

**Central Administrative Tribunal
Principal Bench, New Delhi**

M.A. No. 974/2016

in

OA-1693/2013

Reserved on : 04.04.2018.

Pronounced on :10.04.2018

Hon'ble Shri Raj Vir Sharma, Member (J)

Hon'ble Ms. Praveen Mahajan, Member (A)

Iqbal Singh
S/o Late (Shri) Chanan Singh,
EE (QS&C) (NFSG),
DCWE (Contracts)
Office of the CWE Yol
Yol Cantt, Tahsil: Dharamsala
Distt. Kangra
Himachal Pradesh-175052

Resident of House No.P-12/1,
Adm Area
Yol Cantt, Tahsil Dharamsala
District-Kangra
Himachal Pradesh-176052.

... Applicant

(Applicant in person)

Versus

1. The Secretary,
Government of India,
Department of Defence Ministry of Defence,
101, South Block, New Delhi-110011
2. The Engineer-in-Chief,
Military Engineer Services,
Integrated HQ of Ministry of Defence (Army),
Kashmir House, Rajaji Marg,
New Delhi-110011.

.... Respondents

(By Advocate: Shri Rajinder Nischal)

Order

Hon'ble Ms. Praveen Mahajan, Member (A)

Heard.

2. The applicant has filed the MA seeking following reliefs:

“i) The Hon'ble Tribunal may be pleased to direct the respondents to consider the applicant's case, in accordance with the law, for the grant of Non-Functional Financial Up-gradation in the grade of Director with 'Grade Pay of Rs.8700/- on the basis of Department of Personnel and Training Office Memorandum dated 11.07.2011 as per the Department of Personnel and Training's OM dated 29.12.2010.

ii) The Hon'ble Tribunal may be pleased to direct the respondents herein to draw and pay to the applicant in case his name is approved for grant of above Non-functional Financial Up-gradation, such arrears of pay and allowances admissible to him on account of such financial up-gradation from the due date i.e. 01.07.2011;

(iii) The Hon'ble Tribunal may be pleased to grant any other relief in the interest of justice as deemed fit and appropriate.”

3. The applicant working as Executive Engineer (QS&C) with Ministry of Defence, had filed OA No.1693/2013 before the Tribunal which was disposed of on 27.02.2015 with the following directions:

“7. We direct the respondents to ensure that the claim of the applicant, as sought by him in para 3 of the relief clause, be considered within a period of three months, and after the decision is taken within the stipulated period, the applicant be duly informed. Insofar as Non-functional upgradation is concerned, the

respondents state that this would be considered after the promotion of the applicant. We would, therefore, further direct the respondents that the case of the applicant for non-functional upgradation be considered within a further period of three months from the date of decision on the applicants claim for promotion.”

4. The respondents in reply to the directions issued by the Tribunal showed their helplessness in implementing the same by submitting that the Ministry had returned the file of non-functional financial up-gradation with the following remarks:

“Either provide a copy of DoP&T order which shows that Surveyor and Architect Cadre of MES comes in Organized Group ‘A’ Service or withheld the proposal for grant of NFU of Surveyor and Architect Cadre till revision of RRs as per Organized Group ‘A’ service (Organised)”.

5. The respondents had contended that the applicant cannot be granted the benefit since he is not the part of the Organized Group ‘A’ service.

6. On the last date of hearing, the applicant had sought time to produce documents in support of his contention that he belonged to an organized Group ‘A’ Service of MES (QS&C). The applicant has placed on record the complete gazette notification No.D.L.(N)04/0007/2003-05 dated 09.05.2015 on statutory Rules and Orders issued by the Ministry of Defence, which shows the status of Architect cadre Surveyor cadre of

Military Engineering Service. In the explanatory memo it is mentioned that :

(a) As per the approval of the Departmental of Personnel and Training and Union Public Service Commission, the recruitment rules for the Military Engineer Services (Quantity Surveying and Contract) Group 'A' posts, notified, vide S.R.O. 25 dated the 27th March, 2014, was to be implemented with retrospective effect, that is, from 17th February, 2005, however, due to typographical error it was mentioned in the notification that they shall come into force on the date of their publication in the Official Gazette which is required to be amended.

(b) Military Engineer Services (Quantity Surveying and Contract) Group 'A' post is an Organized Group 'A' Service. In the organized Group 'A' Service, the eligibility for promotion to the grade of Senior Time Scale is four years regular service in Junior Time scale. Therefore, eligibility service of five years in the grade of Assistant Executive Engineer in Pay Band-3 Grade Pay Rs.5400 is substituted as four years for promotion to the grade of Executive Engineer in the Pay Band-3, Grade Pay Rs.6600. It is clarified that by giving retrospective effect to the rules, no one is adversely affected."

7. During the hearing, the applicant in person submitted that the gazette notification dated 09.5.2015 specifies beyond doubt that he belongs to the Organized Group 'A' Service and has been wrongly denied the benefits granted to his colleagues.

8. The respondents in their detailed counter to the MA had held that MES(QS&C) cadre does not fulfill the attributes of an Organized Group 'A' Service and hence the applicant cannot be

extended the benefit of NFU under pay parity scheme issued vide DOP&T OM dated 24.04.2009. The gazette notification furnished by the applicant leaves no room for any ambiguity that the contention of the applicant is correct.

9. The applicant has also placed on record a photocopy of DOP&T's letter dated 14.12.2017 which states that :

Govt. of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
(Cadre Review Division)

3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

Sub: Status of Architect cadre and Surveyor Cadre of
Military Engineer Service.

Reference Notes of Ministry of Defence dated 28/02/2017 in File No.PC-1/85604/Inclusion Architect Cadre/CSCC regarding status of Architect Cadre of Military Engineering Service.

2. The matter has been examined keeping in view the records available in this Department, clarification issued from time to time by the DoPT and the last Cadre Review of the Military Engineering Service held in 2013, and it has been observed that the Military namely Indian Defence Service is an Organized Group 'A' Service with three constituent cadres namely Indian Defence Service of Engineers, Architect Cadre and Surveyor cadre. The status of Architect Cadre has already been clarified by the DOPT in 2009. The Note of this Department of 2009 is enclosed.

3. In view of the above, this Department reiterates its stand taken in 2009 that as per the records available in this Department, Military Engineering Service is an Organized Group 'A' Service with its three constituent cadres namely, Indian Defence service of Engineers, Architect Cadre and Surveyor Cadre.

4. Ministry of Defence is advised to take necessary action immediately to rectify the deviations in these cadres in accordance with the Attributes of Organized Group 'A' Services reiterated vide this Department's OM No.I. 11019/12/2008-CRD dated 19/20.11.2009 (copy enclosed). The list of Central Group 'A' Services issued on 3rd April, 2017 is only draft list and the name of the Service would be modified accordingly in the final list in due course.

5. Ministry of Defence's File bearing No.PC-1/85604/Inclusion Architect Cadre/CSCC is returned herewith.

(Manoj Gupta)
Under Secretary to the Govt. of India

[Tel:24653972](tel:24653972)

Ministry of Defence, Department of Defence { Attn: Under Secretary (D (Works-II), Sena Bhawan, New Delhi-1.

DoPT ID No.1229468/17/CRD dated 14/12/2017.

After receipt of DoPT ID No.1229468/17/CRD dated 14.12.2017, the Ministry of Defence has issued a clarification/communication dated 08.01.2018 reproduced below:

Ministry of Defences
[D (Works-II)]

Subject: Inclusion of Architect Cadre of Military
Engineer Services in the Organized Group
'A' Service.

Reference DoPT ID No.1229468/17/CRD dated 14.12.2017 on the subject "Status of Architect Cadre and Surveyor Cadre of Military Engineer Services".

2. The case forwarded to DoPT for inclusion of the Architect Cadre in the list of organized Group 'A' services. DoPT vide their above mentioned ID Note have been stated that:

"The matter has been examined keeping in view the records available in this Department, clarification issued from time to time by the DoPT and the last cadre review of the MES held in 2013, and it has been observed that the Military Engineer Service is an organized Group 'A' service with three constituents cadres namely Indian Defence Service of Engineers, Architect Cadre and Surveyor Cadre".

In view of the above, this department reiterates its stand taken in 2009 that as per the records available in this department, Military Engineer Services is an organized Group 'A' Service with its three constituent cadres namely, Indian Service of Engineers, Architect Cadre and Surveyor Cadre."

3. E-in-C's Branch is requested to take necessary actions in pursuance to the clarification received from DoPT that Architect Cadre and the Surveyor Cadre along with IDSE Cadre are the three constituents cadre of MES, which is an organized Group 'A' Service.

(Vishnu Dutta Jha)
Under Secretary to the Government of India
Ph.No.23016237

Engineer-in-Chief, Kashmir House, New Delhi

Mod ID No.1/85604/Inclusion Architect
Cadre/CSCC/6(7)/2017/D(W-II) dated 08.01.2018

10. A perusal of the above mentioned documents leaves no scope for doubt that the applicant belongs to Architect cadre of MES in the Organized Group 'A' Service. In view of the same, the respondents are directed to consider and process the case of the applicant for grant of Non-functional financial upgradation in the requisite grade, on the basis of aforementioned clarifications/publication cited above. The applicant may be given the benefits due to him as per his eligibility, in conformity with the rules on the subject. This exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

11. Before closing, we cannot help observing that the applicant has been put to considerable hardship and delayed the benefits otherwise due to him, on the ground that he did not belong to an organized Group 'A' Service. Strangely enough, it was the applicant on whom the onus proof was thrust by the respondents for proving his stand. Resultantly, the applicant had to provide documents, which are otherwise in the public domain, to establish the veracity of his claim that he is the member of an Organized Group 'A' Service. Even at the time of entry in

service, this fact would have been in the knowledge of the respondents. Had the respondents examined his claim seriously, they could have found out about the Gazette Notification and DOP&T, OM, etc. referred to above & saved avoidable harassment to the applicant. In this backdrop, we consider it appropriate to impose a cost of Rs. 50,000/- on the Respondents for the harassment that the applicant underwent because of the non-serious approach of the Respondents.

12. The MA is accordingly disposed of with the above directions.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member(J)

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