

**Central Administrative Tribunal
Chandigarh Bench, Chandigarh**

O.A. No. 60/353/2019
MA.No.60/1632/20-19 and M.A.No.60/1029/2019
&
M.A.Nos.60/555/2020, 60/593/2020, 60/594/2020 and
60/596/2020

Reserved for Orders on : 29.09.2020
Pronounced on : 23.11.2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Amarjit Singh, aged 56 years, S/o Sh.Jaswant Singh,
Sub Divisional Engineer, Public Health Aug W/s Sub
Division No.2, Sector-11, Chandigarh-160 010, Group-A.
...Applicant
(By Advocate: Mr.R.K.Sharma, Counsel for Applicant)

Versus

Union of India, through Secretary to Government of
India, M/o Urban Development, Nirman Bhawan,
New Delhi-110 001.

Secretary to the Government of India, M/o Personnel,
Public Grievances and Pensions, Dept. of Personnel &
Training, North Block, New Delhi-110 001.

Secretary to the Government of India, M/o Home Affairs,
North Block, New Delhi-110 001.

Union Territory, Chandigarh through its Administrator
U.T. Chandigarh, Sector-6, Chandigarh-160 006.

Finance Secretary-cum-Secretary, Engineering
Department,
Union Territory, Chandigarh Administration, U.T.
Secretariat, Section-9, Chandigarh-160 009.

Sh. Sanjay Sahani, Sub Divisional Engineer with
Additional charge of Executive Engineer, Public
Health, Division No.3, Sector-9, Chandigarh-160 009.

Union Public Service Commission, Dholpur House,
Shahjahan Road, New Delhi 110 069, through its
Secretary.

...Respondents

(By Advocate: Mr.Sanjay Goyal, Mr.B.B.Sharma and Mr.Asm Rai, Counsel for Respondents)

ORDER

Justice L. Narasimha Reddy:

The applicant joined service on 14.08.1999 as Junior Engineer in the Union Territory of Chandigarh, Respondent No.4. He was kept on current duty charge of next higher post i.e., Sub-Divisional Engineer (SDE) different spells, in the Municipal Corporations of Chandigarh, upto the year 2008. Thereafter, he was transferred to UT administration. It is stated that between 2008 and 2014, the he worked as Junior Engineer and on 23.09.2008 he was kept in additional charge of Sub Divisional Engineer(SDE) upto 04.03.2015. He is said to have been promoted on regular basis to the post of SDE on 05.03.2015. The next promotion is to the post of Executive Engineer (EE). The applicant has also cleared the departmental professional examination in April, 2015. The 5th respondent was promoted to the post of SDE on 08.12.2015. It is stated that in the seniority list published on 08.10.2016, the applicant is shown at Serial No.4 and respondent no.6 at Serial No.5.

2. The administration of Respondent No.4, published the “Sub Divisional Engineer, Executive Engineer and Superintending Engineer (Public Health), Building and Road

Wing, Engineering Department, Union Territory of Chandigarh Recruitment Rules, 2017”(for short, the Rules) on 27.11.2017, dealing with the promotion to the posts referred to above. According to these rules, an SDE must hold a Degree in Engineering and must have put in 10 years of service in that post, to become eligible for promotion to the post of EE.

3. The applicant contends that the rules are illegal and unconstitutional, apart from having the effect of taking away his rights under the pre-existing rules. It is stated that the 4th respondent adopted and followed the rules framed by the State Government of Punjab for the corresponding posts and according to them, there is no prohibition against promoting a Diploma Holder SDE, to the post of EE.

4. The applicant has raised three principal contentions namely,

- (i) According to the Business Allocation Rules for the Union of India, the Ministry of Urban Development is the authority to deal with the building activities in every part of the country including the Union Territory, and the said Ministry alone was competent to frame rules or approve the rules, whereas, in the instant case, the approval to the Rules was accorded by the Ministry of Home Affairs;

- (ii) It was mandatory on the part of the 4th respondent to consult the Department of Personnel & Training, while framing the Recruitment Rules and that such a step was not followed in the instant case.
- (iii) The Engineers of different categories are vested with certain rights including one of promotion to the next higher post under the existing legal frame work, and the impugned rules cannot take away the same.

In the OA, these grounds are elaborated and apart from them, other subsidiary contentions are also urged.

5. The contest to the OA is mainly by the 4th respondent. They filed a detailed counter affidavit opposing the OA. It is stated that the plea as to the competence of the 4th respondent to issue the rules with the approval of the Home Ministry, is untenable. According to them, the 4th respondent is under the administrative control of the Home Ministry and accordingly, rules were framed with the approval of that Ministry and in consultation with the Ministry of Law and Justice/Legal Affairs. The plea of the applicant that the Ministry of Urban Development has control over the 4th respondent is, flatly denied. As regards the second contention, it is stated that the guidelines framed by the DOPT are advisory and directory in nature and each department or Union Territory has to keep

them mind even while framing the rules, which are typical to them.

6. In reply to the third contention, it is stated that following of the Punjab Rules was only pending the framing of the rules by the 4th respondent and the applicant cannot be said to have been vested with any rights under the Punjab Rules. Other contentions urged in the OA are also denied.

7. The OA was heard by the Chandigarh Bench of this Tribunal, and separate judgments were rendered by the learned Judicial Member on the one hand and the learned Administrative Member on the other hand, in August 2020. While the OA was allowed by the learned Judicial Member, it was dismissed by the learned Administrative Member. Therefore, it was required to be heard by the third member. Accordingly, it is posted today before me.

8. I heard the extensive arguments advanced by Sri R.K.Sharma, learned counsel for the Applicant and Sri Sanjay Goyal, Sri B.B.Sharma and Sri Aseem Rai, learned counsel for the respective Respondents .

9. The gist of the arguments of the learned counsel are contained in the orders passed by the Hon'ble Members, who

heard the matter earlier and in that view of the matter, they are not extracted in detail.

10. The prayer in the OA is a bit elaborate and the concentration is on the challenge to the rules. The other prayer is to set aside the order dated 01.03.2019, through which the 6th respondent was kept on additional charge of the post of EE, and the another limb of the very prayer is to direct the respondents to grant additional charge of that post, to the applicant.

11. If one takes into account, the prayer in its totality, the very challenge to the rules becomes untenable. The reason is that the applicant should have challenged the rules, if only quashing of the same, were to have enabled him to be promoted to the post of EE on regular basis. Such a prayer was not incorporated at all. In other words, even if the rules are quashed, the applicant does not get the eligibility to be promoted to the post of EE. Therefore, the very challenge to the rules become shaky.

12. Be that as it may, the applicant raised three principal grounds for challenging the rules. The rules, in so far as they dealt with the post of EE, prescribe the eligibility for promotion to that post in two facets viz., (a) holding of a Degree in

Engineering by the SDE, and (b) experience of 10 years regular service in that post. The applicant has neither.

13. The first ground of challenge is that it was not competent for the 4th respondent to frame the rules. Placing reliance upon certain correspondence that ensued between the 4th respondent on the one hand and the Ministry of Home Affairs, the 3rd respondent, on the other hand, it is pleaded that the competent Ministry in this behalf was only Urban Development. For this purpose, the applicant placed reliance upon the Business Rules framed in 1961. According to them the President would be represented by the Ministries mentioned in the Rules in relation to the subjects allotted to them. The applicant contends that the Urban Development Ministry was allotted to the powers relating to the buildings and structures of the Government of India situated in a State or Union Territory and it was that Ministry alone which could have dealt with the rules pertaining to the Engineering Division. The provision reads as under :

“All Government Civil Works and Buildings including those of Union territories excluding Roads and excluding works executed by or buildings belonging to the Ministry of Railways, Department of Posts, Department of Telecommunications, Department of Atomic Energy and the Department of Space.”

14. From the above it is clear that what is conferred upon the Ministry of Urban Development is ownership of the buildings

of the Central Government, wherever they are situated. Nowhere it is mentioned that the Administration of the UT is brought into the purview of the UD Ministry. On the other hand it is clearly under the Home Ministry. The record of this OA clearly discloses that the rules were framed with the approval of the Ministry of Home Affairs and advice of the UPSC and the Ministry of Law was also taken. Therefore, the contention advanced by the applicant in this behalf cannot be accepted.

15. The second ground urged by the applicant is that the 4th respondent did not consult the DOPT – 2nd respondent. It may be true that the 2nd respondent issues guidelines from time to time covering various services of Union of India. However, such guidelines will not confer any right upon the individual public servant. They are to be kept in mind while framing the rules by the concerned departments or Ministries. The specific requirements of departments become the paramount consideration. It is not necessary that the guidelines must be reflected or reproduced in the recruitment rules. Added to that, the applicant is not able to point out any specific official memorandum issued by the 2nd respondent touching the question of promotion to the post of EE. In fact, the services in the Country are so versatile that it would not be possible to frame a rule which will cover all the services, albeit, of the similar type.

16. The third ground is about the protection of existing rights. It is fairly well settled that whenever the rule making authority amends the existing rules, the vested rights of the employees are required to be protected. For instance, an employee becomes eligible for promotion to Group C to B on completion of three years of regular service in the feeder category under the pre-existing rules and in the amended rules, the standing in the feeder category is enhanced to five years. In such a case the rights that have accrued to the employees of the Group 'B', to be promoted to Group 'C' on completion of service of three years, cannot be defeated. The new legal regime would apply to those who are appointed, after the rules came into force. In the instant case, the Respondent No.4 did not have any rules of its own, for the posts of SDE, EE and ACE. They were framed for the first time in the year 2017. They were following the rules framed by the Punjab State Government for the corresponding posts almost as a matter of convenience. The adhoc rules framed in 1992 make it very clear that the arrangement is till the President frames rules, covering the subject. The rules are came into existence for the first time in 2017. Therefore, the question there being any existing right in favour of the applicant, much less, it having been defeated does not arise. At any rate the applicant did not qualify for promotion to the post of EE under the Punjab Rules also, by the time, these rules were framed.

17. Viewed from any angle, the OA is devoid of merits and is accordingly dismissed. There shall be no order as to costs.

(Justice L. Narasimha Reddy)
Chairman

DSN/sd