

11/9/14

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No. 209/2003

Date of decision: 13.04.2005

Hon'ble Mr. Kuldip Singh, Vice Chairman,

Hon'ble Mr. G.R.Patwardhan, Administrative Member.

Ram Niwas Meena, S/o shri Gitorilal Ji Meena, aged 43 years, resident of CPWD Colony, Manwa Kheda Road, Hiren Magri, Sec. 4, Udaipur, and Presently working as A.En. CPWD Colony, Manwa Kheda Road, Hiren Magri, Sec. 4 Udaipur.

: Applicant.

Rep. By Mr. R.S. Saluja : Counsel for the applicant.

VERSUS

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

2. The Director General (Works) Directorate General of Works, CPWD, Nirman Bhawan, New Delhi.

3. The Deputy Director, Directorate General of Works, CPWD, Nirman Bhawan, New Delhi.

4. Shri K.P. Singh, A.En. (Electrical) C/o Director General (Works) Directorate General of Works, CPWD, Nirman Bhawan, New Delhi.

5. Union Public Service Commission, through Secretary, UPSC Dholpur House, New Delhi.

: Respondents

rep. By Shri Arvind Samadariya: Counsel for respondents 1 to 3 & 5

None present for respondent No.4

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

/s/

I/19

The applicant has filed this O.A assailing the order dated 08.08.2003(Annex. A-1/1), vide which his representation to assign appropriate seniority has been turned down.



2. The facts as alleged by the applicant are that he belongs to S.T. Community and was appointed as Junior Engineer(J.En for short) in the respondents department with effect from 16.02.1985. It is further submitted that promotion to the post of Assistant Engineer (A.En for short) is effected by seniority and merit based on selection test and examination of records. After the applicant had jointed the department as J.En. A Limited Departmental Competitive Examination (LDCE for short) for promotion to the post of A.En was conducted in the year 1985. But the applicant could not appear in the same. Again another LDCE for the post of A.En was conducted in the year 1989, but the applicant could not qualify in the same since he had secured only 21% marks and hence he was not considered for promotion. Another LDCE examination was conducted in the year 1992 and the applicants succeeded in the same and he was promoted to the post of A.En on 27.09.93. In the year 2002, a provisional seniority list of A.En (Electrical) was published and the applicant was assigned seniority position at Sl. No. 789 in the said seniority list whereas the name one K.P. Singh (Respondent No. 4 in the O.A), who was also promoted to the post of A.En on 27.09.93, was shown at Sl. No. 713, on account of the fact that he was initially appointed as J.En. on 09.11.79. The provisional seniority list is at Annex.A/1. On coming to know this, the applicant submitted a representation dated 01.07.2003(Annex. A/3) on the basis of the fact that he has been promoted as A.En against back log vacancies of 1985-1992 as

in the earlier two recruitment years no person belonging to ST community was available to be promoted to the post of A.En Elec. in the department. The applicant further submitted that in similar circumstances, Original Application No. 1474/95 was preferred by **Shri S.K. Dass and others** before the Principal Bench, which came to be allowed with the following observations:



" In the result, the application succeeds and is allowed. The respondents are directed to follow the 40-point roster for each batch of vacancies and give the applicants notional promotion as Assistant engineers (Electrical) in their turn in the panel against quota of reservation in each batch. They shall be entitled to the consequential benefits like seniority in the cadre of Assistant Engineers in accordance with the rules, and instructions. Necessary action shall be taken within a period of three months from the date of receipt of a copy of this order. Parties to bear their own costs. "

The applicant further contended that the mechanism adopted by the respondents with regard to the applicant is different than the one adopted in the cases of Shri G.C. Sirra (Sl. No. 653), Shri R.R. Dass (Sl. No. 455) and Shri H.S. Nagraj (sl. No. 657) and so on. It is further contended that there are various other persons who have been assigned seniority against the back log vacancies. Thus the applicant submits that he had been given different treatment, he is entitled for up-gradation of seniority. Hence he prays for a direction to the respondents for placing him in the seniority list of A.En at the appropriate place and the assignment of seniority to him at Sl. No. 789 may be declared as illegal and quashed.

3. The respondents are contesting the O.A. The official respondents have taken a preliminary objection to the effect that the promotion to the post of A.En in the respondent department is based on the recommendations of Union Public Service Commission (UPSC for short) and since the applicant has not impleaded the UPSC as respondent in this O.A and the O.A is liable to be dismissed on this

[Handwritten signature]

I/17

ground alone. It is further stated that the applicant has also not challenged the recommendations of UPSC and hence on that score also the O.A is liable to be dismissed as not maintainable.

4. At this stage we may refer Misc. Application No. 63/2004, for impleading UPSC as respondent. After hearing both parties, this Bench of the Tribunal vide its order dated 01.07.2004 allowed the MA and made the following observations:



" We notice that as per the normal rules the UPSC does not fix any one's seniority, however, in the interest of justice and to have the proper adjudication of this case, we permit the applicant to implead the UPSC in the array of the respondents as respondent No. 5 the MA stands disposed of accordingly."

Thus the question of fixing seniority by the UPSC has been already dealt with, as this Bench of the Tribunal had observed that UPSC merely recommends and not fix the seniority and seniority is to be fixed by the respondents.

5. Now coming to the merits of this case, the respondents have taken the plea that so far the ST back log vacancies are concerned it is stated that ST back log vacancies were available but no suitable ST candidate was available to be recommended by the UPSC, for promotion as A.En. on the basis of LDCE examination of 1989. It is further submitted that the representation submitted by the applicant had been examined in detail by the concerned authorities in the department and a speaking order was passed conveying the decision vide (Annex R/1= Annex. A-1/1). It is further submitted that the vacancies had been notified as per the 40 point roster maintained by the department and persons have been promoted as per the recommendations of the UPSC and persons at Sl. No. 653, 655, 657

I/18

were promoted on the basis of Seniority quota and the seniority of examination quota candidates cannot be compared with their counterparts of seniority quota candidates. The applicant was promoted as A.En on the basis LDCE of 1992 and had been rightly assigned the seniority as per the recommendations of UPSC. It is stated that the O.A deserves to be dismissed.

6. A short reply has been filed on behalf of UPSC; wherein it is stated that UPSC only conducts the examination and publish the results and the further necessary action for determining the seniority is to be done by the cadre controlling authority i.e. the respondents department. UPSC has also prayed for dismissal of the O.A.



We have heard the learned counsel for the parties and carefully perused the records and pleadings of this case. The learned counsel for the applicant mainly relied on the judgement rendered by the Principal Bench in O.A. No. 1474/95 [**S.K. Dass and ors. Vs. UOI and ors.** - decided on 24.12.97. In the said O.A also the dispute was regarding the seniority of A.En (Elec.). The applicants in the said O.A were recruited as Jen. In the year 1982. They have also appeared in the LDCE for promotion to the post of A.En. in the year 1983 and they belong to SC community and were shown in the seniority list from 31.03.84 to 17.12.86 and the general candidates were placed en bloc above them from 22.11.83 to 18.11.85, meaning thereby that the roster point was not applied. The applicants therein had relied on an earlier decision in the case of **R.K. Nafaria vs. UOI and ors.** [O.A. No.605/87 decided on 18.09.92.] The Tribunal had held that A.En (Civil) who were promoted in the earlier examination were given the benefit of 40-point roster as per the OM issued by the

I/19

Ministry of Home Affairs dated 29.05.74. The respondents in O.A. No. 1474/95 had controverted the legality of **R.K Nafaria's** case and submitted that the OM dated 24.05.74 did not apply to the case of LDCE and it was meant only for direct recruitment through examination. But the Tribunal negated the contentions of the respondents and the observations made in **Nafaria's** case was relied upon, which has been reproduced herein also:



" The main point which falls for decision is whether, when vacancies are filled up, at different points of time in batches from a larger panel, the reservation points can be ignored for each batch in preference to the position in the panel where Scheduled Caste and Scheduled Tribe candidates occupy much lower position, While the learned counsel for the applicants states that for each batch the roster points should be taken into account of 40 point or 100 point roster as prescribed for determining the number of reserved vacancies, the learned counsel for the respondents argues that the sequence of filling up vacancies in one lot or in batches should follow the sequence in the panel. This argument goes counter to the spirit of reservation. The roster points whether on a 40 point or 100-point basis is a running roster, which has to be taken into account as and when the vacancies are filled up. For each batch covering a particular span points, the number of vacancies reserved for Scheduled castes and Scheduled Tribes is determined by the reserved points in the roster which fall within that span. Therefore, in the first batch of 50 vacancies filled up in November 1983, the respondents should have applied the roster and appointed the SC/ST candidates from the panel in the order of their position in the panel. This should have been followed in the second batch of 45 vacancies filled up in December, 1983 to the number of reserved vacancies arising from the roster should have been added the back log of carried forward reserved vacancies from 1978-79 and not more than 50% vacancies in each batch should have gone to the SC/ST candidates in the panel of 1982.... "

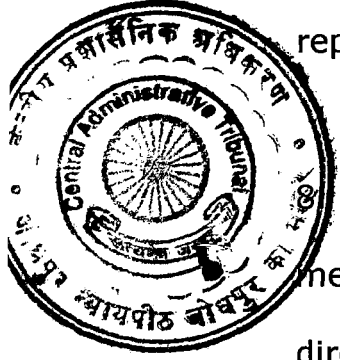
(Emphasis supplied)

In this case also, we find from Annex. R/2 as well as from the reply of UPSC that UPSC has merely recommended the candidates and placed SC/ST candidates en bloc below the general candidates and the roster point does not seem to have been applied and the judgement given in **S.K. Dass** case supra squarely applies to the facts of present case also as the applicant belongs to ST community and according to the respondents ST back log vacancies were carried forward since no ST candidate was available. Hence in our considered view, the applicant is entitled to the benefit of reservation as per roster point and also of carried forward vacancies. Further the respondents have

I/20

I/20

erroneously rejected the representation of the applicant in a mechanical way since the respondents did not apply the roster point and they rejected the representation based on the recommendations of UPSC who have clearly stated in their reply that seniority is to be fixed by the department and not by the UPSC. Thus the rejection of representation is contrary to the stand taken by UPSC.



In view of the foregoing discussions, the O.A has sufficient merits and deserves to be allowed and accordingly we do so. We direct the respondents to re-determine the seniority of the applicant by following the appropriate roster, which was applicable at the relevant point of time and re-fix the seniority of the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

A handwritten signature in black ink, appearing to be "G.R. Patwardhan".

(G.R. Patwardhan)
Administrative Member

A handwritten signature in black ink, appearing to be "Kuldip Singh".

(Kuldip Singh)
Vice Chairman.

Jsv.

Cory Reur
19-4-05

Cory Reur
19-4-05
Bacofib
Adw