

(2015) 12 KAR CK 0116

In the Karnataka High Court

Case No : Writ Petition No. 56745/2014 (S-CAT)

Union of India and Others

APPELLANT

Vs

S. Hemanth Raju

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Citation : (2015) 12 KAR CK 0116

Hon'ble Judges : Mohan M. Shantana Goudar and B. Veerappa, JJ.

Bench : Division Bench

Advocate : K.M. Nataraj, Additional Solicitor General for Mahesh Shetty, CGC, for the Appellant; Vikram Phadke for N.G. Phadke, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantana Goudar, J.—The order dated 25.4.2014 passed by the Central Administrative Tribunal CCAT" for short), Bangalore Bench, Bangalore, in O.A. No. 1221/2013 is called in question in this writ petition by the Union of India and others.

By the impugned order, the CAT has directed the petitioners herein to grant promotion to the respondent to the post of Assistant Engineer (Civil) against the vacancies of the year 2012-13 from the date on which his juniors were given promotion.

2. The records reveal that the respondent joined service in a Military Engineering Service CMES" for short), Ministry of Defence as a Junior Engineer (Civil) on 28.2.2005. He completed his probationary period on 28.2.2007. He has passed MES procedure examination in the year 2009. In the year 2012-13, the respondent gave representation seeking his promotion to the post of Assistant Engineer (Civil) on the ground that his juniors, who were Graduate Engineers, are promoted to the post of the Assistant Engineer and therefore, he should also be promoted from the date on which his juniors were promoted. The second respondent has considered such representation and rejected the same by

communication dated 18.10.2013 as per Annexure-A10. As against the said communication, the respondent herein approached the CAT in O.A. No. 1221/2013, which came to be allowed by the impugned order.

3. Sri. Nataraj, learned Additional Solicitor General arguing on behalf of the petitioners, submits that the CAT has wholly misinterpreted the note attached to the schedule in the Military Engineers Services (Assistant Engineer (Civil), Assistant Engineer (Electrical and Mechanical) and Assistant Engineer (Quality surveying and Contracts)) Recruitments Rules, 2008 ("Rules" for short). According to him, the CAT is not justified in equating the Degree Holder (Graduate) Junior Engineers to Diploma Holder (Non-graduate) Junior Engineers.

4. Sri. Vikram Phadke, learned Advocate appearing on behalf of the respondent per contra argued in support of the judgment of the CAT, contending that the CAT is justified in giving benefit of the note attached to the schedule of the Rules mentioned supra, inasmuch as the Juniors to the respondent are promoted in the year 2012-13 and therefore, the respondent is also entitled for promotion to the post of the Assistant Engineer.

5. Undisputed facts in the matter on hand are that the respondent joined for service of MES, Ministry of Defence as Junior Engineer (Civil) on 28.2.2005. He had completed three (3) years of Diploma in Civil Engineering from a recognised University and hence, he was appointed to the post of Junior Engineer inasmuch as three years Diploma in Civil Engineering is a requisite qualification for being appointed as Junior Engineer (Civil) in MES. It is also not in dispute that there is no bar for the Graduate Engineers to apply for the post of Junior Engineers. Undisputedly, after appointment of the respondent as Junior Engineer (Civil), certain other persons were also appointed as Junior Engineers (Civil), but such other persons, who were subsequently appointed were all the Engineering Graduates but they are not merely the Diploma Holders. However, since the respondent was appointed as Junior Engineer (Civil) at first in point of time, he was kept above in the seniority list than the Graduate Engineers inasmuch as they are subsequently appointed. To be more specific, the respondent was appointed as Junior Engineer (Civil) on 28.2.2005 whereas five other persons namely, Pandit Chandrakant Metry, Vijay Kumar Meena, Ramkesh Meena, Vijendre Kumar, Lokesh Kumar Meena, who were Graduate Engineers (Degree Holders in Civil Engineering) were appointed as Junior Engineers (Civil) on 7.3.2005, 10.3.2005, 12.3.2005, 24.3.2005 and 11.4.2005 respectively. Hence, though the aforementioned five persons who were appointed as Junior Engineers were the Degree Holders in Civil Engineering were kept below the respondent in the seniority list.

6. Before proceeding further, it would be appropriate to read the relevant clauses in the schedule attached to the Rules, which read thus:

7. The portions which are applicable to the case on hand are highlighted. The result of this writ petition fully depends upon the interpretation of the

aforementioned portions of the schedule attached to the Rules.

8. From the aforementioned highlighted portions of the schedule, it is clear that for the purpose of promotion to the post of Assistant Engineer (Civil) from the post of Junior Engineer (Civil), six years of regular service in the grade in case of Civil Engineering Degree Holders is must. However, in case of Civil Engineering Diploma Holders, ten years of regular service in the grade is absolutely necessary.

9. The note found in the aforementioned portion clarifies that where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less. Thus, the note further clarifies that in case if the juniors are promoted, their seniors also should be considered provided they are not short of requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years.

10. While interpreting this Rule, the CAT has accepted the interpretation given by the respondent to the effect that even in case of juniors, who are Civil Engineering Degree Holders are promoted to the post of Assistant Engineers (Civil), their seniors though are having Diploma in Civil Engineering also should be promoted if they had completed half of qualifying or eligibility service or have remained short of two years of requisite qualifying or eligibility service, whichever is less. In other words, the CAT has concluded that irrespective of the qualification of the persons, who were already appointed and working as Junior Engineers (Civil), if the juniors are promoted to the post of Assistant Engineer (Civil), their seniors also should be promoted provided they fulfill other criteria mentioned in the schedule and note.

11. Per contra, the learned Additional Solicitor General contends that the respondent is not eligible for consideration for promotion as he has not fulfilled any of the two criteria fixed for promotion i.e. six years of regular service in the grade in case of Graduate Engineers or ten years of regular service in the grade in case of Diploma Holder Engineers. He further submits that the Degree Holder is to be equated the Degree Holder and non-Degree Holder is to be equated the non-Degree Holder for the purposes of promotion. According to him, the said procedure is being followed by the petitioners all through in India.

12. We are unable to accept the reasoning assigned by the CAT. There cannot be any discrimination if the persons having Civil Engineering Degree are promoted at the first instance though they are juniors to the next higher cadre in preference to the Civil Engineering Diploma Holders. Since, five Civil Engineering Degree Holders (who were juniors to the respondent) were promoted as Assistant Engineers (Civil), the respondent cannot claim the benefit of concession on the basis of note attached to Rules (mentioned supra). The eligibility criteria fixed for promotion to the post of Assistant Engineer (Civil) in case of Diploma Holders is ten years of regular service in the grade. However, the concession can

be given for two years or to the extent of half of the eligibility, as the case may be, under the given circumstances, if his Juniors are promoted to the post of Assistant Engineer (Civil). The Degree Holders cannot be equated to Diploma Holders. The concession shown under the note attached to the schedule may at the most be beneficial to the respondent if his juniors, who were having Diploma in Engineering are promoted earlier to the respondent. Admittedly, the persons who were promoted to the post of Assistant Engineers (Civil) and who were juniors to the respondent were all Engineering Graduates. Since the respondent was the Diploma Holder only, his case cannot be equated to Civil Engineering Degree Holders. It is needless to observe that the note cannot override the main rule. As mentioned supra, the requisite qualification under the Rules for promotion to the post of Assistant Engineer (Civil) is ten years of regular service in the grade in case of Civil Engineering Diploma Holder. Concession can be given to the Diploma Holder only if the persons who are juniors to such persons who are having Diploma in Civil Engineering are promoted ignoring the promotion of such person. Any other interpretation will lead anomaly. If the arguments of the learned Counsel for the respondent is to be accepted, then the respondent would be promoted to the next higher post within six years of service, whereas other Diploma Holders Junior Engineers would be promoted only after ten years of service. There cannot be discrimination among the Diploma Holders, who are equals inter se; whereas there can be discrimination among the persons who are unequal based on the educational qualification, under the facts of the case. The very fact that different period of regular service in Junior Engineer cadre is prescribed for the promotional post of Assistant Engineer, would clearly reveal that the Diploma Holders cannot be equated to Degree Holders in Engineering.

In view of the same, the reasons assigned and the conclusion arrived at by the CAT cannot be sustained. Hence, the impugned order dated 25.4.2014 passed by the CAT in O.A. No. 1221/2013 is liable to be quashed and the same stands quashed. Writ Petition is allowed. The communication dated 18.10.2013 as per Annexure-A10 is restored.