

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

(Ob)

O.A. No. 1977 of 1992

New Delhi, dated this the 9th September 1997

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Shri Ashish Kumar Kar,
Jr. Engineer (C), CPWD
2. Shri Akhilesh Kumar,
Jr. Er. (C), CPWD.
3. Shri Sib Nath Dhara,
Jr. Er. (C), CPWD
4. Shri Bajrang Lal Sharma,
Jr. Er. (E), CPWD ... APPLICANTS

(By Advocate: Shri G.K. Aggarwal)

VERSUS

Union of India through

1. The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Union Public Service Commission,
through the Secretary,
Shahjehan Road,
New Delhi-110011. ... RESPONDENTS

(By Advocate: Shri S.M. Arif)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicants who are Jr. Engineers in CPWD seek a direction to fill up the vacancies of Asst. Engineers (Exam. quota), CPWD till 1.7.1992 on the basis of merit list prepared at 1989 Exam. on the basis of written Exam. and evaluation of service record.

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2. As per Recruitment Rules, the posts of Asst. Engineers (Civil & Electricl) in CPWD are filled up (i) 50% by selection through DPC on basis of merit from amongst permanent Jr. Engineers (Civil & Electrical) in CPWD and (ii) 50% through Ltd. Deptl. Competitive Exam. from amongst J.Es (C&E) employed in CPWD. Applicants contend that after the LDCE quota was introduced in Feb. 1977, the examinations were held in 1978 to fill vacancies from January to October, 1979; in 1979 to fill vacancies from Oct. '79 to Feb. '81; in 1982 to fill vacancies from Feb. '81 to July, '87; in 1983 to fill vacancies from July '87 to Oct. '87 and in 1989 to fill vacancies from Nov. '87 to June, '90. Applicants contend that for the 1989 Examinations respondents had intimated 173 (Civil) and 33 (Electrical) vacancies of AEs, but eventually promoted only 119 (Civil) and 30 (Electrical) JEs. This was challenged in O.A. No. 897/91 and by judgment dated 28.1.92 respondents were directed to make promotions as per vacancies already intimated, namely 173 (Civil) and 33 (Electrical). Applicants further contend that promotions in DPC quota from JE to AE continued upto 1991 and 1992, leaving the corresponding LDCE quota slots vacant, in violation of rules requiring 1:1 ratio to be maintained, even though 37 Civil

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and 18 Electrical JEs were "available" from the 1989 Exam. who could be promoted against the LDCE vacancies arising in 1991 and 1992.

3. We have heard applicants' counsel Shri G.K. Aggarwal and respondents' counsel Shri S.M. Arif. We have perused the materials on record and given the matter our careful consideration.

4. Applicants have no where categorically asserted that any merit list/selection panel of these 210 (173 + 37) Civil and 51 (33 + 18) Electrical JEs was prepared by respondents as a result of the 1989 examinations, and ^{mentioned} applicants' own position in any such merit list/selection panel. Even if such a merit list/selection panel was prepared as a result of that exam., only existing/anticipated exam. quota vacancies for which the 1989 LDCE was held, and which were advertised/intimated at that point of time, could have been filled up from the successful candidate of the 1989 LDCE and not future exam. quota vacancies. To fill up future exam. quota vacancies on the basis of the 1989 examination would, as correctly pointed out by respondents, be denying opportunity to those JEs who had become eligible after 1989 from competing, which would be violative of Art. 14 & 16 of the Constitution.

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5. Shri Aggarwal has argued firstly that in earlier years, vacancies arising subsequently have been filled up by successful candidates from earlier LDCEs; and secondly filling up 1990 and 1991 vacancies by 1992 examinees could well result in a situation where candidates who had not attained the eligible length of service/ in 1990 or 1991, but had done so in 1992, ~~would~~ occupying⁴ the vacancies that arose in 1990 and 1991, at the same time denying applicants who had attained the length of service qualification in 1989 itself, from occupying those vacancies.

6. In our view, none of these grounds have merit. Respondents have pointed out that the glaring case where vacancies which arose in 1987-88 were filled on the basis of the 1982 and 1983 examinations (refer para 2), ~~was done~~ ~~who~~ because of the special circumstances which arose at the time. It has been stated that those vacancies arose as a result of a cadre review and to make promotions against those vacancies a one time relaxation of Recruitment rules was obtained, which cannot serve as a precedent. That apart, the Hon'ble Supreme Court has laid down in a catena of judgments that where fresh vacancies ~~arose~~, the selection process has to be gone

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through anew, and an old panel can not be utilised to fill up those fresh vacancies. In the present case, we notice that there is not even any such panel.

7. Coming to the second argument no specific instance has been cited of a candidate not having the prescribed length of service qualification in 1990 or 1991, but acquiring that by 1992, appearing and becoming successful in the 1992 LDCE and then occupying a vacancy that arose in 1990 or 1991. Hence this argument is not buttressed by any concrete instance. By the same ^{token} ~~proof~~ it could be argued that by filling up the 1990 and 1991 vacancies with 1989 examinees, those persons were deprived who had become eligible in 1990 and 1991 but could not appear in those years, because no examinations were held, and could appear only in the 1992 examination.

8. Ideally no doubt LDCE should have been held annually but in the absence of the ideal filling up the 1990, 1991 and 1992 vacancies on the basis of the 1992 examinations would atleast not deny opportunity to those JEs who were not eligible to compete in 1989 examinations but became eligible subsequently.

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9. In the result the O.A. warrants no
interference. It is dismissed. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
Member (J)
/GK/

S. R. Adige

(S.R. ADIGE)
Vice Chairman (A)