

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**
ORDER OF THE TRIBUNAL

Date : 05/05/2014

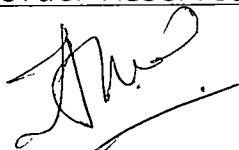
O.A. No. 56/2012

Mr. Amit Mathur counsel for the applicant
Mr. Mukesh Agarwal counsel for the respondents.

Heard learned counsel for the parties.

Learned counsel for both the parties are agreed that this case is covered by the order of the C.A.T, Principal Bench dated 16/10/2012 in OA No. 4221/2011 and order dated 10/02/2014 in OA No. 4221/2011 with OA No. 385/2013, OA No. 1116/2013 & OA No. 1125/2013.

Order Reserved.

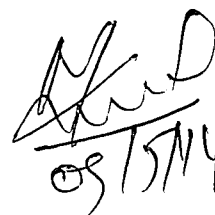


(Jasmine Ahmed)
Member (J)



(Anil Kumar)
Member (A)

^{vv}
Dt 09.5.2014
Order pronounced today in the open
Court by the afore said Bench


05/5/14

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 56/2012

Order reserved on: 05.05.2014

Order pronounced on: 09.05.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE SMT. JASMINE AHMED, JUDICIAL MEMBER

Manoj Kumar Raigar S/o Shri Dhanna Ram Raigar, aged around 29 years, R/o 41, Type-II, AG Colony Bajaj Nagar, Jaipur (Rajasthan), presently working as Draftsman at Jaipur (Rajasthan).

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Urban Development, New Delhi.
2. The Director General, Central Public Works Department, Nirman Bhawan, New Delhi.
3. The Additional Director General (Training) Central Public Works Department, Training Institute, Nirman Bhawan, New Delhi.
4. The Superintending Engineer, Jaipur Central Circle, CPWD, Nirman Bhawan, Sector-10, Vidhyadhar Nagar, Jaipur (Rajasthan).

...Respondents

Mr. Mukesh Agarwal, counsel for respondents.

ORDER

(PER SMT. JASMINE AHMED, JUDICIAL MEMBER)

The applicant has filed this Original Application praying for the following reliefs: -

- "(i) That the present original application may kindly be allowed and directions may be issued to the respondents to treat the applicant eligible for appearing in the examination in pursuance to the notice dated 27-10-2011 and further allow the applicant to appear in the examination to the post of Jr. Engineer (Civil) in pursuance to the notice dated

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27.10.2011. The conditions mentioned in notice dated 27.10.2011 qua attaining of the experience of 5 years may kindly be directed to read as the experience is required to gain at the time of the issuance of the notice. The vacancy which has been issued year wise may kindly be directed to be treated as consolidated vacancies. The determination of the vacancies on year wise may kindly be deprecated and to this extent the notice dated 27.10.2011 may kindly be directed to be modified. That the communication dated 20-1-2012 may further be quash and set aside.

- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of this original application also may be awarded in favour of the applicant."

2. The brief facts of the case here in this case are that the applicant was issued an offer of appointment on 28.10.2005 in pursuance to the Special Recruitment Drive for the members of SC & ST community for appointment as Draftsman Grade-III (Civil) in the office of the respondents in the pay scale of Rs. 4000-6000 and further the respondents issued an office order on 14.11.2005 (Annexure A/4) directing the applicant to join the said post and on the basis of that, the applicant joined the said post on 16.11.2005 with the respondent department. He completed the probation period on 15.11.2007 and was made permanent with effect from 16.11.2007.

3. The respondent No. 2 issued a notification dated 27.10.2011 for conducting the Limited Departmental Competitive Examination 2011 for the post of Junior Engineer (Civil & Electricals). In pursuance of the aforesaid notification, being eligible having the educational qualification, the applicant submitted his candidature for consideration but the respondents

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rejected his candidature without any information in writing to the applicant. The applicant preferred a representation raising his grievances against the rejection of his candidature but the same was also rejected on 20th January, 2012 (Annexure A/3) communicating that as the applicant has not completed the qualifying service of 05 years as on 01.01.2005, hence, his case cannot be considered, nor any relaxation could be given as sufficient number of applications have already been received by the respondents.

4. Learned counsel for the applicant states that in the open departmental examination, vacancies are never issued on year-wise basis. All persons who are eligible when the final date of the examination is announced are eligible to apply. He also contends that it was never mentioned in the notice that cut-off date possessing degree/diploma certificate will be 01.01.2005 but it was stated that it will be in accordance with the year-wise vacancies which is against the provisions of the rules. He also states that nowhere in the rules, it is mentioned that the cut-off date will be the date prior to the final date of the relevant year. He contends that it is well settled law in the service jurisprudence that year of vacancy is having no role to play in the matter of appointment through Limited Departmental Competitive Examination. He also contends that the rules issued by the Ministry in the year 2003 states that candidate must have been in 05 years of continuous service to be eligible to appear in the examination and he further submits that the applicant is appointee of 2005 and as such he fulfilled the condition of 05

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years continuous service in the year 2010, while notice for examination has been issued on 27.10.2011 on which date he is having experience of more than 06 years of service.

5. Learned counsel for the applicant in this regard states that similar issue came before the Central Administrative Tribunal, Principal Bench, New Delhi where the similar controversy of cut-off date has already been decided vide order dated 16.10.2012 in OA No. 4221/2011 (Sh. Rajesh Varoon vs. Union of India & Ors.) and vide order dated 10.02.2014 in OA No. 4221/2011 (Rajesh Varoon vs. Union of India & Ors.) with OA No. 385/2013, OA No. 1116/2013 and OA No. 1125/2013 where in all these OAs, the issue was with regard to the cut-off dates to reckon the educational qualifications prescribed in the Notice dated 27.10.2011 issued by the respondent-Central Public Works Department based on which the Limited Departmental Competitive Examination for appointment to the posts of Junior Engineer (Civil & Electrical) was held on 05.02.2012. Learned counsel for the applicant submitted that as the case of the applicant is fully covered by the said order of the Principal Bench, he is entitled for the same benefits.

6. Learned counsel for the respondents in contra stated that as the applicant has not completed 05 years continuous service on the cut-off date i.e. 01.01.2005 for the vacancy of the year 2010-11, as he has joined the department on 16.01.2005, hence, he has not fulfilled the eligibility criteria and also could

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not be given any relaxation as there is sufficient number of applications received from SC candidates.

7. Learned counsel for the respondents vehemently opposed and placed reliance on the instructions issued by the Ministry of Home Affairs vide O.M. No. 23/11/67-Estt. (B) dated 14.07.1967, O.M. No. 23/38/69-Estt (B) dated 13.03.1969 and O.M. No. 9/21/58-RPS dated 10.06.1959, and submitted that as per the said instructions, the Ministry / Departments should assess carefully, on an annual basis, the number of vacancies required to be filled during the particular recruitment year, with due regards to all relevant considerations, including the vacancies like to occurs as a result of retirement, promotions etc., and report these to the Commission in times for being notified by them in their notice for information of prospective candidates. 'As per DoPT's O.M. No. 22011/3/98-Estt. (D) dated 14.08.2003, the cut-off date for acquiring of qualification for the post will be 1st of January of the year for which vacancies pertains whether calendar year or financial year. Accordingly, cut-off date for acquiring diploma is to be 1st of January of calendar year of vacancies.' The eligibility criteria were judicially decided keeping in view the experience of the prospective candidates in the Department as well as their qualification for the subject examination.

8. Learned counsel for the respondents further submitted that as per Rules, 05 years continuous service in CPWD, possessing minimum qualification is necessary to appear in the limited

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departmental examination for the post of Junior Engineer (Civil). The applicant joined CPWD on 16.11.2005, therefore, he does not complete minimum five year continuous service in the department as on 01.01.2010 for the vacancies of the year 2010-11. Thus, the applicant is not eligible to appear in the LDCE conducted in pursuance of the Notice dated 27.10.2011 and prayed that the Original Application be dismissed.

9. We have heard the rival contentions of the parties, perused the documents available on record and gone through the orders passed by the Principal Bench of the Tribunal as relied by the learned counsel for the applicant.

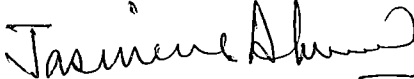
10. We are of the considered opinion that the controversy herein, before us, is exactly similar, pertaining to the similar notification and similar examination as was before the Principal Bench of the Tribunal. The Principal Bench of the Tribunal in OA No. 4221/2011 (supra) vide order dated 16.10.2012 and in OA No. 4221/2011 & batch cases (supra) vide order dated 10.02.2014 has already, after going into detailed elaboration, came to the conclusion and quashed and set aside the Notification dated 27.10.2011 and directed that the cut-off date for possessing diploma certificate will be 30th June of the vacancy year and also directed the respondents to prepare the result of LDCE held on 05.02.2012 making all the candidates who have acquired the prescribed educational qualification as on 30.06.2011 and declare the same at the earliest.


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11. By way of interim order dated 31.01.2012, the respondents here in this case were directed to allow the applicant to appear in the departmental examination to the post of Junior Engineer (Civil) scheduled to be held on 05.02.2012 with further direction that the result of the applicant shall be kept in sealed cover and shall not be declared without permission of the Tribunal.

12. In view of the ratio decided by the Principal Bench of the Tribunal in OA No. 4221/2011 (supra) vide order dated 16.10.2012 and in OA No. 4221/2011 & batch cases (supra) vide order dated 10.02.2014, the respondents are directed to re-examine the case of the applicant and if he is eligible for consideration for the post of Junior Engineer (Civil) then the respondents are directed to open the sealed cover and declare the result of the applicant and if the applicant is found qualified in the examination, he shall be promoted to the post of Junior Engineer (Civil) at the earliest. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order.

13. The Original Application is disposed of accordingly. There shall be no order as to costs.


(SMT. JASMINE AHMED)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER