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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO.149/2008

Date of Order: 20.08.2010

**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER
HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER**

Mahendra Kishore Sharma S/o Shri Dayal Prasadji Sharma, by caste Sharma, age 53 years, Junior Engineer in the office of Garrison Engineer (MES) Udaipur presently working as Junior Engineer (MES), Udaipur.

....Applicant

Mr. Manoj Bhandari, counsel for applicant.

VERSUS



1. The Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, Government of India, New Delhi.
2. The Engineering-in-Chief, Military Engineering Services, Integrated Headquarter of MOD (Army) DHQ, PO, New Delhi.
3. The Chief Engineer, Southern Command, Pune-111001.
4. The AGE-I (Garrison Engineer), MES, Ekling Garh Cant Area, Udaipur.
5. The Director General (Personnel), Military Engineering Services, Engineering-in-Chief's Branch, Army HQs, Kashmir House, Rajaji Marg, New Delhi.
6. Shri H.K. Bhandari, Superintending Engineer, Director (Legal), HQ, Chief Engineer, Southern Command, Pune.

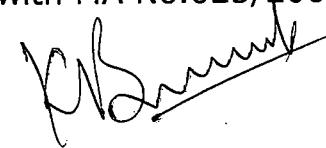
.....Respondents

Mr. Kuldeep Mathur, counsel for respondents.

ORDER (ORAL)

(Per Hon'ble Dr. K.B. Suresh, Judicial Member)

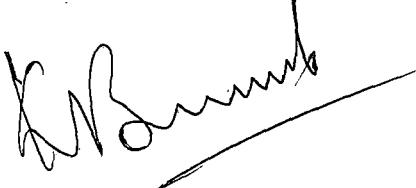
We heard both the sides. The crux of the matter is that the applicant was apparently not passed the qualificatory bench-mark. However, he was benefited by the order of this Tribunal passed in OA No.302/2000 with MA No.023/2001 which infact conferred upon



him the benefit of ACP. Apparently, the respondents had taken up the matter before the Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition No.4619/2002 and vide order dated 22.11.2002 the Hon'ble High Court of Rajasthan held that "*We find that the directions as has been given by the Tribunal are just and proper and meet the ends of substantial justice. The service which was rendered by the respondent in the Beas Project has been directed to be counted for the purpose of grant of benefit under the ACP Scheme and the earlier benefit availed by the applicant under the 5-15 years scheme, will stand withdrawn simultaneously and the benefit received under the 5-15 years scheme, will be adjusted against the benefits of the ACP Scheme.*" Therefore, by this order of the Hon'ble High Court benefit of ACP was granted to the applicant.

2. Aggrieved of this order of the Hon'ble High Court the respondent filed an S.L.P. bearing No.6636/2007 before the Hon'ble Supreme Court which was also dismissed by the Hon'ble Supreme Court vide its judgment dated 15.05.2007.

3. Thereafter, it appears that a contempt petition bearing No.66/2002 in OA No.302/2000 was filed by the applicant. Subsequently, the respondents passed an order-dated 28.12.2006, and the service rendered by the applicant in Beas Construction Board had been taken into account for the purpose of grant of benefit under the first ACP. In view of the averments made by the respondents, the said Contempt Petition stood closed. The



respondents have also averred that the grant of second ACP was under consideration.

4. At this point of time the respondents would advance a case that qualificatory bench-mark relating to passing of examination of MES Procedure was not available to the applicant. It is also contended that the financial benefits under the ACP shall be granted from the date of completion of the eligibility. Since he has not passed the MES Procedure Examination and he may be ineligible and the DOPT circular also speaks about the same. They also raised the contention that the applicant is a diploma holder but they apparently, submitted that the subsequent circular would clear this situation that applicant has not passed MES Procedure examination. The learned counsel for the applicant submits that MES Procedure Examination, which has been relied by the department, is no longer relevant. It is also a pre selection examination.

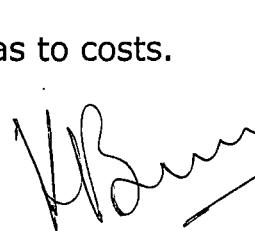
5. But this factor, which they have raised now, ought to have been raised in the year 2000 or at the earlier possible opportunity. It is submitted across the bar that it is not the question involved here. Besides the benefit conferred upon him under 5-15 years were withdrawn and first ACP was granted. Therefore by a process of subrogation a legitimate expectation was created in favour of the applicant. The respondent are estopped from claiming otherwise as the ACP was granted in lieu of a benefit being withdrawn. Therefore, it is incumbent on the respondents to see that applicant should continue to get the benefit and cannot be

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stopped. Therefore, even if the qualificatory bench-mark of passing the MES Procedure examination is not possessed by the applicant for grant of upgradation, we hold that he is entitled to second ACP also. Therefore, OA is allowed and we declare that the applicant is entitled to get the second financial upgradation in pursuance of order dated 23.03.2007. The respondents are directed to grant him the second financial upgradation from the appropriate date with appropriate pay scale. All the other consequential benefits which flow naturally from this is also allowed to him without any interest if it is granted within a time frame of three months from the receipt of a copy of this order and if the same is not paid to the applicant within the above stipulated period, thereafter, the applicant is entitled to get interest at the rate of 10% per annum from the date from when it was due. Accordingly, OA is allowed as above. No order as to costs.

Upover
(V.K. KAPOOR)
Administrative Member

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(Dr. K.B. SURESH)
Judicial Member