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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CIRCUIT AT PORT BLAIR
O.A.NO. 351/ 16 36 /2017**

IN THE MATTER OF:

An application under section 19 of the Central Administrative Tribunal Act, 1985.

-And-

IN THE MATTER OF:

S.Ratnam S/o Late S. Jagannathan, presently working as Junior Engineer (Civil), Construction Division No.1, Andaman Public Works Department, Andaman & Nicobar Administration, Port Blair, R/o L-18, Link Road, Goal Ghar, Port Blair Tehsil, South Andaman District-744101.

.....Applicants

-Versus-

1. Union of India, Service through the Secretary, Ministry of Urban Development, Govt. of India, Shastri Bhavan, New Delhi-110001.
2. The Lt. Governor (Administrator), Andaman & Nicobar Islands, Raj Niwas, Port Blair-744101.
3. The Chief Secretary, Andaman & Nicobar Administration, Secretariat Building, Port Blair-744101.
4. The Secretary (APWD), Andaman & Nicobar Administration, Secretariat Building, Port Blair-744101.
5. The Chief Engineer, Andaman Public works Department, Nirman Bhawan, Port Blair-744101

.....Respondents

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.354/1636/2017

Date of order : 18.9.19

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

S. RATNAM
VS.
UNION OF INDIA & OTHERS
(A.P.W.D.)

For the applicant : Mr. R. Singh, counsel.

For the respondents : Mr. R. Halder, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant, an aspirant for promotion to the post of Assistant Engineer(AEN) has sought for the following reliefs:-

"A) An order be passed directing the respondent authority to consider the case of the applicant for the CDC promotion to the post of Assistant Engineer(civil) from the date his junior have been granted CDC promotion to the post of Assistant Engineer(Civil);

B) Any such order/orders be passed and or direction or directions be given as this Hon'ble Tribunal may deem fit and proper;

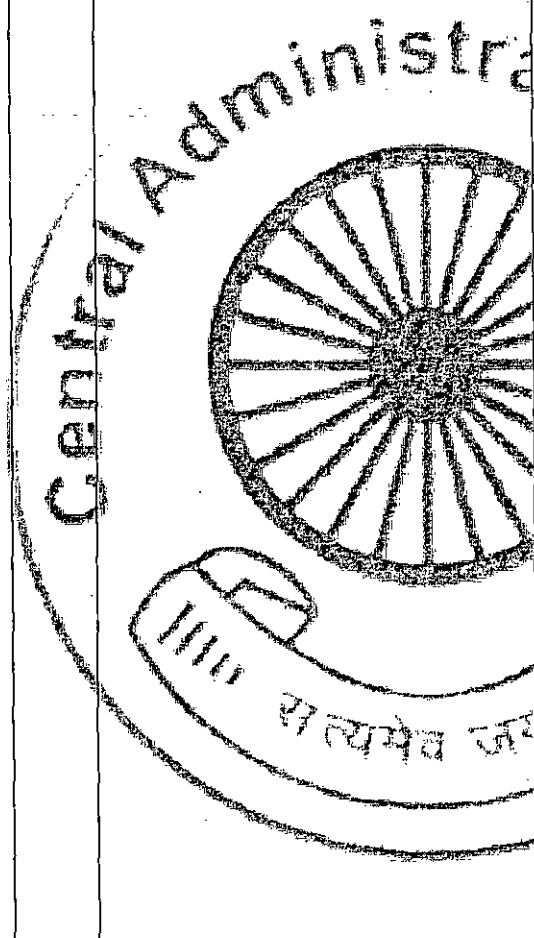
C) Cost and incidentals to this application."

2. The grievance of the applicant is as under:-

On the recommendations of a Selection Committee, applicant holding a diploma in Civil Engineering was appointed to the post of Junior Engineer in the scale of pay of Rs.1400-40-1800-EB-50-2300 vide Office Memorandum dated 04.12.1989 in the establishment of the Andaman Public Works Department and joined service as Junior Engineer with effect from 11.12.1989.

The Andaman & Nicobar Administration nominated and recommended the applicant against the reserve seat in B.E.(Lateral) Course for diploma holder for the session 2005-2006 to the Principal, V.R. Siddhartha College of Engineering, Vijaya Wada and vide Office Order No.829 dated 19.09.2005 respondent authority granted study leave for 12 months for joining the course. During 2005-2006, he could not be admitted due to delay in seeking admission and as a result he was admitted during the session 2006-2007 and completed three years degree course in April 2009 and was awarded degree of Bachelor of Technology from Acharya Nagarjuna University. The Administrator, Andaman & Nicobar Islands notified Recruitment Rules of 08.12.2006, regulating the method of recruitment to the post of Executive Engineer(Civil) & Assistant Engineer(Civil) at column 11 & 12 for promotion to the post of Assistant Engineer(Civil) which reads as under:-

11.	Method of recruitment, whether by direct recruitment or by promotion or by deputation/absorption and percentage of the post to be filled by various methods	1. 85% by promotion failing which by Deputation including short term contract. 2. 15% by direct recruitment.
12.	In case of recruitment by promotion/deputation/absorption, grade from which promotion/deputation/transfer to be made	<u>Promotion (Out of 85% promotion quota)</u> (a) 10% by Junior Engineer(Civil)(Non Diploma) with 15 years regular service in the grade and possessing 2 years ITI Certificate of Draftsmanship and Surveyor.

	<p>Note : The promotion quota for Non-Diploma Junior Engineer(Civil) is applicable only for those who are matriculate and ITI certificate holder and holding the post of Junior Engineer(Civil) on regular basis on the date of the notification of the A&N Administration PWD Group 'B' posts of assistant engineer(Civil) — — Recruitment (Amendment) Rules.</p> <p>(b)(i) 45% by Junior Engineer(Civil) in the scale of Rs.5000-8000 and holding diploma in Civil Engineering with ten years regular service in the grade.</p> <p>(ii) 45% by Junior Engineer(Civil) in the scale of Rs.5000-8000 and holding degree in Civil Engineering with six years regular service in the grade.</p> <p><u>Note: Where junior who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such service or two years, whichever is less, and have successfully completed their probation period to the next grade along with their juniors who have completed such qualifying/eligibility service.</u></p>
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Thus the entire scheme of Rules makes clear –

- (a) That out of 85% promotion quota, the 10% is fixed for non diploma, 45% for diploma and 45% for degree holder or in

other words quota is fixed for each category of Junior Engineer(Civil).

(b) That to be eligible for promotion in 45% quota reserved for diploma holder out of total 85% quota reserved for promotion, a Junior Engineer(Civil) apart from diploma in Civil Engineering, such diploma holder should have 10 years regular service in the grade and for a degree holder Junior Engineer, the degree should be accompanied with 6 years regular service in the grade to be eligible for promotion in 45% quota reserved for degree holder out of total 85% quota reserved by promotion.

(c) Respondent are maintaining the common seniority list for Non diploma, diploma and degree holders.

(d) Note in the rules provide for consideration of seniors when the case of juniors are considered for promotion subject to fulfillment of the eligibility service and other condition stipulated therein.

The applicant's representation, dated 29.01.2013 requesting for grant of Current Duty Charge(CDC) promotion to the post of Assistant Engineer(Civil) was rejected on 11.03.2013 stating that "as on date as per the roster adopted in last DPC no junior Engineers(Civil) possessing degree in Civil Engineering junior to you have been given CDC promotion to the post of Assistant Engineer(Civil)." (Annexure A/6). Being dissatisfied with the rejection he preferred further representation dated 18.04.2013 indicating therein

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those Junior Engineers possessing degree in Civil Engineering, junior to him at serial No.64, 65, 66 and 68 have granted CDC promotion ignoring the applicant at serial no.45 in the seniority list of Junior Engineer(Civil) as on 01.01.2012. Till date the respondent authorities are sitting tight over the matter.

A combined seniority list of Junior Engineer(Civil) APWD as on 01.08.2014 was published in which the name of the applicant figured at serial No.31. Having acquired degree in Bachelor of Technology in April 2009 and having completed 6 years of regular service in the grade on April 2015 he was fully eligible for Current Duty Charge (CDC) promotion against the degree holder quota but the respondents without considering his case and his representation, granted CDC promotion to degree holder Junior Engineers from serial nos.68,69, 82, 83 and 95 who were junior to him while the applicant figured at serial no.31 in the seniority list as on 01.08.2014. He made RTI application seeking information but in respect of application sought at serial no.(iii) the respondent authority informed that the roster operated for giving promotion is not available. Aggrieved and dissatisfied due to the arbitrary and unreasonable acts of commission and omission of the respondent authority he has come up with this O.A.

3. The respondents have by way of reply averred as under:-

That "applicant cannot claim promotion as a matter of right.

Furthermore, he does not fulfil the criteria for consideration for

the post of promotion including CDC promotion to the post of Assistant Engineer(Civil)".

That "as per foot note of Recruitment Rule, which is reproduced below:-

"Where Junior who have completed their qualifying/eligibility service are being considered for promotion, their senior would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their junior who have already completed such qualifying/eligibility service."

As per this foot note the eligibility of Diploma holder who subsequently acquire degree will be as below:-

Date of acquiring degree + Eligibility service + 1/2 of eligibility service or 02 years whichever is less.

In this case it will be = Date of acquiring degree + 6 + 2 = Date of acquiring + 08 years.

As per the foot note the applicant completed degree in April, 2009. Hence his eligibility for degree = April, 2009 + 08 = April, 2017. However, he is covered within the proposal for promotion under Diploma category also.

And "that a proposal for 14 posts of promotion to the post of Assistant Engineer(Civil) on CDC basis is sent to Administration vide No.B-3/CC/CE/APWD/2017/1112 dated 19/12/2017 and the proposal is approved by the competent authority. In the said proposal the applicant's name is also considered as Assistant Engineer(Civil) on CDC basis under Diploma category. Their promotion and posting order to be issued by the competent authority shortly."

It is evident that the respondents have cleverly refrained from addressing the grievance of the applicant as contained in his latest representation enumerated supra, that having completed 6 years of regular service in the grade on April 2015 he was fully eligible for CDC promotion against the degree holder quota, yet the respondents without considering his case and his representations granted CDC promotion to such degree holder Junior Engineers who were junior to the applicant, as they figure at serial nos.68,69,82,83 and 95 while the applicant figures at serial no.31 in the seniority list as on 01.08.2014.

4 By way of written notes the applicant has reagitated as under:-

"A degree holder Junior Engineer with 6-years regular service in the grade is eligible for promotion to the post of Assistant Engineer. The Recruitment Rules stipulates the following:-

"Note: Where Junior who have completed their qualifying/eligibility service for being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their junior who have already completed such qualifying/eligibility service."

The applicant is aggrieved as in the final seniority list his name is at serial No.31 while the candidates appearing at serial No.68 & 69 have been granted Current Duty Charge of the post of Assistant Engineer vide order dated 23rd August 2016(Annexure A-10, Page 55 of the O.A.). The applicant has been denied such posting on the ground that he is not eligible, and would become only eligible in April 2017 which is far

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from truth. Aggrieved as such he has sought for the aforementioned reliefs.

5. According to the respondents, the eligibility ought to be reckoned as under:-

Date of acquiring degree+Eligibility service+1/2 of eligibility service or 02 years whichever is less.

In this case it will be =Date of acquiring degree+6+2=Date of acquiring degree+08 years, i.e. in 2017.

6. According to the applicant, he obtained B.E. degree in April, 2009, so on April 2013 he was short of the requisite qualifying/eligibility service by two years and he was eligible to be considered for promotion from April 2013. When in 2016 his juniors appearing in seniority list at serial no. 68 & 69 were being considered for promotion for Current Duty Charge of the post of Assistant Engineer (Civil) ahead of him, he ought to be granted Current Duty Charges of the post of Assistant Engineer, as, he, by that time, had already completed 06 years of qualifying/eligibility service prescribed under the rules for degree holders. Therefore, the applicant prayed that the respondent authority be directed to grant current duty charge of the post of Assistant Engineer (Civil) with effect from 23rd August, 2017, the date from which applicant's juniors were granted such postings.

7. Per contra the respondents have reiterated that the applicant Shri S. Ratnam became eligible only during April 2017, as such, his claim by way of his Representation dated 21/07/2015, which is the foundation for the instant O.A. is devoid of any merit. The respondents

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have emphatically admitted that when the earlier promotion order granting CDC to the post of Assistant Engineer was issued on 23/08/2016, Shri S. Ratnam was not fulfilling the requisite qualifying service after-acquiring Degree in Engineering. Therefore, his case was not considered during August 2016. In the subsequent promotion in 2017 since he was qualifying in both the categories his case was considered and given the CDC by an order dated 08.02.2018. They would further submit that the previous proposal for grant of CDC was initiated on 05.12.2017 (Annexure R-1) subject to the condition that such promotion carried no financial implication on grant of CDC to the post of Assistant Engineer (Civil), therefore, none of the incumbents can claim any right to the posts of Assistant Engineer (Civil) on the basis of such CDC.

8. We heard the Id. counsels for the parties and perused the materials on record.

9. The discernible facts are as under:

(i) The Recruitment Rules clearly without any ambiguity or ambivalence; mandates that *"a degree holder Junior Engineer with 6 years regular service in the grade is eligible for promotion to the post of Assistant Engineer."*

(ii) The applicant irrefutably and indubitably acquired degree in April, 2009 and in terms of Recruitment Rules he eminently acquired eligibility for promotion to Assistant Engineer in April 09+6=April' 15

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(iii) It is evident that his juniors have been given CDC in August 2016 i.e. after he acquired such eligibility for promotion. His case was deliberately or under a misconception, overlooked.

(iv) His case has been erroneously turned down on the ground that in terms of note in Recruitment Rules, he would acquire eligibility only in 2017 which demonstrated an arbitrary and malafide exercise of power by the competent respondent authority.

10. We are dismayed, how the respondents could whittle down a straight forward claim in terms of Recruitment Rules and take a circuitous route of computing eligibility in terms of Note 6 (supra) which comes to aid the seniors who fails to qualify under normal criteria.

11. The applicant being thus arbitrarily left out in 2016, we allow the O.A. and direct the authorities to either suitably ameliorate his grievance by putting him in CDC on par with his juniors or grant regular promotion as degree holder or as diploma holder, whichever can be provided at the earliest.

12. Appropriate orders be issued within 2 months. No costs.

(Dr. Nandita Chatterjee)
Administrative Member
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(Bidisha Banerjee)
Judicial Member