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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

D.A. NO. 2197/90

New Delhi this the 23rd day of Feb, 95.

Shri N.V. Krishnan, Vice Chairman(A).

Dr A. Vedavalli, Member(J).

1. D.S. Shukla,
S/o Shri Dal Ganjan Shukla.

2. Mohinder Singh,
S/o Shri Bhagat Singh.

3. V.K. Sharma,
S/o Shri Shyam Lal

(All Head Draftsman, Engineering Branch,
Northern Railway, H.Q. Office, Baroda
House, New Delhi).

... Applicants.

By Advocate Shri B.S. Versus
Maine.

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi.

3. The Senior Engineer (P&D),
Engineering Branch,
Northern Railway,
Baroda House,
New Delhi.

... Respondents.

By Advocate Shri B.N. Mani.

ORDER

Shri N.V. Krishnan

The question for consideration is whether the additional seven posts of Chief Draftsman which have arisen under the respondents, consequent upon the change in the strength of the drawing office staff in the Headquarters office due to the upgradation of 27 posts of Tracers as

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Draftsman should be filled by promotion on the basis of the special procedure laid down in para 5.1 of the Railway Board's circular dated 16.11.1984 (Annexure A-3) or they should be filled up in accordance with the normal procedure for filling such posts.

2. The facts of the case giving rise to this issue are as follows:

2.1 A restructuring of the Group 'C' and 'D' staff was ordered by the memo dated 16.11.1984 (Annexure A-3). One of the categories of staff which was restructured is the drawing staff cadre which comprises posts in four different scales. It was ordered that the percentage distribution of the posts in these four scales would be as indicated below:

<u>Scale</u>	<u>Percentage</u>	<u>Remarks</u>
Rs.330-560	20%	Designated Draftsman
Rs.425-700	30%	Designated Sr. Draftsman
Rs.550-750	25%	Designated Head Draftsman
Rs.700-900	25%	Designated Chief Draftsman

It would appear that there were in all 97 posts in this four categories and in view of the percentage distribution fixed above, the distribution among the various categories was Draftsman 20, Senior Draftsman 29, Head Draftsman 24 and Chief Draftsman 24 as is evident from the Annexure A-5 table which was issued some-time in April, 1990.

2.2 A special procedure for promotion to the posts in the higher grade which were created as a result of restructuring was provided for in paras 5.1 and 5.2 of that O.M. which are reproduced below:

"5.1 The existing classification of the posts covered by these restructuring orders, as "Selection" and "Non-selection" as the case may be, remains unchanged.

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However, for the purpose of implementation of these orders, if an individual railway servant becomes due for promotion to only one grade above the grade of the post held by him, at present, on a regular basis, and such higher grade post is classified as a "Selection" post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records without holding any written and/or viva voce test under this procedure, the categorisation 'Out-standing' will not exist.

5.2 In case, however, as a result of these restructuring orders, an individual railway servant becomes due for promotion to a grade more than one grade above that of the post held by him at present on a regular basis, the benefit of the modified procedure of selection as aforesaid will be applicable only to the first such promotion (if that post happens to be a selection post) the second and subsequent promotions, if any, will be based only on the normal rules relating to filling in of 'Selection' or 'Non-Selection' posts (as the case may be).

2.3 By a subsequent order of the Railway Board in his memo dated 25.6.1985 (Annexure A-4) further orders of restructuring of Group 'C' and 'D' staff were issued. This covered various categories of posts including tracers. Orders relating to tracers in the scale of Rs.260-430 are given in Section VI of this O.M. The orders provided that all the existing incumbents of the post of Tracers will be promoted to the next higher grade of Junior Draftsman scale Rs.330-560. Those who already have a diploma of Draftsmanship and those who do not have such a diploma but have completed five years of service as on 1.1.1984 will be promoted as Junior Draftsman in the scale of Rs.330-560. The other tracers will similarly be promoted as and when they complete five years of service or acquire the necessary qualification. The strength of the cadre of the tracers will be frozen and after all persons are upgraded as Junior Draftsman the cadre of

tracers will cease to exist. It was further provided as follows:

"Note:- The existing cadre of Tracers is to be frozen and actual requirements reviewed and determined with Board's approval within six months. In this connection, reference is invited to Ministry of Railways letter No. E(NG)II-85/RC-2/7 dated 27.2.85. Once the cadre of the Junior Draftsman in scale of Rs.330-560 is fixed finally, it will be taken into account for percentage distribution applicable to the drawing office staff vide item 6 of Annexure to this Ministry's letter No. PCIII/84/UPG/9 dated 16.11.84 in the subsequent annual cadre reviews".

2.4 Admittedly, 27 posts of Tracers got upgraded ~~and~~ to the post of Junior Draftsman or Draftsman in the scale of Rs.330-560 sometime in 1990. Therefore, in accordance with the note reproduced above, the percentage distribution of the drawing office staff had to be redetermined. This was done by Annexure A-5 order as follows:

<u>Posts</u>	<u>Existing sanction strength</u>	<u>Revised sanction strength</u>
Chief Draftsman	24	31
Head Draftsman	24	31
Sr. Draftsman	29	37
Draftsman	20	25
Tracers	27	Nil
	<u>124</u>	<u>124</u>

Thus, the earlier restructured strength of Chief Draftsman of 24 posts increased to 31 in the manner described above. To fill up the vacancies of the post of Chief Draftsman including the seven posts, a notice was issued on 27.8.1990, Annexure A-1 proposing to hold a written test for filling up these vacancies of Chief Draftsman.

2.5. Admittedly, the post of Chief Draftsman is to be

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filled up in the normal course by selection for which purpose such written test has to be held. However, if the post of Chief Draftsman has arisen as a result of restructuring, the selection will be based only on scrutiny of the service records, without holding any test as mentioned in para 5.1 of the Annexure A-3 O.M. of the Railway Board reproduced above. It is on the issue of this notice for the test that this application was filed by the three applicants before us.

2.5 It is stated that they had made a representation that the additional 7 posts of Chief Draftsman should be filled up by the special procedure referred to above(vide their representation Annexure A-6) Instead steps were taken to fill up the post by holding a test. Hence, a direction is sought to quash the Annexure A-1 notice dated 27.8.1990 and the Annexure A-2 dated 10.10.1990 regarding the supplementary examination and to direct the respondents to fill up the above mentioned posts by holding modified procedure of selection as per the Railway Board's orders.

2.6 When the matter came for admission, the respondents were given permission to declare the results of 22 out of the 29 posts of Chief Draftsman for which selection was being held by the impugned Annexures A-1 and A-2 notices. In respect of the remaining 7 posts an ad interim order was passed. However, by a subsequent order dated 19.8.1991 it was directed that three posts of Chief Draftsman should not be filled up until this O.A. is disposed of.

3. The respondents have filed a reply in which it is contended that the O.M. dated 16.11.1984 and more particularly the special procedure for promotion laid down in para 5.1 thereof will not apply to the additional 7 posts of Chief Draftsman which came into being in 1990 when the posts of tracers were finally abolished and upgraded as Draftsman. It was contended

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that the special procedure was to be applied only to the vacancies which arose as a result of restructuring which was given effect to from 1.1.1984.

4. The question, therefore, is whether the 7 additional posts of Chief Draftsman which arose as mentioned in Annexure A-6 statement is as a result of restructuring and whether the special procedure for promotion outlined in para 5.1 should apply.

5. We have heard the learned counsel for the parties who have reiterated the stand taken by them. The learned counsel for the applicants submits that the note below item VI Tracer in the circular dated 25.6.1985 (Annexure A-4) and the specific direction given in para 2 of that memo that the instructions given in the foot note under the different categories should be strictly and carefully adhered to, make it clear that the additional posts also have arisen out of restructuring and hence the special procedure for promotion should apply. We have reproduced the note under item VI Tracer in para 2.3 above. Nodoubt, this note states that the additional number of posts of Draftsman which come into being after all the posts of tracers are upgraded should be taken into account for the percentage distribution of the posts among the four categories of drawing staff. Admittedly, when the posts of Tracers remained separate, the total strength of drawing staff was 97 as mentioned above and after restructuring by the Annexure-A-3 order, the total posts of Chief Draftsman was 24. In terms of the instructions contained under the heading 'Tracers' which have been summarised above, these posts were upgraded as Draftsman in the scale of Rs.330-560 as and when the incumbents became eligible for such upgradation until in 1990, all the posts got upgraded. Thus, the 27 posts of Tracers got abolished in 1990.

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and in their place, 27 posts of Draftsman were added to the cadre of drawing staff which raised the strength of the drawing office staff from 97 to 124 in 1990. In the revised strength, the quota for Chief Draftsman was refixed at 31, i.e. an increase of 7 posts. This obviously is as a result of the cadre review, which is contemplated in the 'Note' reproduced in para 2.3 for the purpose of percentage distribution.

6. The question is whether the promotion to these 7 posts would be by the special procedure or by the normal procedure. In our view, this question stands fully answered by para 5.3 of the Railway Board's circular Annexure A-3 dated 16.11.1984 and Annexure A-4 dated 25.6.1985 which reads as under:

"5.3 Vacancies existing on 1.1.1984 and those arising on that date from this cadre restructuring should be filled in the following sequence:

- (i) from panels approved on or before 15.11.1984 and current on that date; and
- (ii) balance in the manner indicated in paras 5.1 and 5.2 above".

The direct vacancies arising on 1.1.1984 as a result of the retrospective operation of the Annexure A-3 and Annexure A-4 orders of restructuring with the concomitant percentage distribution of posts, will be filled up firstly from the panels approved immediately before these two O.Ms were issued. The vacancies that still remain would be filled by the special procedure indicated in paras 5.1 and 5.2 of these O.Ms. In other words, it is clear that for invoking the special procedure for promotion under para 5.1, the vacancies should have normally arisen on 1.1.1984 itself or they should have arisen as a result of the restructuring itself and that too, only as a second method.

7. In the present case, it is quite clear that the vacancies arose only in 1990. Apparently, the process of upgrading of tracers got completed only in 1990. It is thereafter that the Annexure A-5 order was issued which is also dated April, 90. Thus, these additional vacancies arose only in 1990 and not on

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1.1.1984. Therefore, the special procedure laid down in para 5.1 of Annexure A-3 will not apply and the posts have to be filled up according to the normal procedure which is what was ordered by the Annexure A-1 and A-2 notices.

6. In the circumstance, we do not find any merit in the challenge to the Annexure A-1 and A-2 notices. The S.A. is dismissed. The interim order is vacated.

A. Vedavalli

(DR A. VEDAVALLI)
MEMBER (S)

Ch 23.2.85

(N.V. KRISHNAN)
VICE CHAIRMAN (A)

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