



GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing - OA(EKM) 1981/2018 filed by Sri. Bijoy. K.N, Exe.Engineer - Order of the Hon'ble Kerala Administrative Tribunal- Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EW) DEPARTMENT

GO(Rt) No.514/2019/LSGD.

Dated, Thiruvananthapuram, 05/03/2019

- Read:
- 1 Representation dated 02.03.2018 from Sri. Bijoy. K.N
 - 2 Order of the Hon'ble Kerala Administrative Tribunal dated 25.10.2018 in OA(EKM) 1981/2018
 - 3 Representation dated 12.11.2018 from Sri. Bijoy. K.N

ORDER

The Hon'ble Kerala Administrative Tribunal, as per its order read as 2nd paper above, have disposed of the OA(EKM) 1981/2018 filed by Sri. Bijoy. K.N, Exe.Engineer, directing the 2nd respondent, ie the Convener, DPC(H) to consider and pass appropriate orders on Annexure A7 representation in accordance with law within a period of 3 months from the date of receipt of a copy of the order. The applicant has also been allowed to file an additional representation supplementing Annexure A7 to Govt.

2. The DPC(H) 2017 held on 24.10.2017 superseded the applicant for promotion to the post of Exe.Engineer due to prevalence of disciplinary action for minor penalty. Later the said disciplinary action was finalized by barring one annual increment without cumulative effect for 2 years vide G.O(Rt) No.3913/2017/LSGD, Dated 05.12.2017. Accordingly, the DPC(H) met on 14.12.2017 decided to include him in the Select List for the year 2018 as Sl no.2 for promotion to the post of Exe.Engineer and as such the select list 2018 was notified vide GO(P)No. 6/2018/LSGD dtd 24.01.2018.

3. Later the applicant, vide appeal petition read as 1st paper above (Annexure A7) requested to include him in the modified select list 2017. Accordingly, the review DPC held on 10.07.2018 considered the quantum of punishment awarded to the

incumbent vide GO dated 05.12.2017 and observed that the case is serious one in which incumbent was awarded with the punishment for withholding one increment for 2 years. The Committee observed that as per the provisions under Rule 28(b)(i) KS&SSR 1958, select list is to be prepared from among the eligible officers on the basis of merit, and ability; seniority being a consideration only when all the qualifications are equal. Accordingly, committee was of the opinion that an officer who has committed a serious supervisory lapse for which he has been punished by withholding one increment for 2 years cannot be considered meritorious in order to confer all his rights for restoration of seniority and hence decided not to include him in the select list for promotion to the post of Exe.Engineer in the year 2017.

4. In the additional representation read as 3rd paper above, the applicant has contended that the review DPC(H) held on 27.02.2018 considered the request of Smt. Shaiby George, who was not included in select list 2017 for promotion to the post of Exe.Engineer due to the pendency of disciplinary action for major penalty and restored her seniority by including his name in the select list 2017. Therefore it is requested to consider his appeal petition for inclusion in select list 2017 similar to the case of Smt. Shaiby George.

5. But in the case of Smt. Shaiby George, against whom the disciplinary action for major penalty based on the recommendation of Vigilance and Anti-Corruption Bureau was pending, which was later shifted to minor one as it was found that the case was not fit case for perusing further action for major penalty and the same was finalised as per GO(Rt)No.3971/2017/LSGD dated 11.12.2017 by withholding one annual increment without cumulative effect for one year. Since, the disciplinary action case was finalized in the year 2017 with the observation that the dereliction of duty on the part of the incumbent officer was not intentional, the review DPC(H) held on 27.02.2018 decided to include her in the select list 2017 for promotion to the post of Executive Engineer.

6. Though the disciplinary action prevailed against both Sri. Bijoy. K.N and Smt. Shaiby George were finalised in the year 2017, these cases are not similar considering their gravity and in view of the manner of their finalisation by barring their

annual increments. The review DPC(H) held on 10.07.2018 had decided to include Sri. Bijoy in the modified select list 2018 only, considering the gravity of the disciplinary action case against him and the quantum of punishment awarded to him therein.

7. Also, as per Note II below Rule 28 b(i) part II KS&SSR 1958, if the Officers are not fully exonerated of the charges, the Departmental Promotion Committee may decide each case on its own merit. Hence, the decision of the DPC in this regard is binding and an erring official cannot claim his restoration of seniority as a matter of right.

8. Government have examined the matter in detail. The Annexure A7 representation included in OA(EKM) No.1981/2018 is same which has been considered by the review DPC(H) held on 10.07.2018 and decided to include Sri. Bijoy in the modified select list 2018 only, considering the gravity of the disciplinary action case against him and the quantum of punishment awarded to him therein. The contentions of Sri. Bijoy. K.N in the additional representation too deserves no merit and hence the demand of the applicant in both the representations are hereby declined.

9. The order of the Hon' KAT in OA(EKM) 1981/2018 read as 2nd paper is complied with accordingly.

(By Order of the Governor)
SREEJITH.V.P
Under Secretary to Govt.

To

- 1 Sri. Bijoy. K.N, Exe.Engineer (*through the Chief Engineer, LSGD*)
- 2 The Advocate General, Ernakulam (*with Covering Letter*).
- 3 The Chief Engineer, LSGD, Thiruvananthapuram.
- 4 The Accountant General,(A&E/Audit) of Kerala, Thrissur
- 5 The Executive Director, Information Kerala Mission.
- 6 The Web & New Media, I & PRD.
- 7 Stock File/Office Copy.

Forwarded/By Order



Section Officer.