

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.No.497/97

Date of order: 18/4/2000

Akhilesh Kumar, S/o Shri Subbal, R/o 475/2, MES Officers Enclave, Pratap Lines, Jaipur Cantt, presently posted as Surveyor of Works, Jaipur.

...Applicant.

Vs.

1. Union of India through Defence Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer in Chief, Branch Army Headquarter, Kashmir House, DHO PO, New Delhi.

...Respondents.

Mr.D.R.Marcia) - Counsel for the applicant.

Mr.P.P.Mathur)

Mr.K.N.Shrimal - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Newani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant approached this Tribunal against the denial of his promotion on the post of Surveyor of Works and prayed that the respondents be directed to give him promotion on the post of Surveyor of Works with all consequential benefits.

2. In brief facts of the case as stated by the applicant are that he was initially appointed on the post of Assistant Surveyor of Works on 12.8.85 but he was denied promotion on the post of Surveyor of Works till he qualified the final examination from Institution of Surveyors (India). It is stated that vide gazette notification dated 25.1.85, the Rules of 1975 were amended and on the basis of the amended rules, the applicant was entitled to get promotion on the post of Surveyor of Works on the basis of his qualification - Degree in Civil Engineering, but he was ignored. Representations were filed but with no result. It is further stated that the applicant was not considered for promotion to the post of Surveyor of Works only on the ground that he did not pass the Final Examination of Institution of Surveyors (India) but this requirement is not applicable for Degree holders and the same is only for those who are not Degree holders. It is also stated that Ministry of Human Resources vide letter dated 24.1.95, clarified the position, therefore, the applicant is entitled to promotion on the post of Surveyor of Works w.e.f. the year 1991, when he was denied promotion. It is further stated that the representation of the



applicant was not considered because of pending litigation, therefore, after the decision of R.K.Gupta's case, the applicant submitted representation, which was rejected vide order dated 14.5.97. It is also stated that he was given promotion on the post of Surveyor of Works on 25.10.93 but the main grievance of the applicant is that he was not considered for promotion in the year 1991 on the ground that he did not pass the Final Examination of Institution of Surveyors (India).

3. Reply was filed. The respondents relied solely on the provisions of Recruitment Rules, which were framed by the Govt. under the provisions of Article 309 of the Constitution. SRO No.39 dated 9.2.85 which stipulates that promotion from ASW to SW with 4 years regular service in the grade and having been passed the Final Examination of Institution of Surveyors (India) or equivalent. It was also stated that the applicant having not passed the Final Examination of Institution of Surveyors (India), promotion to the post of Surveyor of Works in the year 1991 was not considered. It is further stated that as per the clarifications sought from the Ministry of Science & Technology, it has been clarified that Membership of Institution of Surveyors (India) is a special qualification and is not equivalent to a Degree in Civil Engineering. Therefore, this O.A is devoid of any merits and liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. Extract SRO 39 is reproduced below:

"4. Surveyor of Works.

Promotion: Assistant Surveyor of Works with 4 years regular service in the grade and having passed the final examination of the Institution of Surveyors (India) or equivalent.

Note: For the purpose of counting the above period of eligibility for promotion, the regular service rendered by the assistant surveyor of works in the equivalent post of Assistant Executive (Engineer Cadre) in Military Engineer Services prior to 4th January 1981 shall also be taken into account.

Assistant Surveyor of Works.

(i) 50% by promotion

(ii) 50% by direct recruitment through the Engineering Services Examination held by Union Public Service Commission.


Promotion: Surveyor Assistant Grade I holding Degree in Civil Engineering from a recognised University or equivalent or having passed final, Direct Final Examination of the Institution of Surveyors (India) with 5 years regular service in the grade of Surveyor Assistant Grade I having passed Intermediate Examination of Institution of Surveyors (India) or holding Diploma in

Civil Engineering of a recognised University/ Institution or equivalent with 10 years regular service in the grade. Note: For the purpose of counting the above period eligibility for promotion, the regular service rendered by Surveyor Assistant Grade I in the equivalent grade in the Engineering Cadre, as Superintendent Buildings and Roads Grade I or Supdt. Buildings & Roads Grade I (Charge Holder) or Assistant Engineer prior to 4th January 1981 shall also be taken into account."

According to this Rules, for promotion to Surveyor of Works, the incumbent must be a Degree-holder or have passed the Final Examination of Institution of Surveyors (India) with 5 years experience.

5. The letter dated 24.1.85 is also reproduced below:

" Sub: Recognition of Technical/Professional Qualification

Sir,

I am directed to refer to your letter dated 21.12.94 and 16.1.95 on the subject mentioned above and to say that a degree in Civil Engineering awarded by Panjab University, Chandigarh is recognised for the purpose of employment under Central Govt. Also a pass in the Final/ Direct Final Examination of the Institution of Surveyors in Building and Quantity Surveying is recognised for the said purpose.

Further as per the Gazette of India, February 9, 1985, Part-II Section-4 (SRO 39 of the 16th January, 1985) the latter qualification, mentioned above with five years experience is placed at par with a degree in Civil Engineering for promotion to Assistant Surveyor of Works."

6. Appointment to the grade Surveyor of Works is totally by promotion from amongst the ASW, who are having 4 years of regular service in the grade having passed Final Examination of the Institution of Surveyors (India) or equivalent. The requirement for passing of final examination of the Institution of Surveyors (India) or equivalent is relevant only those who are not degree holders and were appointed as ASWs on the basis of Final Examination of the Institution of Surveyors (India). This stipulation would indicate that while Diploma holders in Civil Engineering were totally precluded for being considered for the post of Surveyor of Works whereas the same ASW with qualification of Final Examination of the Institution of Surveyors (India) could be considered for appointment if he had 4 years of regular service in the grade of ASW. The interpretation of SRO 30 could not be taken to be that one would have to pass the final examination of Institution of Surveyors (India) or equivalent for being appointed to the grade of SW when he is already graduate/degree holder in Civil Engineering.



7. In the case of R.K.Gupta, the Chandigarh Bench of the Tribunal has categorically held that persons having degree in Civil Engineering are eligible for promotion to the post of SW and they need not have passed the Final Examination of Institution of Surveyors (India). This finding of the Tribunal appears to be the interpretation of the Rules, hence this finding is not limited to R.K.Gupta's case alone. The same view has also been taken by the Chandigarh Bench of the Tribunal in A.C.Dutta's case.

8. The learned counsel for the applicant argued that the operation of the order passed by the Chandigarh Bench of the Tribunal in C.A No.42/JK 1990, A.C.Dutta Vs. UOI & Ors delivered on 21.8.98 has already been stayed by the High Court of Punjab & Haryana vide order dated 16.2.99 and a copy of the order of the High Court was placed in support of his contention. The order of the High Court is reproduced below:

Notice of motion for 5.4.1999

Operation of the impugned judgment dated 21.8.98 is stayed till further orders."

This means that only the controversy raised before the Tribunal in A.C.Dutta's case has not reached its finality and the same is pending for final adjudication before the High Court.

9. On merits, we ^{are} convinced that the applicant having educational qualification to hold the post of SW as mentioned in SRO 39. SRO 39 clearly stipulates that recruitment to the post of SW is to be made from amongst ASWs having 4 years service, in the case of officers not holding degree qualification or passed Final Examination of Institution of Surveyors (India) was considered valid for promotion. The fact that degree in Civil Engineering is superior to pass in Final Examination of Institution of Surveyors (India) is itself borne out from the qualification made by the Ministry of Human Resources. The clarification from the Ministry of Science & Technology reveals that Membership of Institution of Surveyors (India) is a special qualification and is not equivalent of Degree in Civil Engineering. It appears that respondent No.2 instead of getting any clarification from the UPSC got clarification from the Ministry of Science & Technology. Admittedly Final Examination of Institution of Surveyors (India) is said to be a special qualification granted to the professionals in that field by a duly recognised body but that qualification cannot be said to be equivalent to a Degree conferred upon by the recognised University. The Membership of Institution of Surveyors (India) after having passed Final Examination is a supplement to the Diploma conferred upon by the recognised Institution/Council. We



thus find that the action of the respondents in denying the promotion to the applicant to the grade of SW on the ground that he had not passed the Final Examination of Institution of Surveyors (India) is totally baseless and unwarranted.

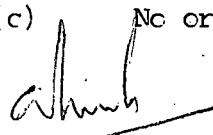
9. The learned counsel for the applicant submits that his case is squarely covered by the order of the Chandigarh Bench of the Tribunal in C.A No.1217/94 dated 15.11.96, R.K.Gupta Vs. UOI. After perusal of the above order, we are also of the considered view that the case of the applicant is squarely covered by the order passed by the Chandigarh Bench of the Tribunal in R.K.Gupta's case.

10. In view of the above, we declare that

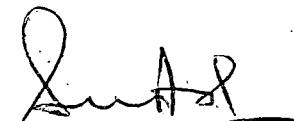
(a) the applicant is entitled to be considered for promotion on the post of Surveyor of Works on the basis of his qualification - Degree in Engineering and the communication dated 14.5.97 (Annex.A1) is set aside and quashed.

(b) The respondents are directed to consider the applicant for promotion to the post of Surveyor of Works w.e.f. July 1991 with all consequential benefits.

(c) No order as to costs.


(N.P. Nawani)

Member (A).


(S.K. Agarwal)

Member (J).