

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS. : 415/93, 434/93, 1025/93,
1145/95 & 602/97.

Dated this Thursday, the 29th day of July, 1999.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

ORIGINAL APPLICATION NO.: 415 OF 1993.

1. R. R. Dhabale,
Assistant Artist..
2. A. B. Mali,
Assistant Artist.
3. K. S. Mudaliar,
Draughtsman.
4. V. G. Joshi,
Draughtsman.
5. R. K. Shinde,
Draughtsman. Applicants

(All the applicants are working in
National Defence Academy, Khadakwasla, Pune.).

(By Advocate Shri S.P. Saxena).

VERSUS

1. Union of India through the
Secretary, Ministry of Defence,
DHQ P.O., New Delhi.
2. The Chief of the Army Staff,
General Staff Branch,
Military Training,
Directorate, Army H.Q.,
DHQ P.O., New Delhi - 110011.
3. The Commandant,
National Defence Academy,
Khadakwasla, Pune-411023.

(By Advocate Shri R. K. Shetty). Respondents

ORIGINAL APPLICATION NO.: 434 of 1993

1. A. S. Waghmare,
Draughtsman Grade-II (SEMT Wing)
College of Military Engg.,
Dapodi, Poona 411 031.
2. R. D. Tilekar,
Tracer,
O/o. Garrison Engineer (South),
Poona 411 001.
3. R. S. Gaikwad,
Draughtsman Grade-II,
Pune Zone, Poona - 411 001.
4. R. M. Londhe,
Tracer,
O/o. Commander Works Engineer,
Kirkee, Pune - 411 003.
5. P. V. Jadhav,
Tracer,
Pune Zone,
Poona - 411 001.
6. Mrs. M. S. Gokhale,
Tracer,
Poona Zone
Poona 411 001.
7. D. V. Kasabe,
Tracer,
O/o. Commander Works Engineer (A.F),
Lohagaon, Poona.
8. V. K. Garud,
Superintendent B/R Grade-II,
O/o. Garrison Engineer (N.E),
Poona - 400 001.
9. V. R. Ayakar,
Draughtsman Grade-II,
O/o. Chief Engineer (Navy),
26, Assaye Building, Colaba,
Bombay - 400005.
10. S. K. Parkar,
Draughtsman Grade-II,
O/o. Chief Engineer (Navy),
26, Assaye Buildings, Colaba,
Bombay - 400005.

11. P. Anbalagan,
Tracer,
O/o. C.W.E. (NW)E-6,
Dr. Homi Bhabha Road,
Navy Nagar, Colaba,
Bombay - 400005.
12. S. S. Chawande,
Tracer,
C.W.E (Army) Bombay,
24, Assaye Building,
Colaba, Bombay - 400005.
- 13 A. M. Kale,
Tracer,
D.G.N.P. (B) Bombay,
Drg. Section, 5th floor,
Lion Gate, Fort, Bombay.
14. V. M. Shinde,
Tracer,
C. E. (Navy) Bombay,
26, Assaye Building,
Colaba, Bombay - 400005.
15. Smt. Jayamma C,
Tracer, ex
Garrison Engineer (NW)
Bhandup,
Bombay - 400018.
16. Smt. Jaya B. Ravi,
Tracer,
Garrison Engineer (NW),
Mankhurd, Bombay - 400 088.
17. P. V. Dalvi,
Tracer,
D.G.N.P. (B) Bombay,
Drawing Section, 5th floor,
Lion Gate, Fort,,
Bombay - 400 001.
18. A. R. Narkar,
Tracer,
C.W.E. (Subs),
Bhandup,
Bombay - 400075. Applicants.

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Union of India
through the Secretary,
Ministry of Defence,
DHQ P.O. New Delhi 110 011.
2. The Engineer-in-Chief,
Kashmir House,
New Delhi - 110011.
3. The Chief Engineer,
Southern Command,
Poona 411 001.
4. The Commandant,
College of Military Engineer,
Dapodi, Poona - 411 001.
5. The Chief Engineer,
Poona Zone, Poona 411 001,
Set
6. ~~The Garrison Engineer (South)~~
~~Poona - 411 001.~~
7. The Commander Works Engineer,
Kirkee, Poona - 411 003.
8. The Commander Works Engineer,
Lohagaon, Poona.
9. The Garrison Engineer (North East),
Poona.
10. Chief Engineer (Navy),
26, Assaye Building,
Colaba, Bombay - 400005.
11. The Commander Works Engineer (NW),
Dr. Homi Bhabha Road,
Navy Nagar, Colaba,
12. Commander Works Engineer (Army)
Bombay, 24, Assaye Building,
Colaba, Bombay - 400 005.
13. Director General N.P. (B) Bombay,
Lion Gate, Fort,
Bombay.

14. Garrison Engineer (NW),
Bhandup, Bombay - 400078.
15. Garrison Engineer (NW),
Mankhurd, Bombay - 400 078.
16. Commander Works Engineer (Subs), ... Respondents.
Bhandup, Bombay - 400 078.

(By Advocate Shri R. K. Shetty).

ORIGINAL APPLICATION NO.: 1025/93.

1. K. R. Dani,
Draughtsman (Sr.)
2. K. N. Bhartal,
Jr. Draughtsman.
3. A. B. Chavare,
Jr. Draughtsman.
4. S. M. Thorat,
Jr. Draughtsman.
5. R. N. Boinwar, ... Applicants.
Jr. Draughtsman.

~~(All the applicants are working in the office of Armoured Corps Centre and School, Ahmednagar).~~

(By Advocate Shri S. P. Saxena).

VERSUS

1. Union Of India through
The Secretary,
Ministry of Defence,
DHQ, P.O., New Delhi.
2. The Director General of
Mechanised Forces,
Army Headquarters,
New Delhi - 110 011.
3. The Commandant,
Armoured Corps Centre & School,
Ahmednagar. ... Respondents.

(By Advocate Shri R. K. Shetty).

ORIGINAL APPLICATION NO.: 1145 OF 1995.

1. Mrs. M. M. Khaladkar.
2. Mrs. M. R. Shewale.
3. Shri M. R. Khuntale.
4. Shri V. M. Korde.
5. Shri B. S. Shinde.
6. Shri B. D. Pol.
7. Shri S. H. Tak.
8. Shri S. M. Bakshi.
9. Shri S. M. Achha.
10. Shri M. S. Salvekar.
11. Shri S. G. Kallurkar.
- ~~12.~~ ^e~~Shri~~ D. J. Bagal.
13. Shri N. V. Moholkar.
14. Shri Mer Kurup.
15. Shri S. S. Gaikwad.
(working as Tracers in CQAE
Aundh Camp, Pune).
16. Mrs. S. R. Godse.
17. Shri A. K. Biradar.
18. Shri Roy Thomas.
19. Shri B. L. Rokade.
(Working as Tracers in CQA(FE)
Aundh Camp, Pune).
20. Shri S. S. Tamhankar.
(working as Tracer in CQA (ME),
Aundh Road, Pune).

21. Shri P. S. Jagtap.
22. Shri D. K. Khadke.
23. Shri M. B. Bhadre.
24. Shri B. S. Gadekar.
25. Shri S. S. Ghare.
26. Shri S. M. Pardhe.

(working as Tracers in CQA(V),
Ahmednagar).

ADDRESS : C/o. Bharatiya Mazdoor Sangh,
185, Shaniwar Peth, ... Applicants.
Pune - 411 030.
(By Advocate Shri D.V. Gangal).

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
Raksha Bhawan,
New Delhi - 110 001.
2. The Director General,
H.Q.D.G.Q.A.,
Dept. of Defence Production RMDE (P).,
D.H.Q. P.O.,
New Delhi - 110 011.
3. The Controller,
C.Q.A.E., Aundh Camp,
Pune - 411 027.
4. The Controller,
C.Q.A. (F.E.), Aundh Road,
Pune - 411003.
5. The Controller,
C.Q.A. (M.E.), Aundh Road,
Pune - 411 003.
6. The Controller,
C.Q.A. (V),
Near Aurangabad Road,
Ahmednagar - 414 001. ... Respondents.

(By Advocate Shri V. S. Masurkar).

In O.A. No. 1145/95 there are 26 applicants who belong to the Contollerate of Quality Assurance.

In O.A. No. 602/97 there are 4 applicants who also belong to the Contollerate of Quality Assurance.

The case of all the applicants is identical and similar. The applicants' case is that in the Central Public Works Department (hereinafter referred to C.P.W.D. for convenience) there were three grades of Draughtsman, Grade-I, II and III with different scale of pay. There was serious dispute raised by the employees claiming enhanced or higher pay scale. The matter was referred to the Board of Arbitration. Then the Board of Arbitration gave a report suggesting different scales of pay to Draughtsman Grade-I, II and III of C.P.W.D. and they were accepted by the Government of India and which are as follows :

Original Scale Revised Scale on the

basis of Award.

a) Draughtsman Grade-I	Rs. 425-700	Rs. 550-750.
b) Draughtsman Gr.II	Rs. 330-560	Rs. 425-700.
c) Draughtsman Gr. III	Rs. 260-400	Rs. 330-560.

It appears that there was agitation by Draughtsman of other departments of Government of India to get same pay scale and

to get the same revised pay scale as given to the Draughtsman in C.P.W.D. Then the Government of India issued an O.M. dated 13.03.1984 under which the said pay scale given to Draughtsman in C.P.W.D. was also extended to Draughtsman in other department of Government of India subject to one condition "provided their recruitment qualifications are similar to those prescribed in the case of Draughtsman in C.P.W.D.". In spite of this order, the Draughtsman in many departments were not given the enhanced or revised pay scales. Many of the employees approached different High Courts and subsequently different Benches of this Tribunal. Many Benches of this Tribunal have granted the revised pay scales of Draughtsman of C.P.W.D. to thos employees who had filed applications before them. The applicants in these cases therefore say that they are also similarly placed like the various applicants who obtained orders from this Tribunal for revised pay scale. Their case is that they have the same qualifications like the Draughtsman of C.P.W.D. and hence they are entitled to the benefit of revised pay scale as per the O.M. dated 13.03.1984. Therefore, the applicants in the first four cases want a direction to the Government to revise their pay scale corresponding to the revised pay scale of Draughtsman of C.P.W.D. In the last case, namely - O.A. No. 602/97, it appears their pay scales are revised comparable to the revised pay scale of C.P.W.D. Draughtsman and payments were also made but subsequently the Government realized that there was some mistake and hence issued orders revising the pay scales of applicants and

then passing an order for recovery of the excess amount paid to the applicants in that case. Therefore, the applicant in this case also want one more direction that the order for recovery be quashed and set aside..

3. The identical defence of the respondents in all these cases is that the applicants in these applications do not have the same recruitment qualifications as prescribed for Draughtsman in C.P.W.D. It is, therefore, stated that the applicants are not entitled to the revised pay scale as given to Draughtsman in C.P.W.D. as per the 1984 Government order. The respondents have pointed out and also produced some documents to show that the recruitment qualifications of the post of the applicants is not identical to the recruitment qualifications of Draughtsman in C.P.W.D. They have clearly stated that the individual ~~qualifications~~ of the applicants is neither material nor relevant but what is relevant and material is the recruitment qualifications of the post and not the qualification of the incumbent. According to the respondents, the applicants are entitled to the benefit of revised pay scales only under the 1984 order provided they come within the conditions laid down therein. It is also the further case of the respondents that the prayer of the applicants is in the nature of seeking enhanced pay scales, which is a policy matter and this cannot be granted by a Court or Tribunal. They have also taken the stand that the applications filed in 1993-95 claiming relief under the 1984 O.M. is barred by limitations, delay and laches. The respondents have therefore

stated that the applicants in these cases are not entitled to any of the reliefs prayed for.

4. The Learned Counsel for the applicants contended that all the applicants belong to the cadre of Draughtsman irrespective of the nomenclature and they have similar qualifications like C.P.W.D. Draughtsman and hence entitled to the same scale as given to the Draughtsman of C.P.W.D. in pursuance of the O.M. of 1984. He also made a submission that even if there is some difference between the qualifications, it does not matter much since the requirement is 'similar qualifications' and not 'same' or 'identical' and for this proposition he relied on some judgements of the Tribunal. Another submission was made on behalf of the applicants that irrespective of their recruitment qualifications many of the applicants do possess the same qualifications like the Draughtsman in C.P.W.D. and hence on this ground also the applicants are entitled to the benefit of O.M. of 1984. On the other hand it was submitted on behalf of the respondents that unless and until the recruitment qualifications are same and identical between the posts for which the applicants were appointed and the posts in C.P.W.D., the applicants are not entitled to get the benefit of O.M. of 1984. It was also submitted that the claim was barred by limitation, delay and laches. It was also argued that qualifications of individual applicants is wholly irrelevant and what is required is the recruitment qualifications for the post.

5. In the light of the arguments and the pleadings, the only point that falls for determination is :

Whether all or any of the applicants are entitled to the benefits of O.M. of 1984 and if so, to what extent ?

Though the Learned Counsel for some of the applicants contended that even if there is difference in the qualifications, still the applicants are entitled to claim the benefit by relying on some observations of some Benches of this Tribunal. We feel that we cannot go into that question since the matter is covered by two direct authorities of the Supreme Court in respect of the same subject matter where the Supreme Court has clearly ruled that ~~any order to~~ ^{any} claim the benefit of 1984 O.M., the Draughtsman must have the same qualifications as Draughtsman of C.P.W.D.

In 1995 SCC (L & S) 1303 (Union of India & Others v/s. Debasish Kar & Others) an identical question arose for consideration. There the Draughtsmen in the Army Base Workshops and the Draughtsmen in Ordnance Factories claimed same pay scales like the Draughtsman Grade-II in C.P.W.D. In para 14 of the reported judgement, the Supreme Court has observed that according to the Tribunal, the qualifications prescribed for Draughtsmen in Ordnance Factories are similar or equivalent to those prescribed for recruitment in C.P.W.D. Similarly, in regard to the Draughtsmen in Army Base Workshop also the Tribunal's finding that they are on par with the Draughtsmen in C.P.W.D. was confirmed by the Supreme Court.

The matter again arose for consideration in the case of **Nain Singh Bhakuni & Others V/s. Union of India & Another** reported in 1998 SCC (L&S) 850 where a dispute had been raised by the Draughtsmen in the Central Water Commission. The Original Application was allowed in part by the Tribunal. Being dissatisfied with the rejection of the part of the claim, the applicants had approached the Supreme Court. In that case there were difference between the recruitment qualifications of Draughtsmen in C.W.C. and Draughtsmen in C.P.W.D. but the Tribunal noticed that the qualifications for both the departments were brought on par by the Government with effect from 09.11.1987. By a process of reasoning, the Tribunal granted the benefit of 1984 O.M. and rejected the claim of the applicants to get the same benefits like the C.P.W.D. Draughtsmen from 1973 itself. The ~~Supreme~~ Court took into consideration its earlier judgement dated 02.12.1997 in Civil Appeal Nos. 11477-11479 of 1995 vide para 4 of the reported judgement and observed that in those cases the Tribunal had rejected the claim of Draughtsmen of Defence Research & Development Organisation to get same pay scales of C.P.W.D. Draughtsmen on the ground that their recruitment qualifications were different. It is pointed out that in the earlier case the Supreme Court accepted the view of the Tribunal and dismissed the appeal. Again in para 12 of the reported judgement the Supreme Court refers to its earlier judgement dated 02.12.1997 and held that the educational

qualifications of D.R.D.O. were different from the educational qualifications of Draughtsmen of C.P.W.D. and hence they were not entitled to the benefit of O.M. dated 13.03.1984.

After discussing the qualifications of Draughtsmen in C.W.C. and qualifications of Draughtsmen in C.P.W.D., this is what the Supreme Court has observed at page 858 which reads as follows :

".....It could not, therefore, be said that qualificationwise the draughtsmen in C.W.C. at the base level or in the higher echelons of service were identically situated as compared to their counterpart Draftsmen Grade-III, II and I in C.P.W.D."

(Underlining is ours.)

Again in para 14 of the Supreme Court judgement the Supreme Court clearly points out that qualification wise the the two Draughtsmen of the two departments were not equal\$.

Again the argument addressed before the Supreme Court was that the Draughtsmen in C.W.C. were doing the same work as Draughtsmen in C.P.W.D. and their functions and responsibilities were the same and therefore they are entitled to the same pay scale like the Draughtsmen in C.P.W.D. The Supreme Court rejected this argument in para 14 of the reported judgement at page 860 with the observations that the appellants cannot get benefits "as their qualifications were not on par till 1987, as seen earlier."

Though in some places the Supreme Court has used the words 'similar qualifications' which are the words found in O.M. of 1984, the Supreme Court has clearly pointed out that the qualifications must be on par or equal with the qualifications of Draughtsmen of C.P.W.D. to get the benefit of 1984 O.M. Therefore, the arguments addressed on behalf of the applicants that even if the qualifications are not identical, they should get the benefit of 1984 O.M. cannot be accepted.

6. In the 1984 O.M. it is clearly mentioned that Draughtsmen of other departments of Government of India are entitled to the same pay scale like the Draughtsmen of C.P.W.D. "provided ~~their~~ ^{similar} recruitment qualifications are similar to those prescribed in the case of Draughtsmen in C.P.W.D." What is more, the O.M. further mentions that those officials who do not fulfill the above recruitment qualifications will continue in the pre-revised scales.

The Supreme Court has interpreted the word 'similarly' means same, equal or identical. If the applicants in these cases have same or similar qualifications like the Draughtsmen in C.P.W.D., then they are entitled to the benefit of the O.M. of 1984. If the qualifications are not similar, even then the applicants are entitled to certain benefits as provided by the O.M. of 1995 where the Government has given benefit even if they

do not have the required qualifications provided they have put in certain years of service in a particular grade.

After explaining the legal position, now the question is whether the applicants in these cases have the same or similar recruitment qualifications like the Draughtsmen in C.P.W.D. This is a question of fact which we will have to examine by taking into consideration the recruitment qualifications for different departments. Therefore, we consider the claim of these applicants one by one.

7. In O.A. No. 415/93 we are concerned with the Draughtsmen in the National Defence Academy. All the applicants were originally appointed as Tracers. It is not disputed that the ~~Tracers~~ could be compared to Draughtsman Grade-III of C.P.W.D.

As per the Recruitment Rules, the qualifications for the post of a Tracer is matriculation with diploma in Draughtsmanship. But for a Draughtsman Grade-III in C.P.W.D. the qualification is certificate/diploma in Draughtsmanship of not less than two years duration including practical training for six months.

For Draughtsman in N.D.A. though the recruitment qualification is diploma in Draughtsmanship, the duration is not

mentioned. Suppose it is only a diploma for one year, can it be compared with a diploma of two years which is required for Draughtsman Grade-III in C.P.W.D. The applicants have not placed any material to show that their diploma was of two years duration. Then further in C.P.W.D. Qualification there is a specific mention of practical training for six months but there is no such condition in the recruitment qualification of Tracers in N.D.A. In our view, this is a disputed question of fact. A Committee of Experts will have to examine the question and then decide whether the recruitment qualification of N.D.A. Tracers is on par with the recruitment qualifications of Draughtsman Grade-III in C.P.W.D.

We therefore feel that the Commandant of the National Defence Academy (Respondent No. 3) should appoint a Committee of Senior Officers of three persons or more including a Senior Civil Engineer and that Committee should examine the recruitment qualifications of Tracers in N.D.A. with the recruitment qualifications of Draughtsman Grade-III in C.P.W.D. and then find out whether the qualifications are identical and same and whether the Tracers in N.D.A. are entitled to get the benefit of revised pay scale on par with the Draughtsman Grade-III of C.P.W.D. in terms of the O.M. dated 13.03.1984.

8. Now coming to O.A. No. 434/93, we find that all the applicants belong to Military Engineering Services. They were

originally appointed as Tracers. As far as M.E.S. Draughtsmen or Tracers are concerned, it is no longer res-integra and it is covered by number of decisions of this Tribunal.

We have an order dated 11.07.1991 in O.A. No. 138/91 at page 15 where a Division Bench of this Tribunal has held that the Tracers in M.E.S. are entitled to the benefit of 1984 O.M.

Then we have another unreported judgement dated 01.09.1998 in O.A. No. 61/95 of Calcutta Bench of the Tribunal at Circuit Sitting at Port Blair, where also it is held that the Tracers of M.E.S. ^{are} ~~is~~ entitled to the benefits of O.M. of 1984 on par with the Draughtsman Grade-III of C.P.W.D. Then we have another unreported judgement dated 03.10.1991 in O.A. No. 856/90 and connected cases, where a Division Bench of this Tribunal has held that Tracers of M.E.S. are entitled to the benefit of 1984 O.M. on par with the Draughtsman Grade-III of C.P.W.D. As against this, the respondents' counsel has relied on a judgement dated 28.09.1993 in O.A. No. 48/92 of Jodhpur Bench of this Tribunal. That was a case filed by one Shri A. K. Agnihotri, who was a Tracer in M.E.S. The Tribunal gave a direction to the administration to find out whether the applicant fulfills the recruitment qualification like the Draughtsman Grade-III in C.P.W.D. and if he possess the qualification, then he must be given the benefit. Now the applicants' counsel has brought to our notice subsequent decision of the Jodhpur Bench of the

Tribunal dated 22.07.1998 where the Division Bench in A. K. Agnihotri's case held that he is entitled to the benefit of 1984 O.M.

The applicants' counsel has also brought to our notice a judgement of the Division Bench of this Tribunal dated 12.08.1991 in O.A. No. 1929/88 granting similar benefits to Draughtsmen in M.E.S.

The respondents' counsel also called our attention to a judgement dated 23.10.1992 in O.A. No. 400/91 of Ernakulam Bench at page 41 of the paper book, where the claim of Draughtsmen of Navy for the benefit of 1984 O. M. was rejected. But we find that the claim was rejected on the ground that the Draughtsman in Navy do not have the same recruitment qualification like the Draughtsman in C.P.W.D. We have already given our finding on this point, namely - that those Draughtsmen whose recruitment qualifications are on par with qualifications of Draughtsman in C.P.W.D. will get the benefit of 1984 O.M.

From the above discussion we find that as far as Tracers/Draughtsmen in M.E.S. are concerned, there are number of judgements of this Tribunal holding that their qualifications are identical with their counterparts in C.P.W.D. and hence the applicants in this O.A. are entitled to the benefit of O.M. of 1984.

9. Now we will take up the claim of the applicants in O.A. No. 1025/93. These applicants were originally appointed as Junior Draughtsman which is equivalent to Tracer in other Defence Establishments and equivalent to Draughtsman Grade-III in C.P.W.D. The applicants in these cases are employes of Armoured Corps Centre and School. The recruitment qualifications for the post of Jr. Draughtsman in Armoured Corps Centre are matriculation with one year experience in tracing.

We have already seen that the qualifications for Draughtsman Grade-III is certificate/diploma in Draughtsmanship of not less than two years of duration including practical training for six months.

By any stretch of imagination the recruitment qualifications of both posts cannot be held to be identical. In the case of these applicants, the recruitment qualification is only one year experience in tracing but on the other hand, ^{in C.P.W.D} ~~counterpart~~ qualification is diploma of not less than two years ^{in C.P.W.D} ~~in Draughtsmanship~~ with practical training of six months. In our view, there is a vast difference between the recruitment qualifications of the applicants in this case and the recruitment qualifications of Draughtsman Grade-III in C.P.W.D. and therefore the applicants in this case are not entitled to the benefit of O.M. of 1984. It may be recalled that in the earlier part of the judgement we have referred to the judgement of the Supreme Court in Debasish Kar's case where the Supreme Court has referred to

its earlier judgement where the claim of Draughtsmen of D.R.D.O. was rejected on the ground that the recruitment qualification was different from the recruitment qualification of Draftsman in C.P.W.D. Therefore, we hold that the applicants in this case whose recruitment qualifications is quite different from the recruitment qualifications of Draughtsman in C.P.W.D., they are not entitled to the benefit of 1984 O.M. Hence, this O.A. is liable to be dismissed. We have already stated that we are not concerned with the individual qualifications of any of the applicants but we are only comparing the recruitment qualifications of the post to the recruitment qualifications of the post in C.P.W.D.

10. Now we can take up the two O.As. No. 1145/95 and 602/97, since they pertain to the same department. The applicants in these two cases are Tracers in the department of Controllerate of Quality Assurance. The qualifications are as below :

C. Q. A.
TRACERS.

Diploma in Automobile Engineering or Mechanical Engineering or Draughtsmanship Course from I.T.I.

C. P. W. D.
DRAFTSMAN GRADE-III

Certificate/Diploma in Draughtsmanship of not less than two years duration including practical training for six months.

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

As far as the post of Tracer is concerned, diploma in Automobile and Mechanical Engineering is wholly irrelevant and cannot be equal to diploma in Draughtsmanship. Then in C.Q.A. the qualification is Draughtsmanship course from I.T.I. It does not say whether it is a diploma or not. The duration of the course is not mentioned. It could be 3 months course or six months course or one or two years course. But in C.P.W.D. it must be a certificate or diploma of not less than two years duration.

It is interesting to note that though the words used regarding Tracers are 'Diploma Course in Automobile or Mechanical Engineering', the words used regarding Draughtsman Gr.III is 'Draughtsmanship course from I.T.I.'. The word 'Diploma in draughtsmanship' is absent here but for C.P.W.D. the recruitment qualification is Diploma in Draughtsmanship of not less than two years. Here for applicants the recruitment qualification is Draughtsmanship course and not a Diploma in Draughtsmanship and further, the period of the course is also not mentioned.

From the comparison of the two sets of qualification, we find that they are neither similar nor identical. Hence, the claim of the applicants in these two cases for the benefit of 1984 O.M. cannot be granted since they do not have similar qualifications like their counterpart in C.P.W.D.

Some arguments were addressed at the bar that the applicants have more qualifications or better qualification than the Draughtsman of C.P.W.D. We have already pointed out that we are not concerned with individual qualifications of the applicants. We are only concerned with the recruitment qualifications for the post in question. Here, the recruitment qualification for the post of Tracer in C.Q.A. has to be compared not to ~~compare~~ the individual qualifications of the applicants, ^{with} ~~not~~ with the qualifications of Draughtsman Grade-III in C.P.W.D.

Therefore, we hold that the applicants in these two cases do not have similar qualifications like their counterpart in C.P.W.D. and ~~hence~~ they are not entitled to the benefit of O.M. of 1984.

11. The contention of the respondents both in the pleadings and at the time of arguments that this Tribunal cannot interfere in granting of pay scales since it is a policy matter and then reliance was placed on some judgements of the Supreme Court on this point. In our view, the argument has no merit. We are not deciding the question as to what pay scales should be given to the applicants. Even the applicants have not asked for such reliefs. The applicants case is that they answer to conditions mentioned in 1984 O.M. and entitled to the benefit of the O.M. Therefore, our limited exercise is to find out whether the

applicants in these cases satisfy the conditions imposed in the 1984 O.M. or not. It is not ~~the~~ policy matter but it is purely a question of fact to be decided by the Tribunal by considering the qualifications of the applicants viz-a-viz the qualifications of the Draughtsmen in C.P.W.D. and then find out whether they are entitled to the benefit of O.M. of 1984 or not. Therefore, the arguments of the respondents that this Tribunal has no jurisdiction to grant the relief has to be rejected.

12. In O.A. No. 602/97 the administration had already fixed the revised pay scale of the applicants in terms of the 1984 O.M. but subsequently they discovered that applicants are not entitled to that benefit. That is why they have taken steps to recover the excess amount from the applicant which is being challenged in ~~this O.A.~~ ^{11.07.1997} The Tribunal has also granted an interim order dated 11.07.1997 directing the respondents not to recover the amounts from the applicants. The interim order is being extended from time to time and it is in force till today.

Now on merits, we have reached to the conclusion that the applicants in this O.A. are not entitled to the benefit of O.M. of 1984. If by wrong calculation or by mistake the benefit has been given to the applicants, the administration has every right to recover that amount. The respondents have also brought to our notice the relevant rules which is at exhibit R-1 to the written statement which gives powers to the authorities to recover the excess payment or over payment made to the employees due to wrong calculation, etc.

The respondents have also placed on record the undertaking given by the applicants which is dated 11.10.1996. The undertaking reads as follows :

"I, hereby undertake that any over-payment on account of arrears of C.P.W.D. pay fixation made to me will be refunded in one lumpsum as and when noticed subsequently by Audit Authority/Controller, CQA(SV) Dehu Road.". (Signature)

The above undertaking clearly shows that all the applicants have given undertaking that they are going to refund the amount if the amount is objected by the Audit Authority/Controller. Therefore, it is ^{a sum in} an additional payment subject to ~~get~~ recovery of amount if found that the applicants are not entitled to that amount. Now on merits we have held that applicants are not entitled to the revised pay scale like the Draughtsmen of C.P.W.D. Hence, the action of the respondents to recover the amount from the applicants is fully justified and according to law.

However, since the amount was paid to the applicants in 1996 and they might have spent the amount and now we are in 1999, we only direct that the recovery of the amount paid to the applicants shall be recovered in reasonable monthly instalments from their pay.

13. The next point contended by the respondents' counsel is that the applicants in their Original Applications filed in 1993 and 1995 are claiming the benefit of O.M. of 1984 and this claim is barred by limitation, delay and laches. But however this point will have a bearing while granting arrears.

14. In the result, it is ordered as follows :

I. O.A. NO.: 415/93.

i. The application is partly allowed. The Commandant, National Defence Academy, Pune (Respondent No. 3) is directed to appointed an Expert Committee of three or more officers including a Sr. Civil Engineer to decide whether the recruitment qualifications of the ~~Tracers in N.D.A.~~ is at par or similar to the recruitment qualifications of Draughtsman Grade-III of C.P.W.D. and whether the applicants in this O.A. are entitled to the benefit of revised pay scales in terms of the O.M. dated 13.03.1984.

ii. In case the administration comes to the conclusion that the applicants in this O.A. are entitled to revised pay scales as per the 1984 O.M., then they must be granted all consequential monetary benefits in terms of the said O.M. subject to the directions in this order. In such a case, the applicants' pay shall be notionally fixed from time to time but however ... 29.

of monetary benefits shall be paid to the applicants since one year prior to the filing of the present application. Since the O.A. was filed on 20.04.1993, the respondents shall give the actual monetary benefits to these applicants from 01.04.1992 and onwards.

iii. In case on the basis of the Committee's recommendations the administration comes to the conclusion that applicants in this case are not entitled to any revision of pay scale as per 1984 O.M. then a speaking order may be passed to that effect.

iv. The direction in this order should be complied by the respondents within a period of six months from the date of receipt of a copy of this order.

II. O.A. NO.: 434 OF 1993.

i. The application is allowed. The applicants in this O.A. are entitled to the benefits of revised pay scale in terms of O. M. dated 13.03.1984.

ii. The pay of the applicants shall be notionally fixed as on 13.03.1984 and then notionally fixed from time to time but however, the arrears of monetary benefits shall

be paid to the applicants since one year prior to the filing of the present application. Since the O.A. was filed on 30.04.1993, the respondents shall give the actual monetary benefits to these applicants from 01.04.1992 and onwards.

iii. The direction in this order should be completed by the respondents within a period of six months from the date of receipt of a copy of this order.

III. O.A. NO. 1025/93 is dismissed.

IV. O.A. NO. 1145/95 is dismissed.

V. O.A. NO. 602/97 is dismissed.

The interim order dated 11.07.1997 granted in this case and extended from time to time is hereby vacated. The respondents are at liberty to recover the payments made to the applicants in pursuance of their letter dated 14.05.1997 (exhibit A-4 to the O.A.) but however, the recovery shall be made from the pay of the applicants by reasonable monthly instalments.

VI. In the circumstances of the case, there will be no order as to costs.

OA.Nos. 415/93, 434/93, 1025/93, 602/97, 1145/95.

Dated: 6.7.1999

Both counsels present. . .

M.P.No. 412/96 in OA.No. 415/93 for condonation of delay in filing sur-rejoinder, M.P.No. 533/98 in OA.No. 602/97 filed by the applicant for permission to produce additional documents and M.P.No. 28/99 in OA.No. 1145/95 praying for early hearing are hereby allowed.

Common arguments heard in all these cases. Orders reserved.

D.S. Baweja
(D.S. BAWEJA)
M (A)

R.G. Vaidyanatha
(R.G. VAIDYANATHA)
VC

Date: 29/7/99
Applicant by Mr. SV Sareen
Respondent by Mr. RK Shetty
Judgement/Order
Sited and Pronounced
in the open court by
Hon'ble Shri Justice R.G. Vaidyanatha VR
and Hon'ble Shri AS Bawage M (A)

AC
Court Officer

Order/Judgement despatched
to Applicant/Respondent(s)
on 12/8/99

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