

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.121 OF 2016

New Delhi, this the 6<sup>th</sup> day of February, 2018

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER  
AND  
HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER**

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1. Shri Prashant Tyagi, aged 31 years,  
s/o Shri Dayanand Tyagi,  
working as Draughtsman,  
R/o 91/6, Old Pinto Park,  
Air Force Station, Palam, New Delhi 110010

2. Shri Naresh Kumar Saroch, aged 32 years,  
s/o Shri Shrikant Saroch,  
working as Draughtsman,  
R/o 118, Double Story,  
Ramesh Nagar,  
Delhi 110015

3. Shri Chandan Baruah, aged 37 years,  
s/o late Rajani Baruah,  
working as Draughtsman,  
R/o ET 13, Labasis Line,  
Near Army Public School,  
Shillong (Assam)

4. Shri Harsh Karhana,  
s/o Satyavir Singh,  
working as Draughtsman,  
R/o House NO.329, Bank Wali Gali,  
Auchandi, Delhi 39

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Applicants

(By Advocate: Mr.I.S.Yadav)

Vs.

1. Union of India,  
Through Secretary (Defence),  
Ministry of Defence,  
South Block,  
New Delhi 110011
  2. The Engineer-in-Chief,  
IHQ of MOD (Army),  
Kashmir House,  
Rajaji Marg,  
New Delhi 110010
  4. HQ Chief Engineer,  
Western Command,  
PIN 908543,  
C/o 56 APO
  4. Headquarters  
Chief Engineer Delhi Zone,  
Delhi Cantt-10
- ..... Respondents

(By Advocate: Mr. Vijay Kumar Sharma)

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### **ORDER**

**Per RAJ VIR SHARMA, MEMBER(J):**

Brief facts of the applicants' case are that they joined the respondent-Department as Draughtsmen on different dates during the period from 2005 to 2012. They are presently working under the Western Command, Military Engineer Service (respondent no.3). The Military Engineer Services, Junior Engineer (Quantity Surveying & Contracts) group 'C' post Recruitment Rules, 2002 (hereinafter referred to as "Recruitment Rules") prescribe (i) 87% of the posts of JE (QS&C) to be filled up by direct recruitment, (ii) 3% by direct

recruitment from amongst departmental employees with five years' regular service and possession of the minimum educational qualifications, failing which by direct recruitment, and (iii) 10% by deputation/re-employment (for Ex-Servicemen). The applicants claim to have fulfilled the eligibility criteria for appointment against 3% departmental quota. Referring to certain informations received from the respondent-Department and from the Staff Selection Commission under the R.T.I.Act, the applicants claim that the respondent-Department filled 438 vacancies for the year 2012, 189 vacancies for the year 2013, and 62 vacancies for the year 2014, totaling 688 vacancies against 87% direct recruitment quota, and 69 vacancies against 10% Ex-Servicemen quota in the post JE(QS&C) during the aforesaid years. It is the claim of the applicants that the total vacancies filled by the respondent-Department during 2012 to 2014 were 757 against 87% direct recruitment quota and 10% Ex-Servicemen quota, and, therefore, 23 vacancies fell under the 3% departmental quota, and the respondent-Department did not fill the said 23 vacancies by considering the applicants and other departmental candidates. Applicant no.1 made a representation dated 23.9.2013 (Annexure A-2) requesting the respondent-Department to consider his case for recruitment against 3% departmental quota. The respondent-Department, vide letter dated 14.11.2013 (Annexure A-3), informed that there was no vacancy available under 3% departmental quota, and

that as and when any vacancy under 3% departmental quota would arise, the same would be filled through SSC only. On the basis of certain other information received by him from the PIOs of the respondent-Department under the R.T.I.Act, applicant no.1 again made a representation dated 23.5.2014 (Annexure A-11) requesting the respondent-Department to consider his case for appointment against 3% departmental quota. With reference to the applicant's representation dated 23.5.2014, the respondent-Department, vide letter dated 18.7.2014 (Annexure A-12), again informed that there was no vacancy available against 3% departmental quota, and that as and when vacancy against the 3% departmental quota would arise, he should apply accordingly. On the basis of certain other information received by him from the PIO of the respondent-Department and from the SSC under the R.T.I.Act, applicant no.1 again made a representation dated 16.8.2014 requesting the respondent-Department to consider his appointment against 3% departmental quota. In the said representation, applicant no.1 referred to the information received by him from the SSC under the R.T.I.Act that 438 vacancies for the year 2012 and 189 vacancies in the post of JE (QS&C) for the year 2013 were notified to be filled through SSC, and claimed that his case should be considered against 3% departmental quota. The respondent-Department, vide letter dated 8.12.2014, reiterated its earlier stand. While so, the respondent-Department submitted online requisition on

29.4.2015 (Annexure 13) to the respondent-SSC for filling 19 vacancies in the post of JE(QS&C) against 87% direct recruitment quota, and the SSC initiated the selection process by issuing notice dated 11.7.2015 (Annexure 14). Hence, the present O.A. was filed by the applicants on 7.1.2016 seeking the following reliefs:

- “(i) Declared the action of respondents illegal and arbitrary for rejecting the applicants’ request on the ground that there is no vacancy available against 3% Direct Recruitment for departmental candidates in the year 2012. Whereas, the respondent has notified the 438 No of vacancy of JE (QS&C) to SSC for recruitment and respondents replied in RTI application vide their letter dated 5<sup>th</sup> Nov 2013 that 15 No of vacancy were available, and
- (ii) Quash the respondent letter No.20075/LRS/12-13/EIC(1) dated 14 Nov 2013 (Annexure A-3) and letter dated 29 Apr 2015 (Annexure A-13) and letter dt. 18 July 2014, and
- (iii) Direct the respondent to fill up the 23 post of JE (QS&C) for the vacancy year 2012-2014 against 3% quota for departmental candidates from the eligible candidates in the department, and
- (iv) To grant all the consequential benefits including the pay and allowances and seniority to the departmental candidates, and
- (vii) To award exemplary cost and
- (viii) To pass any order as this Hon’ble Tribunal deem fit in the interest of justice.”

2. Resisting the O.A., the respondents have filed a counter reply. The respondents have strongly refuted the applicants’ plea that there were 23 vacancies available under 3% departmental quota in the post of JE (QS&C). Reiterating their stand that there was no vacancy available under 3% departmental quota, the respondents have

explained the exact position in a tabular statement (vide Annexure I to the counter reply) as follows:

Srl. No.	Recruitment sanction	Total vacancies JE (QS&C)	3% quota as per Recruitment Rules Departmental candidates												
1	2009-2010	3	Nil												
2	2010-2011	7	Nil												
3	2011-2012	(3+491*) (*Due to Cadre Review)	3% quota to DR (Departmental) due to Cadre Review as per distribution shown below: <table><tr><td>CE SC</td><td>CE CC</td><td>CE EC</td><td>CE SWC</td><td>CE NC</td><td>CE WC</td></tr><tr><td>04</td><td>03</td><td>04</td><td>01</td><td>03</td><td>00</td></tr></table>	CE SC	CE CC	CE EC	CE SWC	CE NC	CE WC	04	03	04	01	03	00
CE SC	CE CC	CE EC	CE SWC	CE NC	CE WC										
04	03	04	01	03	00										
4	2012-2013	12	Nil												
5	2013-2014	15	Nil												
6	2014-2015	16	Nil												
7	2015-2016	8	Nil												

It has also been asserted by the respondents that the calculation given by the applicants in their O.A. for 23 vacancies on the basis of information obtained by them from SSC is baseless. It has been clarified by the respondents that while placing the requisitions with the SSC, the total vacancies were determined by taking into consideration the vacancies arising for the particular recruitment cycle as well as the back-log vacancies against which the candidates selected through previous examination had not reported and the number of remaining vacancies for which no nomination was made by the SSC through the previous examination. In view of the above, it has been submitted by the respondents that the O.A. is devoid of any merit and liable to be dismissed.

3. In their rejoinder reply, the applicants, while reiterating more or less the same averments/contentions as in their O.A., have stated that the distribution of 15 vacancies available under the 3% departmental quota during the year 2011-2012 by the respondent-Department (as appearing in Annexure I to the counter reply) was discriminatory inasmuch as no vacancy was allocated to the Western Command.

4. We have heard Mr.I.S.Yadav, learned counsel appearing for the applicants, and Mr.Vijay Kumar Sharma, learned counsel appearing for the respondents.

5. Mr.I.S.Yadav, learned counsel appearing for the applicants, drew our attention to various informations received by applicant no.1 from the PIOs/authorities of the respondent-Department as well as from the SSC under the R.T.I.Act and submitted that those informations clearly go to show that the respondent-departmental authorities have acted in contravention of the Recruitment Rules by not filling the vacancies under 3% departmental quota during the years 2012, 2013 and 2014 while filling 757 vacancies arising in those years as vacancies under 87% direct recruitment quota and 10% Ex-Servicemen quota. In this connection, our attention was also drawn by Mr.I.S.Yadav to a letter dated 25.9.2012 issued by the Directorate General (Pers), MES, EIC's Branch, Army Headquarters, New Delhi (Annexure R-1 to rejoinder reply). It was also submitted by Mr.I.S.Yadav that though there were 19 vacancies in the post of JE (QS&C) for the year 2015, the respondent-Department treated all those 19 vacancies as falling

under 87% direct recruitment quota and made online requisition (Annexure 13) to the SSC to initiate the process of selection for filling the same. In view of the above, the impugned decisions of the respondent-Department are liable to be quashed and appropriate direction, as prayed for by the applicants, should be issued to the respondent-Department.

6. *Per contra*, it was submitted by Mr.Vijay Kumar Sharma, learned counsel appearing for the respondents that 15 vacancies available under 3% departmental quota for the year 2011-2012 were distributed to the respective Commands on administrative exigency, and non-allocation of any vacancy to the Western Command, where the applicants are working, would not entitle the applicants to either question the allocation/distribution of those 15 vacancies to other Commands at this belated stage or claim consideration of their cases for appointment to the post of JE(QS&C) as departmental candidates when there was no vacancy available under 3% departmental quota for the years 2012-2013, 2013-2014, 2014-2015 and 2015-2016. It was also submitted by Mr.Vijay Kumar Sharma that the respondents have scrupulously followed the provisions of the Recruitment Rules, while filling the vacancies falling under respective quotas, and, therefore, the claim of the applicants is untenable.

7. After having considered the materials available on record and the rival contentions, we have found no substance in any of the contentions of the applicants. The applicants have not produced before this Tribunal any tangible material contradicting/refuting the position explained by the



respondents in their counter reply, which has been noted by us in paragraph 2 of this order. The informations received by the applicants from the respondent-Department and SSC, to which our attention has been drawn by the learned counsel appearing for the applicants, do not go to show that there were 23 vacancies available under 3% departmental quota for the years 2011-12, 2012-13 and 2013-14, or that any vacancy out of the 19 vacancies, which were sought to be filled by the respondent-Department through SSC during the year 2015, fell under 3% departmental quota. The letter dated 25.9.2012 (Annexure R-1 to the rejoinder reply) issued by the Directorate General (Pers), MES, EIC's Branch, New Delhi, was regarding distribution of promotional vacancies of JEs and Supervisors (B/S) for the years 2009-10, 2010-11 and 2011-12 to different Commands. Therefore, the letter dated 25.9.2012(ibid) does not support the claim of the applicants.

8. In the light of what has been discussed above, we have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

**(PRAVEEN MAHAJAN)**  
**ADMINISTRATIVE MEMBER**

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

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