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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA. No. 367 of 1990

Dated New Delhi this 17th day of November, 1994.

Hon'ble Shri J. P. Sharma, Member (J)

Hon'ble Shri B. K. Singh, Member (A)

1. Manjit Suri
H-74 Lajpat Nagar-I
New Delhi-24.
2. Euldeep Dadyal
L-20 DIZ Area
Sector-IV
3. S.P. Dewett
9/12-B, MIG DDA Flats
Kalkaji Extension
New Delhi-19.
4. Sheela Sehajwani
D-28 East of Kailash
New Delhi.
5. Surinder Kaur
A-42 Vishnu Garden
New Delhi-18.
6. Prem Puri
970, Sector VII,
M.B. Road, Saket
New Delhi.
7. Nirmal Dargan
23, Gulmohar Enclave
New Delhi-49.
8. Syed Ghyauddin
2249 Naya Mohalla
Gali Qasimjan Ballimaran
Delhi-06.
9. G.S. Gandhi
KG-1/300 Vikas Puri
New Delhi.

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10. V.P. Sardhana
35/3 Old Rajinder Nagar
NEW DELHI.

11. Inder Kaur Kochhar
D1/96 Janak Puri
NEW DELHI-58.

... Applicants

By Advocate: Shri Balbir Singh

Versus

Union of India

1. through Secretary
Ministry of Urban Development
Nirman Bhawan
NEW DELHI.

2. Directorate General of Works
Government of India
Central Public Works Department
Nirman Bhawan, NEW DELHI.

3. Shri S.P. Deshpandey
4. Shri S.P. Sahane
5. Shri T.C. Vohra
6. Shri HC Chaggan
7. Shri V.V. Limaye

JUDGEMENT

Shri B. K. Singh, M(A)

8. Shri W.Y. Joshi
9. Shri Shri GS Monga
10. Shri Surinder Kumar
11. Shri Iqbal Singh
12. Smt A.G. Juvelkar
13. Shri NP Choudhry

(All Respondents from 3 to 13 are
through Dte Gen of Works, CPWD,
Nirman Bhawan, New Delhi.) ... Respondents
(By Advocate: Shri Balbir Singh with Sh. J.C.
Madan)

This OA.No.367/90 has been filed U/S 19 of the
Administrative Tribunal Act, 1985 against the letter dated
7.7.89 issued from the office of the Respondent No.2
rejecting the prayer of the applicants not to effect change
in the designation from Architectural Assistant to
Assistant (Arch. Department) which has resulted in
their supersessions by their juniors. This is Annexure
'A' of the paper book.

2. The admitted facts of the case are that the applicants
joined the service as Architectural Assistant in the
pay scale of Rs.205-7-240-8-280 between 1969 to 1973. They
were then governed by the CPWD Architectural
Staff (Gazetted) Recruitment Rules, 1962. They were declared
quasi-permanent after completing three years of service. As

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per the Recruitment rules of 1962, the Architectural Assistans were entitled to be promoted as Assistant Architects on completion of ten years and from Assistant Architect to the post of Architect after completion of eight years of service as an Assistant Architect. In 1972 Parliament passed the Architect Act(Act No.20 of 1972) which received the Presidential assent on 31.5.72. The Central Government and the State Governments launched massive constructions in various spheres as a result of the ~~xxxxxxxxxxxxxx~~ the introduction of the Five Year Plans after independence and the Central and State Governments were undertaking the construction taking into consideration the quality and cost reduction in their mind. It was discovered that many unqualified persons calling themselves as Architects were undertaking the consruction of buildings which were neither economical nor safe and they were bringing disrepute to the profession of Architects. The profession of Architects was a specialised profession like legal profession, profession of Chartered Accountants, Company Secretaries etc. and as such it was felt necessary to go in for statutory regulations to protect the general public from the unqualified persons working as Architects. With the passing of the Architect Act,1972 it was made unlawful for any person to designate himself as 'Architect' unless he has the requisite qualifications and experience and is registered under the Act. This legislation is in tune with Acts prevalent in other countries.

3. This Act created a body corporate by the name of "Council of Architecture" vesting it with the requisite powers for the registration of Architects in the Council and enrolment initially of persons holding a degree or diploma in Architecture recognised by the Central Government or possessing other qualifications which may be

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prescribed by the Central Government or of persons who have proved to the satisfaction of the Council to have been engaged in practice as Architects for a period of not less than five years before the commencement of the proposed Architect Act, 1972. Subsequent enrolment of persons who hold degrees or diplomas in Architecture recognised by the Central Government or who possess other qualifications which may be prescribed by the Central Government from time to time could also be registered with the Council of Architecture. The Council was also empowered to hold enquiries into the misconduct of registered Architects and taking suitable action against them. It was also vested with the powers of prescribing standards of professional conduct and etiquette and code of ethics for Architects and also with the task of assessment of the standards of education and training of Architects within the country.

4. The Act protects the title and style of the Architects. It does not make the design, supervision and construction of buildings as an exclusive responsibility of the Architects. Other professionals like engineers were left free to engage themselves in their normal vocation in respect of building construction works provided they do not style themselves as Architects. The Act also stipulated that after the expiry of two years from the date of the Act coming into force, a person who is registered as a Architect shall get preference for appointment as an Architect under the Central or State Government or any other local body or institution which is supported or aided from the public or local funds or in any institution recognised by the Central Government. The recognised qualification means any qualification in Architecture notified U/S 15 of the Act. But the Central Government is competent in consultation with the Council to notify in official gazette any Architectural qualification granted by any University or other institution in any country outside India ⁱⁿ respect of which a scheme of reciprocity for the recognition of Architectural qualification is not in

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force. The Council was also vested with power of withdrawal of recognition if particular institution or university was not maintaining the high standards of profession. Section 27 of the Act strictly prohibits against ^{the} use of title after expiry of one year.

5. In CPWD prior to the operation of the Architect Act, 1972 recruitment was made to the post of Architectural Assistant in terms of Recruitment Rules of 1962 through Employment Exchange. Both the diploma and degree holders were eligible for these posts. There was a combined seniority list and both the degree/diploma holders were eligible for promotion to the post of Assistant Architect. As a result of the promulgation of the Architect Act, 1972, the use of title and style of Architect was prohibited to persons who were not registered with the Council of Architect. According to the scheme of the Act, a person having a degree in Architecture or having qualifications as mentioned in the schedule of the Act, was eligible to get himself registered with the Council. However, as a one time concession, the Act provided ~~for~~ registration with the Council of such of the diploma holders who had been practising as professional Architect for a period of not less than five years prior to the enforcement of the Act. The Architect Act, 1972 necessitated bifurcation of the combined seniority list of Architectural Assistants into two lists, one for the degree holders and the other for diploma holders. The Act resulted in a fundamental change in as much as only the degree holders and /or registered with the Council could be promoted to the post of Assistant Architect while the diploma holders not ~~registered~~ registered with the Council became ineligible for promotion as an Assistant Architect. The CPWD in consultation and agreement with the recommendations of the staff side revised the designation and revised Recruitment rules were framed and notified. The

diploma holders are now designated as Assistants (Architectural Department) and graduates/registered with the Council are designated as Architectural Assistant. The former are eligible for promotion as Technical Officer while the latter for the post of Assistant Architect. Both the posts of Technical Officer and Assistant Architect are group 'B' post in the pay scale of Rs.2000-3500. In short, the bifurcation and separate Recruitment rules were necessitated as a result of the Architect Act, 1972.

6. Aggrieved by the rejection of the representation, the applicants filed this OA seeking the following reliefs:

"(i) The order of respondents bifurcating the cadre into two comprising of the Architectural Assistants (A.D.) be declared as unjust, unconstitutional, discriminatory and both the Architectural Assistant and Assistant (A.D.) be merged into the same post;

(ii) That a combined seniority be issued in respect of the Architectural Assistant & Assistant (A.D.);

(iii) That the Recruitment Rules prevailing at the initial appointment of the petitioners be made applicable to them and the subsequent Recruitment Rules of 1919 & 1980 be declared to be not applicable to the petitioners.

(iv) Pass such other and further orders which this Hon'ble Court may deem fit & proper, and

(v) Pass an order awarding the costs of the Application to the petitioners."

7. A notice was issued to the respondents who contested the application and ^{opposed} grant of reliefs prayed for. We heard Shri Balbir Singh, Counsel for the applicant and Shri J. C. Madan, Counsel for the respondents and perused the record of the case.

8. The learned counsel for the applicants argued that the action of the respondents in bifurcating the cadre into Assistant (A.Ds.) and Architectural Assistants is unconstitutional, unjust, illegal, arbitrary and violative of principles of natural justice and the fundamental and constitutional rights of the petitioners as enshrined in the Constitution of India. It was further argued that the Architect Act, 1972 does not provide anything for a person who is in the employment of the State or the Central Government and it was argued emphatically that the Act is only applicable to a person who is practicing the profession of an Architect. He further pointed out that the respondents have not understood the implications of the Act and they erred in bifurcating the cadre into two and it has affected the service conditions of the applicants adversely since they ^{recruited} were ~~employed~~ on the basis of Recruitment Rules, 1962 and that the Architect Act, 1972 has affected them in a manner that their chance of promotions have gone down as a result of reduction of the posts in the cadre of Technical Officers which designation has been given to them now. It was further argued that the respondents are not entitled under the law to have changed the service conditions of the applicants to their disadvantage without giving opportunity to state their case. It was further argued that the designation of Architectural Assistant has no style or title of post of Architect. It was further argued that the Recruitment Rules are not applicable to the applicants as it cannot have retrospective effect and it can only be applied prospectively since the applicant joined between 1969-73. It was further contended that the respondents are not entitled under law to have two separate seniority lists in respect of the same cadre with same or similar duties and functions attached to these posts and issue of two seniority lists is bad in law, unconstitutional, unjust and illegal and this bifurcation has given advantage to some of the juniors who have stolen a march over their own seniors. The respondents rebutted the arguments of the learned counsel for

the applicants by stating that after the enforcement of the Architect Act, 1972, the use of style and title of architect by persons who were not graduates or registered with the Council of Architect were prohibited. This Act does not permit the use of the word 'Architect' by diploma holders. This fundamental change brought about by the Act necessitated bifurcation of the combined seniority list of Architectural Assistants into two separate seniority lists, one for the degree holders eg. Architectural Assistants and/or those registered with the Council of Architecture and the other separately for the diploma holders though, both of them enjoyed the same scale of pay and ~~before the new Act came~~ into force were designated as Architectural Assistants. The lists were bifurcated in 1977 and separate Recruitment Rules were notified, both for the Architectural Assistant and Assistant (Architectural Department) in 1979. The application, according to the respondents, is barred by delay and laches since the applicants have come to the Tribunal after a lapse of eleven years and they have not been able to explain the delay and ^{on} indolence ~~their~~ part in approaching the Tribunal after a lapse of such a long period. The respondents further argued that the revised Recruitment Rules were framed after consultation and agreement of the representatives of the Staff Side. The change in designation also provided that those who were not degree holders and who were not registered with the Council and who were ~~not~~ practising as Architects

for not less than five years before coming of the Act into force, were considered ineligible for use of the title Architectural Assistant and as such they were called Technical Officers. It is true the respondents have only changed the designation since the use of the word 'Architect' was prohibited under the Architect Act, 1972 and that is the reason why the designation was changed without affecting the pay scales of Technical Officers or the Architectural Assistants. They can both be promoted in their own cadres and the pay scales of Technical Officer and that of Assistant Architect are both identical i.e., Rs. 2000-3000.

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argued
9. The learned counsel for the respondents/that the Act necessitated the bifurcation and, therefore, the respondents were under statutory obligations to frame two separate rules and that this was not on account of any executive decision taken by the respondents. This was as a result of the Architect Act, 1972. He further argued that on the recommendations of the Staff Side, the respondents did take up the matter with the Council of Architecture but unfortunately the latter reiterated that as per the scheme of the Act, the diploma holders cannot be designated as Architectural Assistants. As regards the argument of the learned counsel for the applicants that this Act is not applicable/employees/officers working in Government offices, it was asserted by the learned counsel for the respondents that the Act is applicable both to the Architects doing private practice or working in the Government. The averments made in the OA regarding the various provisions of the Act are admitted by the learned counsel for the respondents and they have said in their counter reply that the Act provided that only those registered with the Council or degree holders can use the name and style of Architect. As a one time concession, it allowed the registration of such diploma holders as had been practising for not less than five years as Architects and had the necessary expertise and experience to use the title and designation. The Recruitment Rules notified in 1979 were framed in accordance with the scheme of the Act. The Council, inspite of the request by the department, did not agree to the equation of the degree holders and non-degree holders in CPWD and, therefore, there was no option for the respondents but to bifurcate the combined seniority list into two; one for the degree holders and those registered with the Council and the other for diploma holders not registered with the Council. The promotions are made as per Recruitment rules then in vogue. Separate Recruitment Rules were issued for Architectural Assistants and Assistant(Architectural Department). Therefore, any person who got himself registered with the

Council his name figured in the seniority list of Architectural Assistants. There was a concession given that people could register with the Council as one time relaxation for a year or so and Shri T. C. Verma took advantage of this concession and got himself registered with the Council of Architecture on 21.2.76 and he was fully qualified to be included in the seniority list of Architectural Assistant. In paragraph XXIV, the applicants have referred to the case of Shri Iqbal Singh. The respondents in their reply have explained that Shri Iqbal Singh did final diploma in Architecture from Government of Maharashtra in the year 1969. He got himself registered with the Council of Architecture in 1976. When this fact was brought to the notice of the respondents, his seniority was shifted from the category of Assistant (Architectural Department) to that of Architectural Assistant. Similarly respondent Nos. 4, 10 & 13 were also included in the seniority list of Architectural Assistant and promoted to the grade of Assistant Architect as per the Recruitment Rules. These people had all their diplomas from the universities/institutions recognised by the Central Government/State Governments and they were registered with Council. None of the applicants are registered with the Council and as such they could not be allowed the use of the word "Architectural Assistant".

10. After going through the pleadings on record and hearing the learned counsel for the rival parties, we find that the Architect Act, 1972 is an Act of Parliament and the constitutionality of the Act is not in question before us. The statutory rules notified in 1979 under proviso to Article 309 are in conformity with the provisions of the rules. The schedule of the Act gives the various degrees and

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diplomas recognised by the Central Government/State Governments and those who obtained their degrees/diplomas and were duly registered with the Council even till 1976 could be permitted to be included in the seniority list of Architectural Assistants. The applicants may be in the category of those who might have obtained diplomas but who remained indolent and did not take any steps to get themselves registered with the Council may be because they had not completed five years as Architectural Assistants when the Act came into force or even if they had taken the diploma later they did not get themselves registered with the Council which is a mandatory provision for carrying the title and designation of 'Architect'. If the use of the word 'Architect' is prohibited in respect of those who are not degree holders and who are diploma holders but not registered with the Council, the applicants naturally had to be divested of this designation of Architectural Assistant though their pay scales to the post of Technical Officer remained equivalent to those of the Assistant Architect. Their hardship is a result of their not being vigilant since even if they had the diplomas they did not get themselves registered with the Council while those who were vigilant got themselves registered and continued to enjoy the title and designation of Architectural Assistant and were included in that list sooner or later.

11. In short, the bifurcation and separation of cadres is an offshoot of an Act of Parliament which received the Presidential assent on 31.5.72 and was published in Gazette Extraordinary of government of India. The new Recruitment Rules had to be framed in line with the provision of Architect Act, 1972. The bifurcation and the framing of the new rules are not because of any executive fiat but is a mandatory requirement to fulfil the requirements of the provisions contained in the Act. It is found that the

department did take up the matter with the Council but the Council rejected the prayer of the applicant to have the designation and title of Architectural Assistant because they were not considered eligible in terms of the Act. The issue was raised only when they received the negative reply from the Council. It has been held clearly by the Hon'ble Supreme

Court in the case of J&K Vs T. Khosa 1974 (1) SCC 19 that:

"The Government can alter the terms and conditions of its employees unilaterally and though in modern times consensus in matters relating to public service is often attempted to be achieved, consent is not a pre condition of the validity of rules of service."

"The nature of the powers conferred by Article 309 on the legislative and executive is identical and accordingly the Government has been held to have the power to make rules under these provisions even with retrospective effect." This has

been held in the case of B. S. Wadera Vs UOI AIR 1969 SC 118. The Parliament made an Act in 1972 which received the assent of the President and the Act normally has its impact on the existing employees as well as the future employees where it is a status situation and not a purely contract situation. In such a situation the conditions of service cannot be altered unilaterally as has been held by the Hon'ble Supreme Court in the case of Roshan Lal Vs UOI 1968 (1) SCR 185.

12. The rights and perks of the applicants have neither been curtailed nor abridged. Only their designation has been changed in line with the provisions of the Act and the directions of the Council of Architects. There is no vested right in having a particular designation. The applicants' promotions as Technical Officers carries pay scale of Rs.2000-3500 and that of the Assistant Architect also carries the same pay scale. Thus, their pay scales on promotion remained one and the same. During the course of arguments, the only grievance was that the number of vacancies in their cadre has gone down. In the counter reply, the respondents (at page-4 of counter reply) have clearly stated that a Cadre

Review is in progress and the diploma holders are likely to be provided more posts in the category of Technical Officers to give them more avenues of promotion. In view of the Architect Act, 1972, the bifurcation of cadre was an imperative necessity on the part of the respondents and so was the framing of the new rules. The pay scales of the applicants on their promotion as Technical Officer has been kept on a par with those of the Assistant Architects. There has been no curtailment in their pay scale or their perks and privileges and what other way they are adversely affected is not understood. Since they are not registered with the Council, they cannot be permitted the use of the word "Architectural Assistant" since it is against the provisions of the Act and also advice tendered by the Council. The Architect Act, 1972 necessitated the changes. The applicants have not challenged the constitutionality of the Architect Act, 1972 and therefore they have no right to challenge the statutory rules framed to carry out the provisions of the Act. The Act itself prohibits the use of title and style of Architect being used by those who are neither degree holders nor registered with the Council. The applicants are neither degree holders nor are they registered with the Council and their pay scales on promotion have been kept at par with those of the Assistant Architects. The application is also hit by delay and laches as has been held by the Hon'ble Supreme Court in the case of State of Punjab Vs Gurdev Singh (1991(17) ATC 287) and Rattan Chandra Samantha Vs UOI (JT 1993(3) SC 418 and in AIR 1990 SC 10 S. S. Rathore Vs State of MP.

13. Thus, in the conspectus of all the facts and application circumstances of the case, we find no merit in the and the same is dismissed as devoid of any merit and substance and also on grounds of delay and laches, leaving the parties to bear their own costs.


(B. K. Singh)
Member(A)


(J.P. Sharma)
(Member(J))

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