

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 1085 of 2018
O.A. 157 of 2015

Reserved on: 17.12.2019
Date of order: 16.03.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

No. O.A. 351/1085/2018 Shri R. Siddappa
& O.A. 351/157/2015 S/o Shri D.T. Rangappa,
Presently posted as
Assistant Engineer (Civil),
Chief Engineer's office,
Andaman Public Works Department,
Nirman Bhawan,
Port Blair - 744 101.

..... Applicant.



Versus

1. Union of India,
Service through the Secretary,
Govt. of India,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi - 110 001.
2. The Lt. Governor,
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair - 744 101.
3. The Commissioner-cum-Secretary,
Andaman Public Works Department,
A & N Administration,
Secretariat Building,
Port Blair - 744 101.
4. The Chief Engineer-cum-Secretary,
Andaman Public Works Department,
Nirman Bhawan,
Port Blair - 744 101.

..... Respondents.

For the Applicant : Mr. B. Bhushan, Counsel

For the Respondents : Mr. R. Halder, Counsel

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ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

This applicant has approached this Tribunal in 2nd and 3rd stage litigation respectively in the instant O.A.s in which he has primarily challenged the seniority lists to the post of Assistant Engineer (Civil) as finalized by the respondent authorities on 17.9.2013 and 1.6.2017 respectively. As O.A. No. 1085 of 2018 challenges the most recently finalized seniority list (as on 1.6.2017), this O.A. is taken up for detailed adjudication and both O.A.s would be disposed of with a common order.

2. In O.A. No. 1085 of 2018, the applicant has sought the following relief in particular:-

(A) An order do issue directing the respondent No. 2 to ante date the appointment order of the applicant in the post of Assistant Engineer (Civil) with effect from 10.02.2005, the date from which other general category candidates are appointed from the same panel.

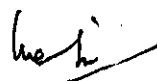
(B) An order do issue setting aside the Seniority list of Assistant Engineer (Civil) as on 01.06.2017 circulated vide Memorandum dated 16.09.2017 (**Annexure A-17**) being contrary to the DOP&T instructions on "Relative Seniority of Direct Recruits and Promotees".

(C) An Order be passed directing the respondent authority to prepare fresh seniority list of Assistant Engineer (Civil) in accordance with DOPT guidelines and to consider the case of the applicant for promotion to the post of Executive Engineer (Civil) if he is within the zone of consideration in terms of the fresh seniority list.

(D) Any such order or orders be passed and or direction or directions be given as this Hon'ble Tribunal may deem fit and proper.

(E) Cost and incidentals to this application."

3.1. The applicant's submissions, as articulated by his Ld. Counsel, is that, in response to a special recruitment drive to recruit Scheduled Tribe candidates for the post of Junior Engineer (Civil), the respondent authorities had issued a notification in May, 1990, and the applicant was thereafter appointed in the said post vide orders dated 15.10.1990 in ST quota. In Office Memorandum dated 28.5.1990 (Annexure A-1 to the O.A.), that recommended the prospective candidates, the applicant was placed at Srl. No. 27 of the said list and one Shri Tej Bahadur, also a



Scheduled Tribe candidate, was enlisted at Srl. No. 32. Such selection, however, was subject to, inter alia, verification of original certificates in support of their claim of belonging to a Scheduled Tribe category. On 18.7.1990 (Annexure A-2 to the O.A.), seven Scheduled Tribe candidates were finally appointed against such quota to the post of Junior Engineer (Civil), whose seniority was directed to be retained in order of merit as shown in the offer of appointment and also that they were to be treated as Mainland recruits. Shri Tej Bahadur was enlisted as the 7th candidate eligible for such appointment.

On 15.10.1990 (Annexure A-2 to the O.A.), the applicant, along with 13 others, were also appointed as Junior Engineer (Civil) in the category of Mainland recruits as Scheduled Tribe candidates subject to verification of, inter alia, their Scheduled Tribe certificates.

On 16.12.1992, UPSC had requisitioned for filling up four vacancies in the post of Assistant Engineer (Civil) and the respondent administration, in response, sent a requisition form whereby one post was reserved for ST and three posts were reserved for Unreserved / General candidates (Annexure A-3 to the O.A.). The Commission finalized its recommendations based on a screening process and Shri Tej Bahadur was recommended for appointment in ST quota vide Commission's letter dated 13.9.1994 (Annexure A-4 to the O.A.) subject to participation in an in service training course. Upon such recommendations, Shri Tej Bahadur was finally appointed vide orders dated 23.11.1994 at (Annexure A-6 to the O.A.) and posted as Assistant Engineer (Civil) at RCD, APWD, Wimberlygunj.

The UPSC, thereafter, notified recruitment of 14 posts of Assistant Engineer (Civil), and one post (permanent) therefrom was reserved for Scheduled Tribe. The applicant was an aspirant to the said process.

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Consequent to a recruitment test as well as an interview, the UPSC recommended 14 candidates subject to, inter alia, verification of their certificates by the respondent administration.

The applicant was declared as the 14th candidate against ST quota. Thereafter, the respondent authorities requested the applicant to appear with all his certificates for verification vide their request dated 30.9.2004 (Annexure A-8 to the O.A.). Thereafter, respondent administration issued an order dated 20.1.2005 (Annexure A-9 to the O.A.) in which certain transfer / postings were made in the category of Executive Engineer, Assistant Engineer and Junior Engineer (Civil) respectively. The applicant, however, did not figure among the officers so transferred, but a note that was appended to such orders stated as follows:-



"The appointment and posting orders in respect of Shri Maheshwar Rao, Biji Varghess & Shri R. Sidappa all department candidates selected by the UPSC will be issued by this office separately."

On 10th February, 2005 (Annexure A-10 to the O.A.), the respondent administration issued formal orders for appointment as Assistant Engineers (Civil) based on recommendations of UPSC dated 25.8.2004. The applicant's name, however, was not included in the said list.

That, on 18.5.2007, the applicant was offered appointment to the post of Assistant Engineer (Civil) based on the recommendations of UPSC against the direct recruitment quota in the vacancy for Scheduled Tribe candidates. The applicant, after having received his appointment order on 22.5.2007, joined the said post as Assistant Engineer (Civil).

Thereafter, the provisional seniority list of Assistant Engineer (Civil) of APWD (as on 11.9.2008) was published (Annexure A-13 to the O.A.) in which the applicant's name was shown correctly at Srl. No. 70 in accordance with recommendations of the UPSC. Thereafter, however, when the seniority list was published as on 31.7.2011 (Annexure A-14 to

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the O.A.), the applicant's seniority came in dispute and the applicant challenged the same in O.A. No. 103/AN/2013. During pendency of the litigation, the seniority list was once again finalized as on 1.8.2014, upon which the Tribunal gave him liberty to file a fresh O.A. challenging the revised seniority list and the applicant came forth before the Tribunal challenging the said seniority list as on 1.8.2014 vide O.A. No. 157 of 2015, and, thereafter, the subsequent seniority list as on 1.6.2017 in O.A. No. 1085 of 2018, the latter two O.A.s being the subject matter of present adjudication.

The applicant had also preferred a representation dated 7.11.2017 in which while referring to the pendency of O.A. No. 157 of 2015, he claimed that his seniority should be considered appropriately by the DPC constituted to recommend promotions of Assistant Engineer (Civil) to the post of Executive Engineer (Civil).

3.2. The primary grounds advanced by the applicant, inter alia, in support of his claim are as follows:-

- (a) That as the UPSC had recommended his appointment as AE (Civil) in ST quota vide their communication dated 25.8.2004, there was absolutely no reason for the respondent administration to withhold his appointment.
- (b) That, after verification of his certificates, withholding of his appointment was unlawful.
- (c) When appointment orders were issued to other unreserved candidates in terms of such UPSC recommendations, the applicant was discriminated against in not being offered appointment at the material point of time.
- (d) That, while Shri Tej Bahadur, another ST candidate was appointed with other unreserved candidates on the basis of

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UPSC recommendations dated 13.9.1994, there was absolutely no reason to discriminate him viz the treatment meted out to Shri Tej Bahadur, a ST candidate with whom he was similarly circumstanced.

(e) And, that, the seniority list as on 1.6.2017 is contrary to DOP&T's instructions on relative seniority of direct recruits and promotees.

4. Per contra, the respondents would controvert the claim of the applicant primarily on the following grounds:-

(i) That, although the applicant was selected for the post of Assistant Engineer (Civil) against the Scheduled Tribe quota by UPSC, upon verification it was found that his ST certificate was issued by the authorities in the State of Karnataka and his status was not recognized as ST in Andaman & Nicobar Islands according to extant circulars.

(ii) That, such circulars, and, particularly, the Presidential order notified on 20.9.1976 on the subject of reservation benefit in Andaman & Nicobar Islands, states that such benefits are only to accrue to ethnic Tribes, such as, Andamanese, Jarawas, Nicobarese, Onges, Sentinelese and Shompens respectively. While, a ST candidate, who has obtained an ST certificate from another State is at liberty to enjoy reservation benefits within such particular State, his migration from the State of his origin will not automatically entitle him to reservation benefits in the Andaman & Nicobar administration. The respondents would also cite a judgment dated 10.7.2006 in Writ Petition No. 169 of 2005 in the matter of **Ranchi Association v. Union of India & ors.**, which directs that no relief can be granted in the absence of Presidential



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Orders in support. The respondents would also cite the judgment in **(2014) 14 SCC 720 State of Uttar Pradesh & ors. v. Ashok Kumar Srivastava & anr.** in support of their claim to substantiate that seniority is to be reckoned from the date of occurrence of vacancy and cannot be awarded retrospectively unless expressly provided for in the relevant service rules.

(iii) The respondents have also raised an issue of misjoinder of parties as because the applicant's claim of seniority overriding 18 candidates has been made without impleading any of them as private respondents.

5. The moot issue for adjudication herein is whether the applicant deserves to be appointed as Assistant Engineer (Civil) against Scheduled Tribe quota on the basis of UPSC's recommendations dated 25.8.2004 with consequent implications on his seniority.

6. We have carefully examined documents on record, judicial pronouncements cited in support as well as rival contentions of both Id. Counsel and we decipher as follows:-

6.1. It is an admitted fact that the applicant, along with 32 others were recommended for consideration for appointment to the post of Junior Engineer (Civil) against the Scheduled Tribe quota. The Administration had, in their Office Memorandum introduced the following preamble in particular:-

"The following Scheduled Tribe candidates have been selected and recommended.",

admitting thereby that the applicant's status as a ST candidate was acknowledged by the Respondents' administration.

The applicant as well as Shri Tej Bahadur were part of the same list. Hence, we note that, on 28.5.1990, the administration had admitted that the applicant is a Scheduled Tribe candidate subject to verification



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of original certificates in support of his claim (as noted in para (g) of the said Office Memorandum). It is equally interesting that, on 18.7.1990, when seven candidates including Shri Tej Bahadur were appointed as Jr. Engineer (Civil) against the Scheduled Tribe quota (to be treated as Mainland recruits with their seniority to be governed in order of merit), each of such candidates acknowledged as belonging to ST category by the administration have drawn their origin from States such as Tamilnadu, Karnataka and Andhra Pradesh respectively. In particular, Annexure A-2 to the O.A. whereby the endorsements were made to individual candidates notes the origin of the candidates categorized with ST status as follows:-



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Contd.

Shri. B. K. Kanna, J. R. G.
C/O. G. B. Kanna,
P. O. Post Master,
247-10, V. P. Nagar,
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.

Shri. K. K. Kanna, J. R. G.
C/O. G. B. Kanna, J. R. G.
P. O. Post Master,
247-10, V. P. Nagar,
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.

Shri. O. K. Kanna, J. R. G.
C/O. T. O. Kanna, J. R. G.
K. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.

Shri. K. K. Kanna, J. R. G.
C/O. G. B. Kanna, J. R. G.
P. O. Post Master,
247-10, V. P. Nagar,
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.

Shri. K. K. Kanna, J. R. G.
C/O. G. B. Kanna, J. R. G.
P. O. Post Master,
247-10, V. P. Nagar,
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.

Shri. K. K. Kanna, J. R. G.
C/O. G. B. Kanna, J. R. G.
P. O. Post Master,
247-10, V. P. Nagar,
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.

Shri. Tej Bahadur, J. R. G.
C/O. G. B. Kanna, J. R. G.
P. O. Post Master,
247-10, V. P. Nagar,
T. N. Nagar, K. Nagar, P. O.
T. N. Nagar, K. Nagar, P. O.


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Shri Tej Bahadur, in particular, is reported to have hailed from Guntur District from the State of Andhra Pradesh. It is not the case of the respondents that Tej Bahadur belongs to any of the tribes ethnic to Andaman & Nicobar Islands such as Andamanese, Jarawas, Nicobarese, Onges, Sentinelese or Shompens respectively.

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On the recommendations of UPSC dated 13.9.1994, the respondent administration, vide their orders dated 24.11.1994, appointed Shri Tej Bahadur against the Scheduled Tribe quota in the post of Assistant Engineer (Civil). UPSC's recommendations dated 13.9.1994 at Annexure A-2 clearly states that Shri Tej Bahadur will be considered as a ST candidate and nowhere during the verification process, the fact that Shri Tej Bahadur had migrated as a ST candidate from the State Andhra Pradesh has been cited as an impediment to his seeking reservation benefits with the respondent administration.



6.2. Thereafter, the UPSC, on 25.8.2004, recommended 14 candidates for the post of Assistant Engineer (Civil) after a recruitment test as well as an interview to the post of Assistant Engineer (Civil). The applicant was admittedly the 14th candidate recommended on ST quota. Hence, similar to Shri Tej Bahadur, the applicant had appeared in a selection process to qualify for the post of Assistant Engineer (Civil) conducted by UPSC. The applicant was called for document verification in September, 2004, but most surprisingly, no appointment was offered to him and the *nota bene* in Annexure A-9 to the O.A. that assured that the applicant would be issued his appointment and posting orders shortly was never honoured by the respondents despite their intentions disclosed in orders dated 10.5.2005.

6.3. During adjudication of the instant O.A.s, the respondents have referred to Presidential Orders of 1976 to argue that the applicant had migrated from his State of origin and consequently he would be entitled to reservation benefits only in such State and not in the Andaman & Nicobar Islands.

Such argument appears to be devoid of logic and reason as because the same administration did not deny Shri Tej Bahadur his appointment

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which was issued in the year 1994, much after the issue of Presidential Orders in 1976. Accordingly, we are of the considered view that the respondents had indeed treated the applicant invidiously vis-à-vis Shri Tej Bahadur, thereby violating provisions of Article 14 and 16 of the Constitution of India by denying the applicant appointment on 10.2.2005 despite assurances. Such discrimination puts the credibility of the respondent administration in question.

6.4. It is on record that Shri Tej Bahadur was appointed with three unreserved candidates on the same day and his seniority was determined accordingly in order of merit. Accordingly, the applicant would claim that he also deserves to be appointed with 12 other unreserved candidates as per UPSC's recommendation dated 25.8.2004 and, as he was the last candidate below Shri Mahesh Kumar Singh, in the UPSC's list of recommendations, he should have been rightfully offered appointment on 10.2.2005 and placed as per merit below Shri Mahesh Kumar Singh. We find a lot of strength in the applicant's averments on his claim for seniority below Shri Mahesh Kumar Singh which was appropriately reflected in the seniority list of Assistant Engineer (Civil) as on 1.1.2008.

6.5. The applicant had apparently not pursued his appointment in the promotional quota because he had chosen to participate in the process of selection as Assistant Engineer (Civil) against direct recruitment quota and was appointed on 22.5.2007 as an Assistant Engineer (Civil) in ST quota. Admittedly, he had rendered technical resignation to his post of Junior Engineer (Civil) to join his post on direct recruitment.

What we find inexplicable, however, is that even while offering the direct quota appointment to the applicant against ST quota, the respondent administration has considered the applicant as an ST candidate, a status that was allegedly denied to him in the context of



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promotion to the post of AE (Civil) on grounds of his having migrated from his State of Origin which had granted him such status. We also find that in all the seniority lists of 2008, 2011, 2014 and 2017, the respondents have consistently referred to the applicant as an ST candidate.

By way of explanation, the respondents have submitted the following:-

"7) That the guidelines issued by the Ministry of Home Affairs DOP&Ts' OM No. 42/21/49-NGS dated 23.1.1952 clarified that the post filled in All India basis through UPSC of SSC on open competitive basis, SC/ST candidates irrespective of their State of origin can apply and decision has been taken to appoint the applicant as Assistant Engineer (Civil) against reserved quota of ST as recommended by the UPSC, but the point to be noted that it is a circular of Department of Home Affairs, not of DoPT and/or general circular applicable to all departments. But this is Public Works Department, not Department of Home Affairs, and neither the CPWD and/or Andaman PWD never adopted that policy applicable to its employees in any level and as such no one has been obtained such status ever, even as on today every year most of the seats of ST quotas not filled up in huge number of vacancies as no other 'ST' category candidates except the "Andamanese, Jarawas, Nicobarese, Onges, Sentinelese, Shompens" who are within the Presidential order notified on 20.9.1976 has been given the reservation benefit in A&N Islands and the AN administration fully followed the judgment of Calcutta High Court which has not been interfered by Hon'ble Apex Court also as per information of the Respondents.

8) That I state that finally the applicant was appointed to the post Assistant Engineer (Civil) by direct recruitment vide Administration's Order No. 2040 dated 22.5.2007 after tendering his resignation from the post of Junior Engineer on 22.5.2007 which was duly accepted by this department on humanitarian ground even if it is against the judgment dated 10th July, 2006 in WP No. 169 of 2005, but his temporary status continued as his Tribal status at Andaman was/is not settled for long time, even as on date the dispute continues. The authority finally confirmed the service of the applicant in the year 2013 as because no one real Tribal candidate challenged the appointment of the applicant. The status of the Migrated Tribals not yet settled as Tribes of A&N Islands, no presidential order has allowed such demand."

The respondents' assertions that his ST status was accepted on humanitarian grounds borders on absurdity. We are indeed baffled by this inexplicable logic and would like to remind the respondents that in

Life Insurance Corporation of India v. Asha Ramchandra Ambekar (1994) 2 SCC 718, the Hon'ble Supreme Court observed as follows:

"..... The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done."

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Sympathy therefore cannot override statutory or legal provisions and the respondent adopting humanitarian approach violating Presidential mandate to say the least, is evidently curious.

6.6. There is nothing on record to establish that the applicant had ever objected to the seniority lists of 31.7.2011, 1.8.2014 or 1.6.2017 before the respondent authorities, although the provisional seniority lists provided opportunities for registering objections by aggrieved candidates. Rather, instead of exhausting his departmental remedies, the applicant had approached the Tribunal in seeking relief when he should have approached the departmental authorities to claim his entitlement.

6.7. We would herein refer to the Hon'ble Apex Court's ratio in ***Kumari Sangeetarani Panigrahi v. State of Orissa, 2006 (8) SLR 226 (Ori. - DB)*** wherein the Hon'ble Apex Court held that the candidate who qualified in merit and had other requisite qualifications cannot be denied appointment on grounds cited to discriminate her from other appointees.

The Three Judge Bench of the Hon'ble Apex Court, while adjudicating Civil Appeal No. 979 of 2014 (***Renu & ors. v. District & Sessions Judge, Tis Hazari & anr.***) observed as follows:-

"7. Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of our Constitution.

In ***I.R. Coelho (dead) by L.R.s v. State of Tamil Nadu, AIR 2007 SC 861***, the doctrine of basic features has been explained by this Court as under:

"The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read with Article 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic features of the Constitution as indicated by the synoptic view of the rights in Part III."

8. As Article 14 is an integral part of our system, each and every state action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in ***Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & ors., AIR 1992 SC 789***; ***State of Haryana & ors. v. Piara Singh & ors. etc. etc., AIR 1992 SC 2130***; ***Prabhat Kumar Sharma & ors. State of UP & ors., AIR 1996 SC 2638***; ***JAS Inter College, Khurja, U.P. & ors. v. State of UP & ors., AIR 1996 SC 3420***; ***M.P. Housing Board & Anr. v. Manoj Shrivastava, AIR 2006 SC 3499***, ***M.P. State Agro***

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Industries Development Corporation Ltd. & Anr. v. S.C. Pandey, (2006) 2 SCC 716; and State of Madhya Pradesh & ors. v. Ku Sandhya Tomar & anr. JT 2013 (9) SC 139."

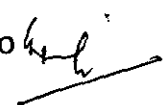
Further, in **Som Raj & ors. v. State of Haryana & ors. AIR**

1990 SC 1176 the Hon'ble Court held as follows:-

"The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antitheses of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority."



We would, accordingly, issue the following directions:-

- (i) The applicant will prefer a comprehensive representation citing Office Memorandum, judicial pronouncements and other legal principles (as applicable) in his support to the competent respondent authority within a period of four weeks from the date of receipt of a copy of this order.
- (ii) The said respondent authority, upon receipt of such representation, will decide on the similarity of circumstances between the applicant and that of Shri Tej Bahadur, particularly, in the context of their acquiring Scheduled Tribe status from States wherefrom both candidates have migrated and decide as per law on the claims made by the applicant on his inclusion in the offer of appointment dated 10.2.2005 and appropriate reflection in the seniority list below Shri M.K. Singh. The authority will also 

issue notice to all incumbent officials that the applicant claims to supersede in the seniority list.

- (iii) In case, a DPC has been held for promotion for the post of Assistant Engineer (Civil) to Executive Engineer (Civil), one post will be kept reserved for the purpose of considering the representation of the applicant at Annexure A-19 of the O.A. and the final decision to fill up the same should only be taken after the competent respondent authority has decided in finality on the claim of the applicant.

8. With these directions, the O.A. is disposed of. No costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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