

20
**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1216/2004

New Delhi, this the 14th day of April, 2006

Hon'ble Shri Justice M.A. Khan, Vice-Chairman (J)
Hon'ble Shri N.D. Dayal, Member (A)

1. Ram Prakash, S/o Vidya Ram
R/o A-14, Ganesh Nagar Complex
Pandav Nagar, Delhi.
2. Kamal Kishore
S/o Gopi Chand Agarwal
R/o 55-A/1, Govind Puri
Kalkaji, New Delhi.
3. Thakur Lal Sharma
S/o Bhagwat Prasad
R/o 825, Bhogal Road
Jangpura, New Delhi.
4. C.P. Singh
S/o Ram Naik Singh
R/o 11/743, Vasundhra
Ghaziabad (UP).
5. Jagat Pal Saharan
S/o Ram Rakh Saharan
R/o 8/543, Lodhi Colony
New Delhi.

... Applicants

(By Advocate Shri Naresh Kaushik)

V E R S U S

1. Govt. of India through
Its Secretary
Ministry of Urban Development
Nirman Bhawan, New Delhi.
2. Central Public Works Deptt.
Through its Director General of Works
Nirman Bhawan, New Delhi.
3. Superintending Engineer (Trg.)-I
CPWD, Training Institute,
E-Wing, Nirman Bhawan, New Delhi.

(By Advocate Shri Rajeev Bansal)

... Respondents

ORDER

Shri Justice M.A. Khan,

Five applicants Junior Engineers (Civil) for short JE (Civil) in CPWD who
had appeared in Limited Departmental Competitive Examination (LDCE) held in

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1999 for promotion to 391 posts of Assistant Engineers (Civil) [for short AE (Civil)] are aggrieved that the respondents have not declared the result of 33 vacancies out of 55 remaining vacancies in compliance with the order of this Tribunal dated 7.8.2003 in OA 1874/2001. They pray that the respondents should be directed to declare the result of remaining 33 vacancies and also grant them promotion with consequential benefits.

2. The shorn of unnecessary details, the factual background of the case is as follows: -

As per the Recruitment Rules, the promotion to the post of AE (Civil) from the cadre of JE (Civil) is 50% by selection from amongst the JE (Civil) with 8 years of regular service in the grade and remaining 50% by promotion through LDCE. The respondents issued notice dated 16.9.98 notifying 391 vacancies pertaining to the vacancy year 1993-94 to 1997-98 for the post of AE (Civil) to be filled in by promotion through LDCE. Some disgruntled JEs (Civil) filed OAs No. 2239 and 2526/1998 titled **Kamal Kishore Joshi & 2 others and Sudama Prasad Sharma & 3 others v. Union of India**. Their main contention was that the vacancies arising from the existing DPCs promotees had to be filled up through DPC and those arising from the permanent exit of LDCE promotees should be filled up through the LDCE. They also assailed the Recruitment Rules 1997. The Tribunal dismissed the OAs but gave certain directions which being relevant are reproduced below: -

- “(i) Segregate both vacancies and eligibility year-wise. This is to ensure that an employee after having qualified in the examination does not get the benefit of seniority against the year when he was not even eligible for the same:
- (ii) Existing rules for filling up the posts meant for reserved category candidates shall be adhered to as prescribed by the DoPT in its OM dated 2.7.97, while communicating vacancies of 391 JEs, respondents have only indicated that the percentage of reservation for SC/ST will be indicated only later on. Since reservation in promotion in such cases are to be ensured as per law laid down, respondents shall strictly follow instructions for maintaining the roster and running account register to look after the interests of backward classes.
- (iii) Vacancies of 391 shall be recalculated to ensure that 1:1 ratio between the two groups for the years from 1993 to 1999 have not been tilted to unduly favour one of the two contending groups.

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- (iv) We are also inclined to agree with the respondents' submission that "present practice of keeping vacant slots for being filled up by direct recruitment of later years thereby giving them unintended seniority over promotees who are already in position could be dispensed with. The above precaution shall be taken before finalizing the present selection process or hand.

14. For similar examinations to be held in future respondents shall also consider (1) the possible of strictly maintaining 1:1 ratio year-wise between DPC and LDCE candidates making them widely known through departmental notice boards: any feasibility of ensuring that the posts falling vacant caused by DPC-promotees could be filled through DPC candidates and those caused by the LDCE promotees could be filled through examination and (iii) for making 1:1 ratio for the newly created posts as mandatory."

3. Thereafter Shri Ajmer Singh & Others filed OA No.1874/2001 alleging that the above mentioned directions of the Tribunal have not been implemented and the result of 391 candidates had not been declared and promotions not accorded to them. It was contested by the respondents who alleged that the directions of the Tribunal were scrupulously followed. After hearing the parties, the Tribunal disposed of the OA on 4.1.2002 with directions to the respondents to declare the result of LDCE 1999 relating to all the 391 notified vacancies of AE (Civil) vide notice dated 16.9.98 and make appointment to the same extent in accordance with the rules and laws applicable to the case along with all the consequential benefits. The respondents assailed this order before the High Court in CWP No.2621/2002. The High Court set aside the order of the Tribunal and remitted the proceedings back to it for fresh decision. This Tribunal after hearing the parties disposed of the OA on 7.8.2003 with the following directions: -

"Having regard to the principles laid down in the order dated 15.2.99 in OA Nos. 2239/1998 and 2526/1998 (Annexure-2), we are of the firm view that adjustment of 61 excess LDCE promotions prior to 1993 against the year 1993-94 at one go is totally unjustified. As a matter of fact, respondents should not have resorted to excess recruitment to such an extent from LDCE 1992. If at all administrative exigencies warranted adjustment it should have been kept within reasonable limits. In any case, such a large number could not have been adjusted against the vacancies of one year. They could have been evenly spread over a period of time. In the interest of justice and finding merit in the contentions raised on behalf of applicants, though we do not intend issuing any directions adversely affecting the rights of the private respondents at this stage, we direct respondents to declare results of 55 more candidates, i.e., beyond merit rank 336 and up to 391, in view of the declared number of vacancies of 391 for LDCE 1999. All these 55 candidates should be adjusted against the 1994-95 LDCE quota. 6 candidates of 61 adjusted from LDCE 1992 against 1993-

Disorder

94 would be adjusted against 1993-94 quota. The remaining excess of LDCE 1992 should be equitably adjusted in the remaining years up to 1998-99. 55 candidates from LDCE 1993 whose result would be declared and promoted under LDCE quota shall be given consequential benefits. The entire exercise as directed above shall be completed by respondents within a period of three months from the date of receipt of these orders."

4. Applicants in the present OA are aggrieved that the aforesaid directions have not been implemented in toto and that result of 33 vacancies out of 391 notified vacancies is still not declared.

5. The respondents contested the OA. They have averred in the counter reply as follows: -

The applicants in the OA are claiming declaration of result of remaining 33 vacancies out of the 55 vacancies as per directions of this Hon'ble Tribunal contained in Judgment dated 7.8.2003. The said judgment was not a judgment in persona but was rather in rem. In effect, the directions were to fill up all the 391 vacancies, which were declared for LDCEs.

Accordingly, vacancies were recalculated on the basis of the direction of this Tribunal as under:

Year	Old vacancies	Revised vacancies
1993-94	0	6
1994-95	136	174
1995-96	126	115
1996-97	66	55
1997-98	61	50
1998-99	12	1
Total	401	401

Due to revision of vacancies as directed by this Tribunal, 22 candidates of the year 1997-98 (11) and 1998-99 (11) who were promoted earlier did not find place in the revised merit list and needed to be reverted. To avoid the reversion and further litigation, these 22 candidates have been adjusted against the creation of 22 supernumerary posts and 22 new candidates were found eligible for promotion for which result was declared vide order dated 19.4.2004.

Thus 424 (336+65+1+22) posts have been filled up through LDCE 1999 as under against the 391 vacancies declared in the notification.

Year	Revised vacancies
1993-94	6
1994-95	174
1995-96	115+1 = 116
1996-97	55
1997-98	50+11***=61
1998-99	1+11***=12
Total	424

22 persons have been adjusted against the 22 supernumerary posts to avoid reversion.

1 person has been promoted as per direction dated 24.9.2002 of CAT (PB), New Delhi in OA No.3457/2001 filed by Shri Sudershan Singh.

These 23 (1+22) persons have been promoted in compliance of this Tribunal's order dated 24-9-2002 in OA No.3457/2001 in the matter of Sudershan Singh and Order dated 7-8-2003 in OA No.1874/2001 in the matter of Ajmer Singh without ensuring the ratio of 1:1 between Seniority Quota and LDCE Quota as required under the Recruitment rules.

As directed by this Tribunal, vacancies were recalculated and 22 new persons were found eligible for consideration of promotion. Remaining 33 were adjusted against the respective year according to their merit. 21 persons have already been promoted and one could not be promoted due to pending vigilance case. It is clear that result of 424 vacancies has already been declared as against the original notification of 391 vacancies. As such, the OA is bereft of any merit and deserves to be dismissed.

6. In the rejoinder, applicants have reiterated their own case.

7. We have heard the learned counsel for the parties. We have also taken into consideration the written submissions filed on behalf of the respondents.

8. The LDCE was conducted in 1999 for promotion of the 391 Jr. Engineers to the post of Assistant Engineers, which pertained to the vacancy years from 1993 to 1999. According to the applicants, the respondents have failed to implement the directions of this Tribunal contained in its order dated 15.2.99 and 7.8.2003 fully and the result of 33 vacancies is yet to be declared by them. Conversely the contentions of the respondents is that these orders of the Tribunal have been scrupulously observed and implemented in letter and spirit. According to them, the vacancy position has been re-calculated and keeping in view the increase in the vacancy pertaining to the year 1995-96, as a result of the restructuring as against 391 vacancies, the Jr. Engineers through LDCE to the extent of 401 vacancies have already been promoted and that no more vacancies are available for the appointment of any other candidate qualified at LDCE 1999.

9. The prayer of the applicants in the present OA is short and simple. They felt aggrieved that the Tribunal's order dated 7.8.2003 has not been fully implemented and still the result of 33 vacancies out of the notified 391 vacancies for which LDCE was held in 1999 has not been declared as a result the

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35
applicants have been deprived of their chances of promotions to the post of AE through LDCE.

10. A careful perusal of the order of the Tribunal dated 15.2.99 would show that amongst others, the Tribunal had given two important directions which were to be borne in mind by the respondents while implementing the orders. They were firstly that the vacancies which arose between 1993-1999 pertaining to the two groups, i.e., DPC promotion on seniority basis and the LDCE qualified group shall be recalculated. This mean that the respondents while carrying out the recalculation exercise were free to determine the vacancies which were available for filling up through LDCE 1999 and the vacancies could be reduced and lesser vacancies than the notified 391 vacancies, could be filled up if the situation so demanded. The second direction, equally important, was that while doing the recalculation exercise, the respondents would ensure that 1:1 ratio between seniority quota and LDCE quota, would be maintained and that the LDCE quota would not be effected thereby, i.e., the respondents would not reduce the posts belonging to the LDCE only. The respondents promoted 336 JEs as against 391 notified vacancies through LDCE 1999. They also adjusted 61 candidates extra against the vacancies pertaining to the year 1993-94 out of the panel of LDCE 1992 over and above the declared vacancies for which that LDCE was held. A cadre review of the cadre of AEs was also carried out in between and 335 vacancies arose out of cadre review out of which 284 vacancies were filled through seniority quota in 1997-98 after obtaining the relaxation of the Rules from DoPT in 1997. In OA 1874/2001 decided on 7.8.2003, the grievance was that the respondents have filled up only 336 vacancies as against the notified 391 vacancies through LDCE 1999 and further that 61 vacancies which arose in 1993-94 have been used up by promoting Jr. Engineers from the panel of LDCE 1992 over and above the declared vacancies for that exercise. The Tribunal dis-approved the adjustment of 61 LDCE promotions out of LDCE 1992 against the vacancies pertaining to the year 1993-94 which was not in accordance with the Recruitment Rules but the Tribunal did not interfere with these promotions. The Tribunal, however, directed that these vacancies should not be adjusted en-block against the vacancies of the year 1993-94 and should be spread over and adjusted as per the directions given. At the same time, the Tribunal was also of the view that as against the declared 391 vacancies reserved for LDCE quota only the result up to 336 merit rank have been declared so gave a direction that the result of 55 more candidates should be declared.

11. The Tribunal gave two directions vide order dated 7.8.2003. The first direction was that the result of 55 more candidates who appeared in LDCE 1999 be declared and they should be promoted with all consequential benefits and second that the extra 61 candidates who had qualified in 1992 LDCE should not adjusted en-block against one years' vacancy i.e. vacancy pertaining to the year

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1993-94 and should be adjusted by spreading over these candidates. The effect of these directions is that the respondents were to fill up all the 391 notified vacancies for the LDCE 1999 and were also allowed 61 more persons from the panel of LDCE 1992 against the vacancies pertaining to the year 1993-1999 for which LDCE 1999 was held. If 61 vacancies which arose between 1993 and 1999 were to be utilized for adjustment of the JEs from the panel of LDCE 1992, the vacancies available for the candidates who qualified LDCE 1999 would be less by the 61 vacancies. But there was some cadre review, as a result, the vacancy position also changed and except 33 out of 391 notified vacancies, according to even the applicants, 358 qualified candidates were promoted out of the panel of LDCE 1999, though according to the respondents, after carrying the entire recalculation exercise and keeping in view the change in the vacancy position on account of cadre review, they have promoted 401 officers against 50% LDCE quota as against the notified 391 vacancies up to 2004.


12. At the first glance, it appears that the Tribunal's directions that 55 more results of 1999 LDCE will be declared and qualified candidates promoted has not been implemented. But the Tribunal's directions contained in the order dated 7.8.2003 have not superceded the directions of the Tribunal contained in its order dated 15.2.99. In fact the Tribunal has issued the directions on the basis of the principles, which were laid down in the order dated 15.2.99. A harmonious reading has to be given to the order of the Tribunal dated 7.8.2003 vis-à-vis the order dated 15.2.99 and the order is to be implemented keeping in view that 61 extra vacancies out of the panel of the 1992 were to be adjusted against the vacancies pertaining to the period from 1993-99 and that the vacancies were to be recalculated separately for the seniority quota and the LDCE quota and the ratio 1:1 between these two quotas were to be scrupulously observed. In the light of all these facts, explanations of the respondents as given and in the counter reply may now be examined.

13. We agree that the two orders of the Tribunal dated 15.2.1999 and 7.8.2003 were the orders in the nature of judgment in rem. We have already reproduced the statement of calculation of vacancies carried out by the respondents in implementing the directions of the Tribunal dated 15.2.99. They have also explained that 424 promotions have been made out of LDCE 1999. The details of the figure of 424 has already been mentioned by them by submission of a year wise chart. Though the applicants have traversed the claim of the respondents about the number of vacancies calculated and filled up by them but they have failed to produce before us any material to show that the facts and figures which the respondents submitted in their counter reply were not correct. We can't discard them simply because according to the applicant 33 more results out of 391 vacancies notified for 1999 LDCE have not been declared. We cannot ignore that the directions of the Tribunal that recalculation would be carried out and also there was a cadre review and further adjustment of

61 additional promotions, which were out of LDCE 1992 were to be made. We do not find any error in the figures, which have been submitted by the respondents. They showed that more than 391 vacancies pertaining to LDCE quota against the vacancy which had arisen from 1993 onwards have been filled up.

14. We are also constrained to observe here that any direction to the respondents now to promote 33 more officers out of LDCE 1999 would be in violation of the Recruitment Rules which had reserved 50% of the vacancies only for LDCE quota and would also be in violation of the directions of the Tribunal dated 15.2.99 and also of 7.8.2003.

15. As result of the above discussion, we do not find any merit in the present OA. Accordingly, it is dismissed. No costs.



(N.D. Dayal)
Member (A)



(M.A. Khan)
Vice-Chairman (J)

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