

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

OA. No. 063/00092/2016

Order pronounced on : 25.01.2018
Order reserved on : 19.01.2018

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CORAM: HON'BLE MR.JUSTICE M.S. SULLAR, MEMBER(J)
HON'BLE MRS.P. GOPINATH, MEMBER(A)
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Shri Iqbal Singh, aged 49 years, Executive Engineer (QS&C) (NFSG), O/o the CWE Yol, Yol Cantt, Dharamsala, Kangra, Himachal Pradesh – 176 052. R/o 12/1, Adm Area, Yol Cantt, Dharamsala, Kangra, Himachal Pradesh – 176 052. (Group A)

.....Applicant

BY: **Applicant in person**

VERSUS

1. Union of India represented by the Defence Secretary, Department of Defence, Ministry of Defence, Room No. 101, South Block, New Delhi – 110 011.
2. The Engineer-in-Chief, Military Engineers Service, Integrated HQ of Ministry of Defence, Kashmir House, Rajaji Marg, New Delhi – 110 011.
3. Shri Manoj Kumar Gupta, SE (QS&C), Director (Contracts), HQ CE (Fy) Hyderabad, Sardar Patel Road, Secunderabad – 500 003.

.....Respondents

BY ADVOCATE: **Mr. Arvind Moudgil for respdts. No. 1 & 2**
Mr. Shailendra Sharma for respdt. No. 3

ORDER

HON'BLE MRS. P. GOPINATH, MEMBER(A):-

1. Applicant is an officer who on the basis of qualifying Engineering Services Examination, 1994, was allotted Survey of India Group 'A' service. Within five months, applicant was re-allotted to MES (QS&C).

2. The applicant's dossiers were not forwarded by Survey of India to Ministry of Defence, the Cadre Controlling Authority of MES. The applicant continued to be retained in Survey of India, whereas a candidate with lower merit had been allotted to MES. The re-allotment was revealed in the year 2009 on a query raised under the RTI by the applicant. Applicant filed OA No. 442 of 2009 before CAT Ahmedabad Bench for allocation to MES. The Tribunal allowed the OA directing that the applicant be appointed to MES (QS&C) and also afforded protection of his seniority and subsequent promotions to the higher grades in the new service. On 22.02.2012, applicant was allotted MES with date of seniority 26.11.1996. Applicant's promotions to the grade of Executive Engineer (QS&C) and Executive Engineer (QS&C) (NFSG) which were to be granted as per Tribunal's order within three months, was given after three years after the CAT Principal Bench judgement in OA No. 2180/2013.

3. In 2015, subsequent to the above Tribunal order of Ahmedabad Bench in OA No. 442/2009, the respondents made promotions to the post of Superintending Engineer by promoting an officer of 1995 Batch, despite the fact that applicant who had been allotted an earlier 1994 batch, had not been considered for promotion as Executive Engineer (NFSG). Applicant made a representation to consider him for promotion as Superintending Engineer w.e.f. the date when the officer from the junior batch stood promoted.

4. The relief claimed by the applicant is for convening of a Review DPC for promotion to the Grade of Superintending Engineer

(QS&C) w.e.f. the date his immediate junior who is also private respondent No. 3 had been promoted. The second prayer of the applicant is for inclusion of the applicant's name in the Superintending Engineer (AS&C) All India Seniority List by placing his name above the said private respondent.

5. Whereas the respondents had initially filed a reply stating that the applicant had represented for promotion at par with immediate junior and the same is under consideration, vide MA. 642/2017 submitted that the statement was a bonafide and unintentional mistake and withdrew the same.

6. In the amended written statement, the respondents accept the fact that the applicant had submitted a representation on 06.05.2016 which is yet to be decided by the competent authority. Respondents also admit that the applicant has been given promotion from AE (E) to EE through a review DPC against the vacancy year 2003-2004. The applicant was subsequently promoted to Executive Engineer (FSG) by a Review DPC against the vacancy year 2008-2009 on 15.10.2015.

7. The respondents submit that the applicant will be considered at par with him immediate junior Sh. A.K. Balmiki in response to the representation made by him and not Sh. Manoj Kumar Gupta, Superintending Engineer cited by the applicant. The respondents argue that the Review DPC which promoted him from AEE to EE, placed him below MES 486735 Sh. Subhash Kumar and above A.K. Balmiki. The respondents therefore do not concede the

prayer of the applicant to be placed above Manoj Kumar Gupta. We also take note of the fact that neither the applicant nor the respondents have produced a copy of the seniority list in support of their respective contentions. Hence, the Bench is not in a position to consider the exact seniority of the applicant.

8. It is necessary, at this stage, to reproduce the judgement in OA No. 442 of 2009 titled Iqbal Singh Vs. UOI of CAT Ahmedabad Bench which allowed the change in service from Survey of India to MES as follows:-

“17. In view of discussion made hereinabove, we direct that the applicant, who belongs to SC community, be appointed in MES based on O.M. dated 07-04-1997. He would be entitled to seniority in the service/post to which he is allocated from the same date on which he has been given seniority in his current service/posting. His ACRs in his existing service/post shall be deemed to be his grading/ACRs in his new service/post for all purposes. In his new service/posting (MES) if his contemporaries/batchmates have earned promotions etc. on the basis of their proficiency tested in a departmental test/examination, application shall be provisionally promoted and thereafter given reasonable opportunity to appear at and clear such tests/examinations, if any. However, we are not inclined to grant arrears of pay to the applicant on account of the fact that he has not rendered service in any other post to which he may have been entitled. With these observations and directions, OA stands allowed leaving the parties to bear their respective costs.

18. Aforenoted exercise shall be undertaken as expeditiously as possible and not later than three months from date of receipt of the order. In view of disposal of OA, MA/118/2011 requires no further orders.”

Hence, the Tribunal had very clearly allotted the seniority to the applicant w.e.f. the same date on which he had been given seniority in the Survey of India service. The applicant was treated in this re-allotted MES service as holding a position similar to those

batchmates who had entered service in MES on the date he had entered Survey of India service.

9. Therefore, there is no dispute in the matter and the applicant is to be treated at par with those who had entered service in the order in which the applicant was allotted to Survey of India. Applicant be given a position above the officer who had a lower rank in the examination in which applicant had qualified for Survey of India, and was subsequently allotted to MES on the basis of the same examination. This order is being issued in view of the fact that the applicant had neither produced any select list of the Engineering Service Exam for the year in which he had qualified or the seniority list of the respondent department to which he has been shifted. The said documents be consulted before allotting the final seniority to the applicant as ordered in OA No. 442 of 2009 filed by applicant before this Tribunal and reproduced in para 8 above. Prayer of the applicant is disposed of accordingly. No costs.

**(P. GOPINATH)
MEMBER(A)**

**(JUSTICE M.S. SULLAR)
MEMBER(J)**

Dated 25.01.2018

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