

Reserved

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This the 81 day of February 2000.

Coram: Hon'ble Mr. S. Dayal, Member (A.)
Hon'ble Mr. Rafiq Uddin, Member (J.)

Original Application No. 465 of 1999.

District Allahabad.

1. Sushil Kumar Mishra s/o Dr. D.K. Mishra, A.E.E. in the M.E.S., M.O.D. presently posted at the office of Garrison Engineer (West), Allahabad.
2. Mohd. Sadi Hashmi s/o M.A. Hashmi, A.E.E. in the M.E.S., M.O.D. presently posted at the office of Garrison Engineer (Air Force), Chakeri, (Kanpur).
3. Jitendra Acharva, s/o Sri Mohan B. Acharya, A.E.E. in the M.E.S. M.O.D. presently posted as Asst. Garrison Engineer (Independent), R.& D at Kanpur.
4. Vinay Kumar A grahari s/o Shri B.P. Agrahari, A.E.E. in the M.E.S., M.O.D. presently posted at the office of Garrison Engineer (E), Allahabad.
5. Neeraj Mehrotra, s/o Shri A.N. Mehrotra, A.E.E. In the M.E.S., M.O.D. presently posted at the office of Chief Engineer (Air Force), Bamrauli, Allahabad.

(Sri Saumitra Singh, Adv. and
Sri S.C. Budhwar, Adv.)

. . . Applicants.

Versus

1. The Union of India, represented by the Secretary, Ministry of Defence, Govt. of India, Sough Block, Army Head Quarters, New Delhi.
2. Engineer-in-Chief, Army Headquarters, Kashmir House Rajaji Marg, New Delhi-11.
3. Union Public Service Commission, through its Secretary, Shahjahan Road, Dholpur House, New Delhi .
4. Sri K.K. Tiwari, M.E.S., No. 430019. } All posted in the office
5. Sri R.S. Khattar, M.E.S. No. 304475. } of G.E.(P.) Nevy, Delhi
6. Sri S.K. Saxena, M.E.S., No. 232007 } Cantt.
7. M.E.S. 306315, P.C. PAUL, A.E. Einc Branch, Army H.Q., New Delhi.
8. M.E.S. 307393 K D PAUL, A E Einc Branch PALAM, New Delhi Cantt.

P.T.O.

9. M.E.S. 440151, DAYA RAM, A E
G.E (South) PALAM, New Delhi Cantt.
10. M.E.S. 440090 N.N. BISWAS, A E
C E DZ, Delhi Cantt.
11. M.E.S. 302007, M L JAIN, A E
Einc Branch, Army H.Q, New Delhi.
12. M.E.S. 210812, FATEH SINGH, A.E.
G E (P) No. 1 Jodhpur (Rajasthan)
13. M.E.S. 306525, R.S. RANGEELA, A.E.
C.E.(A F) W A C, JALANDHAR.
14. C.S. Sandhu, A.E.
C.E.(A F) WAC, JALANDHAR.
15. AVTAR SINGH, A E
C E (A F) W A C JALANDHAR.
16. M.E.S. HARNEK SINGH, A E
C W E AMRITSAR.
17. M.E.S. N P. AGGARWAL, A E
G.E., HALWARA.
18. M.E.S. INDER SINGH, A E
G. E HALWARA, New Delhi.

(Through Sri Satish Mandhyan, Adv (For Official
respondents.

and
Sri Rakesh Pandey, Adv. for Privat respondents.)

. . . Respondents.

Order (Reserved)

(By Hon'ble Mr. S. Dayal, Member (A.)

This application has been jointly filed by
five applicants who have been working as Assistant
Executive Engineer in Military Engineering Service
for the following reliefs:-

- (i) Issuance of a direction to the respondents to
promote the applicants to the post of Executive
Engineer in Military Engineering Service retros-
pectively ^{w.e.f.} from the date promotion was due along
with consequential benefits.
- (ii) The respondents be directed to act strictly
in confirmity with S.R.O. 4-E dated 9.7.91
while filling up the vacancy in the post of A.E.
in M.E.S. who belong to Civilian officers and

to maintain the quota of 2/3 vacancies earmarked for A.E.E. of M.E.S. while filling the existing vacancies.

- (iii) Issuance of a direction to the respondents to restructure the promotion system of departmental promotees of Engineer Cadre in the sense that it is made similar to that Surveyors Cadre.
- (iv) To issue an order or direction of suitable nature commanding the respondents to grant three upgradations in pay scale after completion of 4, 9 and 13 years of service as recommended by the Fifth Central Pay Commission.

2. The applicants have claimed that they were recruited by the Union Public Service Commission through combined Engineering Service Examination. This examination is conducted for recruitment to various departments/ services such as Indian Railways, Post and Telegraphs, Indian Ordnance Factories, C.P.W.D., Central Electricity Authority, Central Water Commission, All India Radio, M.E.S. etc. The applicants claim that they have been selected as Group 'A' Officers through this examination. The applicants claim that it was mentioned in the Prospectus of combined Engineering Services Examination that the applicants would be initially appointed as Asstt. Executive Engineer and will be promoted as Executive Engineer within six years of service or under. The applicants claim that the Ministry of Defence has Under Section 192 of the Army Act 1950 made regulations notified in S.R.O. of 19-E. dated 31.7.89. In the schedule of this S.R.O. number of posts, appointments and percentage of Army Officers has been given. Schedule I of the S.R.O. shows that number of posts

are 890 out of which 445 are to be filled up by Civilian Officers. Under Schedule II 2/3 of the posts of Executive Engineer are to be filled up by non selection basis amongst Asstt. Executive Engineer with four years of regular service and 1/3 posts are to be filled up from amongst Asstt. Engineers. It is claimed that this has without exception been done for a number of years. However, no D.P.C. was held for promotion since 1997. It is claimed that Engineer-in- Chief Army Head Quarters have issued letter No. 41254/policy/E-1B dated 21.2.91 laying down career planning and posting policy in M.E.S. Civilian Officers. It lays down that the endeavour will be to grant first promotion to fresh entrants after four years of service. It is also claimed that the Fifth Central Pay Commission suggested that Group 'A' Cadre should be given three upgradations in three pay scales after completion of 4, 9 and 13 years of service. It is claimed that the applicants who are A.Es. are not being promoted although they have been completed 8 to 10 years service in the post of A.E.E. that they should have been promoted after completion of four years of service. The applicants have drawn analogy of Surveyors Cadre because sometimes A.E.E./E.E. are also made to perform the duties of Surveyors Cadre. It is claimed that the batchmates of the applicants and even junior officers have been promoted in the rank of Surveyor of works equivalent to Executive Engineer while the applicants are being made to mark time. It is claimed that recruitment of Surveyors cadre is also through the same examination. The applicants have mentioned that channel of promotion in Surveyors Cadre is that junior surveyors works

(A group 'B' post in the same scale as that of Asstt. Engineer) are promoted to Asstt. Surveyor of Works (in the same scale as to that of Asstt. Executive Engineer which is group 'A' post). The applicants claim that at present the Asstt. Engineers are getting two promotions therefore the promotion system of departmental officers in Engineers Cadre requires restructuring. It is claimed that in parallel services like Railways, C.P.W.D., Indian Ordnance Factory, Post and Telegraph etc. the promotion /senior scale is taking place on or before completion of stipulated period of service which is four years after senior scale and 8 to 9 years for the next scale. It is claimed that many of the batchmates of the applicants are two posts higher than the applicants. The applicants claim that they have come to know that a move is underway to increase the quota of Asstt. Engineers i.e. departmental promotees and to appoint them in the vacancies which are to be filled up by A.E.E. of M.E.S. The applicants have represented but no action has been taking by the respondents to redress their grievances. It is alleged that the respondents intended to pass necessary orders filling up all the vacancies in the post of E.E. of departmental promotees who are A.Es.

3. The arguments of Sri S.C. Budhwar for the applicants and Sri Satish Mandhyan and Sri Rakesh Pandey for the respondents have been heard. The pleadings have been perused. The parties have chosen to file written arguments which along with the arguments made before us have been considered.

4. We do not propose to consider the reliefs

No. III and IV. Relief No. III is for amendment of Recruitment Rules. The applicants have claimed a relief No. I and II under the existing Recruitment Rules, therefore we can not pass orders after considering the existing Recruitment Rules and also directing the respondents to amend them. We also do not propose to adjudicate relief No. IV which seeks a direction to the respondents to act upon the recommendations of Fifth Central Pay Commission. The recommendations of Fifth Central Pay Commission had been made sometimes back and have already been implemented. It is not known or brought on record as to whether this particular recommendation has been accepted. In case such a recommendation has been accepted, it would require action by way of amendment to Recruitment Rules. The applicants may make suitable representations before the respondents who may consider and pass orders on their representations as deemed fit. An order on these two reliefs sought in this O.A. is neither called for nor germane to the controversy raised in reliefs sought as relief No. I and II mentioned earlier.

5. The controversy with regard to promotion to the post of Executive Engineer from amongst A.E.Es. and A.Es. is a short controversy and is the main reason for filing of the O.A. The controversy revolves round the interpretation of S.R.O. 4-E. This S.R.O. has been notified under Article 309 of the Constitution for regulating the methods of recruitment and the conditions of service of persons appointed to Indian Defence Service of Engineers subject to regulations notified in S.R.O. 19-E dated 31.7.89 relating to the number of posts, appointments and percentage of Army Officers of the Corps of Engineers in the Military

Engineers service department. The relevant rule in this connection is rule 7 of the S.R.O. which relates to future maintenance of service and lays down as follows:-

" After the commencement of these rules the vacancies excluding the vacancies reserved for Army Officers under the Military Engineer Service (Army Personnel) Regulations 1989 shall be filled in the manner as provided in Schedule 2,3 and 4. Schedule 2 to 6 of S.R.O. mentions the minimum educational qualification and age limits for direct recruits to the post of Asstt. Executive Engineer Group A to be filled up on the results of the examination to be conducted by the Union Public Service Commission.

Schedule 3 which is particularly relevant in this case lays down with regard to Executive Engineer (3000-4300) that the post shall be filled up by promotion and 66 2/3 percent post were to be filled up on non selection basis from the grade of Asstt. Executive Engineer while 33 1/3 percent posts to be filled up on selection basis from the grade of Assistant Engineers.

Schedule 4 gives composition of Group A Departmental Promotion Committee. Thus the controversy boils down to interpretation of Rule 7 and Schedule 3. [↓] ~~Where~~ one to read Schedule 3 in isolation, the interpretation could have been that the future maintenance of service was to be done in such a way so that 66 2/3 percent of posts of Executive Engineers were occupied by officers promoted from the cadre of Asstt. Executive Engineer and 33 1/3 percent posts in the same cadre were to be occupied by officers promoted from the grade of Asstt. Engineers. The ~~late~~ ^{logic} of this interpretation is stressed by the respondents when they contend that the number of the officers promoted from the grade of Asstt. Engineers in the cadre of Executive Engineers

has progressively come down which can not be the intention of the respondents in making the rule. We can not accept this contention because Schedule III can not be read in isolation and has to be considered along with rule 7 of S.R.O. 4-E. Rule 7 clearly mentions that the vacancies were to be filled up in the manner provided in Schedule III. Thus the proportion of 2 : 1 in the cadre of Executive Engineers was to be apportioned from the vacancies which arose from year to year for Asstt. Executive Engineers and Asstt. Engineers respectively. It is true that Schedule III mentions the word " Posts" and not " Vacancies" but the word "Posts" has to be considered in the context of provisions made in Rule 7 of S.R.O. 4 -E and would mean of posts which had fallen vacant during a particular year. The contention of learned counsel for the official and private respondents that Schedule III provided for two separate groups in the post of Executive Engineers, one of which consisting of 297 posts to be filled from amongst Asstt. Executive Engineers and the other group consisting of 148 posts to be filled up from amongst Asstt. Engineers can not be accepted if rule -7 is read along with Schedule III. None of the parties has come up with the number of Asstt. Executive Engineers and Asstt. Engineers promoted to the post of Executive Engineers at the time of initial constitution of service. Even if Executive Engineers cadre consisted of 297, Asstt. Executive Engineers 297 officers promoted from amongst Asstt. Executive Engineers and 148 officers promoted from amongst Asstt. Engineers at the time of initial constitution, the application of ratio 2:1 would have changed the proportion progressively given the situation that the Executive Engineers promoted from amongst

Asstt. Engineers retired earlier than those promoted from amongst Asstt. Executive Engineers. To say that this was not the intention is something which can not be accepted. If such was the intention, it could have been made clear in Rule 7 by stipulating that an Executive Engineer's post falling vacant due to promotion of Asstt. Executive Engineer was to be filled up from amongst Asstt. Executive Engineer if it fell vacant and a similar provision could have been with regard to Executive Engineers post which was filled up by promotion from amongst ~~Executive~~ ^{Asstt.} Engineers. Once promoted to the cadre of Executive Engineers, Asstt. Engineers as well as Asstt. Executive Engineers merge in the one group and distinction can not be made nor separate identity maintained. Hence posts falling vacant can not be attributed to as falling vacant on account of promotion retirement, death etc. of Asstt. Executive Engineer or Asstt. Engineer. Therefore, the only logical interpretation of S.R.O.-4 E would be that Schedule III is governed by provisions of Rule 7 and the word post in Schedule III has to be interpreted as post falling vacant.

6. Another argument of learned counsels for the respondents is that Ministry of Personnel, Public Grievances and Pensions Office Memorandum No. 36012/2/96-Estt.(Res) dated 2.7.97 sets at rest the controversy of promotion in the basis of posts or vacancies. While making this contention, the respondents themselves admit that the Office Memorandum of the Department of Personnel relates to reservation roster which has been made post based in order to implement the Apex Court judgment in the case of R.K. Sabharwal Versus State of Punjab. It was contended by the respondents that they now maintain a roster for

297 posts to be filled from amongst Asstt. Engineers. This argument is erroneous because the Supreme Court Judgment between R.K. Sabharwal and the State of Punjab did not consider the controversy which is the subject matter of O.A. before us and, therefore, it can not be taken recourse to for justifying the action of the respondents in enumerating all the 58 posts as the posts to be filled in by promotion of Asstt. Engineers. The Office Memorandum is merely an executive instruction which cannot be taken as amending the statutory rules. The rosters are maintained for various posts- Executive Engineers, Asstt. Executive Engineers and Asstt. Engineers. Once an official is promoted to the cadre of Executive Engineer, he loses his identity as Asstt. Executive Engineer or Asstt. Engineer and element of reservation will be fulfilled if a candidate from either of the two feeder cadres belonging to the specified community is promoted. Paragraph 4(c) of the Office Memorandum dated 2.7.97 will not be applicable firstly because it is applicable to a case where some posts are to be filled up by direct recruitment and some by promotion which is not the case here as both Assistant Executive Engineers and Assistant Engineers are promoted to the cadre of Executive Engineer. Secondly, such an interpretation would be against the provisions of S.R.O. 4-E in the present case.

7. Yet another argument advanced by learned counsel for the official respondents was that the Principal Bench had observed in O.A. 405/98 while dismissing it that only Assistant Engineer by promoted as Executive Engineer till they attain 1/3 share is arguable. The learned counsel for official respondents

claims that there was no infirmity in the decision of the respondents to fill up all the 58 vacancies of Executive Engineers by promotion of Assistant Engineers. It can be clearly seen from the findings we have arrived at in the previous two paragraphs that this contention of learned counsel for the official respondents is totally ~~un~~^{re}tainable. The respondents themselves had been following the policy of filling up 2/3 vacancies from amongst Asstt. Executive Engineers and 1/3 vacancies from amongst Asstt. Engineers ~~while~~ holding D.P.C. for filling up vacancies. They have suddenly made a turn about without justification in the matter of filling up these 58 vacancies.

8. The learned counsel for privat respondents has raised another issue that Scheduled Caste officers belonging to a cadre of Asstt. Engieneers can be justly dealt with only in case of 58 vacancies are filled up from amongst A sstt. Engineers and the number of 148 officers working as Executive Engineers from the cadre of Asstt.Engieneers is reached. This issue has already been indirectly answered in an earlier paragraph. However, it may be mentioned here in connection with this contention that the Scheduled Caste Officers belonging to a cadre of Assistant Engineer can not claim any right better than that which is available to all Assistant Engineers in the cadre because they are only a subset of the set of Assistant Engineers. We are clearly of the view that filling up of posts falling vacant in the proportion of 2/3 from Executive Engineers and 1/3 from Assistant Engeineers is the only ratio provided in S.R.O. 4-E.

9. In view of the above, we partially allow the O.A. to the extent of directing the respondents to fill up the vacancies in proportion of 2/3 from Assistant ^{Executive} Engineers and 1/3 from Assistant Engineers on the basis of provisions of S.R.O. 4-E. There shall be no order as to costs.

Rafiquddin.
Member (J.)

Nafees.
Member (A.)

Nafees.