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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8737/2016 & CM APPLs. 35840/2016, 11793/2017,
26783/2024

Y. NOORUDDIN

.....Petitioner

Through: Ms. Manpreet Kaur, Advocate with
Petitioner (in-Person).

versus

INDIRA GANDHI NATIONAL OPEN UNIVERSITY (IGNOU) &
ANR

.....Respondents

Through: Mrs. Pratima N. Lakra and Mr.
Shailendra Kumar Mishra, Mr.
Abhishek Sharma and Ms. Upanita
Soumyadarshini, Advocates for R-2.
Mr. Varun Jain, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

20.02.2026

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1. The Petitioner joined Respondent No. 1 as Assistant Engineer (Civil) on 31st March, 1999. On completion of 8 years of service, he was placed in the Pay Band of Rs. 15,600-39,100 + GP Rs. 6,600.
2. On 30th March, 2009, he requested Respondent No.1 to consider him for promotion to the post of Executive Engineer (Civil). A Departmental Promotion Committee met on 9th November, 2010 and, according to the Petitioner, recommended his promotion to the post of Executive Engineer (Civil).
3. While the process of promotion was underway, Respondent No. 1 issued Office Order No. 1100 dated 28th December, 2010, entrusting him with the charge of the post of Executive Engineer (Civil) under FR 49(1), in addition to his routine duties, purely on a temporary basis and until further orders. The same reads as follows:



**“MAIDAN GARHI, NEW DELHI 110 068
(ADMINISTRATION DIVISION)”**

F.No.AD/2/NA/3336/99/391

Dated: 28, December, 2010

OFFICE ORDER No.1100

Shri.Y. Nooruddin, Assistant Executive Engineer (Civil), CMD has been entrusted with the charge of the post of Executive Engineer (Civil) in addition to his routine duties purely on temporary basis till further orders under the provisions of FR-49(1) with immediate effect. This issue with the approval of the Competent Authority

-SD-

(R. THYAGARAJAN)

Dy. REGISTRAR (Estt) ”

4. Thereafter, the Board of Management, in its 109th meeting held on 27th August, 2011, approved the Petitioner’s promotion as Executive Engineer (Civil) in the Pay Band of Rs. 15,600-39,100 with Grade Pay of Rs. 7,600, on a temporary basis against a project post stated to be co-terminus with the project period.

5. Pursuant to the above, Office Order No. 127 dated 5th October, 2011 was issued. It records that, on the recommendation of the DPC held on 9th November, 2010 and approval of the Board of Management on 27th August, 2011, the Petitioner was promoted to the post of Executive Engineer (Civil) in Pay Band-3 (Rs. 15,600-39,100) with Grade Pay of Rs. 7,600 on a temporary basis against a project post created for a period of five years. The order further states that the promotion would take effect from the date he assumed charge of the post on promotion. The same reads as follows:

**“INDIRA GANDHI NATIONAL OPEN UNIVERSITY
MAIDAN GARHI, NEW DELHI**



F.No.1-48(B)NA/E-1/Vol.III/1750

Dated : 5th October, 2011

OFFICE ORDER No.127

On the recommendation of the Departmental Promotion Committee made in its meeting held on 09.11.2010 and with the approval of the Board of Management in its 109th meeting held on 27.08.2011, Shri. Y. Nooruddin, Assistant Executive Engineer (Civil) is promoted to the post of Executive Engineer (Civil) in the Pay Band -3 i.e., Rs.15600-39100 with a Grade Pay of Rs.7600/- On temporary basis against the project post created for a period for 05 years.

The date of effect of promotion shall be the date of assumption of the charge of the said post on promotion.

If Sh. Y. Nooruddin refuses the promotion, he will not be considered for promotion for a period of one year and in such a situation, he will lose his seniority and will rank junior to the last official promoted during this period. He has the option to get his pay fixed in the promoted post from the date of drawal of increment in the lower grade, if applicable, for which the option should be exercised within a month of the date of assumption of the charge under the provisions of FR 22 1(a) (i), if applicable.

Acceptance/Refusal of the promotion must be communicated within one month from the date of issue of this order.

-SD-
(U.S. TOLIA)
Registrar (Admn) ”

6. On 24th January, 2014, Office Order No. 1024 was issued on the recommendations of the Establishment Committee in its 71st meeting held on 21st November, 2013. By this order, officers promoted were declared to have completed the prescribed period of probation satisfactorily from the dates specified. In the Petitioner's case, probation was lifted with effect from 4th October, 2012.

7. In the above backdrop, the Petitioner's grievance arises from impugned Office Order No. 214 dated 22nd August, 2016. By this order,



officials who were “earlier promoted/entrusted the charge of Executive Engineer (C/E) on temporary basis under the provisions of FR 49 against the Project Post” were reverted to their substantive posts with effect from the date of completion of the maximum period of five years of the relevant project. The same reads as follows:

**“INDIRA GANDHI NATIONAL OPEN UNIVERSITY
MAIDAN GARHI, NEW DELHI 110068
ADMINISTRATION DIVISION (ESTT)**

F.No:AD/2/NA/904

Dated 22nd August, 2016

OFFICE ORDER No.214

With the approval of the Competent Authority, the following officials who were earlier promoted/entrusted the charge of Executive Engineer (C/E) on temporary basis under the provisions of FR 49 against the Project Post are hereby reverted back to their substantive posts with effect from the date of completion of maximum period of five year of the Project indicated against each:

S.No	OD L. No.	Name	Entrusted the charge to the post under FR49 from	W.e.f	Reverted back to substantive post	Substantive post
1.	1255	Sh. Y. Nooruddin	Executive Engineer (C.)	28/12/2010	18/06/2015	Assistant Executive Engineer (C.)
2.	1234	Shri. Rattan Singh	Executive Engineer (E)	09/08/2010	18/06/2015	Assistant Executive Engineer (E)

Accordingly, the revised pay fixation orders in respect of above said officials will be issued separately.



-SD-
(A.K. SIROHI)
Deputy Registrar (Estt)''

Petitioner's submissions

8. The Petitioner submits that under the Recruitment and Promotion Rules, 2003, an Assistant Executive Engineer completing ten years of regular service becomes eligible for promotion as Executive Engineer (Civil). It is urged that he was duly considered by the Departmental Promotion Committee and was recommended for promotion, which was thereafter approved by the Board of Management. Pursuant thereto, he was promoted to the post of Executive Engineer (Civil), and his probation was subsequently declared to have been satisfactorily completed. On that basis, it is contended that he stood confirmed in the promoted post and could not thereafter be reverted as though he were merely holding a temporary charge.
9. The Petitioner contends that the impugned order proceeds on a flawed premise because it treats him as a mere FR 49 charge holder. The FR 49 arrangement ended once the promotion order dated 5th October, 2011 was issued. Thereafter, he held the post of Executive Engineer by promotion [with pay fixation under FR 22(1)(a)(i)], his probation was lifted, and he could not be reverted by treating the position as only an FR 49 entrustment. The Petitioner submits that the impugned reversion is illegal, arbitrary and without authority because it was not approved by the appointing authority for Group-A officers, namely the Board of Management. He alleges that it was issued only with the approval of the Vice-Chancellor (in-charge), which, according to him, was insufficient.
10. The Petitioner disputes the respondent's stand that the project had



ended by 18th June, 2015 and relies on certain documents showing continuation of construction activities.

11. The Petitioner also submits that the reversion could not have even been implemented because there was no vacant substantive post available. The Petitioner went on deputation to IIT Delhi on 16th November, 2009. During this period, in the DPC meeting dated 9th April, 2010, one Shri R.P. Meena was promoted on a temporary basis to the Petitioner's post, with a specific stipulation that he would have no right to the post and would be reverted upon the Petitioner's repatriation. The Petitioner was relieved from IIT Delhi to return to the parent department (IGNOU) by memorandum dated 8th November, 2010. He points out that Shri R.P. Meena was not reverted back and was later regularised by Office Order dated 12th April, 2023. He further claims that although six sanctioned posts exist for Assistant Executive Engineer, seven persons were shown as working against them, based on information received under RTI.

12. The Petitioner further submits that recovery is impermissible. He asserts that he continued to discharge duties of Executive Engineer and that a *status quo* order dated 28th September, 2016 protected him. He also points to the respondent's later order dated 23rd November, 2016 cancelling the recovery of the "excess" amount, to contend that the recovery itself was unsustainable. He further submits that, having been placed in Grade Pay Rs. 7,600 since 28th December, 2010, he became entitled to an upward movement/time scale to Grade Pay Rs. 8,700 with effect from 27th December, 2015, and that similarly placed officers had been granted such benefit. He claims that his request was declined only because the respondents treated his promotion as withdrawn. On these grounds, the



Petitioner seeks quashing of Office Order dated 22nd August, 2016, restoration of his status and pay as Executive Engineer (Civil), protection against recovery, and consequential benefits.

Respondent's submissions

13. The respondents controvert the Petitioner's case and submit that the promotion as Executive Engineer (Civil) was never to a regular cadre vacancy, but was a time-bound arrangement against a project post, with a maximum outer limit of five years. They submit that this position flows from the very terms of the DPC recommendation and the promotion order, which expressly tie the appointment to the project post and its duration.

14. It is further urged that the project itself was conceived as a limited-period arrangement, and the Works Committee deliberations show that while construction activity and allied contracts continued to be reviewed, the manpower and delegations for the Construction and Maintenance Division were treated as contingent arrangements, with regular recruitment being deferred until appointment of a regular Vice-Chancellor. On that basis, the respondents defend the reversion as a consequence of the project tenure having run its course, and contend that the Petitioner could not claim a vested right to continue as Executive Engineer beyond the sanctioned project period.

Analysis

15. The controversy turns on the legal character of the Petitioner's promotion. The record does not show a regular promotion against a cadre vacancy. The DPC minutes dated 9th November, 2010 record, in terms, that "one Executive Engineer (Civil) has been created for project for period not exceeding for 05 years" and, on that footing, recommended that the



Petitioner “may be promoted ... on temporary basis against the post created for the project period”. The promotion order dated 5th October, 2011 follows the same line. It promotes the Petitioner “on temporary basis against the project post created for a period of 05 years”. The foundation, therefore, is a time-bound project post.

16. A project post created for a fixed period carries an inherent limit. It does not belong to the regular cadre strength. It is not a “vacancy” in the sense in which service rules contemplate a substantive promotion. When a person accepts such a placement, the right acquired is to hold the post on the terms of the creation and the order granting such a right. Once the sanction period expires, there is no continuing right to remain in that post merely because the individual has worked on it for a length of time, or because some construction activity continues on the ground. Continuance thereafter would require a fresh and valid administrative decision extending the post and the tenure, with the requisite financial sanction and approval by the authority competent to create or extend Group ‘A’ posts.

17. The Petitioner places emphasis on two events: (i) entrustment of charge under FR 49(1) by Office Order No. 1100 dated 28th December, 2010, and (ii) lifting of probation by Office Order dated 24th January, 2014 with effect from 4th October, 2012. Neither carries the case further. FR 49(1) is an arrangement of additional charge “till further orders”. It is not a source of substantive appointment. It cannot override the subsequent promotion order which itself describes the promotion as temporary and tied to the project post. As regards “probation”, the expression, in service usage, only reflects that the incumbent’s work was assessed satisfactory for the post held at that time. It cannot transform a time-bound project post into a permanent



cadre post. Confirmation, even when stated, cannot operate beyond the life of the post itself.

18. The argument that the project was “alive” and therefore the post could not lapse has an attractive factual appeal but fails in law. The material relied upon by the Petitioner, including the Works Committee minutes and correspondence showing extension of RITES’ PMC engagement, or municipal approvals, indicates that construction activity and contract management continued. However, that does not, by itself, establish that the University extended the sanctioned project posts beyond the maximum period for which they were created. Extension of a consultancy contract, or extension of a construction timeline, is not the same thing as extension of sanctioned manpower posts. Each has its own approval and financial discipline. Significantly, the Petitioner’s own documents disclose that, in May 2016, a proposal was placed seeking extension of the technical and non-technical posts. The very fact that such extension was proposed demonstrates that no prior decision extending the life of the project posts had been taken. A proposal or internal noting cannot substitute for a completed and approved decision of the competent authority. In the absence of any material showing that the sanctioned posts themselves were extended, the reversion cannot be invalidated merely because construction activity continued.

19. The contention that the impugned reversion order is without jurisdiction because, at the relevant time, there was no regular Vice-Chancellor and the office was being looked after by an acting Vice-Chancellor also does not merit acceptance. The Petitioner relies upon the circular dated 7th August, 2014, referring to Rule 12(2) of the CCS (CCA)



Rules, 1965, to contend that an officer performing the current duties of an appointment cannot exercise statutory powers. However, the said circular itself recognises that such officer may exercise administrative and financial powers vested in the incumbent of the post. The reversion of the Petitioner on completion of the five-year project period was in implementation of the earlier decision of the Board of Management creating the project post for a limited duration and the terms of the promotion order itself, which expressly tied the appointment to the project period. The Petitioner has not demonstrated that such consequential reversion amounts to exercise of any independent statutory power under the IGNOU Act requiring the approval of a regular Vice-Chancellor or exclusively of the Board of Management. In the absence of any statutory prohibition, the mere fact that the Vice-Chancellor was holding charge in an acting capacity does not render the order invalid.

20. The submission that there was no substantive vacancy to which the Petitioner could be reverted, because another officer (Sh. R.P. Meena) allegedly continued as AEE, is a service management issue. It cannot operate as a lever to confer a right to continue as Executive Engineer beyond the life of the project post. At best, it may raise an implementation concern for the employer to rectify by appropriate postings within the cadre. It does not invalidate the legal basis of reversion from the project post.

21. Prayer (c), seeking regular promotion “with effect from 30.03.2009 against the existing vacancy”, cannot be granted in these proceedings. Promotion is not a matter of right. The right is to be considered in accordance with rules, subject to vacancy position, eligibility and comparative assessment. As already noticed, the Petitioner was promoted



only against a project post, which itself suggests that a regular cadre vacancy was not being filled through that DPC recommendation. A writ of mandamus for a retrospective regular promotion from 2009 would require a clear foundation of (i) existence of a regular vacancy in the cadre, (ii) entitlement under the applicable R&P Rules, and (iii) illegality in denial of consideration in that regular channel at the relevant time. That factual foundation is absent on the present record.

22. On recovery, the approach in service law is settled. Recovery of pay already drawn is not automatic merely because an administrative decision is revisited later. Courts weigh whether the employee contributed to the alleged overpayment and whether recovery would be harsh or inequitable. In *Chandi Prasad Uniyal v. State of Uttarakhand*,¹ the Supreme Court held that any amount paid without authority of law can ordinarily be recovered, and absence of fraud or misrepresentation on the part of the employee does not, by itself, create a bar against recovery. Relief against recovery is not a matter of right, but rests in equity, to be exercised in appropriate cases. Subsequently, in *State of Punjab v. Rafiq Masih (White Washer)*,² the Court identified certain categories where recovery would ordinarily be impermissible on grounds of fairness, such as recovery from Class III and IV employees, retired employees, or where excess payment has continued for a long period and recovery would be iniquitous.

23. In the present case, the respondents' pleadings disclose that the proposed recovery was cancelled by order dated 23rd November, 2016, and no recovery has in fact been effected. In that view, the grievance as regards

¹ (2012) 8 SCC 417

² (2015) 4 SCC 334



recovery does not survive. Needless to add, if any recovery is sought to be initiated or revived in future, it would have to be tested on the touchstone of the principles laid down in the aforesaid decisions, including whether the case falls within the categories recognised in *Rafiq Masih* or whether recovery would be iniquitous in the facts of the case.

Conclusion:

24. The petition, therefore, does not make out a legal basis to quash the reversion order on the footing that the Petitioner acquired a substantive right to remain as Executive Engineer beyond the sanctioned project-post period. The Petitioner's service on the post, even if satisfactory, cannot enlarge the tenure fixed by the creation of the post and the promotion order. The remedy of the Court cannot be to convert a time-bound project promotion into a regular cadre promotion by judicial command.

25. That said, the Petitioner's grievance on regular promotional avenues can be addressed only to the limited extent permitted by law. If the Petitioner is eligible under the applicable R&P Rules for consideration to a regular Executive Engineer (Civil) vacancy, and such vacancy exists, the respondents shall consider the Petitioner for promotion in the regular channel in accordance with the governing rules, along with other eligible officers, within a reasonable time.

26. In view of the above, the petition is disposed of along with pending application(s), if any.

SANJEEV NARULA, J

FEBRUARY 20, 2026/as