

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 534
T. A. No.

1991

DATE OF DECISION 30.1.1992

Satish Kumar Shangari _____ Applicant (s)

Mr. P. Santhosh Kumar _____ Advocate for the Applicant (s)

Versus

The Union of India represented Respondent (s)
by Secretary, Ministry of Defence,
Central Secretariat, New Delhi and others

Mr. N.N. Sugunapalan, SCGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The question arising for consideration in this case is as to whether the post of Chief Engineer, Cochin Zone of Military Engineering Service (MES for short) can be occupied by a Brigadier in the Army Engineering Corps.

2. The applicant is at present working as Staff Officer Grade-I having a pay scale of Rs. 4500-150-5700 in the office of the Chief Engineer, MES Cochin Zone.

He has got to his credit a total service of 27 years in Group-A from the date of his commencement of service.

The higher post to which he is eligible for promotion is Chief Engineer in the pay scale of Rs. 5900-200-6700.

According to the applicant, he is prevented from

occupying the next higher promotion post of CE because of an illegal appointment of a Brigadier drawing a much lesser salary in the scale of Rs. 2300-5100 against the provisions of the Recruitment Rules, Annexure-I to III. The rules which were published as per notification dated 17.4.1949, governs the recruitment of MES. It has been made statutory xxxxxxxx under Article 309 of the Constitution w.e.f. 7.1.1961 onwards.
in ~~h~~ of ~~h~~ Annexure-I Rules published as per SRO-93/exercises/powers under proviso to Article 309 by the President in 1985 governs the selection and recruitment of Chief Engineer in the MES service. The rules provide for the method of appointment to the post of CE only by either holding a competitive examination or by promotion in accordance with para 2 of the rules or by promotion in accordance with para 3 of the Rules. Now, the post of CE has been filled up by appointing a Brigadier without following the Recruitment Rules. Hence, he has filed this application under section 19 of the Administrative Tribunals' Act, 1985 with the following prayers:

- "i) to declare that the post of Chief Engineer cannot be occupied by a person who is not in the pay scale of Rs. 5900-6700 otherwise than in accordance with rules.
- ii) to declare that the post of Chief Engineer which carries pay scale of Rs. 5900-6700 can only be filled by promotion from qualified hands in accordance with the Annexure-V rules
- iii) to direct the respondents to promote the applicant as Chief Engineer in accordance with rules.
- iv) to declare that Brigadier cannot write the confidential reports of Superintending Engineer (JAG)"

3. Shri P. Santhosh Kumar who appeared for the applicant submitted that a Brigadier of the Army is ineligible to hold

the post of Chief Engineer in the MES for (i) there is no statutory ~~xx~~ rule providing for appointment of a Brigadier to this post (ii) A Brigadier who is drawing a pay scale of Rs. 2300-5100 is ineligible to be posted as Chief Engineer having the scale of Rs. 4900-6700. The appointment of the Brigadier as Chief Engineer in the MES is not only illegal but will also affect the morale of the eligible persons like the applicant who are in ~~xxxx~~ the feeder category particularly when such a lower category persons are given the authority to write the confidential reports of higher scale officers like the applicant.

4. The respondents filed reply statement and additional reply statement. So also the applicant filed rejoinder and additional rejoinder and argument notes.

5. Having heard the arguments and after perusal of the documents, we are of the view that the ~~crusial~~ question to be examined in the light of the pleadings and arguments is whether a Brigadier in the Army Engineering Corps is eligible to be posted as Chief Engineer in the MES.

6. Without examining the historical background of the MES which was constituted as a department of the Armed Forces it may not be possible to decide the issue. It has been stated in the reply statement that the MES has been created as a department for construction and maintenance of real estate assets of the defence forces. Prior to the independence, all higher level posts in the department were manned by Army Officers of the Corps of Engineers and

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Civilian were recruited only for the subordinate supervisory grades. After independence, in order to meet the acute deficiencies in the officers cadre, both due to deinduction of the British Officers and sudden expansion of the Armed forces of the Union, Civilian Officers were recruited under RPS 1949. Subsequently, to enhance the career prospects of the civilian officers, higher level posts in the MES were thrown open to civilians officers as well but this was only to a limited extent. Specific recruitment rules were framed for each grade of posts tenable by civilian officers and this position continued even today. Thus, two cadres namely Army Officers of the Corps of Engineers and MES civilian officers are governed by different set of service conditions and rules. After a careful review by the Parliamentary Review Committee, a decision was rendered in 1970 which is produced as Annexure R-1 fixing the proportion between the Military and Civil officials upto the grade of CE as 50:50 in the Engineering cadre. As per Annexure R-2, the Govt. has granted sanction for the post which was attached as Annexure-A which is effective from 1st July, 1986. This was fixed as Chief Engineer (Brigadier/C.E) as 28. Further by notification dated 31.7.89 (SRO 19-E) published under section 192 of the Army Act, 1950, Annexure R-3, the Central Govt. by regularisation regarding the number of posts in the ranks of Corps of Engineers in the MES indicated that the CES Zone/ Project/Deputy Director General at Army Headquarters Engineer-

in-Chief's Branch/Director of Works (Command) as 44, out of which 27 posts have been earmarked for Brigadiers. The remaining 17 posts is only to be given to the MES. This was further amplified by the latest notification Annexure R-5 issued under section 192 of the Army Act regarding appointment and percentage of Army officers in the Corps of Engineers in the MES. The relevant rules Annexure R-5 reads as follows:

"..2(i) Military Engineer Services: (Army Personnel) Regulations, 1989" means regulations made by the Central Government in exercise of the powers conferred by section 192 of the Army Act, 1950 (46 of 1950) regarding the number of posts, appointments and percentage of the Army Officers, Junior Commissioned Officers and other ranks of the Corps of Engineers in the Military Engineer Services.....

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7. FUTURE MAINTENANCE OF THE SERVICE: After the commencement of these rules, the vacancies, excluding the vacancies reserved for ARMY OFFICERS under the Military Engineer Services (Army Personnel) Regulations 1989, shall be filled in the manner as provided in schedule II, III and IV.

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12. RULES NOT APPLY TO ARMY OFFICERS: These rules shall not apply to the Army Officers appointed on tenure basis in accordance with provisions of the Military Engineer Service (Army Personnel) Regulations 1989, as they shall be governed by the Army Act, 1950 (46 of 1950 and the rule framed thereunder.

13. APPLICATION: The posts specified in Schedule I are to be manned by Civilians and Army Officers in accordance with the provisions of the Military Engineer Services (Army Personnel) Regulations, 1989, as amended from time to time and at no time can be held by another person unless the Government so decides by specific orders in writing."

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<u>Grade & Scale of pay</u>	<u>Name of post</u>	<u>Total posts</u>	<u>No. to be held by Civilian</u>
Chief Engineer (5900-6700)	Chief Engineer	44	17

NOTE 4: The posts of Engineer-in-Chief, Director General of Works, Chief Engineer (Command) and Addl. Chief Engineer (Command) shall be held by the Army Officers as laid down in the Military Engineer Services (Army Personnel) Regulations 1989. However, these officers shall not form part of the services. The number of posts to be manned by the Civilian and Army Officers shall be governed by the Military Engineer Services (Army Personnel) Regulations, 1989 as amended from time to time.

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SCHEDULE III

S1. Name of No. post & scale of pay	Method of Recr-selection	Whether DPC or non-selection	Field of selection and minimum qualifying service for promotion.
2. Chief Engineer (Rs. 5900- 6700)	By Promotion	Selection	Addl. Chief Engineer with 8 years regular service in the grade (JAG) including service if any, rendered in the non-functional selection grade failing which 8 years combined regular service in the grade of Additional Chief Engineer and Spdt. Engineer 17 years regular service in Group-A posts of which at least 4 years' regular service should be in the grade of Supdt. Engineer (JAG) and possessing degree in Engineering from a recognised University or equivalent."

7. The respondents in the reply statement stated that the posting of Army officers of Engineering Corps to various departments were challenged by some of the Civilian Officers of the Department. A statement was made that the composite nature of the Department requires the posting of Military officials also at various levels. This submission was stated to be upheld by the Hon'ble Supreme Court, but no reference of the decision has been given by the learned counsel for the applicant. However, the learned counsel submitted that Annexure R-3 notification was published after the Supreme Court's decision. ~~xxxxxxxx~~ Annexure R-3 has been issued under section 192 of the Army Act 1950. It reads as follows:

"The Central Govt. may make regulations for all or any other purpose of this Act other than specified in section 191" which is the rule making power of the Central Govt. to carry out the provisions of the Army Act.

This provision contained in section 192 of the Army Act cover a wide field than the rule making powers for a limited purpose/ as contained in Section 191. Hence, Annexure R-3 and R-5 have importance than rules which will be conferred under the Army Act.

8. Thus, by virtue of the authority vested with the Government, it has absolute power ~~xx~~ for fixing the number of posts of Chief Engineer to be occupied by both Army officials and MES officials ~~at~~ for the purpose of integrated working. It is under this authority it has been fixed that the Civil Officials of the CES grade can hold only 17 posts at any one time against the total of 44 posts. The learned counsel for the respondents produced a certificate stating that as on 15.4.91, the number of Brigadiers posted against item 6 of the table of SRO 192 E dated 31.7.89 (Annexure-R-3) did not exceed 27. Col. S. K. Sud, Director of Personnel, Engineer-in-Chief's Branch filed an affidavit dated 1st January, 1991 giving the number of Brigadiers posted in the whole of MES as Chief Engineer/Zone/Project/Deputy Director General at Army Headquarters Engineer-in-Chief's Branch/Director of Works (Command). This affidavit shows only 24 officials have been appointed upto December, 1990. The applicant has neither challenged Annexures R-3 and R-5 nor did he implead the Brigadier alleged to have been appointed to the post of Chief Engineer as apprehended by him and stated in the application that such an appointment has already been made on 15.4.91.

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9. Under these circumstances, the argument of the applicant that the Chief Engineer can be appointed in the MES only as per Recruitment Rules, Annexure-1 as amended by Annexure-III and IV, cannot be upheld in the light of the fact that officers both from MES and Army Engineering Corps can hold the post of CE in terms of Annexures R-III and R-V. It is true that persons like the applicant borne on MES service when appointed to the post of CE can come through the channels of Annexures-III and V but an Army officer like a Brigadier when appointed to the post of Chief Engineer need only satisfy the requirement mentioned in Annexures-III and V produced along with the counter affidavit. Since the Brigadier has been appointed to the post of CE satisfying xx the requirement under the above said provisions, we are not inclined to accept the contention of the applicant and interfere with the appointment of the Brigadier as CE. In this view of the matter, we hold that the appointment of the Brigadier to the post of CE which comes within the quota becomes unassailable. We see no merit in the applicant's contention.

10. The next averment of the learned counsel for the applicant is based on the salary of the Brigadier who is having a scale of Rs. 2200-5100 while according to him, the scale of CE is Rs. 5900-6700. The applicant is a staff officer Grade-I drawing a scale of pay of Rs. 4500-5700. Hence, he is senior officer eligible to be promoted as CE. The applicant's claim for appointment as CE in the MES quota has been

accepted by the respondents in the reply statement. They have stated that promotions are based on the recommendations of the DPC. The DPC has not recommended the applicant for appointment as CE. His name was considered by the DPC in the year 1987 and was placed in the position only on 14.5.89. There are 27 addl. Chief Engineers and 34 Supdt. Engineers. All are senior~~s~~ to the applicant by virtue of earlier appointment in the higher grade of addl. C.E. On the basis of their officiation and order of selection in the grade of Supdt. Engineer, the applicant cannot stake his claim for a posting as CE in preference to his seniors. He will be considered for appointment at the appropriate time when his turn comes. The difference in the pay scales urged by the applicant cannot be given much weight particularly because of the decision at Annexure R-1 and R-2 for bringing officials from both MES and Army Engineering Corps together for appointment to the post of Chief Engineer, fixing a special type of quota system. It is true that the pay scale of the Brigadier is Rs. 2300-5100, but he is generally placed at Rs. 4950 as stated by the respondents in the counter affidavit. In addition, he is also entitled to a rank pay of Rs. 1200/-. So, much weight cannot be given to the arguments of the applicant that there is a difference of pay between the MES Class I officer and a Brigadier. We reject this argument also.

11. The next argument is equally unsupportable. The submission of the applicant that a low pay scale officer like the Brigadier is given the authority of writing the

confidential reports of senior scale officers working in the MES may even affect the morale of the eligible officers working in the feeder category of Addl. Chief Engineers, cannot stand scrutiny because an officer who is posted to the post of Chief Engineer may be drawing a lesser pay, before such an appointment, but after his appointment as Chief Engineer, gets all authority of the office to discharge the duties of his office. When he gets the post of CE, he gets all the legal authority and jurisdiction available for that post to discharge the duties of that post. Thereafter, he can discharge all functions in accordance with law including the writing of C.Rs. Hence, this argument also cannot hold good for granting any relief to the applicant as prayed for in this application.

12. In the result, having regard to the facts and circumstance and for the foregoing reasons, we hold that this application is devoid of any substance and it is only to be rejected.

13. Accordingly, we dismiss the same. There will be no order as to costs.

N. Dharmadan
30.1.92
(N. DHARMADAN)
JUDICIAL MEMBER

S. P. Mukerji
30.1.92
(S. P. MUKERJI)
VICE CHAIRMAN

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