

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1865/95

New Delhi this the 1st day of August 1996.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr K.Muthukumar, Member (A)

1. Surinder Kumar.
S/o Hira Lal
R/o 57/3 Old Rajinder Nagar
New Delhi - 110 060.
2. Dinesh Kumar
S/o Sh. Kishan Singh
R/o 12-A, Pocket A,
Mayur Vihar, Phase-I
Delhi - 110 092
3. Sukhdev Singh
S/o Sh.Kartara Ram
R/o B-102 Pragati Vihar Hostel
Near JNU Stadium
New Delhi
4. Mukund Joshi
S/o Sh. S.S.Joshi
R/o 119, Sector 3
Sadiq Nagar
New Delhi - 110 049.

...Applicants

(By Advocate: Sh. G.D.Gupta)

Versus

Union of India through

1. The Secretary
Ministry of Urban Affairs & Employment
Dept. of Urban Development
Nirman Bhawan
New Delhi- 110 011.
2. The Director General
Central Public Works Department
Nirman Bhawan
New Delhi - 110 011.

(By Advocates: Sh. B.Lall and Sh. Venkataramani)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

The grievance of the applicants 4 in number who are Executive Engineers (Civil) in Central Public Works Department (CPWD) is that respondents 1 & 2 have unjustifiably and irregularly

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filled the post of Superintending Engineers (Civil) which arose by appointing those who were placed in the panel prepared for the vacancies of the year 1994, on account of cadre review in July 1995. Appointing respondents 3 to 35 who were placed in the panel for 33 identified vacancies which arose upto the year 1994, according to the applicants, is opposed to the guidelines in regard to the procedure to be adopted by the DPC while considering the question of making appointments to year-wise vacancies contained in the official memorandum issued by the Department of Personnel & Training. The applicants contend that since all of them would come within the zone of consideration if a DPC had met for drawing up a panel for vacancies which arose in the year 1995, that by the action of the respondents 1 & 2 in filling up the vacancies by order dated 4th September 1995 (Annexure A-1), the applicants have been deprived of their legitimate rights to be considered and appointed towards the posts. Therefore, the applicants have prayed for following reliefs:

[a] Allow the original application of the applicants with costs;

[b] Issue appropriate directions/orders quashing the impugned order No. 197/95 dated 4th September 1995 and DPC proceedings held in October 1994 for this impugned order;

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- [c] Declaring that a fresh DPC should be held within one month for filling the newly created posts of Superintending Engineers (Civil) as a result of cadre review in July 1995 and consequently applicants be ordered to be considered and if found fit may be ordered to be promoted to the post of Supdg. Engineers (Civil) from the date from which the persons were promoted vide impugned office order dated 4th Sept.1995 with all consequential benefits;
- [d] Directing the respondents to hold a fresh DPC immediately for filling the newly created posts of Superintending Engineers (Civil) as a result of cadre review in July 1995 and consequently applicants be ordered to considered to be promoted to the posts of Supdg. Engineers (Civil) from the date from which the persons were promoted vide impugned office order dated 4th September 1995 with all consequential benefits;
- [e] Also declaring the ' applicants entitled to be promoted to the post of Supdg. Engineer (Civil) even on ad-hoc basis immediately with all consequential benefits as their
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juniors have already been promoted as Supdg. Engineers (Civil) on ad-hoc basis and are still working as such;

[f] Also directing the respondents to promote the applicants to the post of Supdg. Engineer (Civil) even on ad-hoc basis immediately with all consequential benefits as their juniors have already been promoted as Supdg. Engineers (Civil) on ad-hoc basis and are still working as such;

[g] Declaring the applicant No.3 being SC candidate, entitled for the benefit of the provisions of para 6:3:2 quoted in ground (O) above while considering him for promotion on the post of Supdg. Engineer (Civil) and also entitled not to be superseded under any circumstances as has been done in the order dated 4th September 1995. In other words, inter-se seniority on the post of Executive Engineers (Civil) may be directed to be maintained on the post of Supdg. Engineer (Civil) also alongwith all benefits of services for which the applicant No.3 would have been entitled to in case he would not have been dealt with adversely; and

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[h] Directing the respondents to give to the applicant No.3 being the SC candidate the benefits of the provisions of para 6:3:2 quoted in ground (O) above while considering him for promotion on the post of Supdg. Engineer (Civil) and also he be further held that in no circumstances the said applicant shall be superseded as has been done in the impugned order dated 4th September 1995. In other words, the inter-se seniority on the post of Executive Engineer may be directed to be maintained on the post of Supdg. Engineer (Civil) also alongwith all benefits of services for which the applicant No.3 would have been entitled to in case he would not have been dealt with adversely.

2. On receipt of notices in the OA, on behalf of the respondents 1 & 2, a short reply was filed in which they admit that the panel prepared in the year 1994 for vacancies which were existing and anticipated till 1994 had been made use of for filling the vacancies created in the year 1995. They seek to justify that action on the ground that it was not feasible to appoint those who were placed in the panel towards the

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vacancies which existed in the year 1994 on account of the fact that the Executive Engineers promoted on ad-hoc basis to officiate as Supdg. Engineers were occupying these posts and some of them having obtained stay orders from the Tribunal.

3. Respondents 7, 14, 18, 23 & 25 have also filed a reply statement seeking to justify their appointments and posting. Although the application is hotly contested, after addressing the Tribunal for some time, the learned counsel for all the parties stated that the application may now be disposed of with directions which are agreeable to the parties.

4. Learned counsel for the applicants stated that the applicants are not pressing the prayer for quashing the proceedings of the DPC which was held in October 1994, mentioned in sub para (i) of para 8 of the prayer. Since according to the instructions on the subject, the DPC has to consider all those who come within the zone of consideration for vacancies arising in a particular year on the basis of the overall service record relevant on the date of consideration by the DPC, it is agreed by all the counsel that the panel prepared in October 1994 by the DPC could not have been validly utilized for filling up vacancies which arose in the year 1995 on account of the cadre review. As the respondents 3 to 35 were placed on the panel for

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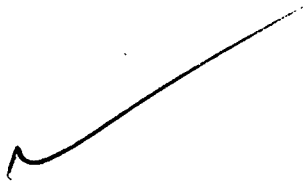
appoint towards 33 identified vacancies which were existing in 1994, it is agreed by all that their appointment cannot be characterised as illegal. However, it is also agreed that their posting on the vacancies which were created in 1995 is irregular. The impugned action on the part of the respondents 1 & 2 agree that they would at the earliest convene a fresh DPC for preparing a panel for appointment towards 37 vacancies of Superintending Engineers, which arose in July 1995, considering all those who were eligible and were within the zone of consideration including the applicants and also give effect to the recommendations of the said DPC. It is also agreed by the parties that till such time the exercise of holding a DPC and giving effect to its recommendations is achieved, the respondents 3 to 35 need not be reverted from the posts and they shall be accommodated on the vacancies for which they were placed in the panel making necessary adjustments.

5. It is also agreed by the counsel for respondents 1 & 2 that if there are still vacancies in the grade of Superintending Engineers, till the holding of the DPC, the Department would consider appointing Executive Engineers including the applicants on such posts on ad-hoc basis.

6. In the light of above consensus by the counsel for the parties, the application is finally

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disposed of with following declaration/direction:

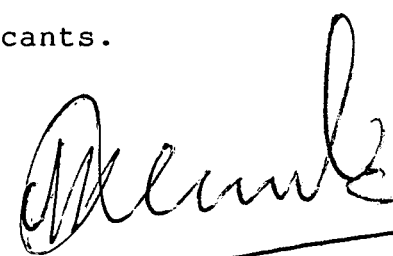
- [i] While the appointment of respondents 3 to 35 who were placed in the panel by the duly constituted DPC for appointment to the 33 identified posts of Superintending Engineers existing in 1994 is held to be valid, the action of the respondents 1 & 2 in posting some of them on the vacancies which were created subsequent to 1994 is declared irregular and unjustified.
- [ii] The respondents 1 & 2 are directed to have a DPC constituted for preparation of a panel of Executive Engineers, considering all those who would come within the zone of consideration towards appointment to the 37 vacancies in the grade of Superintending Engineers which arose in the year 1995 and to give effect to the panel which would be so prepared as expeditiously as possible and at any rate not later than 4 months from the date of receipt of this order.
- [iii] As the respondents 3 to 35 have been validly placed on the panel for appointment as Superintending Engineers, we direct that they shall
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not be reverted from the posts till the recommendations of the DPC as mentioned in para [ii] are implemented.

[iv] For accommodating the respondents 3 to 35, the respondents 1 & 2 shall make necessary adjustments so that they are appointed towards the vacancies for which they were placed on the panel.

[v] If there are vacancies in the grade of Superintending Engineers, the respondents 1 & 2 shall consider making ad-hoc appointments towards those vacancies pending regular appointments in accordance with law, considering those who are eligible including the applicants.


[K.Muthukumar]
Member (A)


[A.V. Haridasan]
Vice Chairman (J)

A.Ashraf