

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 488 of 2001

Jabalpur, this the 16<sup>th</sup> day of July, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

Shri Hridya Kumar Sinha,  
S/o. Shri B.K. Sinha, aged 34  
years, R/o. Qr. No. Type-III/28,  
Income Tax Colony, Sanjeevni Nagar,  
P.O. Garha, Jabalpur.

... Applicant

(By Advocate - Smt. S. Menon)

V e r s u s

1. Union of India,  
through ; Director General  
(Ex Officio Secretary),  
Central Public Works Department,  
Nirman Bhawan, New Delhi.
2. Chief Engineer (Training),  
Central Public Works Department,  
Nirman Bhawan, New Delhi.
3. Union Public Service Commission,  
through ; Secretary, Dhelpur  
House, Shahjahan Road, New Delhi. ... Respondents

(By Advocate - Shri P. Shankaran on behalf of Shri S.C. Sharma)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has  
claimed the following main relief :


"(i) to direct the respondents to consider the applicant  
for appointment to the post of Assistant Engineer (CPWD)  
(Civil) for the vacancy pertaining to the year 1996-1997  
respectively,

And/or

be further pleased to declare the selection as also the  
entire action taken as illegal and contrary to the rules,  
for the facts and reasons mentioned in the aforeprece-  
ding paras of the Original Application."

2. The brief facts of the case are that the respondents  
issued notice dated 16.9.1998 informing the incumbents  
concerned that a limited departmental competitive examination  
for promotion of Junior Engineers (Civil/Electrical) to the  
Assistant Engineers grade (Civil/Electrical) in the Central  
Public Works Department is to be held by the Central Public

Works Department Training Institute on 21.2.1999. 391 vacancies were advertised by the respondents for the period 1.4.1993 to 31.3.1999. The vacancies notified were also for the period pertaining to 1993 to 1996 and it was only expedient but rather mandatory upon the respondents to have conducted the examination in accordance with the unamended rules in so far as the vacancies for the period 1.4.1993 to 20.6.1997 is concerned. This having not been done, the selections that were held cannot be said to be legal and proper and on this ground along, the entire selection is liable to be vitiated including the order of appointment and posting thereof. The applicant further submitted that since notice carried the vacancies of 391 posts, which included the vacancies for the period 1993, 1994, 1995 and 1996, respectively, the said selection ought to have been conducted in accordance with the rules which were in vogue at that point of time, but the respondents without any bifurcation, merged the vacancies for the said years which was wholly unwarranted and unjustified. The amended rules did not carry the clause of retrospective clarification and by no stretch of imagination, the vacancies for the period prior to 1997 could have been dealt with in the manner in which the respondents have carried it out, i.e. under the amended rules. The eligibility list gives a reflection that varying qualifying marks have been taken into consideration in filling up the yearwise vacancies. In so far as the applicant is concerned he has secured 556 marks, but could not find his name in the promotion/eligibility list. The applicant ought to have been considered for the year 1996-97 and he has not been considered principally for the error in calculation of his service period by the Department. He joined the Department on 1st September, 1992 and already completed 4 years of regular service on 31.8.1996 as a result he ought to have been considered for the period 1996-97. Besides this, having secured 556 marks, which is



much higher than the minimum cut off mark of 460 for 1996-97, he should have been declared as a successful candidate and in not doing so, substantial injury and prejudice has been caused to the applicant. The manner in which the selection has taken place besides being illegal, improper and arbitrary, is wholly irregular, in as much as, the respondents instead of bifurcating the vacancies, conducted the examination under the amended rules carrying it with the vacancies for the period prior to amendment. Promotion to the higher post is a fundamental right and it cannot be taken away unless and until cogent and tangible reasons are reflected. Aggrieved by this the applicant has approached this Tribunal by filing this OA and claiming the aforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.

4. The learned counsel for the applicant argued that the applicant had joined <sup>the Department</sup> on 1st September, 1992 and already completed 4 years of regular service on 31.8.1996. But the respondents have said in their return that for computation of minimum eligibility condition, the period from 1st September to 31st August of the following year was taken. The applicant had completed 4 years of service one day earlier i.e. on 31.8.1996. Hence, apparent mistake has been committed by the respondents in not calculating the service of the applicant properly. The applicant has also secured 556 marks for the relevant year 1996-1997, while the cut off mark was 460. Thus he should have been considered for the year 1996-1997 in place of 1997-1998 and the examination should have been conducted as per the unamended rules in the case of the applicant. Hence, the applicant is entitled for the reliefs sought.

5. In the reply the learned counsel for the respondents argued that the applicant having participated in the examina-

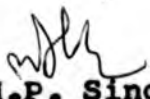


tion conducted by the respondents as per amended rules and also having been failed cannot challenge the procedural irregularity if any conducted by the respondents in conducting the examination and he is stopped to challenge its validity. The applicant should have completed 4 years of qualifying service on 1.9.1996. The result of the applicant has been declared for promotion to AE(C) vide order dated 28.3.2002. The applicant has been duly considered and promoted from 1997-1998. No irregularity or illegality has been committed by the respondents.

6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant had joined his service on 1st September, 1992 and he has completed 4 years regular service on 31st August, 1996, i.e. one day before the cut off date on 1.9.1996. On 1.9.1996 the applicant had put in 4 years and one day regular service. Hence, the version of the respondents that the applicant is not having 4 years of qualifying service as on 1.9.1996, seems to be legally wrong. Secondly, the applicant had secured 556 marks for the relevant year 1996-97, while the cut off mark was 460 for the aforesaid year. Thus, the applicant fulfilled both the conditions. Under these circumstances, the applicant should have been considered for the period 1996-1997 in place of 1997-98 for promotion to the post of AE(C).

7. Accordingly, the Original Application is allowed and the respondents are directed to consider the case of the applicant for appointment to the post of Assistant Engineer (CPWD) (Civil) for the vacancy pertaining to the year 1996-1997 respectively, within a period of three months from the date of receipt of copy of this order. No costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman