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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **W.P.(C) 3702/2018 & CM Appls. 14690/2018, 36281/2019 and
48773/2019**

NORTH DELHI MUNICIPAL CORPORATION & ORS. Petitioners

Through: Ms. Biji Rajesh, Ms. Eshita Baruah,
Ms. Aarti Mahto and Mr. Gaurang
Kanth, Advocates.

versus

HARI MOHAN MEENA Respondent

Through: Mr. Raman Duggal, Mr. Arun Panwar
and Mr Ojusya Joshi, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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13.01.2020

1.The North Delhi Municipal Corporation ('North DMC'), the Additional Commissioner and the Director (Personnel) of the North DMC have filed this petition, challenging an order dated 12th October, 2017 of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT'), allowing the Respondent's OA No. 385/2016 and directing the Petitioners to antedate the promotion of the Respondent to the post of Assistant Engineer (Civil) ['AE(Civil)'] to 16th July, 2007, the date his juniors Mr. Kesh Ram Meena and Mr. Anil Kumar were promoted to that post.

2. The Respondent joined the erstwhile Municipal Corporation of Delhi ('MCD') as a Junior Engineer (Civil) ['JE (Civil)'] on 12th October, 2000.

After trifurcation of the MCD, the Respondent started working at the North DMC.

3. At the time of joining service, the Respondent possessed a diploma in civil engineering, on the strength of which he was appointed as JE (Civil). In the year 2003, he acquired the B.E. (Civil) degree, but intimated about the same to the MCD in the year 2005.

4. The Petitioner was due to be promoted as AE (Civil), for which the requirement was a residency by a degree holder for three years and five years by a diploma holder. 50% of the posts of AE (Civil) were to be filled up by promotion, failing which, by direct recruitment, and failing both by transfer on deputation/transfer. The remaining 50% was to be filled up by direct recruitment, failing which by transfer on deputation/transfer. The regulations were amended on 1st July, 2004 and the ratio of 50:50 was changed to 75% by promotion and 25% by direct recruitment. The residency period for degree holders was increased from three to six years and for diploma holders for five to eight years.

5. The MCD published the final seniority of JEs (Civil) by a circular dated 9th March, 2007. The Respondent figured at serial number 1024 whereas Kesh Ram Meena and Anil Kumar were assigned seniority numbers 1025 and 1027 respectively.

6. The cause of action for the Respondent to CAT was that the

aforementioned two juniors i.e. Mr. Meena and Mr. Kumar were promoted as AEs (Civil) in the Review DPC meeting held on 14th June, 2007, ignoring the Respondent for such a promotion. The CAT in the impugned order noted that the Respondent has been considered for regulation promotion to the post of AE (Civil), in two DPC meetings held on 14th June and 2nd August, 2007, but due to the pendency of an Regular Departmental Action ('RDA') case against him, and non-completion of his ACRs, his case was deferred for promotion on both occasions.

7. In the year 2003, the Respondent acquired the BE (Civil) degree by appearing in the exam conducted by the Jamia Millia Islamia University. He thus became eligible for promotion in the year 2009 and on completion of residency period of six years.

8. At the meeting of the Departmental Screening Committee held on 15th April, 2013, the Respondent was considered for promotion and was recommended to the post of AE (Civil) on *ad hoc* basis. Accordingly, he was promoted by an order dated 25th April, 2013 with immediate effect on conclusion of the pending RDA case against him.

9. On the other hand, Mr. Kesh Ram Meena and Mr. Anil Kumar, who were junior to the Respondent in the seniority list of JEs (Civil), were graduate engineers, and therefore, the residency period applicable to them was six years for being promoted to the post of AE (Civil). Referring to the decision

in *N. Suresh Nathan v. Union of India (1992) SCC (L&S) 584*, the CAT noted that it had been overruled by the subsequent judgment in *M.B. Joshi v. Satish Kumar Pandey (1993) Supp. (2) SCC 419*. It also referred to the decision of the Supreme Court in *D. Stephen Joseph v. Union of India (1997) 4 SCC 753* and *Anil Kumar Gupta v. MCD (2000) 1 SCC 128* and came to the conclusion that the period of service rendered by the Respondent as JE (Civil), prior to his acquiring the BE (Civil) degree, is also to be reckoned for determining his residency period for promotion to the post of AE (Civil). Accordingly, the Petitioners were directed to antedate the promotion of the Respondent to the post of AE (Civil) to 16th July, 2007, at par with his juniors.

10. Learned counsel appearing for the North DMC informed the Court that the impugned judgment of the CAT was inconsistent with the legal position explained by the Supreme Court in *Shailendra Dania v. S. P. Dubey (2007) 5 SCC 535*, which was later followed by this Court in a decision dated 19th July, 2017 in W.P.(C) No.6523/2011 (*R.P. Bharal v. DDA*), wherein it was held that a diploma holder JEs cannot claim seniority over a JE, who is either senior to him in the line of degree holders, or even those in line of diploma holders, who had acquired a degree prior to them for promotion as AE in the quota/channel of degree holder JEs. It was held that the diploma holders would get their position/seniority from the date they acquired the degree and not from the date of appointment as diploma holder JEs.

11. Consequently, the Court is unable to agree with the CAT that on the

basis of above judgments, the Respondent was entitled to relief.

12. Nevertheless, the Court finds that in the relevant rule that is applicable an exception is carved out. Column 12 of the Schedule to the Recruitment Regulations for Assistant Engineer (Civil), MCD, 2004, reads as under:

12.	In case of recruitment by promotion/deputation/absorption from which promotion/deputation/absorption be made	<u>Promotion:</u> Junior Engineer (Civil) with six years regular service in the grade in the case of those possessing degree in Civil. Note: Where juniors -who have completed their qualifying/eligibility service are being considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service
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13. Learned counsel for the Petitioners does not dispute that in terms of the Note below column 12, the Petitioner would in any event be entitled to the relief as granted by the CAT, notwithstanding that the CAT's order is inconsistent with the legal position as explained in *Shailendra Dania v. S. P. Dubey* (*supra*).

14. Consequently, while the Court does not agree with the reasoning rendered by the CAT, it upholds the conclusion on the basis of the Note below column 12 of the Schedule to the Recruitment Regulations.

15. The petition is accordingly dismissed. The pending applications are disposed of. No costs.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 13, 2020
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