

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

OA No.290/00310/2014

Pronounced on : 18.07.2019
(Reserved on : 09.07.2019

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

Bikas Das S/o Sh. Manindra Kumar Das, aged about 57 years, R/o Quarter No.24/6, Air Force Colony, CWE (AF) Bikaner, Rajasthan. Presently working on the post of EE in the office of CWE (AF) Bikaner, Rajasthan.

...APPLICANT

BY ADVOCATE : Mr. S.K. Malik

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Engineer-in-Chief, Military Engineer Services, Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), New Delhi.
3. Director General (Pers), Military Engineer Service, Engineer-in-Chief's Branch, Integrated Headquarter of MOD (Army), New Delhi-110011.

RESPONDENTS

BY ADVOCATE: Mr. B.L. Bishnoi for R1 to R3.

ORDER

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Hon'ble Smt. Archana Nigam, Member (A):-

1. This Original Application (O.A.) has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- "i) By an appropriate writ order or direction impugned orders dated 28.05.2013 (Annexure A1), and impugned order dated 06.09.2013 (Annexure A2) be declared illegal and be quashed and set aside.
- ii) By an order or direction respondents may be directed to consider the case of the applicant for Executive appointment on the post of GE and post him near to his home with all consequential benefits.

- iii) By an order or direction exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice."

2. This OA has been made against the impugned order dated 28.05.2013 (Annexure A1) and the impugned order dated 06.09.2013 (Annexure A2) passed by respondent no.3 wherein the applicant has been denied Executive appointment on the post of GE.

3. The brief facts of the case as narrated by the applicant are that the applicant was initially appointed on the post of E/M Grade II with effect from 04.05.1982. He was promoted on the post of E/M Grade I in the year 1991 and was further promoted on the post of AGE/AE with effect from 02.10.2001. Thereafter, he was lastly promoted on the post of EE i.e. Executive Engineer vide order dated 27.05.2011 and he was posted at CWE, Bikaner as DCWE E/M (Annexure A3). The applicant has moved an application dated 28.01.2012 (Annexure A4) for Executive appointment. Since no reply was received by the respondents, again he moved an application dated 15.03.2013 (Annexure A5) through proper channel for Executive post stating therein that his tenure of two years is likely to be completed in June, 2013, so his case may be considered for the same. Accordingly, Chief Engineer forwarded the same to Chief Engineer, Western Command, vide letter dated 30.04.2014 duly recommended for considering the case of the applicant for Executive appointment after completion of his tenure (Annexure A7). The respondent no.3 vide impugned order dated 28.05.2013 (Annexure A1) has rejected the case of the applicant on the ground that he did not meet requisite criteria to post as GE (Refer Para 8 of Cadre Management of MES Civilian Officers Guidelines July, 2003 and Para 3(d) of Cadre Management of MES Civilian Officers Guidelines January, 2013).

4. It is further stated in the OA that in Para 8 of Cadre Management of MES Civilian Officers Guidelines July, 2003 and Para 3(d) of Cadre Management of MES Civilian Officers Guidelines January, 2013 in as much as applicant is having more than 5 years service and having the requisite qualifications and experience as provided in Para 8 of Guidelines July, 2003 and is also meeting the criteria of 4 years residual service as on passing of impugned order dated 28.05.2013. The applicant vide his application dated 04.06.2013 asked the copies of Para 8 and Para 3(d) of Appendix 'F' of Guidelines July, 2003 and January, 2013 as mentioned in impugned order dated 28.05.2013 and thereafter again resubmitted his application with enclosures of APAR through proper channel vide application dated 22.06.2013 (Annexure A8 and A9) respectively. Respondents again simply without assigning any reason intimated to Chief Engineer, Western Command and Chief Engineer (AF) WAC Palam vide impugned order dated 06.09.2013 (Annexure A2) mentioning therein that they should refer their letter dated 28.05.2013 wherein the case of the applicant was rejected. Again thereafter he submitted an application dated 01.10.2013 through proper channel for consideration of his case. Accordingly, the same was intimated to CWE (AF) Bikaner vide letter dated 09.12.2013. Nothing has been heard from the respondents after submitting his application dated 01.10.2013, respondents are adamant for not considering his case for Executive appointment as GE. Aggrieved of the impugned orders and illegal action on the part of the respondents not to consider the case of the applicant for Executive appointment as GE, applicant has no other alternative except to approach this Tribunal for redressal of his grievance. Hence this OA.

5. In the written statement filed on behalf of the respondents, wherein it has been stated that the applicant was not posted on the post of

Executive appointment as applicant was not having the criteria for the said appointment. It is worth to say that the post of GE one of the appointment in which an officer of the rank of EE can be posted if the officer satisfied the yardstick viz bench mark grading, vigilance clearance, APAR grading etc as per posting policy in vogue. The applicant's promotion order was issued on 25.05.2011 when cadre management of MES Civilian Officers Guidelines July, 2003 was enforced according to this guideline the applicant posting was planned (Annexure R1). The respondents further stated that the case of the applicant for executive appointment was considered in the year 2013 by the Department but as per Para 3D of Appendix G of cadre management of MES Civilian Officers Guidelines January, 2013 which was applicable w.e.f. 01.04.2013 "Departmental Promotion with at least 4 years residual service and having last 5 APAR grading minimum very good shall also be considered for posting as GE" (Annexure R3). It is further stated that as on 30.04.2013, the officer did not need the above criteria of posting him as GE, he was with less than four year residual service since date of retirement of applicant is 31.03.2017 and the applicant had earned below very good APAR in last five years. As per Directorate Persons (M) and DDG Persons (M) and Offg DG (Persons) the officer did not make the criteria of posting him on executive appointment and accordingly the applicant was replied by the department (Annexure R6). All those officers who fulfill the criteria to be posted on Executive appointment on the post of GE, the applicant did not fulfill the criteria to be posted on Executive appointment. As per the Guideline Annexure R3 one must have at least four years residual service and having last five APAR grading minimum very good shall be considered for posting as GE but in the instant case APAR of 2008-2009 the applicant's grading were below very good hence the applicant did not fulfill the criteria for executive appointment as laid down in cadre

appointment of MES Civilian Officers Guidelines January, 2013. It is also submitted that order passed by the competent authority is just and proper there is no illegality in the order put under question mark. The outcome of the consideration was also communicated to the applicant. The guidelines issued by higher formation have not at all been challenged by the applicant as long as guidelines are enforced, applicant cannot say order passed by the compensative authority is illegal because at the time of consideration authority has to follow the guidelines. According to the facts and reply submitted by the respondents, applicant is not entitled to get any relief from this Tribunal and the OA filed by the applicant may be dismissed with costs.

6. Arguments advanced by Shri S.K. Malik, learned counsel for the applicant and Shri B.L. Bishnoi, learned counsel for respondents no.1 to 3 were heard.

7. As per the respondents Para 8 of these guidelines diploma holder with at least five years remaining service and having consistently very good/outstanding record shall also be considered for posting as GE. Copy of guideline is annexed as Annexure R1. It is further submitted that although the officer was degree holder and had five years residual service on the date of issue of his promotion order i.e. 25.05.2011 but applicant did not made the criteria of very good/outstanding record in his APAR. Copy of the Assessment Performa of his APAR is annexed as Annexure R2.

8. Though the applicant was degree holder and had five years residual service on the date of issue of his promotion order but the applicant did not made the criteria of very good / outstanding record in his Assessment Performa of APARs. Again in the year of 2013 the case of the applicant for executive appointment was considered by the department as per the Para 3(D) of Appendix F of cadre management of MES Civilian Officers

Guidelines January, 2013 which was applicable with effect from 01.04.2013. According to the guidelines in force in the department, promotion can be given only with at least 4 years residual service and having last 5 APAR grading minimum very good shall also be considered for posting as GE. As on 30.04.2013, the applicant did not meet both the criteria of posting as GE. At the relevant time, the applicant was left with less than 4 years residual service since date of retirement of applicant tis 31.03.2017 and the applicant had earned below very good ACRs in last five years. The applicant was communicated accordingly vide Annexure R4.

9. As per the guidelines (Annexure R3) one must have at least four years residual service and having last five APAR grading minimum very good shall be considered for posting as GE but in the instant case APAR of 2008-2009 the applicant's grading were below very good hence the applicant did not fulfill the criteria for executive appointment as laid down in cadre appointment of MES Civilian Officers Guidelines January, 2013.

10. In his counter to the submissions made by the respondents Shri S.K. Malik, learned counsel for the applicant reiterated that the representation made by the applicant was rejected vide impugned order and despite being forwarded twice while Annexure A6 and A7. From a close perusal of the representation (Annexure A10) it appears that the representation is a "request for posting". The applicant in the representation requests that his case may be considered sympathetically for a suitable posting preferably to the North East Region to which he is willing to go.

11. It is clear that the case of the applicant was considered twice but the applicant could not meet both the criteria for posting as Garrison Engineer as per Para 3(D) of Appendix 'F' Cadre Management of the MES Civilian Officer issued in January, 2013. It has also been brought to the notice of

the Court that the applicant has now retired. The reliefs sought by the applicant are not maintainable and no cause of action survives. Accordingly, without going any further into the merits of his claim for promotion to the Executive posting, it is clear that any promotion now approved by the Tribunals/Courts would be of no avail to the applicant since retired.

12. Accordingly, OA is dismissed as infructuous. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

Dated: 18.07.2019
Place: Jodhpur

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