

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2430/2015

Order Reserved on: 10.08.2016
Order pronounced on 03.10.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

1. Anurag Singh, AE (Civil)
Aged about 48 years
S/o Late Sh. Rajbir Singh
R/o E-138, Astha Kunj
Sec-18, Rohini
Delhi – 110 089.
2. P. K. Garg, AE (Civil)
Aged about 52 years
S/o Late Sh. R.L. Garg
R/o A-132, Ramprastha,
Ghaziabad – 201 011.
3. Vivek Kumar Gupta, AE (Civil)
Aged about 45 years
S/o Late Sh. Manik Chandra Gupta
R/o Flat No.E-3, Mitrdeep Apartment
Plot No.38, I.P.Extn., Delhi – 110 092.
4. Vivek Verma, AE (Civil)
Aged about 48 years
S/o Sh. B.N.Verma
R/o 63, Vandana Apartment
42, I.P.Extn., Patparganj
Delhi – 110 092.

5. Surender Kumar, AE (Civil)
 Aged about 51 years
 S/o Sh. Girdhari Lal
 R/o A-3/26, Jeevan Jyoti Apartment
 Pitampura, Delhi – 110 034.

6. Tripal Singh, AE (Civil)
 Aged about 46 years
 S/o Late Sh. Devender Pal Singh
 R/o 12/484, Friends Society
 Vasundhara, Ghaziabad-201012. ... Applicants

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India & Ors. Through:

1. The Secretary
 Ministry of Urban Development
 Nirman Bhawan
 New Delhi – 110 001.

2. The Director General
 Ministry of Urban Development
 Nirman Bhawan
 New Delhi – 110 001.

3. The Additional Director General (Training)
 CPWD Training Institute
 Kamla Nehru Nagar
 Hapur Road
 Ghaziabad – 200 002.

4. Sanjay Garg (UR)
 Junior Engineer, Group 'B'
 Working in CPWD
 Aged about 47 years
 S/o Sh. Mool Chand Garg
 R/o H.No.472, Sec-41

Vasundhara,
Ghaziabad (U.P.)

5. Vinod Kumar Garg
T-703, Vasundra Valley Apartment
Sector-6, Vasundra
Ghaziabad (UP).

6. Daulat Ram Verma, JE in CPWD
S/o Sh. Shiv Mangal Verma
Aged about 46 years
R/o H.No.170, Lumbini Apartment
Sec-14, Kaushambi
Ghaziabad (U.P.). Respondents

(By Advocate: Shri Gyanender Singh for Rs No.1 to 3, Shri A.K.Bhera for R-6 and Shri Anil Singal, for Rs. No.4 and 5)

O R D E R

By V. Ajay Kumar, Member (J):

The applicants, who were originally appointed as Junior Engineers (Civil) in the respondents-Central Public Works Department (in short, CPWD), on their participation and qualifying in the Limited Departmental Competitive Examination-2002 (in short, LDCE-2002), were promoted as Assistant Engineers (Civil) on 31.03.2003. They have filed the present OA seeking the following reliefs:

"(i) To declare the action of respondents in filling up more than 391 vacancies on the basis of LDCE-1999 as illegal, arbitrary and set aside all the promotions made on the basis of LDCE-1999 beyond 391 vacancies.

(ii) To quash and set aside the impugned orders dated 26.06.2015.

(iii) To declare the action of respondents in creating Supernumerary Post of AE (Civil) with retrospective effect and filling up the same by declaring non existing result of LDCE-1999 as illegal and unjustified.

(iv) To allow the OA with cost.

(v) To pass any such other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. This Tribunal on 10.07.2015 recorded the submission of the learned counsel for the respondents that no further adverse orders pursuant to the impugned letter dated 26.06.2015 will be issued.

Again, on 15.07.2015, ordered that no further adverse orders will be issued.

3. Heard Shri M.K.Bhardwaj, the learned counsel for the applicants and Shri Gyanender Singh, the learned counsel for the official respondents, Shri A.K.Bhera, the learned counsel for Respondent No.6 and Shri Anil Singal, the learned counsel for Respondents No.4 and 5, and perused the pleadings on record.

4. The learned counsel for both sides advanced extensive and elaborate arguments. However, in our considered view, the OA is liable to be dismissed on the ground of non-joinder of necessary and affected parties.

5. The applicants by way of this OA mainly questioned the action of the respondents in declaring the results of Assistant Engineer (Civil) beyond the notified vacancies of 391 for the year 1998-99 through LDCE-1999 and the consequential promotions to the said post. It is the case of the applicants that they were regularly promoted as Assistant Engineers (Civil) in pursuance of the LDCE-2002 and have

been working from the respective dates of their promotion as Assistant Engineers (Civil) till date, and that the respondents vide the impugned Annexure A1 dated 26.06.2015 created 67 supernumerary vacancies of AE (Civil), i.e., more than the notified vacancies of 391 for the LDCE-1999, and contemplating to promote some of their juniors in the category of AEs and also some of the JEs, who participated in LDCE-1999, with retrospective effect, i.e., against the said newly created supernumerary posts for the year 1998-1999 by declaring their results and thereby the seniority of the applicants in the category of AEs and their further promotional chances will be seriously prejudiced.

6. Vide Annexure A3-Notification dated 16.09.1998, the respondents notified 391 Assistant Engineer (Civil) vacancies along with Assistant Engineer (Electrical) and accordingly conducted LDCE-1999 for filling up the said vacancies. Consequent thereto all the said 391 vacancies of Assistant Engineers (Civil) of 1998-99 were filled up. The impugned Annexure A/1, dated 26.06.2015 discloses that in respect of LDCE-1999, additional result was declared vide letter No.DE(T)-1/JE/Dept.Exam/1998-99/2088, dated 30.08.2004 in which 12 vacancies for the year 1998-99 were included and in compliance of Hon'ble Court directives, 52 supernumerary posts of AE(C)s have been created with the concurrence of Ministry of Finance (Department of Expenditure), vide their ID No.A1103/02/2014-Eg. dated 11.06.2015 resulting into increase of vacancies of AEs for the year 1998-1999 by 67 numbers. Out of the same, result of 12 candidates were already declared vide Office Order No.2088 dated 30.08.2004 and now, the

ADG (Training), CPWD Training Institute, is requested to declare the result of rest of 55 candidates.

7. In pursuance of the impugned Letter dated 26.06.2015, the respondents have declared the results of 55 candidates of LDCE-1999, including the result of the private respondents No.4 and 6, vide Office Order dated 07.07.2015 (Annexure M-2 to M.A.No.2204/2015 and also as Annexure to M.A.No.4218/2015).

8. The private respondents 4 and 6 whose results in respect of LDCE-1999 were declared vide Order dated 07.07.2015, in pursuance of the impugned letter dated 26.06.2015, filed MA No.2204/2015 and MA No.4218/2015 seeking impleadment in the OA as party respondents, by enclosing the Order dated 07.07.2015 by submitting that their consequential promotion against LDCE-1999 as AEs was stalled due to the interim orders passed in the OA and that if the OA is allowed, their declaration of results and the consequential promotion against LDCE-1999 will be affected. The said MAs were allowed and the private respondents were made as respondents in the OA. The applicants though came to know about the existence of the said Order dated 07.07.2015, declaring the results of the private respondents 4 and 6 along with certain others, which was issued in pursuance of the impugned letter dated 26.06.2015, had not chosen to question the Order dated 07.07.2015 either by way of amending the OA or in any other manner. Admittedly, though the total number of vacancies

notified for the year 1998-99, through LDCE-1999 were 391, and though the respondents declared the result of 12 persons more than the said notified 391 vacancies vide proceedings dated 30.08.2004 and the said 12 persons were consequently promoted against 1998-99 vacancies as Assistant Engineers (Civil), way back in 2004 itself, and were made as seniors in the AE(C) category to the applicants, the applicants have not chosen to question the said proceedings dated 30.08.2004 and the consequential promotion orders of the said 12 persons and the action of the respondents in placing them above the applicants in the seniority list of AE(C). The impugned letter dated 26.06.2015 was only to the effect that a direction was issued to declare the results of 55 more candidates of LDCE-1999 and the same was implemented vide Order dated 07.07.2015. Though the respondents through the impugned letter dated 26.06.2015, directed to declare the result of 55 more persons and the same was done vide Order dated 07.07.2015, indicating the names of the said persons, the applicants have not chosen to implead any of the 67 persons whose results were declared beyond the notified 391 vacancies, who were going to be affected if the OA relief is granted. The contention of the applicants' counsel that the private respondents are representing all the 67 persons whose result had been declared beyond the notified 391 vacancies, cannot be accepted, since out of the 67 persons, the results of 12 persons were declared in 2004 and were promoted as AE(C) in 2004 and who were already placed above the applicants in AE(C) seniority list, forms a different group. Further, since the matter

involves a chequered history, and various Court cases filed by various persons other than the private respondents also, the theory of representative capacity cannot be applicable in this case.

9. In **J.S.Yadav v. State of U.P. & Anr.**, (2011) 6 SCC 570, the Hon'ble Apex Court held that:

"32. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order I Rule 9, of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the plaintiff/petitioner may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the Court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail."

10. In the circumstances and for the aforesaid reasons, the OA is dismissed on the ground of non-joinder of necessary and affected parties. However, this order shall not preclude the applicants from availing his remedies if so advised, in accordance with law. No costs.

11. In view of the final disposal of the OA, the MAs, if any pending, are stand disposed of accordingly.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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