

**Proceedings of the sitting on 27.05.2008 in the chamber 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.

An hearing was held 18.10.08 on the office of Hon'ble Chairperson. Shri. Anil Baijal, Secretary, MUD alongwith other officers attended the hearing. . In the hearing cases pending in MUD alongwith 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 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 demanders there was no response from MUD/CPWD till July, 2007. Secretary, NCST decided to have a discussion 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 alongwith 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 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 as per RR 1954. These reserved vacancies filled up with UR 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 is 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, DoPT, Secretary, MUD 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 DOLA for legal advice. MUD vide their letter dated 14.03.2008 intimated that DoPT has advice that eligibility should be counted from actual date of promotion to the feeder grade.

Recently petitioners have intimated 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 it was decided to have a sitting with Secretary, MUD and DG, CPWD in the Chamber of Hon'ble Member (TS), NCST on 16.05.2008 at 03.00 PM. It was intimated by MUD vide their letter dated 14.05.2008 that Secretary and DG both are out of station on 16.05.2008 and requested for new date of sitting. Hon'ble member has considered their request and rescheduled the sitting on 27.05.2008 at 03.00 PM in his Chamber.

## **ANALYSIS**

As the Supreme Court had already given a ruling in 2000 in respect of ADG, CPWD in favour of considering notional seniority for the purpose of counting eligibility in terms of number of years of regular service, therefore, ST AEs must be given promotion to EE on this ground.

Recent promotion orders in April, 2008 indicates that CPWD had given benefit of notional seniority to some AE and also junior has been promoted. As per CPWD RRs 1996 2 years relaxation can be given if the junior is promoted. The AE belonging to ST category were promoted as AE in February, 2001, therefore, they become eligible for promotion as EEs.

## **DISCUSSION**

It was clarified by the ministry of urban development that they will be ready to take initiative for the development of STs, if it is within the rules. It was further clarified that in case of some benefit is given to other categories and STs are deprived of that, then it is a serious matter and must be resolved immediately.

Commission asked CPWD that, when Hon'ble Supreme Court had already clarified the issue of regular and not regular in its judgement in 2000, why this clarification is required again and ST AEs are not being promoted. To this, Spl Sec, MUD stated that he is not aware of this judgement and if it is so, he has to go through it and decision has to be followed. CPWD clarified that in this particular case notional seniority was given because the promotion of individual was kept in seal cover pending disciplinary proceedings and this is one of the four conditions as per rules in which notional seniority/promotion to be counted.

Commission expressed that if CPWD is counting notional seniority as per one condition out of four (i.e. b(ii)) as per rules, then it should also count notional seniority as per other conditions ( i.e.a(ii)) ( Copy enclosed). In the case ST AEs, the seniority was revised and notional seniority was given retrospectively in accordance with the Hon'ble CAT orders. It is also mentioned in the rules that the service in the post for the purpose of further promotion is however, counted.

Petitioners explained that in a batch if somebody joins early and somebody joins late, but the promotion is given at the same time, for example in the batch of 1987, few officers joined late, but all were promoted against the vacancies of 1997.

## **RECOMMENDATION**

Commission recommended that in view of the discussions, there are number of grounds on which ST AEs should be promoted as EE without further delay.

Special Secretary, Ministry of Urban Development directed CPWD to review the case of ST AEs in light of the following :

- i) Any discrimination is done with ST AEs.
- ii) In a batch system, if date of joining is considered for next promotion or complete batch is considered at the same time, for example 1987.
- iii) Practice in other departments to be checked with respect of batch system as mentioned at (ii) above.
- iv) Hon'ble Supreme Court judgement of 2000.

It was decided to review the position on 16.06.2008 at 3.00 pm in the chamber of Hon'ble Member.

## **ANNEXURE**

The following were present in the sitting on 27.05.2008 :

### **NCST**

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

### **Ministry of Urban Development**

1. Shri S. M. Acharya, Special Secretary

### **CPWD**

1. Shri O.P. Bhatia, Director General
2. Shri A.P. Singh, Chief Engineer (P&S)
3. Shri Jagdish Arora, S.O.

### **Petitioner**

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