

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2710/2003

New Delhi this the 13th day of May, 2004.

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

IN THE MATTER OF:

1. Sh. Vijender Singh,
S/o Shish Ram,
R/o 323, SFS Flats,
Pkt-10, Sec-11(Ext)
Rohini, Delhi-110 085
2. Sh. Sanjeev Kumar,
S/o Bhola Ram Sharma,
R/o 179/A Jawher Mohalla,
Fresh Bazar, Shahdara.
3. Sh. Harish Chander,
S/o Sh. P.D. Pathak,
R/o 63-A, Pocket-6,
Sec-II, DDA Flats,
Nasirpur Phase-I,
Dwarka, New Delhi.
4. Sh. Hareh Kumar,
S/o Sh. B.R. Sharma,
R/o 205, Sukhdev Vihar,
New Delhi-110 025.
5. Sh. Pawan Kumar,
S/o Late Sh. R.M. Gupta,
R/o A-229 Main Road Majlis Park,
Delhi-33.
6. Sh. Rajender Kumar,
S/o Nathu Singh,
R/o 35/A, Gali No.6,
West Vinod Nagar,
Delhi-92.
7. Sh. Umesh Kumar,
S/o Sh. Janglesh Kumar,
R/o 87, Siddarth Niketan,
Sec-14, Kaushambi, Ghaziabad,
U.P. 201 010
8. Sh. Ganesh Singh Bisht,
S/o Sh. L.S. Bisht,
R/o 39, Seemant Vihar, Sec-14,
Kaushambi, Ghaziabad,
UP 201 010.

9. Sh. Brahma Pal Singh,
S/o Late Sh. Sumer Singh,
R/o 350, Block-VI, Ashapuushp Vihar,
Sec-14, Kaushambi, Ghaziabad,
UP-201 010
10. Sh. Virendra Singh,
S/o Sh. Bhagat Singh,
R/o B-12/114, Dev Nagar,
Karol Bagh, New Delhi.
11. Sh. Rajendra Praesad Mittal,
S/o Sh. Madan Lal,
R/o C-70/7A, Gali No.2,
Bhajanpura, Delhi-53.
12. Sh. Sunil Kumar Jain,
S/o Sh. S.C. Jain,
R/o B-9/S-2, Dilshad Garden,
Delhi-95.
13. Sh. Ram Bir Sharma,
S/o Late Sh. Kali Ram Sharma,
R/o B-18/3, Gali No.3, North
Chajjurpur Shahdara, Delhi-94
14. Sh. Vijay Bhardwaj,
S/o Dr. U. S. Roy,
R/o G-523/4, Sec-Gamma-II
Greater Noida, U.P.
15. Sh. N. L. Jhamb,
S/o Sh. K. L. Jhamb,
R/o C-10/15, Sector-15,
Rohini Delhi-85.
16. Sh. Mahender Kumar Malik,
S/o Sh. R. D. Malik,
R/o 131, GH-9, Paschim Vihar,
New Delhi-110 087.
17. Sh. Mukesh Mani Mittal,
S/o Sh. A. K. Mittal,
R/o C-178 Eetend Apartments,
Mayur Vihar PH-I (Ext.),
Delhi-110 096.
18. Sh. Sanjeev Kumar,
S/o Sh. Rameshwar Dayal,
R/o IX/3126-A, Gali No.4,
Dharam Pura, Gandhi Nagar,
Delhi-31.
19. Sh. Rakesh Ahuja,
S/o Sh. Thakur Dass Ahuja,
R/o H. No. 28/B, Model Town,
Gurgaon (HR)

20. Sh.Anil Kumar Jain,
S/o Sh.Sumat Prasad Jain,
R/o 191 Deepali Pitampura,
Delhi-34.
21. Sh.Naresh Kumar,
S/o Sh.Pares Kumar,
R/o 429/30 Shuam Nagar,
Gohana Road, Sonepat,
Haryana-131 001.
22. Sh.Suresh Chand,
S/o Sh.Khusi Ram,
R/o C-545, New Ashok Nagar,
Delhi-96
23. Sh.Kishan Avtar Meena,
S/o Sh.S.L.Meena,
R/o F-161/3, Andrew Gang,
New Delhi.
24. Sh.Birendra Kumar Mishra,
S/o Sh.Ram Audh Mishra,
R/o 61B Pkt.B Dilehad Garden,
Delhi-95.
25. Ms.Kitty Joseph,
D/o Sh.Abraham Joseph,
R/o 11B/Pocket A3, Mayur Vihar,
Phase-III, New Delhi.
26. Sh.Kuldeep Krishan Dhar,
S/o Sh.P.N.Dhar,
R/o C-20, Nawada Housing Complex,
Opp.Kakrola Croessing, Uttam Nagar,
New Delhi.
27. Sh.Anil Kant Gandhi,
S/o Sh.Kundan Lal Gandhi,
R/o Flat No.7, CPWD Service Centre
Sec.B, R.K.Puram.
28. Sh.Shashi Singh,
S/o Late Sh.Shiv Kumar Singh,
R/o C-2/151, Lodhi Colony,
New Delhi
29. Sh.P.S.Chauhan,
S/o Late Sh.B.S.Chauhan,
R/o 1582, Sec-5,
R.K.Puram, New Delhi.
30. Sh.Harpinder Singh,
S/o Sh.T.P.Singh,
R/o Flat No.39, Typo-III,
Delhi College of Engineering,
Bawana Road, Delhi-42.

31. Sh.V.S.Yadav,
S/o Sh.H.S.Yadav,
R/o Vill & P.O. Badehpur,
Teh & Distt.. Gurgaon,
State-Haryana.

32. Sh.Praveen Kathuria,
S/o Sh.J.N.Kathuria,
R/o 22D Gulabi Bagh,
Delhi-7.

33. Sh.Rajesh Kumar,
S/o Sh.Houseila Praeas Yadav,
R/o 376. Ashapushp Vihar,
Sect-14, Kaushambi,
Ghaziabad, U.P-201 010.

34. Sh.Muneshwar Tyagi,
S/o Sh.Dayananad Tyagi,
R/o 1606, Sector-5,
R.K.Puram, New Delhi.

..Applicants

(By Advocate: Shri Naresh Kaushik) Versus

1. Union of India,
Through its Secretary,
Ministry of Urban Development
Nirman Bhawan, New Delhi-01.

2. Director General (Works)
C.P.W.D., Nirman Bhawan,
New Delhi-01.

3. Director Administration,
C.P.W.D., Nirman Bhawan,
New Delhi-01.

..Respondents

(By Advocate: Shri S. Rajappa)

ORDER (ORAL)

By Mr. Shanker Raju, Member (J):

Through this OA following reliefs have been prayed:

- "a) allow this Original Application
- b) quash the impugned seniority list dated 4.6.2002;
- c) quash the order No. 29/7/2002-EC-III dated 4.9.2003 and allow notional seniority to the applicants from the dates and years when vacancies arose with all consequential benefits;
- d) direct the Respondents to allow seniority to the applicants w.e.f. the dates and the years in which vacancies against which the applicant have been appointed were available and against which the applicants are shown to have been appointed vide the order dated 16.2.2001.
- e) and pass other or further orders which this Tribunal may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant".

2. Applicants who are Junior Engineers in CPWD have promotional avenues as Assistant Engineer which has two channels, i.e., promotion based on seniority and on qualifying the limited departmental competitive examination (LDCE, for short). On eligibility one is subjected to examination for further progression. Being aggrieved with non-holding of examination applicants filed OA-2239/98 which was disposed of on 15.2.99 with the following directions:

"13. In the light of the detailed discussions aforesaid and in the interest of justice and fair play, we do not think it appropriate to apply broken on the wheels of the proposed selection process. For this reason, the OAs deserves to be dismissed and we do so accordingly. However, to take care of some of the reasonable apprehensions to the applicants, it would be appropriate that while conducting the present selection

and finalising the process thereof, respondents shall take precautions in terms of the following:

(i) Segregate both vacancies and eligibility year-wise. This is to ensure that an employee after having qualified in the examination does not get the benefit of seniority against the year when he was not even eligible for the same:

(ii) existing rules for filling up the posts meant for reserved category candidates shall be adhered to as prescribed by the DOPT in its OM dated 2.7.97, while communicating vacancies of 391 JEs, respondents have only indicated that the percentage of reservation for SC/ST will be indicated only later on. Since reservation in promotion in such cases are to be ensured as per law laid down, respondents shall strictly follow instructions for maintaining the roster and running account register to look after the interests of backwards classes.

(iii) Vacancies of 391 shall be recalculated to ensure that 1:1 ratio between the two groups for the years from 1993 to 1999 have not been tilted to unduly favour one of the two contending groups.

(iv) We are also inclined to agree with the respondents' submission that "present practice of keeping vacant slots for being filled up by direct recruitment of later years thereby giving them unintended seniority over promotees who are already in position could be dispensed with. The above precautions shall be taken before finalising the present selection process or hand.

14. For similar examinations to be held in future respondents shall also consider (1) the possibility of strictly maintaining 1:1 ratio year-wise between DPC and LDCE candidates making them widely known through departmental notice boards: any feasibility of ensuring that the posts falling vacant caused by DPC-promotees could be filled through DPC candidates and those caused by LDCE promotees could be filled through examination and (iii) for making 1:1 ratio for the newly created posts as mandatory."

3. Accordingly, result was declared for 390 vacancies vide notification dated 16.9.98. Applicants appeared in the examination but the result only in respect

of 336 vacancies was declared yearwise. Subsequently, vide order dated 1.2.2002 the result for the remaining 65 vacancies was declared.

4. Applicants have been shown to be appointed against the vacancies pertaining to the years 1994-95 onwards. However, seniority of applicants has been restricted to the year 2001. On issuance of the provisional seniority list on 4.6.2002 applicants preferred representations, seeking notional seniority. As nothing is responded by respondents, the present OA is filed.

5. Learned counsel for applicants assails the impugned seniority list on the ground that it is violative of Articles 14 and 16 of the Constitution of India. Once the respondents have delayed holding of departmental examination in the light of the decision in OA-605/97 decided on 18.9.92 in R.K. Nafaria v. Union of India the notional seniority cannot be denied to them. It is further stated that once they are considered against the vacancies pertaining to yester years the seniority should relate back to the date which is in consonance with the directions issued in OA-2239/98, wherein it is categorically observed that apart from maintaining the ratio one should not get the benefit of seniority against the year when he was not even eligible. Accordingly, it is stated that they have been considered for the year 1994 onwards on their acquirement of eligibility.

6. Learned counsel has assailed the impugned seniority on the basis of hostile discrimination. In this view of the matter by referring to office order dated 28.9.2001 it is contended that for promotion from AEs

(Civil) to the grade of Executive Engineer notional seniority has been given from the date of vacancies which should have been followed when the rules are analogous for both the posts.

7. On the other hand, respondents' counsel contested the OA and their stand is that promotion would be given effect to prospectively and seniority is to be determined from the date of actual promotion on the principle of 'no work no pay'.

8. Moreover, it is stated that there is no discrimination meted out to applicants as Executive Engineers due to the revision of seniority with reference to the juniors accorded notional seniority which is not the case of applicants who have another mode of promotion, which is fast tract where eligibility period is reduced.

9. On careful consideration of the rival contentions of the parties we advert to the directions in OA-2239/98 where due to the fault of respondents by not holding LDCE since 1992 segregation of vacancies was ordered and was to be filled up on yearwise basis. It is also observed that ratio of 1:1 is to be maintained between LDCE and promotees and eligibility should be segregated with vacancies to ensure that those who have qualified the examination do not get the benefit of seniority against the year when they were not even eligible.

10. The only rational and logical interpretation to be given to the aforesaid is that the yearwise panels are to be drawn and on acquirement of eligibility the applicants therein are to be promoted from the date of promotion and in

that event on eligibility and deeming that they have passed the examination in the relevant year seniority is to be accorded.

11. We have also perused the record and find that most of the applicants have been found eligible and have qualified the LDCE for the posts for the years 1995-1996 onwards. Accordingly, they were promoted in 2002 but their promotion is to be deemed on notional basis from the date they have been found eligible on acquirement of eligibility and passing of the LDCE. Accordingly, the seniority is to relate back on notional basis to the date of the year in which they have been found eligible.

12. We also find that the Executive Engineers have also been accorded notional seniority. The ground for difference is revision of seniority and reduced eligibility period to applicants has no reasonable nexus with the objects sought to be achieved. This differentia is not intelligible. LDCE examination apart from promotion quota has always been a fast tract promotion. Once the similar treatment has been meted out in the next promotional cadre the same cannot be denied to applicants which would offend the principles of equality enshrined under Article 14 of the Constitution of India.

13. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. Respondents are granted notional seniority to applicants from the dates and years when vacancies arose. If in the process the others are adversely affected they should be put to notice before any adverse action is taken against them. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V.K. Majotra
VICE CHAIRMAN (A)

13/5/09