

(PA)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

New Delhi, this the 26th day of May, 1995.

OA No. 815 of 1991.

OA No. 1978 of 1990.

HON'BLE MR J.P. SHARMA, MEMBER (J)

HON'BLE MR B.K. SINGH, MEMBER (A)

OA No. 815 of 1991

Shri Kalu Ram, R/O House No. 806,
Gali No. 7, Gebindpuri, New Delhi.

O/O Assistant Engineer (Civil), CPWD, Rampur (UP).

... Applicant.

(through Mr P.L. Mimon Rath, Advocate).

v/s

1. Union of India through
Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Director General (Works)
Central Public Works Deptt.,
Nirman Bhawan,
New Delhi.
3. Shri R.R. Burman (Asstt. Engineer (Civil))
4. Shri Babu Ram -do-
5. Shri Krishan Lal -do-
6. Shri C.K. Ahuja -do-
7. Shri P.D. Chauhan Ex. Engineer
8. Shri Suraj Pal, Asstt. Engineer (Civil).
9. Shri D.M. Maurya -do-
10. Shri H.C. Saha -do-
11. Shri D.N. Mandal -do-
12. Shri Rasham Singh -do-
13. Shri P. Roy -do-
14. Shri G. Mandal -do-
15. Shri D.N. Sarkar -do-
16. Shri Om Parkash Verma -do-
17. Shri Jagdish Prasad -do-
18. Shri Jagdish Chaudhry -do-
19. Shri Ram Kishan -do-
20. Shri H.L. Nim -do-
21. Shri Om Prakash -do-

22. Shri S.C. Sarkar, Asstt.Engineer(Civil).
23. Shri Ram Kishore -do-
24. Shri Om Prakash -do-
25. Shri Sheo Raj Singh -do-
26. Shri C.R. Sarkar -do-
27. Shri V.K. Puri -do-
28. Shri B.L. Kaul -do-

.... Respondents.
(through Mr V.S.R. Krishna, Advocate).

DA No. 1977 of 1990

Shri Puran Chand,
R/O Flat No.1, PWD Enquiry Office,
Gulabi Bagh, Delhi.

(through Mr B.S. Charya, Advocate).

vs.

1. Central Public Works Department,
Nirman Bhawan,
New Delhi. (through its Director General)
2. Union of India Ministry of
Urban Development,
Government of India,
Nirman Bhawan, New Delhi. (through its Secretary).
3. Shri P.D. Chauhan, S.W.C.P.W.D.
SSW(Aviation)
R.K.Puram, New Delhi.
4. Shri J.N. Prasad, ASW,
IP Bhawan, New Delhi.
5. Shri Prakash Chandra
Executive Engineer, CPWD
B.S.R. Division,
Abohar (Punjab).
6. Shri M.D. Manak, SW
CPWD, Silchar Central Circle,
Silchar, Assam.
7. Shri N. Krishnani, ASW,
Central Public Works Department
O/O Supdt. Engineer,
PWD Circle IV,
Multistoreyed Office Building,
IP Estate, New Delhi.
8. Shri B.K. Verma,
EA to SE(Coord) Circle,
IP Bhawan, New Delhi.
9. Shri Prakash Chandra (DOB 25.2.37)
ASW, CPWD,
'D' Division, West of Kidwai Nagar, N. Delhi.
(through Mr B.Lal, Adv).

... Respondents.

ORDER(Oral)

(delivered by Mr J.P.Sharma, Hon'ble Member(J))

Both the applicants belong to S.C. category and were initially engaged in C.P.W.D. on a cadre of Junior Engineer. Shri Kalu Ram joined as Section Officer (now designated as Junior Engineer(Civil) and was confirmed on his appointment on 31.10.1961.

The applicant Puran Chand joined as Junior Engineer on 30.8.1958 and was confirmed on this post subsequently. He was promoted as Assistant Engineer(Civil) on and with effect from 28.12.1975, on adhoc basis.

Shri Kalu Ram retired from the post of Assistant Engineer on 31.1.1995 and Shri Puran Chand retired in February, 1966 on the age of superannuation.

Before coming to the real issue in this case, it is necessary to deal with the brief service history of both the applicants. In accordance with the provisions of the Recruitment Rules, 1964, the promotion of Junior Engineers to the grade of Assistant Engineers is made by selection from amongst the permanent junior Engineers. In 1955 it was decided inter alia that the promotion from the grade of Junior Engineer shall be 50% from the degree holders. However, on these being challenged by a group of officers, namely M.Ramaya and others, the said quotes were quashed by the Hon'ble High Court on the ground that these had not been properly and

effectively determined. Thereafter, the promotions were made by selection from amongst the permanent Junior Engineers without fixing any quota for any group. In 1973, the degree-holder Junior Engineers, represented to the Government for fixing a percentage for them in the matter of promotion, after following the proper procedure. This demand was opposed by the diploma holder Junior Engineers. In order to resolve this, it was decided by the Government that pending formulation of a satisfactory promotion policy, the promotions to the grade of Assistant Engineers may be made purely on adhoc basis. Thus, Junior Engineers have been promoted on adhoc basis, from time to time. A more relaxed standard has been adopted than required for making regular promotion as the promotions were purely ad hoc and was to be reviewed by a regularly constituted Departmental Promotion Committee in accordance with the rules.

Ultimately, it was decided in 1977 that vacancies of Assistant Engineers may be filled 50% by selection from amongst permanent Junior Engineers and 50% by a Limited Departmental Competitive Examination (LDCE) through the Union Public Service Commission. An amendment to this effect was made in the Recruitment Rules, which was published in the official Gazette of India on 5.2.1977. A copy of the amended rule has been annexed with the counter filed in OA No. 815 of 1991 as Annexure R-1. Initially, the Government had decided that all the posts filled on adhoc basis since 1973 shall be treated as vacancies and shall be filled on regular basis in accordance with the amended rules. Accordingly, 133



Junior Engineers were promoted to the grade of Assistant Engineer (C) on 1.7.1977 against 50% vacancies reserved from promotion quota on merit-cum-seniority basis. Some of the adhoc promotees namely, S/ Shri C.K. Bhaskaran and others filed a Writ Petition in the Delhi High Court contending inter-alia that the Rules dated 5.2.1977 were not retrospective and, therefore, should not be applied to vacancies occurring prior to 5.2.1977 and that they may be treated as regular accordingly. The Hon'ble High Court was pleased to pass an order on 9.11.1978 permitting the Government to fill up the clear vacancies but no adhoc promotee was to be reverted till their decision in the matter. A copy of this order has also been annexed as Annexure R-2 to the counter filed in the O.A. of Shri Kalu Ram. Subsequently, on reconsideration, the Government decided in August, 1983 that the rules as amended on 5.2.1977 shall be applied to the vacancies occurring on or after 5.2.1977, it was also decided that vacancies filled on adhoc basis prior to 5.2.1977 shall be filled up in accordance with the Rules, as they stood prior to 5.2.1977, that is, 100% by selection. An application was accordingly filed before the Delhi High Court that in that Writ Petition. The respondents, therefore, constituted a D.P.C. for preparing regular year-wise panels for 100% of the vacancies on or after 5.2.1977 by following the procedure laid down in DP & AP OM No. 22011/3/76-Estt.(D) dated 24.12.1980. The order of the Hon'ble High Court by which the petitioners had withdrawn their writ petition is dated 23.8.1985 and is annexed as Annexure R/IV. The respondents, thereafter convened meetings of the

regular Department Promotion Committee to consider the regular promotion in the grade of Assistant Engineers and also prepared year-wise panel and issued supplementary list dated 25.4.1986. This supplementary list was revised on 31.3.1989 on the recommendations of the review Departmental Promotion Committee which was constituted to consider the representations received from the persons concerned regarding omission/discrepancies/duplication of name in the list of 25.4.1986 and to ratify the same.

Shri Kallu Ram, petitioner, is aggrieved by this seniority list and he has filed this petition claiming the following reliefs:

- (i) quash and set aside the Seniority lists issued by respondent No.2 in 1986 and 1990 to the extent the name of the applicant has wrongly, illegally and arbitrarily has been placed at S.No.113, 114 and 284, respectively;
- (ii) issue suitable directions or orders to the respondents One and Two to restore the inter se position viz; 293 rightly assigned to the applicant in the seniority list issued with the office order No.55 of 1979(Ann:A-5), on the basis of the actual date of promotion of the applicant and others to the post of Assistant Engineer(C).
- (iii) issue further directions or orders to the respondents One and Two to treat 4th June, 1977, which is the actual date of promotion of the Applicant to the

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post of Assistant Engineer(Civil) as the final date of his promotion as A.E.(Civil) and that the deemed dates of his promotion as 25.1.1979 and again as 5.4.1984 shown in office orders No.55 of 1979 (Ann.A-5) and 109 of 1986(Annex, A-2), and 16.7.1984, OM No.30/14/ dated 31.3.1989, and memo. No.37/1/90-ECI dt.2.7.1990, be treated as null and void, and

(iv) issue further directions to the respondents One and Two ~~to~~ that the case of the Applicant for promotion to the post of Executive Engineer be considered with reference to his inter se position of 293 in the combined seniority list of Asstt.Engineer (Civil) issued with respondent Two(s Office Order No.55 of 1979(Ann A-5) ignoring the inter se position wrongly and illegally assigned to him in the subsequent seniority lists issued in 1986, 1989 and 1990, with all the consequential benefits of seniority and back wages in the post of Ex.Engineer. "

A notice was issued to the respondents, who contested the application and denied the various averments made by the applicant in O.A.to which the applicant has filed the rejoinder. On 22.3.1993, the

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petitioner Shri Kalu Ram also moved a M.P. for a direction to the respondents to consider the applicant for promotion to the grade of Executive Engineer and by order dated 20.7.1993, it was ordered that the MP will be disposed alongwith the OA as the relief claimed in the O.A. are same as prayed for in the MA.

The grievance of the petitioner Puran Chand (In OA No. 1977/90) is also regarding the issuance of the seniority list dated 31.3.1989 in respect of Assistant Engineers. It has also been his grievance that the respondents have not considered him for promotion to the post of Assistant Engineer(C) when promotions have been made of several incumbents vide order's dated 14.6.90 and 28.8.90. It is also alleged that the respondents have not adhered to the principle of 40 point roster either in the matter of fixation of seniority as Assistant Engineer(Civil) or in the matter of promotion to the post of Executive Engineer in terms of the aforesaid orders. The relief claimed by the applicant in the O.A. is as follows:

- i) quash the impugned seniority list dated 25.4.1986 and 31.3.1989 which are provisional.
- ii) call upon respondents No. 1 and 2 not to operate the impugned seniority list dated 25.4.1986 and 31.3.89 for any purpose;
- iii) Hold that the position of the applicant shown in the seniority list of promottees dated 1.7.77 or in that particular sequence is correct. His position shown at Sl. No. 255 in the combined seniority list dated 25.1.1979 is also correct and that no deviation can be made therefor. Respondent



Nos. 1 & 2 be directed to not to disturb his seniority position to his detriment. The respondent No. 1 and 2 be further directed to withdraw the seniority position even with reference to the combined seniority list dated 25.1.79, on the basis of 40 point roster and place the applicant at the appropriate position according to list and give him consequential benefits in terms of promotion, etc.

iv) quash the impugned order of promotion dated 14.6.1990 and 28.8.1990 and hold that respondent Nos. 3, 5 and 6 have never been lawfully promoted;

v) cost of the proceedings may also be awarded to the applicant together with any other relief that may be deemed fit and proper in the circumstances of the case."

A notice was issued in this O.A. to the respondents and the respondents have filed same reply, as has been filed in the case of Shri Kalu Ram. It has also been highlighted that there had been representations with regard to the seniority list of 1986 as some of the officers had the grievance that they were entitled to the higher grade than given to them on the basis of the service records. Accordingly, a review D.P.C. was held to reconsider the case of the officers belonging to SC/ST, keeping in view the aforesaid guidelines. The applicant has also filed rejoinder to the counter filed by the respondents.

We have heard the counsel for the applicant (in both the OAs) on a number of occasions and also the counsel for the respondents.

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Shri B.S. Charya, counsel for the applicant (In OA No. 1977/90) has stated that had the roster point been followed by the respondents, in treating the year-wise panels and complied with the reservation percentage, the seniority position of the applicant Shri Puran Chand would have been much higher than shown in the seniority list of 1986 as well as in the year 1989. In the same manner, the learned counsel has pointed out that in the seniority list circulated in 1977, the position of the applicant would have been much higher. On the other hand, Mr B.Lal, learned counsel for respondents has contended that respondents have followed 40 point roster for determination of vacancies reserved for SC/ST yearwise and in making regular portions accordingly. It appears to be reasonable that when a reservation is given on a required number of vacancies than vacancies are to be filled up on the 40 roster point. It means that the roster point has to be applied at the time of entry to the service. The confirmation of the appointment is to be on various other factors, which follow after entry in service. It may be a confirmation after completing the period of probation and there may be other method provided in the recruitment rules or official instructions. Thus, the 40 point roster for reserved category would not be applied for considering the seniority in the group. In view of this, we find that the grievance of Puran Chand with respect to the non-following the 40 point roster is mere apprehension.

Now, we deal with the point of seniority of both the applicants Shri Kalu Ram and Shri Puran

Chand together. The learned counsel has prayed that the official record of the year-wise panel prepared on the assurance given by the respondents in the Writ Petition of C.K.Bhaskaran filed in the Delhi High Court that on the basis of D.P.C. held in April, 1986, year-wise panel was prepared, and that D.P.C. has been held according to the guidelines of the DP & AR Office Memorandum No. 22010/3/76-Estt.D.). We find that the guideline adopted by the aforesaid D.P.C. was 100% of the vacancies occurring prior to 5.2.1977. Thereafter, only 50% were given to the promotion quota and the remaining 50% for those departmental candidates who were recommended by the U.P.S.C. after competitive examination.

The D.P.C. held earlier, as per the chart given below considered both the applicants as the Seniority Nos. of the applicants in Jr.Engineer (Civil) was 1978 of Kalu and that of Puran Chand was 1468:

Year	Vacancies	Zone of Consideration (Sr. numbers) from to	Last SC empanelled	Applicant's Grading & Grading
1979	111	330	1835	1975-A/Good Good
1980	27	330	1536	Nil Nil
1981	143	347	2138	2087/VG Good
1982	27	347	1874-A	1976/Good Good
1983	51	417	1988	1828/Good Good & empanelled.

Having perused the records of the case and hearing the learned counsel for the parties at length, we find that the applicants have been given a rightful place in the seniority list and

(130)

that the respondents have not committed any error in not considering them for the post of Executive Engineer by virtue of the aforesaid seniority list.

In the result, both the applications fail, being devoid of any merit and are dismissed, leaving the parties to bear their own costs.

(B.K. Singh)

/sds/

Member (A)

(J.P. Sharma)

Member (J)

Attested
Rishabh
26/5/95
COP/CIV