

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1847/98

New Delhi, this the 23rd day of February, 1999

HON'BLE SHRI S.R. ADIGE, VICE-CHAIRMAN (A)

HON'BLE SHRI T.N. BHAT, MEMBER (J)

In the matter of:

Jagdeep Singh s/o Sh. Ramkishan Narwal,
r/o V & PO Rindhana, Tehsil Gohana,
Distt. Sonepat, Haryana.

....Applicant

(Applicant in person)

Versus

1. Union of India through

The Secretary,
Ministry of Urban Affairs & Employment,
Department of Urban Development,
Room No. 122, C-Wing, Nirman Bhawan,
New Delhi.

2. Shri N.L. Singh,
Superintending Engineer,
Room No. 114, CPWD, Training Institute,
Kamla Nehru Nagar, Ghaziabad.

...Respondents

(By Advocate: Shri D.S. Jagotra)

O R D E R

Hon'ble Shri T.N.Bhat, Member (J)

The applicant, who appeared in the Combined Engineering Examination conducted by the UPSC in the year 1989, was allocated to the Military Engineering Service (MES, for short) although, according to the applicant, he had given his preference for the Central Engineering Service and the respondents were bound to allocate him to that Service in view of the higher merit secured by him in the said examination.

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2. The applicant filed O.A. 1988 in 1992 which was allowed by this Tribunal with the following directions vide the judgement dated 12.8.1997:-

"6. In the result, this application is allowed. respondent no. 1 is directed to consider the preference of the applicant at the time of allotment of various services as per the revised preference submitted by him in March, 1990, copy of which is placed on record and to make necessary change in allocation of the service cadre in accordance with law and extant instructions...."

The Tribunal further awarded Rs. 1000/- as costs to the applicant in that O.A.

3. In pursuance to the above directions the Directorate General of CPWD has issued the impugned order/letter dated 6.1.1998 appointing the applicant to the Central Engineering Service and placing him on probation for two years. The other order impugned in this O.A. is the one issued by the Superintending Engineer (Trg.) whereby the applicant's pay has been fixed at the minimum of the pay scale of Rs. 8000--13500 applicable to Assistant Executive Engineer.

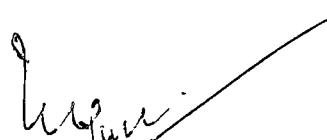
4. The applicant's grievance is two fold. His first contention is that since the wrong allocation of Service was as a result of the respondents' own lapse in not considering the revised preference given by the applicant in March, 1990 the respondents could not take advantage of their own wrong, particularly so when the Tribunal had accepted his

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plea taken by him in his earlier O.A. and that, therefore, the allocation to the CES would relate back to March, 1990 and the applicant should be deemed to have been appointed to the CES in 1990 itself and should get all the consequential benefits including the periodical increments and seniority. Secondly, according to the applicant, the action of the respondents in putting the applicant on probation, a second time, when he had already cleared the probation while working in the MES satisfactorily, would be illegal and against the settled principles of service jurisprudence. He has further given the example of one Shri Rajinder Singh in whose case the respondents had ordered in 1997 that he had cleared his probation from a back date in 1993.

5. The applicant seeks the following reliefs:-

- (a) that the impugned order issued vide letter No. 8/21/92/EC-1 dated 06.01.1998 and vide No. Trg/EE(A)/0051/96-97/Trg./2528-31 dated 14.5.1998 may be quashed and set aside. to be quoted
- (b) that a writ of mandamus may be issued to the respondents for:
- (i) appointment of the applicant in CES in the Senior Time Scale of pay in the post of Executive Engineer with retrospective effect from the date the next junior is functioning.



(a)

(iii) admitting pay and allowances with retrospective effect from 6th March, 1995 the date from which my next junior of 1989 batch Sri Rajesh Banga was promoted by the order issued vide No. 28/3/95-EC-1/Vol.1/10 dated 6th March, 1995 and making payment of interest there upon @ 12% per annum commencing from 06th March, 1995 till disbursement of all payments is made to the petitioner in chronicle correlation to that of the next junior.

(iii) making payment of outstanding dues along with interest @ 12% per annum commencing from 29.05.1998 (the crucial date on which the same were paid to other employees) in respect of the arrears of Pay Commission, from 30.4.1998 (the crucial date from which the disbursement of less payment commenced) in respect of the arrears on account of accumulation of differential of the admissible pay & allowances as drawn previously & that of payment made on appointment after reallocation and in resp of outstanding amount on account of traveling allowance from 15 days (the permissible time limit as per General Financial Rule 232 within which advance of traveling allowance should be adjusted) after the date of submission of the claim on the basis of

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reciprocal equality in application of rule, till the final disbursement of respective dues.

(iv) Consideration of eligibility in the service matter, like allotment of residential accommodation in deference to the service rendered for a period of more than six years in Group 'A' and dmmed status of the applicant in CES.

(c) that cost may be awarded in favour of the applicant and against respondents.

6. The respondents have in their detailed counter taken the following pleas:

That under rules all the AEEs appointed in CPWD are required to undergo specialized training for a period of 35 weeks and to pass in 8 papers plus viva-voce test; that there is a substantial difference in the procedures followed in CPWD and MES for execution of works and that, therefore, the training already undergone by the applicant while working in the MES would not be of much avail to him in the CPWD; that Shri Rajinder Singh, whose instance has been given by the applicant, had worked in the CPWD for 18 years during the course of which he had cleared not only three Accounts papers as AE but also the remaining 5 papers (Engineer-2, Hindi-2 and viva-voce) as AEE in 1997 and it was on these grounds that he was declared to

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have cleared his probation from 1993; that as and when the applicant clears his papers his case for retrospective clearance of probation can also be similarly considered; and that the applicant's claim for consequential benefits like restoration of seniority and promotion to the next higher post of EE can be considered only when he clears his probation as AEE in CPWD.

7. The applicant has also filed a detailed rejoinder to the counter filed by the respondents wherein the averments made in the counter have been refuted and denied.

8. We have heard the applicant in person and the counsel for the respondents. We have also perused the material placed by the parties on record.

9. Normally, a person once confirmed in Govt. service cannot again be put on probation. But in the instant case we are dealing with an abnormal and peculiar situation. It appears that the preference initially given by the applicant was for MES. However, he seems to have later given a revised preference in March, 1990, this time for CES, which was not entertained or acted upon by the respondents even though the merit position secured by the applicant in the examination would entitle him to his allocation to the Service of his choice. The applicant was, therefore, compelled to approach this Tribunal in 1992. His O.A. was eventually decided in his favour in 1997. In the meantime the applicant had put in nearly 6-7 years of service in the MES and had also cleared the probation in that Service.

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10. The question that arises is as to whether this fact would by itself be sufficient to entitle the applicant to the deemed clearance of probation in the CPWD claimed by him when he has been appointed to that service only in 1998 and that too as a fresh candidate, particularly so when according to the relevant rules applicable to that service it is essential for an entrant to the service not only to undergo specialized training but also to clear 8 papers.

11. In our considered view the answer to this question must be in the negative, for the simple reason that so far as the CES is concerned the applicant is a new entrant in this Service and the successful completion of his training in the MES prior to his entry in CES would not be of any avail to him. In this regard, we find ourselves in agreement with the contention of the respondents that there may be several features that distinguish the execution of works in CPWD from the working in MES though both are Engineering Services. Apart from making bald assertions that the works executed in both these organisations are identical in nature the applicant has not been able to furnish any proof which would indicate similarity in the nature of training imparted and the subjects/papers to be cleared in the two services.

12. Another important circumstances which has to be taken into consideration is that in the earlier O.A. the applicant does not appear to have claimed any benefits consequent to his allocation to the CES nor did the Tribunal grant any such relief of retrospective effect to the applicant's allocation to that Service. It was open to the applicant to claim such a relief in that OA. If he had claimed it then he would clearly be non-suited in the present

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O.A. because the Tribunal having not granted the relief the relief must be deemed to have been refused. Conversely, if a relief which ought to have been claimed in the earlier OA was left out a fresh O.A. for claiming that relief would not lie on the ground of constructive res judicata.

13. For the foregoing reasons we are not inclined to accept the plea of the applicant relating to deemed clearance of his probation in CPWD in the CES.

14. However, the matter does not rest there. As admitted by the respondents, giving clearance of probation from a retrospective date is not uncommon in their Organisation. One Shri Rajinder Singh, AEE was given that benefit. The respondents have fairly admitted that they would be prepared to grant similar benefit to the applicant provided he successfully completes the training and passes in the different papers. In that event the respondents should also consider granting to the applicant revised seniority, but only after the persons likely to be effected adversely are given an opportunity to be heard. However, we leave this matter to the respondents and hereby grant liberty to the applicant to file fresh proceedings, if so advised, at the appropriate time.

15. But so far as the question of reduction in the applicant's pay and allowances is concerned, we are of the firm view that the applicant should at least get the amount as his salary which he was receiving in the MES before being appointed/allocated to the CES plus the increments accruing thereafter. These further increments will be allowed only if according to the relevant rules the same are admissible

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without clearance of probation. We are making this order proceeding on the basis that the respondents have already been held responsible for the erroneous allocation of the applicant to the MES when he was entitled to being allocated to the CES. We accordingly direct the respondents to rectify the pay and allowances of the applicant by giving him the benefit of service put in by him in the MES. Needless to say that the applicant shall be entitled to the arrears on that basis.

16. To the above extent the O.A. is allowed. The respondents are granted four months' time from the date of receipt of a copy of this judgement to carry out the above directions. No costs.

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(T.N.BHAT)
Member (J)

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(S.R.ADIGE)
Vice-Chairman (J)

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