

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMABI.

ORIGINAL APPLICATION NO.263/2001.

Wednesday this the 2nd day of March 2005.

Hon'ble Shri A.K.Agarwal, Vice-Chairman (A),
Hon'ble Shri Muzaffar Husain, Member (J).

1. A.B.Kavathekar,
Draughtsman Grade - II,
C.Q.A. (S.V.) Dehu Road,
Pune - 412 113.
2. I.H.Jawale,
Draughtsman Grade - II,
C.Q.A. (S.V.)
Ahmednagar.
3. Smt. N.R.Sathe,
Draughtsman Grade - II,
C.Q.A. (S.V.),
Ahmednagar.
4. Thakar,
Draughtsman Gr.II,
C.Q.A. (SV),
Ahmednagar.

...2.

JK

5. A.L.Gaikwad,
Draughtsman Gr.II,
C.Q.A. (SV),
Ahmednagar.

6. S.R.Yadav,
Draughtsman Gr.III,
C.Q.A. (S.V.), Dehu Road,
Pune - 412 113.
(By Advocate Shri S.P.Saxena)

...Applicants.

v.

1. Union of India through
the Secretary,
Ministry of Defence,
DHQ,
New Delhi - 110 011.

2. The Director General of
Quality Assurance,
Ministry of Defence,
New Delhi - 110 011.

3. The Controller,
C.Q.A. (S.V.), Dehu Road,
Pune - 412 113.

4. The Controller,
C.Q.A. (V),
Ahmednagar.

5. The Controller,
C.Q.A. (F.E.), Aundh,
Pune - 27.
(By Advocate Shri R.K.Shetty)

...Respondents.

...3.



: O R D E R :

{A.K.Agarwal, Vice-Chairman (A)}

This OA has been remanded by the High Court of Judicature at Bombay vide its order dt. 3.10.2003 for fresh consideration in accordance with law. The OA was earlier dismissed by the Tribunal vide its order dt. 14.1.2002 rejecting the demand of the applicants for re-consideration of a matter already decided earlier. The Tribunal while disposing of OA No.415/1993 and other four OAs for pay fixation had dismissed them on the ground of difference in the qualification prescribed for Draughtsman in CPWD observing as follows :

"If we compare the two sets of qualifications we find that they are neither similar nor same nor equal nor identical."

The prayer of the applicant to examine the case afresh on the ground that he could not produce certain relevant material in the earlier OAs was rejected by the Tribunal. The High Court in its order dated 3.10.2003 has observed as follows :

"5. In view of this decision of the Supreme Court the C.A.T. could have treated the O.A. No.263/01 as a review application or permitted the petitioner to convert it as a review application on the ground that amended rules were not brought to the notice of C.A.T. earlier. The

C.A.T. should not have simply dismissed the application without considering the amended rules and the material produced before it by the petitioner who were admittedly not the parties to the earlier application.

6. In this view of the matter, we set aside the order of the C.A.T. and remand the matter back to the C.A.T. for fresh consideration in accordance with law."
2. In view of the above direction of the High Court, we heard the matter afresh. The learned counsel for the applicant stated that they were not party in the other OAs which were rejected by the Tribunal and confirmed by the High Court. He stated that in the earlier set of litigation certain important rules were not cited which have now been given by the present applicants and therefore the case deserves to be heard on merits. He submitted that though the functions and duties of the Draughtsmen working in CPWD and DGQA are the same, but there is a difference in the nomenclature. While in CPWD at entry grade it is Draughtsman Gr.III, in EME, as well as, DGQA Organisation Draughtsman is known as Tracer. He stated that as per SRO 25/85 the recruitment qualifications for Tracer are Diploma Engineering or Draughtsmanship course from ITI, but no duration of such course has been specified. The learned counsel submitted that as per OM dt. 13.3.1984 of

...5.

Department of Expenditure, Ministry of Finance, the pay scales of Draughtsman Gr.III, Gr.II and Gr.I in all offices in Government of India other than CPWD have been revised provided the required qualifications are similar to those prescribed in the case of Draughtsmen in CPWD. The learned counsel stated that in the earlier order dt. 29.7.1999 of CAT the qualifications of Draughtsman in CPWD and DGQA were distinguished essentially on the ground that while in CPWD it must be a certificate or diploma of not less than two years duration, in DGQA it is Draughtsmanship course and not diploma and further the period of the course is also not mentioned. The learned counsel stated that qualifications for Draughtsmen in DGQA were laid down way back in January, 1964 in Civilian Personnel Routine Order (CPRO). Since various relevant CPROs were not before the Tribunal during the earlier course of litigation, the claim of Draughtsman in DGQA could not be properly appreciated. The learned counsel stated that CPRO 8/69 gives an updated list (as on 20.5.1968) of Trades under the Craftsmen Training Scheme and among Engineering Trades Draughtsman (Civil), as well as, Draughtsman (Mechanical). In appendix 'D' to CPRO 8/73 it is mentioned that National Apprenticeship

Certificates' which is awarded after completion of full term apprenticeship for a minimum period of 3/4 years should be considered as a higher grade than the National Trade Certificate which is awarded after 18 months training in Industrial Training Institute followed by six months in plant training. The Government amended Recruitment Rules vide SRO 39 dated 17.1.1990 for the Draughtsman and omitted the entry Matriculation/Higer Secondary Examination with some experience in Tracing. As a result, after this date the only required qualification was ITI certificate. Thereafter vide SRO No.15 issued on 2.1.1974 the qualifications were amended to "Certificate in Draughtsmanship. Subsequently, SRO 25 issued on 20.10.1984 made it a Diploma/Electrical or Mechanical Engineering or Draughtsmanship course from ITI.

3. Giving the background of amendments made in the Recruitment qualifications from time to time, the learned counsel stated that finally by SRO 104 notified on 18.5.1990 for the purpose of recruitment for the post of Tracer, the qualification required is Diploma in Engineering or Draughtsmanship course from ITI. The learned counsel for applicant has relied upon the decision of the Calcutta Bench of CAT given on 3.7.1987

while disposing of OA No.458/86, wherein Tracer/Junior Draughtsman/Senior Draughtsman in the office of the Director General of Supply & Disposal (DGS&D) were held eligible for the same pay scale as Draughtsman Gr.III, II and I in CPWD w.e.f. 13.5.1982. The learned counsel has also relied upon another verdict on this subject given by the Principal Bench of CAT on 15.5.1992 while disposing of a group of OAs relating to the Draughtsmen employed in the Office of the Army Base Workshop holding that they were entitled to be placed in the pay scales as allowed by the Ministry of Finance O.M. dt. 13.3.1984. The learned counsel for applicant stated that the Apex Court in the case of Union of India & Ors. v. Debashiskar & Ors. {1995 Supp (3) SCC 528}, has held that the Draughtsmen in the Ordnance Factory although not fulfilling the requirements of minimum length of service under OM dt. 19.10.1994 were entitled to parity in pay with Draughtsmen Gr.II in CPWD. In this very Judgment, the Apex Court upheld the findings of CAT that Draughtsman in Army Base Workshop, EME were entitled to parity in pay with Draughtsman Gr.II in CPWD since the qualifications for appointment were same. The learned counsel contended that with the amendment of

qualifications for the post of Tracer at par with Draughtsmen, the applicants who have been working as Tracers in Director General of Quality Assurance (DGQA) are also entitled for the pay scales as mentioned in OM dt. 13.3.1984 of Department of Expenditure, Government of India.

4. The learned counsel for Respondents during initial submissions, stated that this case has been remanded for fresh consideration by the High Court vide its order dt. 3.10.2003. He submitted that out of 5 OAs mentioned in para 1 of the High Court order only two viz. 1145/95 and 602/97 relate to staff working in DGQA. The High Court in its order has observed that the CAT should not have simply dismissed the application without considering the amended rules and has permitted the petitioners to convert it as a Review Application. The learned counsel contended that it has to be treated as a Review Application and we are not expected to go into the merits of the case. He stated that there is no error apparent on the face of the record within the meaning of Order 47 Rule 1 of CPC. He further stated that relief sought as per clause 8 (b) is a direction to the respondents to extend the benefit of Arbitration Award of CPWD Draughtsmen to the applicants. However, no award has been attached with

the OA. The learned counsel also stated that the relief sought in clause 8 (c) is for a higher pay scale which according to the ratio laid down by the Apex Court is a matter for Expert Body like Pay Commission. Drawing our attention towards the principles for wage determination contained in the report of the IIIrd Pay Commission, the learned counsel stressed that the factors like degree of skill, strain of work, experience involved, training requirement etc. are to be taken into consideration. A statement in para 5.10 of the OA that "the post of Tracer in DGQA is equivalent to the post of Draughtsman Gr.III in CPWD" will not suffice in the absence of information relating to the factors mentioned above. He reiterated that the Tracers of DGQA are not comparable with Draughtsman of CPWD. The learned counsel for the respondents has relied upon a ratio laid down by the Apex Court while deciding the case State of Madhya Pradesh and Anr. v. Pramod Bharati & Ors. {1993 (2) SC SLJ 91}, wherein it was held that to consider equal pay for equal work things like responsibility, skill, effort, conditions of work etc. are required to be taken into consideration. The learned counsel for respondents has also relied upon the verdict of the Apex Court in the case of State of Orissa & Ors. v. Balaram Sahu & Ors. {2003

SCC (L&S) 65}, wherein it was held as follows :

"Though "equal pay for equal work" is a concomitant of Article 14 as much as "equal pay for unequal work" will also be a negation of that right, equal pay would depend upon not only the nature or the volume of work but also on the qualitative differences as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference."

5. The learned counsel for respondents submitted that the pay scales of Draughtsman have been revised vide OM dt. 15.9.1995 of Government of India, Ministry of Defence. The Tracers who were in the pay scale of Rs.975-1540 have been placed in the pay scale of Rs.1200-2040 after a length of service of 7 years. He submitted that the applicants are entitled only for the pay scales as per this circular. Para 4 (a) of the circular also clarifies that Tracers/Draughtsman appointed in the scale of pay of Rs.975-1540 may be placed in the scale of Rs.1200-2040 as and when they complete requisite length of service prescribed in para 3 (1) (a). The learned counsel for respondents concluding his submissions stated that in view of such facts, the applicants are not entitled for higher pay scales with effect from 1982.

6. We have heard Shri S.P.Saxena, learned counsel for the applicants and Shri R.K.Shetty, learned counsel for the respondents. We have also



considered the material placed on record, as well as, judicial pronouncements submitted by the learned counsel. This case has been remanded by the High Court for fresh consideration on the ground that amended rules and the material produced by the petitioner who were not parties in the earlier leg of litigation were not considered by the Tribunal while disposing of the OA vide order dt. 14.1.2002. The learned counsel for applicant stated that the Recruitment Rules (for short, RR) for the post of Draughtsmen and Tracers in the office of the DGQA, as well as, relevant CPRD were very much in existence on the date when a group of 5 OAs filed by some other applicants were dismissed by order dt. 29.7.1999. The present OA filed by the applicants was dismissed by the Tribunal vide order dt. 14.1.2002 essentially on the ground that the view taken by the Tribunal while dismissing earlier 5 OAs has also been upheld by the High Court.

7. We have considered the RRs, as well as, CPRD furnished by the applicants in this OA. The learned counsel has drawn our attention towards various CPRDs issued from time to time after January, 1964. The applicant has also filed RR notified on 8.2.1969, another set of rules notified on

2.2.1985 and also amended rules as notified on 18.5.1990. We find that all the three set of RR cover within their ambit posts of Draughtsman, as well as, Tracer. The RR notified vide SRO 104 are known as Department of Defence/Production and Supplies, Director General of Quality Assurance Group 'C' (Chief Draughtsman, Draughtsman Gr.I, II, II and Tracer) Posts Recruitment Rules, 1990. Thus, these Rules are for five levels of Group 'C' posts. In these rules, the pay scale of Draughtsman Gr.III is given as Rs.1200-2040 and that of Tracer as Rs.975/1540. The qualifications required for Draughtsman Gr.III are "Diploma in Engineering with one years experience in the relevant field" and for the Tracer the rules provide "Diploma in Engineering or Draughtsmanship Course from ITI". These provisions make it very obvious that qualifications required for the two posts are not similar. Firstly, a candidate who has done Draughtsmanship Course from ITI is eligible for the post of Tracer, but not for the post of Draughtsman Gr.III. Secondly, a fresh diploma holder in Engineering is qualified for the post of Tracer, while for the post of Draughtsman Gr.III he should in addition have one year's experience in the relevant field. Thirdly, we find the RR also provide a channel of promotion

from Tracer to Draughtsman Gr.III and the necessary experience as mentioned in Column 12 of the RR is "Tracer with three years service in the grade".

8. All the six applicants in the OA had joined the DGQA as Tracers and subsequently promoted as Draughtsman Gr.III. As per the information given by the applicants in the OA their dates of appointment as Tracer and dates of promotion as Draughtsman Gr.III are as follows :-

<i>Applicant No.</i>	<i>Dt. of Appointment as Tracer</i>	<i>Dt. of promotion as Draughtsman Gr.III</i>
1	26.12.1985	31.05.1990
2	31.05.1975	30.11.1981
3	21.03.1986	29.06.1990
4	14.05.1988	05/11/91
5	06/01/78	16.07.1981
6	11/07/89	15.09.1995

9. In the Recruitment Rules for Group 'C' (Drawing) posts in DGQA notified on 25.9.1999 the posts of Tracer has been totally omitted. The qualifications for Draughtsman Gr.III have also been slightly revised vis-a-vis the RR of 1990 to diploma in Engineering in the relevant trade. In the 1990 RR, in addition to diploma one year's experience was also required. Now all the posts of Draughtsman Gr.III are to be filled up by direct

recruitment while earlier 20% were promotion posts for Tracers. We are of the considered view that before the statutory rules of September, 1999 came into force, the posts of Tracer could not be held as an equivalent post to Draughtsman Gr.III. The Judgments given by the Calcutta Bench and Principal Bench which have been relied upon by the learned counsel for applicant relate to the organisation of DGS&D and the office of Army Base Workshop. Hence they are distinguishable since DGQA has a separate set of recruitment rules. The applicant has also not pleaded any similarity between the RRs of these organisations with that of DGQA. The decision of the Apex Court in the case of Union of India v. Debashiskar & Ors (supra) relied upon by the applicant relates to parity between the Draughtsman of Ordnance Factory and Draughtsman Gr. II in CPWD. In the present case, we are examining the equivalence between Tracer in DGQA and Draughtsman Gr.III in CPWD. Thus, this ratio is also not relevant to this case. On the other hand, we find that ratio relied upon by the learned counsel for the respondents that while considering the issue of equal pay for equal work for the persons working in two different organisations the factors like degree of skill, experience involved, training

requirement etc. are to be given due weightage is relevant. As we have discussed above, the RR of 1990 clearly distinguish between the qualifications prescribed for direct recruitment for the post of Draughtsman Gr.III and Tracer. More so, 20% posts of Draughtsman Gr.III were to be filled up by promotion by Tracers having three years experience. On the basis of such provision in the RR we are of the considered view that till the new RR 1999 came into force in DGQA the post of Tracer was distinct from Draughtsman Gr.III both in relation to qualifications, as well as, experience and were therefore rightly given different pay scales.

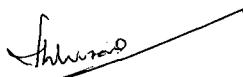
10. The contention of the applicant made in para 5.9 of the OA that the Draughtsmen in DGQA were also given a lower pay scale than their counter parts in CPWD does not appear to be correct since as per the schedule appended to RR of 1990 filed in the OA, the IVth Pay Commission pay scale of Draughtsman is Rs.1200-2040 which is the replacement scale of Rs.330-560 of the IIInd Pay Commission. It is Tracers who have been given the replacement scale of Rs.260-430, in the RR of 1990 which happens to be Rs.975-1540. Although along with the OA the Gazette Notification of RR for the year 1984 has also been filed, but the schedule mentioned in

Rule 2 of the RR has not been enclosed. On the basis of such documentary evidence, we have no hesitation in arriving at a conclusion that though the Draughtsman Gr.III in DGQA can be treated as equivalent to Draughtsman Gr.III of CPWD but Tracers of DGQA will rank one stage below.

11. The Government of India, Ministry of Defence vide O.M. dt. 15.9.1995 prescribed a pay scale of Rs.1200-2040 for the Tracers/Draughtsman working in the pay scale of Rs.975-1540 with seven years service. This O.M. is applicable to various organisations working under all the three wings of Defence i.e. Army, Navy and Air Force. In DGQA the pay scale of Rs.975-1540 was applicable only to Tracers as per RR of 1990. However, it is quite likely that in some other organisations even the Draughtsman may be having this scale. This explains the clubbing of Tracers/Draughtsman in para 4 (a) of the O.M. dt. 15.9.1995. All the six applicants of OA were initially recruited as Tracers and were subsequently promoted as Draughtsman Gr.III on different dates. The posts of Tracer continued to be a distinct category other than Draughtsman Gr.III till RR of 1999 came into being. However, before this the Tracers having more than seven years of service in the scale of Rs.975-1540 were placed

in the scale of Rs.1200-2040 by OM dt. 15.9.1995. According to us before this date of OM no Tracer had any right for automatic upgradation from the pay scale of Rs.975-1540 to the scale of 1200-2040. However, after coming into being of RR of 1999 the post of Tracer has been abolished and all are being treated as Draughtsman Gr.III with one scale.

12. As discussed above, as per RR of DGQA there is a difference in the qualifications of Tracers and Draughtsman therefore Tracers cannot be treated at par with Draughtsman Gr.III of CPWD with retrospective effect. In view of above, we hold that the applicants are not entitled for the benefit contained in the Government of India, Ministry of Finance O.M. dt. 13.3.1984 i.e. getting of higher pay scale from 13.5.1982 on notional basis and from 1.11.1983 on actual basis. O.A. is accordingly dismissed. No costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(A.K.AGARWAL)
VICE-CHAIRMAN (A)

B.