

**Arvind Garg and Another Vs. Union of India Through Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi and Others**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Feb-22-2012

**Judge :** V.K. Bali, Chairman & the Honourable Dr. Veena Chhotray, Member (a)

**Appeal No. :** OA No.2027 of 2010

**Appellant :** Arvind Garg and Another

**Respondent :** Union of India Through Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi and Others

**Advocate for Pet/Ap. :** For the Applicants: M.K. Bhardwaj, Advocate. For the Respondents: Subhash Gosain, Advocate.

**Judgement :**

Dr. Veena Chhotray, J.

1. The applicants belong to the Central Electrical and Mechanical Engineering Service Group 'A'. Both the applicants as well as the private respondents No.5 and 6 belong to the 1987 Batch. Whereas the applicants are from the Mechanical stream, the respondents are from the Electrical stream. In the combined examination, the applicants had secured more marks and therefore, higher rank than the private respondents. Their grievance is that despite obtaining higher rank

in the recruitment examination, the applicants have been assigned lower seniority than the private respondents. This has been from the basic rank of Assistant Executive Engineers to Executive Engineers as also Superintending Engineers.

As per the averments, the seniority list of Executive Engineers was published vide the office memorandum dated 23.7.2003 (Annex. A-2). In case of the Superintending Engineers, a provisional seniority list was issued on 9.5.2006 (Annex. A-3). It is the case of the applicants that ever since the issuance of the 2003 seniority list (when they came to know about the relative seniority), they have been making representations to the authorities about a proper assignment of seniority to them qua the private respondents. However, despite scores of such representations duly forwarded through proper channel and acknowledged by the Public Grievance Cell of the Ministry of Urban Development, their grievances have not been redressed.

2. In the above background, the OA seeks the following reliefs:-

“(i) direct the respondents to determine the seniority of the applicants in the post of Assistant Executive Engineer, Executive Engineer and Superintending Engineer on the basis of their merit/rank/marks obtained by them in the Engineering Services Examination 1987, in terms of the Government of India instructions dated 3.07.1986 which has statutory force and

(ii) quash and set aside the seniority list of Executive Engineers dated 23.07.2003 and provisional seniority list dated 09.05.2006 of the Superintending Engineer (Electrical) in CPWD insofar as it has shown the applicants junior to respondents no.5 and 6 and

(iii) Pass any other order/orders, as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

3. The learned counsel, Shri M.K. Bhardwaj, would seek to reinforce the justifiability of the claims of the applicants by referring to the GOI OM dated 3.7.1986 as regards the basic guidelines in the matter of determination of seniority. As per these guidelines, the relative seniority of all direct recruitments is

determined by the order of merit in which they are selected by the selecting authority. Further, a reply obtained from the UPSC under the RTI vide a communication dated 8.4.2010 would also be relied upon. In response to a specific query as regards the practice adopted by the Commission for determining the relative seniority of candidates recommended through Engineering Service Examination coming from different disciplines of Engineering, it had been informed that persons obtaining more marks in final aggregate in the examination are ranked senior (Annex. A-1).

4. In their counter affidavit, the respondents have admitted about the applicants scoring better marks and higher ranks in the Central Engineering Service Examination 1987 than the private respondents. An averment of there being no specific departmental instructions to decide the inter se seniority of Engineers of Electrical and Mechanical Streams has also been made. Further, it is submitted that as per the prevailing practice in the department, Electrical Engineers of a particular batch have been placed ahead of Mechanical Engineers. This, however, is stated to have been followed without consulting the UPSC or the Do PT, so far.

As regards the maintainability of the OA, Shri Subhash Gosai, the learned counsel for the respondents, would raise the issue of limitation. It would be contended that the applicants were precluded from challenging the seniority lists of 2003 and 2006 through an OA filed in 2010.

5. Rebutting the rival contentions, Shri M.K. Bhardwaj, the learned counsel for the applicants, would emphasise the fact of the pending representations with the Government. He would also cite the decision of the Apex Court in Union of India and Ors. Vs. Shantiranjana Sarkar, (2009) 3 SCC 90 where it was held that delay in filing Original Application should not be a bar against granting of an equitable relief. Besides, it was held that Union of India as a benevolent litigant could not be permitted to take advantage of its own wrong.

6. We would not like to go into the merits of the case at this stage. What we note is that the grievances of the applicants have been simmering right from 2003. The OA has enclosed a number of communications from the Public Grievances Cell of the Ministry of Urban Development (including during the years 2008-2009) making

repeated references to the CPWD for necessary action on the representations of the applicants. On a representation dated 25.9.2009 by the applicant No.2, observations by the Additional Secretary of the Ministry to the effect, 'This has been pending since 2003 without any response from DG (W). An unfortunate state of affairs. Get a report on present status of the case within two weeks' had been made (Annex. A-25). Thus, it is a clear case of the respondents themselves acknowledging the existing grievance of the applicants and the need for its redressal.

Considering this aspect on the point of limitation, we would like to refer to the view taken by this very Bench of the Tribunal in the Review Application No.279/2011 in OA 364/2011 (P.S. Behl Vs. GNCTD and Ors.) decided on 23.9.2011. It was held that when a citizen is made to believe by some positive action or orders passed by the authorities that his case is under consideration, the terminus a quo for limitation would commence. Since as late as the year 2009, the administrative Ministry has been asking the DG CPWD for action in the matter; raising an issue of limitation at this stage would not meet the ends of justice.

7. Resultantly, this OA is disposed with directions to the official respondents to decide the pending representations of the applicants, along with the present OA being treated as a supplementary representation. A speaking and reasoned order would be passed by the respondent No.1 i.e. The Secretary, Union Ministry of Urban Development, within a period of three months from the date of receipt of a copy of this order. No order as to costs.

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