

19

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2862/2004

This the 1st day of February, 2006

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. N.D.DAYAL, MEMBER (A)

MES 315064 S.Ponnammal
JE (Civil)
O/o GE (Air Force) South Palam
Delhi Cantt-10.

(By Advocate: Sh. R.S.Soni)

Versus

1. The Union of India
Through its Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi-110001.
2. The Engineer-in-Chief,
E-in-C's Branch
Army Headquarters
Kashmir House,
New Delhi.
3. The Garrison Engineer (Air Force)
South Palam,
Delhi Cantt.
4. The Secretary,
Union Public Service Commission,
Dhaulpur House,
Shahjahan Road,
New Delhi.

(By Advocate: Sh. Yashpal proxy for
Sh. A.K.Bhardwaj)

ORDER

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

OA is filed for the following reliefs:-

- a) pass appropriate orders/directions to the respondents No.1 & 2 to frame the appropriate recruitment rules on the line of CPWD manual for

28

promotion to the posts of AEs from the panel of JEs under the respondent

No.2;

- b) pass appropriate orders/directions to the respondents No.1 & 2 to hold a competitive examination for the 50% of vacancies to the posts of AEs till the appropriate recruitment rules are framed by them.
- c) pass appropriate orders/directions restraining the respondents No.4 from issuing any waiver to the respondent No.2 for holding any DPC for promotion to the posts of AEs without ensuring a competitive examination for the 50% of vacancies of the posts of AEs.

2. The relevant facts are that the applicant had joined the establishment of the respondent No.2 as Superintendent (B/R) Grade-II on 11.11.1990. As a result of various orders of the Bangalore Bench of this Tribunal passed in 1995 the pay scale and designations of the post of Superintendent (B/R) Grade-I & II, the Superintendent (E&M) Grade-I & II and the Surveyor Assistants Grade I & II were changed to Junior Engineer (Civil), Junior Engineer (Electrical & Mechanical) and Junior Engineer (Quantity, Surveying & Contracts) respectively and their pay scales were brought at par with the Junior Engineers of the CPWD. Respondent No.2 proposed to amend the recruitment rules suitably. By administrative orders the Junior Engineers working in the establishment of the respondent No.2 have been given time bound higher pay scale first after 5 years of service and the second after 15 years of service. The grievance of the applicant is two fold. Firstly, the recruitment rules of the officers have not been amended although a period of more than six years has passed and secondly recruitment rules have not been amended to make them identical to the recruitment rules of the Junior Engineers of the CPWD which, inter alia, reserved 50% of vacancies for promotion to the post of Assistant Engineers by a limited departmental examination. Applicant, accordingly, seeks a direction to the respondent to amend the rules and provide for promotion from the post of Junior Engineer to the post of Assistant Engineer against 50% of vacancies through limited departmental examination and secondly till it is done promotion of the Junior Engineers to the post of ^{Asstt.} Senior Engineers on the basis of the existing unamended rules, after securing waiver from the UPSC, respondent No.4, be kept in abeyance.

A. S. & C. R. - 6

3. Respondent in their counter reply have contended that the order of the Bangalore Bench of this Tribunal has already been implemented by changing the designation of the officers and by granting them time bound pay scales. They have also stated that there was no direction of the Tribunal that the recruitment rules would also be amended to make them identical to the recruitment rules of the Junior Engineers/Assistant Engineers of the CPWD. They are, however, silent on the question of amendment of the recruitment rules of the Junior Engineers/Assistant Engineers of the establishment of the respondent No.2. But it is stated that the applicant has no legal right to demand the framing of the recruitment rules on the lines of the recruitment rules in the CPWD.

4. In the rejoinder applicant has reiterated her case.

5. We have heard the learned counsel for the parties and gone through the record.

6. Concededly the Bangalore Bench of this Tribunal had directed the respondents No.1& 2 to grant its own officers pay scale at par with the pay scale of Junior Engineers of CPWD. While implementing this order, the respondents have already granted time bound higher scales and have also changed the designation of the officers. The copies of the administrative officers in this regard have been filed by the applicant as Annexure-A at pages 11 & 14. The Tribunal in its order dated 31.3.95 and 15.6.95 has not directed the respondents to amend the existing recruitment rules of its officers or framed new recruitment rules for them on the line of the recruitment rules in force in the CPWD. Simply because the applicant and other similarly situated officers of the establishment of respondent No.2 have been redesignated as Junior Engineers and have also been granted time bound higher pay scale similar to the officers of the CPWD that would not necessarily follow that the recruitment rules of the officers of the establishment of respondent No.2 and the CPWD should also be identical. Framing of the recruitment rules is the prerogative of the State policy. Unless the State policy is in contravention of a statute, malafide or contravene the provisions of the Constitution of India the Tribunal cannot interfere with it. A perusal of the letter dated 9.7.99 (page 14 of the OA) by which the officers in the establishment of the respondent were redesignated as Junior Engineer showed that the recruitment rules were also proposed to be amended to give effect to the changed designation. The letter dated 24.4.97 also showed that the

amendment of the recruitment rules was under consideration of the respondent (Annexure-E to the OA). The letter dated 29.10.2002 (Annexure-F to the OA) also shows that the question of providing departmental competitive examination for filling up the post of Assistant Engineer in the establishment of the respondent was under consideration of a Board of Officers. As a consequence of the restructuring of the cadre and redesignation of the posts, amendment in the recruitment rules became necessary which is under consideration of the respondents. So long as the recruitment rules are not amended the promotion from the post of Junior Engineer to the post of Assistant Engineer are to be made in accordance with the existing recruitment rules. There is no impediment in it since according to the applicant all Superintendents and Surveyor Assistant in Grade-I have been placed enblocked above ~~the officers~~ the officers in Grade-II in their respective cadres. Therefore, promotion of the officer from the post of Junior Engineer to the post of Assistant Engineer in accordance with the existing rules with the approval of the UPSC does not suffer from any illegality. Learned counsel of the respondent has referred to an order of this Tribunal in Amitabh Bandhopadhyay and others vs. Union of India & others 1998 (1) ATJ 266 where, inter alia, it was observed that the service condition of the employees were to be guided by their own recruitment rules and they could not take advantage of recruitment rules of others as the granting of fixation of pay scales was a policy decision of the Government.

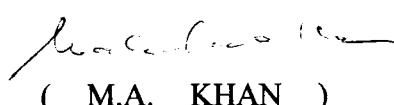
6. Applicant would have been well-advised to approach the cadre controlling authority and the nodal Ministry for redressal of her grievances. She has already made representation to the appropriate authorities. The requisite amendment of recruitment rules, as a result of redesignation of posts and the question of holding of departmental competitive examination for promotion to the post of Assistant Engineer seemed to be under the consideration of the Board of officers of the respondent. Unless it is provided for in the recruitment rules or decided upon by the administrative authorities the applicant does not get vested legal right to claim relief as prayed for in the present OA.

7. For the reason stated above, we do not find any merit in the OA. OA is dismissed. Parties are left to bear their own costs.



(N.D. DAYAL)
Member (A)

'sd'



(M.A. KHAN)
Vice Chairman (J)