

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

M.P.No.346/2001, 544/2001  
& C.P.No.50/2001 in OA No.20/96.

4/7/2001

TRIBUNAL'S ORDER:

MP-346/2001

Heard the Applicant Shri P.S.Kasar in person, Shri R.K.Shetty, Counsel for Respondents.

By this application, the applicant has prayed for amendment in para-8 of OA which deals with relief sought. Shri R.K.Shetty appearing on behalf of respondents opposes the MP.

2. We are satisfied that the amendment be allowed in the interest of justice. Allowed. Let amendment be done within a week. Although the amendment is being made in prayer clause, Shri R.K.Shetty appearing for respondents presses for time and is granted two weeks time to file reply to amendment.

MP-544/2001

The pleadings are not complete, hence the MP-544/2001 for early hearing is rejected.

CP-50/2001

This Contempt Petition has been moved for non compliance of the order of this Tribunal dated 4/7/2000. The Counsel for respondents states that the papers were offered <sup>but</sup> <sub>not accept</sub> to the petitioner <sup>but</sup> <sub>not accept</sub> them. It is not necessary for us to go into that question as the Counsel for respondents has offered the papers before us and petitioner has accepted the same. The petitioner has no grievance <sup>in that respect</sup> now. We are also satisfied that it is not a matter in which further proceedings <sup>for contempt are</sup> <sub>is</sub> required. The Contempt notice is discharged and the contempt petition is dismissed.

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MEMBER(A)

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VICE CHAIRMAN

Central Administrative Tribunal, Mumbai Bench

O.A. No. 20 of 1996

Mumbai this the 13th day of September, 2001

Hon'ble Mr.B.N. Bahadur, Member (A)  
Hon'ble Mr. Kuldip Singh, Member (J)

Shri Prakash Skdeo Kasar  
Draughtsman Grade-III, Sector ID,  
Controller of Quality Assurance  
(Special Vehicles)  
Dehuroad (Maharashtra)  
Pune-412113.

...Applicant

By Advocate: Applicant in person.

Versus

Union of India

1. Controller,  
Controlllate of quality Assurance,  
Special Vehicles,  
Government of India  
(Ministry of Defence),  
Dehuroad (Maharashtra)  
Pune412113.
2. Director General of Quality Assurance,  
DGQA,  
Department of Defence Production,  
Government of India (Ministry of Defence),  
DHQ, PO, New Delhi-110 011.
3. Director,  
Directorate of Quality Assurance Vehicles,  
'G' Block,  
Department of Defence Production,  
Government of India,  
Ministry of Defence,  
DHQ, PO New Delhi-110 011.
4. Chairman of DPC III  
Controller of Quality Assurance Vehicles,  
Government of India (Ministry of Defence),  
Aurgangabad Road,  
PO: Ahmednagar  
(Maharashtra) 414001. .... Respondents

By Advocate: Shri R.K. Shetty.

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ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has come up with this OA before this Tribunal seeking the relief that he ought to be given promotion/appointment as Draughtsman Grade-I w.e.f. 10.10.1985 including seniority and financial benefits. He has also prayed that he should be granted placement in the grade of Draughtsman Grade-II w.e.f. 16.5.1983. Further he prays that he be paid arrears of 5th Pay Commission and CPWD award together with interest at 12% per annum. He has also prayed for grant of special casual leave or temporary duties on dates when he comes to the Tribunal to attend the case in connection with his application.

2. The facts, as alleged by the applicant are, that he was initially appointed to the post of Tracer on 24.9.1976 under the Controller in the office of Controllerate of Quality Assurances Special Vehicles, Government of India, Ministry of Defence, Dehuroad, Pune. Subsequent to that he was appointed as Draughtsman Grade-III by direct recruitment in another office, i.e., the Department of R&D, Ministry of Defence w.e.f. 18.9.1981 and since he had gone through proper channel and wanted to go for further studies, so for the purpose of studies he got reverted back to his earlier office i.e Controllerate of Quality Assurance Special Vehicles as Tracer on 5.6.1982.

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3. He further alleges that from 3.11.1982 upto 15.5.1983 he had been officiating as Draughtsman Grade-III and then on 16.5.1983 he was regularly promoted as Draughtsman Grade-III in the grade of Rs.1200-2040.

4. The applicant further alleges that at the time of his employment in Government service he was possessing 2 years Diploma with ITI qualification and thereafter with the permission of the authorities, the applicant went for higher studies and studied in Government Ploytechnic as part time Civil Egineering Diploma Course which he passed sometime in August, 1985. The applicant alleges that he had gone for studying Diploma Course in Civil Eingeering with a view to make progress in his career.

5. From the stage, after acquiring higher qualification of Diploma Course in Civil Engineering, the applicant started correspondence with the departmental authorities for giving him promotion based on reports or upgradation and acquiring of higher qualification.

6. He further states that lot of vacancies were available for higher posts of Draughtsman Grade-II within the Directorate where the applicant was working and 40 vacancies were also available at Medak but whenever the applicant requested the Controller to consider his case for Direct Recruitment the

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applicant was informed to wait for sometime for publication of advertisement in the News Paper and thereafter it is stated that the Controller verbally refused to consider his case for direct recruitment and thus the Controller purposely allowed a time of 9 to 10 years to pass in the process of awaiting advertisement. Thus the applicant alleges that non-conducting of examination for promotion of Draughtsman Grade-II is a mistake of departmental authorities. Had this recruitment test/examination been conducted, then the applicant might have got the promotion but the officers because of jealousy towards the applicant have not conducted the test for the applicant. Though for the post of Chargeman Grade-II examination was held from the open market and the applicant had also applied but he did not receive the call. Similarly his application for the post of Draughtsman Grade-II and Chargeman Grade-II had not been forwarded and thus he had been deprived by the office authorities from appearing in the test which is not explained by the authorities, rather the silence on the part of the Controller proves that the Controller is at default.

7. The applicant further alleges that the Matriculates and ITI qualified Draughtsman had been promoted on ad hoc basis but the applicant who is a more qualified candidate has not been given a chance of promotion for the higher post and thus various office

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orders in this regard have been violated by the respondents.

8. The applicant further alleges that an advertisement had appeared in the Indian Express on 17.12.1986 for the post of Draughtsaman 'B' and Scientific Assistant Grade 'B' but the application submitted by the applicant was returned by the Administrative Officer stating that the applicant had become overage). Thereafter the applicant is alleged to have submitted an application for relaxation of the age but the same had been withheld and had not been forwarded. Against this it is stated by the applicant to have made some representation but no reply was received. It is also stated that the applicant has been making various representations but the same has neither been replied or stated to have been lost. It is also alleged that the Controller had accepted the fact that the applicant is qualified and eligible for promotion and they are willing to give him promotion, but later on they denied.

9. It is further stated that normally the meeting of the DPC is held on 22nd March but his application dated 1.3.93 which should have reached before 22.3.93 was forwarded only after 22.3.93 which means that his case for promotion has been purposely neglected by the authorities.

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10. The applicant further states that the Controller had brought two type of obstacles in his promotion, namely (i) advertisement and (ii) seniority. It is stated~~s~~ that the question with regard to advertisement, as raised by Controller is useless because before filling up promotion from the departmental candidates the most available hands of departmental candidates should be utilised first.

11. As regards seniority is concerned, it is submitted that Matriculates/ITI employees cannot be compared with Engineering Degree/Diploma Holder employees as different rules are applicable for promotion of Engineering Degree/Diploma Holder candidates. Thus the pretext of seniority, as put up in the way of applicant, is also stated to be meaningless.

12. It is also stated that the applicant has also been issued censure and the Controller is also planning to have disciplinary action against the applicant in an arbitrary manner.

13. It is further stated that whenever the applicant had made representation or written letters, he was issued warning and censures.

14. It is also submitted that it is provided out of turn



promotion in the column of the ACR form and the applicant's claim for promotion could not be passed as his request has been declined by the Chairman of the DPC. Similarly his request for reviewing the DPC has also been denied.

15. The applicant also claims that qualification acquired by him through part time Diploma course is also recognised by the Department and on the basis of which he is eligible for promotion and should have been granted promotion.

16. The applicant further alleges that as per SRO 271 dated 4.10.1985 the mode of recruitment as shown in Column No.10 and Column No.11 in the Schedule to Recruitment Rules show that the vacancies can be filled up 80% by promotion, failing which by direct recruitment and then 20% by direct recruitment, failing which by promotion. Thus he says that he should have been considered against 20% of direct recruitment quota and he prays that his OA should be allowed.

17. The respondents are contesting this OA. They have filed a written reply. The respondents submit that the Recruitment Rules for promotion of an employee from Draughtsman Grade-III to Draughtsman Grade-II is by way of seniority-cum-fitness and only a person who has a seniority and is declared fit can be promoted.

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It is further submitted that until 1993 the applicant was not senior enough to be considered for promotion on the basis of seniority-cum-fitness. In 1994 when the DPC considered the case of the applicant it was found that although the applicant had the seniority but he was unfit on account of entries in his ACR and hence he was superseded by his juniors.

18. Thereafter the respondents had passed an order informing the applicant that he was promoted from 17.7.95 as Draughtsman as Grade-III but he was to be posted at Medak in Andhra Pradesh but the applicant refused promotion and hence till date the applicant continues in the post of Draughtsman Grade-III.

19. As regards the acquiring of a qualification of Diploma in Civil Engineering the respondents submit that the applicant could have been directly considered for the higher post and for this purpose the applicant was free to apply for direct recruitment through proper channel for a higher post for which he was qualified. The applicant, in fact, applied for direct recruitment with the BARC but the case of the applicant could not be forwarded to BARC on the ground as the maximum age requirement for the post was 25 years whereas the applicant had already crossed the age of 25 years. As regards promotion is concerned

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it is submitted, since the applicant did not fulfil the requisite conditions till 1993 so the applicant could not be considered for promotion. However, when the applicant was senior and was in the consideration zone in the year 1994 his case was considered but he could not be promoted because he was found unfit by the DPC on the basis of assessment of his ACRs.

20. It is further submitted that after the applicant had passed the Diploma course in Civil Engineering there was a complete ban on direct recruitment since 1984, as such his case was never considered for direct recruitment as there was no occasion, since no direct recruitment was ever held.

21. Besides that it is submitted that the applicant had acquired a Diploma in Civil Engineering whereas the main field in which the promotion could be possible was either Mechanical or Electrical and since the respondents have got everything to do with the vehicles and no work of civil nature was available with the respondents, so otherwise also he could not have been considered.

22. The respondents further submit that the prayer made in clause 8(1) of the OA is quite vague and the applicant has not disclosed on what basis he could be granted such relief, so on

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that score also the OA is liable to be dismissed.

23. Rejoinder was also filed wherein also similar pleas controverting the pleas taken by the applicant was filed. The applicant has also filed an application for amending the OA. Amended pleadings has also been taken on record but the pleas taken are of similar nature except there was some modification in the relief clause.

24. We have heard the applicant, who argued his case in person and Shri R.K. Shetty, learned counsel for the respondents.

25. From the rival contentions raised in the pleadings as well as during arguments by the respective parties, we find that the applicant is mainly concentrating upon denial of promotion under 20% quota which is meant for direct recruitment. The pleadings of the applicant as well as of the respondents show that for the post of Draughtsman Grade-II the Recruitment Rules provide as under:-

(i) 80% by promotion, failing which by direct recruitment; and

(ii) 20% by direct recruitment, failing which by promotion.

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As far as promotion under the first category of quota of 80% meant for promotion is concerned, the applicant has not been able to make any case that any junior to him in the grade of Draughtsman Grade-III has been promoted as Draughtsman Grade-II particularly so when the applicant is claiming promotion into the grade of Draughtsman Grade-II from the year 1985 after he had acquired Diploma in Civil Engineering.

26. So the short question is whether the applicant could have been granted promotion against 20% quota meant for direct recruits.

27. The grievance of the applicant is that whenever he had applied for direct recruitment, his application has not been forwarded and he had been asked to wait for advertisement to be released by the department for direct recruitment and only then his application can be sent to the concerned quarters for his appearance in the examination meant for direct recruits. The applicant in his OA has even levelled allegation against the Controller that the Controller had not been sending his application mala fide to the concerned office so much so that once he had applied in response to an advertisement published in the Indian Express dated 17.12.1986 for the post of Draughtsman 'B', but the application was returned by the Administrative

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Officer that the applicant had become overaged. So on this ground also the applicant has alleged mala fide on the part of the Controller.

28. Contrary to this, the case of the department is that as far the holding of examination by the department for direct recruitment is concerned, there was a complete ban imposed by the Government of India for appointing any person on direct recruitment basis and on that account no exam for direct recruitment for the post of Draughtsman Grade-II had ever been held so the question of forwarding of the application of the applicant for direct recruitment does not arise.

29. As far the non-forwarding of the applicant's application in response to an advertisement in the Indian Express on 17.12.1986 is concerned, that related to some other office where the maximum age was prescribed and when the applicant had submitted his application, he had become overage as per advertisement itself so his application could not be sent.

30. To our view also since this advertisement which had appeared in the Indian Express on 17.12.1986 related to some other department and since the applicant had become overage, so the department was not under any obligation to send his application to the said department.

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31. As far as the question of holding of exam. by the department for 20% direct recruitment quota is concerned, it has been adequately explained by the department that since there was a ban imposed by the Government of India upon the respondents for filling up any post of Draughtsman Grade-II by way of direct recruitment, so department could not hold any examination for direct recruits. The respondents have stated on affidavit that no exam. has at all been held meant for direct recruitment to the post of Draughtsman Grade-II. We have no reasons to disbelieve this statement of respondents.

32. Only one exam. was held when 40 vacancies became available at Medak, A.P. but the said exam. was limited and was open to the candidates who belonged to reserved category, i.e., either SC or ST and for that exam. though the applicant had applied, his application was sent but he was not given any call as the exam. was not meant for general category candidates since it was meant for SC/ST candidates and the applicant did not belong to either of the category of SC or ST.

33. Now coming to the question of promotion to be given to the applicant against the 20% post meant for direct recruitment is concerned, the case of the applicant is that since the department could not recruit any Draughtsman Grade-II by way of direct recruitment that will amount to as if the department had failed

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to recruit Draughtsman Grade-II on the basis of direct recruitment, so under the "failing which" clause the applicant should have been given promotion against 20% quota of direct recruits.

34. However, to our mind this plea of the applicant has again no merit because the rules, as reproduced above would show that if the department fails to recruit Draughtsman Grade-II by way of direct recruitment only then the 20% post could be filled by way of promotion. But here the department was prevented to appoint any one on direct recruitment basis so no exam. was proposed or held for direct recruit. So the question of failure to recruit direct recruits Draughtsman Grade-II does not arise at all.

35. Assuming for the sake of arguments that the department had failed to recruit Draughtsman Grade-II by way of direct recruitment, then also the alternate available to the department is to fill up vacancies by way of promotion and for promotion again the department had to follow regular procedure for promotion. As per the Recruitment Rules, promotion is to be made on the basis of seniority-cum-merit and admittedly the applicant was not senior enough to have been considered in the year 1985 for the post of Draughtsman Grade-II. No special rules have been provided to give promotion to the candidates like the

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applicant who are possessing the qualifications of Diploma in Civil Engineering on out of turn basis. It is also not the case of applicant if any junior to him have been given promotion ignoring him.

36. The applicant in order to support his contention that he was entitled to specialised category treatment referred to Annexure 34 which is a letter of April, 1976 issued from the Office of the Adjutant General's Branch and on the strength of this he submitted that the category of Draughtsman I to III is one of the specialist category and when the employee holding qualifications, if found suitable, could be absorbed to any grade for which he may be found suitable.

37. In reply to the above, the respondents submitted that this order has been issued by Adjutant General's Branch and it does not apply to the Director General of Quality Assurance (hereinafter referred to as DGQA) to which the applicant belongs. On this aspect we may observe that first of all this order of Adjutant General's Branch has not been produced in complete because it is an extract which provides for exemption of specialist categories and the SAO probably deals with Disposal of Surplus and Deficiencies of Class III and Class IV Civilian Establishment under the Ministry of Defence. The title of this talks of about exemption of specialist category but what is the

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main rule or main order is not available here. However, this document shows that it has been issued from the Office of the Adjutant General Branch and the applicant has not been able to show to us as to how it applies to DGQA as the respondents from the very beginning had been denying its applicability to the DGQA where the applicant is working. Thus it does not assist the case of applicant.

38. The applicant has also relied upon some judgments, the extracts of which have been annexed along with the OA at pages 109 and 110. At page 110 the case is entitled as Shri Raja Ram VS. State of J&K reported in AIR 1971 J&K page 113 (116). In that case the heading provides that Classification of employees with superior qualifications for promotion to higher grade. It further states that no infringement of rule or principles of equality. Similarly the applicant has relied upon another judgment entitled as State of Karnataka Vs. M. Shivanna and Others, (1978) 2 SLR 38 (39) (Karn)(DB) with regard to justification of higher pay scale on the basis of educational qualification.

39. To our mind both these judgments are irrelevant because as regards grant of higher pay on the basis of higher qualification is concerned, it is not the case of the applicant that he should be granted higher pay because of his higher

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qualification. On the contrary, the applicant is only asking for promotion on the basis of acquiring of Diploma and the judgment on page 110 says that if rule provides for grant of promotion with superior qualification, then the rules do not infringe the principle of equity.

40. As per the rules applicable to the case of the applicant is concerned, though it provides that the person who had acquired a qualification of holding of Diploma in Engineering is entitled to appear in a direct recruitment examination for a higher post but as far promotion is concerned, the rules do not provide at all that a person acquiring Diploma can be given promotion earlier than his seniors by virtue of his holding Diploma in Civil Engineering. In view of this, we are of the considered opinion that the judgment in the case of Raja Ram (Supra) will not be of any help to the applicant.

41. The applicant has also referred to another judgment entitled as Gujarat Food and Drugs Control Administration Gazetted Officers Association Vs. State of Gujarat, (1990) 5 SLR 735 (Gujarat) wherein it has been held as under:-

" Appointment-Omission to prescribe specified ratio for direct recruitment and for promotees would not render the rule otiose".

42. It has been held in the above judgment that omission to prescribe specified ratio for direct recruitment and for promotes

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would not render the rule as otiose. It is the discretion of the selecting authority to resort to either of the two channels if no ratio has been prescribed for direct recruitment and promotion. Again we would like to mention that this judgment also does not help the applicant's case. In the rules applicable in this case the fixed quota has been prescribed and it is only the 'failing which clause' which gives the selectors a right to fill up the vacancies by means of promotion if the department is unable to fulfil the qualifications by means of direct recruitment. Thus the selectors are not entitled to appoint persons in disregard of ratio fixed by rules.

43. Resort to promotion can take place again in accordance with the rules. The promotion rules, as applicable to the applicant, simply says that since the post is a non-selection post and the promotion is to be given on the basis of seniority-cum-fitness. The promotion rules do not provide out of turn promotion on the basis of a higher qualification as is the case of the applicant. Thus we find that the applicant has no case for seeking promotion on out of turn basis against direct recruitment quota of 20%. The applicant be given promotion only on his turn.

44. The applicant has also submitted that since he was eligible to be promoted on the basis of his higher qualifications

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and as he has been omitted to be considered, so a direction should be issued for holding a review DPC and to that extent he has also referred to CPR0 issued on December, 1990 which is at page 286 of the paper book which provides instructions for holding review DPC and one of the condition for convening a review DPC is that where eligible persons were omitted to be considered, then review DPC can be held and on the basis of this it is stated that since he was eligible to be considered, so a review DPC should have been held. But to our mind as far the question of review DPC for promotion is concerned, the respondents have submitted that promotion can be granted as per rules only on the basis of seniority-cum-merit and since the applicant was not senior enough so he was not considered earlier. He became senior and came into the consideration zone only in the year 1994 when he was considered but could not be promoted as he was found unfit and it appears that till date the applicant has not been given regular promotion under the Recruitment Rules. Thus there is no case that applicant being eligible and omitted, so no review DPC is called for.

45. It is only after the revision of pay scales of Draughtsman Grade-I to Grade-III in all Government of India offices was allowed on the basis of Award of Arbitration in the case of CPWD the applicant was given a revised pay scale as

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Draughtsman Grade-II w.e.f. 16.5.83 which again in the case of applicant was modified and date of grant of pay scale of Draughtsman Grade-II changed. The applicant contested that even this change of date for grant of Draughtsman Grade-II scale as per CPWD Award is concerned, that has also not been done properly as the applicant states that according to the Circular dated 15.9.1995 the applicant is governed by para 4(b) of the instructions whereas the department submitted that the applicant is governed by para 3.

46. But before advertiring to this controversy, we will have to revert to the pleadings of the parties to find as to what are the reasons given in the OA as to how applicant is governed under para (4) of the instructions and how para (3) has been erroneously applied in the case though after the instructions passed on the CPWD, Award came into force. The applicant had amended the OA but in the pleadings he has not dispelled as to how he is to be governed by para 4, rather we find that the amendment in the pleadings have not been taken by the applicant as to how paragraph 4 is applicable in his case. So in the absence of that it is not proper on our part to decide as to what paragraph is applicable to the applicant because the respondnts have not been given any opportunity to show as to how paragraph 3 is applicable instead of paragraph 4. So on that score we will refrain ourselves to return any finding with regard to the

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applicability of paragrarah 4 or paragraph 3 of the order dated 15.9.95.

47. Even otherwise we find that grant of Grade-II of Draughtsman-II has been done under the circular issued in pursuance of Award in CPWD case. That is not germane to promotion. Moreover applicant has not prayed for quashing of the order vide which date of grant of grade has been modified, which is otherwise a separate cause of action for which separate OA lies.

48. So in view of our discussion the applicant is unable to make out any case for grant of promotion under 20% quota on the basis of qualification as no rule exists to grant out of turn promotion to Diploma holders against 20% of direct recruitment quota. So we find that the OA is without any merits and the same is liable to be dismissed.

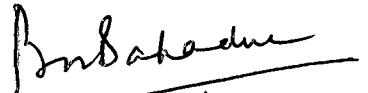
49. Before parting with this case we may mention that since the applicant has filed this OA in person and had argued the case in person we give him liberty to challenge the grant of scale in the Draughtsman Grade-II on the basis of Award given by Board of Arbitrarration in the case of CPWD separately by preferring a fresh OA and in case he files an OA within a period of 6 weeks

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from the date of receipt of copy of this order, the ground of delay and latches will not come in his way.

46. In view of the above, OA is dismissed but without any order as to costs.

  
(Kuldip Singh)  
Member (J)

  
(B.N. Bahadur)  
Member (A)

Rakesh