

Central Administrative Tribunal, Principal Bench

O.A. No.115/2002

New Delhi this the 25th day of October, 2002

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri M.P. Singh, Member (A)

1. All India CPWD(MRM) Karamchari Sangathan, through its President Satish Kumar, 34D, D1 Area Sector 4, Raja Bazar, New Delhi and 11 others as per details given in the OA .. Applicants

(Ms. Shilpa Chauhan, Advocate)

Versus

1. Director General of Works CPWD, Nirman Bhavan, New Delhi
2. Supdt. Engineer Coordination (Elect) CPWD, IP Bhawan, New Delhi .. Respondents

(By Advocate : Shri Madhav Panicker)

O R D E R(oral)

Shri M.P. Singh, Member(A)

Applicants seek direction to respondents to grant seniority to the members of the applicant-Union w.e.f. date of availability of vacancies in the cadre of Work Assistant with all consequential benefits.

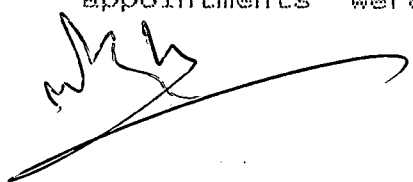
2. Briefly stated, some of the applicants in the present OA had earlier filed OA 808/96 seeking directions to the respondents to appoint them as Work Assistants on the basis of select list. That OA was disposed of by the Tribunal vide its order dated 23.7.96 directing the respondents to offer appointments to the applicants, subject to availability of vacancies and their being suitable for such appointments within three months. Aggrieved by non-implementation of the order dated 23.7.96 in OA 808/96, the applicants filed CP 289/96 in 808/96. That CP was disposed of on 25.2.97 since the

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Tribunal felt that there was substantial compliance of the order dated 23.7.96, with liberty to the petitioners to approach the Tribunal as and when cause of action arises.

3. Thereafter, applicants again filed OA 1841/99 with the plea that applicants have not been appointed as Work Assistants against 25% quota (direct recruitment) in spite of availability of vacancies. That OA was disposed of by the Tribunal vide its order dated 25.10.2000 with the direction to the respondents to fill up the 12 vacancies of Work Assistants under 25% direct recruitment quota in accordance with the merit of the empanelled candidates subject to lifting of the ban, if there was one, within three months. Applicants again filed CP 350/2001 in OA 1841/99 for non-compliance of Tribunal's orders. Thereafter, the applicants were appointed as Work Assistants on temporary basis on various dates between 4.12.2000 and 13.11.2001. However, applicants claim seniority from the date of occurrence of vacancies in the grade of Work Assistant. That is how they are before this Tribunal with the present OA.

4. Respondents in their reply have stated that though the result of trade test conducted for the post of Work Assistant was declared in November, 1995, the appointment could be made only in 2000 and 2001 because of pendency of several OAs filed in this Tribunal which were decided on various dates between 23.7.96 and 7.11.2000. The appointments were made as per vacancies available in



particular category of SC/ST/OBC based on calculation of total sanctioned strength and not on the basis of candidates qualifying the test. Respondents have further submitted that this Tribunal had gone through this issue in OA 1825/96 on 1.3.2000 regarding non-observance of roster points but the Tribunal did not quash the select list. It is stated by the respondents that the appointments have been given to the empanelled as per the result declared on 10.11.95, after obtaining approval from the Directorate. It is stated in the reply that the appointments of the applicants is against direct recruitment quota and therefore they have no claim or any right in respect of benefit of seniority occurring before the date of joining. The posts were filled up as per the directions of this Tribunal in different cases from time to time that too after obtaining approval from the competent authorities.

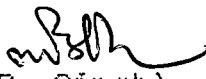
5. Respondents have further submitted that as per Govt. of India decision quoted in Establishment and Administration Manual Chapter 39 Seniority page 523 para 1, the seniority of the person in regular appointment to a post according to the rule would be determined by the order of merit indicated at the time of initial appointment. In this case, Tribunal in its order dated 25.10.2000 has directed the respondents to fill up the 12 vacancies of Work Assistant under 25% direct recruitment quota in accordance with the merit of empanelled candidate. The empanelled candidates were accordingly given the appointment orders. Being fresh appointment

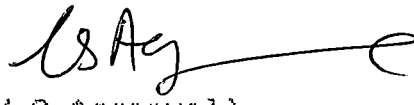
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under DR quota, the seniority of the applicants is to be taken from the date of their actual joining to the post of Work Assistant.

6. The Hon'ble Supreme Court in a catena of judgements have held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of appointment. In this proposition we are supported by the judgement of the apex court in the case of the Direct Recruit Class II Engineering Officers' Association V. State of Maharashtra JT 1990(2) SC 264. Even according to Government of India instructions as laid down in Establishment & Administration Manual Chapter 39-Seniority, page 523, para 1, seniority of the applicants is to be considered from their actual date of joining the post of Work Assistant. Applicants have not been able to establish under what rule or law they are entitled to count their seniority from the date of occurrence of vacancies.

7. Therefore having regard to the various judgements of the apex court as also of this Tribunal, we find no merit in the present DA and the same is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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