

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**



M.A.468/2019, 38/2018, 393/2019, 537/2018

O.A.1621 of 2017

CPC. 23 of 2018

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

K. RajKumar,
Aged about 52 years,
Son of Late V. Karuppaswamy,
Residing at M-B-88, M.A. Road, Phoenix Bay,
Port Blair
At present working as Assistant Engineer
Andaman Public Works Department
posted at Kamorta – 744 101.

..... Applicant.

Versus

1. Union of India
Service through the Secretary
Ministry of Home Affairs,
Jaisalmer House,
26, Man Singh Road,
New Delhi – 110 01;
2. The Lieutenant Governor,
Andaman and Nicobar Islands,
Raj Niwas, Port Blair – 744 101;
3. The Chief Secretary,
Andaman & Nicobar Administration,
Secretariat, Port Blair – 744 101;
4. The Secretary (PWD),
Andaman & Nicobar Administration,
Secretariat, Port Blair – 744 101;
5. Andaman Public Works Department,
Nirman Bhawan, Port Blair,
Through the Chief Engineer APWD,
Port Blair;
6. The Chief Engineer,
Andaman Public Works Department,

Andaman & Nicobar Administration,
Port Blair – 744 101;

7. The Superintending Engineer,
Nicobar APWD,
Car Nicobar, Pin – 744 102;
8. The Executive Engineer,
Construction Division, APWD,
Kamorta, Pin – 744 303;
9. The Assistant Secretary (PWD),
Andaman and Nicobar Administration,
Secretariat, Port Blair – 744 101;
10. Shri K. Moorthy (ST);
11. Shri H.M. Lingaraju (ST);
12. Shri Brij Vinod.

-All are working to the post of Assistant Engineer under the control and authority of Andaman Public Works Department at Port Blair, service through the Chief Engineer, APWD, A & N Administration, Port Blair, Nirman Bhawan, District – South Andaman, Pin 744 101.

.....Respondents.

For the applicant

Mr. P.C. Das, Counsel

For the respondents

Mr. R. Halder, Counsel

Reserved on : 02.07.2019

Date of Order : 26.8.19

ORDER

Per : Bidisha Banerjee, Judicial Member

Heard, Ld. Counsel Mr. P.C. Das for the applicant and Ld. Counsel Mr. R. Halder for the respondents.

2. The reliefs sought for in the O.A. are as follows:

"8.(a) To rectify and/or modify the provisional seniority list of Assistant Engineer (Civil) of APWD as on 01.06.2017 which was published vide impugned office memorandum

dated 5th July, 2017 and to assign your applicant appropriate seniority in the said list by rectifying the provisional seniority list in light of the decision made by the Hon'ble Tribunal dated 30.09.2015 in O.A. No.70/AN/2013, order dated 04.04.2017 in O.A. 78/AN/2011 and in light made by the Division Bench of the Hon'ble High Court in WPCT No. 188 of 2016 vide order dated 10th June, 2016 and in light of another order passed by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair dated 14th June, 2016 in WPCT No. 221/2016 and to give all consequential benefits including the ad hoc payment.

(b) To pass an appropriate order to rectify and/or modify the impugned office memorandum dated 13.09.2017 by which the impugned final seniority list to the post of Assistant Engineer (Civil) of APWD as on 01.06.2017 has been published by the Chief Engineer, APWD without considering the objection submitted by your applicant vide his representation dated 01.08.2017 and 25.09.2017 which is absolutely illegal and arbitrary and further directed the Chief Engineer to rectify the seniority position of the applicant by modifying the final seniority list as on 01.06.2017 in accordance with the judgement and order passed by this Hon'ble Tribunal dated 30.09.2015 in O.A. 70/AN/2013 and 04.04.2017 in O.A. 78/AN/2011 to rectify the original position of the applicant in the said seniority list along with all consequential benefits accordingly.

(c) To pass an appropriate order by directing upon the respondent Authority to regularize the ad hoc service rendered by your applicant to the post of Assistant Engineer (Civil) as per direction of this Hon'ble Tribunal affirmed by the Hon'ble High Court and to assign your applicant's appropriate seniority in terms of the aforesaid decision of the Hon'ble High Court as well as of this Hon'ble Tribunal along with all consequential benefits."

While the CPC has been filed alleging violation of interim orders of this Tribunal.

3. The summary of events demonstrating violation of the interim orders of this Tribunal, as furnished by the applicant would run thus:

"SUMMARY OF EVENTS AND DATE OF OCCURANCE WITH RESPECT TO O.A NO.78/AN/2011 AND M.A. 351/1621/2017, M.A./351/38/2018, C.P.C./351/23/2018 OF K. RAJKUMAR -V/S- APWD.

Date/Year	DETAILS OCCURANCE	By whom approached/deciding authority	Action taken by authority
2011	The O.A. No.78/AN/2011 and M.A.351/00275/2017 was filed by the applicant with a prayer for regularization of ad-hoc services rendered w.e.f 05.03.1984 to 30.07.1985, i.e. from initial date of appointment and for grant of 2 nd financial up gradation under the ACP scheme.		

04/04/2017	The O.A and M.A were disposed of by this Tribunal (Circuit at Port Blair) vide order dated 04/04/2017 with direction to the APWD extend those benefits to the applicant by granting liberty to make a comprehensive representation with direction to the department, for considering the representation within one month, from the date of receipt of copy of representation		
07/04/2017	As directed by this Tribunal in its order dated 04.04.2017, Shri K. Rajkumar, Assistant Engineer submitted a comprehensive representation dated 07/04/2017 CE, APWD		No action taken by CE/APWD until 05/07/2017
05/07/2017	The representation dated 07/04/2017 was still pending. A provisional seniority list of Assistant Engineer (Civil) was published on 01/06/2017 vide CE's office memorandum F.No.VI-3/CE/APWD/ES-1/2017 / 3814 (B) dated 05 th July, 2017 by the Chief Engineer, Andaman Public Works Department		(Violation .1)
01/08/2017	Objection letter was submitted by the applicant Shri K. Rajkumar, AE vide representation dated 01/08/2017 against Provisional Seniority List of AE to the The Chief Engineer, Andaman Public Works Department.		
25/08/2017	In reply to the objection Letter The Chief Engineer, APWD informed by The Chief Engineer, Andaman Public Works Department vide letter F.No.VI-3/CE/PW/ES-1/2017/4819 dated 25 th August'2017, that the matter related to regularization of ad-hoc period is under process and		(Violation -2 and no action taken by CE/APWD till 25/08/2017)

	appropriate action will be taken after obtaining approval from the competent authority		
13/11/2017	A final seniority list of Assistant Engineers (Civil) was published vide CE's office Memorandum No.VI-3/CE/PW/ES-I/2017/516 dated 13.11.2017, without considering the representation/ objection by The Chief Engineer, Andaman Public Works Department.		(Violation-3)
22/11/2017	Since, the final seniority list was published and Shri K. Rajkumar suffered irreparable loss and injury, he prayed for an interim protection before this Tribunal by filing O.A.		
22/11/2017	Accordingly, this Tribunal directed respondents not to take any action in pursuance of the Final seniority list published vide CE's office memorandum dated 13.09.2017, till the next date of listing. The interim protection order continued upto 06/12/2017	Hon'ble Administrative Tribunal, Kolkata Bench	Interim order granted upto 06/12/2017
06/12/2017	Four Weeks time was allowed to the respondent to file reply. Interim order dt. 22/11/2017 continued till the next date on 13/02/2018		
08/01/2018	In spite of interim protection given by the this Tribunal, a promotion order was issued by The Chief Engineer, APWD to assign the Current-Duty- Charge of Executive Engineer (Civil) of APWD, to the Junior most Assistant Engineer to frustrate the interim order.		(Violation-4)
12/01/2018	Appeal to CE/APWD against the unjust order to assign CDC of Executive Engineer (Civil) to juniors vide letter No.Nil.dated 12.01.2018		No action was taken on the representation
12/02/2018	Appeal to the Chief Secretary for regularization		

	of Ad-hoc period and financial benefit.		
21/03/2018	Interim order dated 22/11/2017 continued till next date on 15/05/2018		
02/04/2018	Contempt application filed by the applicant		
23/04/2018	Status report furnished by the Chief Engineer, APWD mentioned that the issue of speaking order to Shri. K. Rajkumar is under process and also clarified that the CDC promotion is temporary arrangement and they will not eligible for any financial benefit or the post of Executive Engineer.	The Chief Engineer, APWD	Violation – 5. No action taken on representation dated 07/04/2017, yet.
14/05/2018	The A&N Administration has requested the Secretary, UPSC, New-Delhi for Convening DPC for promotion of Assistant Engineer(Civil) to the grade of Executive Engineer(Civil) of APWD	The Secretary, UPSC	Violation – 6 since the interim order is live Final seniority list was sent to UPSC without considering the representation of Shri. K. Rajkumar dated 07/04/2017
22/05/2018	Interim order dated 22/11/2017 continued and listed on 29/06/2018		Interim order extend upto 29/06/2018
15/06/2018	Against CDC order issued to the Junior vide order No.1929 dated 15.06.2018		Violation-7. since the interim order is live
29/06/2018	No action taken on the representation by the applicant on 07/04/2017 upto 29/06/2018 ie. More than a year. This Tribunal's direction has been violated at least 06 times by not considering the application (1)No action taken by the Chief Engineer, APWD with effect from 07/04/2017 to 29/07/2018 (2)Provisional seniority published (3)Final(4)while interim order continued CDC order was issued (5)in the interim order period to UPSC was requested to conduct DPC for promotion without considering applicants representation		

	(6) Again CDC order issued. In the interim order period and also after contempt notice issued the Department violated this Tribunal's order.		
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4. Whereas, refuting the allegation of violation of any directions the respondents, by way of written arguments have defended their action. They have categorically submitted as under:

(i) Firstly, they have disclosed the fact that the applicant, way back in 1994 had jointly preferred O.A. 5/94, alongwith 9 Junior Engineers of APWD, to seek inter alia the following reliefs:

"(a) An order directing the respondent authorities to regularise the applicants in their respective posts with effect from the dates of their initial appointment. Thereby modifying the Office Order No. 768 dated 22/8/1986 and 468 dated 21st May, 1986 with all consequential benefits."

The O.A. stood dismissed on 8.12.94 as hopelessly barred by limitation. The SLP, preferred against the order dated 8.12.94, was admitted having noted UOI – vs – Sanjay Pant reported in 1993 Supp (2) SCC 494, but was finally dismissed on 8.1.96.

O.A. 70 of 2011 was of one Bina Parmar who was allowed to treat her adhoc service as regular one, on the basis of Sanjay Pant (supra). But in the present case the applicant's claim for counting adhoc service as regular stood rejected in O.A. 5 of 1994.

Hence, the respondents would contend that the claim put forth about seniority and other benefits in this O.A., being based on the claim for regularisation of adhoc service which already stood rejected in 1994, the present O.A. was barred by principles of Resjudicata.

(ii) The respondents have disclosed the speaking order dated 10.7.18 issued pursuant to the direction dated 4.4.17 in O.A. 78/A&N/2011 and M.A. 275/17.

The speaking order is extracted herein below:

" ANDAMAN AND NICOBAR ADMINISTRATION
OFFICE OF THE CHIEF ENGINEER
ANDAMAN PUBLIC WORKS DEPARTMENT
NIRMAN BHAWAN

Port Blair, dated the 10th JULY, 2018

SPEAKING ORDER

Whereas, O.A. No. 78/AN/2011 in M.A. No. 351/00275/2017 (K. Raj Kumar -Vs - UOI & Others) was disposed on 04-04-2017 by the Hon'ble CAT, Circuit Bench, Calcutta with the following observations:

"By granting liberty to the applicant to make a comprehensive representation by enclosing these two order within a period of one month from today to the Respondent No. 6 and the Respondent No. 6 is directed to consider the said comprehensive representation as well as the applicable these two orders and the settled position of Law in the instant case and dispose of the same by way of a reasoned and Speaking Order within a period of one month from the date of receipt of a copy of the said representation."

And whereas, Shri. K. Raj. Kumar, AE (Civil) submitted representation dated 07-04-2017, 12-01-2018 and 02-02-2018 with the request to regularize his adhoc period from 05-03-1984 to 30-07-1985 and as well as extending of seniority benefit in pursuance of order passed by the Ld. CAT, Circuit Bench in WPCT No. 188 of 2016 in Bina Parmar's case in view of case is similar to Bina Parmar's case.

And whereas, O.A. 351/1621/2017 (K. Raj Kumar - Vs - APWD, the Hon'ble Court has passed interim order on 22-11-2017 directed not to take any action in pursuance of final seniority list published vide office memorandum dated 13-09-2017. However, liberty is granted to the Respondents to put up their application for vacation / modification / cancellation of the interim order, if they so desire, it is needless to mention that meanwhile the Respondent No. 6 shall consider the representation of applicant dated 07-04-2017.

And whereas, the issue of seniority list as on 01-06-2017 published by the department vide Memorandum No. VI-3/CE/APWD/ES-I/2017/5161 DATED 13-09-2017 on the basis of existing seniority list 2014 and earlier dates, the seniority list was already established earlier because in the seniority list of 2017 only the new incumbent are added and retired incumbents are removed from the list.

And whereas, the judgement passed in WPCT No. 188 of 2016 in Bina Parmar's case was in personam in nature and not applicable to those, who were not party / party's in the said case.

And whereas, you are appointed to the post of JE (Civil) on adhoc basis vide PE's Office Order No. 193 dated 02-03-1984 and reported for duty on temporary and adhoc basis for a period upto 31-07-1985.

And whereas, your service was regularized w.e.f 01-08-1985 after obtaining approval from the Administration following procedure laid down in the Ministry of Home Affairs letter No. 14039/5/79 ANL dated 12-09-1980.

And whereas, as per various orders of the Supreme Court regarding regularization of adhoc service, it has been categorically ordered that the adhoc service cannot be regularized, subsequently and it will be not counted for seniority and other consequential benefit.

Therefore, the representations dated 07-04-2017, 12-01-2018 and 12-02-2018 examined in terms of Rules and Regulations and the department arrived in a conclusion that request of the applicant is not justified as per terms and conditions laid down in the appointment order issued vide PE's Office Order No. 193 dated 02-03-1984, the department had already considered the case of the applicant and regularized his appointment w.e.f. 01-08-1985 vide PE's Office Order No. 768 dated 22-08-1986, hence the request of the applicant to regularize his adhoc appointment is in breach of terms and conditions laid down in above said appointment order and not considered, the request is hereby disposed off.

This issued in compliance of order dated 22/11/2017 passed in OA No. 351/1621/2017 by the Hon'ble CAT, Kolkata Bench, Kolkata.

Sd/-
CHIEF ENGINEER
APWD

F.No. IV-49/CE/PW/ES-I/3743"

In view of the discussions therein, it was submitted that speaking order and not be interfered with. *need B*

(iii) The respondents have however justified the delay in issuing speaking order in the following words:

"any insertion of adhoc period in gradation list of only one engineer or two and publication after that creates more hazards and as such the department send proposal to highest authority to take a policy decision in that regard and that reply and preparation of policy decision are under process, this is why the delay occurred to give the reasoned order dated 10/07/2018 and there is no challenge of that order so far by filing any original Application. The reasoned order speaks about itself."

(iv) The respondents have disclosed a Recruitment Rule (RR) of 2017, introduced w.e.f. 20.9.2017 that provides for mode of induction to AEN as under:

(i) 45% by Junior Engineer (E&M) in Level-6 in the pay Matrix possessing **Degree in Electrical or Mechanical Engineering** from a recognized University or having passed Part A & B Examination of the Institution of Engineers (India) with 05 years

regular service in the grade; (ii) 45% by Junior Engineer (E&M) in Level-6 in the pay Matrix possessing **Diploma in Electrical or Mechanical Engineering** from a recognized the Institution and with 05 years regular service in the grade and (iii) 10% by Junior Engineer (E&M) Non-Diploma with 05 years regular service in the grade and possessing two years ITI Certificate of draughtsman ship (E&M).

Since the degree holders and diploma holders have separate channels of entry to AEN, the respondents would plead as follows:

"It is the duty of the authority concerned to publish such list for the benefit of the employees in between which the applicant is one of the candidate, moreso the point to be noted that there are two separate gradation list maintained in the department of APWD, one for the gradation list of Degree holder engineers and the other for the Diploma holder engineers, the applicant is of the second grade, moreso the quota of the Degree holder is different with that of the Diploma holder and as such it is unjust and illegal to deprive any Degree holder Engineer for the claim of a Diploma holder Engineer about seniority list has been stayed when there is specifically no common seniority list applicable to both the categories which should be modified to place the degree holder engineers out of the purview of the claim of the applicant who approach the Tribunal completely suppressing the Supreme Court judgement against their claim as passed on 08/01/1996."

They would plead that within April, 2017 to 7th January, 2018, 4 posts of Executive Engineers of PWD Department of A & N administration fell vacant due to retirement of such Degree holder Engineers. As such posts were of great importance and huge development works were in progress at Andaman & Nicobar Islands due to huge sanction of the Central Government; there was hardly any scope to execute those works without anyone in charge of the offices, and so the authority issued the Order no. 60, dated 8th January, 2018 [assigning current duty charge] considering their to 4 engineers seniority position in the 2011, 2014, 2015, 2016 in the seniority list. The Respondents have clarified that Seniority List of 2017 is nothing but a reiteration of earlier one eliminating the retired and dead Civil engineers from the previous seniority list and that no

inclusion was done and/or no change of position was made since 2011 seniority list was published. The would further state that, considering the two categories, one of the Degree Engineers and other for the Diploma Engineers, posting of 4 Assistant Engineers to hold the Current Duty Charge (CDC) against four important vacant post of Executive Engineers was made to run the department with specific noting in such order that "However, the above officers will neither be eligible for any financial benefit for the post of Executive Engineers (Civil), nor their services rendered on Current Duty Charge will be counted towards seniority for regular promotions." The Respondents would further contend that Shri Alex Varghese and Shri G D Rajan both was Degree holders and therefore their promotional avenues were not at par with that of the Applicant (a diploma holder) and such degree holders were entitle to avail 45% quota fixed for then (degree holders) whereas the applicant and alike (diploma holders) have to go through the channel of Diploma holders for whom a separate quota of 45% posts exists as per RR. Moreso from the panel itself it would by clear that Shri K Devraju, Shri V Subbaraj and Shri Pradeep Prasad. were Diploma holders, but their date of entry into service as well as the date of regular appointment in the post of AE (Civil) was much before that of the applicant, and as such they were entitled to get promotion before the Applicant as per seniority.

(v) The respondents have further referred to a full Bench decision in O.A. 148/AN/2011, O.A. 164/AN/2011, O.A. 165/AN/2011, heard by 5 Members of CAT on 08th September, 2014 where prayer for counting of Adhoc service was rejected. They would contend that regularisation of adhoc service being not permissible the claim put forth by way of this O.A. to seek seniority on the basis of adhoc service from 5.3.84 instead of 1.8.85 is not tenable.

5. We have heard the Ld. Counsels, perused the materials on record and given our anxious consideration to the merit of the claim.

We discern that the applicant's claim for assignment of seniority w.e.f. 5.3.84 stood already rejected in O.A. 5 of 94. Therefore he cannot claim assignment of seniority from 1984. The reason for CDC posting have also been adequately justified, we find no deliberate violation of the directions. Further that, the applicant in his representation dated 1.8.17 has claimed that "as per the seniority list, vide serial No. 17 my date of entry in service is wrongly mentioned as 01/08/1985 instead of 05/03/1984 and then another representation dated 25.9.17" that "I have submitted my representation / objection letter vide no. Nil.dated.01st August '2017. In reply to my representation / objection letter I have been informed vide your office letter No. VI-3/CE/PW/ES-1/20174819.25th August '2017 mentioning that the matter related to the regularization of adhoc period is under process and appropriate action will be taken after approval of competent authority". Therefore inarguably and irrefutably, he has sought for a change in seniority list on the basis of his adhoc entry w.e.f. 5.3.84 which claim stood rejected way back in 1994, as enumerated supra.

6. In the aforesaid backdrop and having noted that the applicant is guilty of suppression of material fact that his claim for grant of seniority with effect from the date of adhoc entry in service stood already rejected in O.A. 5/94, we dismiss all the applications filed by the applicant. However, there shall be no order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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