

Central Administrative Tribunal, Principal Bench

O.A. No. 126/2004

New Delhi this the 7th day of January, 2005

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Malhotra, Member (A)

1. Central Electrical & Mechanical
Engineering Service
Group 'A' (Direct Recruits)
Association (CPWD), thro': Gen. Secretary (Shri S.P. Bansal)
Room No.403, 4th Floor, I.P. Bhawan,
CPWD,
New Delhi-110 002.

2. Vimal Kumar
Executive Engineer (Electrical)
CPWD, B1A/22A, Janak Puri,
Delhi-110 058.

...Applicants

By Advocate: Shri G.K. Aggarwal.

Versus

1. Union of India through Secretary
Ministry of Urban Development and
Poverty Alleviation,
Nirman Bhawan,
New Delhi-110 011.
2. The Secretary (Expenditure)
Ministry of Finance,
Government of India,
North Block,
New Delhi-110 001.
3. The Secretary,
Department of Personnel and Training,
Government of India,
North Block,
New Delhi-110 001.

M.A. Khan

4. The Director General (Works)
CPWD,
Nirman Bhawan,
New Delhi-110 011.

5. General Secretary,
Central Engg. Service Group 'A' (DR),
Association,
CPWD,
Nirman Bhawan,
New Delhi-110 011.

....Respondents

By Advocate: Shri D.S. Mahendru, Counsel for respondent Nos. 1 to 4.

Dr.M.P. Raju, Counsel for respondent No.5.

ORDER (ORAL)

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

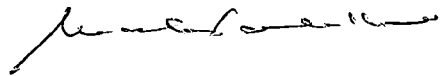
The applicants, Central Electrical & Mechanical Engineering Services Group 'A' (Direct Recruits) Association (CPWD) and Vimal Kumar, Executive Engineer (Electrical), CPWD have filed the present OA for grant of the following relief:

- (i) Order respondent No.1 to place on record the SIU Reports-1193 for Electrical and Civil cadres in CPWD.
- (ii) Quash and set aside A-1 dated 10.12.2003.
- (iii) Declare and order respondents 1 to 4 to revise cadres strength of Electrical as well as Civil cadres in CPWD, effective latest 24.8.2001, with all, including monetary, consequential effects in higher grades also, with interest.
- (iv) Any additional/alternative relief, costs.

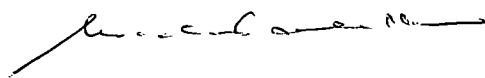
2. The applicants are challenging the respondent No.1's Office Memorandum No.2/5/2003-WII (DGW)/EW-1 dated 10.12.2003 (Annexure A-1 to the OA) and seek implementation of the Staff Inspection Unit (SIU) final Reports-1993 in respect of

Central Electrical & Mechanical Engineering Service Group 'A' and Civil Service Group 'A' of Central Public Works Department, Group 'A' in terms of the Department of Expenditure letter dated 20.11.1980 and 11.1.1988 (Annexures A-2 and A-3) read with DG (W) letter dated 24.8.2001 (Annexure A-6) which prescribed work-load norms in terms of SIU Report 1993 and CPWD total workload for 1996-2002 shown in Annexure A-8. They also seek quashing of the Office Memorandum dated 10.12.2003 and for a direction to respondent Nos. 1 to 4 to revise cadre strength of Electrical as well as Civil Cadres in CPWD effective latest by 24.8.2001 with all, including monetary, benefits and higher grade also with interest.

3. Briefly the allegations are that Central Electrical and Mechanical Engineers' Service Group 'A' comprised of Assistant Executive Engineers, Executive Engineers, Superintending Engineers and Chief Engineers. In every Central Government Department including the CPWD, an exercise is carried out from time to time, known as Staff Inspection Unit (SIU) to inspect its workload, organization, cadres-strength on the basis of work-load norms and total work-load. SIU reports are mandatory as per Department of Expenditure letters dated 20.11.1980 and 11.1.1998, Annexures A-2 and A-3 and they are to be implemented within 3 months unless specifically objected to within one month and referred to the High Power Committee. The CPWD has two main streams: Civil and Electrical, running separately from lowest level Assistant Executive Engineer to Chief Engineer in Group 'A'. Chief Engineers are promoted to the post of Additional Director General (ADG) from the combined eligibility list of Chief Engineers in both the streams. The promotion to the top post of Director General (Works) is from ADG's. SIU submitted its final report on the Electrical Stream on 28.1.1993 and Civil

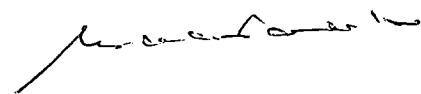


Stream on 24.6.1993. Both the reports were accepted. Pursuant thereto, workload norms were last issued by the DG (W) vide Annexure A-6 on 24.8.2001 but the strength of the Electrical Cadre which was short of SIU norms and the civil cadres which was in excess of the SIU norms were not rationalized. As a result, the office of Electrical Cadres were taken long for promotion to the post of Chief Engineer and upward to the higher post. Applicant No.1 submitted representation on 5.9.2001 for implementing SIU, norms but to no effect. Applicants had filed OA 919/2003 which was disposed off on 8.4.2003, which is at Annexure A-13. The respondent No.1 was directed to pass a speaking order which it had passed on 10.12.2003, Annexure A-1. The respondent No.1 had rejected the applicants' claim by order dated 10.12.2003, impugned in this OA, which is highly discriminatory. The Department of Expenditure vide letter dated 20.11.1980 (Annexure A-2) had required the surplus cadres-strength in civil stream to be transposed to make up deficiency in the Electrical Cadres and abolish the remaining surplus, if any. But this has not been done. The cadre strength in Civil is surplus while that in the Electrical is short of SIU norms. The holders of Surplus staff in the Civil Cadres ought to be treated as ad hoc while those in the Electrical cadres getting promoted in the surplus posts transposed from Civil Cadres be treated as regular promotees. Because of the excess strength at all levels in the Civil Cadres and deficiency in Electrical Cadres, as per the workload norms in terms of SIU Reports-1993, Electrical Cadres are lagging far behind. At the common level of common-cadres of Additional Director General and Director General, Electrical Cadres have no opening for years to come because of the earlier promotion of Civil Cadres in excess number of posts/vacancies in the feeder cadre of Chief Engineer (Civil) whereas fewer than required (in terms of SIU-Reports 1993) posts/vacancies in the cadre



of Chief Engineers (Electrical) made Chief Engineers (Civil) senior to Chief Engineers (Electrical) for Additional Directors General/Director General (W) post. Hence the OA.

4. Respondent Nos.1 to 4 in their reply have repudiated the claim of the applicants. It was stated that CPWD under the Ministry of Urban Development and Poverty Alleviation was created by the Government to create and maintain physical infrastructure for itself and its various departments and Ministries who did not have a regular Engineering organization. The department is responsible for constructing and maintaining buildings, roads and other allied services. It is primarily a civil oriented department with support being provided by the Electrical staff. There are three Group 'A' organized services in CPWD which have been created to man a senior duty post in the department. They are Central Engineering Services for Civil Stream (CES), Central Electrical and Mechanical Engineering for Electrical Stream (CE&MES) and Central Architectural Service for the Architectural Stream (CAS). These three services are entirely distinct in terms of requirement of education, recruitment pattern/profile, service rules, work pattern etc. There are no inter-service relationship between the three services which also include inter-service seniority. Only the post of ADG (W) has been made common to the Civil and Electrical Streams and the post of DG(W) is made common to all the services. The post of ADG (W) and DG (W) do not belong to either CES and CE&MES but are clarified as General Engineering Service and have separate Recruitment Rules. There is no provision in any rule/administrative instruction for transfer of posts from one service to another. Each service is seen in its own entity and is governed by separate rules. The service rules of all the three services/streams stipulate that the posts are dependent on the workload. This provision is inserted to cover administrative exigencies such as creation



of project posts etc. for which no separate Recruitment Rules are framed. This provision does not provide for transfer of posts from one service to another. So the contention of the applicant for transfer of allegedly surplus posts from Civil side to the Electrical side is misconceived. If the applicants feel that they are overworked, than the remedy would be to bring this fact to the notice of the higher ups in department and the cadre controlling authority so that steps are taken to grant them relief by redistributing by deferring some work or outsourcing some work or taking any other step to resolve the situation. This is not a matter to be taken by the association before the courts.

5. SIU carried the last study of CPWD in early 1990's and gave its report in 1993. Separate teams of the SIU studied Civil and Electrical Divisions of CPWD. The CSQ Unit of CPWD issued the workload norms for Civil and Electrical Divisions. The CSQ Unit had given comparable norms of the two disciplines (Annexure R-2) based on the individual workload and individual comparable norms for different disciplines, the number of divisions required and the existing, were indicated in Annexure R-3. It would be seen that the number of civil divisions required was 345 on the Civil Side and 175 on the Electrical side. The Civil and Electrical discipline existing now was 200 Civil and 105 Electrical. The Civil side is asking 58% of the its regular strength and Electrical 61% of the required strength.

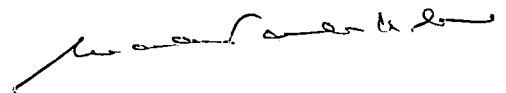
6. The work-load norms prescribed by SIU are the minimum that a division must achieve in order to justify its continuance. It did not bar the divisions from achieving a higher work load. The SIU report also did not recommend that the number of divisions should increase as the workload increases. The aim of the Government had to increase productivity of the staff and to achieve a higher turnover with the same number of

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working hands. Seldom has a government study indicated that there is necessity to increase the staff. SIU report had, in fact, lost its relevance because more than 10 years have passed. Since the report was submitted, substantial changes have taken place in the type of work being handled, the methodology of executing the work etc. Innovation in technologies and improved office automation and works management techniques have resulted in the increase in productivity of staff. While on the civil side the trend of work being executed has changed from the low height buildings to multi-storeyed buildings. On the electrical side, it has changed from low value high labour oriented items to high financial value packaged or ready to install items. The post in any service, particularly at the level of Chief Engineer are not dependent on the financial work load only. There are other functional and organizational factors which merit creation of post in a cadre at different levels. In compliance with the order dated 9.9.2003 passed in OA 919/2003, the respondents – Government in its order had clearly stated as follows:-

- (i) The strength of the cadre is not dependent merely on the work load but also on others functional and organizational aspects.
- (ii) The SIU study was conducted to suggest measures to rationalize staff requirement vis-à-vis the work being performed in a Government office/department. Since 1993 there had been important changes in the nature of work in view of technological innovation and office automation leading to rise in productivity.
- (iii) Cadre re-structuring proposal of Group 'A' services of the CPWD including the CE&MES Group 'A' are under consideration of the ministry.

7. While finalising the above proposals various relevant factors such as SIU norms, changes in the nature of work, need to balance promotional prospects of different cadres,



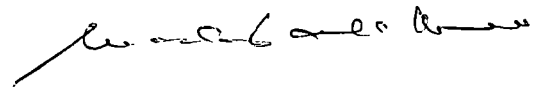
functional and organizational requirements of the CPWD as a whole are to be kept in mind. Moreover, SIU study was confined to Civil and Electrical Divisions only. It did not study of working of department as a whole and the recommendations cannot be extended to the whole department. SIU carries out periodically study to rationalise the staff structure in a department to tune it to the work being executed by the department and trim excess staff wherever it is possible to do so. It is clear from OM dated 20.11.1980 issued by the Ministry of Finance whereby instructions about the SIU study and how to implement them have been issued. The whole thrust of the OM is to ensure that administrative Ministry/Department comply with the SIU recommendation wherein reduction in staff strength was recommended. Only as a passing reference does the OM mentions that in case an increase in staff is warranted in the first instance, reduction of staff where pointed out should be ensured before making proposal for increase in the staff. The SIU does not propose that the surplus of one area should be adjusted in another distinct area especially where the areas are quite distinct. SIU's recommendations are mandatory but there was no recommendation which stated that the number of units/posts should be increased. The SIU had studied two disciplines and submitted independent report, therefore, the norms of workload used by the applicants is for arriving at a number of divisions in the two streams of Civil and Electrical cannot be compared as they are on different footings. The financial yardstick are used to calculate the requirement of divisions or to justify the continuance of the existing division. SIU report does not prescribe any yardstick for any other posts which are required for administrative and functional reasons.

M. S. Chatterjee

8. As regards the promotional avenues at the higher post of the Electrical Engineering Service it was stated that the two disciplines were moving along with one another at just a difference of 1 -2 years. It was denied that Electrical cadres are overburdened or over worked in CPWD while the Civil Cadres are over staffed. The Civil Cadres carried out many extra functions besides the normal function which do not contribute to the financial workload of the department. These include issue of fair rent certificates collection and compilation of market rates for issue of cost index, site surveys, submitting of drawings to local bodies and persuing to obtain clearance etc. Out of total construction work load of the department, more than 80% pertains to Civil side and this requires exercise of higher level of technical expertise and financial powers which necessitate more posts at senior level while on the Electrical side, the maximum input comes from EO's and SE's. The applicant had filed their representation only in 2001 for implementation of SIU report which was submitted in 1993, therefore, it was highly belated.

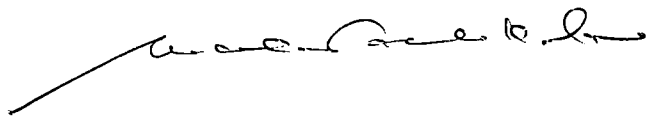
9. The respondents further submitted that the next SIU study has already become over due which would have brought out the fact whether the number of units available in the CPWD were justified or not after taking into account the technological development and other changes that has taken place since the last study. Even the Ministry of Finance has indicated the same and has proposed to initiate a study soon.

10. The respondent No.5,(the Central Engineering Service Group-A (Direct Recruit) Association) which is an association of the Civil Engineers of the CPWD, in its separate reply has raised a preliminary objection that the applicants have no locus standi and no cause of action to file the OA. The OA is also barred by the principles of res judicata in



22

view of the order of this Tribunal dated 8.4.2003 in OA 919/2003. The Tribunal also does not have jurisdiction to decide about the matters relating to creation of posts, increase or decrease in the number of posts, or implementation of the SIU Report. On merit, it is submitted that vide Ministry of Finance, Department of Expenditure in its OM dated 20.11.1980, SIU study is undertaken primarily to identify surplus staff strength and give effect to reduction in sanctioned strength of various cadre posts and where SIU report envisages both creation of posts as well as reduction in posts (obviously within a cadre) simultaneous action is to be taken to reduce the posts while creating new posts. The SIU had only studied working of sample Civil and Electrical Divisions headed by Executive Engineers in CPWD and had given its recommendation on (a) workload to be handled by a division; (b) ministerial staff required for a division and; (c) work-charged staff strength yardsticks both on Civil as well as Electrical side. SIU did not study of the planning and designing units and other units at Circle, Zonal or Directorate level and no recommendation hence has been made about the same. The study is incomplete. The SIU has also not given recommendation regarding hierarchical structure or regarding overall strength of the department, zones or circles. The SIU has given only the required workload for a field unit, i.e., Division, therefore, only number of divisions required can be worked out based on total workload handled in a year. There is no method prescribed for working out the number of other posts of EEs in planning/design or SEs and CEs. The post of SE and CE level and above are based on functional requirement and not on any SIU or any other workload norm and, therefore, cannot be calculated in the manner purported to be done by the applicants. Otherwise also the calculation made by the applicants for the number of divisions is not correct.

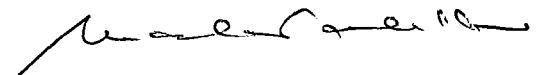


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11. It was refuted that the civil cadres were in excess of SIU norms. Comparison between the promotion prospects of the two distinct and different services is uncalled for. In the year 2000 to 2003 Electrical cadres were much better placed than their civil counter-parts as 2 DGW and 4 ADGs were from Electrical side. Earlier many Electrical Engineers were made CE much earlier to their Civil counter-parts of same batch of UPSC examination as shown in Annexure VIII to the reply. It is only now that Electrical Cadres are slightly behind than the civil side as far as promotion are concerned, but it is temporary phase. It is also submitted that the applicants keep on harping upon SIU norms which are not relevant for working out total cadre strength. It was also denied that any of the Civil posts are liable to be abolished. It is denied that there are surplus Civil Engineering posts, as alleged by the applicants. There is no recommendation to increase the number of posts of Electrical Cadre at all. Moreover, Annexure A-2 and A-3 speaks only of reduction and abolition of posts and not of increase or creation of posts. The alleged mandatory nature is only with regard to reduction in strength. Other allegations made in the OA were also specifically denied.

12. We have heard the learned counsel for the parties and we have also gone through the records of the case.

13. The thrust of the applicants in the OA is on the increasing the cadre strength at all levels of the Electrical Engineering Service Group 'A', as a consequence of the implementation of the SIU report and a corresponding decrease in the cadre strength of Group 'A' post of Civil Engineering Service. This Tribunal while disposing of the OA 919/2003 vide order dated 8.4.2003 (Annexure A-13) has aptly made the following observations:-



“ We are conscious of the fact that it is, by and large, an administrative decision to be taken in this regard and we feel it appropriate to direct the respondents to consider and pass an appropriate order within a reasonable period.”

14. The Hon'ble Supreme Court in P.U. Joshi Vs. Accountant General (2003) 2 SCC 632 has held that creation and abolition of posts pertain to the field of policy and within the exclusive discretion of the State subject to the limitation and restriction imposed by the Constitution of India. It is not for this Tribunal to direct increase or decrease in the sanctioned strength of a service more so only because it is putting a service at disadvantage in the matter of promotion to higher echelon of the department as compared to another service. Judicial interference by the court in the policy matter of the State is forbidden. It is the prerogative of the Government to consider the SIU report and keeping in view all the financial organizational and other factors in view, to increase or decrease the cadre strength of a service. Periodical SIU reports are used to maximise the productivity rates, expenditure and rationalise the strength of the staff manning the department. Whether the cadre strength of the Electrical Engineering Service needed upward revision based on the workload norms as per SIU report is only one of the aspect which the appropriate competent authority has to decide and to bear in mind while implementing the work study reports (SIU). In the present case the Government has given cogent reasons for not accepting the representation of the applicants by the order dated 10.12.2003, Annexure A-I which is impugned in the OA.

15. It is also to be borne in mind that SIU report which the applicants are so forcefully seeking to be implemented to their advantage was submitted about 12 years back in 1993. Since then much water has flown the Ganges. Technological development and

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25

other changes have taken place. It is for this reason that the official respondents in their reply have categorically stated that a fresh SIU study has become overdue.


16. The arguments advanced on behalf of the applicants that the SIU reports are mandatory, to our considered view, does not make their plea in the OA tenable. As observed above, increase or decrease in a cadre strength of service is also a matter in which judicial interference is not warranted.

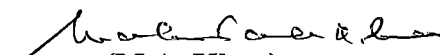
17. Moreover, Central Engineering Service for Civil Stream and Central Electrical and Mechanical Service for Electrical Stream in CPWD are entirely distinct in terms of requirement, recruitment, pattern/profile, service rules, work pattern etc., as alleged by the official respondents. There is no inter service relationship between these two. If SIU reports recommended upward and downward revision of the staff strength in these two distinct service it would not give cause of action to the officers of one service to file this OA to increase or decrease the cadre strength of the other service. The applicants' belief that they would automatically gain from a reduction in the staff strength in Civil Engineering Service is absolutely unfounded.


18. In fact, it has been contended by the official respondents and the respondent No.5 that both these services, Civil and Electrical, are governed by separate and distinct recruitment rules and their strength depended upon diverse factors as enumerated in their reply. It is also pertinent that SIU study is mandatory not on the basis of any statutory enactment but to streamline the working of the department, rationalise its staff strength, reduce expenditure and increase the productivity. It has been argued on behalf of the respondents that the SIU report of 1993 has not recommended increase of the cadre strength of the Electrical Department or decrease in the cadre strength of the Civil

strength. But we need not dwell into the questions which have been raised about increase in the cadre of the Engineering Service Group 'A' and the corresponding reduction of post in Civil Engineering Service Group 'A' any further. In our view the question raised in this OA are not justiciable and judicial interference in the matter is not possible.

19. The result of the above discussion is that the OA is dismissed, but without any order as to costs.


(S.K. Malhotra)
Member (A)


(M.A. Khan)
Vice Chairman (J)


Rakesh