

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No.270/2001

New Delhi: this the 31st day of MAY, 2001

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

HON'BLE DR.A.VEDAVALLI, MEMBER (J)

1. H.K.Srivastava,
S/o Late Shri U.S.P.Srivastava,
68, Ankur Apartments, Patparganj,
I.P.Extension,
Delhi-92

2. D.S.Sachdeva,
S/o Late Shri K.C.Sachdeva,
N-4-3, MS Flat, Sector-XIII,
R.K.Puram,
New Delhi.

3. A.K.Singhal,
S/o Shri Purnachandra,
Flat P-4, Andrews Ganj Extension,
New Delhi-49

4. Pratap Singh,
S/o Shri Babu Lal,
E-33-C, MIG Flat,
Rajouri Garden,
New Delhi-64

5. B.K.Chugh,
S/o Shri Jayadaya Chugh,
10/13, DDA Flats,
Probnn Road,
Delhi-54.

6. O.P.Bhatia,
S/o Shri K.L.Bhatia,
D-89, Ramprastha,
Ghaziabad (UP)

7. N.M.D.Jain,
S/o Shri S.P.Jain,
105, Sector-IV,
R.K.Puram,
New Delhi-22

8. S.P.Singh,
S/o Shri R.B.Singh,
C-87, Ramprastha,
Ghaziabad (UP)

.....Applicants.

(By Advocate: Shri M.S.Ganesh, Sr. Counsel with
Shri Nikhil Nayyar)

versus

1. Union of India,
through

6

Secretary to
Govt. of India,
Ministry of Urban Affairs & Employment,
(Now known as Ministry of Urban Affairs &
Poverty Alleviation),
Dept. of Urban Development,
Nirmal Bhawan,
New Delhi-11

2. The Director General of Works,
Central Public Works Department,
Nirmal Bhawan,
New Delhi -11

3. The Secretary,
UPSC,
Shahjahan Road,
New Delhi-11

4. Central Electrical & Mechanical
Engineering Service Group 'A'(DR)
Association through its
General Secretary,
Room No.17, Vidyut Bhavan,
Shankar Market,
Connaughtplace,
New Delhi.

(By Advocate: Shri G.K. Agarwal for private respondents.
Smt. P.K. Gupta for official respondents.)

ORDER

S. R. ADIGE, VC (A):

Applicants who belong to Central Engineering (Civil) Group 'A' Service impugn Rule 7(v) and the note at the foot of Schedule 1 of (i) the Central Engineering (Civil) Group 'A' Service Rules, 1996 (Annexure-P-1) and (ii) the Central Engineering (Electrical & Mechanical) Group 'A' Service Rules, 1996 (Annexure-P-II) as being ultravires Articles 14 and 16 of the Constitution as also ultravires Rules 3 and 4 read with Rule 2(k) inter alia of the said Rules. Applicants also challenge the guidelines dated 31.1.97 (Annexure-P-3) as being ultra vires Articles 14 and 16 of the Constitution as also ultra vires of the said 1996 Rules themselves. They seek an appropriate order/direction to respondents not to subtract any posts from the sanctioned posts by creating or maintaining any so called common cadre, or any posts as being common to the

two services concerned, and a direction to respondents to restore the posts so subtracted already, to the service to which they belong by virtue of Rule 3 read with Schedule 1 of the said Rules.

2. Heard both sides.

3. Admittedly the Central Engineering Service (Civil) and the Central Elec. & Mech. Engineering Service are two distinct and independent group 'A' services, each with separate service rules. The officers of the two services are eligible for promotion in their own services. Pleadings reveal that during the course of cadre review of the two services in 1985, disparity was noticed in the career prospects of officers in the two services. Respondents decided to treat three posts of Chief Engineers in the Deptt. viz. CE (Vigilance CE (Training) and Dy.DG(Works) as common to the two services with a view to reduce the imbalance in the promotion prospects. Similarly in the grade of SE, 6 posts (5 posts of SE (Coord.) and 1 post of SE (Stores) was decided to be treated as common to both the services. Necessary orders in this regard issued on 5.11.85.

4. This order dated 5.11.85 was challenged in OA No.1716/90 K.B.Rajoria & Ors. Vs. UOI & Ors. but the OA was dismissed by order dated 3.10.97 (Annexure-R1).

5. Meanwhile revised RRs for the two services i.e. CES(Civil) and CE & MES were promulgated on 29.10.96. In the Note below Sch.I in both the service rules, it is indicated that 3 posts of CE and 6 posts of SE were common cadre posts, meaning thereby that officers from both CES(Civil) and CE & MES would be eligible for promotion to these posts, and Rule 7(V) in both the service rules specified the manner in which these posts to which officers from both services were eligible to be promoted, were to be filled.

2

6. Thereupon respondents issued impugned guidelines dated 31.1.97 to regulate the claim of the officers drawn from the aforesaid two services for appointment to these identified posts, such that these posts would be allocated to the services lagging behind in the matter of promotion by a difference of 2 batches or more, and the allocation of common posts would be reviewed annually in the light of the prevailing stagnation in the two services.

7. The keeping of the posts of DG(Works), 6 posts of Addl.DG(Works), 3 posts of CE & 6 posts of SE as common to both CES (Civil) Group 'A' and CE & MES Group 'A', was specifically challenged in OA No.1320/97 K.Srinivasan & Ors. Vs. UOI & Ors. which was also dismissed inter alia as no longer being res integra in the light of the Tribunal earlier order dated 3.10.97 dismissing OA No.1716/90.

8. Nothing has been shown to us to establish that the aforesaid two orders in Rajoria's case (supra) and Srinivasan's case (supra) have been stayed, modified or set aside, and no good reasons have been advanced by applicant's counsel to warrant our taking any different view.

9. A perusal of the grounds taken in the OA reveals that the main ground advanced is that when CES(Civil) Group 'A', and CE & MES Group 'A', constitute two distinct and independent services with separate service rules, a fact which has been admitted by respondents themselves, and officers are eligible for promotions in their own services, and when there is no mention of a common cadre in the RRs and the term 'Cadre' has not even been defined therein, there cannot be any common cadre posts.

10. In our view this argument does not advance the claim of the applicants.

(a)

11. As pointed out by the private respondent No.4 in their reply to the OA, this argument loses sight of the pith and substance of Rules 3, 4, 7(v) Note in Schedule I and the guidelines dated 31.1.97 in taking the word 'common Cadre' literally. Even if the word cadre or the words 'common cadre' have not been defined in the rules, all what is sought to be conveyed is that 3 appointments in the grade of CE and 6 in the grade of SE would be identified, which could be filled by either of the two group 'A' services- the Civil & the E & M. The decision as to whether the Civil or E & M officers would fill up any of these identified posts would be taken in terms of the guidelines dated 31.1.97 and would be implemented in terms of Rule 7(v). This arrangement was sanctioned by Rules 3 & 4 and was qualified by the Note in Schedule -I. Rule 4(2) has a non-obstante opening which expressly overrides Schedule I, which permits addition/alterations to the strength of the duty posts mentioned in Schedule I of both service Rules.

12. As emphasised by private Respondent No.4 the rule of interpretation of statutes has to be purposive and not literal. Merely because the word 'cadre' and common cadre are not defined in the aforementioned two service rules, is not sufficient to quash Rule 7 (v), ^{or} and the Note below Schedule I to the Rules themselves, ^{and} an interpretation that saves the rules has to prevail over ^{that} negates it. Based upon the purposive construction principle, Rule 7(v) and the Note below Schedule I in both the service Rules, which embody a policy decision taken by Govt. ^{with the laudable objective} ^{ve} of reducing the imbalances in the promotion prospects of officers drawn from the two services, and indeed the executive instructions dated

10

21.1.97 which lay down the procedure for its implementation can in no way be said to be illegal or arbitrary, and the rulings cited by applicant's counsel including Chakradhar Paswan Vs. State of Bihar (1988) 2 SCC 214; C. Channa Basavaiah Vs. State of Mysore (1965) 1 SCR 360; Mary Oommen Vs. Manager MGM High School (1987) 2 SCC 214; State of Punjab Vs. J.S. Singh (1961) 2 SCR 371; and Bachhittar Singh Vs. State of Punjab AIR 1963 SC 395, do not advance applicant's claims in the particular facts and circumstances of the present case, so as to warrant judicial interference.

13. The OA is therefore dismissed. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. Radige
(S. R. RADIGE)
VICE CHAIRMAN (A).

/ug/