

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.100/3359/2010
MA 100/2418/2012
With
OA 100/3411/2010
MA 100/2603/2010
MA 100/2615/2010
MA 100/3089/2010

OA 100/3446/2010

**Reserved on 01.12.2016
Pronounced on 13.12.2016**

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

OA 3359/2010

1. Sh. Rajendra Prasad,
S/o Sh. Rampat, Resident of C-2,
Metro Enclave, Pushpa Vihar,
New Delhi.
2. Sh. R.S. Rao,
S/o Shri R. Mahalakshmaiah,
Resident of 708, Block-1,
DDA MS Flats, Motiakhan,
New Delhi-110055
3. Sh. Ram Nath Ram,
S/o Shri Dhani Ram,
Resident of 392, Asha Puspa Vihar,
Sector-14, Kaushambi,
Ghaziabd.
4. Sh. Pradeep Garg,
S/o Shri G.C. Garg,
Resident of 43, Jagdamba Aptt.,
Sector-13, Rohini, Delhi-85
5. Sh. Shailendra,
S/o Shri Ramchandra Misra,
Resident of D-58, CPWD Trg. Instt. Hapur,
Kanta Nehru Nagar,
Ghaziabad-201 002
6. Sh. Anand Singh Bisht,
S/o Shri Kishan Singh Bisht,
Resident of B-7, Metro Enclave,
Pushpa Vihar, New Delhi-110017
7. Sh. C.N. Suresh,
S/o Shri C. Subramanyam,
Resident of Flat No. 07, Ankur Aptts,
Patparganj,
IP Extension, New Delhi-110092

8. Sh. Mohan Lal
S/o Late Sh. Bhoolay Singh,
Resident of 4-C/277,
Vartalok Society, Vasundara,
Ghaziabad.
9. Sh.Vinod Kr. Singh,
S/o Sh. Harihar Singh,
Resident of H-603, Friends Apartment,
IP Extn., Delhi-92
10. Anurag Kumar,
S/o Shri Mahendra Pandit,
Resident of Block 3A, DB501,
Transit Flats, Andrews Ganj,
New Delhi.

... Applicants

(Through: Mrs. Harvinder Oberoi)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-11
2. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-11
3. Department of Personnel & Training,
Ministry of Personnel, Public Grievances
& Pensions & Training,
Through its Secretary,
North Block, New Delhi.
4. Union Public Service Commission,
Through its Chairman,
Shahjahan Road, New Delhi.
5. Nand Lal
6. I.S. Rana
7. K.M.Vyas
8. N.P.Kukreti
9. Rakesh Pant
10. R.Ekambarama
11. P.Gopalkrishanan

12. S.P.Palanisawami
13. M.Jagannathan
14. Santosh K.Jain
15. Ravinder K.Gupta
16. R.K.Rastogi
17. D.J.Mandal
18. S.S.Khanna
19. H.K.Sharma
20. S.L.S.Yadav
21. A.K.Bawa
22. H.S.Chimma
23. G.S.Pant
24. O.S.Saini
25. Manmohan
26. R.R.Verma
27. B.D.Bansal
28. R.Selwaraju
29. K.D.Sharma
30. L.Badrajalam
31. A.C.Varshney
32. P.P.Singh
33. M.Balchandran
34. N.K.Saini
35. Amar Singh
36. Hari Singh
37. Rajesh Kumar
38. P.S.Bassi

39. R.K.Thakur
40. K.Sudereshan
41. Gurbachan Singh
42. V.K.Mehta
43. F.C.Mittal
44. S.K.Sharma
45. P.L.Gupta
46. S.S.Vashishta
47. P.Ramraj
48. Ram Krishan Solanki
49. K.S. Warriach
50. D.S.Bhoraskar
51. S.K.Jain
52. N.K.Khatri
53. D.S.Sehrawat
54. Vijay Kumar
55. T.C.Bansal
56. D.V.Mangla
57. D.S.Sangwan
58. R.K.Kashyap
59. Yamin Beg
60. A.R.Mohd.
61. Ram Lal
62. Lekhraj
63. V.Vellaichamy
64. N.K.Nafaria

65. R.K.Kayastha

(All the Respondents from Sr. 5 to 65 working as Executive Engineer (Civil) CPWD.

To be served through Respondent No.3

Director General (Works), CPWD, Nirman Bhawan,
New Delhi-11.

... Respondents

(Through Mr.B.K.Barera, Mr.Naresh Kaushik and
Mr. D.S.Mahendru for official respondents and
Shri S.R.Sharma for private respondents)

OA 3411/2010

1. Sh.Kapil Deo Narayan,
S/o Shri Deo Narayan Mahto,
R/o Flat No. 203, Ankur Apartment 7,
IP Extension, New Delhi-92

2. Sh. Mithilesh Kumar Singh,
S/o Late Shri Ram Sagar Singh,
R/o TH-1, CPWD Transit Hostel,
Jog Bagh Lane, Aliganj,
Lodhi Colony, New Delhi.

... Applicants

(Through: Mrs. Harvinder Oberoi)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-11

2. Department of Personnel & Training,
Ministry of Personnel, Public Grievances
& Pensions & Training,
Through its Secretary,
North Block, New Delhi.

3. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-11

4. Union Public Service Commission,
Through its Chairman,
Shahjahan Road, New Delhi.

5. Nand Lal

6. I.S. Rana

7. K.M.Vyas

8. N.P.Kukreti
9. Rakesh Pant
10. R.Ekambarama
11. P.Gopalkrishanan
12. S.P.Palanisawami
13. M.Jagannathan
14. Santosh K.Jain
15. Ravinder K.Gupta
16. R.K.Rastogi
17. D.J.Mandal
- 18 S.S.Khanna
- 19 H.K.Sharma
- 20 S.L.S.Yadav
- 21 A.K.Bawa
- 22 H.S.Chimma
23. G.S.Pant
24. O.S.Saini
25. Manmohan
26. R.R.Verma
27. B.D.Bansal
28. R.Selwaraju
29. K.D.Sharma
30. L.Badrajalam
31. A.C.Varshney
32. P.P.Singh
33. M.Balchandran
34. N.K.Saini

35. Amar Singh
36. Hari Singh
37. Rajesh Kumar
38. P.S.Bassi
39. R.K.Thakur
40. K.Sudereshan
41. Gurbachan Singh
42. V.K.Mehta
43. F.C.Mittal
44. S.K.Sharma
45. P.L.Gupta
46. S.S.Vashishta
47. P.Ramraj
48. Ram Krishan Solanki
49. K.S. Warriach
50. D.S.Bhoraskar
51. S.K.Jain
52. N.K.Khatri
53. D.S.Sehrawat
54. Vijay Kumar
55. T.C.Bansal
56. D.V.Mangla
57. D.S.Sangwan
58. R.K.Kashyap
59. Yamin Beg
60. A.R.Mohd.
61. Ram Lal

- 62. Lekhraj
- 63. V.Vellaichamy
- 64. N.K.Nafaria
- 65. R.K.Kayastha

(All the Respondents from Sr.5 to 65 working as Executive Engineer (Civil) CPWD.

To be served through Respondent No.3

Director General (Works), CPWD, Nirman Bhawan,
New Delhi-11.

... Respondents

(Through Mr.B.K.Barera, Mr.Naresh Kaushik and
Mr. D.S.Mahendru for official respondents and
Shri S.R.Sharma for private respondents)

OA 3446/2010

Manish Kumar
S/o Shri S.B.Garg,
Resident of DB-101, Block-13,
Transit Flats, HUDCO Place,
Andrews Ganj, New Delhi.

... Applicant

(Through Mrs. Harvinder Oberoi)

VERSUS

- 1. Union of India,
Through Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-11
- 2. Department of Personnel & Training,
Ministry of Personnel, Public Grievances
& Pensions & Training,
Through its Secretary,
North Block, New Delhi.
- 3. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-11
- 4. Union Public Service Commission,
Through its Chairman,
Shahjahan Road, New Delhi.
- 5. Shri Manoj Kumar,
S/o Shri R.C.Agarwal,
R/o 72, Jagdamba Apartment,
Sector-13, Rohini, Delhi-110085

6. Shri Gaje Singh
S/o Shri Bhag Singh,
R/o H.No.9, Type-V,
Dr. B.S.A. Hospital, Sector-6,
Rohini, Delhi-110085. ... Respondents

(Through Mr.B.K.Barera, Mr.Naresh Kaushik and
Mr. D.S.Mahendru for official respondents and
Shri S.R.Sharma for private respondents)

ORDER

Mr. Shekhar Agarwal, Member (A):

The issue involved in all these three OAs is the same. Therefore, they are being disposed of by this common order.

2. These OAs were filed in the year 2010. When it was pointed out to learned counsel for the applicants that after filing of these OAs several developments in the matter have taken place rendering these OAs infructuous, she stated that her prayer made in OA No. 3411/2010, clause 8(i) still survives and the applicants were seeking grant of the same. The aforesaid prayer clause reads as follows:-

"8 (i) To direct the respondents to revert the private respondent Nos. 5 to 65 as AE (Civil), Group B Officers."

Hence, the three OAs were heard only on this prayer clause.

3. The brief facts of the case are that Government of India (Ministry of Urban Development) vide its order dated 6.07.1999 diverted 430 vacancies from the quota of AEE (Civil) to the quota of AE (Civil). In this connection, the letter written by the then Secretary (Urban Development), Government of India to UPSC on 4.06.1999 reads as follows:-

"4. In order to abolish this adhocism for once and all wipe out the huge backlog of vacancies governed by 1954 Recruitment Rules so as to operate the new Recruitment Rules with a clean slate, the Ministry decided, in consultation with the DOPT, to

seek one time relaxation to divert the backlog quota of Assistant Executive Engineer over a period of 3 years i.e. 1994-95, 1995-96 and 1996-97 (upto 28.10.1996). This proposal was formulated after careful consideration of all pros and cons. As there was no alternative left with the department except to regularise adhoc promotions of Assistant Engineer who have been working as Executive Engineer for more than 10 years.

5. This is a conscious and deliberate policy decision which the Government intend to take to streamline the cadre management in CPWD to facilitate the smooth working of Department. There is no direction of the Apex Court implicit or explicit, to grant such relaxation."

Herein it is relevant to note that the posts of EE (Civil) are filled by promotion from the posts of AEE/AE Degree Holder/AE Diploma Holder in the ratio of 1:1:1. As a result of diversion of 430 vacancies to the quota of AE following disputes arose.

- (i) Whether the Department had power to divert vacancies from AEE quota to AE quota.
- (ii) Whether there were any errors in calculation of back log vacancies.
- (iii) Whether benefit of such diversion has been given even to those AEs who were not working as Ad hoc EEs.

The first dispute mentioned above has been considered by Hon'ble High Court of Delhi in its judgment in Writ Petition no. 2562/2002. The Hon'ble High Court upheld the action of the official respondents in diverting these vacancies from the quota of AEE to AE. It is an admitted case of the parties that this issue is now under consideration of Hon'ble Supreme Court of India.

4. The second dispute regarding error in calculation of vacancies has been considered by Hon'ble High Court of Delhi in its judgment in Writ Petition no. 840/2003 in the case of **Gurbaaz Singh and Others**

Vs. Union of India and Ors. Hon'ble High Court has given following directions in this case:

"From the above discussion, it is apparent that the Central Government had originally proceeded on the assumption that 430 vacancies could be diverted, to be filled by ad hoc Assistant Engineers promoted to the post of Executive Engineers. Even though that position was reiterated during the course of the proceedings before the Tribunal, the Central Government seems to have changed its position to some extent in 2003, before this Court, and articulated the necessity of reviewing the matter and, if necessary, superseding the 6.7.1999 order to the extent of amending the number of vacancies to be treated as diverted from the quota of AEEs. In these circumstances, we are of the opinion that even though the review order of the Tribunal impugned in this case indicates that the question is left for determination by the Central Government, in the absence of clarity and proper sequence of the action to be taken, there is bound to be more confusion and potential litigation. Consequently, we direct the Central Government to first decide or determine: the precise number of vacancies which would have to be diverted. If its original determination of 430 is to survive, there is no need of any further action. However, if in fact the number is to be revised downwards, a separate amendment to the order/notification dated 06.07.1999 may be issued in accordance with law. It is only thereafter that the exercise indicated by the Tribunal, in its main order of 5.12.2000, should be undertaken. This Court accordingly directs the Central Government to, in the first instance, consider all the relevant materials and decide as to the exact number of vacancies which are to be diverted in the cadre of Executive Engineers from the quota of AEEs, and thereafter proceed to conduct the review as directed by the Tribunal. This exercise shall be completed within 12 weeks from today.

10. The writ petitions are disposed of in the above terms."

5. In compliance of the above cited directions, the official respondents under took the exercise to re-determine the exact number of vacancies which were required to be diverted from the quota of AEE to AE after taking into consideration relevant material and record. This exercise revealed that the number of vacancies diverted vide order dated 6.07.1999 needed to be revised downwards and the order dated 6.07.1999 needs to be modified. Thereafter, UPSC and DoP&T were consulted by them and OM dated 3.07.2015 was issued by which the

earlier OM dated 6.07.1999 was modified. The backlog vacancies in the quota of AEEs (Civil) which were required to be diverted to the quota of AE over a period of three years, namely, 1994-95, 1995-96 and 1996-97 (upto 28.10.1996) was brought down to 200 in place of 430 provided for in the earlier OM.

6. Learned counsel for the applicants argued that after having revised downwards the number of vacancies diverted from AEE quota, the respondents were now required to address the third dispute which had arisen as a result of this diversion, namely, whether any ineligible AEs who had never worked as ad hoc AEs were given benefit of diverted vacancies. She stated that this exercise is yet to be undertaken by the respondents. According to her, the whole purpose of diversion was to regularise the adhoc EEs promoted from the AEs in excess of the prescribed quota. She submitted that if this exercise is carried out, it will be found that private respondents 5 to 65 who had never worked as ad hoc AEs prior to their promotion in the year 1999, will need to be reverted. She argued that the diversion of vacancies was made with the specific purpose of abolishing adhocism and regularising those adhoc EEs who had been working on that position in excess of the quota of AEs. This is evident from the letter written by Secretary (UD), the relevant part of which has been extracted in earlier part of the judgment.

7. In their reply, the official respondents have submitted that in compliance of the directions of Hon'ble High Court of Delhi in Writ Petition (Civil) No. 840/2003 and 858/04 titled **Gurbaaz Singh and Others and Central Engg. Service Asso. Vs. UOI & Ors.**, the

respondents have already re-determined the vacancies which were required to be diverted. This number has come down from 430 to 200 in the case of Civil Engineers. Thereafter, OM dated 3.07.2015 has also been issued by which the OM dated 6.07.1999 has been modified. According to them, after this exercise has been carried out nothing survives in these OAs which need to be dismissed.

8. Private respondents 5 to 65 represented by learned counsel Shri S.R.Sharma have also filed their reply in which they have stated that the applicants have abused the process of law as they had no locus to challenge the promotions and seniority of the private respondents. It has further been submitted that the applicants herein were promoted in the year 2000 much after the answering respondents were promoted under old 1954 Rules against vacancies that had occurred in the years 1994-95, 1995-96 and 1996-97 (upto 28.10.1996). Thus, they have argued that the applicants were much junior to the private respondents and cannot challenge the seniority granted to them. They have further submitted that the issue of seniority and calculation of vacancies has been subject matter of many similar OAs and, therefore, these OAs are barred by res-judicata. They have gone out to state that the provisional list was first circulated by Union of India on 6.08.2003 and objections were invited from all the affected parties. Thereafter, all the objections were considered and final seniority list was issued on 10.11.2004. The said seniority list remained unchallenged for more than 4 years. It was only when this Tribunal was considering OA No. 1310/2008 filed by **Shri B.P.Singh and Ors** that directions were given to Union of India on 9.01.2009 to cast a new seniority list. The

aforesaid order of the Tribunal was challenged before Hon'ble High Court of Delhi in Writ Petition No. 12914/2009 titled **R.K.Kashyap and Ors. Vs. Union of India**. The Hon'ble High Court vide their order dated 27.07.2010 set aside the order of this Tribunal and directed the official respondents to prepare an additional or supplementary seniority list without touching the seniority list dated 10.11.2004.

9. As regards calculation of number of vacancies is concerned, private respondents have submitted that the issue is under consideration of Hon'ble High Court in Writ Petition No. 840/2003. (The same has now been decided as mentioned above).

10. Although the private respondents in their reply have also taken the preliminary objection of these OAs being barred by limitation as well as res-judicata, these objections were not pressed before us during arguments.

11. We have heard the parties and have perused the material on record. The written submissions submitted by the applicants, private respondents as well as the official respondents have also been taken on record. It is not disputed by the parties that vacancies of EEs arising upto 28.10.1996 were required to be filled by 1954 Rules. As per provision of these Rules, the quota of the three cadres, namely, AEE (direct recruits), AE (Degree Holders) and AE (Diploma Holders) was 1:1:1. Since enough direct recruits were not available, the AEs were promoted to the post of EE (Civil) on ad hoc basis to fill the existing vacancies much in excess of their quota. The Apex Court in SLP Nos. 5363 and 5364 vide order dated 14.01.1997 directed that

only regular promotion should be made. In view of these directions, the respondents decided to review the policy of ad hoc appointment and took a policy decision to divert 430 posts of EE (Civil) lying vacant in the quota of AEE to the quota of AE. This was done in consultation with the DOP&T and the available vacancies pertained to the years 1994-95, 1995-96 and 1996-97 (upto 28.10.1996). This was the date from which new Recruitment Rules of 1996 came into force.

12. After the aforesaid diversion, DPC meeting was convened in UPSC for making regular promotion against these diverted posts. On the basis of recommendations of DPC 328 AEs were appointed as EEs on regular basis vide order dated 3.11.1999. Due to non availability of adequate number of officers fulfilling the eligibility condition, rest of the vacancies remained unfilled. In the order issued on 3.11.1999, it was mentioned that separate order regarding date of regular promotion shall follow. Thereafter, another office order was issued on 28.9.2001 by which these promoted officers were assigned deemed date of promotion as 31.3.1995, 31.3.1996 and 28.10.1996. The respondents then carried out the exercise of preparing a seniority list and finalised the same on 10.11.2004 after considering all the objections received against the provisional seniority list. This seniority list has, however, now been replaced by a new seniority list issued on 19.11.2014.

13. From the above, it is clear that the purpose of diversion of vacancies from AEE quota to AE quota done, as a one time measure, was to regularise those adhoc EEs who had been promoted from the post of AE much in excess of their quota as enough number of AEE

were not available. The respondents first calculated this number to be 430 and issued OM dated 6.07.1999 on that basis. Thereafter, following directions of Hon'ble High Court in **Gurbaaz Singh's** case (supra), the respondents have re-assessed this number and reduced it to 200 vide their OM dated 3.07.2015. It is obvious that since the number of diverted vacancies has been reduced instead of 368 AEs regularised as EEs vide DPC held earlier in the year 1999, not more than 200 AEs can be regularised against diverted vacancies. If that be so, then only 200 AEs will find place in vacancy years 1994-95, 1995-96 and 1996-97 (upto 28.10.1996). Consequently, the seniority list of EEs also will under go a revision. If any of the applicants or private respondents have been further promoted to the post of SE, that would also need to be reviewed. However, the respondents have yet to carry out this exercise. From the pleadings made in these OAs and arguments advanced before us, it appears that no further action have been taken by the respondents after issue of OM dated 3.07.2015. Till this exercise is carried out by the official respondents, it is not possible for us to give any finding on the issue of reversion of private respondents herein.

14. We, therefore, dispose of these OAs by directing the respondents to take consequential action on their OM dated 3.07.2015, as expeditiously as possible, preferably within a period of three months

from the date of receipt of a certified copy of this order. If after such exercise has been carried out, applicants still have any surviving grievance they may avail of their remedies under law.

15. Parties to bear their own costs.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

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