

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 370 of 2011

Thursday, this the 01st day of March, 2012

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Rajan Koshy M,
MES – 311157,
AE E/M, AGE Tech,
Garrison Engineer E/M (NW),
Naval Base P.O., Kochi – 682 004

....

Applicant.

(By Advocate Mr. Sebastian Philip)

v e r s u s

1. Union of India,
Represented by Principal Secretary,
Ministry of Defence,
New Delhi – 110 001
2. The Engineer-in-Chief,
Integrated HQ of MOD (Army),
Kashmir House, Rajaji Marg,
New Delhi – 11
3. Director General (Pers) E1B,
Integrated HQ of MOD (Army),
Engineer-in-Chief Branch,
DHQ PO, New Delhi – 110 011

....

Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 15.02.2012, the Tribunal
on 01/03/12 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

This O.A. has been filed by the applicant for a direction to the first respondent for considering him for promotion to the post of Executive Engineer, exercising the power to relax the condition of minimum eligibility of



10 years in the cadre of Assistant Engineer under Rule 14 of the Indian Defence Service of Engineers (Recruitment and conditions of Service) Rules, 2004.

2. The applicant who holds a Diploma in Electrical Engineering joined service under the 2nd respondent as Superintendent E/M Grade-II (redesignated as Junior Engineer in 1999) on 24.06.1972. He was promoted as Superintendent E/M Grade-I with effect from 12.03.1985 and further as Assistant Engineer E/M on 22.05.2002. He retired on 31.05.2011. His representation dated 24.08.2010 for promotion as Executive Engineer relaxing the eligibility condition of 10 years qualifying service was rejected vide impugned Annexure A-10 order dated 22.04.2010.

3. The applicant contended that there has not been any consideration of his representation for relaxing the Recruitment Rules (RRs) in his favour under Rule 14 of the RRs by the appropriate authority. He had unblemished meritorious service for 4 decades with two awards of commendation. There is no additional finance liability caused by granting him promotion. His junior has been promoted as Assistant Engineer long before and further as Executive Engineer in March, 2009.

4. The respondents contested the O.A. In their reply statement, they submitted that the applicant had been promoted in his turn as per availability of vacancy and as per the Recruitment Rules. The applicant was promoted as Assistant Engineer E/M with effect from 22.05.2002 and he retired on 31.05.2011. He did not have 10 years qualifying service in the post of

A handwritten signature consisting of a stylized 'V' or checkmark shape.

Assistant Engineer prescribed for the promotional post of Executive Engineer. However, he had been granted financial upgradation under the ACP Scheme and he had a pay scale equal to that of the Executive Engineer. His representation has been disposed of by a speaking order. Relaxation of the rules is considered when there is no eligible person available for filling up the vacant posts.

5. We have heard Mr. Sebastian Philip, learned counsel for the applicant and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents and perused the records.

6. The sum and substance of the applicant's contention is that the power of relaxation has not been exercised by the respondents to reduce the qualifying service of 10 years in the post of Assistant Engineer for considering him for promotion to the post of Executive Engineer. The right to consideration for promotion does not include the right for consideration for relaxation of eligibility criterion for consideration of promotion for the reason that relaxation of criterion is a matter of discretion that falls strictly within the domain of the executive. The applicant does not have a contention that the power to relax the rules has been exercised by the respondents in a arbitrary and discriminatory manner. As pointed out by the respondents, the power to relax the Recruitment Rules is provided for the purpose of meeting exigencies, like not having eligible persons for filling up the vacant posts. The applicant cannot demand it as a matter of right. He can only make a request. It is not the bounden duty of the 2nd respondent in this O.A. to forward any request that is found unreasonable at his level. If aggrieved, the applicant can

A handwritten mark or signature, appearing to be a stylized 'A' or a similar character, located at the bottom right of the page.

represent against non-forwarding of his representation to the higher authority through proper channel. If the applicant had not been given proper assignment of seniority or promotion in time or was superseded by his juniors, he should have agitated the matter before the appropriate forum in time. In the facts and circumstances of this O.A, we do not find any merit in the contention of the applicant for judicial interference in his case.

7. Devoid of merit, the O.A is dismissed with no order as to costs.

(Dated, the 1st march, 2012)



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

CVR.