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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

1) O.A.No. 451 of 1990

2) O.A.No. 539 of 1990

New Delhi this 22nd day of July, 1994.

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

Hon'ble Mr. S. R. Adige, Member (A)

Anil Kumar,

s/o Shri Man Singh,
r/o 7/1 Fruit Garden,
Sector V, Faridabad,
Haryana. Applicant.

By Advocate Shri Sarvesh Bisaria

Versus

1. Union of India,
through
Secretary,
Ministry of Water Resources,
Sharam Shakti Bhavan,
New Delhi.

2. Chairman,
Central Water Commission,
Sewa Bhavan,
R.K. Puram,
New Delhi.

3. Director,
Narmada Sagar Cell,
Block II-West R.K. Puram,
New Delhi Respondents.

By Advocate Shri K. L. Bhandula.

JUDGMENT

By Hon'ble Mr. S. R. Adige, Member (A).

In these two O.As, Shri Anil Kumar, adhoc Draftsman Gr. II C.W.C. has impugned the orders reverting him to the post of Draftsman Gr. III/Ferro-Printer w.e.f. 28.2.90. As both O.As cover the same grounds in respect of facts as well as law, they are being disposed of by a common judgment.

2. The applicant's case is that he was appointed as a Ferro-Printer on 1.7.77 in the Central Water Commission, where there are two cadres namely that of Ferroprinter and that of Tracer, both being in the same grade with the same qualifications. From the cadre of Ferroprinter/

Tracer, the next level is that of Junior Draftsman, by promotion 75% posts of which are filled/ from amongst the Ferro Printers/Tracers and 25% are filled by direct recruits. For the post of Junior Draftsman, the qualifications required to be fulfilled by the Ferro-Printer/Tracer are:-

- i) Diploma in Draftsman, or
- ii) Passing of departmental examination;
- iii) Six years' service .

3. The applicant contends that on the basis of above qualifications, a combined seniority list was being prepared and the promotions were to be made to the post of Junior Draftsman from both the categories. The applicant while working as Ferro Printer appeared in the departmental test conducted on 10th and 11th December, 1983 and was declared successful on 18.1.84 and was placed at Sl.No.106 and thus becoming eligible for the post of Junior Draftsman. On 16.6.86, 16 persons were promoted on adhoc basis as Junior Draftsman and in the same list, the applicant figured at Sl.No.2. Thereafter, 81 persons were again promoted as Draftsman Grade II on 29.9.87 in accordance with the new recruitment rules framed (Annexure -2) which had come into effect from 30.8.86. By these new Rules, the posts of Tracer were redesignated as Draftsman Grade III; Junior Draftsman were redesignated as Draftsman Grade II and Senior Draftsman were redesignated as Draftsman Grade I w.e.f. 26.9.86 and subsequently these posts were upgraded in scales w.e.f. 9.11.87. The applicant contends that the amended Recruitment Rules were challenged in O.A.No.2114/89 'Dinesh Chander Dabral & others Vs. Union of India & others',

in which by judgment dated 18.5.94, the O.A. has been allowed with certain directions. The applicant contends that he has been working continuously as Draftsman Grade II w.e.f. 16.6.86, but while those promoted along with him, have been regularised vide order dated 15.2.90, he has been subjected to hostile discrimination and arbitrarily reverted.

4. The respondents have challenged the contents of the O.A. in their reply and have stated that the applicant held the post of Draftsman Grade II only on adhoc basis pending filling of the post on regular basis by direct recruitment. The Recruitment Rules for the cadre of D'man were under revision and the new rules came into effect from 6.8.86, which the applicant never challenged within the limitation period and as such the application is time barred. Furthermore it has been contended that even in the present O.A., the applicant has not challenged the provisions of the amended R.R. and has, therefore, no legal right against the order of reversion. Apart from these preliminary objections, it has been pointed out that prior to the amendment to the R.Rules on 6.8.86 persons working in the grade of Ferro Printer and Tracer in CWC were eligible for promotion to the grade of Junior Draftsman against promotion quota vacancies from the single eligibility list containing the names of Ferro Printers and Tracers. The R.Rules were amended on 6.8.86 (Annexure 1) by which the Junior Draftsman (now Draftsman Grade II)'s post is required to be filled 100% by promotion from persons working in the feeder grade of Draftsman Grade III having Diploma/ Certificate in Draftsmanship with not less than 3 years

regular service in the Draftsman grade. Draftsman not possessing Diploma/ Certificate in draftsmanship shall be eligible for appearing in departmental examination after rendering three years' service in the grade. Those who pass the examination will be eligible for promotion on completion of their six years' service in the grade. It has been pointed out that nomenclature of the posts of Tracer, Junior Draftsman and Senior Draftsman have been changed as stated in paragraph 3 above and these posts have also been upgraded and placed in revised pay scales, so that Ferro Printer are no longer in feeder grade for promotion as Draftsman Grade II and are eligible for promotion only to the grade of Draftsman Grade III. The applicant who has been working as Draftsman Grade II (Junior Draftsman) w.e.f. 3.7.86 was not eligible for regularisation in that grade as per the amended Recruitment Rules. Prior to amendment, Ferro-Printers were at par with Tracer i.e. both were eligible for promotion as Junior Draftsman (now Draftsman Grade II) subject to certain conditions of passing departmental examination as stated in earlier Recruitment Rules. The names of persons eligible in the grade of Draftsman Grade III were included in the eligibility list, placed before the Departmental Promotion Committee which drew a panel for promotion to the grade of Draftsman Grade II on regular basis in its meeting held on 28.12.89. The applicant was not holding the feeder post of Draftsman Grade III and was, therefore, not included in the eligibility list, and was subsequently reverted to the grade of Ferro-Printer vide Office Order dated 27.2.90 which was later corrected vide Office order dated 15.3.90.

5. We have heard Shri S. Bisaria, learned counsel for the applicant and Shri K. L. Bhandula, learned counsel for the respondents.

6. Shri Bhandula has emphasised that the order dated 16.6.86 promoting the applicant to the grade of Junior D'man, clearly states that the promotion is being made on adhoc basis against a direct recruitment quota for a period of three months, or till the post is filled on regular basis by direct recruitment whichever is earlier and the promotion will not confer upon the promotee any right to claim any seniority or regular promotion in the Junior D'man grade. That being the position, he has argued that although the applicant was promoted after he had cleared the departmental test, it gives him no enforceable right to continue against a post in the direct recruitment quota, which is earmarked exclusively for candidates appointed through direct recruitment and was filled up only because of administrative exigencies temporarily through promotion, till such time as the direct recruitment candidates became available.

7. Notwithstanding the fact that the applicant was promoted purely on adhoc basis against a post in the direct recruitment quota, the fact remains that he was promoted as Junior D'man (Corresponding to Draftsman Gr. II) along with many others after successfully clearing a departmental test and his name figured at Serial No. 2 in the list of promotees dated 16.6.86. The amendment to the Recruitment Rules making Ferroprinters ineligible for promotion as Draftsman Gr. II, and making them eligible only for D'man Gr. III has subjected only the applicant to reversion because none of the other persons named in the promotees list dated 16.6.86 have been reverted. Upon

our query why this was so, we were informed at the Bar that none of the others in the promotees list of 16.6.86 were Ferro Printers and all of them were Tracers (corresponding to D'man Gr.III) and were, therefore, eligible for consideration for promotion as D'man Gr.II.

8. In view of the Tribunal's judgment dated 7.6.94 in O.A.No.2114/89 'Dinesh Chandra Dabral Vs. UOI, declaring that Ferro Printers are to be treated as D'man Gr.III from 30.8.86 along with Tracers, we hold that the action of the respondents in singling out the applicant for reversion from the post of D'man Gr.II by the impugned orders is arbitrary and amounts to hostile discrimination against him and cannot be sustained in law.

9. In the result, these two applications succeed and are allowed. The impugned orders are quashed and set aside, and the respondents are directed to constitute a DPC within three months from the date of receipt of a copy of this order to consider the applicant's case for regularisation as D'man Gr.II. Till the respondents take a decision on the DPC's recommendations, the interim orders passed earlier directing maintenance of the status quo will continue. If any grievance survives after the respondents take a decision in the matter, and after exhausting the available departmental remedies, it will be open to the applicant to agitate the matter in accordance with law. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)