

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

% **Date of decision: 12th April, 2021.**

+ **W.P.(C) 4526/2021**

NARESH KUMAR GUPTA **Petitioner**

Through: Mr. C. Mohan Rao, Senior Advocate.

versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Manish Mohan, CGSC with
Mr. Amit Gupta, GP for R-1/UOI.
Mr. Naresh Kaushik, Advocate for R-4.
Mr. Hanu Bhaskar, Advocate for private respondents.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

C.M. No. 13832/2021(for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) 4526/2021 & C.M. No. 13831/2021(for stay)

3. The petition impugns the order dated 28th January, 2021 of Central Administrative Tribunal (CAT), Principal Bench, New Delhi, of dismissal of OA No.175/2021 (Old No.183/2020) preferred by the petitioner, an Executive Engineer (Civil) in the respondent no.2 Central Public Works Department (CPWD), challenging the seniority list of Executive Engineers (Civil) as on 1st January, 2018, published through OM dated 17th January, 2020.

4. We have heard the senior counsel for the petitioner as well as the counsels for the respondents appearing on advance notice.

5. The petitioner was appointed as a Junior Engineer (Civil) in the respondent no.2 CPWD, in the year 1982. In the year 1991, pursuant to a Limited Departmental Competitive Examination taken by the petitioner, he was promoted as an Assistant Engineer (Civil). On 21st April, 2006, the petitioner was promoted as an Executive Engineer (Civil), but on an *ad hoc* basis. Finally, vide Office Order dated 1st January, 2018, the petitioner was appointed as an Executive Engineer (Civil), on regular basis, retrospectively with effect from 17th December, 2004. The OA aforesaid was preferred, impugning the seniority list of Executive Engineers (Civil) as on 1st January, 2018, published through OM dated 17th January 2020, in which the name of the petitioner figured at Serial No.445, computing the seniority of the petitioner from 21st April, 2006 as against vacancy year 2007-2008, when he was appointed as an Executive Engineer (Civil) first, on *ad hoc* basis.

6. The contention of the petitioner before CAT was that since he was appointed as an Executive Engineer (Civil), though on regular basis on 1st January 2018, but retrospectively with effect from 17th December, 2004, his seniority should have been counted from 17th December, 2004.

7. CAT has not accepted the aforesaid contention, and relying on ***Uttaranchal Forest Rangers' Assn. (Direct Recruit) Vs. State of U.P.*** (2006) 10 SCC 346, has in the impugned order reasoned that the seniority of the petitioner was to be counted from the date the petitioner was actually borne in the cadre and which date was of 21st April, 2006, even though the petitioner on that date was appointed on *ad hoc* basis.

8. The senior counsel for the petitioner, before us has contended that there were several litigations with respect to promotions to the post of Executive Engineer (Civil) in respondent no.2 CPWD and has drawn our attention to the dicta of the Division Bench of this Court in ***Central Engineering Service Class I Association (Dr.) Vs. Union of India*** (2009) 156 DLT 300 (DB) and the judgment dated 22nd July, 2014 in W.P.(C) 840/2003 titled ***Gurbaaz Singh Vs. UOI*** and has argued that the seniority granted to the petitioner from 21st April, 2006 and not from 17th December, 2004 is in violation of the aforesaid judgments. It is argued, that the promotion quota posts of Executive Engineer were illegally diverted to the quota of Direct Recruits and which resulted in litigation and promotion quota posts remaining unfilled. It is contended that the petitioner is entitled to seniority of the year against the vacancy of which the petitioner has been promoted.

9. The counsels for the respondents have rightly contended that the petitioner is confusing promotion with seniority.

10. We have also enquired from the senior counsel for the petitioner, whether not what the petitioner is seeking i.e. seniority from a date before the petitioner was even borne in the cadre of Executive Engineer (Civil), is contrary to ***K. Meghachandra Singh Vs. Ningam Siro***, (2020) 5 SCC 689, which overruled the earlier view taken in ***Union of India Vs. N.R. Parmar*** (2012) 13 SCC 340 and which view the senior counsel for the petitioner is now propagating, though stands authoritatively overruled. The petitioner cannot be granted seniority, from a date before he occupied post of Executive Engineer (Civil) and qua which there is no dispute that it was only on 21st April, 2006. The petitioner cannot claim seniority from the

date when he was wrongfully denied promotion to Executive Engineer (Civil) and which promotion has already been granted to the petitioner. However while promotion is an individual right of the petitioner, seniority is a right *inter se* others holding the same post and the petitioner cannot, on the basis of an order in his favour with respect to promotion, claim seniority over others holding the same post, from prior to the date when the petitioner actually occupied the said post.

11. We therefore do not find any merit in this petition.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

APRIL 12, 2021

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