

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1280 of 2000

Allahabad this the 14th day of December, 2001

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj Gen K.K. Srivastava, A.M.

O.P. Tiwari, Son of Sri Har Prasad Tiwari, presently posted as Assistant Engineer, Planning in Allahabad Central Circle, C.P.W.D. (Central Public Works Department) 841, University Road, Allahabad and residing at 4/3 C.P.W.D. Colony, Sulemsarai, Allahabad.

Applicant

By Advocate Shri S.D. Tiwari

Versus

1. Union of India through the Secretary, Ministry of Urban Development, C Wing, Nirman Bhawan, New Delhi.
2. The Director General of Works, C.P.W.D., A Wing, Nirman Bhawan, New Delhi.
3. Sri B.B.L. Gupta, Executive Engineer 'T' Division, C.P.W.D., A-141-145, Sarojini Nagar, New Delhi.
4. Sri M.K. Ramrakhiani, Executive Engineer, Central Stores, Division-II, C.P.W.D. A.W.H. Compound, Netaji Nagar, New Delhi.
5. Sri I.J. Thappar, Executive Engineer (P & A), Ghaziabad Central Circle, C.P.W.D., C.G.O.L. Hapur Road, Ghaziabad.

Respondents

By Advocate Shri G.R. Gupta

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O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for quashing the order of reversion dated 03.11.1999 filed as annexure-2 to the O.A.

2. The facts giving rise to this application are that the applicant is a diploma holder in Civil Engineering. He was appointed as Junior Engineer(Civil) on 27.04.77 in Central Public Works Department (for short C.P.W.D.). The applicant was promoted as Assistant Engineer on 17.07.84. The applicant was further promoted as Executive Engineer(Civil) vide D.G.W.Order No.229 of 1998 issued on 13.11.98. The order has been filed as annexure-1. The name of the applicant is mentioned at serial no.17. However, by the impugned order dated 03.11.1999 (annexure-2) the applicant has been reverted from the post of Executive Engineer(Civil). Aggrieved by which he has approached this Tribunal.

3. Submission of the learned counsel for the applicant is that admittedly the applicant was promoted to the post of Executive Engineer against a vacancy which occurred after 29.10.1996 and, as such, the promotion of the applicant was under 1996 Recruitment Rules. The claim on behalf of the applicant is that under 1996 Rules the applicant is entitled to be considered for regularisation as Executive Engineer against 33 $\frac{1}{3}$ % post as diploma holder. It has also ^{been} contended that during the pendency of this O.A. the applicant

has obtained the Degree in Engineering (A.A.M.I.E.) and on which basis he is entitled to be considered for promotion as Executive Engineer under 1996 Recruitment Rules. Learned counsel for the applicant has further submitted that the Judgment of Hon'ble Supreme Court in the case of J.N. Goel and Others Versus Union of India and Others reported in (1997) 2 S.C.C. page 440, clearly provided that in respect of the vacancies which occurred after Rules of 1996 (29.10.96), regularisation of diploma holder Assistant Engineers who are working as Executive Engineer on ad hoc basis will have to be made in accordance with the provisions of the 1996 Rules. The submissions in short is that the vacancy against which the applicant was promoted as Executive Engineer on ad hoc basis was not a vacancy to which 1954 Rules could be applied and for this reason the applicant could not have been reverted, instead his claim for regularisation should have been considered. Shri G.R. Gupta, learned counsel for the respondents on the other hand submitted that the applicant was considered for promotion as Executive Engineer under 1954 Rules, however, the D.P.C. did not approve his name, consequently he has been reverted and order does not suffer from any error of law. It is also submitted that the Principal Bench in identical cases has dismissed the applications filed by the Executive Engineer alongwith applicant. He has invited our attention to the orders of the Principal Bench filed alongwith counter-reply. Learned counsel for the applicant on the other hand submitted that in ^{Concluding} ~~opinion~~ para of the Judgment it is mentioned that diploma holder

Executive Engineer were appointed on ad hoc basis under 1996 Recruitment Rules and the case of the applicant is clearly distinguishable.

4. We have carefully considered the submissions of counsel for the parties.

5. The Hon'ble Supreme Court in the Judgment of J.N.Goel and Others(supra) in para-15 has concluded as under:-

"15. In O.A.No.704 of 1988 which was filed by the graduate Assistant Engineers, the relief sought was confined to future promotions of Diploma-holder Assistant Engineers to the cadre of Executive Engineers on regular as well as ad hoc basis. The scope of Civil Appeal No. 5363 of 1990 filed by the graduate Assistant Engineers is, therefore, confined to promotions made to the cadre of Executive Engineers from amongst diploma holder Assistant Engineers after the date of filing of O.A.No.704 of 1988 in the Tribunal. It has been pointed out that subsequent to the filing of O.A.No.704 of 1988 before the Tribunal some orders were passed in 1994 whereby regular appointments have been made to the cadre of Executive Engineers from amongst Assistant Engineers, degree holders as well as diploma holders. It has also been stated that most of the diploma holder Assistant Engineers who were regularly appointed as Executive Engineers under these orders have already retired from service. The grievance of the graduate Assistant Engineers is mainly confined to diploma holder Assistant Engineers who have been working as Executive Engineers on ad hoc basis. Since the 1954 Rules were in operation prior to the promulgation of the 1996 Rules, regular promotion on the post of Executive Engineers against vacancies which occurred prior to the promulgation of the 1996 Rules will be governed by

the 1954 Rules. If any of the appellants in Civil Appeal No. 5363 of 1990 feels aggrieved by the regular promotion of any of the diploma holder Assistant Engineers to the cadre of Executive Engineers after the filing of O.A. No.704 of 1988 and prior to the coming into force of the 1996 Rules, he may agitate the said grievance in the competent forum. The promotion of diploma holder Assistant Engineers who have been promoted on the post of Executive Engineer on ad hoc basis, will have to be reviewed by the authorities and regular promotions against vacancies which occurred prior to the promulgation of the 1996 Rules will have to be made in accordance with the 1954 Rules. Regularisation of diploma holder Assistant Engineers who are working as Executive Engineers on ad hoc basis against vacancies which occurred after the promulgation of the 1996 Rules will have to be made in accordance with the provisions of the 1996 Rules."

6. From para-15 of the Judgment it is clear that the Hon'ble Court made distinction between the appointments against post 29.10.1996 vacancies and the post which had fallen vacant before 29.10.1996. It has been clearly mentioned that the regularisation of diploma holder Assistant Engineers who are working as ~~Assistant~~^{Executive} Engineer on ad hoc basis against the vacancies which occurred after promulgations of the 1996 Rules will have to be made in accordance with the provisions of 1996 Rules. It is not the case of the respondents that the applicant has ever been considered for regularisation under 1996 Rules as observed by the Hon'ble Supreme Court in the Judgment mentioned above. In para-8 of the counter-affidavit the respondents have clearly admitted that the applicant

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was promoted to the post of Executive Engineer on ad hoc basis vide order dated 13.11.1998 in the post 29.10.1996 vacancies existing upto 31.03.1998 in accordance with the 1996 Rules. In view of this clear admission, in our opinion, the applicant could not be reverted before he was considered for regularisation on the post of Executive Engineer under 1996 Rules. The applicant's non selection for the promotion under 1954 Rule could not come in his way as consideration for promotion under 1954 Rules and 1996 Rules are entirely different. Under 1954 Rules as the applicant was a diploma holder he could be considered for promotion to the post of Executive Engineer only in case he had Outstanding service record, which is not the criterian under the 1996 Rules. In these circumstances, in our considered opinion, the order of reversion of the applicant is not justified and is also not in consonance with the Judgment of Hon'ble Supreme Court in J.N. Goel and Others-case(supra) and the applicant is entitled for the relief.

7. For the reasons stated above, the O.A. is allowed. The impugned order (No.203/99) dated 03.11.1999(annexure-2) is quashed so far as the applicant is concerned. The respondents are directed to consider the claim of the applicant for regularisation as Executive Engineer(Civil) in accordance with 1996 Rules. No cost.



Member (A)



Vice Chairman