

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.465/2015

M.A.No.367/2015

Order Reserved on: 11.05.2016

Order pronounced on 18.05.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Dr. B. K. Sinha, Member (A)

1. Mr. Vineet Gaur
Junior Engineer (Civil) – EE-CD-II
Age 42 years
S/o Sh. Babu Ram Gaur
R/o House No.178
Nathu Ram Building
Ghondli, Krishan Nagar
Delhi-51.
2. Mr. Ishwar Chand
Junior Engineer (Civil) – EE-CD-I
Age 43 years
S/o Late Sh. S.Mal
R/o A-1/13, Netaji Subhash Marg
East Babar Puri
Shahdara, Delhi-32.
3. Mr. Surjeet Singh
Junior Engineer (Civil) – EE-UC-I
Age 41 years
S/o Sh. Samay Singh
R/o B-37, Majlish Park
Adarsh Nagar
New Delhi-33.
4. Sh. Kishan Sharma
Junior Engineer (Civil) – O&M

Age 45 years
 S/o Sh. Kishan Sharma
 R/o 10340 Gali No.1
 West Gorakh nagar
 Shahdara, Delhi-32. ... Applicants

(By Advocate: Shri Anshumaan Sahni)

Versus

1. Delhi State Industrial & Infrastructure
 Development Corporation Ltd. (DSIIDC)(GNCTD)
 Through Chairman-cum-Managing Director
 N-36, Bombay Life Building
 Connaught Place, New Delhi-11001
2. Sh. Arun Kumar
 JE(EF) SWD
 DSIIDC Technical Center Building
 Wazirpur, Delhi-52.
3. Sh. Sunil Dabas
 JE(EECD-3)
 DSIIDC
 MCD House Tax Building
 Lajpat Nagar, New Delhi-24.
4. Sh. Shyam Lal
 JE (EEUC-I)
 DSIIDC Technical Center Building
 Wazirpur, Delhi-52.
5. Sh. D.D.Sharma
 JE (EECD-XXII)
 DSIIDC Technical Center Building
 Wazirpur, Delhi – 52. Respondents

(By Advocate: Ms. Ishita Baruah for Shri Gaurang Kanth for
 Respondent No.1 and none for the private respondents)

ORDER

By V. Ajay Kumar, Member (J):

MA No.367/2015, filed for joining together, is allowed.

2. The brief facts, as narrated in the application, are that the applicants along with 15 others, were appointed on Contract basis or/on muster roll basis as Work Assistants/Technical Supervisors on various dates between 07.05.1995 to 01.05.1998 in the 1st Respondent, Delhi State Industrial and Infrastructure Development Corporation Ltd. (in short, DSIIDC). Later they were inducted as Junior Engineers on ad hoc basis and some of them as Assistant Engineers on ad hoc basis.

3. It is further submitted that as per the Recruitment Rules, the prescribed Educational qualification for the post of JE is a Diploma in Engineering and the maximum age limit is 30 years. All the applicants were possessing a Diploma or a Degree in Engineering and were less than 30 years of age as on the date of their initial engagement. 35 posts of Junior Engineers were sanctioned in DSIIDC and the applicants were performing duties as Junior Engineers or Assistant Engineers against the said existing vacancies.

4. The applicants along with certain others filed TA No.261/2009 and TA No.262/2009 before this Tribunal seeking regularization of their services with difference of salary with effect from 04.10.2000.

The said TAs were disposed of by a common order dated 08.07.2009, by observing as under:

"10. In the result, for the foregoing reasons, these TAs are disposed of with a direction to the respondents to hold a selection for the posts of JE through DSSSB and in such an event applicants who are eligible under the recruitment rules shall be considered, giving due weightage to their experience on relaxing the age. On results of such selection, law shall take its own course. Till then status quo, as of date, shall be maintained in respect of the applicants. No costs."

5. However, aggrieved with the said order, the applicant and others filed WP(C) No.14160/2009 and the same was disposed of by the Hon'ble High Court of Delhi by its order dated 09.01.2013 and the relevant paragraphs of the said order read as under:

"21. Thus, all writ petitioners would be entitled to the benefit of the observations of the Supreme Court and the law declared in Paragraph 53 of the opinion in *Umadevi's* case (supra).

22. Thus, the respondents would be obliged, as a one-time measure, to undertake the exercise to fill up the vacant sanctioned posts and while so doing, would be obliged to consider the 19 writ petitioners.

23. To this extent the opinion pronounced by the Tribunal conforms to the opinion expressed by us hereinabove.

24. However, to advertise the posts, is the direction issued by the Tribunal that the selection would be through DSSSB and after notifying the vacancies to be filled up by one and all and while so doing, after subjecting the writ petitioners to the tests conducted by DSSSB which would be written as well as an interview to give weightage to the writ petitioners with reference to their past experience.

25. Now, making petitioners compete with fresh graduate Engineers whose theoretical knowledge, being immediately out of college, would be most unfair.

26. Noting that neither in *Umadevi's* case nor in *M.K.Kesari's* case the Supreme Court rendered an opinion as to what process of regularization should be adopted in cases where initial appointment was irregular and not illegal, we expand upon this subject by opining that the process through which irregular appointments need to be subjected to convert the same into regular appointments has to be a selection process devised where only the irregularly appointed employees are uniformly tested with respect to the minimum theory; keeping in view the experience gained by them. In other words, the test has not to be theoretical but an application based selection process.

27. Before issuing the formal direction we need to note that whereas the DSIDC correctly understood the law declared by the Supreme Court in *Umadevi's* case, much prior to when the opinion was pronounced in *Umadevi's* case inasmuch as on September 19, 2002 it

made a request to the Government of NCT of Delhi to permit it, as a one-time measure, to regularize the services of people working as Engineers with it whose initial appointment was irregular but against vacant sanctioned posts, vide its response dated February 20, 2003 the Government of NCT of Delhi refused to accord the necessary approval. 28. Since appointment of the petitioners was irregular and not illegal, in that, their existed vacant posts of Engineers in DSIDC when petitioners were inducted as Engineers and the petitioners were qualified, we dispose of the writ petition confirming the impugned decision pronounced by the Tribunal but modify the same with reference to direction issued to advertise the posts and effect selection through DSSSB : by substituting the direction that the respondents would devise a suitable methodology to subject the writ petitioners to an induction test which would be designed with reference to application and not theory. Age relaxation benefit would be granted to the petitioners. As noted by us the fact not in dispute is that the petitioners possess the necessary educational qualifications.

28. Such petitioners who clear the selection process, which would be limited to the writ petitioners, would be inducted permanently against the posts they are currently holding.

29. The process be completed as early as possible and preferably within one year from today.

30. No costs.

31. Dasti."

6. Aggrieved by the same, the applicants and others filed Review Petition No.127/2014 in WP(C) No.14160/2009. The said review was disposed of by an Order dated 14.03.2014 as under:

"7. We dispose of the review application observed that the mandamus issued as per para 28 of our decision dated January 09, 2013 would be read to mean that the appraisal process for purposes of regularization/confirmation may be carried out in any manner, be it through DSSSB or a Committee constituted by either the Government of NCT of Delhi or DSIDC.

8. But we clarify. The methodology devised to subject the writ petitioners to an induction appraisal would be designed with reference to application and not theory, as observed by us in paragraph 28. Further, age realization benefit would be granted to the petitioners.

9. It is hoped and expected that the mandamus would be complied with within six months from today."

7. In pursuance of the aforesaid order, the Delhi Subordinate Services Selection Board (in short, DSSSB), vide Notice dated 21.11.2014, intimated the applicant and others that an induction test shall be held for the post of Junior Engineer (Civil) on regular basis as

per the schedule mentioned therein. Accordingly, the applicant and others have participated in the said induction test conducted by the DSSSB. However, they were shocked to know vide the Annexure P Results notice dated 08.12.2014 that the applicants were not selected and whereas the private respondents 2 to 5, who were not originally parties to any of the aforesaid legal proceedings, were selected along with others. Further, the respondents vide the impugned Annexure A(Colly.) orders dated 08.12.2014 by stating that the applicants were not found suitable for the post of Junior Engineer (Civil) by the DSSSB and their names were not recommended for the post in question, terminated the services of the applicants from the post of Junior Engineer (Civil) [contract basis] with immediate effect by enclosing a Cheque for one month's salary in lieu of one month's notice period.

8. Aggrieved by the same the applicants preferred this OA seeking the following relief(s):

- a. "Call for the records of the case and quash/set aside the Termination Letters dated 08.12.2014.
- b. Direct the Respondent No.1 Corporation to Regularize the Applicants in accordance with the directions of the Hon'ble High Court passed in W.P.(C) 14160/09 as modified by Rev. Pet. 127/2014;
- c. Call for the records of the case and quash/set aside the Appointment of Respondent Nos.2-5 as being illegal, ultra-vires and non-est.
- d. Pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.
- e. Allow costs."

9. Heard Shri Anshumaan Sahni, the learned counsel for the applicants and Ms. Ishita Baruah for Shri Gaurang Kanth, the learned

counsel for the official respondent No.1 and none for private respondents No.2 to 5, and perused the pleadings on record.

10. At the very outset, the learned counsel for the applicants submits that the applicants are not pressing the relief 8(c), i.e., seeking quashing of appointments of Private Respondents No.2 to 5, but only seeking to quash and set aside the Termination letters dated 08.12.2014 and, their services may also be regularised, against existing vacancies. Accordingly, their prayer is restricted to the limited extent, as stated above.

11. The learned counsel for the applicant, inter alia, while mainly contending that the Hon'ble High Court of Delhi while disposing of the WP(C) No.14160/2009, by its order dated 09.01.2013, at para No.28, categorically directed the respondents that they "*would devise a suitable methodology to subject the Writ Petitioners to an induction test which would be designed with reference to application and not theory*" and in Review Petition No.127/2014 in WP(C) No.14160/2009 dated 14.03.2014 the Hon'ble High Court while disposing of the review, categorically observed that "*the mandamus issued as per para 28 of the order dated 09.01.2013 would be read to mean that the appraisal process for purposes of regularization/confirmation may be carried out in any manner, be it through DSSSB or a Committee constituted by either the Government of NCTD or DSIDC*". It was again clarified that "*the methodology devised to subject the Writ Petitioners to an induction appraisal would be designed with reference*

to application and not theory", submits that the respondents failed to devise the methodology as directed by the Hon'ble High Court.

12. The learned counsel further submits that the respondents without devising any proper and valid methodology as per the directions of the Hon'ble High Court, arbitrarily and highhandedly and without informing about the procedure being adopted, compelled the applicants to participate in a casual interview process and declared that they have not found suitable for the post of Junior Engineer (Civil). The learned counsel further submits that all the applicants though answered all the questions put to them in the said Interview, correctly, but they were declared not found suitable, that too without declaring the individual marks of the candidates appeared in the interview.

13. The learned counsel further submits that as admitted and as recorded by the Hon'ble High Court all the applicants are possessing the requisite qualifications for appointment to the post of Junior Engineers (Civil). They have been appointed on contract basis as JEs during the period between 07.05.1995 to 01.05.1998 and working as such without any break till the impugned termination orders dated 08.12.2014, i.e., for about nearly two decades, without any remark or blemish and to the best satisfaction of the respondents. The Hon'ble High Court after noticing the fact of satisfying all the eligibility conditions by the applicants and that of their long satisfactory service, specifically directed the respondents to devise an induction test with reference to their application only but not theory. It is not only

surprising but also suspicious that the applicants, who have been working in the same posts of Junior Engineer (Civil) for the last about two decades and who are possessing all the essential educational qualifications, failed to clear the induction test.

14. The learned counsel further submits that as admitted in the counter that there are 52 vacant posts of JE(C) are available under the respondents and that 24 contractual Junior Engineers (Civil), including the applicants, were working against the said posts and were appeared in the induction test. But the respondents selected only 18 candidates including 14 contractual JEs and 4 strangers (private respondents 2 to 5). Even thereafter, 34 posts still remained vacant. Accordingly, he prays for regularising the services of the applicants along with other similarly situated contract JEs.

15. The learned counsel for the 1st Respondent-DSIIDC, opposing the OA averments, inter alia, contended as under:

- i) The induction test was conducted by the DSSSB and when the applicants questioned the validity of the said test, they ought to have made the DSSSB as party to the OA. Hence, the OA is liable to be dismissed for non-joinder of necessary party.
- ii) As per the directions in the cases filed by the applicants themselves only, the respondents conducted the

induction test and hence, they cannot take any objection for conducting the same.

- iii) The applicants are estopped from questioning the validity of the induction test as they have participated in the test without any protest and objection.
- iv) Questioning the validity of the test or examination after participating the same and after noticing that they were not selected, is impermissible.
- v) All the contract Junior Engineers, including the applicants, were put to the same induction test and no discrimination or deviation is shown to any of them.
- vi) Though as per rules the JE's post is 100% direct recruitment post but in obedience to the orders of the Hon'ble High Court, the respondents conducted the induction test to the applicants and other similarly placed contract Junior Engineers, separately. Hence, in view of the fact that the applicants failed to clear the induction test, they are not entitled for continuation even on contract basis, and hence, there is no illegality in the impugned termination orders.

16. As rightly contended by the learned counsel for the respondents, the applicants having participated in the induction test conducted by the DSSSB, without any protest cannot contend that the said test was not conducted as per the directions of the Hon'ble High Court, after they were declared unsuccessful.

17. It is also not the case of the applicants that the respondents shown any invidious discrimination to the applicants. The respondents regularized the services of the similarly situated contract Junior Engineers, whoever cleared the induction test. Further, it is also not the case of the applicants that the respondents conducted the test with regard to the theory also as against the direction of the Hon'ble High Court that the test should be designed with reference to the application only and not theory. Therefore, the contention of the applicants that they should also be regularized along with other contract Junior Engineers, who cleared the induction test, cannot be accepted.

18. However, it is to be seen that the applicants initiated the legal proceedings seeking regularization of their services. The Hon'ble High Court noticing that the appointment of the applicants is irregular but not illegal, since they were possessing the requisite educational qualifications and were working against sanctioned posts, directed the respondents to conduct the induction test limited to the contract Junior Engineers and such contract Junior Engineers, who cleared the selection process, be inducted permanently against the posts they are currently holding. It is to be seen that the Hon'ble High Court, while passing the said orders, has not observed that if any of the petitioners failed to clear the selection process, their services, even as contractual Junior Engineers, should be terminated, and the respondents cannot utilise the services of the applicants even on contract basis against the available existing vacancies, even before the respondents fill up all the

existing vacancies by way of regular recruitment, as per rules. It is also not the case of the respondents that there are no existing sanctioned vacancies and that there is no work or necessity to engage the applicants on contract basis even.

19. In the circumstances and for the aforesaid reasons, the OA is partly allowed. The impugned Annexure A (Colly.) termination orders dated 08.12.2014, are quashed and the respondents are directed to re-engage the applicants in service within 60 days on the same terms and conditions as they were working prior to the termination orders, till all the existing Junior Engineer (Civil) vacancies are filled up on regular basis. However, the applicants are not entitled for any arrears or benefits for the break period. The respondents are further directed to permit the applicants to participate in the selection process, along with others, if taken up by the respondents to fill up the vacancies on regular basis, by granting appropriate age relaxation, if required. No costs.

(Dr. B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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