

**Central Administrative Tribunal
Principal Bench**

OA No.3849/2010

New Delhi, this the 25th day of April, 2017

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

1. Kulwant Singh Rooprai
S/o Late T. S. Rai
R/o H-3/12, Malviya Nagar,
New Delhi.
2. Naresh Kumar Thukral
S/o Late Nand Lal
R/o E-291, Greater Kailash-I,
New Delhi.
3. R. M. R. Parti
S/o Shri O. B. Pant
R/o 370, Malinium Apartments,
Sector-18,
Rohini.
4. A. K. Jain
S/o B. S. Jain
R/o E-15/110, Sector-B,
Rohini, Delhi.
5. G. J. Chandekar
S/o Shri Jnagai Ji
R/o A-13 park,
Khanpur, New Delhi.
6. Subhash Chandra Arora
S/o Late Ram Ji Das
R/o C-9/9803, Vasant Kunj,
New Delhi.
7. Anil Kumar Gulati
S/o Diwan Chand Gulati
R/o EA-161, Tagore Garden,
Najafgarh Road, New Delhi.

.... Applicants.

(By Advocate : Shri Ashish Nischal)

Versus

1. Union of India
Through Secretary
Ministry of Information and Broadcasting
New Delhi.
 2. S. P. Prasad
Surveyor of Works,
C/o Superintendent of Surveyor of Works,
6th Floor, CGO Complex,
Soochna Bhawan,
New Delhi 110 003.
 3. Dinesh Kumar Jain
Executive Engineer (Civil)
54, Shamlal Road,
Near Bharat Bhawan,
Bhopal 462002.
 4. Dinesh Kumar Mishra
Executive Engineer (Civil)
Civil Construction Wing
All India Radio,
Soochna Bhawan,
CGO Complex,
New Delhi 110 003.
 5. Raj N Sharma
Executive Engineer (Civil)
Civil Construction Wing
All India Radio
Soochna Bhawan,
CGO Complex,
New Delhi 110 003.
- Respondents.

(By Advocate : Ms. Anita Pandey)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

The dispute in the present OA relates to the seniority of Executive Engineers (Civil). Brief facts relevant for the purposes of present controversy are noticed hereunder.

2. The applicants in this Application are all diploma holder Engineers. They were recruited as Junior Engineers (Civil) in 1973 and were later promoted as Assistant Engineers (Civil) in due course of time. Presently, they are working as Executive Engineers (Civil) in the respondents Ministry in Civil Construction Wing having been so promoted on regular basis. The private respondents are degree holders. They were working as Assistant Engineers and have been promoted as Executive Engineers (Civil). Promotion to the post of Executive Engineer (Civil) is governed by the Recruitment Rules, namely, All India Radio, Civil Construction Wing (Group ‘A’ and Group ‘ B’ posts) Recruitment Rules 1995 as notified vide G.S.R. No.316 dated 23.05.1995. The relevant extract of the Recruitment Rules is reproduced hereunder:-

(1)	(10)		(12)
6. Executive Engineer (Civil)/Surveyor of Works (Civil)/ Engineer Officer to Chief Engineer (Civil	2 years for Assistant Engineers	Promotion failing which by transfer on deputation	<p>Promotion: Assistant Executive Engineer (Civil) with 5 years regular service in the grade and Assistant Engineers (Civil)/Assistant Surveyor of Works (Civil)/Engineer Assistant to Superintending Engineer/Superintending Surveyor of Works (Civil) having degree in Engineering with 8 years regular service in the grade and those having diploma in Engineering with 11 years service in the grade.</p> <p>Note 1: The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the requisite qualifying service in the respective grade/post.</p> <p>Note 2 : The total number of posts in the grade of Executive Engineer to be filled by the</p>

			<p>diploma holder Assistant Engineers at any point of time shall not exceed 33-1/3% of the sanctioned strength in the grade of Executive Engineers (Civil).</p> <p>Note 3 : Where Juniors who have completed their qualifying eligibility service are being considered for promotion they are not short of the requisite qualifying/eligibility service by more than one year and have successfully completed their probation period.</p> <p>Transfer on Deputation: Officers under the Central Government:</p> <p>(a) (i) Holding analogous posts on regular basis; or</p> <p>(ii) with 5 years regular service in posts in the scale of Rs.2200-4000 or equivalent; and</p> <p>(iii) with 8 years regular service in posts in the scale of Rs.2000-3500 or equivalent; and</p> <p>(b) Possessing following qualifications and experience:</p> <p>(i) degree in civil engineering from a recognised university or equivalent.</p> <p>(ii) 5 years professional experience.</p> <p>The departmental officers in the feeder category who are in the direct line of promotion shall not be eligible for appointment on deputation.</p> <p>Similarly, deputationists shall not be eligible for consideration for appointment by promotion. (Period of deputation including period of deputation is another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the Central Government shall ordinarily not to exceed 3 years.)</p> <p>The maximum age limit for appointment by transfer on deputation shall be not exceeding 56 years as on the closing date of receipt of application.</p>
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The applicants and the private respondents were working as Assistant Engineers (Civil), i.e., same cadre with different

qualifications. The cadre being same they have a common seniority list at the level of Assistant Engineer. The seniority list of Assistant Engineers (Civil) was circulated vide Circular dated 30.04.2002 (Annexure A-7). The applicants figure at serial numbers 61, 47, 45, 55, 77, 59 & 67 whereas private respondents figure at serial numbers 74, 78, 80 & 123 of the common seniority list. Promotions to the post of Executive Engineer were made vide Order No.7/97-B(D) Annexure A-3 dated 30.01.1997. In the said promotion order, some of the respondents were shown above the applicants. It is stated that the official respondents invited objections to the draft seniority list of Executive Engineers. The applicants filed their objections to the draft seniority list of Executive Engineers. The objections were forwarded by the EA to Superintending Engineer (Civil), MH Civil Construction Wing of All India Radio to the Director General, All India Radio vide communication dated 01.02.2002 (Annexure A-4). The official respondents notified the seniority list of Executive Engineers (Civil) of the Civil Construction Wing of All India Radio as on 01.03.1998 vide circular dated 12.03.2003 (Annexure A-1). In this seniority list, private respondents who were degree holder Assistant Engineers have been placed *en bloc* over the applicants who were diploma holder Assistant Engineers and were senior to the private respondents in the feeding cadre of Assistant Engineers. It is this seniority which is impugned in the present OA.

3. Aggrieved of the aforementioned seniority list, the applicants filed OA No.2796/2005 challenging the seniority position of Executive Engineers (Civil). The said OA was, however, withdrawn with liberty to file a better one on 10.07.2008. The Tribunal vide its order dated 10.07.2008 disposed of the said OA with the following directions:-

“With liberty to the applicant to withdraw this OA and file a fresh one, this OA stands disposed of. The point of limitation will not come in the way of the applicant. No costs.”

The applicants thereafter filed OA No.1996/2008 seeking quashment of the seniority list of Executive Engineers (Civil). This OA was also withdrawn with liberty to file a fresh one as is evident from the order dated 09.07.2010 passed in OA No.1996/2008. The said order reads as under:-

“After arguing for some time, Mr. Nischal, counsel representing the applicant, seeks to withdraw this Original Application with permission to file fresh one on the same cause of action wherein, in addition to the pleas raised in present Original Application, separate quotas of degree holders and diploma holders shall also be mentioned indicating that the vacancies for which seniority ought to have been fixed as per quota(s) had arisen for the two categories in the same year.

2. With leave and liberty, as asked for, present Original Application is dismissed as withdrawn.”

It is under these circumstances that the present OA has been filed seeking following reliefs:-

- “a. Quash the impugned seniority list of Executive Engineers (Civil) as on 01.03.1998, published on 12.03.2003;
- b. recast the seniority of Executive Engineers (Civil);
- c. grant all consequential benefits, including non functional junior administrative grade of Rs.12,000/- to 16,500/- to the applicants;
- d. call for the relevant records relating to the DPC held for the year 1994-1995.”

4. We have heard learned counsel for the parties at length.

5. The grievance of the applicants is that they were senior to the private respondents in the feeding channel of Assistant Engineers having common seniority list, however, on promotion from the feeding channel of Assistant Engineer to the post of Executive Engineer (Civil), the official respondents have notified the impugned seniority list wherein the private respondents have been placed *en block* over the applicants. The applicants have been relegated to lower positions in the seniority list, even though they should have been ranked above the private respondents in view of their higher ranking in the seniority list in the feeding channel of Assistant Engineers.

6. Counter affidavit has been filed by the official respondents. The first objection raised to the present OA is that the draft seniority list in the cadre of Executive Engineer (Civil) was circulated vide Circular dated 06.03.1998 inviting objections in respect to discrepancy

or the corrections, if any, in the seniority list up to 15.04.1998. It is stated that the applicants had not produced any evidence having made any representation against the said draft seniority list within the stipulated period. It is further stated that a DPC was held on 07.01.1997, and only 5 officers holding degree were promoted for the vacancies of 1994-95 under the Recruitment Rules of 1998 wherein no provision was made for promotion of the diploma holder Assistant Engineers to the grade of Executive Engineers. It is further stated that the remaining unfilled 25 vacancies were carried forward for the year 1995-96 wherein the amended RRs, as notified in July 1995, were applied. During the period 1995-96, 10 vacancies were earmarked for degree holders and 15 for diploma holders. The DPC recommended a panel of 6 officers against the quota of degree holders and 15 officers against the quota of diploma holders. According to the respondents, diploma holders became eligible for promotion only after the combined notification dated 09.07.1995 came into effect. The degree holders had acquired eligibility prior to the notification of the amended RRs and the vacancies were also available before the amended rules came into existence. It is further mentioned in response to para 4.6 of the OA that 7 degree holders have been placed *en blok* senior to the diploma holder Executive Engineers. It is further averred that the UPSC forwarded the panel of promoted officers vide reference dated 07.01.1997 recommending that the panel for

officiating promotion to the post of Executive Engineer (Civil) should consist of officers mentioned in the order stated in Annexure A-II, and on the basis of advise of the UPSC, the promotion order was issued.

7. The applicants have filed rejoinder reiterating the averments made in the OA.

8. It is admitted position amongst the parties that there was a common seniority list at the level of Assistant Engineers comprising of degree holder Assistant Engineers and diploma holder Assistant Engineers. Earlier, 1988 Rules as notified vide Notification dated 28.03.1998 were in vogue. These rules were substituted by 1995 Rules as notified vide Notification dated 23.05.1995. At the time of promotions in the year 1997, 1995 Rules were in operation. Under the 1995 Rules, promotions to the post of Executive Engineer (Civil) were made from the following sources:-

- (i) Assistant Executive Engineers (Civil) with five years regular service in the grade and
- (ii) Assistant Engineers (Civil)/Assistant Surveyor of Work (Civil)/Engineer having degree in Engineering with eight years regular service in the grade.

- (iii) Assistant Engineers (Civil)/Assistant Surveyors of Work (Civil) having diploma in engineering with 11 years of service in the grade.

Assistant Executive Engineers (Civil) constitute a separate cadre whereas Assistant Engineers (Civil) degree holders and diploma holders constitute a common cadre of Assistant Engineers. In Note 2 appended to 1995 Recruitment Rules in Col.12, it is provided that the total number of posts in the grade of Executive Engineer to be filled by the diploma holder Assistant Engineers at any point of time shall not exceed 33- 1/3% of the sanctioned strength in the grade of Executive Engineer (Civil). Note 3 further stipulates that where juniors have completed their qualifying eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than one year and have successfully completed their probation period.

9. From the consideration of aforesaid provisions, we notice that even though the degree and diploma holder Assistant Engineers constitute one integrated cadre for purposes of their further promotion to the post of Executive Engineer, however, different qualifying service has been prescribed for degree and diploma holders respectively. A degree holder with eight years qualifying service in the grade of Assistant Engineer is eligible to the post of

Executive Engineer (Civil) whereas a diploma holder with eleven years of service in the grade of Assistant Engineer would become eligible for promotion to the post of Executive Engineer (Civil). Note 3 further grants relaxation in respect to those officers who are senior in the feeding channel but are deficit in qualifying service up to one year for their consideration for promotion to the grade of Executive Engineer.

10. In view of different qualifying service prescribed for degree/diploma holders, the administrative department forwarded two separate seniority lists of degree and diploma holders for promotion to the grade of Executive Engineers to the UPSC to enable them to make promotions on the basis of eligibility. The UPSC on consideration of the eligibility and suitability recommended the names of the eligible candidates for promotion by separate recommendations. The respondents on that basis notified the seniority list vide circular dated 30.04.2002 showing the degree holders as senior to the diploma holders. Objections have been filed by the applicants who were diploma holders and were shown junior in the draft seniority list. The final seniority list dated 12.03.2003 has been notified by the respondents without recording reasons on the representation of the diploma holder engineers.

11. In the impugned seniority list, seniority of the applicants and private respondents has undergone change. In Annexure A-6 giving

the seniority position of the private respondents and applicants, the private respondents have been shown from Sl. No.25 to 28 whereas the applicants are listed at Sl. No.36, 33, 32, 34, 39, 35 & 38 respectively. The applicants have relied upon the Consolidated Orders on Seniority dated 03.07.1986 (Annexure A-5) which are general instructions for determining the seniority. Para 2.2 of the aforesaid instructions is relevant for purposes of determination of the seniority in the promotion cadre. The said paragraph reads as under:-

“2.2 Where promotions are made on the basis of selection by a DPC, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the Committee. Where promotions are made on the basis of seniority, subject to the rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where, however, a person is considered unfit for promotion and is superseded by a junior such persons shall not, if he is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons who had superseded him.”

From the perusal of the aforesaid seniority rules, it is evident that where promotions are made on the basis of selection by DPC, seniority of such promotees in the promotional cadre shall be in the order of recommendation by the committee. However, where promotions are made on the basis of seniority subject to rejection of unfit, the seniority of persons considered fit for promotion at the

same time shall be the same as the relative seniority in lower grade from which they are promoted.

12. From the perusal of the Recruitment Rules, we find that promotion to the post of Executive Engineer (Civil) is not by selection, meaning thereby, that such promotion is based upon seniority cum fitness rule. Only unfits are to be weeded out, otherwise promotion has to be made on the basis of seniority and eligibility in the scenario of the present recruitment rules. Undisputedly, different qualifying service is prescribed for promotion to the grade of Executive Engineer from the feeding channel of Assistant Engineers on the basis of their qualifications as noticed hereinabove. Forwarding two separate lists of degree holders and diploma holders was only for the purpose of convenience of the UPSC to enable them to determine the eligibility of the degree/diploma holders on the basis of their qualifying service and not for determining their *inter se* seniority in any manner. For the reasons best known to the UPSC while recommending the names of the candidates for promotion they adhered to two separate panels notwithstanding the fact that the feeding channel had common seniority list.

13. Respondent No.1 on receipt of the separate panels issued promotion orders in total contravention of the *inter se* seniority of degree and diploma holders in the feeding cadre as on 30.01.1997 and

subsequently the draft seniority list of Executive Engineers carried the same error. Objections/representations filed by the applicants and details forwarded by the Superintending Engineer have not been considered, resulting in issuance of the final seniority list dated 12.03.2003 (Annexure A-1) impugned in this Application.

14. On repeated query by the bench from learned counsel for the respondents, as to on which basis, the degree holders have been placed *en block* over and above the diploma holders ignoring their seniority in feeding cadre, we did not receive any logical response except that the degree holders having requisite less qualifying service, i.e., eight years for promotion have been ranked senior to the diploma holders, no other submission has been made justifying their seniority over and above the applicants (diploma holders).

15. Government of India, Department of Personnel and Training, Officer Memorandum No.22011/7/86-Estt. (D) dated 03.07.1986 (Annexure A-5) and subsequent OM dated 03.03.2008 were considered by the Hon'ble Supreme Court in the matter of ***Union of India and ors. etc. vs. N. R. Parmar and Ors.***, and the instructions issued vide OM dated 03.03.2008 were quashed approving the instructions dated 03.07.1986. Thus, 1986 instructions would hold the field for the purposes of determining the seniority. These instructions clearly prescribe maintaining of seniority of the feeding channel in case of promotions based upon the rule of seniority except ignoring

the unfit. Since the Assistant Engineers both degree and diploma holders had common and integrated seniority in the feeding cadre of Assistant Engineers, on their promotion in the same process, the only requirement was consideration of the eligibility, i.e., the qualifying service. Promotions were to be made applying the rule of seniority. Respondent No.1 could not have tempered with the seniority in the feeding channel once the degree holders and the diploma holders were found fit for promotion. Their seniority in the lower grade was required to be carried forward. In the present case, the rule of seniority has been violated without any lawful justification. Objections in the counter affidavit that the applicants have not placed on record any proof of their having objected to the draft seniority is belied from Annexure A-4 whereby the representation of the applicants against draft seniority list dated 02.01.2002 were forwarded on 01.02.2002, i.e., within one month. From the impugned seniority list, we find that the objections of the applicants have not been considered.

16. In view of the above circumstances, this Application succeeds. The impugned seniority list dated 12.03.2003 (Annexure A-1) is hereby quashed and set aside. Respondent No.1 is directed to refix the seniority of the applicants in the grade of Executive Engineer (Civil) on the basis of their *inter se* seniority in the feeding cadre of

Assistant Engineer within a period of three months from the date of receipt of certified copy of this order.

17. In the facts and circumstances of the case, no order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/