

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O. A. NO. 380/2008

Dated this the 16th day of May , 2011

C O R A M

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

M.K.Abdul Salam, S/o Syed Muhammed,
Executive Engineer(Adhoc) Lakshadweep Public
Works Department, Amini, R/o Mukrikakkudi House
Kadarnath, Lakshadweep.

Applicant

(By Advocate Mr. M.R.Hariraj)

Vs

- 1 Superintending Engioneer, Lakshadweep
Public Works Department, Kavarathy.
- 2 The Administrator Union Territory
of Lakshadweep, Kavarathy.
- 3 Union of India represented by the Secretary
Ministry of Urban Affairs, New Delhi.
- 4 Arun Jadev, Assistant Surveyor of Works,
Lakshadweep Public Works Deptt, Division Office Kalpeni

Respondents

(By Advocates Mr. S. Radhakrishnan R1 & 2)
Mrs K.Girija, ACGSC for R3 and Mr Sanjay for R4.

The Application having been heard on 23.3.2011 the
Tribunal delivered the following:

ORDERHON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the promotion of 4th respondent as Executive Engineer overlooking his preferential claim.

2 The applicant, a graduate Engineer initially commenced his service as Junior Engineer and later he was recruited as Assistant Engineer w.e.f 8.7.95. The 4th respondent, a degree holder Engineer, who ranked higher in the select list joined as Assistant Engineer on 25.1.96. However the applicant was treated as junior to the 4th respondent on the basis of the merit list. The qualifications for appointment to the post of Executive Engineer prescribed by the Recruitment Rules is Bachelor's degree in engineering with 8 years regular service. The applicant who joined as Assistant Engineer on 8.7.95 completed 8 years service on 8.7.2003 and the 4th respondent though senior to the applicant in the cadre of Assistant Engineer completed 8 years service on 25.1.2004. Two vacancies in the grade of Executive Engineer arose on 1.7.2002 and being the senior most qualified Assistant Engineer the applicant is to be considered for promotion. The applicant filed OA No.61/2004 before this Tribunal which was disposed of by order dated 27.1.2004. In pursuance to the order of this Tribunal the applicant was informed that for filling up the post of Executive Engineer his name was also in the zone of consideration. It is further submitted that in OA 689/06 filed



by Younis Haji, a Diploma holder Assistant Engineer claimed for promotion as Executive Engineer in accordance with 2004 Recruitment Rules. Both the applicant and 4th respondent contested the matter and the Tribunal allowed the OA on 28.6.2007. The applicant challenged the order dated 28.6.2007 before the Hon'ble High Court of Kerala by WP(C) 23816/2007. On 24.9.2007 the High Court allowed the writ petition holding that in case no one is qualified for the post on the date of occurrence of vacancy, normally the one who becomes qualified first shall be considered for appointment. By way of a review petition filed by the 4th respondent Ho'ble High Court directed that his case also be considered if necessary by holding a review DPC.. Thereafter both the applicant and the 4th respondent were given ad hoc promotion to the cadre of Executive Engineer. While so by Anxx.A1, the 4th respondent was promoted as Executive Engineer overlooking the claim of the applicant and denying the benefit of reservation. The applicant alleged that the appointment made in the cadre of Executive Engineer is violation of the rules of Reservation of posts for ST/SC.

3 Respondents No.1&2 contested the OA by filing reply. It is submitted that the posting of respondent No.4 is in accordance with ~~law as he was the senior most among the Degree holding~~ Assistant Engineers as per seniority list and merit list published by the UPSC. They further submitted that by mistake the offer of appointment and appointment order were sent first to the

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applicant who was at Sl.No.2 in the select list instead of to the candidate at Sl.No.1 i.e respondent No.4. Thus the applicant joined duty on 8.7.95 and 4th respondent joined on 25.1.96. This was a mistake of the administration and not the fault of the 4th respondent. They have cited the judgment of the Hon'ble Supreme Court in the case of Union of India Vs. Smt Sadhana Khanna reported in 2008(1) SCC(L&S) 308. DOPT issued memorandum stating that where the juniors had completed eligibility requirement of promotion, their seniors will also be considered even if they have not completed the eligibility period, in compliance with the judgment of the Apex Court in 1988 SCC (L&S)475, in the case of R.Prabha Devi Vs. The govt of India. Thus the DPC followed the instructions issued by the DOPT. They denied that the applicant was the senior most Assistant Engineer to be promoted as Executive Engineer whereas 4th respondent is senior to the applicant as per the merit list of the UPSC and final seniority list of the respondents department. The respondents maintain a 100 point post based roster observing the guidelines issued by the Govt of India following the judgment of the Hon'ble Supreme Court in R.K.Sabarwal case, .in this regard. Accordingly the respondents have justified the promotion of the 4th respondent as legal and in accordance with law.

4 The 4th respondents filed separate reply by supporting the contentions of the respondents No.1&2 in their reply statement. He contended that his promotion as Executive

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Engineer is just, proper and in accordance with rules in force as he is senior, to the applicant, in the merit as well as seniority list

5 The applicant filed rejoinder and contended that the officers who were promoted as Executive Engineer, were the seniormost in the feeder category and not because they happened to be ST and no islander was promoted against a reserved category in LPWD. He averred that the initial operation of the L shaped roster by the respondents was faulty.

6 We have heard the learned counsel for the parties and perused the record.

7. The applicant has buttressed his claim for promotion to Executive Engineer grade, in preference to R-4 on three grounds. In ground A, he averred that he is senior to R-4, by virtue of his joining as Assistant Engineer, on a date earlier to that of R-4. A vacancy arose in 01.07.2002 and none was eligible for promotion. However, the applicant became eligible on 05.07.2003 but the procedure for filling up the Executive Engineer post was deliberately delayed so that R-4 and others too became qualified by then. The respondents have answered this contention of the applicant by relying on the judgment of the Apex Court in the case of Govt of India Vs Sandhana Khanna reported in 2008(1) SCC (L&S) 308. The relevant portion is extracted below.

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"It may be noted that the respondent was offered appointment vide letter dated 5.7.1983 which is after 01.07.1983, from which the eligibility was to be counted. Hence it is the dept. Which is to be blamed for sending the letter offering appointment after 01.07.1983. In fact, some of the candidates who were junior to the respondents were issued letters offering appointment prior to 01.07.1983. Hence it was the Dept. Which is to be blamed for this. Moreover, in view of the Office Memorandum of the Dept of Personnel and Training dated 18.03.1988 and 19.07.1989, the respondent was also to be considered, otherwise a very incongruous situation would arise, namely, the junior will be considered for promotion and senior will not".

In the memorandum issued by DOPT it is stated that where the juniors had completed eligibility requirement of promotion, then their seniors will also be considered even if they have not completed the eligibility period. Therefore R-4 is eligible for consideration for promotion. Moreover as per the guidelines issued by DOPT, seniority is determined by the placement of the candidates in the merit list issued by UPSC, in grades like Assistant Engineer. It is possible that due to delay in getting relief from the organisation, they are working, certain candidates holding higher ranks in the merit list may join later with the permission of the competent authority and this does not affect their rank in the merit list. Therefore the claim of the applicant that he is senior to R-4 is not tenable.

8. The second ground taken up by the applicant is about the faulty operation of the special representation roster by the

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respondents. He avers that the respondents conceded that L shaped special representation roster has to be maintained for smaller cadres in accordance with the DOPT O.M No. 36012/2/96-Estt dated 02.07.1997 (Annexure A-15). There are only three posts of Executive Engineers and after the initial appointment of three officers from 1986 to 1992 three replacements took place from 1993 to 2002. Eventhough there were two ST original appointees and two ST replacements later on, the ST officers happened to be islanders and they were appointed, being the seniormost qualified officers in the feeder category and not against any SC/ST reserved points. Infact in the L shaped 13 point special representation roster the first reservation is only at point 7 which is reserved for SC. As there is no Scheduled Community in the Lakshadweep islands, SC point is to be substituted by ST in accordance with the DOPT guidelines. Hence when the 7th point was being filled up it should have been reserved for SC/ST as shown in the L shaped special representation roster. Therefore the applicant affirms that process of selection and appointment of 4th respondent who belongs to OC instead of him, the qualified ST candidate is illegal and arbitrary.

9. It is seen from the reply statement that the respondents are maintaining a 100 point roster. Chapter 26 of the Manual on Establishment and Administration deals with the manner in which post based roster have to be maintained



(Annexure A-15). In note 1 below Appendix 2 to Annexure 3, illustration for model roster for promotion for cadre strength up to 13 posts is given. From that it is very clear that the first reserved point arises only against point No.7 as SC and in respect of L-shaped where this SC point is to be treated as ST. Therefore we find that there is some force in the argument of the applicant that the respondents have committed an error in maintaining a 100 point roster instead of a 13 point roster as there are only 3 posts of Executive Engineers in LPWD. At the time of 7th replacement R 1-2 should have verified the post based roster to ascertain the point falling due for filling up in the 13 point roster. In that case the 7th replacement point would have been reserved and the 4th respondent being the seniormost would have been included in the zone of consideration along with any others who were similarly qualified. This did not happen as the respondents maintained a 100 point roster in which points 1 and 4 are reserved for SC and ST respectively.

10. The last ground put forward by the applicant is that both he and the 4th respondent were granted adhoc promotion and there is no need to revert him as there is an existing vacancy.

11. We observe from the foregoing paragraphs that R1 and R2 have failed to maintain the special representation roster in the manner prescribed by the DOPT. Had the L shaped special

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representation roster prescribed for cadre strength not exceeding 13 posts been maintained, this error would not have crept in. The mistake in reckoning reserved points has occurred due to maintainance of 100 point roster for the promotee category. Since the applicant says that there is an existing vacancy the respondents are directed to hold a review DPC for considering the case of applicant for his further promotion to the cadre of Executive Engineer. The interse seniority between applicant and the 4th respondent can be considered by the respondents on receiving representations from them after the applicant is promoted to the cadre of Executive Enginner. They are directed to complete the process of selection and appointment within 4 months from the date of receipt of this order. No costs.


(K Noorjehan)
Administrative Member


(George Paracken)
Judicial Member

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