

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CP NO. 252/2005
OA NO. 2263/2003

This the 13th day of November, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. V.K.AGNIHOTRI, MEMBER (A)

1. Sh. Rautan Singh,
S/o Sh. Ram Singh
R/o MCF-A-49, Bharat Singh Colony,
Ballabgarh, Distt. Faridabad,
Haryana.
2. Sh. Kishan Kumar
S/o late Sh. Devi Sharan,
R/o Gali No.15, House No.148,
Amrit Puri-B Garhi,
New Delhi.


Working as Enquiry clerks
CPWD in O/O Ministry of Urban
Development & Poverty Alleviation
Nirman Bhawan
New Delhi.

((By Advocate: Sh. A.K.Mishra)

Versus

1. Sh. B.N.Mazoomdar
Director General of Works
CPWD Ministry of Urban
Development & Poverty Alleviation
Nirman Bhavan
New Delhi.
2. Sh. Rambir Singh
Superintending Engineer
(Co-ordination Circle Civil)
CPWD, East Block-I
R.K.Puram,
New Delhi.
3. Sh. Permanand
Executive Engineer,
PWD Dev. No.IV,
P.S.Colony, Hauz Khas,
New Delhi.

(By Advocate: Sh. S.N.Sharma)



ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

This Tribunal by order dated 7.5.2004 in OA-2263/2003 had disposed of the OA with the following directions:-

"21. In view of the above, OA is disposed of with a direction to the respondents that as and when the next vacancy in the grade of Mate becomes available, the applicants will be considered for being absorbed in preference to juniors and freshers as per rules. This may be done within a period of 2 months from the date of receipt of a copy of this order. No costs."

2. Present application has been filed by the applicant complaining that the above said order has not been complied with rather the respondents have disobeyed it and have not regularized the service of the applicant against the next vacancy in the grade of Mate in preference to his juniors and freshers. He has contended that the applicant are adopting discriminatory policy against the applicant since the posts were created for regularization of the service of Sh. Raj Bhan, Sh. Chander Bhan and Ms. Sheela Rani in the year 2000 and 2002 but the similar treatment has not been given to the applicant.

3. A show cause notice was issued to the respondent who has submitted reply to the show cause notice in which the allegations made by the applicant are rebutted and it is denied that any junior or fresher has been appointed or regularized in the grade of Mate. It is submitted that Dy. Director EC-X in the office of Director General (Works) vide his letter dated 27.5.2004 sought the vacancy position of the Mate from Superintending Engineer, Coordination Circle (C). Letter dated 31.5.2004 also sought clarification from DG (W) office as to how to adjust one Sh. Kitabudulah who had been placed at the disposal of SE Coordination Circle (E) on the closure of Exhibition Division No.I because there is no vacancy of Mate in CPWD and PWD is unable to adjust the post of Mate on administrative reasons as the post of mate is already declared as 'dying category' vide letter dated 29.1.88. They further allege that Engineer-in-Chief, PWD vide letter dated 23.6.2004, copy of which is annexed with the reply had advised the DGW that in view of the fact that the category of Mate has been declared as 'Dying Category' there is

no question of calling for the vacancy position to fill up the vacant post of Mate. In view of above, it is not possible to adjust the applicant as Mate in the department.

4. This Tribunal on 7.4.2006 after considering the plea made by the respondents observed that since the defence, as disclosed in the reply, was not pleaded in the OA, the Tribunal would not go behind the order and the order has to be implemented on its own tenor and the respondent have to comply with unless it is challenged or stayed by the appropriate forum and further time of 2 weeks was granted to the respondent to comply with the direction.

5. Thereafter the respondent sought time to implement the order which was granted. On 17.8.2006 again the respondent submitted a copy of the order dated 10.2.2005 whereby it was stated that no vacancy was available in the category of Mate within Delhi or outside. Then it was pointed out that respondent has taken time to implement the order. Applicant had also pointed out that there were 2 vacancies, which had occurred in the year 2004 on the retirement of two persons but the same have not been filled up. In the reply it is stated that Finance Ministry had not allowed them to fill up those vacancies. The respondents then were directed to file the complete affidavit disclosing ⁱⁿ vacancies which had occurred after passing of the order in the OA and the reason as to why those vacancies, if any, were not filled up and also the seniority position of the applicant vis-à-vis seniors and juniors who got absorption in the matter.

6. The respondents thereafter filed an affidavit of Sh. Subash Chandra, Executive Engineer in terms of order dated 17.8.2006 in which it is stated that no vacancy is available for the applicant. Applicant still insisted that the vacancy was there and has referred to the letter of the Director of Administration dated 25.5.2006 which had stated that the appointment letter may be issued to the applicant by utilizing vacancies concluded by the Screening Committee in the year 2003-2004. Counsel again sought time to file a response which has been filed. In the affidavit filed by the Executive Engineer has stated that only one vacancy arose after passing of the order on 31.10.2004 due to retirement of Sh. Babu Singh, Mate but this vacancy could not be filled up as per the Ministry of Finance order dated 5.8.99 only 1/3rd vacancies could be filled up by the

department under direct recruitment quota after these are reviewed and cleared for filling up by the Screening Committee. Vacancies arose in the year 2004-2005 were also reviewed by Screening Committee but the Screening Committee did not approve filling up of any post of Mate. Approval of Screening Committee for the year 2004-05 is annexed at Annexure-C. It was further submitted that the seniority position of the applicant could not be intimated as there was no person on Hand Receipt or on casual roll on the post of Mate as on date. The date of initial engagement of Sh. Rautan Singh was as Enquiry Clerk is 7.8.85. As regards Smt. Sheela Rani, she was initially engaged on 17.11.82 as Enquiry Clerk and Sh. Raj Bhan Singh was initially engaged on 30.1.85 as Enquiry Clerk. It was submitted that they were regularized on the post of Mate on 26.9.2001 and 5.8.2002 respectively in implementation of Tribunal's order dated 13.10.2000 in OA No. 2747/99 and the order dated 24.9.2001 in OA-1870/2000 respectively. So no junior to the present applicants had been regularized in the post of Mate in the Department. It was further stated in the affidavit that two Beldars, named Sh. Deena Mehto and Sh. Suresh Prasad have been promoted to the post of Mate vide order dated 3.2.2006 and 8.2.2006 to fill up the backlog in the quota of ST category according to roster points, as per special drive conducted for this purpose by the Government.

7. We have given due consideration to the submission made and the documents submitted by the parties.

8. As noticed the direction of the Tribunal in the OA was that the applicants would be considered for absorption in the next vacancy which became available in preference to juniors and freshers as per rules. Facts which have been brought on record on behalf of the respondents in the affidavit do not show that the respondents have disobeyed this order. The direction of the Tribunal was not that the applicant would be absorbed/regularized in the grade of Mate irrespective of the fact whether the vacancies for filling up were available or not or in derogation of any administrative instruction for not filling up those vacancies. The direction was that in the next vacancy which becomes available the applicant will be considered for being absorbed in preference to

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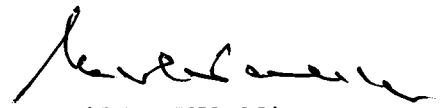
juniors and freshers. No juniors and freshers have been appointed. There is a promotion of two persons of ST quota against reserved point as per roster which cannot be treated to be appointment of fresher. After the order was passed the respondent cannot be said to have disobeyed the order of the Tribunal or in contempt. There is no merit in the contention of the applicant that the respondents have committed contempt of court and should be punished for it. It is submitted on behalf of the respondents that the order of the Tribunal will be duly complied with as and when the vacancy will become available for absorption or regularization of the applicant in the grade of Mate in accordance with the directions in preference to juniors and freshers.

9. Having regard to the above the contempt petition is dismissed. Notices discharged.



(V.K. AGNIHOTRI)
Member (A)

'sd'



(M.A. KHAN)
Vice Chairman (J)