

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 483/2013

Reserved on: 20.04.2017

Pronounced on: 25.04.2017

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

1. Yash Prakash
S/o Sh. Jagbir Singh
R/o 73-A, Kundan Nagar,
Delhi 110 092.
 2. Dewan Chand
S/o Sh. Shiv Charan Das
R/o H.No.D-74, East Vinod Nagar,
Delhi 110 091.
 3. Chhatter Pal Singh
S/o Sh. Nathu Singh
R/o 152, Village & Post Office Khampur,
Delhi 110 036.
 4. Kuldeep Kumar
S/o Sh. Rajpal Singh
R/o 17/8, Gali No.1,
Brahampuri,
Delhi 110053.
 5. Sunil Kumar
S/o Sh. Paryag Narayan
R/o 9/2341, Gali No.12,
Kailash Nagar,
Delhi.
- ... Applicants.

(By Advocate: Dr. Ashwani Bhardwaj)

Versus

1. Delhi Jal Board
Through its Chief Executive Officer
Varunalaya, Phase-II,
Karol Bagh,
Delhi 110 005.
2. The Member (Admn.)
Delhi Jal Board,

Varunalaya, Phase-II,
Karol Bagh,
Delhi 110 005.

3. The Director (Admn. Personnel)
Delhi Jal Board, Delhi Government,
Varunalaya, Phase-II,
Karol Bagh,
Delhi 110 005.
4. Ajay Kumar Chopra
S/o Sh. C. L. Chopra
Working as EE (E&M)
Presently posted with SE (E&M)
Water & Sewage-II, E-39,
Pyare Lal Bhawan, Cannaught Palace,
Delhi
5. Praveen Kumar Gupta
S/o Shri Shankar Dass
Working as EE (E&M) WS-East,
Chitra Vihar, BPS Delhi.
6. S. N. Sharma
S/o Sh. D. D. Sharma
EE (E&M) HP-II,
Hyderpur Water Works,
Delhi.
7. Sheesh Ram Singh
S/o Sh. M.R. Singh
Working as EE (E&M)
Civil Disposal Works-II,
Okhla STP, Delhi-20.
8. Anurag Mittal
S/o Sh. R. S. Gupta
Working as EE (E&M)
Working as EE (E&M) Water Treatment Plant,
Sonia Vihar, Delhi.
9. Iqbal Singh
S/o Sh. Piara Singh
Working as EE (E&M)
Haiderpur, Water Works-I,
Delhi.

Respondents No.4 to 9 to be served through
Member (Admn.)
Delhi Jal Board,
Varunalaya, Phase-II,
Karol Bagh, Delhi-110005.

10. Sandeep Kapoor, Executive Engineer (E&M),

Delhi Jal Board, F-29, Municipal Flats,
Lodhi Colony,
New Delhi-110003. Respondents.

(By Advocate : Ms.Sakshi Popli, for respondents 1-3
Shri A.K. Behera, for respondents 5 and 7
Shri Rajinder Nischal, for respondent 10)

ORDER

Mr. P.K. Basu, Member (A)

This OA has been filed by five applicants who are Junior Engineers (JEs) with the respondents. Applicants No.1 to 4 are holding the post of Assistant Engineer (AE) on Current Duty Charge basis. Applicant No.5 was promoted as AE with effect from 25.07.2012 on regular basis. The applicants along with another Shri Parma Ram Nigam had earlier filed OA 69/2010. They all belong to Scheduled Caste (SC) category. According to the Recruitment Rules (RRs) for the post of AE, 50% of the vacancies of AE are to be filled up by direct recruitment and the other 50% of the vacancies are to be filled up by promotion. Six applicants in that OA were concerned only with 50% vacancies of promotion quota. The basic grievance with which they had approached the Tribunal was that the respondents had failed to make any promotions from 1997 to 2009 and made regular promotions only in 2009 but without following the principles of separate panels for year wise vacancies. The matter was heard and the OA was disposed of with the following directions:

"11. Having considered the totality of facts and circumstances of the case and taking note of the applicability of well settled position of law and extant guidelines on the subjects of drawing up promotion panel year wise, we come to the

considered conclusion that the panel drawn up by the respondents to fill up 35 vacancies including 3 vacancies meant for SC has been procedurally flawed. We, therefore, direct the respondents to conduct review DPC taking into account the vacancies in each year including the vacancies for the Scheduled Castes and Scheduled Tribes and draw up year wise panel. While drawing up fresh panels, the eligibility of the feeder category officers should also be considered for each year as the basis for preparing the list for zone of consideration, as per the relevant seniority list. Hence, the respondents are directed to consider, if the applicants are found fit for promotion to the post of AE (E&M) for any of the previous years, to grant them promotion from the relevant year, and assign appropriate seniority as well as grant difference of pay and allowances. Consequently, their case should be considered for the next higher post of Executive Engineer, if they are found otherwise eligible as per law by a fresh review DPC for the post of EE (E&M).

12. Finding merits in the case, the OA is allowed, in terms of our above directions leaving the parties to bear their respective costs”.

In para 9, the following had been recorded:

“9. In the additional affidavit dated 16.09.2011, the respondents admitted that vacancies arose in the post of AE (E&M) from 1998-99 up to 2008-09 except in two years (1998-99 and 2002-03) but DPC for regular promotion was held on 26.02.2009 and promotion orders were issued on 02.03.2009. The vacancies in AE (E&M) post arose year wise as per the following:-

Sl. No.	Year	Number of vacancies	Category of vacancies
01	1998-99	Nil	UR-2
02	1999-2000	2	UR-2
03	2000-2001	2	UR-2
04	2001-2002	2	UR-2
05	2002-2003	Nil	Nil
06	2003-2004	1	UR-1
07	2004-2005	2	UR-1 + SC-1
08	2005-2006	4	UR-4
09	2006-2007	3	UR-3
10	2007-2008	6	UR-5+SC-1
11	2008-2009	13	UR-12 + SC-1
Total 11 years (vacancy years 9)		35	UR-32 + SC-3=35

UR = Unreserved SC = Scheduled Caste".

At that stage, the applicants had not questioned the above table. The Tribunal also, therefore, in para 11, relying on the above, had considered 35 vacancies including three vacancies meant for SC.

2. The respondents, as a result of the directions of this Tribunal issued vide order dated 31.10.2011 in the aforesaid OA, held DPC meeting on 17.04.2012 and prepared select list (panels) for various years, namely, 1992-93, 1994-95, 1995-96, 2000-01, 2001-02, 2002-03, 2003-04, 2005-06 and 2006-07. Applicants No.2 and 3 are shown against sl.no.4 and 5 in the select list for the year 2000-01 and applicants no.1 and 4 are shown at sl.no.4 and 5 in the select list for the year 2002-03. Thereafter, the respondents circulated final seniority list of AE with effect from 27.05.1991, which we reproduce below till sl.no.13 for ready reference:

S.No.	Name/Father's Name S/Shri	Date of birth	SC/ST/OBC	Education Qualification	Date of apptt/promotion	Remarks
1.	Suresh Kerkatta/John Kerkatta	15.8.63	ST	BE (Mech)	27.05.91	EE(E&N)of CDC
2.	S.N. Sharma/Dev Dutt Sharma	2.1.54	.....	Dip(Mech)	29.05.97	-do
3.	Anurag Mittal/R.S. Gupta	12.6.57	.....	Dip(Mech)	20.5.97	-do-
4.	Islam Khan/Jamshed Ali	15.7.55	.....	Diploma	2.3.09	EE(E&M) on look after charge basis
5.	Suraj Pal Singh/Nayder Singh	1.7.54	SC	Diploma/Post Diploma in Refrigeration & Air Conditioning/ Graduation (Arts)	2.3.09	---do-
6.	Satya Pal Singh/Kanchi Singh	26.10.59	SC	Diploma	2.3.09	---do---

7.	Diwan Chand/Shiv Charan (applicant No.2)	8.7.57	SC	BE (Mech)	2.3.09	EE(E&M) on look after charge basis
8.	Chattar Pal Singh (applicant No.3)	11.09.55	SC	Diploma	2.3.09	
9.	Ram Gopal/Kulanand	10.07.54	.....	Diploma M.Sc (ecology & Eny)/MBA (Disaster Management)	2.3.09	EE(E&M) on look after charge basis
10.	Iqbal Singh/Piara Singh	15.12.58	.....	AMIE	2.3.09	..do...
11.	Atul Goel/R.C. Goel	23.5.55	.....	Diploma	2.3.09	...do..
12.	Kuldeep Kumar/Raj Pal Singh (applicant No.4)	10.12.62	SC	BE (Elect)	2.3.09	..do.
13.	Yash Prakash/Jagbir Singh (applicant No.1)	2.1.60	SC	Diploma	2.3.09	...do..

3. It would be seen that the applicants are at sl.no.7, 8, 12 and 13. Out of this seniority list, S.N. Sharma, Anurag Mittal, Islam Khan, Suraj Pal Singh and Satya Pal Singh are included in the select list of 1994-95, 1995-96 and 2000-01 with Satya Pal Singh being at sl.no.3 in the select list for 2000-01, i.e., before Dewan Chand and Chatter Pal Singh. Similarly, Ram Gopal is included in the select list for the year 2001-02 and Iqbal Singh and Atul Goel at sl.no.2 and 3 in the select list for the year 2002-03, i.e., above Kuldeep Kumar and Yash Prakash, applicant No.4 and 1.

4. According to the applicants, respondents have not followed the principle of reservation and, therefore, deprived them of their legitimate position in the seniority list dated 25.07.2012 and made the following prayers:

“(a) Quash the order dated 3.5.2012, in which the respondents have prepared the select list (panels) for various years, without following the reservation roster and without the proper calculation of the vacancies and without even mentioning about the 10 vacancies of SC & ST.

(b) Quash the Circular NO.DJB/AC(T)/AE (E&M)/SEN.2012/78603 dated 26.07.2012 by which the respondents have circulated a final seniority list.

(c) Direct the respondents to hold review DPC w.e.f. 1992, for regularly promoting the persons to the post of AE (E&M), after calculating the vacancies on yearly basis as per the Reservation Roster and fill up those vacancies from the eligible candidates including the applicant, as per the rules and regulations.

(d) Direct the respondents to make all promotions on regular basis, instead of resorting to CDC or ad hoc basis, and the review DPC should be conducted to review all promotions made on CDC basis or ad hoc basis made by the respondents from 1992-2012.

(e) Prepare a new seniority list on the basis of the review promotions made in terms of the clause (a) & (b) above.

(f) Award consequential benefits of pay, allowances, seniority to the applicants.

(g) Grant cost in favour of the applicants and pass any other or further order(s), in favour of the applicants, which this Hon’ble Tribunal may deem fit, just & proper in the above mentioned facts and circumstances”.

5. The applicants in their OA have primarily raised the issue that in 1992-93 there were about 86 posts of AE, out of which 43 posts were of promotion quota, in which 33 posts should have been for General Category and 10 posts for Reserved Category (7 SC + 3 ST). It is claimed that the applicants were there in the zone of consideration but despite this, the respondents chose not to consider them and to promote them against these posts. It is argued that as a result, they could

only gain regular promotion to the post of AE in 2009, whereas they were eligible for the said promotion in the year 1988 itself. It is also alleged that even though the respondents have now prepared the year wise panel after the order of the Tribunal, the same has not been done in accordance with the rules as vacancies meant for reserved candidates have been allowed to be occupied by General candidates. It is further alleged that not even a single SC/ST candidate has been promoted by the respondents from 1992 to 2000 whereas the vacancies existed and applicants were eligible and available for promotion.

6. The official respondents in their reply have stated that in pursuance of the directions of the Tribunal in OA 69/2010 vide order dated 31.10.2011, the respondents prepared the chart of occurrence of vacancies and eligibility as per DoP&T guidelines and while calculating year wise vacancies, the names of the applicants were considered for the vacancies for the years 2000-01 and 2001-02 and that too under the Unreserved Category and based on this, the seniority list dated 25.07.2012 was finalized.

7. Learned counsel for private respondents 5 and 7, Shri A.K. Behera stated that the applicants had not impleaded any direct recruit in their previous OA and nor had they made out any grievance against direct recruits. The applicants had specifically confined their case to the 50% of the vacancies meant for promotees only. It is thus argued that seniority granted to direct recruits is outside the purview of litigation initiated by the

applicants in their previous OA and the same cannot be raised now being barred by res judicata and constructive res judicata. It is further argued that at the time of the previous OA the Tribunal had identified 35 vacancies including three for SC and the directions of the Tribunal were with respect to these 35 vacancies and preparing of select list panel year wise. Since the same does not involve the inter se seniority between direct recruits and promotees, raising any issue of inter-se seniority of direct recruits and promotees is also barred by res judicata and constructive res judicata. It is stated that respondents no.5 and 7 are directly recruited AEs in the years 1994 and this recruitment was with respect to vacancies of 1989 to 1993. The process of direct recruitment initiated in the year 1993-94 was concluded in October, 1999 and respondents no.5 and 7 joined as AE on 12.10.1999 and 11.10.1999. Since the applicants have now been granted regular promotion as AE (E&M) in the panels of 2000-01, 2002-03 and 2010-11 and respondents no.5 and 7 are the direct recruits against the vacancies of the year 1989 to 1993, there is no comparison between the applicants vis-à-vis respondents No.5 and 7.

8. It is stated that relief 8 (c) and 8 (d), therefore, cannot be sought for as they are hit by res judicata and constructive res judicata. It is stated that when the applicants approached the Tribunal earlier, they had stated that the period when the respondents failed to make any regular promotions was 1997-2009 and, therefore, the applicants now cannot raise issues for

the period prior to 1997, in which case, respondents no.5 and 7 are not affected at all.

9. Shri Rajinder Nischal, learned counsel appearing for respondent no.10 adopted the arguments put forth by Shri A.K. Behera for respondents no.5 and 7. Secondly, it is pointed out that the applicants have prayed for multiple reliefs and, therefore, the OA deserves to be dismissed being barred by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987.

10. We have heard the learned counsel for the parties and gone through the pleadings available on record.

11. As has been made clear above, when the applicants approached the Tribunal in OA 69/2010 (supra), they had specifically raised the issue of regular promotions not being made between 1997-2009 and not preparing panels year wise when promotions were finally granted in 2009. In para 9 of the order quoted above, the Tribunal had identified the number of vacancies and those vacancies reserved for SC. The total number of vacancies identified were 35 including 3 for Reserved candidates. In fact, these numbers are repeated in para 11 of the order. Therefore, the respondents were only required to prepare year wise panel as per directions of the Tribunal. The respondents have done exactly that vide order dated 3.05.2012 and, in fact, the applicants have been adjusted against the year 2000-01 and 2002-03 on their own merit. All those who were above them in the panel prepared year wise, appeared above

them in the seniority list circulated dated 25.07.2012. Therefore, there can be no grievance on the question of their placement in the seniority list. We agree with the learned counsel for respondents 5 and 7 that in this fresh OA, the applicants are debarred from raising issues prior to 1997 as they are clearly hit by the principles of res judicata and constructive res judicata.

12. Thus, the respondents have correctly implemented the directions of this Tribunal dated 31.10.2011 in OA 69/2010 (supra) and no irregularity or illegality has been committed by them. The OA, therefore, does not succeed and is dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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