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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1357/2003

New Delhi this the 29th day of April, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vinod Garg,
A-19, Chandan Nagar,
Ghaziabad-201011 (UP).

-Applicant

(By Senior Counsel Sh. P.P. Khurana with Sh. Amit Anand,
Advocate)

-Versus-

Union of India through the
Director General (Works),
& Ex-Officio Secy, Central
Public Works Department,
Nirman Bhawan, New Delhi-110011. -Respondent

(By Advocate Ms. R.O. Bhutia, proxy for Sh. K.C.D.
Gangwani)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' notice dated 3.5.2002, notification dated 17.3.2003 whereby in pursuance of Limited Departmental Competitive Examination (LDCE) 2002 Junior Engineers (Civil and Electrical) have been found eligible for consideration for promotion to the posts of Assistant Engineer (Civil and Electrical). A direction has been sought to work out the number of LDCE quota regular vacancies for the year 1999 till 2003 to be filled through LDCE-2002.

2. Applicant joined as Junior Engineer (Civil) in the Central Public Works Department (CPWD). As per Central Engineering Group 'B' Service Recruitment Rules 1997 50% of the vacancies are to be filled through DPC and 50% by LDCE from amongst regular JEs who have completed four years regular service on a specified cut off date. Although the first LDCE was conducted by the UPSC in 1978 after 1997, the

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same were conducted by the CPWD. In pursuance of the direction of the Tribunal in another OA 2239/98 dated 15.2.99 vacancies have been filled up finally yearwise and for this LDCE-1999 was held. The applicant was not promoted in LDCE-1999 and the issue regarding LDCE-1999 is sub judice before the High Court of Delhi.

3. Vide Notification dated 3.5.2002 LDCE-2002 was notified for yearwise vacancies for the year 2001-2002 numbering 58-73 respectively. Applicant appeared in the same but could not be promoted as for the year 1999 and 2000 nil vacancies have been reported and for 2002-2003 vacancies have been excluded from the purview of LDCE whose result was declared on 17.3.2003.

4. Learned senior counsel, Shri P.P.Khurana appearing alongwith Shri Amit Anand contends that the respondents had not worked out the vacancies for LDCE-2002 for AE(Civil) as vacancies for the year 1999-2000 was reported as Nil and there is miscalculation pertaining to the vacancies of 2000-2001 and 2001-2002. Referring to the vacancies of 1999, it is stated keeping in view the superannuation, voluntary retirement and those who died 11 vacancies for the year, 1999-2000 had been sought reported whereas vacancy 2000-2001 shortfall is of 12 for the year 2001-2002, the shortfall is of 10. According to the senior counsel, 33 vacancies have not been calculated and short reported, which has deprived the applicant of his rightful promotion.

5. Shri H.K.Gangwani, senior standing counsel appeared for the respondents on the last date and on his request, the matter was adjourned to 27.4.2004 to facilitate the respondents to respond to the contentions put forth by applicant. Today, Ms. R.O.Bhutia appeared for respondents and instead of replying to the contention sought further time to seek instruction though it was made clear on the last date that the explanation should come forward as the matter is part heard.

6. As the contention of short reporting of 33 vacancies has not been rebutted, the same is deemed to be accepted by the respondents despite accord of reasonable opportunity and notice of the proceedings, no material has been put forward to controvert the above submission. Accordingly the contention put forward by the learned senior counsel for want of rebuttal is deemed to be accepted. We are, therefore, of the considered view, that, as for the year 1999-2000, there were vacancies as per the uncontroverted record and there is short reporting of vacancies for the years 2000-2001 and 2001-2002, the contention of the applicant is to be accepted.

7. In so far as the objection as to non-impleadment of the necessary affected parties is concerned, as we are deciding the principle of law, i.e. short reporting of the vacancies is concerned, persons, if at all affected shall be put to notice by the respondents, before taking any adverse against them.

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8. In the result, for the forgoing reasons, OA is disposed of with the direction to the respondents to recalculate the vacancies as observed above and consider the case of the applicant alongwith other similarly circumstance, who had participated in the LDCE-2002. If the applicant makes the grade on the basis of the increased vacancies, he shall be considered for promotion as regular AE(Civil). In that event, he shall be entitled to all consequential benefits. The aforesaid direction shall be complied with by the respondents within three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member(J)

V.K. Majotra

(V.K. Majotra)
Vice-Chairman(A)

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29.4.04