

(2018) 11 CAT CK 0095

In the Central Administrative Tribunal

Case No : Original Application No. 1817, Of 2015, 3883 Of 2012, Miscellaneous Application No. 1649 Of 2015, 3321 Of 2012, 1400, 2865 Of 2017

D.P. Jindal And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Citation : (2018) 11 CAT CK 0095

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Hanu Bhaskar, C. Mohan Rao, Lokesh Kumar Sharma, M.K. Bhardwaj, Kripa Shankar Prasad

Final Decision : Dismissed/Disposed Off

Judgement

V. Ajay Kumar, J

1. Since the facts and law involved in these OAs are identical, the same are disposed of by way of this common order.
2. MA No. 1649/2015 in OA No.1817/2015 and MA No. 3321/2012 in OA No.3883/2012 filed for joining together are allowed.
3. The applicants, 12 in number, and who are working as Assistant Engineers (Civil) in the 2nd respondent-Central Public Works Department (in short CPWD), filed the OA aggrieved by the Annexure A-2, seniority list of Assistant Engineers (Civil), dated 19.11.2014 to the extent of placing them below the private respondents No.4 to 14, in the said seniority list.
4. It is not in dispute that both the applicants as well as the private respondents while working as Junior Engineers in the respondent-CPWD were promoted to the post of Assistant Engineer (Civil) through the method of Limited Departmental Competitive Examination, and that too of the same year exam, i.e., 1999. Therefore, the dispute of seniority is between the same set of persons, i.e., the

persons who were promoted as Assistant Engineers (Civil) through the same Limited Departmental Competitive Examination, 1999, notified on 16.09.1998 (Annexure A-9).

5. Though the respondent-CPWD were supposed to conduct the Limited Departmental Competitive Examination regularly, in respect of the vacancies that arose in each year, but due to various reasons, such as, correspondence with regard to the need of consultation with UPSC etc., no Limited Departmental Competitive Examination for promotion to the post of Assistant Engineer (Civil) was conducted from 1992 to 1998. For all those vacancies that arose in all these previous years from 1992-1998, the respondent-CPWD conducted the Limited Departmental Competitive Examination in the year 1999, wherein the applicants as well as the private respondents participated and having selected, were appointed during the year 2002. It is not in dispute that all the private respondents were seniors to the applicants in the category of Junior Engineer (Civil) and became eligible to participate in Limited Departmental Competitive Examination by completing the required 4 years service as JEs and whereas all the applicants were much juniors to the private respondents in the category of Junior Engineers and became eligible to participate in the Limited Departmental Competitive Examination, subsequent to the private respondents.

6. The applicants, contending that the Limited Departmental Competitive Examination is a competitive examination in all respects and whoever secured more marks in the said examination irrespective of their seniority in the lower category of Junior Engineers, and irrespective of year of occurrence of the vacancies, and irrespective of the date of completion of 4 years service as JE, i.e. the date of becoming eligible to participate in the LDCE, should be given the seniority in the promoted post of Assistant Engineers, approached this Tribunal on an earlier occasion. In one such OA No.3596/2011, this Tribunal by holding that the Limited Departmental Competitive Examination is only a qualifying examination and hence the respondents are empowered to give the seniority to the private respondents as per the year of occurrence of the vacancies, dismissed the said OA and the applicant in the said OA, aggrieved with the said decision, filed W.P. (C) No.8154/2013 (D.P. Jindal Vs. Union of India and Others) and the Hon'ble High Court of Delhi, set aside the orders of this Tribunal and accordingly, allowed the said W.P., by its order dated 28.07.2014.

7. Since the judgment of the Hon'ble High Court of Delhi in W.P. (C) No.8154/2013 (D.P. Jindal Vs. Union of India and Others) dated 27.08.2014 is having a heavy bearing on the instant OA, and both sides placed heavy reliance on the same, and also since the petitioner in the said W.P. is the 1st applicant in the instant OA, it is necessary to note down the said judgment, extensively, as under:-

"1. The present petitions challenge an order of the Central Administrative Tribunal (CAT) dated 05.09.2013 in O.A. No.3596/2011. All the petitioners belong to the category of Limited Departmental Competitive Examination

promotees in the cadre of Junior Engineers, who competed and were promoted to the cadre of Assistant Engineers.

2. This Court does not propose to enter into the rival merits of the dispute in view of the ultimate order proposed and having regard to the subsequent developments which have occurred during the pendency of these proceedings. It would be sufficient to state that both the petitioners and the private respondents belong to the cadre of Junior Engineers in the Central Public Works Department (CPWD). The promotion to the higher post of Assistant Engineers is through two sources, i.e. 50% quota has been earmarked for Junior Engineers promoted on the basis of seniority with 8 years of regular service in the grade; the balance 50% quota is earmarked for Junior Engineers with 4 years regular service in the grade, who successfully compete in the Limited Departmental Competitive Examination (LDCE) conducted by the authorities. The records would show that a tentative seniority list of Assistant Engineers was first published on 04.06.2002; after objections were taken into consideration, and on account of intervening litigation, the finalization of list could not take place for many years. Ultimately on 01.08.2011, after the disposal of all pending writ proceedings, the seniority list was finally prepared and published. This triggered a fresh round of litigation which culminated in the impugned order. The CAT proceeded, by its rather lengthy order, to quash the final seniority list on various grounds. The applicants before the CAT are arrayed as private respondents in the present proceedings. They are by and large Junior Engineers promoted on the basis of seniority after having put in 8 years of service in the cadre, to the post of Assistant Engineer.

3. It was urged on behalf of the petitioners that the finding of the CAT in para 171 of the impugned order that the LDCE is not a competitive examination but is instead, a qualifying examination, is an erroneous one. It was highlighted that the very essence of a test or procedure is to ensure accelerated promotion for those who were able to clear the departmental test which cannot, by any account, be called as a qualifying one. The UOI which is the petitioner in W.P.(C) 2284/2014 also agrees with this submission.

4. Having heard learned counsel for the parties, this Court is of the opinion that the findings of the CAT in this regard are clearly erroneous. The LDCE is in fact a competitive examination. Ordinarily, such of the vacancies which fall within the 50% LDCE quota are notified and a large number of eligible candidates are permitted to compete. However, only those who are best merited - in strict order of merit - are deemed to be selected and are eventually appointed. This beats the CAT's finding that the LDCE is not a competitive examination but a qualifying examination. The findings to the contrary by the CAT are accordingly set-aside.

5. Some of the petitioners articulated the grievance that the CPWD in this case has resorted to a collective examination, i.e. by bunching- up of vacancies in the quota of LDCE for a number of years and holding a common examination. It was submitted that this has resulted in certain anomalies whereby candidates might secure relatively higher merit, while, at the same time, may not have been

eligible to be appointed at the particular point of time when the vacancy arose for a particular year; this fact has been ignored. Learned counsel for the other group contended that the notification clearly mentioned that selections would be made on the merit.

6. This Court, after having considered the submissions, is of the opinion that the object of the LDCE procedure is to ensure that only those who are eligible to compete against specified vacancies for a given year, would be entitled to lay claim to be appointed to such posts. Whilst the CPWD's action in bunching the vacancies and holding a collective examination may not be per se irregular, it has obviously resulted in complications where the candidates with greater merit would, if appropriate clarifications are not made by the department, be capping more senior positions than others who were eligible at that point of time. This Court is, therefore, of the opinion that whilst framing appropriate norms or guidelines and proceeding to finalize the seniority list, care must be taken to balance both the aspects, i.e. relative merits of the candidates who clear such collective examination as well as the dictate of the rules vis-a-vis eligibility.

7. In the light of the subsequent development, i.e. the publication of provisional seniority list dated 20.08.2014, this Court grants liberty to such of the parties who desire to object to the list in accordance with law. The UOI shall proceed to finalize the list within eight weeks after expiry of the time granted for objections, after taking into consideration the issues mentioned and in accordance with and other relevant considerations in the present order. The writ petitions are accordingly allowed, on the above terms".

(emphasis supplied)

8. Heard Shri Anil Singal, learned counsel for the applicants, Shri Hanu Bhaskar, learned counsel for Respondents No.1 to 3, Shri C. Mohan Rao with Shri Lokesh Kumar Sharma, learned counsel for Respondents No.4 and 9, Shri M.K. Bhardwaj, learned counsel for Respondent No.8 and Shri Kripa Shankar Prasad, learned counsel for Respondents No.12 to 14 and perused the pleadings on record.

9. Shri Anil Singal, learned counsel for the applicants while drawing our attention to the Ministry of Urban Affairs and Employment and Central Public Works Department, Central Electrical Engineers Group 'B' Service Recruitment Rules, 1997 and to the judgment of the Hon'ble High Court of Delhi in D.P. Jindal (supra) submits that the fixation of inter-se seniority of the persons promoted to the post of Assistant Engineer (Civil) basing on the same Limited Departmental Competitive Examination, should be fixed as per the merit in the said Limited Departmental Competitive Examination and since admittedly, the applicants secured more marks than the private respondents in the Limited Departmental Competitive Examination, 1999, the action of the CPWD in placing the applicants below the private respondents is illegal, arbitrary and the impugned seniority list dated 19.11.2014 is liable to be set aside, to that extent.

10. On the other hand, learned counsel appearing for the respondents also placing heavy reliance on the judgment of D.P. Jindal (*supra*) submits that though the Hon'ble High Court held that the Limited Departmental Competitive Examination is not a qualifying examination and the same is a competitive examination, however, noticing the fact of non conducting of the Limited Departmental Competitive Examination from 1992 to 1998, and bunching of the vacancies and holding a collective examination, held that the said action per se not irregular, and permitted the respondents-CPWD to proceed with the finalization of the seniority, however, by taking care to balance both the aspects, i.e. relative merits of the candidates who clear in such collective examination as well as the dictate of the rules vis-a-vis eligibility. The respondents further submit that the private respondents, who were seniors in the feeder category of Junior Engineers and who became eligible for participation in the Limited Departmental Competitive Examination, earlier to the applicants, though secured less marks as compared to the applicants, were shown against the vacancies of the earlier years against which they were selected, and the applicants though secured more marks, but who were not even become eligible to participate in the LDCE, in respect of the vacancies of 1992-96, were promoted against the vacancies subsequent to 1996, and hence there is no illegality in their action.

11. It is true that the 1997 Recruitment Rules does not provide for filling up of the Assistant Engineer Posts by segregating the available vacancies, year-wise. Equally, the said rules also do not prohibit the filling up of the said posts pertaining to different years, through a common Limited Departmental Competitive Examination. Similarly the Annexure A-9 Notification dated 16.09.1998 in respect of the Assistant Engineer (CPWD) Limited Departmental Competitive Examination, 1999, does not indicate that the notified vacancies are filled up in respect of the year in which they arose. All those Junior Engineers whoever fulfilled the eligibility condition of 4 years regular service in the said grade, as on 01.09.1998 were made eligible to appear in the examination, without any reference in which year, a particular Junior Engineer completed the said required 4 years service and thereby become eligible to participate in the LDCE.

12. The learned counsel for the applicants was right in saying that the proposal of the Ministry to the effect that "the promotions will be made as per merit list of successful candidates but seniority as Assistant Engineer will be assigned to the year in which he/she completes the eligibility period of 4 years in the grade of Junior Engineer" was not accepted by the UPSC and the Ministry thereafter, filed Annexure A-8 letter dated 24.02.1998 has decided to accept the advice of UPSC. However, it is to be seen that the respondents while declaring the eligible candidates for Assistant Engineer (Civil), basing on the result of the Limited Departmental Competitive Examination, 1999, vide their proceedings dated 16.02.2001 placed the persons who declared selected in the Limited Departmental Competitive Examination, 1999, against the relevant years ranging from 1994-95 to 1997-98, wherein some of the applicants in the OA, though

secured sufficient marks, including the 1st applicant, namely Shri D.P. Jindal, were not included in the select list. Similarly, again vide the Annexure A-11 dated 30.08.2004, the respondents declared the year-wise selected result, as per revised vacancies, as per the directions of this Tribunal dated 07.08.2003 in OA No.1874/2001 in Ajmer Singh and Others Vs. Union of India and Others, wherein also both the applicants and the private respondents were shown against the different years, basing on the years of eligibility and date of vacancy etc. Finally, the Hon'ble High Court of Delhi in W.P. (C) No.8154/2013 (D.P. Jindal, supra) filed by the 1st applicant in the instant OA, though declared that the Limited Departmental Competitive Examination was not a qualifying examination and on the other hand the same was a competitive examination, however, observed that the respondents-CPWD's action in bunching the vacancies and holding a collective examination may not be per se irregular, and after noticing the different complications, permitted the respondent-CPWD to frame appropriate norms/guidelines and to proceed with finalization of the seniority list, by taking care to balance both the aspects, i.e., relative merits of the candidates, who clears such collective examination, as well as, the dictate of the rules vis-à-vis eligibility. In the result, the Hon'ble High Court though held that the Limited Departmental Competitive Examination, 1999 was not a qualifying exam, but permitted the respondent-CPWD to prepare the seniority list after balancing all the aspects. In our view, the impugned seniority list is in accordance with the said decision of the Hon'ble High Court, inasmuch as maintaining balance between the relative merit vis-à-vis date of eligibility to participate in the LDCE.

13. In these peculiar circumstances of the case, and keeping in view the order of the Hon'ble High Court in D.P. Jindal (supra), which has attained finality between the parties, the impugned seniority list dated 19.11.2014 cannot be interfered with.

14. Heard Shri S.R. Sharma, learned counsel for the applicants, Shri Rajinder Nischal, learned counsel for Respondents No.1 to 3, Shri Anil Singal, learned counsel for Respondent No.21, Shri C. Mohan Rao, learned counsel for Respondents No.27, 31 and 79 and perused the pleadings on record.

15. The applicants in this OA were also identically placed like the applicants in OA No.1817/201, in most of the aspects. The only difference between the applicants in this OA and the applicants in OA No.1817/2015 is that the applicants in the instant OA were much juniors in the seniority list of the feeder category of JEs, i.e. even juniors to the applicants in O.A. No.1817/2015, but became eligible to participate in the LDCE Notification of 1998, as they have also completed the required 4 years service as JE as on the cut-off date. As a result, though secured more marks in the said examination, they were not promoted against any of the vacancies notified in the LDCE Notification of 1998. They were, however, promoted as AEs in pursuance of another LDCE Notification of 2001. They filed the OA seeking quashing of all the promotions/selections/recommendations in respect of the LDCE Examination, 1999 with a consequential direction to fill up

the vacancies of 1999 LDCE Examination strictly as per the merit list. The applicants having participated in the LDCE, 1999 and though not promoted in spite of securing more marks than the private respondents have not challenged their non-promotion for more than a decade. In any event, as their claim is identical to the applicants in O.A. No. 1817/2015, the same is liable to be rejected for the same reasons.

16. In the circumstances and for the aforesaid reasons, both the OAs are dismissed. All the pending MAs also stand disposed of. However, there shall be no order as to costs.

Let a copy of this order be placed in both the files.