

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

R.A. No.107/2018

In

O.A. No.333/2013

Reserved On: 25.02.2019

Pronounced on: 18.03.2019

Hon'ble Mr. V. Ajay Kumar, Member (J)

Hon'ble Ms. Aradhana Johri, Member (A)

Sandeep Kapoor
S/o Late Shri S.K. Kapoor
R/o F-29, Double Storey,
Lodhi Colony, New Delhi-110003.Review Applicant

(By Advocate: Shri A.K. Behera with Shri R.K. Jain)

Versus

1. Govt. of NCT of Delhi through
Chief Secretary,
Delhi Secretariat,
ITO,
New Delhi.
2. Delhi Jal Board,
Through its Secretary,
Delhi Sarkar,
Varunalaya, Phase II,
Karol Bagh,
New Delhi.
3. Chief Executive Officer,
Delhi Jal Board,
Delhi Sarkar,
Varunalaya, Phase II,
Karol Bagh,
New Delhi.
4. The Member Administration,
Delhi Jal Board,
Delhi Sarkar,
Varunalaya, Phase II,

Karol Bagh,
New Delhi.

5. Delhi Subordinate Services Selection Board,
Through its Secretary,
Institutional Area,
Behind Karkardooma Courts Complex,
Shahdara, Delhi.
6. Yeshpal Gupta,
s/o late Shri Rattan Lal Gupta,
R/o E-202, Pandav Nagar,
Delhi 110091.
7. Yash Prakash,
s/o Shri Jagbir Singh,
R/o 73A, Kundan Nagar,
Delhi 110092.
8. Rakesh Dutt Yogi,
S/o late Shri Amar Singh,
R/o 9/7527, Street No.4,
Amar Mohalla, Old Selampur,
Delhi 110031.
9. V.K.Gupta,
S/o Shri K.L.Gupta,
Presently resident of
C-8/263, Yamuna Vihar,
Delhi 110053.

. Respondents

(By Advocates: Shri P.P. Khurana, Sr. Counsel with Ms. Sakshi Popli with Mr. D.P. Pande, counsel for R-2 to R-4
Shri Raman Duggal, Counsel with Shri Arun Kumar Panwar and Shri Akshay Chaudhary, Counsel for R-6 to R-9)

ORDER

By Mr. V. Ajay Kumar, Member (J)

O.A. No. 333/2013 was filed by 4 applicants, who are the private respondents No.6 to 9 in the instant RA, while they were working as Assistant Engineers (E&M) under the 2nd respondent-Delhi Jal Board (in short "DJB"), seeking the following reliefs:-

“a) Quash the Office Orders No.221 dt.17.10.2012 Delhi Jal Board (Annexure A/1) appointing Respondent No.6 against direct recruitment quota post of Assistant Engineer (E&M) in the pay scale of 6500-10500 (pre-revised), below Shri K.C.Meena and above Shri Islam Khan w.e.f. 28.10.1999;

b) Quash the office order No.231 dated 26.10.2012 issued by Delhi Jal Board (Annexure A/2) further promoting Respondent No.6 to the post of Executive Engineer in PB-3 of Rs.15,600-39,100 plus grade pay of 6600/- and usual allowances on ad hoc basis;

c) pass such further order or orders as it may deem fit and facts and circumstances of the case.”

2. The review applicant in the instant review was the 6th respondent in the OA, wherein the applicants have challenged Office Orders No.221 dated 17.10.2012 and No.231 dated 26.10.2012 whereunder the review applicant/6th respondent was originally appointed to the post of AE (E&M) and thereafter promoted to the grade of Executive Engineer respectively.

3. Before the grounds raised by the review applicant are considered, it is necessary to note the brief facts of the case, as narrated in the judgment dated 10.05.2018 in OA No.333/2013, which are as under:-

“3. Brief facts of the case, which are relevant for the purpose of deciding the controversy and are not disputed by either party, are as follows:

3.1 Applicant nos.1, 2 and 4 are Diploma Holders in Engineering, and applicant no.3 is a Degree Holder in Engineering. Applicant no.1 joined the erstwhile Delhi Water Supply & Sewage Disposal Undertaking (DWSSDU), now Delhi Jal Board (DJB), as a Junior Engineer on 23.1.1981. Applicant no.2 joined the DWSSDU as a Junior Engineer on 26.10.1981. Applicant no.3 joined the DWSSDU as a Junior Engineer (E&M) on 11.10.1983. Applicant no.4 joined the DWSSDU as a Junior Engineer on 27.1.1981.

3.2 Respondent no.6, a Degree Holder in Engineering, joined the DWSSDU as a Junior Engineer on 14.9.1989.

3.3 The Recruitment Rules provide 50% of the vacancies in the grade of Assistant Engineer (E&M) to be filled by promotion and the remaining 50% by direct recruitment.

3.4 In the year 1992-93, two vacancies in the grade of Assistant Engineer (E&M) occurred, i.e., one under General (UR), and the other under SC category. In the year 1994-95, one vacancy in the grade of Assistant Engineer (E&M) occurred under General (UR) category. In the year 1995-96, one vacancy in the grade of Assistant Engineer (E&M) occurred under OBC category. Thus, a total 5(five) vacancies in the grade of Assistant Engineer (E&M) arose during the years 1992-93, 1994-95 and 1995-96.

3.5 The erstwhile DWSSDU (now DJB), by circular dated 13.3.1996 (Annexure A/3), invited applications from eligible persons for filling up 5 posts (UR-02, SC-01, OBC-01 and ST-01) available in the grade of Assistant Engineer (E&M) under direct recruitment quota during the years 1992-93, 1994-95 and 1995-96 as aforesaid. Subsequently, the erstwhile DWSSDU, by its letter dated 7.10.1997 (Annexure A/4), also sent a requisition to the respondent-DSSSB to conduct the selection process for filling up the aforesaid 5 posts (UR-02, SC-01, OBC-01, and ST-1) of Assistant Engineer (E&M) falling under direct recruitment quota. Accordingly, the respondent-DSSSB issued Advertisement, dated 31.7.1998, inviting applications from eligible persons for selection and appointment to the said five posts of Assistant Engineer (E&M), the breakup of which was UR-02, SC-01, OBC-01, and ST-1, falling under direct recruitment quota.

3.6 Applicant no.3 and respondent no.6, who are Degree Holders in Engineering, applied for selection and appointment to the grade of Assistant Engineer (E&M) on direct recruitment basis. After conducting the selection process, the respondent-DSSSB, by letter dated 28.5.1999 (Annexure A/7), recommended five candidates in order of their merit to the respondent-DJB for their appointment against the said five vacancies in the grade of Assistant Engineer (E&M) falling under direct recruitment quota.

3.6.1 The names of applicant no.3 and of respondent no.6 were not included in the list of candidates recommended for appointment to the grade of Assistant Engineer (E&M) against the said five vacancies falling under direct recruitment quota during the years 1992-93, 1994-95 and 1995-96.

3.7 All the five persons recommended by the DSSSB were duly appointed as Assistant Engineers(E&M) against the five vacancies falling under the direct recruitment quota by September 1999.

3.8 Respondent no.6 filed Civil Writ Petition No.401 of 2000 before the Hon'ble High Court of Delhi, challenging the aforesaid selection. Respondent no.6 also filed CM No.2288 of 2000 in Civil Writ Petition No.401 of 2000, seeking a direction to the respondent-DJB not to fill up any post of Assistant Engineer (E&M) by way of promotion. The interim order of stay passed on CM No.2288 of 2000 was subsequently vacated by the Hon'ble Court on 27.3.2000.

3.9 While CWP No. 401 of 2000 was pending, respondent no.6 again filed WP (C) No. 2931 of 2000 before the Hon'ble High Court of Delhi, seeking a direction to the respondent-DJB to fill up six posts of Assistant Engineer (E&M) falling under direct recruitment quota as per the recommendation received from the respondent-DSSSB pursuant to the selection conducted on the basis of the aforesaid Advertisement dated 31.7.1998.

3.10 The learned Single Judge of the Hon'ble High Court of Delhi, by order/judgment dated 25.5.2000, declined the applicant's claim raised in WP (C) No. 2931 of 2000. LPA No.333 of 2000 filed by the private respondent no.6 against the learned Single Judge's order dated 25.5.2000 was rejected by the Division Bench of the Hon'ble High Court of Delhi, vide order dated 24.9.2001.

3.11 Respondent no.6 again filed CM No.12831 of 2001 in CWP No.401 of 2000 praying for a direction to the respondent-DJB to fill up 6 posts of Assistant Engineer (E&M) pursuant to the selection process conducted by the respondent-DSSSB, vide Advertisement (ibid). The Hon'ble High Court, by order dated 9.10.2001, dismissed CM No.12831 of 2001.

3.12 While so, the applicants were promoted to the grade of Assistant Engineer (E&M) on 2.3.2009, 2.3.2009, 3.5.2012 and 2.3.2009 respectively.

3.13 The Hon'ble High Court of Delhi, vide order dated 21.5.2009, dismissed CWP No.401 of 2000 for non-prosecution.

3.14 The Hon'ble High Court of Delhi, by order dated 3.3.2010, restored and transferred CWP No.401 of 2000 to the Tribunal. Accordingly, CWP No.401 of 2000, on transfer, was registered as TA No.22 of 2010 on the file of the Tribunal.

3.15 The coordinate Bench of the Tribunal disposed of TA No.22 of 2010 by order dated 11.10.2011, which is reproduced below:

“This transfer application (TA for short) was originally filed before the Hon'ble High Court of Delhi as CWP No.401 of 2000. On conferring jurisdiction on service matters of the respondents-Delhi Jail Board has been transferred to this Tribunal.

2. Today when the matter was taken up for consideration the learned counsel for the parties have submitted that the issue involved in this case is being considered by the Mediation Committee appointed by the respondents. The applicant's case has also been considered by the said Committee on 6.9.2011. According to them, the Committee would submit its recommendations very soon for the final approval of the competent authority.

2. Since the matter is already under the consideration of the Mediation Committee, we only direct the respondents to ensure that the Mediation Committee shall take appropriate decision in the matter at earliest but in any case, within one month from the date of receipt of a copy of this order. Therefore, the competent authority shall consider the same and take decision within another six weeks and the same shall be communicated to the applicant. It goes without saying that the applicant will have the liberty to challenge the decision of the respondent so taken, if so advised, through appropriate proceedings.

3. The O.A. is accordingly disposed of. No costs."

3.16 CP(C) No. 355 of 2012 filed by respondent no.6 for alleged non-compliance of the Tribunal's order dated 11.10.2011 (ibid), was disposed of by the Tribunal, vide order dated 18.10.2012 which is reproduced below:

"This CP has been filed for the alleged non-implementation of the orders of this Tribunal dated 11.10.2011 in TA No.22/2010. Today when the matter was taken up, learned counsel for the respondent-Delhi Jal Board, Shri Nishakant Pandey, has produced a copy of office order no.221 dated 17.10.2012 (copy taken on record) issued pursuant to the aforesaid order. Learned counsel for the applicant has submitted that he is satisfied with the aforesaid order.

2. In terms of the aforesaid position, this CP is closed. Notices issued to the respondents are discharged."

3.17 The Office Order No.221 dated 17.10.2012(Annexure A/1), referred to by the Tribunal in its order dated 18.10.2012 (ibid), is reproduced below:

"Whereas Hon'ble Central Administrative Tribunal vide its order Dated 11.10.11 & 08.05.12 in the matter CP (C) 355/2012 vide TA No.22/2012, has directed DJB to take appropriate decision in the matter and communicate to the petitioner Shri Sandeep Kapoor.

Whereas the matter was examined by the Departmental Mediation Committee vide its minutes dated 01.12.11 and it was found the representation of Shri Sandeep Kapoor is justified for his appointment to the post of AE (E&M)

against UR vacancy under direct Quota as per DOPT guidelines.

Whereas the matter was again examined in consultation with DSSSB and the same was placed before the competent authority for his appointment to the post of AE (E&M) w.e.f. 28.10.99 notionally subject to furnishing of an Undertaking that he will not prefer any claim regarding financial benefits etc. retrospectively.

Whereas consequent upon the approval by the competent authority Shri Sandeep Kapoor AE (E&M) on CDC is hereby appointed to the post of AE(E&M) in the pay scale of Rs.6500-10,500/- (pre-revised) w.e.f. 28.10.99 notionally. His placement will be just below Shri K.C.Meena s/o Shri R.K.Meena at S.No.26A & S.No.03A above Shri Islam Khan whose name appears at S.No.04 of seniority list of AE(E&M) circulated vide No.DJB/AC(T)/AE(E&M)/SEN/09-65083 to 65236 dated 09.07.09 vide No.DJB/AC(T)/AE(E&M)/SEN/2012-78546 to 712 dated 25.07.2012 respectively.”

3.18 Thereafter, the respondent-DJB promoted respondent no.6 to the grade of Executive Engineer (E&M) on *ad hoc* basis in PB-3 of Rs.15,600-39,100/- plus grade pay of Rs.6600/-, vide office order No.231 dated 26.10.2012 (Annexure A/2)”.

4. This Tribunal, after hearing both sides, allowed the OA and set aside the appointment order of the respondent No.6 as AE(E&M) and the promotion order to the post of Executive Engineer and the operative portion of the same read as under:-

“15. The applicants were admittedly senior to the private respondent no.6 in the grade of Junior Engineers. They were also promoted to the grade of Assistant Engineers (E&M) on 2.3.2009, 2.3.2009, 3.5.2012 and 2.3.2009 respectively, i.e., much prior to the issuance of the impugned order dated 17.10.2012 (Annexure A/1) by the respondent-DJB appointing the private respondent no.6 to the grade of Assistant Engineer (E&M) on direct recruitment basis with effect from 28.10.1999. In view of this appointment, the private respondent no.6 became senior to the applicants in the grade of Assistant Engineers (E&M), and by virtue of his seniority in the grade of Assistant Engineers (E&M), the private respondent no.6 was promoted to the grade of Executive Engineer on *ad hoc* basis with effect from 26.10.2012 [vide order dated 26.10.2012 (Annexure A/2)]. Absence of any objection/challenge to the aforesaid appointment and *ad hoc* promotion of the private respondent no.6 by any of the persons senior to the applicants in the

grade of Junior Engineers/Assistant Engineers (E&M) would not disentitle the applicants or would extinguish their right to challenge the same when their interests/service prospects were adversely affected thereby. Therefore, we have found no substance in the contention of the respondent-DJB and private respondent no.6 that when none of the persons senior to the applicants in the grade of Junior Engineer/Assistant Engineer (E&M) ever objected to the appointment of the private respondent no.6 to the grade of Assistant Engineer (E&M) under direct recruitment quota with effect from 28.10.1999 as well as to his *ad hoc* promotion to the grade of Executive Engineer with effect from 27.10.2012, and when such appointment and *ad hoc* promotion of the private respondent no.6 do not adversely affect their interest, the applicants have no *locus standi* to challenge respondent no.6's appointment to the grade of Assistant Engineer (E&M) under direct recruitment quota with effect from 28.10.1999 and *ad hoc* promotion to the post of Executive Engineer on 26.10.2012. We have also found no substance in the contention of the respondent-DJB and private respondent no.6 that when applicant no.1 has already retired from service, and when applicant nos. 2, 3 and 4 have been promoted to the grades of Assistant Engineer (E&M) and of Executive Engineer, the issue has become academic and the present proceedings have become infructuous and, therefore, the applicants should not be allowed to pursue this O.A. as a public interest litigation which is not maintainable in service matters before the Tribunal.

16. The vacancy in the grade of Assistant Engineer (E&M) under direct recruitment quota which arose during 1997-98 and was not notified in the circular dated 13.3.1996(ibid) and in the advertisement dated 31.7.1998(ibid) ought to have been filled by the respondent-DJB through a fresh selection process conducted by the respondent-DSSSB. Merely because the private respondent no.6 fulfilled the eligibility criteria laid down in the Recruitment Rules, and because the said vacancy was meant for General (UR) category as per the reservation policy/roster, the respondent-DJB ought not to have appointed the private respondent no.6 against the said vacancy on the basis of the additional panel purportedly prepared by the respondent-DSSSB in the year 1999 which had already spent its force and also on the recommendation of the Mediation Committee which was not authorized and empowered to make any recommendation for appointment to the grade of Assistant Engineer (E&M) on direct recruitment basis under the Recruitment Rules.

17. The decisions relied upon by the respondent-DJB and private respondent no.6, being distinguishable on facts, do not go to support the case of the respondent-DJB and private respondent no.6.

18. No other point worth consideration has been pressed by the learned counsel for the parties.

19. In the light of our above discussions, we hold and declare that the impugned Office Orders No.221 dated 17.10.2012 (Annexure A/1) and No.231 dated 26.10.2012 (Annexure A/12) are unsustainable and liable to be quashed. Accordingly, the same are quashed, and the respondent-DJB is directed to give all consequential service benefits to the applicants within three months from today.

20. Resultantly, the O.A. is allowed. No costs”.

5. Aggrieved with the aforesaid order in the OA, the 6th respondent in the OA filed the instant RA.

6. Heard Shri A.K. Behera with Shri R.K. Jain, the learned counsel for the review applicant, Shri P.P. Khurana, the learned Sr. counsel with Ms. Shakshi Popli and Shri D.P. Pande, the learned counsel for respondents No.2 to 4 and Shri Raman Duggal, the learned counsel with Shri Arun Kumar Panwar and Shri Akshay Chaudhary, the learned counsel for respondents No.6 to 9 and perused the pleadings on record.

7. Shri A.K. Behera, the learned counsel for the review applicant, inter alia, raised the following ground in support of the review application:-

It is his case that the DSSSB did not communicate the additional panel to the DJB, while communicating the main panel of 5 candidates selected and recommended for appointment against the 5 notified vacancies. Since in the additional panel of 5 candidates, which included the name of the review applicant/private respondent No.6 in the OA at Sl.No.1, there is no irregularity or illegality in appointing the review applicant after the said report of the Selection Board saw the light of the day in the

year 2012. The original applicants in the OA, who were not selected in the selection of the year 1999, cannot have any objection for appointment of the review applicant/respondent No.6 who stood at Sl.No.1 in the reserved panel.

8. On the other hand, Shri P.P. Khurana, the learned Sr. counsel and Shri Raman Duggal, the learned counsel appearing for the respondents in the review while drawing our attention to various observations made by this Tribunal while allowing the OA, submits that this Tribunal rejected identical contentions of the review applicant, by giving categorical reasons and hence, there is no error apparent on the face of the record and the instant RA is not maintainable.

9. We find force in the submission made on behalf of the respondents in the review. As observed by this Tribunal in its order in the OA identical pleas raised by the applicant in W.P. (C) No.2931/2000 was dismissed on 25.05.2000 by the Hon'ble High Court of Delhi. Even the LPA No.333/2000 filed therein was also dismissed vide order dated 24.09.2001. Even the CM No.12831/2001 filed in CWP No.401/2000 was also dismissed by the Hon'ble High Court of Delhi on 09.10.2001. The review applicant through the instant RA is trying to reargue the OA, which is not permissible as per the settled principles of law.

10. In the circumstances and for the aforesaid reasons, the RA is dismissed being devoid of any merit. No costs.

(ARADHANA JOHRI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS