

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 23.09.2014  
Pronounced on: 31.10.2014

**+ W.P.(C) 3292/2011, C.M. NO.6919/2011**

KUTUB SINGH AND ORS. .... Petitioners  
Through : Sh. Krishna Dutt Thapliyal, Advocate.

Versus

DELHI JAL BOARD AND ORS. .... Respondents  
Through : Sh. P.P. Khurana, Sr. Advocate with Sh.  
Nishakant Pandey, Advocate, for DJB.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**MR. JUSTICE S. RAVINDRA BHAT**

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1. The petitioners in these proceedings challenge a common order of the Central Administrative Tribunal (CAT) dated 18.02.2011 in T.A. No.1191/2009. That application had initially been preferred as a writ petition before this Court which was directed to be transferred to the CAT. The initial order of 05.02.2010 was made by the CAT which was challenged by the petitioner, the Delhi Jal Board (hereafter called "the DJB"). The order of this court, in writ proceedings, dated 26.08.2010 noticed that the CAT had not earlier worked out the vacancy position nor reflected what fell within the promotion quota for the reserved categories. In these circumstances, the matter was

remitted for reconsideration. By the present impugned order, the CAT dismissed the petitioners' applications.

2. The petitioners were appointed as Junior Engineer (Civil) by the DJB sometime in 1982 against the backlog carry-forward vacancies earmarked for SC candidates. They were entrusted with current duty charge in a higher post – which was also the promotional post – as Assistant Engineers on various dates – i.e 14.06.1996, 27.09.1996 and 22.01.1997. They discharged the duties attached to the post of AE (Civil) and drew the salary applicable to that grade. In the Final Seniority List published on 19.08.2002 for AE (Civil), the petitioners were not shown as holders of that post. They accordingly felt aggrieved and preferred writ petition – W.P.(C) 1691/2003 before this Court. Sometime in 2009, that writ petition was transferred to the CAT and registered as T.A. No.1191/2009 since the DJB was notified as an organization subject to CAT's jurisdiction. By its earlier order dated 05.02.2010, the petitioners' application was allowed. Eight individuals as well as the DJB approached this Court by filing writ petition, being W.P.(C) 3379/2010 and W.P.(C) 3827/2010. Both the writ petitions were disposed of on 26.08.2010 by a common order and the matter was remitted for reconsideration by the CAT, which was directed to work-out the vacancy position and, particularly, what fell to the quota of SC/ST candidates in the promotional cadre of AE (Civil).

3. The CAT, after considering the contentions of the parties, by its impugned order, rejected the petitioners' arguments that they were entitled to be considered as regularly appointed on the date they were

given *ad hoc* promotion or on the date they were given current duty charge. In arriving at this conclusion, the CAT took note of the total cadre strength of AEs and the extent of vacancies that existed at the time. The relevant findings of the CAT are extracted below:

*“14. We have not been able to persuade ourselves to agree to the plea vehemently canvassed on behalf of applicants. The reason therefor is very simple. The vacancy position in the cadre (of Assistant Engineers) has been indicated in the course of para-5 of the written statement. It is clearly indicated in the course thereof that there are, in all, 226 posts in the relevant cadre. 60% of posts are to be filled by promotion, while the balance 40% posts are to be filled up by direct recruitment. The number of posts, which falls to the promotion quota, comes to 136. 20 posts fall to the lot of SC category candidates, 10 posts to the share of ST candidates and the balance to the general category candidates. As many as 20 scheduled castes candidates are holding the posts of Assistant Engineers on regular basis; while the remaining 16 are holding those posts on ad hoc/current duty charge basis. The corresponding para of the rejoinder does not, at all, contest the factual accuracy of the cadre position aforementioned. That paragraph in the counter, on the other hand, avers that the applicants had been “promoted on “Vacancies Based Roster” by exchange”. It is also the plea, in the alternative, that “the petitioners may be adjusted even against the unreserved vacancies treating them as general if they are found to be excess even after applying and exhausting the reservation policy of exchange by filling in the posts meant for Scheduled Tribes to the extent of 50% limit of representation.”*

*15. There can, thus, be no escape from the conclusion that no vacancies falling to the share of scheduled castes candidates were available for being occupied by the applicants. The applicants also cannot validly argue that they are deemed to have been ‘promoted’ on the basis of exchange in terms of the vacancy-based roster. In the first*

*instance, the current duty charge cannot be taken to be a promotion and, in fact, the impugned order categorically indicates that it was a stop-gap arrangement. Apart therefrom, DoP&T instructions also indicate that even while implementing the exchange provision aforementioned (vide which the vacancies meant for ST candidates can be given to SC candidates in case of non-availability of the former category of candidates), the Competent Authority has to ensure that it does not amount to excess representation. Since only two ST candidates are occupying their posts, it would be apparent that the grant of the relevant plea in favour of applicants shall amount to excess representation. Insofar as the alternative plea (of being adjusted against posts meant for general category candidates) is concerned, we negate this too. The reasons therefor would be indicated in another part of this judgment where we would hold that reliance placed by the learned counsel for the applicants upon R.K. Sabharwal v. State of Punjab, AIR 1995 SC 1371, is misconceived.*

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19. *The unanimity about the existence of the exchange provision (as between the SC and ST members of the cadre) notwithstanding, we cannot be oblivious of the fact that the DoP&T instructions categorically informed the official respondents that the result of the exercise aforementioned should not lead to excessive representation. In the present case, as many as 10 posts are meant to be occupied by the members of the ST, whereas the number of ST members of cadre presently is only two. As against 20 posts meant to be occupied by the members of the SC, there are as many as 36 of them who are in place. The present is, thus, obviously a case of excess representation. In the light thereof, we do not give it to the petitioners to rely upon the exchange provision to argue that the averred (though not proved) applicability thereof enables them to assert being in occupation of the present placements in their own right.*

20. *The reliance, placed by the learned counsel for applicants upon R.K. Sabharwal (supra), is misconceived. It*

*only lays down a proposition that if members of reserved categories occupy a post in their own merit, that post will not be counted towards their quota. That judicial pronouncement does not, at all, authorize the plea presently raised on behalf of the petitioners.*

21. *The same applies to M. Nagaraj's case (supra). In that case too, the above quoted legal proposition only was reiterated.*

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26. *The following conclusions can be safely culled out from the discussion in the preceding paras of this judgment.*

i) *There is no force in the plea raised by the applicants that the current duty charge held by them enables them to raise a plea for compulsive promotion. The long period of their holding those posts and the exercise of jurisdiction similar to that exercised by the regular incumbents also does not cement the plea.*

ii) *There is no documentation to prove the averment that the applicants were given current-duty-charge in terms of the exchange of vacancies policy.*

iii) *The impugned order (Annexure P-1) categorically announced the legal connotation of the grant of current-duty-charge by announcing that it shall not confer any service benefit upon the holders. The relevant contours of the order have been noticed in the course of para-17 of this judgment.*

iv) *The reliance placed by the learned counsel for the applicants upon R.K. Sabharwal v. State of Punjab, AIR 1995 SC 137, is misconceived.*

v) *The resistance offered by the respondents is fully supported by the Apex Court judgments reported as (2009) 12 SCC 49 and 1991 Supp. (2) SCC 733.*

vi) *For the reasons noticed in the preceding paras of this judgment, it is held that there was no vacancy available*

*in the SC/ST quota which could have been occupied by the applicants.”*

4. The petitioners argued that the impugned order of the CAT is erroneous. It is submitted that the pre-existing arrangement of exchange of reserved vacancies, continued even after the decision in *R.K. Sabharwal v. State of Punjab*, AIR 1995 SC 1371 and the consequential Office Memorandum of the DOPT dated 22.07.1997. In this regard, reliance was placed upon the circular/letter written by the DOPT to DJB on 15.09.1999. If these were to be taken into consideration, there were sufficient vacancies to accommodate the petitioner SC candidates in the cadre of Assistant Engineer. It was next argued that the CAT fell into error in not noticing that even while granting *ad hoc* promotion, the requirements prescribed for the post, i.e. eligibility conditions, such as educational qualifications, requisite experience mandated by the rules in the feeder cadre, and selection by the concerned Committee, had been taken recourse to. In the circumstances, the long period of more than 16 years spent by the petitioners in the post of AE could not have been ignored and they were entitled to be declared as regular incumbents; their consequent entitlement to the rightful places in the seniority had to be acceded to. It was also contended that pursuant to the application under the RTI Act, the information furnished clearly indicated that between the period 1990-97, as many as 101 vacancies existed in the grade of AE.

5. The respondents argued that entrustment of current duty charge to a junior cadre employee in a vacancy in the higher or promotional grade did not entitle the incumbents such as the petitioners, to the post. Their claim as to promotion on the basis of their being reserved

category employees had to be seen in the light of their initial recruitment with that status. It was argued that the entire application before the CAT was premised upon enhancement of the promotional quota from 50% to 80% and the likely reserved vacancies that were to arise. However, since there was no UPSC concurrence to that proposal and, instead, the promotional vacancies were increased only by 10%, i.e. to 60% - such that the balance 40% was to be filled by direct recruitment, the number of posts available for promotees was substantially lesser than anticipated. Likewise, the number of posts available, and correspondingly the vacancies available for SC/ST candidates was far less substantial. It was pointed out that the CAT's findings clearly bring out the fact that as against 20 reserved promotional vacancies for SCs, about 36 such incumbent Assistant Engineers were already in position. In these circumstances, there was no question of the petitioners claiming a right to be treated as regular Assistant Engineers, as that would have only aggravated the excess representation of the SC categories. Learned counsel submitted that the Office Memorandum of 1999 – dated 15.09.1999 – relied upon by the petitioners, was of no assistance because that specifically cautioned the executive against a situation of over-representation in the promotional cadre on the basis of reservation. Learned counsel also relied upon the terms of the current duty charge orders which specifically stated that such arrangements would not result in any entitlement towards a regular appointment. The respondents' counsel relied upon the averments in the counter affidavit with regard to the number of vacancies; the relevant extracts of the DJB's affidavit in that regard is as follows:

*“10.....It is respectfully submitted that during the year 1997, there were 136 posts earmarked for promotion quota. Out of 136 posts, 20 posts were earmarked for SCs and 10 to STs. All 20 were already working on regular basis. In addition to that 16 SC officials were holding the post of AE(Civil) on current duty charge basis, thus there was an excess representation of SC officials. In terms of the post based roster, there could not be excess representation of one particular group. As and when the regular vacancies arose, petitioners have been regularized as per their seniority. At present petitioner No. 1 to 5 have already been regularized and their name also figures in the latest seniority list of the Assistant Engineer (Civil) dated 27.08.2010.”*

6. And further as follows:

*“13.....It is respectfully submitted that the percentage of 15 is to be maintained while promoting the SC officials. After enhancement of 30 posts, the promotion quota of AE (Civil) was 136. Against the 136 posts, the quota earmarked for SC will be 20 and all the posts have been filled in on regular basis. The Respondents took a lenient view on the Petitioners and they have been allowed to continue as Assistant Engineer (Civil) on current duty charge basis. As and when the vacancies arose in the cadre of AE (Civil) against the SC quota, five of the petitioners have been allowed regular promotion as AE (Civil).”*

#### *Analysis & Conclusions*

7. It is apparent from the above discussion that the Petitioners' grievance is that their names have not been reflected in the seniority list of Assistant Engineers. They urge that according to the roster memorandum of the Central Government, there were sufficient number of vacancies for SC candidates, of which they could have occupied some, having due regard to their seniority in the grade of Junior Engineer. The respondent's position is that their “in-charge” posting and *ad-hoc* promotion

was in anticipation of increase in cadre strength; eventually, the cadre strength was not increased to the extent envisaged, and the ratio as between promotes and direct recruits was varied by an amendment in the rules.

8. The materials on record show that 136 posts fell to the share of promotees. Of these 136 posts, 20 were to be reserved for SCs officers and 10 to STs. The respondents urged that 20 SC officers were already working on regular basis. In addition, 16 other SC officials were holding the post of AE(Civil) on “current duty charge” basis. Had these been treated as part of the cadre, there would have been an excess representation of SC officers. There could not be excess representation of any group. It is also submitted by the respondents that as and when the regular vacancies arise, petitioners and others like them were regularized in terms of their seniority. Petitioner No. 1 to 5 were regularized and their names also figure in the latest seniority list of the Assistant Engineer (Civil) dated 27.08.2010. The Petitioners were unable to refute this position.

9. The decision in *M. Nagaraj v Union of India* 2006 (8) SCC 212 is authority for the proposition that the State is not bound to provide for reservation for Scheduled Castes/Scheduled Tribes candidates in matters of promotions, but that if it intended to exercise its discretion and make such provision, it had to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335 of the Constitution. The later decision in *Suraj Bhan Meena v State of*

*Rajasthan* (2011) 1 SCC 467 holds that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition that such reservation was at all required.

10. The above discussion would reveal that the petitioners were never promoted against any available vacancies, as Assistant Engineer. They were posted to discharge the duties attached to that post, on a purely fortuitous basis (“in charge” posting). Thus, the Petitioners were never part of the cadre at the relevant time, to claim seniority along with other candidates. The right to such service benefit arose only upon their being regularly promoted. The question of conferring seniority, from the date of grant of such “in charge” posting therefore does not arise. The claim for seniority thus has to fail.

11. So far as the next issue is concerned, i.e. whether the Petitioners could be considered against vacancies reserved for Scheduled caste candidates, and whether such vacancies for such class of persons existed, the record would disclose that initially, the respondent sought to increase the cadre strength substantially. However, that proposal did not mature; furthermore, the recruitment rules underwent a change as a result of which there was a change in the quota for promotion; a total of 136 posts fell to that quota. The number of posts available for SC officers was 20; such number of officers already existed. It is not the petitioners’ case that any of the promoted SC Assistant Engineers were promoted against general category posts on account of their higher merit. In these circumstances, if the petitioners were to be treated as regular promotees from the date they assumed the post on

“in charge” basis, clearly there would have been an over-representation of SC officers not on account of their general merit but on account of reservation. This claim of regular appointment against an SC vacancy too, therefore, too had to fail.

12. In view of the foregoing discussion, this Court is of opinion that the writ petition is meritless; it is accordingly dismissed without any order as to costs.

**S. RAVINDRA BHAT  
(JUDGE)**

**VIPIN SANGHI  
(JUDGE)**

**OCTOBER 31, 2014**

