

ASSOCIATION OF ENGINEERS

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v.

GOVERNMENT OF TAMIL NADU & ORS.

(Civil Appeal No. 995 of 2009)

SEPTEMBER 14, 2017

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[ARUN MISHRA AND  
MOHAN M. SHANTANAGOUDAR, JJ.]

*Tamilnadu Engineering Service Special Rules, 1985 – rr. 2, 5 – Promotion to the post of Assistant Engineer – Tribunal directed that the post of Assistant Engineer shall be filled up in the ratio of 3:1, with reference to direct recruitment and recruitment by transfer from the eligible persons holding basic qualification as per rules – Correctness of – Held: Though initially in 1972, the Rule was that Overseers and Draftsmen Gr. II and III could be recruited by way of transfer to the post of Assistant Engineer, in case they had acquired the qualification after they had entered into the service and rendered requisite period of service, as prescribed by the Rules of 1972 – However, thereafter, amendment came into force in 1983 w.e.f. 1980, and Overseers and Civil Draftsman Grade II and III were made ineligible for promotion as Assistant Engineer – The eligibility was confined to Head Draftsmen Gr. I – The position of 1972 was altered and given a go bye till 1985 rules came into force – A bare reading of r.5, read with r.2(a) of Rules of 1985 make it clear that the incumbents, working at the post of Overseers and Civil Draftsmen, in case they had requisite qualification and experience, are to be promoted by way of transfer to the posts of Assistant Engineers – It is clear that differentiation of grades of Draftsmen had been done away with and all Civil Draftsmen had been made eligible including Overseer under r.2 of 1985 Rules – The Rules of 1985 holds the field – With respect to the alleged illegal usurpation of the quota of direct recruitment, it is apparent that inter alia the incumbents, holding the post, in the Public Works Department, of Overseers or Junior Engineer after serving for one year becomes eligible to stake their claim to the post of direct recruitment – Thus, if they are appointed by way of direct recruitment, it could not be said that they had illegally usurped the quota reserved for direct recruitment – As a matter of fact, on being appointed by way of process of direct*

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A *recruitment, they are not to be treated as recruited against the quota reserved for recruitment by way of transfer – Once they have been selected by process of direct recruitment, they have to be counted towards quota of 75% reserved for the direct recruitment.*

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 995 of 2009

From the Judgment and Order dated 06.11.2006 passed by the High Court of Judicature at Madras in Writ Petition No. 7523 of 1997

WITH

C C. A. Nos. 997-998 of 2009

D Jayant Bhushan, V. Prakash, Sr. Advs. N. Subramaniyan, Pranav Sachdeva, Ms. Neha Rathi, Ms. Kamini Jaiswal, Nikhil Nayyar, Eashwar, A. V. Rangam, Buddy A. Ranganadhan, K. V. Vijaykumar, Ms. Maitreyee Mishra, P. Rajendran, Beno Banugar, Harsh Prabha (for Sanjay Kumar Visen), R. Nedumaran, Ms. A. Sumathi, B. Balaji, Advs. for the appearing parties.

The following Order of the Court was delivered:

### ORDER

E 1. The appellant has come up in appeals, questioning the adjudication made by the Tribunal, which has been affirmed by the High Court. The Tribunal had directed with respect to the posts of Assistant Engineers that the same shall be filled up in the ratio of 3:1, with reference to direct recruitment and recruitment by transfer from the eligible persons holding basic qualifications as per rules.

F 2. The case has a chequered history. In the year 1972, Government order, *i.e.*, G.O.Ms.No.1745 dated 10<sup>th</sup> October, 1972 was promulgated, which amended the Special Rules for the Tamil Nadu Engineering Subordinate Service for appointment of Overseers, Head Draftsmen or Civil Draftsmen possessing L.C.E. and A.M.I.E. (India) G qualification with a minimum service of three years as Junior Engineers re-designated as Assistant Engineers. The following amendment had been made in the said Rules:

### "AMENDMENT

H In the said Special Rules in Schedule-II to Branch I of Part-II after the existing proviso under Item-5(IV)(C) in Col.2 against

the item 'Supervisors' in Col(1) the following shall be added, A  
namely:-

"Provided further than an Overseer or Head Draftsman or Civil D'Man (possessing diploma in Civil Engineering and A.M.I.E. (India) qualification shall be eligible for appointment as Junior Engineer if he has rendered service for not less than B  
three years'."

3. As per the aforesaid amendment made, the Overseers or Head Draftsmen or Civil Draftsmen possessing the qualification of Diploma in Civil Engineering and the qualification of A.M.I.E. (India) were eligible for the posts of Junior Engineers. It was followed by another Government order, i.e., G.O.Ms.No.1356 dated 2.8.1980, which contained the proposal of the Government in paragraph 3, with respect to the promotion to the post of Junior Engineers and Supervisors, equivalent to Assistant Engineers and Junior Engineers respectively. A suggestion was made that quota should be filled up by way of transfer from the cadre of Head Draftsmen and Draftsmen, on acquiring the degree, qualification or its equivalent. Paragraph 3 is extracted hereunder: C  
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"3. The Commission, is of the view that a person holding the post of Overseer and Draftsmen, Grade II and III carrying a lower pay cannot be equated to a person holding the higher post of Junior Engineer (now Assistant Engineer) on acquiring the degree qualification for the purpose of appointment to the still higher post of Assistant Engineers (now Assistant Executive Engineers) and that while considering him for promotion to a higher post, the rank held by him and the pay drawn by him in the lower post cannot be wholly ignored. The Commission is of the opinion that the provision made in the amendment issued in 1972, viz. Automatic conversion of Overseers/Head Draftsmen/Civil Draftsman as Assistant on acquiring A.M.I.E. qualification with three years service is not correct and that the anomaly should be set right. The Commission has therefore, suggested that Head Draftsmen and Draftsman Grade alone, whose scale of pay is higher than those of Junior Engineers and Supervisors (now Assistant Engineer and Junior Engineer respectively), on acquiring the degree qualification or its equivalent, be assigned rank below the last Junior Engineer (now Assistant Engineer) selected by the Commission in the year in which they acquire H

A the qualification. The Government has decided to accept the recommendations of the Tamil Nadu Public Service Commission in this regard.”

B 4. The same culminated into an amendment of the Rules. The following amendment had been made in the Rules, on 6.1.1983, which came into force on 2.8.1980 :

“AMENDMENT

C In the said special Rules, in Part II, in Branch I, in schedule II, for the third proviso in column (2) against the post “Supervisors” in column (1) thereof, the following proviso shall be substituted, namely:-

D “Provided also that the Head Draftsman or Draftsman, Grade I possessing A.M.I.E. (India) or B.E. Degree qualifications shall be eligible for appointment as Junior Engineer if he has rendered service for not less than three years”.

E 5. The proposal had been accepted by amending the rules the posts of Junior Engineers re-designated as Assistant Engineers were required to be filled up from the grade of Head Draftsmen and Draftsmen Grade I, possessing the requisite qualification of AMIE or B.E. Degree and 3 years service.

F 6. Thereafter, another set of Rules had come into force, called Tamil Nadu Engineer Service Special Rules, 1985. Rule 2 deals with the appointment to several categories of officers and the method of their recruitment. We are concerned with the promotion to the post of Assistant Engineers, which is prescribed in Category No.5 of Rule 2(a) of the aforesaid Rules of 1985. The relevant provisions are extracted below:

“2. Appointment :- (a) Appointment to the several categories in this branch shall be made as follows:

“Category	Method of recruitment
5. Assistant Engineers	(1) Direct recruitment; or (2) Recruitment by transfer from Junior Engineers, Overscers, Head Draftsmen or Civil Draftsmen of the Tamil Nadu Engineering Subordinate Service.”

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Rule 5 of Rule of 1989 provided the eligibility criteria, method of recruitment and qualifications. For the purpose of recruitment to the post of Assistant Engineers, Rule 5 is extracted hereunder: A

“5. Qualification” – No person shall be eligible for appointment to the category and by the method mentioned in Columns (1) and (2) of the table below unless he possesses the qualifications prescribed in the corresponding entry in column (3) thereof:- B

“Table Category (1)	Method of recruitment (2)	Qualifications (3)
Assistant Engineer	Direct recruit- ment	(1) Must possess the B.E. degree in Civil Engineering; or  (2) (I) Must have passes in Sections A and B of the Institution of Engineers Examinations under Engineering branch, subject to the following further conditions namely:-  (i) should furnish evidence of having undergone practical training in surveying for a period of not less than one year; or  (ii) should have put in service for a period of not less than one year in Public Works Department as Overseer or Junior Engineer; or  (iii) should hold the Upper Subordinate or L.C.E. diploma of the College of Engineering, Guindy or L.C.E. diploma awarded by the State Board of Technical Education and Training, Madras, and

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		<p>(II) Practical experience for a period of not less than three years before or after passing Sections A and B of the Institution of Engineers Examinations; and</p> <p>(3) Must not have completed or will not complete 28 years of age on the first day of July of the year in which the selection for appointment is made;</p> <p>Provided that other things being equal preference shall be given to those who have undergone one year of apprenticeship training under the Government of India Scheme or the State Government Apprenticeship Scheme.</p>
	Recruitment Transfer	<p>Must have acquired the following qualification after entering service as Junior Engineer, namely:-</p> <p>(1) Degree in Civil Engineering or :</p>
		<p>(2) (1) A Pass in Sections A and B of the Institution of Engineering Examination under Civil Engineering branch subject to the following further conditions, namely:-</p> <p>(i) should furnish evidence of having undergone practical training in surveying for a period of not less than one year; or</p>

		<p>(ii) should have put in service for a period of not less than one year in the Public Works Department as Overseer or Junior Engineer; or, Madras;"</p> <p>(iii) should hold the Upper Subordinate or L.C.E. diploma of the College of Engineering, Guindy, or L.C.E. Diploma awarded by the State Board of Technical Education and Training</p>
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It is apparent from a reading of the aforesaid provisions made in Rule 5 of the Rules of 1985 that an Overseer or Junior Engineer can also seek the claim for direct recruitment as Assistant Engineer, in case he possess the requisite qualification, and had put in service for a period of not less than one year in the Public Works Department as an Overseer or Junior Engineer.

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For recruitment by way of transfer, as per Rule 2 can be filled from Junior Engineers, Overseers, Head Draftsmen and Civil Draftsmen. It appears that grades of Draftsmen have been done away with and merged into category of Civil Draftsman. The aforesaid Rule 5 of Rules of 1985 make it clear one should possess the requisite qualification, as prescribed in the aforesaid rules, and had put in service for not less than one year in the Public Works Department as Overseer or Junior Engineer. Thus, there was clear departure made in the Rules of 1985 that holds the field today, from amendment made in 1985 *w.e.f.* 1980.

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7. It was pointed out by Mr. Jayant Bhushan, learned senior counsel appearing for the appellant, that as a matter of fact the ratio of 3:1 is not maintained. He urged two submissions; firstly, the Overseers and Civil Draftsman Grade II and Grade III could not have been recruited by way of transfer to the post of Assistant Engineer; and secondly, that in the guise of the order of the Tribunal, a wrong is being done, by virtually making 56% recruitment on the posts of Assistant Engineers by way of

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A direct recruitment, and 44% recruitment way of transfer. More posts than reserved as per quota are being occupied by Overseers and Civil Draftsmen.

8. On the other hand, Mr. V. Prakash, learned senior counsel appearing on behalf of the respondents submitted that ground urged as to ratio is based on misapprehension. He stated at the outset, that the ratio as ordered by the Tribunal is 3:1, that is to say that out of 100 posts, 75 posts have to be filled up by way of direct recruitment from the eligible persons and 25% posts have to be filled up by way of transfer by promotion of the candidates, i.e., Overseers and Civil Draftsman as per 1985 Rules is being maintained. The Rules of 1985 clearly holds the field and thus, there is no reason to make interference with the impugned order.

9. After hearing learned counsel for the parties, we are of the considered view that though initially in 1972, the Rule was that Overseers and Draftsmen Gr. II and III could be recruited by way of transfer to the posts of Assistant Engineer, in case they had acquired the qualification after they had entered into the service and rendered requisite period of service, as prescribed by the Rules of 1972. However, thereafter, amendment came into force in 1983 *w.e.f.* 1980, and Overseers and Civil Draftsman Grade II and III were made ineligible for promotion as Assistant Engineer. The eligibility was confined to Head Draftsmen Gr. I. Thus, the position of 1972 was altered and given a go bye till 1985 rules came into force.

10. Then again position had been changed by the Rules of 1985. A bare reading of Rule 5, read with Rule 2(a) of Rules of 1985 makes it clear that the incumbents, working at the post of Overseers and Civil Draftsmen, in case they had requisite qualification and experience, are to be promoted by way of transfer to the posts of Assistant Engineers. It is clear that differentiation of grades of Draftsmen had been done away with and all Civil Draftsmen had been made eligible including Overseer under Rule 2 of 1985 Rules.

11. Thus, we find no force in the submissions urged by learned counsel for the appellant, as the Rules of 1985 holds the field, and the action of the respondents is in accordance with law.

12. With respect to the alleged illegal usurpation of the quota of direct recruitment. It is apparent that *inter alia* the incumbents, holding

the post, in the Public Works Department, of Overseers or Junior Engineer after serving for one year becomes eligible to stake their claim to the post of direct recruitment. Thus, if they are appointed by way of direct recruitment, it could not be said that they had illegally usurped the quota reserved for direct recruitment. As a matter of fact, on being appointed by way of process of direct recruitment they are not to be treated as recruited against the quota reserved for recruitment by way of transfer. Once they have been selected by process of direct recruitment, they have to be counted towards quota of 75% reserved for the direct recruitment. A B

13. In view of the aforesaid discussion, and order passed by Tribunal there is no room to entertain the submission urged by the learned senior counsel appearing for the appellant. To put the doubt at rest, in our opinion the order of the Tribunal is quite clear. The relevant portion of the order of the Administrative Tribunal, is extracted hereunder: C

“The Tamil Nadu Public Service Commission Advertisement No.9/94 and Publication of the results pursuant thereto are quashed to the extent that it is not in conformity with the ratio of 3:1. Those who were selected in this selection shall be given appointments only to the extent of 3 by way of direct recruitment and 1 by way of recruitment by transfer from the feeder categories mentioned in Rule 2(a)(5) of the Tamil Nadu Engineering Service Special Rules. Out of the 15 vacancies the Applicants in the O.As. shall be considered along with other feeder categories mentioned in the said Rule 2(a)(5) of Special Rules for the Tamil Nadu Engineering Service recruitment by transfer and appointment shall be made in the above 1 out of every 4 vacancies. Future vacancies shall be filled up in the above ratio, till altered by any Statutory Amendment. D E F

O.A.4563/94 and 4564/94 fail and shall stand dismissed.”

In view of aforesaid discussion, the second submission is hereby rejected. G

14. The appeals are found bereft of merits same deserves to be and are hereby dismissed.