

50/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓
O.A/T.A No. 139/96.....

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SECTION OFFICER (Judl.)

139/96
DA No. (TA)
IP No. (DA)
CP No. (DA)

Shri S. Vasist

APPLICANT(S)

Union of Gardeners

RESPONDENT(S)

Mr. B.K. Sarma, M.B. Chaudhary, Advocate for the applicant.
B. M. A. C. S. Sarma,

Mr. A.K. Choudhary, A.C.S.S. Advocate for the Respondents.

Office Notes

File

Court's Orders

This application is in
form and within time
C. F. of Rs. 50/-
deposited vide
IPO No. 346402
Dated 2.8.96

6.8.96

Mr. B. Sarma for the applicant.

Mr. A.K. Choudhary, Addl. S.G.S.C
for the respondents.

By consent list for hearing
admission on 9.8.96.

& Dy. Registrar.
6/8

Page no. 34 & 38 al-

Annexures are not legible

Member

By

6/8

9.8.96

Mr. A.K. Choudhary for the respondents.
Mr. B. Sarma for the applicant.
for the respondents.

Heard in this matter for admission
considered the contents of the application
and the reliefs sought.
Application is admitted. Admission
order on the respondents by the
learned J.C. Dated 9.8.96. Admitted
in this matter.

List on 10.9.96 for written
statement and further orders.

endency of this application
shall not be a bar for the
admission to the respondents by the
learned J.C. Dated 10.9.96. Admitted
the applicant.

28.8.96

Notice issued to the
respondents vide

O. No. 2839 dt. 29.8.96

12.9.96

Notice unserved on
Respondt No. 5,4.

not stated by not by B.W.

17/9

6/8

2

O.A. No. 139 of 1996

18.9.1996

Mr. A.K.Choudhury, Addl. C.G.S.C. for the respondents.

Written statement has not been submitted.

List for written statement and further orders on 7.10.1996.

Member

trd

7.10.96

Mr. A.K.Choudhury, Addl. C.G.S.C. for the respondents seeks time to file written statement. Allowed.

List for written statement and further orders on 19.11.96.

Member

pg
N
2/10

19.11.96

Learned counsel Mr B. Mehta for the applicant. Learned Addl. C.G.S.C. Mr A.K. Choudhuri for the respondents seeks further time to file written statement.

List for written statement and further orders on 17.12.96.

Member

nkm

N
19/11

17-12-96

Learned counsel Mr.S.Sarma for the applicant. Learned Addl.C.G.S.C. Mr.A.K.Choudhury seeks further time for submission of written statement.

List for written statement and further order on 10-1-97.

Member

Statement has not been filed.

1/10

24.10.96

Notice duly send
to Respondent No. 2.

Ben

Statement - has not been filed.

1/11

Written statement
has not been filed
till today.

N
16/12

Notice duly served
on Respondent No -
1, 2 & 3.

29.12

Statement has not been filed.

1/97

OFFICE NOTE

DATE

ORDER

10.1.97

Learned counsel Mr S. Sarma for the applicant. Learned Addl. C.G.S.C. Mr A.K. Choudhuri for the respondents seeks time to submit written statement.

List for written statement and further orders on 7.2.97.

[Signature]
Member

6.2.97

Memo of appearance filed by Mr. Ak Choudhury ACJSC

lm
w/ 10/11

10.2.97

Let this case be listed on 20.2.97.

[Signature]
Member

[Signature]
Vice-Chairman

DJs filed on the 2 R. no 1 & 3.

nkm

20.2.97

There is no representation on behalf of the parties. Today is fixed for filing ~~for~~ written statement. Respondents No.1 & 3 have already filed written statement. Other respondents have not filed. Several adjournments have been granted for filing written statement. We are not inclined to grant any further adjournment.

List on 4.4.1997 for hearing.

[Signature]
Member

[Signature]
Vice-Chairman

6-2-97

- 1) Notice duly served on Respond. No-1, 2 & 3.
- 2) Notices on Respond No-4 & 5 returned unserved.
- 3) W/S filed on behalf of Respond. No-1 to 3.




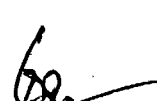

19.2.97

- 1) Respondent nos 4 and 5 returned unserved with remarks "NO Such portion returned sender."

pg
w/ 6/3

- 2) Notices duly served on 1-3.
- 3) W/S has been filed on R. 1-3.

- 4) Memo of appearance has been filed.

OFFICE NOTE	DATE	ORDER
2/8/97 - has not been submitted by R.No. 2, 4 & 5.	4.4.97	The Division Bench is not sitting. The case is, therefore, adjourned to 13.5.97.
1/5. has not been submitted at R.No. 2, 4 & 5.	nkm 14/5	 Vice-Chairman
16.5.97. Written statement has been submitted on R. 1 and 3.	13.5.97	As per the earlier order the case was to be taken up at Shillong. Mr A.K. Choudhury, learned Addl. C.G.S.C. submits that the list has already been prepared. Accordingly the case will be taken up at Shillong.
1/5. has not been submitted at R.No. 2, 4 & 5.	nkm 14/5	 Member
16/5	17-6-97	Learned counsel Mr.S.Barma for the applicant. Case is ready for hearing. List for hearing on 28-7-97.
25.7.97 Ready for hearing.	Im 17/7	 Member
21/7	28.7.97	On the prayer of Mr A.K. Choudhury, learned Addl. C.G.S.C., this case is adjourned till 1.8.97.
The case is ready for hearing.	nkm 30/7	 Member
21/8/97	1.8.97	 Vice-Chairman
15.9.97	15.9.97	Leftover. List on 15-9-97. By order Leftover List on 5.12.97.

5-12-97 There is no division
Bench to-day, List on 27-2-98
to Henry.
By order.

27.2.98

Let the case be listed for hearing
on 12.6.98.

Member

Vice-Chairman

pg

MS
213

12.6.98 Heard in Court.
~~Off~~ Adjourned to 15.6.98
By order

W/S has been filed. 15.6.98. There was a reference.
25.6.98 On the prayer of Mr S.Ali, on
behalf of Mr A.K.Choudhury, learned Addl.
C.G.S.C who is in detavement the case
is adjourned till 23.7.98.

Member

Vice-Chairman

pg

25.6.98

On the prayer of Mr S.Ali on
behalf of Mr A.K.Choudhury, learned Addl
C.G.S.C the case is adjourned till
23.7.98.

Member

Vice-Chairman

pg

MS
26/6

23.7.98

On the prayer of Mr A.K.
Choudhury, learned Addl. C.G.S.C. this
case is adjourned till 19.8.98.

Member

Vice-Chairman

nkm

MS
21/7

19.8.98

On the prayer made on behalf of Mr A.K. Choudhury, learned Addl. C.G.S.C. this case is adjourned till 24.8.98.

ba
Member

LB
Vice-Chairman

nkm

AS
28/8

8.2.99

Place before the Hon'ble Court for further hearing.

8/2/99

24-8-98

Heard counsel for the parties.
Hearing concluded. Judgment reserved.

ba
Member

LB
Vice-Chairman

lm

9.2.99

Prayer for the day.

370
3m

10.2.99

For certain clarifications we have listed this matter today. However, Mr B.S. Basumatary, learned Addl. C.G.S.C. prays that the matter may be passed over for the day to enable him to take instructions with regard to the clarifications. Mr B.K. Sharma, learned counsel for the applicant also prays for time till tomorrow. Accordingly the case may be listed tomorrow, 11.2.99 for further hearing.

ba
Member

LB
Vice-Chairman

nkm

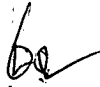

Notes of the Registry

Date

Order of the Tribunal

11.2.99

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.


Member
Vice-Chairman

nkm

25.3.99

Copies of the Judgment have been sent to the D/Sec. alongwith 137/96 for issuing the same to the parties.
at

Notes of the Registry	Date	Order of the Tribunal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Original Application No.137 of 1996

Original Application No.138 of 1996

Original Application No.139 of 1996

And

Original Application No.157 of 1996

Date of decision: This the 11th day of February 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Shri Bhavesh Gupta (in O.A.No.137/96)
 2. Shri Sujav Kumar Gupta (in O.A.No.138/96)
 3. Shri Sanjiv Vasist (in O.A.No.139/96)
 4. Shri Sushil Kr. Jain (in O.A.No.157/96).....Applicants
- By Advocates Mr B.K. Sharma and Mr S. Sarma.

- versus -

Union of India and othersRespondents
By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.

.....

O R D E R

BARUAH. J. (V.C.)

All the above original applications involve common questions of law and similar facts. Therefore, we propose to dispose of the above applications by a common order.

2. The applicants are aggrieved by the preparation of a panel for promotion to the grade of Surveyor of Works in the Military Engineering Service against the vacancies for the year 1995-96 in consequence whereof some other officers' names had been approved for officiating promotions to the grade of Surveyor of Works in supersession of the applicants though the applicants were eligible for promotion from Assistant Surveyor of Works to Surveyor of Works. Their names were not approved

MS

101
for the purpose of officiating promotions to the grade of Surveyor of Works on the ground that the applicants did not pass the Direct Final (Sub Div.II) Examination conducted by the Institution of Surveyors. According to the applicants passing of Direct Final (Sub Div.II) Examination conducted by the Institution of Surveyors is not an essential condition for getting promotion from Assistant Surveyor of Works (ASW for short) to Surveyor of Works (SW for short). The applicants have further stated that the rules do not permit incorporation of any such condition because they are qualified Bachelor of Civil Engineering holding a recognised degree of Engineering from University and they are direct recruit officers who had cleared the UPSC Examination of Indian Engineering Services and they were qualified to be promoted to the post of SW. Therefore, it was not necessary for them to pass the Direct Final (Sub Div.II) Examination conducted by the Institution of Surveyors for the purpose of promotion to SW.

3. The applicant, Shri B. Gupta (in O.A.No.137/96) belongs to the 1988 Indian Engineering Service Batch. The other three applicants belong to the 1989 Indian Engineering Service Batch. All the applicants are holders of degree of Bachelor of Civil Engineering. The applicant, Shri S.K. Gupta (in O.A.No.138/96) also holds a post graduate degree in Engineering. The applicants appeared in the Engineering Service Examination conducted by the UPSC in the year 1988 (Shri B. Gupta) and 1989 (the other three applicants). After clearing the examination they were appointed ASW in the Military Engineering Service (MES for short) under the Ministry of Defence and had been discharging their duties as such. Their next higher promotion is to the grade of SW. The requisite

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qualification for promotion from ASW to SW in the MES is four years regular service in the grade of ASW and passing of the Final Examination of the Institution of the Surveyors (India) or equivalent. The Annexure 1 recruitment rules had been strictly followed at least for the last several years. As per Annexure 2 letter dated 5.8.1992 also the eligibility condition for promotion to the post of SW from ASW is four years regular service in the grade of ASW and passing of the Final/Direct Final Examination of the Institution of Surveyors (India) or equivalent. Both Annexures 1 and 2 emphasised the passing of the direct final examination of the Institution of Surveyors or equivalent. According to the applicants for direct recruitment to the cadre of ASW is a degree in Civil Engineering or equivalent. The passing of the direct final examination of the Institution of Surveyors is recognised as equivalent to the degree of Civil Engineering. Therefore, according to the applicants passing of the direct final examination of the Institution of Surveyors has been considered to be at par with the degree of Bachelor of Civil Engineering. Those having degree in Civil Engineering are not required to appear in the direct final examination. The applicants have further stated that to be eligible to appear in the Indian Engineering Service Examination a person must have the qualification of AMIS, but after passing the said examination he is eligible to be appointed in the SW cadre only, whereas in the case Bachelor of Engineering Degree holder, he is eligible to be appointed for all the posts including SW cadre. The applicants have further stated that the UPSC has laid down the criteria that a candidate selected for MES Group 'A' post would be on probation for two years and he would be required to pass the MES procedure examination during the probation. According to

the.....

qualification

applicants they have fulfilled this qualification by passing such examination. The UPSC has not mentioned anything regarding the passing of any other examination for promotion to the grade of SW, whereas for Indian Naval Armament Service, the UPSC has categorically mentioned about the departmental examination which the candidates would be required to pass before being considered for promotion to the next higher grade.

4. The applicants having served as ASW for more than four years were eligible for promotion to the post of SW. At the relevant point of time when the applicants became eligible for promotion to the post of SW the question arose as to whether the applicants were also required to pass the Direct Final (Sub Div.II) Examination conducted by the Institution of Surveyors for being considered for promotion to the grade of SW. According to the applicants they made correspondence with the competent authority seeking clarification of this regard. By Annexure 6 letter the applicants were intimated that it was essential to pass the Direct Final (Sub Div.II) Examination conducted by the Institution of Surveyors for being considered for promotion to the grade of SW. Thereafter, by Annexure 7 Memorandum dated 20.12.1995 a panel of names of ASW was published for officiating promotion to the grade of SW in the MES against vacancies for the year 1995-96. In the said panel the names of the applicants did not find place. The applicants were aggrieved at the preparation of such a panel in which names of some junior persons had been included overlooking the case of the applicants. The applicants, therefore, submitted representations to the Engineer-in-Chief's Branch, Army Headquarters. In the said representations the applicants highlighted the issues. According to them in case of direct recruit Engineering Graduates who have come through UPSC Examination and had been appointed.....

appointed ASW directly, the qualification of clearing the Direct Final (Sub Div.II) Examination conducted by the Institution of Surveyors cannot be the necessary eligibility criteria for being considered for the purpose of promotion to the grade of SW. The applicants have further stated that by making the qualification of clearing the Direct Final (Sub Div.II) Examination necessary for being considered for promotion to the grade of SW the competent authority has equated the departmental promotees with the direct recruit qualified Engineering Graduates. The applicants have further stated that the Direct Final (Sub Div.II) Examination is required to be passed only by the promotee ASWs who do not have any degree of Civil Engineering for being considered for promotion to SW. As the authority did not consider that aspect of the matter the applicants submitted representations highlighting the points. However, till the date of hearing the applications the representations had not been disposed of. Hence the present application.

5. In due course the respondents have entered appearance. Respondent Nos.1 and 3 have filed written statement in all the applications. All the written statements are similar without any exception.

6. In their written statement the respondents have stated that the applicants have filed the applications on wrong facts. According to them the applicants are not eligible to be considered for promotion to the post of SW as per the Recruitment Rules notified through SRO 39 dated 9.2.1985. Therefore, their names did not find place in the Departmental Promotion Committee Select panel issued by the Engineer-in-Chief's Branch Army Headquarters. They have further stated that no representation was submitted by the applicants to the appropriate.....

appropriate authority so that the position could be made clear to them before approaching the Tribunal. According to the respondents as the applicants did not file any representation the applications should be dismissed on that ground. The respondents have also stated that the action taken by them were strictly in accordance with the statutory rules. The respondents have further stated that challenging the recruitment rules framed under Article 309 of the constitution of India on the ground that the said rules were ultravires being violative of the provision of Article 16 of the constitution had no substance. According to the respondents the rule making authority or the legislature is to prescribe the method of recruitment and qualification. The respondents have stated that as per the law laid down by the Supreme Court the Government is the sole authority to decide the scope and formation of the recruitment rules in any post in the organisation under its control. The authority of the Government cannot be challenged at any level, and therefore, this Tribunal has no jurisdiction over the issue of framing of recruitment rules.

7. We have heard Mr B.K. Sharma, learned counsel for the applicants and Mr B.S. Basumatary, learned Addl. C.G.S.C. Mr Sharma submits before us that as per para 12 of the Annexure 1 Recruitment Rules, in case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer is to be made, the requisite qualification is that the employee must be ASW with four years regular service in the grade and pass the Final Examination of the Institution of the Surveyors (India) or equivalent. Admittedly, the applicants did not pass the Final Examination of the Institution of the Surveyors

(India). Mr Sharma has emphasised in his submission that a degree in Civil Engineering is equivalent to the Final Examination of the Institution of the Surveyors (India). In this connection he has drawn our attention to Annexure 3 Recruitment Rules of ASW equivalent to Assistant Executive Engineer. As per the Annexure 3 Recruitment Rules the minimum qualification for direct recruit ASW is a degree in Civil Engineering or equivalent. The equivalent is shown as pass in the Final/Direct Final Examination in Building and Quantity Surveying of the Institution of Surveyors. Mr Sharma, however, has not been able to answer whether the Final/Direct Final Examination in Building and Quantity Surveying of the Institution of Surveyors is the same as Direct Final (Sub.Div.II) Examination conducted by the Institution of Surveyors. Mr Sharma has also drawn our attention to para 9 of the written statement which is in reply to the statements made by the applicants in paragraphs 4(4) and 4(5) of their applications. By referring to this Mr Sharma submits that the respondents have admitted that for direct recruitment in Surveyor Cadre as Assistant Surveyor of works through UPSC, the minimum qualification will be Degree in Civil Engineering or equivalent to which Mr B.S. Basumatary, however, seriously disputes. Besides the above, Mr Sharma has drawn our attention to a decision of the Chandigarh Bench of the Tribunal in Original Application No.1217 of 1994, R.K. Gupta -vs- Union of India.

8. Mr Basumatary on the other hand submits that for the purpose of recruitment by promotion the degree in Civil Engineering cannot be treated as equivalent to the Direct Final (Sub. Div.II) Examination of the Institution of Surveyors. Mr Basumatary has also relied upon para 9 of the written statement. According to him in para 9 of the

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written statement it has been clearly stated that for the purpose of direct recruitment the direct final examination of the Institution of Surveyor of India can be regarded as equivalent to degree in Civil Engineering, but for the purpose of promotion it is not so. It has been further stated in para 9 of the written statement that the post of Surveyor of Works is a senior class I post which has got more responsibility than the Assistant Surveyor of Works and their duties/responsibilities have been defined in the Military Engineering Service Regulations 1958, and therefore, passing of the Direct Final Examination is a must for promotion to the higher post of Surveyor of Works.

9. On the rival contention of the learned counsel for the parties, it is now to be seen whether the applicants are required to pass the Direct Final (Sub.Div.II) Examination of the Institution of Surveyors. We have seen the records and also the rules. The crux of the whole matter is whether degree in Civil Engineering can be regarded as equivalent to the Direct Final (Sub. Div.II) Examination of the Institution of Surveyors for the purpose of giving promotion. The rules suggest that for the purpose of getting promotion a person must pass the Final Examination of the Institution of Surveyors (India) or equivalent. Now, what is equivalent to Direct Final (Sub. Div.II) Examination has not been mentioned in the Rule or in the application. The written statement is also absolutely silent in this regard. We are also not sure whether the examination mentioned in Annexure 3 Recruitment Rules is same as the examination mentioned in para 12 of the Annexure 1 Recruitment Rules. Besides, as it is not admitted by the respondents about the letter of the UPSC dated 31.12.1994 referred to by the Chandigarh Bench of the

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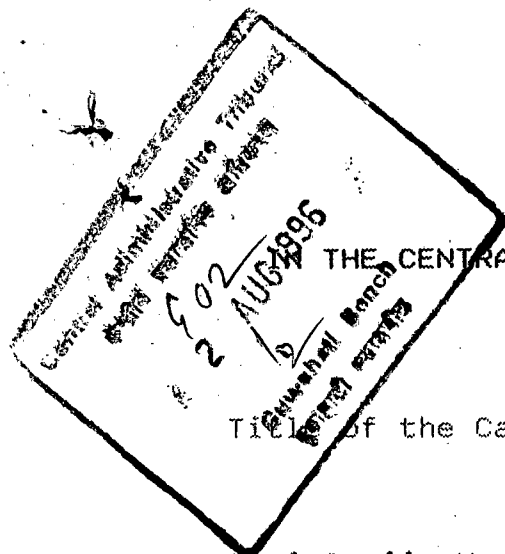
Tribunal it is not possible for us to agree or disagree with the decision of the Chandigarh Bench as the parties have failed to produce the said letter of the UPSC.

10. In view of the above facts and circumstances we are not in a position to decide the matter as it requires examination of the records and Government Circulars. Therefore, we dispose of all the applications with direction to the respondents to examine as to whether degree in Civil Engineering can be regarded as equivalent to the Direct Final (Sub.Div.II) Examination conducted by the Institution of Surveyors and also examine the letter of the UPSC dated 31.12.1994 referred to in the judgment of the Chandigarh Bench. If the degree in Civil Engineering is equivalent to the Direct Final (Sub.Div.II) Examination of the Institution of Surveyors as per the letter of the UPSC dated 31.12.1994 referred to in the judgment of the Chandigarh Bench, the respondents shall not insist on the passing of the Direct Final (Sub.Div.II) Examination of the Institution of Surveyors for promotion of the applicants to SW. This must be done as early as possible at any rate within a period of two months from the date of receipt of this order.

11. The applications are accordingly disposed of. No order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (ADMN)



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THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH
AT GUWAHATI

Title of the Case : O.A. No. 139 of 1996

Shri Sanjiv Vasist Applicant

-Versus-

Union of India & Others Respondents

I N D E X

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*My Record on
at Chingmy
Road GSCC
Disorder
Jm*

For use in Tribunal's Office :

Date of filing : 2-8-96

Registration No.: 139/96

REGISTRAR

20
Filed by *Sankar Das*
20.1.76

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
GUWAHATI

BETWEEN

Shri Sanjiv Vasist.
son of Mr. D.B. Vasist.
Asstt. Surveyor of Works (ASW).
Military Engineer Services (MES).
C/O Chief Engineer, Shillong Zone.
Elephant Falls Camp, P.O. Nonalver.
Shillong - 793 001

.... Applicant

AND

1. The Union of India,
represented by the Secretary,
Ministry of Defence, Govt. of India,
New Delhi.
2. Union Public Service Commission,
Dholpur House, New Delhi
3. Engineer-in-Chief Branch,
Army Head Quarter, Kashmir House,
DHQ, P.O. New Delhi-110 011
4. Mr. S. Venkateshwar Rao.
5. Mr. Indrajit Mandal.


Respondent Nos. 4 and 5 are both Surveyor of Works.
Military Engineer Services, Shillong Zone.
Spread Eagle Falls,
Shillong-793 001

..... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE
APPLICATION IS MADE :

The application under Section 19 of the
Administrative Tribunals Act, 1985 is made against :

- (i) The panel for promotion to the grade of Surveyor of
Works in Military Engineer Service (MES) vide Memo No.
1032/SW/95-96/EIR(0) of the Engineer-in-Chief Branch.
- 

Army Head Quarter. New Delhi dated 20.12.95 pursuant to which the respondent Nos. 4 to 8 were approved for officiating promotion to the grade of Surveyor of Works in Military Engineer Services against the vacancies for the year 1995-96 superseding the applicant.

(ii) Chief Engineer. Eastern Command. Calcutta letter No. 131051/2987/ENGRS/21/EIB dated 2.8.95 communicated vide letter No. 81222/5/237/EIB dated 17.8.95 issued by the SO-III(PERS) for Chief Engineer - stating promotion criteria from Asstt. Surveyor of Works to Surveyor of Works (ASW to SW)

(iii) Engineer-in-Chief Branch letter No. A/410083/ASW/95-96/EIR(O) dated 25.7.95 intimating that the Direct Final (Sub-Div. II) Examination is must for promotion from ASW to SW.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant case is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION :

Since in the instant case, there is no provisions for statutory appeal and under law, no alternative remedy is available against the formation of panel dated 20.12.95 for promotion to grade of SW in MES against the vacancies for the year 1995-96, therefore, formation of panel vide Memorandum dated 20.12.95 is a final order within the

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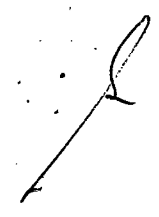
3.

meaning of Section 20 of the Administrative Tribunal Act and since the instant application is being filed within one year from the date on which the aforesaid final order was passed, therefore, it is stated that the instant application fulfils the legal requirements as laid down under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 The crux of the grievance of the applicant for the redressal of which he has come before this Hon'ble Tribunal is as follows :

The applicant in the instant case is aggrieved by the formation of panel vide Memo dated 20.12.95 for promotion to the grade of Surveyor of Works in MES against the vacancies for the year 1995-96. As the result of the formation of panel, the names of the respondent Nos. 4 to 8 have been approved for officiating promotion to the grade of Surveyor of Works in supersession of this applicant though the applicant is due for promotion from Asstt. Surveyor of Works to Surveyor of Works ; but despite his name has not been approved for the purpose of officiating promotion to the grade of Surveyor of Works because according to the competent authority, the applicant has not passed the Direct Final (Sub-Div. II) Examination conducted by the Institution of Surveyors. The basic thrust of the applicant's contentions in the instant case is that passing of the Director Final (Sub-Div. II) Examination conducted by the Institution of Surveyors cannot be the essential condition for making promotion, from Asstt. Surveyor of Works to Surveyor of Works. It is also the applicant's case that the



extant rules do not permit incorporation of any such condition and since the applicant is a qualified Bachelor of civil Engineer holding a recognised degree of Engineering from University and he is a direct recruit officer who has cleared the Union Public Service Commission Examination of Indian Engineering Services therefore, he is qualified to be permitted to the post of Surveyor of Works and it is not necessary for him to pass the Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors for the purpose of being promoted to the Surveyor of Works.

4.2 That the applicant is from the 1989 Indian Engineering Service Batch. The applicant holds the degree of Bachelor of Civil Engineering. The applicant had appeared in the Engineering Services, 1988 Examination conducted by the Union Public Service Commission and based on the ranking in the examination, the applicant was offered to join the services in the MES under Ministry of Defence as Asstt. Surveyor of Works vide their letter No.79996/1989/EIB/785 D(Appts) dated 5.4.91.

4.3 That after the post of Asstt. Surveyor of Works (hereinafter referred to as "ASW" for the sake of brevity) the next higher post is that of Surveyor of Works (SW). As per the recruitment rules for the post of Surveyor of Works in MES, the ASW with four years regular service in the grade and having passed the final examination of the Institution of Surveyors (India) or equivalent is qualified to be promoted to the post of SW. It is stated that the aforesaid recruitment rules which has been laid down vide SRO 39 dated 9.2.85 has been strictly adhered to since last several years. Reference. in this connection. can be made of

Engineer-in-Chief Branch. Army Hqs. New Delhi letter No. A/41032/SW/92-93/EIR(0) dated 5.8.92 wherein the eligibility condition for promotion to the post of SW from ASW has been reiterated as being ASW with four years regular service in the grade and having passed the final/direct final examination of the Institution of Surveyors (India) or equivalent.

The copy of the SRO No. 39 dated 9.2.85 laying down the recruitment rules for the post of SW in the MES in the Ministry of Defence is annexed herewith and marked as ANNEXURE-1.

The copy of the Engineer-in-Chief Branch Army Hqs. New Delhi letter dated 5.8.92 is annexed herewith and marked as ANNEXURE-2.

4.4 That since in both Annexures-1 and 2 while prescribing the eligibility criteria for promotion to the post of SW from ASW emphasis has been given to the passing of Final/Direct Final Examination of the Institution of Surveyors (India) or equivalent. therefore, it is necessary to ascertain as to what does the expression "or equivalent" signifies. For this purpose reference can be made of the recruitment rules for ASW contained in Gazette No. 1581 wherein it has been stated that for direct recruitment in Surveyor of Works cadre as ASW through UPSC the minimum qualification will be a degree in Civil Engineering or equivalent. It has been made clear in the aforesaid rules that a pass in the Final/Direct Final Examination of Institution of Surveyors is recognised as the equivalent to a degree in Civil Engineering.

6.

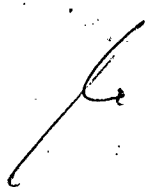
It is, therefore, seen that the passing of the Final/Direct Final Examination of the Institution of Surveyors (India) has been considered to be at par with that of the Bachelor Degree in Civil Engineering of a recognised University.

A copy of the relevant part of the recruitment rules for direct recruitment in the post of ASW is annexed herewith and marked as ANNEXURE-3.

4.5 That it would be in the fitness of things if the reference be made of the qualification laid down by the UPSC eligible to appear in the Indian Engineering Services Examination. Here it is pertinent to mention that having qualification of AMIS only the person is eligible to appear in the Indian Engineering Service Examination but in the event of his passing the said examination, he is eligible to be appointed in the Surveyor of Works cadre only while in the case of Bachelor of Engineering Degree holder, he is eligible to be appointed for all the posts including Surveyor of Works cadre.

Copy of the qualification prescribed by the UPSC laying down the eligibility criteria for appearing in the Engineering Services Examination is annexed herewith and marked as ANNEXURE-4.


4.6 That UPSC which is the principal recruitment body, has mentioned that candidates selected for MES Group "A" posts will be on probation for a period of 2 years and they will be required to pass MES procedure examination during the probation. The applicant has fulfilled this requirement by



passing "Young Officers Basic Works Course - 22" held in CME Pune in 1992 by the department. UPSC has not mentioned anything regarding passing of any other examination for the promotion to the next grade of SW whereas for "Indian Naval Armament Service" UPSC has categorically mentioned about the departmental examination which the candidates will be required to pass before consideration for promotion to the next higher grade.

A copy of the relevant post of brief particulars relating to MES and Indian Naval Armament Service prescribed by UPSC is annexed herewith and marked as ANNEXURE-5.

4.7 That after having served as ASW for a period of four years, the applicant was eligible to be promoted to the post of SW. At the relevant point of time, when the applicant acquired the eligibility for being promoted to SW the confusion arose as to whether the passing of Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors is essential for being considered for promotion to the post of SW. the applicant wrote a letter dated 9.6.95 to the competent authority seeking clarification in regard to the aforesaid matter. The clarification was given vide communication dated 17.8.95 of SO-III (Pers) for Chief Engineer wherein reference was made of Headquarter Chief Engineer. Eastern Command. Calcutta letter No. 131051/2987/Engrs/21/EIB dated 2nd August 1995 and also that of Engineer-in-Chief's Branch letter A/410033/ASW/95-96/EIR(O) dated 25.7.95. On the basis of the aforesaid two reference, it was communicated that it is essential to pass



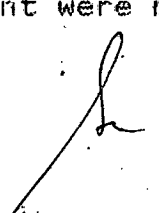
the Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors, 15/7, Institutional Area, New Mehroli Road, New Delhi for being considered for promotion to SW from ASW.

A copy of the aforesaid communication dated 17.8.95 is annexed herewith and marked as ANNEXURE-6.

4.8 That soon thereafter vide Memo dated 20.12.95 of the Engineer-in-Chief's Branch, Army Headquarter, New Delhi, the panel formed for promotion to the grade of SW in MES approved the names of ASW for officiating promotion to the grade of SW2 in MES against vacancies for the year 1995-96. In this panel, the names of the respondent No. 4 and 5 appears while the name of the applicant did not find place in the same.

Copy of the Memo dated 20.12.95 forming the panel for promotion to the grade of SW in MES is annexed herewith and marked as ANNEXURE-7.

4.9 That the formation of panel vide Annexure-7 distressed and dismayed the applicant inasmuch as the respondent Nos. 4 and 5 are juniors to this applicant in terms of all India Seniority List of Assistant Surveyor of Works dated 3.5.95. It is stated that in the aforesaid All India Seniority List of ASW, the applicant's name is at Sl. No. 61 while the names of the respondent Nos. 4 and 5 are at Sl. Nos. 62 and 63 respectively. It is, therefore, stated that pursuant to the formation of panel for promotion to the grade of SW in MES dated 20.12.95, the respondent Nos. 4 and 5 who are juniors to the applicant were promoted to the post of SW



superseding the applicant.

Copy of All India Seniority List of ASW dated 3.5.95 is annexed herewith and marked as ANNEXURE-8.

4.10 That being aggrieved by his supersession and deprivation of promotion to the post of SW, the applicant submitted a representation dated 29.1.96 to the Engineer-in-Chief's Branch Kashmir House, Army Headquarters. In the aforesaid representation of his, the applicant highlighted the following issues :

- (a) As per the terms and conditions of Ministry of Defence's letter No. 79996/1989/EIB/785(D)/Apptt dated 5.4.91 pursuant to which the applicant was appointed as ASW, the requirement of passing the examination of Direct Final (Sub-Div.II) Examination was notified by the UPSC which is the principal recruiting and autonomous body meant to aid and advise the Government for recruitment to various posts under Union Government as per the Constitution of India.
- (b) The requirement of qualifying the Direct Final (Sub-Div.II) Examination was not intimated by the department until the applicant sought clarification on his own vide letter dated 15.6.95.
- (c) The major intake for the post of ASW was of departmental promotees who are promoted from the grade of Surveyor Assistant Grade-I (Group "C" post) to ASW (Group "A" post) and majority of them were not Engineering Graduate and hence they were required to qualify the examination



of Direct Recruit (Sub-Div.II) Examination as per the extant rules.

(d) The listing together of departmental promotees with direct recruit ASW thereby equating the diploma holders with Civil Engineering Graduates is itself unjustified.

(e) As per the terms and conditions notified at the time of recruitment/appointment, the applicant had already cleared the Young Officers Basic Works Course No. 22 which is a departmental course.

(f) The Directo Final (Sub-Div.II) Examination conducted by the Institution of Surveyors is equivalent to a Bachellor Degree of Civil Engineering as per the various letters issued by the Engineer-in-Chief's Branch after approval of the Ministry of Defence.


(g) The Direct Final (Sub-Div.II) Examination conducted by an independent body i.e. Institution of Surveyors is not a departmental examination and hence clearing the same cannot be an essential qualification for being considered for promotion from ASW to SW.

Apart from the above mentioned ground, the applicant urged various other grounds in his representation. But till this very date there has not been any response from the competent authority in regard to the same.

Copy of the representation dated 29.1.96 is annexed herewith and marked as ANNEXURE-9.

4.11 That it is pertinent to mention here that the maior intake for the post of SW is that of departmental promotees


who are promoted from the grade of Surveyor Assistant Grade-I to ASW and majority of them are not Engineering Graduate. Because of being promotees they have also not come through UPSC examination. It is stated that the qualification of passing the Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors may be necessary in regard to these promotees but in case of direct recruit Engineering Graduates who have come through UPSC Examination and have been appointed directly as Assistant surveyor of Works. the qualification of clearing the Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors cannot be the parameter or necessary eligibility criteria for being considered for the purpose of promotion to the next higher grade of SW. It is stated that the competent authority by misinterpreting the extant rules has made the qualification of clearing the Direct Final (Sub-Div.II) Examination necessary for being considered for promotion to the post of SW. By doing this, the competent authority has also equated the departmental promotees with the direct recruit qualified Engineering Graduates. It is stated that this cannot be permitted inasmuch as the direct recruits selected by the UPSC constitute a distinct and separate class and cannot be equated at par with the departmental promotees. Therefore, clearing of examination of Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors which is made mandatory in case of departmental promotees cannot be made applicable in case of ASW appointed directly through the UPSC as they are already minimum graduates in Civil Engineering and have been selected through UPSC on the basis of meritorious performance. Hence



equating these direct recruits with the promotees and compelling the former to clear the Direct Final (Sub-Div.II) Examination for promotion to the grade of SW is highly unreasonable and arbitrary and not in conformity with the rules.

4.12 That the instant case is a fit case wherein the proposition of next below rule can be applied and the applicant in terms of his seniority in all India Seniority List of ASW may be promoted to the post of SW and his name be inserted in between the name of Shri Brahmananda Singh and Shri S. Venkateshwar Rao in the list of panel circulated vide Headquarter letter No.A/41032/SW/95-96/EIR(0) dated 20.12.95.

4.13 That the applicant appeared in the Direct Final (Sub-Div.II) Examination in September 1995 and the results of the same were declared in March 1996. This applicant has successfully cleared the said examination and now even if the arguments of the respondents are accepted, there is no obstacle in the promotion of the applicant to the post of Surveyor of Works. However, the basic contention of the applicant is that there is no requirement whatsoever for him to clear the aforesaid examination in order to be eligible for promotion to the post of surveyor of Works and the ground on which he was denied the promotion to the post of Surveyor of Works has no legal basis at all because the sole ground on which the applicant was denied the promotion was on the basis of the mistaken notion that clearance of Direct Final (Sub-Div.II) Examination is a necessary condition precedent in order to acquire eligibility to be considered



for promotion to the post of SW. Since the applicant's basic case is that it is not at all required to clear the aforesaid examination, therefore, he ought to have been given the promotion to the post of Surveyor of Works at the time when the respondent Nos. 4 to 8 were so promoted and the name of the applicant ought to have been in the list of panel circulated vide Headquarter letter No.A/41032/SW/95-96/EIR(O) dated 20.12.95 which was formed for the purpose of making promotion to the post of SW.

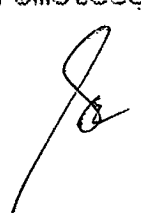
4.14 That this application has been filed bonafide and to secure the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS :

5.1 That passing the Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors is not the qualification prescribed under the extant rules and the competent authority's insistence upon the same is not in conformity with the law and the same is unreasonable and arbitrary.

5.2 That the competent authority's insistence upon clearing the Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors is in contravention of SRO 39 dated 9.2.85 prescribing the recruitment rules for the post of Surveyor of Works in MES, Ministry of Defence.

5.3 That the expression "or equivalent" used in the eligibility condition clearly signifies the distinction that has been made between the qualification which the departmental promotees and the ASW recruited directly




through UPSC might respectively possess. The expression indicates that the qualification of direct recruits and departmental promotees might not be similar and in the event of direct recruits possessing an equivalent qualification might not clear the examination required for the promotees.

5.4 That the applicant having a qualified Bachelor of civil Engineering Degree and having come through the UPSC conducted examination is not required to clear the Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors.

5.5 That the major intake for the post of ASW is of departmental promotees who are promoted from the grade of Surveyor Assistant Grade-I to ASW and majority of them are not Engineering Graduate and hence they are required to qualify the examination of Direct Final (Sub-Div.II) Examination as per the rules prevalent but the same does not hold good in case of direct recruit ASW like this applicant because they hold a degree of Bachelor of Civil Engineering.

5.6 That the Direct Final (Sub-Div.II) Examination of Institution of Surveyors is equivalent to a Bachelor Degree in Civil Engineering as per the various letters issued by the Engineer-in-Chief's Branch after approval of the Ministry of Defence and hence those possessing the Bachelor Degree in Civil Engineering cannot be made to clear the Direct Final (Sub-Div.II) Examination in order to be considered for promotion to SW.




5.7 That the Direct Final (Sub-Div.II) Examination conducted by an independent body i.e. the Institution of Surveyors is not a departmental examination and hence it cannot be a necessary qualification for making promotion to the post of Higher Grade of SW.

5.8 That the direct recruits selected by the UPSC constitute a distinct and separate class and cannot be equated at par with the departmental promotees therefore. Clearing of examination of Direct Final (Sub-Div.II) Examination conducted by the Institution of Surveyors which is made mandatory in case of departmental promotees cannot be made applicable in case of direct recruits appointed direct through UPSC as they are already minimum Graduates in Civil Engineering and have been selected through UPSC on the basis of their meritorious performance. Hence equating the direct recruits with that of promotees and compelling the former to clear the examination of Institution of Surveyors which promotees are required to clear for promotion to SW is highly unreasonable and arbitrary and not in conformity with the rules.

6.DETAILS OF REMEDIES EXHAUSTED :

That the applicant declares that he has exhausted all the remedies available to him. As in the instant case no other alternative remedy is available to him, the applicant has come before this Hon'ble Tribunal.



7. MATTERS NOT PREVIOUSLY FILED OR PENDING
IN ANY OTHER COURT :

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the grievances in respect of which this application is made before any Court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT :

Under the facts and circumstances stated above, applicant prays that :

- 8.1 Direct the respondent Nos. 1, 2 and 3 to produce a copy of the Headquarter Chief Engineer Eastern Command, Calcutta letter No. 131051/2987/Enqrs/21/EIB dated 2nd August 1995 and letter of Engineer-in-Chief's Branch vide No.A.10033/ASW/95/96/EIR(O) dated 25.7.95.
- 8.2 Quash and set aside the Headquarter Chief Engineer Eastern Command Calcutta letter No. 131051/2987/Enqrs/21/EIB dated 2nd August 1995 and letter of Engineer-in-Chief's Branch vide No.A/410033/ASW/95-96/EIR(O) dated 25.7.95.
- 8.3 Quash and set aside the letter dated 17.8.95 containing the copy of Headquarter Chief Engineer, Eastern Command Calcutta letter No. 131051/2987/Enqrs/21/EIB dated 2nd August 1995.



8.4 Direct the respondent Nos. 1.2 and 3 to consider the case of UPSC qualified direct recruit Indian Engineering Services Officers for promotion to the post of SW without asking to clear the Direct Final (Sub-Div.II) Examination.

8.5 Direct the respondent Nos. 1.2 and 3 to promote the applicant to next grade of Surveyor of Works and to show his name between the names of Shri Brahmananda Singh and Shri S. Venkateshwar Rao in the list of panel circulated vide Headquarter letter No. 1032/SW/95-96/EIR(0) dated 20.12.95.

8.6 Direct the respondent Nos. 1.2 and 3 to fix the pay scale of the applicant of next higher grade of Surveyor of Works from the date of panel i.e. 20.12.95.

8.7 Direct the respondents to make appropriate amendments in the seniority list of SW so as to show the applicant in the said list assigning him the correct position.

8.8 Pass any other or further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

8.9 Cost of this application to the applicant.

9. INTERIM ORDER PRAYED :

In the interim, be further pleased to direct the respondent Nos. 1.2 and 3 that pendency of this case shall not be a bar for them to dispose off the representation of



18.

the applicant dated 29.1.96 and to redress his grievance in regard to his supersession by his juniors to the post of SW and for consideration of applicant's name for promotion in the next DPC. if he becomes eligible for the post of SW in the meantime.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- 11.1 I.P.O. No. : 8.09.346402
- 11.2 Date : 2.8.96
- 11.3 Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

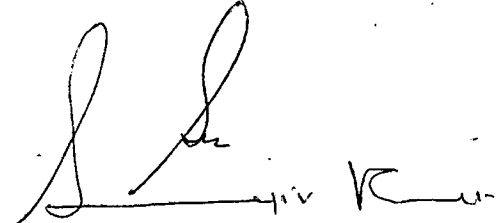
Verification.....



V E R I F I C A T I O N

I, Shri. Sanjiv Vasist, son of Shri D.B.Vasist, aged about 31 years, at present working as Asstt. Surveyor of Works, Military Engineer Services, C/O Chief Engineer, Shillong Zone, Elephant Falls Camp, P.O. Nonglver, Shillong-1, the applicant, do hereby verify and state that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification on this the 22nd day of July 1996.



SANJIV VASIST

RECRUITMENT RULES FOR THE POST OF SURVEYOR OF WORKS IN
MILITARY ENGINEER SERVICES IN THE MINISTRY OF DEFENCE

SRO No. 39

Dated : 09 Feb 85

1. Name of post : Surveyor of Works
2. No. of post : 108 (1985)
subject to variation
depending on workload
3. Classification : Military Engineer Services
Group "A" Gazetted
Non-Ministerial
4. Scale of pay : Rs. 1100 (6th year or
under)-50-1600/-
5. Whether selection post or non-selection post : Non-selection
6. Age limit for direct recruits. : Not applicable
7. Whether benefit of added years of service admissible under Rule 30 of the Central Civil Services (Pension) Rules, 1972. : Not applicable
8. Educational and other qualifications required for direct recruits. : Not applicable
9. Whether age and educational qualification prescribed for direct recruits will apply in the case of promotees. : Not applicable
10. Period of probation if any. : Not applicable
11. Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods. : By promotion

Contd...P/2.

Attested.

Advocate.

12. In case of recruitment by : PROMOTION
 promotion/deputation/
 transfer grades from
 which promotion/deputa-
 tion transfer to be made. -----
 Assistant Surveyor of Works
 with 4 years regular ser-
 vice, in the grade and hav-
 ing passed the Final
 Examination of the
 Institution of the Surveyors
 (India) or equivalent.
- Note: For the purpose of
 counting the above period
 the regular service rendered
 by the Assistant Surveyor of
 Works in the equivalent post
 of Assistant Executive
 Engineer (Engr. Cadre) in
 Military Engineer Services
 prior to 4th January 1981
 shall also be taken into
 account.
14. If a Departmental Pro- : Group "A" Departmental
 motion Committee exists
 What is its composition. Promotion Committee
- For considering promotion
 and confirmation :
1. Joint Secretary -Chairman
 2. Director of Personal -
 Member.
14. Circumstances in which : Consultation with the Union
 Union Public Service
 Commission is to be
 consulted in making
 recruitment. • Public Service Commission
 not necessary while making
 selection for appointment
 to the post.

Attested.

Advocate.

PRIORITY

Tele : 3019687

Coord & Pers Directorate/EIR(0)
Engineer-in-Chief's Branch
Army Headquarters
DHQ PO New Delhi-110 011

A/41 132/SW/92-93/EIR(0)

05 Aug 92

List "A"

DPC FOR PROMOTION FROM ASSISTANT SURVEYOR OF WORKS TO THE
GRADE OF SURVEYOR OF WORKS

1. Reference this HQ letter No.A/41033/ASW/1/92/EIR(0) dated
09 Jan 92.

2. DPC to the grade of Surveyor of Works is scheduled to be
held shortly. As per the Recruitment Rules the eligibility
conditions for promotion is as under :

"ASW with 4 years regular service in the grade and
having passed the Final/Direct Final Exam of
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 ASW in the equivalent post of AEE
(Engr. Cadre) in MES prior to 4th Jan 86 shall also
be taken into account.

3. You are requested to forward the consolidated integrity
certificate of all the eligible ASWs upto Sl. No. 70 as per
the Seniority List of AWS circulated vide this HQ letter
under reference. If any of the officer is involved in any
disciplinary/Vigilance/Spl. case, or otherwise, necessary
particulars be given. The integrity certificate should be
signed by an officer not below the rank of Addl. Chief
Engineer or equivalent, in the prescribed proforma.

4. While submitting the integrity certificate please ensure
that the instructions as contained in DOP & T OM No.
22011/1/91-Estt.(A) dated 31 Jul 91 are complied with
according to which the following categories of persons will
be considered as involved in disciplinary case :

(a) placed under suspension

(b) Charge sheet has been issued or the disciplinary
authority has decided to issue a charge sheet, and

(c) Prosecution for criminal charge is pending or
sanction for prosecution has been issued or a
decision has been taken to accord sanction for
prosecution.

Attested.

Advocate.

In view of the above, please ensure that only above types of cases are reported as involved in disciplinary/SPE case etc. Merely being asked as a witness for court of inquiry, Board of Officers or being blamed by a court of inquiry or registration of case by the SPE or receipt of complaint against an individual should not be regarded as having involved in disciplinary/SPE/Vigilance case.

5. Please also specifically confirm whether the above mentioned officers have passed the Final/Direct Final Exam of Institution of Surveyors(India). If so, a copy of Part II order notifying the casualty may also please be forwarded for our record.

6. Particulars of individual belonging to SC/ST communities may be furnished separately.

7. The above information/documents alongwith consolidated integrity certificate should reach this HQ by 26th Aug 92 for holding DPC to the grade of Surveyor of Works.

Sd/-

(M Prahalada Rao)

SAO

Offg. SO 1 Engrs(Pers)/EIR(O)
Engineer-in-Chief.

Attested.

Advocate.

ANNEXURE-3

EXTRACT

Recruitment Rules - A.S.W. (ASSTT. SURVEYOR OF WORKS EQUIVALENT TO ASSTT. EXECUTIVE ENGINEER)

(Reference - Gazette No. 1581 of 17 Sep 49 as amended)

Direct Recruitment in the post of A.S.W. through U.P.S.C.

The minimum qualification will be a degree in Civil Engineering or equivalent (A pass in the Final/Direct Final Examination in Building and quantity Surveying of the Institution of Surveyors is recognised as equivalent to degree in Civil Engineering).

(Clarification made vide Engineer-in-Chief's Branch, Army HQ letter No.A/40001/SW/EIR dated 19 Jul 78).

Attested.

Advocate

(EXTRACT)

QUALIFICATION PRESCRIBED BY UNION PUBLIC SERVICE
COMMISSION VIDE NOTICE DATED 27TH FEBURARY 1988

6. A candidate must have :

(A) obtained a degree in Engineering from a University incorporated by an Act of the Central or State Legislature in India or other Educational Institutes established by an Act of Parliament or declared to be deemed as Universities under Section 3 of the University Grants Commission Act, 1956, or

(B) passed Sections A and B of the Institution Examinations of the Institution of Engineers (India), or

(C) obtained a degree/diploma in Engineering from such foreign Universities/College/Institution, and under such conditions as may be recognised by the Government for the purpose from time to time : or

(D) passed in the Graduate Membership Examination of the Institution of Electronics and Telecommunication Engineers (India), or

(E) passed Associate Membership Examination Parts II and III, Section A and B of the Aeronautical Society of India, or

(F) passed Associate Membership Examination (Sections A and B) of the Institution of Mechanical Engineers (India), or

(G) passed Graduate Membership Examination of the Institution of Electronics and Radio Engineers, London held after November, 1959.

The Graduate Membership Examination of the Institution of Electronics and Radio-Engineers, London held prior to November 1959 is also acceptable subject to the following conditions :

(1) that the candidates who have passed the examination held prior to November 1959, should have appeared and passed in the following additional papers, according to post-1959 scheme of Graduate Membership Examination.

(i) Principles of Radio and Electronics I (Section "A")

(ii) Mathematics (Science "B")

Attested.


Advocate

- (2) that the candidates concerned should produce certificates from the Institution of Electronics and Radio Engineers, London in fulfilment of the condition prescribed at (1) above.

Provided that a candidate for the post of Engineer, Group A, in Wireless Planning and Coordination Wing/Monitoring Organisation, Ministry of Communications, Indian Broadcasting (Engineers), Service and Indian, Naval Armament Service (Electronics Engineering Posts) ; may possess any of the above qualifications or the qualification mentioned below namely :

M.Sc. degree or its equivalent with Wireless Communication, Electronics, Radio Physics, or Radio Engineering as a special subject.

Note 1 : A candidate who has appeared at an examination the passing of which would render him educationally qualified for this examination, but has not been informed of the result, may apply for admission to the examination. A candidate who intends to appear at such a qualifying examination may also apply. such candidates will be admitted to the examination, if otherwise eligible but the admission would be deemed to be provisional and subject to cancellation, if they do not produce proof of having passed the examination as soon as possible, and in any case not later than 15th December, 1988.

Attested.

Advocate

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ANNEXURE-5

RELEVANT PART OF BRIEF PARTICULARS RELATING TO MILITARY
ENGINEERING SERVICES AND INDIAN NAVAL ARMAMENT SERVICE
PRESCRIBED BY U.P.S.C.

3. MILITARY ENGINEERING SERVICE, GROUP A :

(a) The selected candidates will be appointed on probation for a period of two years. A probationer during his probationary period may be required to pass such departmental and language tests as Government may prescribe. If in the opinion of Government the work or conduct of an officer on probation is unsatisfactory or shows that he is unlikely to become efficient or if the probationer fails to pass the prescribed tests during the period Government may discharge him. On the conclusion of the period of probation, Government may confirm the officer in his appointment or if, his work or conduct has in the opinion of Government been unsatisfactory, Government may either discharge him or extend the period of probation for such further periods as Government may consider fit.

Probationers will be required to pass the MES Procedure Supdts. (B/R & E/M) Grade I Examination and Hindi Test during their probationary period of two years. The standard for Hindi Test should be "PRAGYA" (equivalent to Matriculation standard).

(b) I. The selected candidates shall if so required be liable to serve as Commissioned Officers in the Armed Forces for a period of not less than 4 years including the period spent on training, if any :

Provided that such a candidate -

(i) shall not be required to serve as aforesaid after the expiry of ten years from the date of appointment.

(ii) shall not ordinarily be required to serve as aforesaid after attaining the age of forty years.

II. The candidates shall also be subject to Civilian in Defence Service (Field Liability) Rules of 1957 published under SRO No. 92, dated 9th March 1957. They will be medically examined in accordance with the medical standard laid down therein.

(c) The following are the rates of pay :

(a) Asstt. Executive Engineer/Asstt. Surveyor of Works -
2200-75-2800-EB-100-4000

(b) Executive Engineer/Surveyor of Works -
3000-100-3500-125-4500

Attested.

Advocate

- (c) Superintending Engineer (Ordinary Grade)/
Superintending Surveyor of Works (Ordinary Grade) -
3700-125-4700-150-5000
- (d) Superintending Engineer (Selection Grade)/
Superintending Surveyor of Works (Selection Grade) -
4500-150-5700
- (e) Deputy Chief Engineer - 300-125-4700-150-5000
- (f) Chief Engineer (Level-II)/
Chief Surveyor of Works (Level-II)
5100-150-5700
- (g) Chief Engineer (Level-I)/
Chief Surveyor of Works (Level-I)
5900-200-6700

(B) INDIAN NAVAL ARMAMENT SERVICE :

(a) Candidates selected for appointment to the service will be appointed as probationers for a period of two years which period may be extended at the discretion of the competent authority. Failure to complete the probation to the satisfaction of the competent authority will render them liable to discharge from service.

(b) The appointment can be terminated at any time by giving the required period of notice (one month in the case of temporary appointment and three months in the case of permanent appointment by competent authority). The Government, however, reserves the right of terminating services of the appointees forthwith or before the expiry of the stipulated period of notice by making payment of a sum equivalent to pay and allowances for the period of notice or the unexpired portion thereof.

(c) They will be subject to terms and conditions of service as applicable to Civilian Government Servants paid from the Defence Services Estimates in accordance with the orders issued by the Government of India from time to time. They will be subjected to Field Service Liability Rules, 1957 as amended from time to time.

(d) They will be liable for transfer anywhere in India or abroad.

(e) Scale of pay and classification - Group A Gazetted.

- (i) Deputy Armament Supply Officer, Grade-II
Rs. 2200-75-2800-EB-100-4000
- (ii) Deputy Armament Supply Officer, Grade-I
Rs. 3000-100-3500-125-4500
- (iii) Naval Armament Supply Officer (Ordinary Grade) -
Rs. 3700-125-4700-150-5000

Attested.

Advocate

(iv) Naval Armament Supply Officer (Selection Grade) -
Rs.4500-150-5700

(v) Director of Armament Supply - Rs.5900-200-6700

(f) Prospects of Promotion to higher grades -

(i) Deputy Armament Supply Officer, Grade I DASOs Grade II with 5 years service are eligible for promotion to the grade of DASO Grade I in the scale of pay of Rs. 3000-4500 on the basis of selection on the recommendations of DPC provided that only those officers will be considered for promotion who have passed the departmental examination which may be held after technical training course or the Naval Technical Staff Officers course at the I.A.T. Kirkee.

(ii) Naval Armament Supply Officer (Ordinary Grade) :

Deputy Armament Supply Officer, Grade I with 5 years' service as such as eligible for promotion to the grade of Naval Armament Supply Officer (Ordinary Grade) in the pay scale of Rs. 3700-5000 on the basis of selection to be made by the appropriate DPC.

(iii) Naval Armament Supply Officer (Selection Grade)

Naval Armament supply Officer (Ordinary Grade with 5 years service as such are eligible for promotion to the grade of Naval Armament supply Officer (Selection Grade) in the pay scale of Rs. 4500-5700 on the basis of selection to be made by the appropriate DPC.

(iv) Director of Armament Supply :

Naval Armament Supply Officer (Selection Grade) with 3 years' service in the grade(s) are eligible for promotion to the grade of Director of Armament Supply in the pay scale of Rs. 5900-6700 on the basis of selection to be made by the appropriate DPC.

(iv) Director of Armament Supply :

Naval Armament Supply Officer (Selection Grade) with 3 years' service in the grade(s) are eligible for promotion to the grade of Director of Armament supply in the pay scale of Rs. 5900-6700 on the basis of selection to be made by the appropriate DPC.

The requirements for promotion to next higher grade, as laid down above, are those of minimum eligibility and that promotion in the grade concerned will take place subject to availability of vacancies only.

Note : The pay of the Government servant who held a permanent post other than a tenure post in a substantive capacity immediately prior to his appointment as a probationer may be regulated subject

Attested.

[Signature]
Advocate.

- 4 -

to the provision of P.R. 22B(1) and the corresponding article in CSR applicable to probationer in the Indian Navy.

(g) Nature of duties and responsibilities attached to the post of Deputy Armament Supply Officer Grade II in the Indian Navy, Ministry of Defence.

- (i) Production, planning and direction of work relating to repair, modification and maintenance of armaments, incorporating various mechanical electronics and electrical devices and system production and productivity.
- (ii) Provision of machinery, electronic and electrical equipment for repair, maintenance and overhaul.
- (iii) Development work to establish import substitutes, preparation of indigenous design specifications.
- (iv) Providing of mechanical electronics and electrical spare of armaments.
- (v) Periodical calibration testing/examination of sub-assemblies and assemblies of mechanical electronics and electrical items of armaments (missiles, torpedos, mines and guns) measuring instruments, etc.
- (vi) Providing logistic support in respect of armament stores to fleet and Naval Establishments.
- (vii) Rendition of technical advice to the service in all matters relating to mechanical, electronic and electrical engineering in respect of armaments.

Attested.


Advocate

Tele : AF 2358

Headquarters,
Chief Engineer (AF),
Shillong Zone,
Elephant Falls Camp
Nonglyer Post
Shillong-793009

81222/5/237/EIB

17 Aug 95

CWE (AF) Gauhati
CWE (AF) Kalaikunda
CWE (AF) Jorhat

PROMOTION CRITERIA FROM ASW TO SW

1. A copy of HQ CEEC letter No.131051/2987/Engrs/21/EIB dt. 02 Aug 95 is fwd herewith for your info please.

Sd/-
(HP Mehra)
AEE B/R
SO 3 (Pers)
For Chief Engineer (AF)

Copy to :
E 8 Sec. for na please
E-7A Sec - for info please

A copy of HQ CEEC letter No. 131051/2987/Engrs/21/EIB dated 02 Aug 95.

AS ABOVE

1. It is intimated that one of the ASW serving in this Command had requested the Secretary, Min of Defence to Clarify whether it is essential to pass the Direct Final (Sub-Div. II) Examination conducted by the Institution of Surveyors, 15/7, Institutional Area, New Mohrauli Road, New Delhi for considering promotion to SW.

2. The case was accordingly taken up with the higher authority and E-in-C's Branch vide their letter A/410033/ASW/95-96 EIR(O) dated 25 July 95 have intimated that Direct Final (Sub-Div.II) examination is must for promotion from ASW to SW.

3. The above policy may please be noted for guidance and Disseminated to your units/fmns.

4. XXX

5. XXX

Sd/- (R.K. Khanna)
Lt. Col.
SO II (Pers)
For Chief Engineer

Attested.

Advocate.

Coord & Pers Directorate/EIR(O)
Engineer-in-Chief's Branch
Army Headquarters,
DHQ PO New Delhi-110 011

No. 1032/SW/95-96/EIR(O)

20 Dec 95

List "A"

PANEL FOR PROMOTION TO THE GRADE OF
SURVEYOR OF WORKS IN M.E.S.

1. The undermentioned Assistant Surveyors of Works have been approved for officiating promotion to the grade of Surveyor of Works in Military Engineer Services against the vacancies for the year 1995-96 :

Ser	MES No.	Names of the officers	Date of Birth
		S/Shri	
a.	263330	Laljeet Prasad (S/C)	26 Oct 61
b.	306455	Ram Lal Gangotra	27 May 41
c.	300256	Jasbir Singh Verma (S/C)	05 Mar 63
d.	201079	Subal Chandra Das	07 Jan 41
e.	210014	Vishnu Datt Gautam	10 Jul 46
f.	186178	Ashok K. Gupta	15 Aug 62
g.	300311	Sushant Kumar	13 Aug 64
h.	508901	Mahesh Chander	01 Oct 65
i.	439112	Sanjeev Kumar Jain	15 Feb 65
k.	485036	Sanjay Kumar Gupta	28 Jan 68
l.	439115	Brahmanand Singh	13 Jan 64
m.	189647	S. Venkataswara Rao	16 May 66
n.	263373	Indrajit Mandal	14 Oct 66

(thirteen officers only)

2. The above panel will be operative upto and including 03 Dec 93 unless reviewed earlier or specifically extended beyond this date by the Competent Authority.

3. Actual appointment of Officers included in the panel will be made in the order shown therein subject to the availability of vacancies and issue of orders for appointment.

4. The above panel will be subject to the outcome of CAT Ahmedabad Bench MA 586/93 in O.A. No. 492/93.

Sd/- (Jagmohan Uppal)
Col
Dir of Pers
For Engineer-in-Chief

Copy to :

Min of Def/D(Apptts)
List z"D" "E" & "F"

Internal E1A, E1B - 5 copies, E1C, E1D, MIS (Civ), SCC
E Coord-I, E2 WPC, E-8, WPC/ADGTC, DGBR (pers) D's.

Attested.

Advocate

-33-

Tele : 3019687

PRIORITY

Coord aur Karmik Nidishalaya/E1R(O)
 Pramukh Engineer, Shakh
 Sena Mukhalaya
 Coord & Pers Directorate/E1R(O)
 Engineer-in-Chief's Branch
 Army Headquarters
 DHQ PO, New Delhi - 110 011

A/41033/ASW/95-96/E1R(O)

23 May 95.

List 'A'

ALL INDIA SENIORITY LIST OF ASSISTANT SURVEYOR OF WORKS

1. Two copies of the All India Seniority List of Assistant Surveyor of Works forwarded herewith.
2. The seniority list will be circulated to all concerned for meticulous scrutiny and correctness of the following details will be ensured as to whether:

(a) MES Number and date of Birth as entered are correct.

(b) Educational qualifications specifically in respect of those who have since passed the direct final/final examination of the Institution of Surveyors and other qualifying courses are incorporated including procedure.

(c) Date of seniority assigned is correct and the individual is correctly interpolated.

MES No, date of seniority under column No 5 in cases of Direct Recruits (DR) where not shown will be incorporated. In case of Officers who have voluntary retired/died/resigned may also please be indicated clearly in the AISL and forwarding letter. Discrepancies, wherever observed, be corrected and the same will be attested by an Officer who authenticate its correctness.

3. After thorough scrutiny of above aspects, the seniority list will be authenticated to its correctness by an Officer not below the rank of an SO 1 (Pers) repeat not below the rank of an SO 1 (Pers). Any discrepancies in the seniority list, if found, at a later date, the same rests with the concerned Command.

4. Each Command shall end the following certificate in the seniority list :-

Attested:

2/-

Advocate

CI
ACE (V)
ACE (H)
SOZ (P)

(a) Certified that the individuals at Ser N5 (mention numbers) in the seniority list are born on the strength of the Command and that the SER No and the date of Birth in respect of them as entered in the seniority list are correct.

(b) Certified that the details of educational qualifications and others qualifying course-like ITS procedure exam, institution of Surveyors exam, etc. in respect of the individuals born on the strength of the Command have been verified and are incorporated in the seniority list wherever required.

(c) Certified that the date of seniority assigned to the individuals born on the strength of the Command are correct and none is omitted.

(d) Certified that the individuals born on the strength of the Command have been correctly inter-listed in the seniority list.

(e) Certified that the seniority list has been shown to all affected individuals and their signature, in confirmation to the seniority list has been obtained and that the seniority list has been scrutinised at the official level and all discrepancies have been reconciled.

One copy of the seniority list duly verified and authenticated must be sent to this HQ by 20 Jun 95 together with the Integrity Certificates of all eligible officers appearing in the AISL and who have passed final/direct final exam of Institution of Surveyors of India in full together with a copy of Part-II order notifying the casualities, with effect from date effect as under :-

Certified that Ser N5 of the AISL of ASL circulated vide E-10-15 Sr. letter No A/41035/10/95-96, EIR(0) dated May 95 have passed final/direct final exam of Institution of Surveyors in full, as detailed below :-

AISL NO	Name	Years of passing final/direct final exam	Part II Order No & date
---------	------	--	-------------------------

to complete for records and hold further DPEs in the cadre. Neither piece meal replies will be sent nor lower formations will be directed to forward seniority list directly to HQ.

5. The above seniority list is subject to ratification by Department of Personnel and Training.

Attested

Advocate

(SR Gupta)

540

Offg SO 1 Encl (part 1) for Engineering

with one copy of AISL

Copy 1 :- List 10, 11

Sup. page no. 4 of General Form attached to letter no. 14/033/Am/95-96/EPG (5) dt 03 May 98
 Note which All India Surveying Inst of Indian Surveying of Government included

1 2 3 4 5 6 7 8

S/Shri

51. 300311 Sushant Kumar (OR) Neither 13 Aug 64 31 Jul 90 F.1/4(14) 88.5-VII

BE Civ, Y08U-92, Direct Final Exam SO-II (Slgs & Qty) Surveying-93.

52. 508901 Mahesh Chander (OR) Neither 01 Oct 65 04 Oct 90 -do-

BE Civ-87, Y08U, DIRECT Final Exam ISI-91 BE Civ-87

53. 439602 Bhavesh Gupta (OR) Neither 25 Feb 65 16 Jul 90 -do-

BE (Civ) (Hons), 21 Y08U-91, Direct Final Exam SO-II (Slgs & Qty) Surveying-93.

54. 439112 Sanjiv Kumar Jain (OR) Neither 15 Feb 65 19 Feb 91 -do-

High School-81, Direct Final Exam SO-II (Slgs & Qty) Surveying-92.

55. 485036 Sanjay Kumar Gupta (OR) Neither 28 Jan 68 01 Aug 90 -do-

SSC-79, Inter-81, B Tech, Civ-88, Y08U-21.

56. 189641 A Bhadriah (OR) S/Tribal 05 Jan 63 01 Oct 90 -do-

BE (Civ)-83, Y08U-92.

57. 509000 Madan Lal (OR) Neither 20 Jul 67 09 Sep 91 -do-

B Tech (Civ), ME, Y08U-2.

58. 439606 Sushil Kumar Jain (OR) Neither 03 Jan 68 29 Nov 91 -do-
 Neither 16 Nov 63 28 May 92 F-1/4(V) 89 E-VII

BE (Civ) (Hons/M Tech, Y08U-24, Direct Final Exam SO-II (Slgs & Qty)-93

59. 439115 Brahmanand Singh (OR) Neither 04 July 64 21 Oct 92 -do-

Inter 81, M Tech, BE Civ 83, Y08U-22.

60. 300326 Anil Kumar (OR) Neither 30 Aug 91 -do-

As amended
 vide Encl's
 to
 letter no.
 14/033/Am/95-96/
 ETR (100)

Attested

09.2911A

Engineer-in-Chief's Branch
Directorate of Co-ord and pers

HQ, NEW DELHI - 110 011

PROMOTION FROM ASW TO SW

1. This has reference to your HQ letter No. A/41032/SW/95-96 EIR(O) dated 20 Dec '95 vide which panel for promotion to the grade of Surveyor of Works from Asstt Surveyor of Works was approved.

2. It is seen that the name of undersigned does not figure in the above panel. As understood and intimated to the undersigned vide CE Eastern Command letter No. A/131051/2987/Enggs/21/EIR dated 02 Aug '95 the case was taken up by them with your HQ and your HQ letter No. A/41033/ASW/95-96/EIR(O) dated 25 July '95 had stated that the Direct Final (Sub Div II) examination conducted by the Institution of Surveyor is must from ASW to SW.

3. Following issues are highlighted for your kind consideration :-

- i) That the undersigned had appeared in the Engg Service Exam 1989 conducted by UPSC for which minimum qualification laid down by the UPSC was a Bachelors Degree in Civil Engg.
- ii) That the undersigned had qualified the exam conducted by UPSC and was placed at Sl No. 144 of the overall seniority list of successful Civil engg graduates.
- iii) That the undersigned was offered to join the service in the Military Engineer services under Ministry of Defence by the President as Asstt Surveyor of Works Ministry of Defence letter No. 79996/1989/EIR/735/DAPPS dated 05 Apr 91 refers.
- iv) Based on the terms and conditions in the appointment letter the undersigned gave his willingness to join the deptt and subsequently joined the deptt by reporting to the office of Chief Engineer, Jalandhar Zone.
- v) No where did the UPSC indicate that the undersigned is required to qualify the direct final sub div II exam conducted by the institution of Surveyors for promotion to next higher grade.
- vi) Neither the Ministry of Defence vide their letter dated 05 Apr 91 nor E- in- C's Br intimated to the undersigned the requirement of passing g Direct Final Sub Div II exam.
- vii) The requirement of passing the exam was not intimated by the department until the undersigned asked the clarification from Ministry of Defence on his own, the letter dated 09th June '95 refers.

Attested.

Contd2/

Advocate.

5x

viii)

Engineer cadre
they were chosen
for this cadre

Allocation of an engineer and surveyor cadre started through WPC in the early 50s. A few good people from WPC (i.e. direct recruits) were also in the cadre and the number of direct recruits was based on whether they volunteered or not, or had volunteered for change or not, giving them the choice. Prior to this, the only way to take for officer cadre was after promotion from SA I to ASA i.e. departmental promotion. There were in general not promotion posts in the cadre. Hence, they were required to qualify for the post of Direct Final Sub Div II, as per the rules which were prevalent then. The rule cannot be applied to Direct Recruits i.e. of WPC from WPC, as they were already qualified and not diploma holders and were so since the qualification for SA's (Surveyor Officer) and ASA's (Engineer Officer) was indeed a degree as degree in Engineering. The list of direct recruits from SA I to ASA, which were recruited directly, hence would be direct holders (Departmental promotion) and direct graduates (Direct Recruits) in the cadre. It is itself unjustified and further questioning the requirement of qualifying for the post of Direct Final Sub Div II on ASA (Direct Recruits) for promotion is not correct.

ix)

As mentioned during appointment the officer has to clear departmental exam during promotion and the undersigned has already done the course of WPC-12 (a departmental exam). Further the institution of Surveyor is a self-governing independent professional body and hence the exam conducted by this institution does not come under the definition of departmental exam. This institution is not under the department and is managed by a council of engineers and surveyors who are elected annually. In connection of counterparts who were ordered engineer cadre (i.e. ASA's) through the same WPC decisions exam, only have to clear the departmental exam (which even I have cleared as mentioned above) and there is no other exam to clear to clear for promotion. On the contrary, I have to undergo the course of passing Direct Final exam also, which is conditional equivalent to a degree, which I have already done.

x)

Has the WPC or Ministry of Defence had any role during applying or in selection of the necessity of this exam then the officer would have explored the possibility of joining other departments and would have taken the decision to avoid joining such a department where his career is uncertain even for the first promotion which should be a selection and not by exam. So far as the selection of this is the only way to get the post of direct available through WPC, which is a departmental exam, even for direct recruits, the only of a professional exam, equivalent to degree, conducted by an independent body, which is not under the department, is required for the first promotion. It is not a departmental exam, which is a departmental exam, then it should be a departmental exam.

UPSC, for the Surveyor cadre, who have cleared the Direct Final Exam and should not take Engg graduates for direct recruits.

4. In view of the above it is abundantly clear that the eligibility rule for promotion from ASB to SA has been wrongly interpreted and is not applicable on ASB appointed directly through UPSC.

5. The basic eligibility condition for promotion of ASB to SA as per year letter No. M/41732/S&92-93/214(G) dated 05 Aug 92 (~~Copy~~) is :-

" ASB with 4 years regular service in the grade and having passed the final/Direct final exam of the Institution of Surveyors (India) or equivalent."

The word " or equivalent" implies that there is some other equivalent criteria in lieu of final/direct final exam which is for the direct recruits of UPSC. Hence the eligibility rule has been wrongly interpreted and the requirement of passing Direct final exam of Sub Div II of Institution of Surveyors (India) recognised by the Govt of India. From which it is also clear that Engg degree is equivalent to Direct final Sub Div II and hence passing either of them should be the criteria for promotion and since direct recruits are already graduated therefore, passing Direct final Sub Div II is not mandatory for them.

One more point though slightly off track is paragraph No.5 of 2249 General Conditions of contract which says " Amend the words "Engineer Officer" to read "Surveyor Officer" having degree in Engg or equivalent or having passed final/direct final examination of Sub Div II of Institution of Surveyors (India) recognised by the Govt of India. From which it is also clear that Engg degree is equivalent to Direct final Sub Div II and hence passing either of them should be the criteria for promotion and since direct recruits are already graduated therefore, passing Direct final Sub Div II is not mandatory for them.

6. It is further submitted that the direct recruits constitute a distinct and separate class and cannot be compared with promotees. Therefore passing the examination which is necessary in the case of promotees cannot be made applicable in the case of direct recruits in as much as the direct recruits are graduate engineers and have been selected through the UPSC on the basis of their meritorious performance. Hence, equating them with the promotees and compelling them to clear the examination which promotees are required to clear for promotion to higher post is highly unreasonable and arbitrary and not in conformity with the rules.

7. That the expression " or equivalent " used in the eligibility rules clearly signifies the distinction that has been made between the qualifications which the promotees and direct recruits might respectively possess. The expression indicates that the qualification of direct recruits and promotees might not be similar and in the event of anyone possessing an equivalent qualification might not be required to clear the examination which is required for the promotees.

Attested

Advocate

-40-

: 4 :

8. In view of the above the undersigned requests that as per the original seniority list of ASW and as per the original list of seniority of UPSC the seniority be maintained. For this the undersigned be promoted to grade of Surveyor of Works and name be inserted between MSS No. 439115 Sh. Subodh Singh and MSS No. 139647 Sh. S. Venkateswara Rao in list of panel circulated vide your HQ letter No. N/41032/SW/95-96/DIR(O) dated 27 Dec 95.

9. The denial of rightful promotion to the undersigned to the grade of SW, has been resulting in mental agony and financial loss, it is requested that the panel at para 8 above be reviewed immediately and seniority of the undersigned restored with the date of panel becoming operational. ~~Max process be taken on priority.~~

dt 29 Jan 96

(SENSITIVE)
ASW
MSS NO-300322
HQ CE (AF) Shillong Zone
Elephant Falls Camp
P.O: Nonglyer
Shillong-793009

Copy to :-

1. Secretary (HQ) Ministry of Defence - Your confirmation as asked for vide my application dt 03 June 95 is still awaited. The seniority list given by UPSC to Ministry of Defence of successful candidates of Engg Services Exam-92 has been annexed for Surveyor grade of Military Engg Services has been altered in the panel of SW published by E-in-C's Br vide their N/41032/SW/95-96/DIR(O) dt 20 Dec 95 wherein the undersigned is off the list. My name should have occurred as mentioned in para 8 above and for the reasons mentioned in this application. Necessary corrective actions may please be taken on priority. - do -
2. E-in-C's Br (Advance - Copy) Directorate of Co-ord and Pers - do -
SHP, NEW DELHI - 110 011
3. Chairman UPSC (Regd) - do -
4. HQ Eastern Command (Regd) Engineers Branch Fort William Calcutta - 21 - do -

Att: d.

Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

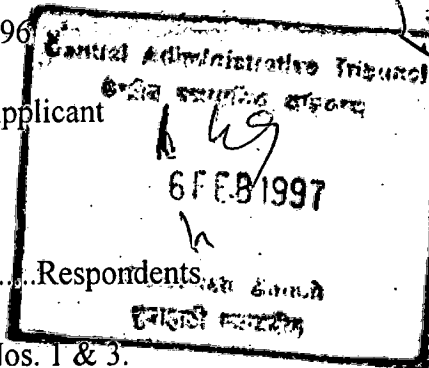
In the matter of :-

OA No 139 of 1996

Sanjiv Vasist..... Applicant

-Versus-

Union of India & others..... Respondents



Written statement for and on behalf of the Respondent Nos. 1 & 3.

I, TDS Visakhan, Chief Engineer, Shillong Zone, SE Falls, Shillong do hereby solemnly affirm and say as follows :-

1. That I am the Chief Engineer, Shillong Zone, SE Falls, Shillong and am acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statements made in the application may be deemed to have been denied. I am authorised to file this written statement on behalf of Respondent No 1 & 3.

2. That the applicant has filed this original application on the wrong facts. It is specifically submitted herein that the applicant is not eligible for promotion to the post of Surveyor of works as per the Recruitment Rules notified through SRO 39 dated 9th Feb 1985. Annexure 'A'.

Therefore, his name could not find a place in the Departmental promotion Committee Select panel issued under Engineer-in-Chief's Branch Army Headquarters letter No A/1032/SW/95-96/E1R(o), dt 20th Dec 1995. No representation was submitted by the applicant to the appropriate authority so that the position could be made clear to him before going to this Hon'ble Tribunal which is a first and foremost requirement of the Tribunal Act. It is specifically submitted here in that the respondents have strictly acted in accordance with the statutory rules and no violation to the rules have been done.

3. That the applicant has tried to build up a case challenging the Recruitment Rules framed by the president of India in exercise of the power conferred on him under Article 309 of the constitution of India on the ground that these rules are ultra vires to the constitution being violative to the provision of Article 16 of the constitution of India. This ground of the applicant has no substance. The Hon'ble Supreme Court has held in the case of VK Sood Vs Secretary Civil Aviation (1993 : 25 : ACT 68 (SC)) that in exercise of the Rule making power the President or authorised person is entitled to prescribe the method of recruitment, qualification both educational as well as technical for appointment or conditions of service to an office or post under the state. The Rules thus having been made in exercise of the power under Article 309 of the

Contd...2/-

Filed by
A H Choudhary
Addl. Central Govt.
Standing Counsel
3/2/97

TDS Visakhan
Chief Engineer
Shillong Zone
SE Falls
Shillong
6/2/97

constitution being statutory cannot be impeached on the ground that the authorities have prescribed tailor made qualification to suit the individual. The Hon'ble Supreme Court has further held that it is settled law that no motive can be attributed to the legislature in making law. The rules prescribed qualifications for the eligibility and suitability of individuals would be tested by Union Public Service Commission. It is for the rule making authority or for the legislature to regulate the method of recruitment prescribed qualifications etc. The rules are framed by the persons who are assisted by the expert body and the Court is never assisted by any expert body in this regard. Therefore, the Hon'ble Supreme Court has held that the Govt is the sole authority to decide the scope and formation of the recruitment rules in any post in the organisation under its control. The Govt is also the sole authority in respect of all matters concerning cadre management, cadre structure, composition of the cadre, qualifications, eligibility criteria etc. The authority of Govt cannot be challenged at any level, therefore, this Hon'ble Tribunal has no jurisdiction over the issue of framing of recruitment rules. This Hon'ble Tribunal may educate only on the implementation of the Rules. Therefore, this original application deserved to be dismissed solely on this ground that the original application is baseless.

4. That the answering respondents have no comments to the statements made in paragraph 1(i) to 1 (iii) and paragraph 2 of the applicants.

5. That with reference to paragraph 3 of the application the answering respondent beg to state that it is clearly stated in the Administrative Tribunal Act section 20 and 21 that before an applicant is filed his case in the Hon'ble Tribunal he should avail opportunity through a representation to appropriate authority and put up such grievances as prayed in the application and should wait for reply, within a period of six months if he does not get any reply and if he is satisfied then the option is open to him to file the OA in the Hon'ble Tribunal. Since the applicant has not availed the opportunity and have not applied to the appropriate authorities for their grievances, as such, it is submitted that the case be dismissed at admission stage itself as the statutory provision of the Central Administrative Tribunal Act have not been complied with.

6. That with reference to paragraph 4 (1) of the application the answering respondent beg to submit that the position has been made amply clear in the preliminary objection submitted in earlier paragraphs as such no further comments are offered.

7. That with reference to paragraph 4 (2) of the application the answering respondent beg to state that the same are admitted being matter of records.

8. That reference to paragraph 4 (3) of the application the answering respondent beg to state that the same are admitted being matter of records as well as it is submitted that the Recruitment Rules are framed by President of India under Article 309 of the constitution of India, which are statutory in nature and cannot be challenged in court of law except when these are not strictly adhered to, which is the jurisdiction of the Hon'ble Tribunal/Courts.

Contd...3/-



The applicant has himself admitted in this original application that the respondents are strictly adhering to the Recruitment Rules and all the promotions being made strictly accordingly to these rules, hence the applicant has no claim at all.

9. That with reference to paragraph 4(4) and 4 (5) of the application, the answering respondent beg to state that it is not denied that as per Gazette of India No 1581 it has been stated that for direct recruitment in Surveyor Cadre as Assistant Surveyor of works through UPSC, the minimum qualification will be Degree in civil engineering or equivalent. The direct final examination of Institution of Surveyor of India is equivalent to degree in Civil Engineering for recruitment is concerned. The cadre deals specially the contractual matter/Engineering matters as well as legal matter on contracts etc. for which the direct final examination is must suited as per the recruitment Rules which are statutory in nature. However, the post of Surveyor of Works is senior class I post which has got more responsibility than the Assistant Surveyor of works and their duties/responsibilities have been defined in the Military Engineering Service Regulations 1958. As such it is correctly stated in Recruitment Rules that the passing of Direct final examination is must for promotion to higher post of Surveyor of works. As there is no point in making comparison between Diploma and Degree given by the institutions.

It is also specifically submitted herein that the advertisement issued in the form of Gazette notification inviting the application for combined Engineering Service Examination is only a brief note giving minimum essential details of various posts, scale of pay etc. After joining, service as per allotment all officers are required to pass certain Departmental Examination and attend the courses in various institutions and the same is strictly in accordance with the rules and regulations of the Department hence there should not be any grounds in this respect.

10. That with reference to paragraph 4 (6) of the application the answering respondent beg to state that as already explained reply to paragraph 8 the Gazette notification is brief note and does not cater for all rules applicable in the promotional posts hence this can not be taken as grievance. The officer after joining the Departments Assistant Surveyor of Works must know what is the basic requirement for their promotion since ignorance of Rules is no excuse.

In case the applicant was not satisfied with condition of acquiring Departmental prescribed qualifications he could have represented against the same at the time of joining or immediately after joining as it involved his future career and promotions. He had the option to pass the direct final examination which is pre condition for future promotion or could have left the service if he so desired.

11. That with reference to paragraph 4 (7) of the application the answering respondent beg to state that it is not denied that the applicant was replied by Engineer-in-Chief's Branch, Army Headquarters, New Delhi vide their communication A/41033/ASW/95-96/E1R(o), dated 25th July 1996 (attached) as Annexure to OA so that all the similarly placed persons should know their position and requirement of passing the Direct final exam was essential before any Assistant

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Surveyor of Works is considered for next promotion as Surveyor of Works hence the applicant was fully aware of his position that he cannot be considered for promotion hence his original application is avoid & without any merit thus, needs no consideration at all.

12. That with reference to paragraph 4(8) of the application the answering respondent beg to state that the same are admitted being matter of records and no further comments are needed.

13. That with reference to paragraph 4(9) of the application the answering respondent beg to state that it is not denied that certain junior to him have been selected for promotion to Surveyor of Works, but it is also a fact that so many senior to the applicant have been left out for promotion due to not acquiring the requisite qualification i.e. passing of direct final examination of Institute of Surveyor of India, as such the point raised in this para is not maintainable.

14. That with reference to paragraph 4(10) of the application the answering respondent beg to state that it is not denied that applicant might, have submitted the application dated 29th Jan 96 to respondent No 2 but since the applicant has himself admitted that the respondents have made position clear above vide Annexure A2 there was no need to give any further reply on the subject matter.

15. That with reference to paragraph 4(11) of the application the answering respondent beg to state that it is not denied that number of persons have been promoted from lower post of Surveyor Assistant Grade-I who are Diploma holders but since they acquire higher qualification of final examination of Institute of Surveyors which is basic qualification for the post of Surveyor of Works hence the applicant's claim is not maintainable.

Further more it is submitted the Department has since created a new post of Junior Surveyor of Works (JSW) and persons with Diploma will have to be promoted first to JSW and then ASW and SW after acquiring experience of the department which will take them at least 15 years to reach upto the post of SW. Hence the grounds of the applicant is not enable.

It is incorrect to say that the respondents have misinterpreted the extent rules has made the clearing of Direct Final (Sub Dir II) examination of Institute of Surveyors of India necessary for being considered for promotion to the post of SW. As already submitted that this qualification is special qualification and cannot be equalled with Degree in Engineering to support our view. Respondents are enclosing herewith a copy of Govt of India, Ministry of Science & Technology memo No SM/34/002/94 dated 07.09.94 which in clear terms express that the membership of Surveyor of India is a special qualification and is not equivalent to a degree in engineering (Annexure 'B'-I). The Recruitment Rules are statutory in nature hence their terms and condition which is part of the post cannot be challenged in court of law being framed under the constitutional Authority of the President of India.

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16. That with reference to paragraph 4(12) of the application the answering respondent beg to state that the submission in this paragraph is denied as it is not a fit case in the light of the fact explained in para 4.11 above. Shri Bralimanand Singh and Shri S Venkateshwar Rao have cleared the Direct final (Sub Div II) Examination for promotion to SW, so their names were included in the panel circulated vide our letter No A/41032/SW/95-96/E1R(o) dated 20th December 1995 whereas the applicant has not cleared the Direct Final (Sub Div II) Exam for promotion to the Gde of SW. Hence question of including his name in the said panel in between their name does not arise.

17. That with reference to paragraph 4(13) of the application the answering respondent beg to state that the applicant himself stated that he appeared in the Direct Final Exam in Sept 95 and result declared in March 1996 in which he has successfully cleared the said examination. But so far as including of his name in the panel circulated in 20th December 1995 to concerned on the basis of successfully passing the same in March 96 is not tenable. His basic contention of the applicant that there is no requirement whatsoever for him to clear the above said examination in order to be eligible for promotion to the post of Surveyor of Works is not agreed to as the DPC is conducted on the basis of Recruitment Rules notified through SRO 39 dated 9th February 1985 where in methods of recruitment/promotions, qualification both educational as well as technical Departmental Examination and service conditions are framed.

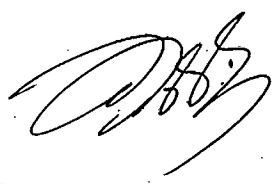
18. That with reference to paragraph 4(14) of the application the answering respondent beg to state that the application is not bonafides rather it is baseless which deserves to be dismissed.

19. That with reference to paragraph 5(1) of the application the answering respondent beg to state that passing the Direct Final (Sub Div II) Exam, conducted by the Institution of Surveyor is a prerequisite condition for promotion under Rules 12 of Recruitment Rules for selecting eligibility and suitability of the individual. His argument is baseless and not tenable in the eyes of law and needs to be rejected.

20. That with reference to paragraph 5(2) of the application the answering respondent beg to state that insistence upon clearing the Direct Final (Sub Div II) Exam concerned by the Institution of Surveyors in terms of recruitment rules is not in contravention of SRO 39 dated 09.02.1985 as recruitment rule is a statutory in nature which has been framed keeping the utilities of service of a serving group 'A' post, hence this application needs no consideration.

21. That with reference to paragraph 5(3) of the application the answering respondent beg to state that no where it is written in Recruitment Rules that directly recruited ASW through UPSC i.e: exempted from passing the Direct Final (Sub Div II). It is also stated that direct recruits possessing an equivalent qualification are exempted for passing the Direct Final (Sub Final II) but it has been made clear in earlier paragraphs that Degrees is not equivalent at all.

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22. That with reference to paragraph 5(4) of the application the answering respondent beg to state that the Recruitment Rules does not indicate anywhere that a Bachelor of Civil Engineering degree and having come through UPSC is not required to clear that Direct Final (Sub Div -II) Exam conducted by the Institution of Surveyors of India. The application needs no consideration.

23. That with reference to paragraph 5(5) of the application the answering respondent beg to state that simply by saying that qualifying the examination of Direct Final (Sub Div II) Exam does not hold good for them who hold a degree of Bachelor of Civil Engineering is not accepted by the Department, because passing the Direct Final (Sub Div II) Exam is a pre-requisite condition for all ASW who is to be promoted to SW.

24. That with reference to paragraph 5(6) of the application the answering respondent beg to state that neither Direct Final Exam of Institution of Surveyors is equivalent to a Bachelor Degree in civil engineering nor any letter in this regard has been issued by this Headquarters. However, the applicant has also not quoted any authority letter for the same.

23. That with reference to paragraph 5(7) of the application the answering respondent beg to state that it is not denied that the Institution of Surveyors who conduct the Direct Final (Sub Div - II) is an independent body. It is also stressed that it is an essential requirement for promotion to SSW as per requirement rules which are statutory in nature.

24. That with reference to paragraph 5(8) of the application the answering respondent beg to state that the applicant's views are not accepted that the direct recruits selected by the UPSC constitution belongs to a distinct and separate class and cannot be equated at par with Departmental promotees with regards to rank and designation. No separate instruction has been issued by the Department that clearing of examination of Direct Final (Sub Div II) Exam is exempted for the direct recruits selected through UPSC being minimum graduates in civil engineering. Thus conducting of Direct Final (Sub Div -II) Exam is not arbitrary rather it is reasonable and is in conformity with the rules. Hence, the application needs to be dismissed at the admission stage.

25. That with reference to paragraph 6 of the application the answering respondent beg to state that the statement are not agreed to as the applicant did not submit any representation to the appropriate authority so that the position could be made clear to him before going to this Hon'ble Tribunal which is a first and foremost requirement of this Tribunal Acts. Hence this case needs to be dismissed at the admission stage.

26. That the answering respondents have no comments to the statements made in paragraph 7 of the applicant.

27. That with reference to paragraph 8 (1) of the application the answering respondent beg to state that Engineer-in-Chief's Branch letter A/41033/ASW/95-96/E1R (o) dated 25th July 1995

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confirming to Shri. Bhavesh Gupta ASW that he is required to pass the exam of Direct Final (Sub Div II) conducted by the Institution of Surveyors, 15/7 Institutional Area, New Mehrauli Road, New Delhi, is enclosed.

28. That with reference to paragraph 8(2) and 8(3) of the application the answering respondent beg to state that without any valid reason or any authority it is not possible to quash E-in-C's Branch letter No A/41083/ASW/95-96/EIR(o) dated 25th July 1995 or any other letter issued by CE Eastern Command quoted by the applicant.

29. That with reference to paragraph 8 (4) of the application the answering respondent beg to state that it is not possible for the Department to consider for promotion to the post of SW to the case of UPSC direct recruit Indian Engineering Services officers without clearing the Direct Final Exam (Sub Div-II) Exam as it is not permitted as per RR.

30. That with reference to paragraph 8(5) of the application the answering respondent beg to state that it is not possible to include the name of the applicant in the panel circulated under this Headquarters letter dated 20th December 1995, as he did not pass the Direct Final (Sub Div II) Exam, before the date of DPC being a prerequisite condition. However the applicant has cleared the said exam in March 1996 and his name will be considered for promotion to the post of SW in next DPC.

31. That with reference to paragraph 8(6) of the application the answering respondent beg to state that until the applicant is not promoted in next higher Grade of Surveyor of Works, question of fixing of his pay in next higher scale does not arise.

32. That with reference to paragraph 8 (7) of the application the answering respondent beg to state that until the applicant is not promoted in next higher grade of Surveyor of Works, question including his name in the seniority list of SW does not arise.

33. That with reference to paragraph 8 (8) of the application the answering respondent beg to state that the Hon'ble Tribunal is requested to dismiss the case as he did not submit any representation to the appropriate authority so that the position could be made clear to him before going to the Hon'ble Tribunal which is a first and foremost requirement of the Tribunal Act. Moreover, it is specifically submitted here that the respondents have strictly acted in accordance with the statutory rules and no violation to the rules have been done.

34. That the answering respondents have no comments to the statements made in paragraph 9,10,11 & 12 of the applicant.

35. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs.




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VERIFICATION

I, TDS Visakhan, Chief Engineer, Shillong Zone, SE Falls, do hereby declare that the statements made in this written statement are true to my knowledge derived from the records of the case.

I sign this Verification of this the 30 ^{Jan}th day of 1997 at Shillong.

DEPONENT



TDS VISAKHAN
Brig
Chief Engineer
Shillong Zone
Shillong