

PREET BHARARA
United States Attorney for the
Southern District of New York
By: JESSICA JEAN HU
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Telephone: (212) 637-2726
Fax: (212) 637-2717
E-mail: jessica.hu@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF TRANSPORTATION,

Defendants.

17 Civ. 0364

COMPLAINT

Plaintiff the United States of America (the “United States”), by and through its attorney, Preet Bharara, United States Attorney for the Southern District of New York, alleges upon information and belief as follows:

INTRODUCTION

1. The United States brings this civil action to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended (“Title VII”). As set forth more fully below, the United States alleges in this action that Defendants the City of New York (the “City”) and the New York City Department of Transportation (the “NYCDOT”) have engaged in a pattern or practice of racial discrimination and retaliation based on the failure to promote minority employees within the Fleet Services unit (“Fleet Services”) of the Division of Roadway Repair and Maintenance within NYCDOT.

JURISDICTION & VENUE

2. This Court has jurisdiction over this matter under 42 U.S.C. § 2000e-6(b) and 28 U.S.C. §§ 1331 & 1345.

3. Under 28 U.S.C. § 1391(b), the Southern District of New York is the proper venue for this matter because Defendants are located in this District.

PARTIES

4. Plaintiff is the United States of America.

5. Defendant the City of New York (the “City”) is a person within the meaning of 42 U.S.C. § 2000e(a) and an employer within the meaning of 42 U.S.C. § 2000e(b).

6. Defendant the NYCDOT is an agency of the City, a person within the meaning of 42 U.S.C. § 2000e(a), and an employer or the agent of an employer within the meaning of 42 U.S.C. § 2000e(b).

BACKGROUND

7. NYCDOT is the City agency charged with maintaining and enhancing the transportation infrastructure of New York City.

8. NYCDOT employs over 4,500 employees and has an annual operating budget of \$900 million.

9. Polly Trottenberg is currently the commissioner of NYCDOT.

10. Commissioner Trottenberg was appointed on December 31, 2013, and she replaced Commissioner Janette Sadik-Khan, who held the position from 2007 until Commissioner Trottenberg’s appointment at the end of 2013.

11. NYCDOT's operations are overseen by members of its Executive Staff who report directly to Commissioner Trottenberg and are each responsible for one of NYCDOT's divisions.

12. These divisions are: Bridges; Finance, Contracting, and Program Management; Human Resources and Facilities Management; IT & Telecom; Roadway Repair and Maintenance (RRM); Sidewalks and Inspection Management; Staten Island Ferry; Traffic Operations; and Transportation Planning & Management.

13. Fleet Services is a subdivision of RRM within NYCDOT and is responsible for maintaining the fleet of vehicles owned and operated by NYCDOT.

14. These vehicles include both heavy machinery, such as pavers, cranes, and dump trucks, which the NYCDOT utilizes in its roadway repair and construction operations, as well as, lighter vehicles, such as pickup trucks, agency passenger cars, and even mopeds.

15. Fleet Services employs approximately 200 individuals in a range of trades, such as: machinists, auto mechanics, electricians, blacksmiths, and engineers.

16. The bulk of the positions within Fleet Services, including supervisory positions, are represented by a union, and these positions are also subject to New York City's civil service rules.

17. At all times relevant to the complaint, RRM was overseen by a Deputy Commissioner ("Deputy Commissioner of RRM"), who reported directly to the Commissioner of NYCDOT.

18. As a subdivision of RRM, Fleet Services was managed by an Executive Director (the "ED"), who then reported directly to Deputy Commissioner of RRM.

19. For all periods of time relevant to the complaint, the Executive Directors of Fleet Services were “Executive Director I” and “Executive Director II.”

I. Pattern or Practice of Discrimination Under Executive Director I

A. Incident Involving Mechanic 1

20. In October 2007, Executive Director I assumed the position of ED.

21. Executive Director I’s second-in-command within Fleet Services was Executive Director II,¹ and although Executive Director I held the title of ED, the bulk of the day-to-day operations of Fleet Services were overseen by Executive Director II.

22. Beginning in 2007, upon Executive Director I’s assumption of the ED position, Executive Director I requested that an African American auto mechanic, “Mechanic 1,” who had been serving as an Assistant Supervisor in NYCDOT’s Bronx garage operations (the “Bronx Shop”), be removed from his office duties and returned to mechanic duties.

23. The practice of an auto mechanic serving as an “Assistant Supervisor” or “Acting Supervisor” within a NYCDOT garage operation is widespread throughout Fleet Services. Individuals serving in this capacity do not have any difference in civil service title from their peers who are only serving as non-supervisory auto mechanics, and as such, they receive the same compensation.

24. Assistant Supervisors serve a distinct operational function, however, and perform functions that are not performed by other auto mechanics within their assigned shop. These tasks include: the assignment of tasks to other auto mechanics; ordering parts from the NYCDOT system; performing intake for vehicles coming into the shop; working in the office; and serving as the supervisor when the SOMME in charge of the shop is on leave or otherwise away.

¹ The Complaint refers to the individual who succeeded Executive Director I in the ED position as “Executive Director II.” This individual did not assume the ED title, however, until Executive Director I left the agency in 2010.

25. Because some of the tasks performed by the Assistant Supervisor require computer access that auto mechanics do not otherwise possess, or a presence in the office (a location where line auto mechanics do not otherwise generally go) the Assistant Supervisor is easily recognized by his peers, as well as others within NYCDOT as serving in a distinct role.

26. In discussing with subordinates his request to have Mechanic 1 removed from the Assistant Manager position, Executive Director I stated that Mechanic 1 “was forced down my throat by the two monkeys who put him in the office and I want him out!”

27. It was understood by those who heard these comments that Executive Director I’s reference to “monkeys,” was to Keith Howard and Leon Hayward, who were Deputy Commissioners at the time, and who were also African American.

28. At Executive Director I’s direction, Executive Director II discussed relieving Mechanic 1 of his responsibilities with “Supervisor I,” who was, at the time, the supervisor in charge of the Bronx Shop.

29. Supervisor I refused to take the requested action because he felt that Mechanic 1 was performing well as an Assistant Supervisor and believed there was no reason to remove him from his responsibilities.

30. Following this initial refusal by Supervisor I, Mechanic 1 continued to perform the same duties.

31. Several months later, however, Executive Director I renewed his request that Mechanic 1 be removed.

32. Shortly after Executive Director I renewed his request, Executive Director II then attempted to discuss the issue with Supervisor I a second time, who again refused to comply with the order to remove Mechanic 1 from his supervisory functions.

33. Following Supervisor I's refusal to comply with Executive Director II's order, Executive Director II then directed others to remove Mechanic 1's computer from his work space such that Mechanic 1 would no longer have the ability to perform some of the administrative functions of an Assistant Supervisor.

34. In spite of these actions, however, Supervisor I persisted in maintaining Mechanic 1 as his Assistant Supervisor.

35. Accordingly, Executive Director II next proceeded to have the phone lines which rang in the office where Mechanic 1 had been sitting, redirected to a different location.

36. Eventually, rather than continue to sit in his office without access to either a phone or a computer, Mechanic 1 chose to remove himself from the Assistant Supervisor position.

37. Within a few months after having been removed from his Assistant Supervisor duties, Mechanic 1 requested a transfer to another location.

B. Incident Involving "Blacksmith 1"

38. In the summer of 2008, "Blacksmith 1," an African American blacksmith in Fleet Services, requested a cell phone.

39. Blacksmith 1's request was denied.

40. In November 2008, Blacksmith 1 became aware that another cell phone had become available and had been given to a white blacksmith with less seniority.

41. When Executive Director I was reminded by Executive Director II that Blacksmith 1 had previously requested a cell phone, Executive Director I responded "that nigger gets nothing."

II. NYCDOT EEO Investigation of Executive Director I (2009 – 2010)

42. On October 15, 2009, Blacksmith 1 filed a complaint with NYCDOT's Equal Employment Opportunity Officer ("NYCDOT EEO").

43. In his complaint, Blacksmith 1 referenced both the 2007 incident involving Mechanic 1's removal as Assistant Supervisor in the Bronx Shop, as well as his own experience in 2008 relating to his cell phone request.

44. In response to Blacksmith 1's complaint, NYCDOT EEO conducted an investigation of Executive Director I.

45. In the course of that investigation, NYCDOT EEO interviewed numerous current NYCDOT employees who stated that Executive Director I routinely used racial epithets, such as "nigger," "monkey," and "gorilla," to refer to African American employees.

46. Executive Director I was reported to have made these statements in the presence of Executive Director II and other senior management of Fleet Services, and none of these individuals ever took any action to report the statements.

47. Indeed, upon first being questioned by NYCDOT EEO, Executive Director II denied ever hearing Executive Director I use a racial epithet to describe African Americans.

48. Executive Director II later recanted, but only after he became aware that Executive Director I had stated that Executive Director II was in fact responsible for the actions taken against both Mechanic 1 and Blacksmith 1.

49. Following its investigation, NYCDOT EEO recommended that Executive Director I be demoted, suspended, and removed from his responsibilities as a NYCDOT EEO counselor.²

50. Commissioner Sadik-Khan approved these recommendations on January 18, 2010.

51. Following the decision of Commissioner Sadik-Khan, Executive Director I chose to voluntarily retire.

52. Upon Executive Director I's retirement, Deputy Commissioner of RRM promoted Executive Director II to ED.

III. Discrimination Under Executive Director II (2010 – 2016)

A. Exclusion of Minorities from Preferred Assignments

53. The culture of fear and intimidation that predominated during Executive Director I's tenure as ED persisted under Executive Director II's leadership.

54. Throughout his tenure as ED, Executive Director II routinely and systematically excluded minorities from preferred assignments and special projects within Fleet Services.

55. Rather than engage in an open application process, or consult with a committee of supervisors who could provide objective feedback on employees' performance, Executive Director II handpicked white candidates for those assignments that provided the best opportunity for further advancement within Fleet Services. Executive Director II then promoted those same white candidates based on the experience they gained during those assignments. Because Executive Director II consistently picked only white candidates for these assignments, minority candidates were and continue to be excluded from promotional opportunities.

² As part of his duties, Executive Director I also served as an EEO counselor for Fleet Services.

56. One example of this discriminatory practice is Executive Director II's decision to move "Mechanic 2," an auto mechanic who had been working as a parts coordinator at a NYCDOT facility in Brooklyn, to NYCDOT's facility at 158th Street in Manhattan (the "Manhattan Shop") in May 2009.

57. Upon moving Mechanic 2, Executive Director I directed the supervisor at the Manhattan Shop at the time, Supervisor II, to install Mechanic 2 as his Assistant Supervisor and second-in-command.

58. At the time, however, another individual, Seupersaud Bharat ("Bharat"), a minority auto mechanic of East Indian descent, was already acting as the Assistant Supervisor in the Manhattan Shop.

59. Supervisor II had selected Bharat for this role because he excelled as a mechanic and was "far and away" superior to the other mechanics in the Manhattan Shop with respect to his skills at fixing vehicles. In addition, Bharat had foreman experience from previously working at Saturn Automotive.

60. As part of his duties as the Assistant Supervisor, Bharat served as the shop supervisor in Supervisor II's absence, including for the cumulative three month period in which Supervisor II was out of the office either on leave or attending meetings elsewhere for NYCDOT.

61. Because he was fully satisfied with Bharat's performance as an Assistant Supervisor, Supervisor II had no desire to replace Bharat with Mechanic 2. Moreover, Supervisor II did not personally believe the addition of Mechanic 2 was necessary.

62. Executive Director II directed Supervisor II to have Mechanic 2 work in the office in the Manhattan Shop, and upon this instruction, Supervisor II relieved Mechanic 2 of his previously assigned duties.

63. Executive Director II never consulted with Supervisor II regarding his decision to replace Mechanic 2 and never informed Supervisor II of the reason for this change.

64. Another example of Executive Director II's discriminating against minorities in the distribution of desirable and high profile assignments within Fleet Services was his management of the Biodiesel Retrofit Program ("BRP"), a project to retrofit certain of Fleet Services machinery to biodiesel fuel.

65. NYCDOT undertook the BRP at some time in 2009 or 2010.

66. As a high profile agency initiative that would provide exposure to NYCDOT leadership and the opportunity to demonstrate suitability for promotion, the BRP was considered by many auto mechanics within Fleet Services to be a desirable assignment.

67. Following his transfer in May 2010 to Harper Street, Mechanic 2 was assigned by Executive Director II to lead the BRP.

68. Executive Director II then sought to assign two additional employees, in addition to Mechanic 2, to the BRP project.

69. Rather than competitively select for these positions, however, Executive Director II took steps to ensure that the positions would be given to "Mechanic 3" and "Mechanic 4," two white auto mechanics who also worked at the Manhattan Shop with Bharat.

70. In contrast to other auto mechanics within Fleet Services who had decades of experience in repairing vehicles, Mechanic 3 and Mechanic 4 were both fairly inexperienced. Both Mechanic 3 and Mechanic 4 had only been working in automotive services since 2003, and

both had only been employed at NYCDOT as auto mechanics since October 2008. Accordingly, at the time they were transferred, neither Mechanic 3 nor Mechanic 4 had more than two years of experience as auto mechanics within the NYCDOT.

71. This was reflected in their work at the Manhattan Shop, where their supervisor, Supervisor II, assessed both of them to have far less automotive expertise and knowledge than Bharat.

72. Executive Director II purposely took steps to obfuscate the true nature of the BRP positions, so that other applicants, including minority applicants like Bharat, would not apply. Specifically, in posting for the positions, Executive Director II purposely listed the job as an office position at Harper Street with a nighttime schedule. The advertised hours discouraged applicants, and as a result, very few eligible mechanics applied.

73. Once Mechanic 3 and Mechanic 4 were selected for the position, however, their hours were changed to the standard daytime schedules.

74. Executive Director II continued to preferentially assign Mechanic 3 desirable work assignments even after the BRP.

75. Following Mechanic 3's transfer and reassignment to the Fleet Services headquarters at Harper Street in Queens ("Harper Street"), Executive Director II assigned Mechanic 3 to report directly to him and to undertake certain duties that were never offered to any minority auto mechanics.

76. These responsibilities included oversight of special projects, in addition to the BRP, and writing specifications for acquisition of new vehicles and vehicle parts.

77. Mechanic 3 was assigned these tasks by Executive Director II as part of his new position, but that position had only been made available to Mechanic 3, a less qualified employee, due to Executive Director II's purposeful obfuscation of the true nature of the job.

B. Promotion of Provisional SOMME (2010)

78. In the summer of 2010, Executive Director II made the decision to promote a number of auto mechanics into the SOMME title "provisionally."

79. Compared to the positions that feed into it, such as an auto machinist, auto mechanic, electrician, or machinist, which have an approximate annual salary of \$65,250, the salary range for a SOMME is between \$92,899-\$102,263.

80. The term "provisional," as used in this context, refers to the civil service status of the position, and it is contrasted with the civil service term "permanent."

81. The New York civil service rules dictate that candidates for permanent promotion must be drawn from a ranked list of candidates who have taken a written examination for the title (the "List").

82. The List, which is maintained by the Department of Citywide Administrative Services ("DCAS"), ranks candidates based on the score that they received on the written examination for the supervisory title and other statutorily defined factors, such as their seniority and veteran's status.

83. Under the civil service rules, management cannot promote an individual "permanently" without first considering other candidates who are ranked higher on the List.

84. In addition, in selecting candidates, management is restricted to the three eligible candidates who are ranked highest on the List.

85. In contrast to permanent promotions, because provisional supervisors have no civil service rights to their positions, the civil service rules place no restrictions on the process used to provisionally promote candidates into supervisory titles.

86. On August 6, 2010, at Executive Director II's direction, NYCDOT posted a promotional opportunity notice for the position of SOMME.

87. The posting described the position and listed under "Qualification Requirements," under the subheading "License Requirements," that the candidate "will be required to obtain a New York State Class A only Commercial Driver License with no restrictions, within ninety days of promotion."

88. The posting accordingly did not require that any applicant possess a "Class A" driver license at the time of interview.

89. A total of 38 auto mechanics within NYCDOT responded to the posting, which was open for only two weeks.

90. Of these applicants, ten were minority candidates.

91. These minority candidates included at least two individuals who were known within Fleet Services to be presently performing the duties of Assistant Supervisor in their respective shops.

92. These two candidates were Bharat and "Mechanic 5," a Hispanic auto mechanic who served as the Assistant Supervisor at the NYCDOT garage operation in Brooklyn ("Brooklyn Shop").

93. Like Bharat, Mechanic 5 had been assigned as an Assistant Supervisor by the supervisor in charge of his respective shop.

94. Although the candidates for promotion were ostensibly selected by a committee which included Executive Director II, and three other senior managers from within Fleet Services and NYCDOT Human Resources, the real decision-maker in the process was Executive Director II.

95. Executive Director II alone selected the candidates for interview, and with one exception, he was effectively the sole decision-maker in the process.

96. In spite of the large number of minority applicants, including minority applicants who were already serving in a supervisory capacity within NYCDOT, of the twelve candidates who were interviewed, only one was a racial minority.

97. This candidate was interviewed and promoted at the request of Deputy Commissioner of RRM because of the candidate's role as a specification writer in NYCDOT's central office in downtown Manhattan, where Deputy Commissioner of RRM was also based, justified higher compensation.

98. The remaining three candidates who were promoted, all at the direction of Executive Director II, were white applicants.

99. One of these individuals was Mechanic 2, who in 2009 had been placed in a supervisory position at the Manhattan Shop, over Bharat, at Executive Director II's request.

C. Promotion of Permanent SOMME (2013)

100. In May 2013, Executive Director II took steps to promote nine individuals permanently into the SOMME position.

101. Throughout the process, NYCDOT management actively took steps which discriminated against minority applicants and promoted the candidacy of white applicants.

102. On May 1, 2013, a notice was sent to all candidates listed on the list of candidates eligible for promotion to SOMME.

103. These candidates were instructed to report to the NYCDOT headquarters in Manhattan on May 17, 2013, to be interviewed for the position.

104. In addition, in contrast to the 2010 posting for the provisional SOMME position, as well as all prior postings for permanent SOMME positions, the May 2013 posting directed candidates to bring their “CDL A License.”

105. The reason the posting stated this requirement was because, in an unprecedented decision, NYCDOT management had elected to exercise what is known as a “selective certification,” and to call only those candidates on the List who already possessed a Class A license at the time of the interview.

106. By deciding to limit eligible candidates only to those who qualified for the Class A selective certification, rather than to allow any selected candidate to obtain a Class A license within 90 days, as had been the past practice, NYCDOT management removed from consideration any candidate who did not already possess a Class A license.

107. Mechanic 1, an African-American employee, was the only applicant within the top fourteen candidates without a Class A license at the time of the interview. NYCDOT management’s decision to require a Class A license at the time of interview excluded Mechanic 1.

108. Given Mechanic 1’s high ranking on the List, and the fact that he had been serving as an Assistant Supervisor in the Bronx Shop, it would have been very difficult for Executive Director II and NYCDOT management to justify not promoting Mechanic 1 had management not exercised the selective certification.

109. At an executive level supervisor meeting prior to the May 17, 2013 interview date, Executive Director II stated a desire to interview a white candidate who was ranked fourteenth on the List.

110. In response to this proposal, Supervisor I, who had since been promoted to an executive management position, expressed dissent. Supervisor I stated that, because the nine applicants that ranked highest on the List were experienced auto mechanics who had demonstrated their qualifications for promotion through their service within Fleet Services, none of these candidates should be passed over in favor of others who were ranked lower on the List.

111. Based on Supervisor I's proposal, the top nine candidates, including Mechanic 1 and Mechanic 5, two minority applicants, would have been selected for the position.

112. Supervisor I was particularly adamant in asserting that Mechanic 1 should be promoted, as he had served for over fifteen years as an Assistant Supervisor.

113. Although others in the meeting agreed with Supervisor I's view, Supervisor I was the only individual to speak up against Executive Director II's proposal of interviewing candidates ranked lower on the list.

114. Following the meeting, Supervisor I was excluded from any further decision making regarding the selection of candidates for promotion.

115. On the date of the scheduled interview, although many eligible candidates reported to the scheduled interview date as directed in the notice, rumors were widespread that Executive Director II had already decided whom he would promote, and the interviews were therefore being conducted merely to satisfy technical requirements.

116. Upon arriving at the interview location, which was located at the NYCDOT headquarters, Mechanic 5 and other eligible candidates saw Deputy Commissioner of RRM in

the same building. When Deputy Commissioner of RRM inquired as to why Mechanic 5 was there dressed in a suit, Mechanic 5 replied that he was there for the interviews for the SOMME posting.

117. In response, Deputy Commissioner of RRM stated “sometimes you just have to wait your turn.”

118. After the interviews, which were conducted by Executive Director II, Executive Director II’s second-in-command, and two employees from NYCDOT’s human resources division, nine candidates were selected for promotion.

119. Although four individuals conducted the interviews, the promotion decisions were ultimately Executive Director II’s, as the other interviewers deferred entirely to his authority.

120. Of the nine candidates selected for promotion, none of the eight candidates selected for promotion by Executive Director II was a minority candidate.

121. This was the case even though all three of the minority candidates who ranked high enough on the List to be considered had served as Assistant Supervisors in the past, and indeed, Mechanic 1 was continuing to serve as an Assistant Supervisor at the time of the interviews.

122. In addition, one of the candidates who was selected, Mechanic 3, was significantly less experienced than the minority candidates who were passed over.

123. In their written justification for Mechanic 3’s selection, the interviewers cited his unique experience in writing specifications, a task he had been preferentially assigned by Executive Director II.

D. Retaliation Against Dissent

124. Some time after he had expressed criticism of Executive Director II's handling of the selection process for SOMME, Supervisor I received an e-mail that all weekday overtime for Fleet Services executive staff, such as himself, should be discontinued and that future overtime requests would have to be submitted to Executive Director II for prior approval.

125. The e-mail effectively discontinued what had been the prior practice for executive staff within Fleet Services to return to their desks for an extra hour at the end of each day, during which time they handled administrative duties and received overtime compensation.

126. Supervisor I interpreted the e-mail as a policy to reduce overtime and responded accordingly, reducing his salary by approximately \$11,000 per year.

127. After he received the e-mail, however, Supervisor I became aware that other executive staff members were continuing to send e-mails after the normal work day.

128. As a result of receiving these e-mails, Supervisor I realized that what he had interpreted as an agency-wide "policy," may have instead been an e-mail sent specifically to him, as retaliation for his prior dissent in the SOMME hiring process.

E. Subsequent Threats Against Dissenters

129. On October 22, 2013, Blacksmith 1 expressed to his supervisor a complaint that a white blacksmith was being given preferential treatment with respect to his overtime allowance and had been recently granted the option of "clocking in" in his home borough, a privilege which Blacksmith 1 had requested in 2011 and been denied by Executive Director II.

130. This complaint was relayed to Executive Director II on that same day, and Executive Director II then requested that Blacksmith 1 come to his office at Harper Street the following day for a meeting.

131. At the time of the appointed meeting, on October 23, 2013, Blacksmith 1, along with Supervisor I and Blacksmith 1's direct supervisor, reported to Executive Director II's office as requested. They were joined by other members of Fleet Services' executive leadership.

132. During the meeting, Blacksmith 1 stated his concern regarding how Executive Director II had treated the white blacksmith preferentially to how he himself had been treated. Executive Director II responded to this statement that "it's none of your concern what I do in this place."

133. Blacksmith 1 then raised a concern that the disparate treatment he had received was similar to Mechanic 1 having been denied the SOMME promotion. Blacksmith 1 further stated that Mechanic 1 should have been promoted to SOMME.

134. In response, Executive Director II said in a loud and threatening manner that was clearly heard by everyone in the room, "I'll take you outside and kick your fucking ass."

135. Upon Executive Director II's threat of physical violence, Blacksmith 1 feared for his safety and left the room.

136. Although this incident was reported by Blacksmith 1 to NYCDOT's Office of the Advocate in 2014, and was witnessed by all of the individuals present in the meeting, Blacksmith 1 never received a formal apology and Executive Director II remained in his position as ED following the incident.

EEOC Proceedings

137. On November 8, 2013, Bharat filed with the EEOC an individual charge of discrimination on the basis of race and national origin under Title VII.

138. In an Answer and Position Statement filed on February 28, 2014, NYCDOT denied Bharat's allegations and asserted that the nine candidates selected for promotion to

SOMME were selected on the basis that: (1) four of the candidates were already serving provisionally in the title, and accordingly, possessed unique familiarity and experience in order to perform the job; and (2) the remaining candidates all possessed the requisite skills needed to fulfill the duties of the SOMME position.

139. On May 14, 2014, Bharat, through counsel, filed a letter rebuttal to the NYCDOT's Answer and Position Statement

140. On October 16, 2014, the EEOC's New York District Director issued a cause determination with regard to Bharat's charges of discrimination. The EEOC found that there was reasonable cause to believe Bharat's allegation that he was not promoted to a supervisory position by the NYCDOT because of his race and national origin. After determining that further conciliation efforts would be futile, on December 15, 2014, the EEOC referred this matter to the Department of Justice for possible litigation.

Conditions Precedent to Suit

141. All conditions precedent to the filing of this suit have been satisfied.

FIRST CLAIM FOR RELIEF
(Pattern or Practice of Discrimination)

142. The allegations in paragraphs one through 142 are repeated and realleged as though set forth fully herein.

143. The acts, omissions, policies, and practices described in paragraphs 1 through 142 above constitute a pattern or practice of employment discrimination on the basis of race in violation of 42 U.S.C. § 2000e-2(a)(1) and retaliation in violation of 42 U.S.C. § 2000e-3(a). This pattern or practice denies racial minorities and others employed within Fleet Services the full exercise of the rights secured by Title VII. Unless enjoined by the Court, Defendants will

continue to engage in practices that are the same as or similar to those that are alleged in this Complaint.

SECOND CLAIM FOR RELIEF
(Discrimination Against Bharat and Similarly-Situated Individuals)

144. The allegations in paragraphs 1 through 142 are repeated and realleged as though set forth fully herein.

145. Defendants violated 42 U.S.C. § 2000e-2(a)(1) by discriminating against Bharat and similarly-situated individuals on the basis of race and national origin.

WHEREFORE, the United States demands judgment:

(a) declaring that Defendants engaged in a pattern and practice of discrimination based on race in violation of 42 U.S.C. § 2000e-2(a)(1) and retaliation in violation of 42 U.S.C. § 2000e-3(a);

(b) enjoining Defendants from engaging in discriminatory and retaliatory employment practices in violation of Title VII;

(c) ordering Defendants to take such other steps as may be necessary to prevent and remedy employment discrimination and the patterns or practices of discrimination in employment identified above;

(d) ordering Defendants to provide remedial relief, including but not limited to sufficient damages to compensate Bharat, similarly-situated individuals, and others, to make them whole for the losses they have suffered as a result of the discrimination and retaliation alleged in this Complaint; and

(e) granting the United States its costs and disbursements, and such further relief against Defendants as the Court may deem just and proper.

Date: New York, New York
January 18, 2017

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for United States of America

By: /s/ Jessica Jean Hu
JESSICA JEAN HU
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2726
Fax: (212) 637-2717
E-mail: jessica.hu@usdoj.gov