

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1586/2000

New Delhi this the 11 th day of January, 2002

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman(J).

Hon'ble Shri Govindan S. Tampi, Member(A).

1. M.S. Bahra,
S/o late Shri Thakur Singh,
Technical Officer,
E-in-C's Branch (CSCC) AHQ,
New Delhi-110 011.

Home Address:

No.1, Kiran Vihar,
Vikas Marg,
Delhi-110 092.

2. R.C. Mehta,
Technical Officer,
Commander Works Engineer,
Meerut Cantt.

Home Address:-

278/1, MES Officers Qtrs.,
Clement Street, Near Supply Depot,
Meerut Cantt. (UP)

3. M. S. Ranga,
-Technical Officer,
E-in-C's Branch (CSCC) AHQ,
New Delhi-110 011.

Home Address:-

A-220, Sarojini Nagar,
New Delhi-110 023.

4. Arjun Kumar,
Technical Officer,
CWE,
Delhi Cantt.

5. Banarsi Dass,
Technical Officer,
E-in-C's Branch, AHQ,
New Delhi.

6. R. S. Vashist,
Technical Officer,
E-in-C's Branch, AHQ,
New Delhi.

B/

(B)

-2-

7. Mrs. Meena Anand,
Technical Officer,
O/o Chief Engineer,
Delhi Zone,
Delhi Cantt.
8. Mrs. Urmila Popli,
Technical Officer,
O/o Chief Engineer,
Delhi Zone,
Delhi Cantt.
9. Mrs. S. Choudhary,
Technical Officer,
CWE-Utility,
Delhi Cantt.
10. Yogindra Pall,
Technical Officer,
Chief Engineer, Race Course,
New Delhi.
11. Bhopal Singh,
Technical Officer,
GE Air Force,
Tugalkabad,
New Delhi. Applicants.

(By Advocate Shri G.D. Bhandari)

Versus

Union of India through

1. The Secretary,
Ministry of Defence,
South Block/Govt. of India,
New Delhi.
2. The Engineer-in-Chief,
E-in-C's Branch, AHQ,
New Delhi-110 011.
3. The Commander Works Engineer,
Meerut Cantt. Respondents.

(By Advocate Shri R.N. Singh)

(B)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This application has been filed by eleven applicants who are Technical Officers (TOs) working with the respondents, claiming that a direction may be given to the respondents to grant them the upgraded additional pay-scale of Rs.7500-12000 which is the pay-scale of an Assistant Architect, Grade-I instead of their present pay-scale of Rs.6500-10500. They have relied on the respondents' orders dated 19.1.2000 and 24.6.2000 by which they have implemented the 5th Central Pay Commission's recommendations in the Engineering Services of M.E.S.

2. According to the applicants, the respondents have designated their posts as TOs and given them the pay scale of Rs.6500-10500. One of the main contentions of Shri G.D. Bhandari, learned counsel, is that there is no openings or prospects of promotion for persons like the applicants who have been designated as TOs. He has relied on the Tribunal's order dated 12.12.2000 in **Surjit Kumar Kalyan Vs. Union of India & Anr.** (O.A.1312/2000), copy placed on record. The applicants have been working in the cadre of Draftsman in the MES Department of the respondents and presently working as TOs, which is a Group 'B' post after their promotion from the posts of Chief Draftsman in the Drawing cadre. We note that there are three grades in the Drawing Office, namely, Draftsman Grade-II, Grade-I and Chief Draftsman. Learned counsel for the applicants has submitted that it was only after the aforesaid orders had been issued by the respondents in January and June, 2000 that the applicants have a

B

grievance that they are not getting the higher scale of Rs.7500-12000 which is the main claim in this O.A. According to them, previously from the post of Chief Draftsman, a Group 'C' post, the promotion was to the post of Assistant Architect which is a Group 'B' post. He has submitted that the problems have arisen because of the statutory requirements under the Act, which prescribes that persons should possess the qualification of Graduation in Architecture and should be registered with the Council. He has submitted that even after the bifurcation of the posts of Assistant Architects into two different cadres, namely, TOs and Assistant Architects, their quantity and quality of the work remain the same. In the circumstances, he has submitted that the applicants are entitled to the higher pay scale.

3. The respondents in their reply have disputed the claim of the applicants. According to them, the post of TO was created after the coming into force of the Act by separating those persons holding the posts of Assistant Architects but were not qualified as Architects and not registered with the Council who could not be designated as Architects. Shri R.N. Singh, learned counsel for respondents has submitted that the applicants have risen from the lower posts of Draftsman, Grade-III/Tracer in Group 'C' to the post of Chief Draftsman. In the case of qualified Architects holding a degree in Architecture and registered with the Council, it is the entry post of their career. Learned counsel has, therefore, submitted that there is no similarity or parity between the applicants

82

(S)

-5-

who are TOs and Assistant Architects. Learned counsel has also pointed out that as per the existing Recruitment Rules (SRO 258) dated 11.10.1988, there is no promotion from a lower feeder post to the post of Assistant Architect. He has submitted that the post of TO was created so that persons, like the applicants under the Act could be accommodated. He has also submitted that the applicants have been promoted from lower Group 'C' posts with qualifications of two years certificate or diploma in Draftsman and they cannot be equated with Assistant Architects who hold a degree and are registered with the Council. The 5th Central Pay Commission in its Report had taken into account all the factors and dealt with the Draftsman and Architects. They had recommended a common replacement pay scale of Rs.6500-10500 in respect of the posts which were in the pre-revised pay scale of Rs.2000-3500 as a measure of rationalisation of pay scales which action is a routine matter for Pay Commissions. He has submitted that the creation of the posts of TO was necessary for enforcing the Act. In the circumstances, he has denied that there is any discrimination against the applicants who have been given the same pay scale as Assistant Architects, Grade-II which they were holding before the implementation of the Act. When the Government had accepted the recommendations of the 5th CPC, 50% posts of Assistant Architects in MES were given the revised functional scale of Rs.7500-12000 while the remaining continued to have the existing pay scale of Rs.6500-10500 which is the same as what the applicants are getting. The *orders* dated 19.1.2000 and 24.6.2000 have been issued in



-6-

implementation of the 5th CPC's recommendations in the Engineering Services of MES. He has submitted that the upgradation of 50% posts of the Assistant Architects in the total strength of the cadre has been done by designating the upgraded posts as Assistant Architect, Grade-I, and the rest of the posts remain in the pay-scale of Rs.6500-10500. He has, therefore, submitted that in the facts and circumstances of the case, as the 5th CPC considered the Draftsman cadre and given its recommendations for this cadre, the applicants cannot compare themselves as Assistant Architects, Grade-I to claim the same pay-scale. He has relied on the judgements of the Supreme Court in **Commissioner, Corporation of Madras Vs. Madras Corporation Teachers' Mandram and Ors.** (1997(1) SCC 253) and **K. Jagadeesan Vs. Union of India & Ors.** (1990 (2) SCC 228).

4. We have further heard Shri G.D. Bhandari, learned counsel. He has placed much reliance on a letter issued by the respondents dated 13.5.1974 which has been annexed to the rejoinder. In this letter, reference has been made to the provisions of the Act in which it has been mentioned that those Departmental officers who do not possess any qualifications prescribed in the Act but have come Departmentally to the rank of Assistant Architects or Architects will have to get registered by 27.4.1974. His contention is that as this letter itself has been issued only on 13.5.1974, the Department cannot enforce registration by 27.4.1974.



93

-7-

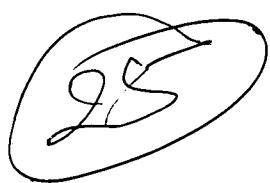
5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. We find that under the provisions of the Recruitment Rules for the post of Assistant Architect, notified on 11.10.1988, the educational and other qualifications prescribed for direct recruitment were Degree in Architecture of a recognised University or equivalent and registration with the Council. The applicants have admittedly been working with the respondents in the Draftsman cadre prior to the coming into force of the Act. The applicants have received several promotions from Group 'C' post upto the level of TOs, Group 'B', in the cadre of Draftsman. The designation of the applicants as TOs instead of Assistant Architects because they do not possess a Degree in the subject nor were they registered with the Council, cannot be faulted, having regard to the provisions of the Act. This has been done to accommodate them. These officers admittedly do not possess the qualifications required under the Act and have received a number of promotions in the lower grades till they have been posted as TOs. It is also relevant to note that the 5th Central Pay Commissions have dealt with the Draftsman cadre and Architects separately. Having regard to the fact that the Act has been passed by Parliament as far back as in 1972, there is no doubt that the respondents have to implement the same.

✓

7. The orders issued by the respondents dated 19.1.2000 and 24.6.2000 are in implementation of the 5th Central Pay Commission's recommendations whereby 50% of the posts of Assistant Architects of MES have been upgraded from Rs.6500-10500 to Rs.7500-12000 and designated as Assistant Architects, Grade-II. When the applicants do not qualify for being designated even as Assistant Architects, Grade-II, in accordance with the provisions of the Act, their contention that they should receive the same pay scale as that of Assistant Architects, Grade-I, cannot be accepted, as it is contrary to the provisions of the Act. The pay of the TOS is similar to Assistant Architects, Grade-II and it is noticed that the 5th Central Pay Commission had recommended a higher pay scale for Assistant Architects, Grade-I. As the applicants do not fulfil the conditions for being even designated as Assistant Architects under the Act, we see no infirmity in the action taken by the respondents in upgrading 50% of the posts of Assistant Architects to the higher pay scale of Rs.7500-12000. There is no question of discrimination against the applicants as contended by their Counsel.

8. In pursuance of the Act, Recruitment Rules published on 11.10.1988 also provide that the posts of Assistant Architects are by direct recruitment for which a Degree in Architecture from a recognised University or equivalent and registration with the Council are essential qualifications. These qualifications are relaxable at the discretion of the UPSC in the case of the candidates
YRZ



-9-

otherwise well qualified. Relying on the case of S.K. Kalyan (supra), learned counsel for the applicants has submitted that similar directions should be given in respect of the applicants so that the UPSC may consider relaxation of the relevant conditions laid down in the Recruitment Rules. We are unable to agree with this proposition because in the first instance, while the applicant, Shri S.K. Kalyan, has been working as an Assistant Architect with the respondents from 1987, that is not the position with the applicants who are admittedly designated only as TOs. They were so designated because they did not possess the qualifications laid down under the Act. The Tribunal in its order dated 12.12.2000 in OA 1312/2000, had specifically noted, that despite the decision of the respondents in their letter dated 1.12.1978 which deals with re-designation of certain posts in the Architecture Cadre, the applicant in that case had been designated as an Assistant Architect throughout, including in the all India seniority list issued on 1.4.1988. Further, it is also relevant to note that it was noted in that judgment that among such re-designated persons who had been officially designated as Assistant Architects, only two persons were now left in the dying cadre of TOs, apart from the fact that the applicant was a Scheduled Caste officer. These facts had weighed with the Tribunal while passing the order for consideration the applicants' case for relaxation of the provisions of the Recruitment Rules by the UPSC. The facts in the present case are entirely different. The applicants have been designated as TOs and never as Assistant Architects as

82

they did not fulfil the conditions laid down for being designated as Assistant Architects, Grade-II under the Act which has been enacted ⁸² existed more than 25 years back. Therefore, at this stage, for them to claim parity in pay scale with Assistant Architects, Grade-I, on the ground that they are doing exactly the same nature of job, is not justified or in accordance with the provisions of the Act and relevant Rules notified on 11.10.1988. The Tribunal in S.K. Kalyan's case (supra) has noted the fact that the respondents had designated the applicant as an Assistant Architect from 1987 onwards and he had continued to work in that capacity for more than 12 years. Therefore, the judgement in S.K. Kalyan's case (supra) is distinguishable from the facts in the present case and will not assist the applicants. Hence, no such directions for relaxing the conditions laid down in the Recruitment Rules of 1988 can be given to designate the applicants as Assistant Architects and thereafter give them the higher pay scale which is applicable to Assistant Architects cadre.

9. Regarding the letter issued by the respondents dated 13.5.1974, relied upon by the learned counsel for applicants, this also does not help them in any way. The applicants have failed to show whether the date for registration under the Act had been extended or if they had made any representation for this purpose or give any explanation as to why they have not agitated this issue earlier which they have now tried to agitate and that too in the rejoinder stage. We consider that the letter dated ⁸²

92X

-11-

13.5.1974 is not relevant to the issues raised in the present application which, according to the contention of the learned counsel for the applicants himself, has arisen because of the respondents' implementing the recommendations of the 5th Central Pay Commission vide orders dated 19.1.2000 and 24.6.2000. Therefore, no claim can be allowed for re-designation and consequential benefits of pay scale as Assistant Architect Grade-I, where the applicants do not fulfil the statutory requirements of the Act. Therefore, in whatever way we look at the claims of the applicants, we find no justification to allow the same as they are not legally sustainable. The contention of the applicants' counsel that the applicants are completely blocked from getting any promotion and, therefore, should be given the higher pay scale, is without any basis as admittedly, most of them have already obtained two or more promotions during their career in the Draftsman cadre. Their claim for higher pay scale to Rs.7500-12000 as TOS can be granted only if they have the necessary qualifications and fulfil other conditions laid down in the Recruitment Rules which they do not possess. The judgements of the Supreme Court in K. Jagdeesan's case (supra) and Commr. Corporation of Madras's case (supra) are relevant in the context of the claims made by the applicants.

10. In view of what has been stated above, we find no merit in this application. The O.A. accordingly fails and is dismissed. No order as to costs.

Govindan S. Tampi
Member (A)

SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)