

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 540 OF 2006

Monday, this the 26th day of September, 2011

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

- | | | |
|----|---|----------------|
| 1. | C. Sureshan
Assistant Engineer (Civil)
Central Public Works Department
Cannannore | |
| 2. | K.V.Dhanamjayan
Assistant Engineer (Civil)
Central Public Works Department
Payyannur | ... Applicants |

(By Advocate Mr. K.N.Kuttan)

versus

- | | |
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| 1. | Union of India represented by Director General of Works
Central Public Works Department
Government of India
Nirman Bhawan, New Delhi |
| 2. | The Deputy Director of Administration
Directorate of General Works,
Central Public Works Department
Nirman Bhawan, New Delhi |
| 3. | S.Rajendra Prasad, E.E(P&A)
Hyderabad Central Circle II
CPWD, Nirman Bhavan, Sulthan Bazar
Hyderabad – 500 095 |
| 4. | Santosh Kumar Awasthi, E.E(Q&A)
North Region, CPWD
Seva Bhavan, New Delhi |
| 5. | Kamaljit Singh E.E(Plg)
GNC, CPWD, 3 rd Floor, Kendriya Nirman Sadan
Gandhi Nagar, Sector X/A, Near CHA-3 Circle,
Gujarat - 382043 |
| 6. | R.Gopalakrishnan, E.E(Admn)
Bangalore Central Circle
CPWD, Kendriya Sadan, Koramangala
Bangalore |

7. R. Chandrasekharan, E.E(AA)
I.T.Department, Mittal Court,
Nariman Point, Mumbai – 21
8. Sankar Dutta , E.E(P&A)
Delhi Central Circle No.12
CPWD, I.P.Bhavan, New Delhi
9. Tej Bali Singh, E.E(Plg)
BFR Circle, CPWD, Acharya JC Bose Road
Kolkatta – 700 002
10. Sasi Bhushan, E.E(AA)
CPWD Training Institute,
Kamala Nehru Nagar, Hapur Road,
Gaziabad – 201 002
11. Mahesh Chandra, E.E(AA)
I.T.Department, Kendriya Sadan, 4th Floor
A Wing, 17th Main, 2nd Block, Koramangala
Bangalore – 560 034
12. Anil KR.Kulshrestha ,E.E(AA)
I.T.Departemnt, A Wing, 3rd Floor
Mittal Court, Nariman Point
Mumbai – 400 021
13. Vinaykumar Katyar, E.E(P&A)
Presidents Estate Circle,
President Estate, New Delhi
14. Kamal Singh, E.E(CS)
OSO, CPWD, E Wing, 1st Floor
Nirman Bhavan, New Delhi
15. M. Faneendranath, E.E(HQ), SZII,
CPWD, 1st Floor, Nirman Bhavan, Sulthan Bazar
Hyderabad – 500 095
16. Omakr Singh Chauhan, E.E(P&A),
Border Fencing Circle I, CPWD,
Prabhai Bhavan Society, Thirad
Gujarat – 385 565
17. Aswin Mittal, E.E(CS),
CSO, CPWD, E Wing, 1st Floor,
Nirman Bhavan, New Delhi
18. Narendra KR Jain
E.E(Valuation), CPWD, IT Department
C – 70 Vinay Champa, Bhagwan Dar Road,
Jaipur – 302 005
19. Sunil Parashar, E.E(Plg),
Outer Delhi Zone,
Sewa Bhavan, R.K.Puram,
New Delhi - 66

20. Sreenivas Chand Jain, E.E.(CDO),
CPWD, Nirman Bhavan, 'A' Wing
New Delhi - 66
21. Arun Kumar, E.E. (TLC)
ADG North Region,
CPWD, Sewa Bhavan,
R.K.Puram, New Delhi - 110 066 ... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 26.09.2011, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicants are Diploma holders who subsequently while in service improved their qualification by taking an Engineering Degree. The applicants commenced their service as Junior Engineers. They were subsequently promoted as Assistant Engineers (Civil) in the Central Public Works Department in 1993. They were Diploma holders and ranked at Sl.No. 2106 and 2124 respectively in the rank of Diploma holders in the seniority list issued by 2nd respondent vide O.M.No.29/1/2002-EC-III dated 04.06.2002. The 3rd respondent placed at Sl.No. 2131 is junior to the applicants. Respondents 4 to 22 are further juniors. As per orders impugned in this OA dated 12.05.2006, the 2nd respondent has promoted Respondents 3 to 22 superseding the applicants presumably for the reason that the applicants had acquired Degree in Engineering while continuing as Assistant Engineers and did not have the prescribed service after acquiring graduation. Inter-alia it is contended that the said stand is unjust and illegal. The applicants therefore seek for an appropriate direction to call for and set aside Annexure A-1 Office Order No.99 of 2006 dated 12.05.2006, issued by the 2nd respondent in so far as and to the extent to which, Diploma holders who are juniors to the applicants like respondents 3 to 22



are thereby promoted to the posts of Executive Engineers and to consider the applicants for promotion to the post of Executive Engineers with effect from the dates on which their immediate juniors were promoted as Executive Engineers with all consequential benefits and pass such further orders as may be deemed just and expedient in the circumstance of the case.

2. As per Schedule-II of the Recruitment Rules provides that the post of Executive Engineer (Civil) is to be filled up by promotion as per the ratio from the feeder positions, named. Of the available posts, 33-1/3 percent is reserved for the category of Assistant Executive Engineers (Civil) who have put in four years of regular service. Another 33-1/3 percent were to be from Assistant Engineers (Civil) having eight years regular service in the grade who possess degree in Civil Engineering. The balance, viz. 33-1/3 percent are to be filled up by Assistant Engineer (Civil) with ten years regular service in the grade and who were having Diploma in Engineering from a recognized University/Institution. A combined seniority list is maintained, and simultaneously an eligibility list, taking notice of the quota earmarked to the three groups also exists. The second and third groups are constituted by promotees, as the feeder category. The grievance of the applicants is that possession of a degree, subsequently in addition to the already held diploma, made them as ineligible for promotion as on the date. It is their contention that although they had acquired Degree in Engineering, so as to ensure an equitable treatment, it is essential that their claims for promotion require to be recognized from the third channel of Diploma holders as they had completed ten years of service. Such a right could not have been foreclosed to them. However, we find that the



Administrative Tribunal of Madras Bench in OA 403/99 took the view that those who acquired Degree in Engineering in the course of service could not have been sidelined from the Diploma quota. The official respondents were directed to consider the claims of the applicants for promotion to the grade of Executive Engineers, with reference to date of promotion of their immediate juniors. The issue again came up before another Bench which however took a different view. The Division Bench dismissed the OA and held that the orders holding that an interference is called for when OA 1647/07 came up for consideration before the Principal Bench took note of the divergent views and referred to a Full Bench. The Full Bench by its decision rendered on 21.08.2008 in OA 1647 of 2007 considered the issue at length and held as follows:-

17. *The Rules, of course, prescribe for quota, and the well-known rule of interpretation is that there is a presumption of constitutionality and fairness attached to them. It is generally accepted that law is but only common sense. We find that the rules are simple and straight forward, and is never incapable of being observed. The heavy weather pointed out by the Respondents, and perhaps observation of the later Madras Decision about the encroachment to quota, really might have arisen out of superficial confusion.*

18. *As to whether on acquisition of a higher attainments, automatically the person should lose advantage possessed by him because of his earlier qualification, the answer can only be in the negative. Such a person can never be considered as having discarded his diploma. As circumstances may require, it should be possible for him to assert that his status as a diploma holder can never go unnoticed. A normal construction of the Rule would be that from group (2) viz. graduates, persons adjudged as eligibles can walk in to the next cadre, to the 33 1/3 % of posts reserved to them. And a graduate who was originally Diploma holder after acquisition of degree has to wait for his turn from the date of his acquisition of additional qualification. But for promotion from group (3) in the 33 1/3 % quota, reserved for diploma holders, on the basis of his seniority, his claims all along is alive, as if he is not a graduate.*



19. Hypothetically in a case where all the diploma holders had acquired graduation, it is not as if there is impossibility to maintain the ratio. Such persons require to be considered as belonging to Diploma quota for the purpose of the Rule. The converse position may not be true also. For example, if 90 % of the Diploma holders in Service had acquired degree, and the balance ten percent were the junior most, it is not as if for satisfying the quota, all the diploma holders are to be promoted, displacing the extra qualified, compelling them to hang to the tail position. Such a construction would be arbitrary. The matter can be examined from yet another angle. If all diploma holders in service may acquire a degree and for that reason be not considered for promotion in the quota reserved under rules for them, the said quota will become extinct, which would be a clear transgression of the rules. In fact, in the event as mentioned above, the service would fall short by 33-1/3 percent of posts reserved in the quota of diploma holders, thus breaking down the rule and making the service short by officers to the extent of 33-1/3 percent. The accommodation of graduates who possess diploma would satisfy prescription of the quota, without any violation of the language of the Rule. What we are obliged to observe is that the eligibility list should have been prepared with more care and caution, duly taking notice of the directions passed in OA 403/1999.

3. The Principal Bench accepted the claim of the applicants there in and held that the applicants should be justified in putting up a demand for being accommodated to the place the juniors occupy. The observations in the decision of the Supreme Court in *UOI v. Satya Prakash & Ors. (2006 (4) SCC 550)* intend to support the applicants while resolving the issue, as it operates as general guidelines. In the matter of impleading persons who might be adversely affected, the technical objection may not be sustainable. Reference was made to the decision in *V. P. Shrivastava & Ors. v. State of M.P. & Ors. (JT 1996 (2) SC 374* where the very principle of seniority was being challenged there, and the Court was of the view that State was the necessary party, and the State had been impleaded and it was sufficient. Citing the judgment in *General Manager, South Central Railway, Secundrabad & Anr. v. A.V.R. Siddhanti and Ors. etc. (1974) 3 SCR 207*), the Court had indicated that private respondents could have



been impleaded, as they would have been proper parties, but the defect could not have affected maintainability of the petitions.

4. The Full Bench accordingly held that the decision in OA No. 403/99, had come to the correct conclusion. The contrary view taken in OA 396/06 cannot be approved. Directions was issued to comply the order within three months. It is also that the Office order No. 99/06 (A-1) should be redrawn forthwith to the extent necessary. It should be the effort of the respondents to give the benefit of this order to all similarly situated, as picking and choosing individuals may lead to unnecessary confusions and claims. Before coming with consequential orders, a general notification should be published about the changes to be brought about in the list for the knowledge of all concerned. Individual grievances highlighted should not go unnoticed. OA was accordingly allowed.

5. In the light of authoritative pronouncement on the issue by the Full Bench, the case of the applicants stand allowed and appropriate proceedings shall be issued by the respondents to promote the applicants to the post of Assistant Executive Engineers, at any rate from the date on which their juniors were promoted with all consequential benefits as in the case of the applicants in the Full Bench decided by the Principal Bench.

6. OA is **allowed** as above. No costs.

Dated, the 26th September, 2011.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

VS