

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-838/87 Date: 30.11.1988.
OA-1502/87

Shri M.P. Singh & Another Applicants

Versus

Union of India & Others Respondents

For the Applicants Shri R.P. Oberoi, Advocate.

For the Respondents Shri P.P. Khurana, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri S.P. Mukerji, Vice-Chairman(Adm.).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench to be delivered by
Hon'ble Shri P.K. Kartha, Vice-Chairman)

The applicants who have filed these applications under Section 19 of the Administrative Tribunals Act, 1985, are working in the Directorate General of Defence Estates in the Ministry of Defence. The issues involved in these applications relate to the promotions made to Group 'A' posts and fixation of seniority of the members of the Indian Defence Estates Service (Group 'A') constituted under the Indian Defence Estates Service (Group 'A') Rules, 1985 (hereinafter referred to as the '1985 Rules').

2. Shri M.P. Singh is applicant No.1 in OA-838/87 and OA-1502/87. He was initially commissioned in the Indian Army in 1964 as an Emergency Commissioned Officer. He was released from the Army in 1970. On the recommendation of the U.P.S.C., he was appointed on 10.1.1972 as Assistant Military Estates Officer (Tech.) - a Group 'B' post in the Military Lands & Cantonments Service (since re-named as

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Indian Defence Estates Service). Being an ex-Service Officer, he was given seniority in Group 'B' of the Service w.e.f. 10.7.1965. He was confirmed in the said grade w.e.f. 3.12.1976. He was promoted on ad hoc basis to Class I (Group 'A') junior time-scale of the Service w.e.f. 4.11.1978 and senior time-scale of Class I w.e.f. 20.2.1982.

3. Shri J.P. Mittal, applicant No.2 in OA-838/87 was selected by the U.P.S.C. for appointment in Group 'B' of the Service. He joined service in the said grade w.e.f. 11.5.1965 and was confirmed w.e.f. 7.1.1976. He was promoted on ad hoc basis to junior time-scale w.e.f. 4.11.1978 and senior time-scale w.e.f. 20.2.1982.

4. Shri T. Pardhasaradhi, who is the second applicant in OA-1502/87, was appointed to Group 'B' of the Service on the recommendations of the U.P.S.C. as Assistant Military Estates Officer (Tech.) - AMEO (Technical) - w.e.f. 31.3.1965. He was promoted on ad hoc basis to Class I of the Service w.e.f. 20.4.1971. He was promoted to the junior time-scale on ad hoc basis w.e.f. 1.1.1973 and to senior time-scale, w.e.f. 20.2.1982.

5. All the applicants have completed five years of service in the senior time-scale.

6. In order to consider the above mentioned issues, it is necessary to briefly recapitulate the salient provisions of rules made from time to time.

7. In exercise of the power conferred by Section 280(2) (cc) of the Cantonments Act, 1924, the Central Government made the Military Lands & Cantonments Service (Groups 'A' and 'B') Rules, 1951 (hereinafter referred to

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as the '1951 Rules'). These rules provided for the method of recruitment and conditions of service relating to classification of posts, promotions and seniority, among others.

8. The posts of Assistant Military Estates Officer were initially sanctioned in 1962. With increased responsibilities of the Service, including those of hiring/requisitioning/acquisition of immovable properties in the wake of Chinese aggression in 1962, posts carrying nomenclature of Assistant Military Estates Officers (Tech.) were sanctioned.

9. Rule 4(c) of the 1951 Rules originally published mentioned only Class II of the Service consisting of Executive Officers. By an amendment of the 1951 Rules, notified on 29.5.1964, Rule 4(c) was amended so as to provide that Assistant Military Estates Officers shall also be included in Class II Cadre of the Service.

10. Between 1962 and 1968, recruitment was made in accordance with the 1951 Rules relating to Group 'B' posts through the U.P.S.C. The names of the officers appointed as Assistant Military Estates Officers - both technical and non-technical - were shown in the combined seniority list of Group 'B' officers of the Service.

11. The appointment of the applicants had been made under the provisions of the 1951 Rules.

12. In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President made the Military Lands and Cantonments Service (Assistant Military Estates Officers - Tech.) Recruitment Rules, 1968 (hereinafter referred to as the '1968 Rules'). These rules

provide for the method of recruitment and qualifications for recruitment of Assistant Military Estates Officers (Technical) and did not deal with other matters, such as promotion to higher posts and fixation of seniority, etc.

13. The 1951 Rules were amended by the Military Lands and Cantonments Service (Class I and Class II) Amendment Rules, 1976 (hereinafter referred to as the '1976 Rules') whereby it was provided that the Service shall be constituted by officers appointed - (i) in accordance with these Rules, (ii) in accordance with the 1968 Rules, and (iii) in consultation with the U.P.S.C. as Assistant Military Estates Officer (Tech.), prior to 1st January, 1967.

14. The respondents have contended that Assistant Military Estates Officers (Tech.) became eligible for promotion posts in Military Lands & Cantonments Service after 1.5.1976 on satisfying the eligibility criteria prescribed in the Service Rules from time to time. The provisions of the 1951 Rules are applicable to them after 1.5.1976.

15. As against the above, the contention of the applicants is that the provisions of the 1951 Rules regulate the matters relating to fixation of seniority in promotion from Class II to Class I and higher posts within Class I. Further, after promotion to Group 'A' (junior scale), the 1951 Rules alone would govern such matters so far as the applicants and others appointed as Assistant Military Estates Officer (Technical) are concerned.

16. The 1951 Rules insofar as they related to Group 'A' posts, were replaced by the Military Lands & Cantonments Service (Group 'A') Rules, 1981 (hereinafter referred to as the '1981 Rules').

17. For Group 'B' posts, included in the Service, the Military Lands & Cantonments (Assistant Military Estates Officers) Service (Group 'B') Rules, 1983 (hereinafter referred to as the '1983 Rules') were

framed.

18. The 1951 Rules and the 1968 Rules, insofar as they related to the posts to which the 1983 Rules were applicable, were repealed. Separate rules were made for the Cantonment Executive Officers belonging to the Group 'B' known as the Military Lands and Cantonments (Cantonment Executive Officer) Service (Group 'B') Rules, 1983.

These rules also repealed the 1951 Rules insofar as they related to posts of Cantonment Executive Officers.

19. The Cantonments Act, 1924 was amended in October, 1983 when clause (cc) of sub-section (2) of Section 280 was omitted.

20. In 1985, the name of the Service was changed to Indian Defence Estates Service by the 1985 Rules. These rules are presently in force.

21. The applicants claim that though they were eligible for promotion to higher posts, the same was denied to them. They were members of the Military Lands & Cantonments Service from the date of their appointment and the posts which had been sanctioned from time to time were duty posts included in the Service. However, they were left out of consideration by the OPCs held by the respondents from 1979 to 1984. They contended that their promotion in senior time-scale of Group 'A' are against regular vacancies and for all intents and purposes, they are to be treated as regular appointments.

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In accordance with the 1951 Rules, seniority in each grade is to be reckoned on the basis of service in the grade and also service in an equivalent grade. Under the 1981 Rules and the 1985 Rules, 25 per cent vacancies in junior time-scale Group 'A' are to be filled up from amongst Cantonment Executive Officers and Assistant Estates Military Officers in equal proportion. While the respondents have allocated vacancies in junior time-scale to the Cantonment Executive Officers, they have not taken similar action in respect of Assistant Military Estates Officers. They have alleged that this amounts to arbitrariness and discrimination.

22. In view of the above, applicants in DA-838/87 have prayed that the respondents should be directed to -

- i) Prepare a seniority list of the officers of the Service in the Senior Time Scale as on 1.4.1987 - showing the names of the officers deemed to have been appointed to the grade on the date of publications of IDES Rules (Group A) 1985 and those appointed to the said grade after the above said date arranged in the order of their seniority reckoned from the date of appointment to the said grade, and
- ii) before final publication of the said list publish a draft of the said list for inviting objections from those likely to be affected and to consider the objections to be received against the draft at appropriate level in the Government, and
- iii) to complete the process of preparation of the above said seniority list within a time-bound schedule - say of 3 months, and
- iv) pending final publication of the seniority list not to make any regular promotion to the grade of JAG in the service or to confirm any officer already appointed to the said grade on ad hoc basis.

23. The respondents convened Review DPCs on 13.2.1987 and 29.4.1987 to review the recommendations made by the earlier DPCs and ordered review of promotion from junior scale of Group 'A' to senior scale of Group 'A' of the Indian Defence Estates Service on the basis of a revised

seniority list issued as a result of implementation of the judgement of the Allahabad High Court in CWP No.1867/77 (G.S. Sohal Vs. Union of India). In that case, the Allahabad High Court, by its judgement dated 24.7.1984, did not accept the plea of some Cantonment Executive Officers in Group 'B' for including the period of Army service for fixation of their seniority. The High Court, however, directed that they may be given seniority in Group 'B' w.e.f. 1.3.1968, the date of their appointment in the Military Lands & Cantonments Service.

It appears that as a result of this, the proceedings of the D.P.C. held on 19.5.1978 were reviewed by a Review

D.P.C. held on 30.2.1987. Pursuant thereto, panels recommended by the earlier DPCs held on 30.11.1972 and 5.9.1974, were redrawn by the order dated 22nd July, 1987.

The applicants in OA-1502/87 have, therefore, prayed that directions should be issued to the respondents to -

- 1) quash the proceedings of review DPCs held on 13.2.1987 and 29.4.1987;
- ii) quash the order dated 22.8.1987;
- iii). publish a list of vacancies which had occurred in Class I (integrated scale upto 1.1.73) and Junior Time Scale of Group 'A' between 1968 till date showing whether the vacancies were substantive or temporary and divided into period-wise grouping with reference to the recruitment rules in force at the relevant

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time as indicated below:-

- a) period between 1968 to Sept. 1981 - Covered by MLC Service Rules, 1951;
- b) period between Sept. 1981 to November, 1985 - covered by MLC Service Rules 1981; and
- c) period from November 1985 onwards - covered by IDES Rules 1985;
- iv) order regular promotions of the applicants on the basis of the combined seniority list of CEOs and AMEOs to Group 'A'/Junior Time Scale against vacancies for group B officers in accordance with the rules in force at the relevant time retrospectively and to fix their seniority in Junior Time Scale of Group A in the order of their merit alongwith other officers promoted/appointed to the said grade;
- v) promote the applicants on regular basis to the Senior Time Scale of Group 'A' on the basis of seniority list prepared in accordance with clause iv) above; and
- vi) to give all consequential benefits including arrears of pay and allowances with interest @ 18% per annum from the date the amount became due to the date of payment to which the applicants would have become entitled and which had been wrongly denied to them due to administrative lapses and the illegal actions of the respondents.

25. At this stage, it may be mentioned that B officers belonging to the Indian Defence Estates Service (S/Shri S.K. Arora, O.P. Agarwal, A. Bhattacharya, K.R.A.N. Iyer,

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D.K. Reddy, K.N. Kumar, A.S. Rajgopal and Smt. Shobha Kapoor) were allowed to be impleaded as parties in / (respondents 4-11). These respondents have contended in their counter-affidavit that the original applicants 1 and 2 were recruited as temporary AMEOs (Tech.) and their service conditions were determined under the Central Civil Services (Temporary Service) Rules, 1965 and that they were not governed by the 1951 Rules, as alleged. Since the 1951 Rules did not provide for any grade known as AMEO (Tech.), the Central Government amended the Rules in 1976 w.e.f. 1.5.1976. However, by the 1983 Rules, separate service rules called 'MLC (AMEO) Service Group 'B' Rules' were made and these rules govern the conditions of service of all AMEO Technical Officers, including the applicants. Thereafter, a seniority list of AMEO (Tech.) Officers was also published by the respondents on 7.5.1983. In 1985, the IDES Group 'A' Rules were made which are still in force. According to these respondents, Shri M.P. Singh and others in the Assistant Military Estates Officers (Tech.) Service were recruited as Class II Gazetted Officers not through departmental examination conducted by the U.P.S.C. The appointment letter issued to them clearly stated that the post was temporary. They were governed by the C.C.S. (Temporary Service) Rules, 1965. Rule 9 of these Rules provides that a Government servant under quasi-permanent service, holding a specified post, say, as from the date on which his services are declared to be quasi-permanent, would be entitled to some conditions of service in respect of leave, allowances and related matters as a Government

servant in permanent service holding the specified post is entitled to. The original applicants have not been declared as quasi-permanent. These applicants constitute a separate category and do not form a part of the mainstream of the Military Lands & Cantonments Service.

26. The contention of the respondents is that the seniority list had to be reviewed by review DPCs in view of the decision of the Delhi High Court in CW No.109/69 (Shri K.K. Gupta Vs. Union of India) and of the Allahabad High Court in WP No.1867/77 (G.S. Sonal Vs. Union of India). The Delhi High Court had quashed the promotions made on the basis of seniority list as on 31.10.1966 and directed fortfixing the seniority of the petitioner (a direct recruit to Group 'A' junior scale) vis-a-vis the promotees. Pursuant to this, the promotions made from time to time after 31.10.1966 in different grades of Class I from the Seniority List flowing from that list, were subject to review in the light of the judgements of the Delhi High Court. In the letter of the respondents dated 11.7.1977, reference has been made to the preparation of seniority list of Class II officers of the ML&C Service. It has also been stated that "since the cadre of Assistant Military Estates Officers (Tech.) has also been brought in the mainstream of ML&C Service with the publication of Ministry of Defence SRO No.99 dated 19.4.1976, the seniority list of Assistant Military Estates Officers (Tech.) has also been reflected in the list at Annexure-D separately..."

27. According to the respondents, the combined seniority list of officers in Group 'B' Cadre was prepared consequent on the amendment dated 1.5.1976 carried out to the 1951 Rules to bring AMEO (Tech.) within the ambit of these rules. The list was, however, bifurcated again consequent on the separation of Group 'B' Cadre of Cantonment Executive Officers and Assistant Military Estates Officers by the 1983 Rules. The separate seniority lists prepared are still in force and have been updated from time to time after removing therefrom the names of the officers retired, removed, promoted, etc.

28. The respondents have further contended that promotion to junior scale of Group 'A' and higher grades, except senior scale of Group 'A', is on selection basis, i.e., on merit-cum-seniority basis, whereas ad hoc promotions have been made on seniority-cum-fitness basis. Therefore, ad hoc promotions made cannot be equated with regular promotions. The applicants are continuing on ad hoc basis in senior scale posts w.e.f. 20.2.1982. Their appointment in junior scale of Group 'A' w.e.f. 4th November, 1978 is also on ad hoc basis. According to the respondents, they are not eligible for consideration for promotion in terms of the eligibility criteria for promotion to junior administrative grade which provides for five years' service on regular basis in senior scale posts, failing which, 9 years' combined service in junior scale and senior scale posts. These applicants are not eligible for consideration for promotion to Junior Administrative Grade until their appointment in junior scale and senior scale of Group 'A' is regularised and

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they render the requisite years of service in senior scale on regular basis, or alternatively, the rules are relaxed to grant them retrospective seniority from the date of availability of clear vacancies falling to their quota.

29. We have carefully gone through the records of these cases and have heard the learned counsel for both the parties at length. The applicants in both the applications are not seeking any specific relief by way of seniority in the junior time-scale, senior time-scale or Junior Administrative Grade of the Service from particular dates. Their grievance is that while many others were considered for promotion to these grades and promoted after convening DPCs, the AMEOs, to which category they belong, were consistently being left out in an arbitrary manner.

30. We may first consider the question whether the applicants belong to the cadre of the Military Land & Cantonments Service from their initial dates of appointment or they were inducted into the service for the first time in 1976, as contended by the respondents. The terms and conditions of appointment would be relevant in this context.

31. Shri M.P. Singh, the first applicant in OA-838/87 and OA-1502/87, was appointed as Assistant Military Estates Officer in accordance with the terms and conditions set out in the memorandum issued by Respondent No.1 on

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22nd September, 1971. A perusal of this memorandum would indicate that the post to which he was appointed, also formed part of the Military Lands & Cantonments Service. The following extracts of the memorandum are relevant:-

"MEMORANDUM"

Subject:- Recruitment to the post of Assistant Military Estate Officer (Technical) in the Military Lands & Cantonments Service.

On the recommendation of the Union Public Service Commission, the President is pleased to offer Shri Mahendra Pal Singh a temporary post of Assistant Military Lands & Cantonments Service under Ministry of Defence.

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The terms and conditions of appointment are as follows:-

(i) The post is temporary. In the event of its becoming permanent his claim for permanent absorption will be considered in accordance with the rules in force.

(ii) He will be on probation for a period of two years from the date of appointment which may be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him liable to discharge from service or reversion to his parent department in case he is holding a permanent post.

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(iv) The appointment may be terminated at any time on one month's notice given by either side, viz., the appointee or the appointing authority, without assigning any reasons, or by reverting the individual to his

parent department, in case he is holding a lien. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

(v) He will be subject to conditions of service as applicable to temporary civilian Government servants paid from Defence Services Estimates in accordance with the orders issued by the Govt. of India from time to time. He will be subject to Field Service Liability Rules 1957."

(Vide Annexure-I to OA-838/87,
pages 26-27 of the paper-book)

32. Shri T. Pardhasarthy, Applicant No.2 in OA-1502/87, was also similarly appointed vide memorandum dated 10th June, 1964, the relevant extracts of which are reproduced below:-

MEMORANDUM

Subject:- Recruitment of Assistant Military Estate Officer (Technical) in the Military Lands and Cantonment Services.

On the recommendation of the Union Public Service Commission the President is pleased to offer Shri T. Pardhasarthy a temporary post of Assistant Military Estate Officer (Technical) (a Gazetted Class II post) in the Military Lands & Cantonment Services under the Ministry of Defence on a pay of Rs.350/- p.m. (Rupees three hundred & fifty only)/ to be fixed according to rules in the scale of Rs.350-25-500-30-590-E8-30-800-E8-830-35-900. The appointee will also be entitled to draw any other allowance at the rates admissible under, and subject to the conditions laid down in, rules and orders governing the grant of such allowances in force from time to time.

2. The terms and conditions of appointment are as follows:-

- (i) The post is temporary. In the event of its becoming permanent, his claims for permanent absorption will be considered in accordance with the rules in force.
- (ii) He will be treated as on deputation if he is holding a permanent and pensionable post under the Central or State Govt. and is allowed to retain lien on his substantive post.

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(iv) He will be on probation for a period of 2 years.

(v) The appointment may be terminated at any time by one month's notice given by either side, viz., the appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

(vi) He will be subject to conditions of service as applicable to temporary civilian Government servants paid from Defence Services Estimates in accordance with the orders issued by the Govt. of India from time to time, unless he is covered by sub-para (iii) above."

32. The above conditions of service (Vide Annexure R-IIIA to the counter-affidavit of Respondent No.1 in the matter of the writ of summons DA-1502/87, page 86 of the paper-book).

33. It will be noticed that the appointments were made through selection by the U.P.S.C.

34. Shri J.P. Mittal, who is applicant No.2 in DA-838/87, was also similarly appointed as Assistant Military Estate Officer (Technical) on the recommendation of the U.P.S.C. on 11.5.1965. In 1974, he was deputed to the post of Cantonment Executive Officer and while so working, he was drawing deputation allowance. The terms of deputation which were accepted by him, are contained in the memorandum dated 13th February, 1974, the relevant extracts of which are reproduced below:-

MEMORANDUM

Subject:- DEPUTATION AGAINST TEMPORARY CLASS II POSTS IN THE MILITARY LANDS AND CANTONMENT SERVICE, MINISTRY OF DEFENCE.

President is pleased to offer Shri J.P. Mittal, Assistant Military Estate Officer (Technical) a post of Cantonment Executive Officer in Class II of the Military Lands and Cantonment Service in the scale of Rs. 650-30-740-35-810-E8-35-880-40-1000-E8-40-1200. He will be on deputation for a period of

year on the following terms:-

- (a) Pay:- He will have the option either to get his pay fixed in the deputation post under normal rules or draw the pay of the post held plus deputation allowance in accordance with the provisions of Ministry of Finance O.M. No.10(24)-E.III(D)/60, dated the 4th May, 1961 as amended from time to time.
- (b) He will be governed by the Military Lands and Cantonments Service (Class I and Class II) Rules, 1951 as amended from time to time during the period of deputation.
- (c) He will be eligible for all the allowances and benefits as applicable to Central Government servants."

(Vide Annexure R-III to the counter-affidavit filed in DA-1502/87).

35. It may be mentioned in this context that the fact that the applicant No.2 was sent on deputation in 1974, would not necessarily indicate that his initial appointment was not in the Military & Lands Cantonments Service.

36. The various orders under which the posts of AMEOs were sanctioned also indicate that these posts were created as if they formed part of the Military Lands & Cantonments Service. Reference may be made to the following orders regarding creation of posts which have been produced before us:-

(i) Order dated 27th April, 1963.

"To

The Director,
Military Lands & Cantts,
New Delhi.

Subject:- ESTABLISHMENT OF THE NEW EASTERN
COMMAND SANCTION OF STAFF.

Sir,

Consequent on the establishment of the new Eastern Command and re-organisation of the existing Eastern Command into Central Command, I am directed to convey the sanction of the President to the creation of the following posts in the Military Lands & Cantts Services:-

1. Dy.-Director, Military Lands & Cantts.	1
2. Asstt. Director, ML&C	1
3. Military Estates Officer(Bihar & Orissa)	1
4. Asstt. Mily. Estates Officer, (Technical Class II)(Rs.350-900)	2"

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(ii) Order dated 31st August, 1963

"To

The Director,
Military Lands and Cantonments,
New Delhi.

**Subject: ESTABLISHMENT REQUIRED FOR REQUISITIONING
AND HIRING OF LANDS AND PROPERTY FOR DEFENCE
PURPOSES DURING THE EMERGENCY.**

Sir,

I am directed to refer to this Ministry letter
No. 41/L/ADM/L&C/62/931-S/D(C&L) dated 24th November,
1962, and to convey the sanction of the President:-

(i) the continuance of the posts sanctioned in
the above quoted letter for a further period of
one year and,

(ii) the creation of the following additional
posts in the Military Lands and Cantonments
Service for a period of one year in the first
instance for emergency hiring, requisitioning
and acquisition work:-

Deputy Director, Military Lands and
Cantonments 1

Assistant Directors, Mily. Lands
and Cantonments 5

Deputy Assistant Directors,
Milistry Lands & Cants. 1

A.M.E.Os (Technical Class, II) 7."

(Vide Annexure-IIA to the application No. DA-
1502/87 of the paper-book, page 34).

(iii) Order dated 24.10.1967

"To

The Director,
Mily. Lands & Cants.,
New Delhi.

**Subject: EXECUTIVE DUTIES CONNECTED WITH HIRING OF
BUILDINGS FOR DEFENCE SERVICES -
CENTRALISATION OF WORK WITH THE MILITARY
LANDS & CANTTS SERVICE.**

Sir,

I am directed to say that with a view to
consolidating the executive duties connected with
hiring of buildings required for Defence Services,
the existing division of responsibility between MES
and ML&C Service, in this regard, has been examined
in consultation with all concerned and the President
has been pleased to decide that these duties in

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respect of all buildings hitherto held on hire by M&S will also be entrusted with effect from 2nd January, 1968 to the Military Lands & Cantts Service who are already dealing with buildings hired during the present Emergency. Necessary procedural directions to effect the change over will be issued by you and the Engineer-in-Chief to the respective lower formation.

2. To cope with the additional load of work, the following establishment is sanctioned with effect from 21.12.67 for the military lands and cantts service:-

AMEO(Technical) 4."

(Vide Annexure A-5 to the rejoinder affidavit in DA-1502/87, p.129 of the paper-book).

(iv) Order dated 18.4.1970

To

The Director,
Military Lands & Cantt.
Ministry of Defence,
New Delhi.

Subject:- ESTABLISHMENT FOR MILITARY LANDS & CANTTS SERVICE OFFICERS.

Sir,

I am directed to convey the sanction of the President to the creation/discontinuance/adjustment of the undermentioned posts in the Military Lands and Cantts Services with effect from 1.9.1969, as a result of the work study of Military Estates Circles Officers carried out by the staff Inspection Unit:-

(a) Posts created on a permanent basis:

1. Military Estates Officer (Class I) 9

2. Asstt. Military Estates Officers (Technical Class II) 11

3. Asstt. Military Estates Officers Non-Technical (Class II) 6."

(Vide Annexure A-6 to the rejoinder affidavit in DA-1502/87, p.130 of the paper-book).

(v) Order dated 22.12.1970

To

The Director,
Military Lands and Cantonments,
New Delhi.

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Subject:- ACQUISITION OF REQUISITIONED/HIRED
LANDS ESTABLISHMENT FOR

I am directed to convey sanction of the President to the creation of the undermentioned temporary posts in the ML&C Service for a period of two years for processing work connected with acquisition of requisitioned/hired lands:-

Special Military Estates Officer - 12

Assistant Military Estates Officers.
(Technical) - 12."

(Vide Annexure A-8 to the rejoinder affidavit in OA-1502/87, p.133 of the paper-book).

37. The question arises whether the appointments of the applicants were made to duty posts in the Military Lands and Cantonments Service or to temporary ex-cadre posts. The contention of the respondents is that they have not been appointed to duty posts and that they are continuing on ad hoc basis pending regular appointment. The regular appointment has been held up on account of pendency of various court cases.

38. The Supreme Court has frowned upon the practice of keeping the posts temporary for long periods and that in such cases the officiating service in a post should be treated as service on a regular basis.

39. In Baleshwar Dass & Others Vs. State of U.P. & Ors., 1980 (4) S.C.C. 226 at 237-238, the Supreme Court has observed as follows:-

"....We must emphasise that while temporary and permanent posts have great relevancy in regard to the career of government servants, keeping posts temporary for long, sometimes by annual renewals for several years, and denying the claims of the incumbents on the score that their posts are temporary makes no sense and strikes us as arbitrary, especially when both temporary and permanent appointees are functionally identified. If, in the normal course, a post is temporary in the real sense and the appointee knows that his tenure cannot exceed the post in longevity, there cannot be anything unfair or capricious in clothing him with no rights. Not so, if the post is, for certain departmental or like purposes, declared temporary, but it is within the ken of both the

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government and the appointee that the temporary posts are virtually long-lived. It is irrational to reject the claim of the 'temporary' appointee on the nominal score of the terminology of the post. We must also express emphatically that the principle which has received the sanction of this Court's pronouncements is that officiating service in a post is for all practical purposes of seniority as good as service on a regular basis."

40. In Shri O.P. Singh and Another Vs. Union of India & Others, 1984 S.C.C. (L&S), 657 at 674, the Supreme Court has observed as follows:-

"....Promotees who were appointed under Rule 16 have been officiating continuously, without a break, as Additional District and Sessions Judges for a long number of years. It is both unrealistic and unjust to treat them as aliens to the Service merely because the authorities did not wake up to the necessity of converting the temporary posts into permanent ones, even after some of the promotees had worked in those posts from five to twelve years."

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"....The fact that temporary posts created in the Service under Rule 16(1) had to be continued for years on end shows that the work assigned to the holders of those posts was, at least at some later stage, no longer of a temporary nature. And yet, instead of converting the temporary posts into permanent ones, the authorities slurred over the matter and imperilled, though unwittingly, the reasonable expectations of the promotees."

41. In Shri Pran Krishna Goswami Vs. State of West Bengal and Others, 1985, Suppl. S.C.C. 221 at 238, the Supreme Court held that a person who is officiating in temporary posts in a cadre, will not constitute a different cadre. In that case, it was observed as follows:-

"....It was suggested that the officiating Sub-Inspectors of Police who had been promoted from the rank of Assistant Sub-Inspectors were appointed to posts outside the cadre as in Katyani Dayal case and it was this argument that found favour with the High Court. There is no basis whatsoever for the supposition that there was any new cadre or any new class of posts created by the Government, known as officiating Sub-Inspector of Police. The officiating Sub-Inspectors of Police were obviously appointed to officiate in permanent or temporary vacancies in the existing subordinate ranks of the Calcutta Police, governed

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by the same Rules and Regulations as other Sub-Inspectors of Police, drawing the same pay and discharging the same duties. There was and there could never be any question of Officiating Sub-Inspectors constituting a different cadre, class or category by themselves."

42. In *Narender Chadha & Others vs. Union of India and Others*, A.T.R., 1986 S.C. 49 at 57, the Supreme Court observed that by virtue of long officiation, officers would develop a right to hold the posts in question. The following observations contained in the judgement are relevant:

"....it is true that the petitioners were not promoted by following the actual procedure prescribed under rule 8(1) (a) (ii) but the fact remains that they have been working in posts included in Grade IV from the date on which they were appointed to these posts. The appointments are made in the name of the President by the competent authority. They have been continuously holding these posts. They are being paid all along the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointment. The orders of promotion issued in cases show that they are promoted in the direct line of their promotion. It is expressly admitted that the petitioners have been allowed to hold posts included in Grade IV of the aforesaid services, though on an ad hoc basis. (See para. 21 of the counter-affidavit filed by Shri P.G. Lele, Deputy Secretary, Department of Personnel and Administrative Reforms. It is, therefore, idle to contend that the petitioners are not holding the posts in Grade IV of the two Services in question. It is significant that neither the Government has issued order of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they are now holding. It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV."

43. A cadre may consist of permanent posts as well as temporary posts added to the cadre from time to time, according to the exigencies of the Service (vide G.K. *Dudani and Others Vs. S.D. Sharma & Others*, 1986 Suppl.

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S.C.C. 239 at 252). In the instant case, the applicants were holding Group 'A' posts since 1978 continuously and uninterruptedly and we are of the opinion that they must be deemed to be holding these posts regularly against regular vacancies. As has been stated above, the posts of AMEOs were sanctioned in the Military Lands & Cantonments Service. The applicants have also cited some instances of promotion of AMEO (Technical) to the post of Special Military Estate Officers in April, 1971 along with other officers of the Military Lands & Cantonments Service (vide the list of officers of the Military Lands & Cantonments Service corrected upto 6.9.1971 at Annex.III to the rejoinder filed in OA-837/87).

44. We are of the opinion that the 1951 Rules apply to applicants. Rule 11 of the 1951 Rules provides that the seniority in each grade is to be reckoned on the basis of service in the grade/equivalent grade. Rule 11 reads as follows:-

"Seniority in each grade, whether in Group 'A' or Group 'B'.....shall, as a general rule, be determined on the basis of the length of service in the grade concerned as well as service in an equivalent grade."

The 1951 and 1985 Rules allocate quota to the Cantonment Executive Officers and A.M.E.Os. in the proportion of 1 : 1. The grievance of the applicants is that the quotas for AMEOs have not been filled up by timely promotions. The stand of respondent No.1 is that the promotions of AMEOs have been held up due to the pendency of court cases. They have, however, stated that this will be taken up now (vide para.7 of the counter-affidavit filed in OA-1502/87). While respondent No.1 has published a combined seniority list upto 1983, no seniority list of 1985 has been published.

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45. Respondent No.1 has stated in the counter-affidavit in OA-837/87 that the question of granting retrospective seniority with effect from the date of availability of vacancy falling in the respective quotas, is under consideration of the Government. As and when such a decision is taken, the applicants, among others, will also be considered for the grant of retrospective seniority from the due date. They have also stated that the applicants are not eligible for consideration for promotion to Junior Administrative Grade until their appointment in junior scale and senior scale of Group 'A' is regularised and they render the requisite years of service in senior scale on regular basis "or alternatively, the rules are relaxed to grant them retrospective seniority from the date of availability of clear vacancy falling to their quota" (vide para. 6.28 and 6.30 of the counter-affidavit of respondent No.1 in OA-838/87). Rule 12 of the 1985 Rules empowers the Government to relax the rules with respect to any class or category of persons if it is of the opinion that it is necessary or expedient so to do. In view of the fact that the applicants have officiated in junior time-scale and senior time-scale posts for a number of years continuously and uninterruptedly, we are of the view that they must be deemed to be holding these posts on a regular basis and that, in the circumstances, the recruitment rules in this regard must be deemed to have been relaxed.

46. In the light of the aforesaid observations, it would be in the interest of justice to direct the respondents to prepare fresh seniority lists on the

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basis of length of service in each of the relevant grades of the Service. Review DPCs will have to be convened afresh to consider the suitability of the officers, including the applicants, for promotion to the various grades. If, as a result of such promotions, some persons who have already been promoted, are likely to be adversely affected, they should not be reverted and they should be accommodated by creating super-numerary posts.

47. We, therefore, order and direct as follows:-

- (a) Respondent No.1 should prepare fresh seniority lists treating AMEOs also as members of the Service from the date of their respective appointment. Such appointments must be deemed to be in relaxation of the relevant recruitment rules.
- (b) Review DPCs should be held afresh as of various years in which vacancies in the higher posts in Group 'A' had arisen and regular appointments should be made on the basis of the recommendations of the Review DPCs.
- (c) In case the applicants are duly recommended by the Review D.P.Cs for promotion, they will be entitled to consequential benefits, including arrears of pay and allowances admissible under the Rules.
- (d) If in the process of such review and promotions held on the basis of such review, persons who have already been promoted are likely to be adversely affected, they should be accommodated by creating adequate number of super-numerary posts. *02*

(a) The respondents should comply with the above directions within a period of six months from the date of communication of this order.

(f) In the circumstances of the case, there will be no order as to costs.

(g) A copy of this judgement may be placed on the case files of DA-838/87 and DA-1502/87.

(S.P. Mukerji)
Vice-Chairman(Admn.)

(P.K. Kartha)
Vice-Chairman(Judl.)