

(4) CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2376 of 1999
M.A. 2395/99

with

Original Application No. 2424 of 1999
M.A. 2424/99

New Delhi, this the 17th day of ~~February~~^{February} 2000

(5)

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

O.A. 2376/99

1. Shri M.K. Lavahe
S/o Shri N. Lavahe
R/o 143/Kishen Garh,
Vasant Kunj,
New Delhi-110 070.
2. Shri Chand
S/o Shri Mam Chand
House No. 416, Chirag Delhi,
New Delhi-110 017.
3. Shri Om Prakash
S/o Shri Bishen Lal
R/o A-179, New Ashok Nagar,
Delhi-110 096.
4. Shri Raj Kumar
S/o Shri Chhotey Lal
R/o 614, Chanderlok,
Mandoli Road,
Shadara,
Delhi-110 032.
5. Shri Ram Kumar
S/o Shri Ram Prasad
R/o A-611, Sector-19,
Noida (U.P.)

... Applicants

By Advocate Shri George Paracken.

Versus

1. Union of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110 011.
2. The Director General (Works)
CPWD, Nirman Bhawan,
New Delhi-110 011.
3. The Secretary,
UPSC, Dhol Pur House,
New Delhi-110 011.

... Respondents

By Advocate Shri A.K. Bhardwaj.

OA 2424/99

(b)

1. Shri V.K. Daroch
S/o Shri Pritam Dass
R/o 13/4 Sector I, Pushp Vihar,
New Delhi-110 017.
2. Shri Sri Ram
S/o Shri KARE Singh
R/o D-127, Krishna Park,
Khanpur- Deoli Road,
New Delhi-110 062. Applicants

By Advocate Shri George Paracken.

Versus

1. Union of India
Through Secretary,
Ministry of Urban Affairs and Employment,
Nirman Bhawan,
New Delhi-110 011.
2. The Director General (Works)
CPWD, Nirman Bhawan,
New Delhi-110 011.
3. The Secretary,
UPSC, Dhol Pur House,
New Delhi-110 011. Respondents

By Advocate Shri D.S. Mahendru.

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

As the facts and issues involved in these two cases are common so the two OAs bearing No. (OA 2424/99 and OA 2376/99) are being disposed of by this common order.

2. The applicants are aggrieved by an Office Order No.203 of 1999 issued Vide No.30/15/99-EC-I dated 3.11.1999 reverting them from the post of Executive Engineers (Civil) to the post of Assistant Engineers (Civil) and they are also aggrieved by the promotion

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order issued vide Office Order No.201 of 1999 dated 3.11.1999 regularising the appointment as Executive Engineer/promoting other ineligible Assistant Engineers as Executive Engineers, vide Annexure B. They have prayed for quashing of the order of reversion and have also prayed that the respondents be directed to consider them for promotion to the post of Executive Engineers.

3. It is further prayed that the respondent No.2 be directed to exclude the name of such Diploma Holder Assistant Engineers from the zone of consideration who do not fulfil the eligibility criteria of 'outstanding ability and records' and also to prepare the zone of consideration by including the names of eligible candidates of SC/ST in the zone of consideration/extended zone of consideration.

4. The application is being contested by the respondents. The main plea of the respondents is that they had made the promotions in accordance with the directions given in the case in Civil Appeal No. 5363 of 1990 (J.N. Goel Vs. U.O.I. & Others).

5. Shri George Paracken appearing for the applicants submitted that the respondents have restricted the zone of consideration and the respondents have not screened Diploma Holder Assistant Engineers and should have furnished the list of only eligible candidates to the DPC so that the eligible candidates alone could have been considered by the DPC. Since the list was sent sans

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screening so the name of those officers who were ineligible to be promoted was also included which restricted the zone of consideration. (8)

6. According to the applicants after the amendment of rules only those Diploma Holder Assistant Engineers could be considered for the post of Executive Engineers who possessed 10 years of service in the grade of Assistant Engineers and were holding 'outstanding ability and records'. So according to the counsel for the applicants, the eligibility being considered for the post of Executive Engineer was 10 years service and also an important condition of holding of 'outstanding ability and records' by the officer concerned.

7. He further submitted that according to Rule 21(3), the respondents were required to screen the Diploma Holder Assistant Engineers to be considered for the post of Executive Engineers based on their total record of service and were to identify those persons who were having 'outstanding ability and records'. Had the department screened those officers on these lines, then probably the applicants would have also come under the zone of consideration and ineligible officers would have been excluded. No other contention was raised before us.

8. In reply to this, the respondents denied that ineligible Diploma Holder Assistant Engineers had been included in the zone of consideration. The respondents submitted that the applicants are making their own zone

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of consideration, which has no basis. The plea of the applicants for separate screening cannot be accepted as both the Degree and Diploma Holders have common seniority list and the submission of the applicants that the zone of consideration should have been prepared by searching eligible SC/ST candidates by extending the zone of consideration five times the number of vacancies, is not relevant because adequate number of SC candidates were available for consideration against the vacancies reserved for them in the normal zone of consideration and while preparing panels for promotion, the instructions issued by the DOP&T have been followed from time to time and the same have also been followed by the UPSC while holding the DPC. The applicants thus cannot sit in judgment over the wisdom of the DPC, which alone is competent to assess the suitability of the applicants.

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

10. The main contention of the learned counsel for the applicants is that all the applicants first should have been screened only thereafter the eligible candidates could have formed the panel for being considered for promotion. In our view, the suggestion made by the learned counsel for the applicants that the department should first screened the candidates applying the test of 'outstanding ability and records' for empanelling an officer in the consideration zone for being considered for promotion is concerned, has no

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merits. Because the qualification of 10 years service can be said to be a qualification, but the 'outstanding ability and records' is such a concept, which is based on performance of an officer, which can be assessed only by the DPC and not by the department itself. In case, we uphold the contention as raised by the counsel for the applicants, then probably the exercise of screening done by the department would not leave any work to be done by the DPC and we would be allowing the department to usurp the functions of DPC.

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11. We may further mention that this particular Rule 21(3) was also a subject matter before the Hon'ble Supreme Court in Civil Appeal No.5363/90 J.N. Goel and Others Vs. U.O.I. & Others wherein the Hon'ble Supreme Court has observed as follows:-

"In service jurisprudence 'outstanding merit' is a well recognised concept for promotion to a selection post on the basis of merit. Such assessment of outstanding merit is made by the DPC on the basis of the record of performance of the employee. (emphasis supplied)

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12. We may further mention that in the case of J.N. Goel and Others (Supra) the validity of Rule 21(3) was challenged on the basis that this 'outstanding ability and record' being considered as a qualification but the Hon'ble Supreme Court declined to say that because of this proviso to Rule 21(3) of the 1954 Rules was violative of Articles 14 and 16 of the Constitution and the Hon'ble Supreme Court had nowhere suggested even

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that the words 'outstanding ability and record' shall be considered as a qualification and the screening is required to be made before empanelling the officers for being considered for the post of Executive Engineers. 11

13. In view of the above, we find that the OAs do not merit any interference and the same are dismissed. No costs.

14. Let a copy of this order be placed in both the files (OA No. 2376/99 and OA No. 2424/99).

Kuldeep
(Kuldeep Singh)
Member(J)

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

/Rakesh/