

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.19/2013

Jodhpur this the 6th day of January, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

1. C.R.Chahilya s/o Shri Adu Ram Chaheliya, aged 57 years r/o Jagjeevan Ram Colony, K.U.M. Mandore Road, Jodhpur, presently working on the post of Assistant Engineer, Central Ground Water Board, Division-XI, Jodhpur.
2. Arjun Singh Gehlot s/o Shri Ram Lal Gehlot, aged 57 years, r/o Chainpura Chitravta Post Punjla Mandore, Jodhpur presently working on the post of Assistant Engineer, Central Ground Water Board, Division-XI, Jodhpur.

.....Applicants

By Advocate: Shri Vinay Jain

Versus

1. The Union of India through Secretary to the Government of India, Ministry of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Chairman, Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad.
3. The Administrative Officer, Ministry of Water Resources, Central Ground Water Board, Bhujal Bhawan, NH-IV, Faridabad.
4. The Union Public Service Commission through Secretary, Dholpur House, Shahjahan Road, New Delhi.

.....Respondents

By Advocate : Ms. K. Parveen

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The present application has been filed by the applicants against the DPC proposal vide letter dated 14.9.2012 (Ann.A/1) for the post of Assistant Executive Engineer and have prayed for the following reliefs:-

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That applicants may be permitted to present the joint application on behalf of two applicants under rule 4(5) Central Administrative Tribunals Act, 1957.

- i. That Original Application may kindly be allowed.
- ii. By appropriate writ, order or direction, the letter dated 14.9.2012 may kindly be quashed and set aside and respondent departments be directed to forward the name of applicants for consideration as per relaxation, further respondent department be directed to determine the vacancies of Assistant Engineer yearwise due to Order dated 11.01.2008 and convene review DPC and accordingly grant the benefits to applicants with all consequential benefits.
- iii. That, any other appropriate direction or order which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly be granted.
- iv. Cost of this application may kindly be granted.

2. Short facts, as stated by the applicants, are that applicant No.1 was promoted to the post of Assistant Engineer (Group-B Gazetted) from the post of Senior Technical Assistant (Mechanical) on the recommendation made by the DPC vide order dated 9.1.2008 (Ann.A/2) and applicant No.2 was promoted to the post of Assistant Engineer on recommendations made by DPC vide order dated 23.2.2009. The Central Ground Water Board Assistant Executive Engineer Recruitment Rules, 2004 were framed wherein as per Rule 11, the posts of Assistant Executive Engineer are filled 75% by promotion and 25% by direct recruitment. As per Rule 12 of these Rules, out of 75% half portion i.e. 37.5% are filled from Assistant Engineer who are having two years of regular service in the grade and possessing atleast diploma in Engineering and the remaining 37.5 % are filled from Driller Incharge having two years of regular service in the grade and possessing atleast diploma. It has been averred that a review DPC for the post of Assistant Executive Engineer was convened and by which employees working on the post of Assistant Engineer were recommended for promotion on the date when they are eligible and they have been granted the benefit

from the date they are eligible and are promoted from that year. The respondent department passed further order dated 11.1.2008 by which revised seniority list of Assistant Executive Engineer was issued in pursuance of promotion order dated 11.1.2008. The applicants submit that after passing of order dated 11.1.2008, the respondent department should afresh determine the vacancy of Assistant Engineer year-wise and accordingly review DPC should be convened and employees should be considered accordingly as per seniority. The applicants have also averred that vide order dated 11.1.2008 Assistant Engineers have been promoted to the post of Assistant Executive Engineer in the respective year then certainly in those respective years vacancies arose and the employees who are junior to the employee who have been promoted vide order dated 11.11.2008 are required to be considered for promotion as per their seniority in those years in which vacancy arose.

2.1 The applicant No.1 also made representation to respondents in which it was requested that as timely DPC has not convened and further belated promotion has been made from Assistant Engineer to Assistant Executive Engineer, therefore, the applicant were given delayed promotion, hence the recommendations which have been made for relaxation has rightly been made and the applicants should be considered for the post of Assistant Executive Engineer for the vacancy of the year 2010-2011.

2.2 It has been averred that vacancies are to be determined year-wise and the employees should be promoted to the post as per their seniority in the respective years when they became eligible. In this case, the respondent department has not convened the DPC in time and due to this applicants were not able to get promotion in time to the post of Assistant Executive Engineer. The applicants submit that in pursuance of judgment rendered by Hon'ble Supreme Court, a review DPC was convened by which

all 23 employees working on the post of Assistant Engineer were promoted to the post of Assistant Executive Engineer on the date from which they were eligible and from that date only they have to be promoted and granted all notional benefits. The applicants further submit that when all the 23 employees have been promoted in their respective years, which means that in respective years the vacancies of Assistant Engineer became vacant and applicants are also entitled to be promoted in respective years as per their seniority for which review DPC should be convened and the applicants are entitled to be promoted to the post of Assistant Engineer in the year when vacancies arose as a consequence of promotion to the post of Assistant Executive Engineer.

2.3 When the grievance of the applicants has not been redressed, the applicants have filed the present OA for the reliefs as stated in para-1 above.

3. By filing reply the respondents have denied the claim of the applicants. It has been submitted that a DPC proposal for filling up 8 vacancies of Assistant Executive Engineer (AEE) pertaining to the recruitment years 2008-2009 and 2009-2010 was sent to the Ministry. One vacancy pertains to the recruitment year 2008-2009 and 7 vacancies pertain to the year 2009-2010. As per the vacancy based roster register, out of 8 vacancies, 4 vacancies were to be filled up from the feeder grade of Assistant Engineer (AE) and 4 from the feeder grade of Drillers Incharge (DIC). But as per the seniority list of AEs as on 1.1.2008 and 1.1.2009, only two AEs were eligible for promotion to the post of AEE, therefore, remaining 2 vacancies of AE were filled up from amongst the DICs, keeping in view the existing provisions of recruitment rules. The respondents have submitted that as per order No.47 of 2007 dated 11.1.2008, 23 officers were promoted to the post of Assistant Executive Engineer from the dates they were eligible

for promotion, But promotion were granted to them only on notional basis, hence no post of Assistant Engineer was vacant from the date they were given promotion order. The vacancy actually occurred on the dates when Assistant Engineers assumed the charge of the post of Assistant Executive Engineer against which DPC had already been convened and promotion orders have already been issued. Hence, there are no vacancies of Assistant Engineer as mentioned by the applicants. It has been further submitted that as per the order of CAT-Principal Bench, New Delhi in MA No.2694/00 arising out of OA No.1168/94 filed by Shri I.P.Awasthi and others and as per the recommendations of the review DPC, the promotion of Assistant Engineers were awarded against the year of vacancy on notional basis which indicates that no resultant vacancy occurred. It has also been submitted that a revised seniority list was issued on the basis of the review DPC for the post of Assistant Executive engineer after implementation of the judgment of Hon'ble Supreme Court in OA No.1168/94 dated 16.2.2006. The respondents have further submitted that against 5 vacancies of Assistant Executive Engineer (4 pertaining to the year 2010-11 and 1 to the year 2011-12), no Assistant Engineer was fulfilling the requisite residency period as on crucial date i.e. 1.1.2010. However, some Assistant Engineers were short of qualifying services from 8 to 30 days, therefore, the Ministry was requested to grant them relaxation in the residency period and the Ministry has requested the DOP&T for one time relaxation and the DOP&T conveyed its approval to the extent of 8 to 30 days vide its note dated 24.8.2010. Accordingly, proposal was sent to the UPSC but the UPSC did not agree stating that the DPC proposal for consideration of Assistant Engineer who do not fulfil the eligibility residency period in relaxation of the rules, is not in conformity with the statutory rules and directed to revise the proposal strictly in accordance with the rules. Accordingly, the proposal was

again revised and sent to the Ministry. The respondents by way of reply have submitted that action of the answering respondents is just and proper being in accordance with the rules and policy on the subject, therefore, the applicants are not entitled to any relief.

4. Head both the parties and perused the material available on record. So far prayer for filing joint OA is concerned, the same is allowed and the applicants are permitted to pursue the OA jointly.

5. Counsel for the applicants contended that the applicants have been promoted from the post of Senior Technical Assistant to Assistant Engineer, and the applicant No.1 was promoted w.e.f. 09.01.2008 whereas the applicant No.2 was promoted w.e.f. 23.02.2009. It has been further contended that the applicants have not been promoted to the post of Assistant Executive Engineer from the post of Assistant Engineer because they have not completed 2 years' regular service in the grade whereas vide order dated 11.01.2008 (Annexure-A/4) issued in pursuance to review DPC, 23 Assistant Engineers have been promoted to the post of Assistant Executive Engineer w.e.f. the date shown against their names in Annexure-A/4. At Sl. No. 1 namely Shri K.R.K. Ganpati was promoted w.e.f. 10.09.1991 and the last person at Serial No.23 namely Shri Equbal Ahmed was promoted w.e.f. 07.02.2000. It has been further contended that the consequential review DPC has not been held by the respondent department for promotion to the post of Assistant Engineer from the post of Senior Technical Assistant. These promotions to Assistant Executive Engineer were withheld due to long pendency of the litigation regarding the amendment of the relevant rules in 1992 by which 20% promotions were to be made for the post of Assistant Executive Engineer from the cadre of Assistant Engineer and 80% from the cadre of Driller Incharge, and that was challenged before the Central Administrative and finally before the Hon'ble

Apex Court in Civil Appeal No.8568/2002 where the Hon'ble Apex Court upheld the judgment of the Central Administrative Tribunal. It has been further contended that in consequence thereof, the respondent department held a review DPC and passed the order at Annexure-A/4, but the respondent department ought to have held the review DPC for promotion to the post of Assistant Engineer from the post of Senior Technical Assistant, because from the dates shown at Annexure-A/4 the posts of Assistant Engineers fell vacant and the applicants are entitled to have the year-wise review DPC against those posts of Assistant Engineers which became vacant after promotion of the Assistant Engineers to Assistant Executive Engineers w.e.f. different dates vide Annexure-A/4.

6. Per contra, counsel for the respondents contended that there were no vacancies available at that time and as the promotions vide Ann.A/4 have been made with retrospective effect on notional basis, no actual vacancies of Assistant Engineers can be said to be existing. She further contended that as the applicants have not completed two years' regular service for the grade, therefore, they are not entitled to have the promotions from the post of Assistant Engineer to Assistant Executive Engineer.

7. We have considered the rival contentions of both the parties and also perused the relevant records. The respondents in their reply averred that they have recommended the names of the applicants for extending the relaxation in the case of applicants, but the Union Public Service Commission did not accept the proposal and it has been further contended that as the notional benefits were given to the persons shown in Annexure-A/4, therefore, no vacancies arose in the cadre of Assistant Engineer.

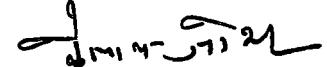
8. It is seen that the Annexure-A/4 does not show reference to any notional benefits to the officers at Sl. No.1 to 23 and, therefore, naturally the

vacancy arose from the date(s) of promotion shown against them from which they have been promoted to the post of Assistant Executive Engineers. This fact can also be verified from Annexure-A/5 because even after retirement of some persons, the benefits have been extended to those persons. Therefore, in our considered view, flowing from the review DPC and orders of promotion to the post of Assistant Executive Engineer as at Ann.A/4, the respondent department ought to determine the year-wise vacancies of Assistant Engineers afresh and accordingly review DPC for Assistant Engineer from the post of Senior Technical Assistant be convened and employee be considered accordingly as per rules and be extended similar benefits as those extended to Assistant Executive Engineers as at Ann.A/4.

9. Therefore, the order dated 14.09.2012 (Annexure-A/1) is quashed and in view of the discussions made hereinabove, the respondents are directed to conduct the review DPC for promotion to the post of Assistant Engineer (from Senior Technical Assistant) after fresh determination of year-wise vacancies flowing from the promotions made to the post of Assistant Executive Engineer (from Assistant Engineer) vide Ann.A/4, and the applicants be considered for the same as per eligibility and rules and be extended similar benefits as those extended to Assistant Executive Engineers as per Ann.A/4. Thereafter, the respondents should hold further promotions to the post of Assistant Executive Engineer according to rules and consider the case of the applicants as per due eligibility.

10. The OA stands allowed, as stated above, with no order as to costs.


 (Meenakshi Hooja)
 Administrative Member


 (Justice K.C. Joshi)
 Judicial Member

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