

**Central Administrative Tribunal
Principal Bench**

OA No.2789/2019

New Delhi, this the 18th day of September, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

1. Udayveer Singh, JE (E&M),
Group 'B',
Aged about 51 years,
S/o Sh. Pritam singh
R/o RZ-42, Gali No.8,
Mohan Nagar, Pankha Road,
New Delhi 110 046.
 2. Krishan Pal Singh, JE (E&M)
Group 'B',
MES No.Ex-JC-179883H
S/o Late Randhir Singh
R/o P-109/8, Type-III,
Kabul Line, Delhi Cantt.110 010.
 3. Deshraj Malik, JE (E&M)
Group 'B',
Aged about 52 years,
S/o Sh. Jagmer Singh
R/o H. No.39, Sailok, Phase-I,
GMS Road, Dehradun, Uttrakhand.
 4. Jahangir Ahmad, JE (B&R)
Group 'B',
MES No.Ex-JC-207608F
Aged about 52 years,
S/o Late Zarif Ahmad,
R/o C-4/3, Sanchar Vihar,
DEAL Colony, Rajpur Road,
Dehradun, UK.
 5. Hari Narayan Neekhara, JE (B&R)
Group 'B',
MES No.Ex-JC 186239A,
Aged about 52 years,
S/o Late N. S. Neekhara,
R/o H. No.1521, Sudama Nagar,
D-Sector Indore,
Madhya Pradesh.
- ... Applicants.

(By Advocate: Shri M. K. Bhardwaj)

Vs.

1. Union of India
Through its Secretary
Ministry of Defence,
South Block,
New Delhi.
 2. Engineer-in-Chief
Rajaji Marg, Kashmir House,
New Delhi.
 3. The DG (Pers)
E-in-C Branch
Rajaji Marg, Kashmir House,
New Delhi.
 4. The Chief Engineer
Military Engineering Service
Hqr. Western Command,
Chandi Mandir, Chandigarh.
 5. The Chief Engineer
Military Engineering Service
Hqr. Central Command,
M.G. Marg, Lucknow,
UP 226002.
- Respondents.

(By Advocate : Shri Rohit Sehrawat for Shri Rajeev Kumar)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman :

The applicants joined the Indian Army as Nayab Subedars, and thereafter got promotions up to the rank of Subedar/Subedar Major. It is equivalent to Junior Engineer (Electrical and Mechanical) or Junior Engineer (Civil), as the case may be. After they retired from the Army, they were re-employed. Their grievance is that they

were not appointed immediately on retirement and thereby they are deprived of the benefit of continuity.

2. It is stated that even at the time of retirement, a clear assurance was given that reappointment would be offered immediately and despite that there was delay in issuing the orders of deputation-cum-re-employment.

3. Earlier, the applicants filed OA No.3944/2018, mainly complaining that the representations submitted by them were not being considered. The OA was disposed of on 17.10.2018 directing the respondents to pass orders on the representation of the applicants. In compliance with the same, the respondents passed a speaking order dated 06.03.2019, wherein, it was mentioned that the reappointment of the pensioners is selection based and it cannot be granted right from the date of retirement. The relevant circulars and other provisions were referred to. This OA is filed challenging the speaking order dated 06.03.2019, and for a direction to the respondents to treat the applicants as JEs from May, 2011, with all consequential benefits.

4. We heard Shri M. K. Bhardwaj, learned counsel for the applicant and Shri Rohit Sehrawat for Shri Rajeev

Kumar, learned counsel for the respondents, at the stage of admission itself.

5. The applicants served the Indian Army for some time, and retired, when they were in the rank of Subedars/Subedar Major, equivalent to JE. Since they retired at a very young age, the Army evolved a Scheme for re-employment of pensioners who are otherwise fit. Accordingly, the orders were passed. The applicants contend that since their re-employment is in the same establishment, there should not have been any break in service. It is also stated that their seniority must be reckoned from the date on which they retired from the Army.

6. Howsoever, assured the re-employment of the applicants may be, they can assume charge on re-employment, only when an order is issued in that behalf. It is not as if, every retired employee can straightway be re-employed. Much would depend upon his willingness, and his being found fit, for the post. An element of selection is involved. The instructions in this behalf are contained in the letter dated 04.06.2012 issued by the Engineer-in-Chief. Clauses 15 & 18 which are extracted in the impugned communication read as under:-

“15. Deputation in their last year of service followed by re-employment for military cadre personnel implies selection of willing JCOs/OR at appropriate time and their absorption in MES on retirement. Re-employment after expiry of deputation will not be automatic.

18. Terms and Conditions. On being re-employed, the individuals will be governed by the “Central Civil Services Rules”. Their inter-se-seniority, pay fixation, promotion prospects and liability of service any where in India will be as under:-

- (a) The seniority of service personnel re-employed in civil stream of MES will count from the date of their re-employment/date of joining duty, whichever is later vis-à-vis their civilian counterparts appointed wef the date.
- (b) Pay of re-employed ex-servicemen will be fixed in accordance with the instructions contained in recommendations of the Sixth Pay Commission for employees as amended from time to time.
- (c) Future promotion prospects of such re-employed pensioners will be regulated in accordance with the Recruitment Rules applicable to their civilian counterparts.

(b) In view of the above deputation clause, the appointment is a selection based on willingness and cannot be assumed a matter of right from the date of retirement. Further, as per terms and conditions, your seniority and pay fixation will count from the date of joining the duty after issue of appointment letter vide Chief Engineer, Northern Command letter No.41623/Mil/DCRE/13/E1C (1) dated 10 Feb 2015 (this will be different for different Appellants).

(c) Para 2 (k) of the appointment letter as temporary JE (E/M), likely to be made permanent after probation, in the Military Engineer Services reads “You should report for duty to the office at GE Partapur on or before 09 March 2015. You will not be entitled to any travelling allowances by joining the appointment. The appointment will take effect from the date you report for duty.”

7. From a perusal of the same, it is evident that without undertaking any selection process, a retired employee cannot be straightway re-employed. The applicants are not able to point out any illegality or infirmity in the impugned order.

8. We do not find any error in the order, impugned in the OA. The OA is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/