

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 111/99

DATE OF DECISION: 30th Aug 2007

B.O. Varghese

... Applicant

Shri P.O. Varghese

... Advocate for Applicant

Vs.

Union of India & Others

... Respondents

Shri V.S. Masurkar

... Advocate for Respondents

Coram

Hon'ble Shri Justice Birendra Dikshit

... Vice Chairman

Hon'ble Shri B.N. Bahadur

... Member (A)

1. To be referred to the Reporter or not? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal? ☒
3. Library. ☒


(B.N. BAHADUR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 111/1999

DATED THIS th 30 DAY OF ^{May} 2001

SHRI JUSTICE BIRENDRA DIKSHIT.

... VICE CHAIRMAN

SHRI B.N. BAHADUR.

... MEMBER (A)

Shri Ba bu Onamthuruthil Varghese,
Junior Engineer (CIVIL), MCD VIII
C.P.W.D. Block 24, Sector VII,
S .M. Plot, Mumbai-400 037.

... Applicant

By Advocate Shri P.O. Varghese

Vs.

1. Union of India , through
The Director General of Works,
C.P.W.D. Nirman Bhavan,
Maulana Azad Ali Road,
New Delhi-110 011.
2. The Secretary to the Govt. of India,
Ministry of Urban Affairs & Employment,
New Delhi.
3. The Director General of Works,
C.P.E.D, Nirman Bhavan, Maulana
Azad Ali Road, New Delhi-110 011.
4. The Addl. Director General of
Works (WR) CPWD, Old CGO Annexe,
15th Floor, Churchgate,
Mumbai-400 020.

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5. The Chief Engineer (Civil)
W2-1) CPWD Old CGO Annexe,
Building, 14th Floor,
Churchgate, Mumbai 400 020.
6. The Superintending Engineer,
(Civil), MCC-11 CPWD,
Flat No.1/1 CGS Colony,
Ghatkopar (West)
Mumbai-400 086.
7. The Executive Engineer, MCD
VIII, CPWD, Building No.24,
S.M. Plot,
Mumbai-400 037.
8. The Chief Engineer (Training),
CPWD Training Institute,
E Wing, Nirman Bhavan,
New Delhi-110 011.

.... Respondents

By A.C.G.S.C. Shri V.S. Masurkar.

O R D E R

Shri B.N. Bahadur.

... Member (A),

The facts of the case, as brought forth by the applicant in this OA, Shri B.O. Varghese, are as follows:-

1. The applicant states that he was appointed as Junior Engineer (Civil) in the respondents' office in Mumbai, in March, 1986, on the basis of an All India examination held by the respondents, in 1984. As per the prevailing rule, the method of recruitment to the next higher post i.e. Assistant Engineer (Civil) was as follows: 50% of the posts were filled by direct recruitment from the market, the other 50% being filled in by promotion. The latter

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promotion quota of 50% was filled in by two modalities of promotion. Half, by regular DPC and the other half, by Limited Departmental Competitive Examination (LDCE for short). These recruitment rules were changed in June, 1997, through which the direct recruitment from the market was given up. All the posts were to be filled in by promotion as per the new rules, again half by DPC promotion and the other half by LDCE promotion. The applicant states that he was eligible for promotion by LDCE method, and the DPC method respectively in the year 1990 and 1994, in view of completion of 4 years and 8 years of service respectively.

2. The grievance of the applicant is that even after 13 years of unblemished service, he has been denied promotion to the post of Assistant Engineer (Civil) in view of the in-action/wrongful implementation of the mode of promotion adopted by the respondents. No vacancy has been filled by LDCE since 1992, avers the applicant, the last competitive examination being held by UPSC in the year 1992. Hence, the applicant is aggrieved, that he has been deprived of the chances for appearing in the said LDCE against the vacancies in 1993 to 1998 (this OA is filed in February, 99). On the other hand, the vacancy position is such, that people with less than 23 years of service have not yet got their chance in the normal channel through DPC promotions.

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3. The grievance made in the application further arises out of Respondent's intention to fill up 391 vacancies that had arisen upto 31.3.1997, in accordance with new rules, which came into force in May, 1997. It is contended that respondents have wrongly derived power to conduct LDCE for vacancies that have arisen after May, 1977 and by not asking the UPSC to conduct the said examination, they are usurping the powers of UPSC. It is contended that these are blatant violations of rules. The applicant further avers that though the impugned notification, dated 16.9.98 respondents have admitted, for examination, all Junior Engineers with 4 years service till 1998, without providing any safeguard or protection to the applicant and similarly situated Junior Engineers entitled to be promoted against earlier vacancies right from 1992.

4. Certain other averments are made and grounds taken in the further part of the OA. Thus, with the above grievances, the Applicant is before us seeking the relief, in substance, for

- a) quashing the impugned notification dated 16th September, 1998 (Ex. A1)
- b) a declaration that respondents are liable to fill up the year-wise vacancies upto 31.3.97 for the post of Assistant Engineer (Civil) from the candidates who are eligible for relevant yearwise through LDCE to be held by UPSC only;



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- (c) ~~some~~ a declaration that respondents are empowered to conduct IDCE only prospectively, for vacancy arising after 21.6.97.

~~Some~~ other reliefs are also sought vide sub paras (d) to (g) of para 8 of the OA.

5. The respondents in the case, have filed their written statement of reply, resisting the claims of the applicant, & first making the point that they had indeed asked the UPSC to conduct the examination, and UPSC had in fact scheduled the examination. But later on ^{it} showed their inability to conduct the examination. The reply dated ^{Ex. R-1} 1.5.98/1s referred to, and the point made that only thereafter, the department had gone ahead to conduct the examination strictly as per recruitment rules. The department could not conduct the examination earlier, and the same has been conducted on 21.2.99.

6. Reacting on the points of merits, the recruitment rules are then explained, and it is stated that IDCE exam could not be conducted after 1992, due to administrative reasons, and 50% quota of IDCE had accumulated. Explaining that UPSC has ~~not said~~ that seniority published was illegal, it is stated that UPSC had only said that fixation of seniority in the manner proposed by the Ministry in letter at Ex. A5 would violate the well established principles of fixation of seniority on the basis of rank in merit list. The judgment made by the New Delhi Bench of this Tribunal in OA No.2239/98 and OA 2526/98

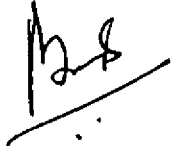
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are then referred to in this connection. (Copies of the common judgment, as at Ex. R7, will be referred to ahead).

7. The respondents have then stated that the department allowed the scale of Rs.2000-3500 (pre-revised) on personal basis to the applicant and others and this personal promotion will be adjusted when vacancy arises and promotions are provided. Persons senior to the applicant have been regularised, according to the respondents. Further details regarding the consultation made by the department with UPSC are explained and it is stated, inter alia, that the Department intends to adjust the departmentally promoted officers within their quota, yearwise, by carrying forward the vacancies against examination quota. The aforesaid judgment of the New Delhi Bench is then relied upon and discussed.

8. We have perused all the papers in the case, and have heard learned counsels on both sides. We have also seen the case law cited.

9. Learned counsel for the applicant, Shri P.O. Varghese argued the case in detail, first taking us to the entire background of the recruitment rules, the inaction of respondents in not conducting LDCE examination between 1992 and 1997 and other factual details (which had been reproduced in the earlier part of this order in gist). It was clarified by him that the applicant ^{had} not appeared for the exam that was



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held in 1999 and had immediately filed this OA. While the applicant had no grievance against DPC promotion, it was clear that he had no chance of any promotion on that side. The main grievance came in that no examinations were conducted for some 5 years and now that the examination was being notified, it was conducted wrongly. The point as to why this examination was wrongly conducted was strenuously argued by the learned counsel. He first made the point that there was no protection to the senior candidates, as every one with 4 years service was allowed to appear, and hence even though not in service in a particular year, would complete for the vacancy for that year through the examination. He argued that the criteria for examination as also the procedure could not be changed and the very fact that the was itself holding the examination for pre 1997 post was in contravention of rules. The procedure was not correctly followed. UPSC should conduct this examination. The learned counsel also made the point that the syllabus had changed, in that knowledge of computers is now required and the examination being conducted would clearly favour the youngsters/new comers, specially vis-a-vis the knowledge of computers. (Unfortunately, this aspect could not be fully assessed, as no old syllabus was on record).

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10. Arguing the case on behalf of the respondents, learned counsel Shri V.S. Masurkar first took the defence that exactly similar matter had come up before the New Delhi Bench of this Tribunal. He referred to the judgment in that matter, a copy of which is available at Ex. R7 (page 95 of the paper book). Learned counsel stated that all facts and arguments made in the order were applicable in the present case, which could be disposed of in the same manner. The points made in the order was gone through in detail by the learned counsel. He also referred to the precautions that the respondents has been exhorted to take in para 13 of the aforesaid judgment and stated that these precautions were taken.

11. Arguing the point of examination not being conducted by the UPSC itself, it was stated that the department had tried and only because of UPSC advice, as seen from the letters annexed, the department had conducted the examination. This could in fact be even treated as permission for relaxation and hence, there was no illegality in department taking the examination. It was also pointed out that UPSC had not been made as a party in the case.

12. Learned counsel for the respondents also reacted to the allegations regarding inaction and pasivity of the respondents, by arguing that it was for the applicant,

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to come up well in time for legal redress when the examination was not being conducted. Unsettling the position would lead to complications, it was argued.

13. Learned counsel for the applicant Shri P.O. Varghese referred to a number of cases of Hon'ble Supreme Court in support of his contentions. We have seen this and shall refer ahead to those which are relevant to the present case.

14. Admittedly, the examination was conducted for filling up the vacancies of the posts of Assistant Engineer (Civil) (statedly 391) that had occurred in the period between 1992 and the coming in force the revised recruitment rules in 1997. It is in regard to the modality and legality of the procedure of filling up of these posts that the thrust of the dispute lies. Indeed it is true that old posts would need to be filled in by following the old recruitment rules and not by new recruitment rules. The case law quoted by learned counsel for the applicant in the matter of the well known case of ^{B.S.} Rangaiah and others settle this point. The first point relates to the agency which is

conducting the examination i.e. the Department as against the UPSC, which was to conduct the examination, as per the old rules. On the basis of the letters on record and the facts we are not convinced that this is a case where there is some kind of move by the respondents to usurp the powers of UPSC, as alleged. We also see no sinister intention in their



conducting the examination. We ~~say~~ this in view of the fact that the department had asked the UPSC to conduct the examination right at the start. It is only at the behest of the UPSC that the department had taken up the examination. This is clear from the communication annexed by the respondents with their written statement at Ex.R1 (Page 61 of the paper book). This communication is addressed by the Commission (UPSC) to the respondent Ministry and it is dated 1st May, 1998. In this communication, the Ministry had been advised to make its arrangements for holding the forth coming LDCE for the post of AE (Civil) as per the provisions of recruitment rules. In view of this position, do not hold this to be a violation of rule. It is also acceptable, as argued by the learned for respondents that this can be viewed as a relaxation in consultation with the Commission.

15. We now take up the decision given by the Principal Bench of this Tribunal in the OAs referred to in pleadings and arguments by both side. This has been referred to in the earlier part of the order and ^{as} stated, a copy of the judgment is available at Ex. R7 (page 95 to 108 of the paper book). Two OAs have been disposed of by this common order on 15.2.1999. The applicants therein were JEs, who had put in 15 to 20 years of service in the Civil and Electrical department of CPWD. Recruitment process arising out of notices dated 16.9.98 and 6.10.98 were questioned ~~interalia~~.

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The rule itself was questioned, but we are not going into the question as the issue is not before us in this OA. The position of facts had been laid down and analysed in the aforesaid judgment especially at para 12 onwards. One of the observations made is that "any order to stall the process of the proposed examination will only mean putting the clock backwards in terms of the interests of not only junior JEs but also for some senior JEs who may be willing to sit for the same." It is further stated that what is further justifiable, as the course of action, would be "to ensure that the proposed examination does not result in providing undue advantage to junior JEs by means of tilting the position of seniority against rule".

16. On this point, we must state that this was an important issue raised before us. If the examination that is now held was to select candidates, the essence of the rule that would be required to be safeguarded is that when vacancies for a particular year are filled in, say for examination of 1993 it must be ensured that only those candidates are considered, who were eligible to appear at the examination at that time i.e. those who had adequate years of service. No infringement of the recruitment rule shall be allowed to occur in view of the examination being the same for vacancies pertaining to about 5 years. We find that this aspect has been examined and taken care of in the judgment

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of the Principal Bench by laying down "precautions" that should be taken. These precautions are listed out in detail in para 13 of the judgment. We have taken note of them.

17. The point made by the learned counsel for the applicant, however, was that the examination held itself is wrong, and should be quashed. In fact, we have also asked him to make a suggestion as to what could be the manner in which the problem would be solved. It was suggested by learned counsel Shri P.O. Varghese that a number of examinations should be held, one by one, for vacancies of different years, and each time only the eligible candidates with that particular reference year should be allowed to appear. This, in our view, would be impracticable, and would be a mechanical solution, even as we have no doubt that the essence of recruitment rules cannot be given a go-by. We are satisfied that the manner in which this has been sought to be taken care of in the judgment of the Principal Bench, ^{which} is appropriate and well considered and provides a practical solution while at the same time ensuring the compliance of recruitment rules. For example, if a 1993 vacancy is being filled-in, on the basis of the examination already conducted, it is obvious that the respondents will need to disregard such candidates who were not entitled to appear at that exam due to any infirmity vis-a-vis the recruitment rules.

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18.. Coming to the case law cited by the learned counsel for the applicant, we cannot have any quarrel that those judgments which settled the case that for vacancies prior to the revision of recruitment rules the then applicable recruitment rule shall be used to fill up vacancies. There could be no difference and we have duly taken note of this in our discussion above. Thus, for instance the law settled in the matter of Rangaiah (AIR 1983 SC 852) and Tarachand (AIR 1997 SC 1282) and some of the other judgments referred to have already been taken care of. What has only been stated is that this could be ensured by the precautions that have^{been} already listed by the Principal Bench, in the above discussed judgment.

19. It would be, therefore, just and proper if this OA is disposed of with suitable directions to the respondents in respect of the examination conducted for selection on the lines of the precautions laid down in para 13 of the judgment of the Principal Bench made on 15.2.99. Accordingly, we dispose of this OA with the directions to Respondents that they should scrupulously follow the precautions that they have been exhorted to take in para 13 of the judgment made by Principal Bench of this Tribunal in common order on OA 2239/98 and 2526/98 on 15.2.99. The OA stands disposed of accordingly with no order as to costs.

B. N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

30/5/01.

B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN