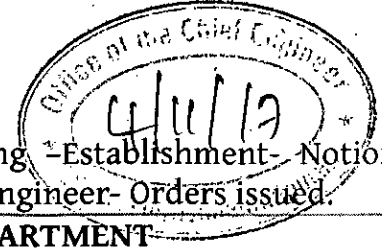




GOVERNMENT OF KERALA

Abstract

Local Self Government Department - Engineering Wing - Establishment - Notional promotions granted to Sri. K.T. Pradipkumar, Executive Engineer- Orders issued.



**LOCAL SELF GOVERNMENT (EW) DEPARTMENT**

G.O.(Rt)No.3103/2017/LSGD.

Dated, Thiruvananthapuram, 20/09/2017

- Read :-**
1. Representation dated 20.10.2011 from Sri. K.T. Pradipkumar
  2. Letter nos.E11/6420/11/CE/LSGD dated 20.01.2012, 13.09.2012, 15.12.2012 & 30.04.2013 from the Chief Engineer, LSGD.
  3. Government Circular no.8130/Adv.C3/2010/P&ARD dated 24.02.2012.
  4. Letter no. E4-19048/11 dated 20.04.2012 from the Director of Urban Affairs.
  5. Letter no.G3-WPC 31278/2003/AGO dated 08.08.2014 from the Advocate General, Kerala.
  6. Government letter no.60172/EW3/2011/LSGD dated 13.03.2015 addressed to Kerala State Commission for SC/ST.
  7. Representation dated 25.05.2015 submitted by Smt. R. Jaya, W/o Sri. K.T.Pradipkumar.
  8. Letter no. KL/12/30/2015 dated 09.06.2015 from the Assistant Director, National Commission for Scheduled Castes.

**ORDER**

Sri. K.T. Pradipkumar, Executive Engineer, vide representation read as 1<sup>st</sup> paper above had requested Government to grant notional promotion and subsequent restoration of seniority above his immediate junior from the cadre of Assistant Executive Engineer. It is complained that even though he belonged to Scheduled Caste Community he was not permitted the exemption for promotion under Rule 13 A (1)(a) KS&SSR Part II.

2. Sri. N.M. Nahas, Superintending Engineer is the immediate junior to Sri. K.T. Pradipkumar and the service details of these officers as reported by the Chief Engineer, LSGD vide letter read as 2<sup>nd</sup> paper are as follows:

Name of the incumbents	Date of Entry in service	Date of declaration of Probation	Date of promotion as Asst. Exe. Engineer	Date of promotion as Exe. Engineer	Date of promotion as Superintending Engineer
Sri. K.T.Pradipkumar	03/11/1986	06/12/1989	09/02/1995	20/08/2007	-
Sri.N. M. Nahas	25/07/1989	02/08/1991	08/06/1993	23/07/2003	26/09/2011

3. Though the date of effect of declaration of probation of Sri. K.T. Pradipkumar in the cadre of Assistant Engineer is on 06.12.1989, the order in this regard had been issued only on 09.12.1994. The incumbent acquired the test qualification only on June 1994. His probation declaration had been delayed due to the non passing of obligatory departmental test, which is inevitable for the promotion to the post of Assistant Executive Engineer. However his probation in the cadre of Assistant Engineer had been declared on 06.12.1989, without considering the said delay in acquiring the test qualification.

4. As there was ambiguity regarding the applicability of Rule 13A(1)A KS&SSRs 1958, the benefit of test exemption was not granted to Sri. K.T. Pradipkumar. He joined Government service only on 03/11/1986. So he was not eligible for test exemption prevailed at that time. However, as per Circular read as 3<sup>rd</sup> paper above, the benefit of test exemption has been lifted from the cut off date of 31.12.1985, so as any employee belonging to SC/ST community will be eligible for test exemption for 3 years irrespective of date of joining.

5. With regard to the claim of Sri. K.T. Pradipkumar, the advisory department of Government had opined that he was eligible for temporary promotion as per Rule 13 A(1)(a) of Part II KS&SSRs w.e.f the date on which his immediate junior was promoted as reiterated in Circular read as 3<sup>rd</sup> paper above.

6. But, the legal opinion received in Government is that there is enormous delay in the claim of the applicant and that there is merit in the contentions put forth by the parties likely to be affected by the promotions proposed to the applicant. It has also been requested to re-examine the issue in the perspective of long delay in the light of relevant judicial pronouncements. However, the advisory department do not agreed with the above legal opinion as according to them the petitioner has been continuously agitating against his supersession from 2000 onwards.

7. The Advocate General of Kerala, vide letter read as 5<sup>th</sup> paper above, opined that the right accrued on the promotion to the post of Assistant Executive Engineer, Executive Engineer and further promotion as Superintending Engineer cannot be overturned after the lapse of a decade and therefore the claim of the petitioner cannot be upheld.

8. Since there was a sharp difference of opinion among all stakeholders regarding the advice and legal opinion in this regard, the matter was then referred to the Kerala

State Commission for SC/ST for their remarks and advice in order to take an appropriate and fair decision in the matter vide Government letter read as 6<sup>th</sup> paper above. However, the advice of the State Commission has not yet been received in Government despite an elapse of more than two and half years and numerous reminders. Accordingly, Government was forced to take a decision without considering the views of the Commission.

9. Both the Advocate General and the Legal Advisory Dept had raised objections against granting notional promotion to the incumbent citing that there is enormous delay on the part of the incumbent in claiming the benefit of his legitimate statutory right which now causing hardship to others. But it has found that the incumbent had raised objections against the seniority of the Asst. Exe. Engineers well before the finalisation of the seniority list. But, his claim has been declined as per GO(Ms)no.230/2004/LSGD dated 13.07.2004, citing that the new entrants in service after 31.12.1985 are not entitled to any test exemption.

10. At present two Vigilance cases and two disciplinary actions for major penalty are pending against Sri. K.T. PradipKumar. Due to the prevalence of which, he cannot be granted regular promotion to the post of Superintending Engineer and restoration of seniority by convening Departmental Promotion Committee(Higher) as per Rule 28(b)(i) of KS&SSRs, Part II . However, these disciplinary action were initiated after the due date of promotion in the cadre of Asst. Exe Engineer and Exe. Engineer.

11. Meanwhile, Smt. R. Jaya, the incumbent's wife had represented to the National Commission for Scheduled Castes, as per petition read as 7<sup>th</sup> paper above and the Commission had sought report in the matter as per paper read as 8<sup>th</sup> above.

12. In the meantime, the incumbent retired from service on superannuation on 30.06.2017. As per Rule 28(b)(i)(14) of KS&SSRs 1958, notional promotion without monetary benefit of pay and allowance but with consequential pensionary benefit can be granted to him without following the procedure such as preparation, publication and review of select list by convening the DPC.

13. Government have examined the matter in detail and it has been established that the retired officer is eligible for notional promotion from the cadre of Asst. Exe. Engineer on the date of promotion of his immediate junior. Hence, notional promotion without monetary benefit but with consequential pensionary benefits is granted to Sri. K.T.Pradipkumar to the cadre of Assistant Executive Engineer w.e.f 08.06.1993, to the

cadre of Executive Engineer w.e.f 23.07.2003 and to the cadre of Superintending Engineer w.e.f 26.09.2011 as per Rule 28(b)(i)(14) of KS&SSRs, Part II.

(By Order of the Governor)

**T.K. JOSE**

**Principal Secretary to Government**

To

1. Sri. K.T.Pradipkumar, Executive Engineer(Rtd) (through the Chief Engineer, LSGD)
2. The Assistant Director, National Commission for Scheduled Castes, Near Govt Guest House, Thycaud, Thiruvananthapuram.( with Covering letter)
3. The Chief Engineer, LSGD, Thiruvananthapuram.
4. The Director of Urban Affairs, Thiruvananthapuram.
5. The Accountant General, (A&E/Audit) Kerala, Thiruvananthapuram/Thrissur.
6. The Director, Information Kerala Mission, Thiruvananthapuram.
7. The Law Department
8. The P&ARD
9. The Web & New Media, I & PRD.
10. Stock File/Office Copy.

Forwarded/By order



Section Officer.