

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

19

O.A.NO.537/95
O.A.NO.538/95
O.A.NO.539/95
O.A.NO.540/95
O.A.NO.541/95
O.A.NO.1058/95
O.A.NO.820/93

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 11th day of Sept 1996

O.A.NO.537/95:

1. K.K.Ravindranathan
s/o Shri K.K.Krishnan
aged 43 years,
Surveyor Assistant Gr.-I
Garison Engineer - E/M
Naval Base
COCHIN-4.
2. T.H.Bhaskaran
s/o Late M.Chandran
aged 50 years
Surveyor Assistant Gr.I
Chief Engineer (Navy)
Naval Base
COCHIN-4.
3. P.Thampan
s/o Late Shri P.C.Kannan
aged 50 years
Surveyor Assistant Gr.I
Garrison Engineer - Project
N.W., Naval Base
COCHIN-4.

... Applicants

Vs.

1. Union of India
represented by Secretary
Ministry of Defence
New Delhi.
2. Chief of Army Staff
Army Head Quarters
New Delhi.
3. Union Public Service Commission
represented by its Secretary
New Delhi.
4. Engineer-in-Chief
Army Head Quarters
New Delhi
5. Capt: P.K.George
c/o Chief Engineer(Navy)
Naval Base
Cochin - 4.

..... Respondents

O.A.NO.538/95:

1. P.P.S.Dhanjjal
Superintending Engineer
President
Combined Engineering Services
Examination M.E.S. Class-I
Officers Association
c/o Commandor Works Engineer
Naval Base
COCHIN - 682 004.

.... Applicant

Vs.

1. Union of India
represented by the Secretary
Ministry of Defence
Government of India
New Delhi.
2. Union Public Service Commission
Dholpur House, Shahajahan Road
New Delhi.
3. The Engineer-in-Chief
Military Engineer Services
Kashmir House
Rajaji Marg
NEW DELHI.

.... Respondents

O.A.NO.539/95:

1. Param Hans Singh
s/o Shri Kalpnath Singh
Chief Engineer
Bathinda Zone
BHATINDA.

..... Applicant

Vs.

1. The Union of India
through the Secretary
Ministry of Defence
Government of India
NEW DELHI.
2. The Union Public Service Commission
through the Secretary
U.P.S.C.
Dholpur House
NEW DELHI.
3. Engineer-in-Chief
Army Head Quarter
Kashmir House
NEW DELHI - 110 011.

.... Respondents

Contd.....3

7/6

O.A.NO.540/95:

1. P.P.S.Dhanjjal
Superintending Engineer
Office of Chief Engineer Zone
Dry Dock and
Visakhapatnam Zone
9, IRSD Area
VISAKHAPATNAM(AP).
2. Shri Param Hans Singh
Executive Engineer
Office of Chief Zone
Naval Base
Cochin(Kerala)-4.

.... Applicants

Vs.

1. Union of India
through the Secretary
Ministry of Defence
South Block
Government of India
New Delhi - 110 011.
2. The Union Public Service Commission
through Secretary
U.P.S.C.
Dholpur House
NEW DELHI - 110 011.
3. The Chief of the Army Staff
Army Headquarters
New Delhi - 110 011.
4. The Engineer-in-Chief
Military Engineer Services
Kashmir House
Rajaji Marg
NEW DELHI - 110 011.

.... Respondents

O.A.NO.541/95:

1. P.P.S.Dhanjjal
Executive Engineer
Engineer-in-Chief Branch
Kashmir House
New Delhi - 110 011.
2. A.P.Jain
Executive Engineer
HQ, R.C.P.O.,
NEW DELHI.
3. Surya Prakash
Executive Engineer
Engineer-in-Chief's Branch
Kashmir House
NEW DELHI - 110 011.

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4. J.N.Rastogi
Executive Engineer
Commander Works Engineer
Delhi Cantt. - 110 010.
5. Rattan Chand Mahajan
Executive Engineer
Garrison Engineer (Water Supply)
Delhi Cantt.-110 010.

... Applicants

Vs.

1. Union of India through
Secretary
Ministry of Defence
Govt. of India
New Delhi - 110 011.
2. The Union Public Service Commission
through Secretary
U.P.S.C.
Dholpur House
NEW DELHI.
3. The Engineer-in-Chief
Army Head Quarter
Kashmir House
New Delhi - 110 011.

.... Respondents

O.A.NO.1058/95:

1. Param Hans Singh
Executive Engineer
Office of Chief Engineer
Bhantinda Zone
Bhantinda Cantt
Punjab.

.... Applicant

Versus

1. Union of India through
Secretary
Ministry of Defence
Govt. of India
P.O. D.H.Q.
New Delhi - 110 011.
2. Engineer-in-Chief
A.H.Q.Kashmir House
Rajaji Marg,
P.O.D.H.Q.
NEW DELHI - 110 011.

.... Respondents

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- 5 -

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O.A.NO.820/93:

Shri Sunil K. Aggarwal
Assistant Executive Engineer
Military Engineer Service
Office of the Chief Engineer
Delhi Zone
Delhi Cantt. - 110 010.

.... Applicant

Vs.

1. The Secretary to the
Govt. of India
Ministry of Defence
DHQ PO
NEW DELHI - 110 011.
2. The Secretary to the
Govt. of India
Ministry of Personnel and
Administrative Reforms
New Delhi - 110 001.
3. The Chairman
Union Public Service Commission
New Delhi - 110 001.

.... Respondents

Applicants through: Shri Raj Kumar Gupta, Shri M.R. Rajinder Nair and
Shri Manoj Prasad, Advocates.

Respondents through : Shri P.P.Malhotra, Sr. Advocate and Shri
V.S.R.Krishna, Advocate.

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

By this order, we are disposing of connected matters relating to various grievances of the petitioners belonging to the Military Engineering Service (MES). Of these matters, Writ Petitions No.160/85, 1456/86 and 1427/90 have been transferred to the Tribunal by the Hon'ble Supreme Court by its order dated 24.1.1995. OA No.1239/93 and OA No.1186/93 which were pending before the Ernakulam Bench of the Tribunal have also been transferred and heard together with the petitions remitted by the Hon'ble Supreme Court. In the latter petition, the induction of army officers to the posts of Assistant Surveyor of Works is being challenged by Surveyor Asstts. Gr.I. In other matters, the orders issued by the Ministry of Defence for the induction of Army Officers and apportioning of certain percentage of vacancies in the MES for the Army Officers is the ground for challenge.

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However, in all the cases the grievances and challenge concerns the posting of army officers to the posts claimed to be part of the MES as would be clear from the statement below of the reliefs sought in these OAs. OA No.820/93 has also been heard as regards the reliefs 3 and 4, but the other two reliefs (i.e. relief 1 & 2) ~~to~~ be taken up seperately.

O.A.NO.537/95 (Previously OA No.1239/93 of Ernakulam Bench):

2. This has been filed by Surveyor Asstts. Gr.I who have sought the following reliefs:

- a) Not to give effect to the notification issued vide SRO 19E (dated 31st July, 1989) which had been published incorporating provisions for posting Army Officers in MES.
 - b) Quashing posting order issued (in respect of Army Officers as ASW) vide MS 12 Sig.P.C.M. 849/93-12A dated 12th May, 1993 (as a specimen case);
 - c) To issue directions to respondents to take action for convening Departmental Promotion Committee and fill up the
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vacancies in the cadre of ASW and above in accordance with rules which existed at the time of occurrence of vacancy.

O.A.NO.538/95 (previously OA No.1186/93 of Ernakulam Bench):

3. This has been filed by Engineering Service Officers Association in which they have sought the following reliefs:

a) Quashing the SRO 4E dated 9.7.1991 publishing recruitment rules for appointment to EDSE subject to regulations notified in SRO 19E dated 31.7.1989 under section 192 of the Army Act, 1950 relating to number of posts, appointments and percentage of Army Officers.

b) Issuing orders directing the respondents not to post Army Officers in any of the posts in the MES Class-I Services;

O.A.NO.539/95 (previously WP No.160/86 Supreme Court):

4. This has been filed by Param Hans Singh in which he has sought the following reliefs:

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- 8 -

a) To issue Writ under Article 32 for issuance of a Mandamus against Respondents, and the Respondents should be restrained from recruiting/posting any Army Personnel in MES.

b) The respondents be directed to give promotion as per rules to the petitioner and others and the Army Personnels who are illegally occupying posts in MES - should be sent back to Army, as it is violative to Article 14 and 16(ii) of Constitution of India.

O.A.NO.540/95 (previously WP No.427/90 SC):

5. This has been filed by P.P.S.Dhanjaj and Param Hans Singh in which they have sought the following reliefs:

a) To issue a Writ or certiorari to quash/set-aside the SRO 19E, Min. of Defence, New Delhi, 31st July, 1989, the Military Engineer Services (Army Personnel) Regulations, 1989.

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- b) To issue a Writ prohibiting, prohibiting the respondents their men and again not to act upon to take any step or action pursuant to the said Military Engineer Services (Army Personnel) Regulations, 1989.

O.A.NO.541/95 (previously WP No.1456/86-SC):

6. This has been filed by P.P.S.Dharmajal, A.P.Jain & Others in which they have sought the following reliefs:

- a) To issue a Writ of mandamus against the Respondents, quashing references to army posts and/or army officers in Appendix 'A' to Govt. of India, Ministry of Defence letter No.93296/E2(WPC)/MOD/D(L-II) dated 28.5.1986 and restraining the respondents from posting any Army Personnel in the officer establishment for MES lower formations and commanding them to post only members of the MES Group 'A' recruited under the respective statutory rules against these posts and further

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directing the respondents to relieve forthwith the Army Personal occupying the said posts in MES to report to back to the Army and to appoint in their place the petitioners and other MES Group 'A' of officers with respective effect from the due dates with all consequential benefits.

O.A.NO.1058/95:

7. This has been filed by Param Hans Singh in which he has sought the following reliefs:

- a) To declare that the rules issued under SRO 4E dated 9th July, 1991 are to be subjected to the regulations.
- b) To declare that posts borne on the MES estimates are only to perform the functions of the service.
- c) To declare that the members of the service are only to perform the functions of the service.
- d) To declare that a member of the service is to work only under another member in the hierarchy of the service.

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e) To declare that the members of the service have a right to dignity, status, and to esprit de corps.

f) To declare that all posts borne on the MES estimates are to be filled as per the recruitment and D.P.C. rules made under Article 309 of the Constitution of India.

g) To declare that the two unequals are not to work in an interchangeable post.

h) To declare posting of Army personnel in MES service is bad in law.

i) To declare that the career of the applicant and other members of the service be brought at par with other organised services retrospectively with all consequential benefits.

k) To declare that repeal of 1949 rule on 9th July, 1991 is infructuous and bad in law.

O.A.NO.820/93:

9. This has been filed by Shri Sunil K. Aggarwal in which he has sought the following reliefs:

i) The respondents be directed to amend the provision of reservation of 33 1/3% of vacancies of Executive Engineer for AE group 'B' on quota basis by passing the eligible AEE group 'A'.

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- ii) The respondents be directed to revert the departmental promote AE group 'B' who have been promoted to the post of Executive Engineer under application of above rule and reallocate these vacancies to the eligible AEE group 'A' who have their first charge on any vacancy for the post of EE that arises in the sanctioned establishment as per the provisions of MES Class-I (RPA) rules, 1949.
- iii) The respondents be directed to invited suggestions/representations on SRO 4E dated 09.7.1991 through a Gazzette notification as per the provisions contained in Chapter XI - subordinate legislation of the Manual for handling parliamentary work in the Ministries published by Cabinet Secretariat, G.O.I.
- iv) The respondents be directed to restrain from reservation of certain percentage of posts for the Army personnel under the authority of SRO 19E dated 31.7.1989 issued under section 192 of the Army Act, 1950.

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9. Although the litigation on this issue has gone through several rounds, we find after perusing the pleadings in all the OAs and hearing the counsels of various parties at length that the contention of the two sides, namely, the civilian officers of MES and the respondents, Ministry of Defence in the Army Headquarters are amenable to a concise statement within a short compass of time and space. Briefly, stated the contention of the applicants in all the OAs is that the MES has been constituted as a distinct entity by the Central Government exercising powers vested in it under the proviso to Article 309 of the Constitution. These Rules, it is asserted, constitute an exclusive and comprehensive provision for the establishment of MES including the modes of recruitment, appointment, promotion as well as a description of the posts included in the cadre and in these in the manner of any other central service/
rules there is no provision
/whatsoever for the induction of army officers.

The intrusion of MES regulations framed under the Army Act, 1958, for the posting of Army officers in the MES is therefore, alleged to be illegal, ultravires, unconstitutional and

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- 14 -

discriminatory since the army officers have their own avenue of service, their terms and conditions of service being governed by the Army Act. The regulations framed under the Army ^{Act} cannot, it is asserted, modify specific rules framed under Article 309 of the Constitution. In view of the position, the petitioners submit that various orders and regulations issued by the respondents in which the reference to the posting of army officers in MES have been made should be quashed and the army personnel now posted to MES be reverted back to their parent organisations.

10. The respondents controvert these allegations. Their stand is that the MES is exclusively meant to meet the Engineering Works requirements of the Army, as well as Navy and Air-force. It was set up as a part of the Army and even now continues to be with the Ministry of Defence. Initially, it was exclusively manned by the army officers but over a period of time civilian officers also came to be inducted since it was found that during war time, the army personnel have to be diverted to combat duties. Nevertheless, the officers from army Corps of Engineers have always continued to work in the MES. Various Estimate Committees of the Parliament which examined this issue, have come to the

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- 15 -

conclusion that composite nature of MES is best suited to meet the requirements of the Defence forces and neither complete civilianisation nor complete militarisation would be a desirable solution. The respondent submit that various rules framed under Article 309 relate only to the civilian component of the MES. To obviate any difficulty, the impugned Service regulations issued in 1989 and 1991 lay down specific instructions regarding percentage of posts to be held by civilian and army officers respectively. It is denied that any of the posts earmarked for the civilians have been intruded upon by the army officers. Hence, the respondents claim there is no conflict between the rules issued under Article 309 and the Army Regulations since the former concern the civilian component and the latter that is MES (Army Personnel) Regulations 1989 and SRO 4E dated 9.7.1991 Indian Defence Service of Engineers (Recruitment and Conditions of Service) Rules, 1991, deal with the army personnel and the posts to be held by the army officers. Consequently, the applicants have no grounds for their allegations which are thus baseless and without any merit.

11. The point for adjudication before us is thus whether the impugned orders issued

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Nil

23

- 16 -

vide SRO 19E dated 31.7.1989 and SRO 4E dated 9.7.1991 deserve to be quashed for being inequitable inasmuch as these result in denying the petitioners the right of equality granted by Article 14 & 16 and illegal because they effectively modify or supersede the Rules framed under Article 309 of the Constitution.

12. To reach a proper conclusion it would be necessary in our view to determine both a question of fact as well as question of law. The factual position to be ascertained is whether or not, army officers have through out been filling some of the posts included in the schedule to MES rules. The question of law is whether the impugned Regulations issued under the Army Act are in conflict with the Rules framed under the Constitution.

13. On the question of fact, the learned counsel on either side have led us through the historical developments as regards the evolution of the MES. The respondents explain that the history of MES can be traced to as far as back as 1871 when the control of these Military Works were placed under the charge of Military Works Branch of the PWD under an Inspector General of Military Works. In 1881, the control of the Military Works Branch came to the Military Department Defence and in 1987-

all military works were taken over by this Department. The composition of the Military Works Department at this point of time was

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entirely military in character. After the First World War, the Director General of Military Works became a Director of Works subordinate to the Quarter Master General. In December, 1923, as a sequel to Military instruction 1014 of 1923, the MES was organised under an Engineer-in-Chief who was borne on the strength of the Army Headquarters and was directly responsible to the Commander-in-Chief. A copy of the Army instructions from January to December, 1923 has been annexed to the reply by the respondents. Instruction 1014 of 4.12.1923 relates to 'Engineer Organisation' and states that "It has been decided, with the approval of Right Hon'ble the Secretary of State for India, to organise the Engineer Services in India under an Engineer-in-Chief who will be borne upon the establishment of Army Headquarters, and will be directly responsible to His Excellency, the Commander-in-Chief. The future Engineer Organisation at Army Headquarters, and at the Headquarters of Commands, is shown in the diagrams appended to this Army Instruction."

14. Para 2 ^{there of} states that "The Engineer Services in India consist of the Corps of Sappers and Miners and the Military Works Services" and further that "the Military Works service will be designated as MES and will

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cease to be administered as a Directorate of the Quarter Master General Branch." According to the instruction 1014 of 1923, it was held that the Engineer-in-Chief would deal with the peace organisation of Engineers unit through the Adjutant General. As per para-8 of the instructions, for the conduct of the MES, there will be a Commanding Royal Engineers, First Class for 1st Class Districts and Commanding Royal Engineers, Second Class for Second Class MES Districts. The ranks of officers who will normally hold the various appointments in the Military Engineering Services will be as shown in the following table:

<u>Nomenclature</u>	<u>Rank</u>
Engineer-in-Chief	Major General
Deputy Engineer-in-Chief	Colonel or Lieut-Colonel
Chief Engineer of a Command	Colonel Commandant
CRE 1st Class Military District	Colonel or Lieut-Colonel
CRE 2nd Class Military District or ACRE Brigade Area, or Military Engineer Services Sub-District	Lieut-Colonel or Major
Staff Officer, Royal Engineers 1st Grade.	Lieut Colonel or Major
Staff Officer, Royal Engineers 2nd Grade(a)	Lieut Colonel or Major
Technical Officer(b)	Major, Captain or Lieut.
Garrison Engineer	Major, Captain or Lieut.

15. It is clear from the above that the organisational set up of MES was considered as a service function of the army and not merely as a 'cadre' of personnel. Para 3 of the

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instructions provided that Engineer-in-Chief will be the Technical Advisor to the Commander-in-Chief responsible for the following:

- a) Engineer operations and Engineer services during war and peace.
- b) The preparedness for war of the Engineering services.
- c) The supply of Engineer stores during war and peace.
- d) The execution and maintenance of all military works.
- e) The constructional efficiency, accuracy and economy of all projects and designs submitted by him.

16. The 1923 instructions had no reference to any civilian component of the Military Engineering Services. It may therefore be safely presumed that as per these instructions, the Military Engineering Service at least at the officer level was totally composed of the Military officers working under the Engineer-in-Chief who was himself an Army Officer.

17. The respondents state that though initially Military Engineers were British Army Officers of the Corps of Royal Engineers; the process of Indianisation and civilianisation

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was initiated in 1936-39 and there were eight civilian Asstt. Garrison Engineers and Six civilian Surveyors of Works in the Organisation in the subordinate positions, at the start of Second World War. There were also about 900 civilian SDOs (non-gagettet) and overseers whose number were increased to 6500 by the end of the War. Thereafter, the various rules for recruitment, promotion and seniority of the civilians in MES came to be published vide Gazette Notification No.1581 dated 17.9.1949. Some of the important and relevant parts of these Rules may be noticed:

Rule 2(c) provides as follows:

"The Service " means the Military Engineer Service, Class-I.

Rule 3 provides as follows:

The Service (other than the Architects Service and the Barrack and Stores Service) shall be recruited by the following methods:

- i) By competitive examination held in India in accordance with Part-II of these Rules.
- ii) By promotion in accordance with Part-III of these Rules.

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- 21 -

Appendix V(5): It is stated that the Military Engineering Services, Class-I, comprises of a number of superior posts as follows:

<u>POSTS</u>	<u>RATES OF PAY</u>
Executive Engineer Surveyor of Works	- Rs.600 for first 6 years of Service-40-1000-
Technical Examiner	- Rs.1000-1050-1080-1100-1100-1150

ADMINISTRATIVE POSTS

<u>POSTS</u>	<u>RATES OF PAY</u>
Chief Technical Examiner Chief Surveyor of Works	Under consideration Rs.1600-100-1800.
Superintending Engineer Superintending Surveyor of Works Superintending Technical Examiner.	Rs.1300-60-1600.

By SRO 41 dated 17.1.1969, Govt. of India in exercise of the powers conferred by the proviso to Article 309 of the Constitution, amended the 1949 Rules. It had also the effect of making the amended rules statutory in nature. Thereafter a number of SROs followed. SRO 35 dated 12th January, 1970 was issued under Article 309 of the Constitution, regulating the method of recruitment to the post of Executive Engineer (Class-I post) in the MES and gave in its schedule the number of posts of Executive Engineer, i.e. Permanent 74 and temporary 171. Similarly, by SRO 217 of 25.6.1971, Recruitment Rules for

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Superintending Engineers were framed and for posts of Civilian Chief Engineer, Dy. Chief Engineer, Directors, Deputy Directors in the MES by SRO No.321 dated 18.12.1976. The schedule thereto however, provided 25 posts only in the rank of Additional Chief Engineers. SRO 32 of 10.1.1985 provided rules in respect of the posts of Chief Engineer and listed 13 posts of this category, whereas Rules framed in 1985, vide SRO 190 etc. catered for the number of vacancies and pay scales of different categories of posts etc. Despite the evolution of statutory rules in respect of constitution of the MES and the recruitment rules for various posts from Executive Engineer upwards and the number of posts involved in the respective cadre, it is clear that at no time the army officers were excluded from appointment against MES posts, listed in the various schedule. The provision for recruitment of Civilian Officers in MES on a regular basis, on lines akin to other Central Civil Services came into effect with the issue of Notification No.1581 dated 17th September, 1949, followed by subsequent SROs referred to in the preceding paragraph. It appears that with the induction of civilian engineers on a regular basis a competitive examination was conducted by the Federal (now Union) Public Service Commission though it increasingly became necessary to clearly apportion the posts amongst civilian and army officers. The matter was gone into by the MES

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Rules Committee (1957) which recommended, inter-alia, as follows:

"The proportion between military and civilian officers upto the grade of CWE should be 50 : 50 and the existing civilian officers should be given option to accept combatant terms.

Where officers are not required to deal with troops, civilians should be considered for posts higher than CWE."

18. Vide Ministry of Defence orders dated 3.4.1970, the above recommendation was accepted to the extent that the ratio will be 50 : 50 upto the grade of CWE and that upto a maximum of 25% of posts in the grade of SW will be filled by military personnel 25% in the cadre of architect. The recommendation that where officers are not required to deal with the troops, civilians should be considered for posts higher than C.W.E. ~~Chief (Works)~~ was also accepted.

19. There are other parameters of the organisation of MES which make it clear that army officers inevitably had to hold posts in the MES from the very inception. Since, the Engineer-in-Chief had been a Technical Adviser to the Commander-in-Chief (now Chief of Staff) and his officers had to render advice to the Army Commanders and Corps and Divisional Commanders etc. necessarily the posts which involved close functional relationship with the combat forces could only be manned by the officers of the defence forces. Thus all the

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- 24 -

posts of Chief Engineer (Command), Garrison Engineers and so on down the line fall within the domain of the army officers. It is also noteworthy that none of the applicants have claimed that army officers had never been posted and occupied any of the posts which were part of the MES. The very debate on the percentage allocation of posts to army and civilian officers and complete militarisation or in the alternative complete civilianisation would indicate the presence of a composite and mixed officer population in the MES.

20. We, therefore, answer the first question i.e. whether Army Officers have always been working in the MES, in the affirmative.

21. The second question to be considered is regarding the legal position, i.e. whether the issue of Regulations under the Army Act 1950 are in conflict with the statutory Rules issued under proviso to Article 309 and therefore illegal and ultravires.

22. In order to examine this allegation, we may take a look at the relevant portion of the Army Act, 1950. Section 192 thereof reads as follows:

"192 Power to make regulations: The Central Government may make regulations for all or any of the purpose of this Act other than

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42

those specified in Section 191.

Note: The Regulations made under this section may cover a wider field than the limited purposes for which rules can be framed under AAs.191(1)".

23. The Army Act in the preamble says that it is "An Act to consolidate and amend the law relating to the government of the regular Army". In other words, regulations under Section 192 can only be made for the purpose of the government of the regular army and can cover only the regulation of terms and conditions of service personnel of the regular army. The Concise Oxford Dictionary, 1994 (Edition) defines Government as the 'Act or manner of governing'. In other words, the regulation under Army Act, 1950 can relate only to act or manner of governing of the army. The Army Act as per Section is applicable to army officers or such civilians who are within the purview of the Army Act.

24. At this stage, the position before coming into force of the Constitution of India in 1950 may be noted. The Govt. of India Act, 1935, Section 238 provided as follows:

"Section: 238: The provisions of the three last preceding sections shall apply in relation to persons who not being members of His Majesty's forces, hold or have held, posts in India connected with the equipment or administration of those forces or otherwise connected with defence, as they apply in relation to persons who are have been, members of these forces."

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25. The three preceding sections i.e. 235, 236 and 237 read as under:

"Section 235: Without prejudice to the generality of powers conferred on him by this Act, the Secretary of State may, acting with the concurrence of his advisers, from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval."

Section 236: Nothing in this Act affects any right of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act, and Secretary of State may entertain any such memorial from a member of those Forces as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

Section 237: Any sums payable out of the revenues of the Federation in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act, charging on the said revenues expenditure with respect to defence".

26. The Army Regulations for the MES, 1936, Para 117 provides as follows:

"Officers of the R.E. or R.E.(1.A) are posted to the M.E.S. transferred from the M.E.S. and posted to Commands by the Military Secretary, A.H.Q. departmental officers of the M.E.S. and Civilian Officers by the Engineer-in-Chief."

27. It is clear from the above that under the Govt. of India Act, 1935, Section

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238, ~~the Central Govt. of India Act, 1935.~~
~~Section 238,~~ the Central Government could issue rules and regulations and orders affecting the conditions of service of the army officers along with those of civilians who held posts in connection with the equipment or administration of the forces or were otherwise connected with defence. As the civilian officers of MES are clearly connected with the defence, Army Regulations of 1936 provided for both civilian and Departmental officers of MES as well as the army officers for postings in MES.

28. ⁹ It may be seen that Article 313 of the Constitution which is concerned with the transitional provisions provides as follows:

"Until other provision is made in this behalf under this Constitution, all the law in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution."

29. Article 313 would also cover rules framed under statutory powers, i.e. Rules framed under Section 238 of the Govt. of India Act, 1935. Hence, the Army Regulations 1936 continued to be valid in so far as they are consistent with the provisions of the Constitution. The continuation of the posting

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45

- 28 -

of Army Officers in MES ~~for both as~~ provided in the Army Regulations, 1936^{stood} covered by Article 313 of the Constitution. In fact, the same Regulations as amended from time to time were published along with the Manuals upto 1963.

30. Learned counsel for the applicant had argued that after statutory rules were framed in exercise of the powers under proviso to Article 309 defining the service conditions of personnel recruited to MES including the process of recruitment, promotion as well as the number of posts, Army regulations ceased to apply since they became inconsistent with the provisions of the Constitution and the Rules framed thereunder. We find no such 'contradiction as strongly urged by the applicants' counsel. The Rules under Article 309 were not created in a vacuum. The posts of MES were already being filled in at the time of issue of Rules under Article 309 in 1967. The recruitment and service conditions of the Army personnel was being governed by the Army Act, 1950. All that happened therefore was that the Rules and Regulations framed for civilians by Army Regulations under Government of India Act, 1935 in terms of Section 238 were replaced by statutory rules framed under Article 309. The statutory rules and army regulations covering separate and distinct cadres could therefore not be

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considered inconsistent with each other, where it is accepted that at the time of promulgation of statutory rules the MES posts were being manned by both civilian as well as army officers.

31. In this connection our attention has been drawn to AIR 1965 SC 1585 State of Kerala Vs. KMG Abdulla and Co. in which it was held in majority judgment that when power to frame rules is conferred by the Act upon the State Government that power may be exercised within the strict limits of the authority conferred. If in making a rule, the State transcends its authority, the rule will be invalid, for statutory rules made in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorised. In so far as the present application is concerned, there is no doubt that the applicants are well within their right to challenge the rules and regulations framed under the Army Act, 1950 on the ground that such rules transcend the authority given to the State under the Act. However, we have found that the allegations are not valid since the same ignore the context and the basis on which the statutory

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rules are found and further more because the impugned regulations under the Army Act can be read harmoniously with the rules framed under proviso to Article 309 of the Constitution.

32. It has been argued before us on behalf of the applicants that even if it were to be assumed that statutory rules provide for the service conditions of the civilians and the army regulations in matters governing army officers, nevertheless, the army officers cannot be allowed to encroach upon the posts which have been clearly demarcated for civilians in the relevant schedules of the Statutory Rules. It has been urged that such number of posts whether they be of Executive Engineer or Superintendent Engineer or Chief Engineer or any other posts whether of higher or lower can only be filled up by civilian officers since these posts are governed by modes of recruitment provided within the statutory rules. On that score, impugned orders issued under the Army Act, in particular in relation to the percentages of posts manned by the civilians or by the Army have to be either struck down or modified.

33. We do find some substance in this argument. In our view, it ~~w~~ould have been appropriate, in order to avoid ^{any} controversy

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that the statutory rules should have provided for the deputation of army officers or in the alternative the posts which were to be manned by the army officers should have been identified and excluded from the schedule attached to the statutory rules. However, as far as the present position is concerned, we have felt it necessary to require an additional affidavit from the respondents to ascertain whether any of the posts listed in the schedules to various statutory rules pertaining to MES have been encroached upon by the Army officers. The additional affidavit filed by Colonel Jagmohan Uppal on 6.3.1996 gives the following details regarding the number of posts provided in the recruitment rules and the number of posts filled in by the Civilian Officers.

<u>Recruitment Rules</u>	<u>No. of posts as given in the Recruitment Rules</u>
a) Military Engineer Services (Additional Chief Engineer) Recruitment Rules, 1985.	25*
b) MES (Superintending Engineer) Recruitment Rules, 1985	96* 24* (SE SG)
	----- 120
c) MES (Executive Engineer) Recruitment Rules, 1986	524
d) Military Engineer Services (Chief Engineer), Recruitment Rules, 1989.	1*
e) SRO 4E dated 9.7.1991 The India Defence Services Engineers (Recruitment and Conditions of Service) Rules, 1991.	

*Subject to variation dependent on work load.

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	<u>Name of the Post</u>	<u>No. of post to be held by Civilian Officers.</u>
i)	Additional Director General	1
ii)	Chief Engineer	17
iii)	Additional Chief Engineer	27
iv)	Superintending Engineer	141
v)	Executive Engineer	445
vi)	Asstt. Executive Engineer	249

34. The information furnished by the respondents, ~~therefore~~, indicates that all the posts listed in the recruitment rules issued under Article 309 are presently held by the civilian officers recruited under those rules. In fact it would appear that number of posts held by the civilian officers is more than the number of posts provided in the recruitment rules.

35. It has been argued by the learned counsel for the applicants in OA No.539/95 that the additional affidavit of the respondents does not take into account the additional posts sanctioned through cadre review, in 1985 which are exclusively meant for civilians. Since we are examining the recruitment rules and the army regulations, it is apparent that any additional posts sanctioned by the Government which do not find reflection in the recruitment rules cannot be taken into account to ascertain whether these are exclusively to be held by the civilian officers.

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36. To sum up, we conclude that historically, the MES was established for meeting the ~~requirements~~ of the army, initially placed under the direct control of the Army and for sometime exclusively manned and managed by the Army Officers. Later, it became necessary to induct civilian officer who however worked under the control of Engineer-in-Chief. The MES gradually came to acquire a composite and mixed character having both civilian and Army Officers. It became necessary in time to fix broad principles for distribution of posts between army and civilian officers and these were articulated by the Army Regulations 1936 issued under the Govt. of India Act, 1935 and thereafter amended ^{from} time to time. It also became necessary to regulate the induction, appointment and promotion of civilian officers on the lines of other Central Civil Services and this was done beginning with orders issued vide SRO No.1581 of 1949 followed by a series of statutory rules framed under Article 309 culminating in SRO No.4E of 1991 setting up the Indian Defence Service of Engineers.

37. Similarly, the army regulations issued for the other component namely, the army officers were issued under the Army Act, 1950, for the posting etc. and the percentage of posts to be held by the army officers. The

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impugned orders issued by SRO 19E dated 13.7.1989 and SRO 4E dated 9.7.1991 identify the posts to be held by Army Officers and the civilian officers. The latter mentioned SRO-4E dated 9.7.1991 issued in exercise of powers conferred by the proviso to Article 309 of the Constitution in fact brings together in a common statutory provision rules respecting postings of the two set of officers.

38. We, therefore, find in short that army officers have always been part of the MES and it is the induction of civilian officers which has given it a composite and mixed character. The rules issued under proviso to Article 309 in respect of this civilian component and the army regulations issued under the Army Act, 1950 cater separately for the two categories and are thus not in conflict or in contradiction of each other. None of the posts provided for the civilian component in the relevant recruitment rules has been encroached upon by the army officers. The SRO-4E of 9.7.1991 issued under Article 309 finally provides for constitution of the Indian Defence Services of Engineers as also for the distribution of posts between army officers of the Corps of Engineers and the civilian officers.

39. For the reasons mentioned above, and in view of the facts and circumstances of the case, we therefore, dismiss all the OAs except OA No.820/93. The reliefs 3 and 4 of OA No.820/93 are denied. This OA will be heard further as regards reliefs 1 and 2. Parties will bear their own costs.

/RAO/

(R.K.AHOJA)
MEMBER(A)

(A.V.HARIDASAN)
VICE-CHAIRMAN(J)

Attested
23/9/96