

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 501 OF 2005

Monday, this the 28th day of July, 2008.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Dr. K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

T.K.Reghunathan
MES No.17349, Assistant Executive Engineer (QS&C)
ACWE(Contract) of Commander Works Engineers, Ezhimala
Ettikkulam PO, Kannur - 38
R/O House No.38/2128
Aiswarya Lane, Elamkulam
Ernakulam, Cochin - 682 017 : Applicant

(By Advocate Mr.K.P.Dandapani)

v.

1. Union of India represented by the Secretary
Ministry of Defence, South Block
New Delhi - 110 001
2. Engineer-in Chief
Army Headquarters
Kashmir House, DHQ Post Office
New Delhi - 110 011
3. Director General (Personnel)
Military Engineering Service
Engineer-in-Chief's Branch
Kashmir House, Army Headquarters
New Delhi - 110 011
4. MES 300347, Shri Dil Bahar AEE (QSC)
ACWE (Contract) CWE Ambala,
Ambala Cantt., Haryana State \
5. MES No.181320, Smt.M.Gracemma
AEE(QS&C), DGNP Office
Naval Base (Post) Visakhapatnam - 530 014
Andhra Pradesh
6. MES No.181320, Shri Gyan Sing Chawla
AEE(QS&C)
ACWE (Contracts) CWE(P) Delhi Cantt
New Delhi - 110 010 : Respondents

(By Advocate Mr.Varghese P Thomas, ACGSC (R1-3))

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The application having been heard on 28.07.2008, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is presently working as Assistant Commander Works Engineers (Contract) in the Military Engineering Service. He is aggrieved by Annexure A-11 draft seniority list of Assistant Executive Engineer (QS & C) 2005-06 dated 19.04.2005 in which his name has been shown at Sl.No.75 whereas juniors in the Annexure A-2 panel have been shown seniors to him. His contention is that he was given promotion as Assistant Executive Engineer (QS & C) on 23.06.2001 vide Annexure A-3 letter dated 13.06.2003 and not from 15.02.2003 as shown in the seniority list and the respondents are now estopped from re-fixing his seniority.

2. He has, therefore, sought directions from this Tribunal to the respondents to quash Annexure A-11 All India seniority list of Assistant Executive Engineer (QS&C) for the year 2005-06 dated 19.04.2005, to recast a fresh All India Seniority List of Assistant Executive Engineer (QS&C) for the said period after taking into consideration of his Annexure A-12 and A-13 representations and to effect his further promotion as SW on the basis of his seniority as ASW with effect from 23.06.2001.

3. Learned Senior Counsel Smt.Sumathi Dandapani has brought to our notice that OA 466/03 and OA 794/03 filed by similarly placed persons seeking a declaration that they are senior to the applicant herein and others have been considered and allowed by this Tribunal on 22.12.2005 during the pendency of this OA and the Applicant herein was the 9th respondent

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in OA 466/03. The prayer of the 1st applicant was to fix his seniority over his juniors, namely, respondents 9 to 76 and the prayer of the 2nd applicant was to fix his seniority over his juniors, namely, the respondents 11 to 76. The operative part of the said order dated 22.12.2005 is as under :-

" In the light of the above discussions, we have no hesitation to hold that the Annexure.A4 letter No.A/41033/ASW/92-93 & 93-940ETR dated 11.6.2001 issued by the Respondent No.3 cannot be held to be the one issued in accordance with the directions of the judgment dated 18.5.98 and 11.3.98 passed by the Hon'ble High Court of J&K at Jammu in SWP No. 1285/96 and WP No.453/99 as the same was in total violation of the principles of seniority. We also hold that there were no vacancies for the period 1992-93 and 1993-94 available when the Annexure.A5 letter dated 11.2.2003 was issued. When the admitted position of the Respondents itself was that those vacancies were the diverted unfilled Military vacancies pertaining the year upto 2002-03. Therefore, the stand of the respondents 1 to 8 that the Annexure.A5 panel dated 11.2.2003 was prepared in terms of the unamended Recruitment Rules which ceased to exist on 20.7.94 is contrary to the facts and records of the case and therefore untenable. The cut of date of 1.10.93 for placing the names of Surveyor Assistant Grade I in the panel of the approved list of Assistant Surveyor Works for the year 1992-93 and 1993-94 is, therefore, arbitrary and illegal. Therefore, the vacancies against which any of the Respondents 9 to 76 were promoted in terms of the unamended Recruitment Rules issued vide SRO 39 dated 16. 1.85 belong to the diverted military vacancies of 2002, to that extent promotions so made are quashed and set aside. The Respondents 1 and 3 shall identify and declare the number of vacancies of Assistant Surveyor of Works as available for the years 1992-93 and 1993-94 in the first instance and then to promote only that many eligible Assistant Surveyors Grade I as Assistant Surveyor of Works strictly in accordance with their seniority and in accordance with the provisions contained in the unamended Recruitment Rules issued vide SRO 39/85 dated 16.1.85. All the vacancies of Assistant Surveyor of Works now re-designated as Assistant Executive Engineer (QS&C) which have arisen after 1993-94 and the diverted military vacancies of 2002 shall be filled only in accordance with the provisions of the Military Engineer Services (Surveyor of Works Cadre Recruitment (Amendment) Rules) 1994. The Respondents 1 and 3 are, therefore, directed to convene a Review DPC to review all the promotions made as Assistant Surveyor of Works/Assistant Executive Engineer (QS&C) from 1992-93 onwards and to make fresh recommendations strictly in accordance with the provisions



contained in the Military Engineer Service (Surveyor of Works Cadre) Recruitment Rules) 1985 and Military Engineer Service (Surveyor of Works Cadre Recruitment (Amendment) Rules) 1994 for the respective number of vacancies arisen before and after the amendment of the Recruitment Rules on 21.7.94. The aforesaid directions shall be carried out and the resultant orders shall be issued by the competent authority within a period of three months from the date of receipt of this order. There will be no order as to costs."

4. The Learned Senior Counsel Smt. Sumathi Dandapani has further submitted that against the aforesaid orders of this Tribunal, the official respondents have filed Writ Petition No.191/06 before the Hon'ble High Court but the same was dismissed but the Review Petition filed against the said judgment is still pending. She has also submitted that similar Writ Petition filed by the private respondents in the said OA was also dismissed but Review Petition No. 1174/07 filed by them against the said judgment is also pending. She has, therefore, submitted that in the above facts and circumstances of the case, it would be appropriate for her to withdraw the O.A with liberty to re-agitate the issue subject to the decisions in the aforesaid two Review Petitions pending before the Hon'ble High Court.


5. Advocate Mr. Thomas Mathew Nellimoottil on behalf of Advocate Mr. Varghese P Thomas appeared on behalf of the respondents.

6. In the above facts and circumstances, we agree with the submissions made by the counsel for applicant. Accordingly permission is granted to withdraw this OA with liberty to re-agitate the issue, if so desired, depending upon the decisions of the Hon'ble High Court of Kerala in the aforesaid pending Review Petitions and the consequent orders,



if any, passed by the official respondents. With the above direction, this OA is **dismissed** as withdrawn. There shall be no order as to costs.

Dated, the 28th July, 2008.



Dr. K.S.SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN,
JUDICIAL MEMBER

VS