

(Reserved on 15.12.2020)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

Allahabad, this **Tuesday** the **29th** day of **December**, 2020

Original Application No. 330/00355/2019

Hon'ble Justice Mrs. Vijay Lakshmi, Member (J)
Hon'ble Mr. Navin Tandon, Member (A)

Jayaprakash. N (Retd) Subedar Major/(Hony Captain) Junior Engineer (E&M) son of K. Narayana Pillai O/o GE (AF) Bamrauli, Allahabad.

. . . Applicant

By Adv : Shri Udai Chandani

V E R S U S

1. Union of India through Secretary Ministry of Defence, New Delhi.
2. Union of India through Joint Secretary, Ministry of defence Department of (Ex-servicemen-Welfare, 99-A, South Block, New Delhi).
3. Adjutant General's Branch Integrated HQ of MoD (Army), New Delhi – 1100001.
4. Engineer-in-Chief, Military Engineer Services, Integrated HQ of Ministry of Defence (Army), Kashmir House, DHQ PO Rajaji Marg, New Delhi.
5. HQ, Chief Engineer, Central Command, Lucknow.

. . . Respondents

By Adv: Shri L.P. Tiwari

ORDER

By Hon'ble Justice Mrs. Vijay Lakshmi, Member (J)

This is the second round of litigation by the applicant, who was serving in the rank of Subedar/Lieutenant in Military Engineering Services (in short MES) and who has now retired after completion of 23 years of service as a Junior Engineer.

2. Earlier, the applicant had approached this Tribunal by means of OA No. 330/658/2018 with prayer to consider his case for lateral absorption as per the existing policy of the Ministry to the promotional post of Assistant Engineer. The aforesaid OA was disposed of vide order dated 25.01.2019 with a direction to the competent authority to consider and decide the representation of the applicant for absorbing him laterally from the date of his superannuation, by passing a reasoned and speaking order within a period of four months from the date of receipt of certified copy of the order.

3. In compliance of the aforesaid order dated 25.01.2019, of this Tribunal, the respondents passed the speaking order dated 06.11.2018 (Annexure A-1) whereby rejecting the claim of the applicant. The legality and correctness of the aforesaid order is under challenge in the present OA.

4. We have heard Shri Udai Chandani, learned counsel for the applicant and Shri L.P. Tiwari, learned counsel for the respondents online through video conferencing. Both the learned Counsel agreed that audio visual quality of video conferencing during arguments is alright. We have perused the pleadings and relevant rules available on records alongwith the written submissions and the judgments filed by the applicant's counsel.

5. By means of the instant OA, the applicant has sought the following reliefs: -

"A) To issue a writ, order or direction in the nature of certiorari setting aside the order dated 06.11.2018 passed by respondent No.4

B) To issue a writ, order or direction in the nature of mandamus directing the respondents to frame/amend and make necessary relaxation of Recruitment Rules for the post vide DOPT OM No.AB.1407/48/2010- Estt (RR) dated 31.12.2010, relating to the

provision for Armed forces Personnel vide OM No.AB.14017/11/86-Estt. (RR) dated 22.01.1987 and absorb the applicant laterally from the date of superannuation on the post of Assistant Engineer (E/M) at par with respect to the civil post in the same organization/department (MES) with all financial consequences and benefits within a stipulated period.

C) To issue a writ, order or direction in the nature of mandamus directing the respondents to execute the necessary guidelines relating to the absorption of the applicant on the post of Assistant Engineer (E/M) as well as Junior Engineer (JEs) as claimed at par with respect to the Civil post in the same organization/department (MES) with all financial benefits in accordance with SRO-32 and SRO 36 within a stipulated period.

D) To issue a writ, order or direction in the nature of mandamus directing the respondents to issue necessary orders covering the scope of Technical promotion of personnel in Armed Forces as applicable to civilian counterpart in the same services (MES) in accordance with the necessary office memorandum and SROs relating to extending the age limit up to 58 years.

E) To issue a writ, order or direction in the nature of mandamus directing the respondent No.1 to implement the 33rd report of the standing committee on Defence (2016-17) relating to re-settlement of Ex-servicemen for the post of Group B "Gazetted" within a stipulated period.

F) To issue a writ, order or direction in the nature of mandamus restraining the respondent No.2 and 3 respectively not to give effect to the draft amendment bearing no.CC-4 (iii) B/75011/JE (Civ) & JE (E&M) Amdt/CSCC dated 19th Septembers 2018 issued by respondent No.3 relating to Group B posts for deputation/re-employment.

G) To issue writ, order or direction in the nature of certiorari setting aside all the appointment made by respondent No.1 & 4 respectively on the deputation-cum-employment under "DCRE Quota" as per SRO 32.

H) To issue an order or direction may deem fit and proper in the facts and circumstances of the case.

I) To award the cost to the applicant."

6. At the very outset, learned counsel for the applicant prayed that he is pressing only the relief nos. (A), (B), (C), (D), (E) and (F) and he is not pressing relief nos. (G), (H) and (I).

7. The impugned order dated 06.11.18, for which the relief in the nature of certiorari, has been sought by the applicant, is quoted below: -

“Speaking order pursuant to the order dated 10 Jul 2018 passed by the Hon’ble Central Administrative Tribunal (Principal Bench), Allahabad in OA No.330/658/2018 filed by Sub. Maj Jayaprakash N. JE (E&M) Vs UOI

1. Whereas, praying for absorption of Junior Engineer (EM) as Assistant Engineer laterally on superannuation, the applicant has filed OA No.330/658/2018 in Hon’ble CAT (PB) New Delhi on 10 Jul 2018 seeking the following reliefs:-

- (a) To issue a writ, order or direction in the nature of mandamus directing the Respondent No.1 and 2 respectively to confer the applicant and absorb him laterally from the date of superannuation i.e. 31 Aug 2018 on the post of Assistant Engineer (E/M) at par with respect to the civil post in the same organization/department (MES).
- (b) To issue a writ, order or direction in the nature of mandamus directing the Respondents No.2 decide the Statement of Case/representation of the applicant bearing letter No.221408/01 ERS dated 12 May 2017 duly recommended and forwarded by Chief Engineer HQ Central Comd vide letter No.901260/5/MIL/174/E1C(1) dt 17 Oct 2017, within a stipulated period, and/or any other order deem fit in the eyes of justice may be passed.
- (c) To issue an order or direction may deem fit and proper in the facts and circumstances of the case.

2. Whereas, the Hon’ble Central Administrative Tribunal (PB), Allahabad passed the following judgment/Order dated 10 Jul 2018:-

“ In view of the prayer made by counsel for the applicant, we are of the view that no useful purpose will be served to keep this OA pending. Accordingly, without going into the merits of the case, including the issue of limitation, we dispose of the OA with direction to the Respondent No.2/Competent authority to consider the application dt. 12 May 2017 submitted by the applicant for absorbing him laterally from the date of his superannuation by passing a reasoned and speaking order within a period of four months from the date of receipt of certified copy of this order”

3. Whereas, SRO-56, Gazette Notification No.85604/10/SA/RR/CSCC/ 398 / D(A)/08 dt 21 Jun 2008 is only applicable to appointment of civilian Assistant Engineers of Military Engineering Services. Various rules and regulations mentioned in the said Gazette Notification are not applicable to military cadre individual.

4. Whereas, in view of subject background there exists no statutory provisions for lateral absorption of military cadre Junior Engineers as Assistant Engineers in the same department/organization and hence the prayer for lateral absorption

cannot be considered.

5. *With this speaking order, the direction of Hon'ble Central Administrative Tribunal (Principal Bench), Allahabad Order dated 10 Jul 2018 for the OA No.330/658/2018 filed by Sub Maj Jayaprakash N, JE (E&M), stands complied with.*

Signed at New Delhi on this 05 day of Nov 2018.

(SK Shrivastava)
Lt. Gen
Engineer-in-Chief"

8. Before entering into the merits of the case, so as to determine the legality and correctness of the aforementioned impugned order, it is necessary to throw a glance on the background facts. Shorn of unnecessary details, the undisputed facts related to the controversy involved in the instant OA are as under:-

- (i) The Military Engineer Services (MES) is a composite organization consisting of both military and civilian officers and subordinates at various levels of MES organizations and hierarchy, directly under Ministry of Defence (Mod).
- (ii) The overall composition of appointment of Military & Civilian Cadre personnel (Officers plus Subordinates), in MES is 50-50% respectively.
- (iii) The post of JE is a Group 'B' Non-Gazetted post, and the mode of appointment/Recruitment to this post is as under:-

"a. Appointment of Civilian Personnel in the post of JE in MES is as per SRO-32 of 27.04.2011, which was framed by the Military of Defence.

b. Appointment of Military Personnel in the post of JE in MES is as per Army Order Paragraph-313 of 1974, which was also framed by Ministry of Defence."

- (iv) Both the civilian as well as Military Cadre JE personnel are

performing the same nature of duties and responsibilities in MES, and it is as per Table “M” of Regulations of Military Engineer Services (RMES). Civilian Personnel appointed as JE in Civil Engineering (JE Civil) & JE Electrical and Mechanical Engineering (JE E&M) as per SRO-32/2011 are further promoted as AE by promotion as per SRO-56/2008 in MES. Whereas, Military Cadre personnel appointed as JE as per Paragraph 313/1974 are continued to work as JE in the Organisation till retirement. There is no provision for further Technical promotion to the post of AE in Active Service as well as on retirement of Military Cadre JEs in MES. This is the root cause of the controversy, involved in the present OA.

9. Learned counsel for the applicant has contended that appointment by promotion to the post of AE for civilian cadre vide SRO-56/2008 was framed in the light of this Notification dated 26.05.1977. This Notification was adopted with the recommendation of Defence Director (Technical), and the Notification says “a Diploma in Engineering in appropriate discipline plus total 10 years of technical experience in the field is recognized as equivalent to Degree in Engineering. It is considered valid for the purpose of selection of Gazetted post and service under the Central Government or State Government.

10. The grievance of the applicant is that benefit of this Notification for promotion to the post of AE vide SRO-56/2008 is being extended only to civilian cadre JEs appointed as per SRO-32/2011 in MES and the same is not being given to Military cadre JEs appointed as JE vide Army Order Paragraph- 313/1974.

11. It is further contended that the benefits of this Notification dated 26.05.1977 has also been granted to various personnel in State and Central Government as per the Order of Hon'ble Punjab and Haryana High Court and CAT (PB) New Delhi for appointment/promotion to the post of AE and EE.

12. The grievance of the applicant is that though the RRs for appointment to the post of JE for Civilian and Military cadre vide SRO-32/2011 and Army Order Paragraph – 313/1974 respectively were framed by the same Ministry of Defence, the JEs belonging to Military cadre including the applicant had not been given the Technical Promotion to the post of Assistant Engineer in MES viz-a-viz with their civilian counterpart JEs performing the same nature of duties and responsibilities in the same Organisation, under same Ministry of Defence, which is a clear violation of Article 14 of the Constitution of India. It has been vehemently contended that the applicant has performed the duty of JE for a period of more than 22 years in MES and has retired as JE on 31.08.2019. Well before his retirement, i.e. on 12.05.2017, applicant had submitted his grievance through a representation to his Head of the Organisation i.e. Engineer-in-Chief, to absorb him laterally from the date of superannuation by complying the existing Govt. Orders, as is being done in some other departments under the same Ministry of Defence, but his grievance was not redressed. It has been contended that it is a discrimination against Military Cadre JEs and as a result, the Military cadre JEs are facing ignominy in working under their recently promoted junior civilian counterparts.

13. It is further submitted by learned Counsel for the applicant that to enhance the carrier prospects of Military cadre JEs viz-a-viz with their civilian counterpart JEs in the organization, there is no provision for further

Technical promotion to the post of AE either in Army Order Para-313 of 1974 or in separate Army Orders. However, there is a provision for Lateral Induction of Armed Forces Personnel in Group 'A' & 'B' civilian post. It is contended that in this regard, Government of India through DoP&T, had already issued an Office Memorandum and the same was already implemented in various Ministries and departments, except in Military Engineer Services (MES) under Ministry of Defence.

14. In this regard, our attention has been drawn to the relevant office memorandum of DOP&T quoted below:-

“(a) As per GOI, Ministry of DoPT vide OM No.AB-14017/13/85 –Estt(RR) dated 31.5.1985, there is a provision for Amendment of Recruitment Rules for Lateral Induction of Armed Forces personnel in civilian post. Armed Forces Personnel due to retire or to be transferred to reserve, within a period of one year and having requisite experience and qualifications can also be considered for appointment to Group 'A' & 'B' post. Para-1 to ibid OM specifies that “it was envisaged that, such persons are to be given deputation terms up to the date on which they are due for release from the Armed Forces, thereafter they may be absorbed either on transfer or on short term contract.” Para-2 to ibid OM clearly specify that “Regarding Group 'A' & 'B' posts, it is strongly recommended that qualified and suitable officers, Junior Commissioned Officers and Junior ranks should be laterally inducted in those posts during the last year of their service.

(b) As per GOI, Ministry of DoPT& vide OM No.AB-14018/13/85-estt (RR) dated 01.05.1986, there is a provision for Amendment of Recruitment Rules for Lateral Induction of Armed Forces personnel in civilian Group 'A' & 'B' post. In this OM, Ministry of DoPT has again reiterated the OM dated 31.05.1985, and to have a uniformity in amending the Rules, it has been decided, in consultation with the UPSC, that the necessary provisions for Lateral Induction of the Armed Forces Personnel will be incorporated in the Recruitment Rules, which is as below:-

In Col No.10 (Method of recruitment Rules):

*“For Ex-servicemen
Transfer on deputation/re-employment”*

In Col No.11:

“For Ex-servicemen

Transfer on deputation/re-employment:-

The Armed Forces Personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualifications prescribed shall also be considered. Such persons would be given deputation terms up to the date on which they are due for release from the Armed Forces; thereafter they may be continued on re-employment”

(c) GOI, Ministry of DoPT, reiterated the OM dated 31.05.1985 and OM dated 01.05.1986 again vide DoPT OM No. AB.14017/2001 Estt (RR) dated 17.05.2001 and all Ministries/departments are requested to examine, identify and consider these OMs for Armed Forces Personnel for appointment in civilian Group ‘A’ & ‘B’ post, through necessary amendment to Recruitment Rules.

(d) GOI, Ministry of DoPT, reiterated the OM dated 31.05.1985 and OM dated 01.05.1986 again DoPT OM No.AB-14017/48/2010 Estt (RR) dated 31.12.2010 and all Ministries/departments are requested to examine and identify the post in which military experience either in general or specific fields or posts would be distinct advantage, and incorporate necessary provisions in the recruitment rules for Lateral Induction of Armed Forces Personnel in Group ‘A’ & ‘B’ Civilian post.

15. It is vehemently contended that even after reiterating the DoPT OMs dated 31.05.1985 and 01.05.1986 again and again by the DoPT, vide above various OMs, the SRO-56/2008 has not yet been amended for lateral Induction of Military Cadre JEs to AE post in MES.

16. It is next contended that apart from the DoPT OM dated 31.05.1985 and 01.05.1986 for lateral induction, Govt. of India, had constituted a Committee in the year 2001, headed by **V S Jafa**, a retired Defence Secretary, to review the working of Military Engineer Services under MoD. The Jafa Committee submitted its Report and Recommendations in the year 2002. In Volume-III, Section IV of the review report, the Jafa committee brought out the Composition of Subordinate Cadre, induction of Military personnel, career progression of Military Staff, enhancement of career prospects of Military Cadre JEs and discrimination of Military Cadre JEs in MES etc., to enhance the career prospects of Military cadre JEs. The Committee recommended that 16-2/3 percent of vacancies should be

kept reserved for absorption on retirement of Military Cadre JEs as AEs.

17. It is next contended that the Hon'ble High Court of Madhya Pradesh has also directed to implement the Jafa Committee recommendations to Military Cadre JEs vide its order dated 14.02.2006 passed in W.P. No. 1383 of 1998, despite that it is not yet implemented. Whereas, many recommendations of Jafa Committee have been implemented to Civilian Cadre under Ministry of Defence, the same is only denied to Military Cadre JEs in MES under Ministry of Defence.

18. It is lastly contended that the post of AE being a Group 'B' Gazetted post and the applicant being a Military rank Group 'B' gazaetted officer since 2008, performing the duties for Group 'B' Non-Gazetted JE post upto his retirement, fulfils the criteria of qualification and experience for the post of AE as per SRO-56/2008 in MES, is entitled for lateral absorption to the post of AE. However, the impugned order dated 6.11.18 has ignored this aspect and it has not been passed in accordance with the direction of this Tribunal. No due care has been taken in it to consider the benefits already extended by the government of India to the armed forces personnel, as a result, the similarly situated persons, having similar rights are being discriminated in the organisation.

19. On the aforesaid grounds, prayer has been made by the applicant to quash the impugned order and to direct the respondents to consider the appointment of applicant to the post of Assistant Engineer Electrical and Mechanical (AE E&M) in Military engineer Service (MES) from the date of his superannuation with all financial benefits with retrospective effect by amending the Recruitment Rule vide SRO-56/2008 as per the Orders of the GOI, DoPT OM dated 31.05.1985 and OM dated 01.05.1986, in the light of the recommendations of Jafa Committee's report vide Vol. III,

Section, IV, Paragraph- 16(e) expeditiously within a period of three months and the execution to the effect to be filed before the Court.

20. Learned counsel for the applicant has relied upon following judgments in support of his contentions: -

- (i). *L. Chandra Kumar Vs. Union of India & Ors – (1997) 3 SCC 261***
- (ii). *Indian Defence Service of Engineers Association (Govt. Approved) Vs. Union of India & Ors. - passed by Hon'ble Delhi High Court on 21.09.2016.***

21. In the counter affidavit filed by the respondents it has been stated that though the nature of duties performed by the civilian Junior Engineers and the applicant is the same, the Recruitment Rules for appointment to the post of Assistant Engineer in the same organization are different. SRO 56/2008 applies only for civilian Junior Engineers and does not apply to Military Cadre Junior Engineers. Moreso, the notification dated 26 May 1977, also applies only for civilian Cadre Junior Engineers.

22. It is contended by learned Counsel for the respondents that although the provisions of the DoPT OM No. AB-14017/13/85/Estt (RR) dated 31 May 1985 and OM No. AB-14018/B/85/Estt (RR) dated 01 May 1986 for "Amendment of Recruitment Rules for Lateral Induction of Armed Forces Personnel in Civilian Posts- incorporation of necessary provisions therein" indicates that the Armed Forces Personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experiences and qualifications prescribed shall also be considered, however, such persons would be given deputation terms upto the date on which they are due for release from the Armed Forces, thereafter they may be continued on re-employment. At present, there exists no statutory provisions for lateral absorption of military cadre

Junior Engineers as Assistant Engineer in the same department/organization.

23. As per the averments in the Counter affidavit filed by the respondents, the SRO 56/2008 does not pertain to the applicant, he being a military cadre Junior Engineer. However, the proposal of changes/amendments in SRO 32/2011 and the proposal for amendments/modification in Recruitment Rules for Junior Engineer (Civ)/Junior Engineer (E/M) and Draughtsman is under consideration/process and the appointments under Deputation/re-employment quota in Military Engineer Service, may be considered after finalization/publication of relevant Recruitment Rules after consultation with Ministry of Law.

24. It is next contended by learned Counsel for the respondents that no relaxation in the educational and other qualification for deputation/re-employment mode is provided for and the same requirement as for the direct recruitment mode shall apply to them. Hence, on observing that the recruitment under deputation/re-employment in MES is not in accordance with DoPT guidelines and existing recruitment rules, the MoD vide ID No. 324/2017-D (Works-II) dated 01 Aug 2017, stopped the recruitment of Junior Engineer (Civil), Junior Engineer (E/M) and Draughtsman under Deputation/Re-employment quota in MES and directed E-in-C's Branch to submit the revised draft RR to MoD with requisite modification/resolution to the anomalies. The proposed amended recruitment rules have been submitted to MoD for vetting and sanction.

25. It is further contended by learned counsel for the respondents that as at present, there does not exist any statutory provisions for lateral

absorption of military cadre Junior Engineers as Assistant Engineer in the same department/organization, the relief claimed cannot be granted. Army Act 1950 is applicable to Army Personnel and civilian personnel are not governed by the act, similarly, SRO 56/2001 is applicable for civilian personal and military cadre Junior Engineers don't come under preview of this SRO. Even after superannuation,, military cadre Junior Engineer will become an ex-servicemen whereas SRO 56/2008 applies for civilian cadre Junior Engineer/AE.

26. It is lastly contended that the controversy involved in the instant matter, is related to policy decision to be taken by the Ministry of Defence/ DoPT and as per well settled legal position, the courts should be reluctant to interfere with policy matters of Government. Learned counsel has contended that he had already raised a preliminary objection with regard to this aspect, which was not decided by this Tribunal at the time of disposal of other preliminary objections, hence now this aspect may be considered and being a policy related matter, the OA is liable to be dismissed.

27. On the aforesaid grounds, it has been prayed that the OA, being devoid of merits, be dismissed.

28. We have given our thoughtful consideration to the rival contentions advanced by the learned counsel for both the parties and have carefully gone through the judgments cited by the learned counsel for the applicant.

FINDINGS

29. Learned counsel for the respondents, at the very outset, had raised some preliminary objections against the maintainability of this OA. The

preliminary objections raised by the learned counsel for the respondents were decided by us vide order dated 11.12.2020, which is reproduced below : -

“Order was reserved on 10.12.2020 on preliminary objections raised by learned counsel for respondents.

1. *Shri L.P. Tiwari, learned counsel for the respondents had raised the following preliminary objection in the present OA. :-*

(i)The present OA is barred by order II Rule 2 of CPC because in the earlier OA, no such relief was claimed by the applicant.

(ii)DOP&T has not been impleaded as party, whereas they should have been made a party because recruitment rules are being challenged.

(iii)Multiple reliefs have been sought.

(iv)Several reliefs claimed by the applicant are in respect to policy matter of the Government. As per settled legal position, the court cannot interfere in policy matters.

2. *Shri Udai Chandani, learned counsel for the applicant put forth his arguments as under:*

2.1 In the previous OA, namely OA 658/2018, there were only two reliefs sought. This Tribunal, without going into the merits of the case disposed of the OA with direction to the competent authority to decide the representation with a reasoned and speaking order. Only after the impugned order was issued by the respondents, wherein reference to SRO 56 is there, the present OA has been filed which challenges the recruitment rules. Therefore, the provisions of order II Rule 2 of CPC do not apply.

2.2 Since the existing recruitment rules has been issued by Ministry of Defence, there is no need to implead the DOP&T in the present OA.

2.3 No multiple relief has been sought. They are all relating to granting the re-employment to ex Military Personnel as Assistant Engineer in MES.

3. *We have considered the matter. The relief prayed for in the earlier OA namely 658/2018 reads as under :-*

(a) To issue a writ, order or direction in the nature of mandamus directing the Respondents No.1 and 2 respectively to confer the applicant and absorb him laterally from the date of superannuation i.e. 31 Aug 2018 on the post of Assistant Engineer (E/M) at par with respect to the civil post in the same organization/department (MES).

(b) To issue a writ, order or direction in the nature of mandamus directing the Respondent No.2 to decide the Statement of Case/representation of the applicant bearing letter No.331408/01/ERS dated 12 May 2017 duly recommended and forwarded by Chief Engineer HQ Central Comd vide letter No.901260/5/MIL/174/E1C(1) dt. 17 Oct 2017, within a stipulated period, and/or any other order deem fit in the eyes of justice may be passed.

(d) *To issue an order or direction may deem fit and proper in the facts and circumstances of the case.*

(e) *To award the cost to the applicant.*

4. *We find that this Tribunal had not gone into the merits of the case and had directed the respondents to decide the representation. Therefore, no adjudication was done in the earlier OA.*

5. *The main grievance of the applicant is that he is not being considered for appointment as AE in Military Engineering Service (MES). The respondents through the impugned order have indicated that SRO 56 is not applicable to Military cadre individual. Therefore, in the present OA, the recruitment rule has also been challenged.*

6. *In our considered opinion, the provision of Order II Rule 2 of CPC are not infringed in the present case.*

7. *The objection regarding mis-joinder of parties i.e. non impleadment of DOP&T - We find merit in the argument of learned counsel for the applicant that the present recruitment rules have been issued by Ministry of Defence, and therefore, the necessary party is Ministry of Defence. DOP&T is not a necessary party.*

8. *Rule 10 of CAT (Procedure) Rule reads as under :-*

“10. Plural remedies – An application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.”

9. *Perusal of the relief sought in the present OA do not indicate that multiple reliefs have been sought.*

10. *Whether policy decision can be challenged or not in this Tribunal would be decided when the OA be heard on merit.*

11. *Accordingly, we do not find merit in the preliminary objection raised by the learned counsel for the respondents and are rejected.*

12. *List it as part heard on 14.12.2020.*

Hon'ble Shri Navin Tandon, Member (Administrative) has given consent through E.mail.”

30. A perusal of the above mentioned order dated 11.12.2020, clearly shows that while deciding the preliminary objections, we had not expressed any opinion on the preliminary objection that the present matter being related to policy decision of the government, should not be interfered by this Tribunal. At that time, we had left this issue to be decided after hearing the OA finally on merits. Therefore, now when we have heard the matter on merits, it appears expedient to first decide the

issue whether the relief claimed in the OA relates to policy decision and whether it can be interfered by this Tribunal?

31. The instant matter pertains to promotion/ lateral absorption of a Junior Engineer, who has retired from Armed Forces as a Subedar Major, to the post of Assistant Engineer, extending the age limit of the military personnel upto 58 years, to bring them at par with their civilian counterparts, working in the same service i.e. MES. In our considered opinion, it is clearly a policy matter, which should be decided by the department/ Ministry concerned and not by the Court, in view of the well settled legal position.

32. Hon'ble Supreme Court in a catena of judgments, has expressed the view that the courts should not interfere in the policy decisions of the Government unless such decisions are totally irrational, arbitrary, malafide or violative of Article 14 and 21 of the Constitution of India.

33. In **Dilip Kumar Garg & Anr Vs. State of U.P & Ors, 2009 (4) SCC 753 (Civil Appeal No.5122 of 07 decided on 03.03.2009)**, which was a case related to the dispute between Junior Engineers of PWD of U.P. Government regarding promotion to the post of Assistant Engineers and where also, the existing rules were challenged as violative of Article 14 of the Constitution, the Hon'ble Supreme Court held as under : -.

“17. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of Appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. (See Union of India Vs. Pushpa Rani and others 2008 (9) SCC 242 and Official Liquidator vs. Dayanand and others 2008(10) SCC1).

18. The decision to treat all Junior Engineers, whether degree holders or diploma holders, as equals for the purpose of promotion is a policy decision and it is well settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or statute. We find no such violation in this case.”

On the basis of the above observations it was held by the Hon'ble Apex Court that the decision to treat all the Junior Engineers whether degree holders or diploma holders, as equals for the purpose of promotion, is a policy decision and the Courts should not interfere in policy decisions unless there is a clear violation of some constitutional provisions or the statute.

34. It is also to be kept in mind that the Article 14 does not prohibit reasonable classification for legitimate purpose and differential treatment does not by itself constitute violation of Article 14 of the Constitution. In *General Manager, South Central Railway Vs. A.V.R. Siddhanti*, (1974) 3 SC 207 at page 214, Hon'ble Apex Court has observed as under: -

“.....A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employee is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such 'classless' and undiscerning 'equality' where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content.....”

35. Some other land-mark judgments rendered by the Hon'ble Apex Court reiterating the above legal position may be cited as under: -

- (i). Academy of Nutrition Improvement and others Vs. Union of India (2011)8 SCC 274.**
- (ii). Narmada Bachao Andolan Vs. State of M.P – AIR 2011 SC 1989**
- (iii). State of Punjab & Ors. Vs. Ram Lubhaya Bagga Etc. – AIR 1998 SC 1703.**
- (iv). Ram Singh Vijay Pal Singh & Ors. Vs. State of U.P & Ors. (2007) 6 SCC 44.**
- (v). Brij Mohan Lal Vs. UOI & Ors (2012) 6 SCC 502.**
- (vi). S.R. Tiwari Vs. UOI & Anr. (2013) 6 SCC 602**
- (vii). Balco Employees Union (Reg.) Vs. UOI & Ors – 2002(2) SCC 333**

(viii). ***Ugar Sugar Works Limited Vs. Delhi Administration & Ors (2001) 3 SCC 635.***

(ix). ***Parisons Agrotech Private Limited & Anr. Vs. UOI & Ors – (2015) 9 SCC 657.***

36. In all these judgments, there has been a consistent view of Hon'ble Apex Court that the scope of interference in the policy decisions of the Government is very limited and the courts cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to the statutory or constitutional provisions or arbitrary or irrational or abuse of power. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation, any such policy should have been adopted or not. It is best left to the discretion of the government. The court does not act as an appellate authority nor it is in the domain of the court to direct or advise the executive in the matter of policy, so long as the authorities laying down the policy, do not transgress their constitutional limit or their statutory power.

37. Hon'ble Apex Court, in its landmark judgment, rendered in **Parisons Agrotech (Supra)** has laid down the law in very clear terms that ***"The courts would not interfere in the policy decision of the government even if those do not be agreeable to the court"***. Further, in the case of **Tata Celluler Vs. UOI & Ors – AIR 1996 SC 11**, the Hon'ble Apex Court has made a clear observation that ***"differential treatment does not by itself constitute violation of Article 14 of the Constitution, as Article 14 does not prohibit reasonable classification."***

38. In another landmark judgment of **Narmada Bachao Andolan (supra)** a three judges bench of Hon'ble Supreme court has held as under:-

“When government forms its policy, it is based on a number of circumstances on facts and law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility or beneficial effects of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to Executive.”

39. Now, when we test the legality and correctness of the impugned order on the anvil of aforesaid legal position, it is found that admittedly, at present, there is no existing rule or statutory provision for lateral absorption of a Military cadre Junior Engineer as Assistant Engineer in the same department/organization. SRO 56 dated 21.06.2008 is applicable only to the Civilian Assistant Engineers of MES and various rules and regulations mentioned in the SRO 56 are not applicable to Military cadre individuals. SRO 32 is applicable only to the Junior Engineers and not to Assistant Engineers. Whether the JEs of military cadre should be laterally absorbed as AEs extending their age of superannuation or not, is clearly a policy decision to be taken by the concerned Ministry and not by this Tribunal, in wake of the clear guidelines issued by Hon'ble Apex Court cited above that the Courts should not attempt to substitute their own views as to what is wise, safe, prudent or proper in relation to technical issues, in preference to those formulated by persons said to possess technical expertise and rich experience.

40. There is no allegation by the applicant about any malafide action, against the government. The applicant has challenged the legality of the existing rules only on the ground that these are discriminatory, hence violative of Article 14 of the Constitution. We do not find any force in this argument. It is seen earlier that Hon'ble Apex Court has consistently held

that differential treatment does not by itself constitute violation of Article 14 of the Constitution as it does not prohibit reasonable classification.

41. On the basis of the above discussion, there does not appear any good ground to interfere in the matter. The prayer to quash the impugned order is accordingly, refused.

42. Learned counsel for the applicant, during course of arguments, laying much stress on the judgment passed by Hon'ble M.P. High Court in Writ Petition No. 1383/1998 – Subedar A.C. Purohit Vs. Union of India & other, wherein, Hon'ble High Court has directed the respondents to consider the recommendation of Jafa Committee and to decide the representation of the applicant within three months, has prayed that the same directions may also be given to the respondents in the present case.

43. It is seen that in the earlier round of litigation, a direction to decide the representation of the applicant has already been given by this Tribunal to the respondents. But, in absence of any existing rule at present, the applicant was not given lateral absorption to the promotional post of Assistant Engineer. Hence, no useful purpose will be served in giving the same direction again to the respondents. However, in view of the fact that in the counter affidavit, it has been repeatedly stated by the learned counsel for the respondents that the proposal for requisite amendments / modification in the recruitment rules of Junior Engineers (Civilian) and Junior Engineers (Military cadre) is under consideration / progress, at present, we hope and expect that the respondents will take a decision in the matter as early as possible.

44. Accordingly, the respondents are directed to take some decision on the aforesaid matter, which is already under consideration, as early as possible.

45. With the aforesaid direction, this OA is finally disposed off.

46. There shall be no order as to costs.

(Navin Tandon)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

Anand...