

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/202/2014

New Delhi, this the 20th day of August, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Prabhat Kumar Srivastava, JE (Civil)
S/o Sh. N.K. Srivastava,
R/o 93-D, Pkt. U&V, Shalimar Bagh, Delhi
 2. Karamvir, JE (Civil)
S/o Sh. Banwari Lal
R/o VPO Mundela Khurd, New Delhi
 3. Neeraj Kalia, JE (Civil)
S/o Sh. V.P. Kalia,
R/o G-14, Swaroop Nagar, New Delhi
 4. Deepak Kumar Saxena, JE (Civil)
S/o Late Sh. O.P. Saxena,
R/o WZ- 280, Sri Nagar,
Rani Bagh, Delhi
- ...Applicants

(By Advocate: Sh. M.K. Bhardwaj)

VERSUS

1. The Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi
 2. The Director General,
Central Public Works Department,
Nirman Bhawan, New Delhi
- ...Respondents

(By Advocate: Sh. Rajeev Sharma)

ORDER (Oral)**Justice L. Narasimha Reddy, Chairman:**

The applicants joined the service of Central Public Works Department (CPWD) as Draftsman. They became eligible to participate in the Limited Departmental Competitive Examination (LDCE) for promotion to the post of Junior Engineer (JE) (Civil) for the year 2002.

2. The respondents sought permission from the Department of Personnel and Training (DoP&T) to fill 650 vacancies of JE (Civil). In accordance with the prevailing practice, the DoP&T has taken into account, the surplus staff that is available for deployment and has given no objection for filling the relevant number of vacancies. In the process, the NOC was given by the DoP&T to the CPWD for filling 403 vacancies of JEs, setting apart 247 vacancies for deployment of surplus staff. 3% of the vacancies are earmarked for appointment through LDCE. The applicants participated in the examination and they were issued offer of appointment in May, 2003.

3. The draft seniority list for the post of JE (Civil) was published in 2011. The names of the applicants were also reflected therein. The applicants were shown immediately after the redeployed surplus staff and above the direct recruits. They

submitted individual representations stating that they are entitled to be placed above the redeployed surplus staff. The final seniority list was published on 6.09.2012. The request made by the applicants in their representation was not acceded to and their position remained the same, as reflected in the draft seniority list.

4. This OA is filed with a prayer to declare the action of the respondents in not fixing the seniority of the applicants as JE (Civil) above the JEs appointed in 2003 through surplus cell as illegal, arbitrary and unjustified and to direct the respondents to fix the seniority of the applicants by applying the principles contained in the judgement of the Hon'ble Supreme Court in **Union of India Vs. N.R. Parmar**, 2012 (11) SCALE 437.

5. The applicants contend that the deployment of surplus staff should not be detrimental to them and though the JEs so deployed can be treated as a part of the batch, they cannot be placed above them.

6. The respondents filed the counter affidavit opposing the OA. They stated that as against the request made for NOC in respect of 650 posts of JEs for the year 2002, the permission was accorded to fill 403 posts through direct recruitment and 247 were earmarked for absorption of surplus staff. It is stated

that the applicants were placed immediately after the surplus staff in accordance with the principles contained in the relevant OM.

7. The applicants filed rejoinder disputing the contents of the counter affidavit.

8. We heard Shri M.K. Bhardwaj, for the applicants and Shri Rajeev Kumar, for the respondents.

9. Firstly, the cause of action for the applicants to file this OA arose on account of publication of final seniority list for the post of JE on 6.09.2012, which is in respect of as many as 2989 JEs all over India. However, the applicants did not choose to assail the seniority list, at least to the extent, it is detrimental to them.

10. Secondly the relief claimed in the OA reads as under:

- “(i) to declare the action of respondents in not fixing the seniority of applicants as JE (Civil) over and above the JE appointed in 2003 through surplus cell as illegal, arbitrary and unjustified and issue appropriate directions to fix the seniority of applicants by interspacing them with the JEs available in 1997-98 to 2001-02.
- (ii) to direct the respondents to fix the seniority of applicants as per the judgment of Hon’ble Supreme Court dated 27.11.2012 in case of UOI Vs. N.R. Parmar & ors.
- (iii) to direct the respondents to fix the seniority of applicants with reference to the availability of vacancies and following the ratio prescribed in the RRs.

(iv) to allow the OA with cost.”

11. In the seniority list dated 6.09.2012, the applicants are placed below the surplus staff. If their request is acceded to, they have to be placed above 247 surplus JEs. That can be done only if those JEs are made parties to the OA. However, for reasons best known to them, the applicants did not implead the surplus JEs, against whom they claimed the relief, as parties. The two aspects mentioned above have their own adverse impact upon the OA.

12. Even otherwise, it is not in dispute that for the year 2002, steps were initiated for appointment of 650 JEs and out of that, the NOC was issued by the DoP&T only for 403 vacancies. The 247 vacancies were earmarked for deployment of surplus staff.

13. Para 1 and 2 under the heading “PRELIMINARY SUBMISSIONS” of the counter affidavit read as under:

- “1. That in March, 2002, Central Public Works Department herein after called CPWD was granted permission to fill up 650 vacancies for the post of Junior Engineer (Civil) herein after called JE (C) and 150 vacancies for the post of Junior Engineer (Electrical) hereinafter called JE (E) for the recruitment year 2000-01 and 2001-02 (Annexure – R1).
2. According to DoP&T O.M. No.2.8.2001-PIC dated 16.05.2001 under the guidelines given vide para 2.4, the vacancies finally cleared by the Screening Committee will be filled up after obtaining a ‘No Objection Certificate’ from Surplus Cell of the DoP&T. Therefore, NOC was sought from DoP&T as per rules vide OM dated 28.03.2002 (Annexure – R2). Surplus Cell of DoP&T vide their letter No.2/31/2002-CS.III

dated 30.04.2002 had given clearance to fill up 403 vacancies for the post of JE (C) out of the requisition of 650 vacancies and 99 vacancies for the post of JE (E) out of the requisition of 150 vacancies through other permissible channels. Balance 247 vacancies for the post of JE (C) and 51 vacancies for the post of JE (E) were withheld by DoP&T for absorption of Surplus Staff against them. They had directed that these vacancies should not be filled without obtaining a specific clearance from this Department and intimated that suitable surplus staff would be nominated soon against them separately (Annexure – R3).”

14. According to the Recruitment Rules (RRs), 97% of the vacancies are to be filled through the process of direct recruitment and 3% through LDCE. The applicants took part in the LDCE and were successful therein. The respondents have placed the JEs appointed through LDCE immediately after the surplus staff and after directly recruited JEs. Though the applicants claim the relief that they must be placed *en bloc* above the surplus staff, they are not able to cite any rule in this behalf.

15. Reliance upon the judgment of the Hon’ble Supreme Court in N.R. Parmar (supra) is equally misplaced. The reason is that in the said judgment, the Hon’ble Supreme Court specifically dealt with the rights of the direct recruits as against the promotees, of a given batch. The dispute arose on account of delay in conducting the departmental examination on the one hand and completing the process of direct recruitment, on the other, leading to imbalance. The direct recruits, who came to be appointed later, used to be assigned seniority after the promotees not only of their batch, but also

of subsequent batches. Nowhere in the judgment, we find any mention about the rights of the persons appointed through LDCE.

17. We do not find any merit in the OA. Accordingly, we dismiss the same. There shall be no order as to costs.

MA pending, if any, shall also stand disposed of.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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