

(2014) 08 DEL CK 0053

Delhi High Court**Case No:** W.P.(C) 5674/2011 and C.M. Nos. 11588/2011, 2449 & 6750/2014

MCD

APPELLANT

Vs

S.C. Aggarwal

RESPONDENT

Date of Decision: Aug. 21, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Vipin Sanghi, J; S. Ravindra Bhat, J**Bench:** Division Bench**Advocate:** Mini Pushkarna, Standing Counsel and Y. Pallavi, Advocate for the Appellant;
Sarvesh Bisaria, Advocate for the Respondent**Final Decision:** Allowed

Judgement

Vipin Sanghi, J.

The petitioner Municipal Corporation of Delhi (MCD) has preferred this writ petition under Article 226 of the Constitution of India to assail the order dated 27.05.2011 passed by the Central Administrative Tribunal Principal Bench, New Delhi (CAT/Tribunal), in TA No.439/2009, related applications and contempt petition, whereby the Tribunal held that the respondent applicant was entitled to, inter alia, pay & allowances in the rank of Assistant Engineer (Civil) from 22.10.1985 to 08.05.1989. Payment of interest @ 9% per annum has been directed on the difference in pay & allowances from the date the same was due till actual payment. Consequential revision of pension has been directed to be made on account of revision of his pay.

2. The facts in brief are that the respondent joined as Junior Engineer (JE) in the petitioner MCD on 30.06.1962. He was promoted as Assistant Engineer (Civil) on current duty charge on 28.01.1981. Vide office order dated 29.05.1982, he was appointed as Assistant Engineer (Civil) on ad-hoc basis in the pay scale of Rs.650-1200. Further, vide order dated 13.12.1983, along with several others, the respondent was granted Selection Grade with effect from 01.08.1976 up to

27.01.1981.

3. The Central Bureau of Investigation (CBI) conducted a raid and the respondent applicant was proceeded with on the charge of possessing disproportionate assets. The charge-sheet was presented on 15.12.1983.

4. The respondent was reverted as JE with effect from 13.02.1985 in the light of the orders passed by the Supreme Court in W.P. No.9914/1979 titled "Azhar Ali Khan & Others Vs. MCD & Others". On 18.02.1985, the respondent was assigned current duty charge of Sub-Engineer (Civil) in the pay scale of Rs.650-1040.

5. On 22.10.1985, the respondent was placed under suspension on account of the registration of a criminal case against him under the Prevention of Corruption Act, 1957 (POCA).

6. The respondent preferred CWP No.3435/1987 praying for his pay fixation as per the Pay Commission recommendations. Directions were issued by the High Court on 12.10.1988, consequent whereupon the petitioner issued office order dated 11.01.1989 refixing the respondent's pay as Assistant Engineer in accordance with the Fourth Central Pay Commission recommendations. He was paid subsistence allowance for the suspension period. The respondent was reinstated vide order dated 08.05.1989 and posted to the Planning Department of the MCD as Assistant Engineer. The respondent attained the age of superannuation on 31.01.1990, while serving as Assistant Engineer.

7. The respondent again approached this Court by filing W.P.(C.) No.5896/2003 since his retirement dues (GPF + gratuity, etc.) were not realized. On 20.01.2009, the said writ petition was transferred to the Tribunal and registered as TA No.439/2009.

8. The Trial Court convicted the respondent on 28.05.2009 and sentenced him on 30.05.2009 to 18 months Rigorous Imprisonment (RI) for offence punishable u/s 5(1)(e) read with Section 5(2) of the POCA and with a fine of Rs.1,65,000/- (in default Simple Imprisonment (SI) of 60 days). The respondent was issued a show-cause notice dated 31.03.2010 proposing to impose a penalty of 10% cut in pension for one year, and after considering his representation, the proposed penalty was imposed vide Resolution No.656 dated 15.05.2010 notified vide office order dated 02.02.2011.

9. The Tribunal in the impugned order sets out the controversy in the following words: "Whether the applicant was promoted as Assistant Engineer (Civil); whether he was reinstated to the post of Assistant Engineer (Civil) on revocation of his suspension on 08.05.1999, and; whether he retired as Assistant Engineer (Civil) on 31.01.1990?"

10. The case of the petitioner before the Tribunal was, and even before us is that the respondent was not substantively promoted as Assistant Engineer (Civil). The office order dated 30.08.1990 does not support the respondent's claim that he was

promoted. The promotion of the respondent was on ad- hoc basis only. The Tribunal divided the period of service of the respondent into different spells. The controversy before us pertains to the period 22.10.1985 when the respondent was suspended, to 08.05.1989 when the respondent was reinstated (defined as Spell VI in the impugned order).

11. The submission of learned counsel for the petitioner MCD is that the substantive post held by the respondent was that of the Sub-Engineer (Civil), and consequently, during the period of suspension, which was ultimately revoked, the respondent could not have been considered as discharging the duties of Assistant Engineer (Civil) since he had no right over the said post. Learned counsel submits that the Tribunal placed reliance on the communications which addressed the respondent as Assistant Engineer (Civil). That by itself, would not confer a right upon the respondent to be considered as Assistant Engineer (Civil) when the substantive post held by him was that of Sub-Engineer (Civil).

12. On the other hand, learned counsel for the respondent supported the impugned order.

13. The office order dated 29.05.1982, whereby the respondent along with others was appointed as Assistant Engineer (Civil) shows that the said appointment was on ad-hoc basis only. This order states that the Commissioner has approved the ad-hoc appointment to the post of Assistant Engineer (Civil) in respect of the Assistant Engineer (Civil) presently working on current duty charge basis from the dates of their taking over the charge.

14. The MCD also issued an office order on 13.12.1983, which records that upon conversion of 60 posts of Junior Engineer (Civil) in the Selection Grade, the Corporation allowed the benefit of the said grade to the eligible officials with effect from 01.08.1976. The respondent was enlisted as one of the eligible officials. This office order, in terms, states that "This benefit shall be available to them till they continued to hold the posts of Jr. Engineers on their substantive posts".

15. Pertinently, it is not the respondent's case that he had ever been promoted on substantive basis to the post of Assistant Engineer (Civil). Merely because at the time of his suspension on 22.10.1985, the respondent was officiating as Assistant Engineer (Civil); and on his reinstatement, he was again required to officiate in the said position on 08.05.1989, it does not follow that the intervening period of suspension has to be deemed as service in the higher grade. The respondent has no right or lien over the higher post on which he was officiating. In this regard, reference may be made to [Union of India \(UOI\) Vs. Parshotam Lal Dhingra, .](#)

16. For the purpose of computing the suspension allowance as well as balance pay and allowances to which an employee would be entitled upon his reinstatement (where the suspension period is required to be treated as spent on duty), an employee cannot insist that he should be deemed to have officiated in the higher

post held by him (not substantively but only on officiating basis) at the time of his suspension. The nomenclature adopted by the petitioner while suspending the respondent; at the time of his reinstatement; at the time of issuance of his posting orders after reinstatement, and; at the time of issuance of the respondent's retirement order, is of no significance since it is not in dispute that he was holding the post of Sub-Engineer (Civil) and had never been substantively promoted as Assistant Engineer (Civil), or drawn the pay attached to that post for the 12 months preceding his superannuation.

17. For the aforesaid reasons, we allow the writ petition and set aside the impugned order insofar as it holds that the respondent stood promoted to the post of Assistant Engineer (Civil) and directs payment of balance amount for the period 22.10.1985 to 08.05.1989 on the basis that the respondent would have served as Assistant Engineer (Civil), had he not been suspended. The parties are left to bear their respective costs.