

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1533/2004

New Delhi this the 31st day of October, 2006.

Hon'ble Mr. Justice B. Panigrahi, Chairman
Hon'ble Mrs. Chitra Chopra, Member(A)

1. All India MES Civilian Engineers Associations Ashrey Mess, Delhi Cantt through its President Sh. S.K. Sharma, (JE(E/M))
2. Sh. P.K. Jaiswal, AE(E/M)
S/o late Sh. S.N. Jaiswal,
R/o 113/1, Kabul Line,
MES Enclave,
Delhi Cantt.

.... Applicants

(through Sh. V.K. Garg, Advocate)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. The Secretary, Ministry of Personnel & Public Grievances & Pension, North Block, New Delhi.
3. The Engineer-in-Chief, Military Engineer Services, Kashmir House, Rajaji Marg, New Delhi.
4. The Indian Defence Services of Engineers Association through its Secretary, E-n-C Branch, Kashmir House, Rajaji Marg, New Delhi.

.... Respondents

(through Sh. Rajesh Katyal, Advocate)

ORDER

Hon'ble Mrs. Chitra Chopra, Member(A)

Through this OA the applicants have assailed the All India Defence Services of Engineers (IDSE) (Recruitment & Condition of Services) Rules,

1991 and IDSE (Recruitment & Condition of Services) Rules, 2004 in so far as they relate to the post of Executive Engineer (EE) and have sought the following reliefs:-

- (a) to quash the IDSE (Recruitment & Conditions of Service) Rules, 1991 so far as they relate to recruitment by promotion to the post of Ex. Engineer (EE);
- (b) to direct respondents to re-frame IDSE (Recruitment & Conditions of Service) Rules, 1991 providing quota for AEE & AE to the post of Executive Engineer in proportionate to their respective strength in the feeder cadre preferably 66.67% of the posts for AE's and 33.33% of the posts for AEE's;
- (c) to direct respondents to re-frame IDSE (Recruitment & Conditions of Service) Rules, 2004 providing quota for AEE & AE to the post of Executive Engineer in proportion to their respective strength in the feeder cadre preferably 66.67% of the posts for AE's and 33.33% of the posts for AEE's;
- (d) to direct respondents to hold review DPCs for all promotions made to the post of Ex. Engineer and above after enactment of the 1991 Rules and place the members of applicants-Association at their respective promotional posts with all consequential benefits;
- (e) to direct the respondents to finalise consequent cadre review to the posts of AE's and JE's; and
- (f) to quash MES (Army Personnel) Regulation, 1989 to the extent it prescribes 50% or above quota for appointment of Army Officers to the posts of Ex. Engineer and above in MES and direct fixation of quota for Army Officers at 20% of the posts in parity with Architect cadre in MES."

2. The factual background is briefly as under:-

Applicant No.1 is the Association of Civilian Engineers employed in Military Engineer Services and all the junior engineers including those who possess degree or diploma qualifications, are the members of applicants-association. Applicant-association through the present O.A. has raised a common cause to all its members and for redressal of the rights of its respective members. Applicant No.2 is at present an Assistant Engineer (AE) and thus a member directly affected by the issue involved in the present application.

3. History of the MES can be traced from pre-independence years and the first rules for MES Class-I were promulgated vide gazette Notification

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No.1581 dated 17.9.1949. These rules were amended by SRO No. 41 dated 17.1.1969 under Article 309 of the Constitution of India. 29

4. In 1971 Standing orders were issued and vide Section 2 thereof rules for recruitment and promotion to Class-III & IV posts in MES were framed. Initial entry for the posts of Superintendent etc. Class-III required matriculate or equivalent & diploma in Civil/E&M/Mech. Engineering from a recognized institute. The promotional channel provided for the next higher post Grade-I 50% of the posts were to be filled up by direct recruitment and remaining 50% from Superintendent etc. Grade-II having 3 years service in case of degree holders and 5 years for diploma holders. The next higher post i.e. Superintendent Grade-I was 100% promotional posts from Superintendents Grade-I with 3 years service for degree holders, 5 years for diploma holders and 7 years for those whom qualification has been relaxed. From Superintendent Grade-I the next promotional post was Assistant Executive Engineer (AEE) Class-I. 50% posts of AEE were to be filled by direct recruitment from candidates with engineering degree, on their selection through UPSC while remaining 50% were to be filled from Superintendent Grade-I with two years experience. Promotion to the next higher post i.e. EE from AEEs on completion of 5 years service. Thus to become EE total service required for Superintendent Grade-I and Surveyor Assistant Grade-II was 17 years in the case of diploma holders and 10 years for degree holders.

5. Since the post of Superintendent Grade-I was under consideration for upgradation pursuant to recommendations of IIIrd Central Pay Commission, no promotions from the post of Superintendent Grade-I were made from 1969 till 1977. On 01.02.1977 Class-II Gazetted Engineer cadre was created in MES and the posts of Superintendent Grade-I were converted to AE Class-II. It was also provided that the existing sanctioned establishment of AEEs will now have AEEs and AEs in the ratio of 1:1. The AEs Class-II were made eligible for promotion to the next higher post of EE with the concurrence of UPSC.

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6. In 1983, respondents provided 20% of the posts of Superintendent Grade-I to be filled by direct recruitment from amongst degree holders. Thus the 50% of the posts meant for direct recruitment by virtue of the Standing Orders 1971 were reduced to 20% thus increasing the chances of promotion for promotees to the post of Superintendent Grade-I. True copy of letter dated 01.07.1977 is Annexure P-2.

7. Through letter dated 01.02.1977, respondents were required to frame recruitment rules in Class-II engineer cadre, but the rules in this behalf were not framed till 13.06.1986. These rules provided the post of EE to be a selection post to be filled up 100% by promotion from amongst the direct recruit AEEs Class-I, promotee AEEs Class-I and AEEs Class-II. These rules however provided that recruitment to the post of EEs by promotion shall be as under:-

"(a) 66-2/3% of the vacancies shall be filled by serving Assistant Executive Engineers having the following qualifications:-

- (i) 5 years regular service in the grade in the case of Engineering degree holders.
- (ii) 8 years regular service in the grade in the case of diploma holders.

(b) 33-1/3% of the vacancies shall be filled by Assistant engineers having the following qualifications:-

- (i) 8 years regular service in the grade in the case of Engineering degree holders.
- (ii) 11 years regular service in the grade in the case of diploma holder."

8. After 1986 Rules, the actual position of posts being held by the various categories was that out of 588 posts of AEE as envisaged in letter dated 01.02.1977, roughly 289 posts were held by direct recruits AEE and the remaining 289 by the promotees AEE. However, it was seen that after exhaustion of promotee candidates to the post of AEE, the entire quota of 66-2/3% became available to direct recruit AEE whose cadre strength was 289 as against 33-1/3% quota left for AE Class-II with the cadre strength of 588.

Members of the applicant-association were further discriminated since compared to AEE with degree/diploma in engineering, AE with degree/diploma in engineering were placed in a disadvantageous position as they were required to acquire higher length of service for promotion even to the 33-1/3% posts left for them.

9. On 21.10.988 the posts of AEEs promotees were merged with AEs Class-II, by way of creation of 230 additional posts of AEs Class-II, thus increasing the cadre strength of 588 to 818. Even after the 1986 rules were framed, no promotion to the post of EE was made during all these years resulting in huge backlog. Departmental Promotion Committee for promotion to the post of EE met for the first time in 1988. Thus some members of the applicant-association also occupied 1/3rd quota in the promotional post of EE, on the other hand the remaining 66-2/3% of the posts became available to the direct recruit AEE since the cadre of promotees to the posts of AEE was exhausted till then.

10. IDSE Rules were further amended vide Notification dated 09.07.1991. By these Rules, the 1986 Rules were repealed. Schedule-III to the 1991 Rules provided that 50% of posts of EE available to civilian officers, were to be filled by promotion from amongst the AEEs (direct recruit) and AEs (promotees) in the ratio of 2/3:1/3. These rules, however, provided that AE with 8 years regular service possessing degree alone shall be entitled for promotion to the post of EE. Thus, the promotional avenue for AEs with diploma was completely closed. Besides the above changes, the respondents started reading the word 'post' in the rules as 'vacancy', thereby further reducing the posts meant for the promotees. The rules have been further amended vide Notification dated 10.07.2004 whereby Schedule-III of the Rules of 1991 has been amended and the position of promotion to the post of EE from the cadre of AE possessing diploma in civil, mechanical or electrical engineering, as existed in 1986 Rules, was restored. However, still the anomaly to the extent of admitting imbalance in their prospects of

promotion to the post of EE vis-à-vis AEE continues. Not only this, the Rules of 2004 prescribing 10 years of regular service as a qualification for promotion from the post of AE in the scale of Rs.6000-10500/- to the post of EE in the scale of Rs. 10000-15200/- is also in violation of O.M. No. AB-14017/2/97-Estt.(RR) dated 25.5.1998 (Annexure P-12) issued by the Department of Personnel & Training, which prescribes the fixed qualifying service for such promotion as 8 years instead of 10 years.

11. Learned counsel for the applicants has contended that the Rules of 1981 and 2004 are arbitrary and violative of Articles 14 and 16 of the Constitution of India as they do not provide for equal promotional avenues in the Junior Engineers and also against the rules of 1/3rd quota for promotees compared to accelerated promotion to the post of AEE (direct recruit) whereas the promotees get promotion only after 25-30 years of stagnation. It has, therefore, been prayed that the quota for AEE and AE should be fixed in proportion to their respective strength in the feeder cadre preferably 66.67% of the posts of AEs and 33.33% of the posts for AEEs.

12. Learned counsel has further submitted that the entire frame of the rules that now exists shows that there is a definite tilt in favour of direct recruits and the promotees are practically debarred from any promotional channel beyond the post of AE. In Para 4.14 of the O.A., it has also been submitted that when the respondents did not take any remedial steps, applicant No. 1 on 19.02.2004 approached the Hon'ble Supreme Court by way of Writ Petition (c) No. 150/2004 praying for a writ of mandamus with the reliefs prayed for in the present O.A. However, Hon'ble Supreme Court was reluctant to entertain directly Writ Petition under Article 32 of the Constitution of India by-passing the alternate judicial remedies such as the present O.A. Thus, vide order dated 16.04.2004 (Annexure P-11), Hon'ble Supreme Court permitted the applicant No.1, the petitioner in the Writ Petition before the Hon'ble Supreme Court, to withdraw the Writ Petition and granted liberty to approach any appropriate forum.

13. In the counter-affidavit filed on behalf of the respondents, learned counsel Sh. Rajesh Katyal has, at the outset, submitted that the applicants had concealed material facts before the Tribunal, in so far as they have filed one Writ Petition No. 163(S/S) of 2003 in the Hon'ble High Court of Uttarakhand at Nainital where the subject matter of the writ is the same as that of the present O.A. Respondents No. 1 to 3 in the present O.A. have also been impleaded as respondents No. 1 to 3 in the said W.P. Further, all the reliefs claimed by the applicant in the present O.A. is also the subject matter in the W.P. Hence, by filing the present O.A, the applicants have initiated parallel proceedings. The prayer clause Nos. (a), (b) & (c) of the present O.A. are similar to the prayer clause-A of the WP No. 163/2003. Shri Katyal has further submitted that the Hon'ble High Court of Uttarakhand, vide interim order dated 23.05.2003, had directed the respondents to decide the representation of the applicant and accordingly speaking order dated 22.10.2003 was passed wherein the representation of the applicant was disposed off. The said Writ Petition is still pending. Learned counsel has vehemently submitted that the filing of the present O.A. is misuse of the process of law and the O.A. is liable to be dismissed as it is necessary to avoid any conflicting decisions.

14. Learned counsel, while refuting the claim put forth by the applicants, has submitted that the O.A. has, in fact, become infructuous and is liable to be dismissed as the relief sought in prayer clause-A of the present O.A. has already been granted to the applicants, namely, vide Gazette of India Notification No. 95 dated 10.07.2004 the necessary amendment has been made in schedule-III of the Rules by providing that in para-6 the applicant i.e. AE with 10 years regular service in the grade and possessing diploma in Civil, Mechanical or Electrical Engineering or equivalent from a recognized University/Institution has been made eligible for promotion. By this amendment, the grievance of the applicants stands resolved.

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15. In reply to the relief regarding holding of review D.P.C. w.e.f. 1991 onwards, it has been submitted that the said D.P.C. cannot be held because rules have been amended by Notification dated 10.07.2004, which is effective from the date of publication and, therefore, the D.P.Cs will be held only subsequent to it. Hence, the question of review D.P.C. w.e.f. 1991 does not arise.

16. Learned counsel has also submitted that in so far as the ratio of posts and percentage of the posts to be filled by direct recruits and promotees is concerned, there is no arbitrariness, nor any violation of Articles 14 and 16 of the Constitution of India. The provisions in the rules have been made keeping in view the functional and organizational needs of the department and structural ratio in all the departments need not be the same. Comparison between MES and CPWD cannot be made as the nature of work between the two cadres is quite different. CPWD does not carry out the works/services, which are done by MES like central air conditioning for sophisticated defence equipments/storage sheds of ammunitions/bomb dumps, etc. Therefore, parity with CPWD is not possible.

17. In response to clause (d) of the relief, namely, holding of cadre review, learned counsel has submitted that the matter regarding cadre review has been taken up with the concerned Ministry and on its finalization necessary orders will be issued. In conclusion, Shri Katyal has submitted that the law is well settled by Hon'ble Supreme Court that classification on the basis of educational qualifications and functional requirements is a reasonable one and satisfies the doctrine of equality as envisaged in Article 14 of the Constitution of India. He has emphasized that Para-6 of the OA as stated is wrong and false and as the applicants have not given complete details of the Writ Petition filed before the Hon'ble High Court of Uttarakhand.

18. Learned counsel has placed reliance on a decision of the Apex Court in **Shamkant Narayan Deshpande Vs. Maharashtra Industrial Development Corporation and another** (AIR 1993 SC 1173) wherein it has

been held that it is for the authorities if they so desire, taking into consideration the nature of work, the requisite qualification for the work and the necessity for making such a classification that quotas could be prescribed on the basis of educational qualifications.

19. We have heard at length the arguments put forth by learned counsels for both the parties.

20. A perusal of the rules notified on 10.07.2004 shows that one of the main grievances of the AEs stands redressed. These rules have been the culmination of a long process of amendments in the MES EEs Recruitment Rules and are reproduced below:-

"(i) 66 2/3% of the posts to be filled on non-selection basis from the grade of Assistant Executive Engineer.

(a) Assistant Engineer with eight years regular service in the grade and possessing degree in Civil, Mechanical or Electrical Engineering or equivalent from a recognized University/Institution.

(ii) 33 1/3% of the posts to be filled on selection basis from the grade of Assistant Executive Engineer.

(b) Assistant Engineer with ten years regular service in the grade and possessing Diploma in Civil, Mechanical or Electrical Engineering or equivalent from a recognized University/Institution."

21. In so far as the main grievance of the applicants, namely, enhancement of the quota of promotion from the existing 33.33% to 50% is concerned, we find no arbitrariness or illegality in the fixation of ratio and would also observe that admittedly in many services the ratio between direct recruits and promotees is 66.67% and 33.33%. Even in All India Services, 33.33% are required to be filled up by promotion of State Civil Officers/State Police Officers etc. We find substantial reason and justification in the contention of the learned counsel for the respondents that such ratio and qualifications for filling up posts at various levels are invariably required to be based on functional and requirements of the particular service. The MES cannot automatically compare with the CPWD or for that matter with any other engineering service, as they have to perform jobs/functions which are

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integral to the functioning of the Army and also affect the security of the country.

22. It is also apparent that the applicants have filed Writ Petition before the Hon'ble High Court of Uttarakhand at Nainital where admittedly the same relief has been sought. Be that as it may, even on merits, we find the applicants have already got the relief sought for by them in para-8(a). In regard to their relief regarding change of quota for the promotees from 33.33% to 50%, we do not find any justifiable grounds to interfere with the Recruitment Rules of 2004 as the quota allocated is based on widely accepted principle and percentage of 33.33% and 67.33% between promotees and direct recruits in many service rules.

23. With the above observations, the present O.A. is disposed off. No costs.

Chitra Chopra
(Chitra Chopra)
Member(A)

B. Panigrahi
(B. Panigrahi)
Chairman

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