

Central Administrative Tribunal Jammu Bench, Jammu



T.A. No.3500/2020
(SWP No.1722/2014)

Wednesday, this the 7th day of April, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Anand Mathur, Member (A)**

Rahmatullah Wani ST
Junior Engineer (Civil) Age 50 years
Presently posted at Kishrak Zanskar
Development Authority Kargil
s/o Mohammad Yasin Wani
r/o Panikhar, Kargil

..Applicant
(Mr. Waseem Shamas, Advocate *vice* Mr. Bilal Ahmad Khan,
Advocate)

VERSUS

1. State of Jammu & Kashmir through
Commissioner/Secretary to Govt.
Public Works (R&B) Department Civil Secretariat
Srinagar/Jammu
2. Chief Engineer R&B/PMGSY Kashmir at Srinagar
3. Superintending Engineer R&B/PMGSY Circle Kargil

..Respondents
(Mr. Amit Gupta, Additional Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was appointed as Junior Engineer (Civil) (diploma holder) in Public Works (R&B) Department, Jammu & Kashmir in the year 1998. He acquired the AMIE degree in the year 2010. There are two categories of Junior Engineers, namely,



diploma holders and degree holders. Separate seniority lists are maintained for them, in the context of promotion to the post of Assistant Engineer (Civil). Eighteen Junior Engineers (diploma holders) were promoted as Assistant Engineers on that basis, on 09.09.2013. The applicant was not considered. He filed SWP No.1877/2013 before the Hon'ble High Court of Jammu & Kashmir. That was disposed of on 04.10.2013 by taking the view that on acquiring the degree, the applicant came to be shifted to different category altogether and he cannot have any qualms against the promotion of eighteen Junior Engineers (diploma holders) as In-charge Assistant Engineers. However, it was left open to the applicant to make a representation.

2. On a representation made by the applicant in this behalf, the respondents passed an order dated 04.07.2014, informing him that his name was not included in the seniority list of degree holders Junior Engineers and he has to wait for his chance in that category. Feeling aggrieved by that, he filed SWP No.1722/2014 before the Hon'ble High Court.

3. The applicant contends that several Junior Engineers, who were much below him in the category of diploma holders and were promoted as Assistant Engineers, whereas the acquisition of degree, and thereafter Post Graduation degree, are turning out to his detriment.

4. The SWP has since been transferred to the Tribunal in view of reorganization of the State of Jammu & Kashmir and renumbered as T.A. No.3500/2020.



5. Today, we heard Mr. Waseem Shamas, learned counsel *vice* Mr. Bilal Ahmad Khan, learned counsel applicant and Mr. Rajesh Thappa, learned Deputy Advocate General.

6. This case presents a peculiar situation. Normally, acquisition of higher qualification creates the avenues for promotion on out of turn basis. In the instant case, it has worked in the reverse direction. Though the diploma holders were promoted in the year 2013 itself, their contemporary Junior Engineers with degree and Post Graduation degree, are still waiting. The reason is that the quotas are fixed for both the categories. The applicant, who was fairly senior in the diploma category, became far junior in the degree category. It cannot be said that there was any illegality in promoting eighteen Junior Engineers (diploma holders) to the post of Assistant Engineer on in-charge basis. The grievance of the applicant needs to be redressed in an extraordinary manner. The denial of promotion to him, under these circumstances, creates a situation, which has penalized him. He cannot be relegated to the worse position than what he would have been without additional qualifications, if he was in the diploma category, before he acquired degree and PG.

7. In the peculiar situation, we are of the view that the respondents can be required to consider the feasibility of promoting the applicant to the post of Assistant Engineer (Civil) on in-charge basis. It shall be purely personal to him till he retires.



8. We, therefore, dispose of the T.A., directing that the applicant shall be promoted to the post of Assistant Engineer (Civil) on in-charge basis, without reference to his place in the seniority list in the post of Junior Engineer (Civil) (degree holder), if he agrees to continue in the diploma category, and the promotion shall be purely personal to him, without affecting his seniority or other rights of the post with those, who are already promoted. There shall be no order as to costs.

(Anand Mathur)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 7, 2021

/sunil/rk/