

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.176/2000

New Delhi this the 30th day of May, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

Hon'ble Shri Govindan S. Tampi, Member(A).

1. CPWD Graduate Engineers Association,
Central Public Works Deptt.,
through Sh.B.M. Singhal, Genl.Secy.,
s/o late Shri Jyoti Prashad,
Executive Engineer (Civil),
r/o C-11/158 Yamuna Vihar,
Delhi 110053.

2. Shri G.N. Shukla, AE(C),
s/o Shri H.N. Shukla,
584, Sector-IX, R.K.Puram,
New Delhi.

3. Shri Rajiv Sharma, AE(C),
s/o Shri Ganga Sharan Sharma,
r/o Sector 2/161, Sadiq Nagar,
New Delhi.

4. Shri J.P. Srivastava, AE(E),
s/o late Shri H.P. Srivastava,
136, Type IV, North West,
Moti Bagh, New Delhi.

.... Applicants

(By Advocate Shri Sohan Lal)

1. Union of India,
through its Secretary,
Ministry of Urban Development
& Employment,
Govt. of India, Nirman Bhawan,
New Delhi.

2. The Secretary,
Ministry of Personnel, Public
Grievances and Pensions, G.O.I.,
North Block, New Delhi.

3. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

4. The Director General of Works,
Central Public Works Deptt.,
Nirman Bhawan, New Delhi.

5. S/Sh. Sanjay Gupta

6. D.K. Gupta

7. R.P. Singh

8. Vinayak Rai

9. Tarkeshwar Tewari

10. A. K. Aggarwal

11. S.K. Srivastava,
12. Gopal Varshney,
13. Rajesh Kumar,
14. Pawan Kumar Gupta,
15. Ravi Kant,
16. Anil Kumar Pandey,
17. Nirmal Goel,
18. Nagender Prashad,
19. Chander Bhushan Upadhyaya,
20. A Sreenivasa Rao,
21. Ajay Kumar,
22. M. Venkateshwara Rao,
23. Himanshu Pandey,

(all Executive Engineers (Civil))

through

The Director General of Works,
Central Public Works Deptt.,
Nirman Bhawan, New Delhi.

... Respondents.

(By Advocates Shri R.V. Sinha - for official respondents, Shri M.S. Ganesh, Sr. Counsel with Shri V.K.Rao and Ms. Anuradha Priyadarshini - for private respondents 5,6,8,9,10,11,14,15 and 16)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicants who are Graduate Engineers working in CPWD and their Association have filed this application impugning certain actions and orders of the respondents dated 18.6.1999, 6.7.1999 and 12.8.1999.

2. The main grievance of the applicants is that the respondents have not complied with the directions of the Supreme Court in J.N. Goel Vs. Union of India (JT

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1997(1) SC 451), that is to fill the vacant posts of Executive Engineers (EEs) prior to 28.10.1996 in accordance with the provisions of the Recruitment Rules, 1954. According to them, the respondents have diverted all the vacancies of Civil/Electrical of Assistant Executive Engineers(AEEs) quota to Assistant Engineers(AEs) quota vide order dated 6.7.1999. According to them, no AEE is eligible for promotion to the post of EE in accordance with the 1954 Rules, after 28.10.1996. Shri Sohan Lal, learned counsel for the applicants, has submitted that the official respondents have, therefore, miscalculated the number of vacancies for the purpose of regular promotions to the post of EEs as they have not given the vacancy position under the 1996 Rules for promotion to the posts of ~~EE~~ from AEE. A number of documents have been referred to by the learned counsel for the applicants to substantiate his arguments, including the Office Order No. 158 issued by the respondents dated 28.8.2000. According to him, this could not be passed by the respondents. In the relief prayed for by the applicants, they have sought a direction to Respondents 1-4 to declare the vacancies under the 1996 Rules as on 12.8.1999 of EEs, after filling the vacancies under the Recruitment Rules of 1954 as per the directions of the Supreme Court in J.N. Goel's case (supra). They have prayed that the promotion orders passed by the respondents of AEEs to ~~AEs~~ vide the

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impugned orders should also be quashed and set aside as, according to them, they are illegal and not in accordance with the aforesaid judgement of the Supreme Court.

3. We have seen the reply filed by the respondents and heard Shri R.V. Sinha, learned counsel for respondents 1-4 and Shri M.S. Ganesh, learned Sr. Counsel for the private respondents 5-6, 8-11 and 14-16.

4. Respondents 1-4 have referred to and relied upon a number of judgements of the Hon'ble Supreme Court, including the judgement in J.N. Goel's case (supra). Shri R.V. Sinha, learned counsel has explained the background of the issues raised in this case. He has submitted that in the past, a number of diploma holder AEs were promoted as EEs, some of them were also regularised as EEs against the AEs quota vacancies from 1973 till 1993-1994 vide orders passed in 1994. They have submitted that following the judgement of the Apex Court in J.N. Goel's case (supra), the respondents had to review the situation regarding the regular promotions made against the vacancies which had occurred prior to the promulgation of the 1996 Recruitment Rules. Learned counsel has also submitted that on the basis of the vacancies and other relevant data, DPCs were also held to recommend officers for promotion against the available vacancies. He had submitted that a number of vacancies falling under AEE quota upto 28.10.1996 were diverted to

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the quota of AEs by relaxation of the provisions of the 1954 Rules. This action of the respondents had caused resentment among the officers of AEs category and, according to him, several O.As and Writ Petitions were filed by the officers in different Benches of the Tribunal and High Courts. In the counter affidavit filed on 10.8.2000, they have stated that accordingly a decision was taken by them to review the whole matter by reassessing the vacancies of EEs (Civil and Electrical) required to be diverted from the AEEs quota to AEs quota for regularising the ad hoc promotions. A Committee of Officers had been constituted vide O.M. dated 18.4.2000 which had recommended lesser number of posts to be diverted. They have also submitted that the report of the Committee is under consideration.

5. Shri M.S. Ganesh, learned Sr. Counsel for the private respondents, has submitted that there is no cause of action which has arisen to the applicants against them nor they can have any grievance against regularisation/promotions of respondents 5-23 which had been made independent of 430 posts which have been referred to by the applicants in their applications. In the reply, they have also given the brief background of the facts leading to the Government making ad hoc promotions of unfilled quota from amongst AEs to the posts of EEs. They have also referred to a number of vacancies which, according to them, is the correct figure

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in the grade of EEs and, according to them, the present application is misconceived and premature.

6. We have considered the pleadings and the submissions made by the learned counsel for the parties.

7. The main contention of the parties in this application is with regard to the exact number of vacancies which should be allotted to the promotion quota of each of the categories to the higher posts of EEs in accordance with the relevant Rules. The applicants have submitted that they are not happy with the working out of the number of vacancies for 1996 as done by Respondents 1-4. It is also evident from the documents on record that there are a number of judgements which have a bearing on this issue, particularly the judgement of the Supreme Court in J.N. Goel's case (supra), which has been referred to time and again by the learned counsel for the parties. It is clear from the facts that the respondents have been trying to take necessary action to the best of their ability, which has unfortunately ^{not vs.} found favour either with one cadre or the other. In order to solve this vexatious problem, it is also noticed that the respondents have taken a decision to constitute a Committee of Officers vide O.M. Dated 18.4.2000 to assess the correct number of vacancies which should be diverted in favour of AEEs, which would presumably be in accordance with the provisions of the Recruitment Rules and directions of the Supreme Court in J.N. Goel's case

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(supra). It is relevant to note that when the case was heard finally, the further action taken by the respondents on the above recommendations was not placed before us.

8. In view of the above facts and circumstances of the case, the O.A. is disposed of with a direction to Respondents 1-4 to take an appropriate decision in the matter, if not already done, on the recommendations of the aforesaid Committee. In any case, this should be done within three months from the date of receipt of a copy of this order. ^{Thereafter, etc.} The respondents shall also take necessary steps to promote the eligible officers in accordance with law, rules and instructions. No order as to costs.

(Govindan S. Tampi)
Member(A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

"SRD"