

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

MP-25/06 ordersheet 1 to 3
closed date-7/6/2006

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R.A/C.P No.....
E.P/M.A No... 25/2006

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SECTION OFFICER (Judl.)

FORM NO. @
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 284/05
Misc. Petition No. _____
Contempt Petition No. _____
Review Application No. _____

Applicant(s) N. K. Srivastava
Respondent(S) U. O. I. JMM

Advocate for the Applicants M. Chanda, G.M. Chakrabarty
S. Nath

Advocate for the Respondent(S) B. Baishya CGSC ✓
Dly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
	21.11.2005	Heard Mr.M.Chanda, learned counsel for the applicant and Mr.G.Baishya, learned Sr.C.G.S.C. appearing for the respondents.
	6.1.2006	Mr. M. Chanda, learned counsel for the applicant is present. Mr. G. Baishya, learned Sr. C.G.S.C. for the respondents seeks for further time for filing written statement. Post on 27.2.2006. written statement, if any, in the meantime.

21.11.2005

Heard Mr.M.Chanda, learned counsel for the applicant and Mr.G.Baishya, learned Sr.C.G.S.C. appearing for the respondents.

Notice to the respondents to show cause as to why this application shall not be admitted. post on 6.1.2006.

Vice-Chairman

bb

6.1.2006

Mr. M. Chanda, learned counsel for the applicant is present. Mr. G. Baishya, learned Sr. C.G.S.C. for the respondents seeks for further time for filing written statement. Post on 27.2.2006. written statement, if any, in the meantime.

Member

Vice-Chairman

mb

No. 266, 31, 89, 86

Dated 11.11.05

Dy. Registrar

18.11.05

Steps not taken

pr comply order dated 21.11.05

18.11.05

Notice & order sent to D/Section for issuing to resp. Nos. 1, 2 & 3 by regd.

A/D post. D/No=1646 to

1648

DT=30/11/05.

Contd.....

27.2.06.

At the request of Mr. G. Baishya learned Sr. C.G.S.C. four weeks time is granted to get instructions from the respondents.
Post on 27.3.06.

5-1-06

① Service report awaited

lm

Vice-Chairman

my

27.03.2006

Mr. G. Baishya, learned Sr. Addl. C.G.S.C. for the respondents wanted time to file reply statement. Let it be done.

Post on 03.05.2006.

24-2-06

① Service report awaited

② No WIs has been filed.

my

24-3-06

① Service report awaited

② No WIs has been filed.

my

2-5-06

No WIs has been filed.

my

6-6-06

No WIs has been filed.

my

mb

3.5.2006

Mr. G. Baishya, learned Sr. C.G.S.C. for the respondents submits that he would like to have four weeks more time to file reply statement. It appears that respondents have already been granted four opportunities for filing the same. However, as a matter of last chance four weeks further time is granted to the respondents to file the reply statement. post on 7.6.2006.

Vice-Chairman

bb

7.6.2006

Post the matter on 7.7.2006 granting four weeks time to the respondents to file reply statement as prayed on behalf of Mr. G. Baishya, learned Sr. C.G.S.C.

6-7-06

No. WIs has been filed.

my

bb

Vice-Chairman

07.07.2006

Learned counsel for the respondents wanted to have four more weeks time to file reply statement. Counsel for the applicant has ment.

29.6.07.

Post on 09.08.2006.

8-8-06

No. Wks has been filed.

3

Vice-Chairman

mb

09.08.2006 Learned counsel for the respondents wanted time to file reply statement. Post on 31.08.2006.

30-8-06

No Written statement has been filed.

3

3
Member

Vice-Chairman

mb

31.8.06

The counsel for the applicant wanted to file rejoinder. Post the matter on 17.10.06.

30.8.06

Wks filed by the Respondents.

3

No rejoinder has been filed.

lm

11.5.07.

Counsel for the applicant wanted time to file with rejoinder. Post the matter on 7.6.07.

lm

Vice-Chairman

3
10.5.07.

7.6.2007

Further three weeks time is allowed to file rejoinder.

No rejoinder has been filed.

Post the case on 29.6.2007.

3
6.6.07.

Vice-Chairman

Rejoinder not filed. /bb/

29.6.07.

Counsel for the applicant has prayed for further time to file rejoinder.. Post the matter on 13.7.07.

3
28.6.07.

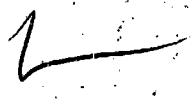
Rejoinder not filed.

Vice-Chairman

3
12.07.07. lm

13.7.07. Counsel for the applicant wanted time to file rejoinder. Let it be done. Post the matter on 2.8.07

Rejoinder not filed.



Vice-Chairman

lm

24
1.8.07.

2.8.07 Three weeks further time granted for filing rejoinder to the applicant.
Post on 27.8.07 for order.



Vice-Chairman

pg

Rejoinder not filed.

24
24.8.07.

27.8.07. Counsel for the applicant wanted time to file rejoinder. Let it be done. Post the matter on 12.9.07 as a last chance.



Vice-Chairman

Rejoinder not filed.

24
11.9.07.

14.9.07

lm

Rejoinder submitted by the Applicant. Copy served page to 9.

12.9.07. Counsel for the applicant wanted time to file rejoinder. Let it be done. Post the matter on 1.10.07.



Vice-Chairman

24

lm

The case is ready 01.10.2007


24
28.9.07.


In this case, reply and rejoinder have already been filed. Subject to point of law to be examined in the final hearing, this case is admitted.

Call this matter on 16.11.2007 for final hearing.

The case is ready for hearing.

24
15.11.07.


(Khushiram)
Member (A)


(M.R. Mohanty)
Vice-Chairman

16.11.2007 Mr. M.Chanda, learned counsel appearing for the Applicant is present. Mr.G.Baishya, learned Sr. Standing Counsel appearing for the Union of India has filed leave note.

Call this matter on 22.11.2007.

(Khushiram
Member(A)

(M.R.Mohanty)
Vice-Chairman

The case is ready
for hearing.

lm

21.11.07

22.11.2007. This matter is adjourned, to be taken up on 14.12.2007.

(Khushiram)
Member(A)

(M.R.Mohanty)
Vice-Chairman

The case is ready
for hearing.

13.12.07

lm

14.12.07 On the prayer of Mrs U. Dutta, learned counsel appearing for the Applicant the case is adjourned to 22.01.08.

The case is ready
for hearing.

21.1.08

(G. Ray)
Member(A)

(M. R. Mohanty)
Vice-Chairman

PG

21.01.2008

Mr G.Baishya, learned Sr. Standing counsel for Union of India undertakes to file his appearance memo in this case. On behalf of the Applicant a prayer has been made for adjournment of hearing of this case.

The case is ready
for hearing.

25.1.08

Accordingly call this matter on 28.01.08.


(Khushiram
Member(A)

(M.R.Mohanty)
Vice-Chairman


00.1.2005/2005-16

28.01.2008 On the prayer of Mr M. Chanda,
learned Counsel appearing for the
Applicant (made in presence of Mr G.
Baishya, learned Sr. Standing
Counsel for the Union of India) this
case stands adjourned to 05.02.2008.

The case is ready
for hearing.


4.2.08


(Khusiram)
Member



(M. Mohanty)
Vice-Chairman

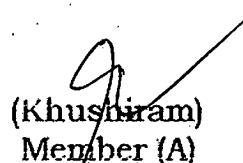
nkm

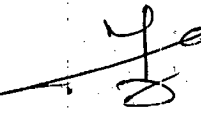
05.02.2008 As a mark of respects to Late Bhargab
Choudhury, a member of the Bar, the
Court Work is suspended.

The case is ready
for hearing.

Call this matter on 12.3.2008.


11.3.08


(Khusiram)
Member (A)

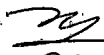

(M.R. Mohanty)
Vice-Chairman

Lm

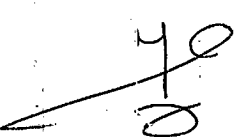
12.03.2008

Call this Division Bench matter
on 23.04.2008.

The case is ready
for hearing.

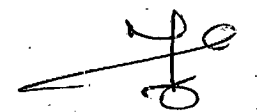

22.4.08

lm


(M.R. Mohanty)
Vice-Chairman

23.04.08

Call this matter before Division
Bench on 29.05.2008 for hearing.


(M.R. Mohanty)
Vice-Chairman

pg

29.05.2005

None for the Applicant. Mr. G.Baishya, learned Sr. Standing counsel appearing for the Respondents are present.

Call this matter on 18.6.2008

The case is ready for hearing.

M
17.6.08.

lm


(Khushiram)
Member (A)

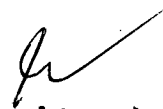
18.06.2008

Heard Mr M. Chanda, learned Counsel appearing for the Applicant and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, in part.

The case is ready for hearing.

M
31.7.08

Call this matter on 01.08.2008 for further hearing.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

nkm

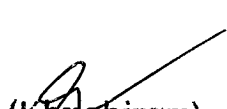
01.08.2008.


No written statement has been filed as yet by the Respondents in this case.

Call this matter on 03.09.2008 awaiting written statement from the Respondents.

The case is ready for hearing.

M
27.8.08


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman


lm


28.08.2008

On the prayer of the learned Counsel for the Parties, call this matter on 09.09.2008.

The case is ready for hearing.

M
8.9.08.


(Khushiram)
Member(A)


(M.R. Mohanty)
Vice-Chairman

nkm

09.09.2008

Mr. M.Chanda. learned counsel appearing for the Applicant and Mr.G.Baishya. learned Sr.Standing counsel appearing for the Respondents are present.

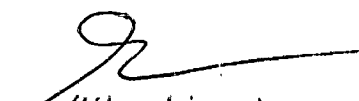
Some records have been called for from the concerned department.

Call this matter on 03.11.2008 for hearing.

The case is ready for hearing.

Yes


31.10.08. im



(Khushiram)
Member(4)

03.11.2008

None appears for either of the parties.

Call this matter on 10.11.2008 for hearing.


(S.N. Shukla)
Member (A)

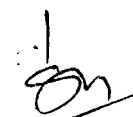

(M.R. Mohanty)
Vice-Chairman


nk m

10.11.2008

Mr M. Chanda, learned Counsel appearing for the Applicant, is present. Mr G. Baishya, learned Sr Standing Counsel for the Union of India is on accommodation.

Call this matter on 12.11.2008.


(S.N. Shukla)
Member (A)


(M.R. Mohanty)
Vice-Chairman

nk m

12.11.2008

Mr M. Chanda, learned Counsel appearing for the Applicant, and Mr G. Baishya, learned Sr. Standing Counsel for the Union of India, are present.

The case is ready for hearing.

22/12/08

nkm

Call this matter on 15.12.2008.

(S.N. Shukla)
Member (A)

(M.R. Mohanty)
Vice-Chairman

~~15.12.2008~~

~~Mrs. U. Dutta, learned counsel appearing~~

15.12.2008

Mrs. U. Dutta, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India are present.

This, being a Divisional Bench matter call

this mat

/lm/

The case is ready for hearing.

27.01.09

15.12.2008

Mrs. U. Dutta, learned counsel appearing for the Applicant and Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India are present.

This, being a Divisional Bench matter call this matter on 28.01.2009.

(S.N. Shukla)
Member (A)

/lm/

GA-284/2005

-10-

28.01.2009

Call this matter on 16.03.2009 for hearing.


(M.R. Mohanty)
Vice-Chairman

/bb/

16.03.2009

With the consent of the parties this case is directed to be listed on 25.03.2009.


(A.K. Gaur)
Member (J)

/bb/

25.03.2009


Call this matter on 07.05.2009. Learned counsel for the Respondents is directed to produce the relevant records on the next date.

The case is ready for hearing


(Khushiram)
Member (A)

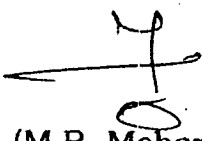

(A.K. Gaur)
Member (J)

/bb/


06.5.09


07.05.2009

Call this matter on 18th June 2009 for hearing.


(M.R. Mohanty)
Vice-Chairman

20.5.09


This OA proposed request

 lm

21.05.2008

Mrs. U. Dutta, learned counsel for the Applicant is present. On behalf of Mr. G. Baishya, learned Sr. Standing Counsel for the Government of India an adjournment is sought. Prayer is allowed.

The case is ready for hearing


25.5.09

Call this matter on 26.05.2009 for hearing.


(N.D. Dayal)
Member (A)


(M.R. Mohanty)
Vice-Chairman

lm

511-
O.A.284/05

26.05.2009 On the consent of the parties
call this matter on 27.05.2009.

(N.D.Dayal)
Member(A)

(M.R.Mohanty)
Vice-Chairman

pg

OA. 284/2005

27.05.2009

On the request of learned counsel for both the parties call this matter on 24.06.2009 for hearing.

The case is ready for hearing.

(N.D. Dayal)
Member (A)

(M.R. Mohanty)
Vice-Chairman

/bb/

23.6.09.

24.06.2009

Call this matter on 29.07.2009 for hearing.

The case is ready for hearing.

(M.R. Mohanty)
Vice-Chairman

lm

28.7.09

29.07.2009

On the prayer of learned counsel for both the parties, call this matter on 31st July 2009.

(M.K. Chaturvedi)
Member(A)

(M.R. Mohanty)
Vice-Chairman

/lm/

9/9/09

31.07.2009

Copy of judgment order dtd 31/07/2009 send to the D/section for issuing to the Applicant & Respondents. by Regd post.
Free copies of both side standing counsels by hand.

Heard Mr.M.Chanda, learned counsel appearing for the Applicant and Mr.G.Baishya, learned Sr. Standing counsel appearing for the Respondents and perused the materials placed on record. Hearing concluded.

For the reasons recorded separately, this case stands disposed of.

(M.K. Chaturvedi)
Member (A)

(M.R. Mohanty)
Vice-Chairman

D/No. 1283-1287

/bb/

Dtd. 16/9/09

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

O.A No. 284 of 2005

DATE OF DECISION: 31.07.2009

N.K.Srivastava

.....Applicant/s.

Mr.M.Chanda

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Mr. G.Baishya, Sr. C.G.S.C.

.....Advocate for the
Respondents

CORAM

**THE HON'BLE MR.MANORANJAN MOHANTY, VICE CHAIRMAN
THE HON'BLE MR.MADAN KUMAR CHATURVEDI, MEMBER (A)**

4. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes/No ✓
5. Whether to be referred to the Reporter or not? Yes/No ✓
6. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No ✓

Judgment delivered by

 Vice-Chairman/Member (A)

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 284 of 2005

Date of Order: This, the 31st Day of July, 2009

THE HON'BLE SHRI MANORANJAN MOHANTY, VICE CHAIRMAN

THE HON'BLE SHRI MADAN KUMAR CHATURVEDI, MEMBER (A)

Sri N.K.Srivastava
Son of Shri K.K.Srivastava
Assistant Engineer (P)
Guwahati Central Division
Central Public Works Department
Bamunimaidan, Guwahati-21.

... Applicant.

By Advocates : Mr.M.Chanda, Mr.G.N.Chakraborty & Mr.S.Nath.

- Versus -

1. The Union of India
Represented by Secretary
to the Government of India
Ministry of Urban Development
and Poverty Alleviation
Nirman Bhawan
New Delhi - 110 011.
2. The Director General of Works
Central Public Works Department
118-A, Nirman Bhawan
New Delhi - 110 011.
3. The Union Public Works Department
Represented by it's Secretary
Dholpur House, Shahjahan Road
New Delhi - 110 011

.... Respondents.

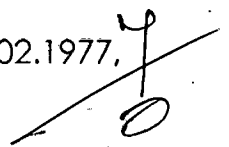
By Mr. G.Baishaya, Sr. C.G.S.C.

ORDER (ORAL)
31.07.2009

MANORANJAN MOHANTY, (V.C.)

Applicant, a graduate engineer, was appointed as a Junior Engineer in Central Public Works Department (in short CPWD) on 07.12.1992.

According to the Recruitment Rules, that stood amended w.e.f. 05.02.1977,



50% of the vacancies in the grade of Assistant Engineer (in short 'AE) are first to be filled up by selection, on the basis of merit-cum-seniority, from amongst permanent Junior Engineers employed in CPWD and the remaining 50% of the vacancies of Assistant Engineers to be filled up through a limited competitive departmental examination (in short LCDE) open to Junior Engineers who have put in a minimum of 4 years service in the grade of Junior Engineer. Applicant, who appeared in the LCDE held during February 1999 (for going over the post of Assistant Engineer) and result of which examination was declared on 16.01.2001, was found eligible for consideration for promotion as Assistant Engineer against the vacancy for the year 1997-98 and the said factum was declared by a communication dated 01.02.2002 of the Director General of Works of CPWD Training Institute/New Delhi. Accordingly, the Applicant was promoted as an Assistant Engineer of CPWD Organisation during 2002.

2. Initial recruitment for Group - 'A' Engineering Services are made at the level of Assistant Executive Engineer (in short 'AEE') through a competitive examination conducted by the Union Public Service Commission (in short 'UPSC') and minimum qualification for the post of AEE is Degree in Engineering. Applicant, a Degree holder in Engineering, took such an examination conducted by the UPSC and during the year 1998 and again in the year 2000, he was called to personality test (i) that was taken on 11.03.1999 (vide UPSC letter dated 06.02.1999, in respect of the Examination of 1998) and (ii) also the one taken on 29.03.2001 (vide UPSC letter dated 01.03.2001) in respect of the Examination of 2000.

3. Applicant addressed a represented dated 22.03.2005 to the Director General (Works) of CPWD and forwarded the same to the



Executive Engineer of Guwahati Central Division of CPWD on 22.03.2005. The Executive Engineer of Guwahati Central Division of CPWD forwarded the said representation to the Circle Office of Assam CPWD in his letter dated 06.04.2005. The Executive Engineer (Adm.) of Assam Central Circle-I of CPWD forwarded the said representation to Chief Engineer (NEZ) of CPWD of Shillong on 05.05.2005.

4. The grievances raised in the aforesaid representation are also raised in the present Original Application filed (on 18.11.2005) under Section 19 of the Administrative Tribunals Act, 1985; wherein it has been alleged (a) that no LDC Examination having been conducted before 1998-99 (i.e. Immediately after completion of 4 years of his service as a Junior Engineer) and there having been delay in publishing the result of LCD Exam., the Applicant was prejudiced by getting delayed promotion as Asstt. Engineer; (b) that correct figure of vacancy in the posts of AEE not having supplied to UPSC (from the end of CPWD) the Applicant could not be recommended (by UPSC) for being appointed as AEE during 1998 & 2000 and (C) that back log vacancies in the post of Executive Engineer (in short EE) in CPWD Organisation (those were meant for AEE) having been diverted unjustly, all promotion (and further promotion) prospects of the Applicant has been jeopardized.

5. Respondents, who filed a written statement in this case, through their Senior Standing counsel, pointed out, at the hearing, that all the issues raised in this case were before the Hon'ble High Court of Delhi in W.P.(C) No.2562 of 2002 (between Central Engineering Services Class-I (DR) Association & 3 Others vs. Union of India & Others) and other cases decided on 05.12.2008 and all those points were answered against the



Applicants and, therefore, the present case deserves to be dismissed; being a covered case.

6. At this stage, Mr.M.Chanda, learned counsel for the Applicant, without pressing this case, filed a memo to permit the Applicant to put up a representation before his authorities for redressal of grievances.

7. While disposing of this case (which is covered by the case of decided by the Hon'ble Delhi High Court – supra) as not pressed, liberty is, hereby, granted to the Applicant to represent any of his grievances before his authority.

8. Send copies of this order to the Applicant and the Respondents and free copies of this order be supplied to the Advocates of both the parties.


(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER


(MANORANJAN MOHANTY)
VICE CHAIRMAN

/BB/

Copy of Order

From

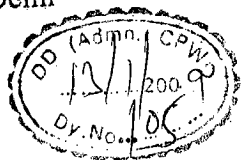
The Registrar General
High Court of Delhi
New Delhi

To

No. 36504 /DHC/WRITS/D-2/2008
Dated 18/12/08

File in Court on 31/12/08

Court Officer.



1. Union of India, through the Secretary, Ministry of Urban affairs & Employment, Nirman Bhawan, New Delhi 11.
2. Union of India through the Secretary, Department of Personnel & Training, North Block, New Delhi 1.
3. The Director General (Works), Central Public Works department, Nirman Bhawan, New Delhi 11.
4. The Chairman, Union Public Service Commission, Dholpur House, New Delhi 11.
5. The Registrar, Central Administrative Tribunal, Principal Bench, Copernicus Marg, New Delhi.

O.A. No. 1968/99 dated 13.2.01

WRIT PETITION (CIVIL) NO. 2562/2002

Central Engineering Service Class I (DR) Association

Vs.

UOI & ors.

....Petitioner/s

....Respondent/s

Sir,

I am directed to forward herewith for information and immediate compliance/necessary action a copy of order dated 5.12.2008 passed by Hon'ble Division Bench of this Court in the above noted case alongwith a copy of Memo of Parties.

Please acknowledge receipt.

अपर सचिव का कार्यालय
AS (UD)'s Office

डायरी सं./Dy. No. 1101/D

दिनांक/Date 30/12/08

Yours faithfully

Asstt. Registrar (Writs)
for Registrar General



Dir (W) - on tour

US (EW-1)

12/1/09

CET (RBS)

12/1/09

Directed to

17/1/09

EC-VIII
19/1/09

IN THE HIGH COURT OF DELHI AT NEW DELHI
EXTRAORDINARY CIVIL WRIT JURISDICTION
C.W.P. NO. 2869 OF 2002

IN THE MATTER OF :

Central Engineering Service Class I (DR) Association & Ors.Petitioners

Versus

Union of India & Ors.Respondents

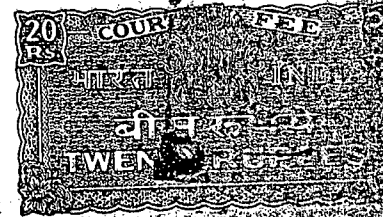
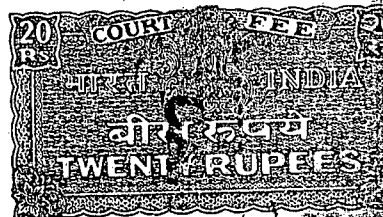
MEMO OF PARTIES

1. Central Engineering Service Class I (DR) Association
Through its Additional Secretary,
2. Umesh Bansal
S/o J.P. Bansal,
K-1, Indraprastha Apartments,
Partparganj, New Delhi 92
3. Sunil Sharma
S/o J.P. Sharma,
28, Prashanth Apartments,
Partparganj, New delhi 92
4. Mohammed Sagheer
S/o M.K. Usman,
TH-11, CPWD Transit Hostel,
Aliganj, Jorbagh, New Delhi 3

....PETITIONERS

VERSUS

1. The Union of India
Through
(1A) The Secretary,
Ministry of Urban Affairs & Employment,
Nirman Bhawan, New Delhi 11
(1B) The Secretary,
Department of Personnel & Training,
North Block, New Delhi 1
2. Director General (Works),
Central Public Works Department,
Nirman Bhawan, New Delhi 11
3. The Chairman,
Union Public Service Commission,



Dholpur House, New Delhi 11

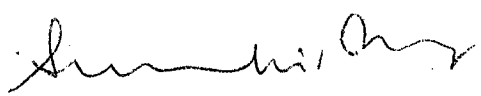
4. Central Administrative Tribunal
Through its Registrar,
Principal Bench,
Faridkot House, New Delhi 1
5. Shri B.M. Singhal,
S/o Late Shri Jyoti Prasad,
C-11/158, Yamuna Vihar,
Delhi
6. Shri S.K. Jain,
S/o Shri S.L. Jain,
R/o, 4/1712, Mittal Sadan
Bhola Nath Nagar,
New Delhi
7. Ashwini Kumar,
OC, Costrn Squadron,
National Security Guards,
CGO Complex, Lodhi Road,
New Delhi - 3
8. P.K. Dixit,
Executive Engineer,
Indore Central Dn, CPWD,
Indore

.....RESPONDENTS

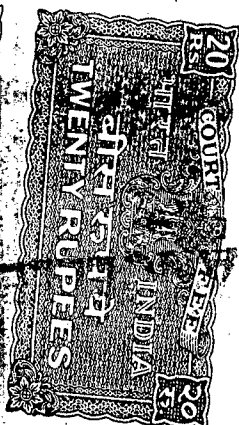
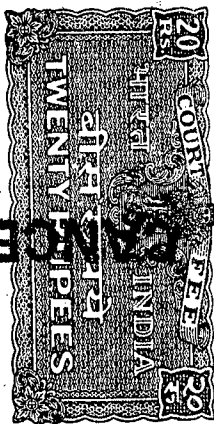
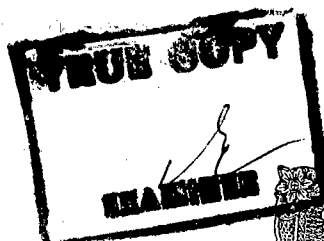
.....RESPONDENTS 7 & 8 ARE PROFORMA RESPONDENT

PETITIONER

THROUGH:


(SURUCHI AGGARWAL)
ADVOCATE
C-61, JANGPURA EXTN
NEW DELHI

DATED: 18.03.2002.



* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No. 2562 of 2002**

Judgment reserved on: July 7, 2008

% Judgment delivered on: December 5, 2008

1. Central Engineering Service Class I (DR) Association
Through its Additional Secretary

2. Umesh Bansal
S/o J.P. Bansal
K-1, Indraprastha Apartments
Patparganj, New Delhi – 92

3. Sunil Sharma
S/o J.P. Sharma
28, Prashanth Apartments
Patparganj, New Delhi – 92

4. Mòhammed Sagheer
S/o M.K. Usman
TH-11, CPWD Transit Hostel
Aliganj, Jorbagh, New Delhi – 3

...Petitioners

Through Mr. P.P. Rao, Senior Advocate with
Mr. V.K. Rao, Mr. Ayushya Kumar &
Mr. Arun Dhiman, Advocates

Versus

1. The Union of India
through
(1A) The Secretary
Ministry of Urban Affairs & Employment
Nirman Bhawan, New Delhi – 1

(1B) The Secretary
Department of Personnel & Training
North Block, New Delhi – 1

2. Director General (Works)
Central Public Works Department
Nirman Bhawan, New Delhi – 1
 3. The Chairman
Union Public Service Commission
Dholpur House, New Delhi – 11
 4. Central Administrative Tribunal
Through its Registrar
Principal Bench
Faridkot House, New Delhi – 1
 5. Shri B.M. Singhal
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C-11/158, Yamuna Vihar, Delhi
 6. Shri S.K. Jain
S/o Shri S.L. Jain
R/o 4/1712, Mittal Sadan
Bhola Nath Nagar, New Delhi.
 7. Ashwini Kumar
OC, Costn Squadron
National Security Guards
CGO Complex, Lodhi Road
New Delhi – 3.
 8. P.K. Dixit
Executive Engineer
Indore Central Dn, CPWD
Indore.
- ...Respondents
- Through Mr. H.K. Gangwani, Advocate for
Respondent No.1
Mr. P.P. Khurana, Senior Advocate
with Mr. Sachin Sood and Mr. Vikram
Saini, Advocates for Respondents
No.5 and 6

WITH

Writ Petition (Civil) No. 489 of 2000

V.K. Jain
724, Laxmibai Nagar
New Delhi-110023.

...Petitioners

Through Mr. P.P. Rao, Senior Advocate with
Mr. V.K. Rao, Mr. Ayushya Kumar &
Mr. Arun Dhiman, Advocates

Versus

1. The Union of India
through
The Secretary
Ministry of Urban Affairs & Employment
Nirman Bhawan, New Delhi -110011.

2. Secretary
Union Public Service Commission
Shahjehan Road
New Delhi-110011.

3. Shri B.M. Singhal
C/o Mr. Sohan Lal, Advocate
C-6/244, Yamuna Vihar
Delhi-110053.

...Respondents

Through Mr. H.K. Gangwani, Advocate for
Respondent No.1
Mr. Sandeep Sethi, Senior Advocate
with Mr. Sachin Sood and Mr. Vikram
Saini, Advocates.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether the Reporters of local papers may

- be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The rather limited question for our consideration is: Whether, in exercise of the power of relaxation conferred by statutory rules, the Central Government is entitled to divert vacancies, *en bloc*, belonging to the quota of direct recruits to the quota of promotees, in order to regularize their promotion? Given the facts and circumstances of the case, as well as the legal position, our answer to this question is in the affirmative.

2. The aggrieved parties before us are directly recruited Assistant Executive Engineers (Civil), Class I (for short AEEs) whose quota of vacancies for promotion to the grade of Executive Engineer was diverted in favour of Assistant Engineers (for short AEs).

Broad facts of the case:

3. The statutory rules that we are concerned with are presently

called the Central Engineering Service Group 'A' Recruitment Rules, 1954 (for short the 1954 Rules). The power to relax the statutory rules is conferred upon the Central Government by Rule 25 of the 1954 Rules and this reads as follows:-

"25. Power to relax: Where the Central Government is of opinion that it is necessary or expedient to do so, it may, by order, relax, in consultation with the Union Public Service Commission, any of the provisions of these Rules with respect to any class or category of persons."

4. At this stage, it may be mentioned that the Ministry of Urban Affairs and Employment (Department of Urban Development), Central Engineering (Civil) Group 'A' Service Rules, 1996 (for short the 1996 Rules) superseded the 1954 Rules. However, as far as we are concerned, this is of no serious consequence for answering the question that we have set out above. We shall, however, be dealing with the alleged impact of the 1996 Rules.

5. Rule 3 of the 1954 Rules provides for recruitment to the Central Engineering Service, Class I, by a competitive examination, by promotion and by transfer. The posts that we are concerned with are of Executive Engineer (Civil), Class I, and they can be filled up by

promotion of directly recruited Assistant Executive Engineers, Class I (AEEs) and by promotion of Assistant Engineers (AEs). AEs who can be considered for promotion as Executive Engineers, include both graduate engineers as well as diploma-holders.

6. The 1954 Rules provide a quota for filling up the posts of Executive Engineer, Class I. As the 1954 Rules originally stood, 75% of the vacancies were to be filled up by promotion of AEEs and the rest by promotion of AEs. However, this quota underwent changes on more than one occasion but we are not really concerned with the amendments made. Suffice it to say that even though direct recruitments were said to have been made to the post of AEEs on a yearly basis, there remained a substantial shortfall of AEEs available for promotion to the grade of Executive Engineer, Class I. The result of this was that to keep the work going, the Central Government promoted AEs as ad hoc Executive Engineers. The promotions made were quite disproportionate to the quota and the fall-out of this was that many of the AEs continued as ad hoc Executive Engineers and even retired as such without the benefit of regularization.

7. As one would expect, promotions of AEs in excess of their quota led to litigation, but our attention has particularly been drawn to a decision of the Supreme Court in *J.N. Goel & others v. Union of India & others*, (1997) 2 SCC 440. What happened in that case was that graduate AEs had challenged, before the Central Administrative Tribunal, the entitlement of diploma-holder AEs for ad hoc promotion as Executive Engineers, *inter alia*, on the ground that the educational qualification postulated by Rule 21(3) of the 1954 Rules did not permit it. During the pendency of the challenge, the Central Government retrospectively incorporated a proviso to Rule 21(3) of the 1954 Rules to the effect that a diploma-holder AE having an outstanding record and ability could be promoted as an Executive Engineer in relaxation of the educational qualification required. This was also challenged before the Central Administrative Tribunal (for short the Tribunal).

8. While upholding the proviso, the Supreme Court noticed that the 1996 Rules had come into force, but observed that they were prospective in operation and that the promotions made prior to the promulgation of the 1996 Rules would be governed by the 1954 Rules. The Supreme Court concluded:

"The promotion of diploma-holder Assistant Engineers who have been promoted on the post of Executive Engineer on ad hoc basis, will have to be reviewed by the authorities and regular promotions against vacancies which occurred prior to the promulgation of the 1996 Rules will have to be made in accordance with the 1954 Rules."

9. Apparently taking a cue from the observations of the Supreme Court, the Central Government decided to undertake a wholesale review of ad hoc promotions made to the grade of Executive Engineer and to regularize the services of the incumbents. There was some correspondence between the Ministry of Urban Development and the Union Public Service Commission (for short UPSC) in this regard. But finally, the proposed action was justified by the Secretary in the Ministry of Urban Development in his letter dated 4th June, 1999 addressed to the Chairman of the UPSC. The salient points mentioned in the letter are to the following effect:

- a. There has been consistent under recruitment of AEEs to fulfill their quota. Consequently, AEs have been promoted in excess of their quota on an ad hoc basis to carry on the work of the department. (Paragraph 2).
- b. The existing arrangements have led to frustration amongst ad-hoc Executive Engineers, many of whom have retired without any benefit of regularization. (Paragraph 3).
- c. To abolish the ad hocism, to wipe out the huge backlog of vacancies and to operate the 1996 Rules on a clean slate, a

one-time relaxation of the 1954 Rules is necessary. There is no alternative but to regularize the ad hoc promotion of AEs who have been working as Executive Engineers for more than 10 years. (Paragraph 4).

d. This is a conscious and deliberate policy decision of the government to streamline the cadre management of the CPWD to facilitate the smooth working of the department. (Paragraph 5).

e. "The proposed course of action shall not in any manner whatsoever adversely affect the interest of AEEs." (Paragraph 6)

f. "In fact the promotion of AEEs in future shall also not be delayed for want of their quota vacancies." (Paragraph 6).

10. On the basis of the above, the UPSC accorded approval to the Central Government to divert 430 vacancies falling under the promotion quota of AEEs (Civil) in the CPWD to the promotion quota of AEs by relaxation of the 1954 Rules, with retrospective effect over a period of three years, that is, 1994-95 to 1996-97 upto 28th October, 1996.

11. Soon thereafter, the Central Government exercised the power of relaxation conferred on it by Rule 25 of the 1954 Rules and issued the following Office Memorandum on 6th July, 1999:

"No 30/5/98-EC-I/EW-1
GOVERNMENT OF INDIA
MINISTRY OF URBAN DEVELOPMENT

New Delhi, the 6th July, 1999.

OFFICE MEMORANDUM

Subject: Diversion of backlog vacancies from AEE's quota to AE's quota for promotion to the grade of EE (C) and EE (Elect.)

As per provisions of 1954 Rect Rules, promotion to the post of EE in the CPWD is made from two sources namely, the AEEs Group-A and AE's Group-B in the following ratio prescribed from time to time.

	AEE	AE
25.8.49 to 6.9.55	3	1
7.9.55 to 31.3.72	2	1
1.4.72 to 31.3.84	1	1
1.4.84 to 28.10.96	2	1

Revised RR's were promulgated on 29.10.96. The AEE's were not available in adequate number to fill up their quota vacancies which resulted in backlog in the quota of AEE's and corresponding excess in the promotion of AE's on adhoc basis against such quota. The backlog in the quota of AEE's till 28.10.96 was 430 in case of Civil and 120 in the case of Electrical. After careful consideration the Govt. has in exercise of the powers conferred under Rules 23/25 of the Central Engineering Service, Group A, Recruitment Rules, 1954 (SRO-1842) and rule 21 of the Central Electrical and Mechanical Engineering Service Group-A Recruitment Rules, 1954 (SRO-1843), decided to divert the said backlog of 430 vacancies in the quota of AEE's (C) and 120 in the

quota of AEE (E) to the Asstt. Engineer (Civil and Electrical) over a period of 3 years namely, 1994-95, 95-96 and 96-97 (upto 28.10.96) with a view to regularising the adhoc promotion of AE's working against these vacancies. This is subject to the condition that retired officers will also be considered, as per existing policy of the Govt. This issues with the approval of DPT vide their Dy. No. 337/US (RR-1)/97 dt. 20.5.97 and UPSC vide their Lr. No. 11/11(3)98 - AP2 dt. 30.6.99.

Sd/-

(S.K. Bhatnagar)

Under Secretary to the Govt. of India
Tel. No. 3014151"

12. The aforesaid Office Memorandum was challenged by the Petitioners in the Central Administrative Tribunal by filing O.A. No. 1968 of 1999. That O.A. came to be dismissed by an order dated 13th February, 2001. This order passed by the Tribunal is now under challenge before us in WP(C) No. 2562 of 2002.

13. A perusal of the order dated 13th February, 2001 shows that the Tribunal relied, *inter alia*, on its earlier decision in *O.A. No. 2134 of 1999 (V.K. Jain v. Union of India & ors) decided on 6th January, 2000*. The decision rendered in *V.K. Jain* is under challenge before us in WP (C) No. 489 of 2000. Both writ petitions were heard together and the

present decision will govern both of them.

What is the effect, if any, of the supersession of the 1954 Rules?

14. Learned counsel for the Petitioners contended that the 1954 Rules having been superseded by the 1996 Rules, the Central Government could not exercise the power of relaxation conferred by Rule 25 of the 1954 Rules because it was no longer available to it. Therefore, it was submitted that the diversion of vacancies was without jurisdiction.

15. Our attention was drawn by learned counsel to paragraphs 65 and 66 of *State of Orissa v. Titagur Paper Mills Co. Ltd.* 1985 Supp SCC 280. It was submitted on the basis of this decision that the effect of supersession of the 1954 Rules by the 1996 Rules is that the 1954 Rules have been wiped off from the statute book and replaced by the 1996 Rules. Consequently, the power of relaxation conferred by Rule 25 of the 1954 Rules can no longer be of any assistance to the Central Government.

16. Reliance was also placed on *Gajraj Singh v. STAT*, (1997) 1

WP (C) Nos. 2562/2002 & 489/2000

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SCC 650 particularly paragraphs 22 and 29 of the Report to submit that when an Act of Parliament is repealed, "it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of Parliament as if it had never been passed; it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was an existing law." The effect that repeal has on vested rights and inchoate rights has also been discussed in that decision.

17. Finally, reference was made to *India Tobacco Ltd. v. CTO*, (1975) 3 *SCC* 512 which says much the same as *Gajraj Singh*, the point being made that for all intents and purposes the 1954 Rules do not exist.

18. We do not agree with the view canvassed by learned counsel. In the first instance, we are concerned only with the promotions made pre-1996. Those promotions could be governed and were governed only by the 1954 Rules and not by any other rule. Apart from the fact that this is quite natural, it was also made explicit by the Supreme Court in *J.N. Goel*. In paragraph 8 of the Report, it was observed:

"Since the 1996 Rules are prospective in operation, the

promotions made prior to the making of the 1996 Rules would be governed by the 1954 Rules

Similarly, in paragraph 15 of the Report, the Supreme Court reiterated its view in the following words:

“The promotion of diploma-holder Assistant Engineers who have been promoted on the post of Executive Engineer on ad hoc basis, will have to be reviewed by the authorities and regular promotions against vacancies which occurred prior to the promulgation of the 1996 Rules will have to be made in accordance with the 1954 Rules. Regularisation of diploma-holder Assistant Engineers who are working as Executive Engineers on ad hoc basis against vacancies which occurred after the promulgation of the 1996 Rules will have to be made in accordance with the provisions of the 1996 Rules.”

19. Secondly, the 1996 Rules make it clear that though they supersede the 1954 Rules, they do so “except as respects things done or omitted to be done before such supersession”. One of the things done by the Central Government under the 1954 Rules was to make promotions of AEs as Executive Engineers far in excess of their quota. This resulted in an anomalous situation in as much as a large number of AEs could not be regularized as Executive Engineers in spite of having worked as such for more than 10 years (some of them even retired as ad hoc Executive Engineers) and this naturally bred frustration amongst them.

The mandate of the Supreme Court in *J.N. Goel* was to rectify this situation with reference to ad hoc diploma-holder AEs. But, this was not possible without taking into consideration similar aspirations of the graduate AEs, who could not (obviously) be left out in the cold. It was to set right the anomalous situation caused by the omission of the Central Government to adhere to the quota that it had to resort to Rule 25 of the 1954 Rules, there being no other alternative or viable option.

20. Effectively, therefore, all that the Central Government has done is to acknowledge the existence of a complex situation of its own making; appreciate the need to rectify it in terms of the observations of the Supreme Court in *J.N. Goel*; utilize the power available to it under Rule 25 of the 1954 Rules; and, correct the course of events caused by "things done or omitted to be done" by it. In our opinion, on the plain language of the 1996 Rules, this power was available to the Central Government under the 1954 Rules in respect of pre-1996 promotions.

21. The matter may be looked at from another point of view. Has any prejudice been caused to the Petitioners or have they been adversely affected in any manner whatsoever? In this context, it is

necessary to advert to the letter dated 4th June, 1999 addressed by the Secretary in the Ministry of Urban Development to the Chairman of the UPSC. In this letter, it is categorically stated that "The proposed course of action shall not in any manner whatsoever adversely affect the interest of AEEs." Therefore, by correcting the course of events, no prejudice has been caused to the AEEs. Indeed, as far as we are concerned, nothing was shown to us to even remotely suggest that the Petitioners were prejudicially affected. That being so, we fail to see the grievance that any of the Petitioners could have to the remedial action taken by the Central Government.

22. It was suggested by learned counsel for the Petitioners that prejudice was caused to his clients in as much as their seniority was adversely affected because there is no period specified for promotion of AEEs (such as the Petitioners) to the post of Executive Engineer. Theoretically, therefore, they could have been promoted on the very first day that they joined the service and the diversion of vacancies has denied this opportunity to them. This submission is mentioned only to be rejected forthwith. No such case was ever put forward by the Petitioners before the Tribunal and no instance has been brought to our

notice of any AEE having been promoted to the post of Executive Engineer on the very day that he joined the service. The submission seems to be entirely hypothetical and one of desperation by clutching at a straw. In the absence of anything worthwhile or substantial, we are not inclined to seriously consider the completely illusory and imaginary situation set out by learned counsel.

23. Contrast this with the averment made by the Petitioners in paragraph 19 of the writ petition. It is averred therein that:

“The Petitioners herein were directly recruited as AEEs (Civil) through the Competitive Examination for the Combined Engineering Services conducted by the UPSC during the years 1988 onwards. Accordingly, after completing the requisite qualifying service as per the 1954 Rules and as per the 1996 Rules (dealt with hereinafter), they were promoted as EEs (Civil) within their lawful quota.”

24. To our mind, this clearly suggests that not only were the Petitioners required to undergo a qualifying period of service for promotion to the post of Executive Engineer, but that their promotions were made under the 1996 Rules and not under the 1954 Rules. This really confirms that the Petitioners have not been prejudicially affected in any manner whatsoever.

25. The follow-up to the contention urged, in the larger canvas, is that the 1996 Rules occupy the field and the Central Government cannot resort to the 1954 Rules to remedy the situation. Even this submission is without any substance. It is quite clear that the 1996 Rules are prospective in nature (as held in *J.N. Goel*) and they do occupy the field but only in so far as promotions post-1996 are concerned. It is equally clear that for pre-1996 promotions, the 1996 Rules cannot be made applicable – they are not retrospective and were not in existence before 28th October, 1996. The only rules that could be considered for application to pre-1996 promotions are undoubtedly the 1954 Rules and it is only the power conferred by those rules that the Central Government has invoked. If any other authority is needed for this general proposition, one need only look at *Y.V. Rangaiah v. J. Sreenivasa Rao*, (1983) 3 SCC 284. [“We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.”]

26. Learned counsel submitted that Rule 7 of the 1996 Rules dealing with future maintenance of the service would be the applicable rule to deal with the situation that we are confronted with. With respect,

this is not correct. Rule 7 of the 1996 Rules deals with filling up of vacant duty posts, by way of future maintenance of the service created by the 1996 Rules. In the present case, the situation contemplated by learned counsel does not at all arise because by the order dated 6th July, 1999 all promotions of ad hoc AEs were regularized leaving no "vacant duty posts" to be filled up. In fact, by virtue of their regularization, the AEs became members of the Central Engineering (Civil) Group 'A' Service on its initial constitution under Rule 6 of the 1996 Rules.

To sum up, there is no visible impact of the 1996 Rules on the 1954 Rules as far as this case is concerned.

Does the power of relaxation enable diversion of vacancies?

27. The next submission of learned counsel for the Petitioners was that assuming the Central Government was entitled to invoke the 1954 Rules, even then, Rule 25 thereof did not enable it to divert vacancies from one category (AEEs) to another (AEs). It was also submitted, in this context, that Rule 25 did not enable the Central Government to alter the statutorily fixed quota applicable for promotions to the post of Executive Engineers. It was further submitted that the statutorily fixed quota could be altered only by amending the

1954 Rules, as had been done from time to time, and not by administrative instructions.

28. The power of relaxation conferred by Rule 25 of the 1954 Rules is extremely wide. It enables the Central Government to relax any provision of the 1954 Rules with respect to any category or class of persons. Of course, this is possible only in consultation with the UPSC. In this case, the power has been exercised by the Central Government with respect to the entire category or class of AEs. What has been done is to relax the provisions of the rules requiring filling up the posts of Executive Engineer in a particular manner, that is, by relaxing the adherence to a quota. This has been achieved, though in a slightly circuitous manner, by diverting vacancies from the quota of AEEs to the quota of AEs.

29. It is nobody's case that Rule 25 of the 1954 Rules confers arbitrary powers or has been applied arbitrarily. Indeed, this cannot even be the case of the Petitioners because there does appear to be adequate justification for invoking the power of relaxation in its widest amplitude. The power is available and has been used, *inter alia*, to

mitigate the hardship caused to a category or class of persons, many of whom were not able to obtain the benefits of regularization even though they had worked as Executive Engineers for as long as ten years and many of them had even retired without reaping any such benefits.

30. Learned counsel for the Petitioners referred to *Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561*. This decision of the Supreme Court is rather instructive but, in our opinion, it does not support the absolute view canvassed by learned counsel, which is to the effect that the power of relaxation given in Rule 25 of the 1954 Rules relates only to relaxation of the conditions of service and not to relaxation of the quota.

31. In the first place, as held in paragraph 31 of the Report, the case was one of implied relaxation, though pertaining to relaxation in the quota, but nevertheless one of implied relaxation, unlike in the case that we are dealing with where the relaxation is specific. Secondly, the Public Service Commission was not consulted, again unlike in the case that we are dealing with. Thirdly, on facts, the relaxation was held to be bad because of insufficient reasons given in the Cabinet note. In the case

that we are dealing with, there is no challenge to the relaxation on facts. Fourthly and finally, *Suraj Parkash Gupta* itself recognizes that there may be extraordinary situations warranting a departure from the general rule laid down therein.

32. The Supreme Court held in *Suraj Parkash Gupta* that there are various kinds of relaxation. For instance, there could be:

Relaxation of conditions of service,

Relaxation of rules,

Relaxation in any particular case,

Relaxation in favour of a person,

Relaxation in favour of a class of persons.

33. Reference was made by the Supreme Court to *Narender Chadha v. Union of India*, (1986) 2 SCC 157 and although it was held to be an exceptional case, the facts of that case as analyzed by the Supreme Court are quite similar to the facts of the case that we are dealing with. The Supreme Court noted that in *Narender Chadha* the promotees occupied not only their own quota but also the direct recruitment quota to some extent. They were held entitled to regular

promotion on the theory of implied relaxation of the recruitment rules to all posts within and outside the promotion quota. Since the promotees were not regularized for 15 to 20 years, it was held that their non-regularization over such a long period violated Articles 14 and 16 of the Constitution. The Supreme Court went on to say that the recent trend is towards strict compliance of the recruitment rules.

34. Obviously, there can be no quarrel with the law laid by the Supreme Court to the effect that *Narender Chadha* is to be treated as an exception and not as a rule and that there should be strict compliance with the recruitment rules, in matters such as the present. However, if one compares this mandate with the facts of the case in hand, it is clear that there was strict compliance in respect of the power of relaxation under the 1954 Rules in as much as the Central Government consulted the UPSC and only then took a decision. As already mentioned, the rationale or justification for relaxation is not under challenge. However, we may note that the rationale or justification given itself explains the unusual situation faced by the Central Government.

35. What is the unusual situation that we are concerned with? As

explained in the letter dated 4th June, 1999 sent by the Secretary in the Ministry of Urban Development to the Chairman of the UPSC, the unusual features are: there was consistent under-recruitment of AEEs; to continue the (smooth or efficient) working of the department it was necessary to promote AEs far in excess of their quota; non-regularization of the services of the AEs led to frustration amongst them; a situation arose whereby many of the Executive Engineers from amongst the AEs continued in an ad hoc capacity for more than ten years and many of them retired without even reaping the benefits of regularization; there was a need to get rid of the ad hocism and operate the 1996 Rules on a clean slate; for achieving this, a conscious and deliberate policy decision was taken by the Central Government to streamline the cadre management of the CPWD to facilitate the smooth working of the department; and finally, the AEEs were not prejudiced in any manner whatsoever. Taking all these aspects into consideration as well as the fact that there was strict compliance with the procedure laid down in the 1954 Rules, we are of the opinion that not only was an extremely wide power of relaxation available to the Central Government, but that it did right in exercising that power conferred by the 1954 Rules. If in doing so, there was a change in the quota rule, it

was quite justified and permissible, if not inevitable. Moreover, given the facts of the case, we are not inclined to upset the apple cart on this ground alone.

36. Another decision referred to by the Supreme Court (though distinguished by it) is that of *G.S. Lamba v. Union of India*, (1985) 2 *SCC 604* wherein it was generally stated that the rule relating to relaxation of any of the provisions also comprehends the rule relating to quota. It is not normal, but is certainly possible in a given case, to relax the quota rule should the situation so necessitate.

37. Could the Central Government alter the quota by executive instructions, without amending the 1954 Rules? It is difficult to answer the question in an absolute yes or an absolute no. As we have indicated above, the power of relaxation conferred by Rule 25 of the 1954 Rules is extremely wide. It is not hedged in by any substantive conditions, only a procedural one. In that sense, the power can be used to alter the quota. But, at the same time, the power cannot be used wantonly and arbitrarily so as to emasculate the power of amendment. A middle path, therefore, has to be taken. In the present case, the middle path was taken

by using the power of relaxation as a one-time measure and given the exigencies of the situation. Normally, the appropriate course would have been to amend the 1954 Rules to alter the quota, as was done from time to time, but the same result was achieved by utilizing the power of relaxation, without adversely affecting anybody's rights. Given the wide power of relaxation, we cannot, on the facts of this case, find fault with the course adopted by the Central Government.

38. Learned counsel for the Petitioners contended that when it came to the crunch, the Central Government did have an alternative available for dealing with excess promotions. In this, he may be right, but it is really for the Central Government to decide what course of action to adopt. The Central Government may, to keep the wheels of administration moving, create ex-cadre posts, make ad-hoc appointments, make supernumerary appointments or resort to other out-of-the-way expedients, as observed in *N.K. Chauhan v. State of Gujarat*, (1977) 1 SCC 308. Compulsions of the rules cannot go to the extreme extent of requiring the Central Government to keep posts vacant. As far as the present case is concerned, the Central Government took a deliberate policy decision to regularize the promotions to

streamline the cadre management for facilitating the smooth working of the department. This policy decision is certainly not arbitrary or whimsical, nor has it been shown to be so.

39. Learned counsel further submitted that the Central Government was obliged to follow the law and the principles laid down by the Supreme Court in *A.K. Subraman v. Union of India*, (1975) 1 SCC 319 and *P.S. Mahal v. Union of India*, (1984) 4 SCC 545. There can hardly be any doubt that the law and principles laid down by the Supreme Court have to be followed and adhered to. But unfortunately, learned counsel has been unable to demonstrate to us which principle was not adhered to by the Central Government. At best, it can be argued that the excess promotions made of AEs are irregular, but in the facts of the case, they cannot be said to be totally illegal [*V.B. Badami v. State of Mysore*, (1976) 2 SCC 901]. Even in this scenario, we have not been told how any prejudice has been caused to the Petitioners either in the pre-1996 situation or even post-1996. The submission, therefore, is really of an academic nature and so we are not inclined to spend time on it.

To sum up, we are of the opinion that Rule 25 of the 1954

Rules permitted diversion of vacancies.

Has the Central Government incorrectly understood *J.N. Goel*?

40. The final contention of learned counsel for the Petitioners was that the Central Government did not correctly appreciate the decision of the Supreme Court in *J.N. Goel* and, therefore, carried out an exercise not mandated by that decision. We have dealt with this issue above and do not feel the necessity of repeating ourselves. Suffice it to say that it is correct that *J.N. Goel* did not concern itself with any dispute involving AEEs – it was concerned only with issues relating to graduate and diploma-holder AEs. It was for resolving that dispute that the Supreme Court said that the promotion of diploma-holder AEs to the post of Executive Engineer on an ad-hoc basis would have to be reviewed. This direction of the Supreme Court could not be carried out in isolation or by overlooking the rights, concerns and aspirations of graduate AEs. It is this compulsion that necessitated a wholesale review of the impact of ad-hoc promotions of AEs to the grade of Executive Engineer, leading up to the Office Memorandum dated 6th July, 1999.

To conclude, the Central Government correctly appreciated *J.N. Goel* particularly the principles laid down in that decision and

rightly acted on them.

Additional submissions:

41. Learned counsel for Respondent Nos. 5 and 6 (in WP (C) No. 2562 of 2002) raised certain additional submissions, such as that the Petitioners were setting up a new case, which was not permissible; the writ petition ought not to be entertained on the grounds of delay and laches; and, the Petitioners have failed to implead necessary parties in the writ petition. We are not taking any decision on any of these issues because on the merits of the controversy, we find that the Petitioners have made out no case for interference with the impugned order of the Tribunal.

42. The writ petitions are dismissed. No costs.

sd
MADAN B. LOKUR, J

sd
J.R. MIDHA, J

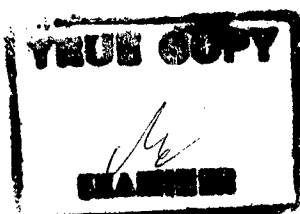
December 5, 2008

ncg

Certified that the corrected copy of the judgment has been transmitted in the main Server.

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PS
5.12.08
WP (C) Nos. 2562/2002 & 489/2000

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18 NOV 2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 284 /2005

Shri Naresh Kumar Srivastava

-Vs-

Union of India and Others.

LIST OF DATES AND SYNOPSIS OF THE APPLICATION

- 07.12.1992- Applicant was selected for the post of Junior Engineer through all India Competitive Examination held in 1992 and joined as Junior Engineer (Civil) in Central Public Works Department (in short CPWD).
- 16.09.1998- Respondents issued a notification for conducting limited departmental examination/1999 against the vacancies year marked for the recruitment year 1996, pursuant to the said notification, applicant appeared in the limited departmental examination held in 1999 and declared selected in the limited departmental examination for promotion to the post of Asstt. Engineer. However, no examination or recruitment to the post of Asstt. Engineer was conducted during the year 1993, 1994, 1995 under direct recruitment quota, as a result applicant was denied benefit of consideration of appointment under direct recruitment quota.
- 01.02.2002- Applicant was promoted to the post Asstt. Engineer with the benefit of notional seniority in the cadre of Asstt. Engineer w.e.f. November 1996. (Annexure-1)
- 08.02.1999- As per existing Recruitment rule, the initial recruitment for Group 'A' Engineer Services (Civil, Electrical and Mechanical) is made at the level of Assistant Executive Engineer through competitive examination held by the UPSC. Applicant appeared in the Engineering Service Examination conducted by the UPSC which is evident from the letter dated 08.02.99 and qualified in the written examination but his name for appointment in the Group 'A' Services under direct recruitment quota was not recommended by the UPSC due to non furnishing of correct numbers of vacancy position including the backlog vacancy position to the UPSC by the respondent department. (Annexure-4)
- Applicant again appeared in the Engineering Services Examination in the year 2000, conducted by the UPSC for appointment in the Group 'A' services and came out successful but

his name was not recommended for non-furnishing of actual number of vacancy position including the position of backlog vacancy to the UPSC by the CPWD and as a result the case of the applicant was not considered for recommendation for appointment to Group A services inspite of his eligibility and selection. More so when the vacancies are available in the department in Group 'A' services and it is mandatory for the respondents as per Govt. instructions to prepare yearwise panel and also to conduct Engineering Services Examination each and every year to fill up the backlog vacancy and existing vacancies but the respondents resorted to the unfair practice of diversion/conversion/downgrading of Group 'A' vacancies without considering the cases of qualified Asstt. Engineers like the present applicant waiting for a long time in the queue for appointment in the post of Group 'A' services. (Annexure-5)

22.03.2005- Applicant being highly aggrieved for non-consideration of his appointment to the cadre of Group 'A' Services in C.P.W.D under direct recruitment quota and also being aggrieved with the action of the respondents in diversion of vacancies from Group 'A' service to promote the Asstt. Engineer (Civil) to Executive Engineer (Civil) submitted a detailed representation addressed to the Director General (Works), CPWD, New Delhi. Although the said representation was duly forwarded by the Executive Engineer to the Chief Engineer (NEZ) Shillong and the Chief Engineer forwarded the same to the DG (W), CPWD, New Delhi on 05.05.05 but to no result. (Annexure-7 series)

18.11.2005- Hence this Original Application.

P R A Y E R S

Relief (s) sought for:

1. That the Hon'ble Tribunal be pleased to direct the respondents to hold review selection to fill up all backlog vacancies in the Group 'A' Services, i.e. in the cadre of Executive Engineer (Civil)/ Assistant Executive Engineer (Civil) under direct recruitment quota with immediate effect on the basis of the result of the Engineering Services Examination declared earlier in the year 1998 and 2000 to consider the cases of appointment of the successful candidates including the applicant of the Engineering Services Examination on the basis of actual numbers of backlog vacancies.
2. That the Hon'ble Tribunal be pleased to restrain the respondents from diversion, downgrading of the backlog vacancies of Asstt. Executive Engineer (Civil)/ Executive Engineer (Civil) till filling up the vacancies through eligible and qualified candidates by conducting review selection without considering the cases of the eligible and qualified

candidates/Asstt. Engineers like the applicant under direct recruitment quota.

3. That the Hon'ble Tribunal be pleased to declare that the respondents are not entitled to make diversion/downgradation of Group 'A' vacancies to provide undue advantage of promotion to the Asstt. Engineers of CPWD who are not qualified for appointment to the post of Asstt. Executive Engineer (Civil)/Executive Engineer (Civil) under direct recruitment quota, more particularly in the backlog vacancies.
4. That the Hon'ble Tribunal be pleased to direct the respondents to consider the case of the applicant for promotion to the post of Asstt. Executive Engineer (Civil)/Executive Engineer (Civil) by holding review selection on the basis of the result of the written examination of the Engineering Services Examination held in the year 1998 and 2000 by furnishing the actual numbers of backlog vacancies to UPSC.
5. That the Hon'ble Tribunal be pleased to direct the respondents to fill up the existing vacancies in the cadre of Asstt. Executive Engineer (Civil)/Executive Engineer (Civil) by holding Engineering Services Examination with immediate effect.
6. Costs of the application.
7. Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for:

During pendency of the application, the applicant prays for the following interim relief: -

1. That the Hon'ble Tribunal be pleased to restrain the respondents from diversion, downgrading of the backlog vacancies of Asstt. Executive Engineer (Civil)/ Executive Engineer (Civil) till filling up the vacancies through eligible candidates by conducting review selection till disposal of this Original Application.
2. That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. 284 /2005

BETWEEN:

Shri Naresh Kumar Srivastava,

S/o- Shri K.K. Srivastava,
Assistant Engineer (P),
Guwahati Central Division,
Central Public Works Department,
Bamunimaidan, Guwahati- 21.

-----Applicant.

-AND-

1. The Union of India,
Represented by Secretary to the
Government of India,
Ministry of Urban Development and
Poverty Alleviation,
Nirman Bhawan,
New Delhi- 110011.
2. The Director General of Works,
Central Public Works Department,
118-A, Nirman Bhawan,
New Delhi- 110 011.
3. The Union Public Service Commission,
Represented by it's Secretary,
Dholpur House,
Shahjahan Road,
New Delhi- 110011.

..... Respondents.

1
Filed by the applicant-
through: Subrata Nath
Advocate
17.11.05

Shri K.K. Srivastava

N. K. SRIVASTAVA

DETAILS OF THE APPLICATION

1. Particulars of the order (s) against which this application is made:

This application is made praying for a direction upon the respondents to consider the appointment of the applicant to the post of Assistant Executive Engineer/Executive Engineer in the cadre of Group 'A' Services under the vacancies earmarked for the direct recruitment through Engineering Services Examination and also for a direction upon the respondents restraining from diversion/downgrading of the Group 'A' vacancies in the cadre of Asstt. Executive Engineer (Civil)/Executive Engineer (Civil) till consideration of the cases of the eligible Asstt. Engineers waiting for a long time for promotion such as the applicant under quota of Engineering Services Examination who falls within the zone of eligibility and qualified for consideration for appointment to the cadre of Asstt. Executive Engineer (Civil)/Executive Engineer (Civil).

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation:

The applicant further declares that this application is filed within the limitation prescribed under Section- 21 of the Administrative Tribunals Act' 1985.

4. Facts of the case:

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. Applicant is presently working as Assistant Engineer in the office of the Executive Engineer, Guwahati Central Division, C.P.W.D,

N. K. SRINASTAVA

Bamunimaidan, Guwahati. He possesses qualification of B. Tech (Civil) with Honours, M.E (Civil), P.G.D. (Human Resource Management).

- 4.2 That your applicant pursuant to an advertisement published by the C.P.W.D, was selected for the post of Junior Engineer in the year 1992 and joined as Junior Engineer (Civil) in Central Public Works Department (in short C.P.W.D) on 07.12.1992, through all India Competitive Examination held in 1992. However, in the aforesaid advertisement qualification was prescribed for recruitment of Junior Engineer, Diploma in relevant field with 75% marks or Degree holder in Civil Engineering. It is relevant to mention here that during the year 1992, for the first time C.P.W.D had prescribed minimum educational qualification of Degree in Civil Engineering for recruitment in the cadre of Junior Engineer, but thereafter Degree in Civil Engineering was never insisted upon, for recruitment in the cadre of Junior Engineer in C.P.W.D.

- 4.3 That it is stated that as per recruitment Rule, in the cadre of Junior Engineer 4 years of regular service is necessary for further promotion to the post of Assistant Engineer through departmental examination, i.e. subject to passing of the departmental examination.

But unfortunately for number of year's departmental examination for consideration of promotion of eligible Junior Engineers was not conducted inspite of availability of vacancies in the cadre of Assistant Engineer fixed under the departmental examination quota. It is ought to be mentioned here that even no notification was issued for recruitment of Assistant Engineer under the direct recruitment quota inspite of availability of vacancies. However, as a result of non-recruitment to the cadre of Assistant Engineer the applicant is being adversely affected for his further promotion prospect to the cadre of Assistant Executive Engineer (Civil)/ Executive Engineer (Civil) in Group 'A' service in C.P.W.D.

4.4 That it is stated that only on 16.09.1998 a notification was issued for conducting limited departmental examination/1999, pursuant to the said notification, the applicant appeared in the limited departmental examination held in 1999 for consideration of promotion to the post of Assistant Engineer. However, result of the said examination was published after an inordinate delay of almost 2 years i.e. in the year 2001. The applicant came out successfully in the said examination and declared selected in the limited departmental examination for promotion to the post of Asstt. Engineer, accordingly the applicant was promoted vide order bearing letter No. SE (T)-I/JES/Deptt. Exam/98-99/261 dated 01.02.2002 with the benefit of notional seniority in the cadre of Asstt. Engineer w.e.f. November 1996 without considering his eligibility for the vacancies in the year 1993-94, 1994-95, 1995-96 though he was eligible for the same under direct recruitment quota as per provision of the recruitment rule and appeared in the Engineering services Examination. ?

A copy of the promotion order dated 01.02.02 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-1.

4.5 That it is stated that it is obligatory on the part of the respondents to hold the limited departmental examination/Engineering Services Examination, well in advance in each and every recruitment year at regular interval so long vacancies are available in the appropriate level to facilitate promotion/appointment/recruitment to the post of Asstt. Executive Engineer/Executive Engineer, so that on the day when the vacancy is available the same should be filled up as per DOPT instructions issued by the Government of India from time to time. In this connection the applicant like to draw the attention of the Hon'ble Court on the following instructions issued by the Government of India. The relevant portion is quoted below from Swamy's Manual on Establishment and Administration:

"Frequency at which D.P.C should meet

3.1 The D.P.Cs should be convened at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, Integrity Certificates, Seniority List etc., for placing before the DPC. DPCs could be convened every year if necessary on a fixed date, e.g., 1st April or May. The Ministries/Departments should lay down a time-schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. Holding of DPC meeting need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the Recruitment Rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.

1[Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.]

3.2 The requirement of convening annual meetings of the DPC should be dispensed only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

Surprisingly in the instant case, the respondents did not follow the aforesaid instructions of the Government, as a result, abnormal delay has been caused in considering the case of the applicant for recruitment / promotion to the post of Group 'A' and as such he is incurring huge financial loss, loss of seniority, and further promotion prospects to the next higher cadre.

Copy of extract of Govt. of India's instruction regarding holding of DPC (Page-834) from Swamy's Complete Manual of Establishment and Administration for Central Govt. Officials, 2003 Edition is enclosed as Annexure- 2.

- 4.6 That your applicant begs to state that as per existing Recruitment Rule, the initial recruitment for Group 'A' Engineering Services (Civil, Electrical and Mechanical) is made at the level of Assistant Executive Engineer, through competitive examination held by the Union Public Service Commission. The minimum qualification for the post of Assistant Executive Engineer is a degree in Civil/Electrical/Mechanical Engineering from a recognized university as the case may be. The relevant portion of the rule is quoted below:

"Assistant Executive Engineer (Group 'A')

4. Initial recruitment for Group 'A' Engineering Services (Civil & Electrical & Mechanical) is made at the level of Assistant Executive Engineer through a competitive examination held by the Union Public Service Commission. The minimum qualification for the post

of Assistant Executive Engineer is a Degree in the Civil/Electrical/Mechanical Engineering from a recognized University as the case may be."

Assistant Engineers (Group 'B')

5. Vacancies in the grade of Assistant Engineers in Central Engineering Service Group 'B' and Central Electrical Engineering Service Group 'B' were being filled up by direct recruitment through a competitive examination conducted by the UPSC and partly by promotion. Direct recruitment to this grade has however been suspended since 1-4-72, from 1-4-72 to 4-2-77, the vacancies in the grade were being filled up 100% by promotion by selection from amongst permanent Junior Engineers. The recruitment rules were amended w.e.f. 5-2-77 according to which:

- (i) 50% of the vacancies in the grade of A.E are 1st to be filled up by selection on the basis of merit-cum-seniority from amongst permanent J.Es employed on the Civil/Electrical Engineering side of the C.P.W.D., and
- (ii) The remaining 50% through a limited competitive departmental examination open to J.Es who have put in a minimum of 4 years service in the grade.

N.B.: The provision for direct recruitment is however, still retained in the recruitment Rules.

6. The minimum Qualifications for direct recruitment to the posts of Assistant Engineer in CES Groups 'B'/CEES Group 'B' is a Degree in Civil/Electrical or Mechanical Engineering as the case may be from a recognized University. (For appointment by promotion. Section 7 may be referred to)"

In the instant application, the applicant is concerned with his appointment to the cadre of Group 'A' services i.e. in the cadre of

Assistant Executive Engineering and consequential promotion to the cadre of Executive Engineer.

It is abundantly clear from the rule quoted above, the initial appointment, of Group 'A' Officer is made through Engineering Services Examination through UPSC. Therefore, an obligation is cast on the respondent Union of India, to provide necessary, detail information, including correct position of the vacancies, available in the department which normally occurred, due to creation, death, resignation, retirement, promotion. It is relevant to mention here that it is the duty of the respondents to intimate, accurate vacancy position to the UPSC for recommending the names of eligible selected candidates, for appointment to the Group 'A' post in C.P.W.D.

Copy of the extract of Recruitment Rule is enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 3.

- 4.7 That your applicant being fully qualified and eligible for appointment to the post of Group 'A' i.e. Assistant Executive Engineer in the department of C.P.W.D, he has appeared in the Engineering Services Examination in number of years during the period of 1990 to 2001 and fortunately the applicant was selected in the written examination under the direct recruitment quota in the year 1998 and also in the recruitment year 2000 but unfortunately the U.P.S.C could not recommend the name of the applicant for appointment to Group 'A' service in C.P.W.D due to non-furnishing of correct vacancy position to the U.P.S.C in the grade of Group 'A' service. It is relevant to mention here that only during the year upto 1998 altogether about 400 vacancies were accumulated in the cadre of Group 'A' service which are normally liable to be filled up through all India Competitive Examination conducted by the U.P.S.C every year which is known as "Engineering Service Examination", the minimum qualification for appearing in the said examination is Degree in Civil/Electrical/Mechanical Engineering. The applicant although

qualified in the written examination conducted by the U.P.S.C in the year 1998 and 2000 but could be recommended for appointment, for non furnishing correct numbers of vacancies to the U.P.S.C by the respondent department. It is the specific case of the applicant that altogether about 400 Group 'A' vacancies have been occurred and accumulated upto the year 1998 only apart from the vacancies of the subsequent years but surprisingly the respondents department in violation of the normal rules of recruitment, started diverting/converting/downgrading the said, huge, accumulated Group 'A' vacancies to provide undue promotional benefit to the serving Assistant Engineers under the seniority cum fitness quota, without considering the cases of the eligible candidates where the Recruitment Rule categorically provided for direct recruit in Group 'A' services, the relevant portion of the Recruitment Rule is further quoted below:

"Assistant Executive Engineer (Group 'A')

4. Initial recruitment for Group 'A' Engineering Services (Civil & Electrical & Mechanical) is made at the level of Assistant Executive Engineer through a competitive examination held by the Union Public Service Commission. The minimum qualification for the post of Assistant Executive Engineer is a Degree in the Civil/Electrical/Mechanical Engineering from a recognized University as the case may be."

In view of the above specific provision of the Rule the authority is duty bound to appraise correct vacancy position to the U.P.S.C for filling up the Group 'A' post, first by the eligible candidates who are within the zone of eligibility and waiting in the queue for consideration of appointment under the direct recruitment quota, it is the duty of the respondents U.O.I to consider all eligible candidates for appointment to the Group 'A' post under the direct recruitment quota, especially those who have fall within the zone of consideration for appointment and in the

event of non availability of sufficient number of suitable candidates for recommendation for appointment, to the extent vacancies are available to group 'A' post only thereafter the respondents are at liberty to fill up the vacancies of group 'A' post in CPWD through seniority cum fitness quota or through other sources, but in the instant case of the applicant the respondents in a most arbitrary manner started diversion, conversion or downgradation of vacancies available in the Group 'A' cadre in C.P.W.D in total violation of Rules and also due to adoption of unfair policy in the matter of recruitment and as a result the applicant who was selected in the written examination appeared in the interview at least on two occasions, has been adversely effected so far his promotion/appointment in the cadre of Group 'A' service is concerned as because his name was not recommended by the UPSC due to non furnishing of correct numbers of vacancies to UPSC, the applicant has been denied appointment to group A service inspite of the fact that the applicant declared selected in the engineering service conducted by the UPSC, and as a result the service prospect of the applicant has been adversely affected due to inaction of the respondents department.

- 4.8 That it is stated that due to adoption of unfair policy of diversion/conversion/ downgradation of vacancies to grant undue privileges to a group of persons or a particular class serving in the cadre of Assistant Engineer in C.P.W.D and that too by a unfair means, at the cost of eligible candidates like the applicant who are otherwise eligible and falls within the zone of consideration for appointment in the cadre of group 'A' service in C.P.W.D under the specific quota meant for direct recruitment. It is not fair to grant additional privilege to a particular group /class of employees at the cost of similarly situated another class of employees that too in violation of Recruitment Rules.

In the circumstances stated above the Hon'ble Court be pleased to direct the respondents to furnish/refurnish the correct position of

yearwise vacancies available in Group 'A' service without any further diversion, conversion or downgradation of such vacancies and further be pleased to direct the U.P.S.C to consider/reconsider the cases of qualified candidates of Engineering Services Examination on the basis of correct/fresh vacancy position for further recommendation for appointment to Group 'A' service under direct recruitment quota. It would be evident from letter No. ESE' 98 dated 08.02.99 as well as from the letter No. ESE 2000 dated 01.03.2001 that the applicant was allowed to appear in the interview for the recruitment year 1998 and 2000 of the Engineering Services Examination and the applicant fared well in the said examination, but his name was not recommended for non-furnishing of actual number of vacancies by the C.P.W.D and as a result the case of the applicant was not considered for appointment to group A service inspite of his eligibility and selection. More so when vacancies are available in group 'A' service.

Copy of letter dated 08.02.99 and letter dated 01.03.01 are enclosed herewith for perusal of Hon'ble Tribunal as Annexure- 4 and 5 respectively.

- 4.9 That it is stated that the applicant has attained his eligibility for promotion to the cadre of Group 'A' service i.e. A.E.E/E.E under the existing Recruitment Rule. It is relevant to mention here that altogether about 400 vacancies in the cadre of Group 'A' service are available including the backlog vacancies in C.P.W.D which were accumulated till the recruitment year 1998 but unfortunately those accumulated vacancies in the cadre of Group 'A' service has been diverted/converted/downgraded by the respondents to provide promotion to the serving Assistant Engineer, to the cadre of Group 'A' service i.e. in the cadre of A.E.E/E.E, under seniority cum fitness quota without considering the cases of appointment/promotion of the eligible Degree holder Assistant Engineers

working in CPWD and appeared in the Engineering Services Examination in the year 1998 and 2000 under clear DR quota and as a result the applicant is a worst sufferer for non-consideration of his appointment to the Group 'A' post under the quota as indicated above.

- 4.10 That your applicant further begs to state that as per instructions of the Govt. of India as indicated in para 4.4 hereinabove, the requirement of convening annual meeting of DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled up by promotion/appointment or no officers are due for confirmation during the year in question. It is also observed by the Govt. of India in their O.M No. 22011/3/91-Estt (D) dated 13th May 1991 that very often action for holding DPC meeting is initiated after a vacancy has arisen and the same result in undue delay in filling up of vacancy causing dissatisfaction among those who are eligible, therefore it must be ensured that regular meetings of DPC are held every year for each category of post so that an approved select list is available in advance for making promotion/recruitment against vacancies arising over a year. The relevant portion of the instruction of the O.M dated 13th May 1991 is quoted from chapter 54 (PROMOTIONS) of Swamy's Complete Manual of Establishment and Administration for Central Govt. Officials, 2003 Edition. page 834 is quoted below for convenience and perusal of the Hon'ble Court.

"[Very often, action for holding DPC meeting is initiated after a vacancy has arisen. This results in undue delay in the filling up of the vacancy causing dissatisfaction among those who are eligible for promotion. It may be ensured that regular meetings of DPC are held every year for each category of posts so that an approved select panel is available in advance for making promotions against vacancies arising over a year.]

3.2 The requirement of convening annual meetings of the DPC should be dispensed only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question."

In view of the categorical instructions issued by the Govt. of India from time to time a duty caste on the Govt. of India to hold the Engineering Services Examination regularly in each recruitment year but surprisingly the respondents Union of India in the instant case of the applicant has deliberately violated the aforesaid categorical instructions of the Govt. of India in the matter of consideration of appointment of the eligible Degree holder Civil Engineers and also due to non furnishing of the correct vacancy position as such the applicant is denied appointment to group 'A' service and as a result of such deliberate violations of rules/instructions, the further appointment/ promotion prospects of the applicant is also adversely effected and as such the Hon'ble Court be pleased to direct the respondents to consider the appointment of the applicant under the existing Recruitment Rule through Engineering Services Examination against the existing and backlog vacancies, without first diverting the accumulated vacancies in Group 'A' cadre i.e. A.E.E./E.E and also be pleased to direct the respondents to grant the benefit of appointment to the next higher cadre with retrospective effect at least from the date of availability of vacancies and from the date of eligibility of appointment/promotion attained by the applicant with all consequential service benefit including seniority. It is ought to be mentioned here that the applicant has already attained eligibility for promotion to the cadre of Group 'A' service i.e. in the cadre of A.E.E./E.E.

Be it stated that in fact the duties and responsibilities of Assistant Engineer (Civil) in C.P.W.D are exactly similar and same with the duties and responsibilities of Assistant Executive Engineer and as such there

should not be any difficulty to consider the appointment of the applicant to the cadre of Group 'A' service under the existing backlog vacancies.

Copy of extract of Govt. of India's instruction regarding holding of DPC and suggested model calendar for DPC from Swamy's Complete Manual of Establishment and Administration for Central Govt. Officials, 2003 Edition (Page-862-863) is enclosed for perusal of Hon'ble Tribunal as Annexure- 6.

- 4.11 That it is stated that as per provision of the Recruitment Rule 50% of the vacancies in the grade of Assistant Engineer are required to be filled up by selection on the basis of merit cum seniority from amongst the permanent Junior Engineers employed in the Civil/Electrical/Mechanical Engineering side of the C.P.W.D and the rest 50% are liable to be filled up through a limited competitive departmental examination opened to Junior Engineers who have put a minimum of 4 years service in the grade, apart from this still there is a further provision of recruitment which is as follows:

"N.B.: The provision for direct recruitment is however, still retained in the recruitment Rules."

But surprisingly the aforesaid provision of direct recruitment in the cadre of Assistant Engineer has not been explored for a number of years since the appointment of applicant in the cadre of Junior Engineer and as a result the applicant is also deprived from the opportunity of appointment in the cadre of Assistant Engineer through direct recruitment quota simply because the respondents Union of India did not intimated the vacancies to the UPSC for the recruitment of Assistant Engineer (through Engineering Services Examination) under direct recruitment quota. It is relevant to mention here that for direct recruitment to the post of Assistant Engineer in Central Engineering Service Group 'B', a degree in

Civil/Electrical/Mechanical Engineering is necessary and the applicant being fully qualified for consideration of such appointment through direct recruitment quota has been deprived of due to laches and negligence of the authority, otherwise the applicant had a better chance of appointment in the cadre of Assistant Engineer immediately after his recruitment of Junior Engineer. Therefore, non-conducting of any recruitment through direct recruitment quota also adversely effected the applicant.

Even, the applicant as per provision of the recruitment rule was eligible for consideration of his appointment to the higher post of Assistant Engineer under 50% quota, by direct recruitment/through limited departmental examination, although in each recruitment year a large number of vacancies in the cadre of Assistant Engineers were available since 1993 onwards but Respondents did not recruited Assistant Engineers conducting the limited departmental examination as per provision of Recruitment Rule for direct recruitment of Assistant Engineers and as such inaction laches and negligence also adversely effected the applicant's service prospect, since the applicant was qualified for consideration of appointment to the post of Assistant Engineer under direct recruitment quota, he had a fair chance of appointment as Assistant Engineer, if the respondents would have conducted the recruitment through direct recruitment quota, during the year 1993-1994 itself.

It would be evident from the order/letter bearing No. SE (T)-1/JEs/ Deptt. Exam/98-99/261 dated 01.02.2002, where it would be seen that the limited departmental competitive examination held by the C.P.W.D only in February '99 against the vacancies occurred during the recruitment year 1997-98 and 1998-99 and surprisingly as a consequence of the limited departmental examination the result and promotion order was issued only on 1st February 2002, promoting the applicant to the cadre of Assistant Engineer, alongwith others i.e. after a lapse of about 3 years, whereas as per rule the limited departmental examination ought to have

been conducted during the year 1996 for the vacancies occurring in the year 1997-98 but due to inaction, laches and negligence the limited departmental examination due in the year 1996 was conducted in the year 1999 and accordingly result was declared during February' 2002, therefore the process of recruitment and promotion adopted by the respondent department is in total violation of the Govt. instruction and rule indicated above and as a result the said process caused abnormal delay in the matter of promotion of the employees working in C.P.W.D and ultimately led to deprivation of his due promotion/recruitment in the cadre of Group 'A' service i.e. in the post of Assistant Executive Engineer/Executive Engineer.

In this connection it may be stated that although the applicant was promoted in the cadre of Assistant Engineer vide order dated 01.02.2002, however his seniority is assigned from the year 1996 to the cadre of Assistant Engineer and a number of candidates who secured less marks than the applicant in the LDCE 1999 are placed above the applicant though the applicant was eligible for grant of seniority from the year 1993 as per recruitment rules under direct recruitment quota.

Be it stated that as per normal rule of promotion 8 years regular service is required in the cadre of Assistant Engineer for further promotion to Group 'A' service through seniority cum fitness basis, subject to availability of vacancies but in the instant case the specific grievance of the applicant that although applicant was selected in the examination during the year 1998 and 2000 under DR quota of Engineering Examination Services for consideration of appointment in Group 'A' post under direct recruitment quota but inspite of the fact that there were large number of availability of backlog vacancies up to the year 1998 at least not less than 400 vacancies but due to non furnishing furnishing of correct vacancy position to the U.P.S.C, the case of the applicant could not be recommended by the U.P.S.C for appointment in

the post of Group 'A' service and as such the service prospect of the applicant has adversely effected.

- 4.12 That it is stated that the Government of India in almost all Central Govt. departments and State Governments in state departments had conducted special drive for recruitment of the Civil Engineers in Group 'A' and Group 'B' Services since 1990 due to which only a few opportunities were available for general category candidates possessing the degree in civil engineering to get appointment in the Government Departments and at the same time CPWD has not intimated the correct vacancy position to the UPSC and thereby reduces the opportunities of the applicant to get appointment in the cadre of Group 'A' /Group 'B' services and was forced to get /remain under employed.
- 4.13 That your applicant being highly aggrieved for non-consideration of his appointment to the cadre of Group 'A' services in C.P.W.D and also being aggrieved with the action of the respondents in diversion of vacancies from Group 'A' service to promote the Asstt. Engineer (Civil) to Executive Engineer (Civil) through seniority channel, submitted a detailed representation on 22.03.2005 addressed to the Director General (Works), C.P.W.D, Nirman Bhawan, through Executive Engineer, Central Division, C.P.W.D, Guwahati. In the said representation the applicant among other things, it is categorically stated that a large number of vacancies of Group 'A' services are lying vacant in C.P.W.D which has not been filled up by the department and are now being diverted for promotion from Assistant Engineer (Civil) to Executive Engineer (Civil) i.e. in other channel/source of promotion without considering the cases of the eligible Assistant Engineers who are waiting on the queue for consideration of their appointment in Group 'A' service under direct recruitment quota. The relevant portion of the representation is quoted below:

"It is requested to consider my claim for these Group 'A' vacancies, which are being diverted for promotion to Executive Engineer (Civil) from Assistant Engineer (Civil), since all the required codal formalities has already been completed through the Engineering Services Examination conducted by the Union Public Service Commission. Following relevant details/facts are submitted herewith.

(a) I appeared in Engineering Services Examination from 1990 to 2001 as a general candidate/departmental candidate, and I was eligible for the post of Assistant Executive Engineer (Civil) in Central Engineering Services, Group 'A'/other departments, since I have qualified the written examination, appeared in the interview and medical examination successfully.

(b) Since the department has recruited only a few Assistant Executive Engineer (Civil), in spite of a huge vacancies of Group 'A' services, and not intimated the full vacancies to the Union Public Service Commission, which were lying vacant since long time, I was not recommended by the Union Public Service for the post of Assistant Executive Engineer (Civil) though qualified the written examination, appeared successfully in the interview and medical examination."

The case of the applicant was not recommended due to non-furnishing of correct numbers of vacancies to the Group 'A' services, besides the applicant also raised the following grounds in his representation dated 22.03.2005;

" As per information available to me following facts are not considered by the department;

- (a) Eligibility criteria of the candidates were not checked as per year wise vacancies.
- (b) Vacancies against the recruitment rules-Pre 1996 & Post 1996 are not considered separately.
- (c) Vacancies for the Direct Recruitment of assistant Engineer (Civil) for which the minimum qualification is graduate in Civil Engineering is not considered.
- (d) Year wise vigilance clearance of the candidates not considered.
- (e) Year wise vacancy criteria is imposed due to the reason, that there is an undue benefit to the Junior candidates in getting the eligibility for the old vacancies. Senior candidates who have already availed this said undue benefit in earlier examinations up to LDCE-1992 are not eligible to get the benefit of the year wise vacancies it is not considered since they are getting double benefit.
- (f) Merits of the candidates are decided by the LDCE-1999 on the day of examination i.e 21.02.1999.
- (g) In deciding the eligibility criteria of LDCE-1999 candidature of graduate junior Engineers are not considered separately, in spite of the recruitment as a Graduate Engineer for the post of Junior Engineer (civil) through the All India Competitive examination for recruitment to the grade of Junior Engineer (civil)-1992 for which one of the minimum qualification was clearly mentioned as a graduation in civil engineering.
- (h) It is not known, whether the marks of Confidential Reports are considered as per the year wise vacancy.
- (i) Vacancies for AE (Civil) are not calculated on 1st January of respective year.

Although the said representation was duly forwarded by the Executive Engineer, Superintendent Engineer and by the Chief Engineer (NEZ), Shillong, to the DG (W), CPWD, New Delhi vide letter bearing No. 8 (3)/ACC-I/E-I/725 dated 5.5.2005 but to no result.

In the compelling circumstances the applicant has no other alternative but to approach this Hon'ble Court, praying for a direction upon the respondents to consider the case of the applicant for appointment/promotion to the post of Assistant Executive Engineer/ Executive Engineer in Group 'A' services in the accumulated/backlog vacancies by holding a review selection, in the light of the results of the written examination of the Engineering Services Examination conducted during the year 1998 and in the year 2000 taking into consideration the correct numbers of vacancies in Group 'A' service or alternatively to conduct fresh engineering services examination for recruitment of Group 'A' services on the basis of actual/correct number of existing/backlog vacancies.

Copy of the representation dated 22.03.05 and forwarding letter dated 05.05.05 are enclosed herewith and marked as Annexure- 7 (Series)

4.14 That this application is made bonafide and for the cause of justice.

5. Grounds for relief (s) with legal provisions:

5.1 For that, it is mandatory on the part of the respondents to fill up the existing and backlog vacancies available in the cadre of Assistant Executive Engineer (Civil)/ Executive Engineer (Civil) by considering the cases of eligible and qualified candidates/ Assistant Engineers working in C.P.W.D as per provisions of the relevant recruitment rule.

- 5.2 For that, respondents are not entitled to make diversion/downgradation of the posts of the huge existing and backlog vacancies (approximately 400) Group 'A' vacancies in the cadre of Assistant Executive Engineer (Civil)/Executive Engineer (Civil) in C.P.W.D without considering the eligible candidates and qualified Assistant Engineers eligible for consideration for appointment under direct recruitment quota.
- 5.3 For that, applicant is an eligible and qualified candidate for consideration of appointment under the direct recruitment quota as per relevant provision of the recruitment rule.
- 5.4 For that, the applicant has appeared on different occasions during the period 1990 to 2001 in the Engineering Services Examination conducted by the UPSC for recruitment to the post of Group 'A' Services i.e. Assistant Executive Engineer (Civil)/Executive Engineer (Civil) and also qualified in the examination in the year 1998 and also during the recruitment year 2000 for consideration of his appointment under direct recruitment quota but the name of the applicant was not recommended by the UPSC for appointment for non-furnishing of correct number of vacancies to the UPSC by the respondent department; although sufficient numbers of vacancies are available but due to adoption of unfair policy of diversion/downgrading of the post to provide undue advantage of promotion to other channel/quota/source of recruitment to the Assistant Engineers who are not eligible to compete under direct recruitment quota.
- 5.5 For that, it is mandatory on the part of the respondents to hold/conduct Engineering Services examination each and every recruitment year as per recruitment rule so long vacancies are available to the cadre of Assistant Executive Engineer/Executive Engineer as per Govt. of India's instruction contained in Swamy's Complete Manual of Establishment and Administration for Central Govt. Officials, 2003 Edition and also in the

light of the decisions rendered by the Hon'ble Supreme Court in the cases of Binode Kumar Sangal Vs- Union of India & Ors reported in (1995) 2 SLR 695, Syed Khalid Rizvi & Ors. Vs. Union of India & Ors. in Civil Appeal No. 823 of 1989 decided on 06.11.2003, reported in 1993 (3) Sup SCC 575, Hemchandra Bhuyan Vs- State of Assam & Ors. reported in 2005 (1) GLT 385.

- 5.6 For that, in C.P.W.D although huge vacancies are available in the cadre of Group 'A' services i.e. Assistant Executive Engineer/Executive Engineer but due to laches and negligence on the part of the respondents and also due to non-furnishing of vacancy position to the UPSC regularly, due to the lapses of the respondents and as a result the applicant being qualified Engineering Services Examination has been denied appointment to the cadre of Group 'A' services in CPWD.
- 5.7 For that, respondents are duty bound to hold intimate correct vacancy position with backlog vacancies to the UPSC to review the selection held during the year 1998 and 2000 for consideration of appointment to the applicant against the accumulated backlog vacancies to the cadre of Group 'A' services.
- 5.8 For that, respondents are duty bound to hold/conduct Engineering Services Examination with immediate effect to fill up the existing and backlog vacancies in the cadre of Assistant Executive Engineer (Civil)/Executive Engineer (Civil).
- 5.9 For that, the applicant had submitted representation for consideration of his recruitment to the cadre of Assistant Executive Engineer (Civil)/Executive Engineer (Civil).
- 5.10 For that, respondents are not entitled to adopt unfair policy of diversion/downgrading of backlog vacancies without considering the cases of

eligible and qualified candidates waiting for appointment under direct recruitment quota in the Group 'A' vacancies.

6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief (s) sought for.

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief (s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

- 8.1 That the Hon'ble Tribunal be pleased to direct the respondents to hold review selection to fill up all backlog vacancies in the Group 'A' Services, i.e. in the cadre of Executive Engineer (Civil)/Assistant Executive Engineer (Civil) under direct recruitment quota with immediate effect on the basis of the result of the Engineering Services Examination declared earlier in the year 1998 and 2000 to consider the cases of appointment of the successful candidates including the applicant of the Engineering Services Examination on the basis of actual numbers of backlog vacancies.

N.K. SRIVASTAVA

- 8.2 That the Hon'ble Tribunal be pleased to restrain the respondents from diversion, downgrading of the backlog vacancies of Asstt. Executive Engineer (Civil)/ Executive Engineer (Civil) till filling up the vacancies through eligible and qualified candidates by conducting review selection without considering the cases of the eligible and qualified candidates/Asstt. Engineers like the applicant under direct recruitment quota.
- 8.3 That the Hon'ble Tribunal be pleased to declare that the respondents are not entitled to make diversion/downgradation of Group 'A' vacancies to provide undue advantage of promotion to the Asstt. Engineers of CPWD who are not qualified for appointment to the post of Asstt. Executive Engineer (Civil)/Executive Engineer (Civil) under direct recruitment quota, more particularly in the backlog vacancies.
- 8.4 That the Hon'ble Tribunal be pleased to direct the respondents to consider the case of the applicant for promotion to the post of Asstt. Executive Engineer (Civil)/Executive Engineer (Civil) by holding review selection on the basis of the result of the written examination of the Engineering Services Examination held in the year 1998 and 2000 by furnishing the actual numbers of backlog vacancies to UPSC.
- 8.5 That the Hon'ble Tribunal be pleased to direct the respondents to fill up the existing vacancies in the cadre of Asstt. Executive Engineer (Civil)/ Executive Engineer (Civil) by holding Engineering Services Examination with immediate effect.
- 8.6 Costs of the application.
- 8.7 Any other relief (s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for:

N.K. SRIVASTAVA

During pendency of the application, the applicant prays for the following interim relief: -

- 9.1 That the Hon'ble Tribunal be pleased to restrain the respondents from diversion, downgrading of the backlog vacancies of Asstt. Executive Engineer (Civil)/ Executive Engineer (Civil) till filling up the vacancies through eligible candidates by conducting review selection till disposal of this Original Application.
- 9.2 That the Hon'ble Tribunal be pleased to direct the respondents that the pendency of this application shall not be a bar for the respondents for consideration of the case of the applicant for providing relief as prayed for.

10.

11. Particulars of the I.P.O

- | | | |
|------|---------------|-----------------|
| i) | I.P.O No. | : 266 318986 |
| ii) | Date of issue | : 14.11.05 |
| iii) | Issued from | : GPO, Guwahati |
| iv) | Payable at | : GPO, Guwahati |

12. List of enclosures:
As given in the index.

N. K. SRIVASTAVA

VERIFICATION

I, Shri Naresh Kumar Srivastava, S/W/o- Shri K. K. Srivastava , aged about 38 years, working as Assistant Engineer (P) , in the office of the Guwahati Central Division ,CPWD, Guwahati-21, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 17th day of November' 2005.

N. K. SRIVASTAVA

DIRECTOR GENERAL OF WORKS

CENTRAL PUBLIC WORKS DEPARTMENT

TRAINING INSTITUTE : NIRMAN BHAWAN

09, NEW DELHI 110019

Annexure-1

No. SE(T)-I/Js/Deptt. Exam/98-99/261

Dt. 01.02.2002

Assistant Engineer (CPWD) Limited Departmental Competitive Examination - 1999

Based on the Limited Departmental Competitive Examination held by the CPWD Training Institute for the posts of Assistant Engineer (Civil) and Assistant Engineer (Electrical) in February 1999, the instructions of Principal Bench CAT Delhi issued in OA Number 2239/1998 with OA No. 2528/1998 on 15th February, 1999, the guidelines issued by the DOPT vide their O.M. dated 02.07.1997 for filling up of vacancies of SC & ST candidates, and year wise eligibility for promotion, for which the result was declared vide this office letter even no. dated 16-1-2001, following candidates have been further found eligible for consideration for promotion against the year wise vacancies of Assistant Engineers (Civil) for the year 1997-98 and 1998-99. These additional posts have been recently revived by the DOPT, Ministry of Finance and Ministry of UD&PA.

S.NO	NAME	DATE OF BIRTH	ROLLNUMBER	DATE OF JOINING	CATEGORY	TOTAL MARKS
For the Year 97-98						
1	A.K. SETHI	01/12/70	DEL/0346/C	08-Jan-93	OC	602
2	ARBIND KUMAR SINGH	03/10/68	DEL/0153/C	18-Dec-92	OC	595
3	D.P. JINDAL	01/01/69	DEL/0029/C	22-Dec-92	OC	592
4	SHRI RAM SAHU	07/29/68	CAL/0135/C	01-Feb-93	OC	588
5	RAKESH KUMAR	05/01/67	DEL/0053/C	10-Dec-92	OC	587
6	KAKULAVARAPU KRISHNA KISHORE	04/21/69	CHE/0192/C	07-Apr-93	OC	587
7	SUBODH KUMAR SINGH	09/10/66	DEL/1201/C	15-Jan-93	OC	583
8	SANJAY MADAAN	01/06/67	DEL/0206/C	30-Jan-93	OC	580
9	HANSA DUTT	11/15/66	DEL/1356/C	05-Dec-92	OC	577
10	KRISHAN MOHAN KANSAL	05/15/68	DEL/1264/C	10-Dec-92	OC	570
11	AMIT KUMAR JAIN	03/05/67	DEL/1069/C	16-Dec-92	OC	563
12	PRADEEP VERMA	07/18/66	DEL/0737/C	04-Jan-93	OC	565
13	MUNESHWAR TYAGI	12/12/67	DEL/0015/C	08-Dec-92	OC	564
14	KAILASH CHANDER TANEJA	05/03/68	DEL/0124/C	30-Nov-92	OC	561
15	YASHWANT SINGH BIST	03/11/70	DEL/1195/C	01-Dec-92	OC	561
16	S. RAVI	06/02/67	MUM/0039/C	15-Dec-92	OC	559
17	A.K. PANDEY	03/01/70	DEL/0040/C	31-Dec-92	OC	558
18	M.K. JAIN	04/24/69	DEL/1261/C	28-Dec-92	OC	557
19	BIKAS CHANDRA	12/15/66	DEL/0222/C	01-Feb-93	OC	554
20	RAJESH TANEJA	07/12/67	DEL/0529/C	01-Jan-93	OC	548
21	SUKHMAL CHAND JAIN	08/13/72	DEL/0253/C	24-Dec-92	OC	544
22	PANKAJ KUMAR SHUKLA	02/15/68	DEL/0101/C	10-Dec-92	OC	539
23	A.K. SRIVASTAVA	06/30/67	DEL/0369/C	07-Dec-92	OC	537

Handwritten signature and initials at the bottom left.

24	DHARMENDRA KUMAR SHUKLA	06/03/68	DEL/0078/C	11-Jan-93	OC	537
25	KONINDALA JAGADEESH	07/15/69	CHE/0221/C	11-Jan-93	OC	537
26	J.P.SINGH	10/22/70	DEL/0493/C	07-Dec-92	OC	535
27	A.K.SHARMA	09/08/69	DEL/0032/C	29-Dec-92	OC	527
28	ASHOK KUMAR	04/01/67	DEL/0170/C	14-Jun-93	OC	524
29	R.S.SHARMA	10/12/66	DEL/0357/C	29-Jan-93	OC	513
30	SUNIL KUMAR AGARWAL	11/13/66	DEL/1053/C	02-Dec-92	OC	512
31	EMTIAZUR RAHMAN	07/05/66	DEL/1001/C	08-Apr-93	OC	511
32	A.K.PANDEY	07/16/71	DEL/0682/C	28-Dec-92	OC	509
33	B.K.JAIN	03/01/70	DEL/0060/C	18-Dec-92	OC	505
34	VIJAY KUMAR DUBEY	04/27/66	DEL/0543/C	16-Dec-92	OC	504
35	S.K.RAI	09/08/72	DEL/0351/C	10-Dec-92	OC	503
36	R.S.MISRA	06/30/69	DEL/0152/C	29-Jan-93	OC	502
37	MEDICHERLA S.N.L. SREENIVAS	07/27/67	CHE/0174/C	14-Dec-92	OC	499
38	AKBAL SINGH	08/31/67	DEL/1329/C	18-Dec-92	OC	497
39	BALBIR SINGH	09/03/69	DEL/0012/C	11-Jan-93	OC	495
40	PELLAKURU RAVI PRASAD	12/25/68	CHE/0178/C	13-Jan-93	OC	495
41	NARSI RAM SINGHMAR	04/01/64	DEL/0041/C	27-Nov-92	SC	473
42	ANIMESH MALLICK	10/11/69	CAL/0012/C	29-Dec-92	SC	472
43	ASHOK KUMAR	07/06/68	DEL/0178/C	19-Dec-92	SC	464
44	MAHENDRA CHOUDHARY	01/07/69	DEL/0166/C	05-Jan-93	SC	439
45	RAJESH KUMAR	12/25/72	DEL/0327/C	28-Jan-93	SC	426
46	PALLAB KUMAR SINHA	12/15/69	CAL/0073/C	24-Dec-92	SC	419
47	KAMAL RAM MEENA	6/27/68	DEL/1099/C	25-Jan-93	ST	407
48	SHASHI PAL SINGH	07/26/67	DEL/1021/C	30-Nov-92	SC	394
49	MAHALE SANJIV RAVINDRANATH	05/05/70	MUM/0091/C	05-Nov-92	ST	387
50	LOKENDRA SINGH	07/04/67	DEL/0049/C	21-Dec-92	SC	377
51	DEVPAL SINGH	01/02/70	DEL/0876/C	22-JAN-93	SC	370
52	SHAMSHAD KHAN	08/16/67	DEL/0318/C	02-Feb-93	ST	316
53	LAXMAN MURMU	01/05/66	CAL/0030/C	12-Jan-93	ST	302
For the Year 98-99						
54	SANDESH SRIVASTAVA	01/17/68	DEL/1198/C	22-Oct-93	OC	636
55	MUTHYALA RAMESH	06/05/68	CHE/0026/C	15-Nov-93	OC	604
56	SURINDER KUMAR	07/23/67	DEL/0120/C	13-Nov-93	OC	584
57	VIJAY RAJE	10/08/69	DEL/0055/C	21-May-94	OC	565
58	M.D.SHAFI AHMAD	11/15/59	DEL/0408/C	28-Dec-93	OC	544
59	K.K.JAIN	07/01/67	DEL/0470/C	25-Oct-93	OC	543
60	K. KRISHNA KAILAS	02/15/59	CHE/0210/C	23-Aug-94	OC	535
61	BRAJENDRA NARAYAN SINGH	10/05/57	DEL/1112/C	21-Nov-93	OC	537
62	MANOJ KUMAR SINGH	05/15/69	MUM/0092/C	19-Jan-94	OC	537
63	MAHESH KUMAR	01/03/69	DEL/0959/C	03-Dec-93	SC	512
64	JASWINDER PAL	03/15/72	DEL/0294/C	27-Oct-93	SC	475
65	RAMSEWAK RAWAT	10/25/63	MUM/0089/C	05-Nov-93	ST	377

-29-

Declaration of the result of any candidate does not automatically confer on him the right for promotion, which would be subject to the verification of the vacancies available year-wise, approval from Ministry of Finance for filling up the vacancies over one year old, vigilance clearance, yearwise eligibility for promotion and outcome of judgements in cases pending in various CATs/Courts including the following. CAT/Court cases and cases if any filed in future.

1. CWP No.3519 of 1999 Shri Santosh Shukla Vs. U.O.I. & Others, Delhi High Court.
2. O.A.No.386/99 Shri S.K.Chaturvedi Vs. U.O.I. & Ors. CAT, PB, New Delhi
3. Contempt Petition No.CPC No.299/2000 Sh.Vinod Garg Vs. U.O.I. & Ors.
4. OA No.37/99 Shri A.K.Singh Vs. U.O.I. & Ors., CAT, Guwahati Bench.
5. O.A.No.111/99 Sh.B.O.Verghese Vs. U.O.I. & Ors. CAT, Mumbai Bench.
6. O.A.No.1103/98 to 1108/98 , O.A.No.1119/98 O.A.No.1073/98 and 33/99 all combined at CAT, Mumbai Bench
7. O.A.No.1757/99 Shri Shyam Lal Vs. U.O.I. CAT, PB, New Delhi
8. O.A.No.546/99, CAT, PB, New Delhi.
9. O.A.No.498/99, Sh.D.K.Jaiswal Vs. U.O.I. & Ors., CAT, PB, New Delhi.
10. O.A.No.839/99 Shri Surinder Kumar Vs.U.O.I. & Ors., CAT, PB, New Delhi.
11. O.A.No.1682/99 Shri Vinod Garg & Ors. U.O.I.
12. CPC 160/2001 in O.A.No.2526/98 Shri D.K.Yadav Vs. U.O.I. & Ors.
13. O.A.No.3457 Sh.Sudarshan Singh Vs. U.O.I. & Ors. CAT, PB, New Delhi.
14. O.A.No.2192/2001 Sh G K Jindal Vs U.O.I. & Ors. CAT, PB, New Delhi.
15. O.A.No.488/2001 Sh.H.K.Sinha Vs. U.O.I. & Ors. CAT, Jabalpur Bench.

The result of Shri S K Chaturvedi, Roll No.DEL/1358/C and Shri Ajay Kumar Singh, Roll No.GUW/0013/C have been kept in sealed covers as per directions of Principal Bench, CAT, Delhi vide their instructions dated 17.02.1999 in O.A.No.386/99 and CAT, Guwahati vide their instructions dated 16.02.1999 in O.A.No.37/99 respectively.

(Deepak Thakur)
SE(Trg)-I & Controller of Examination

Copy to the Director of Administration, CPWD, Nirman Bhawan, New Delhi for further necessary action.

16/2/02
SE(Trg)-I & Controller of Examination

G.I., Dept. of Per. & Trg., O.M. No. 22011/9/98-Estt. (D),
dated the 8th September, 1998 read with O.M. of even number,
dated the 13th October, 1998

Model Calendar for DPCs and related matters

The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum No. 22011/5/86-Estt. (D), dated April 10, 1989 containing consolidated instructions on DPCs. These instructions *inter alia* provide that the DPCs should be convened at regular intervals (by laying down a *time schedule* for this purpose) to draw panels which could be utilized for making promotions against the vacancies occurring during the course of a year. This enjoins upon the concerned authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like seniority list, Annual Confidential Reports (ACRs), integrity certificates, etc., for placing before the DPCs. The instructions further provide that the DPCs should consider ACRs for equal number of years in respect of all officers considered for promotion. The DPCs should assess the suitability of the officers for promotion on the basis of their service records and with particular reference to the ACRs for five preceding years. However, in cases where the required qualifying service is more than five years, the DPCs should see the records with particular reference to the ACRs for the years equal to the required qualifying service. Instructions further provide that no proposal for holding a DPC or Selection Committee should be sent to the UPSC until and unless all the ACRs, complete and up-to-date, are available.

2. The importance of keeping the ACR dossiers up-to-date and of timely convening of DPCs cannot be overemphasized. Instances have, however, come to the notice of the Department of Personnel and Training where the DPCs could not be held in time owing to non-availability of complete ACR dossiers of the officers in the zone of consideration and also for lack of prompt administrative action. This invariably delays promotions resulting in considerable frustration among the officials, thereby adversely affecting their morale and overall productivity. As such, some remedial action in this regard has become essential.

3.1 Keeping the aforesaid objective in view, it has been considered imperative to provide for a *time-schedule*, for convening DPCs not only in time but in sufficient advance also so as to utilize the prepared panel as and when the vacancies arise during the course of the vacancy year. For practical reasons, it is also considered desirable to have separate *time-schedules* for cases requiring approval of the Appointments Committee of the Cabinet and cases which do not require such approval. Accordingly, in order to complete all required action, including the approval of the Competent Authority, well in time (before the commencement of the panel or vacancy year), the

administrative action for convening DPCs, in the *cases requiring approval of the ACC* (ACC cases), could, as such, be initiated at least eight and a half months before the commencement of the vacancy year and, similarly, DPCs in such cases could be held at least four months before the commencement of the vacancy year. This means that there would be a clear period of the first three and a half months of the year immediately preceding the vacancy/panel year available for completion of the ACRs, etc., followed by another four and a half months' time for holding of DPCs. The next one month could be devoted to the post-DPC follow-up administrative action by the Administrative Ministry/Department. The final three months' period prior to the commencement of the vacancy year could be left for approval of the Competent Authority (the ACC).

3.2 In relation to the *cases which do not require approval of the ACC* (non-ACC cases), the aforesaid time-schedule could follow a different pattern in regard to various activities as discussed above. This is considered desirable to give sufficient time to the UPSC for holding DPCs in such cases. Accordingly, the administrative action for convening DPCs in such cases could be initiated at least eight months before the commencement of the vacancy year and, similarly, DPCs could be held at least two months before the commencement of the vacancy year. This means that there would clearly be the first four months of the year immediately preceding the vacancy/panel year available for completion of ACRs, etc., followed by another six months' time for holding of DPCs. The final two months could, as such, be devoted to the post-DPC follow-up administrative action, including approval of the Competent Authority. The aforesaid time-schedule, both in 'ACC' and 'non-ACC' cases, may be sufficient by any reckoning. Thus, the *Model Calendar* of events for ACC/non-ACC cases may follow the following illustrative pattern and the DPCs may ordinarily be held accordingly:—

SUGGESTED MODEL CALENDAR FOR DPCs

Events (1)	Financial Year-based (2)	Calendar Year-based (3)
(i) Vacancy year	2000-2001	2000
(ii) Crucial date for determining eligibility	January 1, 2000	January 1, 2000
ACC Cases [Cases where ACC approval is required (including SAG/HAG grades/posts)].		

27

Assistant Executive Engineer (Group 'A')

4. Initial recruitment for Group 'A' Engineering Services (Civil & Electrical & Mechanical) is made at the level of Assistant Executive Engineer through a competitive examination held by the Union Public Service Commission. The minimum qualification for the post of Assistant Executive Engineer is a Degree in the Civil/Electrical/Mechanical Engineering from a recognised University as the case may be.

Assistant Engineers (Group 'B')

5. Vacancies in the grade of Assistant Engineers in Central Engineering Service Group 'B' and Central Electrical Engineering Service Group 'B' were being filled up partly by direct recruitment through a competitive examination conducted by the UPSC and partly by promotion. Direct recruitment to this grade has however been suspended since 1-4-72, from 1-4-72 to 4-2-77, the vacancies in the grade were being filled up 100% by promotion by selection from amongst permanent Junior Engineers. The recruitment rules were amended w.e.f. 5-2-77 according to which:

- (i) 50% of the vacancies in the grade of A.E. are 1st to be filled up by selection on the basis of merit-cum-seniority from amongst permanent J.Es. employed on the Civil/Electrical Engineering side of the C.P.W.D., and
- (ii) the remaining 50% through a limited competitive departmental examination open to J.Es. who have put in a minimum of 4 years service in the grade.

N.B.: The provision for direct recruitment, is however, still retained in the recruitment Rules.

6. The minimum Qualifications for direct recruitment to the posts of Assistant Engineer in CES Groups 'B'/CEES Group 'B' is a Degree in Civil/Electrical or Mechanical Engineering, as the case may be from a recognised University (for appointment by promotion, Section 7 may be referred to).

Junior Engineer (Group 'C')

7. A new set of recruitment rules for the post of JEs in the CPWD were notified with effect from Feb. 1, 1972 according to which recruitment to 97% vacancies in the grade of Junior Engineer (Civil) & (Electrical) is made through an All India Open Competitive Examination to be held by the C.P.W.D. and the remaining 3% is filled up through a departmental competitive examination open to the departmental employees having a minimum qualification of diploma in Civil/Electrical/Mechanical Engineering. The minimum qualification prescribed for the post is

Diploma in Civil/Electrical/Mechanical Engineering from an Institute recognised by the Central Government or equivalent thereof or any higher qualification. The age limit for Direct Recruitment is 18-25 years.

Architects

* Appointments to the post of Chief Architect, Senior Architects and Architects (Group 'A' posts) are made by promotion from amongst the eligible officers of the next lower rank. 25% posts at Sr. Arch level are filled by direct recruitment through UPSC.

9. The initial recruitment to Group 'A' services in respect of Architects is made at the level of Deputy Architects through interviews by the Union Public Service Commission. The minimum qualification for the post is a Degree in Architecture or equivalent from a recognised University with 3 years experience in the profession. The candidate should be registered with the Council of Architecture.

10. The posts of Assistant Architects are filled 50 per cent by promotion falling which by direct recruitment and 50% by direct recruitment. The direct recruitment is made through interviews by the UPSC; the minimum qualification for the post being a Degree in Architecture or equivalent from a recognised University with 2 years experience in the profession. The candidate should be registered with the Council of Architecture. The promotion posts are filled up from the following categories in order of preference:—

(i) Architectural Assistant.

(ii) Asstt. (Arch Deptt.)

The eligibility criteria for promotion are:

- (a) a degree or equivalent qualification in Architecture with five years service in any one or more of the grades; or
- (b) Intermediate in Architecture with ten years' service in any one or more of the above grades; or
- (c) neither of the above qualification but with 15 years service in any one or more of the above grades.

Handwritten signature: Mustafa Adhwa

SPEED POST/REGISTERED A.D./IMMEDIATE

THIS LETTER ENTITLES YOU
TO ENTER THE U. P. S. C.
BUILDING ON THE SPECIFIED
DATE ONLY 11-3-99

DATE OF INTERVIEW 11-3-99TIME OF INTERVIEW ... 1330 Hrs.

IMPORTANT NOTE: NO CHANGE/
POSTPONEMENT OF INTERVIEW
DATE WILL BE ALLOWED

Nay
SECTION OFFICER
U. P. S. C.

36421
MO. ESE '98/ ROLL NO. /E.VII
UNION PUBLIC SERVICE COMMISSION
DHOLPUR HOUSE, SHAHJAHAN ROAD.

NEW DELHI - 110011, THE

TO

An. N.K. Srivastava
Delhi

Subject: ENGINEERING SERVICES EXAMINATION, 1998
PERSONALITY TEST FOR THE -

Sir/Madam,

With reference to your candidature for the above mentioned examination, I am directed to request you to present yourself at the Commission's Office, Dholpur House, Shahjahan Road, New Delhi for the purpose of Personality Test to be conducted by the Union Public Service Commission as per date and time indicated at the top of this letter.

2. Please bring this letter with you when you come for the Personality Test and report to the Reception Officer of the Union Public Service Commission on arrival. (Gate No. 2).

3. You should bring with you two passport size (5 cm. x 7 cm. approx.) copies of your photograph taken recently say within the preceding three months.

4. The Union Public Service Commission do not defray the travelling or other expenses of the candidates summoned for the interview. They, however, contribute towards these expenses to the extent mentioned in the enclosed note. For

Contd...2/-

Attested
Advocate

1-2-1

this purpose, two blank T.A. Bill Forms are sent herewith. You should fill up these forms with particulars in respect of both the onward and return journeys and hand them over to the Assistant concerned of Accounts Branch as soon as you report to the Commission's Office. The Commission's contribution towards your travelling expenses would be paid to you in cash on the date of interview itself. You should collect the same from the Cashier of the Commission's Office before you leave.

5. In accordance with the "Instructions to Candidates" a copy of which was supplied to you alongwith the blank application form and in terms of the conditions of admission communicated to you in the Admission Certificate permitting you to take the above examination provisionally, you are required to submit the following certificates.

- (a) Matriculation/Higher Secondary or equivalent certificate in original (with a copy thereof) issued by the University/Board, concerned for verification of your date of birth.
- (b) Degree or equivalent certificate in original (with a copy thereof), issued by the University concerned for verification of your educational qualification. In case you possess a higher qualification. Please also bring the originals (with a copy thereof each), issued by the University concerned.
- (c) Scheduled Caste/Scheduled Tribe/Other Backward Class certificate in original (with a copy thereof) in the form prescribed in the set of instructions enclosed with the Detailed Application Form issued by the Competent Authority of the District to which you belong (in case you have claimed to belong to Scheduled Caste/Scheduled Tribe/Other Backward Class).
- (d) Certificate of service particulars in the form prescribed in the set of instructions enclosed with the Detailed Application Form from the Head of the Department or Office, duly completed and signed for claiming age concession under Rule 5(b) of the Rules of Engineering Services Examination, 1998.
- (e) A certificate in original (with a copy thereof) from the Principal/Registrar/Dean of the College/University concerned showing that you have passed, M.Sc. degree or its equivalent examination with Wireless Communication, Electronic, Radio Physics or Radio Engineering as special subject.

6. You should bring the above mentioned certificates with you when you present yourself at the Commission's Office for Personality Test.

Contd....3/-

: -3- :

7. In the event of your inability to produce the original certificates mentioned at Para 5 above, you should submit an explanation for their non-submission and should bring with you at the time of your interview the following alternative certificate which the Commission may consider on merits:-

- (a) A certificate in original (with a copy thereof) from the Head of the Institution from which you passed the Matriculation/Higher Secondary or equivalent examination showing your exact date of birth as entered in the record of that institution or any other certificate/document in original (with a copy thereof) issued by the Board/University indicating your date of birth in Christian era.
- (b) A certificate in original (with a copy thereof) from the Principal/Registrar/Dean of the College/University concerned certifying that you have passed the qualifying examination i.e. University Degree or equivalent.

8. YOU MAY PLEASE NOTE THAT IN CASE YOU FAIL TO COMPLY WITH THE ABOVE REQUIREMENTS, YOU MAY NOT BE INTERVIEWED AND IN THAT EVENT THE COMMISSION'S CONTRIBUTION TOWARDS TRAVELLING EXPENSES WILL NOT BE PAID TO YOU. YOU MAY ALSO NOTE THAT THE DOCUMENTS CALLED FOR IN PARA 5 ABOVE MUST BE SUBMITTED AS SOON AS POSSIBLE EVEN IF YOU HAVE SUBMITTED THE ALTERNATIVE CERTIFICATE MENTIONED IN PARA 6 ABOVE.

9. You may please note that if you do not present yourself for the personality Test, your candidature is liable to be cancelled. However, if the original certificates called for above are submitted to the Commission for verification within 7 days from the date fixed for Personality Test, your candidature will not be cancelled.

10. Please note that if you are declared successful on the results of the examination, you will not be appointed unless you are eligible, inter alia, in terms of the Rules for the Examination.

11. You are informed that all correspondence regarding your Medical Examination should be addressed directly to the Secretary, Ministry of Railways (Railway Board) -E(GR)1 Section, Rail Bhavan, Rafi Marg, New Delhi - 110001.

12. Please acknowledge receipt of this letter IMMEDIATELY and also state the address & phone number (if any) of your place of intended stay at DELHI.

Contd...4/-

: - 4 - :

3. You should submit the enclosed 7 copies of the Attestation Form after completing the same either in your own handwriting or in typed script, duly signed, after affixing a copy of your recent passport size (5 cm. x 7 cm. approx.) photograph on each of the 7 copies of Attestation Forms (one on each Attestation Form), within 15 days from the date of issue of this letter, direct to the Secretary, Ministry of Railways (Railway Board), Rail Bhavan, New Delhi (GR)1 Section. While forwarding Attestation Form, you should ensure that all columns are filled properly, initials of your name and your father's name are duly expanded, your roll number has been indicated on the right hand top corner of all the seven copies of the Attestation Forms and they are tagged together. If you desire to deliver the Attestation Forms in person, the same should be deposited at the Central Registry of the Ministry of Railways located at the Ground Floor of Rail Bhawan (Opposite to Rail Bhawan, Post Office).

NOTE:- PLEASE NOTE THAT -

-) NO REQUEST FOR CHANGE/POSTPONEMENT OF THE DATE OF PERSONALITY TEST WILL ORDINARILY BE ENTERTAINED.
-) THE WEATHER AT DELHI BETWEEN JANUARY AND MARCH IS COLD, YOU ARE ADVISED ACCORDINGLY TO EQUIP YOURSELF WITH WARM GARMENTS SUCH AS WOOLLEN SUITS/PULLOVERS, BLANKETS AND QUILTS ETC., WHEN YOU COME TO DELHI FOR INTERVIEW.
-) YOUR SPECIFIC ATTENTION IS INVITED TO PARA 17 OF THE RULES FOR THE EXAMINATION IN TERMS OF WHICH YOUR MEDICAL EXAMINATION WILL BE CONDUCTED AT THE CENTRAL HOSPITAL, NORTHERN RAILWAY, HASANT LANE, NEW DELHI. YOU SHOULD THEREFORE COME PREPARED FOR STAY IN DELHI FOR THIS PURPOSE ALSO.

You should bring the enclosed questionnaire duly filled and signed by you when you present yourself at the Commission's office for Personality Test.

Yours faithfully,

UNDER SECRETARY
UNION PUBLIC SERVICE COMMISSION

"Candidate for
INTERVIEW BOARD

- 56 -

Annexure-5

E-13

SPEED POST

THIS LETTER ENTITLES YOU
TO ENTER THE U.P.S.C.
BUILDING ON THE SPECIFIED
DATE ONLY

DATE OF INTERVIEW: 29-3-2001

TIME OF INTERVIEW : 09 30 Hrs. ✓

: 13 30 Hrs.

SECTION OFFICER
U.P.S.C.

IMPORTANT NOTE : CHANGE /
POSTPONEMENT OF INTERVIEW
DATE WILL ORDINARILY NOT
BE ALLOWED

No. ESE 2000/Roll No. 33179, E-XII
UNION PUBLIC SERVICE COMMISSION
DHOLPUR HOUSE, SHAHJAHAN ROAD

NEW DELHI-110011, THE... (3) ... (2001)

To
Sh./Mr. Nareesh Kumar Srivastava
Delhi

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PERSONALITY TEST FOR THE -

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Contd...2/-

Affected
Advocate

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- a. Matriculation/Higher Secondary or equivalent certificate issued by the University/Board concerned for verification of your date of birth.
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- c. Scheduled Caste/Scheduled Tribe/Other Backward Class certificate in the form prescribed in the set of instructions enclosed with the Detailed Application Form issued by the Competent Authority of the District to which you belong (in case you have claimed to belong to Scheduled Caste/Scheduled Tribe/Other Backward Class).

- d. A certificate in the prescribed form as mentioned in para 11 of the instructions to the candidates attached with the detailed Application Form issued by the competent authority mentioned therein/certificate in the prescribed form sent to you by the Commission separately, if you claim to belong to the category of Physically handicapped candidates.
- e. Certificate of service particulars in the form prescribed in the set of instructions enclosed with the Detailed Application Form from the Head of the Department or Office, duly completed and signed for claiming age concession under Rule 5(b) of the Rules of Engineering Services Examination, 2000.
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YOU SHOULD BRING THE ABOVE MENTIONED CERTIFICATES WITH YOU WHEN YOU PRESENT YOURSELF AT THE COMMISSION'S OFFICE FOR PERSONALITY TEST.

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Contd...4/-

:4:

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Please note that if you are declared successful on the results of the examination, will not be appointed unless you are eligible, interalia, in terms of the Rules for examination.

YOU ARE INFORMED THAT ALL CORRESPONDENCE REGARDING MEDICAL EXAMINATION SHOULD BE ADDRESSED DIRECTLY TO SECRETARY, MINISTRY OF RAILWAYS (RAILWAY BOARD)- E(GR)1 SECTION, RAIL BHAVAN, RAFI MARG, NEW DELHI-110001.

Please acknowledge receipt of this letter IMMEDIATELY and also state the address & phone number (if any) of your place of intended stay at DELHI.

YOU SHOULD SUBMIT THE ENCLOSED 7 COPIES OF THE ATTESTATION FORM AFTER COMPLETING THE SAME EITHER IN YOUR OWN HANDWRITING OR IN TYPED SCRIPT, DULY SIGNED, AFTER ATTACHING A COPY OF YOUR RECENT PASSPORT SIZE (5 cm.x 7 cm. APPROX.) PHOTOGRAPH ON EACH OF THE 7 COPIES OF ATTESTATION FORMS (ONE ON EACH ATTESTATION FORM) WITHIN 15 DAYS FROM THE DATE OF ISSUE OF THIS LETTER, DIRECT TO THE SECRETARY, MINISTRY OF RAILWAYS(RAILWAY BOARD) RAIL BHAVAN, NEW DELHI E(GR)1 SECTION. WHILE FORWARDING ATTESTATION FORM, YOU SHOULD ENSURE THAT ALL COLUMNS ARE FILLED PROPERLY. INITIALS OF YOUR NAME AND YOUR FATHER'S NAME ARE DULY MENTIONED, YOUR ROLL NUMBER HAS BEEN INDICATED ON THE LEFT HAND TOP CORNER ON ALL THE 7 COPIES OF THE ATTESTATION FORMS AND THEY ARE TAGGED TOGETHER. IF YOU

Contd..5/-

IRE TO DELIVER THE ATTESTATION FORM IN PERSON, THE SAME
ULD BE DEPOSITED AT THE CENTRAL REGISTRY OF THE MINISTRY
RAILWAYS LOCATED AT THE GROUND FLOOR OF RAIL BHAVAN.

:- PLEASE NOTE THAT -

REQUEST FOR CHANGE/POSTPONEMENT OF THE DATE OF
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Yours faithfully,



UNDER SECRETARY
UNION PUBLIC SERVICE COMMISSION

G.I., Dept. of Per. & Trg., O.M. No. 22011/9/98-Estt. (D),
dated the 8th September, 1998 read with O.M. of even number,
dated the 13th October, 1998

Model Calendar for DPCs and related matters

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administrative action for convening DPCs, in the cases requiring approval of the ACC (ACC cases), could, as such, be initiated at least eight and a half months before the commencement of the vacancy year and, similarly, DPCs in such cases could be held at least four months before the commencement of the vacancy year. This means that there would be a clear period of the first three and a half months of the year immediately preceding the vacancy/panel year available for completion of the ACRs, etc., followed by another four and a half months' time for holding of DPCs. The next one month could be devoted to the post-DPC follow-up administrative action by the Administrative Ministry/Department. The final three months' period prior to the commencement of the vacancy year could be left for approval of the Competent Authority (the ACC).

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SUGGESTED MODEL CALENDAR FOR DPCs

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(i) Vacancy year	2000-2001	2000
(ii) Crucial date for determining eligibility	January 1, 2000	January 1, 2000
ACC Cases [Cases where ACC approval is required (including SAG/HAG grades/posts)]		

Government of India
Central Public Works Department

No.8(3)/ACC-I/E-I/725

Dated, Guwahati, the
5.5.05

To
The Chief Engineer (NEZ),
CPWD, Cleave's Colony,
Dhankheti, Shillong-3.

Subject:- Vacancies of Group 'A' Services in CPWD and Diversion of
vacancies from Group 'A' services to promote the Assistant
Engineer (Civil) to Executive Engineer (Civil)

A self explanatory representation dated 22-3-05 received from Shri N.K. Srivastava,
Assistant Engineer (Planning) attached to Guwahati Central Division, CPWD, Guwahati-21 is
submitted herewith for onward transmission to higher authority please.

This issues with the approval of SE/ACC-I.

Encl:- Representation - 5 Nos.

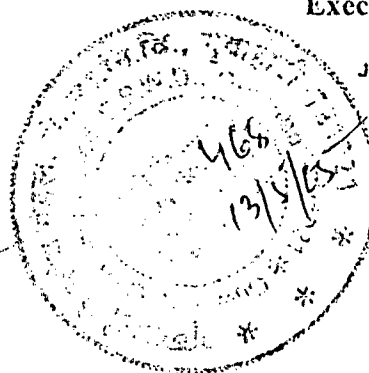
Sd/-
Executive Engineer (Admn)
Assam Central Circle-I
CPWD, Guwahati-21.

Copy to:-

✓ The Executive Engineer, Guwahati Central Division, CPWD, Guwahati-21 w.r.to
his letter No.8(1)/GCD/05/947 dated 6.4.2005 for information.

Copy to be submitted to Shri N.K. Srivastava, 22-3-05

*E. Eng
13/5/05*



Sd/-
Executive Engineer (Admn)

No.8(1)/GCD/05/947 dated 6.4.2005
13.5.05

Copy to be submitted to Shri N.K. Srivastava, 22-3-05

13/5/2005
সহকারী অভিযন্তা
গুৱাহাটী কেন্দ্রীয় মহল
কেন্দ্রীয় কক্ষ, গুৱাহাটী-২১

*Attested
by
Advocate*

To,

Date: 22.03.2005

The Executive Engineer,
Guwahati Central Division,
Bamunimaidan,
Guwahati-21

Sub: My representation addressed to DG(W),CPWD.

Sir,

Please find enclosed herewith my representation (through proper channel) regarding the diversion of Group 'A' vacancies to promote the Assistant Engineer (Civil) to Executive Engineer (Civil), LDCE -1999 for promotion from JE (Civil) to AE (Civil) and the Seniority list of the Assistant Engineer (Civil).

It is requested to sent all the copies to respective offices as early as possible.
Thanking you.

Encl: Copy addressed to DG(W) along with the enclosures & Copies to send to following offices

1. The Secretary Union Public Service Commission, Dhaulpur House, Shahjahan Road, Delhi-110011
2. The Secretary ,Ministry of Urban Development and Poverty Allevation , Government of India , Nirman Bhawan, New Delhi -110011.
3. The Secretary, Department of Personnel Training, Government of India, New Delhi for information and necessary action please.
4. The ADG (S& P), CPWD, Nirman Bhawan, New Delhi-110011 for information and Necessary.

(Naresh Kumar Srivastava)
Assistant Engineer (Civil),
Guwahati Central Division,
CPWD, Guwahati-21

Received
22/03/2005

Accepted
22/03/2005
A. K. Acharya

To

The Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011

(Through Proper Channel)

Sub: Vacancies of Group 'A' Services in CPWD, and Diversion of vacancies from Group 'A' services to promote the Assistant engineer (Civil) to Executive Engineer (Civil).

Ref: Limited Departmental Competitive Examination for promotion from Junior Engineer (Civil) to Assistant Engineer (Civil) held on 21.02.1999.

Sir,

A large number of vacancies of Group 'A' services are lying vacant in CPWD which were not filled by the department, and are now being diverted for promotion from Assistant Engineer (Civil) to Executive Engineer (Civil).

It is requested to consider my claim for these Group 'A' vacancies, which are being diverted for promotion to Executive Engineer (Civil) from Assistant Engineer (Civil), since all the required codal formalities has already been completed through the Engineering Services Examination conducted by the Union Public Service Commission. Following relevant details/facts are submitted herewith.

- a) I appeared in Engineering Services Examination from 1990 to 2001 as a general candidate/departmental candidate, and I was eligible for the post of Assistant Executive Engineer (Civil) in Central Engineering Services, Group 'A' / other departments, since I have qualified the written examination, appeared in the interview and medical examination successfully.
- b) Since the department has recruited only a few Assistant Executive Engineer (Civil), in spite of a huge vacancies of Group 'A' services, and not intimated the full vacancies to the Union Public Service Commission, which were lying vacant since a long time, I was not recommended by the Union Public Service Commission for the post of Assistant Executive Engineer (Civil) though qualified the written examination, appeared successfully in the interview and medical examination.
- c) It is also desirable to maintain the fair proportion of the Engineers recruited / promoted through the two channels of engineering stream in CPWD in the interest of the department.
- d) I am working as an Assistant Engineer (Civil) in CPWD since 27.02.2002 after getting the promotion through L. D. C. E. -1999. The duties performed by me as an Assistant Engineer (Civil) is in no way less than the duties of an Assistant Executive Engineer (Civil).
- e) My qualifications, B. Tech (Civil Engineering), M. E. (Civil) with specialization in Hill Area Development Engineering, Post Graduate Diploma (H R D), experience in CPWD as an assistant engineer (Civil) from 26.02.2002 till date with seniority fixed at S. No.-3358 (which may please be

After 27.02.2002

revised to an earlier number as per the merit in the LDCE-1999), and the above facts are sufficient to satisfy my eligibility for Group 'A' Post, against the existing vacancies of Group 'A', which are being diverted.

- f) If deserving candidates are not promoted it will have a huge implication due to the nature of duties in technical as well as financial terms.

With reference to LDCE-1999 and issue of the seniority list of Assistant Engineer (Civil) following points may please be considered;

- a) I appeared in the Limited Departmental Competitive Examination -1999, for the promotion from Junior Engineer (Civil) to Assistant Engineer (Civil), and got 537 marks out of 800. At the time of notification of this departmental examination, all the Junior Engineers who have completed four years of services were eligible for all the vacancies, and for the overall seniority on the basis of the merit in the examination.

After wards result was declared in 2001, and eligibility criteria was changed on the basis of year wise vacancy calculation on the ground that the examinations were not conducted every year for the promotion from Junior Engineer (Civil) to Assistant Engineer (Civil). Seniority list of Assistant Engineers (Civil) is issued by the department, but without informing the rules under which the Limited Departmental Examination -1999 was concluded and the seniority of the Assistant Engineers (Civil) is finalized. The seniority list is not acceptable to me since it is not finalized as per the merits of the candidates of LDCE for promotion from JE to AE.

As per information available to me following facts are not considered by the department;

- a) Eligibility criteria of the candidates were not checked as per year wise vacancies.
- b) Vacancies against the Recruitment Rules – Pre 1996 & Post 1996 are not considered separately.
- c) Vacancies for the Direct Recruitment of Assistant Engineer (Civil) for which the minimum qualification is Graduate in Civil Engineering is not considered.
- d) Year wise vigilance clearance of the candidates not considered.
- e) Year wise vacancy criteria is imposed due to the reason, that there is an undue benefit to the Junior candidates in getting the eligibility for the old vacancies. Senior candidates who have already availed this said undue benefit in earlier examinations up to LDCE-1992 are not eligible to get the benefit of the year wise vacancies it is not considered since they are getting double benefit.
- f) Merits of the candidates are decided by the LDCE-1999 on the day of examination i.e.21.02.1999.
- g) In deciding the eligibility criteria of LDCE-1999 candidature of graduate Junior Engineers are not considered separately, in spite of the recruitment as a Graduate Engineer for the post of Junior Engineer (Civil) through the All India Competitive Examination for recruitment to the grade of Junior Engineer (Civil) -1992 for which one of the minimum qualification was clearly mentioned as a graduation in Civil Engineering.

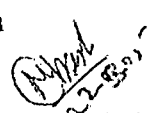
- h) It is not known, whether the marks of Confidential Reports are considered as per the year wise vacancy.
- i) Vacancies for AE (Civil) are not calculated on 1st January of respective year.

It is humbly requested to consider the above facts in deciding the following cases :

- a) Fate of the huge number of Group 'A' vacancies,
- b) Promotion from Assistant Engineer (Civil) to Executive Engineer (Civil) and my candidature.
- c) Issue of the Revised Seniority List of Assistant Engineer (Civil).
- d) Intimate me the rules/criteria under which the LDCE-1999 is being concluded
- e) It is also requested to consider my above eligibility, replying the all the related court cases and in the relevant policy decision.

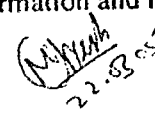
The above case is submitted to consider me equally in these cases to avoid any injustice to me and to avoid any possibility of the violation of the right of equality which is assured by the constitution of India.

Encl; Letters of UPSC as a proof of my candidature for the Engineering Services Examination


(Naresh Kumar Srivastava)
Assistant Engineer (P),
Guwahati Central Division,
Central Public Works Department,
Bamunimaidan, Guwahati-781021
Assam

Copy to;

1. The Secretary Union Public Service Commission, Dhaultpur House, Shahjahan Road, Delhi-110011 for information and necessary action please. Details of my candidature for Engineering Services Examination may please be traced by following informations ;
Name : Naresh Kumar Srivastava
Fathers Name : Late Shri K. K. Srivastava
Date of Birth : 30.06.1967
2. The Secretary, Ministry of Urban Development and Poverty Allevation, Government of India, Nirman Bhawan, New Delhi -110011.
3. The Secretary, Department of Personnel Training, Government of India, New Delhi for information and necessary action please.
4. The ADG (S& P), CPWD, Nirman Bhawan, New Delhi-110011 for information and necessary action please.


(Naresh Kumar Srivastava)

2005
2005
2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

O.A. NO.284 OF 2005

Sri Naresh Kr. Srivastava

...Applicant

-Versus-

Union of India & Ors.

....Respondents

The written statements on behalf of
the Respondents above named-

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETH:

1. That with regard to the statement made in paragraphs 1 of the instant application the answering Respondents beg to state that the contents of this para are wrong and hence denied. The respondents submitted that the appointment to the post of AEE in CPWD is done on the basis of Engineering Service Examination conducted by UPSC, whereas the post of Executive Engineer (E) is filled up by promotion from amongst AEE who have rendered 4 years regular service and degree holder AEs and diploma holder AEs with 8 and 10 years of regular service respectively in the grade of AE in the ratio of 1:1:1. The applicant who joined the department in Group C post of Junior Engineer and was promoted to the grade

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Filed by
respondents
Through
Gabin
Sr 16

of Assistant Engineer in the year 2002 cannot be considered for appointment either as AEE or as EE because posts of AEEs are filled up only by direct recruitment through UPSC through an all India competitive examination and he has not yet completed 8 years of regular service in the grade of AE for consideration for promotion to the grade of Executive Engineer.

2. That with regard to the statement made in paragraphs 2 and 3 of the instant application the answering Respondents have no comment.

3. That with regard to the statement made in paragraph 4.1 and 4.2 of the instant application the answering Respondents beg to state that the same are matter of records and the respondents do not admit anything which are not borne out of records.

4. That with regard to the statement made in paragraph 4.3 of the instant application the answering Respondents beg to state that the contents of this para except those which are matter of record the rest are wrong and denied. In reply it is further stated that the recruitment of Assistant Engineer under the direct recruitment quota has been stopped after 1972 and as per the Central Engineering Services Group-B recruitment Rules, 1977 as amended from time to time, the posts in the grade of Assistant Engineer is a selection post and

is to be filled up 100% from amongst the Junior Engineers in the Department by promotion and through limited departmental competitive examination conducted by the Department. It is respectfully submitted that upto 1992 the LDCE was held by the UPSC. But after that UPSC advised the respondents to relieve them from holding the LDCE for promotion of JEs to the grade of AEs and bring out necessary amendment to this effect in the relevant recruitment Rules. Accordingly, the Department took action for amending the Recruitment Rules in consultation with concerned Ministries/Department and finally published the amendment Rules in the Gazette of India dated 21st June 1997. In these circumstances the LDCE for filling the vacancies in the grade of AE earmarked for examination quota for the year 1993-94 and onwards upto 1998-99 could only be conducted in 1999 as per the amendment rules dated 21.6.1997. The notice for holding the Limited Departmental Examination, 1999 was issued on 19th September, 1998 and the examination was held on 21st February, 1999.

5. That with regard to the statement made in paragraph 4.4 of the instant application the answering Respondents beg to state that the contents of this para are wrong and denied except those which are matter of record. In reply it is stated that a number of cases were filed in different Benches of this Hon'ble Tribunal after notice for holding LDC 1999 was issued on 19.9.98.

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In OA No. 2239/98 and 2526/98 the CAT, Principal Bench by their final order dated 15.2.99 directed the respondents inter alia to segregate vacancies and eligibility year wise in order 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 even eligible for the same and to recalculate the 391 vacancies notified to ensure that the 1:1 ratio between the two groups (LDCE candidates and departmental promotee candidates) for the years from 1993 to 1999 are not tilted to favour one of the two contending groups.

In compliance of the orders of the Hon'ble Tribunal Principal Bench dated 15.2.99, the vacancies were recalculated by the respondents and a total of 336 vacancies of AEs (Civil) for the years 1993-1999 were arrived at. The results of the LDCE 1999 which was held on 21.2.99 were declared in February, 2001 and 336 candidates were declared selected for appointment as AE (Civil) as a result of LDCE, 1999 and orders of their promotion were issued vide office orders dated 16.2.01 and 4.4.2001. It is respectfully submitted that action of the respondents to declare results in respect of only 336 vacancies of AE (Civil) instead of 391 notified was cancelled in OA No. 1874/2001 (Ajmer Singh & Ors. -Vs- Government of India & Ors.) in CAT, Principal Bench. The said OA was allowed vide order dated 4.1.2002 with directions to the respondents to declare the result of LDCE, 1999 relating to all the 391 notified vacancies of

AE (Civil) vide notice dtd. 16.9.98 and make appointments to the same extent in accordance with Rules and law applicable to the case with all consequential benefits. Thereafter the respondents vide order dated 1.2.2002 further declared a list of 65 candidates found eligible for promotion to the grade of AE (Civil) against the vacancies of the year 1997-98 and 1998-99 on the basis of LDCE, 1997. The name of the applicant was included in the order as eligible for promotion against the vacancies of the year 1997-98. It is further submitted that as per the Rules of the LDCE, 1999 dated 16.9.98 regularly appointed officers of the grade of Junior Engineer (Civil/Electrical) of CPWD who on 1st September, 1998 satisfy the condition of having put in 4 years of Service as Junior Engineer in the department were eligible to appear in the examination. Thus cut off date in respect of date of joining for eligibility of a candidate for becoming due for consideration for the vacancies of a particular year was 1st September of the year proceeding four years to the year of consideration. Thus the applicant who joined department as JE in December, 1992 became eligible to appear in LDCE for consideration for appointment as AE against the vacancies of the year 1997-98 and subsequent year. There is no direct recruitment for filling the post of AE. Therefore the question of determining the eligibility of the applicant for direct recruitment as AE does not arise. Hence averments are denied.

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6. That with regard to the statement made in paragraph 4.5 of the instant application the answering Respondents beg to state that the contention of the applicant in this para regarding instructions of the Government for holding of DPC to draw panels for making promotions against the vacancies occurring during the course of the year is a matter of record. As already submitted in para 4.3 above after LDCE only in the year 1992 the respondents could hold the LDCE only in the year 1999 due to certain administrative exigencies for promotion of Junior Engineers to the grade of Assistant Engineer against the vacancies that have occurred between the year 1993, to 1999. However the recruitment to the post of AEE is done on the basis of Engineering Services Examination which is conducted by UPSC every year. The next higher post of EE is filled by promotion from amongst AEEs and AEs with requisite eligibility. It is submitted that due to various court cases the Department has not been able to held DPC on regular basis for filling the posts in this grade. The applicant who is a degree holder AE will become eligible for consideration for appointment as EE in his turn on completion of 8 years of service i.e. from the year 210 onwards. Hence averments are denied.

7. That with regard to the statement made in paragraph 4.6 of the instant application the answering

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Respondents beg to state that the contention of the applicant in this para are wrong and denied except those which are matter of records. In reply it is stated that the direct recruitment to the grade of AE in CFS Group B was suspended in 1972 and all the posts in the grade are being filled up by promotion from amongst Junior Engineers (i) by promotion through holding DPC and (ii) through limited departmental competitive examination as per the relevant 1977 recruitment rules as amended from time to time. Under the existing rules, there is no mention of direct recruitment for the post of AE. The applicant has joined CPWD as Junior Engineer and has been promoted as AE in the year 2002. The contention of the applicant for his appointment in the Central Engineering Service Group-A wither as AEE or EE shows that the applicant has a very poor understanding of the relevant rules according to which post of AEE are filled by direct recruitment through an all India examination conducted by UPSC and the post of EE is filled by promotion from amongst AEEs with requisite eligibility service. Hence averments are denied.

8. That with regard to the statement made in paragraph 4.7 of the instant application the answering respondents beg to state that the contents of this para except matter of record are wrong and denied. In reply it is submitted that only the posts of AEE in Group A Engineering service in CPWD are filled up by direct

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recruitment through the Engineering Service Examination conducted by UPSC. The next higher post of EE is filled up by promotion from eligible AEEs & EEs as per the provisions of the relevant 1996, Recruitment Rules. The sanctioned strength of AEE(c) in CPWD is 80%. Hence the contention of the applicant that about 400 vacancies had accumulated in the cadre of Group A service upto 1998 and were required to be filled through All India Competitive Examination conducted by UPSC is without any basis and hence wrong and denied.

The number of vacancies that are required to be filled in the grade of AEE from amongst General, SC, ST and OBC categories through Engineering Services Examination in a particular years are intimated by the Department to the UPSC. The vacancies are determined by taking into account the total sanctioned strength in the grade of AEE, the number of AEEs working against that strength in the department and number likely to be promoted in near future. Non selection of the applicant by the UPSC cannot be attributed to the vacancies intimated by the department but depends on how he finally fared in that examination. Being an open All India Examination it is not necessary that person who has qualified the written part of the Engineering Services Examination and is called for the interview/personality test would eventually be declared successful. The overall merit list is prepared by the UPSC and on the basis of the same successful candidates are recommended for appointment based

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on the vacancies to be filled through that examination in different Ministries/Departments of the Government of India. Hence averments are denied.

9. That with regard to the statement made in paragraph 4.8 of the instant application the answering Respondents beg to state that it denied that the respondents adopted unfair policy of diversion of Group A posts to favour AEs at the cost of the applicant who could not be appointed to Group-A post. No diversion of post of AEEs was ever carried out by the department. The posts in the grade EE belonging to the quota of AEEs which were lying vacant as on 28.2.1996, under the old 1954 Recruitment Rules, were diverted in favour of AEs with a view to regularising their adhoc appointments in the grade of EE vide office Memorandum dated 6.7.99 and regular promotion of eligible AEs against the those vacancies for the years 1994-95, 1995-96 and the year 1996-97 (upto 28.10.96) was done in 1999. The applicant who joined CPWD as JE (Civil) in 1992 and got promoted to the post of AE (Civil) in 2002 has not yet become eligible for consideration for appointment to the post of EE. Hence averments are denied.

10. That with regard to the statement made in paragraph 4.9 of the instant application the answering Respondents beg to state that the contents of this para are wrong and dined and in view of the submissions made in the proceeding paras need no further reply.

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11. That with regard to the statement made in paragraph 4.10 of the instant application the answering Respondents beg to state that the contents of this para regarding instructions/guidelines of the Government on holding of DPC are matter of record. However, the contention of the applicant that the respondents deliberately violated the aforesaid instructions in the matter of promotion/appointment of the applicant in Group-A service/posts is strongly denied. The Engineering Services examination through which recruitment of AEEs is made in the department is held by the UPSC on regular basis every year. As admitted by the applicant himself he appeared in the Engineering Service Examination a number of times during the period 1990 to 2001 but could not pass the examination. The contention of the applicant that since the duties and responsibilities of AE(C) in CPWD are similar with the duties and responsibilities of AEEs (Civil) he should be considered for appointment to Group-A Service in backlog vacancies of Group-A is misconceived, without any basis and is not covered under the relevant Recruitment Rules and the law laid down by the Supreme Court and hence wrong and denied.

12. That with regard to the statement made in paragraph 4.11 of the instant application the answering Respondents beg to state that the contention of the applicant in this para are wrong and denied except those

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which are borne out of record. As already stated that the direct recruitment in the grade of AE was suspended in 1972 and since then all the post in the grade of AE are being filled by promotion from amongst JEs as per the provisions of the relevant Recruitment Rules. As already submitted in para 4.4 above, the applicant has been promoted to the grade of AE (Civil) on the basis of LDCE, 1999 against the vacancies of the year 1997-98 vide order dated 1st Feb, 2002 read with order 25.2.2002. The contention of the appellant that he was selected for appointment in Group-A Post through Engineering Service examination in 1998 and 2000 is not correct and the respondents crave leave of this Hon'ble Tribunal to put the applicant to strict scrutiny to prove his claim.

13. That with regard to the statement made in paragraph 4.12 of the instant application the answering Respondents beg to state that contentions of this para are wrong, baseless and hence denied. No special drive has been conducted in CPWD for recruitment of Civil Engineers in Group-A and Group-B. As already submitted, there is a direct recruitment to the Group-A post of AEE in CPWD through Engineering Service Examination conducted by the UPSC. The department sends the requisition for number of posts required to be filled in the grade in AEE through that examination in a particular year. The contention of the applicant that Department has not intimated to the UPSC the correct vacancy position is wrong and denied.

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14. That with regard to the statement made in paragraph 4.13 of the instant application the answering Respondents respectfully beg to state that the applicant joined the Department as JE (Civil) which is a Group C post in the year 1992 and was promoted to the Grade of AE(Civil) a Group B post in the year, 2002. The department can not be faulted if he could not qualify the Engineering Service Examination conducted by the UPSC for direct appointment in Group-A service as AEE (Civil). Further the applicant's turn has not yet come for promotion to the Grade of EE (Civil) because he was promoted to the Grade of AE only in the year 2002 and as per relevant 1996 Recruitment Rules in respect of degree holder AEs 8 years regular service in the grade of AE is required for consideration for promotion to the Grade of EE. In view of the detailed submissions made in the proceeding paras the representation of the applicant dated 22.3.2005 need no reply. In view of the factual position explained above the applicant has no case to approach this Hon'ble Tribunal and this application is not maintainable and is therefore liable to be dismissed with costs in favour of the respondents.

15. That with regard to the statement made in paragraph 4.14 of the instant application the answering Respondents beg to state that the contents of this paragraph need no reply in view of the submissions made in the preceding paragraphs.

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16. In view of the submissions made herein above, none of the grounds mentioned by the applicant in sub paragraph 5.1 to 5.10 is maintainable and the present application being devoid of any merit is liable to be dismissed with costs in favour of the respondents.

17. That with regard to the statement made in paragraph 6 of the instant application the answering Respondents have no comment.

18. That with regard to the statement made in paragraph 7 of the instant application the answering Respondents denied for want of knowledge.

19. That with regard to the statement made in paragraph 8 and 9 of the instant application the answering Respondents beg to state that in view of the factual position and reply on merits furnished herein above with legal submissions made therein none of the reliefs prayed for by the applicant is legally admissible to him. The present OA being devoid of any merit is liable to be dismissed with costs in favour of the respondents.

VERIFICATION

I, ...P.K.PARMAR.....S/o...Sh.DHARAM..SINGH
aged about years, R/o .5.Single Hosted Block, CPWD.Colony,
District .Guwahati. and competent officer of the
answering respondents, do hereby verify that the state-
ment made in paras are true
to my knowledge and those made in paras
being matters of record are true to my information
derived therefrom which I believe to be true and the
rests are my humble submission before this Hon'ble
Tribunal.

And I sign this verification on this th day
of 2006 at Guwahati..

Leopold

केन्द्रीय प्रशासकीय न्यायालय
Central Administrative Tribunal

1/5/2005

गुवाहाटी न्यायालय

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

Filed by the applicant
Through S. Nath, advocate
on 12.09.07

In the matter of: -

O.A. No. 284 of 2005

Shri Naresh Kumar Srivastava.

.....Applicant.

-Versus-

Union of India & Ors.

....Respondents.

-AND-

In the matter of: -

Rejoinder submitted by the applicant in
reply to the written statements
submitted by the Respondents.

The humble applicant above named most humbly and respectfully state as
under: -

1. That the applicant categorically denies the statements made in paragraph 1 of the written statement and further begs to state that he was recruited as a Junior Engineer (Civil) by CPWD against the minimum qualification graduation in Civil Engineering, which was the minimum qualification for the recruitment to the post of Assistant Engineer (Civil) as per the recruitment rule at that time whereas the applicant possesses qualification of B. Tech (Civil Engineering) with Honours, M.E. in Civil Engineering with Honours and Post Graduate Diploma in Human Resource Management. It is pertinent to mention here that the applicant appeared in the Engineering Services Examination 1998 conducted by the UPSC as a departmental candidate, qualified in the written examination, medical examination and personality test (Annexure- 4 to the O.A.) but he was not recommended by the UPSC for the post of Assistant Executive Engineer (Civil) due to fault on the part of the department, as because department

did not intimate the required number of vacancies of Assistant Executive Engineer (Civil) to be recruited and hold the vacancies of the Group 'A' services under the direct recruitment quota, for the reasons best known to the department. Moreover, the department is diverting backlog vacancies of the Group 'A' services under the direct recruitment quota to promote the Assistant Engineer (Civil) who are not satisfying the minimum requirement/standards for these vacancies. It is stated that the applicant was eligible for the recruitment as an Assistant Executive Engineer (Civil) on inclusion of these vacancies in the in the Engineering Services Examination 1998, the Secretary UPSC cannot deny the recommendation of the applicant for the post of Assistant Executive Engineer (Civil) on the inclusion of the backlog vacancies of Group 'A' services for which initial recruitment was to be done at the level of Assistant Executive Engineer (Civil) as per the recruitment rules. The relevant portion of recruitment rule is reproduced below:

"Assistant Executive Engineer (Group 'A')

4. Initial recruitment for Group 'A' Engineering Services (Civil & Electrical & Mechanical) is made at the level of Assistant Executive Engineer through a competitive examination held by the Union Public Service Commission. The minimum qualification for the post of Assistant Executive Engineer is a Degree in the Civil/Electrical/Mechanical Engineering from a recognized University as the case may be."

Therefore, from the provision of recruitment rule it is very much clear that the applicant fulfils the required qualification for recruitment to the post of Assistant Executive Engineer but due to non-furnishing of correct number of vacancies of Assistant Executive Engineer under the direct recruitment quota, the applicant was not appointed to the post of Assit. Executive Engineer under the direct recruitment quota. Moreover, due to diversion of vacancies under the direct recruitment quota by downgrading and diverting the posts the Group 'A' backlog vacancies to give the undue benefit to the Group 'B' Engineers who were never eligible

for the post for initial recruitment for Group 'A' vacancies, applicant was made to suffer.

Moreover, applicant is eligible to get the appointment as an Assistant Executive Engineer (Civil) based on his performance in the Engineering Services Examination 1998 and on inclusion of the correct number of the vacancies for the initial recruitment for the Group 'A' Engineering Services. It is further submitted that against the backlog vacancies of Executive Engineer (Civil) under direct recruitment quota of Group 'A' services, initial recruitment was to be done at the level of Assistant Executive Engineer (Civil) through Engineering Services Examination conducted by the UPSC and the Assistant Executive Engineer (Civil) were to be promoted to the post of Executive Engineer (Civil) after 4 years of services. Applicant is eligible for promotion to these backlog vacancies of Executive Engineer (Civil) since he has already completed the required service with the duties exactly same as required for the promotion to the post of Executive Engineer under direct recruitment quota (from Assistant Executive Engineer). Moreover, the applicant has already qualified the written part of Engineering Services Examination on two occasions (passing of written examination of Engineering Services is the basic technical requirement for direct recruitment of Group 'A' services), appeared in the personality test and medical examination successfully but he could not be recommended by the UPSC due to intimation of lesser number of vacancies to the UPSC by the department though the large number of Assistant Executive Engineer (Civil) were to be recruited as per the recruitment rule to maintain the ratio of (a) well qualified civil engineers with good academic record tested by Engineering Services Examination to provide the higher level of technical support to the department and (b) the civil engineers under promotional quota on the basis of low bench mark of academic record but having experience at the post of Assistant Engineer. Hence the respondents are downgrading the post under the direct recruitment quota of Group 'A' services without considering the technical requirement of the department. Applicant is the best fit candidate for these backlog vacancies of the Executive Engineer (Civil) based on his performance in the

Engineering Services Examination 1998 considering the inclusion of the backlog vacancies of Group 'A' services under direct recruitment quota at the initial recruitment level and may be promoted to the post of Executive Engineer (Civil) as per the rule of promotion from AEE to EE (Civil).

It is pertinent to mention here that applicant is placed at Sl. No. 3358 in the slot of year 1996 in the seniority list of Assistant Engineer (Civil) published by the department. A number of juniors placed below him in the seniority are eligible for the promotion to the post of Executive Engineer (Civil) hence the applicant is also satisfying the eligibility criteria for the promotion to the post of Executive Engineer (Civil) under seniority quota as per the recruitment Rule (Page -58) under the heading Selection Method at S. No. (iii) which is quoted below:

"A note that when juniors who have completed the eligibility period are considered for promotion their seniors would also be considered irrespective of whether they have completed the probation period....."

Copy of the extract of recruitment rule is enclosed herewith as Annexure- A.

2. That with regard to the statements made in paragraph 4 and 5 applicant categorically denies the same saves and except which are borne out of record and begs to state that the minimum qualification for the direct recruitment of Assistant Engineer is specified in the recruitment rule (Annexure- 3 of the O.A.). The relevant portion is quoted below:

"N.B: The provision for direct recruitment is however, still retained in the recruitment Rules.

6. The minimum qualification for direct recruitment to the posts of Assistant Engineer in CES Groups 'B'/CEES Group 'B' is a Degree in Civil/Electrical or Mechanical Engineering as the case may be from a recognized University (For appointment by promotion Section 7 may be referred to.)"

Hence the applicant who had already completed his degree in civil engineering in year 1990 was eligible for the recruitment to the post of Assistant Engineer (Civil) under the provision of direct recruitment of AEs. The act of department to award the higher seniority to a number of candidates who secured much less marks than the applicant in the same departmental examination for LDCE 1999 is injustice with the applicant and extension of an undue benefit to a particular group of Engineers. The present applicant deserves the seniority above those candidates for all the backlog vacancies of the Assistant Engineers filled by LDCE 1999.

3. That the applicant categorically denies the statements made in paragraph 6 and 7 of the written statement saves and except which are borne out of record and further begs to state that all the required formalities as per recruitment rule has been completed in the case of the applicant through Engineering Services Examination 1998. It is further stated that the duties of the Assistant Executive Engineer (Civil) and the Assistant Engineer (Civil) are same and exactly same, with only a difference that the post of the AEE is the direct recruitment post which is filled by the Engineering Services Examination and the post of Assistant Engineer is a promotional post, now a days, and was a promotional as well as the direct recruitment post. As such the applicant is eligible to get the appointment as an Assistant Executive Engineer (Civil) based on his performance in the Engineering Services Examination 1998 and on inclusion of the correct number of the vacancies for the initial recruitment for the Group 'A' Engineering Services.
4. That the applicant categorically denies the statements made in paragraph 8, 9 and 10 saves and except which are borne out of record and further begs to state that as per recruitment rule 1954, the 50% of vacancies of the Executive Engineer are to be filled by Assistant Executive Engineers recruited under direct recruitment quota of Group 'A' service and 50% by the Assistant Engineers. The respondents did not recruit sufficient number of Group 'A' engineers at initial recruitment level i.e. Assistant Executive Engineers due to which a large number of vacancies were accumulated

and the applicant who is a successful candidate in the Engineering Services Examination eligible for recruitment in Group 'A' services under the direct recruitment quota. Moreover, applicant is eligible for recruitment to the Group 'A' service under direct recruitment quota as a departmental candidate, qualified in the written examination conducted by the UPSC, medical examination and personality test but he was not recommended by the UPSC for the post of Assistant Executive Engineer (Civil) due to fault of the respondents as because the respondents did not intimate the required number of vacancies of the Assistant Executive Engineer (Civil) to be recruited and hold the vacancies of the Group 'A' service under the direct recruitment quota at the cost of applicant, for the reasons best known to the department. It is also relevant to mention here that the respondents are diverting the backlog vacancies of the Group 'A' services under the direct recruitment quota to promote the Assistant Engineer (Civil) to the post of Executive Engineer (Civil), who are not satisfying the minimum standards for these vacancies. It is also pertinent to mention here that the applicant who is eligible for recruitment to the post of Assistant Executive Engineer (Civil) on inclusion of backlog vacancies of Group 'A' services for which initial recruitment is to be done at the level of Assistant Executive Engineer (Civil) as per the recruitment rules.

5. That with regard to the statements made in paragraph 11, 12 and 13 the applicant categorically denies the statements made therein save and except which are borne out of record and further begs to state that the respondents are diverting the backlog vacancies of direct recruitment quota to promote the Assistant Engineer (Civil) to the post of Executive Engineer (Civil), who are not satisfying the minimum standards for these vacancies without considering the eligibility of the applicant as per recruitment rule. Moreover, the respondents are awarding the higher seniority to those candidates of LDCE- 1999 who secured less marks than the applicant, which is opposed to the principle of natural justice.

It is also pertinent to mention here that due to diversion of backlog vacancies of the Executive Engineer and also due to intimation of lesser number of vacancies of Executive Engineer under direct recruitment quota to the UPSC, the applicant who is eligible for recruitment to the post of AEE through Engineering Services Examination has suffered in the matter of recruitment to the Group 'A' services.

6. That the applicant reiterates the submission made in the Original Application and humbly submits that he is entitled to the reliefs prayed for and in the facts and circumstances stated above the Original Application deserves to be allowed with costs.

VERIFICATION

I, Shri Naresh Kumar Srivastava, S/o- Shri K. K. Srivastava, aged about 39 years, working as Assistant Engineer in the department of CPWD, do hereby verify that the statements made applicant in the instant Original Application, do hereby verify that the statements made in paragraph 1 to 6 of the rejoinder are true to my knowledge and rest are my humble submission before the Hon'ble Tribunal, I have not suppressed any material fact.

And I sign this verification on this the 9th day of September 2007.

Naresh Kumar Srivastava

(Extract)

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Annexure - A

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नाहित्तराहित्य। No interview should be held unless it has been specifically provided for in the Recruitment Rules for the post.

संबंधित गोपनीय Selection Method

प्राप्तिये। Where promotions are made by selection method as prescribed in the Recruitment Rules, the DPC shall for the purpose of determining the number of officers, who will be considered from out of those eligible officers in the feeder grade, restrict the field of choice as under with reference to the number of least regular vacancies proposed to be filled in the year:—

पात्रता तारीख	No. of vacancies	No. of officers to be considered
में जहाँ वर्ष के	1	5
गोपनीय	2	8
जाती	3	10
एवं पदों निषेधक	4	10 + twice the number of vacancies in excess of three vacancies i.e. $x = 2x + 4$ where x is number of vacancies effective from 1-11-90.

से ज्येष्ठ सेवारत। However, in respect of SC/ST, the field of choice will be five times the number of vacancies.

यह भी ध्यान रखें। While merit has to be recognised and rewarded advancement in an officer's career should not be regarded as a matter of course but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process. There is misconception about 'Average performance'. While Average may not be taken as adverse remark in respect of an officer, at the same time it cannot be regarded as complimentary to the officer. It is only performance that is above average and performance that is really noteworthy which should entitle the officer to recognition and suitable reward in the matter of promotion.

अतः। CRs are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation

tion of CRs should be fair, just and non-discriminatory. Hence:

(i) DPC should consider CRs for equal number of years in respect of all officers concerned for promotion.

(ii) The DPC should assess the suitability of the officers for promotion on the basis of their service records and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the records with particular reference to the CRs for the year equal to qualifying service.

(iii) While holding DPC during a year, the crucial dates for determining the eligibility of officers for promotions would be prescribed as under:—

(a) 1st July of the year in cases where ACRs are written calendar yearwise.

(b) 1st October of the year where ACRs are written financial yearwise.

The crucial dates indicated above would be applicable to only such services and posts for which statutory Rules do not prescribe a crucial date.

A note that when juniors who have completed the eligibility period are considered for promotion their seniors would also be considered irrespective of whether they have completed the probation period, should be indicated in the Recruitment Rules in order to ensure that seniors who might have joined later due to various reasons are not overlooked for promotion.

(iv) Where one or more CRs have not been written for any reasons during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case, these are not available, the DPC should take the number of CRs of the lower grade into account. If this is also not possible all the available CRs should be taken into account.

Attestd
Jais
Sawade