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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. 1991/97

New Delhi this the 12<sup>th</sup> day of September, 2008

**HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J)**  
**HON'BLE MR. N.D. DAYAL, MEMBER (A)**

Shri Arjun Singh,  
son of Shri Avadh Bihari Singh,  
976, Baba Kharak Singh Marg,  
New Delhi-1.

... Applicant.

(By Advocate Shri K.K. Patel)

Versus

1. Union of India,  
Through Secretary,  
Ministry of Urban Affairs & Employment,  
(now known as Urban Affairs and Poverty Alleviation),  
Nirman Bhawan,  
New Delhi.
2. Land & Development Officer,  
Land & Development Office,  
Ministry of Urban Affairs & Employment,  
Nirman Bhawan,  
New Delhi.
3. Department of Personnel & Training,  
Through Secretary,  
North Block,  
New Delhi.

... Respondents.

(By Advocate Shri R.N. Singh)

**O R D E R**

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J).**

The application originally had been submitted on 20.08.1997, and the four applicants had prayed that respondents were to be directed to modify or hold the recruitment rules pertaining to their service so as to include persons of their class for being considered for promotion to the post of Assistant Engineer/Building Officer. The Tribunal had found that not much interest had been taken by the applicants to prosecute

their case and by order dated 04.08.2000, the OA was rejected. Tribunal had observed that it was not considered appropriate to make a direction to the respondents to include any further qualifications than that was there already in the rules and such matters purely were to be decided by the competent authority if they considered it as necessary.

2. One of the applicants had taken up the matter before the High Court by filing CWP 2086 of 2001. By judgment dated 24.09.2007, a Division Bench had noticed the contentions of the petitioner therein that the rules, according to him, were discriminatory. The Court also noted that an application for amendment to challenge the rules had been permitted. Therefore, it had been held that the Tribunal had to bestow its consideration on that aspect in the first instance. The case was remanded to the Tribunal to decide the aforesaid issue. Petitioner was given permission to raise the issue by amending the OA.

3. On remand, the matter had been reposted. But, however, we find that there is only one applicant now on record. Mr. K.K. Patel appeared on his behalf and Shri R.N. Singh appeared for the respondents. Although we have been supplied with an amended OA, stated to be as per the order dated 24.09.2007 of the High Court of Delhi, we do not find any application for amendment as such nor presence of any orders in that regard. But, however, that may not be highly relevant, since it is specifically stated on page 4 of the amended application as following:-

“In the present case, the applicant is not challenging the Recruitment Rules in a mechanical manner.”

It is further stated that he has approached the Tribunal for removal of a paradoxical situation inasmuch as in view of recruitment rules the

official respondents held that the applicant is not fit for the promotion for the post of Assistant Engineer/Building Officer. At the same time, he had been found fit for grant of benefits under the ACP Scheme for which the essential requisite conditions as provided in the condition No. 6 (of the order) was that the employee must be fit for the next higher promotion. Learned counsel also submits that the applicant is not challenging the Recruitment Rules as such.

4. According to him, even the present rules permitted promotion of the applicant as an Assistant Engineer. The submission as above is based on official memorandum dated 10.05.1961 (P-90 of the amended OA). The qualification possessed by him required thereby to be equated with Diploma in Craftsmanship. He had been in possession of National Trade Certificate, in the Trade of Surveyor. Therefore, on the basis of memorandum of 10.05.1967, he should have been considered as possessing a Diploma entitling him to promotion.

5. At the first instance, this position was not accepted when the matter was initially presented before the Tribunal. Opportunity was left to the applicant to challenge the RRs as per the judgment of the High Court. But when applicant submits that he is not challenging the rules, really nothing matters now as worthy of adjudication. The RRs provide that Overseers with five years service in the grade in the case of Degree holders in Civil Engineering and 10 years service in the case of Diploma holders in civil engineering are entitled for promotion. It also prescribes that Senior Surveyors with eight years service in the grade in the case of Diploma holder in civil engineering or in survey are also eligible. The applicant has no diploma but only a certificate and puts up the claim on a plea that the certificate has been equated to diploma.

6. It is also relevant to note that in page 7 of the amended OA, it is contended that the Department itself had initiated proposals for amendment of the RRs vide their office order dated 14.01.2000. It is stated that "However, due to red-tapism, the outcome is in the oblivion". This opposition is admitted practically viz. that the applicant is not qualified for promotion as per the present rules.

7. The office memorandum of 1961, cannot have the effect of amending the statutory rules which are in existence and the applicant is required to possess the diploma as per the rules which alone will enable him for promotion. The circumstances that ACP benefits have been granted to him cannot lead to a presumption to be drawn therefrom that he was holding the position of Surveyor as qualified person, When we are specifically looking at the rules, and as to whether there is a situation where the applicant was qualified for promotion under the rules. The said circumstance requires to be relegated to the background. The pure question is whether as per the existing Rules he is to be conferred with promotion. The answer can be only in the negative.

8. The Original Application is accordingly dismissed. No costs.



**(N.D. DAYAL)**  
**MEMBER(A)**

'SRD'



**(M. RAMACHANDRAN)**  
**VICE CHAIRMAN (J)**