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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:HYDERABAD

O.A.No.1468 OF 1995.

Date of Order:6-3-1998.

Between:

Mirza Waris Hussain.

.. Applicant

and

1. Union of India, rep. by the Secretary,
to Government of India,
Ministry of Defence, Army Head Quarters,
D.H.Q.P.O., New Delhi.
2. The Engineer-in-Chief,
Army Head Quarters, D.H.Q.,
New Delhi-110 001.
3. The Chief Engineer, Southern Command,
Engineers Branch, Pune-411 001.
4. The Chief Engineer, Hyderabad Zone,
opp. Parade Ground, S.P.Road,
Secunderabad.

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr.N.Ram Mohan Rao

COUNSEL FOR THE RESPONDENTS: Mr.V.Rajeshwara Rao

CORAM:

THE HON'BLE SRI A.V.HARIDASAN, VICE CHAIRMAN

AND

THE HON'BLE SRI H.RAJENDRA PRASAD, MEMBER (ADMN)

: O R D E R :

(AS PER HON'BLE SRI A.V.HARIDASAN, VICE CHAIRMAN)

Heard Mr.Siva for Mr.N.Ram Mohan Rao, learned Counsel for the Applicant and Mr.V.Rajeshwara Rao, learned Counsel for the Respondents.

2. The applicant who is a Superintendent (E & M) Grade-II in the office of the Garrison Engineer (Factory-I), Eddumailaram has filed this application challenging the legality, proprietary

and correctness of the Order dated:1-11-1995 of the 2nd respondent and 10-11-1995 of the 4th respondent rejecting his representation claiming inclusion in the panel for promotion to the post of Superintendent(E & M) Grade-I and for a direction to the respondents to consider the case of the applicant and empanel the applicant for promotion to the post of Superintendent(E & M)Grade-I.

3. The applicant states that on the date on which the D.P.C. met(18-9-1995) he had acquired the qualification for being considered for promotion to the post of Superintendent(E&M)Grade-I as he was already a diploma holder in Engineering and had cleared the M.E.S. Procedure Examination, he was not considered by the Departmental Promotion Committee for empanelment with the result that in the panel his name was left out. The applicant has stated that the respondents acted callously and indifferently in placing the material before the D.P.C.inasmuch as one Mr. Satish Chandra Gupta who had passed the M.E.S. Procedure Examination alongwith the applicant was considered by the D.P.C. and a person who had died in the year 1993 was also considered and included in the panel. As the case of the Applicant was not properly considered, the applicant made a representation seeking consideration and inclusion of his name in the panel which was turned down by the Impugned Orders. It is under these circumstances that the applicant has filed this application.

4. The respondents contend that on the crucial date viz., 1-10-1994, the applicant had not acquired the eligibility criteria as he had not passed the M.E.S. Procedure Examination by that time. He was not eligible to be considered for promotion by the D.P.C. and, therefore, the applicant does not have any grievance at all. The inclusion of Mr.Satish Chandra Gupta in the panel is sought to be substantiated/ on the ground that Mr.Satish Chandra Gupta being an Engineering Graduate in the year 1981 was even otherwise qualified

without passing the M.E.S. Procedure Examination and that the deletion of his qualification earlier being found to be erroneous considering his representation had since been corrected. About the inclusion of the name of a dead person in the panel, the respondents state that it was done inadvertently. In any case, as the applicant has no legitimate grievance because he was not eligible for consideration by the D.P.C. the application has to be dismissed contend the respondents.

5. We have carefully gone through the pleadings and material on record. We have also heard Sri Shiva, the learned Counsel for the Applicant and Sri V.Rajeshwara Rao, the learned Standing Counsel for the Respondents. The fact that the applicant did not pass the M.E.S. Procedure Examination on the crucial date 1-10-1994 is not in dispute; but the learned Counsel for the Applicant argued that as the applicant had already appeared for the examination in the month of June, 1994 when in November, 1994 he was declared passed, his success should date back to the date of examination and, therefore, he should be deemed to have acquired the qualification in June, 1994. In support of the proposition, the learned Counsel for the Applicant relied on the Government of India's instruction which reads as follows:

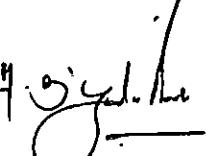
"(13) Type-writing test in the case of LDCs for grant of increments.- As the Ministries/Departments, etc., are aware, the Ministry of Home Affairs, O.M.No.15/3/53-Estt.(D), dated: the 16th September, 1956 (not pintered), provides that in the case of persons appointed to the post of LDCs, whether before or on or after 13th July, 1964, who pass the typewriting test at the speed of 30 words per minute subsequent to the date on which their increments fell due, the increments should be allowed from the date of the test at which the individual

concerned passed and that no arrears of increments should be allowed but the normal increments accrued should be allowed from that date with normal and annual date being regained."

6. The Government of India's instruction referred to above which has been strongly relied on by the learned Counsel deals with drawal of increment. The passing of typewriting examination is a condition precedent for the Lower Division Clerks for drawing the increment. It is in that respect that a Government Order was issued that if the official clears the examination, the increment due to him can be drawn even from the date on which he appeared for the examination. This does not hold good in the case of acquiring eligibility qualifications to be considered for promotion. Drawal of increment on passing of the typewriting examination is automatic whereas one has to acquire the qualification for the purpose of being considered for promotion. In other words the acquisition of qualification does not guarantee automatic promotion but only confers eligibility for consideration for promotion. It is well settled by now that the eligibility for consideration for promotion should have been acquired on the crucial date. In this case the applicant not having acquired the requisite qualification as on 1-10-1994, he was not entitled to be considered by the D.P.C. Therefore, we find that the applicant does not have a legitimate grievance against nonconsideration by D.P.C. and non-inclusion in the panel. In that view of the matter, we do not find anything wrong in the Impugned Order.

7. Before parting with this case, we would like to place on record our astonishment in the callous and indifferent manner in which the respondents have dealt with the case of Mr. Satish Chandra Gupta as also the preparation of the panel including a person who was died.

8. In the light of what is discussed above, the application is devoid of merit and, therefore, it is dismissed without any order as to costs.


H. Rajendra Prasad

(H. RAJENDRA PRASAD)
MEMBER (ADMN)


A.V. Haridasan

(A.V. HARIDASAN)
VICE CHAIRMAN

Dated: this the 6th day of March, 1998

Dictated in the Open Court


Deputy Registrar

DSN

O.A. 1468/95.

To

1. The Secretary to Govt. of India,
Union of India, Ministry of Defence,
Army Headquarters, DHQ PO, New Delhi.
2. The Engineer-in-Chief, Army Head Quarters,
DHQ. New Delhi-1
3. The Chief Engineer, Southern Command,
Engineers Branch, Pune-1.
4. The Chief Engineer, Hyderabad Zone,
Opp: Parade Ground, S.P. Road,
Secunderabad.
5. One copy to Mr. N. Rammohan Rao, Advocate, CAT. Hyd.
6. One copy to Mr. V. Rajeswar Rao, Addl. CGSC. CAT. Hyd
7. One copy to DR(A) CAT. Hyd.
8. One spare copy

pvm.

31/3/98

I Court

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE A V Haridasan
VICE-CHAIRMAN (Empanelled
Bench)

AND

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

DATED: 6-3-1998

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

O.A.No. 1468/95 in

T.A.No.

O.W.P

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction
Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

