

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1175/2015

Reserved on : 23.09.2015.

Pronounced on : 0610.2015.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Sh. Bansh Raj,
Seniority No. 1356,
Assistant Engineer (Civil),
Group-“B”working in CPWD,
Aged about 54 years,
S/o late Sh. Munni Lal,
R/o Flat No. 571/KG-1,
Vikas Puri, New Delhi-18.

..... Applicant

(through Sh. Anil Singal, Advocate)

Versus

1. Union of India through
Its Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. Director General
CPWD, Nirman Bhawan,
New Delhi.
3. DOPT through
Its Secretary,
North Block,
New Delhi.
4. S.C. Meena (ST),
Seniority No. 726.
5. S.S. Pathak (UR),
Seniority No. 826.
6. Virendra Singh (UR),
Seniority No. 926.
7. Bharat Lal Meena (ST),
Seniority No. 1026.
8. Sunil Kumar (UR),
Seniority No. 1126.
9. Raj Kumar (SC),
Seniority No. 1226.

.... Respondents

(Respondent No. 4 to 9 are all Assistant Engineer or Executive Engineer on ad hoc basis working in the office of the official respondents and are to be served through respondent No.2)

(through Sh. Lokesh Kumar Sharma, Ms. Pallavi Parmar, Sh. Gyanendra Singh and Sh. C. Mohan Rao, Advocates)

ORDER

Mr. Shekhar Agarwal, Member (A)

This O.A. has been filed seeking the following relief:-

"(A) To quash and set aside Final Seniority List of Assistant Engineers (Civil) dt. 19.11.2014 being based on OM dt. 4.3.2014.

(B) To quash and set aside OM dt. 4.3.2014 to the extent it was applied for fixation of seniority between two set of promotees vide Seniority List dt. 19.11.2014.

(C) To direct the respondents to fix the seniority of AEs in CPWD in accordance with OMs dt. 24.6.78, 7.2.86 and 3.7.1986 taking into consideration the date of DPC for promotion to the rank of AE vis-a-vis AEs who were promoted on the basis of LDCE-99 in the year 2001.

(D) To award costs in favour of the applicant and pass any order or orders, which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case."

2. During the course of arguments, learned counsel for both sides agreed that this O.A. is identical to OA-4308/2014, which was decided by this Bench of the Tribunal on 09.03.2015. Both parties agreed that this O.A. can be disposed of in the same manner as OA-4308/2014. Learned counsel for the applicant Sh. Anil Singal, however, argued that when judgment in OA-4308/2014 was pronounced, the judgment of a Co-ordinate Bench of this Tribunal in OA-2942/2012 could not be brought to the notice of this Bench of the Tribunal. In the aforesaid case, Co-ordinate Bench of this Tribunal has taken an entirely different view as is evident from the following extracts from the order dated 10.01.2014:-

“18.We also agree with the contention of the respondents that N.R. Parmar’s case (supra) and the circulars relied upon by the applicant do not apply in the present case as those apply where the recruitment is through two different modes namely direct recruitment and promotion to a particular post. The present matter relates to promotion and within the promotion mode, there are two channels and this is squarely covered by the 1978 circular. Applying 1978 circular, date of completion of selection process for the promotion route should be taken as last date of DPC meeting, which in this case is 28.04.2006. For the departmental examination, it will be taken as the date of announcement of results, which is January, 2007. Therefore, the period of 4.01.2007 to 1.02.2007 held by respondent no.5 will be treated as ad hoc but he would definitely be treated senior both to Smt. Tulsa Gupta and the applicant as per 1978 OM.”

2.1 Sh. Anil Singal argued that this Bench, on the other hand, has taken the view that N.R. Parmar’s judgment would apply and that seniority has to be determined as per DoP&T OM dated 07.02.1986, 03.07.1986 and 04.03.2014. He, therefore, stated that in view of difference of opinion between two Benches, this case be referred to a Larger Bench.

3. We have gone through the judgment of Co-ordinate Bench of this Tribunal in OA-2942/2012 dated 10.01.2014. Facts of aforesaid case, as stated in the judgment, were as follows:-

“The applicant and Shri Rajeshwar Dayal (respondent no.5) were both posted as Assistants in the ICAR. Both belong to the Scheduled Caste (SC) category. As per the Recruitment Rules (RRs) dated 20.06.2005, the recruitment to the post of Section Officer was through two modes i.e. 50% by Limited Departmental Competitive Examination (LDCE) and 50% by seniority mode. For the recruitment/ select year 2005-06, 17 vacancies were notified/ earmarked under the LDCE and a requisition was sent to the Agricultural Scientific Recruitment Board (ASRB) on 12.09.2005. Out of the 17 vacancies, 1 vacancy was reserved for SC category. The examination was held on 22-24.08.2006 and the result was declared on 2.01.2007. The applicant was placed at serial number 5 in the merit list and respondent no.5 was placed last at serial number 17. The applicant’s claim is that thus he became senior by virtue of merit. Both the applicant and respondent no. 5 joined the regular post of Section Officer on 4.01.2007. The next promotional post from the grade of Section Officer is the post of Under Secretary and two posts were reserved for SC category candidates.

2. Respondent no.5 made a representation that his promotion to the post of Section Officer for the Select Year 2005-06 under the 50% available vacancies in LDCE mode be changed to the seniority mode for the subsequent Select Year 2006-07 and he be accorded promotion from a subsequent date i.e. 1.02.2007 when his erstwhile junior in the grade of

Assistant was promoted in respect of anticipated vacancies for the Select Year 2006-07. The said request was rejected by the ICAR on 27.02.2009. Again a representation was made by respondent no.5 to the National Commission for Scheduled Caste which directed the respondents to grant necessary relief. On 5.09.2011, the respondent ICAR rejected the request for change of mode of promotion and change of Select Year from 2005-06 to 2006-07. According to the applicant, he thus remained senior to respondent no.5 from 2007 till 30.01.2012 and became the senior most SC candidate for one post of Under Secretary reserved for SC category. From 18.01.2011 to 30.01.2012, the applicant made nine written and personal representations to the official respondents for granting him promotion to one vacant post of Under Secretary in the SC category. None of these were answered.

3. The respondents, instead, sent the third representation of respondent no.5 to the DoP&T for advice on the request for change of mode of promotion from LDCE quota to seniority quota and from one recruitment year to another. However, it was clearly stated that respondent no.5 was promoted through LDCE mode only. The DoP&T vide its advice dated 24.03.012 opined that as respondent no.5 was promoted under both the modes i.e. by LDCE and seniority mode, he could take promotion under the mode which is more beneficial. Based on this advice, the ICAR offered the post to respondent no.5 under seniority quota for the select year 2006-07 on 18.05.2012 and he accepted the same on the same day. It is stated by the applicant that on 7.08.2012, review DPC was directed to be held on 8.08.2012 and the review DPC while reviewing eight previous DPCs and reverting 28 officers, granted promotion retrospectively to respondent no.5 from 1.02.2007 on non-existent post. Consequent to the review DPC on 8.08.2012, a provisional seniority list (calendar year wise as against required financial year wise) was issued on 29.08.012 and respondent no.5 was made senior to the applicant. Subsequently, the final seniority list was issued on 16.10.2012, rejecting representations against provisional seniority list on 19.10.2012. The applicant had learnt about the advice of DoP&T dated 24.03.2012, which he alleges to be erroneous, and he made three representations dated 12.04.2012, 11.05.2012 and 26.06.2012, pointing out violation of mandatory provisions and prayed that advice of DoP&T may not be accepted and review DPC be not held. In the above background, the present OA has been filed."

4. It is seen that the factual matrix of this case was entirely different. In the aforesaid case the dispute was only between seniority of two persons, namely, the applicant and the respondent No.5 therein. Further, as is obvious in that case the respondent No.5 had been promoted under both modes that LDCE and Seniority quota and under advice from DoP&T he was allowed to choose the mode, which was more beneficial to him. He chose seniority mode. The change in seniority between the applicant and respondent No.5 occurred

because the respondent No. 5 was allowed to change promotion mode from LDCE to seniority quota, which was challenged by the applicant in the aforesaid OA.

5. The O.M. dated 07.02.1986, which has been relied upon by the Co-ordinate Bench, deals with starting point of the roster when inter-se seniority of persons coming from different modes such as Direct recruitment, promotion or LDCE is to be determined. The OM lays down what would be the crucial date for determining the same. Since seniority of only two persons promoted through different modes was involved, this O.M. could be applied as starting point of the roster itself was sufficient to determine their inter-se seniority. However, this O.M. does not lay down how the vacancies have to be rotated between persons coming from different streams.

6. We also notice from the judgment in OA-2942/2012 that Co-ordinate Bench has not really examined the question of applicability of N.R. Parmar's case to determine seniority between the applicant and respondent No. 5 therein. They have merely accepted the contention of the respondents without going into the merits of the same. On the other hand, in our judgment in OA-4308/2014, we had examined this issue in detail and had also relied on the judgment of Hon'ble High Court of Delhi dated 29.11.2012 WP(C) No. 1188-90/2005 (**UOI & Ors. Vs. Vijender Singh & Ors.**). We had also relied on the judgment of Hon'ble A.P. High Court in Writ Petition No. 15053/2009 (**P.V. Shobha & Ors. Vs. UOI**) dated 04.03.2010 in which they had upheld the principle of rotation of vacancies between DPC and LDCE promotees in the ratio of quota fixed for each. The aforesaid judgments of Hon'ble High Court of Delhi as well as Hon'ble A.P. High Court were not brought to the notice of Co-ordinate Bench of this Tribunal when they decided OA-2942/2012.

7. We are, therefore, of the opinion that this O.A. need not be referred to a Larger Bench as argued by learned counsel for the applicant. Since admittedly, this O.A. is similar to OA-4308/2014, which had been dismissed by us by our order dated 09.03.2015, we dismiss this O.A. as well. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/