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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 24.04.2024*+ **W.P.(C) 4396/2024 & CM APPL. 17983/2024 -Stay****MUNICIPAL CORPORATION OF DELHI** PetitionerThrough: Ms. Divya Swamy, SC with Mr.
Rishav Ranjan and Ms. Akriti Singh,
Advocates

versus

RAKESH GUPTA

..... Respondent

Through: none.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 13.10.2023 passed by the learned Central Administrative Tribunal in O.A. No. 3422/2017. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent thereby directing the petitioner to convene a review DPC for considering him for promotion to the post of Deputy Director (Press & Information) after taking into account both his ad hoc as well as regular service in the feeder post of Assistant Director (P&I).
2. At the outset, the brief factual matrix of the matter as emerging from the record may be noted. The respondent who had joined the services of the



petitioner as a Field Worker on 28.12. 1987, was on 21.02.1997 selected as a Publicity Assistant in the Health Department of the petitioner. While he was working on the said post, the Recruitment Regulations (RRs) for the post of Assistant Director and Deputy Director (P&I) were notified in March 2004, according to which, while a Publicity Assistant with three years regular service was eligible for promotion to the post of Assistant Director, an Assistant Director having eight years regular service (P&I) became eligible for promotion to the post of Deputy Director. Despite his possessing more than ten years of service as a Publicity Assistant, as against the prescribed eligibility of three years, the respondent was not considered for regular promotion but was on 29.08.2007, granted ad hoc promotion as an Assistant Director (P&I). He was subsequently granted regular promotion on 23.11.2010 by which time he had completed more than thirteen years service as a Publicity Assistant.

3. On 24.01.2017 the respondent as against his aspiration for regular promotion to the post of Deputy Director, was granted only ad hoc promotion to the said post. Being aggrieved, he approached the learned Tribunal by way of OA 3422/2017, seeking a direction to the petitioner to convene a regular DPC to the post of Deputy Director (P&I) and consider him for promotion by counting his service rendered on ad hoc basis as Assistant Director towards the eligibility criteria of eight years service prescribed under the RR's. The said OA has been allowed by the learned Tribunal vide the impugned order.

4. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed



to appreciate that as per the RRs 2004, the respondent was required to have eight years of regular service as an Assistant Director and his ad hoc service as an Assistant Director for the period between 29.08.2007 to 23.11.2010 before he was granted regular promotion as Assistant Director (P&I), could not be taken into account. He contends that the ad hoc service is distinct from regular service and could not therefore be included towards the eligibility criteria for promotion to the post of Deputy Director. In support of his plea, he places reliance on a decision dated 29.05.2023 of a Coordinate bench in *Cyprian Kujur & Anr v Union of India* in W.P.(C) 11341/2016. He, therefore, prays that impugned order be set aside.

5. Having considered the submissions of the learned counsel for the petitioner and perused the record, we find that the learned Tribunal has allowed the OA by relying on the decision dated 11.12.2018 of this Court in *K. C. Meena v. P. K. Gupta* in W.P.(C) 5356/2014. In the said case this Court, while dealing with the claims of Superintending Engineers who were initially granted ad hoc promotion on account of their regular promotion being delayed due to non-convening of DPC in time, directed that ad hoc service rendered by them be included for considering their eligibility for promotion to the post of Chief Engineer. Learned counsel for the petitioner, however, seeks to urge that the aforementioned decision of this Court pertains solely to the question of inter se seniority and does not deal with the question of counting ad hoc service towards qualifying period for promotion. We may therefore refer to the relevant extracts of this decision of the Coordinate Bench, which reads as under:-



“ In our view, the stand taken by the respondent is neither fair nor legally sustainable. Those officers who were eligible to be promoted as Superintending Engineers, but were not so promoted on regular basis on account of failure of the respondents to hold the DPC, and were asked to officiate in the grade of Superintending Engineers, cannot be denied their seniority in the said grade from the dates that they have been officiating, or the dates when the vacancy arose, whichever is later.

Our attention has been drawn to two orders passed by this court. The first order was passed in CWP No.3091/1997 on 24.05.2002. A learned Single Judge of this Court (Sanjay Kishal Kaul, J., as his Lordship then was) directed as follows:

“In view of the aforesaid a direction is issued that service rendered by the petitioners on current date charge will be counted towards their service for determining the eligibility for promotion to the next higher post if the petitioners were eligible, a vacancy existed and the DPC was not held within a period of one year from the vacancy arising.

The respondents shall do the needful and intimate it to the petitioners within a period of 6 weeks from today.

Writ petition is disposed of in the aforesaid terms”.

The second order was passed by this court in WP(C) No.5985/2002 on 28.04.2004 by placing reliance on the order passed in WP(C) No.3091/1997. This court directed the MCD that service rendered by the petitioners in that case on current duty charge will be counted towards their service for determining their eligibility for promotion to the next higher post. Pertinently, these orders have been implemented by the Municipal Corporation as is evident from the communication dated 23.07.2012 issued

by the Additional Commissioner (Estt.). Taking note of, and placing reliance on the judgment in CWP No.3091/1997 dated 24.05.2002 and the order in WPC No.1548/1999 dated 07.05.2004, the respondents, inter alia, observed:

“During the meeting of the Screening Committee, it was observed that in some Court cases, such as CW 3091/1997 dated 24.05.2002 in the case of P.S. Dahiya & Ors and also in order dated 7.5.2004 in W.P.(C.) No.1548/99, the Hon'ble High Court of Delhi had directed the MCD that service rendered by the petitioners on Current Duty Charge be counted towards their service for determining their eligibility for promotion to the next higher grade.

Taking into account the position brought out above, particularly provisions contained in Circular



*No.F3/2/72/CED(A)/ 167 dated 14.12.1973, the directions of the judiciary in the cited cases and DOP&T's instructions regarding consideration of promotion of the senior along with his junior on fulfilling the prescribed conditions, **the Committee is of the view that the service rendered on Current Duty Charge basis needs to be counted for the purpose of reckoning of service in the post of SE(C) for promotion to the post of CE(C) on Current Duty Charge basis**".(emphasis supplied)*

Thus, it does not lie in the mouth of the respondents to contend that the service rendered by the petitioners as Superintending Engineers on current duty charge basis or adhoc basis would not count for purpose of determining their eligibility for consideration for regular promotion to the post of Chief Engineer. We, accordingly, direct the respondents to determine the seniority of the petitioners in the grade of Superintending Engineers from the date that they have been working in the said grade either on current duty charge / officiating basis, or from the date when the regular vacancy arose, whichever is later. (emphasis supplied)

The respondents shall draw up eligibility and seniority lists and send the requisition to the UPSC for holding DPCs for the posts of Chief Engineer (Civil). The same principle would be followed for holding the DPC for the post of Engineer-in-Chief. Compliance shall be made within four weeks."

6. From a bare perusal of the aforesaid extract of the decision in **K. C. Meena (supra)**, we find that in the aforesaid case, the Court after noticing the fact that the department was at fault for not conducting DPC for years together had directed that ad hoc service rendered by the employee concerned in the post of Superintending Engineer to which he was subsequently promoted on regular basis, be included for the purpose of considering his eligibility for the post of Chief Engineer. We are, therefore, unable to agree with the learned counsel for the petitioner that the said case did not pertain to the question of counting ad hoc service towards regular service as an eligibility criteria for further promotion.



7. We have also considered the decision in *Cyprian Kujur (supra)* relied upon by the petitioner but find that the same is not applicable to the facts of the present case. In the said decision, the Court was dealing with a claim of an employee who was granted an ad hoc promotion as a LDC and was granted regular promotion as a LDC after he qualified the requisite typing test prescribed as a condition for promotion. In the present case, it is undisputed that the respondent was meeting the eligibility criteria for regular promotion to the post of Assistant Director on the date when he was granted ad hoc promotion to the said post. This decision therefore does not forward the case of the petitioner.

8. In the light of the aforesaid, even though we agree with the learned counsel for the petitioner, that generally ad hoc service is not to be included towards regular service, we are of the view that in a case like the present, where despite his eligibility and availability of vacancy, the respondent was considered only for ad hoc promotion as an Assistant Director on 29.08.2007, it will be highly unfair to deprive him of the benefit of the said ad hoc service specially when his ad hoc appointment as an Assistant Director was followed by regular appointment. In our considered opinion, when despite the respondent having rendered more than ten years of service as a Publicity Assistant as against the requirement of three years service for promotion to the post of Assistant Director, the petitioner granted him only ad hoc promotion as Assistant Director on 29.08.2007, no ground is made out to interfere with the directions issued by the learned Tribunal.

9. The writ petition being meritless, is accordingly, dismissed along



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with the pending applications.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

APRIL 24, 2024/So