



## GOVERNMENT OF KERALA

### Abstract

Local Self Government Department - Engineering Wing - Establishment - OA No.1506/20 filed by Sri.Sureshkumar.S, Assistant Executive Engineer - Order of the Hon'ble Kerala Administrative Tribunal dated 28.09.2021 complied with - provisionally promoted to the cadre of Exe. Engineer - Orders issued:-

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### **LOCAL SELF GOVERNMENT (EWB) DEPARTMENT**

G.O.(Rt)No.2052/2022/LSGD Dated,Thiruvananthapuram, 22-08-2022

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Order dated 28.09.2021 of the Hon'ble Kerala  
Read:- 1. Administrative Tribunal in OA No.1506/20 filed by Sri.Sureshkumar.S, Assistant Executive Engineer.

2. GO (Rt) No. 695/22/LSGD dated 21.03.2022.

3. Interim Order dated 22.07.2022 of the Hon'ble High Court in OP (KAT) No.240/2022.

4. GO(P) No.66/2022/LSGD dated 16.08.2022.

5. Letter no. E1-607/2022/CE/LSGD dated 17.08.2022 from the Chief Engineer, LID & EW.

### **ORDER**

Sri.Sureshkumar.S, Assistant Executive Engineer filed OA No.1506/20 before the Hon'ble Kerala Administrative Tribunal aggrieved that he was superseded for promotion to the cadre of Executive Engineer, while his juniors were promoted. The Hon'ble Kerala Administrative Tribunal, in its order read as 1<sup>st</sup> paper above, directed the first respondent, ie the State of Kerala represented by the Secretary to Government, LSGD to finalize the proceedings initiated as per Annexure A19 (MoC/SoA No.335/EW1/15/LSGD dated 17.12.2018) within a period of two months from the date of receipt of a copy of the order. The respondents were also directed to include the applicant in Annexure A-5 select list (Select list for the year 2019 for promotion to the cadre of

Executive Engineer) and place him between SI No.12 and SI No.13 and consider his claim for promotion in accordance with law.

As per the original seniority position, Sri.Sureshkumar.S, Assistant Executive Engineer was eligible to be included in the select list for the year 2019 for promotion to the cadre of Executive Engineer. The DPC(H) held on 06.12.2018 for preparation of select list for the year 2019 observed that disciplinary actions for minor penalty in two cases as per VACB recommendation vide MoC/SoA No.s EW1/348/15/LSGD dated 11.12.2017 & EW1/384/17/LSGD dated 07.10.2018 are pending against the incumbent. The committee was of the opinion that disciplinary actions initiated as per the recommendations of the Government's prime investigation agency like Vigilance cannot be overlooked and accordingly the committee decided to consider the case of the incumbent against whom disciplinary action for minor penalty is pending, only after the conclusion of such disciplinary actions. Hence the incumbent was superseded in the select list 2019 for promotion to the cadre of Executive Engineer.

Against the supersession, he approached the Hon'ble Kerala Administrative Tribunal by filing OA No.1814/19, which as per its order dated 05.02.2020 directed the Convenor, DPC(H) to consider the suitability of the incumbent for inclusion in the select list 2019 for appointment as Executive Engineer in accordance with Note (1) to Rule 28(b) (i)(7) Part II KS&SSRs. Accordingly the DPC(H) held on 17.03.2020 reviewed the select list 2019 for promotion to the cadre of Executive Engineer. The DPC observed that the disciplinary actions for minor penalty as detailed above have not yet been finalised and the charges are still alive. Moreover another disciplinary action for minor penalty was initiated against the incumbent vide MoC/SoA No.EW1/335/15/LSGD dated 17.12.2018 after the convening of the DPC(H) 2019. Therefore the DPC(H) observed that he is not at all eligible for inclusion in the select list 2019 for promotion to the post of Executive Engineer due to the pendency of the disciplinary actions.

Thereafter the DPC(H) met on 25.09.2020, again reviewed the case of the incumbent & found that the disciplinary actions for minor penalty in three cases in Government file Nos.348/EW1/15/LSGD, 335/EW1/LSGD & 31/EW1/2020/LSGD have not yet been finalised and the charges were alive. Hence the committee observed that the incumbent is ineligible for promotion as Executive Engineer and decided not to include him in the select list.

Later, the disciplinary action pending against him in file



No.348/EW1/15/LSGD was finalized by absolving him from the charges vide GO(Rt) No.443/21/LSGD dtd 15.02.2021, that in the file No.335/EW1/2015/LSGD by awarding censure vide GO(Rt) 695/22/LSGD dated 21.03.2022 & that in file No 31/EW1/2020/LSGD by awarding censure vide GO(Rt) No.656/21/LSGD dated 04.03.2021. However, another disciplinary action for minor penalty in file No. 444/EW1/15/LSGD as per VACB recommendation vide MoC/SoA dated 24.08.2021 is pending against him. Also, Government have accorded sanction for prosecuting him in VC No.16/15/ALP vide GO (Ms) No.86/21/LSGD dated 08.04.2021 and that VC has been charge sheeted on 20.10.2021 in the Vigilance Court, Kottayam.

In the above circumstances, the first respondent complied with the direction of the Hon.Court to finalize the disciplinary proceedings against the incumbent as per Govt File No.335/EW1/15/LSGD by issuing the Government Order read as 2<sup>nd</sup> paper above. However, the respondents were not in a position to comply with the order of the Hon'ble Kerala Administrative Tribunal to include the incumbent in the select list of 2019 & to grant subsequent promotions in view of the present prevailing disciplinary action and the Vigilance Case wherein he has been charge sheeted as detailed above and also based on the prerogatory mandate of the DPC to decide whether an officer is suitable to be included in the select list as per Note 1 below Rule 28 (b) (i) 7 Part II KS & SSRs.

Then the petitioner had filed Contempt Petition (Contempt Petition No. 43 of 2022 in OA No. 1506/2020) alleging non-compliance of the direction of the Hon'ble KAT.

In the DPC (H) held on 10.05.2022, the position was again examined in detail and the overall situation of the matter was assessed. The DPC(H) observed that the order of the Hon'ble Kerala Administrative Tribunal has partly been complied with by Government vide GO(Rt)No.695/2022/LSGD dated 21.03.2022 by finalizing one disciplinary action pending against the incumbent and the direction to include the incumbent in the select list for the year 2019 would adversely affect all the existing procedures being adopted by Government as well as DPC. The DPC(H), after having a meticulous examination, decided to defer the inclusion of Sri.Suresh Kumar.S subject to the clearance of Appeal Petition to be filed by the Government in compliance of the order dated 28.09.2021 in OA No.1506/20.

Thereafter, Government have filed an appeal petition before the



Hon'ble High Court OP (KAT) No.240/22 challenging the Order dated 28.09.2021 in OA No.1506/20 filed by Sri.Suresh Kumar.S, Assistant Executive Engineer. In the interim order read as 3<sup>rd</sup> paper above, the Hon'ble High Court allowed 3 weeks time to implement the directions of the Tribunal and directed that the DPC shall meet within a period of three weeks to implement the directions of the Tribunal on provisional basis. In otherwords, while the respondent shall be provisionally included in the select list and thereafter provisionally promoted in his turn to the promotion post, such promotion shall be subject to the final outcome of the OP(KAT).

As per the direction of the Hon'ble High Court, Review DPC(H) was convened on 05.08.2022. The DPC(H) considered the case in detail and observed that the Order of the Hon'ble Court to include an officer, against whom disciplinary action is pending and Vigilance Case has been charge sheeted, in the select list for promotion to a higher post would adversely affect the basic procedures and rules which are being followed by DPC for several years, by which numerous officers have been overlooked/superseded likewise and any relaxation in this regard would jeopardise the selection process adopted by DPC for the last several decades. Also, the Order of the Hon'ble Court is apparently an infringement on the prerogative decision of DPC and is likely to spoil the basic sanctity of DPC, as it is repugnant to the existing procedures and rules with regard to the guidelines followed by Government as well as DPC and is likely to create much embarrassments to the administrative apparatus of all the Government Departments. Here, as the meritorious service of Sri. Suresh Kumar.S is in question in view of the Vigilance Case charge sheeted and the disciplinary action pending against him, he is not at all eligible to be included in the select list of Executive Engineer for the year 2019, as per the provisions of Rule 28 (b) (i) of Part II KS & SSRs.

However, in the light of the Order dated 28.09.2021 of the Hon'ble Kerala Administrative Tribunal in OA No.1506/20 and the interim direction dated 22.07.2022 of the Hon'ble High Court in OP (KAT) No.240/22, the DPC(H) decided to include the incumbent provisionally as SI No.13a in between SI No.13 and SI No.14 in the select list of Executive Engineer for the year 2019, subject to the final judgement of the OP(KAT) pending before the Hon'ble High Court and notification in this regard was issued vide the paper read as 4<sup>th</sup> above.

On the basis of the DPC notification subsequent to the Court direction, Sri.Suresh Kumar.S, Assistant Executive Engineer is provisionally promoted to the cadre of Executive Engineer and is posted as such in the existing vacancy in Changanasserry Municipality. The promotion is provisional and is subject to the final judgement of the OP(KAT) No.240/2022 pending before the Hon'ble High Court.

The Order of the Hon'ble Kerala Administrative Tribunal in OA No.1506/20 and the interim Order of the Hon'ble High Court in OP(KAT) No.240/2022 are compiled with accordingly.

The incumbent shall join forthwith in his respective post and furnish RTC to Government without fail.

(By order of the Governor)  
BIJUKUTTAN.M.S  
ADDITIONAL SECRETARY

To:

1. The incumbent (through the Chief Engineer LSGD).
2. The Chief Engineer, LSGD.
3. The Advocate General, Thiruvananthapuram (with Covering Letter).
4. The Advocate General, Ernakulam ( with Covering Letter).
5. The Accountant General (A&E/Audit) Kerala, Thrissur.
- ✓ 6. The Executive Director, Information Kerala Mission.
7. The Web & New Media, I & PRD.
8. Stock File/Office Copy.

Forwarded /By order  
Signed by Sreekanth G  
Date: 22-08-2022 17:06:13  
Section Officer