* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.04.2016
Pronounced on: 21.09.2016

\+ **W.P.(C) 3199/2014, C.M. NO.552/2015**

INDIAN DEFENCE SERVICE OF ENGINEERS ASSOCIATION (GOVT. APPROVED) ..... Petitioner

Through : Sh. Khwaja Siddiqui, Advocate.

Versus

UNION OF INDIA AND ORS. ..... Respondents

Through : Sh. Rajesh Gogna, CGSC, for UOI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioners in these proceedings under Article 226 of the Constitution of India challenge two set of rules- i.e. the Military Engineer Services (Army Personnel), Regulations, 1989 hereafter ("the 1989 Regulations") framed under the Army Act, 1950 and notification bearing no. SRO. 4E dated 09.07.1991 ("the 1991 Rules") framed under proviso to Article 309 of the Constitution of India as well as the notification dated 29.06.2004 issued by Ministry of Defense (MoD)- which amended the 1991 Rules. The petitioner association complains that these impugned regulations and rules violate the fundamental rights- embodied in Articles 14 and 21, of its members, who are members of the Military Engineer Services ("the MES")

2. MES was originally set up with effect from 26.09.1923 during the British rule; it comprised of the Corps of Sappers and Miners (now called Corps of Engineers and Military of Works Services) headed by the Director

of Military Works. The service (MES) was reorganized on 04.12.1923. By a notification of 24.06.1948, which was made effective from 15.08.1947, a revision of the established cadre of MES was ordered. This was to ensure that various military posts would be converted into civilian posts. Later, a notification was issued on 17.09.1949 by the MoD notifying various rules, regulations, orders and resolutions, covering MES called the Military Engineer Services, Class I (Recruitment, Promotions and Seniority) Rules. The rules were not framed under Article 309 and were apparently executive rules in character (known hereafter as "the 1949 rules"). These provided that persons for all the services other than architect service and the barrack and store services were to be recruited through competitive exams held as prescribed. The 1949 rules also provided for promotion criteria for certain posts. The posts created under the Notification were in two parts; the first being superior posts i.e Executive Engineer (EE), Surveyor of Work (Surveyor) and Technical Examiner (TE) and other administrative posts, i.e. Chief Technical Examiner (CTE), Chief Surveyor of Work (CSW), Superintending Engineer (SE), Superintending Surveyor of Works (SSW) and Superintending Technical Examiner (STE). The 1949 rules did not prescribe any criteria relating to transfer of Army personnel or for posting of Army personnel within MES.

3. The 1949 Rules were assimilated into statutory rules, in 1959 known as the Military Engineer Service Class I Rules (under proviso to Article 309 known as "the 1959 Rules"). The petitioners rely on provisions of the 1959 rules to say that they provided in a fairly exhaustive manner, the kind of channels from where recruitment was possible and also spelt out age concessions for different categories of employees and public servants. It is

urged that from this it becomes clear that the posts held under the Engineer-in-Chief Army Headquarters ("EICAHQ") were not deemed to be posts under the Military Engineer Services and also that the Engineer-in-Chief Army Headquarters was regarded as separate and independent from MES. It is also highlighted that since the source of entry or recruitment was clearly indicated in the 1959 Rules, and it did not include personnel under the EICAHQ, the question of mobility of such army officers into the MES, their assimilation and further career growth in that department could not arise. The petitioners emphasize that these 1959 rules are in force. They also argue that MES personnel and employees are not subject to the Army Act, nor are its benefits extended to them.

4. In these circumstances, urge the petitioners, the 1989 regulations were framed and brought into force under Section 192 of the Army Act. It is submitted that these regulations did not in any manner seek to change the existing terms of recruitment, the channels or quotas prescribed for promotion, or the criteria thereof, for MES officials at various levels. What it did seek to achieve, for the first time, rather was to partially amend them thereby attempting to provide certain fixed posts for Army personnel and fixed posts for civilians in the MES. At the same time, the recruitment procedure was not changed or amended or superseded in any manner. The petitioners question the 1989 regulations by saying that MES could not have been restructured by the Central Government by framing them under the Army Act, 1950. This amounted to changing the structure and framework of MES, an independent body that is not within the scope and ambit of Section 192 of the Army Act; changing of structure of MES is not within the scope of power of the Central Government under the Army Act. The 1989

regulations, therefore, are alleged to be *ultra vires* the provisions of the Army Act and liable to be quashed. The *vires* of the 1989 regulations are also questioned as being contrary to the mandate of Section 193A of the Army Act, which provides that all regulations framed should be tabled before both Houses of Parliament. Since that procedure was not ever followed, the regulations are invalid and unenforceable.

5. The petitioners then argue that the 1991 Rules constituted the Indian Defence Service of Engineers (hereafter "IDSE"). Even though it recognized the existence of the 1989 regulations and sought to alter it to some extent and by Rule 17, indicated what other rules stood repealed, significantly, the 1959 rules were left intact. The 1991 rules created the IDSE and at the same time, sought major changes in the number of posts available to civilian officers of MES. As against 4 cadre posts of Additional Director General, only one was earmarked for civilian officers; likewise the cadre (total) and quota (number) for civilian officers, for other posts (shown as civilian officers)/total cadre) were: Chief Engineer -17/44; Additional Chief Engineer-27/93; SE 141/282; EE 445/890; Asst. EE 249/497.

6. The Central Government, by MoD's notification dated 29.06.2004 ("the 2004 amendment") subsequently issued rules regulating the method of recruitment and conditions of service for IDSE in partial supersession of the 1991 rules, under Article 309 of the Constitution.

7. Learned counsel for the petitioners reiterated the grounds urged in the writ petition. It was submitted that the impugned rules, i.e. the 1989 regulations and the 1991 rules, have adversely affected the conditions of service of MES officers. The civilian nature and character of the service, to the extent that the sources of recruitment, the qualification, selection criteria,

method of recruitment through open competition, the promotional quotas and prescription of promotional qualifying criteria, was exhaustively dealt with cumulatively under the 1959 rules and other executive orders issued from time to time with respect to creation of posts. These rules at no time envisioned recruitment of army or defense personnel. The near permanent institutionalization of army personnel, through the 1989 regulations, in the guise of regulation making power under the Army Act, was a dubious method, considering that the entire MES cadres and their conditions of service were covered by rules framed under proviso to Article 309 of the Constitution. To that extent, these regulations were *ultra vires,* as beyond the power give under Section 192 of the Army Act.

8. Mr. Rohit Puri, learned counsel also argued in addition that the 1989 regulations are untenable because they do not conform to Section 193A of the Army Act, which casts a mandatory duty on the respondents to ensure that regulations are tabled in both Houses of Parliament. The impugned regulations violate that condition as well, because they were never tabled, before Parliament. As such they are unenforceable in law. In support, reliance is placed on the decisions reported as *Quarry Owners Association v State of Bihar & Ors* 2000 (8) SCC 665; *Lohia Machines v Union of India* 1985 (2) SCC 197 and *Lt. General R.K. Anand v Union of India* 1991 (21) DRJ 185.

9. It was argued that the 1991 Rules, to the extent they give effect to and recognize the 1989 rules, are arbitrary. Since MES officers were never subject to the Army Act nor entitled to its benefits, the 1991 rules could not have accorded any sanction to the 1989 regulations. To the extent that these two - the regulations and rules, spell out fixed quotas in the MES hierarchy

for army officers, they are detrimental to MES civilian officers, as they shrink promotional chances and completely take away meaningful promotional avenues. By introducing army officials into the cadre of MES, the respondents acted contrary to the legitimate and reasonable expectations of MES civilian officers.

10. The respondents argue that Officers of IDSE Association had filed various OAs in various Benches of the Central Administrative Tribunal (CAT) and Supreme Court with demands similar to the present one, in the past. The Supreme Court subsequently transferred those proceedings to the Principal Bench of CAT, New Delhi. The Principal Bench New Delhi after many rounds of deliberations and while disposing off OA Nos.537/95, 538/95, 539/95, 540/95, 541/95, 1058/95 and 820/93 in respect of similar matters stated in its judgment dated 11.09.1996 that: *"Army officers have always been part of the MES and it is the induction of civilian officers which has given it a composite and mixed character"*. It is also argued that after the above OAs and Writ Petitions were dismissed, no review petitions/challenge of judgment was ever witnessed in the past 18 years. It is urged that since the major issues in this Writ Petition had already been heard in detail and were dismissed by CAT (Principal Bench) New Delhi, their judgement of 11.09.1996 has attained finality and cannot be re-opened.

11. It is urged that the workload of MES has been increasing multifold, from year to year, which necessitated infusion of enthusiasm, functional changes and accretions in manpower to meet the infrastructural challenges, thereby raising of these issues again and up-scaling them by the IDSE Associations which is only one of the civilian association of the MES is

leading to wasteful commitment of organizational resources and is causing retardation of output.

12. The respondents underline that the functioning and review of the MES have undergone administrative, as well judicial scrutiny many times in the past and after great deal of deliberations at all levels including the Estimates Committee of the Seventh Lok Sabha, JAFFA Committee, the Fifth Central Pay Commission, Defence Secretary, in the CAT Principal Bench New Delhi and the Supreme Court, it was concluded that a heterogeneous composition, viz. military and civil, is best suited for the MES. The views and opinions of the said bodies and institutions relied upon by the respondents, are as follows:-

> (a) Estimates Committee of the Seventh Lok Sabha while carrying out review of the MES as mentioned at para 50.105 of the Fifth Central Pay Commission Report deliberated this issue and observed *"Military Engineer Services is at present a composite organisation with a judicious blend of Civilian and Military personnel at various levels. The Committee have gone into the suggestion made to it for complete civilianization and complete militarization of this service. After considering the pros and cons of the matter the committee feels that the present composite character of the service is best suited for an organisation like Military Engineer Services".* The Government of India accepted this recommendation.
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> (b) The JAFFA Committee constituted to Review the working of the MES by para 5 (e) and para 8 of Section II of Chapter 10 of its report to Ministry of Defense in April 2002 recommended *"Military Engineer Service without the military complement will lose its distinctive character for which it was raised"* (para 5 (e) of their report) and also observed *"however, considering all the relevant factors, the composite nature of the MES with its mix of civil and military personnel appears to be best suited for the MES"* (Para 8 of their report).

(c) The then Defence Secretary, by his letter No.542/11169/Def Secy/88 dated 31.10.1988 regarding the observations made by the Supreme Court in the Writ Petition filed by Shri Param Hans Singh and Shri PPS Dhanjal mentioned: *"we have carefully examined the suggestion made by the Hon'ble Bench during the hearing. Our views on the subject are given in the succeeding paragraphs. Considering the large construction and maintenance responsibilities of the MES, it is not feasible to have only Army Officers manning the MES. The matter regarding manning of the Department by Civilian Officers alone has also been examined by the Department as well as Committees of Parliament on many occasions in the past. Presence of Civilian Officers enables deployment of Army officers and men during war in posts in which they are essentially required and this can be done without MES works being adversely affected at that point of time. Also because of inherent requirement of Engineer Officers to assume a combat role during operations, it is not possible to totally civilianise MES. Furthermore, the functional efficiency of MES is a major parameter contributing to the operational effectiveness of all Armed Forces, hence the military aspect of MES cannot be lost sight of. It is felt that the best composition is the mixture of both civilian and military personnel as at present."*

(d) Further, the Fifth Central Pay Commission at para 50.108 of its report mentioned *"There is adequate representation of IDSE constituent of MES in E-in-C Branch. So long as MES continues to be a composite organisation it may not be feasible to create independent Command structure for IDSE officers".*

13. It is argued that the petitioners cannot say that the conditions of service cannot be changed at all; depending upon the exigencies of the time and the need to change the cadre having regard to the challenges that arise from time to time, the Union of India as a public employer can always frame rules. So long as the rules are within bounds of constitutional provisions and

do not impair the accrued rights of its employees, in matters such as change in cadre structure, modification of promotional avenues, bifurcation of cadres, prescription of qualifications for various post- at recruitment and promotional levels, method of recruitment, etc the choice of the executive government is more or less unfettered. Thus, earmarking a certain percentage of posts for filling up from amongst army personnel on the one hand and streamlining the existing structure of the civilian office force, through separate rules cannot be challenged as arbitrary. Besides, argues the Union, the petitioners have not been able to demonstrate how their accrued or vested rights have been adversely affected because of the change in the rules. The promotional avenues have remained the same; the period of waiting for higher posts may have lengthened. For all these reasons, the respondents argue that the petition lacks merit and should be dismissed.

Analysis and Findings

14. The Military Engineer Services (MES) is a composite organization consisting of both military and civilian officers and subordinates at various levels of MES organizations and hierarchy. At present, military officers are posted to MES from the Corps of Engineers of Indian Army and Group 'A' Civilian Engineers Officers are posted in MES from an organized Central Service called the Indian Defence Service of Engineers (IDSE). IDSE itself was constituted in 1991, through the impugned rules. Officers are inducted to the Indian Army through competitive examination conducted by Union Public Service Commission (UPSC). Group Engineering posts in MES are filled through common examination held by UPSC and IDSE officers are recruited through this examination.

15. MES traces its existence to as far back as 1871 when control of Military Works was placed under the Military Works Branch of the PWD under the Inspector General of Military Works. In 1881, control of the branch was transferred to the Military Department Defense and by 1887 all Military Works were taken over by Military Department Defense. On 04.12.1923, (consequent to issue of Military Instruction 1014) all engineering services were organized under the Engineer-in-Chief borne on strength of Army Headquarters and was directly responsible to the Commander-in-Chief. That instruction created Engineer Services under the Engineer-in-Chief. Consequently, the Military Works Services were designated as the Military Engineer Services (MES). Its control was transferred from Quarter Master General to the Engineer-in-Chief who was placed as the Technical Advisor to the Commander-in-Chief for all engineering operations and engineer services during war and peace, for supply of engineering stores both during war and peace time and for execution and maintenance of all military works ensuring efficiency, accuracy and economy of all projects and designs under him.

16. The respondents' reply shows that the number of civilian employees (SDO non-gazetted) increased – from 900 at the start of World War II to 6500 by end of the war. The Revision of Establishment Cadre of the MES issued by Government of India, Ministry of Defense through letter No 3601/75/1/ElA dated 24.06.1948 the civilian establishments employed in the MES were classified into permanent establishment (comprised of pensionable and non-pensionable personnel), substantive temporary establishment (comprised of temporary personnel engaged for indefinite periods and appointed substantively), temporary establishment (comprised of

personnel appointed for fixed periods not exceeding two years) and casual establishment (comprised of temporary personnel paid at monthly or daily rates). MES, therefore, was exclusively manned by army officers but subsequently, over a period of time civilian officers were also inducted as mentioned above. This resulted in a composite and mixed character of the MES with a correspondingly proportionate mix of two cadres i.e. military officers and subordinates from the Army (Corps of Engineers) and the MES CGOs.

17. The conversion of a number of military posts to civil posts in terms of the Government of India order dated 24.06.1948 was necessary since the existing total permanent and temporary strength, (military and civil) owing to war expansion, had grown exponentially. This resulted in a series of gazette notifications prescribing rules for recruitment, promotion, creation of civilian posts and seniority of civilians in MES at the level of Executive Engineers, Superintending Engineers, Chief Engineer, Dy. Chief Engineer, Additional Director General, Director General, Directors, Deputy Directors and Additional Chief Engineers etc. MES was created exclusively to meet the engineering works requirements of the Army, Navy and Air Force. Later, the notification dated 17.09.1949 was issued to deal exclusively with the civilian component of the MES till the level of Superintending Engineer and was in no way meant for army component. This is apparent from Para 2 (c) and Para 5 of Part-I and para 5 of Appendix V to the notification. No separate criteria for Military personnel for posting to MES was prescribed since such personnel already possessed requisite qualification and criteria.

18. The 1959 Rules dated 24.01.1959 provided only for the civilian component of the MES. The army component of the MES continued to be

governed by other existing instructions. No separate criterions were prescribed in 1959 for the Army officers who were part of MES. In this background the Military Engineer Services (Army Personnel) Regulations, 1989 were formulated under Section 192, Army Act, 1950. The composition of the MES was described as comprising of*"..the Officers, Junior Commissioned Officers and Other Ranks of the Corps of Engineer and civilian personnel".* In terms of the 1989 regulations, the Engineer-in-Chief of the Army is Head of the Corps of Engineers and Military Engineer Services. The regulation sets out the total number of posts in the MES and proportion or percentage of Army officers of the Corps of Engineers in the MES at officers' level and at the subordinate level. These regulations were later given effect to and supplemented by the 1991 Rules, which rationalized and reorganized the cadre structure, creating IDSE. The 1991 rules were later partially superseded by SRO 95 of 29.06.2004.

19. It is clear from the above discussion that the army component of MES is- and always has been- subject to the Army Act, the enactment was applicable only to military personnel. The issue of the 1989 regulations under provisions of the Army Act was, therefore, made.

20. The first issue to be decided is whether the omission of the respondents to lay the regulations before the House or Houses of Parliament, in terms of provisions of the Army Act (Section 193-A) vitiates them. The petitioners' counsel had urged that such would be the consequence if the regulations, which are in the nature of subordinate legislation, remain un-ratified or are not otherwise approved by Parliament. In this regard, it was submitted that the long and pervasive legislative functioning exercised by the

executive- unless approved by Parliament, in accordance with law, would violate constitutional boundaries.

21. On this subject, the Supreme Court has spoken repeatedly. For instance, *Vineet Aggarwal v Union of India* 2007 (13) SCC 116 held that:

> *"the issue relating to the laying down of rules/regulations on the table of the Houses for the period provided under the statute under which they are so framed has been dealt with by this Court in various cases. Some of these cases are Jan Mohammad Noor Mohammad Bagban v. State of Gujarat & Anr 1966 (1) SCR 505, M/s Atlas Cycle Industries Ltd & Ors v. the State of Haryana, 1979 (2) SCC 196, Hukum Chand v Union of India 1972 (2) SCC 601, and Bank of India etc v O.P. Swarnakar & ors etc. 2003 (2) SCC 721. In a recent judgment, this Court followed the view taken in M/s. Atlas Cycle Industries Limited's case (supra) and Prohibition & Excise Suptd, A.P. & Ors. V. Toddy Tappers Cooperative Society, Marredpally and Others, 2003 (12) SCC 738.*
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> *14. In all these cases, the issue relating to laying down and interpretation of the said regulation was examined. It has been held in all these cases that the laying of the rule before both the Houses of Parliament is merely a directory rule and not mandatory. In the Case of O.P. Swarnakar & Others (Supra), the provision providing for laying the rules before the Legislative was exactly similar to Section 31 of the SEBI Act. It was also held by this Court that the said provision was directory and not mandatory. The non-compliance with the laying of the rule before the Parliament was not a sufficient ground to declare the rules/regulations framed under the statute as to be ultra vires."*

In *Lt. General R.K. Anand* (supra) relied on by the petitioners, this court ruled that the consequences of not laying the regulations before the Houses of Parliament is not shown in the statute; yet the court ruled that it rendered the regulation void. During the hearing, there was nothing pointed out in the

statute to support that proposition. Furthermore, this court is also of the opinion that the right of the public employer to affect the conditions of service, embodied in statutory rules have to be judged on the touchstone of their validity or otherwise to provisions of the Constitution. As a result, we reject the contention that laying of rules before Parliament is mandatory and that not following the statute in that regard vitiates the regulations. This argument has no force.

22. The next question is the limits of the executive government in rule making, either under the Constitution (like in proviso to Article 309) or under a specific statute. In *V.K. Sood vs Secretary, Civil Aviation & Ors* AIR 1993 SC 2285:

> *"In exercise of rule making power under Proviso to Article 309, the President or authorised person is entitled to prescribe the method (of recruitment, educational and technical qualifications or conditions of service for appointment to an office or post under the State. These rules, being statutory cannot be impeached as being tailor-made to suit specific individuals."*

Again, in *SS Bola v BB Sardana* 1997 (8) SCC 522 it was held as follows:

> *"A distinction between right to be considered for promotion and an interest to be considered for promotion has always been maintained. Seniority is a facet of interest. The rules prescribe the method of recruitment/selection. Seniority is governed by the rules existing as on the date of consideration for promotion. Seniority is required to be worked out according to the existing rules. No one has a vested right to promotion or seniority. But an officer has an interest to seniority acquired by working out the rules. The seniority should be taken away only by operation of valid law. Right to be considered for promotion is a rule prescribed by conditions of service. A rule which affects chances of promotion of a person relates to conditions of*

service. The rule/provision in an Act merely affecting the chances of promotion would not be regarded as varying the conditions of service. The chances of promotion are not conditions of service. A rule which merely affects the chances of promotion does not amount to change in the conditions of service."

23. Unarguably, the 1991 rules are statutory in character; they were framed under proviso to Article 309 of the Constitution of India. The question is how far was the Central Government obliged to preserve the *status quo* with respect to the cadre strength, promotional avenues and recruitment policy embodied in the 1959 rules? If one keeps in mind the historical background and evolution of the MES, it undeniably had a composite character. The Central Government has repeatedly emphasized that having regard to the varied nature of the duties of MES officials, it finds it expedient to preserve that composite character. The 1991 rules are to be seen as part of the scheme, which began with the 1989 regulations. The object, which those regulations achieved, was to clearly earmark and demarcate the number of posts available to army officers; hitherto it was left to the exigencies of the times. By statutorily earmarking the number of posts and cadres, definiteness as to where army officers could be posted, was imparted. Hitherto such certainty did not exist; executive instructions and orders made from time to time held the field. The 1989 regulations were, therefore, an improvement; neither army officers could claim more than what was provided in the regulations, nor could the army post such officers, in excess of such defined cadres. The 1991 regulations in a sense updated the pre-existing rules and for the first time created IDSE. The plenitude of power vested with the Union of India, under the Army Act and proviso to Article

309 of the Constitution, enables it to create new cadres, define the availability of posts to one channel of recruitment or promotion, prescribe qualifications and experience for each post, etc. This was emphasized in *S.S. Bola (supra)* and again, in *Union of India v Pushpa Rani* (2008) 9 SCC 242 as follows:

> *"23. We have already pointed out, that Annexure 4 was issued on February 5, 1957, and Annexure 7, on March 30, 1963, and that the initial constitution of the Service was to be from December 1, 1954, and it is, on that basis, that the promotions, or appointments, to the Service, are to be made. In this case, there is no Act of the appropriate Legislature, regulating the recruitment and conditions of service, under the 2nd respondent and, therefore, the main part of Article 309 is not attracted. But, under the Proviso therein, the President has got full power to make rules, regulating the recruitment, and conditions of service, of persons, under the 2nd respondent. Further, under the Proviso, such person, as may be directed by the President, can also make rules, regulating the recruitment and conditions of service, of persons, under the 2nd respondent. The rules so made, either by the President, or such person, as he may direct, will have currency, until provision, in that behalf, is made by or under an Act, of the appropriate Legislature, under Article 309.*
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> *24. It is also significant to note that the proviso to Article 309, clearly lays down that `any rules so made shall have effect, subject to the provisions of any such Act'. The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning, unless hedged-in, by any limitations. The rules, which have to be `subject to the provisions of the Constitution, shall have effect, `subject to the provisions of any such Act'. That is, if the appropriate legislature has passed an Act, under Article 309, the rules, framed under the proviso, will have effect, subject to that Act; but, in the absence of any Act, of the appropriate legislature, on the matter, `in our opinion, the rules, made by the President,*

or by such person as he may direct, are to have full effect, both prospectively, and, retrospectively. Apart from the limitations, pointed out above, there is none other, imposed by the proviso to Article 309, regarding the ambit of the operation of such rules. In other words, the rules, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority.

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37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration."

24. That the executive can function, appoint, promote public employees and generally prescribe conditions of service without a law and framing rules, but through executive instructions is a settled proposition of law. (See *B.N. Nagarajan v State of Mysore* AIR 1966 SC 1942 and *Sant Ram Sharma*

v State of Rajasthan AIR 1967 SC 1910). All that the regulations of 1989 achieved is the earmarking of posts in the MES to the army, in a definitive manner. This was done through purely executive instructions, or having regard to exigencies, depending upon the vacancies arising from time to time. Given that there was a vacuum in respect of delineation of the number of posts in the MES in each cadre or level, it is not unusual for the Union to have earmarked a number of posts and set them apart for Army officers. This gave an element of definiteness and finality. The petitioners cannot urge that to achieve those objectives, regulations could not be framed; certainly they have not established how the regulations impaired their rights. Furthermore, the observations of the Supreme Court cautioning the courts to be circumspect in regard to application of Article 14, in *Dilip Kumar Garg v State of UP* (2009) 4 SCC 753 are relevant; they are extracted below:

> *"15. In our opinion Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a court of appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions."*

The Central Administrative Tribunal, in its decision (which was relied on by the respondents) rejected an identical contention nearly 20 years ago, when the 1989 regulations and the 1991 rules were challenged:

> *"The impugned order issued by SRO 19E dated 13.7.1989 and SRO 4E dated 9.7.1991 identify the posts to be held by Army Officers and the civilian officers. The latter mentioned SRO 4E dated 9.7.1991 issued in exercise of powers conferred by the*

proviso to Article 309 of the Constitution in fact brings together in a common statutory provision rules respecting postings of the two set of officers.

38. We, therefore, find in short that army officers have always been part of the MES and it is the induction of civilian officers which has given it a composite and mixed character. The rules issued under proviso to Article 309 in respect of this civilian component and the army regulations issued under the Army Act, 1950 cater separately for the two categories and are thus not in conflict or in contradiction of each other. None of the posts provided for the civilian component in the relevant recruitment rules has been encroached upon by the army officers. The SRO-4E of 9.7.1971 issued under Article 309 finally provides for constitution of the Indian Defence Services of Engineers as also for the distribution of posts between army officers of the Corps of Engineers and the civilian officers.

39. For the reasons mentioned above, and in view of the facts and circumstances of the case, we, therefore, dismiss all the OAs except OA No.820/93. The reliefs 3 and 4 of OA No.820/93 are denied."

Special Leave to Appeal (Civil) No.1156/97, (*P.P.S. Dhanjjal versus UOI & Ors*) against the above order was rejected by the Supreme Court by its order dated 28.01.1997.

25. In view of the foregoing conclusions, this court finds no merit in the writ petition; it is, therefore, dismissed without order on costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

SEPTEMBER 21, 2016