

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2026/2000
IN
MA 2423/2000

New Delhi, this the 7th th day of May, 2002

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

1. CPWD Graduate Engineers Association
Central Public Works Deptt.
through Shri B.M.Singhal, EE (C)
General Secretary
S/o Late Shri Jyoti Prashad
R/o C-11/158 Yamuna Vihar
Delhi - 110 053.
2. Shri Raj Singh Naulakha
AE-III, PWD-20, J.B.Tito Marg
New Delhi - 110 049.
3. Shri G.C.Mamgai
S/o Late Shri D.D.Mamgai
AE, PWD Cir.VIII,
R/o C-47 Sadat Pur
Delhi - 110 094.
4. Shri Kasturi Lal
S/o Late Shri Wazir Chand
AE (E), ACD II, Vidyut Bhawan
New Delhi.
R/o 645, Sector IX, R.K.Puram.

...Applicant

(By Advocate Shri Sohan Lal)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary
Ministry of Urban Development &
Employment, GOI, Nirman Bhawan
New Delhi.
2. The Secretary
Ministry of Personnel,
Public Grievances and Pensions
GOI, North Block, New Delhi.
3. The Secretry
UPSC, Dholpur House, Shahjahan Road
New Delhi.
4. The Director General of Works
CPWD, Nirman Bhawan, New Delhi.
5. The Controller General of Accounts
Ministry of Urban Affairs and Employment
Nirman Bhawan, New Delhi.

...Respondents

(By Advocate Shri R.V.Sinha)

-2-

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O R D E R

By Hon'ble Shri Govindan S.Tampi,

The applicants in this OA are challenging the continued functioning of a number of persons as Executive Engineer who are, according to the applicants, ineligible to hold the said posts.

2. MA 2423/2000 for joining allowed.

3. Heard S/Shri Sohan Lal and R.V. Sinha, learned counsel for the applicants and the respondents respectively.

4. Applicants, who are Graduate Engineers of CPWD allege that the respondents had been promoting Diploma holders as Ex. Engineers from 1950 onwards. As 1954 Recruitment Rules, did not permit such promotions, proviso was introduced in Rule 21(3) permitting promotion of outstanding diploma holders. However, those who were promoted did not fulfill the criterion of outstanding ability and promotions were ordered on seniority-cum-fitness basis. Graduate Engineers came in OA 704/88 (J.N.Goel) challenging the promotion of diploma holders while the latter filed OA 910/89 challenging the criterion of outstanding ability. Being aggrieved by the Tribunal's decision, both the groups moved the Hon'ble Supreme Court in Civil Appeals No. 5363/90 (Goel) and 5364/94 (Gupta) respectively. Hon'ble Apex Court while disposing Goel's case (JT 1997 (1) SC.451) directed that the vacancies be filled in accordance with the RRs of 1954 and 1996 depending upon the period vacancies related to. As the decision was not given effect to B M

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Singhal, a graduate Engineer filed OA 1461/97, which was decided by the Tribunal permitting adhoc promotion, which were to be vacated if regularisation could not be done in six months. As a number of promotions ordered accordingly on 23.4.98, 24.4.98 and 23.9.98, were continued despite non-regularisation as directed, CP No. 317/98 was instituted. Thereafter DPC was held regularly promoting 314 EE (Civil) and 83 EE (Elec) on 3.11.89, by diverting 430 posts of EE (C) and 120 EE (E). It was also followed by reversion of 25 EE (C) and 22 EE(E), on the same day. While effecting regularisation, ineligible persons were considered with the result 162 posts on Civil side and 54 on the Electrical side were left vacant, though eligible graduate AEs were available. These were to be filled by 1954, Rules, but were not so filled, leading to OA No.58/2000 pending decision. Drawal of the consideration zone was admittedly irregular, as it had included diploma holders also on the ground of common seniority list though they were not outstanding either in ability or on record. While action was not taken to fill up 162 and 54 vacant posts of EEs, from eligible persons, it was found that as many as 155 and 26 EEs were still holding the post on ad hoc basis, improperly. It was further observed from the counter filed by the respondents in OA 176/2000, that there were 41,40 and 40 vacancies for AEE, graduate and diploma holder AEs respectively 89 promotion were made only from AEE, leading to 48 excess promotion, according to 1996 Rules. These are shown to have been effected by transfer of 30 vacancies from 1954 RRs to 1996 RRs for which there was no possibility as 430 vacancies of AEE, had already been transferred and

there was no provision to do so as per the Rules. Though in terms of the decisions in B.M.Singhal¹OA ad hoc EEs who could not be regularised, even after six months, were to be reverted and though the plea of the diploma holders had been specifically repelled by the Tribunal, the decision was only partially implemented, leaving quite a few still holding the charge irregularly. Besides, Ministry of Personnel, Public Grievances and Pension given on 23.9.97 advised Ministry of Urban Development not to release the pay and allowances of the adhoc promotees w.e.f. 1.1.98. These instructions had not been adhered to and 155 EE(C) + 26 EE(E) are continuing to draw their salary, inspite of their not having been found fit by the DPC. Their continuation is totally wrong. Respondents reluctance to fill up 162 vacancies in EE(C) and 64 vacancies in EE(E), under 1954 Rules is only to protect the above ad hoc individuals who are not entitled to hold the posts even for a single day. Hence this O.A.

5. Grounds raised in the OA are as below:

a) 162 EE(C) and 54 EE(E) vacancies should be filled by 1954 rules;

b) vacancies of 430 EE(C) and 120 EE(E) diverted with the concurrence of UPSC are also to be filled up only in accordance with 1954 rules ;

c) 40 vacancies each for promotion to EE, from diploma holders and graduate AEs, shown in OA 176/2000, are to be filled by 1996 rules;

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- 5 -

d) ad hoc promotion were being continued indefinitely inspite of DoPT's instructions of 30.3.88.

e) in terms of the directions of the Hon'ble Supreme Court ad hoc EEs not found fit cannot at all continue in that position and also as ineligible persons cannot even be considered by DPC;

f) ad-hoc promotion of ineligible promotes does not bestow any right on the for continuation in the posts;

g) only vacancies relatable to 1996 rules can be filled up with reference to the said rules.

h) persons holding the posts in the improper manner are holding the same de hors the rules and therefore have to be reverted in terms of the Court's orders.

In view of the above , the reliefs sought are the immediate reversion of all ad hoc EEs who were not approved by DPC, recovery of excess pay and allowances drawn by them as E.Es., placing of restraint for their extension, restraint on further diversion of vacancies under 1954 Rules to 1996 Rules, direction to the respondents to make regular promotions in terms of the relevant Recruitment Rules (1954 or 1996) and award costs.

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6. All the above points were forcefully reiterated by Shri Sohan Lal, learned counsel for the applicant.

7. Respondents vehemently oppose the pleas raised by the applicants. According to them, as another OA i.e. No. 58/2000, filed by the applicants is awaiting adjudication before the Tribunal, the present OA was an abuse of process. In terms of RR, 1954, promotion to the cadre of EEs was being ordered from two feeder cadres i.e. AEEs and AEs in fixed ratios. In the absence of adequate number of AEEs, for promotion, AEs were promoted as EEs on the ad-hoc basis and were continued, but were not given seniority. RRs did permit the promotion of degree holding AEs with three years of service to the grade of EEs. In 1954/1956, diploma holders were also declared eligible for such promotion, while in 1972, educational qualification was relaxed in the case of AEs of outstanding ability and record. This was set aside by the Tribunal while deciding OA No. 704/1988. On 30-4-1990. While the appeal was pending in the Hon'ble Supreme Court, respondents decided that only those diploma holding AEs with 60 % 'Very Good' and above were to be promoted as EEs on ad-hoc basis and regularised the promotion from 1972 to 1993-94 by four orders in 1994. However, as directed by the Hon'ble Supreme Court, the respondents followed the Tribunal's order and recast the RRs on 29-10-1996. It had also been directed by the Hon'ble Apex Court that the promotions have to be made in accordance with the RRs

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(1954 or 1996) relatable to the period when the vacancies arose. In between while disposing of the OA No.1461/97, the Tribunal (PB) permitted that ad-hoc promotions be made to meet exigencies, subject to their being reviewed and regularised within six months or being reverted if not so regularised. Following this 430 (Civil) + 120 (E) posts of AEE quota were diverted to AE quota by relaxing the quota under 1954 RRs, so that the adhocism could be ended. Accordingly 314 + 83 ad hoc AEs were regularised and remaining were reverted. On 3-11-1999, since adequate personnel were not available 161 + 54, remained to be occupied by AEs, officiating as EEs on ad hoc basis. Decision is yet to be taken to deal with the situation i.e. to fill them under 1954 RRs or 1996 RRs. A Committee has been set up on 18-4-2000 to assess the correct number of vacancies which could be diverted from AEE quota to AE quota and the report of the said Committee is under consideration. Therefore, this OA is pre-mature, according to the respondents. Respondents concede that a number of AEs working as ad-hoc EEs continue to hold the post, as they had not been able to find personnel with prescribed eligibility for promotion and large scale reversions would have disrupted the work. Final decision in the matter is pending adjudication in various Benches of the Tribunal and the High Court. Graduate AEs and diploma holding AEs are in the same seniority list but for promotion, only those Diploma holders with outstanding ability and record would be considered. Promotions have been correctly done. While conceding in general, the facts narrated by the applicants, the respondents deny that ineligible diploma holding AEs were considered for

promotion, as only those with outstanding ability and were considered for promotion and that too in terms of the RRs and the assessment done by the DPC. Respondents also point out that all those who could not be regularised had been reverted. While it is true that the PAO in the Ministry of UA&E on 16-1-2000 had objected to the payment of salary to the ad-hoc EEs, respondents had taken concurrence of DOPT for continuing them on ad-hoc basis. In view of the above, the respondents plead that the OA has no merits. This is reiterated by Shri R.V.Sinha, learned counsel who has submitted that the Tribunal's decision in OA 58/2000 may be awaited.

8. In their rejoinder, the applicants reiterate their pleas and state that respondents have conceded that 161 + 54 vacancies could not be filled up and that ad hoc promotees are continuing, which showed that the rightful continue to be denied their legitimate dues. DOPT's sanction had also expired by 30.6.2000, but the ad hoc appointees are continuing to occupy the posts which they were not entitled to held and collecting their salary at the cost of the applicant. Respondents had no authority whatever to keep the above in position, beyond the period permitted by the Tribunal and the Hon'ble Supreme Court. They also state that the Tribunal had directed the filling up of the existing 161 + 54 vacancies by holding a review DPC for selection from amongst those who are eligible, and that diploma holders would have to be screened by a Committee to determine their eligibility on the basis of their outstanding ability and record. Hon'ble Supreme Court has time and again

asserted that those who have obtained position de hors the rules have no claim to hold them and have to vacate the same position. The attempt of the respondents to save the incorrect arrangement of permitting the continuation of the above persons calls for immediate intervention plead the applicants.

9. We have carefully considered the matter. This is one of the latest in the series of litigations instituted by the Engineers of CPWD with Assistant Engineers -both graduates and Diploma holders and Asstt. Executive Engineers ^{being} ~~are~~ the rival contenders. It is found that considerable amount of ad hocism was operating in the organisation which had led to a spate of OAs/CWPs, ending in CWP 5363/90 filed by J.N.Goel a graduate AE and CWP 5364/90 filed by G.L.Gupta a diploma holder AE, which were decided by the Hon'ble Supreme Court on 14.1.97 J.N.Goel Vs.UOI (JT 1997(1)SC 451), with directions that the promotion made be reviewed and the vacancies should be filled up in accordance with the Recruitment Rules, 1954 or 1996, depending upon the period they arose. Some vacancies (430 + 120) were also diverted for the purpose with the clearance of the UPSC on 30.6.99. Still as the decision was not given effect to fully, OA 1461/97 was filed by B.M.Singhal which was decided by the Tribunal granting permission to the respondents to effect ad hoc promotions for a period of six months with the rider that those who could not be regularized have to be reverted. However, it is found that though ad hoc promotions were made on 23.4.98, 24.4.98 and 23.9.98, all vacancies could not be filled up and all those who did not make the grade for regularisation were not

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reverted as directed. Thus the eligible persons have not got their due promotions a few ineligible persons who have become ad hoc EE, are continuing even after six months are over and they could not be promoted. The respondents have filed somewhat ~~of~~ contradictory averment. In Para 15 of the counter dealing with the facts of the case respondents aver as below:-

"As already submitted, the DPC held in UPSC in September, 99 have not been able to recommend officers for promotion against all the vacancies reported to them due to non availability of adequate number of suitable officers within the consideration zone meeting the prescribed benchmark and other requirements of the RRs, as a consequence of which a number of these vacancies could not be filled on regular basis. Against some of these vacancies a number of AEs are still working on ad hoc basis. The Department has not been able to revert all such adhoc EEs mainly because no regular replacements were available and their vacating the posts without posting of their substitutes would have led to large scale disruption of work in field formations of the CPWD spread all over the country and also because of the court cases filed in various courts against the said regular promotions and consequent reversions by several officers. Many officers working on ad hoc basis as EE have also filed court cases apprehending reversion".

At the same time in para 4.11 they state that the order dated 18.8.97 of this Hon'ble Tribunal in OA No.1461/97 (B.M.Singhal's case) is matter of record. As submitted in reply to preceeding paras the respondents have reverted all ad hoc EEs who could not be included in the panels for regular promotion prepared by the DPC held in UPSC and for whom no vacancies existed so as to allow them to continue as EE on adhoc basis after making promotion of officers included in the regular panels. Hence averments are denied. It is obvious, therefore, that order of the Tribunal in OA No.1461/97 has not been given effect. ~~6~~ There is also nothing forthcoming on

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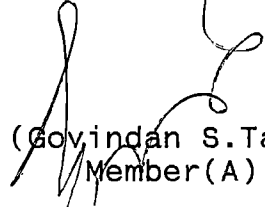
record that the said decision of the Tribunal had been got stayed, altered or set aside. Obviously, therefore, from amongst those who were promoted on ad hoc basis during April and September, 1998 continue to hold the post of EE, after six months, without being regularised by the DPC, they would have to vacate their positions unless the respondents have got permission from the Tribunal itself or from the Delhi High Court for continuing them as ad hoc and their continuation would be against the law. The number of vacancies which could not be filled up on account of non-availability of eligibility of officers for promotion and which are being occupied by the ad hoc EE, are indicated to be 161 on the Civil Side and 54 on the Electrical Side. Uncertainty and irregularity definitely hover over these posts and the respondents have to set them aright by considering the case of eligible candidates in the relevant stream. This cannot wait any longer.

10. In the result, the appeal ^{filed} succeeds substantially and is accordingly disposed of. Respondents shall take steps to fully implement the decision of the Tribunal in OA No.1461/97 filed by B.M.Singhal followed by CP No.317/98 in the same OA by ensuring that all those who were promoted on ad hoc basis during 23.4.98, 24.4.98 and 23.9.98 but were not found fit for regularisation by DPC and are continuing as ad hoc EEs are reverted and are not given any extension except by any order of the Tribunal or the Court. This shall be done within one month from the date of receipt of a copy of this order. Respondents shall also take action to ^{Commence} ~~commence~~ a DPC to fill up all the vacancies falling under 1954 Rules. According to those Rules,

without making any further diversions, if any unless directed by the Tribunal or Court. DPC for the purpose shall be constituted and shall meet within three months from the date of receipt of a copy of this order for finalising the selection. Those of the applicants who are selected for promotion would be entitled for all consequential benefits from the dates on which such vacancies arose, on notional basis but would be entitled for arrears of pay and allowances only from 22.9.2000 i.e. date of filing of this OA. As there has been a spate of litigations from all sides, which had partially led to the delay in the promotions, there is no case for grant of interest or costs.



(Shankar Raju)
Member (J)


(Govindan S. Tampi)
Member (A)