

Central Administrative Tribunal, Principal Bench

Original Application No.2996 of 1992

New Delhi, this the 18th day of August, 1999

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. N. Sahu, Member (Admnv)

Sunil K. Aggarwal, Assistant Executive
Engineer, Military Engineer Service,
Office of the Chief Engineer, Delhi
Zone, Delhi-110010

- Applicant

(By Advocate - None)

Versus

1. Engineer-in-Chief, Military Engineer
Service, DHQ, PO New Delhi-110011

2. The Secretary to the Govt. of India
Ministry of Defence, DHQ. PO New
Delhi-110011

- Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The reliefs claimed in this Original
Application are as under -

- (i) Respondent no.1 and respondent No.2 be directed to amend the notification No. A/41023/1/90/EIR(0) dt 10 Sep 92 (Annexure-A-5) and Notification No. A/41023/ 1/91-92/EIR(0) dt 10 Sep 92 (Annexure A 6) clearly indicating the authority under which the panels have been issued, the authority under which the DPC was constituted and its recommendations accepted thereof by the Govt of India and UPSC.
- (ii) Respondent no.1 and respondent no.2 be restrained from further operations on the basis of the panels referred to in relief No.1 (enclosed as Annexure A 5 & A 6) to the detriment of the applicant till the time anomalies pointed out in para d & e of the facts of the case are removed.
- (iii) Respondent No.1 and Respondent No.2 be directed to treat as provisional till the pendency of the suit the Engineer-in-Chief's i.e. respondent No.1 promotion cum posting order No. MES/182/92 dated 14 Sept 92 (enclosed as Annexure A 8) in respect of Shri Sunil K Sharma, Kamlesh Kumar, Sudhir K

Arora, Lalit Kumar, Kartar Singh Chaher and Droan Ahuja whose seniority is subsequent to the seniority of the applicant as per AISL (Annexure A 3), and

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- (iv) Pass such other orders as may be deemed fit and proper in the circumstances of the case."

2. At the time of final hearing neither the applicant nor any counsel on his behalf was present. We have heard Shri V.S.R.Krishna, learned counsel for the respondents and perused the record.

3. The applicant's stand is as follows :- he was appointed to a Group "A" post of Assistant Executive Engineer (in short "AEE") (Mech) in Military Engineering Service (in short "MES") Ministry of Defence . He states that his posting as a Staff Officer III to the Chief Engineer and Inspector of Engineer Machinery, etc. are not proper posting orders to benefit his rank. His proper posting should have been as Assistant Executive Engineer or Assistant Technical Examiner. His second stand is that the provision of 33-1/3% quota for departmental promotee Assistant Engineers (in short "AE") Class II for promotion to the post of Executive Engineer (in short "EE") under the provisions of SRO 6E(R1) and SRO 4E(R2) is contrary to the provisions of MES Class-I (RPS) Rules, 1949. He states that his appointment is against the MES Class-I (RPS) Rules, 1949 and, therefore in the matter of promotion he should be subjected to the provision of appendix V. para 6 of MES Class I (RPS) Rules 1949 and he cannot be subjected to SRO 6E (R1) and SRO 4E (R2) of the Rules. He claimed that there was a delay in the offer of appointment and before his appointment here he served in a Government of India Undertaking. He was

not considered by the DPC on the ground of not having completed five years of service without taking into account his service in the PSU. He impugns the fixation of quota for departmental promotees at 33-1/3%. He states that the DPC was not correctly constituted since UPSC was not represented. He further submits that his representation dated 13.2.1989 against the adverse remarks pertaining to ACR of 1987-88 was turned down by the Chief Engineer, Bareilly Zone, without proper application of mind. He further contends that repeal of MES Class I Rules, 1949 is prejudicial to his interest. He questions the propriety of promoting AE Class-II and the rules for such promotion. He contends that 8 years of service rendered as AE Class II does not make him as meritorious as AEE who has rendered four years of service in Class-I.

4. The respondents after notice have challenged each and every contention of the applicant. The respondents contend that select panels were drawn up by duly constituted DPCs. The DPCs made the selection under the provisions of the relevant Recruitment Rules. The panels have been notified. There was no violation of procedure or rules. At page 14 of the counter the respondents have given the details of vacancies in the AEE quota and the AE quota. We extract the said details :-

Year	Number of Vacancies	Vacancies in AEE quota	Vacancies in AE quota	Remarks
1990-91	06 Nos. (To be filled under old recruitment rules, selection posts)	04	02	The applicant was not eligible for consideration against these vacancies as he had not completed 5 years service.

1991-92 (a) 04 Nos. 03 01 -do-
(To be filled
under old
RRs, selection
post)

(b) 48 Nos. 32 16 Applicant was consi-
(To be filled dered by DPC but
under new RRs- found not yet fit.
non-selection
post).

5. The UPSC was associated for 19 vacancies of AEs quota and for 7 vacancies of AEEs quota in so far as the selection method was adopted. Thus, it is submitted there is no justification for the reliefs claimed by the applicant.

6. The applicant has impugned the rules. The important point to be noticed is that the Recruitment Rules for the post of EE were revised after the offer of appointment to the applicant. Under the revised rules of 13.6.1986 EE is a selection post to be filled 100% by promotion of Assistant Executive Engineer Class-I and Assistant Engineer, Class-II in the ratio of 2:1. AEEs with five years regular service in the grade (in the case of Engineering degree holders) are eligible for promotion to EE. In the subsequent revision of the rules dated 9.7.1991 EE has become a non-selection post and AEEs with four years regular service are eligible for promotion to EE. As this is a non-selection post reservation is provided for SCs and STs. It is made very clear that as far as the vacancies of 1990 and 1991 are concerned the DPC took into account the recruitment rules of 13.6.1986. The applicant did not complete the requisite length of

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service by 1991 and, therefore, he could not be considered by the DPC. It has been clearly explained that for 1991-92 there were 52 vacancies. Out of this, four vacancies were to be filled up under the 1986 Recruitment Rules. Even here as the applicant did not complete five years, he was considered ineligible. Out of the balance of 48, 16 were earmarked for AEs and 32 for AEEs. His overall performance was considered by the DPC and he was found unfit for promotion. Although it is a non-selection post, the DPC still could not find the applicant fit. With regard to the challenge of the rules the respondents rely on the decision of the Hon'ble Supreme Court in the case of Asif Hameed Vs. State of Jammu & Kashmir, 1989 (Supp) 2 SCC 364. Which feeder cadre will be considered for promotion and what pay scales can be attributed to different cadres are matters within the province of the Legislature. Their lordships in Asif Hameed's case, has held that the Courts cannot usurp the functions assigned to the executive to exercise its rule making power in any manner.

7. With regard to the challenge of the applicant for promotion of AE (Class II) to the post of EE it is found that the MES Class-I Rules 1949 are no longer operative. These were replaced by Indian Defence Service of Engineers (Recruitment and Conditions of Service) Rules, 1991 (SR0 4E dated 9.6.1991). These rules framed under Article 309 of the Constitution fixed eligibility as well as the percentage of promotion from both AEEs cadre and AEs cadre. The inclusion of AE as a feeder cadre for promotion to EE is entirely within the domain of the executive and the

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Courts cannot question as to why this group has been included. We find different years of experience have been prescribed. AEEs require four years of regular Class-I service whereas Class II AEs require 8 years of regular service. The qualifications are also prescribed for both. This Court cannot question the decision of the executive in this regard. We entirely agree with the contention of the learned counsel for the respondents that this is a matter which is not within the province of the Courts to question as to why a particular feeder cadre has been given a promotional avenue. As different qualifications are prescribed for both the cadres, we do not see any infirmity in the rule. We agree with the counsel that the applicant's stand in this regard is baseless in view of the decision of the Hon'ble Supreme Court in the case of Mallikarjuna Rao Vs. State of Andhra Pradesh & others. AIR 1990 SC 1251, wherein their Lordships have held as under -

"It is neither legal nor proper for the High Courts or Administrative Tribunals to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the Constitution. We are bound to reach scowlingly to any such advice."

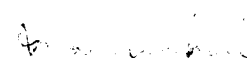
8. The other contention of the applicant has been answered in a summing up by the respondents as follows :- "The number of posts of EE to be held by civilian officers is indicated in schedule I of the IDSE (RCS) rules, 1991 notified in Gazette of India (SR0 4-E) dated 09 Jul 91. Composition of DPC for

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promotion and confirmation to Group 'A' posts in Indian Defence Service of Engineers is indicated in schedule IV to the rules *ibid*. Guide lines on Departmental promotion committees are contained in Dept of Pers & Trg OM No 22011/5/86-Est(D) dated 10 Apr 89. The applicant should have referred to Swamy's compilation on seniority and promotion in central Govt service before rushing to this Tribunal with an ill-informed all ill advised OA. The applicant was considered by a duly constituted DPC against the vacancies of EE for the year 1991-92. The DPC assessed the applicant as "Not yet fit" and accordingly he could not be empanelled in the select panel and could not be approved for promotion."

9. We do not see any justification in this OA. The O.A. is dismissed. No costs.


(K.M. Agarwal)
Chairman


(N. Sahu)
Member (Admnv)