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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 02.06.2021

+ W.P.(C) 5744/2021 & CM APPL. 18009/2021

SURESH BISWAS AND ORS Petitioners

Through: Mr. Devendra Kr. Gupta, Adv.

versus

UNION OF INDIA THROUGH DGESIC Respondent

Through: Mr. Arnav Kumar, Senior Panel
Counsel for UOI with
Mr. Akshat Singh, GP.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. This petition has been filed by the petitioners praying for the following reliefs:-

- (i) *On the premise set forth above and the facts and circumstances of the case, it is most respectfully prayed that the Hon'ble Court may graciously be pleased to issue writ of or in the nature of certiorari and/or any other appropriate writ/s, order/s or direction/s quashing and setting aside the impugned Judgement and Order dated 16.3.2021 (Annexure P-1) in O.A. No. 584/2021 passed by the Hon'ble Central Administrative Tribunal, Principle Bench, New Delhi.*
- (ii) *To direct the Director General, Employees' State Insurance Corporation, New Delhi –*

Signature Not Verified

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By: SHALGO BATRA

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110002 to hold the DPC for filling the post in the grade of EE(Civil) for the panel year 2018-19 and 2019-2020 in accordance with DOP&T guidelines issued vide DOPT O.M. No. 36012/2/96-Estt (Res) dated 2.7.1997 and letter no. 14017/2/1997-Estt (RR) dated 19.01.2007 and Hon'ble Supreme Court Judgments to promote the Applicants based on post based roster.

- (iii) *To direct the DG, Employees' State Insurance Corporation not to fill the Post of EE (Civil) on deputation basis till the disparity in RR's between EE (Civil) & EE (Electrical) and the Claim of Petitioners is not disposed in accordance with DOP&T guidelines."*

2. The petitioners had filed O.A. No. 584/2021 before the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'CAT') *inter alia* contending therein that they are working as Assistant Executive Engineer (Civil) (hereinafter referred to as 'AEE (Civil)') with the respondent and are eligible for promotion in the grade of Executive Engineer (Civil) (hereinafter referred to as 'EE (Civil)'). As per the Employees State Insurance Corporation Executive Engineer (Civil) Recruitment Rules of 2012, these posts are to be filled with 50% from AEE (Civil) and 50% from AE (Civil). They allege that there are 14 posts in the grade of EE (Civil) out of which 8 posts of EE (Civil) have been filled by promotion while 6 are to be filled as per DOP&T guidelines issued vide DOP&T O.M. No. 36012/2/96-Estt. (Res) dated 02.07.1997 and letter no. AB. 14017/2/1997-Estt. (RR)/Pt. dated 19.01.2007. They made the following prayer in the O.A. before the learned CAT:-

"8. RELIEF SOUGHT

In the aforesaid facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to;
a) To direct the Director General, Employees' State Insurance Corporation, New Delhi – 110002 to hold the DPC for filing the post in the grade of EE(Civil) for the panel year 2018-19 and 2019-2020 in accordance with DOP&T guidelines issued vide DOPT O.M. No. 36012/2/96-Estt (Res) dated 2.7.1997 and letter no. 14017/2/1997-Estt (RR) dated 19.01.2007 and Hon'ble Supreme Court Judgments to promote the Applicants based on post based roster."

3. The learned CAT vide its Impugned Order dated 16.03.2021 disposed of the O.A. with the following direction:-

"5. We, therefore, dispose of the OA, directing the respondents to take the necessary steps for conducting the DPC for promotion to the post of Executive Engineer, or to indicate the reasons for not conducting the DPC at present through a communication, to be given within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs."

4. In the purported compliance with the said order, the respondent issued an Office Order dated 18.05.2021 *inter alia* observing as under:-

"5. DOPT O.M. 14017/2/1997-Estt(RR) dated 19.01.2007 referred is regarding revision of pay scales-amendment of Service Rule/ Recruitment Rules with regard to 5th CPC, whereby, it has been made necessary to amend existing RR under Col. 11 of Annexure-1 in the DOPT guidelines dated 18.03.1988 to replace "percentage of the vacancies to be filled by various methods" by "percentage of the posts to be filled by various methods". Further, DOPT in the aforesaid O.M. also provided

illustration how the post-based roster for reservation and vacancy based roster for appointment under various methods are to be operated. The cadre strength of Executive Engineer (Civil) is 14 and as per the provisions of RRs, 50% posts are to be filled from AEE (C) and 50% of posts are to be filled from AE (C). Accordingly, the total no. of posts were equally earmarked and filled up from the respective quota. 07 posts were filled from AEE (C) Quota and out of 07 vacancies earmarked to be filled from AE(C) only 01 vacancy was filled from AE (C) quota. Remaining 06 vacancies against Assistant Engineer (Civil) quota were unfilled due to non-availability of eligible officers. These 06 vacancies are earmarked to be filled from AE (Civil) Quota only and cannot be apportioned twice.

6. Since, no officer in Assistant Engineer (Civil) cadre was eligible for promotion to the post of Executive Engineer (Civil), therefore, as per clause under column no. (10) of Recruitment Regulations for the post of EE (Civil), "By promotion failing which by deputation (including short term contract)/absorption", 03 vacancies have already been filled up by deputation including short term contract and an advertisement was published in Employment News dated 27 March-02 April, 2021 for filling up of remaining 03 vacant posts of Executive Engineer (civil) on deputation/absorption basis in ESI Corporation.

Keeping in view the above mentioned facts, the claim of filling up of vacant posts of Executive Engineer (Civil) by holding DPC for the panel year 2018-19 and onwards cannot be acceded to as no post of Executive Engineer (Civil) is lying vacant against the Assistant Executive Engineer (Civil) Quota as on date."

5. The learned counsel for the petitioners submits that the above Office Order dated 18.05.2021 is not in terms of the DOP&T Guidelines dated 19.01.2007 and the DOP&T O.M. dated 02.07.1997.

He submits that the learned CAT failed to direct the respondent to follow the above guidelines and O.M.

6. Having heard the learned counsel for the petitioners, we are of the opinion that the Office Order dated 18.05.2021 issued by the respondent gives a new/fresh and subsequent cause of action to the petitioners, for which the petitioners would be at liberty to take appropriate remedy, if so advised, in accordance with law. However, the order dated 16.03.2021 passed by the learned CAT in O.A. No. 584/2021 cannot be faulted on this account. In fact the impugned order has worked itself out.

7. In view of the above, the present petition is dismissed, however, the petitioners shall be at liberty to challenge the order dated 18.05.2021 of the respondent, if so advised, in accordance with law. We make it clear that we have not expressed any opinion on the validity of the Office Order dated 18.05.2021.

8. There shall be no order as to costs.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

NAVIN CHAWLA, J.

MANMOHAN, J.

JUNE 2, 2021/rv/U

Signature Not Verified

Digitally Signed

By:SHALGO BATRA

04.06.2021 10:20:40 P.(C) 5744/2021