

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

TA 754/2009  
MA 4260/2015

Reserved on: 9.08.2016  
Pronounced on: 22.08.2016

**Hon'ble Mr. P.K. Basu, Member (A)**  
**Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

1. Shri Man Chand  
S/o Shri Harkesh Singh  
R/o B-1284, Shastri Nagar  
Near Sarai Rohilla  
Delhi-110052  
(Employee Code No.144808)
2. Shri H.S. Manral  
S/o Shri Bhagwan Singh  
R/o B-2, Palika Niwas  
Lodhi Colony  
Delhi-110003  
(Employee Code No.109951)
3. Shri R.R. Shukla  
S/o Shri R.K. Shukla  
R/o 46, Aditya Sadan  
Ashoka Road,  
Delhi-110001  
(Employee Code No.110049)
4. Shri J.S. Jendu  
S/o Shri Rakha Ram  
R/o B-716, DDA MIG Flat  
East of Loni Road, Shahdara,  
Delhi-110093  
(Employee Code No.108961)
5. Shri Jagjit Singh  
S/o Shri Teja Singh  
R/o WX/B-44A, Krishna Park Extn.  
Tilak Nagar, Delhi-110018  
(Employee Code No.105842)
6. Shri Mehar Chand  
S/o Shri Ram Richhpal  
R/o T-3, N.D.M.C. Complex, Type-III Flat  
Nauroji Nagar, Ring Road,  
Delhi-110029

(Employee Code No.109068) .... Applicants

(Through Mrs. Rashmi Chopra, Advocate)

Versus

New Delhi Municipal Council

Palika Kendra

Parliament Street,

New Delhi-110001

Through its Chairperson

... Respondent

(Through Shri Vaibhav Agnihotri, Advocate)

### ORDER

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

This matter has been remanded back by the Hon'ble High Court with the following directions:

"5. It is, therefore, evident that the premise on which CAT proceeded to discuss the merits and ultimately issued the operative directions (which are impugned) is incorrect. Learned counsel for the applicants submitted that whilst the CAT's erroneous appreciation cannot be now disputed, in view of the settled legal position, nevertheless, their claim for promotion as Assistant Engineers would have to be independently gone into on merits. Though the NDMC expressed reservations, it was not disputed that there are no findings on this aspect. In the circumstances, we are also of the opinion that these claims have to be independently adjudicated – once the entire basis of the CAT's decision is held to be on a misappreciation of law. Accordingly, the CAT is hereby directed to hear and decide the respondents/ applicants' grievances in accordance with law. The matter is remitted for this purpose. The impugned order is accordingly set aside. The writ petition is allowed in the above terms."

2. Learned counsel for the applicants, at the outset, clarified that prayers (a), (b), (c) and (d) are not being pressed now and

it is only prayers (e) to (k) which are being pressed, which is primarily that the post of Assistant Engineer (Electrical) should be filled as per the Recruitment Rules (RRs) existing at the relevant time when the post of Assistant Engineer (Electrical) had fallen vacant particularly in 1996-98 when the petitioners became eligible for consideration to the said posts; consequently direct the respondents not to fill up outside quota to the post of Assistant Engineer (Electrical) from the departmental quota that too totally ignoring the so called unqualified category; respondents to consider, appoint and promote the petitioners to the post of Superintendent (Technical) and thereafter consider, appoint and promote the petitioners to the post of Assistant Engineer (Electrical) with effect from 1996-1998 with all consequential benefits; direct the respondents to grant petitioners the next time bound promotion scale; quash office order dated 17.09.2004 (Annexure 'M') by which 22 Supdt. (Tech) (re-designated as Junior Engineer (Elect)) were given current duty charge of the post of Assistant Engineer (Elect), ignoring the claim of the applicants.

3. Six applicants, who were appointed during 1969-1975, were promoted as Junior Engineer (Elect) in the years 1980, 1984 and 1996. As per the RR's, the next promotion was to the post of Superintendent (Technical) and 25% of the candidates were to be appointed from the unqualified category (the category to which the petitioners belong) and 75% were to be appointed from the qualified category. To be promoted as Superintendent (Technical), experience of eight years as Junior

Engineer (Elect) is required, which the petitioners acquired in 1988, 1992 and 1994. It is submitted by the applicants that in the year 1992-1994, four posts of Superintendent (Technical) were lying vacant and as on 28.01.2002, six posts of Superintendent (Technical) were lying vacant. Vide order dated 23.04.2002, the post of Superintendent (Technical) was ultimately merged with the post of Junior Engineer (Elect) with effect from 28.01.2002. The applicants, therefore, state that since six posts were vacant on 28.01.2002, they should have been considered and appointed to the post of Superintendent (Technical), at least prior to the date of merger.

4. The applicants further state that separate seniority lists for qualified and unqualified category for the post of Junior Engineer (Elect) was maintained while there was no separate seniority list for the post of Superintendent (Technical) for qualified/unqualified category. It is submitted that next promotion from the post of Superintendent (Technical) is to the post of Assistant Engineer (Electrical). As per the RRs to the post of Assistant Engineer, 50% of the posts are to be filled from outside quota and remaining 50% from departmental quota. From amongst departmental quota, 75% of the 50% i.e. 23 posts were to be filled through degree/ diploma holders and the remaining 25% of 50% i.e. 8 posts of Assistant Engineer (Electrical) were required to be filled from unqualified category.

5. According to the RRs, for the departmental quota to be filled in from unqualified category, 4 years experience as

Superintendent (Technical) was required, failing which Superintendent (T) with 12 years combined regular service in the grade of Supdt. (T) and Junior Engineer (Elect) was required to be considered.

6. The RRs were modified finally vide notification dated 12.05.2008 in which for the post of Assistant Engineer, method of recruitment was provided as 70% by promotion failing which by deputation including short terms contract and 30% by direct recruitment. For promotion quota, 50% was for departmental Junior Engineers (Elect) possessing diploma in Electrical Engineering or having eight years regular service in the grade and 20% for departmental Junior Engineers (Elect) possessing degree in Electrical Engineering or having five years regular service in the grade, which means that since the post of Superintendent (Technical) had been merged with Junior Engineer, there was no reference of Superintendent (Technical) in these rules and the promotional avenue for unqualified Junior Engineers was also deleted.

7. According to the applicants, they became eligible for consideration to the post of Assistant Engineer (Electrical) in the years 1996-1998. As per the applicants, there are total number of 62 posts of Assistant Engineer (Electrical). Therefore, 8 posts of Assistant Engineer (Electrical) are required to be filled from unqualified category and as against this, only two persons have been promoted.

8. The other grievance of the applicants is that they have not been granted benefit of time bound promotion as has been granted to similarly situated persons.

9. The case of the applicants is that there were six vacancies available at the relevant time and that they were eligible for promotion as Superintendent (Technical). Therefore, had the respondents promoted them on time as Superintendent (Technical) under the old rules, which permitted unqualified persons to be considered, they would have become eligible for promotion as Assistant Engineer as well.

10. Learned counsel for the applicants relied on the following to substantiate the applicants claim:

- i) Section 387, sub-section (2) of the NDMC Act 1994, which provides as follows:

“387 (2) No regulation made by the Council under this Act shall have effect until it has been approved by the Central Government and published in the Official Gazette.”

It is thus argued that the merger order dated 23.04.2002 of Superintendent (Technical) with Junior Engineer (Elect) is invalid in law as it has not been approved by the Central Government and published in the Official Gazette;

- ii) Internal notes of the NDMC in which there are some notings which suggest that request of the applicants be considered to fill up the post

of Assistant Engineer based on earlier RRs and not on the basis of RRs dated 12.05.2008. However, since these are internal notes not culminating in any order issued, we are not to take cognizance of these and, therefore, this argument is noted only to be rejected.

11. Learned counsel for the applicants referred to Office Order dated 17.09.2004 by which current duty charge has been granted to Superintendent (Technical) re-designated as Junior Engineer (Electrical), stating that even in the year 2004, the respondents have recognized the post of Superintendent (Technical).

12. Learned counsel for the respondents, first of all, raised objection that the MA filed by the applicants dated 4.12.2015 attempts to bring on record new material, which was not there when the T.A. was heard and decided. It is submitted that the Hon'ble High Court vide order dated 30.01.2015 remanded the matter back to this Tribunal to hear and decide the applicants grievance in accordance with law and since the matter has been remanded for a specific purpose, the parties have to adhere to the said direction and no party can file new documents and pleadings, on the basis of which the Tribunal can readjudicate the dispute.

13. It is further stated by the learned counsel for the respondents that the Chairperson, NDMC has deleted the category of Junior Engineer (Elect) certificate holders on 28.09.1999 as eligible for promotion to Superintendent

(Technical) and thereafter Assistant Engineer and this decision was brought to the knowledge of the applicants by the respondents, however, they chose not to challenge the same.

14. Learned counsel for the respondents drew our attention to the minutes of the DPC held on 30.06.1998 to select candidates for the post of Superintendent (Technical) in which the following has been recorded:

"1997	: 1 Vacancy unqualified (Non diploma Holder)
	: 3 Vacancy qualified (Diploma Holder)
1998	: 1 Vacancy Unqualified (Non Diploma Holder)
	: 1 Vacancy Qualified (Diploma Holder)

and the DPC recommended as follows:

"AGAINST 1997 VACANCIES

1. Shri C.V.S. Chauhan, Unqualified
2. Shri Mahender Pal (SC), Qualified
3. Shri Santosh Kumar Singh, -do-

AGAINST 1998 VACANCIES

1. Shri Gian Inder Singh, Unqualified
2. Shri Anil Kant Kaushik, Qualified

The recommendations in respect of Shri S.K. Bansal, J.E. (E) are contained in a separate sealed cover."

It is stated that Shri Gian Inder Singh was the last unqualified person to be inducted.



15. It was argued by the learned counsel for the respondents that out of six vacancies, one vacancy remained unfilled, which was to be filled by qualified candidate for 1998 vacancy. He further referred to seniority list of Junior Engineer (Electrical) Departmental Quota Category-II (Unqualified) after merger with Junior Engineer (Meter) vide Resolution No.19 dated 23.11.1989. In this list, Shri Gian Inder Singh is at serial number 27 whereas applicants Shri Man Chand, Shri J.S. Jendu, Shri Jagjit Singh and Shri Mehar Chand are at serial no.30, 33, 35 and 36. Therefore, it is argued that between Shri Gian Inder Singh and Shri Man Chand, there are two other unqualified Junior Engineers namely Shri R.K. Srivastava and Shri V.K. Malhotra. Thus the applicants were not even eligible even if there was a vacancy for unqualified post. Learned counsel also argued that the applicants have been insisting that the number of posts earmarked for unqualified persons should be worked out based on the total cadre strength whereas clearly it has to be a percentage of the total vacancies. He referred to the judgment of the Hon'ble High Court by which the matter has been remanded back to this Tribunal in which the High Court has held that the premise on which the Tribunal discussed the merits and issued operative directions is incorrect and this premise was that where the cadre is to be filled from different sources, post-based roster shall be considered and not vacancy based roster. The Hon'ble High Court relied on the ruling in **State of Punjab and ors. Vs. Dr. R.N. Bhatnagar and anr.**, 1999 (2) SCC 330,

where it was held that the quota would operate on the vacancies that arise.

16. Learned counsel for the respondents also submitted that the reason behind doing away with the provision of quota for unqualified category was that the government wanted to improve the quality of services by getting qualified engineers for the post. This was a policy decision of the government for improvement of engineering services provided by the government.

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

18. First of all, on the question of taking additional documents on record, on principle it is accepted. However, Annexure A-2 is a copy of relevant NDMC Act 1994 and Annexure A-3 is a copy of new RRs notified by notification dated 12.05.2008. Annexure A-4 Office Order dated 17.09.2004 is already part of the record and the internal documents of NDMC at Annexure A-5, have already been rejected by us and not taken on record. Therefore, there can be no objection on Annexures A-2, A-3 and A-4, which are either statutory provisions or notifications by respondents or documents already on record.

19. As regards merits of the case, the objection of the learned counsel for the respondents is valid that at no stage have the applicant been able to demonstrate that they were actually entitled to be promoted as Superintendent (Technical) or

Assistant Engineer. In fact, the learned counsel for the respondents has been able to demonstrate that six vacancies in 1997-1998 have been identified by the applicants themselves in their petition. Following the quota on the vacancies and not on post based roster, the last unqualified person Shri Gian Inder Singh has been promoted as Superintendent (Technical) and in between last unqualified person and the applicants there are two other persons named above. Therefore, the applicants were not eligible for promotion against 1997-1998 vacancies and on this logic, their whole claim collapses.

20. On the issue that Office Order dated 23.04.2002 has not been approved by the Central Government and published in the official gazette and therefore it is illegal and has to be ignored, it is seen that the expression used in 387 (2) is "No regulation" and this is only an office order and not a regulation. The fault of the respondents has been that they took several years in notifying the RRs in May 2008. They should have amended the rules simultaneously but in any case, as demonstrated by the learned counsel for the respondents, the applicants could not have been considered for the vacancies of the unqualified quota in the year 1997-98.

21. We also note that doing away with the quota for unqualified Junior Engineers is a policy decision of the government for improving engineering services provided by the NDMC for the citizens and cannot be faulted on merit nor can it be interfered with being a policy matter.

22. The bottom line in this case is that even if the unqualified quota was there, the applicants have not been able to establish that they were entitled for promotion as Superintendent (Technical), rather the learned counsel for the respondents has demonstrated that applicants could not have been entitled given their seniority position and vacancies available for unqualified persons. In fact, the logic of the applicants that quota should be worked out on the basis of total cadre strength is incorrect, which has also clearly been mentioned in the order of the Hon'ble High Court.

23. In view of above discussion, this TA fails and is dismissed.  
No costs.

(Dr. Brahm Avtar Agrawal)  
Member (J)

(P.K. Basu)  
Member (A)

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