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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A. NO.1835/88

New Delhi this the 20th day of December, 1993.

CORAM :

THE HON'BLE MR. JUSTICE B. C. SAKSENA, VICE CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

N. R. Paul S/O Late Shri Mohan Paul,
Assistant Engineer (Electrical),
Delhi Central Electrical
Circle IV, CPWD,
I.P. Bhawan, New Delhi.
Resident of :
Qr. No. 1917, Timarpur,
Delhi-7. ... Applicant

By Advocate Shri K. N. R. Pillai

Versus

Union of India through
the Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi. ... Respondents

By Advocate Shri M. L. Verma

O R D E R

Hon'ble Mr. Justice B. C. Saksena —

The applicant was recruited as Section Officer (Electrical) now called Junior Engineer, in the C.P.W.D. on 2.2.1960. He was promoted as an Assistant Engineer on 7.8.1973. Since he did not pass the departmental examination within two years of his appointment, under the provisions of the recruitment rules of 1958, he was not allowed to draw his second and subsequent increments. The learned counsel for the applicant submitted that by memo dated 10.12.1964 copy of which is annexed as Annexure A-II to the application, it was provided that "so far as such

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Section Officers are concerned, their second increment may be released from the due date but their third and subsequent increments should be withheld until they pass the departmental examination in terms of their appointment letters." It was further provided that ^{the case of} S.O.s appointed after 17.3.58 but whose appointment letters do not include the condition regarding passing the departmental examination was still under consideration and necessary instructions with regard to the same would be issued separately. The said instructions were issued through memorandum dated 17.8.1965. In paragraph 2 of the said memorandum it was provided that the condition regarding passing the departmental examination in Simple Accounts prescribed for Section Officers in the C.P.W.D. need not be enforced against the Section Officers whose appointment letters do not contain any such condition, and their normal increments in the grade of Section Officers should be released. It was further provided that on their promotion to the grade of Assistant Engineers, they will not be allowed to draw even their normal increments in that grade unless they pass the departmental examination in Simple Accounts prescribed for Section Officers or for the grade to which they may be promoted. The applicant has sought quashing of this memorandum dated 17.8.1965. The learned counsel for the applicant submitted that under the recruitment rules non-passing of the departmental examinations is confined to

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Section Officers and provides that the second and subsequent increments will not be released if they fail to pass the departmental examination. The submission of the learned counsel, therefore, was that this condition cannot be imposed after the promotion of the applicant to the grade of Assistant Engineer.

2. After having given our anxious consideration to the submissions made, we are of the opinion that the memo dated 17.8.1965, though an executive instruction, has not been shown to the contrary to any statutory provision. It is a settled law that the gaps in the statutory rules can be filled up by executive instructions. If the statutory rules do not cover the point in question, executive instructions or orders can be issued in respect of the same. The memo dated 17.8.1965, therefore, would be binding and can be implemented.

3. Admittedly, the applicant failed at the three attempts to pass the departmental examination and, therefore, by reason of the provisions in the memo dated 17.8.1965, he was rightly not allowed to draw his increments in the grade of Assistant Engineer. The applicant had preferred representation for the first time on 12.12.1983. The same was rejected on 13.2.1984. Thereafter, he chose to prefer a second representation to the same authority, which was also rejected as back as on 10.7.1984. Though a plea of the application being barred by limitation was

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raised in the written statement, the learned counsel for the respondents did not raise it at the time of hearing the application. But since we have held that the office memorandum dated 17.8.1965 did not violate any statutory provisions and it was applicable and the applicant was rightly not allowed to draw his increments in the grade of Assistant Engineer, we need not reject this application on the ground of limitation.

4. Learned counsel for the applicant next submitted extant that under the provisions an exemption from passing the departmental examination would be admissible after the incumbent attains the age of 50 years. Such a condition is provided for in Annexure-A-VIIIA which is the copy of letter dated 23.1.1976 issued from the Ministry of Works and Housing to the Engineer-in-Chief, C.P.W.D., New Delhi. This letter indicates that the power to exempt the officers from passing the departmental examination is prescribed in the Ministry's letter dated 28.5.1954 subject to the following conditions :-

- "i) The officer should have reached the age of 50 years.
- ii) He should have good record of service."

5. In the reply, it has been indicated that the applicant failed to earn good record of service and to pass any of the departmental examinations prescribed for Junior Engineers/Assistant Engineers and, therefore, increments have not been allowed to him. The learned

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counsel for the applicant challenged the validity of the condition laid down in this memorandum and urged that the applicant on crossing the age of 50 years on 22.1.1986, should be treated as exempted from the Accounts examination and allowed to cross the efficiency bar in the scale of Rs.650-1200, first due in 1979 and then in 1984 and his pay in this scale be re-fixed from the due dates before determining his pay in the revised scale. This relief cannot be granted to the applicant. As noted hereinabove, due to the applicant's failure to pass the prescribed departmental examination, he was not allowed any increment. The efficiency bar is prescribed in a given time scale and the employee concerned would reach the efficiency bar stage only after accrual of the annual increments indicated in the said time scale. The plea that the applicant became eligible to cross the two efficiency bars prescribed in the time scale is misconceived.

6. Shri K. N. R. Pillai, learned counsel for the applicant, has cited a few decisions of the Principal Bench which are as follows :-

- 1) L. D. Kandpal vs. Union of India
O.A. No. 783/86 decided on 18.1.1988.
- 2) N. P. Aggarwal vs. Union of India
O.A. No. 1054/86 decided on 18.1.1988.
- 3) K. K. Sarna vs. Union of India
O.A. No. 103/87 decided on 18.1.1988.

Shri Pillai conceded that the applicability of the criteria for crossing the efficiency bar and the guidelines in that behalf copy of which has been

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annexed as Annexure-A-XXI to the application, will not be applicable in the present case, in view of the fact that the applicant had not reached the efficiency bar stage. In view of the concession made by the learned counsel for the applicant, it is not necessary for us to examine in detail the various decisions rendered on 18.1.1988 by the Principal Bench of this Tribunal.

The learned counsel for the applicant relying on a decision reported in 1974 (3) SCR 207 - General Manager, South Central Railway, Secunderabad & Anr. vs. A. V. R. Sidhanthi & Ors., submitted that the mini classification made in Annexure-VIII-A is arbitrary and violates the provisions of Articles 14 and 16 of the Constitution. In our opinion, there is no question of any mini classification. The recruitment rules clearly provide for passing of the departmental examination before earning further increments.

By way of elucidation, the memo dated 10.12.1964 was issued which, as noted hereinabove, provides that as far as Section Officers are concerned, their second increment may be released from the due date but their third and subsequent increments should be withheld until they pass the departmental examination in terms of the appointment letters. The applicant's appointment letter did not contain any such condition and, therefore, the memo dated 17.8.1965 comes into play. The challenge to the provision in para 3 of the said memorandum having failed, the said provision would be applicable. In the grade of Assistant Engineers, therefore, the same condition continues to apply.

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No classification has been made by the said memorandum much less mini classification. The submission is that Junior Engineers who had failed to pass the departmental examination but who were promoted to the grade of Assistant Engineers, should be governed by the said conditions as applicable to Assistant Engineers. We, however, find that in their reply, the respondents have indicated that the condition of passing the departmental examination before accrual of the next increment under the recruitment rules equally applies to the Junior Engineers as well as the Assistant Engineers. In that view of the matter, the plea that a mini classification has been resorted to is unfounded. Even otherwise, the memo dated 17.8.1965 is in the nature of concession given to Junior Engineers who failed to pass the departmental examination. The condition that the next increment would not be permitted to be drawn by them was confined only to those whose appointment letters contained such a condition. At the same time, it was provided that in the grade of Assistant Engineers, unless they pass the departmental examination, no further increments would be permitted to be drawn. This, in our considered opinion, does not amount to a classification between the Junior Engineers promoted as Assistant Engineers and _____ who had not passed the departmental examination and on the other hand, direct recruits to the cadre of Assistant Engineers. The condition of non-accrual of next increment equally applies to both of them. Such Assistant Engineers who were promoted from the rank of Junior Engineers who failed to qualify

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the departmental examination while continuing in the cadre of Junior Engineers carried with them the same condition on their promotion as Assistant Engineers. They had to pass the departmental examination while in the grade of Assistant Engineers. The direct recruits to the post of Assistant Engineers also are subjected to the same condition of passing the departmental examination before being permitted to draw the next increment. Thus, we see no justification and tenability in the plea advanced on behalf of the applicant.

7. In view of the discussion hereinabove, there is no merit in the application. It is accordingly dismissed. No costs.

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(S. R. Adige)
Member (A)

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(B. C. Saksena)
Vice-Chairman (J)

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