

Central Administrative Tribunal
Principal Bench, New Delhi

(25)
of

O.A.No.2230/2004
O.A.No.2573/2005
O.A.No.2575/2005
O.A.No.2838/2005
O.A.No.2883/2005

Tuesday, this the 29th day of May 2007

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)

OA-2230/2004

1. All India CPWD (MRM) Karamchari Sangathan (Regd.) through its President Shri Satish Kumar House No.4, Karkardooma, Delhi-92
2. Harpal Singh s/o Shri Bhishan Singh Barkandaz, c/o All India CPWD (MRM) Karamchari Sangathan (Regd.) House No.4, Karkardooma, Delhi-92
3. Surender Kumar Seth s/o Raj Kumar Seth Barkandaz, c/o All India CPWD (MRM) Karamchari Sangathan (Regd.) House No.4, Karkardooma, Delhi-92
4. Surender Singh s/o Shri Inder Singh Barkandaz, c/o All India CPWD (MRM) Karamchari Sangathan (Regd.) House No.4, Karkardooma, Delhi-92
5. Anil Kumar s/o Shri P.L. Sharma (Peon) c/o All India CPWD (MRM) Karamchari Sangathan (Regd.) House No.4, Karkardooma, Delhi-92
6. Vijay Pal s/o Shri L.S. Rawat Barkandaz, c/o All India CPWD (MRM) Karamchari Sangathan (Regd.) House No.4, Karkardooma, Delhi-92
7. Ramesh Chander s/o Shri Duli Chand c/o All India CPWD (MRM) Karamchari Sangathan (Regd.) House No.4, Karkardooma, Delhi-92
8. Brahma Nand, Peon c/o All India CPWD (MRM) Karamchari Sangathan (Regd.) House No.4, Karkardooma, Delhi-92

..Applicants

(By Advocate: Shri Vikram Singh for Shri T.V. George)

Versus

1. Govt. of India
through its Secretary
Ministry of Urban Development
Nirman Bhawan, New Delhi
2. Director General (Works)
CPWD Nirman Bhawan
New Delhi
3. Superintending Engineer (Civil)
CPWD, Coordination Circle Civil
East Block, RK Puram
New Delhi
4. Rajender Kumar, Peon
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi
5. Nahar Singh, Peon
c/o Executive Engineer
Ludhiana Central Division
CPWD Model Town, Ludhiana
Punjab
6. Baleshwar, Chowkidar
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi
7. Om Hari, Chowkidar
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi
8. Bidhi Chand Rana, Peon
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi
9. Bhuwan Lal Singh, Chowkidar
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi
10. Brahm Prakash, Chowkidar
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi
11. Bhagwan Dass, Chowkidar
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi

12. Bindra Prasad, Chowkidar
c/o Chief Engineer, MAP, Zone
CPWD, Curzon Road Barracks
KG Marg, New Delhi

..Respondents

(By Advocates: Shri R.C. Gautam for official respondents and Shri SN
Anand for private respondents)

OA-2573/2005

1. Bhuwan Lal, LDC
o/o Executive Engineer
Muman MAP Zone-1
CPWD, Mamun (PB)
2. Binra Prasad, LDC
o/o Executive Engineer
Madhopur MAP Zone
CPWD, Madho Pur (PB)
3. Brahm Prakash, LDC
c/o Executive Engineer
Mamun MAP Zone-I
CPWD, Mamun (PB)

..Applicants

(By Advocate: Shri S.N. Anand)

Versus

1. Union of India
through Secretary
Ministry of Urban Development
Nirman Bhawan, New Delhi
2. Director General (Works)
CPWD Nirman Bhawan
New Delhi
3. Superintending Engineer (Civil)
CPWD, Coordination Circle Civil
East Block, RK Puram
New Delhi

..Respondents

(By Advocate: Shri R.C. Gautam)

OA-2575/2005

1. Bhagwan Dass, LDC
o/o Executive Engineer
Bhatinda Map Zone
CPWD, Bhatinda (Punjab)
2. Vidhi Chand Rana, LDC
o/o Executive Engineer
Jallandhar Map Zone-I
CPWD, Jallandhar (Punjab)

3. Nahar Singh, LDC
o/o Executive Engineer
Ludhiana Central Division
CPWD, Ludhiana (Punjab)

..Applicants

(By Advocate: Shri S.N. Anand)

Versus

1. Union of India
through Secretary
Ministry of Urban Development
Nirman Bhawan, New Delhi
2. Director General (Works)
CPWD Nirman Bhawan
New Delhi
3. Superintending Engineer (Civil)
CPWD, Coordination Circle Civil
East Block, RK Puram
New Delhi

..Respondents

(By Advocate: Shri R.C. Gautam)

OA-2838/2005

1. Raj Kumar Sharma s/o Shri KP Sharma
SE (P&A) o/o Chief Engineer (E) NDZ-V
CPWD, Vidyut Bhawan
New Delhi
2. Ram Paul s/o Shri Hari Ram
PWD Division No.III
Below ISBT Bridge
Kashmere Gate, Delhi
3. Shashi Pal s/o Prakash Chand
o/o SE, PWD C-II
Curzon Road Barracks, KG Marg
New Delhi
4. Dinesh Chandra s/o Shri Jugal Kishore
Ghaziabad Central Division
CPWD, Hindon, Ghaziabad
5. Chunni Lal s/o Shri Mishri Lal
Ghaziabad Central Division
CPWD, Hindon Ghaziabad
6. Hans Raj s/o Chatter Singh
O/o DCC-VII, RK Puram
New Delhi
7. Prem Ballabh Dobriyal
o/o Executive Engineer, DCDI
CPWD, Dehradun

8. Jagmohan Singh
DCED, CPWD, Dehradun

9. Mohan Lal Balodi
DCED- CPWD, Dehradun

10. Prakashvir Singh Rawat
DCED, CPWD, Dehradun

11. Om Raj
o/o Executive Engineer
PWD-16, Delhi

12. Rambir Singh s/o Ram Rikh Singh
o/o ADG Training Institute
CPWD, Ghaziabad

13. Raj Pal singh s/o late Kalu Ram
Ghaziabad Central Division
CPWD, Hindon, Ghaziabad

14. Dayanand s/o Shri Umeed Singh
G Division, CPWD, New Delhi

15. Daya Sagar s/o Shri Shadu Ram
CPWD, Delhi

16. Jai Prakash
ED-IV, CPWD, ITO, Delhi

17. Chaman Singh
ED-IV, CPWD, ITO, Delhi

18. Ram Bir
ED-I, CPWD, ITO, Delhi

19. Ajeet Singh
PWD, ED-I, CPWD, ITO, Delhi

20. Vishnu Dutt
PWD Circle-5, Delhi

All working in Group D posts in CPWD offices indicated against each
..Applicants
(By Advocate: Shri S.N. Anand)

Versus

1. Union of India
through Secretary
Ministry of Urban Development
Nirman Bhawan, New Delhi

2. Director General (Works)
CPWD Nirman Bhawan
New Delhi

3. Superintending Engineer (Civil)
CPWD, Coordination Circle Civil
East Block, RK Puram, New Delhi

4. Satpal Singh
SSI 12191966 PEO N071987

5. Madan Pal Singh
MPS10071963PEON031994

6. Pati Ram
TRA01071957CHOWWO31987

7. Vishwa Vardhan
WA13011065PEON101990

8. Pramod Puri
PPU161211964PEON091990

9. Prakash Chand
PCH1507665PEON091988

10. Ravinder Kumar Singh
RKS28061964PEON101987

11. Ranjit Singh
RSI1013196PEON041993

12. Jagdish Chander
JCH150612967PEONO41994

No.4 to 12 all now working as LDC in various Divisions/Offices of CPWD posted under Office order No.176 of 2005 dated 27.10.2005 and service to be effected through Superintending Engineer (Civil), CPWD Coordination Circle Civil, East Block No.1, RK Puram, New Delhi-110 066

..Respondents

(By Advocate: Shri R.C. Gautam)

OA-2883/2005

Om Hari, Peon
S/o late Kishan Chand
O/o Executive Engineer
Mamoon Map Division-1
CPWD, Mamoon Cantt. (Punjab)

..Applicant

(By Advocate: Shri SN Anand)

Versus

1. Union of India
through Secretary
Ministry of Urban Development
Nirman Bhawan, New Delhi

2. Director General (Works)
CPWD Nirman Bhawan, New Delhi

3. Superintending Engineer (Civil)
 CPWD, Coordination Circle Civil
 East Block, RK Puram
 New Delhi

..Respondents

(By Advocate: Shri R.C. Gautam)

O R D E R (ORAL)

Hon'ble Shri Shanker Raju, Member (J):

As the issue pertains to a selection, the facts being interwoven with an identical question of law, these OAs are disposed of by this common order.

2. OA-2573/2005, OA-2575/2005, OA-2838/2005 and OA-2883/2005 are an offshoot of OA-2230/2004 as well as an order passed by the Tribunal on 26.5.2005 in OA-2230/2004 and order passed in RA-7/2006 on 21.12.2006.

3. Brief factual matrix transpires that original applicants in OA-2230/2004 were substantively appointed as Group 'D' employees in CPWD. In the matter of filling up of 10% quota in Group 'C', applicants assailed result for the post of LDC declared vide OM dated 3.2.2004 and 19.4.2004 as well as promotion of the private respondents effected on 21.7.2004 on the ground that criteria for cut-off marks is to be reckoned as per OM dated 20.3.1970, which makes the cut-off criteria as 40% for general category candidates and 30% for SC/ST candidates. After the selection process was initiated in 2003, official respondents altered the criteria vide OM dated 23.3.2004 laying down 50% qualifying marks for general candidates and 40% qualifying marks for SC/ST candidates. The aforesaid has been viewed illegal in the light of the decision of Apex Court in **Maharashtra S.R.T.C. & others v. Rajendra Bhimrao Mandve**, 2002 (1) SC SLJ 17. Accordingly, as the

promotions of private respondents were made subject to the final outcome, the result declared and promotions were set aside with a direction to the respondents to recast and prepare the result by strictly applying the criteria as laid down in the OM dated 20.3.1970. It was also directed that before any adverse action is taken against the promotees, they shall be put to notice. Meanwhile, a review application (RA-7/2006) has been filed by All India CPWD (MRM) Karamchari Sangathan (Regd.), whereby the Association sought review of the order on the ground that recruitment rules, i.e., CPWD (Subordinate Offices) LDC Recruitment Rules 1988 whereunder the 10% quota on the basis of qualification of the examination was not considered by the Tribunal.

4. Above said review petition filed by the Association was allowed on 21.12.2006 on the ground that recruitment rules placed on the record were not considered and OA was listed for re-hearing.

5. We have heard the learned counsel for the parties and perused the material on record.

6. The only ground, which has been raised is change of the criteria from 40% and 30% respectively for general category candidates laid down vide OM dated 20.3.1970 to 50% and 40% for general and SC/ST candidates, which cannot be done. However, the fact remains that whereas the recruitment rules specify the examination as qualifying, the OM of 1970 holds it to be a competitive examination. In case of conflict between the statutory rules and administrative rules, the former is to prevail. Accordingly, we have no hesitation to hold that as per the recruitment rules of 1988 the examination was qualifying

marks, yet as the statutory rules do not lay down any cut-off percentage for qualifying the examination, the same would hold good, as envisaged in OM of 1970, which is 40% and 30% respectively for general and SC/ST candidates and the change of criteria effected vide respondents' OM dated 23.3.2004, which lays down 50% and 40% respectively for each category, would not be operated retrospectively and the examination of 2003 would be operated in accordance with OM of 1970.

7. Accordingly, we disposed of the OA-2230/2004 with a direction to the respondents that treating the examination as qualifying, the cut-off percentage for qualification would be reckoned as per OM of 1970 and those who qualified have to be promoted in order of their seniority.

8. As regards the others who had been promoted during this interregnum and fresh selections made earlier also, we have not disturbed their promotions, except by due process of law. OA-2573/2005, OA-2575/2005, OA-2838/2005 and OA-2883/2005 have been filed wherein the applicants had been reverted to Group 'D' without issuing them a show cause notice.

9. Respondents' learned counsel have stated that vide letter dated 23.8.2005 promotions made to the private respondents have been made subject to the final outcome and subsequent letters whereby reversion has taken place, the former is a show cause notice, as directed by the Tribunal. We do not find any reasonableness in the action of the respondents. Once we have earlier directed the respondents to put the applicants to notice before any adverse

decision is taken, a fresh notice after the decision of the Tribunal in the order passed, which has now been reviewed, is not an order whereby the promotions have been made subject to the final outcome. A notice is to confront and to afford a reasonable opportunity against the proposal. As no proposal for reversion has been incorporated in the order treated by the respondents as show cause notice, the same is not a due notice and compliance in true letter and spirit of the directions. Accordingly, the reversion order of the private respondents cannot be countenanced in law and these OAs are disposed of by quashing the respondents' order of reversion and respondents are directed to restore back the applicants in their original position with all consequential benefits.

10. As the methodology after the decision in OA-2230/2004 is to be evolved, we direct that those, who have already been promoted and their rights have been saved, shall not be disturbed from their position. Respondents are directed to prepare the result afresh and consider the applicants as well as private respondents by adopting the criteria laid down by us. Status quo with regard to persons who have already been promoted would be maintained till final result is published and promotions are effected accordingly. No costs.

11. Let a copy of this order be placed in each case file.

NR
Neena Ranjan
 Member (A)

/sunil/

S. Raju
(Shanker Raju)
 Member (J)