

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1658/1996

(22)

New Delhi, this the 4th day of October, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

H.P. Kureel,
Sector-I/159,
Sadiq Nagar,
New Delhi - 110 049
(By Advocate: Shri M.P. Raju)

... APPLICANT

Versus

1. Union of India
Through its Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi
2. The Director General (Works),
Central Public Works Department,
Nirman Bhavan,
New Delhi
(By Advocate: Shri S.M. Arif)

... RESPONDENTS

O R D E R

By Mukesh Kumar Gupta, Member (J):

Earlier this OA had been dismissed vide order dated 28.03.2000 on account of non-impleadment of necessary parties etc., which had been carried before the Hon'ble Delhi High Court vide Civil Writ Petition No. 7577 of 2000. Aforesaid writ petition was disposed of vide order dated 23.05.2006 with following observations:-

"Accordingly, we are of the view that the Tribunal dismissal of the OA on the ground of non-joinder particularly in view of the statement made by the learned counsel for the petitioner that no relief was claimed against persons featured in Sl. No. 438 to 588 of the seniority list was not sustainable.

Accordingly, the writ petition is allowed. The order of CAT dated 28th March, 2000 is quashed and set aside. The Tribunal is directed to record findings on merits of the matter while disposing of the O.A. before it not later than six months from 4th July, 2006. The parties to appear before the Tribunal on 4th July, 2006." (emphasis supplied)

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It is in these circumstances, we have heard this matter once again on merits.

2. Necessary facts relevant for adjudication of the case are that applicant is aggrieved by an order dated 23.02.1996 to the extent that the order awarded notional promotion as Assistant Engineer (Electrical) w.e.f. 18.09.1987 only while keeping the date of actual promotion as 27.10.1987, and assigning him seniority No.588-A instead of 438. He is also aggrieved by Respondents' action in refusing to promote him under the examination quota, which he had already qualified, i.e., the Limited Departmental Examination (in short 'LDE') held in the year 1983. In total 10 persons passed the aforesaid examination and 7 were promoted on 17.09.1986 (Annexure-II). Remaining 3, including the applicant, were promoted against promotee quota, instead of examination quota in the year 1987. As per rule, post of Assistant Engineer (Electrical) was to be filled up 50% by promotion and 50% by LDE. Vacancies in said grade were to be filled up and seniority to be assigned in the ratio of 1:1. Initially, he was appointed as JE (Electrical) on 13.11.1972. He belongs to SC community. In the LDE held in 1983, he was placed at serial No.9 out of 10 successful candidates. Over 145 candidates, including juniors to him, were promoted to the grade of Assistant Engineer based on a cadre review in September 1987. Applicant and other two from the select list of 1983 represented to Respondents and, as a result of

which, they were promoted on 27.10.1987. He made representation dated 10.03.1989 seeking correction in seniority list as per 1983 examination and placement before those promoted in the cadre review of the year 1987. Without considering said representation, Respondents issued supplementary seniority list vide OM dated 20.09.1991 and placed him at serial No.601 below even to his juniors instead of placing him at correct serial no. He ought to have been placed above Shri R.K. Khanna, who was at serial No.438. In these circumstances, he made further representations dated 02.12.1991 and 12.1.1995, which were rejected vide communication dated 01.05.1995. Alleging violation of reservation roster and arbitrary and discriminatory action of Respondents in not promoting him based on the select list of 1983 examination, he approached this Tribunal. It is contended that vide order dated 23.02.1996, he had been given notional promotion w.e.f. 18.9.1997 keeping his date of actual promotion as 27.10.1987 and further he was assigned seniority at serial No.588-A.

3. Respondents raised two preliminary objections, namely, that he did not make any representation against order dated 23.02.1996 and without exhausting departmental remedy, approached this Tribunal. In the rejoinder he averred that he has made representation dated 04.03.1996 against order dated 23.02.1996. The other contention raised by Respondents is that OA is barred by limitation as the cause of action arose on 18.09.1987, whereas OA was filed on 31.07.1996, i.e. after a considerable delay of 9 years. Initially no MA had been filed seeking condonation of delay. However, such an application was filed subsequently on 26.08.1996. Respondents have also taken the

plea that repeated representation is not a good ground to condone the delay.

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4. It is contended by applicant that Respondents rejected his request for promotion based on 1983 select list vide impugned order dated 23.02.1996 and, therefore, a cause of action arose on the said date. Respondents' contention that he approached the Tribunal without making representation against impugned order is not tenable, particularly when we find on record that such a representation had indeed been made.

5. Shri M.P. Raju, learned counsel for applicant strenuously urged that applicant had been promoted under promotion quota and not under LDE quota in the year 1987, despite the fact that rule provides filling up of posts of Assistant Engineer in the ratio of 1:1 and assignment of seniority also on the said basis. Seniority list issued on 20.09.1991 indicates that upto serial No.435, the ratio of 1:1 had been maintained between promotee quota and LDE quota. From serial No.436 onward, all promotees who were promoted w.e.f. 18.09.1987 had been bunched together. He has been placed at serial No.601, which has been subsequently amended vide order dated 23.02.1996 and assigned seniority at serial No.588-A instead of 601. Had he been granted due promotion under LDE quota on availability of vacancy in the year 1987, his name would have figured immediately above Shri R.K. Khanna at serial No.438. In other words, if his promotion was allowed under the LDE quota, his placement would undergo a material change from serial No.588-A to 437-A.

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6. Shri M.P. Raju, learned counsel further invited our attention to (2005) 13 SCC 362, **Punjab State Electricity Board & Ors v. Kuldeep Singh**, to contend that applicant is entitled to promotion under LDE quota with effect from the date when the vacancy was available in the year 1987 along with all consequential benefits. Reliance was also placed on (2003) 12 SCC 280, **Union of India & Ors v. Leelamma Jacob & Ors.**, particularly paras 14, 15 and 17. Learned counsel further contended that it is well settled law that statutory rules cannot be amended, varied or changed by administrative instructions.

7. In the alternative, learned counsel further contended that even if he is promoted under the promotion quota, he would figure over Shri Krishan, a SC candidate, who is placed at serial No.571 for the reason that he was appointed as JE (Electrical) on 13.11.1972 while Shri Krishan was appointed on 18.11.1972, i.e. 5 days subsequently. In other words, based on continuous length of officiation as JE, he would also stand to gain.

8. Respondents contested the claim laid stating that applicant, who appeared at serial No.9 out of 10 qualified officials in the 1983 LDE, could not be promoted earlier as only 7 JEs were appointed as AE (E) vide order dated 17.09.1986. 3 candidates, including the applicant, could not be promoted for want of examination quota vacancies. However, he was promoted against examination quota vacancy in the year 1988 instead. In 1987, while processing promotee quota cases, applicant and two others were not considered on the ground that they have already qualified LDE in the year 1983 for promotion to the grade of AE(E). Though he was eligible for promotion under promotee quota when his immediate junior, a SC candidate viz. Shri S.P. Kureel, was

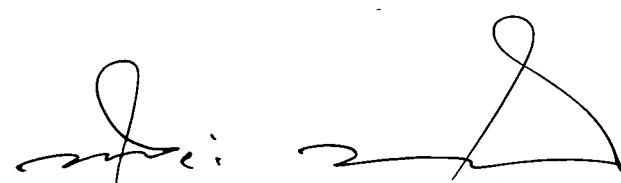
considered and promoted in September, 1987. Considering this situation and fact that he would have attained higher seniority position as AE (E) against promotee quota as compared to examination quota, a review DPC was held on 14.02.1996 for considering him for promotion against promotee quota and accordingly his seniority had been re-fixed as AE (E) vide order dated 23.02.1996 at serial No.588-A above Shri S.P. Kureel instead of examination quota at serial No.601. The first cadre review was approved by the Government in September, 1987. 50% posts created by cadre review as per Recruitment Rules (for short RR) were to be filled up by LDE. However, the RRs were relaxed in respect of filling up of 50% examination quota and thus the cadre review vacancies were filled up 100% by promotional method. As no vacancy was given out of cadre review to examination quota, 3 successful candidates of examination, including applicant herein, could not be promoted under examination quota. None of his junior has been promoted under examination quota.

9. We heard learned counsel for parties and perused the pleadings on record carefully. No order or material has been produced before us to suggest that relaxations of RRs were made in September 1987 in terms of statutory RRs in vogue. It is an admitted fact that there had been large number of vacancies created because of cadre review in the said year. From aforesaid seniority list, we find that officials at serial Nos. 436 to 599 had been bunched together and they all belong to promotee category. If 3 vacancies had been released to LDE quota as per RRs in vogue, applicant would have been promoted against the said quota and would have been placed at appropriate place i.e. at

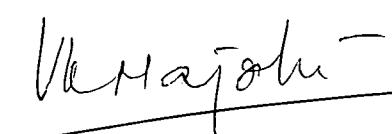
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serial No.437-A, instead of promoting him under the promotion quota and placing him at serial No.588-A. It is well settled proposition of law that statutory RRs cannot be amended, varied or changed by an administrative instruction. Even if there had been a relaxation, such relaxation should have been issued only in terms of Rules in vogue and not otherwise. In the absence of production of any document or material to this effect, we have no hesitation to conclude that Respondents' action in diverting all vacancies in the year 1987 to promotee quota was not in consonance with the spirit and object of rules, which admittedly provided 50% by promotion and 50% by LDE and also required seniority to be prepared in the ratio of 1:1.

10. In the circumstances, we allow OA and direct Respondents to treat applicant as having been promoted under Examination quota in September, 1987 instead of promotion under promotee quota. Accordingly, his seniority would be required to be re-determined. He will be entitled to all consequential benefits of such re-determination of seniority including consideration for promotion to next higher post from an appropriate date. In the peculiar circumstances, we further hold that in case he is so promoted to the next higher post, he will not be entitled to payment of arrears, as his pay would have to be regulated on notional basis. The above exercise shall be completed within a period of three months from date of receipt of a copy of this order.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra)
Vice Chairman (A)