CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.1073/98 with OA Nos.1103,1104, 1105, 1106, 1107, 1108, 1119/1998 and 33/1999

Mumbai, this 20th day of July, 2001

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

P. Babu
JE(Electrical), RTI
CPWD, New CGO Building, Mumbai-400020
Mumbai-400020 .. Applicant in OA 1073/98

Smt. Jayshree R. Nair, JE(E)
MCEC, CPWD, New CGO Building
2nd Floor, Mumbai-400020 .. Applicant in OA 1103/98

J.Gorge, JE(E)
MCED-III, CPWD, New Qrts,Bammanwada
Mumbai-400099 .. Applicant in OA 1104/98

S.N. Shukla, JE(E)
MCED-II, CPWD Block 29
Sector VII, S.M.Plot
Mumbai-400037 .. Applicant in OA 1105/98

K.Raghunathan, JE(E)
MCED-III, CPWD New Qrts.
Bammanwada,Mumbai-400099 .. Applicant in OA 1106/98

K.K.Pillai, JE(E)
MCED-II, CPWD Block 29
Sector VII, S.M.Plot
Mumbai-400037 .. Applicant in OA 1107/98

N.B.Vyawahare, JE(E)
MCED-III, CPWD New Qrts
Bammanwada, Mumbai-400099 .. Applicant in OA 1108/98

R.P. Shukla, JE(E)
MCED-IV, CPWD New Qrts
Bammanwada, Mumbai-400099 .. Applicant in OA 1119/98

C. Jaiswal, JE(E)
MCED-II, CPWD Block 29
Sector VII, S.M.Plot
Mumbai-400037 .. Applicant in OA 33/99

(Applicants in person in all the OAs)

versus

Union of India, through

1. Director General of Works
   Nirman Bhavan, New Delhi
2. Additional Director General of Works(WR)
   CPWD, Old CGO Annexe, 15th Floor

Churchgate, Mumbai
3. Chief Engineer(Electrical)
CPWD, NewCGO Building
4th Floor, Churchgate, Mumbai
4. Superintending Engineer(Electrical)
MCEC, CPWD, 2nd Floor
Churchgate, Mumbai
5. Chief Engineer (Training)
CPWD Training Institute, E Wing
Nirman Bhavan, New Delhi
6. Secretary
Ministry of Urban Development
Nirman Bhavan, New Delhi .. Respondents

(By Shri V.S.Masurkar, Advocate)

ORDER(oral)

Hon'ble Shri M.P.Singh

The issues involved in all the aforementioned nine OAs and the reliefs prayed for are identical and, therefore, we proceed to dispose of the OAs through a common order. The applicants have challenged the Notice dated 16th September, 1998 (Annexure-A 2) by which respondents were to conduct a limited departmental competitive examination (LDCE, for short) for promotion of Junior Engineers(Civil/Electrical) (JE(C/E), for short) to the Asistant Engineers Grade (Civil/Electrical) (AE(C/E), for short) in the CPWD on 21.2.99 in accordance with the R/Rules notified on 21.6.1997. Brief facts of the case in the first OA No.1073/1998, are as follows:

OA No.1073/1998

2. The applicant was appointed as JE(E) in CPWD vide order dated 29.10.77. He was granted higher scale of Rs.2000-3500 on personal basis because of non-availability of vacancy in the post of AE(E) vide order dated 21.5.93. According to the aforesaid order

dated 21.5.93, the pay scale of Rs.2000-3500 has been allowed to him on personal basis and as and when regular vacancy in the grade of AE arises, this personal promotion will be adjusted against that vacancy subject to observance of normal procedure. Respondents therefore ought to have granted the applicant regular promotion of AE(E) in the year 1993 itself since there did exist the vacancies for the post of AE(E).

3. According to letter dated 22.3.1991, the Ministry of Urban Development has introduced a Scheme for grant of personal promotion on fitness basis for the JEs in CPWD w.e.f. 1.1.91. This scheme was introduced by the Government in consideration of the stagnation of the JEs for long time who were not getting promotion due to non-availability of vacancies. Therefore, it was decided to grant the personal promotion in higher scale with specific commitment that as and when regular vacancies in the cadre of AE/AD(H) arise the JE/Sectional Officers enjoying personal promotion will be adjusted against these vacancies, subject to the observance of normal procedure. It is stated by the applicant that the actual authority to grant promotion to the post of AE(E) is Director General of Works, CPWD, New Delhi. Howoever the Directorate General vide its order dated 27.3.91 delegated its powers to DPC consisting of 3 senior officers.

4. According to the applicant, respondents instead of complying with the commitment made vide their letter dated 22.3.91 and OM dated 27.3.91 are going ahead with conducting the examination as per impugned notice dated 16.9.98. According to the applicant even the R/Rules for the post of AE(E) stipulates the eligibility for consideration for promotion to that post which is as under:

> "Promotion:
> (i) 50% from JE(E) with 8 years regular service in the grade.
> (ii) 50% by limited departmental competitive examination to be conducted by the Central Public Works Department Training Institute, any other insitution duly recognised by the Central Government or State Government open to JE(E) with 4 years regular sevice in the grade.

Applicant further states that since his personal promotion was given way back in the year 1993, the rules then existing are applicable to consider his case for promotion in usual course and not the rules which came into force afterwards, i.e. 18.6.97. Applicant also submits that even assuming for the sake of argument that the latest amendment rules notified on 18.6.97 are to be followed even in that case the said rule No.2 makes it clear that the rules shall come into force on the date of publishing in the government gazetted i.e. 21.6.97. It is also alleged by the applicant that if the department is interested in filling up 50% quota by the method of LDCE even then the department was bound to conduct the said examination year-wise on regular basis, whereas admittedly after 1992 examination conducted by the UPSC, the department is conducting the consequential examination in the year 1999 and therefore the entire

action of holding examination is arbitrary, illegal, unwarranted and therefore violative of Articles 14 and 16 of the Constitution. Aggrieved by this, the applicant has filed this OA seking directions to call for the records and proceedings relating to the office order dated 21.5.93 and further directions to the respondents to adjust the applicant on regular promotion to the post of AE(E) in the existing vacancy of 1993-94 with all consequential benefits. He has also prayed for setting aside the notice dated 16.9.98.

5. Respondents in their reply have contested the case and have stated that the applicants were given personal promotions on the basis of all the three orders dated 22.3.91, 27.3.91 and 21.5.93 which clearly speak that JE/Sectional Officers enjoying personal promotion will be adjusted against these vacancies subject to observance of normal procedure. The posts of AE are filled up on regular basis from amongst the JE in accordance with R/Rules of AEs and not by the aforequoted orders. Moreover, the order dated 27.3.91 by which these personal promotions were governed have now been withdrawn after the intoduction of Assured Career Progression (ACP, for short) Scheme w.e.f. 9.8.99, which gives him the benefit as first upgradation in the scale of Rs.6500-10500 (AE's scale) after completion of 12 years of regular service and 2nd upgradation in the scale of Rs.10000-15200 (EE's scale) after completion of 24 years of regular service. As regards referring to CPWD Manual Vo.I 1992 is concerned,

the department has clearly stated in their reply that the CPWD Manual Vol.I is intended to be used only for general guidance and should not be quoted as authority. The contention of the applicant that neither the 1954 R/Rs nor 1997 R/Rs are applicable to him is wrong. Promotion to AE was first regulated by old R/Rs of 1954 and w.e.f. 21.6.97 by the new R/Rs. In both these set of R/Rules, recruitment to AE's grade is made as under:

(i) 50% from JE(C) with 8 years regular service in the grade and

(ii) 50% by LDCE to be conducted by the CPWD Training Institute or any other institution duly recognised by the Central Government or State Government open to JE(C) with 4 years regular service in the grade.

Since the applicant's case is that of promotion, rule at (i) is applicable to him, His claim for promotion has no relation with LDCE. In one of the judgements dated 13.12.2000, the Principal Bench has given direction to declare the aforesaid results of LDCE 1999 in accordance with Rules and instructions on the subject within 6 weeks from the date of a copy of that order. According to the respondents, prior to 1977 only 505 posts were available for promotion to JEs in the grade of AE and the rest 50% posts of AE were filled by open competitive examination through UPSC. After February, 1977 by way of amendment in R/Rs of 1954 the department had given 100% posts of AEs to departmental JEs by two method i.e.50% seniority cum merit and 50% through LDCE. The Department is taking action strictly in accordance with the provisions of R/Rs for the post of AE(C/E) through LDCE. According to them, provisions of CPWD

Manual are not applicable in the present case. Applicant will be promoted in his turn as and when be becomes eligible in accordance with the R/Rs. So far no junior to the applicant has been promoted.

6. Respondents have also stated in their affidavit filed on 14.6.1999 that there were 80 vacancies for the period from 1994-95 to 1998-99 earmarked for promotees and 80 vacancies for LDCE quota. According to the respondents direct recruitment of AEs was stopped in 1972 and in between 1972 and 1977, the Rules prevailing at that time were under review and in 1976 promotion policy was framed according to which 50% promotions were to be made by selection and 50% by LDCE to be held by UPSC. Amendment in the R/Rules was made on 5.2.77 which being prospective could not be applied to the vacancies prior to 5.2.77. As regards personal promotion given to the JEs in 1991, this was given by the Government to relieve the acute stagnation in the cadre of JEs. A perusal of the letter dated 22.3.91 would make it clear that the personal promotion was resorted to give some relief to the JEs, who could not be promoted to the post of AE due to non-availability of vacancies in the grade of AE. As regards the vacancies created through the Cadre Review in 1987 and 1995, the total number of cadre review posts sanctioned on both the occasions were entirely filled through the DPC by way of selection and not a single vacancy of cadre review was given to LDCE after taking the relaxation from the government for

filling the total number of posts created by the cadre review. In view of the aforesaid submission, the OA fails and is liable to be dismissed.

7. Heard the applicant who appeared in person and the learned counsel for the respondents and perused the records.

8. During the course of the arguments, applicant has stated that all the persons granted personal promotion to the post of AE should be adjusted against the regular vacancies of 1993 subject to normal procedure. According to him, normal procedure means promotion made by following the DPC procedure and not any other method. He also submitted that the respondents have not prepared seniority list though several requests have been made to prepare the same. According to him, the exact number of vacancies under each quota would be known only if the seniority list is finalised and published. He further submitted that more than 50% vacancies have already been filled up through LDCE. On the other hand, the learned counsel for the respondents submitted that personal promotion was given to the JEs to relieve the acute stagnation in the cadre of JEs who could not be promoted due to non-availability of vacancies in that grade. This was given purely on personal basis on completion of 15 years of total service as JE and regular promotion will be made according to normal procedure laid down in

the R/Rules. He has also submitted that no person junior to the applicant has been promoted and therefore the applicant should have no grievance on this ground.

9. After hearing the applicant in person and learned counsel for the repondents and perusing the records, we find that the examination proposed to be held by letter dated 16.9.98 is already over and the results have already been declared and therefore the request of the applicant to give him promotion strightaway without appearing in the said LDCE is not tenable. Order dated 27.3.91 by which personal promotions were governed has now been withdrawn after the introduction of ACP Scheme w.e.f. 9.8.99, which provides the benefit of upgradation on completion of 12 years regular service and 2nd upgradation on completion of 24 years service. It is also an admitted fact that no person junior to the applicant has been promoted as AE on regular basis. Applicant has failed to establish that more vacancies have been diverted to LDCE quota. The contention of the applicant that any vacancy available after 1993 should be given to him and that he should be regularised as AE is not tenable. Vacancies are to be filled in accordance with the R/Rules subject to observance of normal procedure. Normal procedure means in accordance with the provisions contained in the R/Rules and not as per the DPC procedure as contended by the applicant. In view of the fact that the respondents have followed the procedure as per the provisions contained in the R/Rules and the fact that the Scheme of 22.3.91 has since been

withdrawn and also the fact that no person junior to the applicant has been promoted as AE on regular basis, the application has become infructuous and the applicant has no case.

10. Applicant has vehemently argued that the respondents have not finalised the seniority list of AEs despite several requests made by him in this regard. This seniority list would indicate the correct number of vacancies utilized for Promotion quota as well as LDCE quota. On perusal we find that the said list has not been finalised by respondents and they have filed only a draft seniority list. We would, therefore, direct the respondents to finalise the seniority list as expeditiously as possible and furnish a copy thereof to the applicant in OA No.1073/1998.

11. We find that the applicants in respect of the remaining eight OAs aforementioned have also come with similar grievance seeking the same relief and the reply of the respondents is also the same as that of OA No.1073/98. In view of this, we do not feel it necessary to discuss them in detail.

12. For the reasons stated above, we find no merit in the OAs and the same deserve to be dismissed. We do so accordingly. There shall be no order as to costs.