

In The Central Administrative Tribunal
Calcutta Bench

OA.137 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Ashok Kumar Majumdar

.... Applicant

- Vs -

- 1) Union of India through the Secretary,
Ministry of Surface Transport (RW),
Transport Bhawan, New Delhi - 110 001.
- 2) The Chief Engineer(Mechanical), Ministry
of Surface Transport(RW), Transport Bhawan,
New Delhi - 110 001.
- 3) The Superintendent Engineer(Mechanical),
Ministry of Surface Transport(RW), 8A,
Lindsay Street '3rd Floor', Calcutta-87.

..... Respondents

For the Applicant : Mr. K. Sarkar, Advocate

For the Respondents: Ms. U. Sanyal, Advocate.

Heard on : 28-3-2000 &
29-3-2000.

Date of Order : 05/4/2000

ORDER

G.S. MAINGI, AM

by

This O.A. has been filed by Shri Ashok Kumar Majumdar, working as a Head Project Computer (Mechanical) in the Office of Superintending Engineer(Mechanical), Ministry of Surface Transport (Roads Wing), Calcutta. The applicant has claimed the following reliefs:

(a) To declare and direct the respondents that the applicant is entitled to be promoted as Assistant Engineer (Mech.) w.e.f. 31st May, 1988.

(b) A direction be given upon the respondents that the new Recruitment Rules of 1988 may be modified like previous Recruitment Rules of 1969 as such an

Assistant Engineer(Mech.) post should be there in the new Recruitment Rules of 1988.

2. The applicant who is a diploma holder in Mechanical Engineering was appointed as Project Computer (Mech.) ^{at} a pay of Rs.425/- per month in the pay scale of Rs.425-15-500-EB-560-20-700/- plus usual allowances as admissible from time to time w.e.f. 31.5.1980 vide Ministry of Shipping and Transport (Roads Wing) Office Order No. 75/80 dated 24th July, 1980 issued from the file No. AII-2(2)/77. The applicant was working as Head Project Computer (Mech.) vide letter No. AII-2(24)/83-Pt. I dated 7-1-1984. When the applicant was working as Head Project Computer (Mech.), his Superintending Engineer wrote a letter to the Ministry of Shipping and Transport on 20-5-1985 recommending therein that since the applicant was eligible for promotion after putting in five years' service as Project Computer (Mech.) w.e.f. 31.5.1980 he should be considered for promotion as he is a Diploma Holder in Mechanical Engineering. The Superintending Engineer wrote this letter ignoring ~~about~~ the Recruitment Rules and probably he was not aware of any provision of the Recruitment Rules. This ^{epm} ~~the~~ letter was replied by the Ministry informing the Superintending Engineer (Mech.) vide letter dated 7-6-1985 from File No. RW/AII-2(8)/85 (Annexure A-4 to the application). According to the Recruitment Rules, the post of Head Project Computer (Mech.) is filled up by 100% by promotion from amongst Project Computers who have completed 5 years service in the grade of Project Computer and as there are still 8 persons who are senior to the applicant in the grade of Project Computer, he will be considered for promotion in his turn. This continued and the applicant became impatient for promotion as Assistant Engineer (Mech.). He also appears to have enjoyed the sympathy of his Officers of Calcutta as they have recommended his case for promotion from time to time being unmindful of the provision of the Recruitment Rules modified in 1988. The Recruitment Rules of 1969 ^{were then} superseded by new Rules on 20.1.1988 and the new Rules are known as Central Engineering Service (Roads). This Rules cover the post of Assistant Engineer (Civil) and the post in question relating to Assistant Engineer (Mech.) was deleted for

their reply to the O.A. It is observed from the Ministry of Surface and Transport (Roads Wing) Order No.76/91 dated 5-12-1991 issued for the File No.A-32016/1/90-AII that the applicant Shri A.K. Majumdar, Project Computer at Regional Office (Mech.), Calcutta was promoted to the post of Head Project Computer in the same Office in the pay scale of Rs.1600-50-2300-EB-60-2660 w.e.f. the date he joined duty until further orders. It can be observed that right from early 1980s the applicant was working as Head Project Computer on ad-hoc basis.

3. The case was heard on two days i.e. on 28-3-2000 and 29-3-2000 when Ld. Advocate Mr. K. Sarkar appeared on behalf of the applicant and Ld. Advocate Ms. U. Sanyal appeared on behalf of the respondents. Both the Ld. Advocates argued the case vehemently. Ld. Advocate Mr. Sarkar for the applicant insisted that the Recruitment Rules of 1988 should be declared as ultra-vires as the Administrative Tribunal has the power to do so. Ld. Advocate Ms. Sanyal insisted that there is nothing wrong with the Recruitment Rules of 1988. Both the Ld. Advocates explained the position. Ms. Sanyal drew our attention to para 5 of the respondents' reply and sub-para a, b and c are extracted below :

- a) The Recruitment Rules for the posts of Assistant Engineer(Civil) and Assistant Engineer(Mechanical) were framed in the year 1969. At that time, the number of posts of Assistant Engineer(Civil) and Assistant Engineer(Mechanical) were 9 and 1 respectively.
- b) As per these Recruitment Rules, the method of recruitment was by promotion, failing which by transfer on deputation. Promotion was made from Chief Draftsman, failing which by Head Project Computer and Head Draftsman (Later project Computer and Draftsman Grade 'A' were also included in feeder grade).
- c) The eligibility condition for promotion to the post of Assistant Engineer(Civil) was degree in Civil Engineering having 3 years total service or Diploma in Civil Engineering having 8 years total service. Similarly,



for promotion to the post of Assistant Engineer (Mechanical), Degree or Diploma in Mechanical Engineering was required. In 1982, total sanctioned strength of Assistant Engineer(Civil) and Assistant Engineer(Mechanical) was upgraded to 16 and 1 respectively.

Ld. Advocate Ms. Sanyal further drew our attention to sub-para 'g' of para 5 of the reply of the respondents which reads as under :

"After examining all the points, it was decided that since none of the officials in the feeder grade i.e. only Chief Draftsman (the posts of Head Project Computer, Project Computer, Head Draftsman and Draftsman Grade 'A' were excluded from feeder grade as per instructions of Department of Personnel and Training and U.P.S.C.), was Degree or Diploma holder in Mechanical Engineering and also since Degree or Diploma holders have already two promotional channels viz. Head Project Computer and Chief Draftsman, therefore, it will not be unfair, if the only post of Assistant (Mechanical) is surrendered. Therefore, it was not felt necessary to revise the Recruitment Rules of Assistant Engineer(Mechanical) and only the Recruitment Rules for the post of Assistant Engineer(Civil) was revised in supersession of earlier Recruitment Rules for Assistant Engineer(Civil) and Mechanical of 1969. The new Rules came into force with effect from 20.1.1988."

This was done at the instance of the Quick Review Committee which was set up to give its report on re-organisation of technical staff in the Roads Wing of the Ministry.

4. The respondents in their reply at para 7 of page 8 have explained that the applicant wants promotion to the post of Assistant Engineer(Mechanical). However, there is no sanctioned post of Assistant Engineer(Mechanical) in this Ministry at this stage. There are 11 posts of Assistant Engineer(Civil). The Recruitment Rules have been framed as per the instructions of Department of Personnel and Training and U.P.S.C. Hence, framing of Recruitment Rules was

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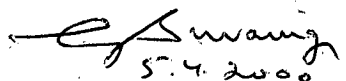
not done in a clandestine manner. It is not true that the chance of the promotion of the applicant is nil in the near future. He joined as Project Computer on 31.5.1980 and has been promoted to the post of Head Project Computer on 5.12.1991. Further, he is in the feeder grade for promotion to the post of Chief Draftsman. Thereafter, Chief Draftsman are in the feeder grade for promotion to the post of Technical Assistant (pay scale of Rs.2000-3500/-). The pay scale of the post of Assistant Engineer is the same as that of Technical Assistant. Thus, in any case, he has a chance of promotion upto to the level of Technical Assistant which is a Group 'B' Gazetted post, equivalent to the grade of Assistant Engineer.

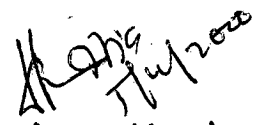
5. The applicant also filed rejoinder in which no new issue was raised.

6. We have carefully considered the arguments advanced by the applicant and the contentions made by the respondents. But we cannot say any wrong in the revised Recruitment Rules that the Recruitment Rules for Assistant Engineer (Civil) of 1988 have been framed in a clandestine manner in which applicant's channel of promotion has been ceased and by promulgation of the Recruitment Rules, his chance of promotion to the post of Assistant Engineer(Mech.) has become nil. This is absolutely misleading statement. In the Recruitment Rules 1988 in respect of Assistant Engineer(Mechanical) there is only one post of Assistant Engineer(Mechanical) available in the whole organisation. It is not understood why the applicant is very keen for promotion to the post of Assistant Engineer(Mech.) when two promotions are available to him as explained by the respondents in para 7 which indicates that the applicant is in the feeder grade for promotion to the post of Chief Draftsman in the pay scale of Rs.2000-3200/- and thereafter, Chief Draftsman is in the feeder grade for promotion to the post of Technical Assistant in the pay scale of Rs.2000-3500/-. The applicant right from the beginning has been showing his keenness for promotion as Assistant Engineer(Mech.). This is because of sympathy shown for him by the Superintending Engineer(Mech.) recommending his name for promotion to the post of Assistant Engineer(Mechanical) being unmindful of the provision of the Recruitment Rules 1988. But we cannot find

any wrong in the promulgation of the Recruitment Rules. We also find nothing wrong with the current Recruitment Rules to declare these as ultra-vires.

7. In view of what is stated above, we find no merit in the application of the applicant. We, therefore, dismiss the same awarding no costs.


5.4.2000
(G.S. Maingi)
Member(A)


(D. Purkayastha)
Member(J)

DKN