

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 576/2003

Jabalpur, this the 16th day of September, 2004.

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.A.K.Bhatnagar, Judicial Member

1. B.R.Sankhere
S/o Lt.Shri R.P.Sankhere
Assistant Engineer (Quantity,
Survey and contracts)
O/o Garrison Engineer (North)
Mhow Cantonment, Mhow,
Dist. Indore.
2. Shaikh Abdul Aziz
S/o Shri Shaikh Bashir
Junior Engineer (Quantity,
Survey and contracts),
O/o Head Quarter - Chief
Engineer, Jabalpur zone,
Near Military Hospital
Jabalpur Cantt. Jabalpur.
3. P.M.Nandgirkar
S/o Shri M.P.Nandgirkar
Junior Engineer (Quantity,
Survey and contracts) now
empanelled as Asstt. Engineer
(Quantity, Survey and contracts)
O/o Commander works Engineer (Project)
Mall Road, Cantonment Jabalpur,
Dist. Jabalpur.
4. Balkrishnan Sahu
S/o Lt.Shri Halku Ram
Junior Engineer (Quantity,
Survey and contracts) O/o
Garrison Engineer (Project),
Ridge Road, Jabalpur Cantt.
Dist. Jabalpur.

Applicants.

(By advocate Shri S.Nagu)

Versus

1. Union of India through Secretary
Ministry of Defence, South Block
New Delhi.
2. Engineer in Chief, Army Headquarter
DHQ PO, New Delhi.
3. Union Public Service Commission
Through the Secretary, Dholpur House
Shahjahan Road, New Delhi.
4. Shri G.Madhavan, AEE (QS&C) MES-
113369, O/o CE(N), Mumbai.
5. Shri Nand Gopal, AEE (QS&C) MES-
465548, O/o CE(N) Vizag

[Signature]

6. Shri Subhash Babu K, AEE
(QS&C) MES - 129404, O/o CWE
Dehradun (Uttaranchal).

7. Shri Shyam Parshad, AEE
(QS&C), MES -507010, O/o CE
Bhatinda Zone (Punjab)

Respondents.

(By advocate Shri P.Shankaran)

O R D E R (oral)

By A.K.Bhatnagar, Judicial Member

By filing this OA under Section 19 of the AT Act, the applicants have prayed for the following reliefs:

- (i) Direct the official respondents to consider and promote the applicants to the post of Assistant Surveyor of Works/AEE by including their names in the panel of 1992-93 and 1993-94 by holding a review DPC.
- (ii) Quash the impugned order dated 27.5.03 rejecting representation of the applicants.
- (iii) Direct the official respondents, as a necessary consequence of the above prayers, to assign the correct seniority to the applicants in the ASW panel of 1992-93 & 1993-94 and grant all other consequential benefits, pay fixation, further promotion as and when due.

2. The brief facts of the case as per the applicants are that the applicants were working as Surveyor Assistant Grade II (425-700 unrevised) in substantive capacity against permanent post and were promoted on different dates to the post of Surveyor Assistant Grade I (SA-I). They have filed a chart showing details of the applicants as well as the private respondents (Annexure A1). Further promotion of SA-I was to the post of ASW now known as Assistant Executive Engineer (AEE). The service conditions of ASW were governed by the MES (Surveyor of works Cadre) Recruitment Rules 1985 which till July 1994 provided 50% quota for direct recruits and 50% quota for SA-I to be filled by promotion by holding DPC. The applicants are much senior to the private respondents as per the seniority list of SA-I dated 1.10.96 (Annexure A2). The grievance of the applicants is that despite being senior, their claim for the post of ASW was ignored by the department while junior to them, 233 in number, have been promoted as ASW, which is against

rules. Applicant No.1 submitted a representation to the Department (Annexure A4) which has also been rejected by the department by order dated 27.5.03 (Annexure A5). Hence the applicants have filed this OA.

3. Learned counsel for the applicant submitted that the applicants are much superior to a majority of the benefited persons whose names are mentioned in orders dated 11.2.2003 and therefore had a preferential right over the juniors to be considered and promoted. Therefore, the action of the respondents in not promoting the applicants is against the principles of natural justice.

4. The learned counsel for the respondents resisting the claim of the applicants filed a counter reply which was followed by the rejoinder filed by the applicants. The learned counsel of the respondents invited our attention to para 6 of the counter and submitted that further promotion of SA-I was to the rank of ASW, the qualification prescribed was Graduate Engineering Degree or the candidate should have passed the direct final examination of the Institution of Surveyor. All the candidates did not possess the requisite eligibility qualification, therefore, they have not been considered for promotion to the next promotional post of ASW. Due to lack of qualification, the names of the applicants were not considered by the Selection Committee whereas the private respondents who were found suitable were accordingly promoted. The learned counsel further submitted that as per recruitment rules the applicants were not found suitable for promotion to the post of ASW, therefore, they have not been promoted and the private respondents having

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the requisite qualification were promoted as per rules.

The learned counsel further submitted that except applicant No.1, none of the applicants approached the respondents for exhausting alternative remedies as per AT Act and, therefore, the OA is not maintainable as far as applicants 2 to 4 are concerned.

5. We have heard the learned counsel for the parties and perused the records. We have seen para 6 of the counter in which it has been specifically stated that for promotion to the post of ASW, the qualifications prescribed are either Graduate Engineering Degree or the candidate should have passed the Direct Final Examination of the Institution of Surveyor. As the applicants were not having either of the qualifications, they were not eligible for the post mentioned above. In the rejoinder also filed by the applicants, they have not rebutted this fact as stated in para 6 of the counter. We have also gone through the rejection order of the representation of applicant No.1 dated 27th May 2003 which clearly shows the criteria for consideration for promotion as ASW, as under:

- (a) SA Gde I having 5 years regular service in the grade.
- (b) SA Gde I having Engg. Degree or passed Direct Final Exam of ISI.
- (c) The Cut off date for becoming eligible was 1st Oct. 93.

Therefore, we find that the representation of applicant No.1 was rightly rejected by the respondents as he was not qualified for the post of ASW/AEE.

6. After hearing the counsel for the parties and carefully perusing the records, we are of the view that the applicants have no case as they were not rightly promoted for the promotional post due to lack of qualification. Therefore, the OA is liable

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to be dismissed being devoid of merit. Accordingly,
the OA is dismissed being devoid of merit. No costs.

AB
(A.K.Bhatnagar)
Judicial Member

MPS
(M.P.Singh)
Vice Chairman

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पृष्ठांकन सं ओ/व्या..... जल्दापुर, दि.....
प्रतिलिपि द्वारा दिया गया

- (1) सचिव, अद्यत व्यापार, विविध विभाग, जल्दापुर
(2) आवेदक श्री/श्रीमती/स्त्री के काउंसल S. Naresh
(3) प्रत्ययी श्री/श्रीमती/स्त्री के काउंसल P. Shankaran
(4) वायपाल, केप्पल, जल्दापुर वर्धमान
सूचना एवं आवश्यक पर्यायवाही हेतु

PM 28-10-04

उप रजिस्ट्रर

*Issued
on 28.10.04*