

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.465/2004

FRIDAY THIS THE 22nd DAY OF DECEMBER, 2006

C O R A M

**HON'BLE MRS. SATHINAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

T.H.Bhaskaran, MES NO. 305215
S/o late M. Chandran
50/262-C, Pooja-Priya
Al Ameen School Road
Edappally, Kochil-682 04

.. Applicant

By Advocate M/s Dandapani Associates

Lvs.

- 1 Union of India represented by
Secretary, Ministry of Defence
South Block
New Delhi-110 011
- 2 The Engineer-in-Chief
Army Headquarters
Kashmir House, DHQ PO
New Delhi-110 011
- 3 The Director General
Permanent & Coordination
Engineer-in-Chief's Branch
Army Headquarters
DHQ PO
New Delhi-110 011
- 4 The Chief Engineer
Southern Command
Pune-411 001.

.Respondents

By Advocate Mr. P.Parameswaran Nair, ACGSC

ORDER

HON'BLE MRS. SATHINAIR, VICE CHAIRMAN

This Application is not against any particular order. The facts are narrated as under:- The applicant who joined the Military Engineering Service (MES) as Superintendent B/R-II in 1963 at Garrison Engineer (P) Accn. Project, Palam, New Delhi was subsequently promoted as Surveyor Assistant Grade-I (SAG-I) w.e.f. July, 1984. As per the then existing Recruitment Rules, the next post to which he could aspire for promotion was Assistant Surveyor of Works (ASW) Group-AI post in the scale of pay of Rs. 700-2300, the applicant having had the requisite qualification in Building and Quantity Surveying. The relevant Recruitment Rules stipulates that Surveyor Assistant Grade-I with Graduation in Civil Engineering or a pass in Direct Final Examination of Institution of Surveyors (India) is the pre-requisite qualification for promotion as ASW. The applicant passed the aforesaid qualifying final examination in the year 1974 and he became eligible to be promoted to the post of ASW. The applicant had also put in more than 5 years of service in the grade of Surveyor Assistant, as stipulated in the Rules, in the year 1989. The Rule further stipulates that Surveyor Assistant Grade-I shall have put in minimum 5 years of service in the grade to become eligible for the post of ASW. Annexure A1 Rules were issued in supersession of MES(Survey cadre) Recruitment Rules, 1975 which was in existence when the applicant entered service. The applicant had passed the requisite qualifying examination viz. Final Examination of Institution of

Surveyors(India) in the year 1974 itself. The applicant accordingly became eligible for next promotion as ASW in the year 1989.

2 The applicant understood that there were many vacancies of ASW in the following years, i.e. From 1989 onwards and made several representations to consider his candidature for being considered to the post of ASW by holding Departmental Promotion Committee. The applicant's representations fell on deaf ears and it evoked no response. The respondents did not hold DPC and vacancies remained unfilled against available vacancies of ASW from 1989 onwards. The applicant on being aggrieved by the non-feasance on the part of the respondents in not initiating necessary steps in this direction, sought voluntary retirement and he accordingly retired from service on 31.12.1994 in the post of Surveyor Assistant Grade-I. He had been granted pension on the basis of pay he had drawn in the post of Surveyor Assistant Grade-I. At the time of his retirement he was stagnating in the scale of pay of SAG-I. The respondents prepared Panel for promotion to the post of ASW against vacancies 1992-93 and 1993-94 as in Appendix-A to Engineer-in-Chief Branch, New Delhi No. BM-2033/R-DPC/SA to ASW 92-93 and 93-94/ELR dated 2/2003 which is enclosed as Annexure A-2. It is submitted that the applicant is ranked at Sl. No. 36 in the panel. It is discernible from the Panel that the respondents sought to fill up vacancies which arose in the years 1992-93 and 1993-94, whereas vacancies of ASW were prevailing

✓

from 1989 onwards for which the applicant was eligible as he had completed 5 years of requisite minimum service as SAG-I and he was qualified to be considered for such vacancies. It is further submitted that his immediate junior, Shri Kripal Singh figuring at Sl. No. 37 in the Panel had already been promoted as ASW. Similarly Shri Subash Chandra Gulati figuring at Sl.No. 182 who retired on 31.3.2003 has been given notional promotion as ASW and his pay in the post of ASW had been fixed granting all consequential benefits. The applicant therefore submitted a detailed representation to the third respondent seeking notional promotion w.e.f. 1.10.1993 or w.e.f. the date prior to the date of promotion of his erstwhile next immediate junior Shri Kripal Singh with all con-committant consequential benefits, including revision of pension and other pensionary benefits. The respondents neither suo moto granted the applicant legitimate promotion as ASW notionally nor acted upon his representation at Annexure A3. Aggrieved by such non-feasance on the part of the respondents, the applicant is left with no other efficacious remedy, but to approach this Hon'ble Tribunal by this O.A.

3 The following reliefs are prayed for:

- (i) call for the records leading to Annexure A2 Panel and direct the respondents to grant the applicant notional promotion to the post of ASW and fix his pay in the post of ASW notionally and grant consequential revision of pension and monetary benefits flowing therefrom.
- (ii) declare that the applicant is eligible to be considered for promotion as ASW and consequential notional promotion,

fixation of pay and pension,

(iii) such other orders and directions as this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.

4 The respondents have filed a reply taking the preliminary objection that the OA is filed after a lapse of one year from the meeting of the DPC. They further submitted that the DPC meeting was conducted as per the Court directions, the name of the applicant was considered in the panel and he was not promoted physically due to the applicant having taken voluntary retirement on 31.12.1994. and as the panel was issued on 11.2.2003 and as per DOPT OM No. 22011/8/87-Estt(D) dated 9.4.1996 the promotions are only prospective in nature even though the vacancies were of earlier years. It is further submitted that as per the SRO 292 dated 19.9.1989, the SA-I having three years regular service with diploma in Mechanical/Electrical/Civil Engineering were to be promoted as Junior Surveyor of Works and as per SRO 142 dated 21.7.1994 only the Junior Surveyor of Works were to be promoted as Assistant Surveyor of Works.

5 A rejoinder has been filed by the applicant reiterating his contentions that even though the vacancies had been in existence since 1989, the respondents conducted the DPC only in 2003 to fill up the vacancies which arose in 1992-93 and 1993-94 and had the DPC met at the appropriate time the applicant would have been

promoted at the right time before his voluntary retirement. Since no final orders have been issued by the respondents after the panel was prepared the applicant had filed a representation on 13.5.2004 and the OA was filed on and 22.6.2004, the allegation of delay is not sustainable. He has also reiterated that he was qualified as per Annexure A-1 Recruitment Rules which were in force for 1992-93 and 1993-94 vacancies.

6 We have heard Shri Suvitha representing Shri K.P. Dandapani and R. Sudheesh representing the ACGSC. At the outset itself, it is seen that the contentions taken by the respondents are not tenable. The panel in Annexure A2 for promotion from SAW-I to ASW has been prepared against the vacancies of 1992-93 and 1993-94 and the respondents themselves have conceded that the DPC was held on 11.2.2003 as per Court directions in different OAs filed by number of SAWs ~~is~~ all over the country. In fact the covering letter to Annexure A-2 refers to the judgments of different Benches of the Tribunal and the High Courts in this regard. Hence no doubt, the DPC held was a review DPC for consideration for promotion to the post of ASWs on retrospective basis for the vacancies which had occurred in the previous years viz. 1992-93 and 1993-94. Many of the incumbents who have been included in the panel had already retired by then as also seen from the last column of the panel in which the retirement status of the persons has been shown. Many others in the panel, Nos 1 to 3, 12, 14, 15, 22, 35, 36 against which the applicant's name

figures, have been shown as retired. According to the respondents, the applicant also was considered along with other retired persons shown in the panel. It is to be understood that the applicant is not seeking physical promotion but only notional promotion and consequential benefits in fixing his pension. SI. No. 37 Shri Kripal Singh is the immediate junior of the applicant. When the DPC is held on a subsequent date to fill up the vacancies which existed earlier and the incumbent retired in the meanwhile and was eligible to be promoted he becomes entitled to all benefits of the promotion on a notional basis. The respondents cannot contend that since the applicant has taken voluntary retirement he cannot be promoted even notionally. His voluntary retirement is subsequent to the date of the panel as he retired voluntarily only on 31.12.2004, the vacancies against which the panel was approved would have certainly arisen before the date of his voluntary retirement. Voluntary retirement does not extinguish the rights of an employee which have accrued to him prior to his retirement.

7 Another contention which finds mention in the reply but not seriously canvassed by the respondents is that as per the two SROs cited in their reply (presumably the Recruitment Rules) the applicant did not possess the qualification of Diploma in Mechanical/Electrical / Civil Engineering with three years service. According to the Recruitment Rules at Annexure A-1, a Degree in Civil Engineering from a recognised University or equivalent or having a pass in the

direct final examination of the Institution of Surveyors (India) with 5 years regular service in the grade or a pass in Intermediate Examination of Institution of Surveyors (India) or holding a Diploma in Civil Engineering of a recognised University/Institution or equivalent with 10 years of regular service in the grade of SAG-I is the qualification prescribed for promotion to the post of ASWs. The applicant who had passed the Final Examination of the Intermediate Examination of Institution of Surveyors (India) with five years experience was eligible for promotion. It is further seen from Annexure A-2(3) letter from the Directorate/E1R Engineer-in-Chief's Branch communicating the panel and the instructions contained thereon to all Engineers-in-Chief, they were directed vide para 4 thereof to verify whether the officers included in the panel are Engineering Degree holders before 1st October, 1993 or have passed the direct final examination of the Institution of Surveyors before that date. Therefore it is clear, that was the only qualification which was taken into consideration for preparation of the panel and to decide the eligibility. Hence provisions in the subsequent Recruitment Rules stipulating different qualifications referred to by the respondents in the statement do not seem to have any relation to the applicant's case. The Rule position would have been taken note by the DPC before recommending his inclusion in the panel. Therefore, we are of the view that since the applicant who is a retired incumbent is found eligible to be promoted as on the date of the vacancy by the DPC and was empanelled by the DPC, has become

entitled for benefits of promotion notionally and all other benefits flowing therefrom in pension and related retiral benefits. Accordingly, the OA is allowed.

8 The respondents are directed to grant the applicant notional promotion to the post of ASW on the basis of inclusion of his name in the panel at Annexure A-2 for the year 1993-94 with reference to his immediate junior Sri Kripal Singh and to fix his pay in that post on notional basis and also to grant consequential benefits of; revision of his pension on the basis of re-fixation. No doubt, in keeping with the principle of 'no work no pay' the applicant shall not be eligible for any arrears for the period of notional service, but shall be eligible for arrears of pension consequent to the re-fixing. This exercise including payment of arrears shall be completed within four months from the date of receipt of this order. No costs.

Dated 22.12.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

kmn