

**Proceedings of the sitting on 24.11.2008 under the Chairmanship of
Hon'ble Member(TS)**

A list of officers present in the sitting is at Annexure.

ISSUES

Non-promotion of AE's belonging to ST category as EEs in CPWD.

Whether the notional seniority given to them as AEs should be counted towards the qualifying regular service.

BACKGROUND

A representation dated 05.04.2006 was received from a group of 16 ST AEs in CPWD for their due promotions to the post of EE. Their complaint was forwarded to MUD for submitting the full facts of the case on 27.04.2006. In spite of repeated reminders there was no response from them.

A Sitting was held on 18.10.06 in the office of Hon'ble Chairperson. Shri. Anil Baijal, Secretary, MUD along with other officers attended the discussion. In the hearing cases pending in MUD along with this case of Shri R.G. Meena and others was also discussed. It was intimated that MUD had decided to seek advice of Dept of Legal Affairs and the position will be intimated in this regard by end of October, 2006. It was intimated by CPWD that DOPT has returned the file with some observations and file has again been referred to MUD on 17.11.2006.

Even after repeated reminders there was no response from MUD/CPWD till July, 2007. Secretary, NCST decided to have a discussion with Liaison Officer for SC/ST of CPWD on **15.10.2007**. It was intimated during the meeting that post based rosters are not ready for most of the posts. It was decided to review the reservation position of STs at level of JE, AE & EE. It was decided to have next meeting with ADG (S&P), CPWD and LO for SC/ST of CPWD on 31.10.2007 along with complete documents.

During the meeting on **31.10.2007** it was intimated by CPWD that last regular promotion to the post of Executive Engineer in CPWD was done in 1999. After that there was no promotion to EE because of stay by the Hon'ble High Court of Delhi. Hon'ble High Court of Delhi had permitted to fill 431 vacancies of EEs in CPWD on adhoc basis through promotion channel, accordingly 431 promotions were effected in May, 2006 with respect to recruitment rules 1996. Again CPWD approached Hon'ble High Court, Delhi for permission to fill another 155 vacancies of EEs. Hon'ble High Court, along with permission to fill 155 vacancies of EEs in CPWD on adhoc basis, directed them to workout the year wise breakup of 431 vacancies already filled by them in May, 2006. It was also directed by the Hon'ble Court that vacancies (74, SC-42, ST-29, UR-3) prior to

revision of RR in 1996 must be filled up as per RR 1954. CPWD intimated that out of 29 ST vacancies maximum will be filled up with ST candidates and balance will be filled up with UR candidates as per RR 1954. These reserved vacancies filled up with UR candidates will be carried forward to next recruitment year to be filled up by ST candidates as per RR 1996. It was also assured by CPWD that notional seniority accorded to ST with effect from 1994 will be taken into consideration for the purpose of determining the eligibility in terms of length of service of 8 years. It was also admitted by CPWD that some of the AEs had already been given the benefit of notional seniority for the purpose of counting the actual service for promotion as EEs. It was clarified by NCST that for adhoc promotions, there is no zone of consideration. CPWD assured to rectify this error in yearly review DPCs. It was also assured by CPWD to complete this exercise of review DPC by 07.12.2007 and post based rosters of JEs, AEs & EEs to be completed by December, 2007.

A meeting with DG, CPWD and ADG (S&P) in the Chamber of Hon'ble Chairperson, NCST was held on **07.01.2008**. CPWD informed that as clarification received from DoPT, benefit of notional seniority for the purpose of eligibility of 8 years for promotion to EE cannot be given.

It was decided by Hon'ble Chairperson to have a meeting with Secretary, MUD, Secretary, DoPT and DG, CPWD on **12.02.2008** in her Chamber. It was intimated by the DoPT that seniority and eligibility are two different things and they have referred this case to DOLA for legal advice. MUD vide their letter dated 14.03.2008 intimated that DoPT has advised that eligibility should be counted from actual date of promotion to the feeder grade.

It was intimated by the petitioners that in recent promotion orders their junior has been promoted and also the benefit of notional seniority has been given to few AEs. They have also enclosed a copy of Supreme Court judgment dated 28.03.2000 in the case of Union of India and others Vs Shri. K.B. Rajoria in which it is clearly mentioned that the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on adhoc or stop gap or purely temporarily basis. It is nobody's case that the notional promotion granted to Krishnamoorti was irregular. By giving him notional promotion as Additional Director General w.e.f. 22.02.1995. Krishnamoorti was in fact regularly appointed to the post on that date.

In view of the above, a sitting with Special Secretary, MUD and DG, CPWD was held on **27.05.2008**. It was explained by the Commission that as per Hon'ble Supreme Court decision in 2000, it is very clear that notional seniority to be counted as regular service. It was also made clear that according to the literature followed by the CPWD, in case of notional promotion, the service in the post for the purpose of further promotion is to be counted. In this meeting Spl. Secretary, MUD expressed that he is not aware of SC decision of 2000 and is

require to be studied. He further directed CPWD to review the case of promotion of ST AEs in light of the SC decision of 2000, promotion of other category officers based of notional seniority and practice being followed in the other departments.

To review the position CE(P&S), CPWD came to the Commission on **16.06.2008** and discussion held with JS, NCST. The discussion resulted that the speaking order dated 18.02.2008 by CPWD is not as per decision of Principal Bench, CAT, New Delhi and needs amendment/re-examination, a number of examples were cited as examples in support of the fact that in general promotion in CPWD are being done based on the notional seniority and back dated promotions cannot be justified with current eligibility. Later on, CPWD quoted these promotion cases as anomalies and assured to correct them.

After this no sitting/meeting could be held for availability of officers from MUD and CPWD. A sitting is scheduled to be held with Secretary, MUD, Secretary, DoPT and DG(W), CPWD on **24.11.2008** at 1100 hrs with Shri Tsering Samphel, Hon'ble Member, NCST.

DISCUSSION

It was noted by the Commission that the main issue pertained to review of the whole case afresh both by the CPWD as well as by the DoP&T in the light of the position emerged from the deliberations in the Commission. Rather than proceeding according to the decision taken in the earlier meetings in the Commission, particularly, the meeting held on 27.05.2008 with the Special Secretary, MoUD, CPWD is only re-iterating their earlier decision / views in the matter. Secretary, MoUD expressed his displeasure in the matter and directed CPWD to review the case in consultation with DoP&T with reference to the specific points raised by the Commission.

On the request of the DG, CPWD, the issues/points on the basis of which review of the case is considered necessary in consultation with the DoP&T, were summarized, which are listed as under:

- i) Clear decision of Hon'ble Supreme Court was given in 2000 in case of a CPWD officer Shri Krishnamoorti, Addl DG regarding counting of notional seniority towards regular service. As per the RRs for DG, CPWD of 1992, the post of DG(W) is a selection post to be filled up by promotion from amongst Addl DG with two years regular service in the grade. The High Court earlier in the case held the decision of the CAT that Krishnamoorti was not eligible on the cut off date i.e. 01.07.1997 for promotion to the post of DG. According to the High Court the words regular service in the rules means actual service and that the fiction of notional promotion could not amount

to the two years experience necessary under the rules. The High Court was of the view that the notional seniority granted to Krishnamoorti by the order dated 10.06.1998 was no substitute for the requirement of two years regular as Additional DG, which had been laid down in the relevant rules as the eligibility criteria for promotion to the post of DG(W). Hon'ble Supreme Court decided that High Court decision cannot be sustained. Supreme Court further elaborated that the High Court erred in construing the word regular service in the grade as actual physical service. If that were so, then an ad hoc appointee who actually serves in the post could also claim to be qualified to be considered for the post of DG. The word regular therefore does not mean actual. In view of Supreme Court, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis. It is nobodys case that the notional promotion granted to Krishnamoorti was irregular. By giving him notional promotion as Addl DG with effect from 22.02.1995, Krishnamoorti was in fact regularly appointed to the post on that date.

ii) The DoPT in their first decision on 18.12.2007 stated that " we may advise Ministry of Urban Developmen to give the benefit of seniority for ad hoc promotion to the grade of Executive Engineer subject to final decision of the Delhi High Court."

The revised decision of DoPT obtained by CPWD on 14.01.2008 is based on the case of Ms Prabha Devi. DoPT has mentioned that as per the Supreme Court decision in Prabha Devi case, seniority and eligibility are two different things and seniority is relevant only between eligible persons. Commission would like to make it very clear that the case of Ms Prabha Devi was for demanding notional seniority w.e.f a date, when she was not in the job, whereas in case of ST AEs, they have already been awarded notional seniority as per the directions of Principal Bench, CAT, New Delhi on 02.04.2007. PB, CAT has directed to count seniority and eligibility both from the date of occurrence of vacancies subject to outcome of writ petition. CPWD has implemented only the counting of seniority part and left the counting of eligibility, which is clear discrimination with the ST AEs. Notwithstanding this, even if the decision of Hon'ble Supreme Court in case of Ms Prabha Devi is applied on this case, it should be applied in totality. In case of Prabha Devi SC has not granted notional seniority to Ms Prabha Devi but clarified that in respect of SC/ST officers the eligibility period has to be reduced to half, which should also be made applicable in case of ST AEs. According to this decision even if eligibility period is counted from 2001, then also these AEs become eligible for promotion as EEs.

- iii) The Principal Bench, CAT, New Delhi in OA No 1105/2006 filed by the petitioners has given decision on 02.04.2007. The following was stated in the decision :
- a) The contention of the applicant is that the Tribunal in Vijender Singh & others Vs Union of India & others (OA-2710/2003) decided on 13.05.2004, as regards the JE seeking promotion as AE on declaration of vacancies on 1.2.2002, allowed counting of service in LDCE from the date of occurrence of vacancies, which has been reiterated by the Chandigarh Bench of the Tribunal in A.P.Garg & others Vs Union of India & others (OA-1260/CH/2003) decided on 29.07.2004, wherein it has been held that the applicants are entitled to be reckoned for counting of service from occurrence of vacancies, which will make them eligible as per the required service.
 - b) As the decision of the Tribunal occupies the arena of grant of seniority from the date of accrual of vacancies in LDCE and has been implemented by the respondents in view of the decision of Chandigarh Bench of the Tribunal in CP (supra), though subject to the outcome of the writ petition, applicants, who have also applied LDCE, being ST, are entitled to be considered for ad hoc promotion as per DoPT OM of 15.03.2002 and the same criteria of reckoning eligibility / seniority from the date of accrual of vacancies cannot be denied to them, which would constitute an invidious discrimination.
 - c) In view of the matter, we dispose of this OA remanding back this case to the respondents for reconsideration of applicants' case for ad hoc promotion in the cadre of Executive Engineer on the same principle as adopted in the case of applicants before the Chandigarh Bench, i.e. **counting of seniority and eligibility from the date of occurrence of vacancies** and take a final decision by a reasoned and speaking order within two months from the date of receipt of a copy of this order.
- iv) The official seniority list of CPWD contains the date of promotion order only and not the actual date of joining the post, which clearly indicates that notional seniority is only followed for eligibility criteria for promotion and there is no system exists at present to count the actual period of experience for promotion as stated by the officials of CPWD, which should also be followed in case of promotion of ST AEs in CPWD.

CPWD explained that a number of meetings were held with Minister and in Ministry and the position was explained. Commission expressed that CPWD is

always explaining the existing position, but never addressing the additional points raised by the Commission.

Secretary, MUD directed the CPWD to examine and review the case of ST AEs in light of the above points raised by the Commission, in consultation with DoPT .

RECOMMENDATION

The Commission recommends that in view of the discussions, there are number of grounds as

- i) Decision of Hon'ble Supreme Court given in 2000 in case of a CPWD officer Shri Krishnamoorti, Addl DG;
- ii) The decision of DoP&T on both the occasions not being against ST AEs promotion;
- iii) The Principal Bench, CAT, New Delhi in OA No 1105/2006 filed by the petitioners has given decision on 02.04.2007 that seniority and eligibility should be counted from the date of occurrence of vacancies in the feeder post for the purpose of promotion; and
- iv) The official seniority list of CPWD contains the date of promotion order only and not the actual date of joining the post.

on which ST AEs should be promoted as EE without further delay. It is further recommended that final views of DoP&T may be obtained, before taking any final decision in the matter.

At present, all the posts of Executive Engineer in CPWD are being filled with General seniority list on adhoc basis. This is a general trend in CPWD. It is recommended that views of Reservation Cell of DoP&T may also be obtained, before a final view is taken, so as to ensure that reservation policy is not compromised in view of adhoc promotions, which is a recurring phenomenon in CPWD.

While referring the case to DoP&T (under intimation to NCST) by CPWD, an official of the Commission should also be involved in explaining the views of the Commission to the DoP&T on the related issues, before a final view is taken by the DoP&T in the case.

ANNEXURE

The following were present in the sitting on 24.11.2008 :

NCST

1. Shri Tsering Samphel, Hon'ble Member**In Chair**
2. Shri Aditya Mishra, Jt. Secretary
3. Shri Vinod Aggarwal, Director

Ministry of Urbal Development

1. Shri M. Ramachandran, Secretary

CPWD

1. Shri Anil Kumar, Director General
2. Shri O.P. Bhatia, ADG(S&P)
3. Shri A.P. Singh, Chief Engineer (P&S)

DoP&T

1. Shri K.G. Verma, Director/Res.

Petitioner

1. Shri K. A. Meena, AE(C), CPWD
2. Shri A. K. Meena, AE(E), CPWD
3. Shri J. K. Meena, AE(C), CPWD