



**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A.61/909/2020

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T.A. No. 61/895/2020

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T.A. No. 61/928/2020

This the 04th day of December, 2020

**HON'BLE MR. JUSTICE L. NARASIMHA REDDY, CHAIRMAN
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

Raman Uppal S/o Maj. Mulk Raj Uppal resident of Village Nagri
(Parole) Kathua at present Junior Engineer, Local Bodies,
Jammu age 40 years.

.....Applicant

(By Advocate:- Mr. Parag Sharma, Counsel for the Applicant in all
TAs)

Versus

1. State of J&K through Chief Secretary, J&K Government Civil Sectt. Srinagar/Jammu.
2. Commissioner/Secretary, Housing and Urban Development Department, Civil Sectt. Jammu.
3. Director, Local Bodies, Jammu.
4. Director, Local Bodies, Kashmir.
5. Executive Engineer, Local Bodies, Division, Jammu.
6. Firdous Ahmad Qazi, in the O/o Local Bodies, Sub Division, Doda.

.....Respondents

(ByAdvocate:-Mr. Amit Gupta, Id. Additional Advocate General
Mr. Sudesh Magotra, Id. Deputy Advocate General
Mr. K.S. Johar for Respondent No. 6, in the respective
TAs)

ORDER
[O R A L]

Justice L. Narasimha Reddy, Chairman:

These three TAs, arise out of three Writ Petitions, which filed by the applicant in the Hon'ble High Court of Jammu & Kashmir. Since they are interconnected, they are being disposed of through a common order.

2. For the sake of convenience, the facts stated in TA.No.909/2020 (SWP.No.2820/2001) are taken as the basis.

3. The applicant was initially appointed as Junior Engineer in the Directorate of Local Bodies (DLB), Kashmir. Thereafter, he went on deputation to the Jammu Development Authority. On 12.05.2000, he was repatriated to his parent organization and simultaneously, his lien was transferred to the Directorate of Local Bodies, Jammu. The 6th respondent was an Assistant Engineer in the Department of Science & Technology, Jammu & Kashmir. He came on deputation to the Directorate of Local Bodies, Jammu, in the year 1996. Shortly, thereafter he was absorbed on permanent basis. One Mr.Tariq Parvez Malik, a Junior Engineer, Directorate of Local Bodies, filed SWPNo.234/1997 challenging the absorption of the 6th respondent. The Writ Petition was disposed of on 30.05.2001. It was observed that in case the appointment of the 6th respondent was by way of direct recruitment, all eligible persons ought to have been considered and if, on the other hand, it was by way of promotion, all the Junior

Engineers in the zone of consideration, ought to have been considered. The Government was directed to re-examine the issue. On such consideration, stating to be in compliance of the order of the Hon'ble High Court, the Government passed an order dated 30.07.2001 directing that the absorption of the 6th respondent shall be treated as the one, against a direct recruitment vacancy.

4. TA No.909/2020 is filed challenging the order dated 30.07.2001.

5. The applicant filed SWP No.2585/1999, with a prayer to direct the respondents therein to consider his case for promotion to the post of Assistant Engineer. The Writ Petition was disposed of on 30.01.2001, directing the respondents to consider the claim of the applicant for the post of Assistant Engineer, vis-a-vis the persons, who are junior to him and who have stole a march over him in his absence.

6. The 6th respondent was promoted to the post as Assistant Executive Engineer through an order dated 10.09.2001. The applicant filed SWP No.2345/2001, challenging the same, and it is renumbered as TA.No.928/2020.

7. The 6th respondent was further promoted to the post of Executive Engineer, vide order dated 30.06.2010. The applicant filed SWP.No.1676/2010, challenging the promotion.

8. The applicant contends that there was no provision for deputation muchless absorption against the post of Assistant Engineer in the DLB, Jammu, and in that view of the matter, the very absorption of the 6th respondent is contrary to law. He further contends that once the initial absorption is illegal, the subsequent promotions cannot be sustained in law.

9. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Suraj Parkash Gupta & Others v. State of Jammu & Kashmir & Others** (2000(3) SCR 807) in Civil Appeal No.3034/2000, dated 28.04.2000.

10. The respondents 1 to 5, on one hand, and the 6th respondent on the other hand, filed separate counter affidavits. According to them, the applicant was in the DLB, Srinagar, before his lien was transferred to Jammu. It is also stated that various observations made by the Hon'ble High Court in the order dated 30.05.2001 in SWP.No.234/1997, was kept in view and the order dated 30.07.2001 was passed. According to them, the absorption has to be made on account of administrative exigencies, and that the applicant cannot be said to have suffered any loss

11. Various contentions urged by the applicant are denied.

12. We heard Shri Parag Sharma, learned counsel for the Applicant in all the TAs, and Shri Amit Gupta, Id. Additional Advocate General, Shri Sudesh Magotra, Id. Deputy Advocate General, for the official respondents and Shri K.S. Johar, learned counsel for Respondent No. 6, in the respective TAs.

13. The area of controversy in all these TAs is very limited and it is as to whether the absorption of the 6th respondent as Assistant Executive Engineer in the DLB, Jammu, is legal and valid. Other issues are connected to that.

14. As observed earlier, the absorption of the 6th respondent took place in the year 1996. One Mr. Tariq Parvez Malik, a Junior Engineer, Directorate of Local Bodies, filed SWP No. 234/1997 challenging the absorption of the 6th respondent. After discussing the matter at some length, the Hon'ble High Court did not interfere with the order of absorption, but directions were issued to re-examine the entire issue duly keeping in view, certain observations i.e., if the post is to be filled by way of direct recruitment, the eligible candidates must be considered and if it is by way of promotion, those who are in the zone of consideration, must also be considered. In compliance with the directions so issued, the respondents passed the impugned order dated 30.07.2001, reads as under:

“Whereas Shri Firdous Ahmad Qazi, Assistant Director, Science and Technology, was transferred and permanently absorbed in the Director Local Bodies Jammu vide Govt. order No: 223-HUD of 1996 dated: 04.10.1996 as Assistant Engineer.

Whereas the transfer/absorption of Shri Firdous Ahmed Qazi was challenged in the High Court by one Shri Tariq Parvez Malik, Junior Engineer, Local Bodies, Jammu.

Whereas the Hon'ble Court disposed of the writ petition vide judgement dated: 30.05.2001 in SWP No.234/97. The operative portion of the judgement is as under:-

'If the post was to be filled by promotion then those in service and senior to the petitioner should have been considered. If it was to be filled by direct recruitment, then the claim of all those candidate who could have applied for open competition should have been considered. Both these things have not happened. Respondent No:4 was initially sent on deputation. Thereafter, he was made permanent in the department. This in a way would be colourable exercise of powers. This petition is accordingly disposed of with a direction to the respondents to re-consider the claim of the petitioner and all other eligible persons. Thereafter, the permanent absorption of the respondent No.4 would depend upon the result of his re-consideration. Let this be done within a period of four months from the date a copy of the order passed by this court is made available to the respondents by the petitioner.'

Whereas the case of the petitioner Sh.Tariq Parvez, Junior Engineer and Firdous Ahmad Qazi, Assistant Director, has been considered in the light of the judgement dated: 30.05.2001 of the Hon'ble High Court.

Whereas Shri Firdous Ahmad Qazi is a Degree Holder in Civil Engineering and was holding a Gazetted Post in Science and Technology Department which is equivalent to the post of Assistant Engineer in Director Local Bodies.

Whereas the petitioner Firdous Ahmad Qazi being eligible for the post of Assistant Engineer has been considered vis-à-vis Sh. Tariq Parvez Malik and is permanently absorbed as Assistant Engineer against the direct recruitment quota, while as the petitioner Sh.Tariq Parvez Malik being in service Junior Engineer will be considered for the post of Assistant Engineer under rules as and when the post of Assistant Engineer under promotion quota becomes available in the department, in the category of Diploma Engineers.

Now, therefore, in compliance with the judgement dated:30.05.2001 passed by the Hon'ble High Court, the case of petitioner Sh.Tariq Parvez Malik and Sh.Firdous Ahmad Qazi stands considered

and Sh.Firdous Ahmad Qazi is hereby permanently absorbed as Assistant Engineer in the Local Bodies Jammu against the direct recruitment quota.

15. The entire issue turns around the manner in which the 6th respondent became part of the DLB. Extensive litigation ensued in this behalf and ultimately he was adjusted against a vacancy meant for direct recruitment. Assuming that there is no provision for deputation or absorption for the post of Assistant Engineer in the DLB, the fact remains that the event took place way back in 1996. The applicant was in a totally different organization, at that time. As observed earlier, he was a Junior Engineer in the DLB, Srinagar, and from there he went on deputation or otherwise, to the Jammu Development Authority. It was only on 12.05.2000, he became part of the Directorate of Local Bodies, Jammu, that too as a Junior Engineer. He filed SWP.No.2585/1999 with a prayer to direct the respondents to consider his case for promotion to the post of Assistant Engineer. It must be kept in mind that the only direction issued therein was to consider his case for promotion to the post of Assistant Engineer, in case any person junior to him, stole a march over him when he was on deputation. The applicant does not contend that the 6th respondent was junior to him, at any stage. As a matter of fact, he was on deputation to Jammu Development Authority, at that point of time. Obviously, because he did not become part of DLB, he did not make any protest, vis-à-vis the 6th respondent.

16. Once the applicant was not in the DLB Jammu, till 12.5.2000, the question of his challenging the absorption of the 6th respondent, which took place in the year 1996, does not arise. Assuming that the impugned order dated 30.07.2001, runs contrary to the observations made by the Hon'ble High Court in SWP.No.234/1997, at the most, there would be an occasion to file a Contempt case, that too, by the person, who filed a Writ Petition. The applicant was the one who filed it.

17. Reliance placed upon the judgment of the Hon'ble Supreme Court in Suraj Parkash Gupta (supra). That pertains to inter se seniority between direct recruits on one hand and promotes on the other decided. Their Lordships held that a direct recruit cannot claim any seniority over the promotee, who was appointed to that very post, earlier to him. Other observations in relation to that were also made. We do not find any relevance of the judgment to the controversy in this batch of cases.

18. The TAs are accordingly dismissed. There shall be no order as to costs.

(A.K. BISHNOI)
MEMBER (A)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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