

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.**

**O.A. No. 372/2013**

**Date Of Decision: 4<sup>th</sup> January, 2019.**

**CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).  
HON'BLE SMT. RAVINDER KAUR, MEMBER (J).**

Shri Laxman Dattatray Shinde,  
Aged 47 years, Subedar Major (Retd.),  
Residing at Chaitraban Co-op Hsg Soc. Ltd.,  
Mohan Nagar, Chinchwad, Pune- 411 019.

**...Applicant.**

**(In person)**

**Versus**

1. The Union of India,  
Through the Secretary,  
Ministry of Defence,  
Engineer-in-Chief Branch,  
'B' Wing, Sena Bhavan,  
Integrated H.Q. Of MoD (Army)  
DHQ (P.O.), Rajaji Marg,  
New Delhi- 110 011.
2. The Engineer-in-Chief,  
Integrated HQ of MoD (Army),  
Kashmir House, New Delhi- 110 011.
3. The Director General (Personnel),  
Military Engineer Service,  
Engineer-in-Chief Branch,  
Integrated HQ of MoD (Army),  
Kashmir House, New Delhi- 110 011.

**...Respondents.**

**(By Advocate Shri R R Shetty)**

**Reserved on : 17.12.2018  
Pronounced on : 04.01.2019.**

**ORDER**  
**PER:- R. VIJAYKUMAR, MEMBER (A).**

This application has been filed on 23.04.2013 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, hold and declare that 6 vacancies were required to be reserved against 20% quota of Deputation-cum-Reemployment for Ex-servicemen under SRO 58 by the Respondents while holding the selection to fill up the posts of Store-keeper Grade- II in respect of Recruitment Years 2009-10, 2010-11 and 2011- 12.

b. This Hon'ble Tribunal may further be pleased to direct the Respondents to grant Deputation-cum-Reemployment to the Applicant on the post of Store-keeper Grade-II w.e.f. 01.06.2013 or with effect from such date from which others candidates were granted Deputation-cum-Reemployment on the post of Store-keeper Grade-II with all consequential benefits, including seniority and back wages

c. Costs of the application be provided for.

d. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed. "

2. This matter had been considered by this Tribunal in a different Bench and orders passed on 27.11.2015 allowing the OA and directing the respondents to offer appointment to the applicant for an existing vacancy of Store Keeper Gr.II or by creating a supernumerary post considering that he was placed at Serial No. 6 in the Merit List of the respondents for the particular year in question. For the purpose of these orders granting relief, this Tribunal relied on the orders of the Hon'ble Apex Court in Dr. K. Ramulu and Anr. Vs. Dr. Surya Prakash Rao and Ors. [(1997) 3 SCC 59] and State of Punjab and Ors. Vs. Arun Kumar Aggarwal & Ors. [(2007) 10 SCC 402] wherein it was held that: "when the Government takes a conscious decision not to fill up any pending vacancy, until the process initiated for amendment of recruitment rules is completed, on administrative ground, no direction can be issued to the Government to prepare and operate the panel based on the earlier

Rules. In Arun Kumar Aggarwal (*supra*), the Apex Court reiterating the said principle had held that if Government takes a conscious decision not to fill up the posts under the Recruitment Rules in force, pending revision of the Rules, no direction can be issued to fill up the post which occurred during continuance of the earlier Rules as those posts are required to be filled up under the provisions of the new Rules". Respondents took the matter to the Hon'ble High Court which considered the aspect of whether such a conscious decision had been taken by the respondents in the OA and noted that the Tribunal should have considered this averment of the respondents that no conscious decision was taken by them not to fill up the posts under the Recruitment Rules in force, SRO-71 of 2008, and then recorded a finding whether such a conscious decision had indeed been taken for not filling up the posts under the old rules pending framing of the new rules. The

orders of this Tribunal had accordingly been quashed and the matter remanded for fresh disposal.

**3.** To recapitulate the facts of this case, the applicant retired from service on 31.01.2012 from the Military Engineering Services (MES) in the rank of Subedar Major. In terms of SRO-71 issued on 04.08.2008 which are titled MES Supervisor, Barrack/Stores Grade-C [Non-Industrial Posts] Recruitment Rules, 2008. These also specify the number of posts and Recruitment Rules for appointment by direct recruitment, promotion, deputation and re-employment for persons as Store Keeper Gr.II across all locations in the country. The specific rules are identified under Rule No. 3 and under Column 11, which provides that 90% of the 416 posts will be filled by promotion failing which by direct recruitment and the remaining 10% by re-employment from ex-servicemen which is described as DCRE (Deputation cum Re-employment) failing

which by direct recruitment. A DPC was also constituted comprising at Headquarters, the SE, EE and Under Secretary, Ministry of Defence. These rules were superseded by SRO-58 dt. 03.08.2011 which specified at Serial No. 2 that the posts would be filled up by direct recruitment for 80% of 336 vacancies and 20% by DCRE with the following requirements as specified in Columns 10(ii) & 11 as below:

10	11
(ii) 20% by deputation-cum-reemployment (for Ex-servicemen), in accordance with Ex-servicemen (Re-employment in Central Services and Posts) Rules, 1979, failing which by absorption failing both direct recruitment.	<b>Deputation/reemployment (for Ex-servicemen)</b> The Armed Forces personnel including combatants from corps of Engineers due to retire or who are to be transferred to reserve with a period of one year and have the requisite qualifications as prescribed under column(7) shall also be considered. Such persons would be given deputation up to the date on which they are due for release from the Armed Forces. Thereafter they may be re-employed as civilian employees in the entry grade of Rs. 5200-20200 with Grade Pay of Rs. 1900.

4. The composition of the DPC remained unchanged. Following these Recruitment Rules, it appears that no specific instructions were issued on the manner in which potential applicants could apply against the DCRE quota and on the basis for their inter-se comparison and selection. These were eventually issued by respondents in their orders at No. 36789/Posting/130/7/E1A dt. 20.10.2011 which refers to SRO 58 which was now applicable and sets out the method of evaluating applicants, the time schedule for applications and the method of identifying Command-wise vacancies. For this purpose, Para 14 states as below:

*"Vacancy position of Store Keeper Gde-II for the period from Jan to Jun and Jul to Dec including the backlog vacancies, if any shall be submitted to this HQ as per Appx 'B' by all CE Comds. Appx 'B' should reach this HQ by 15 Apr and 15 Oct every year. The report reaching by 15 Apr and 15 Oct should cover vacancy positions for the periods 01 Jan to 30 Jun and 01 Jul to 31 Dec of the subsequent year. "*

5. The applicant has argued that the

computation of vacancies is not correct and states that he had obtained information under the RTI Act and was supplied different numbers for vacancies in 2009-10, 2010-11 & 2011-12. Finally, he received information on 59 vacancies comprising 2009-10 (19 vacancies), 2010-11 (23 vacancies) & 2011-12 (17 vacancies). He states that the Minutes of the Review Meeting however gave a figure of 30 vacancies which was a third set of figures. He argues that even if this figure of 30 is accepted, the DCRE quota would be 20% of this figure based on SRO-58 and would come to six vacancies whereas the respondents have wrongly arrived at a figure of five. He also refers to an RTI reply which he had received which states that in letter No. A/810027/RTI/10079 dt. 14.11.2012 (Annexure A-8) as follows:

*"2. Information as available with this Headquarters and permissible under RTI Act 2005 is as under:*

*(a) **Information on Para (c) (i)***

*Board proceedings alongwith Noting sheet in r/o deputation cum re-employment of SK/BS for the period Jan 2012 to Jun 2012, is exempted under Section 8(1) (d) &*

*(j) of RTI Act 2005. However, you were at Ser. No. 6 of the Board Proceedings for the period 01 Jan 2012 to 30 Jun 2012. "*

**6.** The applicant claims that since he was at Serial No. 6, he is entitled to appointment.

**7.** In reply, the respondents would claim that SRO-58 was only applicable for the vacancies of the years 2012-12 onwards since it was only gazetted on 13.08.2011. They have provided gazette copies of SRO-71 which had been contested as not available by the applicant and which was applicable until superseded by SRO-58. They have stated that since the SRO 58 took effect from 03.08.2011, its provisions could be applied only to vacancies arising in the financial year 2012-13. They have referred to the Minutes of their Review Meeting held by the DG(Personnel) in Office of Engineer-in-Chief on 30.05.2012 in which the selections made for JE(Civil), JE(E/M), JE(QSNC), MR, LDC, Peon & Store Keeper Gr.II vacancies were reviewed. Perusal of these minutes show

that for the purpose of filling up these vacancies, the date of issue of SRO with reference to the commencement of the financial year was examined and it was decided that a uniform approach would be adopted by applying the SRO amended in the course of the financial year to the next financial year. The same decision was utilized for the purpose of reviewing the orders filling up the vacancies of Store Keeper Gr.II and the Minutes recorded as under:

**"5. Filling of SK-II vacancy**

This issue was not deliberated in the meeting considering that no promotional vacancy was identified while distributing vacancy as per available RR SRO 58 dt 03 Aug 11 at the time of issue of LRS during Oct-Nov 2011. The relevant RR applicable for the period 09-10, 10-11 & 11-12 was to be SRO 71 of 04 Aug 08, in line with the decision taken in respect of JE © and JE E/M at Sr No. 1 (b) above. Moreover for promotion of SK-11 to SK-1 for DPC yr 2011-12 same SRO 71 of 04 Aug 08 is being utilized and case was referred to this HQ under CE SC letter No. 150101/25/393/E1B (R-DPC) dt 27 Mar 12 for certain help in completing the DPC.

**Decision:-**

(i) Distribution of vacancy, promotion and constitution of DPC shall be done as per applicable RR

(SRO 71 of 04 Aug 08) for the yr 09-10, 10-11, 11-12. Accordingly, distribution of vacancy so far done as per SRO 58 of 03 Aug 11 should be reviewed. (ii) It is observed that total of 30 No of LRS vacancies distributed as per SRO 58 was 5 DCRE and 25 DR @ 20% & 80% respectively. On review as per SRO 71 of 04 Aug 08 it would be 3 DCRE & 27 promotion @ 10% and 90% respectively, since feeder category of Storeman & Packer is not available on the establishment of MES, hence 27 No converted to DR. (iii) But since 5 No. of vacancy of DCRE has already been filled, the addition 2 No. recruited shall be adjusted during 2012-13.

**Action by: EIC (1) Section  
Info to All CE's Command"**

**8.** From the above and in the manner that they have actually carried out this selection, the respondents argue that they had implemented SRO-71 for the purpose of this selection.

**9.** The applicant has filed a rejoinder stating that SRO-71 was not put into effect in view of the recommendations of the Sixth Pay Commission and that when he had enquired, the respondents had informed him that there was no provision for DCRE in the cadre because they had not formulated any procedure for filling up the posts in DCRE.

Therefore, SRO-71 was never operated and he argues, that this suggests that the respondents had taken a conscious decision not to fill up the DCRE posts until notification of SRO-58. He, therefore, argues that SRO-58 should have been applied to all the vacancies from 2008 onwards. Further, he also argued that excess vacancies were reserved for Compassionate Appointment which should have been restricted to 5% of the available vacancies. He also disputes the application of SRO-71 for the year 2011-12 since many vacancies would have arisen after 13.08.2011. He also questions the decisions of the Review Meeting held on 30.05.2012 when appointments were given to five persons in June 2012 against only three vacancies identified for the DCRE quota even by the Review Meeting. The applicant makes a computation using SRO-58 for the years 2009-10 to 2011-12 for 59 vacancies and states that there should be twelve vacancies (20%) reserved for DCRE.

Further, if 10% is adopted under SRO 71, there would be six vacancies.

**10.** In their reply, respondents have stated that the vacancies for Compassionate Appointment are computed at 5% of overall DR vacancy and is not category-wise but overall. Further, they have adopted SRO-71 since SRO-58 was only notified well after the commencement of the financial year. They note that they have strictly followed the rules and have arrived at one vacancy for the years 2009-10, two vacancies for the years 2010-11 and zero vacancies for the years 2011-12 and for the purpose of DCRE and the excess appointments of 2 were planned for reduction/adjustment from the next year. An additional affidavit has also been filed by the respondents on 27.06.2018 enclosing orders of the DoPT on Compassionate Appointment which provide for a maximum of 5% of vacancies falling under the direct recruitment quota in any Group-C post, with the rest being filled through

Staff Selection Commission or otherwise. Therefore, they have reiterated that after deducting compassionate vacancies, the vacancies available for recruitment were ten in 2009-10, seventeen in 2010-11 and three in 2011-12. Against this, they had initially considered SRO-58 and identified five vacancies (two in 2009-10, two in 2010-11 and one in 2011-12) taking 20% of the vacancy figures. After the applicability of SRO was reviewed, the SRO 71/2008 was utilized for identifying vacancies and this gave a figure of three vacancies for DCRE out of the total thirty vacancies.

**11.** In reply, the applicant has reiterated the applicability of SRO-58 on the date of preparation of Select List. Further, in relation to the period 2010-11 which had seventeen overall vacancies, he says the calculation of 20% should have given three vacancies for DCRE and not two as noted. Therefore, the total vacancies rise to six if SRO-58 is adopted and he

would then be selected.

**12.** We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

**13.** At the outset, we would like to discuss the issue on which the Hon'ble High Court had remanded this matter to this Tribunal for considering afresh. That issue was on the question of whether a conscious decision was taken by the respondents to await the new Recruitment Rules contained in SRO-58 issued in August, 2011 and then to apply these rules for determination of vacancies. The applicant would argue that he was informed by the respondents that they were waiting for modifications of SRO 71 consequent upon the Sixth Pay Commission recommendations of 2006. However, they had also told him that no procedure had been put in place for the purpose of such selection. Therefore, even if the SRO-58 had been

notified, no purpose would have been served until the Rules issued on 20.10.2011 were available for the Board and the Selection Committee. The applicant has clearly confused one aspect for the other. It is also settled law that Recruitment Rules as notified cannot operate with retrospective effect. The vacancies for the years during which the SRO-71 was extant, will necessarily have to be guided by the rule position set out in that SRO. Since this has been notified, it becomes an enforceable right for many other parties and if this applicant wishes to challenge its enforceability, he would have had to challenge the SRO-71 and also the actual and potential beneficiaries of that SRO. This has not been done in this OA. Moreover, the argument of the applicant that SRO 58 should have been applied for 2011-12 vacancies especially since he claims that most of the vacancies arose after notification of that SRO needs to be countered with the fact that

the SRO was issued in mid-financial year. In these circumstances, it may have been possible for the respondents to look at this aspect but the other administrative aspect of whether they followed a uniform procedure in this regard also deserves critical understanding. The review done on 30.05.2012 therefore takes meaning and establishes that the respondents had followed a uniform and non-discriminatory procedure for all categories. Even otherwise, there were only three vacancies available for the year 2011-12 and if these are distributed on a proportionate basis, ten percent of one vacancy and twenty percent of two vacancies still adds up only to 0.5 vacancies and could well be treated as zero or one. Along with the three vacancies identified for the previous years, this total amounts to only three or four possible vacancies to be filled up under DCRE and against which five people had been appointed. The applicant has received

replies under RTI which have informed him that he was ranked sixth in the Board proceedings. The connected proceedings has been perused by this Tribunal as produced by the respondents. The Board proceedings for Bengal Engineering Group held at Roorkee on 09.02.2012 and subsequent days ranked 19 Subedar Majors who had retired in the period 01.01.2012 to 30.06.2012. The applicant was indeed ranked at No.6 in these Board proceedings with a total marks of 17. Of the five persons above him, the first three with marks of 21, 20 & 18 were selected for recommendation while No. 4 & 5 with 18 marks were not selected for recommendation. Similarly, for the period 01.07.2012 to 31.12.2012, four Subedar Majors were considered and the first person with 19 marks was selected for DCRE while the second with 17 marks was not selected for recommendation. These Board proceedings were communicated to the Engineer-in-Chief on 28.03.2012. Similar Board proceedings

were also received by the Engineer-in-Chief from the Bombay Engineer Group, Kirkee and the Madras Engineering Group at Bangalore. On this basis, a Merit List for Store Keeper was prepared for the period 01.01.2012 to 31.01.2012 by the Engineer-in-Chief. The applicant who had received 17 marks was placed at No.12 based on 17 marks that he had obtained. This list also indicates that he was Sixth in the corresponding Board proceedings. His next above person in the Board proceedings at Roorkee who was ranked Fifth was now ranked Seventh with 18 marks in the Merit List and was, incidentally, not selected. The RTI reply appears to have unfortunately confused the applicant by reference to Board Proceedings when it should have set out very clearly to him by reference to the Merit List that although he was sixth in the Board Proceedings at Roorkee, he was only 12<sup>th</sup> in the national Merit List. Therefore, the entire efforts made by the applicant to rectify a wrong felt

by him were based on wrong premises induced by the reply in the RTI and could have been entirely avoided.

**14.** In the circumstances, this application is devoid of any basis and it is apparent that the selection has been done in a fair manner and has not caused any injury to the applicant who was ranked well below the border line to be ever considered by some marginal changes in the vacancy position. While dismissing this OA without any order as to costs, it is also appropriate to direct the respondents to consider taking appropriate disciplinary action against the CIO/CPIO who had given incomplete and misleading information to the applicant and brought embarrassment and needless correspondence to the Department and costs to the applicant.

**(Ravinder Kaur)**  
**Member (J)**

**(R. Vijaykumar)**  
**Member (A)**

*Ram.*