



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 2937/2018
M.A. No. 2510/2019
M.A. No. 3290/2018
M.A. No. 602/2020

Friday, this the 11th day of December, 2020

Through video conferencing

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)

1. Shri Sundeep Kumar Sharma
Aged 47 years,
Shri S.S. Sharma, Supdtg. Engineer
R/o SD-245, Shastri Nagar
Ghaziabad, UP-201002.
2. Shri Vishnu Kumar Rawat
Aged 43 years
Shri D.R. Rawat, Supdtg. Engineer
R/o A-7, MCD Flats, Soami Nagar
New Delhi-110017.
3. Shri Santosh Kumar
Aged 43 years
S/o Shri Rabindra Prasad, Supdtg. Engineer
R/o 106, Shipra Apartment
Kaushambi, Ghaziabad
UP-201010.
4. Shri Vikas Jain
Aged 40 years
S/o Shri Naresh Jain, Executive Engineer
R/o C-254, West Enclave
Pitampura, New Delhi-110034.
5. Shri Bharat Singh Lakhpuria
Aged 42 years
S/o Shri Hargovind Lakhpuria
Executive Engineer
R/o 02/15, Ban Road
Shipra Sun City, Vaibhav Khand
Indirapuram, Ghaziabad-201014.



6. ShriVirender Singh
Aged 37 years
S/o ShriInder Singh, Executive Engineer
R/o 502, DJA Apartment, Plot No.1-A
Sector-13, Dwarka, Delhi-110078.

.. Applicants

(Through Mr. Rajeev Sharma, Advocate)

Versus

1. The Commissioner
North Delhi Municipal Corporation
Dr. S.P. Mukherjee Civic Centre
4th Floor, J.L. Marg
New Delhi.
2. Union Public Service Commission (UPSC)
(Through its Secretary)
Dholpur House, Shahjahan Road
New Delhi.

.. Respondents

(Through Mrs. Anupama Bansal, Advocate for respondent No.1 and Mr. R.V. Sinha, Advocate for respondent No.2)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

One step taken by the Municipal Corporation of Delhi in the year 2002 stating to be in the direction of strengthening the Electrical Wing of their establishment has brought about the virtual stagnation in the context of promotions. The result is that the person who is holding the post of Assistant Engineer in substantive capacity is kept in charge of not only the post of Executive Engineer, but also that of Superintendent Engineer. Instances of

such persons handling the posts of Chief Engineer were also there.



2. The applicants herein were appointed as AEs (Electrical) in the Municipal Corporation of Delhi on being selected by the UPSC in the year 2003 and 2004. The next promotion is to the post of Executive Engineer. Recruitment Rules for that posts were framed on 24.08.1974.

3. In the year 2001, the Municipal Corporation created two more posts of Executive Engineers and fixed the pay scales also, through the proceedings dated 22.02.2001. When steps were initiated for promotion to those posts, some deviation from the existing RRs was noticed. The UPSC was requested to convene the DPC by relaxing the necessary measure as a onetime measure. DPC took place by granting one time exemption. Thereafter, correspondence ensued between the Corporation on the one hand and the Commission on the other hand for convening of DPC. The Commission was insisting that unless the recruitment rules for the post of Executive Engineer (Electrical) are amended, it would not be feasible to convene the DPC. The Corporation on the other hand stated that the service conditions remain the



same and though an attempt was made to amend the rules at some stage, it did not materialize. Thrice or four times the request made by the Corporation for convening the DPC was turned down by the Commission.

4. The applicants filed this OA with a prayer to direct the respondents to convene the DPC for promotion to the post of Executive Engineer and to extend the benefits to them.

5. The Municipal Corporation filed counter affidavit. According to them, the Recruitment Rules for the post of Executive Engineers remained unchanged and even the pay scales for the posts did not undergo any change. According to them the UPSC did not convene the DPC for the post of Executive Engineer (Civil and Mechanical) without raising any objection and the position remained the same for the post of Executive Engineer (Electrical) also.

6. The UPSC filed a detailed counter affidavit and supporting documents. According to them the pay scale for the post of EE was indicated as Rs.10000 which is variance with the one, prevailing at the relevant point of time and obviously for that reason, the DPC was convened at that time by making one time relaxation in



contemplation of the amendment rules, but the rules were not changed as yet. They further contend that unless the rules are amended, it would not be possible to convene the DPC. Reliance is placed upon the OM dated 06.09.2007 issued by the DOP&T.

7. We heard Sh.Rajeev Sharma, learned counsel for the applicant and Ms. Anupama Bansal and Sh.R.V.Sinha, learned counsel for the respondents at length.

8. The issue is about promotion to the post of Executive Engineer (Electrical). Similar posts exist in the Civil and Mechanical wings also, and the promotions to those posts have taken place from time to time without any difficulty. The Recruitment Rules for the post of EE (Electrical) were notified on 24.08.1974. The scale of pay as well as the method of promotion are indicated therein.

9. It is true that in the year 2001, the Corporation created some posts on the Electrical wing at various levels and has also mentioned the pay scales. When the UPSC was approached to convene the DPC for promotion to the post of EE, the difference was pointed out and ultimately the DPC was convened by granting one time relaxation. It appears that the Corporation did not



apprise the commission properly in this behalf. An impression was being given that the pay scales for the post of EE (Electrical) was different from that of the similar posts in the other wings and those indicated in the Recruitment Rules. To a specific question, the learned standing counsel for the Corporation has stated that except that the pay scale mentioned in the year 2001 was the corresponding to the pay scale mentioned in the recruitment rules for the year 1974, there was no enhancement as such. To be more precise, it is reiterated that the post of EE (Electrical) is carrying the same scale of pay of EE (Civil and Mechanical). If this is the situation, the necessity to amend the Recruitment Rules may not arise. The correspondence that ensued in this behalf appears to be not that warranted.

10. The doubt expressed by the UPSC was in fact genuine. In case the pay scale of the post is increased, the method of selection also must be different. Once the Corporation asserts that they have not enhanced the pay scale to the post of Executive Engineer (Electrical) and it continues to be the one corresponding to the pay scale mentioned in the Recruitment Rules of 1974, the steps can be taken to convene the DPC.



11. It is true that in OM dated 06.09.2007, the DOPT had indicated the steps to be taken wherever there is uncertainty as to the recruitment rules. The judgement of the Hon'ble Supreme Court in **Government of Pondicheri and another Vs. V.Rama Krishnan and others** dated 07.10.2005 was taken note of. The need to grant one time relaxation would arise only in the following four circumstances.

(i) When a new post is created and there is necessity of filling the post urgently in the absence of Recruitment Rules.

(ii) When existing RRs become inoperative on account of the same being inconsistent with the guidelines on educational qualifications, experience, etc., laid down by the concerned agencies like AICTE, UGC and MCA.

(iii) Where there is a change in the pay scales (based on the recommendations made by Pay Commission, etc) resulting in change in qualifying service for consideration of officers for appointment; and

(iv) Where RRs have been approved by the Commission and there is the likelihood of delay in notification.

12. A close scrutiny of the facts of the present case discloses that none of the four situations exists for the post of EE (Electrical). A perfect set of recruitment rules framed in 1974 is in place. No amendment was caused to it nor any court has set aside the same. Even if there



was any impression at the different points of time, that the pay scales were modified, the clarification issued by the Corporation that the conditions remained the same, would put an end to that uncertainty.

13. We therefore, allow the OA and direct that the respondents shall convene DPC for promotion to the post of Electrical Engineer strictly in accordance with the recruitment rules dated 24.08.1974. Any uncertainty that prevailed in the recent past shall not be taken into account. It is also directed that the Municipal Corporation shall not make any promotions to the post of EE (Electrical), otherwise than in accordance with the RRs dated 24.08.1974, unless they are amended in accordance with the prescribed procedure. The exercise indicated above shall be completed within a period of three months from the date on which a proposal, together with a copy of this order is submitted to the UPSC.

There shall be no order as to costs.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

December 11, 2020

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