

Central Administrative Tribunal, Principal Bench

Original Application No. 2214 of 1998

New Delhi, this the 5th day of January, 2001

Hon'ble Mr.V.K.Majotra, Member (Admnv)
Hon'ble Mr.Shanker Raju, Member(J)

1. Shri K.P.Dangi, S/o Shri S.Dangi, working as Chief Design Assistant, Northern Railway, Baroda House, New Delhi R/o C-64, South Ganesh Nagar, Delhi-110092.
2. Shri P.K.Ghosh, S/o Shri R.C.Ghosh working as Chief Design Assistant, Northern Railway, Baroda House, New Delhi R/o G-92, Shastri Nagar, Gaziabad, U.P. - Applicants

(By Advocate Shri S.K.Sawhney)

Versus

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Director, Pay Commission, Railway Board, Railway Bhawan, New Delhi.
3. General Manager, Northern Railway, Baroda House, New Delhi. - Respondents

(By Advocate Shri B.S.Jain)

O R D E R

By V.K.Majotra, Member(Admnv) -

Applicant no.1 Shri K.P.Dangi joined as Design Assistant on 18.1.1985 in pay scale of Rs.1600-2660. He was promoted as Chief Design Assistant in scale of Rs.2000-3200 on 7.7.1986. He is an Engineering graduate. Similarly, Shri P.K.Ghosh, applicant no.2 Shri P.K.Ghosh also an Engineering graduate joined as Draftsman on 12.3.1981. He was promoted as Design Assistant in scale of Rs.1600-2660 on 10.2.1987. He was later promoted as Chief Design Assistant in the scale of Rs.2000-3200 on 27.12.1993. These applicants have assailed Annexure-A-1 dated 28.9.1998 whereby percentage distribution of posts in various scales for the category of Draftsmen/Design Assistants/ Estimating Staff has been ordered on

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implementation of recommendations of Fifth Central Pay Commission (for short '5th CPC'). The said percentage has been worked out from the initial scale of Rs.1200-2040 which was available in the cadre of Draftsman and Estimating staff only. The cadre of Design Assistants starts from the scale of Rs.1600-2660 and the next promotion scale for Design Assistant is Rs.2000-3200. The applicants are aggrieved on clubbing of the cadre of Design Assistants with Estimating Staff and Draftsmen for the purpose of distribution of posts which according to the applicants is erroneous as it lacks ^{any} rationale for allowing the benefit of higher percentage of posts to the cadre of Draftsmen and Estimating Staff at the cost of Design Assistants. The applicants have claimed that the percentage distribution of posts in the cadre of Design Assistants could be resorted to only in respect of two scales i.e. entry scale of Rs.2000-3200 equated to Rs.6500-10500 and the next promotion scale of Rs.7450-11500.

2. The applicants have stated that they have a separate seniority unit, separate rules of recruitment, separate entry scale, separate duties and responsibilities and higher educational qualification of graduation in Engineering. Their posts are not inter-changeable with the Estimators/ Draftsmen. Another grievance of the applicants is that the respondents have not allowed Design and Planning Allowance to their cadre which had been recommended by the 5th CPC. The applicants have submitted that their representations dated 5.2.1998, 26.3.1998 and

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13.10.1998 (Annexures A-7, A-8 and A-15 respectively) have been rejected by the respondents. The applicants have sought the following reliefs:

- "i) Direct the respondents to delink the percentage distribution of posts in the cadre of Design Assistants taking into consideration their duties and responsibilities and job requirements which is distinct and separate from other disciplines of Draftsman/ Estimators in the Civil Engineering Department and further order to grant replacement scale of Rs.6500-10500 for Design Asstt. & Rs.7450-11500 for Chief Design Assistant as recommended by Vth pay Commission and accepted by respondents.
- ii) Direct the Respondents to allow Design and planning Allowance to the Applicants as recommended by Fifth Pay Commission.
- iii) Direct the Respondents to pay all consequential benefits that will accrue to the Applicants as a result of their claim for re-distribution of posts and grant of planning and Design Allowance.
- iv) Direct the Respondents to pay interest for the delayed payment of consequential benefits from the date of implementation of Fifth Pay Commission Award i.e. from 1-1-1996 to the date of payment".

3. In their counter the respondents have claimed that recruitment qualifications for Senior Draftsmen and Senior Design Assistants are Diploma in Engineering and not Engineering Degree. According to the respondents the percentage structure of Drawing/ Design/ Estimating staff has been revised in terms of Railway Board's letter dated 27.1.1993 (copy not enclosed). The revised percentages were 20% in grade Rs.1200-2040, 20% in grade Rs.1400-2300 and 35% in grade Rs.2000-3200. These percentage have been made applicable to combined cadre strength of the Drawing/Design/Estimating staff and no separate percentage has been laid down for Design staff. The respondents have stated that posts in the Design category have been operated in the 4th CPC scales of Rs.1600-2660 and Rs.2000-3200 keeping in view 'functional requirements'. The respondents

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have also stated that as per provisions contained in the Indian Railway Establishment Manual (for short 'IREM') qualification of Engineering degree for recruitment in the 4th CPC scale of Rs.1600-2660 and Diploma in Engineering for recruitment in 4th CPC scale of Rs.1400-2300 exist in case of Design/Drawing cadres. According to the respondents the 5th CPC had disturbed the parity of pay scale of Draftsmen and Design Assistants. The respondents have stated that the 5th CPC has made recommendations in Para 50.37 of its report for uniformity in pay scales for Draftsmen/ Design Assistants, the recruitment qualifications of both being identical. The respondents have further taken objection that the present matter is a policy matter and does not fall within the jurisdiction of this Tribunal. According to the respondents the applicants have benefited from grant of pay scale as per Annexure-A-1 dated 28.9.1998 and cannot have any grievance against the same.

4. The applicants have filed a rejoinder also.

5. We have heard the learned counsel of parties and gone through the material on record.

6. Shri S.K.Sawhney, learned counsel of the applicants stated that the respondents' contention that minimum educational qualification in case of both cadre of Design Assistants and Draftsmen are Diploma in Civil Engineering is wrong and the 5th CPC had recommended pay scale of Rs.6500-10500 and Rs.7450-11500 for Head Design Assistants and Chief Design Assistants respectively taking into consideration separate seniority units, separate rules of recruitment, separate entry scale, separate duties and responsibilities and non-interchangeability with the cadre of Draftsmen and Estimators. He also mentioned that the

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Design Assistants have also been included in the safety category as per memo dated 31.5.1982 (Annexure-AA-6). Shri Sawhney contended that clubbing together the cadre of Design Assistants with the Draftsmen/ Estimators is violative of the provisions of Article 14 of the Constitution as the respondents have equated the unequal Estimators and Draftsmen with the cadre of Design Assistants. The learned counsel relied on the case of **Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, 1993 Supp (1) SCC 153** stating that normally Courts' interference with the complex matter involving job evaluation, equation of posts and salaries, reduction of number of pay scales which require consideration of various factors is not ordinarily called for unless there is unjust treatment by arbitrary State action or inaction as in the present case.

7. The learned counsel of the respondents stated that allotment of pay scale vide memo dated 28.9.1998 (Annexure-A-1) is a decision of the Government in a policy matter in which the respondents have not displayed any malafide and arbitrariness. The learned counsel referred to memo dated 26.3.1999 stating that the respondents have clubbed the cadres of Draftsmen and Design ~~Assistant~~^{Estimating} as there are only 9 posts in the Design cadre and implementation of percentage distribution in the Design cadre was difficult. Therefore following suggestions were made for the benefit of the Design cadre:-

1. Cadre of Design Assistant and Draftsman/ Estimating staff should be separate. Design Assistants 75% should be recruited through direct recruitment of Engg. degree holders from market

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and balance 25% from serving engineering degree holders in Civil Engineering Department.

2. As Engineering degree is a pre-requisite for the post of Design Assistant, therefore all existing posts of Design Assistant be upgraded to Rs.6500-10500. Grade Rs.5000-8000 and Rs.5500-9000 is not to exist in Design cadre.
3. 50% of the total post of Design Assistant (Rs.6500-10500) be suitably distributed in higher grade of Rs.7450-11500. So that they get atleast one promotion in the non-gazetted cadre".

The learned counsel referred to the following decisions contending that the Court should not interfere with policy decisions : (i) State of Punjab and others Vs. Ram Lubhaya Bagga, 1998 (2) SLJ 35; (ii) State of Andhra Pradesh Vs. V.C.Subbarayudu & others, 1998 (3) SLJ 5; and (iii) Union of India and others Vs. R.Reddappa and another, (1994) 26 ATC 117.

8. The respondents have contended that in terms of provisions contained in Para 154(1) of IREM for entry in the category of Draftsmen/ Design Assistants, qualification of Diploma from a recognised Engineering college is required. We have read the provisions of afore-stated Para. It relates to the category of Draftsmen and does not refer to the Design category at all. As a matter of fact Annexure-A-4 dated 28.8.1989 issued by the Northern Railway states that "[A]s per extant instructions, vacancies of Design Assistants are filled by Departmental promotion to the extent of 75% and the remaining 25% are filled by direct recruitment. Minimum qualification of degree in Civil Engineering is prescribed for both i.e. Departmental selection as well as direct recruitment". From the documents placed on record we find that whereas for the category of Draftsmen the recruitment qualification at the ADM/SDM level is ITI or certificate in Draftsmanship Diploma in Engineering respectively, it is Engineering degree for

promotion to the level of Head Draftsmen. For Design Assistants only two scales HDA and CDA existed for which the recruitment qualification is Engineering degree. The relevant recommendation Para 83.177 in the report of the 5th CPC is as follows:-

"We have discussed the pay scales and service conditions of the first three categories (except Permanent Way/Works/Bridge Mistries) in Chapters on Workshop Staff and Engineering Services. However, we mention below the pay scales granted to these categories in accordance with our general approach on the pay structure of subordinate engineering cadres:

Designation	Pay scales		Redesignation
	Existing	Proposed	
	Rs.	Rs.	
Asstt.Draftsman	1200-2040	1320-2040	Draftsman Gr.III
Sr.Draftsman	1400-2300	1600-2660	Draftsman Gr.II
Head Draftsman	1600-2660	1640-2900	Draftsman Gr.I
Chief Draftsman	2000-3200	2000-3500	Chief Draftsman
Design Assistant	1400-2300	1600-2660	Design Assistant III 1640-2900
Hd.Design Assistant	1600-2660	2000-3500*	Design Assistant II
Chief Design Assistant	2000-3200	2375-3750	Chief Design Assistant

* (Direct recruitment of Engineering graduates (25%))

9. We find that whereas for the Draftsmen starting from the scale of Rs.1200-2040 the 5th CPC proposed the scale of Rs.1320-2040, for the Chief Draftsmen in the scale of Rs.2000-3200 the 5th CPC recommended the scale of Rs.2000-3500. In the cadre of Design Assistants the existing scale Rs.1400-2300 was proposed at Rs.1600-2660/ 1640-2900 and for Head Design Assistant and Chief Design Assistant their scales were proposed at Rs.2000-3500 and Rs.2375-3750 respectively. In the cadre of Draftsmen the scale of Rs.2375-3750 was not at all recommended by the 5th CPC. This paragraph also clarifies that apart from promotion to the post of Head Design Assistant and Chief Design Assistant who entered the Design cadre being an Engineering graduate direct recruitment could also be made

at the level of Head Design Assistants (Rs.2000-3500) to the extent of 25%. The respondents have not been able to establish that the recruitment qualifications of both categories are the same i.e. Diploma. We find that these categories have separate seniority units, separate rules of recruitment, separate duties and responsibilities and the 5th CPC had made different recommendations for them. The 5th CPC had made a recommendation of according a pay scale of Rs.2000-3500 to Head Design Assistant and Rs.2375-3750 for Chief Design Assistants. Under normal circumstances the Government would have accorded them replacement scales for these scales on the basis of the recommendations of the 5th CPC. The respondents have allotted two scales, namely Rs.6500-10500 and Rs.7450-11500 as per Annexure-A-1 for the Design staff but they have clubbed the categories of Drawing, Design and Estimating staff as alleged by the applicants. We have described above various characteristics which distinguish these categories of staff and the 5th CPC had recommended the scales of Rs.6500-10500 and Rs.7450-11500 for Head Design Assistant and Chief Design Assistant respectively. Normally, the Courts do not interfere with the policy decisions of the Government which are taken after considering the recommendations of the expert bodies like the CPC. However, if the decision of the Government appears to be arbitrary and not rational, if unequal categories have been equated violating the provisions of Article 14 of the Constitution, nothing should prevent the Courts to interfere with the matter. We would like to draw support from the decision in the matter of West Bengal Registration Service Association (supra) in this behalf. We find that the recruitment qualifications of the Design Assistant was

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superior to that of the Draftsmen; applicants are Engineering degree holders; they have been categorised in the safety category; they belong to separate seniority units ~~having~~ separate duties and responsibilities; and their posts are not interchangeable with those of the Draftsmen. Thus, the Design cadre could be clubbed with the cadre of Draftsmen only if there was a strong rationale for its support. We find that such a rationale is missing in the present case and when there are so many factors, as enumerated above, for adoption of the recommendations of the 5th CPC favouring the Design cadre, it was unjust and improper for the respondents to club the two cadres on the flimsy ground that they were finding it difficult to implement the recommendations of the 5th CPC - the Design cadre being very small having 9 posts only.

10. ✕ Having regard to the above reasons, we allow the OA and direct the respondents to consider delinking the percentage distribution of posts in the cadre of Design Assistant from the disciplines of Draftsmen/ Estimators in the Civil Engineering Department and grant replacement scale of Rs.6500-10500 for Design Assistant and Rs.7450-11500 for Chief Design Assistant as recommended by the 5th CPC with consequential benefits within a period of four months from the date of communication of this order. No costs. ✕

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

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