

CENTRAL ADMINISTRATIVE TRIBUNAL.
PRINCIPAL BENCH

OA No.2239/1998
with
OA 2526/1998

(8)

New Delhi. this 15th day of February. 1999

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas. Member(A)

OA 2239/98

1. Kamal Kishore Joshi
99/3. NW Moti Bagh, New Delhi
2. Navin Chandra Saxena
D/733, Sarojini Nagar, New Delhi
3. Anil Kumar Mutreja
C-5/147, Keshavpuram, Delhi . . . Applicants

(By Advocate Shri G.K. Aggarwal)

OA 2526/98

1. Sudama Prasad Sharma
15/283. Lodi Colony. New Delhi
2. D.K. Yadav
44/A-A. Sector DIZ Area. New Delhi
3. Santosh Shukla
A-228, Kidwai Nagar (E). New Delhi
4. Puran Singh
F-158, Sarojini Nagar, New Delhi . . . Applicants

(By Advocate Shri Vijay K. Jain)

versus

Union of India. through

1. Secretary
M/Urban Affairs
Nirman Bhavan, New Delhi
2. Director General
CPWD. New Delhi
3. Chief Engineer (Training)
CPWD. New Delhi . . . Respondents

(By Advocate Shri A.K. Bhardwaj)

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ORDER

Hon'ble Shri S.P. Biswas

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1. The legal issues raised, background facts and the main reliefs sought for being common in these two OAs, they are being disposed of by a common order. A brief description of antecedent facts would be essential for the purpose of appreciation of the legal issues involved. These are as follows:

2. Applicants, in both the OAs, are Junior Engineers (JEs for short) having put in over 15-20 years of service in the Civil and Electrical Departments of Central Public Works Department (CPWD for short), Government of India. Promotion to the next higher grade of Assistant Engineer (AE for short) is governed by 1954 Rules for vacancies arising upto 21.6.97 and by 1997-Rules for vacancies occurring thereafter but both under the proviso to Article 309 of the Constitution. Both these Rules provide that 50% of vacancies in AEs are to be filled up through Departmental Promotion Committee (DPC for short) on merit-cum-seniority basis and 50% through Limited Departmental Competitive Examination (LDCE for short). For those seeking promotion to the grade of AEs under DPC quota, minimum length of regular service as JE (Civil or Electrical) for 8 years is required. While for LDCE the requirement is four years. Prior to 18.6.97, that is, when the new R/Rs came into existence, LDCEs were being conducted by Union Public Service Commission (UPSC for short) and

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thereafter it is proposed to be organised by CPWD itself. Notices dated 16.9.98 and 6.10.98, as at A-1 and A-2 respectively, have been given for holding LDCE-1999 on 21.2.99 to fill up 391 posts of AEs. The last LDCE was conducted by UPSC in 1992. In other words, LDCE-1999 is intended to cover vacancies arising during the period 1.4.93 to 31.3.99. Respondents have arrived at the figure of 391 for the present LDCE on the basis of 50% of the total number of vacancies that occurred during the above period. Applicants in OA 2526 are challenging Recruitment Rules of the Ministry of Urban Affairs & Employment and CPWD Central Civil Engineer Group B Service 1997, Ministry of Urban Affairs & Employment and CPWD Electrical Engineer Group B Service R/Rs-1997 and CPWD - Department of Training's Notice dated 16.9.98 for LDCE-1999 as well as public notice dated 6.10.98 issued pursuant to framing of new R/Rs as aforesaid. Whereas the applicants in OA 2239/98 have sought for quashing only A1 and A2 notices dated 16.9.1998 and 6.10.1998.

OA 2239/98

3. The applicants' case is that the number (either for LDCE category or for the DPC category) should be equal to the number of vacancies arising due to permanent exit of those AEs who were promoted from JEs to AEs through LDCEs only plus 50% of the newly created posts other than cadre review posts. It is apparent that exit of promoted JEs as compared to

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the officials coming from LDCE, is much higher. Accordingly if the quota rule is not adhered to, service cadre of JE in due course of time would be filled up by candidates coming through the route of LDCE and would thus not only lead to stagnation but would also disturb the existing provision of 1 : 1 ratio between the two groups of employees for the purpose of promotion to the grade of AEs. Therefore, if 50% of [AEs (C) through LDCE plus AEs (C) through DPC)] is given to LDCE, there will be progressive reduction of DPC-promotee AEs (C), leading to distortion of 1 : 1 ratio between LDCE and DPC promotees prescribed in the Rules.

4. Applicants would argue that vacancies arising from existing DPC promotees ought to be filled through DPC and those arising from permanent exit of LDCE-promotees be filled up through LDCE, and this proposition is well supported by the judgement of Supreme Court in the case of Govt. of AP etc. V. Bata Musalaiah etc. JT 1995 (1) SC 20.

5. There were no vacancies in AEs(C) grade during April. 93 to March. 99 due to permanent exit of LDCE promotees. Therefore, there is no LDCE vacancy available to be filled up through examination proposed to be held. All these 391 AE(C) vacancies are to be filled up through DPC.

6. Respondents have wrongly clubbed vacancies for the entire period between 1.4.93 to 31.3.99 to be filled up by means of LDCE-1999 to be held on

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21.2.99. Such an attempt would only enable those ineligibles to sit for LDCE for the period 1993-98 and to compete for the vacancies arising during that period. Articles 14 and 16 of the Constitution of India are thus violated by treating unequal as equals. On the analogy that if DPCs did not meet during 1993-98, the next DPC is required to prepare year-wise panel based on year-wise vacancies and eligibility, similar procedure was required to be followed for LDCE in the instant case. DPC vacancies continued to get filled up during 1993-98 even though no LDCE was conducted after 1992. Applicants would have faced less competition if there were year-wise LDCEs.

OA 2526/98

7. In this OA, applicants have assailed the new R/Rs-1997 as aforesaid. While doing so, Shri V.K. Jain, learned counsel for applicants sought to drew strength from the decisions of the Supreme Court in a long chain cases. Those case-laws as well as the specific paras of court cases to which Sri Jain drew our attention are enumerated below:

(i) A.K. Subramani & Ors. v. UOI & Ors. AIR 1975 SC 483 - Details, particularly in paras 20 and 26, were brought out / for sharp focus.

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(ii) Jagmal Singh Yadav V. M.Ramayya & Ors.

AIR 1977 SC 1474 - Main emphasis was in respect of the views expressed by their Lordships in para 34 of this case.

(iii) P.S.Mahal & Ors. Vs. UOI & Ors. AIR 1984 SC 129 - Details in paras 32 and 36 were highlighted.

(iv) R.L. Bansal & Ors. Vs. UOI & Ors. AIR 1993 SC 978 - Paras 8, 9, 13, 16 and 24 were quoted.

Learned counsel for the applicants also drew our attention to GSR 168 amending 1954-Rules called "Central Engineering Service Class II R/Rs-1976". Their Lordships in that case held that the amendment carried out in some of these cases have been done in a haste and without proper scrutiny. It is evident from the fact that only Rule 24 was amended without corresponding amendment of other rules in 1954-Rules.

¶ Learned counsel argued that repeated warnings given by their Lordships of the Apex court in a series of judgments, as mentioned aforesaid in chronological order, did not have any impact on the respondents in framing appropriate R/Rs. Present RRs of 1997 are in no way exceptions in terms of bring a quitus in the matter. The learned counsel

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for the applicants also sought to justify his attack on the 1997-Rules on the basis of the following additional grounds:

- (a) Any service includes both temporary and permanent post. Vacancy is always to a post and accordingly rules are required to be framed so as to cover all kinds of appointments/posts, as shown in para 1 of Bansal's case (supra), to the post of AEs. This has not been done in the present 1997 RRs.
- (b) Respondents have no infrastructure to provide for training, development and holding of LDCE as channel of promotion for next higher grade. Accordingly, such rules cannot be worked out and applied in a reasonable manner. It will lead to favoritism and thus would violate Articles 14 and 16 of the Constitution.
- (c) The present Rules provide that consultations with UPSC are not necessary and are, therefore, liable to be struck being, inter alia, violative of Article 320 of the Constitution which mandates consultation with UPSC.
- (d) These Rules provide for quota, i.e. 50% from JEs with 8 years regular service in the grade and 50% by LDCE. Obviously, LDCE

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can be conducted only after arriving at the accurate total number of vacancies available at any given point of time, because 50% must go to JEs with 8 years regular service in the grade. Respondents have not carried out such an exercise before issuing notices for the examination.

Q. Besides assailing the new R/Rs on the basis as aforementioned, learned counsel has also pressed in similar arguments, on the lines of Shri G.K. Aggarwal, learned counsel in OA 2239/98, for the purpose of challenging the validity of the notifications for holding the examination on 21.2.1999.

10. Shri A.K. Bhardwaj, learned counsel for the respondents vehemently opposed the reliefs claimed in both the OAs. It has been submitted that as per applicants' own admission quota prescribed for both the methods is the same in 1954 well 1997-Rules. So, at their young age at the initial stage, applicants have had a chance to qualify in LDCE for promotion to AEs(C) against 50% quota. If they had failed in doing so they cannot complain against the said R/Rs at this stage. That apart, with the prevailing methods operating available since 1954, the OAs of the applicants in challenging the same now are barred by limitation.

11. We also find that none of the applicants have come out with the details as to how their interests individually are likely to get affected by the proposed LDCE to be held on 21.2.99. As per Rules, JEs with 4 years service in the grade are eligible to appear in the LDCE whether elder or young. The applicants seek to frame out two different categories among the JEs - one with lesser and another with longer experience. The rules do not prohibit a JE with long service to appear in the tests which are in vogue since 1954. In fact, all of them have additional opportunities to appear in the LDCEs alongwith others (against 50% vacancies) as well as are eligible to be considered by DPCs for their promotion on the basis of seniority-cum-merit.

12. It is well settled in law that administrative authorities are fully empowered to lay down R/Rs in the interest of efficiency of service. The present OAAs appear to have been filed by such officials who apparently could not get through the LDCEs held earlier for promotion to AEs and they are now pressing for promotion through the corridors of DPC only which, if allowed, would only denigrate the efficiency of engineering service. This is not the first time that LDCE is being held after a long gap. After 1979, this exam was held in 1982, in 1983 then in 1989 and 1992. We cannot also doubt that the department is incapable of holding the LDCE since it is already holding examinations for recruitment of JEs on All-India basis as also departmental examinations for AEs and EEs. Director

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General of Works has a Training Institute which is fully competent to conduct the LDCEs and is the notified authority for conducting the said examination as per R/Rs. We also find that in both the R/Rs of 1954 and 1997, the posts of AEs(C) and AEs(E) are being filled up 50% by LDCE and 50% by DPC. The principle of holding DPC is also applicable to vacancies which would occur during a particular year by way of new creation/retirement/death/promotion irrespective of the fact that by whom the posts are vacated i.e. whether by promotee quota AEs or by LDCE-quota AEs. No records have been brought before us to show ^{that} the percentage prescribed for each quota is not being followed. In the present case, due to non-conducting of LDCE after 1992, 50% quota for LDCE has got accumulated. Vacancies proposed to be filled up by LDCE on 21.2.99 are those that got accumulated since long and include earlier backlogs. Even the four major grounds on the basis of which learned counsel for the applicants in OA 2526/98 have challenged the new R/Rs-1997 do not vitiate the legality of the new rules framed. They only point out to the need for taking a few additional administrative remedial steps in terms of type of appointment that could be covered by such examination, strengthening infrastructure for holding such examinations and ensuring proper determination of vacancies for each group. On these pleas, we can ill afford to set aside the Rules framed in 1997. Any order to stall the

process of the proposed examination will only mean putting the the clock backwards in terms of the interests of not only junior JEs but also for some senior JEs who may be willing to sit for the same.

It is ^{also} ~~not~~ not possible to rule out that some of the senior JEs ^{and} could come out successful in such examination as well. In such a situation, the only justifiable course of action would be to ensure that proposed examination does not result in providing undue benefits to very junior JEs by means of tilting the position of seniority against rules. We mention this because ~~there~~ may be persons now appearing in the examination (1999) who may have joined the department in 1994 and if he qualifies and obtains a high ranking in the merit he may be appointed for a vacancy for the post of AE which occurred in 1993 i.e. the vacancy when he did not even join the department even as JE. Such a situation would be only arbitrary and irrational. We are required to avoid such situation and the respondents are aware of such a position and have also come out with reasonable steps as in para 8 of the reply statement dated 22.1.1999 in OA 2239/98.

13. In the light of the detailed discussions aforesaid and in the interest of justice and fairplay, we do not think it appropriate to apply brakes on the wheels of the proposed selection process. For this reason, the OAs deserve to be dismissed and we do so accordingly. However, to take care of some of the reasonable apprehensions of the applicants, it would be appropriate that

while conducting the present selection and finalising the process thereof, respondents shall take precautions in terms of the following:

- (i) Segregate both vacancies and eligibility year-wise. This is to ensure that an employee after having qualified in the examination does not get the benefit of seniority against the year when he was not even eligible for the same;
- (ii) existing rules for filling up the posts meant for reserved category candidates shall be adhered to as prescribed by the DoPT in its OM dated 2.7.97. While communicating vacancies of 391 JEs, respondents have only indicated that the percentage of reservation for SC/ST will be indicated only later on. Since reservation in promotion in such cases are to be ensured as per law laid down, respondents shall strictly follow instructions for maintaining the roster and running account register to look after the interests of backward classes.
- (iii) Vacancies of 391 shall be recalculated to ensure that 1 : 1 ratio between the two groups for the years from 1993 to 1999 have not been tilted to unduly favour one of the two contending groups.

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(iv) We are also inclined to agree with the respondents' submission that "present practice of keeping vacant slots for being filled up by direct recruitment of later years thereby giving them unintended seniority over promotees who are already in position could be dispensed with". The above precautions shall be taken before finalising the present selection process on hand.

14. For similar examinations to be held in future, respondents shall ^{also} consider (1) the possibility of strictly maintaining 1 : 1 ratio year-wise between DPC and LDCE candidates, making them widely known through departmental notice boards; (ii) feasibility of ensuring that the posts falling vacant caused by DPC-promotees could be filled up through DPC candidates and those caused by LDCE-promotees could be filled through examination and (iii) for making 1 : 1 ratio for the newly created posts as mandatory.

15. OA is disposed of as aforesaid at the admission stage.

(S.P. Biswas)
Member(A)

(T.N. Bhat)
Member(J)

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