

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/531/2014

Hyderabad, this the 25th day of February, 2020



***Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

- 1) Sri. G.Shyam Sundar Rao aged 46 Yrs,
S/o G.Appala Raju, working as JE, O/o
Executive Engineer, HCD III, CPWD,
Nirman Bhavan. Koti, Hyderabad-95.
- 2) Sri B.Narayana Murthy aged 45 Yrs.,
S/o B.B.Kameswar Rao Working as JE O/o
Executive Engineer, HCD II, CPWD,
Nirman Bhavan. Koti, Hyderabad-95.
- 3) Sri Edit Susan aged 57 Yrs.,
W/o V.Ranjan, Working as JE O/o
Executive Engineer, HCD II, CPWD,
Nirman Bhavan. Koti, Hyderabad-95.

... Applicants

(By Advocate: Mr. Siva, Advocate for Mr. G. Pavan Murthy)

AND

1. The Director General, CPWD,
Nirman Bhawan, New Delhi – 110011.
2. Special Director General, Southern Region, CPWD, Chennai.
3. Chief Engineer, Southern Zone -2, CPWD, Hyderabad.
4. Dy. Director (Admn), O/o The Director General
CPWD, Nirman Bhawan, New Delhi-110011.
5. N. Mahesh Babu, S/o. Hanmandlu,
Aged about 42 years, Occ: Junior Engineer (Civil),
O/o. Executive Engineer, CPWD,
President Estate Division, Rashtrapathi Nilayam,
Bollaram, Secunderabad.
6. Y.V.Subbarami Reddy, S/o. Late Sri Y.V.Subba Reddy,
Aged about 48 years, Occ: Junior Engineer (Civil),
O/o. Valuation Cell, I.T Department, Hyderabad.
7. C. Sreenivasa Rao, S/o. Lakshminarayana,
Aged about 40 years, Occ: Junior Engineer (Civil),
O/o. EE, HCD-II, CPWD, Hyderabad.
8. D. Lakshmayya, S/o. Late Seshuvudu,
Aged about 41 years, Occ: Junior Engineer (Civil),
O/o. EE, HCD-IV, CPWD, Hyderabad.



9. P. Rajkumar, S/o. Late P. Komuraiah,
Aged about 43 years, Occ: Junior Engineer (Civil),
O/o. HCSD-I/5, HCD-I, CPWD, Hyderabad.
10. Balla V. Venkateshwarlu, S/o. B.V.S. Narayana,
Aged about 39 years, Occ: Junior Engineer (Civil),
O/o. HCSD-I/2, CPWD, CRPF Campus,
Chandrayanagutta, Hyderabad.
11. S.V. Chiranjeevi, S/o. Late S.A. Naidu,
Aged about 48 years, Occ: Junior Engineer (Civil),
O/o. HCSD-I/3, CPWD, Survey of India Campus, Uppal, Hyderabad.
12. Md. Khaja Moyinuddin, S/o. Md. A. Ali Khan,
Aged about 47 years, Occ: Junior Engineer (Civil),
O/o. HCSD-I/5, CPWD, NIPHM Campus,
Rajendranagar, Hyderabad.
13. B. Hemasundararao, S/o. Late B. Lokanadharao,
Aged about 35 years, Occ: Junior Engineer (Electrical)
O/o. HCESD-VIII/HCEC-I, CPWD, Nirman Bhavan,
Koti, Hyderabad.
14. M. Rajendran, S/o. B. Mahadevan,
Aged about 50 years, Occ: Junior Engineer (Electrical),
O/o. HCED-II, CPWD, Nirman Bhavan, Koti, Hyderabad
15. G.J.N. Prasad, S/o. G.N. Bhushanam,
Aged about 45 years, Occ: Junior Engineer (Civil),
O/o. SE, Valuation, Basheer Bagh, Hyderabad.
16. P.V. Subrahmanayam, S/o. Late P.V. Krishnaiah,
Aged about 49 years, Occ: Junior Engineer (Civil),
O/o. HCSD-II/5, GPRA Campus,
Type 'I', Block-57, 'C' and 'D', Gachibowli, Hyderabad.
17. D. Ranjit Kumar Yadav, S/o. D. Narasimha Rao,
Aged about 35 years, Occ: Junior Engineer (Electrical),
O/o. HCESD-V, HCED-II, CPWD, Nirman Bhavan, Koti, Hyderabad.
18. D. Prakash, S/o. D. Laxman,
Aged about 35 years, Occ: Junior Engineer (Civil),
O/o. The AE/HCSD-III/3, CPWD, Koti, Hyderabad.
19. D. Bapuji, S/o. Late. D. Ramacharyulu,
Aged about 41 years, Occ: Junior Engineer (Civil),
O/o. The AE/HCSD-III/3, CPWD, Koti, Hyderabad.
20. A. Sreenivasa Rao, S/o. A Kesava Rao,
Aged about 45 years, Occ: Junior Engineer (Civil),
O/o. EE, HCD-I, CPWD, Koti, Hyderabad

... Respondents

(By Advocate Mr. Mr. Jose Kollanur, proxy counsel for
Mr.T. Hanumantha Reddy, Sr. PC for CG;
Dr. A. Raghu Kumar, Advocate for Respondents 5 to 20)

ORDER (ORAL)
{As per Hon'ble Mr. Justice L Narasimha Reddy, Chairman}

Applicants joined the services of the CPWD as Junior Engineer (Civil) in 1994. Promotion to the next post of Assistant Engineer used to be 50% on the basis of seniority and the remaining 50% through the process of Limited Departmental Competitive Examination (for short "LDCE").

However, there was some deviation from 1997 onwards.

2. The applicants contend that, at least from 1999 onwards, there was serious uncertainty about the vacancies and thereby, the distribution between the two categories. They contend that had the proper reckoning of vacancies and distribution taken place, they would have stood a chance of being promoted in the year 2003. They state that spate of litigation ensued at various Tribunals and even the LDCEs were not held in regular intervals. It is their case that they were not eligible to appear in LDC Examination conducted in the years 1999, 2002 & 2006 and it was only in 2011, they became eligible. They participated in the Examination and were also selected and promoted against the vacancies of 2005.

3. The applicants made series of representations to the respondents with a request to re-determine the vacancy position. In response to that, an Office Memorandum dated 17.04.2014 was issued indicating the vacancy position from 2002-03 to 2013-14. Not satisfied with that, they filed this OA with a prayer to direct the respondents to remove anomaly in allocation of vacancies between the promotion on seniority and LDCE category from

1992 onwards and to set aside the OM dt. 17.04.2014. They contend that once the percentage between two categories is fixed, equal number of vacancies should have been made available, at any given point of time and instead, gross injustice was done to the LDCE category.



4. The respondents filed counter affidavit opposing the OA. It is stated that the applicants cannot raise objection about the reckoning of vacancies in the year 1999, at this stage. It is also stated that the applicants have been selected and appointed under LDCE category in the vacancies referable to the year 2005 and there is absolutely no basis for the pleas raised by the applicants.

5. We heard Sri Siva, learned proxy counsel representing Mr. G. Pavan Murthy, learned counsel for the applicants and Mr. Jose Kollanur, learned proxy counsel representing Mr. T. Hanumantha Reddy, learned counsel for the respondents.

6. The basic challenge in this OA is to the OM dt. 17.04.2014. It is beneficial to extract the same. In a way, it reflects the state of affairs that were prevailing in the Department in the context of promotion to the post of Assistant Engineer. It reads as under:

"F. No.30/01/2014
 Government of India
 O/o. The Directorate General
 Central Public Works Department
 EC-III Section



Dated: 17th April, 2014

Office Memorandum

Subject:- Calculation of vacancies for regularization of AEs promoted on Ad-hoc basis.

In Supersession of earlier OM No. 30/02/2013-EC-III dated 28.11.2013, the undersigned is directed to refer to the subject cited above and enclosed herewith calculation of vacancies from 2007-08 to 2013-14 for regularization of AEs already promoted on ad-hoc basis.

2. *The year wise vacancies in the grade of AE (Civil) for regular promotion from the year 2007-08 to 2013-14 are as under:-*

Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Vacancies for Civil	36+31*	29	32	32	27	385**	76

* Backlog vacancies for ST carried forward from 2006-07

** Including all cadre review vacancies

3. *The vacancies in the grade of AE(C) for LDCE quota from the year 2002-03 to 2006-07 shall be same as already notified vide notice dated 07.11.2006 for LDCE-2006. Further vacancies for year 2007-08 to 2013-14 have been worked out on the basis of calculation of vacancies for seniority quota for corresponding years. The total position of vacancies from the year 2002-03 to 2013-14 for LDCE shall be as under*

(Civil)

	2002-03	2003-04	2004-05	2005-06	2006-07
Vacancies for Civil	51+10*	64+9*	20	47	30

2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
35	28	32	08	07	18	19

* These vacancies have been kept reserved for settlement of court cases in LDCE-99. If settlement of court cases does not materialize till publication of result, these vacancies will remain reserved and will be carried forward to next LDCE.

4. *Comments/ objections are hereby called for from concerned officers, regarding the calculation of vacancies as mentioned in the enclosed list. The comments/ objections, if any, may be reached this Directorates within 7 days of issue of this OM. If no comment is received within the stipulated time, these*

vacancies will be treated as final and it will also be assumed that all the concerned officers are agreed with the above calculations.

5. It is observed from the previous years of LDCEs that after declaration of the results, the Junior Engineers who were not promoted through that LDCEs went to CAT by filing an application stating that the Department has not correctly calculated the vacancies of particular year and praying that if the vacancies of that year is re-calculated the number of vacancies of that particular year might be increased and they could also be promoted through that LDCE. In most of the cases, the Tribunal delivered the verdict in favour of the applicant and directed the Department to re-calculate the vacancies of particular years. Then, on the direction of CAT, it is also observed from the past files that the vacancies were re-calculated two or three times increasing the number of vacancies for particular years and some candidates were promoted after three ad four years from the date of declaration of result of previous LDCEs and court cases on thesees ground in LDCE-99 are still not finalized. On account of various court cases, the regularization process as well as further LDCE were held up, serious affecting the working of the Department. In order to avoid any such situation to reoccur, the request for re-calculation of above vacancies at later stage will not be entertained. However, if under any exigencies or on account of court orders, recalculation of vacancies is done at a later date, then any excess/ shortfall in vacancies found shall be carried forward only to the next LDCE and will not be adjusted in the concerned financial years.

Encl:

1. Vacancy calculation Sheet.

Sd/- xxxxx
(Jasbir Singh)
Dy. Director (Admn.)"

The respondents have also appended the vacancy calculation sheet to the said OM.

7. On the one hand, the applicants are holding the posts under the LDCE category and on the other hand, they find fault with the allocation of vacancies for promotion category. All the same, we do not find any contradiction in between two. In case the applicants had any grievance about the reckoning of vacancies in 1999, they should have pursued remedies at that stage. Assuming that they became eligible in the year 2014, they should have approached the Tribunal around that time. Having not pursued the remedies at that time, they cannot raise any issue



pertaining to the allocation of vacancies to the promotion category now. Even otherwise, the applicants can have genuine grievance if any person, who is junior to them, was promoted. That, however, is not their case. Obviously, on account of voluminous litigation initiated by the members of the service, a fluid state of affairs prevailed and the respondents, in fact, acknowledge the same in the impugned order. There cannot be any ready-made solution for such a complicated issue. The grievance of the applicants cannot be viewed in isolation, ignoring the relative claims of hundreds of others. We do not find any merit in the OA and the same is accordingly dismissed.

8. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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