

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2134/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 6th day of January, 2000

V.K.Jain  
724, Laxmibai Nagar  
New Delhi - 110 023. .... Applicant  
(By Shri G.K.Agarwal, Advocate)

Vs.

1. Union of India through  
Ministry of Urban Affairs &  
Employment, Nirman Bhawan  
New Delhi - 110 011.
2. Secretary  
Union Public Service Commission  
Shahjehan Road  
New Delhi - 110 011.
3. B.M.Singhal (Mr.)  
c/o Mr. Sohan Lal  
Advocate  
C-6/244, Yamuna Vihar  
Delhi - 110 053. .... Respondents

(By Shri Gajender Giri, Advocate for the official  
respondents and Shri Sohan Lal, Advocate for the  
private respondents.)

O R D E R (Oral)

By R.K.Ahooja, Member(A)

This is one more round of litigation in the  
dispute between the various categories of AE and AEEs  
in CPWD for promotion to the post of Executive  
Engineer.

*Report*

2. The applicant was working as an Assistant  
Engineer (AE) holding a diploma in Civil Engineering  
where he was promoted as an Executive Engineer (EE) on  
ad hoc basis in November, 1995. The ad hoc promotions  
of Assistant Engineers had taken place in excess of the  
quota prescribed for the AEs under 1954 Rules as  
adequate number of AEs recruited through the UPSC were

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not available. The ad hoc promotions of AEs in excess of their quota as also the promotions of Assistant Engineers holding diploma qualifications lead to a number of OAs before the various Benches of this Tribunal in which the rights of the various periods were contested. Ultimately in the case of J.N.Goel & Ors. Vs. Union of India & Ors., JT 1997(1) S.C. 451 the grievance of both the graduate as well as none graduate AEs were taken up by the Supreme Court which in its order held as follows:

"In O.A.No.704/1988 which filed by the graduate Assistant Engineers, the relief sought was confined to future promotions of diploma holder Assistant Engineers to the cadre of Executive Engineers on regular as well as ad hoc basis. The scope of Civil Appeal No.5363/90 filed by the graduate Assistant Engineers is, therefore, confined to promotions made to the cadre of Executive Engineers from amongst diploma holder Assistant Engineers after the date of filing of OA No.704/88 in the Tribunal. It has been pointed out that subsequent to the filing of OA No.704/88 before the Tribunal some orders were passed in 1994 whereby regular appointments have been made to the cadre of Executive Engineers from amongst Assistant Engineers, degree holder as well as diploma holders. It has also been stated that most of the diploma holder Assistant Engineers who were regularly appointed as Executive Engineers under these orders have already retired from service. The grievance of the graduate Assistant Engineers is mainly confined to diploma holder Assistant Engineer who have been working as Executive Engineers on ad hoc basis. Since the 1954 Rules were in operation prior to the promulgation of the 1996 Rules, regular promotion on the post of Executive Engineers against vacancies which occurred prior to the promulgation of the 1996 Rules will be governed by the 1954 Rules. If any of the appellants in Civil Appeal No.5363/1990 feels aggrieved by the regular promotion of any of the diploma holder Assistant Engineers to the cadre of Executive Engineer after the filing OA No.704/88 and prior to the coming into force of the 1996 Rules, he may agitate the said grievance in the competent forum. The promotion of diploma holder Assistant Engineers who have been promoted on the post of Executive Engineer on ad hoc basis, will have to be reviewed by the authorities and regular promotions against vacancies which occurred prior to the promulgation of the 1996 Rules will have to be made in accordance with the 1954 Rules. Regularisation of diploma holder Assistant Engineers who are working as Executive Engineers on ad hoc basis against vacancies which occurred after the promulgation of the 1996 Rules will have to be made in accordance with the provisions of 1996 Rules."

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3. It may be stated that in compliance with the directions of the Supreme Court in J.N.Goel & Ors. (Supra) official respondents have since held DPCs resulting in the promotions of certain diploma Assistant Engineers with outstanding ability and record. However, the applicant herein before us did not make the grade and continues to be an ad hoc Executive Engineer.

4. The case of the applicant in brief is that as per the 1954 Rules (amended in 1972) diploma holders Assistant Engineers were promoted only when they were found to have outstanding ability and record. There was also a distribution of vacancies between the AEs and the Assistant Executive Engineers (hereinafter referred to as AEEs) the latter being recruited through the UPSC. As already mentioned an adequate number of candidates were not available for filling up the quota of AEEs. The vaccume was filled up by promoting the AEs on ad hoc basis against the posts falling in the quota of AEEs. However, the Rules came to be amended in 1996. Under these Rules, the posts of Executive Engineers would be filled up 1/3rd from amongst AEEs with four years regular service, 1/3rd from amongst with AEs with 8 years regular services with degree in Engineering and 1/3rd from amongst AEs with 10 years regular service with diploma in Engineering. In other words, 1/3rd of the posts of EEs would be filled from amongst the Assistant Engineers who are diploma holders without any stipulation regarding outstanding ability and record. The applicant states that the posts which were not filled up in the AEs quota under the 1954 Rules, had necessarily to be carried forward under Rule 6(3)

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of the 1996 Rules and to be filled in as per the 1996 Rules. As there is no stipulation regarding outstanding ability, the applicant would have been considered under the provisions prescribing 1/3rd of the vacancies for diploma holder of AEs. His grievance is that the respondents by the impugned notification dated 6.7.1999, purportedly in exercise of the powers under Rule 21 of 1954 rules have diverted 430 posts falling under the AEEs quota to the AEs quota to be filled in under the 1954 Rules. As a result the number of graduate AEs even though otherwise junior to the applicant in terms of length of service, are being regularly appointed against the diverted vacancies. Had this diversion not been done, these posts would have been filled in under the 1996 Rules and the applicant would have got his due in the quota assigned to the diploma holder AEs.

5. The learned counsel for the applicant has emphasised and pressed the point before us that the respondents could not have issued the impugned notification in 1996/1999 purportedly in exercise of the powers under the 1954 Rules when the said 1954 rules had been extinguished and replaced by promulgation of the 1996 Rules, thus the Government had no authority in 1999 under the 1954 rules, which were no longer in existence, to issue the said notification diverting the posts. The said notification was thus non est in the eyes of law in view of the rule 6(3) of 1996 Rules and therefore, the diverted vacancies could only be filled in under Rule 6(3) of 1996 Rules.

6. The aforesaid contention has been sought to be contested by the learned counsel on the opposite

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side, namely, Shri Gajender Giri for the official respondents and Shri Sohan Lal, for the private respondents. They have pointed out that the directions of the Supreme Court in J.N.Goel & Ors. (Supra) were that vacancies arising before the 1996 came into force, were to be filled in accordance with the 1954 Rules. Further they have relied on the orders of the Chandigarh Bench of this Tribunal in OA 935-CH-99 (Anand Singh Bisht & Ors. Vs. Union of India & Others), decided on 8.10.1999 and the decision of this Principal Bench in OA No.2044/97 (Central Engg. Services Class-I (DR) & others Vs. UOI & Ors.) decided on 12.8.1998.

7. We find from the aforesaid submissions and arguments advanced before us that the controversy before us lies within a narrow compass. The question to be determined is whether the respondents were competent to issue the impugned notification diverting the posts in 1999 even though the 1954 Rules had been replaced by the 1996 Rules in the interruggnum.

8. In J.N.Goel's case (Supra) the directions of the Supreme Court related to the regularisation of the ad hoc Assistant Engineers promoted from amongst the ranks of diploma holder Assistant Engineers after April, 1988. It is not disputed that such regularisation would have to be considered against vacancies which was in excess of the quota assigned to Assistant Engineers under the 1954 Rules. Therefore, the compliance of the orders of the Supreme Court in J.N.Goel's case necessarily entail the diversion of some posts from the quota of AEEs to AEs. Shri G.K.Aggarwal, learned counsel for the applicant argues that the diversion could only take place to the extent

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required to implement the orders of the apex court and no further diversion could be undertaken by the respondents in view of the Rule 6(3) of the 1996 Rules. We however find that there is a clear direction of the Supreme Court in J.N.Goel's case (Supra), ~~As~~ the operative part of which has been reproduced above, that regular promotions against vacancies which occurred prior to the promulgation of the 1996 Rules will have to be made in accordance with 1954 Rules. Admittedly, the vacancies which are the subject matter of the impugned order are pre 1996 vacancies, therefore, they are to be governed by the 1954 Rules. Even though in point of time the consideration of these vacancies will be after the coming into force of 1996 Rules, the process will be undertaken as if it was before 1996. It cannot therefore be said that 1954 Rules as amended in 1972 had become totally extinguished on the promulgation of the 1996 Rules. They continued to exist and be operated in regard to the vacancies which arose prior to 1996. For the same reason any action that is required to be taken by the respondents in respect of their vacancies shall also be in terms of the 1954 Rules. This would be particularly so in respect of diploma holders of AEs whose ad hoc promotion took place prior to 1996. It is already on record that a number of these posts came to be filled in 1996 on an ad hoc basis and the question remained as to how these ad hoc promotions were to be regularised. Some of these vacancies were dealt with under the directions of the Supreme Court in J.N.Goel's case. The respondents sought to deal with the others ~~by the~~ remaining ones by the issue of the impugned

notification. Clearly that could not be done ~~so~~ under the 1996 Rules since the vacancies arose prior to 1996.

9. We also find from the orders of this Tribunal in OA No.2044/97 that the action of the respondents in treating the vacancies as diverted without issue of a proper notification was not viewed with favour. The Tribunal observed as follows:

"We, however, make it clear that it shall be open to the respondents to alter the ratio of the quota in exercise of powers of relaxation under the 1954 rules, which were in force till 28.10.1996, ...." (emphasis supplied).

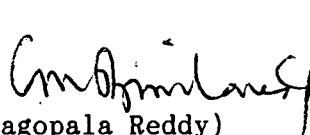
10. The Tribunal has thus already held that the respondents could exercise their powers of relaxation under the 1954 Rules in order to alter the ratio of the quota between the AEEs and the AEs.

11. We therefore find that since the respondents were dealing with vacancies which had arisen prior to 1996 <sup>as</sup> were to be governed by the 1954 Rules, they had the authority to alter the ratio in exercise of the powers available to them under the 1954 Rules. The 1954 Rules were still alive in respect of these posts and the respondents could therefore exercise the powers that were available to them under these Rules. It cannot therefore be said that there was any violation of the Rules. In point of time, the 1996 rules had not replaced the 1954 rules in respect of the pre 1996 vacancies.

12. We therefore find no merit in the OA, the same is accordingly dismissed. No costs.

  
(R.K. Ahooja)  
Member (A)

/rao/

  
(V. Rajagopala Reddy)  
Vice Chairman (J)