

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.935/99 & 937/99.

, THIS THE 11 TH DAY OF DECEMBER, 2003.

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri Muzaffar Hussain, Member (J).

Muthiah Rajavellu,
Executive Engineer,
(Valuation) Income Tax Dept.
Piramal Chamber, Parel,
Mumbai - 400 012.
(By Advocate Shri P.O.Verghese)

...Applicant in
OA No.935/99

Chittaranjan Santra,
Executive Engineer (CPWD),
Appropriate Authority,
Mittal Court, 3rd Floor,
'A' Wing, Nariman Point,
Bombay - 400 021.
(By Advocate Shri P.O.Verghese)

...Applicant in
OA No.937/99

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.

...Respondents in
both the O.As.

2. Shri D.S.Bhouraskar,
Executive Engineer (Civil) (On Promotion)
C.P.W.D., Indore Central Circle,
Indore (M.P.).

...Respondent in
OA No.935/99/

3. Shri P.Ram Raj,
Executive Engineer (C.P.W.D.),
Appropriate Authority,
Mittal Court, 3rd Floor,
'A' Wing,
Nariman Point,
Bombay - 400 021.
(By Advocate Shri V.S.Masurkar
for R-1).

...Respondent in
OA No.937/99

: O R D E R :

{Anand Kumar Bhatt, Member (A)}

Original Application Nos. 935/99 and 937/99 are on the same issue and the two are taken up together for common order. For the sake of convenience, we refer to O.A. No.935/99 which will refer mutatis mutandis O.A. 937/99, as well.

2. In O.A. No.935/99, the following reliefs have been sought by the applicant:

(a) That this Hon'ble Tribunal be pleased to call for the records and proceedings regarding the impugned office order No.203 of 1999 dated 3.11.1999 (Exhibit A-1) and after going through the legality and validity the same may be quashed and set aside;

(b) That this Hon'ble Tribunal be pleased to declare that the Applicant is entitled to continue as Executive Engineer (Civil);

(c) That the Respondents be ordered/directed to immediately withdraw and/or cancel the impugned order of reversion dt. 3.11.1999 and permit the applicant to continue in his promoted post of Executive Engineer (Civil);

(d) That the cost of this application be granted to the Applicant;

(e) That any other and further orders and/or direction in the facts and circumstances of the case be granted.

3. The facts of the case in brief, are that the applicant was selected to the post of Junior Engineer (Civil) on the basis of an All India Competitive Examination and was appointed on 8.9.1978. He was promoted to the post of Assistant Engineer (Civil) on 28.9.1987. Thereafter, vide order dt. 13.11.1998 he was promoted temporarily on ad hoc basis as Executive Engineer (Civil) Group 'A' in the pay scale of Rs.10,000-15200. The applicant in O.A. 935/99 is an SC candidate. By the impugned order dt. 3.11.1999 (Exhibit - A-1) 25 ad-hoc Executive Engineers were reverted including the two applicants. As per the applicant, the impugned order of reversion is based on the order dt. 3.11.1999 issued by the Respondents by which 314 Assistant Engineers (Civil) have been regularised and appointed to officiate as Executive Engineers (Civil) on regular basis in

Group 'A'. It has been mentioned by the respondents in the said order that these promotions were in compliance with the order dt. 18.8.1997 issued by the Tribunal in O.A. No.1461/97 passed by the Principal Bench of the Tribunal at New Delhi. The applicant states that the promotion of the applicant was much later than the order of the Tribunal and therefore, the impugned order is totally self-contradictory and mala fide. The applicant has also stated that out of 314 Assistant Engineers promoted to the post of Executive Engineers on regular basis by the impugned order dt. 3.11.1999, already 82 Executive Engineers had retired and therefore the vacancies existed for the reverted Assistant Engineers and therefore there was no need to revert the applicants along with other colleagues totalling 25. The applicant states that the said order is mala fide, illegal and violative of the Rules regarding promotion.

4. In the reply filed by the Respondents, they have stated that as per old Recruitment Rules of 1954, promotion to the post of Executive Engineer in CPWD is made from two streams viz. Assistant Executive Engineer and Assistant Engineer in the ratio prescribed from time to time ^{which were 3:1} ~~are~~ valid upto the time when new Recruitment Rules were promulgated on 28.10.1996. The quota for Assistant Executive Engineers could not be filled up and till the promulgation of the revised Recruitment Rules the Respondents had 430 vacancies of Executive Engineer (Civil) and 120 vacancies of Executive Engineer (Electrical). These unfilled vacancies were diverted in favour of Assistant Engineers by relaxation of Recruitment Rules for being filled up in the years 1994-95, 1995-96 and 1996-97 (upto 28.10.1996). A reference was made on

11.7.1997 to U.P.S.C. for filling up of these vacancies. The DPC for regular promotion as Executive Engineer was held in UPSC from 19.9.1999 to 29.9.1999. The DPC recommendations were received by the respondents on 30.9.1999 and 7.10.1999. As a consequence of implementation of DPC minutes, the Respondents issued the promotion order of empanelled Assistant Engineers and reverted those ad-hoc Executive Engineers whose names were not included in the regular panel prepared by the UPSC and for whom vacancies did not exist. The reversion were made strictly on the basis of instructions issued by the DOPT dt. 30.4.1983 (Annexure - R-2) which states that when regular promotions are made, all ad-hoc appointees should be reverted strictly in the reverse order of seniority, the juniormost candidate being reverted first, no special concession is to be given to SC/ST candidate at the time of such reversion. The ad-hoc promotions made earlier vide order dt. 13.11.1998 ^{were} ~~was~~ on the basis of seniority-cum-fitness without application of bench mark. In O.A. No.1461/97 filed by B.M.Singhal, the Tribunal on 18.8.1997 had ordered that the process of making regular promotion be initiated pursuant to the Hon'ble Supreme Court's direction in Goel's case within a period of six months. Thus, by the said promotion order dt. 3.11.1999, the said order of the Tribunal dt. 18.8.1997 given by the Principal Bench of the Tribunal has been implemented.

5. In the oral submissions Shri Verghese, Counsel for the applicants has stated that the Madras Bench of the Tribunal gave a Judgment in favour of Smt.B.Rethi James who is similarly placed and included in the same reversion order dt. 3.11.1999 and therefore, the present applicants should also be given similar

Shri Verghese submitted that -5-

benefit. [Respondents in their reply at page 2 (b) have pointed out that the relaxation has been obtained in the Recruitment Rules in favour of the Assistant Engineers and therefore, it is not understood how the applicants can be reverted. In view of the admitted position of the respondents, the judgments quoted by them are not applicable here. He has further pointed out that the statement by the Respondents that ad-hoc promotions of A.Es. to the post of Executive Engineer (Civil) was made only on seniority-cum-fitness basis without application of Bench Mark is contradictory to what has been stated at page 2 (b). Against 430 vacancies only 340 vacancies were filled up and therefore, there were enough vacancies to enable the respondents not to revert the applicant. Shri Verghese further stated that the applicant in 935/99 is an SC candidate and the benefits applicable to SC candidate were not made available to him.

6. In reply Shri V.S.Masurkar pointed out that the promotion order of 13.11.1998 was for a period of six months or till further orders which ever is earlier, was temporary and on ad-hoc basis and it was mentioned in the said promotion order that this will not confer any right on the promoted officer to claim any regular appointment/seniority. He pointed out that there is no contradiction at ^{Clause} ~~page~~ 2 (b) of the reply as the relaxation in the Recruitment Rules was in relation to old Recruitment Rules of 1954 and the vacancies for which relaxation was obtained was upto 28.10.1996 till the new Recruitment Rules were notified. The applicant was too junior to be considered by UPSC and therefore, he was not included in the approved panel. He pointed out that the Judgment given by the CAT Madras Bench of the Tribunal has

been stayed by the High Court.

7. We have heard the learned counsel on both sides at length and have gone through the pleadings. The promotion order dt. 13.11.1998 (Exhibit - A-3) clearly mentions that the promotions are temporary and on ad-hoc basis. It has further been mentioned in the promotion order that the said ad-hoc promotions will not confer any right on the promoted officers to any claim either for regular appointment as Executive Engineer (Civil) or for determining seniority in the grade of Executive Engineer. The terms of appointment are very clear that the applicant cannot claim any benefit on the basis of the said promotion orders for regular appointment. It is now an established principle in view of the decision in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors. (1990 SCC (L&S) 339) that where the initial appointment has been made following the procedure laid down by the Rules and the appointee continues in the said post uninterruptedly, the ~~said regularisation of~~ ^{for seniority.} period of officiating service would be counted. However, where the initial appointment is only ad-hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The same is true about claiming regular appointment or non-reversion if such promotion is ad-hoc. The respondents have categorically stated that the said ad-hoc promotions were made on the basis of seniority-cum-fitness and not on the basis of benchmarks prescribed in the Recruitment Rules. The applicants have claimed the benefit on the basis of the Judgment given by the Madras Bench of the Tribunal. However, this order of the

Tribunal has now been stayed by the High Court and therefore, the present Bench is not bound by that Judgment of the co-ordinate Bench. The respondents have also reverted the applicant strictly on the basis of DOPT guidelines. The DOPT guidelines also states that in reversion the benefits applicable to SC/ST will not be taken into consideration. Therefore, the arguments given in this connection by the learned counsel for the applicant will not hold good. It is clear that ^{as} the ad-hoc promotions were made only as a stop-gap arrangements till a regular panel was made available by the UPSC and merely as a stop-gap arrangement, the applicant cannot claim any benefit.

9. In the result, both the O.As are dismissed. There will be no orders as to costs.

(MUZAFFAR HUSSAIN)
MEMBER (J)

(ANAND KUMAR BHATT)
MEMBER (A)

B.