CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.267 OF 2004
WITH
O.A. NO.268 OF 2004

New Delhi, this the 2nd day of November 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

O.A. No.267 OF 2004

1. Shri Kilob Singh (Driver)
Son of Shri Jai Narayan
Working under the Chief Engineer (Electrical),
Delhi Outer Zone, CPWD,
East Block, Second Floor,
R.K. Puram, New Delhi.

Resident of M –15, Mahalaxmi Garden,
Railway Station, Gurgaon.

2. Shri Surender Kumar (Asst. Pump Operator)
Son of Shri Kavar Singh Gupta,
Working under the Chief Engineer (Electrical),
Delhi Outer Zone, CPWD,
East Block, Second Floor,
R.K. Puram, New Delhi.

Resident of F-1-57, Swarup Nagar, Delhi.

3. Shri Mithlesh Kumar (Wireman)
Son of Shri Pokhar Das,
Working under the Chief Engineer (Electrical),
Delhi Outer Zone, CPWD,
East Block, Second Floor,
R.K. Puram, New Delhi.

Resident of 14/15, Guru Teg Bahadur Colony,
Kaithal, Haryana.

4. Shri Ram Bhool (Beldar)
Son of Shri Hari Kishan Sharma
Working under the Chief Engineer (Electrical),
Delhi Outer Zone, CPWD,
East Block, Second Floor,
R.K. Puram, New Delhi.

Resident of 72, Sant Nagar, New Delhi-65.

5. Sh.Sunil Kumar(Beldar)
S/o Sh.Hari Kishan Sharma
working under the Chief Engineer (Civil)
Delhi Outer Zone, CPWD
Sewa Bhawan, First Floor,
R.K.Puram, N.Delhi.
R/o 72, Sant Nagar, N.D-65.

.....applicants.

(By Advocate : Shri K.K. Patel)

Versus

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

2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi.

3. The Superintending Engineer
Co-operative Circle,
C.P.W.D.
East Block, Second Floor,
R.K. Puram, New Delhi.

4. The Chief Engineer (Electrical)
Delhi Outer Zone, CPWD,
East Block, Second Floor,
R.K. Puram, New Delhi.

5. The Chief Engineer (Civil)
Delhi Outer Zone, CPWD,
Sewa Bhawan, First Floor,
R.K. Puram, New Delhi.

.....Respondents.

(By Advocate : Shri Mohar Singh)

O.A. No.268 OF 2004

1. Shri Hari Gobind (Safai Karamchari)
Working under the Chief Engineer (Civil),
Delhi Outer Zone, CPWD,
Sewa Bhawan, First Floor,
R.K. Puram, New Delhi.

Resident of 257, Gali No.2,
Chanderlok, Delhi.

2. Shri Mahendra Pal (Beldar)
Son of Shri Bhim Singh,
Working under the Chief Engineer (Civil),
Delhi Outer Zone, CPWD,
Sewa Bhawan, First Floor,
R.K. Puram, New Delhi.

.....applicants.

(By Advocate : Shri K.K. Patel)

Versus

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

2. The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011.

3. The Superintending Engineer
Co-operative Circle,
C.P.W.D.
East Block, Second Floor,
R.K. Puram, New Delhi.

4. The Chief Engineer (Civil)
Delhi Outer Zone, CPWD,
Sewa Bhawan, First Floor,
R.K. Puram, New Delhi.

.....Respondents.

(By Advocate : Shri Mohar Singh)

ORDER (ORAL)

HON'BLE SHRI SHANKER RAJU, MEMBER (J) :

As identical question of law is involved in both the cases, these are disposed of by this common order.

2. Applicants, who are employed on hand receipt basis and working as Beldars since 1988-89, seek regularisation.

3. In OA 267/2004, applicants were engaged as Assistant Pump Operators, Drivers, Wiremen on hand receipt basis and have worked for more than 15 years along with others. Applicants preferred OA 401/2001 seeking regularisation wherein by an order dated 20.8.2002 directions have been issued to consider them for regularisation as per their seniority and eligibility.

4. Vide order dated 4.4.2003, it was communicated that due to existing ban on direct recruitment quota and non-availability of posts under direct recruitment quota, the applicants' claim for regularisation cannot be acceded to. One Shri V.S. Rawat, similarly situated person, filed a case before this Tribunal being OA No.1338/2000, which was disposed of vide order dated 14.12.2000 with a direction to the respondents that, taking shelter of the so-called ban order, differential treatment cannot be meted out to the applicants.

5. In another OA 268/2004, similar pleas have been raised.

6. Learned counsel of the applicants Shri K.K. Patel contended that junior employees to the applicants, namely, S/Shri Bir Singh, V.S. Rawat, Kishan Singh and Moolchand had been regularised. Learned counsel further stated that in the light of the decision of the Apex Court in *State of Haryana Vs. Piara Singh*, (1992) 4 SCC 118, the action of the respondents is arbitrary, discriminatory and is violative of Articles 14 and 16 of the Constitution of India as despite the vacant

posts, applicants, having continued in service for more than 15 years, have yet not been regularised.

7. On the other hand, respondents' counsel Shri Mohar Singh vehemently opposed the contentions and stated that the Project, in which the applicants were engaged, had come to an end and also due to existing ban on direct recruitment, the claim of the applicants for regularisation has not been considered. It is also stated that as far as juniors are concerned, they are in another division where the seniority is separately maintained. As such, the claim of the applicants cannot be countenanced. Shri Mohar Singh further stated that having the different units of seniority, as per the provision in CPWD Manual Vol.II, as and when the vacancies arise the applicants shall be considered.

8. We have carefully considered the rival contentions of the parties and perused the records.

9. Hostile discrimination, without intelligible differentia and reasonable nexus with the object sought to be achieved, is invidious discrimination and is violative of Articles 14 and 16 of the Constitution of India. We find that in pursuance of the direction in OA 401/2001, the respondents have regularised similarly situated junior persons. The plea of non-availability of vacancies and ban has also been taken note of in OA No.1338/2000 and has been repealed. The applicants, who are similarly situated, cannot be deprived of the benefit of the ratio of the above decision. We also find that junior employees to the applicants, namely, S/Shri Hari Chand, Devki Nandan and Shri Sanship Kumar have also been regularised, which fact has not been effectively defended and explained by the learned counsel of the respondents.

10. In our considered view, having regularised the juniors when the seniority was the criteria for regularisation, the applicants have also right for consideration and existing ban would not come in their way.

11. In the result, both these OAs are allowed. Respondents are directed to device ways and means to regularize the services of the applicants under direct recruitment quota in compliance with the directions dated 20.8.2002 rendered in

OA No.401/2001 and in that event, the applicants shall be entitled to all consequential benefits. We, however, make it clear that till then the status quo as of date regarding their continuance, shall be maintained. There shall be no order as to costs.

12. Copy of the present order to be placed in the respective files of these OAs.

(Shanker Raju)
Member (J)

(V.K. Majotra)
Vice Chairman (A)

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2-11-04