

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No:2374 of 1999

New Delhi, this the 16th day of January, 2000

HON'BLE MR.S.R. ADIGE, VICE CHAIRMAN(A)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

1. Bahadur Singh
R/o House No.111-F
1/12 Nehru Nagar,
Ghaziabad (Posted in Delhi).

2. H.S. Kohli
R/o BE-239, Hari Nagar,
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3. J.P. Jain
395, Laxmibai Nagar,
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4. K.S. Sandhu
B-10 Transit Hostel,
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Delhi-54.

5. R.P. Yaduvendu
R/o 218, Ankur Apt., Plot-7,
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6. R.T. Gupta
A-131 Suryanagar,
Ghaziabad.

7. S.C. Mittal
R/o J-85, Saket,
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8. S.K. Chawla
R/o A-105, Pandara Road,
New Delhi-17.

9. V.P. Sewalia
49/IV, NW Moti Bagh,
New Delhi-21.

10. Ramesh Chandar
R/o R-14/66 Raj Nagar,
Ghaziabad-200201.

11. Phool Singh
R/o House No.10/138. Barh,
Faridabad.

12. Om Prakash Gupta
R/o C-725 Vikas Puri,
New Delhi-18.

13. C.L. Sharma
R/o 6370/Pkt.4, Sector-B,
Vasant Kunj,
New Delhi-17.

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14. Hira Lal
R/o C-209, Tagore Garden Extn.,
New Delhi.

15. I.C. Khera
R/o DU-130, Pitam Pura,
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16. J.S. Saini
R/o Q.No.1899, Lodhi Road Complex,
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17. M.S. Madhu
R/o H-54, Sector XI,
NOIDA.

18. P. Biswas
R/o 12/220, Lodhi Colony,
New Delhi.

19. Rattan Singh
R/o 669, Laxmi Bai Nagar,
New Delhi.

20. S.D. Saini
29/28 Old Rajinder Nagar,
New Delhi.

21. S.K. Sachdeva
527, Sector-IV, R.K. Puram,
New Delhi.

22. U.B. Garg
R/o 678, Laxmi Bai Nagar,
New Delhi.

23. V.K. Adlakha
R/o S-331 Greater Kailash-I,
New Delhi-48.

24. V.K. Sharma
R/o 766-Sector-III, R.K. Puram,
New Delhi.

25. V.P. Gupta
R/o C-58, Pachsheel Enclave.

26. Y.K. Mittal
R/o B-127, Ram Puri,
Ghaziabad.

27. Shiv Narain
R/o 1088/IV, R.K. Puram,
New Delhi-22.

28. Ram Niwas Rohilla
R/o DA/104A, DDA Flats, Hari Nagar,
New Delhi.Applicants

(By Advocate: Shri G.K. Aggarwal)

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Versus

1. Union of India thro' Secretary, Ministry of Urban Affairs & Employment, Nirman Bhawan, New Delhi-11.
2. The Director General (Works) Central Public Works Department, Nirman Bhawan, New Delhi-11.
3. The Secretary, Union Public Service Commission, Shahjahan Road, New Delhi-11.
4. B.M. Singhal (Mr)
C/o: Mr. Sohan Lal, Advocate
C-6/244, Yamuna Vihar,
Delhi-53.

-RESPONDENTS

Shri Madhav Panikar, Counsel for respondent Nos. 1 to 3.

Shri Sohan Lal, Counsel for respondent No.4.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

This is a joint application filed by the applicants who have impugned Office Orders No.201 to 209 dated 3.11.1999 issued by the DG(W). While challenging the said orders, they have prayed for the following relief:-

"Declare and order that the promotions, non-regularisations in and reversions from the grade of Executive Engineers (Civil, Electrical) shown in or inferred from annexures A/1 to A/9 (which are various Office Orders: 201 to 209 dated 03.11.1999) shall be reviewed by following the procedure, criteria, etc., whereby Diploma Holders AEs or 'ad hoc' EEs (both Civil and Electrical) with at least 60% out of the latest 10

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ACRs being at least 'very good' would get promoted or, as the case be, 'regularised' in the grade of EEs and those EEs whose promotions as EEs suffered from no defect other than non-consultation with UPSC and in excess of AEs quota, would be deemed to have been regular EEs eversince their initial promotions as EEs, SCs/STs to get their concessions in the matter of zone of consideration and 'benchmark' as pointed out in this OA hereinabove, with all consequential, subsequent, incidental reliefs/benefits/promotions, etc., with costs."

2. All the applicants are the Diploma Holders and are concerned about their promotion from the level of Assistant Engineer to Executive Engineer. The case of the applicants is that earlier the Diploma Holders with at least 60% of the latest 10 Annual Confidential Reports being 'very good' or 'outstanding' were promoted, but now the Government is changing the criteria and are considering only those AEs who have got during the last 10 years 'outstanding ability and record'. The rules to this effect were amended long back, sometime in the year 1972.

3. The applicants already had a round of litigation upto the level of Hon'ble Supreme Court, wherein the Hon'ble Supreme court upheld the validity of Rule 21(3), vide which the amendments were made which enabled a Diploma Holder Assistant Engineers to be promoted as Executive Engineers, if they had 'outstanding ability and record'. *kr*

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4. The applicants wanted that the term 'outstanding ability and record' should be taken as 60% of the Annual Confidential Reports as 'very good' out of the last 10 years. This contention of the applicants has been negated by this Tribunal in OA No. 2095 of 1995 (A.K. Jain and Another Vs. U.O.I. & Others) wherein similar plea was taken by the colleagues of the applicants.

5. When this OA came up for hearing, the respondents counsel stated that the present OA has become infructuous as the matter has already been decided by this Tribunal in OA No. 2095 of 1995 (A.K. Jain and Another Vs. U.O.I. & Others). However, the counsel for the applicants submitted that this case requires to be referred to a Larger Bench, which plea was opposed by the respondents.

6. We have heard the learned counsel for the parties and have gone through the records.

7. From a perusal of the grounds taken by the learned counsel for the applicants, we do not find any reason either to differ from the earlier judgment or to refer the present case to the Larger Bench. The reasons stated in the case of A.K.Jain (Supra) would also apply to the present case on facts as well as on law.

8. In view of the above, we have to apply the judgment as given in A.K. Jain's case (Supra) to the

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present case also and in view of the said judgment.

9. During hearing Shri G.K. Aggarwal asserted that applicants also fulfilled the eligibility conditions as per Recruitment rules when they were considered for ad hoc promotion, and contended that indeed it could not have been otherwise in view of DP&T's O.M. dated 30.3.88. Secondly it is argued that in the counter affidavit filed by official respondents in C.P. No. 120/92 J.N. Goel & Others Vs. R.K. Bhargava & Others, official respondents had themselves stated that in the context of the guidelines for ad hoc appointment issued by DP&T it had been decided that diploma holder Assistant Engineers should have at least 60% 'Very Good' or 'outstanding' remarks out of a total of 10 reports for assessing their suitability for ad hoc promotion to the next higher grade, and official respondents could not resile from that position now.

10. Neither of these arguments avail applicants. As observed by the Hon'ble Supreme Court in its order in C.A. No. 5363 and 5364/90 extracted in the Tribunal's order dated 10.12.99 in O.A. No. 2095/95,

"The failure on the part of DPCs in the past to correctly apply the norms laid down in the proviso and to make an assessment about the eligibility of the diploma holder AE's on the basis of their 'outstanding ability and record' would not mean that the proviso is violative of Article 14 & 16 of the Constitution...."

11. It is this 'failure' noticed in the aforesaid
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order of the Hon'ble Supreme Court, which is now proposed to be set right by respondents.

12. In view of the above, the application has no merits and the same is liable to be dismissed. Accordingly, O.A. is dismissed but without any order as to costs.

Kuldeep Singh
(Kuldip Singh)
Member(J)

S. R. Adige
(S. R. Adige)
Vice Chairman(A)

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