

ANNEXURE

| S.No | Issue | Views of NCST | Views of MoUD |
|------|--|---|---------------|
| 1. | The benefit of notional seniority should be given while counting their eligibility on the following grounds. | | |
| 1a. | Decision of Hon'ble Supreme Court in 2000 in respect of a CPWD officer, Shri Krishnamoorti, Addl DG regarding counting of notional seniority towards regular service (Appendix-I) | <p>High Court earlier in the case held the decision of the CAT that Krishnamoorti was not eligible on the cut off date for promotion to the post of DG as regular service in the rules means actual service. Hon'ble Supreme Court decided that High Court decision cannot be sustained. It is no body's case that the notional promotion granted to Krishnamoorti was irregular. By giving him notional promotion as Addl DG with effect from a date, Krishnamoorti was in fact regularly appointed to the post on that date.</p> <p>This clearly shows that notional seniority / promotion in the feeder grade to be counted for eligibility for promotion to the next higher grade, for this reason PB, CAT, New Delhi has decided in the favour of ST AEs.</p> | |
| 1b. | Need to review the interpretation and follow up of earlier advices of DoP&T by CPWD | <p>The DoP&T in their first advice on 18.12.2007 stated that “ we may advise Ministry of Urban Development 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.” (Annexure-I)</p> <p>CPWD didn't follow clear advice of DOPT in the matter, CPWD didn't proceed with the promotion and again referred the case to DoP&T with a query that notional promotion to be counted for ad hoc promotion or only period of actual promotion to be counted.</p> <p>The revised advice 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. Further, DoP&T mentioned that regular service in the feeder grade to be counted for ad hoc promotion and as per the decision of</p> | |

| | | | |
|-----|---|--|--|
| | | <p>Supreme Court in case of Shri Krishnamoorthy, Addl DG, CPWD, by giving notional promotion as AE with effect from a date, ST AEs are in fact regularly appointed to the post on that date.</p> <p>It is worthwhile to mention that the case of Ms Prabha Devi was for demanding notional seniority w.e.f a date when she was not in the service, whereas in case of ST AEs, they have already been awarded notional seniority as per the directions of the Principal Branch CAT New Delhi on 02/04/2007; ST AEs are in fact regularly appointed to the post on that date.</p> <p>It is mentioned here that the case of Ms Prabha Devi was referred by DoP&T only to emphasize that seniority and eligibility are two different things, otherwise the case of Prabha Devi is not relevant in this case.</p> <p>In view of the position explained above, the earlier advice of DoP&T in 12/07 is again supported by their advice in 01/2008. DoP&T has never given any adverse advice which can be quoted for not promotion of ST AEs in CPWD. It is only the interpretation of DoP&T advice by CPWD, which is not in favour of ST AEs, which shows a clear discrimination by CPWD towards ST AES.</p> | |
| 1c. | The decision of Principal Bench, CAT, New Delhi in OA No 1105/2006 filed by the petitioners on 02.04.2007. | As per the decision, seniority and eligibility is to be counted from the date of occurrence of vacancies which was not implemented by the CPWD as far as eligibility is concerned. The decision was subjected to outcome of the High Court decision. | |
| 1d | The official seniority list of AEs in CPWD contains the date of promotion orders and not the actual date of joining | <p>There is no system exists at present to count the actual period of experience for promotion as stated by the officials of CPWD. Hence, it is logical to interpret that only date of promotion, and notional seniority is considered for promotion.</p> <p>It is general practice to award the notional seniority and count it in further promotion since last so many years. During 1987 Department has also granted notional seniority to approximate 550 AEs (Civil & Electrical), vide</p> | |

| | | | |
|---|--|---|--|
| | | their no. 30/1/83/EC-I dated 31/3/1003 (copy enclosed) & this awarded notional seniority has been counted for further promotion to the grade of EEs. In this regard, Commission has already sent a list, containing such names of such candidates to CPWD, who have been promoted during 2006 (Annexure). Further, CPWD again considered the notional seniority of some AEs namely, Shri. Ram Kumar and Shri. Ramesh Chandra for promotion to the grade of EE vide promotion orders no. 102 dated 2/4/2008. These officials are still working as Executive Engineer. . | |
| 2 | Relaxation to senior degree holder AE, when a diploma holder junior is promoted as per the Common seniority list of AEs in CPWD. | When a common seniority list is being maintained by CPWD for all AEs irrespective of their streams, then stream wise seniority has no relevance and benefit of relaxation to a degree holder AE should be given for promotion, in case a junior is promoted, irrespective of his stream. | |

Note :

Accounting of notional seniority while counting eligibility for promotion by CPWD in large number of cases in the past while same principle not being applied in the instant case; thus present approach of CPWD is discriminatory as it is a factual position on ground, which is verifiable from the documents/records relating to drawal of Year-wise DPC panels by CPWD taking into consideration the eligibility as per notional seniority in connection with promotion of 431 AES (Civil) in 2006; adjusted year-wise from 1999 to 2006 as per the directives of Delhi High Court.

Related Issue

Though it was never raised by the Commission, but it is very much relevant that the position of ST AEs in the seniority list is not as per the CPWD office order no 29/2/2007-EC-III dated 22.05.2007 issued to implement the directions of PB, CAT, New Delhi in O.A. No. 1105/2006 dated 02.04.2007, according the notional seniority w.e.f 1 st July of the year of the vacancies i.e. 1994. First candidate (Shri S.C. Meena) placed as per this office order is at seniority no 2531, whereas if the notional seniority is to be accorded w.e.f. 01.07.1994 then he should be placed at 2375. Likewise all the placements are not in order. This discrepancy may also be rectified by CPWD. In case, CPWD is not in agreement with this, the same also needs to be referred to DoP&T with their comments.