



GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing – OA No.1915/2017 filed by Sri. Vinod. S & others - Order dated 10.10.2017 of the Hon'ble Kerala Administrative Tribunal- Complied with - Orders issued

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**LOCAL SELF GOVERNMENT (EW) DEPARTMENT**

GO(Rt) No.2010/2018/LSGD.

Dated, Thiruvananthapuram, 23/07/2018

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- Read:
- 1 Representation dated 11.09.2017 from Sri. Vinod.S
  - 2 Order of the Hon'ble Kerala Administrative Tribunal dated 10.10.2017 in OA No.1915/2017.
  - 3 Letter no. E3-1290/2010/CE/LSGD dated 15.11.2017 from the Chief Engineer, LSGD.

ORDER

As per the Order read as 2<sup>nd</sup> paper above, the Hon'ble Kerala Administrative Tribunal have disposed of OA No.1915/2017 filed by Sri. Vinod. S & others, Asst.Engineers directing the 1<sup>st</sup> respondent, the Govt to consider Annexure A8 representation read as 1st paper above, and dispose of the same expeditiously taking into consideration Annexure A5 , A6 and A7 also, after affording an opportunity of being heard to the applicants, within a period of three months from the date of production of a copy of the order.

2. Annexure A5 is the executive orders issued in PWD as per G.O (MS) No.36/94/PWD dt.3-10-1994, wherein it was held that despite the quota prescribed in special rules, an Assistant Engineer who possesses Diploma will not be eligible for promotion to the Category of Assistant Executive Engineer, over a Graduate Assistant Engineer having longer service in the category of Assistant Engineer, unless the latter is otherwise rendered ineligible for promotion to the post of Assistant Executive Engineer. Annexure A6 is the common orders of Hon'ble KAT in OA(EKM)919, 1755 etc of 2017 dated 24-08-2018 , on the above issue, where in it was ordered that while implementing the ratio of 3:1 the respondents will consider whether graduate Assistant Engineers with longer service in the category of Assistant Engineer was available and in such cases only after their promotion the diploma holders be considered for selection/appointment to

the post of Assistant Executive Engineer. Annexure A7 is the judgement of Hon'ble High Court of Kerala in OP(KAT) 339/2017 dated 31-08-2018, where in the Court has rejected to interfere with the above orders of Hon,ble KAT.

3. In pursuant to the Hon' KAT direction, the applicants were heard by the Under Secretary on 09.01.2018.

4. The applicants in OA No.1915 of 2017 filed before the Hon'ble Kerala Administrative Tribunal are Graduate Assistant Engineers in the Local Self Government Department. They are aggrieved by the promotion granted to the Diploma holders as Assistant Executive Engineers overlooking the longer service of the Graduate Assistant Engineers. According to the applicants, though a ratio 3:1 between the graduates and diploma holders is prescribed in the Special Rules, a Diploma holder shall not be eligible for promotion over a Graduate Engineer having longer service in the category of Assistant Engineer. If promotions are ordered on the basis of the principles approved therein, they are entitled to be promoted as Assistant Executive Engineers in preference to the Junior Diploma Holders. They have submitted Annexure A8 representation dated 11.09.2018 before the 1<sup>st</sup> respondent, the Government and sought for a direction for expeditious disposal of Annexure A8.

5. During the hearing, the applicants contented that they are aggrieved by the present practice of promotion granted to the Diploma Holders as Assistant Executive Engineers overlooking the longer service of the Graduate Assistant Engineers thereby the Diploma Holders are managed to get promotions well before the eligible Graduate Engineers, leading to embarrassing situations in the hierarchy of the Local Self Government Engineering wing. Hence they requested to make necessary amendments in the Special Rules or issue executive orders to overcome the above irregularity. It is also informed that there are provisions in the Special Rules of PWD and Irrigation Department to tackle similar situations.

6. As per the special rule of the department issued vide G.O (P) No.271/07/LSGD dated 27.11.2007, a ratio for the promotion to the category of Assistant Executive Engineer from among Direct Recruitess and Diploma Holders in the feeder category was not specified. Due to this, the seniority list of Assistant Engineers could not be prepared and promotion to the post of Assistant Executive Engineer could not be effected. Hence an amendment was made, viz; Kerala Local Self Government Engineering Service amendment Special Rules 2009 notified vide G.O(P) No.



133/09/LSGD dated 16.04.2009. Sub Rule (1) of Rule (3) after category 4 says that "Promotion to the category of Assistant Executive Engineer shall be made from any Direct Recruittees and Diploma Holders in the feeder category in the ratio 3:1" Challenging the above amendment WP(C) No.24284/09 was filed by Sri. Sulfikar. N and others in the Hon'ble High Court. The Hon'ble High Court vide interim order dated 28.05.2009 stayed the operation of note in Sub Rule (1) of rule 3-inserted by amendment in the special rule and also ordered not to finalize the provisional seniority list of Assistant Engineers until further orders.

7. The WP © No.24284/09 existing in the Hon'ble High Court of Kerala was transferred to the Hon'ble Kerala Administrative Tribunal, Thiruvananthapuram. The Hon'ble Kerala Administrative Tribunal vide judgement dated 28.10.2014 quashed the amendment made to the Special Rule vide G.O(P) No.133/09/LSGD dated 16.04.2009 and also the provisional Seniority List published by the Chief Engineer, Local Self Government Engineering Department. Subsequently Local Self Government Department Graduate Engineering Association and others filed a petition for Special Leave to Appeal No.16984/2015 at Hon'ble Supreme Court of India against the OP No.111/15 of the Hon'ble High Court of Kerala.

8. The Hon'ble Supreme Court of India vide interim order dated 01.05.2017 on the above Special Leave to Appeal (c) No. 16984/15 have pronounced that "Operation of the impugned orders shall remain stayed. Promotion if any, may not be made as per rule existing prior to the impugned judgement. But the same will be subject to the further orders from this court". Based on the interim order of the Hon'ble Supreme Court the LSGD Engg Wing prepared the Seniority list of Assistant Engineers and finalized vide Order No. E3-1290/2010/CE/LSGD dated 22.06.2017. The said seniority list is prepared in 3 categories viz. Direct Recruiters, Diploma Holders and Certificate Holders respectively. In lieu of the interim order of the Hon'ble Supreme Court of India the promotion in the existing vacancies of Assistant Executive Engineers could be made in the ratio 3:1 based on the Special Rule amendments vide G.O(P) No.133/09/LSGD dated. 16.04.2009.

9. The Chief Engineer, LSGD, vide letter read as 3<sup>rd</sup> paper above, has reported that the Department has a Cadre Strength of 233 Assistant Executive Engineers in total at present. 179 Assistant Executive Engineers are working in this department and 54 posts are lying vacant. If the Cadre Strength is fixed in the ratio of 3:1 among direct recruittees and Diploma Holders, as far as Direct Quota is concerned, there will be 175



nos of Asst.Exe.Engineers and in the diploma quota there will be 58 numbers of Assistant Executive Engineers. At present the department has 142 numbers of Assistant Executive Engineers in the direct quota and 37 numbers of Assistant Executive Engineers in the diploma quota.

10. As per the interim order dated 01.05.2017 of the Hon'ble Supreme Court of India and the Special Rule amendment as per G.O(P) No.133/09/LSGD dated 16.04.2009, the existing vacancies of Assistant Executive Engineers should be filled by in the ratio 3:1 from among the Direct Recruits and Diploma Holders respectively. At present there are 54 vacancies of Assistant Executive Engineers. Considering the cadre strength of Direct Recruits of 175 out of the total 233 there is a shortage of 33 numbers and there is a shortage of Assistant Executive Engineers among the Diploma Holders is 21 out of their quota of 58 in the total 233. The Department Promotion Committee held on 24.10.2017 prepared the select list of Assistant Executive Engineers to Executive Engineers as per the existing Special Rules. In the meanwhile, 23 vacancies arose due to the promotion of the existing Assistant Executive Engineers to the post of Executive Engineers. Hence the total deficiency in the Assistant Executive Engineers cadre of Direct Recruits is 55 and that of diploma holders is 22. That must be filled in accordance with the order of the Hon'ble Supreme Court.

11. As per the existing special rules and the subsequent amendment there after, promotion to the category of Assistant Executive Engineers were made in the ratio 3:1. While maintaining the said ratio the Diploma Holders are happened to supersede the direct recruits because among the 3:1, the 1 relates to Diploma Holders, in which the Diploma Holders who got promotion at the fag end of their career is liable to be retired from service and another eligible incumbent has to be promoted in the Diploma Quota in order to sustain the quota. In this process the juniors who were promoted in the Diploma Quota happened to supersede the seniors who is in the Direct Quota. In pursuance to the interim orders of Hon'ble Supreme Court of India dated 01.05.2017 in Special Leave to Appeal (c) No. 16984/15, promotions to the cadre of Assistant Executive Engineer have been effected to the existing and subsequent vacancies observing the quota specified in the Special Rule after taking due steps.

12. Government have examined the matter in detail and taking in to account all the aspects involved, it is considering the possibility to issue an executive order or making necessary amendments to the Special Rule to safeguarding the right of the

senior graduate Assistant Engineers against being superseded by the junior diploma holding Assistant Engineers while implementing the quota of 3:1 for making promotions to the post of Assistant Executive Engineers. However, in order to issue such an order so many procedural formalities have to be followed, which requires considerable time.

13. Under the above circumstances, Chief Engineer, LSGD is hereby directed to furnish a comprehensive report specifying whether there is any necessity of issuing such an executive order in the department by specially taking into consideration Annexure A5, A6 and A7 along with his specific recommendation in the matter as the Head of the Department, within a week positively. Since, promotions to the cadre of Assistant Executive Engineer have already been made as per the Special Rule and issuing of the executive order as demanded by the applicant cannot be effected within a short time span, their demand in Annexure A8 representation is hereby rejected. The order of the Hon'ble KAT in OA No.1915/2017 read as 2<sup>nd</sup> paper above, is complied with accordingly.

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

To

- 1 Sri. Vinod. S, Sri. Nibu Kurian & Sri. Abhijith. U.V, Asst.Engineers  
(through the Chief Engineer, LSGD)
- 2 The Advocate General, Thiruvananthapuram (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