

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A NO. 102/2003**

**TUESDAY THIS THE 11th DAY OF JULY, 2006**

**C O R A M**

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

R.G. David S/o late David George  
Chief Draughtsman  
O/o the Commander Works Engineer (Air Force)  
Thiruvananthapuram-6.

Applicant

By Advocate Mr. TC Govindaswamy

Vs.

- 1 Union of India represented by  
the Secretary to Government of India  
Ministry of Defence  
New Delhi.
- 2 The Engineer-in-Chief  
Kashmir House.  
Army Headquarters PO  
New Delhi.
- 3 The Chief Engineer, Headquarters  
Southern Command  
Pune-411 001
- 4 The Chief Engineer (Air Force)  
No. 2, B.C. Area  
MES Road,  
Bangalore-22
- 5 The Commander Works Engineer (Air Force)  
Thirumala Post  
Thiruvananthapuram-6
- 6 Sub/Maj. Pratap Singh A.C.  
Chief Draughtsman  
O/o the Commander Works Engineer (Air Force)  
Thiruvananthapuram-6

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDERHON'BLE MRS SATHI NAIR, VICE CHAIRMAN

The applicant joined the service of the respondents in the cadre of Draughtsman (Civilian) on 20.8.2001 and was finally promoted as Chief Draughtsman (Group-B Gazetted) during November, 2002 by Annexure A-1 order issued by the second respondent. He was also directed to officiate in the post of Administrative Officer by office order No. 73 dated November, 2002. He was also in-charge of E-6 Section w.e.f. the date he took over the responsibilities of the post of Draughtsman Group-B. He is aggrieved by the office order of the 5<sup>th</sup> respondent dated 3.1.2003 holding that the 6<sup>th</sup> respondent will be in charge of E-6 Section and that he would coordinate the work in E-6 Section which according to the applicant is clearly arbitrary, discriminatory and highly demoralising as the 6<sup>th</sup> respondent does not have the status of a Group-B Civilian Officer nor a Gazetted Officer. To buttress his contention he has submitted that the Subedar Majors are Junior Commissioned Officers (JCOs) and that the Ministry had taken up the matter of grant of gazetted status to Subedar Majors with the Vth CPC, but the Commission had rejected the demand. He also relied on Annexure A-7 'status order' which shows that the civilian Group-A and B posts which includes the post of Chief Draughtsman and that Subedar Major belong to subordinate cadre as evidenced by Annexure A-9. It is also submitted that the sixth respondent does not have powers to write ACRS etc. and

such a person is not competent to officiate in the post of Chief Draughtsman. In none of the officials of the MES Subedar Majors are incharge of any Section nor do they discharge the duties of a Civilian Gazetted Officer and extreme favouritism has been shown to the person affecting the applicant's right to discharge his duties.

2 The respondents have denied the averments of the applicant in the reply statement. According to them the Chief Draughtsman is equivalent to a Gazetted Officer Class-II. The sixth respondent has been posted as Chief Draughtsman in the existing vacancy by the Records Bengal Engineering Group Roorkee order dated 4.2.2002 whereas the applicant has been posted in the same office on promotion as Chief Draughtsman and assumed the appointment w.e.f. 26.12.2002. Hence it was clear that the 6<sup>th</sup> respondent was senior to the applicant. It is also contended that the powers and responsibilities of JCOs were enhanced by various letters from the Army Headquarters and the JCO by virtue of appointment through Gazette notification is a Class-II Gazetted rank. They have relied on Annexure R-4 which is an Army Headquarters letter dated 10.10.1995 to establish equivalence of Subedar Major and Chief Draughtsman.

3 The applicant has filed a rejoinder stating that Subedar Majors cannot be treated as Gazetted Officers when they are availing all benefits of a Group-C officer including adhoc bonus. He has also

contended that the date of posting of the applicant vis-a-vis 6<sup>th</sup> respondent is not material because the applicant and the 6<sup>th</sup> respondent belong to two independent classes.

4 The respondents have filed an additional reply statement contending that the 6<sup>th</sup> respondent was posted against an existing vacancy of Chief Draughtsman much earlier than the applicant and hence he is senior to the applicant. However, they agreed and accepted that Subedar Majors are entitled for adhoc bonus whereas Civilian Officers are not entitled for bonus. This is because of the policy of the Government as far as Army personnel are concerned. They also agreed that there is no inter-se seniority between the applicant and the 6<sup>th</sup> respondent in the department and also among many other cadres of Army and civilians Officers and the seniority of Subedar Major is controlled by the respective Records Bengal Engineering Group at the Centre, Roorkee and the applicant's seniority is controlled by the Ministry of Defence Engineering Branch an All India Seniority basis. They have also enclosed Annexure R-6 which is return of the strength of officers other than JCOs in the respondents' office. The respondents have also filed some documents in M.A. 152/2006 to show the equivalence of MES officers with Military ranks, which were accepted and have been taken on record.

5 After filing of the documents referred to above especially

Annexures R-7 to R-9 which showed the chart of equivalence of status between Military and Civilian ranks and the Government of India Ministry of Defence letter dated 30.3.1948, amended from time to time, the respondents were directed to produce the documents cited in the foot note of the said Annexure A-9. After taking much time, they have reported that they could not produce any of these records and that the case may be decided on the basis of available records.

6 We have heard Sri T.C. Govindaswamy for the applicant and Shri TPM Ibrahim Khan, SCGSC for the respondents and gone through the records and documents produced by the parties. Though much has been delivered about the equivalency of Civilian and Military ranks, the real question for consideration is whether the action of the respondents in placing the 6<sup>th</sup> respondent in charge of Administration and taking away the E-6 Section which was under the charge of the Chief Draughtsman (Civilian) i.e. the applicant, was in order or not. The main contention of the respondents in this regard is that the 6<sup>th</sup> respondent was posted as a Chief Draughtsman in the office from 4.2.2002 whereas the applicant assumed the charge as Chief Draughtsman on 21.11.2002 only. Therefore the 6<sup>th</sup> respondent is senior to the applicant. While the respondents were holding on to the same stand from the beginning, in the additional reply statement they have conceded that there is no place for inter se seniority between the applicant and the Subedar Major in the

department as the controlling authorities are different and that the applicant's seniority is controlled on the All India basis by the Ministry of Defence at New Delhi. Hence the earlier contention of the respondents that the 6<sup>th</sup> respondent is senior and he can supervise the work of the applicant has been negated by the respondents themselves. The Recruitment Rules for the post of Chief Draughtsman are relevant in this context to decide the claim of the applicant. The notification of the MES Chief Draughtsman Recruitment Rules is at Annexure A-8. According to these rules, the method of recruitment is only by promotion from the post of Senior Draughtsman and Draughtsman Grade-I with four years regular service in the grade and selection is by a DPC. From the above it is clear that for the post of Chief Draughtsman in MES the method of appointment to the post is only by promotion from the feeder cadre and it does not provide any other method of recruitment like transfer from other office. The number of appointments and personnel of Army officers and other ranks in the MES are prescribed in Military Engineering Service (Army Personnel) Regulations 1989 at Annexure A-6. It is seen from Annexure A-6 that there are Engineer cadre, Architect cadre, Administrative cadres etc. and the posts which can be held by Army officers are also given. But such a classification of Draughtsman is not found in the MES (Army Personnel) Regulations. In the Architect cadre there is a provision for 20% of the posts to be held by Army officers. The order classifying the Civilian posts is in Annexure A-7

in which the Chief Draughtsman has been shown under Civilian Group-B and C posts under the cadre of Draughtsman at para 1.4 (c).

7 From the above reading of the Rules and orders, it is clear that the post of Chief Draughtsman is a Civilian Group-B post and it also leads us to the conclusion that there is no corresponding Army post and it is not an identified post which can be held by Army personnel. This is further confirmed by the staff strength return produced by the respondents at Annexure R-6 which shows the relevant ranks and posts held by the applicant and the 6<sup>th</sup> respondent. The 6<sup>th</sup> respondent's name is at Sl. No. 7 and column 2 shows the authority for appointment with rank as "AA" and present rank as S/M D/Man whereas the applicant at Sl. NO. 8 is appointed to the post of Chief D/Man and ranked as Chief D/Man. This belies the contention of the respondents that the 6<sup>th</sup> respondent was appointed as Chief Draughtsman as the return shows the correct position that he had been posted against the post of "AA" (Assistant Architect). This corresponds to item 19 under Architect cadre in Annexure A-6 and the rank given therein under col. 2 is "Lt". All these would go to show that the 6<sup>th</sup> respondent was posted to an existing post of Asst. Architect available in the office, as an administrative arrangement and given the work of administration and supervision of the Administrative Section by putting him in-charge of Coordination and such an arrangement was clearly against the rules/instructions in

force. The applicant who was holding the post of Administrative Officer in additional charge, had rightly felt aggrieved by the same.

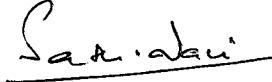
8 Coming to the equivalency of Gazetted rank, the respondents have failed to produce any authentic documents to show that Subedar Major is equivalent to Chief Draughtsman, much less, any order enabling the appointment of Subedar Majors belonging to Military Services against the Civilian post of Chief Draughtsman. They have also admitted that the concept of Gazetted rank does not exist in Military service and policies and structures of the Military cadres are entirely different from the Civilian cadres. We agree with the same. We do not want to enter into the controversy whether a Subedar Major is a Gazetted Officer or not because the categorisation of Gazetted and Non-Gazetted exist in the Civilian Establishments only. By virtue of pay scales or duties and responsibilities of the post they are equivalent would be a point relevant for consideration. But that is also not borne out by the records available in this case and the respondents could not produce the records cited by them as authority. There is only one post of Chief Draughtsman in the staff strength of the office which was held by the applicant on regular promotion and his selection is also as per the Recruitment Rules. The claim of the inter se seniority has been relinquished by the respondents. Therefore this contention also does not hold good to justify the action of the respondents. The

appointment and continuance of the 6<sup>th</sup> respondent as a Chief Draughtsman against a non-existing post is found to be clearly in violation of the staffing pattern.

9 In the result, we find that the applicant has made out a case. Annexures A-2 and A-4 are quashed. The respondents are directed to restore the status quo as regards the applicant as on 1.1.2003 and allow him to continue as Section head of E-6 section till regular arrangements are made to the post of Administrative Officer. The O.A. is allowed. No costs.

Dated 11.7.2006.

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

kmn