

**Central Administrative Tribunal
Principal Bench**

TA No.39/2013

New Delhi, this the 17th day of August, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Harishwar Dayal, EE
DCWE (E/M)
CWE, Nagpur. Applicant.

(By Advocate : Shri Yatish Mohan)

Vs.

1. Union of India
Through Secretary
Ministry of Defence,
South Block,
New Delhi 110 001.
2. Engineer-in-Chief
Army Head Quarters,
Kashmir House,
New Delhi 110 001.
3. Union Public Service Commission
Through Secretary
Shahjahan Road,
New Delhi. ... Respondents.

(By Advocate : Dr. Ch. Shamsuddin Khan)

: O R D E R (ORAL) :

Justice Permod Kohli :

The applicant in the present OA was selected as Assistant Executive Engineer (E/M) in Military Engineering Services, a Group 'A' post, on the basis of Combined Engineering Services Examination

held in the year 1981 by Union Public Service Commission. A common notification dated 20.02.1982 was issued for holding combined competitive examination for recruitment in the services/posts which *inter alia* included Engineering Services comprising of Civil Engineering, Mechanical Engineering, Electrical Engineering, Electronics and Telecommunication Engineering for different services/posts in the Indian Railway, Central Engineering Services, Military Engineering Services, Central Water Engineering Service and various other organizations of the Government. The post also included the Assistant Surveyor of works. On declaration of the result, the UPSC recommended the names of the selected candidates.

2. It is admitted case of the parties that the candidates higher in merit in the select list were allocated engineering services and those lower in merit were appointed as Assistant Surveyor of Works. On the basis of the merit, the applicant was appointed Assistant Executive Engineer. It is also admitted case of the applicant that the Engineering service and that of Assistant Surveyor of works comprises of separate cadres and separate seniority lists were maintained notwithstanding that there was a combined examination for their selection. From 1985 onwards, the UPSC started conducting separate examinations for recruitment to the engineering services and the assistant surveyors of works. It is also not in dispute that the pay scales of the Assistant Executive Engineers and Assistant Surveyor of

Works were same. The next promotion in the engineering services is to the post of Executive Engineer and then to the Superintending Engineer and Chief Engineer whereas in the cadre of Assistant Surveyor of Works, the next promotion is to the post of Surveyor of Works, Superintendent Surveyor of Works and Chief Surveyor of Works. The posts are equal in status and pay scales. The applicant earned promotion to the post of Executive Engineer. While the applicant is still working as Executive Engineer those who were recruited as Assistant Surveyor of Works also earned promotion as Surveyor of Works, and vide order dated 19.02.1998 have been promoted as Superintendent Surveyor of Works. It is this order which is under challenge in the present OA.

3. The grievance of the applicant is that the candidates who were recruited as Assistant Surveyor of Works being lower in merit in the combined services examination have earned promotions in the cadre of Surveyors of Work to the post of Superintendent Surveyor of Works whereas those who were higher in merit in the engineer cadre are still working on the lower posts of Executive Engineer. Learned counsel appearing for the applicant has thus argued that the order of promotion impugned herein be quashed as the same is in violation of rights of the applicant under Articles 14 and 21 of the Constitution of India. His contention is that the juniors to the applicant have been

promoted in a higher rank and pay scale whereas the applicant has been denied similar promotion and benefit.

4. In the counter affidavit filed by respondent Nos.1 & 2 under the caption preliminary objections, dismissal of the OA is sought for non-joinder of the necessary parties. The respondents have also raised the issue of limitation. Apart from the above, it is stated that prior to 1985, appointment or selection and allocation between the engineering and surveyor cadre was based on cut off point and those who are higher in merit were allotted engineering services and those below in merit were appointed as Assistant Surveyor of Works. After 1985, the procedure was altered and at the stage of examination itself, candidates were asked to exercise option between the engineering and surveyor cadre, qualifications of both being the same. It is further stated that the engineering service and the surveyor cadre are separate and distinct cadres having separate seniority and avenues of promotion. The next promotion is on the basis of availability of vacancies in respective cadres and not on the basis of the vacancies in other cadre. The respondents have also stated that till 1997, the applicant never raised a grievance about allocation of engineering cadre. It is further mentioned that the military engineering service is a prestigious service and the highest executive post in the cadre is that of Additional Director General Works in the pay scale of Rs.22000-24500 whereas in the surveyor cadre the highest post is that

of Chief Surveyor of Works in the pay scale of Rs.18400-22400 which is a lower scale. According to the respondents since vacancies in the surveyor cadre arose earlier than the engineering cadre, promotions were accordingly made from the surveyor cadres.

5. This Application was filed in the year 1999 before the Hon'ble High Court of Delhi and came to be transferred to this Tribunal vide order dated 12.07.2013.

6. The claim of the applicant for promotion on the basis of higher merit in the combined services examination held in the year 1981 as against the promotion of the officers in the surveyor cadre is totally misplaced. It is admitted case of the parties that the engineering cadres are distinct and separate from the surveyor cadre. Although, a common examination for selection/recruitment was held by the UPSC but in the advertisement itself applications were notified for various services. At the time of recruitment/appointment, the meritorious candidates were allocated engineering service/cadre whereas those below in merit were selected/recruited in the surveyor cadre. The applicant never projected his grievance for allocation of surveyor cadre. Rather on the basis of his higher merit he accepted his appointment in the engineering cadre/service. He earned promotion to the next post of Executive Engineer without raising any objection or grievance. It is only when the appointees in surveyor

cadre from the same selection/examination were promoted to the higher post of Superintendent Surveyor of Works that the applicant filed the present TA before the Hon'ble High Court of Delhi. The very basis on which the challenge is made to the promotion of the surveyor cadre is misplaced and contrary to law. From the date of appointment till the date the persons appointed to the engineering service and those to the surveyor cadre constitutes separate service/cadres. Separate seniority lists are maintained for them. They have separate promotional avenues in their respective services. The posts are not transferrable or exchangeable. The mere fact that persons who were appointed in surveyor cadre and lower in merit have earned promotions earlier than the applicant does not give any cause of action to the applicant to challenge their promotion. Every service has its own seniority and promotional avenues depending upon the availability of vacancies, retirement of the appointees and various other factors. The two separate services/cadres are not comparable merely because their eligibility and qualifications for recruitment are same. The applicant has no right whatsoever to challenge the promotion in a different and distinct cadre of surveyors on the basis that he had higher merit in the examination as the applicant belongs to a different cadre and service. His promotional avenues depend upon availability of vacancies in the engineering

services. We do not find that there has been violation of any right of the applicant.

7. This Application is totally misconceived and is hereby dismissed.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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