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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi: This the 3rd day of March, 2003.

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

(1) O.A. No. 1290/2001

Bhavesh Gupta
S/o Mr. L.P. Gupta
Surveyor of Works (SW)
Military Engineering Services (MES)
Office of Commander Works Engineer, Delhi
Delhi Cantt. 10.Applicant

(Shri A.K. Sharma, Advocate)

-versus-

1. Union of India through
its Secretary
Ministry of Defence
Government of India
New Delhi.
2. Engineer-in-Chief Branch
Army Headquarters
Kashmir House
DHQ, PO,
New Delhi-11.
3. Union Public Service Commission
Dholpur House, New Delhi.
4. Director (C)
EIR, Engineer in Chief
Army Headquarters
Delhi Cantt.
New Delhi-11.
5. Mr. Sajiv Kumar Jain
6. Mr. Sanjay Kumar Gupta
7. Mr. Brahamananda Singh
8. Mr. S. Venkateshwar Rao
9. Mr. Inderjit Manda
(Respondents Nos. 5 to 9 are all Surveyor
of Works, Military Engineering Services
Through E-in-C's Branch (Respondent No. 2)

.... Respondents
(Shri Gyaneshwar, Advocate for respondent No. 7)

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(2) O.A. No. 1275/2002

Shri Dil Bahar
 A.S.W. (CWE, KOLKATA)
 R/o 18 & 19, Grannary Barrack
 Fort William
 Koklata.

....Applicant

(Shri O.P.Kalshian, Advocate)

-versus-

1. Union of India through the
 Secretary to Govt.of India
 Ministry of Defence
 New Delhi-110011.

2. Engineer in Chief
 E-in-C's Branch Army Hqs.
 Kashmir House DHQPO
 New Delhi-110011.

....Respondents

(By Shri R.P.Agarwal, Advocate)

(3) O.A. No. 1476/2001

Shri Mahesh Kumar
 A.S.W. (C.E. MES, Bareilly Zone)
 R/o 401, Sect.-A, Pocket-C
 Vasan Kunj
 New Delhi-110 070.

....Applicant

(By Shri O.P.Kalshian, Advocate)

-versus-

1. Union of India through the
 Secretary
 Government of India
 Ministry of Defence
 South Block
 New Delhi.

2. Engineer in Chief
 E-in-C's Brnch Army Hqs.
 Kashmir House DHQPO
 New Delhi.

....Respondents

(None for the respondents)

O R D E R (ORAL)

JUSTICE V.S.AGGARWAL:-

The doctrine of Stare decisis that a previous decision on the point is binding with certain



modifications subject to the decisions of the Large Benches etc. and at times right to differ has been accepted in our jurisprudence. We need not delve further into this because in hierarchical system, the decision of an authority judicially reviewing that of the other would be binding. The above system does not come to a judge as a way of escape. It is only by way of judicial discipline that decisions of this Tribunal when they are reviewed become binding and one often quotes Lord Tennyson from (You ask my why) "from precedent to precedent."

2. The questions involved in all the above Original Applications, namely 1290/2001, 1476/2001 and 1275/2002 are the same. We are taking the facts from the application of Bhavesh Gupta (OA No. 1290/2001) for the sake of convenience.

3. Shri Bhavesh Gupta is a graduate in Civil Engineering. He was offered the post of Assistant Surveyor of Works (ASW) in the Military Engineering Service (MES) on 19.4.1990. In accordance with the MES (Surveyor of Works Cadre) Recruitment Rules, 1985 (for short, "the Rules"), an ASW becomes eligible for promotion to the post of Surveyor of Works (SOW) on completion of 4 years of regular service in the grade of ASW and on having passed the final examination of the Institution of Surveyors (India) or an examination equivalent thereto.

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4. Accordingly the applicant also became eligible for promotion to the post of SOW in 1994-95. It appears that there was some confusion as regards the requirement of passing the final/direct final examination conducted by the Institution of Surveyors (India) by the holders of degree in Civil Engineering. The applicant, therefore, filed a representation before the competent authority on 5.6.1995. The matter was clarified by the respondents vide letter dated 14.8.1995 making a reference therein to the Headquarter Chief Engineer Calcutta's letter dated 2.8.1995 and the Engineer-in-Chief's Branch letter dated 25.7.1995. They opined that passing of the direct final examination conducted by the Institution of Surveyors (India) was essential for promotion to the post of SOW. Thereafter several ASWs junior to the applicant including the private respondents were empanelled for promotion to the post of SOW in the MES.

5. The applicant filed OA No 137/1996 before the Guwahati Bench of this Tribunal along with three other Original Applications. The Guwahati Bench of this Tribunal referred to the decision of the Chandigarh Bench of this Tribunal in OA No.1217-JK of 1994 in the case of **R.K.Gupta v. Union of India and Ors.** dated 15.11.1996. The Bench opined that it was not in a position to decide the matter which requires examination of the records and Government circulars

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and disposed of the application with the following directions:-

"10. In view of the above facts and circumstances we are not in a position to decide the matter as it requires examination of the records and Government Circulars. Therefore, we dispose of all the applications with direction to the respondents to examine as to whether degree in Civil Engineering can be regarded as equivalent to the Direct Final (Sub.Div.II) Examination conducted by the Institution of Surveyors and also examine the letter of the UPSC dated 31.12.1994 referred to in the judgement of the Chandigarh Bench. If the degree in Civil Engineering is equivalent to the Direct Final (Sub.Div.II) Examination of the Institution of Surveyors as per the letter of the UPSC dated 31.12.1994 referred to in the judgement of the Chandigarh Bench, the respondents shall not insist on the passing of the direct Final (Sub.Div.II) Examination of the Institution of Surveyors for promotion of the applicants to SOW. This must be done as early as possible at any rate within a period of two months from the date of receipt of this order."

6. Subsequently, the applicant who was unsuccessful thereafter as a result of the decision taken on his representation on 7.6.2000 had preferred the present application seeking quashing of the said decision and for a direction to consider him for promotion to the post of SOW with effect from 20.12.1995 with consequential benefits. Needless to state that in pursuance of the decision of the Guwahati Bench referred to above, on 7.6.2000, an administrative decision was taken that for the post SOW, one must have qualified in addition to a degree in Civil Engineering of the Institution of Surveyors (India) referred to above. The final conclusion drawn while taking a decision in pursuance of the Guwahati

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Bench reads:-

"(a) A degree in Engineering of a specific field is a degree in that specific field alone and cannot be equated to be equivalent to a degree in another specific field. While Civil Engg is a field of Engg. Buildings and Quantity Surveying is a specialisation in the profession of Quantity Surveyor.

(b) The Govt. of India, Ministry of Science & Technology vide letter No. SM/34/002/94 dated 07 Sep 94 have made it amply clear that membership of Institution of Surveyors (a person becomes a member of Institution of Surveyors after passing of above examination) is a special qualification and is not equivalent to a degree in Engineering.

3. In view of the above, after careful examination of the case in compliance with CAT Guwahati Order dated 11 Feb 99 passed in OA Nos. 137, 138, 139 and 157 of 1996, the respondents have come to the conclusion that passing of Final/Direct Final Examination from Institution of Surveyors, India is a pre-requisite to become eligible for promotion to SW."

7. Challenging the same, the present application has been filed. When this matter came up before a Bench of this Tribunal, this Tribunal felt that the decision of the Chandigarh Bench of this Tribunal in the case of R.K. Gupta (supra) requires reconsideration and referred the matter to this Larger Bench.

8. Before proceeding further, we at this stage would refer to the relevant recruitment rules pertaining to the qualifications for the posts of SOW

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and ASW. The same read as under:-

"Surveyor Of Works

Promotion of Assistant Surveyor of Works with 4 years regular service in the grade and having passed the final examination of the Institution of Surveyors (India) or equivalent.

Note: For the purpose of counting the above period of eligibility for promotion, the regular service rendered by the assistant surveyor of works in the equivalent post of Assistant Executive (Engineering Cadre) in Military Engineering Services prior to 4th January, 1981 shall also be taken into account.

Assistant Surveyor of works:

(i) 50% by promotion.

(ii) 50% by direct recruitment through the Engineering Services Examination held by Union Public Service Commission

Promotion: Surveyor Assistant Grade-I holding Degree in Civil Engineering from a recognized University or equivalent or having passed final, Direct Final Examination or the Institution of Surveyors (India) with 5 years regular service in the grade of Surveyor Assistant Grade-I having passed Intermediate Examination of Institution of Surveyors (India) or holding Diploma in Civil Engineering of a recognised University/Institution or equivalent with 10 years regular service in the grade.

Note: For the purpose of counting the above period of eligibility for promotion, the regular service rendered by Surveyor Assistant Grade-I in the equivalent grade in the Engineering Cadre, as Superintendent Buildings/and as Grade I or Supdt. Buildings and Roads Grade-I (Charge Holder) or Assistant Engineer prior to 4th January, 1981 shall also be taken into account."

In the case of R.K.Gupta (supra), the Chandigarh Bench had considered the same and opined that once a person is holding the degree of Civil Engineering referred to above, then he is not required to pass the final

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examination of the Institute of Surveyors (India) and the findings recorded by the Chandigarh Bench read:-

"5. So far as the merits of the case are concerned, we are also convinced that the applicant possessed educational qualifications to hold the post of SW as enjoined in SRO 39. SRO 39 clearly stipulates that recruitment to the post of SW is to be made from amongst ASWs having 4 years service, in the case of officers not holding Degree, qualification or passed in final examination of the Institution of Surveyors (India), were considered to be valid for promotion. The fact that Degree in Civil Engineering is superior to the pass in Final Examination of Institution of Surveyors (India), is itself, borne out by the R-5 which is a qualification from the Ministry of Science and Technology which says that the membership of the Institution of Surveyors (India) is a special qualification and is not equivalent to a Degree in Engineering. This is precisely so because it has been laid down in SRO 39 that anybody having this qualification must have 5 years regular service for being eligible to be considered for the post of ASW. There is no such stipulation of service in the case of degree holders for promotion to the post of ASW. The respondents themselves had promoted the applicant to the level of S.W. It is not very clear to us how they have interpreted SRO 39 as in the case of the applicant, promotion was given to him two years back under the orders of the President. A complaint made by one Shri K.C. Sharma could not have been the prime factor twisting the interpretation of SRO 39 for reverting this officer. In case there was any doubt in the minds of the respondents, they should have consulted the Ministry concerned and also the Ministry of Human Resource Development and the UPSC in this regard which are two organisations involved in the matter of recognition of degrees and recruitment of superior services in the Military Engineering Service. Instead of getting this confirmation from these two organisations. Respondent No.2 got clarification from the Ministry of Science and Technology which also did not say that the final examination is equivalent to Degree in Civil Engineering. Admittedly, final examination of the Institution of Surveyors (India) is a special qualification granted to professionals in that filed by a duly recognised body but that qualification cannot be said to be equivalent to a degree conferred upon by a recognised

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University. The membership of Institution of Surveyors (India) after having passed final examination is a supplement to the diploma conferred upon by the recognised University. We thus find that the action of the respondents in denying the applicant promotion to the grade of SW on the ground that he had not passed final examination of the Institution of Surveyors (India) is totally illegal and unwarranted."

9. We would have delved into this controversy further in detail but during the course of arguments, our attention was drawn towards a decision of the Punjab and Haryana High Court in the case of **Union of India and Ors. v. The Central Administrative Tribunal and Another**, in Civil Writ Petition No. 1997 of 1999 (CAT) rendered on 18.10.2001. It appears that one Avinash Chander Dutta relying upon a decision in the case of R.K.Gupta of the Chandigarh Bench (supra) had filed an original application at Jammu. Keeping in view the decision in the case of R.K.Gupta (supra), the application was allowed. The Union of India challenged the same in the Punjab and Haryana High Court. The case of R.K.Gupta came for consideration before the Punjab and Haryana High Court. The logic and reasoning thereto were approved and a Division Bench of that High Court held:-

"In our opinion, the reasons assigned by the Tribunal in R.K.Gupta's case which has been referred to in the impugned order do not suffer from any legal infirmity warranting interference by this Court. It has not been disputed by the petitioners that the Union Public Service Commission in its communication dated 31.1.1994 (Annexure R-2) and the Government of India in its letter dated 21.4.1995 (Annexure R-1) had clearly indicated that the Final Examination of the Institution of Surveyors (India) has been recognised as equivalent to the Degree in Engineering for the purposes of recruitment to superior services/posts under the Central

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Government. In R.K.Gupta's case, the Tribunal interpreted Rule 4 read with Entry 5 of the Schedule and concluded that a person possessing Degree in Civil Engineering from a recognised University is eligible for promotion to the post of Surveyor of Works. The Tribunal also observed that the Degree in Civil Engineering may even be superior to the Final Examination of the Institution of Surveyors (India). In view of this, there is no escape from the conclusion that respondent No.2 was eligible to be considered for promotion as Surveyor of Works on the date his juniors had been promoted and the Tribunal did not commit any illegality by directing the petitioners to consider his case for promotion with retrospective effect."

In the hierarchy that has been presently in force, it is obvious that the decision of the Chandigarh Bench in the case of R.K.Gupta (supra) has been approved by the Punjab and Haryana High Court. Resultantly, it cannot be made the subject matter of further review by a Larger Bench.

10. During the course of the submissions on behalf of the Union of India, it was urged that the decision of the Punjab and Haryana High Court does not bind this Tribunal at Delhi because the said High Court does not have territorial jurisdiction beyond the Union Territory of Chandigarh and the States of Punjab and Haryana. In strict sense, it would be so but so far as the Central Administrative Tribunal is concerned, it is one Tribunal. Different Benches have been set up only to assist and for the sake of convenience to dispose of pending matters and, therefore, as at present there is only one decision of a particular High Court. One cannot stretch abovesaid



argument to state that it will have some geographical limits. There cannot be different laws so far as this tribunal is concerned for interpretation by different Benches. Consequently, the judicial discipline requires that the said decision so long as it holds good necessarily must be followed.

11. Resultantly, we allow the present applications following the decision of the Punjab and Haryana High Court in Civil Writ Petition No. 1997-CAT of 1999 in the case of Union of India & Ors. v. The Central Administrative Tribunal and Another rendered on 18.10.2001 and quash the impugned orders. The applicants should be considered for promotion in the face of the above findings and consequential benefits in accordance with law should be awarded to them. No costs.

Announced.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V. K. Majotra
(V. K. MAJOTRA)
MEMBER (A)

(V. S. AGGARWAL)
CHAIRMAN

/sns/