

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2114/89

New Delhi this the 18th Day of May, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Smt. Lakshmi Swaminathan, Member (J)

1. Dinesh Chandra Dabral
S/o Shri S.N. Dabral
R/o Sector XII/954, R.K. Puram
New Delhi
2. Daulat Ram
S/o Shri Sumer Singh
R/o 126, Masjid Moth
New Delhi
3. Ishwar Das
S/o Late Shri Jagat Ram
R/o D-878, Netaji Nagar
New Delhi
4. Kartar Chand
S/o Shri Ragha Ram
S/o Executive Engineer & Bursar
Div. CNC Patel Nagar, Canal Road
Talab Tillo- Jammu (J&K)
5. Ghanshyam Singh
S/o Shri Sugan Singh
R/o A-212, Minto Road
New Delhi
6. J.P. Sharma
S/o Shri Indraj Sharma
R/o Village Nariyala
P.O. Fatehpur Billoch
Faridabad

----- Applicants

(By Advocate Sh. S.K. Bisaria)

Versus

1. Union of India
through
Secretary
Ministry of Water Resources
Shram Shakti Bhavan
New Delhi
2. Chairman
Central Water Commission
Sewa Bhavan
R.K. Puram
New Delhi

----- Respondents

(By Advocate Sh. K.L. Bhandula)

ORDER (ORAL)

Mr. N.V. Krishnan:-

The applicants who are Ferro Printers in the
Central Water Commission (CWC) are aggrieved by the

discriminatory treatment meted out to them as compared to Tracers in the Department, while amending the recruitment rules in 1986.

2. It is stated that the applicants who are all Ferro Printers had the same grade of pay, i.e., Rs.260-430 as the other group of persons called the Tracers. Both the Ferro Printers and Tracers were eligible for promotion to the next higher grade of Junior Draftsman in the pay scale of Rs.330-560 in accordance with the recruitment rules of 1982, extracts from the schedule to which have been reproduced at Annexure-2. These rules provided that the posts of Junior Draftsman would be filled up by direct recruitment to the extent of 25%. The remaining 75% would be filled up by transfer failing which by promotion. The transfer was restricted to Ferro Printers in other establishments. In so far as promotion is concerned, both Ferro Printers and Tracers were treated on par and made eligible for promotion subject to fulfilling the eligibility conditions.

3. While so, a departmental examination for promotion of Tracers and Ferro Printers to the grade of Junior Draftsman was held on 10th and 11th December, 1983. The results were announced on 16.1.84 (Annexure-I). The enclosure thereto has been produced by the applicants which shows the names of all the six applicants before us alongwith the names of others who are Tracers. It is stated that none of the applicants have been promoted as Junior Draftsman.

4. In the meanwhile, the recruitment rules were amended by the notification dated 6.8.82

(Annexure-2). By the ~~amended~~^{ment} entries in the schedule relating to recruitment to the posts of Senior Draftsman, Junior Draftsman and Tracer were substituted. The posts were referred to, after amendment, as Draftsman Grade I, Draftsman Grade II and Draftsman Grade III. Two other changes were made. Firstly, the lowest grade of Draftsman, designated as Draftsman Grade-III in the pay scale of Rs.260-430, is to be filled up by direct recruitment to the extent of 95% and the remaining 5% is, strangely enough, to be filled up by transfer of Ferro Printers. The respondents have not filed any copy of the amended rules. It thus appears that the remaining 5% vacancies will be filled up by transfer of Ferro Printers from establishments outside the C.W.C., where the applicants were working. Secondly, there is no mention in these amended rules to the Tracers at all. The reason is that, by a separate order dated 26.9.86 (also Annexure-2), the respondents have re-designated the posts of Senior Draftsman, Junior Draftsman, and Tracer respectively as Draftsman Grade I, Draftsman Grade II and Draftsman Grade III. The learned counsel for the respondents submits that the applicants are entitled to be promoted to 5% of the posts of Draftsman Grade-III.

5. The revised pay scale corresponding to the pay scale Rs.260-430, which applies both to Ferro Printers and Tracers, is Rs.975-1540 from 1.1.86. The pay scale of Tracers, redesignated as Draftsman Grade-III, has been upgraded by a separate order to Rs.1200-2040 from 9.11.87. The Draftsman Grade-III are, according to the recruitment rules, eligible for promotion as Draftsman Grade-II. The result is that while all the erstwhile Tracers automatically

become eligible for promotion as Draftsman Grade-II, the Ferro Printers (i.e., the applicants) will first have to be promoted as Draftsman Grade-III to 5% of the posts and thereafter, seek promotion to the next grade of Draftsman Grade-II.

6. The applicants further complain that 81 persons have been promoted to the next grade from 29.9.87 (i.e. Draftsman Grade III) but none from the category of Ferro Printers was promoted.

7. It is in the light of this discriminatory treatment that the applicants have sought a declaration that they stand promoted as Draftsman Grade-II w.e.f. 29.9.87. (i.e., the date on which persons junior to them working as Tracers have been promoted to that grade) with all consequential benefits and also to declare that the recruitment rules (Annexure A-2) relating to promotion to the posts of Draftsman Grade-III and Grade-II are illegal.

8. The respondents have filed a reply contending that the O.A. is barred by limitation inasmuch as the recruitment rules had already come into force in 1986 and the O.A. was filed only on 16.10.89. It is also contended that in terms of the recruitment rules notified on 6.8.86 (Annexure A-2), the applicants are not entitled for direct promotion as Draftsman Grade-II. The respondents further state that the posts of Tracer, Junior Draftsman and Senior Draftsman which existed earlier, were redesignated as Draftsman Grade-III, Draftsman Grade-II and Draftsman Grade-I respectively. They, however, do not explain why, in this redesignation, they have left out the Ferro Printers, who claim that until the recruitment rules were

amended in 1986, they were at par with the Tracers.

The respondents further state that the question of considering promotion from 29.9.87 does not arise because the applicants are not eligible for such promotion.

9. The applicants have made a specific averment in para 4(g) of the O.A. that vacancies (i.e. of Junior Draftsman) existed in 1986 before the amendment of the recruitment rules and as such, they are entitled to be promoted as Junior Draftsman in accordance with the unamended rules. To this the respondents have not given any specific reply.

10. We have heard the learned counsel for the parties. The learned counsel for the applicants submitted that no reason has been assigned as to why the Ferro Printers have been left out of consideration while granting benefits to Tracers only. He relied on the judgement of the Supreme Court in Y.P. Rangiah and Others v. Srinivas Rao & Others - AIR 1983 (3) SCC 284.

11. The learned counsel for the respondents merely reiterated what has been mentioned in the reply. He produced for our perusal an office memorandum of the Ministry of Finance dated 13.3.84. This refers to the revised scales of pay allowed to the Draftsman Grade-I, Grade-I and Grade-III in the C.P.W.D. on the basis of an award of the Board of Arbitration. It communicates the decision of the Government of India that the revised grades may also be allowed to Draftsman Grade-III, Grade-II and Grade-I in all offices of the Government of India, subject to the fulfilment of the conditions mentioned therein. The

posts in the Department were redesignated because of this O.M. He was, however, unable to explain why the Tracers only were designated as Draftsman Grade-III and not the Ferro Printers. He submitted that the duties of these two categories of persons are different and hence the distinction.

12. We have carefully considered the rival contentions and perused the records. There is no dispute that according to the 1982 recruitment rules, the Ferro Printers were placed on par with the Tracers in the matter of promotion to the next higher grade of Junior Draftsman vide the schedule at Annexure-1. In the circumstances, that parity ought to have continued even if the recruitment rules were amended unless the respondents could cite some basic difference on the basis of which the distinction was made. By a mere declaration made on 26.9.86 (Annexure A-2) Tracers as a group were redesignated as Draftsman Grade-III and Ferro Printers have been left high and dry or at best made eligible to 5% of the posts of Draftsman Grade-III. No reasons whatsoever have been given either in the reply or in any other annexure as to why Ferro Printers have been deliberately discriminated, though, until the recruitment rules were amended on 6.8.86, these two categories were at par with each other.

13. We also notice another anomaly in the amended Annexure-2 recruitment rules. The schedule provides that the Draftsmand Grade-III in the grade of Rs.260-430 will be filled up to the extent of 5% by transfer of Ferro Printers. The respondents have not questioned

the ~~corrections~~^{ness} of the Annexure A-2 produced by the applicants. It is clear that only outsider ~~from~~^{Ferro} Printers can be taken on transfer. The learned counsel for the respondents suggests that this should be treated as a reference to the promotion of the Ferro Printers of the C.W.C. who are already on the pay scale of Rs.260-430. If we have to accept this contention, it would lead to the absurd situation that the persons in the pay scale of Rs.260-430 are to be promoted in the same grade. It appears to us that if the recruitment rules as produced by the applicants are read properly, no provision whatsoever has been made for the promotion of Ferro Printers.

14. In either case, we are unable to understand why this discrimination had been made. We are, therefore, satisfied that this decision is arbitrary and is violative of Article 14 of the Constitution of India.

15. In the circumstances, we dispose of this O.A. with the following directions/order:-

- i) We declare that the schedule as substituted by the Central Water Commission Non-Ministerial (Group 'C') posts (Amentment) Recruitment Rules, 1986 (Annexure 2) in so far as it relates to the posts of Draftsman Grade-III does not provide that 5% of the posts are to be filled by promotion from Ferro Printers in the C.W.C.
- ii) We further declare that the order dated 26.9.1986 (Annexure 2), in so far as it ~~redesignates~~ ^{remains} the posts of Tracer only as Draftsman Grade-III is discriminatory and violative of Article 14 of the Constitution and that

its validity can be maintained only by reading it down to ~~indicate~~ ^{to include} the posts of Ferro Printers also, along with Tracers and accordingly we declare that Ferro Printers are to be treated as Draftsman Grade-III from 30.8.86, along with Tracers.

- iii) In the light of the above declaration the applicants are entitled to get the upgraded pay scale made applicable to the Tracers from the same date.
- iv) The applicants shall be considered for promotion to the posts of Draftsman Grade-II in the light of this order.
- v) The respondents shall consider applying these orders to all Ferro Printers instead of restricting it to the applicants before us.

16. The O.A. is allowed with the aforesaid directions. No costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

'Sanju'

N.V. Krishnan
(8.5.84)
(N.V. Krishnan)
Vice-Chairman (A)