



2025:DHC:1839-DB



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

Date of decision: 21.03.2025

+ W.P.(C) 3522/2025

BIRENDRA KUMAR MISHRA AND ORSPetitioners

Through: Mr. M. K. Bhardwaj and Ms. Priyanka Bhardwaj, Mr. Himanshu Bhardwaj, Advs.

versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Vinay Yadav, SPC with Ms. Kamna Behrani, Mr. Ansh Kalra, Mr. Divyanshu Sinha, Advs for UOI
Mr. Ravinder Agarwal and Mr. Manish Kumar Singh, Advs for R-4/UPSC
Mr. Vaibhav Kalra, Adv. for R-5 & 6.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

CM APPL. 16502/2025 (Exemption)

1. Allowed, subject to all just exceptions.

CAV 108/2025

2. In view of the appearance of the learned counsel for the respondents.



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3. The caveat stands discharged.

W.P.(C) 3522/2025 & CM APPL. 16503/2025

4. This petition has been filed by the petitioners, challenging the Order dated 18.02.2025 passed by the learned Central Administrative Tribunal Principal Bench, New Delhi (hereinafter referred to as the, 'learned Tribunal') in Original Application No. 301/2025 (O.A.), titled as "***Birendra Kumar Mishra v. Housing and Urban Affair***". The learned Tribunal, in the impugned order, though has observed that it is not inclined to grant any *interim* relief to the petitioner, however, it has directed that any promotion made to the post of Superintendent Engineer (Civil) [hereinafter referred to as, 'SE (C)'] during the pendency of the O.A. shall be subject to the final outcome of the O.A.

5. The learned counsel for the petitioners vehemently submits that despite repeated directions from the learned Tribunal and also from this Court in various proceedings, reference to which has been given in the writ petition, the respondent no. 1 finally issued an Order dated 31.05.2024, promoting the petitioners to the grade of Executive Engineer (Civil) against the panel years of 2012-13 (from 17.08.2012) to 2015-16 on regular basis. He submits that although the said order states that the petitioners shall be promoted with effect from the date of assumption of charge of the post, as the petitioners were already working at the said post on an ad-hoc basis, their seniority should relate back to the date of the initial appointment.

6. He submits that a similar exercise was followed when the officers working as Assistant Executive Engineer (Civil) and Assistant



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Executive Engineer (Electrical and Mechanical), were promoted to the grade of the Executive Engineer (Civil) and the Executive Engineer (Elect. & Mech.) *vide* Order dated 25.02.2015. This is also reflected in the seniority list published on 17.01.2020, which determines seniority as of 01.01.2018.

7. He submits that in the present case, the respondents are proposing to grant promotion to the post of SE (C) without publishing the seniority list as of 01.01.2025, thereby prejudicing the case of the petitioners.

8. On the other hand, the learned counsel for the respondent nos. 5 and 6 submits that the promotion to the post of SE (C) cannot be stopped for want of a seniority list. He submits that even if a seniority list is to be drawn, the petitioners will be placed junior to the said respondents.

9. He submits that in the Order dated 31.05.2024 issued by the respondent no. 1, it has been clarified that the promotion shall be “with effect from the date of assumption of charge of the post”. He submits that the same has also been clarified by the respondent no. 3 in its communication dated 29.05.2024, and by the respondent no. 2 in its Office Memorandum dated 03.12.2024. He submits that presently there is no challenge to any of these orders before the learned Tribunal. He further submits that the appointment of the petitioners on an *ad-hoc* basis was not in accordance with the recruitment rules, therefore, no retrospective seniority can be granted to the petitioners.

10. He submits that, therefore, the learned Tribunal has brought



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about a balance of the rights of the administration and the petitioners, by directing that any promotion made shall be subject to the outcome of the O.A. filed by the petitioners. The learned counsel for the petitioners denied the submissions of the learned counsel for the respondents.

11. The learned counsel for the respondent no. 1, who appears on advance notice, unfortunately, does not have any instructions as of today.

12. Having considered the submissions made by the learned counsels for the petitioners and the respondent nos. 5 and 6, we are of the opinion that there are larger issues to be determined by the learned Tribunal in the O.A. that is pending before it. The nature of appointment of the petitioners and whether the petitioners can claim retrospective seniority based on the Order dated 31.05.2024, will have to be determined by the learned Tribunal keeping in view the earlier litigations and the orders passed therein, as well as the nature and manner of appointment of the petitioners, the relevant Recruitment Rules, etc.

13. The learned Tribunal has listed the O.A. for the final hearing on 02.05.2025 and has also directed that any promotion made to the post of SE (C) during the pendency of the said O.A. shall be subject to the outcome of the O.A. The equities, therefore, have been balanced by the learned Tribunal, and we do not deem it appropriate to interfere with the same in the exercise of our powers under Article 226 of the Constitution of India. However, taking into account that these issues

