



GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing - OA(EKM) 968/2018 filed by Smt. Hairnesa. A, Asst.Exe.Engineer - Order dated 12.04.2018 of the Hon'ble Kerala Administrative Tribunal- Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EW) DEPARTMENT

GO(Rt) No.2639/2018/LSGD.

Dated, Thiruvananthapuram, 15/10/2018

- Read: 1 Representation dated 03.04.2018 from Smt. Hairnesa. A, Asst.Exe.Engineer.
2 Order of the Hon'ble Kerala Administrative Tribunal dated 12.04.2018 in OA(EKM) 968/2018.
3 Proceedings no. E22-5137/2018/CE/LSGD dated 19.06.2018 of the Chief Engineer, LSGD.
4 Letter no.E22-12714/2017/CE/LSGD dated 13.10.2017 from the Chief Engineer, LSGD.

ORDER

The Hon' KAT as per its order read as 2nd paper above have disposed of the OA(EKM) 968/2018 filed by Smt. Hairnesa. A, Asst.Exe.Engineer directing the 3rd respondent, ie the Convenor, DPC(H) to consider and pass appropriate orders on Annexure A9 representation, read as 1st paper above, in accordance with law and after affording an opportunity of hearing to the applicant and affected persons as expeditiously as possible, at any rate, before convening of DPC for selection/appointment to the post of Exe.Engineers.

2. In the Annexure A9 representation, the applicant has contended that her seniority in the cadre of Asst.Engineer was not reckoned while regularising the provisional promotion in the cadre of Asst.Exe.Engineer, vide GO(Rt)no. 3380/2017/LSGD dtd 24.10.2017 and thereafter in the draft seniority list of Asst.Exe.Engineer published on 05.12.2017. The incumbent who was provisionally promoted as Asst.Exe.Engineer in the year 2012 has also contended that her seniority in the cadre of Asst.Exe.Engineer should have been fixed in accordance with her seniority in Asst.Engineer cadre and therefore, it is requested to revise the seniority in the cadre of Asst.Exe.Engineer and to grant her promotion to the cadre of Exe.Engineer before the date of promotion of her immediate junior in the cadre of Asst.Engineer.

3. The Chief Engineer, LSGD has been arrayed as 3rd respondent in the case and he has been erroneously depicted as the Convenor of DPC(H), where as the Secretary, LSGD is the Convenor, DPC(H) in respect of the post of Executive Engineer. Accordingly, the Advocate General was asked to bring the factual error regarding inclusion of Chief Engineer, LSGD in the capacity of Convener of DPC(H) in the order of Hon' KAT dated 12.4.2018 to the notice of the Tribunal, but no reply has been received from the Advocate General so far.

4. However, in compliance with the above erroneous KAT order, the Chief Engineer heard the applicant on 07.06.2018 and the claim of the applicant was observed to be baseless on the ground that she was on LWA under Appendix 12B Part I KSRs at the time of granting provisional promotion to 106 Asst.Engineers as Asst.Exe.Engineers in the year 2010 and she rejoined duty after the LWA only on 13.07.2011. As the Govt is the competent authority to consider and take a decision on the claim of the applicant, the Chief Engineer has decided to place the matter before Govt by issuing proceedings read as 3rd paper above.

5. The Chief Engineer, vide letter read as 4th paper above, has reported that the applicant was on Leave Without Allowance for 5 years to take employment abroad from 13.10.2009 vide GO(Rt)No.2630/09/LSGD dated 13.10.2009. But, she rejoined duty on 13.07.2011 before the expiry of the LWA sanctioned to her. In the meantime, provisional promotions were given to 66 Assistant Engineers on 30.03.2010 and another 40 Assistant Engineers on 07.08.2010. These two provisional promotions has been effected at the time when the incumbent was on LWA and hence she was excluded for provisional promotion. The incumbent was given provisional promotion as Asst.Exe.Engineer in the year 2012, subsequent to her rejoining service on 13.07.2011. Accordingly, the DPC (H) held on 24.10.2017 regularized her provisional promotion and was included as Sl.No.1 in the select list of Assistant Executive Engineers in the year 2012 as per the prevailing rules.

6. The seniority in the cadre of Assistant Engineer alone cannot be reckoned for the seniority in the cadre of Assistant Executive Engineer. An officer under LWA as per Appendix XIIA Part I KSRs, will loss seniority/promotion under the currency of leave. The provisional seniority list of Assistant Executive Engineers has been prepared on the basis of regularization of the provisional promotion by the DPC(H) in accordance with

the interim judgement of the Hon'ble Supreme Court of India in SLP(C) No.16984/2015 dated 01.05.2017. Based on this provisional seniority list, the DPC(H) 2018 held on 14.12.2017 had prepared select lists for promotions to the cadre of Executive Engineer, in view of the urgency to fill the vacant posts of Executive Engineer for the smooth implementation of the works of LSGD (Engineering Wing). At the time of promotion of Assistant Executive Engineer, Smt. Bijimol and Smt. Mini. T.N were in service, whereas Smt. Hairnesa was on LWA and hence not considered her for promotion. Therefore, Smt. Hairnesa is not eligible for placing in seniority between Smt. Bijimol and Smt. Mini. T.N in the Asst.Exe.Engineer cadre.

7. Government have examined the matter in detail and it is found that as the applicant was not in service at the time of granting promotion as Asst.Exe.Engineer to her juniors, she cannot claim for her seniority in the Asst.Engineer cadre. Hence her contentions in Annexure A 9 representation lacks merit and is hereby declined.

8. The order of the Hon' KAT in OA(EKM) 968/2018 read as 2nd paper is complied with accordingly.

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

To

- 1 Smt. Hairnesa. A, Asst.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.