



GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Engineering Wing - Establishment-Order dated 30.7.2015 of the Honourable Kerala Administrative Tribunal in O.A(EKM)No. 954/2014 filed by Sri. M.K. Roy, Assistant Engineer – Complied with - orders issued.

LOCAL SELF GOVERNMENT (EW) DEPARTMENT

G.O. (Rt) No.707/2017/LSGD. Dated, Thiruvananthapuram, 16.03.2017

- Read:
1. Representation dated 26.11.2014 submitted by Sri. M.K. Roy, Assistant Engineer, LSGD Engineering Wing.
 2. Order of the Hon' KAT dated 30.07.2015 in O.A(EKM)No. 954/2014.
 3. Letter nos. E11-6/2004 dated 22.02.2007 & 24.05.2016 from the Director of Panchayaths.
 4. Letter no. E22/9292/2012/CH/LSGD from the Chief Engineer, LSGD Engineering Wing, dated 05-02-2015.

ORDER

As per the Order read as paper 2nd above, the Honourable Kerala Administrative Tribunal has directed Government to consider and pass orders on Annexure A5 representation read as 1st paper submitted by Sri. M.K. Roy, Assistant Engineer, LSGD Engineering Wing in accordance with law, after affording an opportunity of being heard to the Applicant and other affected persons, if any, within 4 months from the date of receipt of a copy of the order.

2. In Annexure A5 representation, the Applicant has pleaded to grant retrospective effect to his promotion to the post of Assistant Engineer. In compliance with the order of the Hon' KAT in OA No.954/2014, the petitioner was heard in person by the Under Secretary on 23-03-2016.

3. The petitioner, Shri. M.K. Roy joined service in Panchayat Department in 2004 as 2nd Grade Overseer and subsequently acquired B.Tech. The petitioner claims that he is the lone B.Tech Overseer in the Panchayat Department. He aspires for promotion to the post of AE and made a representation for promotion to the post of AE, but the same was turned down.

4. The Special Rules for the Kerala Panchayat Service came into force with effect from 03-02-2006. The Kerala Panchayat Service Rules provides for the filling up of post of Assistant Engineer by direct recruitment and by transfer from the category of 1st Grade Overseer of the Panchayat Subordinate Service in the ratio of 6:4 and every appointment in the post of Assistant Engineer by

transfer, a ratio of 6:3:1 shall be maintained among Graduates, Diploma Holders and Certificate Holders in the feeder category. The cadre strength of AEs in the Panchayat Department is 41. As per Special Rules, 25 posts of AEs shall be filled up through Direct Recruitment and 16 posts by way of appointment by transfer.

5. Shri. M.K. Roy, filed WP © No.31497/2006 before the Hon'ble High Court seeking a direction to Government to consider and pass orders on his representation requesting to promote him to the cadre of AE against one of the five vacancies arose after 03-02-2006 as per the provisions contained in the Special Rules issued on 03-02-2006. While examining the Special Rules, it was observed that no saving / protection clause is included in the Special Rules protecting the persons promoted / appointed by transfer before the Special Rules came into force, Government rejected the request made by the petitioner directing the Director of Panchayat to take action to fill up 24 posts which was then identified to be in existence in the cadre of AE, by reverting 19 junior most transfer appointees of the post of First Grade Overseer as and when the direct recruits report for duty. Government had directed the Director of Panchayat to ensure the maintenance of the internal ratio of 6:3:1 among the Degree holders / Diploma and Certificate holders in the quota earmarked for promotees as such and GO (Rt) No.1791/07/LSGD dated 30-06-2007 was issued accordingly.

6. Aggrieved by this, the petitioner filed another WP © No.30143/2007 which was disposed of on 15-11-2007 by directing the petitioner to point out the specific number of vacancies which have arisen subsequent to the said GO and the Director of Panchayat (Second Respondent) should take a decision. As per the direction contained in the said GO, 24 vacancies of AEs were reported to the KPSC by the Director of Panchayat. Taking into account the fact that out of the 16 persons appointed as AE on by transfer only 2 AEs are Degree holders and hence the Director of Panchayat promoted the petitioner provisionally to the cadre of AE, vide proceedings No.E11-6/2004 dated 28.01.2008.

7. In the meantime, LSGD Engineering Wing was formed and came into force on 01-01-2008. The petitioner again approached the Court (WP © No.13685/2009) and WA No. 973/2009 for consider him in Degree quota and reviewing his promotion from 03-02-2006 and the Hon'ble Court issued orders for reviewing his promotion from 03-02-2006. In compliance with the Orders of Hon'ble Court dated 30.07.2015, the petitioner was heard in person on 23-03-2016.

8. As per the Special Rules of the Kerala Panchayat Service, out of the total strength of 41 posts of AE, 25 are to be manned by persons appointed directly and only 16 posts are to be filled up by persons appointed by transfer and among these persons appointed by transfer a ratio of 6:3:1 is to be maintained for Degree, Diploma and Certificate holders. As per Annexure 3 of the Kerala Panchayat Common Service Rules 1977, promotion to the post of Junior Engineer were made from among the First Grade Overseer who had put in 2 years of service in that cadre. The post of Junior Engineer in the Panchayat

Common Service Rules was not covered by any Rules consequent on supercession of Rules by the introduction of the Kerala Panchayat Subordinate Service Rules 1994, the promotions to the post of AE were made provisionally from among the senior most First Grade Overseers. The Kerala Panchayat Service Special Rules 2006 was notified vide GO (P) No.47/2006/LSGD dated 03-02-2006 which govern the appointment of AEs. Note 4 under Rule 3 of the Special Rules provides that the ratio for appointment by Direct Recruitment and by transfer of Degree, Diploma and Certificate holders shall be applied to the total cadre strength of AEs in the service and not to the vacancies that may arise. The cadre strength of AE at that time was 41. 25 posts of AE are to be filled up by direct recruitment and 16 posts by way of appointment by transfer. At that time 36 AEs were working in the Department, out of which, 35 were promotees from among First Grade Overseers and the remaining 1 by Direct Recruitment. In this circumstances the Director of Panchayat forced to report 5 vacancies which arose after 03-02-2006 to KPSC for Direct Recruitment. The Director of Panchayat vide letter No. F11-06/2004 dated 30-09-2008 had reported that 9 vacancies of AEs arose up to 01-01-2008 [after 30-06-2007 i.e, the date of GO (Rt) No.1791/2007/LSGD]. He had reported further that out of the 9 vacancies that arose after the reporting of 24 vacancies to KPSC, 7 were to be filled up by way of by transfer and the petitioner was appointed against the said 7 vacancies.

9. The Director of Panchayath, vide letter dated 24-05-2016 read as 3rd paper above, has reported that Sri. M.K. Roy was eligible for promotion to the post of AE w.e.f 01.06.2007 against the first vacancy arose in Diploma holder category in 40% quota earmarked for by transfer appointment consequent upon filling of 60% of the posts of the total cadre strength through KPSC. The Director of Panchayath has reported that after the issuance of Special Rule there was some delay in finalizing the seniority list of technical wing in the department on the basis of qualification.

10. Government have examined the matter in detail. LSGD Engineering Wing was formed and came into force on 01-01-2008, by absorbing staff from Public Works Department, Water Resources Department, Urban Affairs Department, Panchayath Department etc. As per rule 2 (2) (V) of Special Rule of the LSGD Engineering Service, the rank and seniority of a person absorbed in to LSGD Engineering Service and included in a category in that service shall be determined on the basis of his date of appointment and seniority in the respective category in the former service. At the time of creation of the Department, Sri. Roy. M.K was a first Grade Overseer. But consequent to the Judgement of the Honble High Court of Kerala dated 15-11-2007 in WP C No.30143/2007 he was promoted as Assistant Engineer by the Director of Panchayath on 28.01.2008. While receiving the details of staff absorbed from the Director of Panchayaths, the applicant Sri. Roy. M.K was included among the list of Assistant Engineers with date of promotion as 28.01.2008. Though eligibility of promotion is to be determined with respect to the date of occurrence of vacancy, the mere fact that a person is eligible for promotion with effect from the date of vacancy cannot be claimed as a right to get promotion. Notional promotions are ordered under exigencies of service

consequent to retrospective revision of rank/seniority, promoting junior overlooking the rightful claim of the senior, in compliance of court directions etc. No such circumstances existing in this case. If request for retrospective promotion on the basis of seniority/ date of occurrence of vacancy in the former Department is considered after such long time the set seniority of the department will become upset and it will lead to complaints from Assistant Engineers absorbed from other Departments as per norms.

11. In these circumstances, the prayer of the applicant in the Annexure A5 representation to grant notional promotion with effect from 01.06.2007 to the post of Assistant Engineer deserves no merit and is hereby rejected. The direction of the Honourable Kerala Administrative Tribunal contained in the order read as 2nd paper above is complied with accordingly.

(By Order of the Government)

T.K. JOSE

Principal Secretary to Government

To

1. Sri. M.K. Roy, Assistant Engineer, LSGD (through the CE, LSGD)
2. The Chief Engineer, LSGD Thiruvananthapuram. (with Service Book)
3. The Director of Panchayaths, Thiruvananthapuram.
4. The Advocate General, Thiruvananthapuram (with Covering Letter)
5. The Accountant General (Audit/A&E), Kerala, Thrissur.
- ✓ 6. The Director, Information Kerala Mission, Thiruvananthapuram.
7. The Web & New Media, I & PR Department.
8. Stock File/ Office Copy.

Forwarded/By Order



Section Officer.

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