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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2816/97

New Delhi this the 7<sup>th</sup> day of July, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman  
Hon'ble Mrs. Shanta Shastry, Member (Admnv)

1. M.K. Ghosh
2. T.V. Rao
3. V.V. Chandra Rao
4. D.K. Mishra
5. Gurinder Singh Talwar
6. R. Balasubramaniam

...Applicants

(By Advocate Shri O.P. Kalshian)

-Versus-

1. Union of India through  
the Secretary,  
Ministry of Defence,  
South Block, DHQ P.O. New Delhi.
2. Secretary,  
Ministry of Personnel, Public  
Grievances & Pensions,  
North Block,  
New Delhi.
3. Secretary,  
Union Public Service Commission,  
Dholpur House,  
Shahjahan Road,  
New Delhi-110011.
4. Engineer-in-Chief,  
E-IN-C's Branch,  
Army Head Quarters,  
Kashmir House, DHQ P.O.,  
New Delhi-110011.

...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Reddy, J.-

The applicants, who are Degree holder Assistant Executive Engineers (AEEs) and Assistant Engineers (AEs) seek to review the quota of 66-2/3% and 33-1/3% regarding their promotion to the grade of Executive Engineers to the ratio of 1/3:1/3:1/3 for the AEEs, AEs (Graduates) and AEs (Diploma holders). The facts that are necessary to notice in this case are:

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2. The applicants have been working in the Military Engineering Service (MES) as AEs (Group 'B') gazetted. All of them are Graduate Engineers, holding a Degree in Engineering from recognised University. They initially joined the department as Superintendents Grade I and were promoted to the posts of AE.

2.1 The cadre of AEs are to be filled up by promotion from Supervisory cadre in the relevant branches. The Superintendents B/R & E/M grade I are the feeder cadre for promotion to Group 'B' cadre of AEs. The direct recruitment to the cadre of Superintendents Grade II requires a Diploma in Engineering and for Superintendent Grade I, Degree in Engineering is required in the relevant field. Thus the Group 'B' cadre of AE is to be filled up by promotion from a mixed cadre of both Degree and Diploma holder Engineers.

2.2 The promotion to the grade of Executive Engineers (Group 'A') under the Indian Defence Service (Recruitment and Conditions of Service) Rules, 1991, is made from the directly recruited AEEs and AEs (Group 'B') in the ratio of 2/3%:1/3%. The 2/3% quota is to be filled up by direct recruitment having four years service by non-selection whereas the 1/3% quota for AEs to be filled on selection basis by employees having 8 years regular service in the grade in the case of Graduates, whereas in the case of non-Graduates 11 years service in the grade was required.

2.3 The applicants submit that other organised Engineering Services in the Government of India like CPWD etc. there are specific allocation of posts in the grade of



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Executive Engineers for promotion of Graduate Graduate AEs and Non-Graduate AEs (Diploma holders) maintaining different seniority list. In the case of MES there is no such weightage for higher qualification in the case of Graduate AEs. The applicants, therefore, filed the OA for the revision of the quota for promotion to the posts of Executive Engineers in the ratio 1/3:1/3:1/3 for the AEEs, AEs (Graduate) and AEs (Diploma holders).

2.4 The respondent No.4 filed the counter. It was averred that the OA is misconceived and it is liable to be dismissed on the ground that there was no cause of action for filing the present OA. It was further stated that the promotion in the cadre of EEs is strictly in terms of statutory rules and in the absence of challenge to the same the OA cannot be sustained. It was further stated that there can be no comparison with the AEs serving in the other Central Government departments, that due weightage is given for promotion to Executive Engineers in that only Graduate Engineers fulfilling the eligibility criteria were made eligible for promotion to Executive Engineers.

3. We have heard the learned counsel for the applicants and the respondents and we have given careful consideration to their contentions.

4. The learned counsel for the applicants submits that as held by the Supreme Court in J.N. Goel & Others v. Union of India & Others, 1997 (2) SCC 440, the recruitment rules for promotion to the posts of Executive Engineer should contain the weightage to Graduate AEs both for Graduate AEEs and AEs in the ratio of 1/3:1/3 in addition to 1/3 to Diploma

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holder AEs. It is contended that <sup>in</sup> the recruitment rules as presently existed such weightage is not given to the Graduate AEs. It is his case that the higher educational attainment is not recognised and graduate AEs are treated uniformly with Diploma holders which is arbitrary. The learned counsel for the respondents, however, contends that both Graduate and Diploma holders have been equally treated from the cadre of Superintendents, maintaining one seniority list and the Superintendent Grade I having been promoted as Assistant Engineers and hence the Superintendents subsequent to the promotion of Assistant Engineers are not entitled to seek weightage to the Degree holders in the matter of promotion to the Executive Engineers. It is his case that the J.N. Goel's case (supra) has no application to the facts of the present case.

5. There are two basic flaws in the OA. Firstly, we do not find any cause of action for the applicants to file the OA and secondly as the applicants are seeking weightage or separate quota for Degree holders in the matter of promotion in preference to the Diploma holders, Diploma holders being the affected party, should have been impleaded in the OA. But they are not so impleaded.

6. The applicants seek to rely on J.N. Goel's case (supra). We have perused the same. In that case two OAs came to be filed before the Principal Bench viz. OA No.704/88 and OA No.910/89. The Graduate Assistant Engineers being aggrieved by the proviso inserted to sub rule (3) of Rule 21 of the Central Engineering Service (Group 'A') Recruitment Rules, 1954 (hereinafter called the rules) filed OA-704/88 questioning the proviso. Subsequently, another

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OA-910/89 was filed by the Diploma holders Assistant Engineers. Both these applications have been disposed of by the Tribunal holding that the proviso was arbitrary and discriminatory and that it required to be substituted by a rational and just criteria. The Tribunal also directed the Government to amend the 1954 rules suitably. Both the Graduate Engineers as well Diploma holders AEs having felt aggrieved by the judgement of the Tribunal, approached the Supreme Court. Meanwhile, the rules have been amended in 1996 superseding 1954 rules and prescribing the quota system for promotion to the posts of Executive Engineers from three sources, viz. (i) AEEs with four years service - 33-1/3%, (ii) Degree holders Assistant Engineers with 8 years service - 33-1/3% and (iii) Diploma holders AEs with 10 years service - 33-1/3%. The Supreme Court, however, did not agree with the Tribunal in holding that the proviso to Rule 21 (3) of 1954 rules was arbitrary. It upheld the proviso and directed the promotion to Executive Engineers in accordance with 1996 rules to the vacancies which occurred to be filled up as per 1996 Rules and the vacancies which occurred prior to 1996 rules should be filled up in accordance with 1954 rules. Thus the Supreme Court has approved only the quota fixed in the 1996 rules. It may be true that on the recommendations of the Tribunal the rules might have been amended and the 1996 rules have come into force. But in the present case in the absence of the Diploma holders, who are the affected parties no such direction can be given without hearing the Diploma holders. That apart, no cause of action arose to the applicants in this case.

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7. In the circumstances we are unable to give any relief to the applicants. The OA, therefore, fails and is accordingly dismissed. No costs.

Shanta J

(Smt. Shanta Shastry)  
Member (Admnv)

Rajagopala Reddy

(V. Rajagopala Reddy)  
Vice-Chairman(J)

'San.'