

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR.

Date of Decision: 18-1-2000

OA 11/93

J.K.Kapoor, Staff Officer Grade-III (Design) in the office of Chief Engineer, M.E.S., Jaipur Zone, Bani Park, Jaipur.

... Applicant.

V/s.

1. Union of India through Secretary, Ministry of Defence, Raksha Bhawan, North Block, New Delhi.
2. Engineer-in-Chief, Army Headquarter, Kashmir House, New Delhi.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDL.MEMBER

HON'BLE MR.N.P.NAWANI, ADM.MEMBER

For the Applicant

... Mr.P.P.Mathur, proxy counsel

for Shri R.N.Mathur

For the Respondents

... Mr.K.N.Shrimal

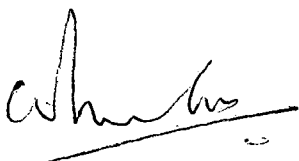
O R D E R

(PER HON'BLE MR.N.P.NAWANI, ADM.MEMBER)

In this application filed u/s 19 of the Administrative tribunals Act, 1985, the applicant has prayed for the following reliefs :

"(i) the respondents may be directed to maintain rule of quota. That the order ~~of~~ Annexure A-1 may be quashed and review DPC may be convened in accordance with the rules which has been reproduced. The applicant, therefore, prayed that direction may be issued to the respondents to the rules of quota.

(ii) the direction may be issued to the respondents to promote the applicant on the post of Executive Engineer on the basis of seniority. The respondents may be directed



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to produce the entire record of DPC pertaining to the year 1988-89 and 1991-92 so that the control with regard to the vacancy the name of the applicant may be considered by the DPC and may be perused by the Hon'ble Court/Tribunal and control may be solved.

- (iii) That the O.M.No.36013/4/85-Estt.(SCT) dated 24th May, 1985 which provides for reservation on the post of Executive Engineer in Group 'A' service may be set aside and quashed. The directions may be issued to the respondents that in future DPC no post shall be kept reserved for SC or ST employees for promotion to the post of Executive Engineer.
- (iv) direction may be issued that the applicant shall be entitled to get promotion on the post of Executive Engineer and pay of the Executive Engineer shall be paid to him after completing period of 5 years service from the date he joined. The benefit may be granted to him with ~~xxx~~ retrospectively.
- (v) that the Schedule-III in so far as it provides that the post of Assistant Engineer Group 'B' Class-II Service to the post of Assistant Executive Engineer can be as Class I service shall be clubbed together for the purpose of according promotion to the post of Executive Engineer may be declared ultravires and same ~~xx~~ may be quashed as being violative of Articles 14 of the Constitution of India.
- (vi) further direction may be issued that the promotion to the post of Executive Engineer under Military Engineering Service Rules shall be made only from the post of Assistant Executive Engineer."

2. The applicant has challenged the impugned order dated 10.9.1992 (Annexure A-1) promoting certain Assistant Executive Engineers (for short AEEs) and Assistant Engineers (AEs) to the grade of Executive Engineers (EEs) mainly on the grounds that the prescribed quota of 66.2/3% and 33.1/3% from amongst feeder grades of AEEs & AEs respectively under the Recruitment & Rules (for short RRs) was not adhered to; that if the quotas were followed, he would have become eligible and would have been promoted on the basis of his seniority in the sixth year of his service as AEE; that it was wrong to club together two dissimilar grades like AEEs & AEs for being feeder grades for promotion to EE and that no posts could have been reserved for SC and ST persons.

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3. Notice of OA was sent to respondents who have filed their reply. The applicant has also filed a rejoinder to the reply and the respondents have filed an additional affidavit. All these have been taken on the record and perused.

4. The respondents have contested the averments made by the applicant and have stated that the quota rule was strictly observed while drawing up the panel for promotions made vide the impugned order dated 10.9.1992 (Annexure A-1). It was only in 1988 that a one time diversion of 40 vacancies of the AEE quota to AE quota was done in view of the fact that ~~xxx~~ as much as 22% of the posts were lying vacant for want of eligible officers in the feeder category of AEEs and such a large deficiency was adversely affecting the functioning of the Department. This diversion was done after seeking relaxation (provided under the RRs) from the competent authority which duly consulted the UPSC. As regards reservation ~~of~~ for SC/ST, the respondents have stated that, "the panel dated 10.9.1992 for promotion to the grade of Executive Engineer has been drawn by the DPC on the ~~xxx~~ basis of selection as the vacancies considered by the DPC were of the ~~xx~~ period prior to publication of new Recruitment Rules. As per the old Recruitment Rules, on the basis of which the DPC held on 1992 was conducted, the post of Executive Engineer was a selection post and accordingly, the DPC drew its panel dated 10.9.1992 on the basis of selection based on merit. Since the scheme of ~~xx~~ reservation for Scheduled Castes and Scheduled Tribes is not applicable in respect of promotions within Group 'A' to be made on the basis of selection, no vacancy was reserved for Scheduled Castes and Scheduled Tribes while considering the filling up the vacancies

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pertaining to the period ~~xx xx~~ prior to publication of new Recruitment Rules vide SRO 4-E dated 9.7.91. It is further stated all the DPCs which met after publication of new Recruitment Rules for considering the filling up the vacancies of the period subsequent to the publication of new Recruitment Rules have been conducted on non-selection basis as per the provision of new Recruitment Rules and the scheme of reservations has been applied in all these DPC as per the ~~xxxxxxx~~ existing instruction of Govt. on reservations". On the question of clubbing of the cadres of AEE & AE as feeder to the post of EE, the same has been provided in the RRS by the government or the Executive, keeping in view of its administrative requirements and it is a matter exclusively under the domain of the executive powers of the government, which it exercises under Article 309 of the Constitution of India.

5. We have heard the learned counsel for the parties at length and have also carefully perused the material on record.

6. As far as the question of having AEEs & AEs as feeder cadres to ~~be~~ the grade of the EE is concerned, the learned counsel for the applicant strongly argued that this cannot be done and cited judgements to support his contentions in cases like Gudur Krishna Rao reported in (1998) 4 SCC ~~xxx~~ 189, Jagdish Ch. Patnaik reported in (1998) 4 SCC 456, Rajasthan Public Service Commission v. Chanan Ram & anr reported in (1998) 4 SCC 202 and Sonal Sihimappa v. State of Karnataka reported in ~~xx~~ AIR 1987 SC 2359. We feel that these cases are distinguishable because in none of these, the powers of the executive to provide for more than one grade as feeder to a promotion post has been struck down.

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The respondents on the other hand have equally strongly defended the powers of the executive to have the ~~power~~ <sup>with different periods of regular service</sup> provision of feeder grades of AEE & AE for promotion to EE in the RRs and have also cited a number of judgements where such power of executive has been upheld. Some of these are the case of Mallikarajuna Rao, (1990) 13 ATC 724 (S.C.); Asif Hameed v. State of J&K, 1989 Supp. (2) SCC 364 and Girish Sahai & ors. v. UOI, (1989) ATC 251 (CAT-New Delhi). We have, therefore, no hesitation in holding that the provision in RRs providing for promotion to EE from the feeder grades of AEEs & AEs cannot ~~not~~ be faulted and is perfectly valid.

7. As regards the one time diversion of 40 vacancies from out of quota of AEEs to AEs in 1988, the RRs themselves provide for such relaxation as under :

"Power to relax - where the government is of the opinion that it is necessary or expedient to do so, it may by order for reasons to be recorded in writing & in consultation with the Commission (the UPSC), relax any of the provisions of these rules with regard to any class or category of persons."

We have perused the order sheet shown to us in this regard and we are satisfied that such diversion of 40 posts in 1988 was validly done. In any case, this diversion was done in 1988 when the applicant was not even eligible for consideration for promotion having joined as AEE only in December, 1985 and thus not completed even 5 years of service.

8. Another ground raised by the applicant was that no post should have been reserved for SC/ST. In this regard the respondents have stated that when the DPC met in 1992

for the vacancies for the years 1990-91 and 1991-92 under

the pre revised RRs applicable prior to 9.7.1991, the promotion to EEs from AEEs was on selection basis and accordingly the scheme of reservation for SC/ST was not applicable and no vacancies were reserved. This DPC had prepared the panel on the basis of which orders for promotion for 7 AEEs were issued on 10.9.1992 which has been challenged by the applicant. In view of this, the challenge to the impugned order Annexure A-1 on the ground of vacancies having been reserved for SC/ST does not stand. We are not required in this application to adjudicate on the larger issue of the validity of the reservation policy of the government and ~~and~~ hope that the government would be taking note of the decisions of the courts in this regard.


9. The applicant has also averred that he should have been promoted in the sixth year of his service as AEE. We are not able to persuade us to accept this contention as there is no right to promotion, there is only a right to be <sup>not</sup> considered. We notice that the applicant has not taken any plea that he has been superceded by any of his juniors. All that ~~has~~ has been mentioned at one place is that in the order Annexure A-1, promotion have been given to certain employees belonging to SC though they are junior in comparison to the applicant. However, if we find that the basis for the impugned order at Annexure A-1 was the DPC held at UPSC on 9-10 July, 1992 under the RRs prior to the amendment brought about w.e.f. 9.7.1991, when selection process was applicable and seven AEEs were promoted as per Appendix 'A' to E-in-C; Branch EIR (O) letter no.A/41023/1/90/EIR (O) dated 10.9.1992 which the applicant has challenged in the OA and annexed as Annexure A-1, there is no mention of any S.C. officer in this Appendix and in any case the respondents

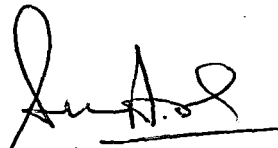
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have already stated that the scheme of reservation for SC/ST was not applicable for this selection for vacancies falling in the period when RRs as existing prior to 9.7.1991 were the relevant RRs. The relevant year was changed to the financial year w.e.f. 1.4.1990 and all the 7 vacancies for promotion from amongst AEE, 4 out of a total of 6 during 1990-91 and 3 out of 4 occurring prior to the taking effect of the modified RRs w.e.f. 9.7.1991 were considered as general vacancies with no reservation for SC/ST and ~~xx~~ filled up as per the Appendix 'A' to the order dated 10.9.1992. The other DPC held on 7.8.1992 in the Ministry of Defence considering promotion of AEEs against 32 vacancies against the quota of AEEs and issuance of orders for promotion of 29 AEEs, inclusive of ~~xx~~ 5 SC and 24 general candidates and held under amended RRs made operative w.e.f. 9.7.1991 ~~xx~~ is beyond the purview of the present OA since the order challenged is the one at Annexure A-1 and it contains promotions of ~~XXXXXX~~ 7 AEEs against vacancies available prior to the amendments made in the RRs and made operative w.e.f. 9.7.1991.

10. In view of above discussions, we come to the conclusion that the application has no merit and deserves to be dismissed and is so dismissed.

Parties to bear their own costs.

  
(N.P. NAWANI)  
MEMBER (A)

  
(S.K. AGARWAL)  
MEMBER (J)