

K.K. TIWARI & ORS.

v.

UNION OF INDIA & ORS.
(Civil Appeal No. 571 of 2002)

APRIL 21, 2008

[A.K. MATHUR AND LOKESHWAR SINGH PANTA, JJ.]

Service Law:

Defence Service of Engineers (Recruitment and Conditions of Service) Rules, 1991 – Rule 7 r/w Schedule III – Promotion – Post of Executive Engineers (EEs) – From the cadre of Assistant Executive Engineers (AEEs) (direct recruits) and Assistant Engineers (AEs) (promotees) – Circular stating that all 58 posts of EEs for 1997-98 to be filled in by promotion from amongst AEs only – Challenge to, by AEEs – Direction by tribunal to Government to fill vacancies by promotion in ratio of 2/3rd from AEEs and 1/3rd from AEs as per the Rules – Upheld by High Court – Interference with – Held: Order of High Court suffers from no error or perversity since the Circular did not find support from the Rules – Rule 7 r/w Schedule III states that post of EEs are to be filled in from AEEs and AEs in ratio of 66^{2/3} and 33^{1/3} respectively – Its language is to be read harmoniously with meaningful construction – Intention of the Rules cannot be ignored – Acceptance of claim of AEs that all 58 posts of EEs for the year 1997-98 are to be filled in by promotion from amongst AEs cadre would break down the quota rule.

The promotion to the post of Executive Engineers (EEs) is made from the cadre of Assistant Executive Engineers (AEEs) (direct recruitees); and from the cadre of Assistant Engineers (AEs) (promotees). A Circular dated 29.07.1997 was issued stating that as on 1.4.1997 out of the then sanctioned strength of 445 posts of EEs, 354 posts as against 297 posts were occupied by those

A employees who have been promoted from the cadre of
AEEs, while 76 posts as against 148 posts by those
belonging to the cadre of AEs; and that the total demand
for the year 1997-98 to the cadre of EEs was 58 posts,
which were to be filled in by promotion from amongst AEs
B only. The private respondents-AEEs challenged the order.
The tribunal directed the respondent no. 1-3 to fill in the
posts of Executive Engineer by promotion in proportion
of 2/3rd from the Assistant Executive Engineers and 1/3rd
C from Assistant Engineers as per the Indian Defence
Service of Engineers (Recruitment and Conditions of
Service) Rules, 1991. Both the appellant and the
respondent no 2 filed writ petitions. High Court upheld
the order. Hence the present appeal.

Dismissing the appeal, the Court

D HELD: 1.1 The High Court was right in holding that a
direction in terms of the Circular of respondent No.2 did
not find support from the Indian Defence Service of
Engineers (Recruitment and Conditions of Service) Rules,
1991 as Rule 7 neither refers to Schedule I which
E prescribes the total strength of the cadre nor it provides
anywhere further that recruitment shall be made in a
manner so as to maintain the ratio of 2/3rd and 1/3rd
in the entire cadre for a particular year. The language of Rule
7 is very clear and unambiguous and it emphasises that
F after the commencement of the Rules which came into
force on 9th July, 1991, the vacancies shall be filled in a
manner provided in Schedule III. Schedule III prescribes
that the post of EEs shall be filled in the ratio of 66 2/3
G posts to be filled on non-selection basis from the grade
of AEEs and 33 1/3 posts have to be filled on selection
basis from the post of AEs. The expression "posts to be
filled" used in the rule clearly indicates and means that
whenever any selection is made to the post of EE, the
ratio, the criteria and the essential minimum qualifying
H service in terms of Schedule III shall have to be strictly

followed and adhered to and any promotion in excess of the quota will result in breaking down the prescribed quota. Thus, the language of Rule 7 read with Schedule III governing the service conditions has to be read harmoniously with meaningful construction. (Para 25) [713-H; 714-A-D]

1.2 It is not possible or advisable to interpret the ratio of 2/3rd and 1/3rd as prescribed in Schedule III of Rule 7 in the manner that all the 58 posts of EEs for the year 1997-98 should be filled in by promotion from the cadre of AEs only. If the claim of the appellants that all 58 posts of EEs for the year 1997-98 are to be filled in by promotion from amongst the AEs cadre only is accepted, then the quota rule as prescribed by Rule 7 read with Schedule III shall break down with the result that the ratio of 2/3rd and 1/3rd prescribed in the rules for AEEs and AEs has to be ignored and resultantly a situation may arise when one cadre will get excess quota as compared to other feeder cadre. If the service rules are construed in right perspective and read their provisions in a harmonious manner then the desired result can be achieved. If the interpretation which is sought to be given by the appellants is to be accepted, then it is likely to disturb the ratio in the cadre strength of sanctioned strength. When the Rules say that posts of EEs shall be filled in from two channels i.e. AEEs and AEs in the proportion of 66 2/3 and 33 1/3 respectively the intention of the Rules cannot be ignored. On evaluation of the findings recorded by the High Court no manifest error or perversity is found in the judgment of the High Court warranting interference in this appeal. (Paras 25 and 26) [714-E-H; 715-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 571 of 2002.

From the final Judgment and Order dated 9.08.2001 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 10242 of 2000.

A P.S. Patwalia, Manita Verma, Vinay Kumar Garg and Ranjan Mukherjee for the Appellants.

Dr. R.G. Padia, Devendra Singh, Rajiv Nanda, B.K. Prasad, Sushma Suri and John Mathew for the Respondents.

B The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. This appeal by special leave is directed against the judgment and order dated 9th August, 2001 passed by the Division Bench of the High Court of Allahabad at Allahabad in Civil Miscellaneous Writ Petition No. 10242/2000 and Civil Miscellaneous Writ Petition No. 18114/2000. By the common judgment under challenge, the High Court dismissed the writ petitions whereby the order dated 8th February, 2000 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), Allahabad Bench, Allahabad, in O.A. No. 465/1999 was affirmed, whereunder the Tribunal directed the Union of India through the Secretary, Ministry of Defence – respondent No.1, Engineer-in-Chief, Army Head Quarters – respondent No. 2 and Union Public Service Commission – respondent No. 3 herein to fill in the posts of Executive Engineer in proportion of 2/3rd from the Assistant Executive Engineers and 1/3rd from Assistant Engineers in accordance with the relevant rules.

2. Facts relevant and necessary leading to the filing of this appeal may be stated.

3. There are two feeder channels for promotion to the post of Executive Engineers (EEs): (i) from direct recruit known as Assistant Executive Engineers (AEEs) and (ii) from the grade of Assistant Engineers (AEs) (promotees).

4. The rules governing the service of the cadres framed under Article 309 of the Constitution of India are called 'the Indian Defence Service of Engineers (Recruitment and Conditions of Service) Rules, 1991 (hereinafter referred to as 'the Rules')'. The appellants in the present case are the AEs, whereas private respondent Nos. 4 to 10 are AEEs. The AEEs are appointed

by direct recruitment on the basis of selection made by Union Public Service Commission (for short 'the UPSC'). A

5. A Circular dated 29.07.1997 was issued by respondent No.2 in which it was stated that as on 1.4.1997 out of the then sanctioned strength of 445 posts of EEs, 354 posts (as against 297 posts) were occupied by those employees who have been promoted from the cadre of AEEs, while 76 posts (as against 148 posts) by those who belong to the cadre of AEs. It was also stated in the said Circular that the total demand for the year 1997-98 to the cadre of EEs was 58 posts, which were directed to be filled in by promotion from amongst AEs only. B C

6. The private respondents herein challenged the order dated 29.07.1997 of the Engineer-in-Chief – respondent No. 2 before the CAT, Principal Bench, Allahabad. The Tribunal by its order dated 08.02.2000 partly allowed the O.A. and directed respondent Nos. 1 to 3 to fill up the vacancies by promotion in the ratio of 2/3rd from AEEs and 1/3rd from AEs in accordance with the provisions of the relevant rules. D

7. Feeling aggrieved by and dissatisfied with the order of the Tribunal, two writ petitions, one by the appellants and another by the Engineer-in-Chief, were preferred before the High Court of Allahabad. E

8. Having heard the learned counsel for the parties and having perused the entire record, the Division Bench of the High Court has found no substance in the writ petitions and accordingly dismissed the same *inter alia* holding as under:- F

"The order of the Engineer-in-Chief dated 29.7.1997 can at best be treated to be an executive instruction. If the rules are silent on any point the Government can fill up the gaps and supplement the rules and issue instructions consistent with the rules already framed. But they cannot run contrary to statutory provisions or whittle down their effect. The office memorandum dated 29.7.1997 clearly runs contrary to the provisions of the rules and as such, it G H

A is illegal. The order passed by the CAT directing respondent nos. 1 to 3 to fill up the vacancies in proportion of $2/3^{\text{rd}}$ of Assistant Executive Engineers and $1/3^{\text{rd}}$ from Assistant Engineers is, therefore, perfect, legal and calls for no interference.

B In view of the discussion made above, both the writ petitions lack merit and are hereby dismissed.”

C 9. Hence, AEs-appellants have filed this appeal questioning the correctness and validity of the judgment of the High Court.

D 10. Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the appellants, contended that the High Court erred in reading Rule 7 of the Rules separately from Schedule III appended to the Rules while construing the words “post to be filled” in Column 3 of Schedule III to mean the available vacancies at a given point of time and thus, instead of applying the quota to the “duty posts” or the cadre, has wrongly applied it to the vacancies. According to the learned counsel, if the interpretation to the duty posts as given by the High Court is E accepted, miscarriage of justice shall be perpetuated to the AEs who shall never achieve their due share of quota as envisaged under the Rules. He emphasized that the quota prescribed by the rules shall strictly be adhered to and any promotion made in excess of the quota will not give right to the promotee to hold F the posts meant for the other feeder cadre and inaction of the Government to make promotions from one feeder channel is not indicative of breaking down of quota.

G 11. Dr. R.G. Padia, learned senior counsel appearing on behalf of respondent Nos.1 to 3, on the other hand, contended that the Tribunal as also the High Court have passed well-reasoned and well-merited orders based upon the facts of the case, the relevant rules governing the service conditions of the parties and the principles of law and, therefore, this Court shall not be obliged to interfere with the judgment of the High Court H upholding the order of the Tribunal.

12. In order to appreciate the rival contentions of the learned counsel for the parties, we think it appropriate that the rules relevant for the purpose of determination of the controversy raised in this appeal need to be referred to. A

13. Rule 2(e) of the Rules defines 'duty posts' to mean any post specified in Column 4 of Schedule I. In Rule 2 (h) 'grade' means a grade of the Service specified in Column 1 of Schedule 1. 'Regular services in relation to any grade' in terms of Rule 2(j) means the period of service in the grade rendered after selection according to procedure laid down by the Government for long term appointment to that grade and includes any period or periods: B C

- (i) taken into account for purpose of seniority in the case of these appointees in the initial constitution of the service; D
- (ii) during which an officer would have held a duty post in the grade but for being on leave or otherwise not being available for holding such post.

14. Rule 2(m) of the Rules defines 'Service' to mean the Indian Defence Service of Engineers constituted under Rule 3. E

15. Rule 3 deals with the Constitution of Indian Defence Service of Engineers, which reads as under:-

"There shall be constituted a service to be known as the Indian Defence Service of Engineers consisting of posts specified in Schedule I." F

16. Rule 4 deals with grade, authorized strength and its review.

17. Rule 5 prescribes members of the service and reads as under:- G

"The following persons shall be members of the service, namely:-

- (a) Persons deemed to have been appointed to the H

A service under Rule 6; and

(b) Persons appointed to the service under Rule 7.”

18. The Initial Constitution of the service on the commencement of these Rules is governed by Rule 6, which
B reads as under:-

“All the existing officers in the Military Engineer Services (Engineer Cadre) holding Group ‘A’ posts on regular basis on the date of commencement of these rules shall be deemed to have been appointed to the corresponding posts and grades in the service in the substantive or officiating capacity, as the case may be, at the initial constitution stage.”
C

19. The material and relevant rule on the basis of which the point in issue has been decided by the Tribunal and the High Court reads as under:-
D

“Rule 7. After the commencement of these rules, the vacancies, excluding the vacancies reserved for Army Officers under the Military Engineer Services (Army Personnel) Regulations, 1989 shall be filled in the manner as provided in Schedules II, III and IV.”
E

20. The relative seniority of members of the service is governed by Rule 8.

21. Schedule I attached to the Rules prescribes the names of posts, total number of posts and number of posts, which are to be held by Civilian Officers in each grade and scale of pay of Additional Director General, Chief Engineer and Additional Chief Engineer, Superintending Engineer (selection grade), Superintending Engineer (ordinary grade), Executive Engineer and Assistant Executive Engineer. The total number of sanctioned posts of EEs is mentioned 890, out of which 445 posts are to be held by Civilian Officers.
F
G

22. Schedule II prescribes minimum educational qualifications and age limits for direct recruits to the post of
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AEEs Group 'A' to be filled in on the basis of examination to be conducted by the UPSC. A

23. Schedule III [see Rule 7] provides the method of recruitment, field of promotion and minimum qualifying service in the next lower grade or feeder grade for promotion to duty posts in the various grades of the Indian Defence. EEs are placed at Serial No.6 of the Schedule. EEs posts in terms of Column 4 of the Schedule are to be filled in by two channels of promotions, viz. (i) $66\frac{2}{3}\%$ posts are to be filled on non-selection basis from the grade of AEEs with four years regular service in the grade with a Degree in Civil, Mechanical or Electrical Engineering or equivalent from a recognised University/ Institution and $33\frac{1}{3}\%$ posts to be filled on selection basis from the grade of AEs with 8 years regular service in the grade and possessing Degree in Civil, Mechanical or Electrical Engineering or equivalent from a recognised University/ Institution [see Column 5]. B C D

24. We have given our anxious consideration to the above raised contentions of the learned counsel for the parties in the light of the above-extracted relevant Rules. E

25. Rule 7 on its bare reading does not make reference to Schedule I, which provides that 445 numbers of posts are to be held by Civilian Officers in the cadre of EEs. The Rules nowhere provide that the total strength of the cadre of EEs has to be consistently maintained in a manner that $\frac{2}{3}$ rd cadre is manned by those who are promoted from the posts of AEEs and $\frac{1}{3}$ rd cadre is manned by those who have been promoted from the post of AEs. It appears from the record that the entire basis for issuing the Circular dated 29.7.1997 by respondent No.2 was that in the cadre of EEs the ratio of such officers who had been promoted from the post of AEs had been depleted and after calculation of the posts, the deficiency has been found to the extent of 58 vacancies and, therefore, the vacancies should be filled in from amongst AEs only for a particular year 1997-98. The High Court, in our opinion, was right in holding that such a F G H

A direction in terms of the Circular of respondent No.2 did not find support from the rules as Rule 7 neither refers to Schedule I which prescribes the total strength of the cadre nor it provides anywhere further that recruitment shall be made in a manner so as to maintain the ratio of $2/3^{\text{rd}}$ and $1/3^{\text{rd}}$ in the entire cadre for a particular year. The language of Rule 7 is very clear and unambiguous and it emphasises that after the commencement of the Rules which came into force on 9th July, 1991, the vacancies shall be filled in a manner provided in Schedule III. Schedule III, as earlier noticed, prescribes that the post of EEs shall be filled in the ratio of $66\frac{2}{3}$ posts to be filled on non-selection basis from the grade of AEEs and $33\frac{1}{3}$ posts have to be filled on selection basis from the post of AEs. The expression "posts to be filled" used in the rule clearly indicates and means that whenever any selection is made to the post of EE, the ratio, the criteria and the essential minimum qualifying service in terms of Schedule III shall have to be strictly followed and adhered to and any promotion in excess of the quota will result in breaking down the prescribed quota. Thus, the language of Rule 7 read with Schedule III governing the service conditions has to be read harmoniously with meaningful construction. It is not possible or advisable to interpret the ratio of $2/3^{\text{rd}}$ and $1/3^{\text{rd}}$ as prescribed in Schedule III of Rule 7 in the manner that all the 58 posts of EEs for the year 1997-98 should be filled in by promotion from the cadre of AEs only. If the claim of the appellants that all 58 posts of EEs for the year 1997-98 are to be filled in by promotion from amongst the AEs cadre only is accepted, then the quota rule as prescribed by Rule 7 read with Schedule III shall break down with the result that the ratio of $2/3^{\text{rd}}$ and $1/3^{\text{rd}}$ prescribed in the rules for AEEs and AEs has to be ignored and resultantly a situation may arise when one cadre will get excess quota as compared to other feeder cadre. If we construe the service rules in right perspective and read their provisions in a harmonious manner then the desired result can be achieved. If the interpretation which is sought to be given by the learned senior counsel for the appellants is to be accepted, then it is likely to disturb the ratio in the cadre strength of

sanctioned strength. When the Rules say that posts of EEs shall be filled in from two channels i.e. AEEs and AEs in the proportion of 662/3 and 331/3 respectively we cannot ignore the intention of the Rules.

A

26. On evaluation of the findings recorded by the High Court and for the reasons discussed hereinabove, we do not find any manifest error or perversity in the judgment of the High Court warranting interference in this appeal.

B

27. In the result, the appeal is, accordingly, dismissed with no order as to costs.

C

N.J.

Appeal dismissed