

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4454/2011

With

OA-1959/2012

Reserved on : 01.12.2015.

Pronounced on : 09.12.2015.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

OA-4454/2011

1. Arun Kumar, Asst. Director, Grade I, CEA, Sewa Bhavan, R K Puram, New Delhi, R/o flat No. G-4, Plot no. 754, Shalimar Garden Extn.-I, Sahibabad, Ghaziabad, U.P.

(through Sh. A.K. Ojha, Advocate)

Versus

1. Secretary, Department of Power, Ministry of Power, Shram Shakti Bhavan, New Delhi – 110001.
2. Chairman, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi – 110066
3. Secretary, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi – 110066

(respondents no. 4 to 29 to be served through respondent no. 3)

4. Sandeep Malik, Asstt. Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
5. Sanjay Kumar Rathi, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
6. K. Seshadri, Deputy Director, , Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
7. N.R.L.K. Prasad, , Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
8. Ms Manjari Chaturvedi, , Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
9. Raghavendra Pratap singh, , Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
10. Shyam Kejriwal, , Deputy Director, Central Electricity Authority, EPRC, Regional Power Survey Office (East), 201, CGO complex, A-Wing, DF Block, Sector-I, Salt Lake City, Kolkatta - 700064

11. Subhro Paul, , Deputy Director, Central Electricity Authority, ERPC, Regional Power Survey Office (East), 201, CGO complex, A-Wing, DF Block, Sector-I, Salt Lake City, Kolkatta - 700064
12. Sunil Kumar Jain, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
13. Praveen Kamal, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
14. Ms Shivani Sharma, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
15. Ajitesh Kumar, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
16. Meka Ramakrishna, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
17. Lakshmi Kant Singh Rathore, Deputy Director, Central Electricity Authority, WRPC, WRPC Building, Plot No. F-3, Midc Area, Central Road, Marol, Andheri East Mumbai – 93.
18. Annepu Suresh, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
19. Santosh Kumar, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
20. Anzum Parwej, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
21. Somen Barma, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
22. Deepak N Gawali, Deputy Director, Central Electricity Authority, WRPC, WRPC Building, Plot No. F-3, Midc Area, Central Road, Marol, Andheri East Mumbai – 93.
23. Rahul Raj, Asstt. Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
24. Shivcharan Chhirolia, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
25. Pramod Kumar Dattatraya Lone, Deputy Director, Central Electricity Authority, WRPC, WRPC Building, Plot No. F-3, Midc Area, Central Road, Marol, Andheri East Mumbai – 93.
26. Dinesh Kumar Bauri, Deputy Director, Central Electricity Authority, Meghalaya State Housing Financial, Co. Op. Society Ltd. Building, Nongrim Hills Shillong – 793003.
27. Narsi Ram Meena, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.
28. S. Mangsothang Aimol, Deputy Director, Central Electricity Authority, NERPC, Meghalaya State Housing Financial, Co. Op. Society Ltd. Building, Nongrim Hills Shillong – 793003.
29. D. Nagavasudev, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi -110066.

..... Respondents

(through Sh. Subhash Gosain, Dr.Ch. Shamsuddin Khan and Sh. T.C.Gupta, Advocate)

OA-1959/2012

1. Suryanarayana, Deputy Director, CEA, Sewa Bhavan, R.K. Puram, New Delhi, R/o N-308, Sector-8, R.K. Puram, New Delhi-110022.
2. S. Chandra Sekhar Rao, Deputy Director, CEA, Sewa Bhavan, R.K. Puram, New Delhi, R/o 2-504, Millenium Apartments, Sector-9, Dwarka, New Delhi-110077.
3. C.P. Jain, Deputy Director, CEA, Sewa Bhavan, R.K. Puram, New Delhi, R/o SFS Flat No. 152, Pocket 1 & 2, Sector-3, Dwarka, New Delhi-110078.
4. Krishna Kant Neema, Deputy Director, CEA, Sewa Bhavan, R.K. Puram, New Delhi, R/o 1112, Sector-4, R.K. Puram, New Delhi-22.
5. Bhojraj Alwani, Deputy Director, CEA, Sewa Bhavan, R.K. Puram, New Delhi, R/o H-390, Vikaspuri, New Delhi-110018.
6. M. Siva Kumar, Executive Engineer, NRPC, CEA, New Delhi, R/o 490, Sector-3, R.K. Puram, New Delhi-110022.
7. Gopinadhan Pillai, Executive Engineer, NRPC, CEA, New Delhi, R/o 532(A), Sector-3, R.K. Puram, New Delhi-110022.
8. Thomas K. Chacko, Deputy Director, RPSO(S), CEA, Bangalore-560034, R/o D-9, CPWD Officers Hostel, Domlur, Bangalore-560071.
9. S.P. Abraham, Deputy Director, RIO(S), CEA, Chennai-600006, R/o No.30, 4th Cross, Dhnalakshmi Layout, Vidyaranyapura P.O., Bangalore-560097.
10. Koduru Swami Babu, Executive Engineer (Gen-II), PHPA-I, Lobesa, Bhutan, R/o N-232, Sector-8, R.K. Puram, New Delhi-110022.

.... Applicants

(through Sh. A.K. Ojha, Advocate)

Versus

1. Secretary, Department of Power, Ministry of Power, Shram Shakti Bhavan, New Delhi-110001.
2. Chairman, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
3. Secretary, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
4. Sanjay Jain, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
5. Prakash Khichi, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
6. Sandeep Malik, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
7. Sanjay Kumar Rathi, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
8. K. Seshadri, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
9. N.R.L.K. Prasad, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.

10. Ms. Manjari Chaturvedi, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
11. Raghavendra Pratap Singh, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
12. Shyam Kejriwal, Deputy Director, Central Electricity Authority, EPRC, Regional Power Survey Office (East), 201, CGO Complex, A-Wing, DF Block, Sector-I, Salt Lake City, Kolkatta-700064.
13. Subhro Paul, Deputy Director, Central Electricity Authority, ERPC, Regional Power Survey Office (East), 201, CGO Complex, A-Wing, DF Block, Sector-I, Salt Lake City, Kolkatta-700064.
14. Sunil Kumar Jain, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
15. Praveen Kamal, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.
16. Ms. Shivani Sharma, Deputy Director, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi-110066.

..... Respondents

(through Sh. Subhash Gosain, Dr.Ch. Shamsuddin Khan and Sh. T.C.Gupta, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

These two OAs are identical and are, therefore, being disposed of by this common order.

2. The applicants were recruited as Technical Assistants/Technical Officers in the Central Electricity Authority. They were subsequently promoted to the post of Assistant Director Grade-II after completion of 08 to 10 years of service. They have stated that the post of Assistant Director Grade-II is a feeder post for Junior Time Scale of Central Power Engineering (Group-A) Service (CPES). According to them, they were eligible for promotion to Junior Time Scale of CPES (Group-A) for vacancies from 1996 onwards. The Recruitment Rules for this service provide for filling up the post of Junior Time Scale i.e. Assistant Director Grade-I/Assistant Executive Engineer, 50 % by promotion and 50% by direct recruitment. The CPES Rules, 1990 were in operation till 20.04.2005. They were, however, superseded by

CPES (Group-A) Rules, 2005 w.e.f. 21.04.2005. The applicants have alleged that with mala fide intention to deny benefit of promotion to them and to favour the direct recruits, the respondents filled the vacant post of direct recruitment in the year 2002 and 2004. The 50% quota of departmental promotion was, however, not filled by them. Thereafter, applying CPES Rules, 2005, the respondents arbitrarily clubbed vacancies of the panel years 2002-2003 to 2004-2005 and held the DPC. Thereafter, the seniority of the departmental promotees was depressed by interpolating direct recruits of 2005 Examination with the promotees. The respondents ignored the fact that all these direct recruits had joined service in the year 2007 & 2008. Even then, some of them have been shown senior to the applicants in the seniority list issued on 18.05.2010. The applicants earlier filed OA No. 355/2011 to challenge the impugned seniority list. The same was, however, withdrawn with the leave of the Court on 28.11.2011 to file a fresh O.A. impleading the necessary parties. Now, the present O.A. is being filed to challenge the seniority list dated 18.05.2010 and seeking the following relief:-

“(i) To quash the seniority of respondents Sanjay Jain, Prakash Khichi, Sandeep MaLIK, Sanjay Kumar Rathi, K. Seshadri, N.R.L.K. Prasad, Ms Manjari Chaturvedi, Raghavendra Pratap Singh, Shyam Kejriwal, Subhro Paul, Sunil Kumar Jain, Praveen Kamal and Ms. Shivani Sharma fixed at sL. No. 2,3,5,7,9,11,13,15,17,19,21,25 and 27 respectively in the seniority list dated 18.05.2010.

(ii) To quash the clubbing of all vacancies of previous years with the panel year 2005 with regard to applicant Departmental promotes and assign the applicants their seniority starting from the year 2002 to 2005.

(iii) To direct the Respondent no.I & II to determine the seniority of the applicants on the basis of quota-rota based on year wise panel and assign the seniority to the applicants on the basis of CPES Group A rules 1990 and DOPT OM dated 03rd July 1986 read with OM dated 03.03.2008 by applying correct quota-rota rule. According Thomas K Chako, K K Neema, S. Suryanaryan and G Pillai may be granted Seniority of year 2002 and the remaining applicant may be assigned seniority of 2003.

(iv) To direct Respondent No. 1 and 2 to interpolate/rotate the applicants with the direct recruits respondents of 2002 and 2003 as prayed in para 8.3 above by applying correct quota-rule.

(v) To direct Respondents No.1 and 2 to interpolate/rotate the direct recruits who have joined service in 2007 and 2008 with the departmental promotees of 2007 and 2008 respectively for seniority and not with the applicants who joined service in 2006.

(vi) To pass such other orders as may be deemed fit and proper in the circumstances of the case in the interest of justice."

3. The applicants have contended that the Seniority Rules provide that the inter-se seniority of direct recruits and promotees has to be fixed in accordance with DoP&T OM's dated 03.07.1986 read with O.M. dated 03.03.2008. According to these OM's, the relative seniority of direct recruits and promotees shall be determined according to rotation of vacancies between direct recruits and promotees in the ratio of quota reserved for each category. In O.M. dated 03.03.2008, it has been laid down that both in the case of direct recruits as well as the promotees for the purpose of fixation of seniority the year of availability shall be the actual year of appointment after declaration of results/selection. The respondents have, however, ignored this O.M. while fixing the seniority besides clubbing vacancies of 2002, 2003, 2004 and 2005 as far as promotees were concerned. Thus, the direct recruits, who joined in the years 2007/2008 have been interpolated with departmental promotees who were actually promoted on 23.03.2006 after clubbing of vacancies as mentioned above. The applicants have relied on several judgments of Hon'ble Supreme Court to say that a direct recruit cannot claim seniority from a date when he was not even borne in the service. The judgments relied upon by the applicants are as follows:-

(a) **Suraj Parkash Gupta and Others Vs. State of J&K**, AIR 2000 SC 2386.

(b) **Mohd. Ismail Vs. State of Bengal**, AIR 1974 SC 2554

- (c) **AFHQ/ACSOS,SO(DP) Association and Ors. Vs. UOI & Ors.**, (CA) No. 1384 of 2008).
- (d) **N.K. Chauhan Vs. State of Gujrat**, AIR 1977 SC 251.
- (e) **A. Janardhan Vs. UOI**, 1983, AIR 769.
- (f) **Uttaranchal Vs. Dinesh Kumar Sharma**, (2007) 1 SCC 683.

Further, they have contended that clubbing of vacancies for departmental promotion was in violation of law laid down by Hon'ble Supreme Court in the case of **UOI Vs. N.R. Banerjee**, (1997) 9 SCC 287, paras 8, 9, 10 & 11 of which read as under:-

"8. Crucial date for determining eligibility has been dealt with thereunder. By an amendment brought w.e.f. July 19, 1989, it is stated that relevant dates for determining eligibility of the officers for promotion would be, where A.C.Rs. are written calendar yearwise, 1st July of the year and where the A.C.Rs. are written financial yearwise, 1st October of that year. The other details prescribed in Chapter IV are not material for the purpose of this case. Part 6.4.1 deals with preparation of yearwise panels by D.P.C. which reads as under;

"Where for reasons beyond control, the DPC could not be held in year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures :

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

(ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a 'Select list' by placing the select list of the earlier year above the one for the next year and so on;

9. It would, thus, be seen that the authorities are required to anticipate in advance the vacancies for promotion on regular basis including long term deputation posts and additional posts created and then to take the action plan in finalising the A.C.Rs. preparation of the select list and place necessary material before the D.P.C. for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years.

10. D.P.C. in the present case was directed to consider the cases of all the eligible candidates within the zone of consideration so that there will not be any heart burning among the eligible persons whose claims have been withheld for consideration for promotion to the higher post. In *S.K. Rizvi & Ors. vs. Union of India & Ors.* [1993 Supp. (3) SCC 575] the mandatory duty of the preparation of the select list of the officers for promotion to the All India Services has been indicated in para 35 of the judgment at page 605 thus:

"We, therefore, hold that preparation of the select list every year is mandatory. It would subserve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction".

11. It would thus be seen that the claims of the candidates eligible have to be considered for promotion objectively and dispassionately, with a sense of achieving many-fold purpose (1) affording an opportunity to an incumbent to improve excellence, honesty, integrity, devotion to public duty; (2) inculcating discipline in service; (3) afford opportunity to every eligible officer within zone of consideration for promotion to higher post or officer; and (4) ensuing that the Committee regularly meets and considers their claim objectively, impartially with high sense of responsibility in accordance with the procedure and finalisation of the list in advance so as to fill up vacancies arising in the year from the approved panel without any undue delay. They are the salutary principles, purpose and the policy behind the above rules and the Government should follow them."

4. In their reply, the respondents have stated that the DPC for filling up the post meant for promotion for the year 2001-2002 was held on 08.11.2002 and promotion orders were issued in January, 2003. A proposal for holding DPC for the year 2002-2003 and 2003-2004 was forwarded to the UPSC on 16.11.2004 for filling up the post meant for promotion quota. A total of 15 posts for the year 2002-2003 and 07 posts for the year 2003-2004 were proposed to be filled. Thereafter, as per the operative Scheme relating to Optimization of Direct Recruitment, each cadre authority was required to review vacancies meant for direct recruitment and restrict recruitment to 1/3rd of direct recruitment vacancies or 1% of the sanctioned strength of the Ministry/Department,

whichever was less. On reviewing status as per this Scheme, 32 posts of Assistant Director, Grade-I/AEE pertaining to the years 2000-2001 to 2003-2004 were abolished vide order dated 09.02.2005. After abolition of these posts, the cadre strength was reduced to 158. In view of the same, it was felt that no posts under promotion quota could then be filled as the number of promotee officers at that time exceeded the available promotion quota of 79 officers. Accordingly, UPSC were requested on 21.03.2005 to treat the DPC proposal sent earlier as withdrawn.

5. Separately, UPSC advised in the case of promotion to the grade of Chief Engineer in CEA that vacancies for the year 2004-2005 and 2005-2006 may be clubbed and a combined proposal be sent for their consideration. It was felt that the same situation would arise in the case of AD-I/AEE also. Hence, it was decided to club the vacancies for the year 2004-2005 and 2005-2006 even for this grade and a combined proposal was sent to UPSC.

6. We have heard both sides and have perused the material on record. The first contention of the applicants that the respondents had clubbed the vacancies starting from 2002-2003 to 2005-2006 has been refuted by the respondents. According to them, the last DOC was held on 08.11.2002 for promotion for the year 2001-2002. There was no clubbing up of vacancies in this DPC. Hence, we do not find anything wrong with the same. Thereafter, the respondents have stated that due to abolition of 32 posts of AD-I/AEE, there was an excess of officers in the promotee quota, hence no promotion was necessary for the years 2002-2003 and 2003-2004. Thus, the contention of the applicants that vacancies for all these years were clubbed by the respondents to favour the direct recruits has been refuted by the respondents. We do not find any

reason to doubt the veracity of the assertion made by the respondents in this regard.

7. The respondents have, however, admitted that they had clubbed together the vacancies for the year 2004-2005 and 2005-2006 because UPSC had advised them to do so in the case of promotion to the grade of Chief Engineer. We have further called for the minutes of the DPC held in UPSC on 06.01.2006 to consider promotion to AD-I/AEE. We find from the minutes, which have been taken on record that a combined panel for the year 2005-2006 was drawn by UPSC in which the applicants herein figured. In our opinion, DPC while drawing a combined panel as mentioned above, acted in violation of the DoP&T Instructions in this regard. Thus, in Swamy's Compilation on Seniority and Promotion in Para 6.4.1 of Chapter-3 the following is mentioned:-

“6.4.1 Where for reasons beyond control, the DPC could not be held in a year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should following the following procedures:-

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.
- (iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on.”

According to these Instructions, the DPC was required to draw year-wise panel. In the instant case, since vacancies pertained to both years 2004-2005 and 2005-2006, the DPC should have segregated the vacancies and drawn panel for each vacancy year separately. It was possible that some of the applicants herein would have then fallen in promotion quota of vacancy year 2004-2005

rather than the year 2005-2006 that has been assigned to them. Such promotees would also be enbloc senior to direct recruits of 2005 examination who will be interpolated with promotees of 2005-2006 panel year.

8. The other contention of the applicants that the respondents acted in violation of DoP&T OM dated 03.07.1986 read with O.M. dated 03.03.2008 while fixing seniority in the seniority list issued on 18.04.2010, in our opinion lacks merit. This is because following the judgment of Hon'ble Supreme Court in the case of **UOI & Ors. Vs. N.R. Parmar & Ors.**, JT 2012(12)SC 99, the O.M. dated 03.03.2008 has been withdrawn by DoP&T by Instructions issued on 04.03.2014 ab initio. Hence, the applicants cannot place reliance on the aforesaid O.M. Moreover, in the same case, Hon'ble Supreme Court has laid down that if the process of direct recruitment for vacancies arising in a particular year is initiated in that year then the direct recruits so appointed against those vacancies shall for the purpose of seniority be placed in that very year, even if their result had been declared in a subsequent year and they have joined in a year after that. This is because Hon'ble Supreme Court held that candidates cannot be allowed to suffer for delay in the recruitment process. When the aforesaid judgment is applied to this case, it is found that the private respondents were direct recruits of 2005 examination and were recruited against vacancies of that year intimated to UPSC in that very year. This is clear from Para 4.7 of the reply filed by the respondents (page-199 of the paper-book) wherein it is clearly mentioned that the direct recruits arrayed in this O.A. as private respondents were selected through Engineering Service Examination, 2005 even though they joined the service in the year 2007/2008. In view of the aforesaid, we do not find any infirmity in the respondents interpolating such direct recruits with promotees of panel year 2005-2006 for the purpose of determining their seniority in accordance with the O.M. dated 03.07.1986 of DoP&T. This case is squarely

covered by the judgment of Hon'ble Supreme Court in **N.R. Parmar's** case rather than the judgments relied upon by the applicants.

9. We, therefore, allow this O.A. partly. We direct that a review DPC be conducted segregating promotee quota vacancies for the year 2004-2005 and 2005-2006 and drawing year-wise panel as prescribed in DoP&T Instructions. Thereafter, inter-se seniority be determined between direct recruits and promotees in accordance with the observations made above. Seniority list dated 18.04.2010 would stand modified accordingly. This entire exercise be completed in three months from the date of receipt of a certified copy of this order. No costs.

10. A copy of this order be placed in both the OA files.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member(A)

/Vinita/