Central Administrative Tribunal
Principal Bench, New Delhi.

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(1) OA- 538/90
(2) OA-1378/90
(3) OA-2567/90

23rd day of December, 1993.

Mr. Justice S.K. Dhaon, Vice Chairman(J)

Mr. P.T. Thiruvengadam, Member (A)

(1) O.A.No.538/90

1. Shri Krishan Kumar,
Superintending Engineer(Civil),
Central Public Works Deptt. — Applicant No.1

C/o Shri G.K. Aggarwal,
Advocate,
G-82, Ashok Vihar-I,
Delhi-110052.

(Address for service for
all applicants)

2. Shri Deepak Narain,SE(C),CPWD — Applicant No.2
3. Shri A.V. Chaturvedi,SE(C),CPWD — Applicant No.3
4. Shri Jag Mohan Lal,SE(C),CPWD — Applicant No.4
5. Shri S.K. Khanna, SE(C),CPWD — Applicant No.5
6. Shri J.P. Singhal, SE(C), CPWD — Applicant No.6
7. Shri V.S. Dixit, SE(C), CPWD — Applicant No.7
8. Shri Shyam Kishore, SE(C), CPWD — Applicant No.8
9. Shri B. Mazumdar, SE(C), CPWD — Applicant No.9
10. Shri C.B. Lal, SE(C), CPWD — Applicant No.10

(2) OA-1378/90

Shri P.P. Popli,
Superintending Engineer,
CPWD (North Zone),
R.K. Puram,New Delhi. — Applicant

(3) OA-2567/90

Shri D.N. Bhargava,
Superintending Engineer,
CPWD Training Institute,
Nirman Bhavan,
New Delhi. — Applicant

Versus

1. Union of India through
Secretary,
Ministry of Urban Development,
Nirman Bhavan,N.Delhi. — Respondent 1

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2. Director General (Works), CPWD
Nirman Bhavan, New Delhi. — Respondent 2

3. Union Public Service Commission
through its Secretary,
Shahjahan Road, New Delhi-11. — Respondent 3

4. Shri D.N. Bhargava,
SE(C), CPWD,
Director of Estates,
Nirman Bhavan, N.Delhi. — Respondent 4

5. Shri H.N. Sachdeva,
Superintending Engineer(C),
C.P.W.D.,
New Delhi. — Respondent 5

6. Shri K.S. Guliani,
Superintending Engineer(C),
C.P.W.D., New Delhi. — Respondent 6

7. Shri P.P. Popli,
Suptdg.Engineer(C),
CPWD, New Delhi. — Respondent 7

(Respondents in OA-538/90)

OA-1378/90

1. Union of India through the
Secretary, Ministry of Urban
Development, Nirman Bhavan,
New Delhi-110001.

2. Director General of Works,
Central Public Works Department,
Nirman Bhavan,
New Delhi-110001.

3. Shri Krishan Kumar
4. Shri M.A.Jacob
5. Shri S.K.Chawla
6. Shri P.K.Kohli
7. Shri Deepak Narayan
8. Shri S.Ganesan
9. Shri A.V.Chaturvedi
10. Shri Jag Mohan Lal
11. Shri S.K.Khanna
12. Shri K.S.Guliani

Superintending Engineer,
C/o DG(W), CPWD, Nirman Bhavan,
New Delhi.

13. Shri I.M.Singh	
14. Shri T.S.Santhanam	
15. Shri S.L.Karunakaran	
16. Shri V.K.Anand	
17. Shri J.P.Singhal	
18. Shri D.K.Roy	
19. Shri S.S.Chandhok	
20. Shri V.S.Dixit	
21. Shri D.P.Goyal	Superintending Engineer, C/O DG(W), CPWD, Nirman Bhavan, New Delhi.
22. Shri Shyam Kishore	
23. Shri K.N.Aggarwal	
24. Shri P.S.Chadha	
25. Shri B.N.Sinha	
26. Shri T.P.H.Menon	
27. Shri Kalyan Roy	
28. Shri B.Mazumdar	
29. Shri H.K.L.Mehta	
30. Shri A.K.Mukherjee	
31. Shri Basant Kumar	
32. Shri Mahesh Chandra	
33. Shri G.Perumal	
34. Shri S.P.Lalla	
35. Shri T.K.Mishra	
36. Shri Krishan Kant	
37. Shri K.K.Verma	
38. Shri C.B.Lal	
39. Shri S.J.Kulkarni	
40. Shri H.R.Kanwar	

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41. Shri R.K. Biswas
42. Shri Y. Harishchandrudu
43. Shri Maical Thomas
44. Shri R.D. Gupta .... All Superintending Engineers, C/o DG(W), CPWD, Nirman Bhavan, New Delhi.
45. Shri S.S. Juneja
46. Shri Lalit Mohan
47. Shri A.K. Saxena
48. Shri U.C. Mishra
49. Shri A.E. Ayyar
50. Shri R.S. Sagar
51. Shri M.D. Mehra .... Respondents

O.A.No.2567/90

Union of India through
Secretary,
Ministry of Urban Development,
Nirman Bhavan,
New Delhi. Respondent

By: Shri G.K. Aggarwal, Counsel for Applicants in O.A.No.538/90.

Shri G.D. Gupta, Counsel for Intervenors in O.A.No.538/90

Shri N.K.Batra, Counsel for the Applicant in OA-1378/90.

Shri M. Chandrasekharan, Counsel for the Applicant in OA-2567/90.

Shri P.H. Ramchandani, Counsel for Respondents in all the three cases.

O R D E R

Shri P.T. Thiruvengadam, Member

There are 10 applicants in OA-538/90 and they are all recruited to Class I, Central Engineering Service in Central Public Works Department through Engineering Services Examination conducted by the U.P.S.C. in various years ranging from 1964 to 1967. Generally, they joined towards the end of the year subsequent to the year of examination excepting in a few cases where they joined

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in the beginning of the second subsequent year after holding of the examination. Apart from 3 official respondents in OA-538/90, there are ~~three~~ four other respondents who are released from the Emergency Commission/Short Service Commission of the Armed Forces of the Union and were recruited against vacancies reserved in Central Engineering Service in C.P.W.D. as per provisions in the reservation of vacancies (II) ~~after~~ Rules 1971 applicable to released ECOs and SSCOs. The details of these four respondents (R-4 to R-7) are as under:-

S.No.	Name	Respondent No.	Dt. of joining CPWD	Deemed dt. of joining as AEEs	Dt. of Birth
1.	Shri D.N.Bhargava	4	3.10.1972	25.2.65	8.2.42
2.	Shri H.N.Sachdeva	5	7.6.1974	25.10.63	31.1.35
3.	Shri K.S. Guliani	6	14.3.75	15.11.66	16.7.40
4.	Shri P.P. Popli	7	10.2.75	1.1.70	8.3.35

2. The deemed date of joining as AEEs in the last col. as above, has been arrived at after giving credit for the approved military service as ECO or SSCO, as the case may be, including the period of training, if any. This is as per Rule 6(1) of the notification dated November 25, 1971 (supra.).

3. The deemed date of joining is relevant for the purpose of fixation of pay and has also a bearing on the seniority to be reckoned for the released ECOs/SSCOs vis-a-vis the direct recruits through the Engineering Service Examination. It will be relevant to extract

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Rule 6 in notification date ...l:-

"Rule 6: Seniority a...

(1) Pay of the ... Commissioned Officer or Short ...oned Officer appointed against ...cy shall be fixed on the assu... ...ld have been appointed to the ... as the case ... the date ... giving credit ... approved ... as Emergency Commissioned Office... Commissioned Officer, as the ca... ...ng the period of training, if any ... ...se of seniority he shall be de... ...n allotted to the corresponding ye...

Provided that...

(2) Seniority ... ...ates who are appointed against ... ...eserved under rule 4 and allotte... ...r year shall be determined accor... ... list prepared by the Commission ... the results of their performan... ...voce or test or interview.

(3) All candi... ...inted against the reserved vacanc... ...w the successful candidates fro... ... of the year to which they are a...

(4) In cases ... ...sed Emergency Commissioned Offic... ...ervice Commissioned Officers re... ...n a temporary basis and given t... ... allotment are confirmed subsequen... ...ifferent from the order of merit ... time of their appointment, senio... ...w the order of confirmation a... ...nal order of merit."

Note: Rule 4 referred to ... ...ns the percentage of vacancies in Clas... ...Services which

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Rule 6 in notification dated 25.11.1971, in full:-

"Rule 6: Seniority and pay:-

(1) Pay of the released Emergency Commissioned Officer or Short Service Commissioned Officer appointed against a reserved vacancy shall be fixed on the assumption that he would have been appointed to the Service or post, as the case may be, on the date arrived at after giving credit for his approved military service as Emergency Commissioned Officer or Short Service Commissioned Officer, as the case may be, incuding the period of training, if any, and for the purpose of seniority he shall be deemed to have been allotted to the corresponding year;

Provided that....

(2) Seniority interse of candidates who are appointed against the vacancies reserved under rule 4 and allotted to a particular year shall be determined according to the merit list prepared by the Commission on the basis of the results of their performance at the viva voce or test or interview.

(3) All candidates who are appointed against the reserved vacancies will rank below the successful candidates from open competition of the year to which they are allotted.

(4) In cases where the released Emergency Commissioned Officers or Short Service Commissioned Officers recruited initially on a temporary basis and given the same year of allotment are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit."

Note: Rule 4 referred to in Rule 6(2) mentions the percentage of vacancies in Class I, Engineering Services which

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are to be filled by direct recruitment in any year and which shall be reserved for being filled by the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union, who were commissioned on or after 1.11.1962 but before 10.1.1968, or who had joined any pre-commissioned training before the later date.....

4. There is no dispute regarding the fixation of pay to the released ECOs/SSCOs. However, regarding the seniority, the interpretation of Rule 6 had been undergoing change from time to time and in the seniority list published on 4.8.1989, by C.P.W.D. in their Office Memorandum No.23/4/74-EC.I, the respondents No.4 to 7 were shown their seniority position as under:-

Name	Deemed date of joining as AEE	Placed below direct recruits of Engineering Services Exam.
Sh.D.N.Bhargava	25.2.1965	Below 1963 Exam.DRs
Sh.H.N.Sachdeva	25.10.1963	Below 1962 Exam.DRs
Shri K.S.Guliani	15.11.1966	Below 1964 Exam.DRs
Shri P.P. Popli	1.1.1970	Below 1968 Exam.DRs

5. The contention of the applicants is that the released ECOs/SSCOs should be placed below the direct recruits of the examination of the year to which the ECOs/SSCOs are deemed to be allotted. In other words, as far as R-4 is concerned, since the date of joining as AEE has been worked out as 25.2.1965, he should be placed below all the direct recruits who are appointed as a result of the Engineering Services Examination held in the year 1965. This O.A. has been filed with the following main

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prayers:-

(a) Quash the seniority and placement of respondents 4,5,6 and 7 as Assistant Executive Engineers (Civil) in Central Engineering Service, Class I in Annexure A-1 O.M. 23/4/74-ECI dated 4.8.1989 and all consequences flowing therefrom, and

(b) direct respondents 1,2, and 3 to fix seniority and placement of respondents 4,5,6 and 7 as AEEs(C) in CES(1) as if not entitled to any benefit as ex-Emergency Commissioned Officer or ex-Short Service Regular Commissioned Officer, as the case be, if not, direct respondents 1,2, and 3 to fix the same by antedating their date of appointment as AEE(C) in CES(1) on the basis of 'scheduled release' year as per Rules of ECOs or SSRCOs, as the case be, placing them below all AEEs (C) of the Examination of the calendar year in which their antedated joining date fell, with all consequences flowing therefrom in the grades of AEE(C), EE(C), SE(C), CE(C), ADG, DG in CES(1).

6. OA-1378/90 has been filed by Shri P.P. Popli, who figures as Respondent No.7 in OA-538/90. In OA-1378/90, he has prayed that he should be given seniority below all direct recruits appointed on the basis of competitive examination held in 1963. The main ground advanced by him is that he had put in military service during April 22, 1963 to June 1, 1968 and was subsequenty appointed

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to the Central Engineering Services on 10.2.1975. He is seeking the invocation of the provisions in the Office Memorandum dated 5.9.1968.

7. OA-2567/90 has been filed by Shri D.N. Bhargava, who figures as Respondent No.4 in OA-538/90. In Memorandum No.9/21/67-ECI dated 31.1.1979, the C.P.W.D. had advised the applicant that for his seniority, he would be placed below the direct recruits who joined as a result of 1964 Examination. This position was reiterated in a subsequent letter of CPWD No.8/19/90-ECI dated 30.11.1990. This OA-2567/90 has been filed with a prayer to quash the letter of 30.11.1990.

8. We find that reliefs in all the three O.As relate to the inter-linked seniority between direct recruits and released ECOs/SSCOs and the orders to be passed will have a common effect. Accordingly, we propose to dispose of all the three O.As in a common order.

9. The main issue to be decided is the interpretation of Rule 6 with regard to seniority and pay in the notification dated 25.11.1971. Rule 6(3) reads as under:-

> "All candidates who are appointed against the reserved vacancies, will rank below the successful candidates from open competition of the year to which they are allotted."

10. Shri G.K. Aggarwal, learned counsel for the applicants in OA-538/90, argued that the phrase 'to which they are allotted' applies to released ECOs/SSCOs. It is his contention that there is no concept of allotment

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year with regard to direct recruits. From the open competition held by the U.P.S.C., direct recruits are appointed generally in the following year after holding of the examination, or in a few cases, in the second following year. However, their merit position as decided in the competitive examination, will decide the inter se seniority between them. Hence, "the year to which they are allotted, cannot qualify the direct recruits. As regards released ECOs/SSCOs, the year of allotment is the year arrived at after giving credit for approved military service. A deliberate fiction has been introduced in the case of these candidates against reserved vacancies by taking into account their actual date of joining the Central Engineering Service and working back the deemed date/year of joining by giving weightage for military service, for various purposes, like fixation of pay and seniority. Having thus arrived at the deemed year of allotment for the ECOs/SSCOs for the purpose of seniority vis-a-vis the direct recruits, the former candidates have to be placed below the successful candidates from open competition/examination held in the relevant year of allotment (for ECOs/SSCOs).

11. It was further contended by Shri Aggarwal that the wordings used in Rule 6(3) are plain and clear and there should be no need to explore other sources for interpreting this Sub-rule. No ambiguity could be attributed in the wording of the Rule, nor any absurdity would flow if a direct and plain interpretation is given to this Sub-Section.

12. The learned counsel, Shri Aggarwal, also referred to para.4(4) of the reply affidavit filed by the respondents 1 to 3, wherein it has been stated that the panel seniority

of direct recruits appointed through competitive examination held by the U.P.S.C., is maintained on the basis of the examination year/batch. He also produced certain seniority lists where the direct recruits have been arranged as per the year of examination, taking into account the merit position obtained by the candidates in the relevant examination.

13. It was further argued that the above interpretation would not be in disharmony with the provisions of Sub-Section(1) of Rule 6 (which has been quoted earlier). As per this Sub-section for the purpose of seniority, the ECOs/SSCOs shall be deemed to have been allotted to the corresponding year which is the year arrived at after giving credit for approved military service.

14. Shri G.D. Gupta, learned counsel for applicant No.7, fully agreed with the arguments advanced by Shri Aggarwal. He supplemented the same by stressing on the words 'successful candidates' referred to in Rule 6(3). These words can have significance only if direct recruits of the deemed year of allotment of the other group are considered.

15. Shri Gupta also referred to Rule 4 of O.M. of 1959 of the Department of Personnel for Central Services as per which the seniority of direct recruits is decided by the merit position in the examination, thereby making the individual dates of joining irrelevant for the inter se seniority. This being so, consideration of direct recruits other than by associating them with the year

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of examination, would lead to anomalies since, in practice, the Central Engineering Service candidates from a particular examination have been joining in different calelndar years.

16. It was further argued that Rule 6 in notification of 25.11..1971 is a self-complete rule, with 6(1) giving the guidelines for fixing the deemed allotment year for ECOs/SSCOs and Rule 6(3) laying down the guidelines for interpolating the two groups. There should be no need to go into any other rules and, in any case, the relevant rules regarding direct recruits have not provided for such interpolation.

17. Shri P.H. Ramchandani, learned counsel for Respondents 1 to 3, conceded that the year of allotment for direct recruits in case of Central Engineering Service has not been defined anywhere. It is his case that the year of allotment for direct recruits should be deemed to be the year subsequent to the year of examination since predominantly, the successful candidates are appointed in the subsequent year. Analogy with the All India Service Rules where a specific provision to this effect has been made, was relied upon. In August, 1991, it was even proposed to change the seniority of Respondent No.6 in OA-538/90 by issuing a memorandum based on the above approach. It was also the case of the learned counsel for Respondents 1 to 3 that such interpretation as put forward by him, would be the most equitable one. In other words, the contention was that the ECOs/SSCOs, who have been assigned a deemed year of allotment, should rank

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in seniority below all the direct recruits appointed as a result of the competitive examination held in the previous year.

18. Shri M. Chandrasekharan, learned counsel for Respondent No.4 in OA-538/90, referred to Rule 6(1). His argument was that in the guidelines ~~phrase~~ that seniority of ECOs/SSCOs is to be based on the allotment to the corresponding year, ~~should be interpreted as the year of competitive examination as a result of which the direct recruits would have joined in the deemed allotment year for the other group.~~ He relied on the Supreme Court's order in 1989 (4) SCC 689 and particularly to para.19 which is reproduced as under:-

> "It is not that for the first time by the impugned rules, the past services of the ECOs and the SSCOs have been taken into consideration for the purpose of giving them their year of allotment with retrospective effect, that is to say, on a date earlier than their actual appointment in the Indian Police Service or in the Indian Forest Service, as pointed out by Mr. G. Ramaswamy, learned Additional Solicitor General appearing on behalf of the government-appellants. The learned Additional Solicitor General has drawn our attention to the notings in the government files for the purpose of showing the government policy to rehabilitate the ECOs and SSCOs in All India Services, Central Services and State Services in order to ensure good response and to provide sufficient incentives for those who offered themselves for emergency commissions. These notings start from November 17, 1962. It is not necessary for us to make a particular reference to the notings in the government files. Suffice it to say that in view of the voluntary offer of services by the youngmen of our country to defend the country against foreign aggression, the government took a very sympathetic view and took steps to compensate them after their discharge from the Emergency Commission Servie, for the opportunity lost by them in joilning the All India Serices. One thing which is very significant to be mentioned here that although their past services were taken into consideration, the governmen did not relax the minimum qualifications required for the All India Services. These ECOs and SSCOs had to appear in the competitive tests held by the Union Public Service Commission and they were appointed only after they became successful in such tests."

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19. Having heard the learned counsel for the parties, we note that it is not disputed that there is no concept/ definition of the year of allotment with regard to direct recruits from open competition. As regards released ECOs/SSCOs, the deemed year of allotment is to be worked out by taking the actual date of appointment of such candidates and then giving credit for approved military service, including the period of training, if any. For the purpose of seniority, this deemed year of allotment will be the 'corresponding' year. The word 'corresponding' refers to the year which is worked out by giving the weightage as mentioned and no other meaning could be imported. We do not agree with the stretched construction sought to be given to this word 'corresponding' by the learned counsel, Shri Chandrasekharan for Respondent No.4.

20. In the absence of the concept of year of allotment for direct recruits, the phrase 'of the year to which they are allotted' can only apply to the candidates appointed against reserved vacancies. We also note the specific mention of the words 'successful candidates' which would strengthen this view.

21. The citation referred to by Shri Chandrasekharan in 1989(4) SCC 689, does not help his argument since the Supreme Court decision has been mainly on the aspect of the legality of giving seniority from a back date for the ECOs and SSCOs on their appointment to various services after release from military service and not on the exact quantum of such retrospective effect

22. As regards the O.A. filed by Shri P.P. Popli, it has not been established that he should be governed

by the provisions of any memorandum other than the notification dated 25.11.1991. Hence, there is no need to discuss his claims separately.

23. In the circumstances, we hold that the released ECOs/SSCOs should be first assigned the deemed year of allotment by giving credit for approved military service in relation to their actual dates of joining and for the interpolation of seniority vis-a-vis direct recruits, these candidates (released ECOs/SSCOs) should be placed below all the direct recruits who are appointed as a result of the open competition, i.e., (Examination) held in the deemed allotment year.

24. Apart from the arguments with regard to interpreting Rule 6 of the notification dated 25.11.1991, Shri Aggarwal, learned counsel for the applicants, raised further grounds like one of the respondents, namely, Shri H.N. Sachdeva, Respondent No.5 being over-aged at the time of joining the pre-commissioned training and thus not fulfilling the requirement under Rule 5(2) (a) (ii) which reads as under:-

> "5. Method of recruitment, age limits etc. of Emergency Commissioned Officers and Short Service Commissioned Officers -
>
> xxxx xxxx xxxx xxxx xxxx xxxx
>
> ii) he should not have attained, on the crucial date of the year in which he joined the pre-Commission training, or got the Commission where there is only post-Commission training, the upper age limit prescribed by the Central Govt. for the Service or Post:
>
> xxxx xxxx xxxx xxxx xxxx xxxx xxxx

25. It is the contention of the learned counsel that the recruitment of Respondent No.5 in Central Engineering Service is irregular in view of the above. We do not propose

to go into this issue since R-5 was appointed in CES in 1974 and has superannuated by January 1993; raising the issue regarding irregular appointment in C.E.S., is hopelessly time barred.

26. Similarly, the other argument advanced that the notification dated 25.11.1971 is applicable only for the period 29.1.1971 to 29.1.1974 and R-5, R-6 and R-7, who were appointed in C.E.S. after 29.1.1974, should be treated as irregularly appointed, is not based on strong grounds. The notification of 25.11.1971 is title 'Released Emergency Commissioned Officers and Short Service Commissioned Officers (Engineering and Medical Services)-Reservation of Vacancies (No.II) Rules, 1971'. The relevance of dates of 29.1.1971 and 29.1.1974 is only with regard to reservation of vacancies during the period and not for appointments which could be made against these vacancies at a subsequent date. Again, raising this plea at such a late stage, has to be ~~time-barred~~ disallowed being time-barred.

27. In the light of the above discussion, the O.A. is disposed of with directions as in para 23 above.

No costs

(P.T. Thiruvengadam)
Member(A)

(S.K. Dhaon)
Vice-Chairman(J)

SLP

Original orders in OA 532/90
Attested true copy
Advocate
C.A.T.
24.12.93