



GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing - OA(EKM) 875/2017 filed by Sri. K.T. Rajan, Exe.Engineer - Order dated 26.05.2017 of the Hon'ble Kerala Administrative Tribunal- Complied with - Orders issued.

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**LOCAL SELF GOVERNMENT (EW) DEPARTMENT**

GO(Rt)No.2401/2018/LSGD.

Dated, Thiruvananthapuram, 10/09/2018

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- Read:
- 1 Representation dated 28.04.2017 from Sri. K.T. Rajan
  - 2 Order of the Hon'ble Kerala Administrative Tribunal dated 26.05.2017 in OA(EKM) 875/2017.
  - 3 GO(Rt)No.1787/2017/LSGD dated 30.05.2017.

ORDER

As per the Order read as 2<sup>nd</sup> paper above, the Hon'ble Kerala Administrative Tribunal have disposed of OA(EKM) 875/2017 filed by Sri. K.T. Rajan, Executive Engineer directing the 1<sup>st</sup> respondent, ie Govt to promote the applicant provisionally as Superintending Engineer and grant him a posting forthwith on or before 30.05.2017, as the disciplinary action by which he was denied the promotion has been finalised by absolving him and as he is due to retire on 31.05.2017. The Hon' KAT has also directed the Govt to issue final orders after considering the contentions raised in Annexure A17 representation, read as 1<sup>st</sup> paper above, after affording an opportunity of personal hearing to the applicant within three months from the date of receipt of a copy of the order. The demand of the applicant in the Annexure A17 representation was to grant him promotion to the post of Superintending Engineer with retrospective effect from 20-02-2014 ie, the date on which his immediate junior was promoted. The gist of the case is as follows.

I. The select list for promotion to the cadre of Superintending Engineer was published without including Sri. K.T. Rajan, as the DPC(H) held on 17.12.2013 and 01.10.2016 had superseded him over his juniors due to the pendency of disciplinary action for major penalty in connection with the irregularities in the construction of bus shelters while he was working in Thrissur Corporation and also due to the non declaration of his probation in the cadre of Executive Engineer. The disciplinary action for major penalties pending against the incumbent was finalised by absolving him from charges vide GO(Rt)No.1184/2017/LSGD dated 18.04.2017( Annexure A16 order).

II. The probation of the applicant in the cadre of Executive Engineer had not been declared so far for want of Vigilance Clearance and he is the 2nd accused in VC No. 17/03/KNR, which is under trial in Vigilance Court, Thalassery. Moreover, there were no regular vacancies in the cadre of Superintending Engineer and there was two Executive Engineers namely, Sri. B. Anandaraju and Sri. K.T. Pradeep Kumar senior to him, though disciplinary action for major penalty are pending against them. Government could not



bring forth the above facts before the Hon' KAT as the ex-parte order along with the copy of the OA has been received in Government only on 29.05.2017.

III. However, in view of the legal opinion obtained, Government considered the matter in detail and provisionally promote the applicant to the post of Superintending Engineer as per Rule 31(a)(i) of Part II of KS&SSRs, 1958 and posted him in the Earned Leave vacancy available in Thrissur Corporation as per GO read as 3<sup>rd</sup> paper above.

2. In order to comply with the second part of order of the Hon' KAT read as 2<sup>nd</sup> paper above, the applicant was heard by the Deputy Secretary of the Department on 06.09.2018. During the hearing the counsel for the applicant advanced certain arguments, which are as follows:

I. The Memo of Charges and Statement of allegations were with malafide and fraudulent motives to deny promotion to Sri.K.T.Rajan.

II. The enquiry revealed that he was no way associated with the awarding of work.

III. Undue delay was occurred in finalizing the disciplinary proceedings initiated.

IV. He was not aware of the Vigilance cases pending against him and no intimation had been received in this regard either from the Vigilance or from Government.

V. If the MOC had not been served, he would have been promoted to the post of Superintending Engineer before the promotion of Sri.P.G.Rajeev (Sl.No.53 in the Seniority list).

VI. He is entitled for promotion to the post of Superintending Engineer with effect from 20/02/14 with all consequential benefits.

3. Govt. have examined the above contentions in detail and found that the same are not maintainable on account of the following.

I. The MOC/SOC under Rule 15, KCS(CC&A) Rules 1960 was issued to the applicant among others based on the findings of the Vigilance and Anti Corruption Bureau following a Surprise Check at Thrissur Corporation on 30-07-12, which was finalised as per Annexure A16 order. The applicant was found an accused by the Vigilance and not by this Department. The irregularities from the part of Engineering Wing Staff as pointed out by the VACB are as follows:

i)The contractor has not built the 138 bus shelters within the agreement period ,ie from 09.07.2004 to 08.01.2005.

ii)There are no completion report and the submission report by the contractor to the corporation regarding the construction of 63 bus shelters.

iii) Corporation authorities have turned blind eye towards the execution of the scheme even after the agreement date.

II. Though the applicant had not worked during the agreement period, ie from 09-07-2004 to 08-01-2005, the main charge related to the applicant was that the Corporation



authorities turned a blind eye towards the illegal construction of bus shelters without renewing or making a new valid contract. Though two formal Enquiry Officers were appointed both of them failed to report, whether the construction of bus shelters were carried out during the tenure of the accused officer. He was absolved of charges in Annexure A16 order, not because he has not worked during the agreement period, ie from 09-07-2004 to 08-01-2005. His absolving was actually based on the report dated 24-01-2017 of the Secretary, Thrissur Corporation that no action has been taken by the accused officers to hand over site for construction of bus shelters during their service in Thrissur Corporation and that the details of the 63 completed bus shelters were entered in the Asset Register of Thrissur Corporation on 01/04/2006 and no construction of bus shelters were carried out thereafter.

III. There was no deliberate delay, in finalising the disciplinary action against the officer, which is quite evident from the Annexure A16 order itself, by which the disciplinary action against him was finalised. Also, the above disciplinary action was for major penalty as per Rule 15 of KCS(CC&A) Rules and procedural formalities such as conduct of formal enquiry has to be carried out to finalize the same. Though the MOC/SOA was issued on 26.09.2013, two enquiries were to be conducted and the report from the Secretary, Thrissur Corporation was also to be sought for thereafter. On receiving the above report of the Secretary, Thrissur Corporation dated 24-01-2017, Government had finalised the disciplinary action against the applicant by Annexure A16 order dated 18-04-2017 after taking due steps.

IV. The applicant is arrayed as the 2nd accused in VC 17/03/KNR which is under trial before the Enquiry Commissioner and Special Judge Thallaserry and he was charge sheeted well before the date of promotion as Superintending Engineer claimed by him, ie on 02.12.2009. Therefore the argument that he is not aware of the case and no intimation received is not maintainable.

V. The DPC(H) held on 17.12.2013 had superseded the applicant due to non declaration of probation and prevalence of disciplinary action for major penalty. Though the disciplinary action was finalised subsequently by absolving him of charges vide GO(Rt)No.1184/2017/LSGD dtd 18.04.2017, the Vigilance Case in VC no 17/03/KNR in which he was charge sheeted on 02.12.2009 and under trial is an impediment in the satisfactory declaration of his probation. Therefore, he is not eligible for promotion to the post of Superintending Engineer.

VI. The probation of the incumbent in the cadre of Executive Engineer was not declared originally due to the prevalence of disciplinary action for major penalty, which was finalised by absolving him from charges as per Annexure A16 order. On finalising the disciplinary action against the accused officer, this Department has taken prompt steps to declare his probation in the cadre of Executive Engineer and accordingly the Vigilance clearance was sought for. However the Vigilance Department has informed their inability to accord Vigilance Clearance to the incumbent in view of the pendency of two Vigilance cases, two departmental actions and a Vigilance enquiry against him. In the Vigilance case no. VC 32/15/TSR registered on 13.07.2015 regarding the irregularities in granting building permits in Thrissur Corporation, the applicant is the

2nd accused and the investigation is under way. He is also arrayed as the 2nd accused in another VC no. 17/03/KNR, in which the charge sheet was submitted before the Enquiry Commissioner and Special Judge on 02.12.2009 and it is under trial.

Since the applicant was charge sheeted in the Vigilance case in VC no.17/03/KNR he is not eligible for the satisfactory declaration of his probation in the Executive Engineer cadre as per Rule 20 (c) of KS&SSR 1958. The explanation under the said Rule states that the decision of the Appointing Authority that the probationer is not suitable for full membership may be based also on his work and conduct till the date of the decision inclusive of the period subsequent to the prescribed or extended period of probation. Hence the works and conduct during the period subsequent to the prescribed period of probation has also to be considered for declaring the probation of the Applicant. An Officer facing trial in Vigilance Court for Corruption is not eligible for declaration of probation and consequential promotions.

4. In these circumstances, the contentions raised by the applicant in Annexure A17 representation does not contain any merit and is hereby declined. The orders of the Hon'ble KAT in OA(EKM) 875/2017 read above, is complied with accordingly.

(By Order of the Governor)

**T.K. JOSE**

Additional Chief Secretary to Govt

To

- 1 Sri. K.T. Rajan, Superintending Engineer (Rtd), Keezheth Swathi, St. Antony's Road, Thykoodam, Vytilla.P.O, Ernakulam - 682019.
- 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