



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

**OA No.175/2021
MA No.224/2021**

Today this the 28th day of January, 2021
Through video conferencing

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

Sri Naresh Kumar Gupta, 58 years
S/o Sri Hukam Chand
Superintending Engineer (Adhoc) CPWD
And working as District Valuation Officer(DVO)
Bengaluru:560 034. ...Applicant

(By Davocate: Mr. P.A. Kulkarni)

Vs.

1. Union of India
To be represented by its Secretary
Ministry of Housing and Urban Affairs
Nirman Bhawan, New Delhi-110011.
2. Director General
CPWD, Nirman Bhavan
New Delhi-110011.
3. Department of Personnel and Training(DOPT)
By its Secretary, Govt. of India
North Block, Central Secretariat
Lok Nayak Bhavan
New Delhi:110001.
4. Union Public Service Commission
Through its Secretary
Dholpur House, Shahajehan Road
New Delhi-110069. ..Respondents

(By Advocate: Mr. Hanu Bhaskar and Mr. Vaibhav Kalra)

Order (Oral)**Justice L. Narasimha Reddy:****MA No.224/2021**

This Application is filed with a prayer to implead the applicants herein as parties to the OA. Mr. P.A. Kulkarni, learned counsel for the applicant in OA do not have any objection to that. The MA is accordingly ordered.

OA No.175/2021

The applicant was appointed as Junior Engineer (JE) (Civil) in the CPWD in the year 1982. Thereafter he was promoted to the post of Assistant Engineer (AE) in 1991, on the basis of his performance in the Limited Departmental Competitive Examination. The applicant was further promoted to the post of Executive Engineer (EE) in April 2006 on ad hoc basis and on regular basis through an order dated 01.01.2018. It was mentioned that the promotion shall be effective from 17.12.2004, the date on which the DPC made recommendations, or the date on which the applicant joined the promoted post, whichever is later.



2. The respondents published a seniority list for the post of EE as on 01.01.2018, through OM dated 17.01.2020. The applicant was shown at Sl. No.455. He filed this OA challenging the OM dated 17.01.2020. According to him, the respondents did not follow the prescribed procedure, particularly the one under 1996 Recruitment Rules. It is also stated that while the regular promotion to the post of EE was with reference to the panel year 2001-2002, it was mentioned in the impugned order that the applicant would take his seniority w.e.f. 21.04.2006, the date on which he joined the post of EE on ad hoc basis. It is also stated that the methodology adopted by the respondents is not correct. Various other contentions are also urged.

3. The respondents filed a reply opposing the OA. It is stated that the seniority list was prepared, strictly in accordance with law laid down by the Hon'ble Supreme Court, in supersession of the earlier seniority list. It is also stated that a draft seniority list was published and that all the objections raised to the draft seniority list were taken into account, before the final seniority list was published.

4. We heard Mr. P.A. Kulkarni, learned counsel for the applicant, Mr. Hanu Bhaskar, learned counsel for the



respondents and Mr. Vaibhav Kalra, learned counsel for the impleaded respondents.

5. The particulars of the progression of the applicant in his service in CPWD are furnished in the preceding paragraphs. They include the dates of his ad hoc promotion to the post of EE, and thereafter the regular promotion, to that very post. The DPC met for this purpose way back on 17.12.2004. However, on account of extensive litigation that ensued in this behalf, the promotions were not finalized. Pending finalization thereof, ad-hoc promotions were made and the applicant came to be promoted on that basis, on 15.04.2006. He assumed charge of that post on 21.04.2006. In the order of promotion dated 01.01.20018, the applicant was shown against the vacancy of the panel year of 2001-2002. The order of promotion reads as under:-

“01.01.2018

Office Order

The President is pleased to promote the following Assistant Engineers(Civil) to the grade of Executive Engineer(Civil) in Central Engineering Service, Group-A on regular basis in the scale to pay of Rs.10,000-325-15,200 (as per 5th CPC) in CPWD with effect from 17.12.2004 i.e. the date of communication of DPC recommendations by UPSC or from the date of assumption of charge of the post, whichever is later:

Degree Quota

Sl.	Name(S/Shri)	CAT	D.O.B.	Panel Year	Remarks
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No.					
114.	Naresh Kumar Gupta	UR	15/04/1961	2001-02	

4. This order is subject to outcome of OA no.3198/2016 filed by the Central Engineering Services Association & Others V/S M/o Urban Development in CAT(PB), New Delhi.”

The applicant was shown at Sl. No.114 and he did not have any grievance about it.

6. In the context of preparation of seniority for various posts in the CPWD, lot of uncertainty prevailed. This was on account of diversion of posts in the category of EE, meant for one feeder category, to another feeder category. To be precise, promotion to the post of EE was to be made 33.1/3% from the direct recruit Assistant Executive Engineers (Civil), 33.1/3% from promotee Assistant Engineers (Graduate) and 33.1/3% from promotee Assistant Engineers diploma holders. At one point of time quite large number of vacancies that are earmarked for direct recruit A.E.s were diverted to other categories. The litigation is pending even now, in relation to that. Final seniority list for the post of E.E. was published in 2011.

7. The respondents have undertaken a further exercise in the light of the judgment of the Hon'ble Supreme Court in ***Uttarakhand Forest Rangers Association Vs. State of***



UP and Others (2006) 10 SCC 346. The principle laid down therein was that in case promotions are made in excess of the quota for a particular category, the seniority shall be reckoned only from the date on which the vacancy arises under the quota, and not earlier thereto. The relevant portion reads as under:-

“37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to be adversely affect the direct recruits appointed validly in the meantime, as decided by this court in *Keshav Chandra Joshi vs. Union of India*, held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of the statutory rules and would offend Articles 14 and 16 of the Constitution.”

8. Though learned counsel for the applicant submits that the judgment of the Hon’ble Supreme Court, referred to above, does not apply to the facts of his case, he is not able to satisfy as



to how it does not apply. The issue therein was very specific and their Lordship clearly enunciated the principle.

9. Obviously, by taking this into account, the respondents started an exercise to prepare a seniority list for the post of EEs as on 01.01.2018. Initially a draft seniority list was published and on consideration of the objections received in reply thereto, the final seniority list was published. OM dated 17.01.2020 reads as under:-

“Office Memorandum

Sub: Final Inter-se-Seniority List as on 01.01.2018 in the grade of Executive Engineers (Civil), CPWD.

A provisional inter-se-seniority list in the grade of Executive Engineers(Civil) was circulated vide this Directorate's OM No.37/1/2018-EC.I(B) dated 9th April 2018 for inviting the objections/observations, if any, against the said seniority list. Objections & observations received from the individual officers as well as from the stakeholders were examined. The objections which were found to be correct had been accordingly incorporated in the final inter-se-seniority list.

2. The inter-se-seniority list in the grade of EE(Civil) is prepared on the basis of MHA's OM No.9/11/55-RPS dt. 22.12.1959 regarding general principles for determining seniority and DoP&T's OM No.20020/4/89-ESTT. (D) dt. 7.02.1990 regarding inter-se-seniority of officers promoted from more than one feeder grade's and DoPT OM No.22011/5/86-Estt. (D) dt. 10.04.1989 which provides that promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s). The inter-se-seniority list is in



concurrence with the Hon'ble Supreme Court Judgment in the matter of 2006 (10) SCC 346, Uttranchal Forest Rangers' (DR) and Ors. Vs. State of UP and Ors. which was referred in the para-16 in order dated 16.07.2007 of Hon'ble CAT, New Delhi in OA No.779/2006.

3. The final inter-se-seniority list in the grade of Executive Engineers(Civil) as on 01.01.2018 is enclosed as Annexure and will be in supersession of seniority list of Executive Engineers (Civil) which was issued as on 01.12.2011 and all consequent related orders.

4. The inter-se-seniority list of Executive Engineer(Civil) shall also be subject to the outcome of OA No.3198/2016 pending in the Hon'ble CAT(PB), New Delhi and W.P(C) No.7346/2007 in Hon'ble High Court of Delhi and any other related Court Cases as decided & pending in various Courts.

5. This issues with the approval of competent authority.”

10. The applicant was shown at Sl. No.455. He contends that the very methodology adopted by the respondents in preparing the impugned seniority list is defective and contrary to the relevant rules. It is also stated that the 2012 Recruitment Rules contain a clause to the effect that the seniority fixed earlier shall not be touched, and in contravention of that, the impugned seniority list is published.

11. We would have certainly appreciated the grievance of the applicant in case he was pushed down in the context of seniority



or any service, to which he is otherwise entitled to, was not reckoned. Not a word is said that the applicant lost any place in the seniority. Further, he did not claim the seniority above any particular officer, much less did he implead anyone.

12. During the course of arguments, it is urged that while in the order of promotion dated 01.01.2018, the applicant was shown against the panel year of 2001-2002, the same was not reflected in the seniority list. It needs to be pointed out that the parameters for fixation of the seniority are totally different from those that are required to be taken into account, while granting promotion. The panel year has no relevance for preparing of seniority list. The seniority of the applicant was reckoned from the date on which he assumed the charge on ad hoc basis on the post of EE, i.e. 21.04.2006. It is not even pleaded that he is entitled to reckon his seniority to the post of EE from any date, earlier to that.

13. Net result is that (a) the applicant was not pushed down in terms of his seniority compared to the seniority assigned to him in the year 2011 and (b) no EE who was promoted to that post subsequent to the applicant was placed above him in the impugned seniority list. Unless the applicant

has any grievance on those aspects, he cannot challenge the seniority list just for academic purpose.



14. We do not find any merit in the O.A. and accordingly dismiss the same.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/sunil/rk/vb/