

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

2

OA No. 60 of 2005

Thursday, this the 20th day of January, 2005

CORAM

HON'BLE MR. A.V. HARIDAS, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. Shri. Girish Kumar A.G, JE (C) S/o. Late P.K.G. Nair, aged 42, now residing at "Gokulsree", Kothakulangara, Angamali P.O, Working at CPWD. Calicut Central Circle, Dutt Saw Mill Road, Kallay, Calicut
2. A.O George S/o. Late A.V. Ouseph, aged 44 years, Now residing at Aluvathanhal House, Kunneparambu, Vazhakkala, Kochi - 21 Working as JE (Elet), CESD - I CPWD, Karithala Road Cohin- 16.
3. Aboobacker Paloli, JE (C) S/o Mohammed Paloli aged 39, now residing at Baithul Rahmath, Koyappankandam, Chooloor, Kodur P.O, Malapuram Dist working at CCC, CPWD, Kallay, Calicut
4. Asokan, JE (C) S/o late K.Kumaran, Aged 38, now residing at Korambeth House, Munderi P.O, Eachur (Via), Kannur D't, Working at CCSD III, CPWD, Thanne, Kannur
5. Sany Joseph JE(C), S/o. M.J. Joseph, aged 38, now residing at House No. 50/465, Narayani Nivas, Veenus Corner, Thalatserry, Working at CCSD IV, CPWD Thanna, kannur.
6. M.G. Latha JE (C) W/o. Gopikrishna, aged 44, now residing at Janaki Nivat, Judge Road, Karamana, Trivandrum - 2, Working at C.C.S.D.II, CPWD Dutt Saw Mill Road, Kallay, Calicut
7. S.Suresh Kumar JE (E) S/o. S. Sridran aged 48, now residing at CE-37, Central Revenue Quarters, Opp. Lious Park, Beach Road, Calicut- 673032, Working at C.C.E.S.D, CPWD, Dutt Saw Mill Road, Kallay, Calicut
8. K.C. Johny JE (C), S/o. K.C. Cheria, aged 40, Working at TCD / CPWD, Trichur.
9. Anto. C.G. JE (C), S/o George C.C, aged 44, Working at TCD/ CPWD, Trichur.
10. Anitha Nair JE (C), ^{Age 42} W/o. R. Jayachandran Nair, Working at TCD / CPWD, Trichur.
11. P.R. Shaji JE (C), S/o. P.K. Raghavan, aged 40, Working at T.C.D., CPWD Trichur
12. John Kurian, JE (E) S/o. K.Kurian, aged 50 years, Working at T.C.E.S.D, CPWD, Trichur.
13. Rethnakumari V.S. JE (C) D/o. K.P Velukutty Nair, Working at T.C. D., CPWD, Trichur.

14. C.N. Vasan S/o. C.S Narayanan Namboothiri, aged 44 years, now residing at Choorakkat Illam, Near Arattukadavu, Kumaranelloor P.O, Kottayam Working as JE Elect CE SD- III/ CPWD, Near CSEZ, Kakkanadu, Kochi.
15. Shri. K.V. George, JE (E) S/o. Late K.J Varghese aged 47, now residing at 2/62 B East hill Near KV-I, Calicut -10 Working at CPWD. Calicut Central Electrical Sub-Division ,Dutt Saw Mill Road,Kallay,Calicut
16. V.R. Aravindakshan Nair, S/o. N. Raman Nair, aged 43 years, now residing at Block No. XII, Qt No. C-30, GPRA, Kunnumpuram, Kakkanadu, Kochin - 30 Working as JE (Civil) CCSD -I/ CPWD Thrikkakara, Kochi - 30
17. R. Mohandas, S/o. Late K. Raghavan, aged 45 years, now residing at Krishnakripa, Kakkanadu, Kochi - 30, Working as JE (Civil) CCDS - II / CPWD Kulamavu.
18. G. Saji Kumar, S/o. S. Gopalakrishna Pillai, aged 37 years, now residing at Ghouse No. 116 / VII, 'Sreelaya' Near NGO Qut, Thrikkakara P.O, Kochi -21, working as JE (Civil), CCDS IV / CPWD, Kaloor, Kochi
19. Nancy Jose, W/o. M.M. Jose, aged 43 years, now residing at 124, Happy Home No. 1, Chittethukara, Kakkanadu, Kochin - 37 working as JE (Civil) CCSD I / CPWD, Thrikkakara, Cochin - 30
20. Shibu M.I, S/o. K. Idicula, aged 43 years, now residing at Marie Villa, Perumanoor P.O, Kochi - 15, Working as JE (C) CCSD-I, CPWD Thrikkakara, Kochi
21. P.R Sheela Devi, W/o. C.R. Shaji, aged 41 years, now residing at Chithateril House, Kaloor, Kochi - 17 Working as JE (Civil) TCSD/ CPWD, Thrikkakara , Kochi
22. Geetha M.R, D/o. M. Raghavan, aged 45 years now residing at Qtno. C. 18, GPRA, Kakkanadu, Kochin 30, Working as JE (Civil) CCSD- I/ CPWD, Thrikkakara, Kochi - 30
23. N.G. Jerry S/o. N.J George, aged 38 years, Neriamkot House, South Chittor P.O, Kochi - 27, working as JE (Civil) CCSD V / CPWD Kaloor, Kochi -17
24. Antony N.G. S/o. George N.J, aged 45 years now residing at Neriamkot House, South Chittor P.O, Kochi - 27, working as JE (Civil) CCSD IV / CPWD Kaloor, Kochi .
25. K.B.Radhamany Amma W/o. P.K. Swamikuttan, Aged 48 years, now residing at Swararag, Santhi Nagar, Marottichodu, Edappally, Kochi - 24. working as JE (Civil), CCDS - IV / CPWD Kaloor Kochi - 17
26. Jayashree M.D., W/o. P.R Vijayakumar, aged 40 years, now residing at Anugraha Puthezhathu Lane, Vattekatu Road, Kaloor Kochi, working as JE (Civil) CCSD III / CPWD Karithala Road, Kochi - 16.

27. S. Venugopalan Nair, S/o. Late Shri. Narayanan Nair, aged 40 years, now residing at Pura -79, Nallathu Road, Poojapura Trivandrum, working as JE (Civil), O/o. The Asst. Engineer, T.C.S.D. I, CPWD, AG's office Campus, Trivandrum.
28. Chandran Zacharias, S/o. Late K.T. Zacharia, aged 38 years, now residing at 5/2245-1, New Kawadiar Gardens, Trivandrum Working as JE, TCESD - II, Met. Centre, Trivandrum -33
29. M. Ramachandran, S/o. Late P.M. Madhavan Asari, aged 42 years, now residing at Greeshmam, C/17, Archana Nagar, Pongummoodu, Medical Collage P.O, Trivandrum, working as JE (C) TCSD V, CRPF, Tivandrum
30. K. Vijaya Kumar, S/o. Late N. Krishnan, aged 42 years, now residing at Vilayil Vilakathu Veedu, Karippoor P.O, Nedumangad, Trivandrum working as JE (C), O/o. The Exe. Engineer, Valuation Cell, Income Tax Department.
31. M. Ramadasan, S/o. Late K. Madhavan, aged 49 years, now residing at Rahath, Vianyaka Nagar, Kallampaaly, Sreekaryam, Trivandrum - 17. Working as JE (E) TCESD II, CPWD, MET Centre, Palayam, Vikat Bhavan P.O, Trivandrum.
32. Geetha A. Subremony, D/o. A.R.V. Sharma, aged 42 years, now residing at C/o. Prof. A. Anantha Sive Iyer, Veliematom, Mavelikara working as JE (E) TCSED II, CPWD, Met Centre, Palayam, Vikas Bhavan P.O, Trivandrum.
33. L. Ajitha Kumari, W/o. A. Rajendran, Aged 42 years, now residing at "Sree Hari", MGRA F30, Opp. Lord's Hospital, Anayara P.O, Trivandrum Working as JE (Civil), Trivandrum Centre, Sub Division No.IV, CPWD, J.N. V. Campus, Nanthiyodu, Trivandrum.
34. K.M. Krishna Kumar, S/o. Late A. Madhavan Pillai, aged 46 years, residing at T.C. 5/1588, Chemmarath, Kalpaka Lane, Survey School Road, Ambalamukku, Peroorkada. P.O, Trivandrum. Working as JE (Elect), TCED, CPWD, C.G.O. Complex, Poonkulam, Trivandrum
35. Harikumar P. S/o. P.S. Parameswaren Pillai, aged 47 years, now residing at 1 /4 Income Tax Qt. Kottayam - 1, Working as JE (Elect), KCESD / CPWD AG's office Bldg. Kottayam - 6
36. T. Jose, S/o. Oommen Thomat, aged 43 years, now residing at Kulangara Vadakethil, Kudosunadu P.O Allapuzha, Working as JE (Elect) KCEDS / CPWD AG's Office Bldg. Kottayam.- 6
37. P.N. Sasidharan Nair, S/o. V.R. Narayanan Pillai, aged 50 years, now residing at " Jayathree", Temple Road Kumaranelor P. O, Kottayam. Working as JE (Civil) KCSD- I / CPWD AG,s office Bldg. Kottayam
38. P.G. Raju, S/o. P.S. Gopalapillai, aged 46 years, now residig at Prapally thazhath, Chirakkadavu Eatt P.O, Kottayam Working as JE (Civil) KCSD II / CPWD Public Lirary Bldg., Kottayam

39. Shakkela Shukkur, W/o. P.A. Shukur, aged 40 years, Dharusalem, Collectrate P.O, Kottayam - 2, Working as JE (Civil) KCSD -III / CPWD, Vellakinar, Allapuzha
40. Saifi Kumar.S., S/o. Sankara Nair, aged 44 years, Karthiyani, Vellayani P.O, Poomkulam, Trivandrum, working as JE (Civil) KCSD -IV / CPWD, Kadappakada, Kollam.
41. Mary Michael, W/o. C.M Michael, aged 43 years, now residing at Chandraankunnel House, Convent lane, Pallimuku, Peyad, Trivandrum - 73 Working as JE (Civil), TCSD II, CPWD, Trivandrum
42. C.M. Sheik Muhammed, S/o. C.M. Meeran, aged 44 Years, now residing at CRRA-A2, Chalakuzhy Lane, Pattom, Trivandrum, Working as JE (Civil), TCC, CPWD, Trivandrum.
43. Lethika P, W/o. Shri. N. T. Kesari Menon, aged 45, working as JE (Civil), Valuation Cell, I.T Department, Calicut
44. Varghese M.J, S/o. M.K. John, aged 44 years, now working as JE (Civil), Kanoor Central Division, CPWD, Payanoor.
45. P.Ramakrishnan, S/o. P.M. Padmanabha Rao, aged 44 years, now working as JE (Civil), KCD, CPWD, Payanoor.
46. P.V. Mathoo, S/o. P. Varkey, aged 49, now working as JE (Civil) CSD, CPWD, Kulamavu.

(By Advocate Shri Joy Thattil Itoop)

...Applicants

Versus

1. The Union of India represented by the
Secretary, Ministry of Urban Affairs & Poverty Alleviation
New Delhi
2. Director General of Works
Central Public Works Department
Nirman Bhavan , New Delhi
3. The Additional Director General (Trg)
Central Public Works Department
Training Institute, E-Wing , Nirman Bhavan
New Delhi
4. The Secretary, Department of Expenditure
Ministry of Finance, Government of India, New Delhi

...Respondents

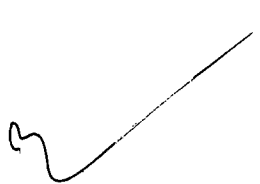
(By Advocate Shri TPM Ibranim Khan, SCGSC)

The application having been heard on 20-1-2005, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Applicants, 46 in number, who are Junior Engineers of the Central Public Works Department (CPWD) have filed this application seeking the following reliefs:-


- "a) Direct the respondents to declare that total cadre strength of the posts of Assistant Engineer (Civil) & Assistant Engineer (Electrical) in the Central Public Works Department and also the number of posts in each cadre now occupied by promotees according to seniority and those occupied by promotees on the basis of LDCE before holding any further examination for promotion through LDCE.
 - b) Direct the respondents to strictly maintain the ratio of promotion among promotees according to seniority and promotees through Limited Departmental Competitive Examination (LDCE) in the cadre of Assistant Engineer (Civil) & Assistant Engineer (Electrical) in the Central Public Works Department.
 - c) Direct the respondents to consider the financial implications of promoting junior officers to the cadre of Assistant Engineers while retaining senior officers already drawing the pay scale of either Assistant Engineer or even Executive Engineer due to benefit of Assured Career Progression Scheme introduced by the 5th Central Pay Commission before holding any further examination for promotion through LDCE.
 - d) Direct the respondents to immediately fill up the existing vacancies in the cadre of Assistant Engineer (Civil) & Assistant Engineer (Electrical) in the Central Public Works Department to be filled on the basis of seniority before holding any further examination for promotion through LDCE.
 - e) Direct the respondents not to permit any person who has not completed 4 years of service in the cadre of Junior Engineer (Civil & Electrical) in the CPWD to take part in the limited departmental competitive examination scheduled to be held on 27.02.2005 or on any other date."
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2. It is alleged in the application that from Annexure A6 it is seen that the LDCE quota is over-represented, while promotion is under-represented and that the respondents are going on with LDCE which would likely to upset the seniority of persons like the applicants who are entitled to be promoted according to the statutory Recruitment Rules against 50% vacancies. It is further alleged in the application that against the instructions contained in the rules, persons who have been redeployed in the CPWD on surplusage from other departments having not completed four years service in CPWD are also being allowed to participate in the examination. With these allegations, the applicants have sought the reliefs aforesaid.

3. We have perused the application and annexures appended thereto and have heard the learned counsel of the applicants and Shri TPM Ibrahim Khan, SCGSC appearing for the respondents.

4. Learned counsel of the respondents opposed the admission of this application on the ground that the application is premature and does not disclose any valid cause of action.

5. On perusal of the entire materials placed on record and on hearing the learned counsel on either side, we find that the applicants have neither disclosed any subsisting and legitimate grievance which calls for admission of this application as also we find that this application is premature in nature. Learned counsel of the applicants inviting our attention to Annexure A6, the details of vacancies in the grade of Assistant Engineer (Civil) for the year 2004-05, tried to say that there is no vacancy in the LDCE quota, whereas 90 seniority quota vacancies are available. On verification, we find that this assessment

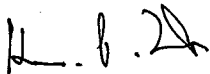


of the learned counsel of the applicants is based on an erroneous interpretation of what is stated in Annexure A6. The 90 vacancies in the seniority quota is to materialize during the year 2004-05 only.

6. Further, even if, as stated in the application, the respondents have not made the promotions on time and there is an attempt to fill up the vacancies by any other method, if appointments are made violating the rules, it is upto the applicants to challenge those appointments in excess of the quota. Since supersession in the matter of promotion or not giving due benefits under the statutory Recruitment Rules is a variation of service conditions, the applicants can seek departmental remedies available as per rules. Applicants have not exhausted that remedy. It is upto them to make representations to the concerned authority putting forth their claim and if they do not get any reply or if the reply given is not satisfactory, they will be at liberty to seek appropriate relief. In any case, the present application without exhausting the departmental remedy is premature.

7. In the light of what is stated above, finding no reason to admit the application, we reject the Original Application under Section 19(3) of the Administrative Tribunals Act, 1985. No order as to costs.

Thursday, this the 20th day of January, 2005



H.P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

Ak.