

Proceedings of the sitting on 15.04.2009 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.

Issues raised by the Commission in the sitting held on 24.11.2008 were forwarded by CPWD/MUD to DoP&T for their final comments or not, as no ATR received from them.

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.

After a number of Sittings, last Sitting was held on 24.11.2008 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 as under:

- i) Clear decision of Hon'ble Supreme Court was given in 2000 in case of a CPWD officer Shri Krishnamoorti, Addl DG. 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. Hon'ble Supreme Court decided that High Court decision cannot be sustained. The word regular does not mean actual. 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 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 case 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.

It was decided though these issues might have been considered, but these require a fresh consideration and must be put up to DoP&T for their views on these issues with the views of the Commission.

Accordingly Commission recommended that 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 are not 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.
- 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 view of DoP&T may be obtained, before taking any final decision.

There was no communication from CPWD / MoUD on the ATR regarding recommendation of the Commission. Therefore, Shri Tsering Samphel, Member decided to have a discussion with the Secretary, MoUD, DG(W), CPWD and Secretary, DoP&T on 15.04.2009 at 3.00 pm in the Commission.

DISCUSSION

During discussion, it was intimated by CPWD that the file has been received back on date from DoP&T and they have not considered the request of one time relaxation in the period of experience required for promotion of ST AEs to EEs. It was further explained by CPWD that the points recommended by the Commission were already considered in the CPWD / MoUD and as per them, it was of no use to send these points to DoP&T for their comments.

The Commission expressed its dissatisfaction and explained that it was clearly decided in the last sitting on 24.11.2008 that even though deliberations have already been there on these issues, still all these points taken together along with the views of the Commission were to be put up to the DoP&T for their final views. CPWD informed that the complete file was send to the DoP&T and earlier issues were also mentioned in that.

The DoP&T representative clearly explained that DoP&T offers comments only on the issues which are mentioned in the last noting with which file is referred to them. On a query from the Commission, DoP&T rep clarified that in case a junior employee is promoted and senior could not be promoted due to shortage of experience, then he(senior) must be considered for promotion on his becoming eligible and period is not important in this case (after which he/she becomes eligible) and need not be in the same DPC.

The MoUD raised a query that in case a junior AE of Diploma stream is promoted than the benefit of relaxation to a Degree holder senior can be given in case a common seniority is maintained. To this DoP&T rep said that complex situations cannot be sorted out in the meeting, if the case is put up to them with all inputs, it will be examined and their comments will be offered.

The Commission mentioned that the case should have gone to DoP&T for their comments with all inputs like counting of notional seniority in light of (i) Judgment of Hon'ble Supreme Court in 2000 in case of a CPWD officer Shri Krishnamoorti, (ii) Both the advices of DoP&T, in first advice it was mentioned that to give the benefit of seniority for ad hoc promotion to the grade of Ex Engg subject to final decision of the Delhi High Court and in second decision it was mentioned that seniority and eligibility are two different things, (iii) Judgment of Principal Bench, CAT, New Delhi that counting of seniority and eligibility from the date of occurrence of vacancies and (iv) CPWD is already following the date of promotion in feeder grade for next promotion and not the actual date of joining, as only date of promotion order is recorded in official seniority list of AEs.

The DoP&T further clarified that the forwarding Ministry should also record their views on the issues which are mentioned in any case.

RECOMMENDATIONS

The Commission recommended that the case of promotion of ST AEs as EEs should be sent to DoP&T with the grounds of considering their notional seniority in the eligibility and relaxation to the seniors when a junior is promoted as enclosed in the **Annexure**. CPWD / MoUD should forward the issues raised and views of the Commission as per Annexure, after endorsing their views on the issues to the DoP&T for their final advice. In case, it is required CPWD can discuss the issues with the Commission before endorsing their views / stand. Commission is of the view that there is a clear discrimination in this case, therefore, DoP&T may like to discuss the issues raised with the Commission before final advice is given by them in this case.

ANNEXURE

The following were present in the sitting on 15.04.2009:

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 R. C. Mishra, Addl. Secretary
2. Shri Aniruddha Kumar, Director (Works)
3. Shri J. S. Rawat, US (EWI)

CPWD

1. Shri D. S. Sachdev, Director General (W)
4. Shri O.P. Bhatia, ADG(S&P)
5. Shri A.P. Singh, Chief Engineer (P&S)

DoP&T

1. Shri C. B. Paliwal, Jt. Secretary (E)

Petitioner

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