

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.660/2001

Mumbai, ~~20th~~ ^{24th} day of June, 2002

Hon'ble Shri Justice Birendra Dikshit, VC(J)
Hon'ble Shri M.P. Singh, Member(A)

1. S. Ravi
41/405, Ekata Vihar, CGS Colony
Sec 25, CBD, Belapur, Navi Mumbai
2. M.R. Bhavsar
40/394, Rkata Vihar, CGS Colony
Sec 25, CBD, Belapur, Navi Mumbai
3. R.S. Rawat
40/397, Ekata Vihar, CGS Colony
Sec 25, CBD, Belapur, Navi Mumbai

... Applicants

(By Shri R.S.Tulaskar, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Urban Affairs
Nirman Bhavan, New Delhi
2. Director General of Works
CPWD, Nirman Bhavan, New Delhi
3. Executive Engineer
CPWD, NMCD, 7th Floor
CGO Bldg, Navi Mumbai

... Respondents

(By Shri V.S. Masurkar, Advocate)

ORDER (ORAL)

Shri M.P. Singh, Member(A)

1. By the present OA, applicants three in number, are seeking direction to quash and set aside the select list for the post of Assistant Engineer(Civil) (AEC, for short) notified vide letter dated 16.2.2001 or in the alternative direct the respondents to place their names in the said select list at appropriate place and to promote them to the post of AEC, with all consequential benefits.

2. Briefly stated, it is the case of the applicants, working as Juniot Engineers (Civil) (JEC, for short), in the Office of Respondent no.3 that next in the line of promotion is the post of AEC (Group B) recruitment to

which is governed by the Recruitment Rules notified in 1997. As per these Rules, the posts of AEC are to be filled in by promotion of JEC. 50% of the vacancies are to be filled from JEC with 8 years regular service in the grade and 50% by limited departmental competitive examination (LDCE, for short) to be conducted by CPWD Training Institute from amongst JECs with 4 years regular service in the grade. Respondents vide notice dated 16.9.1998 notified selection for promotion of JEs (Civil/Elect) to 391 vacancies of the post of AE in CPWD, earmarked for the year 1993-94 to 1998-99, under the quota meant for LDCE. These vacancies included those reserved for SC/ST for Civil Wing and 68 for Electrical Wing. The results of LDCE held in February, 1999 were declared on 16.2.2001 wherein applicants' names were not included. Applicants immediately made representations in this regard but there has been no response so far.

3. According to the applicants, on going through the individual mark sheets supplied to them in May, 2001, Applicant No.1 had secured 559 marks, applicant No.2 had secured 472 marks and applicant No.3 (belonging to SC community) had secured 377 marks. The grievance of the applicants is that persons who had secured less marks than the applicants have been selected for the post of AEC. That is how the applicants are before us seeking the aforesaid reliefs.

4. Respondents have contested the OA and have stated in their reply that OAs 2526/1998 and 2239/98 filed by similarly situated persons challenging the notice dated 16.9.98/6.10.98 for holding LDCE on 21.2.99 for filling

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up 391 vacancies of AEC and 63 of AE(Electrical) were disposed by the Principal Bench of the Tribunal vide its order dated 15.2.99 with the following directions:

- (i) Segregate both the vacancies and eligibility year-wise. This is to ensure that an employee after having qualified in the examination does not get the benefit of seniority against the year when he was not eligible for the same;
- (ii) Existing rules for filling up the posts meant for reserved category candidates shall be adhered to as prescribed by the DoPT in its OM dated 2.7.1997;
- (iii) Vacancies of 391 shall be recalculated to ensure that 1:1 ratio between the two groups for the years from 1993 to 1999 have not been tilted to unduly favour one of the two contending groups; and
- (iv) The present practice of keeping vacancy slots for being filled by direct recruitment of later years thereby giving them unintended seniority over promotees who are already in position could be dispensed with.

5. In pursuance of the aforesaid directions, the vacancy position was reviewed year-wise and as a result of the same 336 vacancies of AEC and 89 of AEE for the years from 1993-94 to 1998-99 were required to be filled. Therefore, the result of LDCE was declared on the direction of the Tribunal after segregating the vacancies and eligibility of candidates year-wise with a view to ensure that an employee after qualifying the examination does not get undue benefit in seniority for the year when he was not actually eligible for the same. The three applicants joined CPWD on 15.12.92, 7.10.93 and 5.11.93 respectively and they became eligible to take examination only against the vacancies for the year 1997-98 and 1998-99 as per rules of examination for this purpose. The merit list for these years of vacancies had gone higher than the marks obtained by the applicants. Therefore the applicants cannot be equated with the candidates declared successful in the aforesaid

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examination, who have become eligible prior to the crucial year of recruitment. In view of this position, the OA be dismissed.

6. Heard the learned counsel for the rival contesting parties and perused the records furnished by the respondents relating to selection process.

7. Though the applicants have taken a variety of grounds in support of the reliefs prayed for, we find that the same are not maintainable in view of the fact that the respondents have declared the results of the test keeping in view the directions given by the Principal Bench of the Tribunal in its decision dated 15.2.99(supra). We also find that only persons who have secured more than 600 marks in the examination in respect of the vacancies for the year 1997-98 have been promoted by the impugned order, whereas as per applicants' own admission they have secured only 559, 472 and 377 marks respectively. We further note that in the order dated 16.2.2001 promoting JEs to the post of AEs, it has been stipulated that the declaration of results vis-a-vis promotion to the grade of AE is subject to the outcome of several OAs filed before the different Benches of the Tribunal. Therefore we do not find that the order dated 16.2.2001 suffers from any infirmity that would warrant our interference. Respondents have taken action strictly in terms of the directions given by the Principal Bench of this Tribunal(supra).

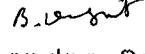
8. The learned counsel for the respondents has also drawn our attention to the order No.33 of 2002 dated 25.2.2002 by which applicants No.1 and No.3 have been

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given regular promotion to the post of AEC, of course subject to the outcome of several OAs mentioned therein. In view of this position, the OA has become infructuous in so far as these applicants are concerned. In so far as applicant No.2 is concerned, the learned counsel has submitted that the said applicant has secured less number of marks than those who have been promoted by the order dated 25.2.2002. In view of this, applicant No.2 cannot march over others, who have secured more marks, and claim promotion superceding them and contrary to the rules.

9. Therefore, for the reasons recorded above, the present OA is dismissed. No costs.


(M.P. Singh)
Member(A)


(Birendra Dikshit)
Vice-Chairman(J)

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