



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3018/2015

Reserved on 10.12.2019
Pronounced on 08.01.2020

Hon'ble Mr. S.N.Terdal, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)

Nitin Garg (Aged about 41 years)
S/o Shri R.K.Garg,
R/o 202, Jaina Apartments,
Plot No. 26, Sector 13, Rohini,
Delhi-110085
[Presently stands terminated from
The services of DSIIDC Ltd. on the
Post of JE(C)/ Group-C post].

... Applicant

(By Advocate: Mr. R. A. Sharma)

VERSUS

1. Delhi State Industrial & Infrastructure Development Corporation Ltd.
(the DSIIDC),
Through its Chairman-cum-Managing Director, N-36, Bombay Life Building, Connaught Circus, New Delhi-110001
2. Delhi Subordinate Service Selection Board (DSSSB),
Through its Secretry,
3rd Floor, UTCS Building, Vishwas Nagar, Shahdara, Delhi-110032.
3. Shri Arun Kumar
Presently working as
Junior Engineer (Civil) in DSIIDC Ltd.
(Service to be effected through R-1)
4. Shri Sunil Dabas
Presently working as
Junior Engineer (Civil) in DSIIDC Ltd.
(Service to be effected through R-1)
5. Shri Shyam Lal
Presently working as
Junior Engineer (Civil) in DSIIDC Ltd.
(Service to be effected through R-1)



6. Shri D.D. Sharma
Presently working as
Junior Engineer (Civil) in DSIIDC Ltd.

(Service to be effected through R-1). . . Respondents

(By Advocate: Ms. Eshita Baruah for Mr. Gaurang Kanth
for R-1 (DSIIDC) and Mrs. Sumedha Sharma for R-2 (DSSSB))

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Ms. R.A.Sharma, counsel for applicant and Ms. Eshita Baruah for Mr. Gaurang Kanth and Mrs. Sumedha Sharma, counsel for respondents, perused the pleadings and all documents produced by all the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “(a) Call for the records of the case and quash and set aside the orders dated 8.12.2014 (Annexure A-1) & dt. 8.12.2014 (Annexure A-2) as these do not recommend the name of the applicant for appointment to the post of J.E (Civil) in the DSIIDC Ltd.
- (b) Direct the respondent Corporation (respondent No.1) to appoint and regularize the applicant in the post of J.E. (Civil) with all consequential benefits of service.
- (c) Quash and set aside the appointment of (Private) respondent Nos. 3 to 6 as being illegal ultra-vires, de hors the High Court's order/directions and non-est.
- (d) Pass such other or further order (s) as may be deemed fit and proper in the facts and circumstances of the present case.
- (e) Allow costs in favour of the applicant.”



3. The relevant facts of the case are that the applicant was terminated by order dated 25.05.2005, which is extracted below:-

"ORDER

Sh. Nitin Garg was appointed to the post of Junior Engineer (Civil/Electrical) on a consolidated salary of Rs.8,400/- per month purely on contract basis vide Office Memorandum No.DSIDC/II-8/Estt./ 2000 dated 04.10.2000.

A Joint Surprise Check was conducted by CBI at DSIDC, Sector-3, Bawana on 16.09.2003. It was alleged that Sh. Nitin Garg, while posted and functioning as Junior Engineer (Civil), DSIDC, Bawana, handed over the official documents in his possession to an unauthorized person. By his such acts, Sh. Nitin Garg not only failed to maintain devotion and integrity to duty but also failed to preserve/maintain the prestige of the corporation.

In view of the above irregularities committed by Sh. Nitin Garg and detected by CBI, the contract of engaging Sh. Nitin Garg as Junior Engineer (Civil/Electrical) on a consolidated salary of Rs.8,400/- per month vide Office Memorandum No. DSIDC/II-8/Estt./2000 dated 04.10.2000 is therefore terminated with immediate effect and a bank draft no.No.085894 of Bank of India dated 25.05.2005 for an amount of Rs. 8,400/- is enclosed in lieu of one month's notice in view of para 1 of his contract appointment."

The applicant challenged his order of termination dated 25.05.2005 by filing Writ Petition (Civil) no. 14259/2005 in the Hon'ble High Court of Delhi. The single Judge of the Delhi High Court dismissed the Writ Petition. The relevant portion of the order is extracted below:

"The authorities cited by the learned counsel for petitioner have no application to the facts and circumstances of the present case. The use of stigmatic language is an extraneous matter. Whether it was a stigma or not has got no bearing on the facts of this case. This plea would have carried weight in case it was held that the Staff Service Rules were applicable to the petitioner. This question is not a part of the matter in hand. Succinctly stated it was well within the rights of



the respondent to terminate the services of the petitioner after the expiry of the fixed period irrespective of the fact whether some stigmatic language was used or not. After the expiry of the fixed period, he had no right to the above said post. Writ petition is meritless and, therefore, the same is dismissed. No order as to costs."

The applicant filed LPA No. 1660/2006. The Hon'ble High Court disposed of the said LPA vide order dated 25.05.2007 observing that the applicant is not entitled for reinstatement and they have also observed that the contractual service of the applicant having expired, there is no liability on the respondents to pay wages also. The relevant portion of the order is extracted below:

"With the above observations, we partly allow this appeal but hold that the applicant is not entitled to reinstatement by the respondent. Contract service of the appellant having expired with the aforesaid termination, there shall be no liability and direction to pay wages to the appellant."

The applicant filed SLP no.20507/2007 challenging the order dated 25.05.2007 of the High Court. The Hon'ble Supreme Court vide order dated 18.01.2011 disposed of the said SLP ex-parte as the counsel who was engaged by the respondents was not present before the Hon'ble Supreme Court on the date of hearing i.e. on 18.01.2011. On the basis of the submissions made by the counsel for the applicant, the Supreme Court observed that the applicant was identically situated as those of 27 Junior Engineers who had filed case before the Tribunal with TA Nos. 261 / 262 of 2009



(S.K.Chaudhory & Ors Vs. Govt. of NCT of Delhi through Chief Secretary, Delhi and another and Surjeet Singh & Ors Vs. Govt. of NCT of Delhi through Chief Secretary, Delhi and another) with order dated 08.07.2009. The said order dated 18.01.2011 of the Hon'ble Supreme Court is extracted below:-

"Heard learned senior counsel for the petitioner. No one appears for the respondent.

Mr. Singla, learned senior counsel appearing for the petitioner has drawn our attention to the Order of the Central Administrative Tribunal dated 8th July, 2009 by which a direction has been given to the respondent "to hold a selection for the posts of Junior Engineer through Delhi Subordinate Services Selection Board (DSSSB) and in such an event, applicants who are eligible under the recruitment rules shall be considered giving due weightage to their experience on relaxing the age. On results of such selection, law shall take its own course. Till then status quo, as of date, shall be maintained in respect of the applicants."

It is further contended by Mr. Singla that the petitioner is identically placed with 27 other Junior Engineers who have been named in Annexure P-3 filed with the Special Leave Petition and his case should be treated as par with them. We find force in this contention. Consequently, we direct that the case of the petitioner shall also be considered for regularization along with other similarly placed candidates.

With these observations, the Special Leave Petition is disposed of."

4. From the perusal of the said order of the Tribunal dated 08.07.2009 it is clear that TA Nos. 261/262 of 2009 was filed by some junior Engineers who were continuing to serve on contract basis as on the date of filing the said TA of 2009 and none of them were then terminated. The said applicants in the TAs were seeking regularization. The Tribunal directed the respondents to hold selection through the DSSSB giving weightage to the experience gained by the applicants in that



case and also relaxing their age limit and the Tribunal further observed that until the said selection was held, status quo with respect to their contract service be maintained. The relevant portion of the said order dated 08.07.2009 is extracted below:-

- "9. In our considered view the decision in Pooran Chandra Pandey (supra) has been held to be an obiter in a larger Bench of the Apex Court in *Official Liquidator v. Dayanand*, 2008(10)SCC 1. However, an exception carved out in *Umadevi* (supra) clearly signifies that if the initial appointment is irregular by virtue of being continued for 10 years, one has a right to be considered on one time measure for substantive appointment. Keeping in light the scheme in vogue under the Rules for engagement of muster roll employees and deeming status of the applicants granted by the respondents from their initial joining and reckoning this period for the purpose of seniority and sending a proposal clearly shows that the engagement of applicants and their subsequent appointment was not illegal. However, we find that the recruitment rules for the posts of JE do not stipulate promotion or regularization as a mode of appointment. It is 100% by selection and the only agency to undertake such a selection is DSSSB. However, the applicants who are now since continuing for more than 10 years and some of them for more than 15 years have exceeded the exterior age limit prescribed under the Rules for the post of JE but are qualified educationally and technically as per the recruitment rules. In such view of the matter, if the respondents hold a selection through DSSSB for filling up the vacant posts of JE, which is not disputed in the instant cases, not only the applicants have a right to participate and to be considered in the selection but also desirability on relaxing the age limit and consideration of their experience is mandated in view of the recent decision of the Apex Court, taking cognizance of *Umadevi* (supra) in *Harminder Kaur v. Union of India*, 2009(7) SCALE 204.
10. In the result, for the foregoing reasons, these TAs are disposed of with a direction to the respondents to hold a selection for the posts of JE through DSSSB and in such an event applicants who are eligible under the recruitment rules shall be considered giving due weightage to their experience on relaxing the age. On results of such selection, law shall take its own course. Till then status quo, as of date, shall be maintained in respect of the applicants. No costs.

Let a copy of this order be kept in TA 262/2009."



The said order dated 08.07.2009 was unsuccessfully challenged by the respondents in Writ Petition (Civil) No. 14160/2009 and also in SLP (Civil) 1115/2014 and with the permission of the Supreme Court they filed Review Petition No.127/2014 in WP (C) No 14160/2009 in the High Court.

5. From the facts narrated above, the applicant was not similarly situated as those who were applicants in TA Nos 261/262/2009 in which order dated 08.07.2009 was passed. However, the counsel for the applicant stated before the Hon'ble Supreme Court that he is similarly situated as those who are concerned with order dated 08.07.2009 passed by the Central Administrative Tribunal and the Hon'ble Supreme Court based on the oral submissions of his senior counsel, treating the applicant as similarly situated, directed that the applicant shall be considered for regularization with those allegedly similarly situated candidates. Though in his case termination order dated 25.05.2005 was not set aside upto the Hon'ble Supreme Court, yet in view of the order dated 14.03.2014 in Review Petition 127/2014 in WP(C) 14160/2009 passed by the High Court, the DSSSB conducted induction test on 4.12.2014. The applicant was also subjected to above stated induction test. Based on the said order of the Hon'ble Supreme Court dated 18.01.2011, he was found



ineligible and he was not recommended vide order dated 08.12.2014. The said order dated 8.12.2014 is extracted below:-

Sl. No	Name	Category	Marks	Recommended/ Not Recommended
1.	Sh.Vipin Sharma	UR	72	Recommended
2	Sh.Vikas Sharma	UR	69	Recommended
3.	Sh.Arun Kumar	UR	68.4	Recommended
4.	Sh.Jaidev Sharma	UR	65.6	Recommended
5.	Sh. Naresh Kumar	OBC (Delhi)	65.4	Recommended
6.	Sh. Subhash Sharma	UR	65	Recommended
7.	Sh. Ravinder Kumar Sirohi	UR	61.8	Recommended
8.	Sh.S.K.Choudhary	UR	60	Recommended
9.	Sh. Ajay Agarwal	UR	58	Recommended
10	Sh.Rakesh Kumar Nain	OBC (Delhi)	57.4	Recommended
11	Sh.Gopi Ram	UR	55	Recommended
12	Sh. Dinesh Chand	UR	52	Recommended
13	Sh.Surinder Kumar	UR	50.6	Recommended
14	Sh. D.D.Sharma	UR	48	Recommended
15	Sh.Atul Shama	UR	45	Recommended
16	Sh. Sunil Dabas	OBC (Delhi)	44	Recommended
17	Sh. Dhirender Kumar	OBC (Outside)	42	Recommended
18	Sh. Shyam Lal	SC (Delhi)	41.4	Recommended
19	Sh.Krishan Sharma	UR	35	Not Recommended
20	Sh.Ishwar Chand	UR	34.8	Not Recommended
21	Sh. Surjeet Singh	UR	32.6	Not Recommended
22	Sh.Nitin Garg	UR	32.4	Not Recommended
23	Sh.Vineet Gaur	UR	32	Not Recommended
24	Sh.Ashok Kumar	SC	28	Not Recommended



5. In the present OA, the counsel for the applicant submitted that out of 6 candidates who were not recommended in the impugned order dated 08.12.2014, 4 candidates have filed OA no. 465/2015 (**Vineet Gaur and Ors. Vs. DSIIDC and Others**) and this Tribunal vide order dated 18.05.2016 in the said OA 465/2015 quashed the order dated 08.12.2014 directing the respondents to re-engage those applicants. The other candidate Ashok Kumar had also filed OA 1312/2015 which was also allowed on the basis of the order dated 18.05.2006 in above said OA vide order dated 05.09.2016. Seeking parity with the applicants in the above stated OA No. 465/2015 and OA 1312/2015, the applicant seeks similar order.

6. At the time of hearing when enquired, the counsel for the applicant stated that his case is similar to the above stated Ashok Kumar. From the perusal of the order passed in the case of Ashok Kumar, it is clear that in the case of Ashok Kumar also there was termination order, but, however, at the time of hearing of his case before the Hon'ble High Court, the respondents had sought to withdraw the said termination order, which are not the facts in the case of the applicant, as such the case of the applicant is not identical with any of the candidates who are not recommended under the order dated 08.12.2014.



7. Vide order dated 21.10.2019 of this Tribunal, the respondents were directed to file detailed facts regarding the cases filed by the applicant and others which resulted in the passing of the impugned order dated 08.12.2014. In response to the said order dated 21.10.2019 the respondents have given the details of the three rounds of litigations filed by the applicant and the gist of the orders passed by various courts in those cases. From the perusal of the same also, it is clear that the case of the applicant is not similar to the case of others. The averments made by the respondents in response to the order dated 21.10.2019 of this Tribunal is extracted below:-

"3. That vide an Order dated 21.10. 2019, this Ld. Tribunal was pleased to direct the Respondents to place on record relevant judgments and SLP in the present matter. In compliance thereof, the Respondent No.1 is filing the present Affidavit pacing the relevant judgments and SLP on record along with the charts below stating the facts in a sequential manner as there are several rounds of litigation involved:

CHART No.1 (First round of litigation):

01.08.2014	Applicant was engaged as 'work assistant' on daily wager basis.
04.10.2000	Applicant was engaged as 'junior engineer' on contract basis temporarily.
16.09.2003	There was a surprise CBI raid and the Applicant was found guilty.
25.05.2005 (Annexure-A)	In view of the above, the contractual employment of the Applicant was terminated as per advice of CVC alongwith one month emoluments as notice period.
WP (C) No. 14259/2005	Applicant filed a Writ Petition in Delhi High Court challenging his termination order.
07.07.2006 (Annexure-B)	The said Writ Petition was dismissed vide order dated 07.07.2006.



LPA No.1660/2006	The Applicant challenged the order dated 07.07.2006 passed in the Writ Petition by filing LPA No. 1660/2006.
25.05.2007 (Annexure-c)	The said LPA was disposed of on 25.05.2007 as under: "11. With the above observations, we partly allow this appeal but hold that the appellant is not entitled to reinstatement by the respondent. Contract service of the appellant having expired with the aforesaid termination, there shall be no liability and direction to pay wages to the appellant."
SLP No.20507/2007 (Annexure-D)	Against the said Order dated 25.05.2007, the Applicant had preferred an SLP.
18.01.2011 (Annexure- E)	The SLP was disposed of vide an ex-parte Order dated 18.01.2011. "It is further contended by Mr. Singla that the petitioner is identically placed with 27 other Junior Engineers who have been named in Annexure-P3 filed with the Special Leave Petition and his case should be treated at par with them. We find force in this contention. Consequently, we direct that the case of the Petitioner shall also be considered for regularization along with other similarly placed candidates." The Hon'ble Supreme Court referred to an Order dated 08.07.2009 while passing this judgment. This Order dated 08.07.2009 was passed in TA No. 261/262/2009. The details are given in the Chart No.3 below.
01.02.2011	In view of the above, the Applicant filed a representation with the Respondent no.1 seeking re-instatement and to permit him to join duties.
20.04.2012 (Annexure-F)	The said Representation was rejected by Respondent No.1 vide a speaking Order dated 20.04.2012.
Const. Case (C)No.542/2011 in SLP (C) 20507/2007 (Annexure-G)	In the meanwhile, the Applicant had filed a Contempt Petition in the Supreme Court alleging non-compliance of Order dated 18.01.2011 and to permit the Applicant to join duties in the meanwhile.
09.01.2012 (Annexure-H)	The Hon'ble Supreme Court vide an order dated 09.01.2012 held that there was no contempt and treated the said contempt petition as an Interlocutory Application in the disposed of SLP (C) No. 20507/2011.
03.08.2012 (Annexure-I)	The said Interlocutory Application (erstwhile Contempt Petition) was dismissed by the Hon'ble Supreme Court.



CHART No.2 (Second round of litigation):

W.P.C.No.509/2013	The Applicant filed a Writ Petition in the year 2013 before Delhi High Court seeking implementation of the order dated 08.01.2011 passed in SLP (C) No.20507/2007 and praying for reinstatement.
22.04.2014 (Annexure-J)	<p>The said Writ Petition was disposed of vide an Order dated 22.04.2014.</p> <p>In this order, it is recorded that Petitioner would not be entitled for wages for the period as he has not rendered services since 2005.</p> <p>The prayers for willful disobedience and permission to join duties were rejected in view of the Order dated 03.08.2012 passed by Supreme Court in the Interlocutory Application.</p> <p>The Court directed the DSIIDC to give the benefit of the Judgment dated 09.01.2013 passed in WPC 14160/2009 to the Petitioner so as to consider him for regularization. This WPC No.14160/2009 is explained in the Chart No.3.</p>
LPA No.451/2014	Against the said Order dated 22.04.2014 an LPA was filed before the Ld. Division of Delhi High Court.
20.07.2015 (Annexure-K)	<p>The said LPA was dismissed in default on 20.07.2015.</p> <p>The Applicant took no steps to revive the same.</p>

The present OA No.3018/2015 is the 03rd round of litigation.

4. That the Hon'ble Supreme Court while disposing of the SLP 20507/2007 had referred to an Order dated 08.07.2009. This Order was passed by the Ld. Central Administrative Tribunal in TA No. 261/62 of 2009 which was going on at the relevant period. The history of the said case bearing TA 261/262 of 2009 is as under:

Chart No.3 (History of TA 261/2662 of 2009):

2009 (SK Chaudhary vs DSIIDC TA 261/262 of 2009)	<p>In the year 2009, Junior Engineers who were working temporarily on contract basis sought regularization on the said post. Hence, they had filed a Writ Petition before the Delhi High Court.</p> <p>The said Writ Petitions were transferred to CAT, Principal Bench and were re-numbered as TA 261/262 of 2009.</p>
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08.07.2009 (Annexure-L)	The said TA 261/262 of 2009 were disposed of vide an Order dated 08.07.2009 holding as under: "respondents to hold a selection for the posts of JE through DSSSB and in such an event, applicants who are eligible under the recruitment rules shall be considered giving due weightage to their experience on relaxing the age. On results of such selection, law shall take its own course. Till then status quo, as of date, shall be maintained in respect of the applicants..."
WPC 14160/2009	Against the said Order dated 08.07.2009, the applicants therein had filed a Writ Petition bearing WPC No. 14160/2009.
09.01.2013 (Annexure-M)	The said Writ Petition was disposed of vide an Order dated 09.01.2013 thereby confirming the Order of the Ld. Tribunal but by substituting the 'selection through DSSSB' with a direction to select through a suitable methodology.
SLP(C) 1115/2014	Against the said direction, the Respondent (DSI IDC) filed a SLP bearing SLP(C) No.1115/2014. It was the case of DSI IDC that to adopt a suitable methodology is the job of DSSSB only.
03.02.2014 (Annexure-N)	The SLP was dismissed as withdrawn with liberty to file review before the High Court as the prayer was very limited.
Rev.Pet.No.127/2014 in WPC No. 14160/ 2009	The DSI IDC filed a Review Petition in Delhi High Court
14.03.2014 (Annexure-O)	The said Review Petition was disposed of thereby allowing the prayer of the DSI IDC.
24.11.2014	In view of the above and directions of Hon'ble Supreme Court, the DSI IDC vide its letter dated 24.11.2014 requested all similarly situated JEs for an induction/appraisal test for regularization conducted by DSSSB. Sh. Nitin Garg (Applicant herein) as well as one Mr. Ashok Kumar was also asked to appear in the said induction/appraisal test.
04.12.2014	The results of the Induction/appraisal Test were declared and the Applicant (Sh. Nitin Garg) failed to qualify.



8. From the facts and circumstances narrated above, we are of the view that the OA is devoid of merit. Accordingly, the OA is dismissed. No order as to costs.

(Aradhana Johri)
Member (A)

(S.N.Terdal)
Member (J)

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