

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO. 294 of 2005

.....Wednesday.....THIS THE 18<sup>th</sup> DAY OF JANUARY, 2005

CORAM:

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

Johnson Mathew,  
Pariyappanal House,  
Koothattukulam,  
Ernakulam District.

- Applicant

By Advocate Mr. KP Dandapani

vs

1. Union of India represented by  
the Secretary,  
Ministry of Defence,  
South Block,  
New Delhi-110 001.
2. Engineer-in-chief,  
Army Headquarters,  
DHQ.P.O.  
New Delhi-110 001.
3. Chief Engineer(AF),  
No.2 DC, Area MES Road,  
Yeshwantpur Post,  
Bangalore-560 022.
4. Commander Works Engineer(AF) South,  
Bellary Road,  
JC Nagar Post,  
Bangalore-560 006.
5. Ex-Subash Chander Chagla,  
O/o AGE(1), Air Force, Sambra,  
Belgam, Karnataka-590 001.
6. Ex-Yellappa B Jogi,  
O/o GE (Air Force) SDI/ASTE,  
Bangalore-560 037.

7. Ex-Satheeshkumar,  
O/o GE(Air Force), SDI/ASTE,  
Bangalore-560 037.

8. Ex-D.Sethuraman,  
O/o GE (Air Force),  
Trivandrum-695 001. - Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC (for R. 1 to 4)

The application having been heard on 14.12.2005, the Tribunal on  
18.1.2006 delivered the following

O R D E R

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

Challenge in this O.A. is against the manner in which the respondents have conducted the selection to the post of Junior Engineer (Civil) in Military Engineering Service (MES for short) in pursuance of A-1 notification for the said post appeared in the Employment News 2-8 October, 2004. The applicant's grievance is two fold: (i) that the respondents have given excessive representation to the Ex-servicemen in the cadre of JE(Civil); and ii) the respondents have preferred Engineering graduates in place of Diploma holders as against the stipulation in the Annexure A-1 notification that the basic qualification for selection to the aforesaid post is Diploma in Engineering

2 The Respondent-4, viz, Commander Works Engineer (AF) South, Bellary Road, JC Nagar Post, Bangalore 560 006, issued a notification in the Employment News 2-8 October 2004, inviting applications for the post of JE(Civil). The vacancies were spread over to different zones at Bangalore, Chennai, Ezhimala and Kochi.



In all these zones one post each has been earmarked for the Ex-servicemen category. The qualification prescribed for the post was Diploma in Civil Engineering from a recognised Institute/University or Board or equivalent.

3 In response to the aforesaid notification, the applicant has also submitted his application. He was allotted the Roll No.149 and he was admitted for written test at Bangalore on 21.11.2004. As he qualified in the written test, he was called for the interview at Bangalore on 4.1.2005 but he could not make it in the final selection. The applicant attributes his non-selection to the undue preference given to Ex-servicemen and to the Degree holders in Engineering. He has submitted that the number of Ex-servicemen in the cadre was already much more than the 10% post earmarked for them and, therefore, further induction of 10% vacancies from Ex-servicemen quota will result in further excess representation causing imbalance in the cadre. According to him, as per the recruitment rules, the total cadre strength of JE(Civil) is 3343 and the representation of the Ex-servicemen is prohibitively excessive due to induction of the Ex-servicemen by direct recruitment as well as by other modes of recruitment. The applicant has also submitted that the respondents have committed further impropriety by preferring Engineering Graduates in place of Diploma holders as prescribed in the Recruitment Rules as well as in the Annexure A1 notification. The basic qualification published in A-1 notification was Diploma in Civil Engineering and no preference was to be given to

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persons possessing higher qualification. The applicant has, therefore, contended that the Engineering Graduates were not eligible to be considered in the process of selection as JE(Civil) in the MES.

4 The applicant has made the A-6 and A-8 representations dated 25.2.2005 and dated 26.6.05 respectively but the respondents have not considered them. Instead, they were going ahead with appointing those persons who have already been selected brushing aside the legitimate claim of the applicant.

5 A reply has been filed on behalf of respondent No.3. The respondents have raised the preliminary objection regarding territorial jurisdiction of this Bench of the Tribunal to adjudicate this O.A. They have submitted that the applicant is a resident of Ernakulam District in Kerala. The entire selection process took place in Bangalore and no cause of action has arisen within the jurisdiction of this Bench of the Tribunal and therefore, the O.A is not maintainable and it is to be dismissed.

6 On merits, the respondents have submitted that the selection to the post of Junior Engineer(Civil) was done strictly according to the provision of the Recruitment Rules. As regards representation of ex-servicemen in the cadre, out of the 141 vacancies of JE(Civil) released for Chief Engineer, Southern Command, only 14 vacancies have been earmarked for Ex-servicemen which is not beyond 10% reservation for direct recruitment as admissible under the Rules. The respondents

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denied that there were excess appointments of Ex-servicemen made beyond the prescribed number of vacancies as provided under the Recruitment Rules. As regards the educational qualification, the respondents have submitted that even though the minimum required qualification published in the advertisement was Diploma in Engineering, there was no bar for degree holders for appointment. They have also found no irregularity in providing 5 marks for Diploma holders and 10 marks for Graduates in the evaluation. Their submission was that there was no preference given to Degree holders except the 5 marks of additional weightage out of 100 marks. The question papers set for the written test was of Diploma standard. Out of 40 selected candidates, only 13 were the Degree holders and the rest were Diploma holders or Diploma plus Degree holders. The marking scheme, according to Appendix 'C' of Annexure-R(2) letter dated 5.10.2004 was that out of the total marks of 100, 10 marks were allotted for basic qualification. If one is a Diploma holder, he will get only 5 marks and if he is a Degree holder, he will get 10 marks. The balance 90 marks were equally distributed for experience, interview and written test in the order of 10,15 and 65 marks respectively for both Diploma holders and Engineering Graduates. The final merit list was prepared based on the marks obtained by the candidates who were called for interview and written test. The last candidate in the general category who has been selected, scored 60.5 marks whereas the applicant scored only 52.75 marks. Since the Applicant scored lesser marks and

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did not come in the merit compared to the candidates included in the select list, he was not given the appointment letter.

7 Shri U.Balagangadharan, the applicant's counsel argued that part of the cause of action has arisen within the territorial jurisdiction of this Bench of the Tribunal inasmuch as the Annexure.A1 notification was circulated in the area of jurisdiction of this Bench and also the applicant had applied for the post from Ernakulam. Moreover, the Annexure.A.1 notification was also for a post available in Kochi. He has relied upon the judgment of the Hon'ble Supreme Court in **Y.Abraham Ajith and others Vs. Inspector of Police, Chennai and another, 2004 AIR SCW 4788:2004(8) SCC 100** to support his argument that this Bench of the Tribunal has jurisdiction to entertain the present OA. In the said judgment, the Apex Court while considering the scope of the expression "cause of action" as used both in civil cases and criminal cases, have held:

*"13 While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in criminal legal expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.*

14 It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15 The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider

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sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

16 The expression 'cause of action' has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material fact.

17 The expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's law Dictionary a 'cause of action' is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4<sup>th</sup> Edn), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

18 In Halsbury's Law of England (4<sup>th</sup> edn) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse, "Cause of action" has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action."

8 The Applicant has challenged the action of the Respondents in preferring Engineering Graduates to the Diploma Holders as against the stipulation in the Annexure A1 notification on the basis of the judgment of the Apex Court and the High Courts in various cases.

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9 The Apex Court in **District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M Tripura Sundari Devi [(1990) 3 SCC 655]**, held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. The Supreme Court held that it amounted to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. A Division Bench of the Hon'ble High Corut of Kerala after analyzing the various decision on the point and also considering the judgment of the Apex Court in Tripura Sundaridevi's case (supra) the following propositions have been laid down:

- "1. If the notification itself does not indicate that equal qualification would also be considered, there is no power on the Public Service Commission to entertain the application stated to be equivalent to the one notified.*
- 2. A higher qualification possessed by an applicant will not be an adequate substitute for the minimum qualification prescribed by the Public Service Commission.*
- 3 When a particular qualification is prescribed there is no justification in saying that an over qualified candidate is desirable or required.*

4 If the candidate does not possess the qualification that is prescribed by the rules, the question as to whether some other qualification possessed by him is higher or not does not arise for consideration, and

5 When advertisement mentions particular qualification and if appointments are made in disregard to the same, it amounts to a fraud on public."

10 In **Dr M.A.Haque v. Union of India** [(1993) 2 SCC 213], the Apex Court has held that the rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the bypassing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. Government will have no power to override the rules framed under the proviso to Article 309 of the Constitution of India by executive orders.

11 In **Ashok Kumar Sharma v. Chandrasekhar** [(1997) 4 SCC 18], the Hon'ble Supreme Court has held that an advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by it and it cannot act contrary to it.

12 In **Kuppusamy v. State of T.N.** [(1998) 8 SCC 469], the Supreme Court held that statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies.

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13 The Apex Court in **Dilip Kumar Ghosh and others v. Chairman and others** [AIR 2005 SC 3485] has held as follows:

"9. The rules, as noticed above, were framed primarily for recruitment of teachers for primary school and the rules were designed to give an incentive to the teachers who are specifically trained to teach in primary schools. The rationale behind the framing of this rule is that the JBT/PTTC certificate trained teachers should be appointed so that they can impart proper education to the primary school students in terms of the aims and object with a trained hand. The rules purposely laid an emphasis that all the candidates for teachers in primary schools who possessed JBT/PTTC should be appointed for the development of the child. The primary education is upto 4<sup>th</sup> standard. There is a middle education and then secondary and higher secondary education. For teaching in the primary school, therefore, one must know the child psychology and development of a child at tender age. As already noticed, the candidates like the appellants who are trained in B.Ed. Degree are not necessarily to be equipped to teach the students of primary class. They are not trained and equipped to understand the psychology of a child of tender age.

10 It is in this context, Rule 2(n) Rule 6 and Rule 9 are to be read in conjunction.

11 Rule 2(n) defines trained candidate. The term 'trained candidate' if read and understood in the context of appointment of teachers in the primary school, would mean a candidate who possessed JBT/PTTC. Rule 6(d) as quoted above expressly put a prohibition that no extra credit shall be given to higher academic qualification for the purpose of selection of a teacher. A conjoint reading of Rule 2(n) and Rule 6(d) would make up abundantly clear



*that for appointment of a teacher in primary school only the candidates who possessed the academic qualification prescribed under the rules JBT/PTTC shall be considered and the candidates like the appellants who possessed higher academic qualification like BA/B.Ed. Shall not be given any credit."*

14 The Apex Court in the case of **P.M.Lata & another v. State of Kerala and others [(2003) 3 SCC 541]** was considering an Appeal preferred by the Appellants who are holders of TTC and have not been able to get selected for the post of Lower/Upper Primary teachers. They questioned their non-selection to the post due to inclusion of B.Ed candidates in the select list prepared by the Public Service Commission of the State of Kerala. Their contention before the High Court was that in the advertisement issued for recruitment to the post of teachers in government primary schools, B.Ed is not the prescribed qualification and only candidates with prescribed educational qualifications of Teachers' Training Certificate (shortly referred to as TTC) were entitled to compete for the selection and seek appointment. The learned Single Judge of the High Court allowed the petition and a direction was issued to cancel all orders of appointment issued in favour of B.Ed degree holders. Though the Division Bench upheld the decision of the learned Single Judge, yet they validated the appointments already made on the basis of an affidavit filed by the Government that they would suitably amend the Recruitment Rules for providing avenues of recruitment to B.Ed degree holders as teachers in government

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primary schools. However, in the Appeal, the Apex Corut has held as under:

"10. We find absolutely no force in the argument advanced by the respondents that B.Ed. Qualification is a higher qualification than TTC and therefore, the B.Ed. Candidates should be held to be eligible to compete for the post. On behalf of the applicants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. Degree, the trained imparted is to teach students of classes above primary. B.Ed. Degree holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. Qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed. Whether B.Ed qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed candidates, for the present vacancies advertised as eligible."

11 The Division Bench in the impugned order upheld the decision of the Single Judge that in terms of the advertisement, B.Ed candidates were not eligible to take up the selection test and to be included in the rank list. We fail to understand that having thus upheld the decision of the learned Single Judge, what was the justification for the Division Bench to refer to statutory recruitment rules applicable to teachers in private primary schools, aided by the Government and the judgments rendered by the High Court in their cases, for reversing

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the judgment of the Single Judge and maintaining the rank list including names of the B.Ed candidates and their appointments on the basis of rules yet to be framed.

12 On behalf of the respondents it is submitted that since a large number of B.Ed candidates were allowed to compete and actual appointment orders were also issued in their favour, the Division Bench has tried to adjust the equities between the parties.

13 Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. The Division Bench forgot that in extending relief on equity to B.Ed candidates who were unqualified and yet allowed to compete and seek appointment contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the rank list to get appointment against the available vacancies, had B.Ed candidates been excluded from the selections. The impugned judgment of the Division Bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been wrongly deprived of due chance of selection and appointment. The impugned judgment of the Division Bench, therefore, deserves to be set aside and of the learned Single Judge restored."

15 We have considered all the facts of the case, the documents on record and the arguments put forth by Shri U.Balangangadharan, Learned counsel for the applicant and Shri T.P.M.Ibrahim Khan, SCGSC for the respondents.

16 We may first deal with the preliminary objection raised by the respondents that this Bench of the Tribunal has no territorial



jurisdiction to entertain the present OA as the entire selection process has taken place in Bangalore and no cause of action has arisen within the territorial jurisdiction of this Bench. Section 14 of the Administrative Tribunals Act, 1985 describes the jurisdiction, power and authority of Tribunals which is reproduced below:

**"14. Jurisdiction, powers and authority of the Central Administrative Tribunal:**

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to:

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian.

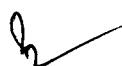
(b) all service matters concerning--

(i) a member of any All India Service; or

(ii) a person not being a member of an All India Service or a person referred to in clause(c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian (not being a member of an All India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government.

(c) all Service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any



service or post referred to in sub-clause(ii) or sub clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation( or society) or other body, at the disposal of the Central Government for such appointment."

It is seen from Sub Clause 14(1)(a) of the Act, the jurisdiction of the Central Administrative Tribunal not only applies to those who are already in service, but also matters relating to recruitment to All India Services or any Civil Service of the Union.

17        **In Sudhanshu Tripathi Vs. Union of India and another (1988(2) SLR 688 (Allahabad) (HC)** the Allahabad Bench of this Tribunal was considering the question of jurisdiction regarding competitive Examination for recruitment to Indian Administrative Service. It was held that:

*"Taking clue from the wordes used in Article 323-A of the Constitution the Parliament deliberately used the words 'recruitment" and "matters" concerning recruitment" in Sections 14 and 28 of the Act so as to indicate that the Tribunal shall have exclusive jurisdiction to deal with these matters and that the High Court in view of the specific provisions contained in Sec.28, shall not have jurisdiction to entertain or adjudicate upon the petition in which questions relating to recruitment and matters concerning recruitment are raised.*

*It is not disputed that holding of competitive examination is a condition precedent for appointment to an All India Service for which the petitioner had applied and appeared and was ultimately declared not to have succeeded. It is also not disputed that appointment to All India Services, atleast , to the Indian Adminsitrative Service as indicated in the petition, is made on the basis of the result of the competitive examination held by the Union Public Service Commission. The examination, therefore, is a part of the process of recruitment.*

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*In view of the provisions contained in Section 14, since the dispute raised in the present petition directly concerns the recruitment to All India Service, we are of the opinion that the petition can be entertained only by the Administrative Tribunal."*

18 In **Annuthappa Vs. State of Karnataka and others** (1990)(1) SLR 211 (CAT Bangalore) it was held:

*"Section 14 and 15 of the 1985 Act, like Articles 98, 146, 148, 187, 229,309, 312,318 etc of the Constitution, speak separately of recruitment or appointments to a service or post and conditions of service of persons appointed thereto. The expressions 'recruitment' and 'appointment', relate to the stage of entry into service or post, while the expression 'condition of service', relates to the stage subsequent thereto.*

*We have, therefore, no doubt whatever, in our minds, that all action taken by the GOK, in the present case before us, preliminary or preparatory to actual 'appointment', to the IAS cadre, by "selection", under the 1956 Regulations, clearly falls, within the ambit of the term 'recruitment' and consequently, the matter urged in the instant case, distinctly falls within the purview of Section 14 of the 1985 Act, particularly, within the wide ranging expression, in sub-section (1)(a) thereof, namely, 'recruitment and matters concerning recruitment, to any All India Service....."*

19 In **H.Saleena V. Deputy Collector (P&E)O,Cochin and another** (1988 (2) SLR 555(Ker) HC: 1990(2) SLR 98(Ker)(HC) it was held:

*"Section 14 inter alia vests the Central Administrative Tribunal with exclusive jurisdiction over matters in relation to, or concerning recruitment to any All India Service or any civil service of the Union. "Recruitment" in the Section is not restricted to recruitment by transfer of persons already in service. It is of wide amplitude and can take within its ambit, direct recruitment as well."*

20 Section 18 of the Administrative Tribunals Act, 1985 empowers the appropriate government to distribute the business of the Tribunal among the Benches of the Tribunal. Section 18 is reproduced below for sake of convenience:

*"18. Distribution of business amongst benches: (1)*

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*Where {any Benches of the Tribunal are constituted,} the appropriate Government may, from time to time, by notification make provisions as to the distribution of the business of the Tribunal amongst the Benches and specify the matters which may be dealt with by each Bench*

*(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench of a Tribunal, the decision of the Chairman thereon shall be final.*

21 Sub Section (7) of Section 5 of the Administrative Tribunals Act, 1985 has specified the places at which Benches of the Central Administrative Tribunal shall ordinarily sit and it also provides that the Bench of the Tribunal shall sit at such other places as the Central Government may by notification specify. The said Sub Section 7 of Section 5 of the Act reads as under:

*"(7) Subject to the other provisions of this Act, the Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as the Principal Bench), Allahabad, Calcutta, Madras, New Bombay and at such other places as the Central Government may, by notification, specify."*

22 Under the Scheme of the Act, the Central Administrative Tribunal is one Tribunal for the whole country and it has to function in Benches sitting at various places as notified under Sub Section (7) of Section 5 of the Act. When several Benches have been established it has become necessary to specify the territorial jurisdiction of the Benches. Exercising the power conferred on the Central Government under Section 18 of the Act, notifications were issued by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) vide GSR 610 (E) dated 26/7/85 and further amended it by GSR No.631(E) dated

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15.10.1991. Accordingly 15 Benches have been established with specified territorial jurisdiction. The territorial jurisdiction of this Bench consists of State of Kerala and the Union Territory of Lakshadweep.

23 The Bench of the Tribunal before which an application has to be filed is prescribed in Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987. It reads as under:

**"6. Place of filing applications:-** (1) An application shall ordinarily be filed by an applicant with the registrar of the Bench within whose jurisdiction --

(i) the applicant is posted for the time being, or  
(ii) the cause of action, wholly or in part, has arisen; provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.)

24 The Applicant in the present OA is a candidate for direct recruitment for the post of Junior Engineer (Civil) in MES. The Tribunal, therefore, has jurisdiction to entertain the present Application under Section 14(1) of the Act. Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 do not specifically deals with the place of filing by the Applicants for direct Recruitments. Rule 6(1)(i) says that the Application shall ordinarily be filed by the Applicant with the Registrar of the Bench within whose jurisdiction the Applicant is posted. Rule 6(1)(ii) says the



Application can be filed before the Bench within whose jurisdiction the cause of action, wholly or in part have arises. In the present case, the Applicant is a resident of Ernakulam District in Kerala. The Employment News 2-8 October, 2004 in which the Annexure.A1 notification was issued was having circulation all over India. The Applicant had submitted his application in response to the said notification in the Employment News circulated in Kerala from Ernakulam. Some of the posts advertised were for the Kerala Region. Even though the major part of the cause of action,namely, selection process etc., have arisen in Bangalore, it cannot be denied that part of the cause of action as regards the applicant has arisen within the jurisdiction of this Bench. Notification for recruitment to a post is the initial part of the cause of action which arises in a recruitment process. Therefore, the very notification which was issued in the Employment News having circulation in the jurisdiction of this Bench and the Applicant who has resided at the said jurisdictional area and applied for the posts for which vacancies are also available in the area give jurisdiction to this Bench. Moreover, Rule 6(2) deals with persons who have ceased to be in service by reason of retirement etc. They can at their option file an application with the Registrar of the Bench within whose jurisdiction such persons are ordinarily residing at the time of filing the application. A candidate for direct recruitment can very well be compared with the category of persons included in Rule 6(2) for the purpose of territorial jurisdiction of the Tribunal and therefore he can



file the Application at his option with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing the application. The Applicant in the present OA is admittedly a resident of Ernakulam. From the aforesaid provisions of the Act and the Rules, we have no hesitation to hold that the present O.A has validly been filed before this Bench of the Tribunal which has the requisite jurisdiction to adjudicate the same.

25 Going by the merits of the case, we do not find any substance in the first submission of the applicant that the respondents have given excessive representation to the ex-servicemen in the cadre of JE(Civil) and that was one of the reasons that the applicant could not come in the merit list. The respondents have submitted that they have not exceeded the ten percent reservation for ex-servicemen in direct recruitment and their action was in accordance with the provisions of the Recruitment Rules for Junior Engineers (Civil). We have considered the said Recruitment Rules and its relevant provisions are extracted below:-

Name of post	Number of posts	Classification	Scale of Pay	Whether selection cum seniority or by selection by merit
1	2	3	4	5
1. 1.Junior Engineer(JE(Civil)	3343	General	Rs.5000-150-	Not applicable
Note:1: Erstwhile posts of Superintendent(B&R) Grade I and Supdt.Grade II have been redesignated as Junior Engr.	(for year 2000)	Central Service (entry grade)	8000 variation Non Gaz	applied
(Civil) vide Ministry of			Dependent Non-on work	Industrial



Defence load) Non Ministerial.  
 letter No.55605/RR(B&R)1&II  
 CSCC/2742D/(Works) dated  
 9/7/99 as amended vide letter  
 No.55606/RR/B&R I&II CSCC/174/  
 D Works dt.19 Jan.2000  
 Note: 2: Among Junior Engineer  
 (Civil) there will not be any effect  
 on the existing seniority of  
 erstwhile Supdt.(B&R) Gde.I  
 and Supdt.(B&R) Gr.II drawn  
 on the basis of previous RR on  
 account of erstwhile posts of  
 re-designation.  
 Note:3: Among Junior Engineers  
 (Civil) erstwhile Supdts.(B&R) Gr.I  
 shall be enblock senior to the  
 erstwhile Supdt.(B&R) Grade I Is  
 Note:4: Those Junior Engineers  
 (Civil) who hold grade  
 of erstwhile Supdt.Gr.Is  
 on notional basis shall  
 continue to do so, till  
 they retire or are  
 promoted to the next  
 higher grade.

Age limit for direct recruitment    Whether benefit of added years of service admissible under Rule 30 of Central Civil Service(Pension) Rule 1972.

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*18-25 years	Not applicable	a. Matriculation or equivalent. (b) Three years Diploma in Civil Engineering From recognised institution/university Board or
*Note.1: Relaxable for Govt.servants Upto 5 years in accordance with the instructions or orders issued by the Central Governemnt.		
Note.2: Relaxable for Scs/STs/OBCs and certain other categories as equivalent. notified by the central Government from time to time. This relaxation shall be available cumulatively with any other admissible relaxation in age limit for these categories.		



Note:3: Thercial date for determining the age limit shall be the closing date for receipt of applications from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of J&K State, Lahsul and Spiti District and Pangi Sub Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakshadweep)

Note.4: In respect of posts, appointment to which are made through employment exchange/advertisements in Employment News/other advertising media, the crucial date for determining the age limit will in each case, be the last date upto which the Employment Exchange are asked to submit the names or last date of receipt of application given in the Employment News/other advertising media.

Whether age and education qualification prescribed for direct recruitment will apply in case of promotees.	period of probation, if any.	Method of recruitment whether by direct recruitment or by promotion or by deputation/absorption and percentage of posts to be filled by various methods.
9 Not applicable	10 2 years	11 (i) 87% by direct recruitment (ii) 3% by direct recruitment from amongst Departmental employees with 5 years continuous service and possession of the minimum educational qualifications as prescribed in column 8, failing which by direct recruitment as per (i) above. (iii) 10% by deputation/re-employment (for Ex Servicemen(re-employment in Central Civil Services and posts Rules, 1979 notified under Govt. Of India Min of Home Affairs GSR No.1530 dated 29 Dec 1979 and as

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amended and possessing qualification as specified in column 8 failing which by direct recruitment.

In case of recruitment by promotion/deputation grade from which promotion absorption to be made.

If a departmental promotion Committee exists what is the composition/ absorption to be made.

Circumstances in which UPSC to be Consulted in making recruitment

12	13	14
<u>Deputation/Re-employment (for Ex-Servicemen):</u> The Armed Force Personnel including combatants from Corps of Engineers due to retire or who are to be transferred to reserve within a period of one year and have the requisite qualifications and experience as prescribed under column 8 shall also be considered. Such persons would be given deputation upto the date on which they are due for release from the Armed Forces. Thereafter they may be re-employed as civilian employees in the entry grade of Rs. 5000-8000.	<u>Group C Departmental promotion Committee for confirmation in the pay scale of Rs.5000-8000)consisting of:</u> 1. Chief Engineer or his nominee with not less than the rank of Superintending Engineer or equivalent – Chairman. 2. Executive Engineer or equivalent -Member 3. Group C Civilian Gazetted Officer or a Commissioned Officer not connected with the Department- Member.	Not applicable

26 The method of recruitment provides that 87 % of the vacancies are to be filled up by direct recruitment. The Recruitment Rules further provides that 10% of the vacancies are to be filled by deputation/reemployment of ex-servicemen in accordance with the Ex-Servicemen (Reemployment in Central Civil Services and Posts) Rules, 1979 notified under the Government of India, Ministry of Home affairs vide GSR No.1530 dated 29.12.1979. The total

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number of 141 vacancies of Junior Engineer were released for CE, Southern Command for direct recruitment and 14 vacancies had been earmarked for ex-servicemen which is within the prescribed ten percentage earmarked for the ex-servicemen in direct recruitment. Since the Recruitment Rules have also provided for further 10% vacancies to be filled up by deputation/re-employment of ex-servicemen, the total percentage of ex-servicemen in the cadre is bound to increase. Thus, there is no excess appointments de hors the Recruitment Rules been made by the Respondents in terms of the aforesaid advertisement.

27 However, we find substantial merit in the allegation of the applicant that the respondents have preferred Engineering Graduates in place of Diploma Holders as against the stipulation in the Recruitment Rules and the Annexure.A.1 notification for the post of JE (Civil) appeared in the Employment News 2-8 October, 2004. According to the Recruitment Rules, the educational and other qualifications required for direct recruitment are (a) Matriculation or equivalent (b) Three years Diploma in Civil Engineering from recognised institution/university/board or equivalent. According to the Annexure.A1 advertisement also the minimum educational qualification prescribed for the post was shown as diploma in Civil Engineering from a recognised Institute/University/Board or equivalent. Vide Annexure R.2 letter dated 5.8.2004 the respondents have given instructions regarding the marking scheme in the recruitment test. Out of the total of 100 marks, 10 marks have been earmarked for basic qualification. The respondents have earmarked 5 marks for diploma holders and ten marks for holders of degree in Engineering in the relevant field.

*(Signature)*

Thus the degree holders have a better chance to succeed in the examination. As held by the Hon'ble Supreme Court in various cases which have already been considered in the preceding paragraphs, when an advertisement mentioned a particular qualification and appointment is made in disregard to the same, it is not a matter only between the appointing authority and the appointees concerned. The Apex Court has held that such appointments would amount to fraud on the public. In the present case also the respondents have mentioned Diploma in Engineering as the qualification but have selected 13 degree holders by giving preferential treatment of awarding five marks extra for their higher qualifications. In total violation of the Recruitment Rules, the Department have prescribed the Annexure.R.2 marking scheme. It is a well accepted principle of law that the statutory rules cannot be over-ridden by the executive orders. When the Recruitment Rules and Annexure.A1 notification have not provided for Degree in Engineering as the prescribed qualification, permitting the Degree holders to compete with the diploma holders itself was illegal and arbitrary and violative of the law laid down by the Apex Court. The degree of arbitrariness has been heightened by the Respondents when they have set the question papers for the written test at the Diploma standard and the degree holders have been permitted to participate in the test with the diploma holders that too with



weightage of 5 marks. In the case of P.M.Latha and another (*supra*) the Hon'ble Supreme Court has rejected the argument that B.Ed qualification is a higher qualification than TTC and therefore, the B.Ed candidates should be held eligible to compete for the post. In the present case, not only the degree holders have been allowed to compete for the post of JE (Civil) in the written test for which question papers have been set at diploma standard but they have also been given the extra incentive of additional 5 marks in determining the merit list and in that process 13 degree holders have found their position in the merit list. We have, therefore, no hesitation to hold that the action of the respondents permitting the degree holders to compete with the diploma holders and awarding five extra marks to the degree holders was in total violation of the Recruitment Rules framed under the proviso to Article 309 of the Constitution of India.

28. In view of the aforesaid legal positions settled by the Hon'ble Supreme Court, the OA succeeds and it is declared that the Engineering Graduates were not entitled to be considered for the post of Junior Engineer (Civil) in MES. The Respondents are therefore, directed to review the Select List of Junior Engineer(Civil) in MES made in pursuance of Annexure.A1 notification and delete the names of the Engineering Graduates included in the list. The exercise of preparing the fresh Select List shall be completed by the Respondents within a period of two months from the date of receipt of this order and if the Applicant gets the necessary rank against

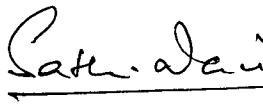
*[Signature]*

the available vacancies, he should be given the appointment with the consequential benefits of seniority. The O.A is accordingly allowed with no order as to costs.

Dated this the 18<sup>th</sup> day of January, 2006

  
GEORGE PARACKEN  
JUDICIAL MEMBER

S.

  
SATHI NAIR  
VICE CHAIRMAN