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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**Original Application NO.1094 of 2009
with
Review Application Nos.66/2010 in OA No.2393/2007,
58/2009 in OA No.2393/2007
& 92/2010 in OA No.2404/1999**

This the 10th day of May, 2011

**HON'BLE SHRI JUSTICE V. K. BALI, CHAIRMAN
HON'BLE SHRI L. K. JOSHI, VICE-CHAIRMAN (A)**

O.A. No.1094/2009

1. V. K. Malik S/o Dharam Pal Malik,
R/o 14 A, Mother Teresa Crescent Road,
New Delhi.
2. Upendra Malik S/o Harpal Singh,
R/o CPWD Training Institute,
Ghaziaad, UP.
3. P. K. Singh S/o R. S. Singh,
R/o N-208, Sector 8, R.K.Puram,
New Delhi.
4. B. N. Malhotra S/o Y. R. Malhotra,
R/o D-6A, MIG Flats,
Rajouri Garden,
New Delhi-110064.
5. S. K. Srivastava
S/o S. K. Lal Srivastava,
R/o 370, Asiad Village,
K.P.Takkar Block,
New Delhi-110049.
6. Rajendra Kalla S/o H. N. Kalla,
R/o 16, Munirka Enclave,
Nelson Mandela Road,
New Delhi-110067.

7. R. K. Soni S/o Laxmi Kant Soni,
R/o 5/13 Income Tax Colony,
Kalgisi Road,
Malviya Nagar, Jaipur.
All working as Superintending Engineer
(Civil) in CES Cadre.

... Applicants

(By Shri Arun Bhardwaj, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.

2. Director General of Works,
CPWD, Nirman Bhawan,
New Delhi.

3. Secretary,
Union Public Service Commission,
Shahjahan Road, New Delhi.

4. Secretary, DOP&T,
Ministry of Personnel, Public Grievances
& Pensions, North Block,
New Delhi.

... Respondents

(By Shri R. N. Singh, Advocate)

R. A. No.66/2010

S. K. Srivastava

... Applicant

(By Shri Arun Bhardwaj, Advocate)

Versus

Union of India & others

... Respondents

(By Shri R. N. Singh, Advocate)

R. A. No.58/2009Central Engineering (Civil) Group 'A' Service
Association & another

... Applicants

(By Shri Arun Bhardwaj, Advocate)

Versus

Union of India & others ... Respondents

(By Shri R. N. Singh and Shri D. S. Mahendru, Advocates)

R. A. No.92/2010

N. L. Singh & Another ... Applicants

(By Shri Arun Bhardwaj, Advocate)

Versus

Union of India & others ... Respondents

(By Shri R. N. Singh, Advocate)

O R D E R**Justice V. K. Bali, Chairman:**

By this common order, we take in hand for disposal OA No.1094/2009 and three review applications being RA Nos.66/2010, 58/2009 and 92/2010, as common questions are involved in all the matters. Learned counsel representing the parties also suggest likewise. Before we may advert to the factual matrix of the case, we may give the backdrop of the events culminating into filing of the OA and the three review applications.

2. A. K. Jaiswal and two others filed OA No.2404/1999, which was allowed by this Tribunal vide orders dated 11.10.2000. The applicants in the OA aforesaid were recruited as Assistant Executive Engineers (Electrical), and were promoted to the post of Superintending Engineers (Electrical) during 1982 to 1984. They were eligible for promotion to the post of Chief Engineer (Electrical)

as well as Chief Engineer (Common Cadre) on completion of eight years of regular service as Superintending Engineer. Service conditions of the applicants were governed by the Central Engineering (Electrical & Mechanical) Group 'A' Service Recruitment Rules, 1996 (hereinafter to be referred as the Rules of 1996). Rules *pari materia* to the Rules aforesaid are also applicable to Central Engineering (Civil) Group 'A' Service. It was the case of the applicants that three posts of Chief Engineers were to be identified as common cadre posts for promotion in both disciplines, i.e., Civil as well as Mechanical. Accordingly, three posts of Chief Engineers were identified, viz., Chief Engineer (Training), Chief Engineer (Vigilance) and Deputy Director General (Works) as common cadre posts. One post of Chief Engineer (Training) was upgraded to the post of Assistant Director General (Works) w.e.f.30.6.1999, thereby taking away one post from the common cadre of Chief Engineers, resulting in reduction of one post from the three posts of common cadre. It was the case of the applicants that this would violate the recruitment rules and thereby promotional chances of the applicants would be jeopardized. The OA thus came to be filed for issuance of a direction to the respondents to comply with the statutory requirement of three posts of Chief Engineers to be identified as common cadre posts. The matter was contested by the official respondents on the plea that there was no statutory requirement of making available three posts in the common cadre and that it was for the department

depending upon the needs in the cadre either to keep three posts or to decrease the posts of Chief Engineers in the common cadre. Private respondents arrayed in the OA also contested matter by filing their response. On behalf of the applicants, their counsel relied upon the note below Schedule 1 appended to the recruitment rules, and based thereupon, urged that three posts of Chief Engineers in each wing should be identified as common cadre posts. It was also urged that at that time the posts of Chief Engineers in the Electrical Wing were far less than the posts of Chief Engineers in the Civil Wing. There were only six posts in Electrical wing as against forty in Civil wing. The Government, it was urged, had taken a policy decision to cover the wide disparity in the career prospects of the officers of the two services, and, therefore, three posts in the common cadre were to be identified.

The note below Schedule 1 reads as follows:

"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."

The judgment recorded by the Tribunal on the rival contentions of the learned counsel representing the parties allowing the OA reads as follows:

"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 posts should contain 3 posts of Chief Engineers. Admittedly, one of the posts of

Chief Engineer 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 both 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 posts 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 posts 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.

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 8 earlier) being 3 common cadre posts 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 Engineer. 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 posts 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."

3. CE & MES Group 'A' (DR) Association and one M. K. Verma, filed OA No.2393/2007 seeking to quash and set aside the order dated 1.3.2007, vide which the Government of India, Directorate General of Works, CPWD, in exercise of powers vested in it under para 27(a) of CPWD Code, had diverted one post of Chief Engineer (Vig.) under ADG (S&P) to Commonwealth Games Project as Project Manager with immediate effect. In consequence of setting aside the order aforesaid, the applicant association prayed for a direction to be issued to the respondents to immediately make available the common cadre post of CE (Vig.) to be filled as per rule 7(v) forthwith by appointing an officer of the cadre of the applicants against the said post by considering M. K. Verma, applicant No.2, who was awaiting promotion orders. Primarily, it was the case of the applicants that once, three posts of Chief Engineers were

(3)

common cadre posts under the statutory rules, the same had to be maintained and diversion of one post, as had been done in the case, would be opposed to the rules. From the contentions raised by the learned counsel representing the parties, we came to the conclusion that the OA was squarely covered in favour of the applicants by the decision of this Tribunal in the case of **K. K. Jaiswal** (supra). After reproducing paragraphs 4 to 6 of the judgment in the said case, we observed and directed as follows:

“7. The issue has since been clinched by an authoritative pronouncement of this Tribunal, which, we may reiterate, has attained finality. Independently too, we are of the view that as per statutory rules, while diverting a common cadre post, strength of the cadre could not be reduced. Nothing at all has also been urged by the learned counsel representing the respondents that may even remotely suggest that the observations/findings made by the Bench in **K. K. Jaiswal** (supra) need re-consideration. In fact, as mentioned above, it remained admitted that the matter herein is covered by the decision in **K. K. Jaiswal** (supra).

8. For parity of reasons given in **K. K. Jaiswal** (supra), we issue the same directions in this case as well, as reproduced below:

“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 as three, within a period of three months from the date of receipt of a copy of this order in accordance with the rules.”

9. The Application is accordingly disposed of, leaving, however, the parties to bear their own costs.”

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4. Shri S. K. Srivastava has filed review application bearing RA No.66/2010 in OA No.2393/2007. The prayer is to review out order in the OA aforesaid and by doing so, to dismiss the OA. Central Engineering (Civil) Group 'A' Service Association and another have filed RA No.58/2009 also seeking review of our order in OA No.2393/2007. Shri N. L. Singh and another have filed RA No.92/2010 seeking review of the order of the Tribunal in OA No.2404/1999 in the matter of *K. K. Jaiswal*.

5. Shri V. K. Malik and six others have filed OA No.1094/2009, wherein the note below Schedule-1 appended to the Rules of 1996, on the basis of which the two OAs referred to above were allowed, has been questioned. The prayer is to set aside the note below Schedule-1 by declaring the same to be *void ab initio*, unconstitutional, and *ultra vires* of the provisions of Article 309 of the Constitution of India. The ground seeking to quash the note below Schedule-1 to the Rules aforesaid has been taken in all the matters, i.e., the OA as well as three review applications, and that is in fact the only ground pressed during the course of arguments for the relief asked for in the OA and the review applications. The applicants have not directly challenged our judgments in the two OAs referred to above, but their effort is to achieve the same object, as surely, if the note below Schedule-1 is set aside, the judgments rendered by this Tribunal may not be of any meaning and consequence. If we were to take a view that the note below

Schedule-1 needs to be set aside, we may have constituted a Full Bench to decide the matters. Having heard the learned counsel representing the parties, however, we are of the view that there is no merit whatsoever in the contention raised by the learned counsel who has argued all the matters. Before we may, however, give our reasons for what we have observed, we may give the facts as culled out from the OA.

6. It is the case of the applicants that CPWD under the Ministry of Urban Development is basically a civil engineering organization, and that the senior level posts are manned by officers recruited through UPSC and to support them there is small number of officers from other cadres, such as Electrical & Mechanical Engineers. Architects and Horticulturists, and there is a separate cadre for each discipline. In the CES cadre, promotions to the post of Chief Engineer (Civil) are effected from amongst Superintending Engineers (Civil), and promotions to the post of Superintending Engineer (Civil) from Executive Engineers (Civil). Similar is the promotional ladder in the CE&MES cadre. It is averred that in both cadres, promotions from one post to another are made strictly in the respective cadres and no jumping from one cadre to another is permissible in service jurisprudence. The applicants were appointed as Assistant Executive Engineers Civil) in the respondent department, and in their respective turns were promoted to the post of Executive Engineers (Civil) and then as

Superintending Engineers (Civil) and are due for the next promotion as Chief Engineer (Civil) in their own cadre. They have all completed eight years of required regular service as Superintending Engineers. They are governed by the Central Engineering (Civil) Group 'A' Service Recruitment Rules, 1996. From time to time, it is the case of the applicants, cadre review exercise is done to upgrade, abolish or create posts or minimize disparity in promotion prospects. In the first cadre review, two posts of Addl. Director General (ADG), three posts of Chief Engineers and six posts of Superintending Engineers were identified as common posts for both services, i.e., CES and CE&MES. These common posts were to be utilized to facilitate reduction in disparity in promotion prospects between the two services. It is the case of the applicants that after a period of ten years, second cadre review was undertaken, and that the cadre review committee heard and considered written and oral submissions made by representatives of both the cadres and finally recommended changes in the cadre for sanction of the President of India and there was a change in the common posts inasmuch as, only one post of Director General and six posts of Additional Director General were kept as common posts and there were no common post at any other level of Superintending Engineer and Chief Engineer. This decision was arrived at after extensive deliberations in the Ministry and by the cadre review committee headed by Cabinet Secretary in the Ministry and by cadre review

committee headed by the Cabinet Secretary. In the second cadre review of each cadre, separate and distinct posts up to the level of Chief Engineer were approved. Sanction of such posts was granted by the President of India and issued by the Ministry of Urban Affairs & employment vide sanction order dated 12.7.1995. On the date aforesaid, in accordance with the sanction of the President, number of posts of Chief Engineer (Civil) was revised from 26 to 40 and those of Chief Engineer (Electrical) from 4 to 7. It was stated in para 3 of the order aforesaid that one post of DG(W) and six posts of ADG (W) were kept as common to CES Group 'A' and CE & MES Group 'A' services. It is the case of the applicants that in violation of the Presidential sanction dated 12.7.1995, recruitment rules for the post of Chief Engineer were notified on 28.10.1996. This notification was made and it was erroneously and wrongly mentioned in the note appended to Schedule-1 that three posts of Chief Engineer and six posts of Superintending Engineers would be common cadre posts in each of the two services, i.e., CES Group 'A' and CE & MES Group 'A'. On 29.10.1996, three posts of Chief Engineer and six posts of Superintending Engineer were shown as common cadre post in each of the two services even when there was no basis to do so. It is the case of the applicants that the recruitment rules are not properly framed and are against the sanction of the President, and that there was no constitutional Presidential sanction for identification of the three posts of Chief Engineer and six posts of Superintending Engineers as common

posts. On 6.1.1997, the respondents invited proposals to take a view on the recommendations of DPC on *ad hoc* promotions of Executive Engineers (Civil) on the ground that in the revised recruitment rules, certain posts of Chief Engineer and Superintending Engineers were classified as common posts. It was mentioned therein that "The cadre review committee chaired by Cabinet Secretary seems to have recommended that these common posts should be utilized for reducing the imbalance in promotions..." It is the case of the applicants that this proposal was made without actually looking at the recommendations of the second cadre review committee, which had never recommended keeping of posts of Chief Engineer and Superintending Engineer as common posts, and, therefore, the proposal was against and in violation of the report of the cadre review committee and against sanction of the President dated 12.7.1995. On 9.1.1997, an UO was passed by the respondents with reference to note dated 6.1.1997. In para 2, initially a mention was made to the second cadre review (wherein only the posts of DG and ADG were kept as common posts and there were no common posts at any other level), but later on this fact was lost sight of when in para 3 reference was made to recruitment rules dated 28.10.1996 but the relation of the recruitment rules with the second cadre review report was not concentrated upon. On 31.1.1997, forgetting that the second cadre review report never decided in favour of keeping the posts of Chief Engineer and Superintending Engineer as common and the

sanction of the President was in favour of common posts of DG and ADG and for no other posts, the respondents, it is the case of the applicants, illegally issued a UO specifying guidelines to be observed while allocating the common posts between Civil and Electrical disciplines. It is the case of the applicants that the Joint Secretary to Government of India did not take into consideration and totally ignored the Presidential sanction dated 12.7.1995. On 2.6.2008, the Director (Works), ignoring that the second cadre review report never decided in favour of keeping the posts of Chief Engineer and Superintending Engineer as common and the sanction of the President was in favour of common posts of DG and ADG and for no other posts, issued another UP in supersession of Ministry's UO dated 31.1.1997 amending the guidelines for allocation of the common posts between the Civil and Electrical disciplines. In the note below Schedule-1 to the recruitment rules it is mentioned that "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". It is the case of the applicants that their association has been representing to the respondents for making corrections, but no response was ever received in that regard by the applicants.

7. In the OA the respondents arrayed as parties are only official respondents. No one to whose benefit the earlier OAs have

been allowed, or who may be adversely affected if the present OA is to be allowed, have been arrayed as party respondents.

8. In response to notice issued by the Tribunal, official respondents have entered appearance and by filing their counter reply contested the cause of the applicants. By way of preliminary objections, it has been averred that no cause of action can be said to have accrued to the applicants, inasmuch as they have challenged the provisions of the recruitment rules framed by the competent authority under Article 309 of the Constitution. It is pleaded that the framers of the rules, after considering all relevant aspects, have framed and notified the rules under challenge and merely for the reasons that one set of persons, including the applicants, does not find the same convenient or beneficial to them, this Tribunal may not like to interfere into the same while exercising its power of judicial review. It is further pleaded that the action under challenge exclusively falls in the domain of the respondents. Reliance for the preliminary objection as mentioned above has been placed upon the judgment of the Hon'ble Supreme Court in ***Mallikarjuna Rao v State of A.P.*** [(1990) 2 SCC 707]. On merits of the controversy, it is pleaded that sanction of the President for creation/upgradation of the posts of Central Engineering Service Group 'A' and Central Electrical & Mechanical Engineering Service Group 'A' of CPWD was conveyed vide No.15014/2/89-EW.19 Vol.III dated 12.7.1995, wherein one post of

Director General (Works) and six posts of Additional Director General were earmarked as common posts to both CES (Group 'A') and CE & MES (Group 'A'). As per GSR(500)E and GSR(501)E dated 28.10.1996, three posts of Chief Engineers and six posts of Superintending Engineers were notified as common posts for both CES and CE&MES. However, the common posts have not been identified in the recruitment rules separately for both the services. The orders for the second cadre review were issued in January 1995 and recruitment rules for CES (Group 'A') and CE & MES (Group 'A') were notified in October, 1996. The applicants would not object to the provisions of the recruitment rules for nearly 14 years. It is pleaded that the establishment of CPWD is composed of multiple services, viz., Engineering Services (Central Engineering Service Group 'A' & 'B'), Central electrical & mechanical Engineering Service Group 'A' & 'B', Central Architect Service, Horticulture Services, Central Secretariat Service, subordinate cadre of Engineers, Architects etc., and other Group 'D' establishments. As per GSR dated 28.10.1996, three posts of Chief Engineers and six posts of Superintending Engineers were notified as common posts for both CES and CE&MES. However, specific posts pertaining to either service for common posts have not been identified in the recruitment rules of both the services separately. The recruitment rules of both services are stated to be statutory in nature and have the sanction of all prescribed constitutional authorities. It is pleaded that the second cadre review did not bar

the respondents in identification of such posts which are not service specific functional posts and which cannot be shared by members of the other service owing to functional requirements of knowledge of specific branch of engineering pertaining to the service concerned and notify such number of posts in the recruitment rules, and, therefore, identification of the common posts was in no way illegal. It is pleaded that the applicants or their association never ventilated their grievance eversince till such time OA No.2393/2007 came to be filed and which was allowed.

9. The applicants have filed rejoinder, wherein it is pleaded that sanction dated 12.7.1995 would show that it is admitted by the respondents that only one post of Director General (Works) and six posts of Addl. DG were earmarked as common cadre posts, and that if that be so, how the posts other than the post of Director General (Works) and six posts of Addl. DG have been kept as common posts, for which there is no Presidential sanction.

10. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. We may refer to some of the relevant provisions of the Rules known as the 'Ministry of Urban Affairs and Employment (Department of Urban Development) Central Engineering (Civil) Group 'A' Service Rules, 1996'. Rule 2 contains definition. 'Schedule' has been defined under rule 2(i) to mean a schedule appended to the Rules.

Constitution of the service is governed by rule 3 which reads as follows:

“3. Constitution of the Service. – All the duty posts included in the Service as specified in Schedule-I shall constitute the Central Engineering Civil Group ‘A’ Service (emphasis supplied).”

Schedule-1, by virtue of provisions contained in rule 3, is part of the rules. Schedule-1 which has come into being by virtue of rule 3 reads as follows:

“Schedule-I
(See rule 3)

Posts indicated in column (3) also include posts sanctioned in some departments such as Income Tax etc. and are encadered in the Central Engineering (Civil) Group ‘A’ Service

Sl. No.	Name of duty Posts and grade	No. of posts	Scale of pay
(1)	(2)	(3)	(4)
1	Chief Engineer (Civil)	40	5900-200-6700
2.	Superintending Engineer (Civil) Non-functional Selection Grade	..	4500-150-5700
3.	Superintending Engineer (Civil) (Junior Administrative Grade)	130@	3700-125-4700-150-5000
4.	Executive Engineer (Civil)	494@	3000-100-3500-125-4500
5.	Assistant Executive Engineer (Civil)	60	2200-75-2800-EB-100-4000
6.	Assistant Executive Engineer (Civil) (Leave Reserve)	20	2200-75-2800-EB-100-4000

. In 1996, subject to variation dependent on workload.

@ Includes non-functional selection grade posts also in the pay scale of Rs.4500-150-5700/-.

.. The junior administrative (grade selection) is non-functional and the maximum number of posts in this grade shall be equal to fifteen per

cent of the senior duty posts (i.e. all duty posts at the level of senior time scale and above in the Service) and the maximum number of posts in the selection grade (non-functional) shall be limited to the number of posts sanctioned in junior administrative grade.

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."

11. Schedule-I reproduced above would manifest that there are 40 posts of Chief Engineer (Civil). In addition thereto, there are three posts of Chief Engineer and six posts of Superintending Engineers in the common cadre posts for the Central Engineering (Civil) Group 'A' Service and the Central Engineering (Electrical and Mechanical) Group 'A' Service. Three posts of Chief Engineer are thus common to both Services, be it Civil or Electrical & Mechanical. In the earlier orders of the Tribunal, three posts of Chief Engineer and six posts of Superintending Engineers as common cadre posts, have been held to have come into being by virtue of the note below Schedule-I. It is not the case of the applicants that the said note is not a part of the rules and, therefore, needs to be deleted. The only plea raised in the OA as regards illegality insofar as the common cadre posts are concerned, is that the said posts did not have the Presidential sanction. In other words, the case of the applicants is that when the second cadre review was undertaken, one post of Director General and six posts of Addl. Director General (ADG) were identified as common

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cadre posts for both services, whereas, when the recruitment rules came into being, it wrongly came to be mentioned that 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. We will hereinafter refer to the issue as debated by the learned counsel representing the applicants, as mentioned above, but on the facts as fully detailed above, an immediate thought that comes to mind is as to how the applicants have been adversely affected. It is significant to mention that the pleadings in that regard are absolutely silent. If the common cadre posts were to be one post of Director General and six posts of Addl. Director General, how the applicants would gain, is thus the question. If the applicants may not be adversely affected at all, the plea raised by them would be only proverbial '*much ado about nothing*'. We asked the learned counsel representing the applicants to explain as to how the applicants would be adversely affected if the common cadre posts to be mentioned in the recruitment rules were not to be one post of Director General and six posts of Addl. Director General. No satisfactory reply is forthcoming. On conclusion of the arguments, we required the learned counsel to make a note in writing to show as to how the applicants have been adversely affected. In the written note it has been mentioned that since introduction of the concept of three common posts, 16 Chief Engineers (Elect.) have occupied these three common posts of Chief

Engineers, which has blocked the promotions of 16 Superintending Engineers belonging to Civil discipline. The applicant, it is mentioned, belongs to the 1980 batch and presently his rank in the prospective panel of Civil Engineer (Civil) for 2011-12 is 8th against total vacancies of 10, and that had these three posts basically, meant for Chief Engineer (Civil) but occupied by Electrical Engineers, been occupied by Chief Engineer (Civil), the applicant would have been promoted to the post of Chief Engineer (Civil) in the financial year 2009-10 or even earlier, and, therefore, he has suffered for such inordinate delay in his promotion for three years for no fault of his. It is not possible to accept, as per the written note, as if the applicants are adversely affected. It may be recalled that insofar as the posts of Chief Engineer in Civil discipline, as per the Schedule-I reproduced hereinabove, are concerned, the same are 40. It is not in dispute that against these 40 posts, Engineers in the Civil wing alone are considered for promotion. It is only as regards three common cadre posts that Superintending Engineers from either of the streams, i.e., Civil and Electrical & Mechanical, are considered for promotion. If, therefore, there was not to be any common post of Chief Engineer, chances of promotion of the applicants would be less, as it would be against 40 posts only that they would be considered, as against 43 posts now. That apart, if the common posts were to be two of ADG, one of Director General and six of Addl. Director General, it is not shown as to how and in what manner the applicant would be eligible for promotion against

these posts to the exclusion of Superintending Engineers in the other stream. The applicants would only mention that since introduction of the concept of three common posts, 16 Chief Engineers (Elect.) have occupied these three posts. It is not understandable as to how the applicants have mentioned in the written note that these three posts are basically meant for Chief Engineer (Civil) but have been occupied by Chief Engineer (Electrical). Insofar as, the posts of Chief Engineer are concerned, the same have been mentioned to the extent of 40 only. As regards three common cadre posts, it may be recalled that as per the positive stand taken by the respondents, the same were provided to cater for the depleted chances of promotions of Superintending Engineers in the other stream. We may mention that the rules as regards Civil as well as Electrical & Mechanical Group 'A' Services are *pari materia*. In the schedule annexed to the Ministry of Urban Affairs and Employment (Department of Urban Development) Central Engineering (Electrical and Mechanical) Group 'A' Service Rules, 1996, the posts of Chief Engineer (Electrical and Mechanical) are only six, as against forty in the Civil wing. These rules also contain a note that three posts of Chief Engineer and six posts of Superintending Engineer are common cadre posts for the Civil and the Electrical & Mechanical Group 'A' Services, thus making it more than doubly sure that these three posts are meant for either of the wings, and it appears, are to go by seniority.

12. This Tribunal constituted under the Act of 1985, would entertain applications under Section 19 from persons aggrieved of any order pertaining to any matter within its jurisdiction as regards redressal of their grievances. An employee being aggrieved is thus *sine qua non* for entertaining applications under Section 19 of the Act. We do not find the applicants to be aggrieved in any manner whatsoever. Insofar as, the plea of the applicants that the note to Schedule-I as regards common cadre posts of Chief Engineer may not have Presidential sanction, or in other words, the same having sanction for other posts, is concerned, we may mention in the first instance that there is no plea raised in the OA, nor is there a reference to any of the provisions of the rules to show that only such posts shall be mentioned in the rules which may have the Presidential sanction, and unless that may have been done, the recruitment rules would be invalid. That apart, sanction as regards posts identified as common cadre posts by the cadre review committee may not be a final decision taken in the matter. Such a decision would be reflected in the rules that may ultimately come to be framed and in the case in hand, the Rules of 1996 came to be framed by the competent authority under Article 309 of the Constitution of India. Framing service rules is in the exclusive domain of the respondents, and unless the rules are shown to be unconstitutional, *ultra vires* of the statute, adversely affecting the rights of a citizen, normally the courts and tribunals in the power of judicial review vested with them would not interfere. The

applicants have not been able to show that the note appended to Schedule-I to the Rules of 1996 is unconstitutional or *ultra vires* of any provision of the statute. That apart, we have already held above that by virtue of creating common cadre posts, chances of the applicants for promotion to the post of Chief Engineer may have only been enhanced. Assuming, however, that it is not so, it would only be a case of reducing chances of the applicants for promotion on the post of Chief Engineer, and only on the plea that chances of the applicants have been reduced, no writ, order or direction would be required to be issued.

13. Finding no merit either in the Original Application or the review applications, we dismiss the same. There shall, however, be no order as to costs.

(L. K. Joshi)
Vice-Chairman (A)

(V. K. Bali)
Chairman

/as/