

(ON INTERIM RELIEF)

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.NO.060/00236/2019

Orders pronounced on: 15.03.2019
(Orders reserved on: 14.03.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Jaspal Singh MES No. 510773 S/o Lt. S. Hajan Singh, age 36 years,

presently working as JE (E/M) O/o HQ CE Leh Zone

C/o 56 APO,

R/o H.No. 133, LIG Phase I Urban Estate Patiala-147001.

Applicant

(Argued by: **MR. ROHIT SETH, ADVOCATE**).

Versus

1. Union of India through the Secretary, Government of India, Ministry of Defence, North Block, New Delhi-110001.
2. Engineer-in-Chief, Directorate General (Personnel)/EI(DP-I), Military Engineer Services, Engineer-in-Chief's Branch, Integrated HQs of MoD (Army), Kashmir House, Rajaji Marg, New Delhi-110011.
3. Directorate General (Pers)/E1 (DPC), HQ Military Engineer Services Kashmir House, Rajaji Marg, New Delhi-110011.
4. Chief Engineer, JE (E/M) O/o HQ CE Leh Zone C/o 56 APO, Leh 901205.

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Respondents

(Argued by : **MR. SANJAY GOYAL, ADVOCATE**)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has approached this Tribunal under section 19 of the Administrative Tribunal Act, 1985, seeking, inter-alia, issuance of direction to the respondents to consider and promote him from the post of JE (E/M) to the post of AE (E/M) as per his seniority, by treating him eligible in terms of recruitment rules which provide for consideration of JE (E/M)s who have degree and have completed six years of service, as such, even without clearing MES procedural examination etc. and in any case, if condition of passing of examination is insisted, it be held that conduct of examination having been delayed by respondents, they cannot take benefit of their own wrong, as they delayed result of MES procedural examination paper-I held on 15.1.2018, by 5 months and then applying DoPT OM dated 8.5.2017, which is applicable in case of year wise routine promotions based on year wise panels to have 1st April, 2018 upto DPCs for vacancy year 2018-19 as cut off date, though as per OM cut off date for 2019 DPC is 1st of January, 2019 for vacancy year 2019 and DPC has taken place on 27.2.2019 itself, which is illegal.

2. In para 9 of the O.A. it is prayed that either promotions under Cadre restructuring Scheme may be stayed or a direction may be issued to respondents to keep one post of AE (E/M) available under cadre restructuring as vacant.

3. The bare minimum facts necessary for disposal of request of applicant for interim relief, are that he is a Degree Holder and joined

service as JE (E/M) on 16.10.2009. The promotion to the next post of AE (E/M) is governed by SRO 56 dated 10.6.2008 namely Military Engineer Services Assistant Engineer (Civil), Assistant Engineer (Electrical and Mechanical) and Assistant Engineer (Quantity Surveying and Contracts), Recruitment Rules, 2008. As per these rules, for promotion, the eligibility is as under :-

"Junior Engineer (Electrical) (Erstwhile Superintendent Electrical or Mechanical Grade-I) in the revised pay scale of Rs.5500-9000 with three years regular service in the grade in the case of Electrical or Mechanical Engineering Degree Holders from a recognized University or equivalent or seven years of regular service in the grade in the case of Electrical or Mechanical Engineering Diploma Holders from a recognized Institute or University or equivalent

and

Having passed the Military Engineer Service Procedure Examination
Failing which

Junior Engineer (Electrical or Mechanical) (including erstwhile Superintendent Electrical and Mechanical Grade-II) in the revised pay scale of Rs.5000-8000 with six years regular service in the grade in the case of Electrical or Mechanical Engineering Degree Holders from a recognized University or equivalent or ten years of regular service in the grade in the case of Electrical and Mechanical Engineering Diploma Holders from a recognized Institute or University or equivalent;

and

Having passed the Military Engineer Services Procedure Examination."

4. The plea raised by the applicant is that he is eligible as per the aforesaid rules and passing of the MES Procedure Examination cannot be insisted upon him and in any case, the respondents having not conducted this examination in time and caused delay, the applicant cannot be made to suffer as that would amount to taking benefit of own wrong and if the applicant is not promoted in the ongoing process,

he will suffer immensely and as such prayer for grant of interim relief, aforesaid, has been made.

5. The notice in this case was issued on 8.3.2019 for 14.3.2019. Today, both the sides were heard on prayer of the applicant for grant of interim relief, as made in para 9 of the O.A.

6. A perusal of the pleadings would disclose that as to whether the applicant is eligible or not as per recruitment rules, Annexure A-1, is a question that can be determined only on completion of pleadings and it involves interpretation of the statutory provisions and applicant cannot claim that the passing of procedural examination should not be insisted upon him as delay of 5 months caused by respondents has snatched a right of consideration from him and in any case he is eligible as per the rules as he has the Degree and relevant experience. However, we find that the passing of examination is a condition precedent as that is in addition to the qualification of degree and experience. The question of determination of cut off date for eligibility of candidates as per relevant instructions can also be decided only on merit after having reply from the respondents. Apparently, if applicant is allowed any blanket stay, as claimed by him, that would have adverse impact upon others who are not a party before us either in individual or representative capacity.

In these circumstances, we are of the firm opinion that the applicant has not been able to make out a *prima facie* case in his favour for grant of interim relief. The balance of convenience also does not lie in his favour and in any case, if he succeeds, the court can always direct the respondents to grant him due benefit. Thus, no irreparable loss is likely to be caused to him.

7. In any case one thing is clear that the interim relief sought for by the applicant amounts to grant of final relief which cannot be allowed at this stage. Moreover, it is not a case where the applicant cannot be compensated if his plea is allowed. If he is successful in this O.A., he can always be granted promotion from the due date and would also be entitled to all the consequential benefits emanating there-from. Thus, we are not touching the case on merits at this stage and facts have been discussed for purpose of interim relief only.

8. The Hon'ble Supreme Court has consistently held that a court of law while dealing with the case at an interim stage should not grant a relief which amounts to final relief, in view of law laid down in various cases including in **STATE OF U.P. AND OTHERS V. RAM SUKHI DEVI** reported as (2005) 9 SCC 733, the Supreme Court again had an occasion to deal with a similar issue as to whether the Court should grant almost the final relief by way of interim measure. In that connection, in paragraph 8 of the said judgment, the Supreme Court has held that "Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations.".

9. In view of above factual and legal position, the prayer of the applicant for grant of interim relief, in the manner sought for by him, is rejected. It is, however, made clear that any appointment made out of impugned selection, would be subject to ultimate decision of this case.

10. Needless to mention that the observations made herein above would not have any effect on ultimate decision of the case and have been made only for the purpose of interim relief.

11. Respondents may file detailed reply to the O.A within four weeks, with copy in advance to the applicant, who file replication, if any, within two weeks thereafter.

12. List for hearing on 30.04.2019.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated: March 19, 2019

HC*

