

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3101/2016
M.A. No.2743/2016

Order reserved on: 16.01.2017
Order pronounced on: 31.01.2017

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K. N. Shrivastava, Member (A)**

1. Ishwar Chand Mittal, AE (Civil),
Aged about 59 years,
S/o Late Shri Rameshwar Dass Mittal,
R/o 187, 2nd Floor, Sharda Niketan,
Pitampura, Delhi-110034.
2. Satish Chandra Dabas, AE (Civil),
Aged about 59 years,
S/o Shri Amar Singh,
R/o 51, Pkt-C, 13, Sec-3,
Rohini, Delhi.
3. Vijay Kishore Gaur, AE (Civil),
Aged about 59 years,
S/o Late Shri Khem Chand,
R/o C-9, Kurat Mohalla, Village Chhawla,
New Delhi-110071.
4. Satish Kumar Sharma, AE (Civil),
Aged about 58 years,
S/o Sh. Ram Gopal Sharma,
R/o 16, Vishwakarma Apartment,
Vasundhara Enclave, Delhi-110096.
5. Raj Kamal, AE (Civil),
Aged about 56 years,
S/o Shri Ram Kumar Gupta,
R/o B-24, Tagore Road, Adarsh Nagar,
Delhi-110033.
6. Rajesh Kumar Madan, AE (Civil),
Aged about 56 years,
S/o Late Sh. B.L. Madan,
R/o A-327/2, Derawal Nagar,
Delhi-110009.

-Applicants

(By Advocate: Mr. M.D. Jangra for Mr. M.K. Bhardwaj)

Versus

DDA & Ors. Through:

1. The Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA, New Delhi
2. Engineer Member,
Delhi Development Authority,
Vikas Sadan, INA, New Delhi
3. The Commissioner (Pers),
Delhi Development Authority,
Vikas Sadan, INA, New Delhi
4. Ajay Kumar Bhatia
Serving as EE (C),
FOD-3/PM, Flyover, DDA,
New Delhi.
5. Anurag Ahuja
Serving as EE (C),
WD-13/CC-17, DDA,
Dwarka, New Delhi.
6. Bibekanand Jha
Serving as EE (C),
RPD-1/ Rohini,
DDA.
7. Sanjeev Kumar Gupta
Serving as EE (C),
ND-12/CC-8/ DDA.
8. Rajender Kumar Sharma
Serving as EE (C),
EE (P)/PM MPR
9. Harish Kumar Dhingra
Serving as EE (C),
EE.-III/QAC/INA DDA,
10. Altaf Hussain
Serving as EE (C),
EE (P)-I/SE (P) R/RZ

11. Chander Mani Garg
Serving as EE (C),
WD-5/CC-8/NZ/ DDA
12. Vinod Kumar Ahuja
Serving as EE (C),
SED-7/CC-15/SZ/DDA
13. Uma Shankar Prasad
Serving as EE (C),
SWD-4/CC-1/SZ/ DDA
14. Sri Kant Chaudhary
Serving as EE (C),
EE/RPD-10/CC-9.
15. Shivaji Singh,
Serving as EE (C),
EE/RPD-10/CC-9,
16. N.N. Dewadi,
Serving as EE (C),
EE (P)II/SP (R), Rohini Zone,
Deepali Chowk Complex
17. Suresh Kumar Goel,
Serving as EE (C),
EE/RPD-2/CC-6
18. Bhimsen Kukreja,
Serving as EE (C),
R/D. 8/CC-13/02

-Respondents

(By Advocate: Mr. Arun Birbal for R-1
Mr. Rajat Rathee for R-4,7,9,11 & 12
None for other respondents)

O R D E R

Mr. K.N. Shrivastava, Member (A):

MA No.2743/2016 for joining together in single Application under Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987 is allowed.

2. The applicants, through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, have prayed for the following main reliefs:

“(i) To quash and set aside the impugned E.O No.206 dated 09.02.2016 & seniority list of AE (C) issued vide Circular No.18/2016 dated 26.05.2016 and Order No.F.10(130)2011/CC/Pt.I/Repn1352 dated 26.05.2016 and order dated 30.06.2016 and direct the respondents to restore the promotion of applicants as AE (C) w.e.f. 16.09.2004, 10.10.2005 & 21.10.2005 as well as seniority as AE (Civil).

(ii) To quash and set aside the order dated 26.05.2016 (Colly) rejecting the objections against the impugned seniority list and declare the action of the respondents in preparing list of eligible JE (C) for promotion to the post of AE (C) on the basis of date of acquiring degree as illegal and unjustified and restore the promotion of applicants as AE (C) as per E.O No.1456 dated 16.09.2004 and E.O No.1425 dated 21.10.2005 and seniority and consider them for further promotion to the post of EE (C) with all consequential benefits.

(iii) To declare the action of respondents in reviewing the promotion of applicants and changing their seniority as AE (C) by preparing list of JEs (C) for promotion to the post of AE (C) from 1991 to 2010 on the basis of date of acquiring degree and not on the basis of length of service as illegal and unjustified and issue appropriate consequential directions.”

3. The brief facts of this case are as under:

3.1 The applicants joined as Junior Engineers (JEs) (Civil) in the respondent-organization, i.e., Delhi Development Authority (DDA) on different dates between the years 1980-1982. Their promotional hierarchy is Junior Engineer (Civil) – Assistant Engineer (Civil)-Executive Engineer (Civil). The promotions are governed in terms of the Recruitment Rules (RRs) notified by the DDA vide notification dated 13.11.1963. As per the RRs, 50% of the vacancies of Assistant Engineers (AEs) (Civil) are to be filled up through the

direct recruitment and the remaining 50% by promotion from the cadre of JEs. Further, the JEs possessing the Degree in Civil Engineering become eligible for promotion to the cadre of AE (Civil) on completion of three years of service, whereas the Diploma holders in Civil Engineering would acquire eligibility for promotion to the cadre of AE (Civil) on completion of 08 years service as JEs (Civil). The RRs were amended in the year 2005. As per the amended RRs (Annexure A-8), 75% of the posts of AEs are to be filled by way of promotion from the cadre of JE (Civil) and the remaining 25% by way of departmental examination from amongst JEs (Civil) with five years of experience. Thus, the amended RRs do not leave any scope of any direct recruitment to the posts of AE (Civil). The RRs further stipulate that against the 75% promotional quota meant for promoting JEs (Civil) to the cadre of AE (Civil), half of it is to be filled up from amongst JEs (Civil) possessing degree in Civil Engineering with three years of experience and the remaining half is to be filled from amongst JEs (Civil) possessing diploma in Civil Engineering with 08 years experience.

3.2 The controversy involved is with regard to fixation of inter-se seniority of the officers in the cadre of AE (Civil) who have acquired that position through promotion, more particularly relating to the seniority of such JE (Civil) who joined DDA as JE (Civil) with diploma in Civil Engineering but while in service they acquired degree in Civil Engineering. This controversy has been gone into

and settled by the Hon'ble Apex Court in the case of **N. Suresh Nathan and Ors. v. Union of India & Ors.**, [(2010) 15 SCC 692], wherein it has been held that the period of three years of service in the grade as degree holder would commence only from the date of acquiring degree and not earlier. The Hon'ble Apex Court further clarified in the case of **Shailendra Dania & Ors. v. S.P. Dubey & Ors.**, [(2007) 5 SCC 535] that diploma holders JEs who obtained degree of engineering during the tenure of service would be required to complete three years service on the post of JE (Civil) after having obtained the degree in engineering to become eligible for promotion as AE in the channel of degree holders JEs.

3.3 A Full Bench of this Tribunal has gone into the issue of inter-se-seniority of Civil Engineers in DDA while adjudicating OA No.82/2008 – **Amarjeet Singh & Ors. v. DDA & Ors.** and TA No.86/2009 - **R.K. Mittal & Anr. Vs. DDA & Ors.** and had also discussed the ratio of law, laid down by the Hon'ble Apex Court in **N. Suresh Nathan** (supra) and **Shailendra Dania** (supra) and vide judgment dated 12.01.2011 has held has under:

“10. In view of the discussion made above, we hold that insofar as the seniority on the post of Junior Engineer is concerned, there is no dispute that one who came to be appointed earlier in point of time would be senior irrespective of the qualification that he held when he was appointed. Junior Engineers with their respective qualifications for the purpose of promotional post of Assistant Engineer have to be in their watertight compartments as per quota of promotion fixed for them. If, however, a Junior Engineer with diploma in engineering may, during the currency of his service, improves upon his qualification by obtaining degree in engineering and may thus wish to count his seniority with Junior Engineers who

initially came into service with degree in engineering, his seniority vis-`a-vis degree holders would count from the date he may have acquired the qualification of degree in engineering. If in a given case, it may suit a hybrid diploma holder to be promoted in the quota of diploma holders only, he can do so, but in case after obtaining degree in engineering, he may like to be promoted in the quota meant for degree holders, he would be junior to the degree holders if he has obtained degree in engineering after the Junior Engineer who has come into service initially with degree in engineering. The eligibility of a hybrid Junior Engineer for his promotion on the post of Assistant Engineer, if he may like to be promoted in the quota meant for degree holders, would start from the date when he may improve upon his qualification. We may illustrate A Junior Engineer with qualification of diploma in engineering is appointed in 1990; he improves upon his qualification by obtaining degree in engineering in 1995. If he may choose to be promoted in the quota meant for degree holders, he will be junior to a degree holder who may have been appointed before 1995.”

3.4 The Hon’ble Apex Court while considering the Contempt Petition (Civil) No.339/2013 in Civil Appeal No.8468/2013 – **C. Chakkaravarthy and Ors. v. Tmt. M. Satyavathy, IAS and Ors.**

examined the issue as to whether the Government of Pondicherry in the matter of appointments of AEs (Civil) in its Public Works Department had followed the law laid down by it in **N. Suresh Nathan** (supra). In its judgment dated 16.10.2015, the Hon’ble Apex Court, *inter alia* , observed as under:

“As between the date of acquiring eligibility and the date of entering service as a Section Officer/Junior Engineer the latter was, in our opinion, a more intelligible, fair and reasonable yardstick to be applied for drawing-up the list of eligible candidates by the review DPC. Inasmuch as the review DPC relied upon the date of acquiring eligibility as the basis for preparation of the list of eligible candidates, it committed a mistake which needs to be corrected.”

3.5 The judgment of the Full Bench of this Tribunal in **R.K. Mittal etc.** (supra) was challenged in Writ Petition (Civil) No.6523/2011

before a Division Bench of the Hon'ble Delhi High Court, who vide an interlocutory order dated 06.09.2011 ordered maintenance of *status quo* till the next date of hearing.

3.6 The respondent-organization, i.e., DDA, after obtaining clarifications from the Hon'ble Delhi High Court through the medium of CM No.6845/2012 on the interlocutory order, published a draft seniority list of AEs (Civil) vide Annexure A-15 on 09.02.2014 that covered the officers appointed to the cadre of AE (Civil) from the year 1991-92 to 2009-2010. The objections were invited from the concerned persons. The present applicants filed their objections (Annexure A-3 colly.) which were rejected by the DDA vide order dated 26.05.2013. The DDA published the final seniority list vide Circular No.15/2016 dated 12.04.2016.

3.7 Based on the final seniority list, the DDA vide Establishment Order dated 30.06.2016(Annexure A-4) promoted some of the AEs (Civil) to the posts of Executive Engineer (Civil) on ad hoc basis.

3.8 Aggrieved by the Annexure A-3 final seniority list and Annexure A-4 promotion order, the applicants have filed the instant OA, praying for the main reliefs as indicated at para-1 (supra).

4. The important grounds pleaded by the applicants in support of their claims are as under:

- i) The official respondents have erred in preparing the seniority/eligibility list on the basis of date of acquiring degree in Civil Engineering. As a matter of fact, they were required to determine the seniority/eligibility of JEs (Civil) for promotion to the posts of AE (Civil) without changing their seniority position as JE (Civil). All eligible JEs (Civil) were required to be promoted subject to the completion of requisite years of service after acquiring the qualification/degree/diploma and not on the basis of total length of service.
- ii) The respondents have ignored the judgment of the Hon'ble Supreme Court in the case of **N. Suresh Nathan** (supra) and Full Bench judgment of the Tribunal in the case of **R.K. Mittal etc.** (supra) in granting promotions as per the Annexure A-4 order dated 30.06.2016.
- iii) Principles of natural justice have not been followed by the respondents as they did not provide opportunity of being heard to the applicants before passing the impugned order. The Tribunal had never permitted the respondents to alter the seniority/eligibility of JEs. The Full Bench of the Tribunal has clearly defined that a concerned JE is to be considered eligible for promotion after he has rendered the minimum prescribed years of service after acquiring the qualification.

iv) The private respondents R-4, R-5, R-6 and R-7 are junior to the applicants as per the seniority list of AE (Civil) prepared in the years 2008 and 2014 but by the impugned order they have been promoted as Executive Engineers on ad hoc basis, ignoring the legitimate claims of the applicants.

v) The respondents have failed to note that the seniority in the feeder grade of JE (Civil) could not have been ignored for promotion to the post of AE (Civil) merely on the basis of acquiring degree. The acquisition of degree in civil engineering is only for the purpose of determining the eligibility at the time of promotion and not for determining the inter-se-seniority as such.

vi) The applicants were not parties before the Full Bench of the Tribunal in the case of **R.K. Mittal etc.** (supra) and as such the judgment of the Full Bench of this Tribunal in the said case is not applicable to them. The respondent-organization, i.e., DDA has committed the same mistakes which the Pondicherry Administration had committed for which the said Administration had to face a contempt before the Hon'ble Supreme Court.

vii) The Hon'ble Supreme Court has clearly held that the date of acquiring eligibility should not be the basis for preparation of the list of eligible candidates for promotion. The action of the DDA in issuing the impugned Annexure A-4 is not in consonance with the order of the Full Bench of the Tribunal in the case of **R.K. Mittal**

etc. (supra) as well as the ratio of law laid down by the Hon'ble Apex Court in **N. Suresh Nathan** (supra).

5. Pursuant to the notices issued the official respondents (R-1 & R-2) and private respondent R-9 filed their counter-reply. The applicants thereafter filed their rejoinder. The official respondents in their reply have pleaded as under:

- a) The DDA has been holding DPCs from time to time as per the norms as there were various pending litigations between he acquired degree holders and direct diploma holders; all such promotions were subject to the outcome of the pending litigations. Annexure A-3 seniority list has been finalized keeping in view the judgment of the Hon'ble Apex Court in **Shailendra Dania** (supra), **N. Suresh Nathan** (supra), the Full Bench decision of this Tribunal in **R.K. Mittal etc.** (supra) as well as the clarification issued by the Hon'ble Delhi High Court vide order dated 29.05.2012 in CM-6845/2012 in WPC No.6523/2011.
- b) The DDA has prepared the Annexure A-3 seniority list strictly in accordance with the directions issued by the Full Bench vide judgment dated 12.01.2011 of this Tribunal.
- c) The RRs provide a watertight compartment for graduate and diploma holders JEs. They are eligible for promotion in their respective quotas. The judgment of the Hon'ble Apex Court in **N. Suresh Nathan** (supra) was in the context of different organization

having different RRs. The judgment of the Full Bench of the Tribunal in the case of **R.K. Mittal etc.** (supra) was in the context of the same cadre, like the applicants in the present OA.

6. With the completion of the pleadings the case was taken up for hearing the arguments of the learned counsel for the parties on 16.01.2017. Shri M.K. Bhardwaj, learned counsel for the applicants and Shri Arun Birbal, learned counsel for respondents No.1&2 and Shri Rajat Rathi for respondents No.4,7,8,10,11&12, argued the case.

7. We have given our thoughtful consideration to the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The core controversy raised by the applicants in the OA is regarding fixation of inter-se seniority of AEs (Civil) on their promotion from the feeder cadre of JEs (Civil). As prescribed in the RRs for JEs (Civil), both diploma and degree holders in civil engineering are eligible for promotion as JEs (Civil). Since the RRs provide for 75% quota of seniority based promotion from the cadre of JEs (Civil) to AEs (Civil) and again out of this 75% promotional quota, half is to be filled by such JEs (Civil) who are graduate engineers and who have put in a minimum of three years of service as JE (Civil). The other half of the promotion quota is to be filled from amongst diploma holder JEs (Civil) who have put in 08 years of service. The

remaining 25% quota of AE (Civil) is to be filled through the Limited Departmental Competitive Examination (LDCE) for which all JEs with five years of experience are eligible for participating in the selection process irrespective of the fact whether they are graduate engineers or diploma holders engineers. The issue of inter-se seniority has been fully settled by the Hon'ble Apex Court in **Shailendra Dania** (supra) and **N. Suresh Nathan** (supra). The crux of these judgments is that a diploma holder JE, on acquiring the degree while working as JE can become eligible for promotion in the promotional quota meant for degree holders only after having put in a minimum three years of service from the date of acquiring degree in civil engineering. He, however, would continue to be eligible for promotion as AE (Civil) under the promotional quota meant for diploma holder JEs after putting in 08 years of service. The choice to choose between these two streams of promotion, i.e., via degree route or diploma route, entirely rests with the person concerned. This position has been clearly elaborated by the Full Bench of this Tribunal in **R.K. Mittal etc.** (supra).

8. The judgment of the Full Bench of this Tribunal in **R.K. Mittal etc.** (supra) was challenged before the Hon'ble Delhi High Court in Writ Petition (Civil) No.6523/2011, who vide order dated 29.05.2012 in CM No.6845/2012 in the ibid Writ Petition has furnished the following clarification:

“In view of the specific averments made in paragraph 6 and 7, the order dated 06.09.2011 is clarified to the extent that the status quo order does not preclude DDA from making promotions to the cadre of A.E. It is also clearly understood that promotions shall be made without affecting the petitioners herein as also other similarly situated respondents namely the respondent Nos. 4 to 18. Any promotions made shall be subject to the final orders of this court and shall be without prejudice to the rights and contentions of the parties including that of DDA.”

9. The aforementioned clarification of the Hon’ble Delhi High Court paved way for DDA to finalize the seniority list of AEs (Civil) and to grant further promotion to the eligible AEs (Civil) to the posts of Executive Engineers. Accordingly, the DDA took action for preparation of draft seniority list keeping in view the ratio of law laid down by the Hon’ble Apex Court in the case of **N. Suresh Nathan** (supra) and **Shailendra Dania** (supra) which were duly elaborated by the Full Bench of this Tribunal in the case of **R.K. Mittal etc.** (supra). The DDA published the draft seniority list on 09.02.2016 and invited objections against the same from the concerned persons. The objections received were considered and disposed of by the DDA and only thereafter the final seniority list was published on 12.04.2016. The objections received from the applicants against the draft seniority list were also considered and disposed of by the official respondents by passing speaking orders. As such, the allegation of the applicants that the official respondents have not followed the principles of natural justice in finalizing the seniority list is absolutely unfounded.

10. We have perused the impugned Annexure A-4 promotion order dated 30.06.2016 and have also gone through the Annexure A-3 (colly.) final seniority list dated 12.05.2016. We are fully convinced that the ratio of law laid down by the Hon'ble Apex Court in **N. Suresh Nathan** (supra) and **Shailendra Dania** (supra) have been meticulously followed by the official respondents. Hence, we are of the view that the Annexure A-4 promotion order, as well as Annexure A-3 (colly.) seniority list do not suffer with any illegality or perversity.

11. In the conspectus of the discussions in the foregoing paras, we do not find any merit in the OA. The OA is accordingly dismissed.

12. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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