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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1045/2002

New Delhi this the 9th day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri Govindan S. Tampi, Member (A).

Ativir Jain,
S/o Shri Prem Chand Jain,
JE (QS&C),
office of G.E. (Utility),
E&M, Roorkie Road,
Meerut Cantt.

... Applicant.

(By Advocate Shri G.D. Bhandari)

Versus

1. Union of India, through the
Secretary,
Ministry of Defence,
New Delhi.
2. G.E. (Utility) E&M,
Roorkie Road,
Meerut Cantt.
3. CWE,
19, Mall Road,
Meerut Cantt.
4. Chief Engineer (BZ),
Sarvatra Bhawan,
Bareilly.
5. Chief Engineer,
Central Command,
Engineer's Branch,
Lucknow.
6. Engineer-in-Chief,
Army Headquarters,
Kashmir House,
DHQ PO
New Delhi-110 011.

... Respondents.

(By Advocate Shri R.P. Agarwal)

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Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has filed this application stating
that he fulfils all the eligibility conditions for
promotion as Assistant Surveyor of Works (ASW) Group 'A'

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Non-Ministerial Gazetted post, for which he should have been considered and promoted when the vacancy arose. According to the applicant, there was a vacancy of the post prior to the amendment of the Recruitment Rules, that is, Military Engineering Services (MES) (Surveyor of Works Cadre) Recruitment Rules, 1985, as amended by the 1994 Rules.

2. Shri G.D. Bhandari, learned counsel for the applicant has submitted that the applicant had passed the final examination of Sub-Division-II 'Building & Quantity Surveying' in September, 1994, that is prior to the coming into effect of the Amendment Rules, 1994. He has relied on the extract of the Part-II order issued by the respondents (Annexure A-5) dated 24.4.1995. Against the name of the applicant under column 4, it has been stated as follows:

"Appeared in Final Examination of Institution of Surveyors 1994 & declared successful in Final Exam. 1994 Institution of Surveyors Sub. Div. II Building & Quantity Surveying vide the Institution & Surveyors, New Delhi. Original Certificate No. S/3055/15 dated 17.02.95".

3. Learned counsel for applicant has contended that as the applicant had appeared in the aforesaid final examination of the Institution of Surveyors in 1994 and was declared successful in that year, he ought to have been considered for promotion to the post of ASW Group 'A' Non-Ministerial Gazetted against a vacancy which had occurred prior to the amendment of

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the Recruitment Rules, which has not been done by the respondents.

4. In pursuance of the directions of the Tribunal, the respondents have submitted a copy of the letter from the Institution of Surveyors dated 3.2.2003. The relevant portion of this letter reads as follows:

"It is confirmed that Shri Ativir Jain, has passed the FINAL EXAMINATION of Sub-Division II 'Building & Quantity Surveying' held in September 1994. The Result was declared on 2nd February 1995".

5. Shri G.D. Bhandari, learned counsel has very vehemently submitted that the declaration of the result of the final examination, referred to above is irrelevant and what is material is only the date when the applicant had appeared in the examination which he has passed, as also reflected in Part-II order issued by the respondents, on 24.4.1995. He has also raised an issue that the copy of the Government of India, Ministry of Defence Notification dated 21.7.1994/SRO 142 (Annexure R-3), is not a copy of the Gazette Notification. He has further submitted that the Amendment Rules of 1994 have to come into force on the date of their publication which, according to him, have not been published on 21.7.1994.

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6. On the other hand, Shri R.P. Agarwal, learned counsel for respondents has submitted that SRO 142 itself is the Gazette Notification which has been published on 21.7.1994. He has also submitted a copy of the Gazette Notification dated 21.7.1994 by which the Recruitment Rules of 1985 were amended and called as 'MES (Surveyor of Works Cadre) Recruitment (Amendment) Rules, 1994' (copy placed on record).

7. After perusal of the relevant records and taking into considerations the submissions of learned counsel for the parties, we find no merit in this application. The contention of the learned counsel for the applicant that the date when the applicant had appeared in the final examination of Sub Division-II 'Building and Quantity Surveying' which was held by the Institution of Surveyor is the relevant date and not the date of publication of the result, cannot be accepted. The result of the said examination was declared on 2.2.1995 when the Recruitment Rules of 1985 have already been amended by the Amendment Rules of 1994 which have been published as SRO 142 in the Gazette Notification, on 21.7.1994. Even if the contention of Shri G.D. Bhandari, learned counsel is assumed to be correct that the applicant had passed the aforesaid final examination in September, 1994 when he appeared in the examination and not when the results were declared on 2.2.1995, even then the

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O.A. fails, as the amendment Rules have come into force on the date of their publication in the official gazette, that is 21.7.1994. Therefore, the contention on behalf of the applicant that he had the necessary eligibility condition prior to the coming into effect of the amended Rules of 1994, is rejected. In this view of the matter, as there is no merit in this application, O.A. fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member (A)
'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)