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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1320 of 1997

New Delhi, this the 9th day of January, 1998

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)
Hon'ble Mr. N. Sahu, Member (Admnv)

1. K. Srinivasan, S/o Shri late S.K. Chari, J-4-S
Sector 13, R.K. Puram, New Delhi - 110 066
2. Jose Kurien, S/o K.K. Kurien, D-2/51, West
Kidwai Nagar, New Delhi - 110 023.
3. M.K. Kanchan, S/o A.C. Kanchan, 372, Sector 3
R.K. Puram, New Delhi - 110 066
4. Trilok Chander, S/o D. Puran Chander, 104,
Tagore Road Hostel, New Delhi.
5. A.K. Sinha, S/o late Shri S.C. Prasad, Q-1-2, M.S.
Flats, Sector 13, R.K. Puram, New Delhi - 110 066
6. Akhilesh Kumar, S/o late R.R. Agrawal, N-158,
Sector 8, R.K. Puram, New Delhi - 110 066
7. Anant Kumar, S/o Shri Om Prakash Rajput, C-3A/
27A, Janakpuri, New Delhi - 110 058 - **APPLICANTS**

(By Advocate - Shri K.B.S. Rajan) -

Versus

1. The Union of India through the Secretary,
Ministry of Urban Affairs and Employment,
Department of Urban Development, Nirman
Bhawan, New Delhi - 110 011
2. The Secretary, Min of Personnel, Public
Grievances & Training, Department of
Personnel & Training, North Block,
New Delhi - 110 011
3. The Director General (Works), Central
P.W.D., Nirman Bhawan, New Delhi - 110 011
4. The Secretary, Union Public Service
Commission, Dholpur House, Shahjehan
Road, New Delhi 110 011 - **RESPONDENTS**

(By Advocate Shri R.V. Sinha)

JUDGMENT

By Mr. N. Sahu, Member (Admnv) -

The applicants in this O.A. assail the action of the respondents in treating the post of D.G. (Works), six posts of Addl.D.G. (Works), three posts of Chief Engineer and six posts of

Superintending Engineer as common to both Central Engineering Service (in short 'CES') Group 'A' and Central Electrical & Mechanical Engineering Service (in short 'CE&MES'), Group 'A' on the ground that this is an arbitrary action. According to the applicants there cannot be a common post to both the cadres. They pray for quashing the guidelines dated 31.1.1997 and they seek a declaration that there cannot be any post which can be held in common to both the services.

2. After notice the respondents state that the Government had conducted the first cadre review of CES and CE&MES in 1985 and it was observed that there was a wide disparity in the career prospects of the officers of the two services. It was decided by the Government to treat the three posts of Chief Engineers and DDG Works as common to the two services. Similarly, in the grade of Superintending Engineer six posts have been mentioned as common to both the services. Since 1985 these common posts are occupied by both the services. The revised recruitment rules for the two services were promulgated on 29.10.1995 indicating that three posts of CEs and six posts of SEs are common cadre posts. It is submitted that in CPWD there are different disciplines like Civil, Electrical, Mechanical, Architect & Horticulture. Rules have been framed in a manner so as to provide opportunity for officers of every discipline to aspire for the top level posts in the organisation.



2

3. The contention in this O.A. is no longer res integra. In O.A. No. 1716/90 disposed of by an order dated 3.10.1997 by a Division Bench of this Court in which one of us (Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)) was a party, the contention was exactly similar. They challenged the cadre review order dated 15.11.1985 by which 10 senior level posts were declared as common posts. This Court held that the decision taken is a policy decision even though the same has been issued by an executive order. We shall do no better than quote the concluding two paragraphs of the above order.

We have also proceeded to consider that the decision of the respondents in this case for merger of the two services is essentially a policy decision even though the same has been issued by Executive orders. The respondents are within their powers to lay down policies and frame schemes by issue of executive orders. By merely having an effect of those executive orders, to reduce the chances of promotion and since the chances of promotion is not a condition of service, we are of the opinion that no illegality can be attributed to such policy decision and therefore on that count the said policy decision cannot be quashed. On the other hand, the respondents are perfectly within their competence to change a policy or re-change it or adjust the same or re-adjust it according to the compulsions of circumstances. It has been so held by the Supreme Court in the case of Col. A.S. Sangwan Vs. UOI reported in AIR 1981 (SC) 1545. It has been further held in the same case that it is entirely within the reasonable discretion of the Union of India who may stick to the earlier policy or give it up on its discretion. In the case of Parvat Kiran Mohanty, (JT 1991(1)SC 430), the Supreme Court has held that the policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle. No such grounds have been shown or advanced against the order of merger by the parties in this case. Again in the case of Col. A.S. Sangwan it



was stated by the Supreme Court that the executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive area of Defence, courts should be cautious although courts are not powerless. The Union of India having framed a policy has relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy.

Thus a policy once formulated is not good for ever. It is perfectly within the competence of the Union of India to change it, re-change it, adjust it and re-adjust it according to the compulsions of the circumstances and the imperative of the national considerations."

4. The guidelines issued on 31.1.1997 allocating the common posts to the services lagging behind in the matter of promotion by a disparity of two batches or more cannot be considered to be irrational. The respondents state that relatively a large number of officers on the civil side go on deputation whereas on the electrical side there was no such avenue. We find that this guideline cannot be considered as unreasonable. This guideline is issued in the common interest of all the personnel promoting the promotional prospects of each and every branch. Such a holistic view is always healthier in the interest of proper functioning of all the branches in the service.

5. In view of the above decision we hold that there is no merit in this O.A. and accordingly the same is dismissed. We would, however, add that any inter service problems, adjustments and difficulties



can always be placed in a representation and the ~~same~~ difficulties can be considered and redressed by the administrative authorities. No costs.



(N. Sahu)
Member (Admnv)



(Dr. Jose P. Verghese)
Vice Chairman (J)

rkv.