

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.194/2019
M.A. No.490/2019
M.A. No.599/2019

Reserved on : 14.02.2019

Pronounced on : 15.02.2019

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

1. Mr. Nikesh Kumar,
S/o Mahesh Prasad Singh,
R/o Flat No-86, DDA Staff Quarter,
Ber Sarai-110016.
2. Mr. Chhanveer,
S/o Sher Singh,
O/A-S.E.D-5, DDA Office Complex,
Nelson Mandela Road,
Vasant Kunj-110070.
3. Mr. Prashant Kaushik,
S/o B.D. Kaushik,
R/o 309, Bara Thakur Dwara,
Shadhpura, New Delhi-110032.
4. Mr. Bhupendra Kumar,
S/o Parmanand Pra
R/o T-07/603, Paras, Near Noida Expressway,
Noida, U.O-201301.
5. Mr. Rupendra Ashok,
S/o O.P. Ashok
R/o SED-1, East Zone, DDA.
6. Mr. Harish Mukhtar,
S/o Mukhtar Ahmad,
R/o A-103, Fakruddin Apartment,
Plot No. 18, Sector-10
Dwarka-110075.
7. Mr. Prashant Vijay,
S/o Prabhu Dayal Vijay,
C-7/17 SDA DDA Staff Qtr
Hauz Khas, New Delhi-110016.Applicants

(By Advocate: Shri R.A. Sharma with Shri Aseem Nayyar)

Versus

1. The Vice Chairman,
Delhi Development Authority
B Block, 1st Floor, Vikas Sadan, INA,
New Delhi.
2. The Commissioner (Pers)
Delhi Development Authority
B Block, 1st Floor, Vikas Sadan, INA,
New Delhi.
3. The Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
4. Sh. Manohar,
S/o Sh. Doongar Ram,
R/o Flat No. 342, Plot-6,
Sector-A-10, Narela, Delhi-110040.
5. Sh. Alok Lohiya,
S/o Sh. Prakash Lohiya,
R/o 139, DDA SFS Flats,
PKT-1, Sector-6, Dwarka,
New Delhi-110075

...Respondents

(By Advocates: Ms. Sriparna Chatterjee for R-1 & R-2
Shri Brij Shankar for Shri R.K. Sharma for R-3
Shri M.K. Bharwaj for R-4 and R-5)

ORDER

By Shri V. Ajay Kumar, Member (J)

The applicants, 7 in number, who were originally appointed as Junior Engineers (Civil) and presently working as Assistant Engineers (Civil) filed the OA seeking the following reliefs:-

“(a) Direct the respondents to comply with the judgment passed by the Hon’ble Supreme Court in Civil Appeal Nos. 17869-17870/2017 (Arising out of special leave petition (C)

Nos. 19807-19808/2012) Civil Appeal Nos. 17902-17905/2017 etc.

(b) Direct the Respondents take into consideration that the retrospective regularization could be granted as per the Recruitment Rules mentioned in the Memorandum No. 22011/5/86- Estt(D) dated 10.04.1989 of DoP&T

(c) Direct the Respondents to produce the relevant records in respect of service Rules and relevant Establishment orders which is followed by the Respondents for perusal of this Hon'ble Tribunal.

(d) Direct the respondents to clarify and determine the inter se seniority of the Applicants in view of the principles enunciated.

(e) Pass such other and further orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case".

2. In short, the applicants grievance is that the respondents are proceeding to effect promotions to the next post of Executive Engineer (Civil) by considering the cases of certain persons who acquired their Degrees in Engineering, by way of Distance Education Mode, though the Engineering Degrees obtained through Distance Education Mode were declared as invalid by the Hon'ble Apex Court in **Orissa Lift Irrigation Corporation Ltd. Vs. Rabi Shankar Patro and Others** (2018) 2 SCC 298.

3. It is also the grievance of the applicants that in spite of the representations made by the applicants, the respondent-DDA is not fixing the seniority list of Assistant Engineers (Civil) who were promoted from the year 2012 onwards, like the applicants and others.

4. On 17.01.2019, while issuing notices to the respondents, this Tribunal observed that any promotions, if made to the post of Executive Engineer (Civil) are subject to the result of the OA. Again, on 31.01.2019, after the notices were served on the respondent-DDA, this Tribunal directed the respondents that they shall not give effect to the orders of promotion, for the persons, whose names were shown at Sl.Nos.1, 5 and 11, i.e., Manohar, Alok Lohiya and Lokendra Singh Rajpurohit, respectively, and who were working as Assistant Executive Engineer (Civil). Out of the said three persons, Shri Manohar and Shri Alok Lohiya got themselves impleaded as private respondents No.4 and 5 vide order dated 05.02.2019 in M.A. No. 491/2019.

5. The respondent-DDA has filed its counter in the OA and the private respondents No.4 and 5 have filed a short reply in the OA and both of them also filed M.A. 599/2019 and M.A. No.490/2019, respectively, seeking vacation of the interim orders dated 17.01.2019 and 31.01.2019.

6. Shri R.A. Sharma, learned counsel appearing for the applicants filed rejoinder to the counters filed by the respondents.

7. As agreed by all the counsels, the main OA along with pending MAs were taken up for final disposal.

8. Heard Shri R.A. Sharma with Shri Aseem Nayyar, the learned counsel for the applicants and Ms. Sriparna Chatterjee, the learned counsel for respondents No.1 and 2, Shri Brij Shankar for Shri R.K. Sharma, the learned counsel for respondent No.3 and Shri M.K. Bhardwaj, the learned counsel for private respondents No.4 and 5.

9. At the outset, it is not in dispute that none of the juniors of the applicants in the category of Assistant Engineer (Civil) were being considered for promotion to the post of Executive Engineer (Civil). Further, it is also not in dispute that even if the promotion of the private respondents or any other person whose name was empanelled for promotion to the post of Executive Engineer (Civil) is quashed, no applicant will fall within the zone of consideration or that they get any chance of consideration for promotion to the post of Executive Engineer, through the impugned promotion process.

10. In view of the above referred admitted position, the interim orders are liable to be vacated.

11. Insofar as the prayer of the applicants that as the respondents are not finalising the seniority list of the applicants and others who were appointed as Assistant Engineers (Civil) from the year 2012 onwards, in spite of their repeated representations, Ms. Sriparna Chatterjee, the learned counsel appearing for the respondents-DDA would submit that the DDA has already passed a speaking order

vide Annexure R-6 dated 17.01.2019 stating that the promotions made to the post of AE (Civil)/AE(E/M) since 1991 onwards are under review and the seniority has been finalised for the empanelment year 2010-11, and whenever the promotions from 2011-12 onwards are reviewed by review DPC, the seniority of such persons including the applicants will be finalised accordingly. In view of the categorical reply given by the respondent-DDA, in reply to the representations made by the applicants, on 17.01.2019 (according to the applicants the said letter came to their knowledge for the first time after service of the counter in the OA to them), the said prayer of the applicants becomes infructuous. If they are still having any grievance against the said reply, the applicants are at liberty to avail their remedies, in accordance with law.

12. Insofar as the prayer of the applicants that the respondent-DDA is not taking any action against those employees, who obtained their Engineering Degrees through Distance Education Mode, in terms of the judgment of the Hon'ble Apex Court **Orissa Lift Irrigation Ltd.** (supra), it is for the respondent-DDA to take appropriate action in accordance with the settled principles of law. If it is the case of any of the applicants that action of the respondent-DDA in promoting any ineligible person as Executive Engineer (Civil), affecting their rights, then the applicants are at liberty to avail their remedies against such an action of the

respondent-DDA at the appropriate time and also specifically impleading such ineligible person as party to the OA.

13. With regard to the submission of the applicants that three of the Assistant Executive Engineers whose names were empanelled by the DPC, without there being any seniority list showing their names in the category of Assistant Executive Engineers, since the respondent-DDA filed the tentative seniority list as well as the final seniority list of Assistant Engineers wherein the names of those 3 persons belonging to the Assistant Executive Engineer Cadre were included, we do not find any merit in the said submission made by the applicants, more so, when the applicants who are the Assistant Engineers have no claim over the slots meant for the Assistant Executive Engineers in the promotion of Executive Engineers, as per rules, is unsustainable and untenable

14. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed and the interim orders are vacated.

15. Pending MAs, if any, also stand disposed of, accordingly. No costs.

(A.K. BISHNOI)
Member (A)

(V. AJAY KUMAR)
Member (J)

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