



GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing – Interim Order of Hon'ble Kerala Administrative Tribunal in OA no.1476/2020 filed by Smt. Latha M. S., Superintending Engineer - Complied with - Orders issued

LOCAL SELF GOVERNMENT (EWA) DEPARTMENT

G.O.(Rt)No.711/2021/LSGD Dated, Thiruvananthapuram, 17/03/2021

- Read 1 Representation dated 18.09.2020 from Smt. Latha M. S.
- 2 Interim Order of the Hon'ble Kerala Administrative Tribunal dated 24.09.2020 in OA no.1476/2020.
 - 3 Letter no.E22-10908/2020/CE/LSGD dated 30.10.2020 from the Chief Engineer, LSGD.

ORDER

Smt. Latha M. S., Superintending Engineer had filed OA 1476/2020 before the Hon'ble Kerala Administrative Tribunal with a prayer not to promote the 4th respondent, Sri. K. Johnson, to the post of Chief Engineer in the light of the Special rules which enables only directly recruited graduate engineers for promotion to the post of Executive Engineer. In the interim order read as 2nd paper above, the Hon. KAT has directed the 1st respondent, the State of Kerala, represented by the Additional Chief Secretary to Government, Local self Government Department, to pass appropriate orders on Annexure A16 representation, read as 1st paper above submitted by the applicant after giving a hearing to her, as well as the 4th respondent.

2. In the Annexure A16 representation, the contention of the applicant is that only directly recruited graduate Engineer is eligible for promotion to the cadre of Exe.Engineer as per Special Rules in LSGD Engg Wing and hence the 4th respondent, Sri. Johnson K., Supdt. Engineer should not be considered for promotion as Chief Engineer.

3. On the matter, the Chief Engineer, vide letter read as 3rd paper above, has reported that as per final judgement of the Hon'ble Supreme Court dated 05.02.2020, in Civil Appeal No.(S)6165/17, the amendment in Special Rule made as per GO(P)No. 133/2009/LSGD dated 16.07.2009, effecting ratio for promotion from Asst.Engineer to Asst.Exe.Engineer, i. e., 3:1 for direct and diploma quota respectively, has

become and void. Accordingly, the seniority list of Assistant Engineers has been revised by combining all Assistant Engineers without considering their quota of appointment, vide proceedings no. E22/4358/2020/CE/LSGD dated 18.05.2020, of the Chief Engineer. Based on this, the promotions made to the post of Assistant Executive Engineers from Assistant Engineer, for the period from 2010 to 2019 have been reviewed by the DPC(H) held on 25.09.2020. Hence, for promotion to the cadre of Asst.Exe.Engineer, the seniority in the combined seniority list in the Asst.Engineer cadre is to be considered.

4. The Chief Engineer has reported that the argument of the applicant that only those entered in service under direct quota is eligible for promotion as Exe.Engineer is not tenable as per the provisions in Special rule of LSGD Engg Wing ordered vide GO(P)no.271/2007/LSGD dtd 27.11.2007.

5. The gist of the facts regarding the issue is as follows:-

The special rule of LSGD Engineering Wing was published as per GO(P) No. 271/07/LSGD dated 07.11.2007, in which separate quota has not been specified for promotion to the post of Assistant Executive Engineer from Assistant Engineer. Later as per GO(P) No. 133/2009/LSGD dated 16.07.2009, an amendment in special rule has been made such that the promotion to the post of Assistant Executive Engineer from Assistant Engineer has been made with the ratio of 3:1, from Direct recruits and Diploma holders respectively. Against this amendment, Sri. Sulfikar N. & others filed a WP(C) No. 24284/09 before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala had transferred this writ petition to the Hon'ble Kerala Administrative Tribunal as TA No. 228/2014 and the Hon'ble Tribunal quashed the amendment made in the special rule as per the order dated 28.10.2014 in the TA.

Against the order of the Hon'ble Kerala Administrative Tribunal, an OP(KAT) has been filed before the Hon'ble High Court as OP(KAT) No. 111/2015. The Hon'ble High Court in the judgment in OP(KAT) No. 111/2015, upheld the order of the Hon'ble Kerala Administrative Tribunal. Aggrieved by the order of Hon'ble High Court of Kerala, Kerala Graduate Engineers Association filed a special leave petition No. 16984/2015, in the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court in its interim order dated 01.05.2017, in the Special Leave Petition (c) No. 16984/2015 stated that "Operation of the impugned order shall remain stayed. Promotion, if any, may be made as per the rules existing prior to the impugned judgment, but the same will be subject to the further orders from the Court".

Again Sri. Sulfikar N. & others filed a Civil Appeal No. (S) 6165/17 before the Hon'ble Supreme Court. The Hon'ble Supreme Court in its final judgment dated 05.02.2020 in the Civil Appeal, has ordered thus; "have been heard the learned council for the parties, we do not find any ground to interfere the impugned judgment of the Hon'ble High Court". Hence the amendment in Special Rule made as per GO(P) No. 133/2009/LSGD dated 16.07.2009 has become and void and the promotions made to the post of Assistant Executive Engineers from Assistant Engineer for the period from 2010 to 2019 have to be reviewed in accordance with the judgment of the Hon'ble Supreme Court. Thus, for promotion to the cadre of Asst.Exe.Engineer, the seniority in the combined seniority list in the Asst.Engineer cadre is only to be considered.

6. As directed in the interim order read as 2nd paper above, the applicant Smt. Latha

M. S., Superintending Engineer and Sri. K. Johnson, Chief Engineer were heard on 16.11.2020. In the hearing, the applicant reiterated her contentions in the Annexure A16 representation. Sri. Johnson argued that in the light of the order of the Hon'ble Supreme Court, the contentions of the applicant deserves no consideration.

7. From the documents and details made available by the applicant, the 4th respondent and from the report of the Chief Engineer, it is evident that there is no justification in the contentions of the applicant. There is no provision in the Special Rules of the LSGD Engineering wing staff, insisting that only graduate engineers can be promoted to the post of Chief Engineer. Those who are qualified to be promoted to the post of Assistant Executive Engineer, Executive Engineer and Superintending Engineer can very well be considered for promotion to the post of Chief Engineer. As per the direction in the final Judgement dated 05.02.2020, of the Hon. Supreme Court, in Civil Appeal No. 6165/2017, for promotion to the cadre of Asst.Exe.Engineer, the seniority in the combined seniority list in the Asst.Engineer cadre only is to be considered.

8. The orders in the interim judgements of the Hon. KAT in OA 454/2018 and OA 307/2019, as mentioned by the applicant, does not prevent the promotion of Sri. Johnson to the post of Executive Engineer, but states that his promotion will be subject to the final decisions in the said OAs. It is obvious that the Government will be duty bound to comply with the directions of the Hon. KAT, in its final judgements in the above OAs, as and when it is delivered.

9. Sri. Johnson was promoted to the post of Superintending Engineer after the Departmental Promotion Committee found that he is eligible for the same. Consequently, his probation in the post of Superintending Engineer has also been declared to have been satisfactorily completed. So, there was no impediment in considering him for promotion to the post of Chief Engineer.

10. In the above circumstances, the request in the Annexure A16 representation filed by Smt. Latha M. S., Superintending Engineer, is found untenable and hence the same is hereby disposed of by rejecting the same.

11. The orders of the Hon'ble KAT in OA no.1476/2020 read as 2nd paper above, is thus complied with.

(By order of the Governor)

BIJUKUTTAN.M.S

ADDITIONAL SECRETARY

To:

1. Smt. Latha M. S., Superintending Engineer, Kollam Corporation
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

Signature valid

Digitally signed by SREEKANTH
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Date: 2021.03.21 21:47:58 IST
Reason: Approved

Section Officer