

**(2021) 02 CAT CK 0007**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 998 Of 2020, Miscellaneous Application No. 1490, 1491, 1518, 1519, 2605 Of 2020, Contempt Petition No. 555 Of 2019 In Original Application No. 1899 Of 2019

P.R. Charan Babu

APPELLANT

Vs

Union Of India & Others

RESPONDENT

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**Date of Decision :** 05-02-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16(1)

**Citation :** (2021) 02 CAT CK 0007

**Hon'ble Judges :** L. Narasimha Reddy, J;A. K. Bishnoi, Member (A)

**Bench :** Division Bench

**Advocate :** C. Mohan Rao, Lokesh Kumar Sharma, MK Bhardwaj, Zulfiqar Alam, Hanu Bhaskar, Sangita Chandra

**Final Decision :** Disposed Of

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## **Judgement**

L. Narasimha Reddy, J

1. The applicant joined the Central Public Works Department (CPWD) as a Junior Engineer (Civil) on 23.02.1984. He was promoted to the post of

Assistant Engineer (Civil) in the year 1991 through the Limited Departmental Competitive Examination (LDCE). The next promotion is to the post of

Executive Engineer (EE). The Rules framed in the year 1996 for the post of EE, provided for three feeder categories. The first is Direct Recruit

Assistant Engineers (DR,AE). The second is Promotee Assistant Engineers (Graduate) [Pr,AE(G)]. The third is Promotee Assistant Engineers

(Diploma) [Pr,AE,(D)]. Promotion to the post of EE is in equal proportion to all the three categories. The applicant was promoted to the post of AE on

regular basis in the year 1991. Before 1996, quite a large number of posts of EE, which were otherwise required to be filled by the DR,AE, were

diverted to the other two categories. That gave rise to phenomenal litigation. Ultimately, the Hon'ble Supreme Court approved the diversion of

vacancies vide its judgment in J.N. Goel v. UOI & Ors., (1997)2 SCC 440.

2. The Government issued OM dated 06.07.1999, providing for regularization of services of ad hoc EE, who were promoted from the category of

Pr,AE. That was challenged by the DR,AE in OA No. 1968/1999. The O.A. was dismissed. A Writ Petition filed by them was also dismissed by the

Hon'ble Delhi High Court on 05.12.2008. Complaining that their promotions were being delayed, some of the Pr,AEs, holding the post of EEs on ad ho

basis, filed OA No. 1360/2015. That was disposed of, directing the respondents to consider the case of the applicants therein and other similarly

placed persons for regularization of their services in the post of EE. This was followed by OA No. 1899/2019 and that was disposed on 05.09.2019

with a direction to the respondents to take immediate and expeditious steps for promotion of Pr,AE (G) and Pr,AE(D) to the post of EEs against the

vacancies of respective years.

3. A Contempt Case No.555/2019 is filed, alleging that the directions issued in OA No. 1899/2019 were not complied with.

4. The Government issued orders dated 28.12.2018 and 11.07.2019, promoting some of the EEs, who were from the category of DR,AE; to the post

of Superintending Engineer (SE). This OA is filed, challenging the said two orders. The applicant has also prayed for a direction to the respondents not

to promote the officers from DR,AE cadre to the post of EE and for a further direction to them not to promote EEs from the DRAEs to the post of

SEs, until the directions issued in OA No. 1360/2015 and OA No. 1899/2019 are complied with.

5. The applicant contends that the issue pertaining to the diversion of vacancies in the post of EE, which were otherwise required to be filled by the

DR,AE, has assumed finality, and despite that, the Government is making promotion to the post of EEs, as though the diversion did not take place at

all. He submits that the repeated directions issued by this Tribunal were ignored. Extensive reference is made to the adjudication that has taken place

in the earlier rounds.

6. The respondents filed a detailed counter affidavit, opposing the OA. It is stated that the applicant has to wait for his turn for regularization in the

post of EE and thereafter for promotion to the post of SE. According to them, the impugned orders of promotion were issued strictly in accordance

with the recruitment rules and on the basis of the seniority in the feeder category post, i.e. AE. They further submit that the diversion of the vacancies

may have resulted in out of turn promotion of Pr,AEs but that cannot defeat the rights which accrued to the relevant categories of the officers on the

basis of seniority. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Uttaranchal Forest Ranger's v. State of UP & Ors.*

(Civil Appeal No. 4249/2006).

7. We heard Mr. C. Mohan Rao, learned counsel for the applicant and Mr. Hanu Bhaskar, learned counsel for the respondents.

8. The brief background of the case has been furnished in the preceding paragraphs. The prayer in this OA is somewhat typical, and it reads as

under:-

â??a) Direct the respondents not to promote officers from AEE's cadre to the post of EE's and further direct the respondents not to promote EE's

from AEE's cadre to the post SE's, until and unless the respondents first implement the directions passed by this Hon'ble Tribunal in OA No. 1360 of

2015 dated 6.10.2015 and OA No. 1899 of 2019 dated 5.9.2019.

b) quash the promotion order dated 28.12.2018 and 11.7.2019 promoting the EE's from AEE's cadre to the post of SE's who are juniors to the

applicant and

c) Any other further order or orders as this Hon'ble Court deem fit and proper under the facts and circumstances of the case.â??

9. The first prayer is to restrain the respondents from promoting DRAEs to the post of EEs and to further direct the respondents not to promote such

EEs to the post of SEs till the order in the two OAs are complied with. In the second prayer, two orders of promotion are challenged. In the first one,

78 EEs and in the second 12 EEs were promoted to the post of SEs.

10. Two aspects become relevant in this behalf. The first is that the applicant is yet to become eligible to be considered for promotion to the post of

SE. The second is that the EEs promoted as SEs through the impugned orders, were not made as parties. Therefore, the second limb of the prayer

cannot be considered at all. What remains, is the first part of the prayer.

11. The emphasis of the applicant is on the orders passed in the OA No. 1360/2015 and OA No. 1899/2019. In OA No.1360/2015, no adjudication

whatsoever has taken place. The entire order reads as under:-

â??Heard Shri M.K. Bhardwaj, learned counsel for applicant and Shri Gyanendra Singh, learned counsel for respondents.

2. The grievance of the applicants in the present OA is that though the direct recruit officers, who were earlier appointed on ad hoc basis have been

regularised, the officers who have also been promoted on ad hoc basis, during the same period from 2006 to 2014, have not been regularised till date,

thereby, depriving them from consideration for promotion.

3. Shri Bhardwaj, learned counsel appearing for the applicants submits that the OA may be disposed of directing the respondents authority to consider

and pass necessary order relating to the claim of regularisation of the applicants.

4. Shri Gyanendra Singh, learned counsel appearing for the respondents submits that for the purpose of consideration for regularisation, a DPC is

required to be held which will take 6 months time to finalise the same.

5. Having regard to the aforesaid submissions, we dispose of the OA directing the respondents authority to consider the case of the applicants and

other similarly placed persons for regularisation and pass necessary order within a period of four months from the date of receipt of a copy of this

order. The order that may be passed shall be communicated to the applicants. It is made clear that in the event the applicants are regularised in

service from a particular date and their juniors are promoted to the next cadre, the case of those applicants for promotion with effect from the dates

when their juniors were promoted would also be considered subsequently. The OA is accordingly disposed of. No cost.â??

12. In the second OA, the directions issued read as under:-

â??We, therefore, dispose of the OA directing the respondents to take immediate and expeditious steps for promotion of AEs (Degree) and

AEs(Diploma) to the post of EE against the vacancies of respective years, meant for that category and conclude the same within a period of two

months from the receipt of a certified copy of this order. There shall be no order s to costs.â??

13. Here again, the entitlement of the applicants therein to be regularized in the post of EE or their seniority was not adjudicated upon. As of now, the

applicant is holding the post of EE on ad hoc basis. He has to wait for his turn for regular promotion. The respondents have indicated the manner in

which the promotions to the post of EEs through different channels are taking place. Since that is not an issue in this OA, we are not dealing with it

elaborately.

14. For being considered for promotion to SE, the applicant has to cross two stages. The first is that he must be promoted to the post of EE on regular

basis. It is not his case that any PrAE(D), who is junior to him, was promoted to the post of EE on regular basis. He cannot compare himself with the

trajectory of a DR,AE. The promotional avenues for different categories are bound to be not uniform. The interests of the respective categories are

adequately protected by allocating vacancies to the concerned categories. The larger issue about diversion of the vacancies from one category to

another has already been dealt with by the Hon'ble Delhi High Court and the Hon'ble Supreme Court. It is on account of such large scale diversion

of vacancies, that many in the category of PrAEs got promotions, much earlier than their regular turn.

15. The second is that it is only on being regularly appointed to the post of EE, and on completion of the stipulated residency period, that the applicant

would become eligible to be considered for promotion to the post of SE. Once the promotion to the post of EE takes place, the source from which they

came, namely DR,AE or Pr,AE, does not become relevant. All of them stand merged into one category. However, for promotion to the post of SE,

their seniority becomes relevant. It is here that the source, from which an AE is drawn, becomes relevant. The seniority is required to be assigned in

accordance with the quota for the respective categories. Even where an AE from one category, is promoted to the post of EE in excess of the quota

of the category at the relevant point of time, he has to take the seniority strictly in accordance with the quota. It is a different matter that such out of

turn promotions to the post of EEs would remain intact, for all purposes. The principle laid down by the Hon'ble Supreme Court in the case of State of

Uttaranchal (supra) gets attracted and it reads as under:-

â??When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous

service fortuitous. The previous promotion would be regular only from the date

of the vacancy within the quota and the seniority shall be counted from that date and not from the date of his earlier promotions or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying and the force of statutory rules and would offend Articles 14 and 16(1).â??

16. Though Mr. C. Mohan Rao, the learned counsel for the applicant, made strenuous efforts to convince us that the said principle does not get attracted in the instant case, since the diversion of vacancies were upheld by the Hon?ble Supreme Court. We are of the view that the principle becomes very much relevant in the matters of this nature, where promotions took place, disproportionate to the entitlement.

17. A clear distinction needs to be maintained herein between promotion on the one hand and seniority on the other hand. The diversion of vacancies may have resulted in out of turn or earlier promotion to a certain category. However, the seniority is something, which is guided by the relevant recruitment rules and the settled principles. Occasional deviations hardly affect the principles.

18. Hence, this OA is disposed of:

(a) rejecting the challenge to the orders of promotion dated 28.12.2018 and 11.07.2019; and

(b) directing that:

(i) the promotion to the post of EE against the vacancies diverted from the category of direct recruit AE shall hold good for all practical purposes; and

(ii) AEs from the three different categories, promoted to the post of EEs shall have to take their seniority in accordance with the entitlements under

the recruitment rules, and thereby for promotion to the post of SEs.

19. Pending MAs also stand disposed of.

CP No. 555/2019

20. This Contempt Case is filed, alleging non-implementation of the directions

issued n OA No. 1899/2019 by the respondents.

21. We are of the view that the respondents have taken steps for promotion to the post of EEs under various categories as is evident from the series

of orders passed in this behalf.

22. We do not find any contempt on the part of the respondents. We accordingly, close the contempt case.

There shall be no order as to costs.