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

+ **W.P.(C) 11636/2016 & CM APPL. 45856/2016**

UNION OF INDIA AND ORS

..... Petitioners

Through: Mr. Jasmeet Singh with Mr. Srivats
Kaushal, Advocates.

versus

R.C. RANGRAY AND ORS

..... Respondents

Through: Mr. M. P. Raju and Mr. Krishna
Kumar Mishra, Advocates for R-1 to
R-8.
Mr. Naresh Kaushik, Advocate for R-
9.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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27.11.2019

Dr. S. Muralidhar, J.:

1. The Union of India through the Ministry of Urban Development and the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel Training (DoPT) as well as the Central Public Works Department ('CPWD') Petitioner Nos. 1 to 3 respectively have filed the present petition challenging an order dated 23rd January, 2015 passed by the Central Administrative Tribunal ('CAT') in OA No. 3553/2010 filed by Respondent Nos. 1 to 8. The CAT in the impugned order issued directions to the Petitioners herein to consider the cases of the Respondent Nos. 1 to 8 for promotion to the post of Executive Engineer (Civil) ["EE (Civil)"] on regular basis from the due date or from the year 1994-95 by applying the ratio of the decision in *Rohtas Bhankar v. Union of India* (2014) 8 SCC

872 and *Superintendant Engineer, Public Health, UT Chandigarh v. Kuldeep Singh (1997) 9 SCC 199.*

2. The challenge is also to an order dated 11th March, 2016 passed by the CAT dismissing the Review Application No. 230/2015 filed by the present Petitioners.

3. The brief facts for the purpose of present petition are that the Central Engineering Services (Group 'A') Recruitment Rules, 1954 (hereafter, '1954 RRs') were notified on 21st May, 1954, whereby Assistant Executive Engineer ('AEE') was the feeder grade for the post of Executive Engineer ('EE'). Initially, only such of those AEEs holding a degree in Engineering were eligible to be promoted as EE. In 1972, a proviso was introduced in Rule 21 (3) of the 1954 RRs which permitted a diploma holder AE of 'outstanding merit and record' to be considered for promotion to the post of EE. Respondent Nos. 1 and 3 to 7 are SC candidates and Respondent No. 2 is an ST candidate. All of them cleared the Limited Department Competitive Exam ('LDCE') in the year 1982 and were appointed as AE (Civil) in 1983. Whereas, Respondent Nos. 1 to 6 were appointed as AEs on 17th November, 1983, the other Respondents were appointed as such on 13th December, 1983. Each of them is a diploma holder.

4. A fresh set of RRs were notified by the Government of India with effect from 29th October 1996 ('the 1996 RRs'), prescribing a quota for promotion as EE. 33.33 % was reserved for AEEs with four years' service in the grade, 33.33% for Graduate AEs with eight years' service in the grade and 33.33% for diploma holder AEs with ten years' service in the grade.

5. By a judgment dated 14th January, 1997 in ***J. N. Goel v. Union of India (1997) 2 SCC 440***, the Supreme Court upheld the criteria of “outstanding ability and record” for diploma holder AEs and issued corresponding directions regarding the promotion of diploma holder AEs on *ad hoc* basis against vacancies that occurred prior to the 1996 rules.

6. At this stage, it is required to be noticed that the issue regarding relaxed standard for SC/ST form the subject matter of the decision of the Supreme Court in ***S. Vinod Kumar v. Union of India (1996) 6 SCC 580***. This decision was pronounced on 1st October, 1996 and essentially followed the decision of the Constitutional Bench of the Supreme Court in ***Indra Sawhney v. Union of India 1992 Supp. 3 SCC 217***, which held that Article 16 (4) of Constitution of India does not contemplate or permit reservation in the matter of promotion. It permitted reservation already made to continue for period of five years from the date of judgment.

7. Both the decision in ***Indra Sawhney*** and the decision in ***S. Vinod Kumar (supra)***, triggered amendment to the Constitution by the insertion of Articles 16 (4A) and 16 (4B) as well as to Article 335 of the Constitution. To overcome the effect of decision in ***S. Vinod Kumar (supra)***, retrospective effect from 17th June, 1995 by the Constitution (Seventy-Seventh Amendment), 1995 was given to a portion inserted in Section 16 (4A) extending the enabling power of the State to make the provision for reservation “in the matter of promotion with consequential seniority to any class” .

8. Prior to the decision in *S. Vinod Kumar (supra)* an OM No. 8/12/69-Estt. (SC/ST) dated 23rd December, 1970 was issued by the DoPT relaxing the standards in case of SC/ST candidates in LDCE and Departmental Confirmation Examination. There was another DoPT OM 22011/5/86/Estt. (DE) dated 10th April, 1989 issued by the DoPT prescribing lower qualifying marks and lesser standard for SC/STs. As a direct result of the decision in *S. Vinod Kumar (supra)* both OMs i.e. the OM dated 23rd December, 1970 as well as the OM dated 10th April, 1989 were withdrawn by an OM No.36012/23/6-Estt dated 22nd July, 1997.

9. After the insertion with retrospective effect of the above amendment in Article 16 (4A) of the Constitution, the aforementioned OMs, which had stood withdrawn got revived by OM No.36012/23/96-Estt. dated 3rd October, 2000, with the rider that the above OMs that stood revived would take effect in respect of selection to be made on or after the issuance of the OM dated 3rd October, 2000 and that the selection finalized earlier shall not be disturbed.

10. The validity of the OM dated 22nd July, 1997 that had withdrawn the 1970 and 1989 OMs was considered by Constitution Bench of the Supreme Court in *Rohtas Bhankar v. Union of India (2014) 8 SCC 872*. The Constitution Bench while declaring the aforementioned OM dated 22nd July, 1997 to be illegal gave corresponding directions as regards the results of the LDCE, 1996 held for the post of Section Officers/Stenographers (Grade B/Grade-I) by providing reservation and extending all consequential reliefs.

The net result was that Petitioners were required to revive the 1970 and 1989 OM's as if there was no interregnum during which they remained inoperative.

11. Reverting to the case on hand, when the Departmental Promotion Committee ('DPC') held its meeting in September, 1999 it applied the aforementioned OM on 22nd July 1997, which remained operative till 3rd October, 2000 and proceeded to make promotions on that basis. This is clear from the counter affidavit filed by the Petitioners herein, before the CAT.

12. It was noted by the CAT in the impugned order that the DPC held in November, 2004 considered the case of the Respondent Nos. 1 to 8 against vacancies from 20th October, 1996 to 31st March, 2003 by invoking the RRs published in 1996 and recommended them for promotion to EE (Civil) on regular basis whereas recommendations in respect of the Respondent Nos. 3 and 8 were kept in a sealed cover on account of pendency of departmental proceedings against them. Subsequent to certain directions issued by this Court in W.P.(C) No.840/2003 (*Gurbaaz Singh v. Union of India*), the Respondent Nos. 1, 2 and 4 to 7 were promoted as EEs on *ad hoc* basis. The CAT was informed that this Court had finally disposed of W.P. 840/2003 on 22nd July, 2014 with certain directions. The CAT also took note of the decisions in *Indra Sawhney (supra)* *Rohtas Bhankar (supra)* as well as the decision in *Kuldeep Singh (supra)*. In effect, the CAT applied the law explained in *Kuldeep Singh* and *Rohtas Bhankar* that the OM dated 22nd July, 1997 was illegal.

13. The CAT in its first impugned order dated 23rd January 2015 therefore concluded that there was no legal impediment for the Petitioners herein to promote the Respondent Nos. 1 to 8 as EE (Civil) on regular basis in respect of vacancies for the years 1994-95, 1995-96 and 1996-97. The promotions could not be denied on the ground that they were only diploma holders and did not meet the criteria of ‘outstanding ability and record’, since they were eligible for the benefit of relaxed standards. As already noted, the CAT on 11th March 2016 dismissed the Petitioners’ Review Application No.230/2015.

14. Mr. Jasmeet Singh, learned counsel appearing for the Petitioners submitted that the relevant rules pertaining to the Respondents’ service were not specifically amended to provide for the relaxed standards. He sought to place reliance on the decision ***Suresh Chand Gautam v. State of Uttar Pradesh AIR 2016 SC 1321*** to urge that while there may be enabling provisions in the RRs, unless there is a notification issued pursuant thereto relaxing the standards, Respondents 1 to 8 could not claim it as a matter of right.

15. As rightly pointed out by Dr. M.P. Raju, the learned counsel for the Respondents 1 to 8, the relaxed standard was in fact incorporated in the relevant rules by inserting para 23-A in the 1954 RRs in part VI, as under:

“23-A. Saving-Nothing in these rules shall affect reservation relaxation of age limit and other concessions required to be provided for persons belonging to the Scheduled Castes and the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Government from time to time.

(M/O) W&H Notification No.220U-A(4)/75-EWI dated 10.09.82.”

16. Further, even in the 1996 RRs there is a power to relax given to the Government under Rule 16.

17. In any event, in the present case, as is evident from the counter affidavit filed by the Petitioners herein before the CAT, reliance was placed on the DoPT OM dated 22th July, 1997, which has been held to be invalid in ***Rohtas Bhankar (supra)***. The sequitur is that the Petitioners should restore the position as it existed prior to the withdrawal of the DoPT OMs of 1970 and 1989.

18. In that view of the matter, the directions issued by the CAT in the impugned order cannot be faulted and do not call for interference. The order dismissing the Petitioners’ review petition also calls for no interference.

19. The petition is accordingly dismissed. The interim order stands vacated and the application is disposed of. No order as to costs,

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 27, 2019/mr