

D.P. Jindal And Ors vs Union Of India And Ors on 26 February, 2019

Author: Vipin Sanghi

Bench: Vipin Sanghi, A. K. Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 13375/2018

D.P. JINDAL AND ORS.

..... Petitioners

Through:

Mr. Padma Kumar and Mr.Amandeep
Joshi, Advs. with Ms.Nimisha, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. C. Mohan Rao, Adv. with

Mr.Lokesh Kumar Sharma, Adv. for
R-9/Caveator.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% 26.02.2019 Since the counsel for the caveator/respondent No. 9 has already put in appearance, the caveat stands discharged.

CM APPL. 52053/2018 Exemption allowed, subject to all just exceptions. W.P.(C) 13375/2018 & CM APPL. 52054/2018 (for stay) The petitioners have assailed the order dated 02.11.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal') in O.A. Nos. 1817/2015 & 3883/2012. The petitioners in the present writ petition are the applicant in O.A. No. 1817/2015.

The long and short of the matter is that the petitioners were serving as Junior Engineers (Civil) in CPWD, New Delhi. The next promotional post is that of Assistant Engineer (Civil). The posts of Assistant Engineer (Civil) are filled entirely through promotion. For regular promotion on the basis of seniority, the qualifying service required is eight years regular service in the feeder grade of Junior Engineer (Civil). 50% of the promotional posts are filled on the basis of seniority. The remaining 50% posts are filled through a Limited Departmental Competitive Examination (LDCE). The qualifying service therefore is four years regular service in the feeder grade of Junior Engineer (Civil).

The respondent-department did not hold the LDCE for promotion to the grade of Assistant Engineer (Civil) for several years, and a common examination was held in respect of the LDCE vacancies for the post of Assistant Engineer (Civil), which arose for the years 1993-98. Upon declaration of result,

the lists of promotees was drawn up, and the respondent has allocated the vacancies in the promotional post upon consideration of the merit of the candidates while taking into account the eligibility of the candidates i.e. by ensuring that the candidates fulfil the requisite qualifying service criteria of four years regular service.

The grievance of the petitioners was that though they had not completed the qualifying service of four years regular service in the feeder grade of Junior Engineers (Civil), they should be considered and promoted against all the benched up vacancies, irrespective of the year in which the vacancies arose. Their plea was that all the vacancies should be treated at par, irrespective of the year in which they arose and the entire pool of vacancies, according to them, was available for them to compete, even though they do not fulfil the requirements of Recruitment Rules-prescribing four years regular service in the feeder grade as Junior Engineers (Civil) in respect of vacancies which arose in the years e.g. in 1993 and 1994.

The Tribunal has not found favour with the said submission and, consequently, the Original Applications stand dismissed.

The petitioners have sought to anchor their claim on the past practice and the view taken by the UPSC. The examination was held by the respondent Authorities and not by the UPSC in the present case. The UPSC is only an examining body and its view has not been accepted and implemented by the respondent Authorities.

We find that the method adopted by the respondents was the only fair and just manner of allocating the vacancies year-wise. The Recruitment Rules, which are statutory in nature, could not have been breached merely on account of the fact that the respondent Authorities failed to hold the LDCE on year-wise basis. The respondents could have held different LDCEs, year-wise, simultaneously. In that eventuality, the petitioners could not have staked a claim that they should be allowed to compete for vacancies which arose in the years in which they were not even qualified. Merely because a single LDCE has been held for the sake of convenience, the petitioners do not get a right to stake their claims in respect of the vacancies which arose in the years when they were not even qualified under the Recruitment Rules. Relative merit has to be judged only between the eligible candidates, and those not eligible in a particular year, cannot claim to be more meritorious than those who are so qualified in that year.

Learned counsel for the petitioners submits that for the years 1995-96 and 1996-97, several Junior Engineers were granted promotions, even though, they were not eligible. A perusal of the documents placed on record in this regard shows that all of them had the qualifying service for being considered for the years 1995-96 and 1996-97. It is claimed that they were lower in merit, and yet promoted in these years. However, this is not an aspect that the petitioners have any locus standi to raise, considering the fact that all of them have become eligible only from 1997-98 onwards, and they are not even eligible to be considered for the vacancies which arose prior to 1997-98. The petitioners are, therefore, in any event, not affected by the so-called 'irregular' promotions granted to several persons in the years 1995-96 and 1996-97.

Learned counsel for the petitioners has lastly drawn our attention to a document of the Ministry of Finance, Department of Expenditure dated 16.04.2004, as also to another document dated 11.06.2015. A perusal of the document dated 16.04.2004 shows that with a view to implement the order of the CAT dated 07.08.2003, and with a view to save 22 Assistant Engineers from reversion, an equivalent number of supernumerary posts were created in the cadre of AEs w.e.f. 04.04.2001 to 31.03.2005 with certain conditions. It was for the Government to decide whether, or not, to revert the said affected 22 AEs and the petitioners can have no grievance in that regard, if supernumerary posts were created so as to prevent their reversion. Similarly, on 11.06.2015, the Government approved the proposal from the Ministry of Urban Development regarding the creation of 52 supernumerary posts of Assistant Engineer (Civil) in CPWD, to adjust the Officers promoted in excess from Junior Engineer (JE) to the grade of Assistant Engineer (AE) through LDCE conducted in the year 1999, for vacancies pertaining to the year 1993-94 to 1998-99. In our view, it was a prerogative of the Government to create the said supernumerary posts, and the petitioners can possibly have no grievance in that regard. We also find that supernumerary posts were created year-wise as follows:

"Sl. No.	No. of SPs to be created	Year of adjustment of SPs against the regular vacancies
1	08	1998-1999
2	02	1999-2000
3	14	2000-2001
4	16	2001-2002
5	06	2002-2003
6	06	2003-2004
Total	52"	

Therefore, not only the Senior JEs, who became eligible for consideration for promotion in the years 1998-99 and 1999-00 benefited, but even those who became eligible in later years i.e. 2002-03 and 2003-04 benefited.

For the aforesaid reasons, we find no merit in this petition. Dismissed.

VIPIN SANGHI, J A. K. CHAWLA, J FEBRUARY 26, 2019 nn