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

Decided on: 19th December, 2018

+ **W.P.(C) 13708/2018, CAV 1194/2018 & CM Appl. Nos. 53517-53520/2018**

SUDHIR KUMAR GULATI AND ANR. Petitioners
Through: Mr. S.R. Sharma, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Dr. Ashwani Bhardwaj & Mr. Gaurav Rohilla, Advocates for R-1 to 3.
Mr. C. Mohan Rao, Advocate with
Mr. Lokesh Kumar Sharma,
Advocate for Caveator/R-31.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)
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CAV 1194/2018

As the respondents have entered appearance through counsel, the Caveat is discharged.

CM APPL. Nos. 53517 & 53520/2018 (Exemption)

The applications for exemption are allowed subject to all just exceptions. The application stands disposed of in the aforesaid terms.

CM APPL. No. 53519/2018

This an application for placing on record additional documents.
For the reasons stated therein, the application is allowed.

W.P.(C) 13708/2018 & CM APPL. No. 53518/2018

1. The petitioners have filed this writ petition against a judgment dated 02.11.2018 passed by the Central Administrative Tribunal (hereinafter, "the Tribunal") whereby the Tribunal has dismissed their application, being O.A. No. 3883/2012, and thus upheld a seniority list of Assistant Engineers (hereinafter, "AEs") dated 01.11.2011, prepared by the Central Public Works Department (hereafter, "CPWD").
2. The petitioners joined the CPWD as Junior Engineers (hereinafter, "JEs") between 06.12.1992 and 24.06.1994. They participated in a Limited Departmental Competitive Examination (hereinafter, "LDCE") held on 21.02.1999 for filling up 391 posts of AE (Civil) and 68 posts of AE (Electrical), but were not promoted. Rule 12 of the Central Civil Engineering Group B Service Recruitment Rules, 1997 provides that 50% of the posts of AEs are to be filled by promotion, and the remaining posts are to be filled through LDCE of JEs having minimum 4 years' service as JE. Factually, it is not disputed that no LDCE was held during the period 1992 to 1999, and that the petitioners participated in the LDCE held in 1999, on the basis that the stipulated cut-off date for determining the eligibility was 01.09.1998.
3. Although the petitioners were subsequently promoted to the post of AE, pursuant to an examination held in 2002, they approached the Tribunal in 2012, on the basis that the seniority list dated 1.11.2011 had revealed certain irregularities in the processing of the results of the LDCE held in 1999. Their contention was that the respondents were required to consider *only* the result of the LDCE in order to determine the list for promotion, but had erroneously taken into account the fact that the petitioners had

completed the minimum condition of 4 years' regular service as JEs during different years, during the period in which no LDCE was held. According to the petitioners, the relevant rules, the notification for the examination in question and the advice tendered by the Union Public Service Commission (hereinafter, "UPSC") to the respondents on the subject did not draw any distinction between the candidates at a particular LDCE, on the basis of the year in which they became eligible for promotion upon completion of the qualifying 4 years regular service as JE. They therefore submitted that the respective merit rank of the candidates in the LDCE ought to be the sole criterion for promotion.

4. The Tribunal has rejected the petitioners' application on the basis that they were not entitled to promotion simply on the basis of the result of the LDCE, without any regard to the time when they fulfilled the minimum eligibility condition for participation therein. The Tribunal has also noticed the judgment of this Court dated 27.08.2014 in W.P. (C) 8154/2013 (*D.P. Jindal v. Union of India & Ors.*) which concerned the same examination i.e. LDCE for the post of Assistant Engineer in the CPWD. This Court held in the said judgment *inter alia* as follows:-

"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 complete 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)

5. The judgment in *D.P. Jindal* makes it clear that the date on which a candidate became eligible for promotion, is of utmost relevance when the LDCE is not held annually, but collectively for several years. The relevant Recruitment Rules mandate the respondents to classify the vacancies in a

manner that those eligible in a particular year, do not fill up the vacancies which occurred before their eligibility was established. To hold to the contrary would result in the breach of the statutory Recruitment Rule, and the petitioners deriving a benefit from the completely incidental circumstance that the LDCE was not held for a number of years, and instead held at one time for all vacancies which had arisen in the interregnum. It is evident that, had the LDCE been held regularly on an annual basis or different LDCE were held for each year, the number of vacancies for which the petitioners would have been eligible to compete would have been much fewer than were available in the examination under consideration.

6. The contention of the petitioners based on the language used in the notification for the LDCE of 1999 is also untenable. The notification does not expressly allude to the year-wise availability of vacancies, but mentions that 4 years' service as JE as on 01.09.1998 would render a candidate eligible to appear in the examination. In our view, the eligibility of the candidate to participate in the LDCE does not automatically give the candidate a right to be promoted against vacancies for which he/she was ineligible when they arose. The notification did not intend to, or have the effect of amending or relaxing the eligibility criteria in the statutory Recruitment Rules.

7. The petitioners have also relied upon a communication dated 03.11.1997 addressed by the UPSC to the concerned Ministry, which according to them supports the case of the petitioners and was accepted by the Union of India. The material contents of the said letter are set out below:-

“I am directed to refer to you letter no.30 / 25 / 97-EC. I /E.W.I. dated the 10th September, 1997 and to invite your attention to the proposal contained in para 2 of the letter that the Examination notification should provide that those eligible candidates qualifying in merit will be considered for vacancies falling in the year in which they complete minimum period of 4 years service or thereafter. 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.

2. The above proposal of ministry has been considered in this office and the following comments are offered thereon:-

(i) In all the competitive examination held by the UPSC, the candidates who fulfil the conditions of eligibility prescribed for that particular examination as on the crucial date are treated to be at par and the candidates qualifying or the result of the examination are assigned seniority on the basis of their rank in the merit list. Fixation of seniority in the manner proposed by ministry in their letter cited above will violate the well established principle of fixation of seniority on the basis of rank in the merit list.

(ii) In the past also, this examination was held in 1982, in 1983, then in 1989 and 1992. No such provision, as now proposed by the Ministry, was incorporated in the rules of examination in those years.

3. In view of the position indicated in the proceeding paragraphs, the Ministry of Urban Affairs and Employment are advised to reconsider their proposal and furnish their considered view to this office before the matter is placed before the commission for their consideration and decision.

4. The firm number of vacancies intimated by the ministry vide their letter cited above have been noted.

5. As per the Commission's programme of examination of the year 1998, this examination has been scheduled to be notified on 31.01.1998 and to be held on 2.8.1998. It is requested that a reply to this letter may please be sent as early as possible so that further necessary actions in the matter can be taken by the Commission.”

This communication does not appear to be anything more than part of a consultative process between UPSC and the Government. The seniority list ultimately prepared by the respondents (which gave rise to the petitioners' application before the Tribunal) demonstrates that the Government did not ultimately accept the view reflected in this communication. The petitioners have been unable to demonstrate that it was in any way binding upon the respondents.

8. For the reasons aforesaid, we are of the view that the actions of the respondents, and the impugned order of the Tribunal, do not warrant interference under Article 226 of the Constitution. The writ petition is accordingly dismissed, but without any order as to costs. Pending application stand disposed of.

PRATEEK JALAN, J.

VIPIN SANGHI, J.

DECEMBER 19, 2018

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