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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2404/99

New Delhi, this the 11th day of October, 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

1. K.K. Jaswal, SE(E), CPWD,
Q-8/2, MS Flats, S-13 R.K. Puram,
New Delhi-110066.
2. K. Keshvan, SE (E), CPWD,
Q-5/1, MS Flats, S-13 R.K. Puram,
New Delhi-110066.
3. S.C. Khurana, SE(E), CPWD,
A-41/1, DDA SFS Flats, Saket,
New Delhi-110017. Applicants
(By Advocate: Sh. G.K. Aggarwal)

VS.

1. Union of India through Secretary
Ministry of Urban Affairs &
Employment, Nirman Bhawan,
New Delhi-110011.
2. The Secretary,
Union Public Service Commission,
Shahjahan Road,
New Delhi-110011.
3. Sh. S.S. Jasrotia,
S/o Late Sh. A.S. Jasrotia,
4/V, Nirman Parisar, Sector-7,
Vidyadhar Nagar, Jaipur-302012.
4. Sh. S.R. Pandey,
S/o Sh. Sarjoo Pandey,
3/23, East Patel Nagar,
New Delhi-110008.
5. Sh. Jose Kurian
S/o Late Sh. K.K. Kurian,
DII/51, West Kidwai Nagar,
New Delhi-110023.
6. Sh. B.N. Gupta,
S/o Sh. C.S. Gupta,
F/A, 230, Lajpatnagar,
Sahibabad, Ghaziabad-201005.
7. Sh. S.S. Mondal,
S/o Sh. M.L. Mondal,
D-32, Delhi Administration Flat,
Timarpur, Delhi-110054.

8. Sh. V.Nainani,
S/o Sh. H.D.Nainani,
57, Ankur Apartment,
7, Patparganj,
Delhi-110092. Respondents
(By Advocate: Sh. D.S.Mahendru for Resp. No.1 & 2 and
Sh. K.C.D.Gangwani for Resp. No.3 to 8).

ORDER (ORAL)

By Mr. Justice V.Rajagopala Reddy,

The applicants were recruited as Assistant Executive Engineers (Electrical). They are promoted to the post of Superintending Engineers (Electrical) during 1982 to 1984. On completion of 8 years of regular service Superintending Engineers were eligible for promotion to the post of Chief Engineers (Electrical) as well as Chief Engineers (Common Cadre). The applicants are governed by the Central Engineering (Electrical & Mechanical) Group 'A' Service Recruitment rules, 1996. Similar rules are also made applicable for Central Engineering (Civil) Group 'A' Service. According to the applicants 3 posts of Chief Engineers are to be identified as common cadre posts for promotion in both the disciplines (Civil as well as Mechanical). Accordingly, 3 posts of Chief Engineer were identified viz. Chief Engineer (Training), Chief Engineer (Vigilance) and Deputy Director General (Works) have been identified as common cadre post. However, one of the posts of Chief Engineer (Training) has been upgraded to the post of Assistant Director General (Works) w.e.f. 30.6.99 thereby taking away one post from the common cadre of Chief Engineers resulting in reduction of one post from the 3 posts of common cadre of Chief Engineers thereby violating the Recruitment Rules and thereby the promotional chances of the applicant are jeopardised. The present OA is, therefore, filed for a direction to the respondents to comply with statutory requirement of 3 posts of Chief Engineer to be identified as common cadre posts.

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2. It is other stand of the official respondents that there is no statutory requirement of making available 3 posts in the common cadre and it is for the department depending upon the needs in the cadre either to keep 3 posts or to decrease the posts of Chief Engineer in the common cadre.

3. Private respondents have also filed counter affidavit and supported the stand of the official respondents.

4. Learned counsel for the applicant Sh. G.K. Aggarwal, placing reliance upon the Note of Schedule 1 of the Rules contends that 3 posts of Chief Engineers in each wing should be identified as common cadre posts. It is the case of the applicant that at present the posts of Chief Engineers in the Electrical Wing are far less than the posts of Chief Engineers in the Civil Wing. There are only 6 posts (in Electrical) as against 40 in Civil. The Government has taken a policy decision to cover the wide disparity in the career prospects of the officers of the two services. It is, therefore, contended that 3 posts in the common cadre of Chief Engineers are to be identified. The note to Schedule 1 reads as under:-

"Three posts of Chief Engineer and six posts of Superintending Engineers are common cadre posts for the Central Engineering (Civil) Group 'A' Service and the Central Engineering (Electrical) and Mechanical Group 'A' Service."

5. A similar note is appended to Schedule 1 to the recruitment rules of Central Engineering (Civil) Group 'A' Services. The note clearly shows that the common cadre of

post should contain 3 posts of Chief Engineers. Admittedly, one of the posts that Chief Engineers in the Common cadre has been upgraded to the post of Director General (Works). The strength of common cadre of posts has thus been reduced by one. Law is too well-settled that Note forms part of the statutory rules to which it is appended and the rules framed under Article 309 of the Constitution are statutory. The contention of the learned counsel for the respondents that the strength of the common cadre of posts need not be maintained as it is not a statutory requirement and that the strength of the common cadre is variable depending on the work load is not acceptable. The 'star' mark placed upon the number of posts denotes that the number of posts are subject to variation every year. The star mark is however confined to the number of posts of Chief Engineers (Electrical & Mechanical) and (Civil), other than common cadre. It cannot be extended to the number of common cadre of posts. From the reading of Schedule 1 to Rule 3 it cannot be said that the common cadre of post are liable for variation and are dependent upon the work load. Rule 4 explains Grade, strength and its review. Rule 4 (2) provides for review from time to time by order to make temporary additions or alterations to the strength of the duty posts in various grades, for such period as may be specified therein: Placing reliance upon this rule it is sought to be argued by the learned counsel for respondents that the strength of common cadre of post could also be reviewed by reducing the number of posts or adding if necessary. We do not agree. What is sought to be reviewed under Rule 4 (2) is the strength of the posts in various grades. It does not speak of common cadre posts.

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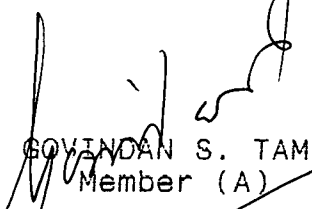
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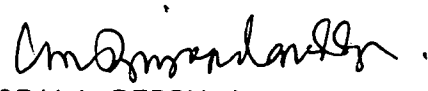
6. It is, however, contended by the learned counsel for the respondents that after upgradation of the post of Additional Director General (Training) the total common cadre posts remaining the same as 9 (which was also 9 earlier) being 3 common cadre post and 6 posts of Additional Director General. This contention is wholly misconceived. For the purpose of consideration for promotion to the post of Additional Director General one should have been promoted as Chief Engineers. The applicants are aggrieved by the reduction of their chances of promotion to the post of Chief Engineers. Unless the applicants are promoted to the post of Chief Engineer the consideration for promotion to higher post does not arise. The question of prejudice is writ large in the circumstances of the case. In the proceedings dated 31.1.97 the Government have issued certain guidelines for allocation of the common cadre post of Junior Engineers. It was clearly stated therein that the allocation of common post will be reviewed every year in the light of the prevailing stagnation in the two services. Thus, the question of identification of common cadre posts depends upon stagnation every year in each discipline. Thus, it is for the Government to decide which post should be identified as common cadre post (Civil or Electrical) in accordance with the guidelines it is incumbent upon the Government to review the identification of the common cadre of post now that one post of Chief Engineer (Training) has been upgraded to the Assistant Director General in 1999.

5. We, therefore, direct the respondents to review the identification of one more post of Chief Engineer as a common cadre post of Chief Engineer to make the number of posts 3

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within a period of 3 months from the date of receipt of a copy of this order in accordance with the rules. OA is, accordingly, disposed of. No costs.


(GOVINDAN S. TAMPI)
Member (A)


(V. RAJAGOPALA REDDY)
Vice Chairman (J)

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