

**Central Administrative Tribunal
Principal Bench**

**OA 2348/2017
MA No.3648/2017**

New Delhi, this the 28th day of September, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

1. R. K. Ahirwar
Assistant Engineer (Civil), (B)
CPWD,
Aged about 50 years,
S/o Sh. G Lal
R/o 11-C, Pkt-6, MIG Flat,
M.V. Phase-III, Delhi 110 096.
2. Tulsi Ram
Assistant Engineer (Civil) (B)
Aged about 48 years,
S/o Sh. Sheo Lal
R/o 1201, Mohinder Apartment,
Plot-17, Sec-12, Dwarka,
New Delhi 110 078.
3. Umesh Kumar
Assistant Engineer (Civil) (B)
Aged about 47 years,
S/o Sh. Janglesh Kumar
R/o 87 Sidharth Niketan,
Sec-14, Kaushambi, Ghaziabad,
UP.
4. Raj Singh
Assistant Engineer (Civil) (B)
Aged about 57 years,
S/o Sh. Pyare Lal
R/o Flat No.84, Sangam Apartment,
Paschim Vihar, New Delhi 110 087.
5. Satpal Singh
Assistant Engineer (Civil) (B)

Aged about 48 years,
S/o Sh. Deep Chand
R/o House No.3, Block-5, Andrews Ganj,
New Delhi 110 049.

6. Vimal Kumar
Assistant Engineer (Civil) (B)
Aged about 52 years,
S/o Sh. Mahavir Singh
R/o Flat No.102, Kailash Apartment,
IP Extn., Patpar Ganj,
Delhi 110 092.
7. Raj Kumar
Assistant Engineer (Civil) (B)
Aged about 51 years,
S/o Late Sh. Yogender Rajak,
R/o Flat No.403, Shanti Orchid
Vasundhara Apartment, Bind Toll,
Shekhpura More, Patna,
Bihar 800014.
8. Roop Lal
Assistant Engineer (Civil) (B)
Aged about 51 years,
S/o Sh. Ajit Ram
R/o H. No.130-A, Gali No.3,
Gopal Nagar, Majitha Road,
Amritsar 143001, Punjab.
9. Rajesh Kumar
Assistant Engineer (Civil) (B)
Aged about 53 years,
S/o Sh. Dharam Pal
R/o H. No.712, Sec-30-A, Chandigarh.
10. Mehar Singh
Assistant Engineer (Civil) (B)
Aged about 52 years,
S/o Late Gurdial Singh
R/o Qtr. No.49 (MS) Type-III,
Timarpur, Delhi 110 059.

.... Applicants.

(By Advocate, Shri M. K. Bhardwaj)

Vs.

1. Union of India
Through its Secretary
Ministry of Urban Development & Poverty
Alleviation,
Nirman Bhawan,
New Delhi.
2. The Director General
Central Public Works Department
Ministry of Urban Development & Poverty
Alleviation,
Nirman Bhawan,
New Delhi.
3. The Addl. Director General (S&P)
Central Public Works Department,
Ministry of Urban Development & Poverty
Alleviation,
Nirman Bhawan,
New Delhi.

.... Respondents.

(By Advocates, Shri Hanu Bhaskar for respondents in OA and Shri C. Mohan Rao for Shri Lokesh Kumar Sharma for applicants in MA No.3648/2017)

: O R D E R (ORAL) :

Justice Permod Kohli :

MA No.3648/2017.

This MA has been filed seeking impleadment as party respondents in the main OA.

2. The applicants in this MA are seeking their impleadment stating therein that their names have been mentioned in Ground (L) of the OA, and the applicants of the OA are seeking a direction from the Tribunal against the applicants of this MA. It is accordingly

stated that the applicants of the OA who belongs to reserved category without impleading the applicants of this MA as party respondents have sought relief against them, and in such an event, the applicants of this MA would be adversely affected by any order that may be passed in the main OA. It is, however, admitted case of the applicants of this MA that in the seniority list dated 19.11.2014 issued consequent upon the judgment of the Hon'ble Delhi High Court passed in a bunch of writ petitions disposed of vide judgment dated 27.08.2014 titled *D. P. Jindal vs. Union of India & Ors.* W. P. (C) No.8154/2013 and other matters, and a subsequent seniority list dated 02.01.2017 the applicants in this MA are junior to the original applicants. As a matter of fact, the applicants in this MA are disputing the seniority of the applicants of OA. Thus, it is admitted position that in the final seniority list issued by the official respondents, the applicants in this MA are junior to the applicants of OA. Their main grievance is in respect to the seniority list whereas the original applicants have not disputed the seniority list rather they are relying upon the final seniority list issued by the competent authority. A similar MA No.2888/2017 was filed by the applicants therein claiming to be senior to the applicants of OA was disposed of vide order dated 18.08.2017. The said MA was also disposed of with liberty to seek any remedy in respect to the seniority, if so desired, in accordance with law.

3. In this view of the matter, the applicants of this MA are neither necessary nor proper parties in the present OA. If they have any grievance in respect to the final seniority list, they are at liberty to seek proper/regular remedy in accordance with law.

OA No.2348/2013.

4. The applicants in this OA belong to SC category. They initially joined as Junior Engineer (Civil) and were promoted/appointed as Assistant Engineer (Civil) through Limited Departmental Competitive Examination (LDCE). It is stated that the *inter se* seniority of the qualified candidates in the LDCE was fixed on the basis of the competitive examination, irrespective of the quota meant for reserved categories. The final seniority list of AE (Civil) issued vide OM dated 02.01.2017 reflects the names of the applicants at serial numbers mentioned in para 4.3 of the OA against their respective names.

5. The case of the applicants is that the next promotion is to the post of EE (Civil) from the post of AE (Civil) as well as AEE appointed through UPSC. The applicants claim to be within the zone of consideration on the basis of their seniority as reflected in the final seniority list dated 02.01.2017. They were sent for mandatory training during the period 17.04.2017 to 28.04.2017. They have successfully completed the training. The respondents issued OM dated 18.05.2017

calling for vigilance/administrative clearance for promotion to the post of EE (Civil). The names of the applicants figure at Sl. No.17 to 31 of the said OM dated 18.05.2017. After vigilance clearance was received, they were required to be considered for ad hoc promotion to the post of EE (Civil). It is stated that about 60 vacancies of AE (Civil) are available. The apprehension of the applicants is that they are being deprived of their promotion to the post of EE despite their eligibility and seniority without any lawful and valid reasons.

6. In Ground (L) of the OA, the applicants have mentioned as many as 10 names stating therein that these persons who are otherwise junior to them are likely to be considered for promotion ignoring the claims of the applicants. The applicants have sought for following reliefs:-

- “(i) To declare the action of the respondents in depriving the applicants from promotion to the post of EE (C) against available vacancies for which the process has been initiated vide OM dated 18.05.2017 as illegal and arbitrary and direct the respondents to promote the applicants to the post of EE (C) on ad hoc basis against available vacancies as per DoP&T OM No.36011/14/83-Estt. (SCT) dated 30.04.1983 with all consequential benefits.
- (ii) To declare the action of respondents in not following the DoP&T instructions dated 30.04.1983 as well as other relevant OMs issued time to time for making ad hoc promotion of SC/ST category employees while filling up near about 60 vacancies of EE (C) on ad hoc basis as illegal and direct the respondents to consider the claim of all applicants for promotion to the said post of EE (C) on ad hoc basis as per their seniority as AE (C) in preference to their juniors of General/Reserved category.

(iii) to allow the OA with cost.”

7. Counter affidavit has been filed by the respondents stating therein that in the process of promoting AE (Civil) to the grade of EE (Civil) on ad hoc basis against the vacancy year 2016-2017 and 2017-2018, in which a total of 16 and 40 vacancies respectively have arisen in the grade of EE (Civil) on account of retirement/VRS/permanent absorption etc. of *ad hoc* EEs (Civil). Vigilance clearance certificate and CR Dossiers of AEs (Civil) according to the seniority list of AEs (Civil) as on 01.04.2016 have been sought. It is stated that due to various Court cases, department is not able to make regular promotion to the grade of EE (Civil) since 1999 and now on the directions of the Hon'ble High Court of Delhi dated 22.07.2014 passed in W.P. (Civil) No.840/2003 & 858/2003 in the matter of *Gurbaaz Singh vs. Union of India*, the process of review DPC for regular promotion to the grade of EE (Civil) is under progress and it will take more than one year's time to complete this process. It is further stated that the department is facing acute shortage of EEs (Civil) for speedy delivery of services. These posts cannot be left unfilled being cutting edge of the department, and thus to cope up this difficulty, pending finalization of regular promotions, the department is making *ad hoc* promotions in the grade of EE (Civil). The respondents have further stated that the promotees under the SC and ST categories in the rank of EE (Civil) are already exceeding their

prescribed quota of 15 % and 7.5%. The respondents have also referred to the order dated 09.05.2017 passed in OA No.1111/2017 and MA No.1201/2017 wherein this Tribunal has directed the Ministry of Personnel, Public Grievances and Pension not to grant benefit of seniority on the basis of accelerated promotion at the level of Under Secretary in contravention to the mandate contained in judgment of *M. Nagraj & Ors. vs. Union of India & Ors.* [(2006) 8 SCC 212]. It is accordingly stated that the Executive Engineer (Civil post being equivalent to Under Secretary, the benefit of accelerated promotion cannot be granted in contravention to the judgment of the Apex Court in *M. Nagraj's case* (supra).

8. We have heard learned counsel for the parties.

9. Shri M. K. Bhardwaj, learned counsel for the applicants submits that the applicants be considered for their promotion to the post of EE (Civil) on ad hoc basis in accordance with the existing seniority list and not on the basis of their accelerated promotion.

10. In this view of the matter, this Original Application is disposed of with a direction to the respondents to make promotions to the post of EE (Civil) on ad hoc basis in accordance with existing seniority list subject to any direction or order that may be in existence or may be passed by any competent court by according consideration to the

eligible candidates who are within the zone of consideration in accordance with law as and when such promotions are intended to be made.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/