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भारत सरकार

Government of India

राष्ट्रीय अनुसूचित जन जाति आयोग

National Commission for Scheduled Tribes

(A Constitutional Body set up under Art. 338A of the Constitution of India)

File No. RKM/2/2019/MDEF5/SEPROM/RU-IV

Dated: 06.12.2019

To,

1. **The Secretary,**
Ministry of Defence,
Room No. 101-A, South Block,
New Delhi – 110 011.
2. **The Engineer-in-Chief,**
Military Engineering Services,
Engineer-in-Chief's Branch,
Integrated HQ of MoD (Army),
Kashmir House,
New Delhi – 110 011.

Sub: Proceedings of the sitting taken by Dr. Nand Kumar Sai, Hon'ble Chairperson, National Commission for Scheduled Tribes (NCST) on 13.11.2019 in the case of Shri R.K. Meena, Chief Engineer, Jt. Director General, ADG(North), Jammu regarding denial of posting on promotion to the post of Chief Engineer as Executive appointment in MES and harassment in transfer.

Sir,

I am directed to enclose herewith a copy of the Proceedings of the Sitting held on 13.11.2019 under the Chairmanship of Dr. Nand Kumar Sai, Hon'ble Chairperson, National Commission for Scheduled Tribes on the above mentioned subject for necessary action and submission of compliance report to this Commission within 30 days from the receipt of the letter for placing the same before the Hon'ble Chairperson, NCST.

Yours faithfully,

(Signature)
(Y.K. Bansal)
Research Officer
Ph. No. 011-24645826

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Copy to:-

Shri R.K. Meena,
MES/196315,
Chief Engineer,
Jt. Director General,
ADG (North),
Jammu.

Copy to: - SAS, NIC, NCST.

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Case File No. RKM/2/2019/MDEF5/SEPROM/RU-IV

PROCEEDINGS OF SITTING HELD ON 13.11.2019 AT 02.00 P.M. CHAIRED BY DR. NAND KUMAR SAI, HON'BLE CHAIRPERSON, NATIONAL COMMISSION FOR SCHEDULED TRIBES (NCST) IN THE CASE OF SHRI R.K. MEENA, CHIEF ENGINEER, JT. DIRECTOR GENERAL, ADG (NORTH), JAMMU REGARDING DENIAL OF POSTING ON PROMOTION TO THE POST OF CHIEF ENGINEER AS EXECUTIVE APPOINTMENT IN MES AND HARASSMENT IN TRANSFER.

List of officers present in sitting is Annexed.
Date of Sitting – 13.11.2019

1. The petitioner Shri R.K. Meena, Jammu vide his representation dated 02.09.2019 has submitted the grievances of his harassment by way of denial of posting on promotion to the post of Chief Engineer as executive appointment in MES. He alleged that he was promoted to the post of Chief Engineer as per the ACC's approval and he had been posted on promotion as Jt. DG at ADG (North) Jammu on a staff appointment. But he was denied the executive appointment to the post of Chief Engineer which is rightfully due to him. It has been learnt that almost 06 executive appointment of CE are vacant and 04 officers who are junior to him are being proposed to be posted against these vacant executive CE appointments.

The Department is also intended to forward a proposal for implementation of recommendation of DPC for promotion to the post of Chief Engineer (CE) for the vacancy year 2019 leaving behind undersigned for the post of Chief Engineer as Executive appointment. This is against the provisions of Indian Constitution as well as various policy on the matter issued on the subject time to time (for SC/ST candidates) by the Govt. of India.


Further, the policy issued by GOI through Ministry of Defence's letter dated 09.10.2015 and revised vide E-in-C's Branch letter dated 07.08.2019 underlines the benchmark for posting on executive appointment with certain condition which are in direct conflict and violation of Amendment No. 82 of Article 335 of Indian Constitution. The relevant conflicting provision in the MoD letter dated 09.10.2015 & 07.08.2019 is as under:-

"Seniority will not be the only criteria for being considered for CE Zone/CCEs. The officers should have minimum 4 outstanding APARs out of last six and all APAR of CWE/STE should be very good or above. Officers who have shown unwillingness to shoulders responsibility as CWE in the past will not be considered for nomination of Zonal CE/CCE"

He requested the Commission to uphold the provisions contained in Article 335 of Indian Constitution and consider the petitioner's executive appointment of CE before selecting his juniors for the executive appointment.

2. As per procedure, the representation was referred to the Secretary, Ministry of Defence, New Delhi and the Engineer-in-Chief, MES, Engineer-in-Chief's Branch, New Delhi for report and comments on 11.09.2019.

3. A report dated 14.10.2019 received from MES, Ministry of Defence wherein it was reported that Shri R.K. Meena, stands promoted to the rank of Chief Engineer vide promotion panel issued dated 26 August, 2019. Accordingly, the Officer has assumed the appointment in Chief Engineer Grade as Joint Director General at ADG (North) Jammu on 04 Sep 2019. Thus, the Officer has not been denied promotion. However, the Officer has not been posted CE/CCE in Zone, as he was not covered for such posting as per provisions of posting policy.


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As per the posting policy, the officer should have minimum 4 outstanding APARs out of last six and all APARS of CWE/STE should be very good and above. The officer could not meet the APAR criteria for posting as CE/CCE in Zone, as he has only 02 outstanding APARs as against the requirement of 04 outstanding APARs of the last six APARs, to qualify for posting as Chief Engineer, i.e. CE (Zone)/CCE. The officer's contention that he has been discriminated is not correct, as in light of the above provisions, Shri R Alagarsami fulfilling the above criteria and belonging to SC/ST community has been recommended for executive posting as Zonal CE, whereas Shri B M Agarwal belonging to General Category has been denied executive posting on similar grounds as the applicant. Thus the policy provisions have been adhered to in letter and spirit without any discrimination.

All officers in the promotion panel stand promoted either in staff or executive. The bench mark for executive posting in all ranks are defined as per extant policy, which is basically to further shortlist Officers based on certain objective parameters of residual service and past performance. This is applied without any discrimination bias or favour irrespective of the category of the Officer.


4. Since, the Department's report was found to be unsatisfactory and therefore, a sitting was fixed on 13.11.2019 to have a discussion into the case in the Commission.

5. As per scheduled the sitting was held on 13.11.2019. In sitting the Joint Secretary, (Works), Ministry of Defence, The DDG (Pers), MES, Ministry of Defence, Deputy Secretary, (Works- II), Ministry of Defence, Director (DPC), Engineer-in-Chief's Branch, MES, Ministry of Defence and Joint Director, Ministry of Defence along with the petitioners were present.

6. In sitting the petitioner has raised the grievances of denial of posting on promotion to the post of Chief Engineer (Zone)/ CCE and harassment in transfer/ posting. He was stated that the Ministry of Defence, Admin has violated the Government of India's policy for executive posting on promotion and denied posting as Chief Engineer (Zone)/ CCE on the grounds of internal policy which was not approved by the Competent authority of DoPT. In addition, he was posted at Jammu on promotion despite he is on verge of retirement (left two years' service) and wife's serious illness instead at New Delhi. In this connection, out of five incumbents promoted to the post of Chief Engineer, only he was posted outside of Delhi i.e. at faraway place of Jammu and rest incumbents have been retained at New Delhi. In this regard, he requested the Department to post him at Delhi as his wife is seriously ill and she is suffering from mentally stress disease. Her treatment is going on at New Delhi Hospitals and she required frequent take care. Hence, the Commission may instruct the Department to consider his posting as Chief Engineer (Zone)/ CCE at New Delhi.


7. The DDG (Pers), Ministry of Defence reported to the Commission that the petitioner has already been promoted and there is only issue of denial of posting on promotion to the post of Chief Engineer as Executive posting. As per Ministry of Defence Rules, the posting of Chief Engineer is made by two ways i.e. Zone posting (sensitive posting) and Staff posting (Non- sensitive posting). The Rules says that for sensitive posting (Chief Engineer, Zone), four Outstanding ACRs are required. Since, the petitioner did not meet the said criteria and hence, he was not given sensitive posting and he was posted as Joint DG on Chief Engineer (Staff posting). This also applied for all incumbents in respect of their caste/ category.

8. The case was discussed in detail. The Commission observed that the Govt. of India has given certain protection to the employees belonging to the Scheduled Castes and Scheduled Tribes while considering their promotion and posting. In the instant case, the petitioner's posting as Chief Engineer (Zone)/ CCE was denied on the ground of Ministry of Defence's internal policy which


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was not approved by the Competent authority i.e. DoPT. The petitioner has ability to take responsibility of the post of Chief Engineer (Zone). Thus, denial of posting is not justified. In addition, the petitioner was only transferred to faraway place i.e. Jammu, instead of Delhi despite retaining four other incumbents at Delhi station. This seems to be discrimination with the ST candidate. The petitioner is also on the verge of the retirement and his wife is also seriously ill.

9. Keeping in view of the Commission's observations, the Commission recommends that the Ministry of Defence authority should review the posting policy in line with DoPT guidelines in consultation with Amendment No. 82 of Article 335 of Indian Constitution and should consider the petitioner's posting as Chief Engineer (Zone)/ CCE. His posting at New Delhi should also be considered in the light of the petitioner's wife illness and his verge on retirement as per his approval of last leg posting vide MoD HQ letter No. B/20000/Boo/CG/LLP/EIB dated 20.02.2019. It also be ensured that no injustice should be meted out against the ST petitioner on caste ground. An action taken report on the Commission's recommendations within 30 days from receipt of the proceedings, positively.


श्रीमती माया चिंतामण इवनाते
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National Commission for Scheduled Tribes

Case File No. RKM/2/2019/MDEF5/SEPROM/RU-IV

List of participants

Sitting held on 13.11.2019 at 02.00 P.M. in the case of Shri R.K. Meena, SE Director, HQ Chief Engineer, Jodhpur regarding harassment and denial of promotion and posting to the post of Chief Engineer as Executive appointment in MES.

I National Commission for Scheduled Tribes

1. Shri Nand Kumar Sai, Hon'ble Chairperson In Chair
2. Shri Hari Krishna Damor, Hon'ble Member
3. Smt. Maya Chintamn Ivate, Hon'ble Member
4. Shri K. Touthang, Joint Secretary
5. Shri Y.K. Bansal, Research Officer
6. Shri Sudhir Atram, PS to Member (MCI)

Officers from Ministry of Defence

1. Smt Nazli J. Shayin, Joint Secretary, (Law), Ministry of Defence
2. Brig Anil Singh, DDG(Pers), MES, Ministry of Defence
3. Shri Vijay Malhotra, DS (W II), Ministry of Defence

Petitioners

Shri R.K. Meena