

ORDER SHEET

Original Application No. _____

Misc. Petition NO. _____

Contempt petition No. 13/05 in O.A 252/03

Review Application No. _____

Applicants. Amp SharmaRespondents. W.O.I GensAdvocates for the Applicant. M. Chanda, G.N. Chakraborty, S. Nath
S. ChaudharyAdvocates of the Respondents. case

Notes of the Registry	Dated	Order of the Tribunal
<p>This Contempt petition has been filed by the petitioner praying for initiation of a Contempt proceeding against the alleged Contemners for non-compliance of the order dated 23.9.04 passed by this Hon'ble Tribunal in O.A 252/03.</p> <p>Laid before the Hon'ble Court for further orders.</p> <p><u>Section Officer</u></p> <p>Pl. comply order dated 13.4.05.</p> <p>19.4.05</p> <p>Steps taken on 19/4/05.</p>	<p>13.4.2005</p> <p>mb</p> <p>16.5.05</p>	<p>Present : The Hon'ble Mr. Justice G. Sivaraman, Vice-Chairman.</p> <p>The Hon'ble Mr. K.V. Prahladan, Administrative Member.</p> <p>Heard Mr. M. Chanda, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why contempt proceedings shall not be initiated.</p> <p>The respondents are directed to file their affidavit within four weeks. Personal appearance is dispensed with for the time being.</p> <p>List on 16.5.2005.</p> <p><u>Member (A)</u></p> <p>Vice-Chairman</p> <p>Heard counsel for the parties. Hearing concluded. Judgment delivered in open court kept in separate sheets.</p> <p>The contempt petition is closed in terms of the order.</p> <p><u>Member (A)</u></p> <p>Vice-Chairman</p>

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Notice & order
sent to D/section
for issuing to
resp. Nos. 1, 2, 3 by
regd. AID post.

Ce
20/4/05.

D/No = 612 to
614

DT - 25/4/05.

Notice duly
served on resp
No - 2

Ce
4/5.

13.5-05

Ms. Leha Das AC9SC
entered appearance and
filed show cause resp
on behalf of the
Contestants no. 2 & 3.

by

Received
Leha Das
AC9SC
28/5/05

31.5.05

Copy of the order
has been sent to
the D/Sec for issuing
the same to the applicant
by post.

H.S.

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Contempt Petition No. 13 of 2005 (In O.A.No.252/2003)

Date of Order : This the 16th Day of May, 2005.

The Hon'ble Mr Justice G. Sivarajan, Vice-Chairman

The Hon'ble Mr K.V.Prahladan, Administrative Member.

Shri Anup Sharma,
Draftsman Grade-III,
Survey of India,
Assam and Nagaland GDC,
Ganeshguri, Guwahati-6.

.... Petitioner

By Advocate Shri M. Chanda.

- Versus -

1. Shri Prithish Nag,
Surveyor General,
Survey of India,
Block B, Hathibarkala Estate,
Dehradun.

2. Brigadier B.D.Sharma,
Director,
Meghalaya & Arunachal Pradesh, GDC,
Survey of India,
Shillong-1.

3. Shri O.P.Tripathi,
Director,
Assam & Nagaland GDC,
Survey of India,
Ganeshguri, Guwahati-6.

... Respondents

By Miss Usha Das, Addl.C.G.S.C.

ORDER (ORAL)

SIVARAJAN J.(V.C)

O.A. No.252/2003 filed by the applicant was disposed of by an order dated 23.9.2004 vide Annexure-1 to the contempt petition. Two directions were issued in the said order.

[Signature]

(i) The respondents were directed to conduct necessary trade test in terms of Circular Order No.439 (Administrative) within a period of 3 months from the date of receipt copy of this order.

(ii) Consider the case of the applicants and other Draftsmen who have completed 2 years in Grade III for the purpose of promotion to the next higher grade, namely, Grade II in accordance with the provisions contained in Circular Order No. 435/436 and 439 (Administrative).

2. The applicant has filed this Contempt Petition alleging non compliance of the aforesaid directions. The respondents have filed their affidavit. It is stated in the affidavit that another set of Draftsman Grade-III & IV working under the Survey of India, New Delhi preferred O.A No.1777/03 before the Central Administrative Tribunal, Principal Bench, New Delhi seeking a declaration that the Circular No.C-17078/4E21 (C) dated 7.11.2002 issued by the Director, Survey (AIR), Survey of India regarding trade test, 2002 and declaring the Circular Order No.439 (Administrative) dated 1.8.1950 corrected upto 31.3.1983 as null and void; the said O.A was decided on 26.3.2004 by holding that Circular No.439 corrected upto 31.3.1983 is not applicable to the case of the applicants and they cannot be subject to test in absence of any new Recruitment rules for further promotion, rather they are entitled to be governed by the OM dated 19.10.1994, which has been further revised after the 5th Pay Commission vide order dated 1.6.2001. The notification for conducting the trade test is also quashed. It is further stated that the said order was taken in Writ Petition before the Hon'ble High Court by the department and an interim order staying the operation of the judgment passed in O.A.No.1777/03. It is also stated that a trade test was conducted pursuant to a notification dated 17.3.2004. However, the result of the trade test was kept in abeyance till further orders are issued by the Principal Bench in O.A.1777/03 and

[Signature]

M.A.No.1510/2003. An undertaking was also taken from each of the examinees that he or she was aware that the implementation of result of the trade test is subject to the outcome of O.A.1777/03 and that applicant has given an undertaking to participate in the trade test. The attempt of the respondents in the affidavit is to show that there was no willful default or negligence on the part of the respondents in not complying with the directions issued in the order. The respondents have also tendered an unconditional apology with an assurance not to repeat the same in future.

3. Heard Mr M.Chanda, learned counsel for the applicant and Miss U.Das, learned Addl.C.G.S.C for the respondents. Mr Chanda submits that there is no impediment at present in complying with the directions issued by this Tribunal, since the order of the Principal Bench has already been stayed by the High Court. In other words he submits that the trade test can be conducted and the applicant case for promotion can be considered after the result of the trade test are published. On the other hand Miss U. Das, learned Addl.C.G.S.C submits that the applicant was well aware of the decision of the Principal Bench of the Tribunal and that he has given an undertaking that he will abide by the decision of the Principal Bench of the Tribunal and participate in the trade test. She accordingly submitted that the applicant was not justified in filing this contempt petition.

4. [We have considered the rival submissions of the parties. Of course the Principal Bench of the Tribunal has quashed the circular regarding conduct of the trade test and also held that trade test is not required for promotion to the post of Draftsman Grade II, but this decision of the Principal Bench has been stayed by the High Court in the Writ Petition. The position as it obtained now is that there is no impediment in complying with the direction issued by this Tribunal. However, since the order of the Principal Bench has got serious implication in regard to the

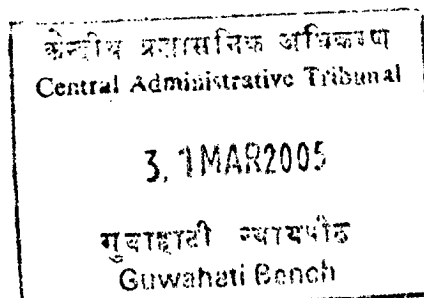
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requirement of passing the trade test for the purpose of promotion on all India basis, the respondents may be justified in deferring the implementation of the direction issued by this Bench of the Tribunal to await the decision of the High Court. Delay in conducting the trade test or publishing the result of the trade test on the ground that Writ Petition is pending against the decision of the Principal Bench of the Tribunal will result in non consideration of the claims of the applicant and other similarly situated persons for promotion in spite of direction issued by this Bench of the Tribunal against which no Writ Petition is pending. Its implication, in case of subsequent promotion of the applicant with retrospective effect, if any, viz, claim for back wages etc. has to be borne in mind. If the respondents keep this aspect in mind and defer the implementation of the direction of this Tribunal for some time to abide by the decision of the High Court it cannot be said that there is a willful non compliance by the respondents.

With the hope that the respondents will take action for getting an early disposal of the Writ Petition, the contempt petition is closed with liberty to the applicant to approach this Tribunal again if he is so advised.


(K.V. PRAHLADAN)
ADMINISTRATIVE MEMBER


(G. SIVARAMAN)
VICE CHAIRMAN



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Filed by the petitioner
through: Subroto Nath
Advocate

TRIBUNAL IN THE CENTRAL ADMINISTRATIVE

GUWAHATI BENCH: GUWAHATI

(An Application under Section 17 of the Administrative Tribunals Act, 1985)

Contempt Petition No. 13 /2005

In O.A. No. 252 of 2003.

In the matter of:

Shri Anup Sharma.

... Petitioner.

- Versus -

Union of India and Others.

... Alleged Contemnors.

-And

In the matter of:

An application under Section 17 of the Administrative Tribunals Act, 1985 praying for initiation of a Contempt proceeding against the alleged contemnors for non-compliance of the order dated 23.09.2004 passed in O.A. No. 252/2003.

-And -

In the matter of:

1. Shri Anup Sharma.
Draftsman Grade-III.
Survey of India,
Assam and Nagaland GDC,
Ganeshguri, Guwahati-6.

... Petitioners.

-Versus-

- 1) Shri Prithish Nag,
Surveyor General,
Survey of India,
Block B, Hathibarkala Estate,
Dehradun.
- 2) Brigadier B.D. Sharma,
Director,
Meghalaya & Arunachal Pradesh, GDC,
Survey of India.
Shillong-1.
- 3) Shri O.P. Tripathi,
Director,
Assam & Nagaland GDC,
Survey of India,
Ganeshguri, Guwahati- 6.

... Alleged Contemnors.

The humble petitioners above named-

Most respectfully sheweth: -

1. That your petitioner approached this Hon'ble Tribunal through O.A. No. 252/2003, against the impugned order issued under letter dated 18.07.2002 and dated 08.10.2002, issued by the Director, North Eastern Circle, Survey of India, Shillong, and also praying for a direction upon the respondents to conduct necessary trade test with immediate effect for effecting promotions/upgradation of the petitioner to the cadre of Draftsman Grade-II with effect from January 2003 with all consequential benefits including monetary benefit.

2. That the Hon'ble Tribunal after hearing both the parties was pleased to dispose of the Original Application vide order dated 23.09.2004 passed in O.A. No. 252 of 2003 directing the respondents as follows: -

“ 12. In view of the above, the application is allowed and impugned orders issued under letters dated 18.07.2002 and 8.10.2002 (Annexure-IV) are hereby set aside and the respondents are directed to conduct necessary trade test in terms of Circular Order No. 439 (Administrative) within a period of 3 months from the date of receipt copy of this order and consider the case of the applicants and other Draftsman who have completed 2 years in Grade III for the purpose of promotion to the next higher grade, namely, Grade II in accordance with the provisions contained in Circular Order No. 435/436 and 439 (Administrative).

In the facts and circumstances we shall leave the parties to bear their costs.”

(Copy of the Judgment and order dated 23.09.2004 is annexed hereto for perusal of Hon'ble Tribunal and marked as Annexure-I).

3. That your petitioner beg to state that Directorate of Survey of India, North Eastern Circle has been bifurcated into two Directorate, namely; Directorate, Assam & Nagaland GDC, Survey of India, Ganeshguri, Guwahati and Directorate, Meghalaya & Arunachal Pradesh, GDC, Survey of India, Shillong. The petitioner is presently working under the Director, Assam & Nagaland GDC, Survey of India, Ganeshguri, Guwahati, therefore he approached the alleged contemnor No. 3 through representation dated 16.11.2004 alongwith a copy of the order dated 23.09.04 passed in O.A No. 252/03, for implementation of the judgment and order

dated 23.09.2004 passed in O.A. No. 252/03, interalia praying for conducting of trade test as per direction passed by this Hon'ble Tribunal but to no result. Be it stated that Petitioner again submitted another representation on 13.01.05 praying for conducting trade test but the alleged contemnors did not give any reply to the representations and also did not implement the judgment and order dated 23.09.04 passed in O.A. No. 252/03.

(Copy of the representation dated 16.11.2004 and dated 13.01.2005 are annexed hereto for perusal of Hon'ble Tribunal and marked as Annexure-II & III respectively.)

4. That the humble petitioners beg to state that more than 5 (five) months time have passed since the passing of the order by this Hon'ble Tribunal but the alleged contemnors have not initiated any action for implementation of the Judgment aforesaid.
6. That it is stated that the alleged contemnors deliberately and willfully did not initiate any action for implementation of the Judgment and Order dated 23.09.2004 which amounts to Contempt of Court. Therefore the Hon'ble Tribunal be pleased to initiate a Contempt proceeding against the alleged contemnors for willful violation of the order of the Hon'ble Tribunal dated 23.09.2004 in O.A.No.252/2003 and further be pleased to impose punishment upon the alleged contemnors in accordance with law.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate Contempt proceeding against the Alleged Contemnors for willful non-compliance of the order dated 23.09.2004 in O.A.

No. 252/2003 and be pleased to impose punishment upon the alleged contemnors in accordance with law and further be pleased to pass any other order or orders as deemed fit and proper by the Hon'ble Court.

And for this act of kindness the petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Shri Anup Sharma, presently working as Draftsman Grade-III, Assam and Nagaland GDC, Guwahati, aged about 43 years, petitioner in the instant contempt petition, do hereby solemnly declare as follows: -

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statement made in para 1 to 5 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this Affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench for non-compliance of the Hon'ble Tribunal's order dated 23.09.2004 passed in O.A. No.252/03.

And I sign this Affidavit on this 31st day of March' 2005.

Identified by
Sushita Das Choudhury
Advocate.

Anup Sharma,
Deponent.

The above named deponent
solemnly affirmed and declared
before *Subrata Nath, Advocate*
on 31st day of March' 05,
who is identified by
Miss. Sushita Das Choudhury,
Advocate

Subrata Nath.
Advocate

31.03.05.

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati for initiating a contempt proceeding against the contemnors for willful disobedience and deliberate non-compliance of order of the Hon'ble Tribunal dated 23.09.2004 passed in O.A. No. 252/2003 and to impose punishment upon the alleged contemnors for willful disobedience and deliberate non-compliance of the Hon'ble Tribunal's order dated 23.09.04.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 252 of 2003.

Date of Order : This the 23rd Day of September, 2004.

The Hon'ble Mr Justice R.K.Batta, Vice-Chairman.

The Hon'ble Mr K.V.Prahladan, Administrative Member.

1. Shri Anup Sarma,
2. Smti. Rumki Choudhury,
3. Smti. Swapna Mawrie,
4. Shri Parth Das Choudhury &
5. Shri Alok Dam.

All the applicants are Draftsman Grade III working in the office of the Survey of India, North Eastern Circle Office, Shillong-793001.

...Applicants

By Advocate Sri M.Chanda.

- Versus -

1. The Union of India, represented by the Secretary to the Govt. of India, Ministry of Science & Technology, New Delhi.

2. The Surveyor General, Survey of India, Block B, Hathibarkala Estate, Benradun.

- The Director, Survey of India, North Eastern Circle, Shillong.

....Respondents

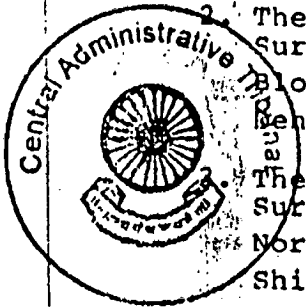
By Shri A.Deb Roy, Sr.C.G.S.C.

ORDERR.K.BATTA, J. (V.C)

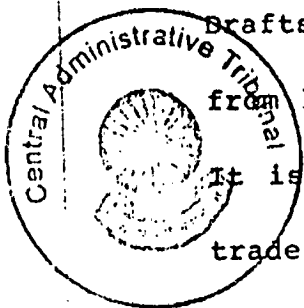
The applicants were initially appointed on 10.4.1995 to the post of Topo Trainees Type B in the pay scale of Rs.950-1500/-. After completion of two years training, classification test was conducted by the respondents and on the basis of the said classification

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True Copy
for
Shri. A.Deb Roy



test the applicants were upgraded as Draftsman Grade IV after passing of the trade test and they were placed in the pay scale of Rs.3200-4900 with effect from 1.4.1997. Thereafter on completion of 3 years regular service in the Draftsman Grade IV, they again appeared in the trade test and after passing the trade test they were upgraded in the cadre of Grade III Draftsman in the scale of pay of Rs.4000-6000/- with effect from 1.1.2001. According to the applicants Circular Order No. 435/439 (Administrative), wherein service conditions of Group C employees are laid down and which governs the promotional avenues of the applicants, Rule 6(d) provides for promotion to the next higher grade on completion of certain number of years. The applicants further allege that they are working in the Draftsman Grade-III with effect from 1.1.2001 and are entitled to be promoted/upgraded to the next higher grade of Draftsman Grade-II in the scale of Rs.4500-7000/- with effect from 1.1.2003 without reference to availability of vacancy. It is further contended that as per Government instruction trade test/DPC for promotion/upgradation has to be conducted well in advance so that the employee gets the benefit of Government instructions. According to the applicants, the trade test has not been conducted as a result of which they have been deprived of the promotion/upgradation to Grade-II with effect from 1.1.2003. The applicants submitted



representation for conducting trade test on 15.11.2002 and vide letter dated 27.12.2002 applicant No.4 was informed that the residency period from one grade to another grade would be followed as per order dated 8.10.2002 of the Director, N.E.Circle, Shillong and asked the applicants not to make any further correspondence. The applicant No.4 was further informed in the said letter that in view of the letter dated 8.10.2002 residency period is required in case of Draftsman Grade-III for getting promotion to Draftsman Grade-II as per O.M.No.13(1)IC/91 dated 19.10.1994. The applicant challenge various impugned letters dated 18.7.2002 and 8.10.2002 (Annexure-IV) and seeks setting aside of the same. Their case further is that no amendment of Recruitment Rules has been made incorporating the residency conditions laid down in O.M. dated 19.10.1994 and as such the Recruitment Rules in Circular Order No.435/439(Administrative) are still in force and the promotion/upgradation from Grade III to Grade II has to be considered in terms of the said Circular Order No.439. The applicants rely upon averments made by the respondents in O.A.14/2002 filed before this Tribunal. The applicants, therefore, claim setting aside of letters dated 18.7.2002 and 8.10.2002 and direction to conduct trade test for effecting promotion/upgradation of the applicants to the

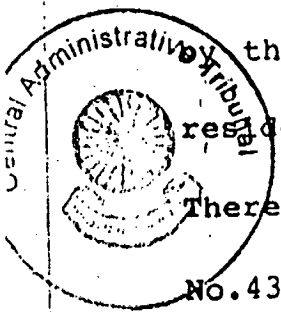


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cadre of Draftsman Grade II with effect from 1.1.2003 with all consequential benefits.

2. The respondents in the written statement have stated that prior to the implementation of judgment dated 17.7.97 of this Tribunal in O.A.52/96 and Principal Bench, CAT New Delhi order dated 7.2.2002 in O.A.No.2094/2001, the provisions laid down and Circular 435/439(Administrative) in respect of residency period for conducting trade test was followed which was two years in case of Grade III for being eligible for trade test of Grade II and promotion thereto. However, after the implementation of the judgment dated 17.7.97 of this Tribunal in O.A.52/96 and order dated 7.2.2002 of the Principal Bench of this Tribunal in O.A.2094/2001, the Draftsman of Survey of India are governed by the provisions made in the O.M. dated 19.10.94 and the residency period prescribed therein has to be followed. Therefore, according to the respondents Circular Order No.435/439 are not now applicable to the Draftsman working in Survey of India and the applicants cannot claim benefits of two separate set of rules. It is further averred in the written statement that revised recruitment rules for Draftsman Grade I, II and III, as per O.M. dated 19.10.1994 and Fifth Central Pay Commission report have already been sent to the Department of Science and Technology vide letters dated 25.5.2003 and 11.7.2003 for their approval.



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Accordingly, there is no merit in the application and it should be dismissed.

3. In reply the applicants have stated that O.A.52/96 was relating to extension of revised higher pay scale in terms of O.M. dated 19.10.94 and it does not relates to promotion. The present applicants claim promotion in terms of Circular Order 439. It is further contended that the O.M dated 19.10.94 cannot be treated as recruitment rules for Draftsman, in as much as no amendment of the recruitment rules has been carried out. Learned counsel for the applicant has placed reliance on Rangaiah vs. J.Sreenivasa Rao, 1983(3) SCC 284 and State of Rajasthan vs. R.Dayal or others, 1997(10) SCC 419.



We have heard learned counsel for the parties at length. The controversy which is required to be sorted out whether the applicants, who are working in the cadre of Draftsman Grade III in the office of Survey of India, are governed by Circular Order No.439 (Administrative) or by O.M. dated 19.10.94 for the purpose of consideration for the promotion to next Grade II. We shall, therefore, first refer to the relevant part of Circular Order No.439 which deals with qualifications and trade test for Group C technical personnel. Rule 2 of the said circular provides that the grade of an individual in the Group 'C' service may be changed to a higher one in the following circumstances, which includes promotion by selection and on regradation. In

terms of Rule 2(b) of the Circular Order No.439(Administrative), regradation is effected in recognition of technical competence and an individual in Group 'C' will be eligible to be regraded under Rule 6 to the next higher grade if he is qualified under the Appendix to these Rules and if it is considered that he has sufficient experience by virtue of length of service in his present grade. Rule 6(a) provides for regradation on the results of trade test in terms of Rule 6(b) thereunder. Rule 6(a) of the said Circular further provides that requests from the Directors should reach Surveyor General's Office by 30th September each year and all promotions as a result of regradation, re-classification/initial classification will normally take effect from the 1st January following. Rule 6(b) of the said Circular, lays down that to assist the Directors in assessing the qualifications of candidates, Directors will periodically convene Trade Testing Boards to consider all eligible candidates to undergo the trade test as prescribed. ~~By~~ Rule 6(d) of the said Circular which has bearing on the controversy to be decided, reads as under :

"Personnel will have to complete the following minimum period in a particular grade before they can be promoted to the next higher grade provided their work and conduct have been satisfactory over the past one year:-

Grade IV .. 3 years
Grade III' .. 2 years.

They will be allowed to take trade test for the next higher grades in the third and second year of grades IV and III respectively or in subsequent years."



Note :-The word "conduct" appearing above should be taken to mean conduct so far as it affects the professional work of an individual.

Marks should be allotted for all tests and a candidate should not be passed unless he has obtained at least 45% in each item of the test (except where specially stated otherwise) and 55% in the aggregate."

5. We may at this stage refer to O.M. No.13(1)-IC/91 dated 19.10.1994 of Government of India, Ministry of Finance, Department of Expenditure which deals with revision of pay scales of Draftsman Grade I, II and III in Government of India offices on the basis of award of Board of Arbitration in the case of Central Public Works Department. The said Office Memorandum is reproduced below :

No.13(1)-IC/91
Government of India
Ministry of Finance
Department of Expenditure

New Delhi the 19th Oct, 1994

OFFICE MEMORANDUM

Subject : Revision of pay scales of Draughtsmen Grade I, II and III in all Government of India Offices on the basis of the Award of Board of Arbitration in the case of Central Public Works Department.

The undersigned is directed to refer to this Department's O.M.No.F(50)-E.III/82 dated 13.3.84 on the subject mentioned above and to say that a Committee of the National Council (JCM) was set up to consider the request of the staff side that the following scales of pay allowed to the Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draughtsmen Grade I, II and III irrespective of their recruitment qualification, in all Government of India offices.

	Original Scales (re.)	Revised scale on the basis of the Award
Draughtsmen Grade I	425 - 700	550 - 750
Draughtsmen Grade II	330 - 560	425 - 700
Draughtsmen Grade III	260 - 430	330 - 560



2. The president is now pleased to decide that the Draughtsmen Grade I, II and III in Offices/Departments of the Government of India other than in CPWD may also be placed in the scales of pay mentioned above subject to the following

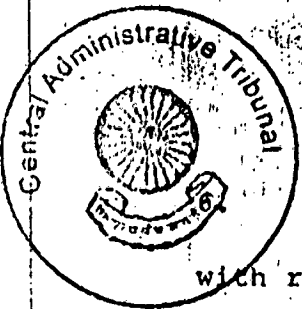
- (a) Minimum period of service for 7 years placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised scale Rs.260-430 to Rs.330-560)
- (b) Minimum period of service for 5 years placement from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to 425-700).
- (c) Minimum period of service for 4 years placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750).

3. Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

4. The benefit of this revision of scale of pay scale be given with effect from 13.5.82 notionally and actually from 1.11.83.

Sd/-SHYAM SUNDER
Under Secretary to the Government of India"

From the above Office Memorandum it is clear that with reference to O.M.No.F(59)-E III/82 dated 13.3.84 on the subject, a Committee of National Council (JCM) was set up to consider the request of staff side that the following scales of pay allowed to Draftsman Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draftsman Grade I, II and III irrespective of their recruitment qualification in all Government of India offices. Accordingly, it was decided that Draftsman Grade I, II and III in offices/Departments of the Government of India



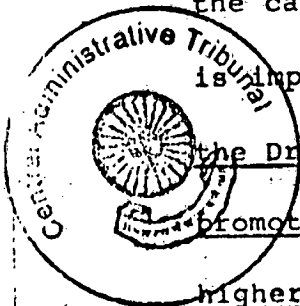
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other than in CPWD may also be placed in the scale of pay mentioned above subject to fulfillment of minimum period of service which in case of Draftsman Grade II is 5 years. It is clear from the above Office Memorandum that scales of Draftsman Grade I, II and III working in the CPWD had been revised, but the pay scales of the Draftsman in Grade I, II and III working in other Government departments had not been revised and for that purpose a Committee of National Council was appointed to consider the case of Draftsman Grade I, II and III of the other departments in Government of India and thereafter Government of India decided that the scales given to CPWD Draftsman Grade I, II and III should be extended to Draftsman Grade I, II and III in the other Government offices irrespective of their recruitment qualifications provided they fulfill the minimum period of service which in the case for Draftsman Grade III to Grade II is 5 years. It

is important to note that Para 3 of O.M provides that once the Draftsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid in the Recruitment Rules (emphasis supplied).

Para 4 of the said Memorandum further provides that the benefit of this revision of scale of pay be given with effect from 13.5.82 notionally and actually from 1.11.83.

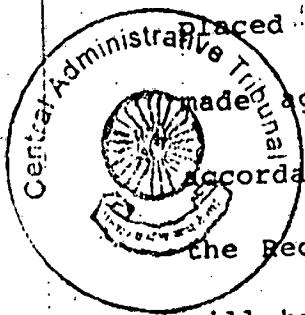
The O.M therefore relates back and remedies the grievances of employees working in other establishments other than



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CPWD and grants them revised pay scales at par with CPWD Draughtsman and fixation in the revised pay scales with retrospective effect. And once the same is done further promotions have to be effected as per normal Recruitment Rules.

7. Therefore, a close reading of the said Office Memorandum dated 19.10.1994 goes to show that the said Memorandum provides for placing the Draftsman of other Government departments in the regular scales, namely, in the scales which are earlier been given to Draftsman Grade I, II and III of CPWD and the benefit of this revision of pay scale was extended with effect from 13.5.82 notionally and actually from 1.11.83. It is pertinent to note that Para 3 of this Memorandum enjoins that once the Draftsman are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules. Therefore, Para 2 of the Memorandum will have no bearing in so far as the claim put forward by the applicants is concerned who shall be governed by Para 3 of the said Memorandum dated 19.10.1994 in relation to further promotion against available vacancies in higher grade and in accordance with normal eligibility criteria laid down in Recruitment Rules. The normal eligibility criteria laid down in the Recruitment Rules is laid down in Circular Order No.435, 436 and 439 (Administrative), which

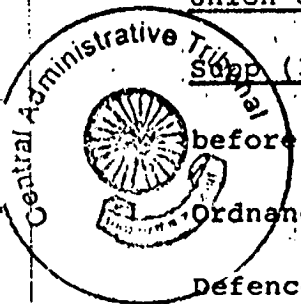


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deals with promotions by selection and regradation. Rule 6(d) of the Circular Order 439 clearly contemplates that the personnel will have to complete the minimum period in a particular grade before they can be promoted to the next higher grade provided their work and conduct have been satisfactory over the past one year. The minimum period required for promotion from Grade III to Grade II is 2 years and trade test in order to determine the competency of the Draftsman for consideration to the next higher grade.

8. We shall at this stage refer to various rulings which have been placed before us. The question of parity in pay in relation to Draftsman working in Ordnance Factories and Draftsman Grade II in CPWD came up before the Apex Court in Union of India and others vs. Debashis Kar and others, 1995

Supp (3) SCC 528. The question which arose for consideration before the Apex Court was whether Draftsman employed in the Ordnance Factories and Workshops of FME in the Ministry of Defence are entitled to have their pay scale revised on the basis of Office Memorandum of Government of India, Ministry of Finance dated 13.3.1984 to which reference has been made in Office Memorandum No.13(1)-IC/91 dated 19.10.94. In that case the Apex Court noticed that on the basis of report of the Third Pay Commission, the pay scales of Draftsman employed in CPWD were revised. However, the said employees of the CPWD were not satisfied and claimed that they should have been placed on higher pay scale. The dispute was



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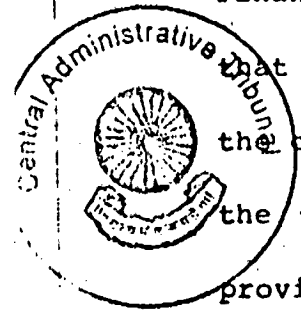
referred to a Board of Arbitration and the Board of Arbitration gave Award on 20.6.1980 whereby the pay scales of Draftsmen working in CPWD were revised as under :

- | | |
|-----------------------------|--------------|
| (i) Draughtsman Grade I | Rs.550 - 750 |
| (ii) Draughtsman Grade II | Rs.425 - 700 |
| (iii) Draughtsman Grade III | Rs.330 - 560 |

By the said Award it was directed that, pay of the Draughtsman shall be fixed notionally in their respective scales of pay from 1.1.1973, but for computation of arrears, the date of reckoning shall be 28/29.7.1978. In accordance with the said Award, the pay scales of Draughtsmen in CPWD were revised vide order dated 10.11.1980. The Draughtsmen employed in departments other than CPWD claimed the revision of their pay scale in the light of revision of pay scale in CPWD and on 13.3.1984 the Government of India, Ministry of Finance issued an Office Memorandum whereby it was directed

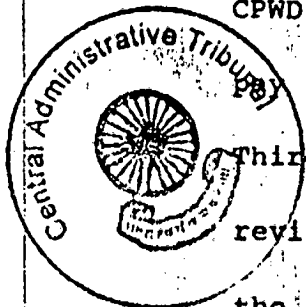
that the scale of pay of Draughtsmen Grade III, II and I in the office/department of the Government of India, other than the CPWD, may be revised as per revised scales for CPWD provided their recruitment qualification are similar to those prescribed in the case of Draughtsmen in CPWD and those who do not fulfill the said qualifications would continue in the pre-revised scales. The Ministry of Defence on 3.7.1984 issued an order whereby the organisations were requested to take necessary action in terms of para 2 of the Office Memorandum dated 13.3.1984. It appears that in the

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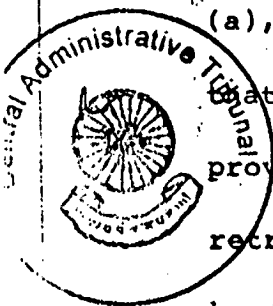
Ordinance Factories under the control of Director General of Ordinance Factories no action was taken to revise the pay scales of Draughtsmen as per Office Memorandum dated 13.3.1984. A series of Writ Petitions were filed before the High Courts and Tribunals. In the Writ Petition filed before the Calcutta High Court, it was directed by order dated 8.10.85 that O.M. dated 13.3.84 as well as the order of Ministry of Finance dated 3.7.84 to revise the pay scales be implemented forthwith. The judgments of the various Benches of the Tribunal had taken the view that the qualifications which were required for appointment of Draughtsman in the Ordinance Factories as well as in the Army Base Workshops in EME were equivalent to qualifications which were prescribed for appointment in the post of Draughtsman Grade II in the CPWD and therefore, the respondents who were placed in the pay scale of Rs.335-560/- on the basis of the report of the Third Pay Commission were entitled to be placed in the revised pay scale of Rs.425-700/- in accordance with O.M. of the Ministry of Finance dated 13.3.1984. The Union of India assailed the view of the Tribunals and it was stated that qualifications for appointment in the post of Draughtsman on the Ordinance Factories and Army Base Workshops of EME cannot be treated as equivalent to the qualifications for appointment on the post of Draughtsman Grade II in CPWD and therefore, the said respondents are not entitled to the



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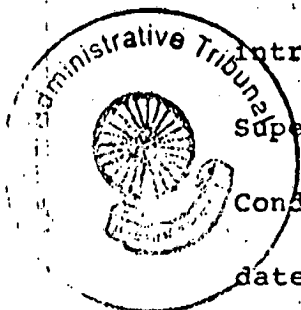
benefit of revision of pay on the basis of the Office Memorandum dated 13.3.1984. During the pendency of the matter before the Apex Court, Government of India, Ministry of Finance issued Office Memorandum dated 19.10.1994 to which we have already referred. By the said Office Memorandum Government of India after considering request of staff side that the scales of pay allowed to Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration, may be extended to Draughtsmen Grade I, II and III irrespective of their recruitment qualification, in all Government of India offices has decided that Draughtsmen I, II and III in offices/departments of the Government of India other than in CPWD may also be placed in the revised scale of pay subject to certain minimum period of service as mentioned in clause (a), (b) and (c) of the O.M. The Apex Court has pointed out that the benefit of this revision of pay scales which is provided in O.M dated 19.10.1994 had been given retrospectively with effect from the same dates as was given by the O.M dated 13.3.1984, i.e. from 13.5.1985 notionally and actually from 1.11.1983. It was further observed by the Apex Court that in respect of Draughtsmen who fulfilled the requirement relating to the period of service mentioned in the same Office Memorandum dated 19.10.1994 on the relevant date the question whether their recruitment qualifications were similar to those in the case of Draughtsmen in CPWD would not arise and they would be entitled to the revised



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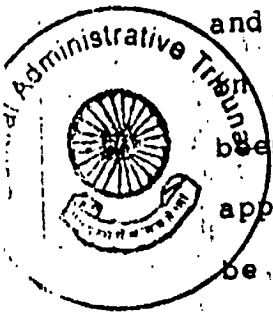
pay scales, as granted to the Draughtsmen in CPWD irrespective of their recruitment qualification. However, in respect of those Draughtsmen who did not fulfill the requirement relating to the period of service prescribed in Para 2 of the O.M dated 19.10.1994 the question whether their recruitment qualification are similar to those prescribed for Draughtsmen in CPWD is required to be considered for the purpose of deciding whether they are entitled to the benefit of the revision of pay scales as per O.M dated 13.3.1984. In that case it was urged on behalf of Union of India that there are different channels of promotion in Ordnance Factories and in fact better chances of promotion and as such benefit of revision of pay scales could not be given under O.M. dated 13.3.1984. The Apex Court noticed that provision regarding promotion of Draughtsman as Chargeman Grade II in Ordnance Factories was introduced by the Indian Ordnance Factories Group C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 issued vide Notification dated 4.5.1989 and the said rules were not retrospective in operation. The Apex Court observed that the case in hand was of revision of pay scales on the basis of O.M. dated 13.3.1984 and at that time the said rules were not operative. Therefore, on the basis of aforesaid Rules, Draughtsmen in Ordnance Factories could not be denied the benefit of revision of pay scales on the basis of O.M. dated 13.3.1984.



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9. From the above judgment of the Apex Court it is clear that what was done vide O.M. dated 19.10.1994 was to effect revision of the pay scales in all Government of India offices on par with the Draughtsman Grade I, II and III working in the CPWD and for that purpose the Government had fixed minimum period of service for placement in the revised scales irrespective of recruitment qualifications in as much as the benefit of the revision of pay scale was to be given effect from 13.5.1982 notionally and actually from 1.11.1983. It is crystal clear from Para 3 of the said O.M. dated 19.10.1994 that once Draughtsmen were placed in regular scales (in fact revised scales) in terms of Memorandum dated 19.10.1994, all further promotions were to be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules. The normal eligibility criteria in the Recruitment Rules is found in Circulars Order No.435/436 and 439(Administrative) and for that purpose minimum period of particular grade for promotion to next higher grade has been fixed at 2 years for Grade III. The applicants were appointed on 10.4.1995 and their promotions obviously will be governed by the Recruitment Rules in force which are contained in Circular Order No.435/436 and 439(Administrative). The respondents in the written statement have admitted that the Recruitment Rules have not been amended and the revised Recruitment Rules have been sent to the Department of Science and Technology vide letter dated 25.5.2003 and 11.7.2003 for their approval. Besides this, O.M. dated 19.10.94 provides for revision of pay scales retrospectively at par with CPWD scales and it does not embody any rule of recruitment nor is it in supercession of



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Recruitment Rules. The condition relating to minimum service relates to cases of revision of pay thereunder and cannot be imported in Recruitment Rules for the purpose of promotion. Therefore, there is no merit whatsoever in the stand taken by the respondents.

10. Our attention was drawn to the decision in Tulsiram Sharma & Others vs. The Secretary, Ministry of Science & Technology, New Delhi and others, O.A.No.52/96 and the decision in Tulsiram Sharma and others vs. Union of India & Others, O.A.14/2002. In both these applications the question which came up for consideration was in relation to the revision of pay scales with reference to O.M. dated 19.10.1994. The question which has been raised in the present application never cropped up in the said applications. In both those applications the Union of India had challenged the order before the High Court but the Writ Petitions Civil Rule No.4733 of 1997 and WP(C) No.9786/2003 were dismissed. Special Leave Petition filed by the Union of India before the Apex Court also dismissed. It is relevant to point out that in Union of India & Ors. vs. Tulsiram Sharma and others, Writ Petition(C) No.9786/2003, the Hon'ble High Court found that the matter pertained to revision in the pay scale in terms of O.M. dated 19.10.1994 and it was made clear that this revision in pay scale was on account of the particular number of years of service rendered by the respondents and it does not mean that they have been given promotion to the higher post.

11. In view of this the applicants shall be governed by the Recruitment Rules contained in Circular Order No.435/436 and 439 (Administrative) and their claim for promotion shall be governed thereunder. Since they have completed 2 years in Grade III, the appropriate authority shall have to take further necessary action in terms of the said Circular Order

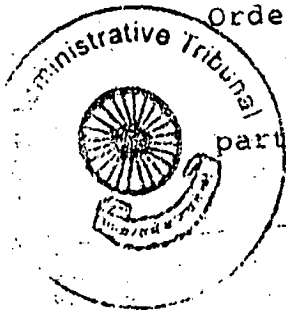
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No.435/436 and 439 (Administrative) and conduct trade test and thereafter pass appropriate order in accordance with the respective rules contained in Circular Order No.435/436 and 439 (Administrative).

12. In view of the above, the application is allowed and impugned orders issued under letters dated 18.7.2002 and 8.10.2002 (Annexure-IV) are hereby set aside and the respondents are directed to conduct necessary trade test in terms of Circular Order No.439 (Administrative) within a period of 3 months from the date of receipt copy of this order and consider the case of the applicants and other Draftsmen who have completed 2 years in Grade III for the purpose of promotion to the next higher grade, namely, Grade II, in accordance with the provisions contained in Circular Order No.435/436 and 439 (Administrative).

In the facts and circumstances we shall leave the parties to bear their costs.



Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

Certified to be true copy
प्रमाणित प्रतिलिपि

Section Officer (A)

C.A.T. GUWAHATI BRANCH

Guwahati-781005

PG

18/10

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The Director,
Assam and Nagaland A.C.
Survey of India,
Guwahati - 6.

(Through proper channel)

SUB : CONDUCTING OF TRADE TEST & RESULT

REF : Judgement & order dtd. 22-09-2004,
in OA no. 252/2003 passed by
the Hon'ble CAT, Guwahati.

Sir,
Respectfully, I have to enclose herewith
a copy of judgement and order dated 23-09-2004
passed by the Hon'ble Central Administrative
Tribunal (CAT) in OA no. 252/2003 which
is self detailed.

I would request you kindly to implement
the case of my gradation to the grade of Draftsman
grade II at an early date. It is pertinent
to mentioned here that I have already appeared
the Trade Test for draftsman grade II during
the month of May 2004. Therefore, I request
your honour to convey the result of the said
test so that I can get my upgradation on due
time.

This is for favour of your kind and
necessary action, please.

Date : 16.11.04.
Guwahati - 6

Encls : Copy of Judgement

Yours faithfully,

16.11.04.

(ANUR SINGHA)

D/Man side III.

Assam & Nagaland
Guwahati - 6

True Copy
for
Advocate

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To The Director
Assam & Nagaland ADE.
Survey Infra,
Ganeshpint, Guwahati-6.

(Through proper channel)

Sub: CONDUCTING OF GRADUATION TEST & RESULT
Ref: 1) Judgement and order dated 23-07-2004
in S.No. 252/2003 passed by the Hon'ble
Cat. Guwahati.

2) My application dated 16th NOV'2004.

Sir,
Most humbly, I have the honour to respect you
that till date I did not receive any reply from
your end as per my application dated
16th NOV'2004 as mentioned in the above reference 2.

Therefore, once again I request you to
kindly implement the judgement aforesaid and
consider the case of my graduation for D/man ADE II
at earliest.

Necessary action for the same is requested
from your end please. Copy of the Tribunal's order
attached with my previous application dated 16th Nov
2004.

Thanking you.

Date : 13-01-2005
Guwahati-6

Yours faithfully
(ANUP SHARMA)
D/man Gde II
Assam & Nagaland ADE.
Guwahati.

Tone Com
for
Advocate

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP NO. 13/05
IN OA NO. 252/03

IN THE MATTER OF

SHRI ANUP SHARMA

.....PETITIONER

-VERSUS-

UNION OF INDIA & ORS

...RESPONDENTS

-AND-

IN THE MATTER OF

Show cause reply filed by the respondent No. 2

-AND-

IN THE MATTER OF

Shri Anup Sharma.

Draftsman Grade-III

Survey of India,

Assam and Nagaland GDC,

Ganeshguri, Guwahati-6

.....Petitioner

-Versus-

1) Shri Prithish Nag,

Surveyor General,

Survey of India,

Block B, Hathibarkala Estate,

Dehradun.

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- 28 -

Filed by
The Respondent
No. 2 through
Alsha Das,
Advocate
13/5/05

Seal

(बी. डी. शर्मा) ब्रिगेडियर
(Brig. B. D. Sharma)
निदेशक, मेघालय एवं अरु. प्र. जो. डी. सी.
Director (M. & A. P. GDC)
भारतीय सर्वेक्षण विभाग
Survey of India
शिलांग/Shillong 791001

2) Brigadier B. D. Sharma,
Director,
Meghalaya & Arunachal Pradesh, GDC,
Survey of India.
Shillong-1.

3) Shri O. P. Tripathi,
Director,
Assam & Nagaland GDC,
Survey of India,
Ganeshguri, Guwahat-6.

.....Respondents

The humble respondent No. 2 above named
MOST RESPECTFULLY SHEWETH:-

I, Brigadier B. D. Sharma, aged about 49 years, son of Shyam Singh Sharma, at present working as Director, Meghalaya & Arunachal Pradesh, GDC, Survey of India, Shillong-1, do hereby solemnly affirm and state as follows :-

- 1) That I am the respondent No. 2 in the above noted Contempt Petition and I have been served with a copy of Contempt Petition filed by the petitioner. I have gone through the copy of the Contempt Petition and have understood the contentions made therein. Save and except the statements, which are specifically admitted herein below, other statement made in the Contempt Petition may be treated as total denial. The statements, which are not borne on record, are also denied and the petitioner is put to the strictest proof thereof.
- 2) That before traversing various paragraphs of the Contempt Petition your humble respondent begs to place the brief fact of the case.

Shri Arup Sharma, Draftsman Grade -III of Erstwhile North Eastern Circle, Shillong and others filed the OA No. 252/03 before the Hon'ble Central

Boe

Administrative Tribunal Guwahati Bench, Guwahati praying for a direction for holding Trade Test of Grade-II as per the provisions laid down in C.O. No. 435 and 439. Shri Anup Sharma was appointed as TTT'B' (D/Men) on 10.04.1995, classified as D/Men Grade - IV on 01.04.1997 on promotion as D/Men Grade-III on 01.01.2001 as per the provisions laid down in C.O. 435 & 439.

In the O.A. No. 252/03, Shri Anup Sharma & others prayed the Hon'ble Tribunal, Guwahati Bench, Guwahati, that they should be entitled for appearing in Trade Test for Grade-II as they have completed 2 years service in Grade -III on the basis of residence as laid down in CO 435 & 439.

The Hon'ble Tribunal, Guwahati Bench was pleased to allow the said OA directing the respondents as follows:-

".....In view of above, the application is allowed and impugned orders issued under letter dated 18.07.2002 and 08.10.2002 are here set aside and the respondents are directed to conduct necessary Trade Test in terms of Circular Order No. 439 (Administrative) within a period of 3 months from the date of receipt of copy of this order and consider the case of the applicants and other Draftsman who have completed 2 years in Grade III for the purpose of promotion to the next higher grade, namely, Grade II in accordance with the provisions contained in Circular Order No. 435/436 and 439 (Administrative)."

Another set of Draftsman Grade -III & IV, working under the Survey of India, New Delhi preferred OA No. 1777/03 before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi seeking a declaration that the Circular No. C-17078/4E21 (C) dated 7.11.2002 issued by the office of the Director, Survey (AIR), Survey of India, regarding trade test, 2002 and declaring the Circular Order No. 439 (Administrative) dated 1.8.1950 corrected up to 31.3.1983 as null and void. While deciding the OA on 26.03. 2004, Hon'ble Tribunal, Principal Bench was pleased to allow the OA and directed that the circular No. 439 corrected up to 31st March, 1983 is not applicable to the case of the applicants and they cannot be subject to test in absence of any new Recruitment Rules for further promotion, rather they are entitled to be governed by the OM dated 19.10. 1994, which has been further revised after the 5th Pay Commission vide order dated 1.6.2001. The notification for conducting the trade test is also quashed.

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It is pertinent to mention here that against the Judgment passed by the Hon'ble Tribunal, Principal bench, the Department has preferred a Writ Petition before the Hon'ble Delhi High Court and the Hon'ble High Court was pleased to pass an interim order staying the operation of the judgment passed in OA No. 1777/03 by the Hon'ble Principal Bench.

Copies of the Judgment and orders dated passed in OA No. 1777/03 by the Hon'ble Tribunal, Principal Bench and the judgment and order dated passed in OA No. 252/03 by the Hon'ble Tribunal, Guwahati bench are annexed herewith and marked as Annexure- 1& 2 respectively.

During pendency of the OA No. 252/03 before the Hon'ble Tribunal, Guwahati Bench, Guwahati the Deputy Surveyor General, for Surveyor General of India issued a Notification bearing No. E2-4238/1196-B (T.R.S.) dated 17.03.2004 for conducting the Trade Test of Draftsman Grade IV to III and Grade III to II. However it was made clear that the result of the Trade Test may be kept in abeyance till further order in view of the judgment passed by the Hon'ble Tribunal, Principal Bench in OA No. 1777/03 and M. A. No. 1510/2003. An undertaking was also taken from each examinee that he/she was aware that the implementation of result of the test is subject to the outcome of OA No. 1777/ 03.

Copy of the notification dated 17.03 2004
is annexed herewith and marked as
Annexure-3

Accordingly undertaking was taken from each examinee and the Trade Test was conducted from 24th to 28th May 2004. The petitioner in this CP, has also given the undertaking and participated in the Trade Test.

A copy of the undertaking given by the petitioner, Shri Anup Sharma is annexed herewith and marked as Annexuer-4.

Bew

It is pertinent to mention here that the petitioner was aware of the judgment passed in OA No. 1777/03 by the Hon'ble Tribunal, Principal Bench and also participated in the Trade Test held from 24th to 28th May, 2004 giving undertaking by signing undertaking that he was aware that the implementation of result of the test which he was appearing, was subject to the outcome of O.A. No. 1777/2003 in Hon'ble CAT, Principal Bench, New Delhi.

After knowing about the judgment passed by the Hon'ble Principal Bench in OA No. 1777/03 the Deputy Surveyor General For Surveyor General issued an order bearing No. E2-9369/1196-B (TRS) dated 28-31 May, 2004 by which the Office Letter dated 17.3.2004 kept in abeyance till further orders.

- 3) That with regard to the statement made in paragraphs 1 & 2 of the CP, the respondent Begs to no comment.
 - 4) That with regard to the statement made in paragraph 3 of the CP, the respondent begs while denying the contentions made therein begs to state that the averment made by the petitioner is misleading and not at all correct since he has already appeared in the Trade Test during pendency of the OA. The petitioner himself has given the undertaking (Annexuer-4) that result of the test would be subject to the outcome of the OA. Now the petitioner before the Hon'ble Tribunal cannot make false statement that the petitioner submitted representation praying for conducting trade test as per judgment of this Hon'ble Tribunal. The respondent most humbly and respectfully submits that in fact the OA was in fructuous at the time of hearing of the OA. The petitioner appeared in the trade test knowing fully well about the OA No. 1777/03 in the Hon'ble Tribunal, Principal Bench and himself given an undertaking.
 - 5) That with regard to the statement made in paragraph 4 of the CP, your humble respondent while relying and refer upon the statement made above beg to state that the trade test was held from 24th to 28th May of 2004 and the petitioner participated in the said trade test knowing fully well about the facts and circumstances of the case.
 - 6) That with regard to the statement made in paragraph 6 of the CP, the respondents while denying the contentions made therein begs to state that your humble respondents has highest regard to this Hon'ble Tribunal hence cannot think of
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violation of the Hon'ble Tribunal's order at any cost. Since the Trade test as prayed by the petitioner before this Hon'ble Tribunal was held during pendency of the OA No. 252/03 and the petitioner appeared in the said Trade Test and now he has come before the Hon'ble Tribunal making false and misleading statement which is not at all permissible in the eye of law.

- 7) That your humble respondent most humble and respectfully begs to state that the direction contained in the judgment of the OA No. 252/03 has already complied with, there is no willful and deliberate violation of this Hon'ble Tribunal's Order. In view of the conflicting judgment passed in OA No. 1777 /03 and OA No. 252/03, the department is now not in a position to take appropriate steps.
- 8) That the respondent begs to state that in view of the above facts and circumstances of the case, there is no willful and deliberate violation of this Hon'ble Tribunal's direction given in the OA. It is further stated that the respondent being a responsible officer of the Govt. of India never violated any judgment/direction of this Hon'ble Tribunal willingly. The humble respondent having highest regard to this Hon'ble Tribunal cannot think of violation of any direction of the same deliberately. It is also most respectfully submitted that even if there is any violation occurred due to ignorance or unwillingly, the present respondent places unconditional apology with an assurance not to repeat the same in future.
- 9) That the respondent begs to state that in view of the facts and circumstances narrated above the allegation made by the petitioner is not at all correct, in fact, is false, misleading and suppression of material fact for which this Hon'ble Tribunal may be pleased to take serious note of that be further pleased to take action accordingly. The respondent never committed any willful and deliberate violation of any judgment and order passed by this Hon'ble tribunal, the Hon'ble Tribunal may be pleased to discharge the contempt proceeding against the respondent by dismissing the Contempt Petition.
- 10) That the statement made in this Show Cause reply in paragraphs... 1, 3, 9... are true to my knowledge and those made in paragraphs... 2 to 7... are matter of record, which I believed to be true and rests are my humble submission before this Hon'ble Tribunal.

(बो. डी. एन.) ब्रिगेडियर
Brig. B. D. Sharma)
निदेशक, मेधाव्य एवं अरु. प्र. जो. डी. सी.
Director M & A. P. GDC
भारतीय सर्वेक्षण विभाग
Survey of India
शिकाग 11/01/2009

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1777 of 2003

New Delhi, this the 5th day of March, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL),
HON'BLE MR. S.A. SINGH, MEMBER (A)

Shri Mukut Singh Meena
Draughtsman Grade-III

Shri Bharat Kumar
Draughtsman Grade-III

Smt. Harinder Kaur
Draughtsman Grade-III

Shri R.K. Sirohi
Draughtsman Grade-IV

Shri Babban Yadav
Draughtsman Grade-IV
all at Survey of India
No. 94 (AM) Party
West Block-4,
R.K. Puram,
New Delhi-110 066.

Shri Jaipal Singh
Retired Draughtsman Grade-I,
R/o 41, Sector-1,
Sadiq Nagar,
New Delhi-110 049.

Shri Panna Lal
Retired Draughtsman Grade-III,
R/o Sector-5/979,
New Delhi-110 022.

Applicants

(By Advocate: Shri Sanjay Agarwal)

Versus

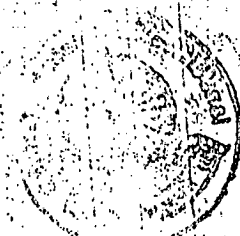
1. Union of India
through the Secretary,
Ministry of Science and Technology,
New Mehrauli Road,
New Delhi-110 016.

2. The Surveyor General
Survey of India,
Block-B, Hathi Barkata Estate,
Dehradun, UP-248 001.

3. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.

Respondents

(By Advocate: Shri M.M. Sudan)



- 8 -
2.
ORDER

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

This is a joint application filed by Draughtsmen working in Grades II, III and IV under the respondents the Surveyor General, Survey of India, Dehradun.

2. The applicants have filed this OA seeking a declaration that the circular No. C-17078/4E21 (C) dated 7.11.2002 issued by the office of the Director, Survey (AIR), Survey of India, regarding trade test, 2002 and declaring the circular order No. 439 (Administrative) dated 1.8.1950 corrected upto 31.3.1983 as null and void.

3. The facts in brief are that Draughtsman (Cartographic) Association and Others had filed an OA which was registered as OA No. 2094/2001 and in the said case the court had directed the respondents to implement the Office Memorandum dated 19.10.1994 issued by the Ministry of Finance (Department of Expenditure), Government of India, the applicants claim to be the member of the said Association and they allege that the respondents had been reluctant to implement the order so an MA 2637/2992 was filed and then vide order dated 3.7.2003 the respondents claimed to have implemented the said order.

4. The applicants further submit that as per OM dated 19.10.1994 there were clear and specific directions vide which an award of Board of Arbitration was extended to the Draughtsmen Grades-I, II and III irrespective of their recruitment qualification in all Government of

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India's Offices and accordingly these scales were framed and once the draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules and by specific order the promotion in the scales are to be done as per the OM dated 19.10.1994 and there is no scope of any separate test for it.

5. It is further submitted that in disregard of the court's order the respondents have now come out with a circular dated 7.11.2002 for holding a trade test. According to which a test was to be conducted on 18.11.2002 for Draughtsmen Grade III to IIIA. It is also submitted that this test is void ab-initio and unenforced as per the specific OM and the orders of the court. In the OM itself there are only three grades and promotion is to be made against the available vacancies in higher grades in accordance with the normal eligibility criteria laid down in the recruitment rules.

6. It is further submitted that the stand of the respondents are now that they are conducting trade test on the basis of this circular No.439 dated 1.8.1950 and they have already implemented the OM dated 19.10.1994 which is being challenged by the applicants.

7. In nutshell the case of the applicants is that when order dated 19.10.1994 had been accepted by the respondents then upto the position of Grade-I there should not be any test and it is only with regard to further promotion the same can be made in accordance with

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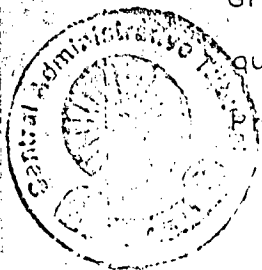
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the Recruitment Rules but from Grade-III to Grade-II and from Grade-II to Grade-I there should not be any hitch and by completing the minimum residency period the employee should be given the next higher grade.

8. The respondents who are contesting the OA pleaded that the order dated 19.10.1994 was a one time measure and it applied to all the Draughtsmen working in different grades and after the revised recruitment rules for the posts of Draftsman Grade-I, II and III as per OM dated 19.10.1994 and the Vth CPC have already been drafted and are in the process of finalisation. The revised Recruitment Rules will be implemented in the Survey of India after their notification.

9. We have heard the learned counsel for the parties and gone through the record.

10. The short question which involves determination in this case is with regard to interpretation of OM dated 19.10.1994. According to this OM which is at page 20 of the paper book it appears that a Committee of the National Council (JCM) was set up to consider the request of the Staff Side that following the scales of pay, allowed to Draughtsman Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draughtsmen Grade-I, II and III irrespective of their recruitment qualification in all Government of India offices. The President was pleased to decide that the Draughtsmen



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Grade I, II and III in the offices/departments of the Government of India other than in CPWD may also be placed in the scales of pay mentioned as under:-

- (a) Minimum period of service for placed from : 7 years from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised Rs.260-430 to Rs.330-560).
- (b) Minimum period of service for placement : 5 years from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to Rs.425-700).
- (c) Minimum period of service for placement : 4 years from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750).

11. It is pertinent to mention that clause 3 of the memo provides that once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

12. The counsel for the applicant submitted that upto grade-I the employees were to be automatically placed in the minimum of the scale provided they have requisite number of years of service and no trade test is to be held. On the contrary the respondents pleaded that Clause-3 specifically provided that the Draughtsmen are to be placed in one of the three scales and once the Draughtsmen are placed in the regular scales then further promotions are to be made in accordance with the Recruitment Rules available in the higher grade and in accordance with the normal eligibility criteria.

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13. From the OM dated 19.10.1994, the learned counsel for the respondents pointed out that immediately on implementation of the circular the Draughtsmen have been placed in different scales and now for further promotion notices have been issued in accordance with the Recruitment Rules.

14. The respondents then referred to circular which is at page 30 of the paper book and according to the respondents the convener be asked to conduct the test for Draughtsman from Grade-III to Grade-II, and though one candidate will also be trade tested in all items of Grade-IV, Grade-III (including Grade II) being a case of change of trade from P/Lab. to R.K.). Thus the learned counsel for the respondents submitted that now by holding the test the respondents are considering the promotions of Grade-III Draughtsmen to Grade-II which is well in conformity with the OM dated 19.10.1994 because according to the OM dated 19.10.1994 all the Draughtsmen are to be placed in one of the three scales depending upon the number of years which they have rendered in service and once they are placed in the regular scale in one of the three grades then further promotion is subject to Recruitment Rules as stated in para 3 of the said circular itself.

15. We have considered these rival contentions.

16. The perusal of para 3 of the Circular dated 19.10.1994 leaves no room for doubt that once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in



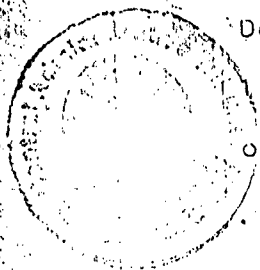
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higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules and in this case though the department has undertaken to revise the rules and had sent the draft rules and till the draft rules are promulgated and come in operation the department cannot conduct test for next higher grade in accordance with the earlier existing circular No.439 dated 1.8.50 which has been corrected upto 31.3.1983.

17. The learned counsel for the applicant has also submitted that this circular No.439 of 1.8.50 is no more relevant after the OM dated 19.10.1994 has been issued and the department was under obligation to frame new rules but since the same have not been done so the promotion etc. is also to be governed by OM dated 19.10.1994.

18. In our considered view the contentions, as raised by the learned counsel for the respondents particularly emphasising on paragraph 3 of the circular dated 19.10.1994 that once the Draughtsman are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules.

19. This contention of the learned counsel for the respondents does not appear to have any merits because after the 5th Pay Commission, Ministry of Finance, Department of Expenditure had come up with OM dated 1.6.2001 on the subject regarding revision of pay scales of Government of India Offices which also mentions that



in pursuance of the award of Board of Arbitration Draughtsman in Grades I, II and III in the Central Public Works Department in the 3rd CPC pay scales of Rs.425-700, Rs.330-560 and Rs.260-430 respectively were placed in the higher pay scales of Rs.550-750, Rs.425-700 and Rs.330-560 respectively. Orders were also issued subsequently in this Department dated 13.3.1984 extending these scales of pay to Draughtsmen in all the Government of India offices notionally from 13.5.82 and actually from 1.11.1983 subject to their recruitment qualifications being similar to those applicable in the Central Public Works Department. Further OM No.13(1)-IC/91 dated 19.10.1994 extending the corresponding 4th CPC pay scales to even those not possessing the prescribed qualifications subject to the condition that they had instead rendered the length of service prescribed therein specifically for the purpose and since the Vth CPC had been appointed and benefits of pay scales had not flown, as envisaged to all personnel in various departments who had not completed the prescribed service in the applicable scales of pay, the Vth CPC had also further revised the scales of pay of the common category of Draughtsmen.

20. The matter had also gone to the National Anomalies Committee and the Staff Side had invited attention to the anomalous situation and had raised a demand that the revised pay scales recommended by the Vth CPC should be extended to the Draughtsmen in all Central Government offices and due weightage was being given for the services rendered by the personnel not possessing the prescribed qualifications in different departments as

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envisaged in the department's OM dated 19.10.1994, so following the consideration of this demand in consultation with the Staff Side the President is now pleased to decide that Draughtsmen in different departments other than the CPWD who do not possess the prescribed qualification and excluding those who have already derived the benefits envisaged in the OM dated 19.10.1994 may be placed in the scales of pay recommended by the 6th CPC on completion of the minimum service (including service rendered in the corresponding pre-revised scales) as indicated below:-

Minimum period of service to be rendered for placement from the scale of Rs.3200-4900 (pre-revised: Rs.975-1540) to the scale of Rs.4000-6000 (pre-revised: Rs.1200-2040) 5 years

Minimum period of service to be rendered for placement from the scale of Rs.4000-6000 (pre-revised: Rs.1200-2040) to the scale of Rs.5000-8000 (pre-revised: Rs.1400-2300 revised to Rs.1600-2660 by the 5th CPC) 8 years

Minimum period of service to be rendered for placement from the scale of Rs.4500-7000 (pre-revised: 6 years

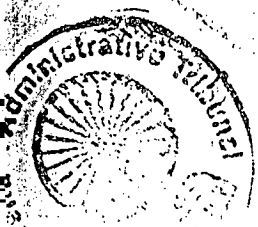


Rs.1400-2300) to the scale of
Rs.5500-9000 (pre-revised:
Rs.1640-2900)

21. This OM further prescribes that determining the eligibility to be placed in the revised pay scales, the service already rendered in the pre-revised scales will also be duly taken into account. There it was also mentioned that once the Draughtsmen in various department of Central Governments are placed in the applicable revised scales of pay, further promotions to the higher grades will be made only against available vacancies in such higher grades in accordance with the normal eligibility criteria prescribed in the Recruitment Rules.

22. The reading of this circular particularly the pay scales goes to show that the Draughtsmen requires 5 years service to be placed in the pay scale of Rs.4000-6000 from Rs.3200-4900 (pre-revised Rs.975-1540) and similarly for placement in the scale of Rs.4000-6000 to Rs.5000-8000 8 years service is required, and then further from Rs.4500-7000 to Rs.5500-9000 minimum 6 years service is required. It is irrespective of the possessing of prescribed qualification as stated in paragraph 3 of this OM.

23. Thus we find that for going from one stage to another it is only the number of years of service has to be counted for going from one grade to another but no trade test is prescribed for the same nor any other criteria has been prescribed. The OM further says that once the Draughtsmen are placed in the regular scales,



further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules. The Recruitment Rules have not yet been framed so the department cannot insist upon the Draughtsmen to appear for a test for being upgraded from one grade to another.

24. Though the respondents have stated in their reply that, according to the para 3 of the OM dated 19.10.1994 that once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules but department is conducting trade test as per their circular No.439 corrected upto 33/3.1983. In our view this circular cannot be made applicable to the Draughtsmen as after the decision of the Board of Arbitration Draughtsmen have been taken out of the category of Group 'C' Technical Personnel for promotion to higher grades in Survey of India comprising Topographical and Map Reproduction. They are to be governed by the OM dated 19.10.1994. As regards fitment in the pay scales are concerned further promotion are to be given in accordance with the Recruitment Rules and as it is admitted by the respondents themselves Draughtsmen Grade-I, II and III as per the OM dated 19.10.1994 and Vth CPC and are in the process of finalisation of the rules. The revised Recruitment Rules will be implemented when the Survey of India after their Notification. Thus after the decision of the Board of Arbitration and after the OM dated 19.10.1994 have been issued, the



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25. In view of the above, the OA is allowed and we direct that the circular ^{Number} dated 439 corrected upto 31st March, 1983 is not applicable to the case of the applicants and they cannot be subjected to test in the absence of new Recruitment Rules for further promotion, rather they are entitled to be governed by the OM dated 19.10.1994 which has been further revised after the 5th Pay Commission vide order dated 1.6.2001. The Notification issued for conducting trade test is also quashed. No order as to costs.

(KULDIP SINGH)
MEMBER (JUDL)

/ Rakesh



[Handwritten signature]

The Hon'ble Mr Justice R.K.Batta, Vice-Chairman.

The Hon'ble Mr K.V.Prahladan, Administrative Member.

- All the applicants are Draftsman Grade III working in the office of the Survey of India, North Eastern Circle Office, Shillong-793001.

...Applicants

By Advocate Sri M.Chanda.

- Versus -

1. The Union of India,
represented by the Secretary to the
Govt. of India,
Ministry of Science & Technology,
New Delhi.

The Surveyor General,
Survey of India,
Block B, Hathibarkala Estate,
Dehradun.

The Director,
Survey of India,
North Eastern Circle,
Shillong.

... Respondents

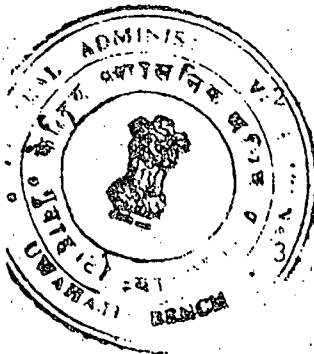
By Shri A. Deb Roy, Sr.C.G.S.C.

ORDER

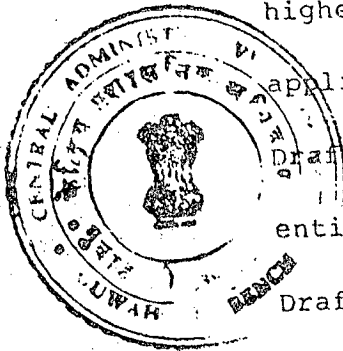
R.K.BATTA, J. (V.C)

The applicants were initially appointed on 10.4.1995 to the post of Topo Trainees Type B in the pay scale of Rs.950-1500/-. After completion of two years training, classification test was conducted by the respondents and on the basis of the said classification

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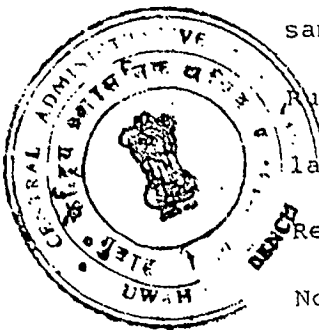
test the applicants were upgraded as Draftsman Grade IV after passing of the trade test and they were placed in the pay scale of Rs.3200-4900 with effect from 1.4.1997. Thereafter on completion of 3 years regular service in the Draftsman Grade IV, they again appeared in the trade test and after passing the trade test they were upgraded in the cadre of Grade III Draftsman in the scale of pay of Rs.4000-6000/- with effect from 1.1.2001. According to the applicants Circular Order No. 435/439, (Administrative), wherein service conditions of Group C employees are laid down and which governs the promotional avenues of the applicants, Rule 6(d) provides for promotion to the next higher grade on completion of certain number of years. The applicants further allege that they are working in the Draftsman Grade-III with effect from 1.1.2001 and are entitled to be promoted/upgraded to the next higher grade of Draftsman Grade-II in the scale of Rs.4500-7000/- with effect from 1.1.2003 without reference to availability of vacancy. It is further contended that as per Government instruction trade test/DPC for promotion/upgradation has to be conducted well in advance so that the employee gets the benefit of Government instructions. According to the applicants, the trade test has not been conducted as a result of which they have been deprived of the promotion/upgradation to Grade-II with effect from 1.1.2003. The applicants submitter



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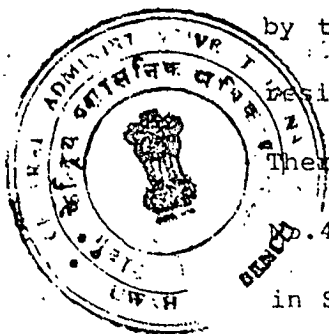
representation for conducting trade test on 15.11.2002 and vide letter dated 27.12.2002 applicant No.4 was informed that the residency period from one grade to another grade would be followed as per order dated 8.10.2002 of the Director, N.E.Circle, Shillong and asked the applicants not to make any further correspondence. The applicant No.4 was further informed in the said letter that in view of the letter dated 8.10.2002 residency period is required in case of Draftsman Grade-III for getting promotion to Draftsman Grade-II as per O.M.No.13(1)IC/91 dated 19.10.1994. The applicant challenge various impugned letters dated 18.7.2002 and 8.10.2002 (Annexure-IV) and seeks setting aside of the same. Their case further is that no amendment of Recruitment Rules has been made incorporating the residency conditions laid down in O.M. dated 19.10.1994 and as such the Recruitment Rules in Circular Order No.435/439(Administrative) are still in force and the promotion/upgradation from Grade III to Grade II has to be considered in terms of the said Circular Order No.439. The applicants rely upon averments made by the respondents in O.A.14/2002 filed before this Tribunal. The applicants, therefore, claim setting aside of letters dated 18.7.2002 and 8.10.2002 and direction to conduct trade test for effecting promotion/upgradation of the applicants to the



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cadre of Draftsman Grade II with effect from 1.1.2003 with all consequential benefits.

2. The respondents in the written statement have stated that prior to the implementation of judgment dated 17.7.97 of this Tribunal in O.A.52/96 and Principal Bench, CAT New Delhi order dated 7.2.2002 in O.A.No.2094/2001, the provisions laid down and Circular 435/439(Administrative) in respect of residency period for conducting trade test was followed which was two years in case of Grade III for being eligible for trade test of Grade II and promotion thereto. However, after the implementation of the judgment dated 17.7.97 of this Tribunal in O.A.52/96 and order dated 7.2.2002 of the Principal Bench of this Tribunal in O.A.2094/2001, the Draftsman of Survey of India are governed by the provisions made in the O.M. dated 19.10.94 and the residency period prescribed therein has to be followed. Therefore, according to the respondents Circular Order No.435/439 are not now applicable to the Draftsman working in Survey of India and the applicants cannot claim benefits of two separate set of rules. It is further averred in the written statement that revised recruitment rules for Draftsman Grade I, II and III, as per O.M. dated 19.10.1994 and Fifth Central Pay Commission report have already been sent to the Department of Science and Technology vide letters dated 25.5.2003 and 11.7.2003 for their approval.



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Accordingly, there is no merit in the application and it should be dismissed.

3. In reply the applicants have stated that O.A.52/96 was relating to extension of revised higher pay scale in terms of O.M. dated 19.10.94 and it does not relates to promotion. The present applicants claim promotion in terms of Circular Order 439. It is further contended that the O.M. dated 19.10.94 cannot be treated as recruitment rules for Draftsman, in as much as no amendment of the recruitment rules has been carried out. Learned counsel for the applicant has placed reliance on Rangaiah vs. J.Sreenivasa Rao, 1983(3) SCC 284 and State of Rajasthan vs. R.Dayal or others, 1997(10) SCC 419.



We have heard learned counsel for the parties at length. The controversy which is required to be sorted out is whether the applicants, who are working in the cadre of Draftsman Grade III in the office of Survey of India, are governed by Circular Order No.439 (Administrative) or by O.M. dated 19.10.94 for the purpose of consideration for the promotion to next Grade II. We shall, therefore, first refer to the relevant part of Circular Order No.439 which deals with qualifications and trade test for Group C technical personnel. Rule 2 of the said circular provides that the grade of an individual in the Group 'C' service may be changed to a higher one in the following circumstances, which includes promotion by selection and on regradation. In

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terms of Rule 2(b) of the Circular Order No.439(Administrative), regradation is effected in recognition of technical competence and an individual in Group 'C' will be eligible to be regraded under Rule 6 to the next higher grade if he is qualified under the Appendix to these Rules and if it is considered that he has sufficient experience by virtue of length of service in his present grade. Rule 6(a) provides for regradation on the results of trade test in terms of Rule 6(b) thereunder. Rule 6(a) of the said Circular further provides that requests from the Directors should reach Surveyor General's Office by 30th September each year and all promotions as a result of regradation, re-classification/initial classification will normally take effect from the 1st January following. Rule 6(b) of the said Circular lays down that to assist the Directors in assessing the qualifications of candidates, Directors will periodically convene Trade Testing Boards to consider all eligible candidates to undergo the trade test as prescribed. Rule 6(d) of the said Circular which has bearing on the controversy to be decided, reads as under :

"Personnel will have to complete the following minimum period in a particular grade before they can be promoted to the next higher grade provided their work and conduct have been satisfactory over the past one year:-

Grade IV .. 3 years
Grade III .. 2 years.

They will be allowed to take trade test for the next higher grades in the third and second year of grades IV and III respectively or in subsequent years."



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Note :-The word "conduct" appearing above should be taken to mean conduct so far as it affects the professional work of an individual.

Marks should be allotted for all tests and a candidate should not be passed unless he has obtained at least 45% in each item of the test (except where specially stated otherwise) and 55% in the aggregate."

5. We may at this stage refer to O.M. No.13(1)-IC/91 dated 19.10.1994 of Government of India, Ministry of Finance, Department of Expenditure which deals with revision of pay scales of Draftsman Grade I, II and III in Government of India offices on the basis of award of Board of Arbitration in the case of Central Public Works Department. The said Office Memorandum is reproduced below :



No.13(1)-IC/91
Government of India
Ministry of Finance
Department of Expenditure

New Delhi the 19th Oct, 1994

OFFICE MEMORANDUM

Subject : Revision of pay scales of Draughtsmen Grade I, II and III in all Government of India Offices on the basis of the Award of Board of Arbitration in the case of Central Public Works Department.

The undersigned is directed to refer to this Department's O.M.No.F(59)-E.III/82 dated 13.3.84 on the subject mentioned above and to say that a Committee of the National Council (JCM) was set up to consider the request of the staff side that the following scales of pay allowed to the Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draughtsmen Grade I, II and III irrespective of their recruitment qualification, in all Government of India offices.

	Original Scale (rs.)	Revised scale on the basis of the Award
Draughtsmen Grade I	425 - 700	550 - 750
Draughtsmen Grade II	330 - 560	425 - 700
Draughtsmen Grade III	260 - 430	330 - 560

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2. The president is now pleased to decide that the Draughtsmen Grade I, II and III in Offices/Departments of the Government of India other than in CPWD may also be placed in the scales of pay mentioned above subject to the following

- (a) Minimum period of service for 7 years placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised scale Rs.260-430 to Rs.330-560),
- (b) Minimum period of service for 5 years placement from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to 425-700).
- (c) Minimum period of service for 4 years placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750).

3. Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

4. The benefit of this revision of scale of pay scale be given with effect from 13.5.82 notionally and actually from 1.11.83.

Sd/-SHYAM SUNDER
Under Secretary to the Government of India"



6. From the above Office Memorandum it is clear that with reference to O.M.No.F(59)-E III/82 dated 13.3.84 on the subject, a Committee of National Council (JCM) was set up to consider the request of staff side that the following scales of pay allowed to Draftsman Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draftsman Grade I, II and III irrespective of their recruitment qualification in all Government of India offices. Accordingly, it was decided that Draftsman Grade I, II and III in offices/Departments of the Government of India

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other than in CPWD may also be placed in the scale of pay mentioned above subject to fulfillment of minimum period of service which in case of Draftsman Grade II is 5 years. It is clear from the above Office Memorandum that scales of Draftsman Grade I, II and III working in the CPWD had been revised, but the pay scales of the Draftsman in Grade I, II and III working in other Government departments had not been revised and for that purpose a Committee of National Council was appointed to consider the case of Draftsman Grade I, II and III of the other departments in Government of India and thereafter Government of India decided that the scales given to CPWD Draftsman Grade I, II and III should be extended to Draftsman Grade I, II and III in the other Government offices irrespective of their recruitment qualifications provided they fulfill the minimum period of service which in the case for Draftsman Grade III to Grade II is 5 years. It is important to note that Para 3 of O.M provides that once the Draftsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid in the Recruitment Rules (emphasis supplied). Para 4 of the said Memorandum further provides that the benefit of this revision of scale of pay be given with effect from 13.5.82 notionally and actually from 1.11.83. The O.M therefore relates back and remedies the grievances of employees working in other establishments other than



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CPWD and grants them revised pay scales at par with CPWD Draughtsman and fixation in the revised pay scales with retrospective effect. And once the same is done further promotions have to be effected as per normal Recruitment Rules.

7. Therefore, a close reading of the said Office Memorandum dated 19.10.1994 goes to show that the said Memorandum provides for placing the Draftsman of other Government departments in the regular scales, namely, in the scales which are earlier been given to Draftsman Grade I, II and III of CPWD and the benefit of this revision of pay scale was extended with effect from 13.5.82 notionally and actually from 1.11.83. It is pertinent to note that Para 3 of this Memorandum enjoins that once the Draftsman are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules. Therefore, Para 2 of the Memorandum will have no bearing in so far as the claim put forward by the applicants is concerned who shall be governed by Para 3 of the said Memorandum dated 19.10.1994 in relation to further promotion against available vacancies in higher grade and in accordance with normal eligibility criteria laid down in Recruitment Rules. The normal eligibility criteria laid down in the Recruitment Rules is laid down in Circular Order No.435, 436 and 439 (Administrative), which



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deals with promotions by selection and regradation. Rule 6(d) of the Circular Order 439 clearly contemplates that the personnel will have to complete the minimum period in a particular grade before they can be promoted to the next higher grade provided their work and conduct have been satisfactory over the past one year. The minimum period required for promotion from Grade III to Grade II is 2 years and trade test in order to determine the competency of the Draftsman for consideration to the next higher grade.

8. We shall at this stage refer to various rulings which have been placed before us. The question of parity in pay in relation to Draftsman working in Ordnance Factories and Draftsman Grade II in CPWD came up before the Apex Court in Union of India and others vs. Debashis Kar and others, 1995

Supra (3) SCC 528. The question which arose for consideration before the Apex Court was whether Draftsman employed in the Ordnance Factories and Workshops of FME in the Ministry of Defence are entitled to have their pay scale revised on the basis of Office Memorandum of Government of India, Ministry of Finance dated 13.3.1984 to which reference has been made in Office Memorandum No.13(1)-JC/91 dated 19.10.94. In that case the Apex Court noticed that on the basis of report of the Third Pay Commission, the pay scales of Draftsman employed in CPWD were revised. However, the said employees of the CPWD were not satisfied and claimed that they should have been placed on higher pay scale. The dispute was



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referred to a Board of Arbitration and the Board of Arbitration gave Award on 20.6.1980 whereby the pay scales of Draftsmen working in CPWD were revised as under :

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|-----------------------------|---------------|
| (i) Draughtsman Grade I | Rs. 550 - 750 |
| (ii) Draughtsman Grade II | Rs. 425 - 700 |
| (iii) Draughtsman Grade III | Rs. 330 - 560 |

By the said Award, it was directed that, pay of the Draughtsman shall be fixed notionally in their respective scales of pay from 1.1.1973, but for computation of arrears, the date of reckoning shall be 28/29.7.1978. In accordance with the said Award, the pay scales of Draughtsmen in CPWD were revised vide order dated 10.11.1980. The Draughtsmen employed in departments other than CPWD claimed the revision of their pay scale in the light of revision of pay scale in CPWD and on 13.3.1984 the Government of India, Ministry of Finance issued an Office Memorandum whereby it was directed that the scale of pay of Draughtsmen Grade III, II and I in the office/department of the Government of India, other than the CPWD, may be revised as per revised scales for CPWD provided their recruitment qualification are similar to those prescribed in the case of Draughtsmen in CPWD and those who do not fulfill the said qualifications would continue in the pre-revised scales. The Ministry of Defence on 3.7.1984 issued an order whereby the organisations were requested to take necessary action in terms of para 2 of the Office Memorandum dated 13.3.1984. It appears that in the



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Ordnance Factories under the control of Director General of Ordnance Factories no action was taken to revise the pay scales of Draughtsmen as per Office Memorandum dated 13.3.1984. A series of Writ Petitions were filed before the High Courts and Tribunals. In the Writ Petition filed before the Calcutta High Court, it was directed by order dated 8.10.85 that O.M. dated 13.3.84 as well as the order of Ministry of Finance dated 3.7.84 to revise the pay scales be implemented forthwith. The judgments of the various Benches of the Tribunal had taken the view that the qualifications which were required for appointment of Draughtsman in the Ordnance Factories as well as in the Army Base Workshops in EME were equivalent to qualifications which were prescribed for appointment in the post of Draughtsman Grade II in the CPWD and therefore, the respondents who were placed in the pay scale of Rs.335-560/- on the basis of the report of the Third Pay Commission were entitled to be placed in the revised pay scale of Rs.425-700/- in accordance with O.M. of the Ministry of Finance dated 13.3.1984. The Union of India assailed the view of the Tribunals and it was stated that qualifications for appointment in the post of Draughtsman on the Ordnance Factories and Army Base Workshops of EME cannot be treated as equivalent to the qualifications for appointment on the post of Draughtsman Grade II in CPWD and therefore, the said respondents are not entitled to the



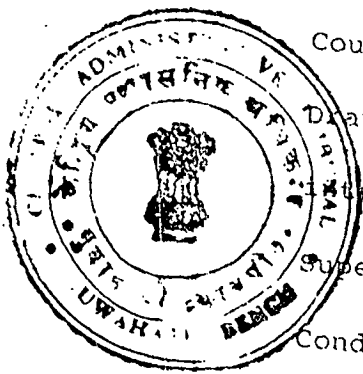
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benefit of revision of pay on the basis of the Office Memorandum dated 13.3.1984. During the pendency of the matter before the Apex Court, Government of India, Ministry of Finance issued Office Memorandum dated 19.10.1994 to which we have already referred. By the said Office Memorandum Government of India after considering request of staff side that the scales of pay allowed to Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration, may be extended to Draughtsmen Grade I, II and III irrespective of their recruitment qualification, in all Government of India offices has decided that Draughtsmen I, II and III in offices/departments of the Government of India other than in CPWD may also be placed in the revised scale of pay subject to certain minimum period of service as mentioned in clause (a), (b) and (c) of the O.M. The Apex Court has pointed out that the benefit of this revision of pay scales which is provided in O.M dated 19.10.1994 had been given retrospectively with effect from the same dates as was given by the O.M dated 13.3.1984, i.e. from 13.5.1985 notionally and actually from 1.11.1983. It was further observed by the Apex Court that in respect of Draughtsmen who fulfilled the requirement relating to the period of service mentioned in the same Office Memorandum dated 19.10.1994 on the relevant date the question whether their recruitment qualifications were similar to those in the case of Draughtsmen in CPWD would not arise and they would be entitled to the revised



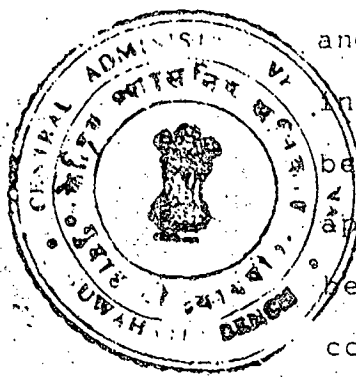
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pay scales as granted to the Draughtsmen in CPWD irrespective of their recruitment qualification. However, in respect of those Draughtsmen who did not fulfill the requirement relating to the period of service prescribed in Para 2 of the O.M dated 19.10.1994 the question whether their recruitment qualification are similar to those prescribed for Draughtsmen in CPWD is required to be considered for the purpose of deciding whether they are entitled to the benefit of the revision of pay scales as per O.M dated 13.3.1984. In that case it was urged on behalf of Union of India that there are different channels of promotion in Ordnance Factories and in fact better chances of promotion and as such benefit of revision of pay scales could not be given under O.M. dated 13.3.1984. The Apex Court noticed that provision regarding promotion of Draughtsman as Chargeman Grade II in Ordnance Factories was introduced by the Indian Ordnance Factories Group C Supervisory and Non-Gazetted Cadre (Recruitment and Conditions of Service) Rules, 1989 issued vide Notification dated 4.5.1989 and the said rules were not retrospective in operation. The Apex Court observed that the case in hand was of revision of pay scales on the basis of O.M. dated 13.3.1984 and at that time the said rules were not operative. Therefore, on the basis of aforesaid Rules, Draughtsmen in Ordnance Factories could not be denied the benefit of revision of pay scales on the basis of O.M. dated 13.3.1984.



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9. From the above judgment of the Apex Court it is clear that what was done vide O.M. dated 19.10.1994 was to effect revision of the pay scales in all Government of India offices on par with the Draughtsman Grade I, II and III working in the CPWD and for that purpose the Government had fixed minimum period of service for placement in the revised scales irrespective of recruitment qualifications in as much as the benefit of the revision of pay scale was to be given effect from 13.5.1982 notionally and actually from 1.11.1983. It is crystal clear from Para 3 of the said O.M. dated 19.10.1994 that once Draughtsmen were placed in regular scales (in fact revised scales) in terms of Memorandum dated 19.10.1994, all further promotions were to be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules. The normal eligibility criteria in the Recruitment Rules is found in Circulars Order No.435/436 and 439(Administrative) and for that purpose minimum period in particular grade for promotion to next higher grade has been fixed at 2 years for Grade III. The applicants were appointed on 10.4.1995 and their promotions obviously will be governed by the Recruitment Rules in force which are contained in Circular Order No.435/436 and 439(Administrative). The respondents, in the written statement have admitted that the Recruitment Rules have not been amended and the revised Recruitment Rules have been sent to the Department of Science and Technology vide letter dated 25.5.2003 and 11.7.2003 for their approval. Besides this, O.M. dated 19.10.94 provides for revision of pay scales retrospectively at par with CPWD scales and it does not embody any rule of recruitment nor is it in supercession of



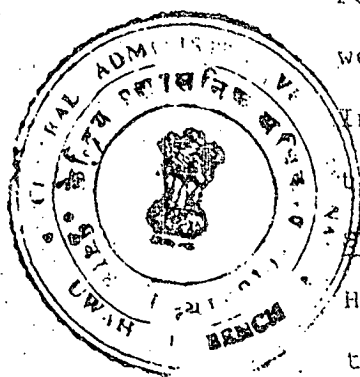
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Recruitment Rules. The condition relating to minimum service relates to cases of revision of pay thereunder and cannot be imported in Recruitment Rules for the purpose of promotion. Therefore, there is no merit whatsoever in the stand taken by the respondents.

10. Our attention was drawn to the decision in Tulsiram Sharma & Others vs. The Secretary, Ministry of Science & Technology, New Delhi and others, O.A.No.52/96 and the decision in Tulsiram Sharma and others vs. Union of India & Others, O.A.14/2002. In both these applications the question which came up for consideration was in relation to the revision of pay scales with reference to O.M. dated 19.10.1994. The question which has been raised in the present application never cropped up in the said applications. In both those applications the Union of India had challenged the order before the High Court but the Writ Petitions Civil Rule No.4733 of 1997 and WP(C) No.9786/2003 were dismissed. Special Leave Petition filed by the Union of India before the Apex Court also dismissed. It is relevant to point out that in Union of India & Ors. vs. Tulsiram Sharma and others, Writ Petition(C) No.9786/2003, the Hon'ble High Court found that the matter pertained to revision in the pay scale in terms of O.M. dated 19.10.1994 and it was made clear that this revision in pay scale was on account of the particular number of years of service rendered by the respondents and it does not mean that they have been given promotion to the higher post.

11. In view of this the applicants shall be governed by the Recruitment Rules contained in Circular Order No.435/436 and 439 (Administrative) and their claim for promotion shall be governed thereunder. Since they have completed 2 years in Grade III, the appropriate authority shall have to take further necessary action in terms of the said Circular Order

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No.435/436 and 439 (Administrative) and conduct trade test and thereafter pass appropriate order in accordance with the respective rules contained in Circular Order No.435/436 and 439 (Administrative).

12. In view of the above, the application is allowed and impugned orders issued under letters dated 18.7.2002 and 8.10.2002 (Annexure-IV) are hereby set aside and the respondents are directed to conduct necessary trade test in terms of Circular Order No.439 (Administrative) within a period of 3 months from the date of receipt copy of this order and consider the case of the applicants and other Draftsmen who have completed 2 years in Grade III for the purpose of promotion to the next higher grade, namely, Grade II in accordance with the provisions contained in Circular Order No.435/436 and 439 (Administrative).

In the facts and circumstances we shall leave the parties to bear their costs.



TRUE COPY
प्रति

Sd/- Vice chairman

Sd/- Member

[Signature]
14-10-04

Private Secretary
Central Administrative Tribunal
Guwahati Bench
Guwahati-6

भारत सरकार
GOVERNMENT OF INDIA

सर्वे शिक्षा अभियान

यश पति सर्व वदे

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

महासर्वेक्षक का कार्यालय

SURVEYOR GENERAL'S OFFICE

डाक बक्स सं० 37, POST BOX No.37,

देहरादून-248001 (उत्तरांचल)-भारत।

DEHRA DUN-248001 (Uttaranchal), INDIA

Dated: 17 March, 2004.

सं० : "महासर्वेक्षक"

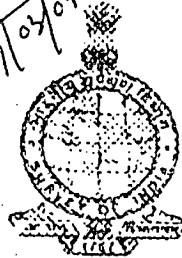
Telegram : "SURVEYS"

फैक्स व दूरभाष : 0091-135-744064

Fax-cum-Telephone : 0091-135-744064

ई-मेल : sgo@nde.vsnl.net.in

E-Mail : sgo@nde.vsnl.net.in



No.E2-4238 /1196-B(T.R.S.)

To,

Addl. S.G.s:UP GDC/MP GDC/Rajasthan GDC/AP GDC/Maharashtra GDC

Directors:Uttaranchal GDC/Punjab & Chandigarh GDC/Haryana GDC/
J&K GDC/HP GDC/Assam & Nagaland GDC/Meghalaya &
Arunachal Pradesh GDC/Tripura, Manipur & Mizoram GDC/
Bihar GDC/West Bengal, Sikkim and A&N Island GDC/Orissa
GDC/ Jharkhand GDC/Chhattisgarh GDC/Gujarat & Daman &
Diu GDC/Goa GDC/Karnataka GDC/Tamilnadu & Pondicherry
GDC/Kerala & Lakshadweep GDC/Survey (Air) and Delhi
GDC/G&RB/DMC(D.Dun)/DMC(Hyd.)/STI/R&D/ NSDI/ B&P/
Nothorn Printing Group/Southern Printing Group/ Eastern
Printing Group/Western Printing Group.

SUB: Trade Test of Draftsman Gde.IV to III and Gde.III to Gde.II

In suppression of para 1(ii) of this office letter No-E2-6680/1196-B(TRS) dated 18-7-2002, arrangement may please be made to conduct the Trade Test of eligible Draftsman, as per C.O.439, from Grade IV to Grade III and Grade III to Grade II. The results of the Trade Test may be kept in abeyance till further order in view of O.A.No.1777/2003 and M.A.No.1510/2003-filed by Sh.M.S.Meena and Others V/S Union of India in Hon'ble CAT, Principal Bench, New Delhi.

An undertaking may be taken from each examinee that he/she is aware that the implementation of result of the test is subjected to the outcome of O.A.No.1777/2003 filed by Sh.M.S.Meena and Others V/S Union of India and Others in Hon'ble CAT Principal bench, New Delhi.

(M.V.Bhat) Brig.

DEPUTY SURVEYOR GENERAL,
for SURVEYOR GENERAL OF INDIA.

- Copy to:-
- Sh.N.P.S.Ahuja, President, Draftsman Cartographic Association, Dehra Dun for information with reference to Agenda Point No.1 of Minutes of the Meeting sent under this office letter No.J-4144/612-Draftsman dated 5-3-2004.
 - O.C.Workstudy, S.G.O. with reference to letter No.J-4144/612-Draftsman dated 5-3-2004.

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Annexure 4

ANNEXURE 'A'

TRADE TEST

DECLARATION

I, Shri/Smt./Kumt. Anup Sharma of M&Ar.P. GDC initially
classified as D'Man Grade IV on 01-4-1997
(Trade & Grade) (Date)
and promoted to D'Man Grade III on 01-1-2001
(Trade & Grade) (Date)
hereby declare that I am willing to appear in Meghalaya & Arunachal Pradesh GDC
Trade Test for promotion to D'Man Grade II.
(Trade & Grade)

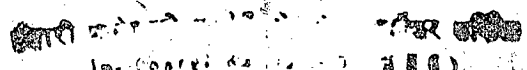
Station: Shillong
Date: 12-04-2004

Signature [Signature]
Name ANUP SHARMA
Trade & Grade D/man Gde III.

COUNTERSIGNED

[Signature]

Station:
Date:


In-charge, Spatial Data Transforming Wing

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UNDERTAKING

I am aware that the implementation of result of the test for which I am appearing, is subject to the outcome of O.A.No.1777/2003 filed by Shri M.S. Meena and others -Vs- Union of India and others in Hon'ble CAT Principal Bench, New Delhi.

Signature of individual: ANUP SHARMA

Name of individual: ANUP SHARMA

Trade & Grade: D/Man Gde III.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

CP NO. 13/05
IN OA NO. 252/03

IN THE MATTER OF

SHRI ANUP SHARMA

.....PETITIONER

-VERSUS-

UNION OF INDIA & ORS

...RESPONDENTS

-AND-

IN THE MATTER OF

Show cause reply filed by the respondent No.3

-AND-

IN THE MATTER OF

Shri Anup Sharma.

Draftsman Grade-III

Survey of India,

Assam and Nagaland GDC,

Ganeshguri, Guwahati-6

.....Petitioner

-Versus-

1) Shri Prithish Nag,

Surveyor General,

Survey of India,

Block B, Hathibarkala Estate,

Dehradun.

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Filed by
the respondent
No. 3 through
Alaka Das.
Advocate
13/5/05

Signature
of the
Respondent
No. 3
Director
Assam
G.D.C.
Guwahati
781 005 (ASSAM)

2) Brigadier B. D. Sharma,
Director,
Meghalaya & Arunachal Pradesh, GDC,
Survey of India.
Shillong-1.

3) Shri O. P. Tripathi,
Director,
Assam & Nagaland GDC,
Survey of India,
Ganeshguri, Guwahati-6.
.....Respondents

The humble respondent No. 3 above named
MOST RESPECTFULLY SHEWETH:-

I, Shri O. P. Tripathi, aged about 46 years, son of Sukdev P. Tripathi, at present working as Director, Assam & Nagaland, GDC, Survey of India, Ganeshguri, Guwahati-6 do hereby solemnly affirm and state as follows :-

- 1) That I am the respondent No. 3 in the above noted Contempt Petition and I have been served with a copy of Contempt Petition filed by the petitioner. I have gone through the copy of the Contempt Petition and have understood the contentions made therein. Save and except the statements, which are specifically admitted herein below, other statement made in the Contempt Petition may be treated as total denial. The statements, which are not borne on record, are also denied and the petitioner is put to the strictest proof thereof.
- 2) That before traversing various paragraphs of the Contempt Petition your humble respondent begs to place the brief fact of the case.

Shri Arup Sharma, Draftsman Grade -III of Erstwhile North Eastern Circle, Shillong and others filed the OA No. 252/03 before the Hon'ble Central Administrative Tribunal Guwahati Bench, Guwahati praying for a direction for

holding Trade Test of Grade-II as per the provisions laid down in C.O. No. 435 and 439. Shri Anup Sharma was appointed as TTT'B' (D/Men) on 10.04.1995, classified as D/Men Grade - IV on 01.04.1997 on promotion as D/Men Grade-III on 01.01.2001 as per the provisions laid down in C.O. 435 & 439.

In the O.A. No. 252/03, Shri Anup Sharma & others prayed the Hon'ble Tribunal, Guwahati Bench, Guwahati, that they should be entitled for appearing in Trade Test for Grade-II as they have completed 2 years service in Grade -III on the basis of residence as laid down in CO 435 & 439.

The Hon'ble Tribunal, Guwahati Bench was pleased to allow the said OA directing the respondents as follows:-

".....In view of above, the application is allowed and impugned orders issued under letter dated 18.07.2002 and 08.10.2002 are here set aside and the respondents are directed to conduct necessary Trade Test in terms of Circular Order No. 439 (Administrative) within a period of 3 months from the date of receipt of copy of this order and consider the case of the applicants and other Draftsman who have completed 2 years in Grade III for the purpose of promotion to the next higher grade, namely, Grade II in accordance with the provisions contained in Circular Order No. 435/436 and 439 (Administrative)."

Another set of Draftsman Grade -III & IV, working under the Survey of India, New Delhi preferred OA No. 1777/03 before the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi seeking a declaration that the Circular No. C-17078/4E21 (C) dated 7.11.2002 issued by the office of the Director, Survey (AIR), Survey of India, regarding trade test, 2002 and declaring the Circular Order No. 439 (Administrative) dated 1.8.1950 corrected up to 31.3.1983 as null and void. While deciding the OA on 26.03. 2004, Hon'ble Tribunal, Principal Bench was pleased to allow the OA and directed that the circular No. 439 corrected up to 31st March, 1983 is not applicable to the case of the applicants and they cannot be subject to test in absence of any new Recruitment Rules for further promotion, rather they are entitled to be governed by the OM dated 19.10. 1994, which has been further revised after the 5th Pay Commission vide order dated 1.6.2001. The notification for conducting the trade test is also quashed.

It is pertinent to mention here that against the Judgment passed by the Hon'ble Tribunal, Principal bench, the Department has preferred a Writ Petition

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before the Hon'ble Delhi High Court and the Hon'ble High Court was pleased to pass an interim order staying the operation of the judgment passed in OA No. 1777/03 by the Hon'ble Principal Bench.

Copies of the Judgment and orders dated passed in OA No. 1777/03 by the Hon'ble Tribunal, Principal Bench and the judgment and order dated passed in OA No. 252/03 by the Hon'ble Tribunal, Guwahati bench are annexed herewith and marked as Annexure- 1 & 2 respectively.

During pendency of the OA No. 252/03 before the Hon'ble Tribunal, Guwahati Bench, Guwahati the Deputy Surveyor General, for Surveyor General of India issued a Notification bearing No. E2-4238/1196-B (T.R.S.) dated 17.03.2004 for conducting the Trade Test of Draftsman Grade IV to III and Grade III to II. However it was made clear that the result of the Trade Test may be kept in abeyance till further order in view of the judgment passed by the Hon'ble Tribunal, Principal Bench in OA No. 1777/03 and M. A. No. 1510/2003. An undertaking was also taken from each examinee that he/she was aware that the implementation of result of the test is subject to the outcome of OA No. 1777/ 03.

Copy of the notification dated 17.03 2004 is annexed herewith and marked as Annexure-3

Accordingly undertaking was taken from each examinee and the Trade Test was conducted from 24th to 28th May 2004. The petitioner in this CP, has also given the undertaking and participated in the Trade Test.

A copy of the undertaking given by the petitioner, Shri Anup Sharma is annexed herewith and marked as Annexure-4.

It is pertinent to mention here that the petitioner was aware of the judgment passed in OA No. 1777/03 by the Hon'ble Tribunal, Principal Bench and

also participated in the Trade Test held from 24th to 28th May, 2004 giving undertaking by signing undertaking that he was aware that the implementation of result of the test which he was appearing, was subject to the outcome of O.A. No. 1777/2003 in Hon'ble CAT, Principal Bench, New Delhi.

After knowing about the judgment passed by the Hon'ble Principal Bench in OA No. 1777/03 the Deputy Surveyor General For Surveyor General issued an order bearing No. E2-9369/1196-B (TRS) dated 28-31 May, 2004 by which the Office Letter dated 17.3.2004 kept in abeyance till further orders.

- 3) That with regard to the statement made in paragraphs 1 & 2 of the CP, the respondent Begs to no comment.
- 4) That with regard to the statement made in paragraph 3 of the CP, the respondent begs while denying the contentions made therein begs to state that the averment made by the petitioner is misleading and not at all correct since he has already appeared in the Trade Test during pendency of the OA. The petitioner himself has given the undertaking (Annexuer-4) that result of the test would be subject to the outcome of the OA. Now the petitioner before the Hon'ble Tribunal cannot make false statement that the petitioner submitted representation praying for conducting trade test as per judgment of this Hon'ble Tribunal. The respondent most humbly and respectfully submits that in fact the OA was in fructuous at the time of hearing of the OA. The petitioner appeared in the trade test knowing fully well about the OA No. 1777/03 in the Hon'ble Tribunal, Principal Bench and himself given an undertaking.
- 5) That with regard to the statement made in paragraph 4 of the CP, your humble respondent while relying and refer upon the statement made above beg to state that the trade test was held from 24th to 28th May of 2004 and the petitioner participated in the said trade test knowing fully well about the facts and circumstances of the case.
- 6) That with regard to the statement made in paragraph 6 of the CP, the respondents while denying the contentions made therein begs to state that your humble respondents has highest regard to this Hon'ble Tribunal hence cannot think of violation of the Hon'ble Tribunal's order at any cost. Since the tread test as prayed by the petitioner before this Hon'ble Tribunal was held during pendency

of the OA No. 252/03 and the petitioner appeared in the said Trade Test and now he has come before the Hon'ble Tribunal making false and misleading statement which is not at all permissible in the eye of law.

- 7) That your humble respondent most humble and respectfully begs to state that the direction contained in the judgment of the OA No. 252/03 has already complied with, there is no willful and deliberate violation of this Hon'ble Tribunal's Order. In view of the conflicting judgment passed in OA No.1777 /03 and OA No. 252/03 , the department is now not in a position to take appropriate steps.
- 8) That the respondent begs to state that in view of the above facts and circumstances of the case, there is no willful and deliberate violation of this Hon'ble Tribunal's direction given in the OA. It is further stated that the respondent being a responsible officer of the Govt. of India never violated any judgment/direction of this Hon'ble Tribunal willingly. The humble respondent having highest regard to this Hon'ble Tribunal cannot think of violation of any direction of the same deliberately. It is also most respectfully submitted that even if there is any violation occurred due to ignorance or unwillingly, the present respondent places unconditional apology with an assurance not to repeat the same in future.
- 9) That the respondent begs to state that in view of the facts and circumstances narrated above the allegation made by the petitioner is not at all correct, in fact, is false, misleading and suppression of material fact for which this Hon'ble Tribunal may be pleased to take serious note of that be further pleased to take action accordingly. The respondent never committed any willful and deliberate violation of any judgment and order passed by this Hon'ble tribunal, the Hon'ble Tribunal may be pleased to discharge the contempt proceeding against the respondent by dismissing the Contempt Petition.
- 10) That the statement made in this Show Cause reply in paragraphs...1, 8, 9.....are true to my knowledge and those made in paragraphs...2 to 7.....are matter of record, which I believed to be true and rests are my humble submission before this Hon'ble Tribunal.

O.P. Tripathi
ओ. पी. त्रिपाठी
O.P. TRIPATHI
निदेशक, असम एवं नागालैण्ड, जी.डी.सी.
DIRECTOR, ASSAM & NAGALAND, G.D.C.
भारतीय सर्वेक्षण विभाग,
SURVEY OF INDIA
गुवाहाटी - 781 006 (असम)
GUWAHATI - 781 006 (ASSAM)

97 - 7 - Annexure
CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1777 of 2003

New Delhi, this the 5th day of March, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S. A. SINGH, MEMBER (A)

1. Shri Mukut Singh Meena
Draughtsman Grade-III

2. Shri Bharat Kumar
Draughtsman Grade-III

3. Smt. Harinder Kaur
Draughtsman Grade-III

4. Shri R.K. Sirohi
Draughtsman Grade-IV

5. Shri Babban Yadav
Draughtsman Grade-IV
all at Survey of India
No. 94 (AM) Party
West Block-4,
R.K. Puram,
New Delhi-110 066.

6. Shri Jaipal Singh
Retired Draughtsman Grade-II
R/o 41, Sector-1,
Sadiq Nagar,
New Delhi-110 049.

7. Shri Panna Lal
Retired Draughtsman Grade-III
R/o Sector-5/979,
New Delhi-110 022.

Applicants

(By Advocate: Shri Sanjay Agarwal)

Versus

1. Union of India
through the Secretary,
Ministry of Science and Technology,
New Mehrauli Road,
New Delhi-110 016.

2. The Surveyor General
Survey of India,
Block-B, Hathi Barkala Estate,
Dehradun, UP-248 001.

3. The Secretary,
Ministry of Finance,
Department of Expenditure,
North Block,
New Delhi.

Respondents

(By Advocate: Shri M.M. Sudan)

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O R D E R

By Hon. ble Mr. Kuldeep Singh, Member (Judl)

This is a joint application filed by Draughtsmen working in Grades II, III and IV under the respondents the Surveyor General, Survey of India, Dehradun.

2. The applicants have filed this OA seeking a declaration that the circular No. C-17078/4E21 (C) dated 7.11.2002 issued by the office of the Director, Survey (AIR), Survey of India, regarding trade test, 2002 and declaring the circular order No.439 (Administrative) dated 1.8.1950 corrected upto 31.3.1983 as null and void.

3. The facts in brief are that Draughtsman (Cartographic) Association and Others had filed an OA which was registered as OA No.2094/2001 and in the said case the court had directed the respondents to implement the Office Memorandum dated 19.10.1994 issued by the Ministry of Finance (Department of Expenditure), Government of India; the applicants claim to be the member of the said Association and they allege that the respondents had been reluctant to implement the order so an MA 2637/2992 was filed and then vide order dated 3.7.2003 the respondents claimed to have implemented the said order.

4. The applicants further submit that as per OM dated 19.10.1994 there were clear and specific directions vide which an award of Board of Arbitration was extended to the Draughtsmen Grades-I, II and III irrespective of their recruitment qualification in all Government of

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India's Offices and accordingly these scales were framed and once the draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules and by specific order the promotion in the scales are to be done as per the OM dated 19.10.1994 and there is no scope of any separate test for it.

5. It is further submitted that in disregard of the court's order the respondents have now come out with a circular dated 7.11.2002 for holding a trade test. According to which a test was to be conducted on 18.11.2002 for Draughtsmen Grade III to II. It is also submitted that this test is void ab-initio and uncalified for as per the specific OM and the orders of the court. In the OM itself there are only three grades and promotion is to be made against the available vacancies in higher grades in accordance with the normal eligibility criteria laid down in the recruitment rules.

6. It is further submitted that the stand of the respondents are now that they are conducting trade test on the basis of this circular No.439 dated 1.8.1950 and they have already implemented the OM dated 19.10.1994 which is being challenged by the applicants.

7. In nutshell the case of the applicants is that when order dated 19.10.1994 had been accepted by the respondents then upto the position of Grade-I there should not be any test and it is only with regard to further promotion the same can be made in accordance with

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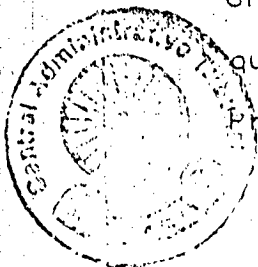
the Recruitment Rules but from Grade-III to Grade-II and from Grade-II to Grade-I there should not be any hitch and by completing the minimum residency period the employee should be given the next higher grade.

8. The respondents who are contesting the OA pleaded that the order dated 19.10.1994 was a one time measure and it applied to all the Draughtsmen working in different grades and after the revised recruitment rules for the posts of Draftsman Grade-I, II and III as per OM dated 19.10.1994 and the Vth CPC have already been drafted and are in the process of finalisation. The revised Recruitment Rules will be implemented in the Survey of India after their notification.

9. We have heard the learned counsel for the parties and gone through the record.

10. The short question which involves determination in this case is with regard to interpretation of OM dated 19.10.1994. According to this OM which is at page 20 of the paper book it appears that a Committee of the National Council (JCM) was set up to consider the request of the Staff Side that following the scales of pay, allowed to Draughtsman Grade-I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draughtsmen Grade-I, II and III irrespective of their recruitment qualification in all Government of India offices. The President was pleased to decide that the Draughtsmen

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Grade I, II and III in the offices/departments of the Government of India other than in CPWD may also be placed in the scales of pay mentioned as under:-

- (a) Minimum period of service for placed from : 7 years from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised Rs.260-430 to Rs.330-560).
- (b) Minimum period of service for placement : 5 years from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to Rs.425-700).
- (c) Minimum period of service for placement : 4 years from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750).

11. It is pertinent to mention that clause 3 of the memo provides that once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

12. The counsel for the applicant submitted that upto grade-I the employees were to be automatically placed in the minimum of the scale provided they have requisite number of years of service and no trade test is to be held. On the contrary the respondents pleaded that Clause-3 specifically provided that the Draughtsmen are to be placed in one of the three scales and once the Draughtsmen are placed in the regular scales then further promotions are to be made in accordance with the Recruitment Rules available in the higher grade and in accordance with the normal eligibility criteria.

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13. From the OM dated 19.10.1994 the learned counsel for the respondents pointed out that immediately on implementation of the circular the Draughtsmen have been placed in different scales and now for further promotion notices have been issued in accordance with the Recruitment Rules.

14. The respondents then referred to circular which is at page 30 of the paper book and according to the respondents the convenor be asked to conduct the test for Draughtsman from Grade-III to Grade-II, and though one candidate will also be trade tested in all items of Grade-IV, Grade-III (including Grade II) being a case of change of trade from P/lab. to R.K.). Thus the learned counsel for the respondents submitted that now by holding the test the respondents are considering the promotions of Grade-III Draughtsmen to Grade-II which is well in conformity with the OM dated 19.10.1994 because according to the OM dated 19.10.1994 all the Draughtsmen are to be placed in one of the three scales depending upon the number of years which they have rendered in service and once they are placed in the regular scale in one of the three grades then further promotion is subject to Recruitment Rules as stated in para 3 of the said circular itself.

15. We have considered these rival contentions.

16. The perusal of para 3 of the Circular dated 19.10.1994 leaves no room for doubt that once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in



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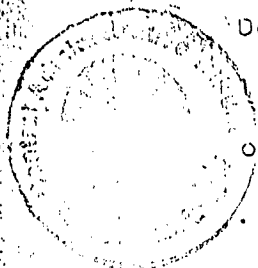
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higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules and in this case though the department has undertaken to revise the rules and had sent the draft rules and till the draft rules are promulgated and come in operation the department cannot conduct test for next higher grade in accordance with the earlier existing circular No.439 dated 1.8.50 which has been corrected upto 31.3.1983.

17. The learned counsel for the applicant has also submitted that this circular No.439 of 1.8.50 is no more relevant after the OM dated 19.10.1994 has been issued and the department was under obligation to frame new rules but since the same have not been done so the promotion etc. is also to be governed by OM dated 19.10.1994.

18. In our considered view the contentions, as raised by the learned counsel for the respondents particularly, emphasising on paragraph 3 of the circular dated 19.10.1994 that once the Draughtsman are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules.

19. This contention of the learned counsel for the respondents does not appear to have any merits because after the 5th Pay Commission, Ministry of Finance, Department of Expenditure had come up with OM dated 1.6.2001 on the subject regarding revision of pay scales of Government of India Offices which also mentions that

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in pursuance of the award of Board of Arbitration, Draughtsman in Grades I, II and III in the Central Public Works Department in the 3rd CPC pay scales of Rs.425-700, Rs.330-560 and Rs.260-430 respectively were placed in the higher pay scales of Rs.550-750, Rs.425-700 and Rs.330-560 respectively. Orders were also issued subsequently in this Department dated 13.3.1984 extending these scales of pay to Draughtsmen in all the Government of India offices notionally from 13.3.82 and actually from 1.11.1983 subject to their recruitment qualifications being similar to those applicable in the Central Public Works Department. Further OM No.13(1)-IC/91 dated 19.10.1994 extending the corresponding 4th CPC pay scales to even those not possessing the prescribed qualifications subject to the condition that they had instead rendered the length of service prescribed therein specifically for the purpose and since the Vth CPC had been appointed and benefits of pay scales had not flown, as envisaged to all personnel in various departments who had not completed the prescribed service in the applicable scales of pay, the Vth CPC had also further revised the scales of pay of the common category of Draughtsmen.

20. The matter had also gone to the National Anomalies Committee and the Staff Side had invited attention to the anomalous situation and had raised a demand that the revised pay scales recommended by the Vth CPC should be extended to the Draughtsmen in all Central Government offices and due weightage was being given for the services rendered by the personnel not possessing the prescribed qualifications in different departments as

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envisaged in the department's OM dated 19.10.1994, so following the consideration of this demand in consultation with the Staff Side the President is now pleased to decide that Draughtsmen in different departments other than the CPWD who do not possess the prescribed qualification and excluding those who have already derived the benefits envisaged in the OM dated 19.10.1994 may be placed in the scales of pay recommended by the Vth CPC on completion of the minimum service (including service rendered in the corresponding pre-revised scales) as indicated below:-

Minimum period of service to be rendered for placement from the scale of Rs.3200-4900 (pre-revised: Rs.975-1540) to the scale of Rs.4000-6000 (pre-revised: Rs.1200-2040) 5 years

Minimum period of service to be rendered for placement from the scale of Rs.4000-6000 (pre-revised: Rs.1200-2040) to the scale of Rs.5000-8000 (pre-revised: Rs.1400-2300 revised to Rs.1600-2660 by the 5th CPC) 8 years

Minimum period of service to be rendered for placement from the scale of Rs.4500-7000 (pre-revised: 6 years



Rs.1400-2300) to the scale of

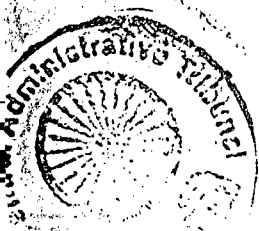
Rs.5500-9000 (pre-revised:

Rs.1640-2900).

21. This OM further prescribes that determining the eligibility to be placed in the revised pay scales, the service already rendered in the pre-revised scales will also be duly taken into account. There it was also mentioned that once the Draughtsmen in various department of Central Governments are placed in the applicable revised scales of pay, further promotions to the higher grades will be made only against available vacancies in such higher grades in accordance with the normal eligibility criteria prescribed in the Recruitment Rules.

22. The reading of this circular particularly the pay scales goes to show that the Draughtsmen requires 5 years service to be placed in the pay scale of Rs.4000-6000 from Rs.3200-4900 (pre-revised Rs.975-1540) and similarly for placement in the scale of Rs.4000-6000 to Rs.5000-8000 8 years service is required and then further from Rs.4500-7000 to Rs.5500-9000 minimum 8 years service is required. It is irrespective of the possessing of prescribed qualification as stated in paragraph 3 of this OM.

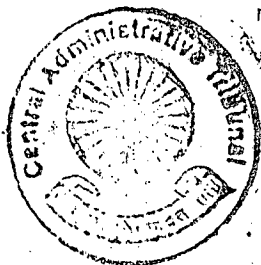
23. Thus we find that for going from one stage to another it is only the number of years of service has to be counted for going from one grade to another but no trade test is prescribed for the same nor any other criteria has been prescribed. The OM further says that once the Draughtsmen are placed in the regular scales,



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further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules. The Recruitment Rules have not yet been framed so the department cannot insist upon the Draughtsmen to appear for a test for being upgraded from one grade to another.

24. Though the respondents have stated in their reply that according to the para 3 of the OM dated 19.10.1994 that once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules but department is conducting trade test as per their circular No.439 corrected upto 33.3.1983. In our view this circular cannot be made applicable to the Draughtsmen as after the decision of the Board of Arbitration Draughtsmen have been taken out of the category of Group 'C' Technical Personnel for promotion to higher grades in Survey of India comprising Topographical and Map Reproduction. They are to be governed by the OM dated 19.10.1994. As regards fitment in the pay scales are concerned further promotion are to be given in accordance with the Recruitment Rules and as it is admitted by the respondents themselves Draughtsmen Grade-I, II and III as per the OM dated 19.10.1994 and Vth CPC and are in the process of finalisation of the rules. The revised Recruitment Rules will be implemented in the Survey of India after their Notification. Thus after the decision of the Board of Arbitration and after the OM dated 19.10.1994 have been issued, the



25. In view of the above, the OA is allowed and we direct that the circular ^{number} dated 439 corrected upto 31st March, 1983 is not applicable to the case of the applicants and they cannot be subjected to test in the absence of new Recruitment Rules for further promotion, rather they are entitled to be governed by the OM dated 19.10.1994 which has been further revised after the 5th Pay Commission vide order dated 1.6.2001. The Notification issued for conducting trade test is also quashed. No order as to costs.

(KULDIP SINGH)
MEMBER (JUDL)

/Rakesh

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Time: *11:00 AM*



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19/11/04
85. 19 - Annexure-2 (20)

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

A/

Original Application No. 252 of 2003.

Date of Order : This the 23rd Day of September, 2004.

The Hon'ble Mr Justice R.K.Batta, Vice-Chairman.

The Hon'ble Mr K.V.Prahladan, Administrative Member.

1. Shri Anup Sarma,
2. Smti. Rumki Choudhury,
3. Smti. Swapna Mawrie,
4. Shri Parth Das Choudhury &
5. Shri Alok Dam,

All the applicants are Draftsman Grade III working in the office of the Survey of India, North Eastern Circle Office, Shillong-793001.

...Applicants

By Advocate Sri M.Chanda.

- Versus -

1. The Union of India,
represented by the Secretary to the
Govt. of India,
Ministry of Science & Technology,
New Delhi.

The Surveyor General,
Survey of India,
Block B, Hathibarkala Estate,
Dehradun.

The Director,
Survey of India,
North Eastern Circle,
Shillong.

....Respondents

By Shri A.Deb Roy, Sr.C.G.S.C.

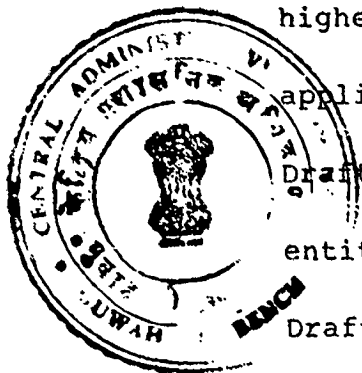
ORDER

R.K.BATTA, J. (V.C)

The applicants were initially appointed on 10.4.1995 to the post of Topo Trainees Type B in the pay scale of Rs.950-1500/-. After completion of two years training, classification test was conducted by the respondents and on the basis of the said classification

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test the applicants were upgraded as Draftsman Grade IV after passing of the trade test and they were placed in the pay scale of Rs.3200-4900 with effect from 1.4.1997. Thereafter on completion of 3 years regular service in the Draftsman Grade IV, they again appeared in the trade test and after passing the trade test they were upgraded in the cadre of Grade III Draftsman in the scale of pay of Rs.4000-6000/- with effect from 1.1.2001. According to the applicants Circular Order No. 435/439 (Administrative), wherein service conditions of Group C employees are laid down and which governs the promotional avenues of the applicants, Rule 6(d) provides for promotion to the next higher grade on completion of certain number of years. The applicants further allege that they are working in the Draftsman Grade-III with effect from 1.1.2001 and are entitled to be promoted/upgraded to the next higher grade of Draftsman Grade-II in the scale of Rs.4500-7000/- with effect from 1.1.2003 without reference to availability of vacancy. It is further contended that as per Government instruction trade test/DPC for promotion/upgradation has to be conducted well in advance so that the employee gets the benefit of Government instructions. According to the applicants, the trade test has not been conducted as a result of which they have been deprived of the promotion/upgradation to Grade-II with effect from 1.1.2003. The applicants submitted



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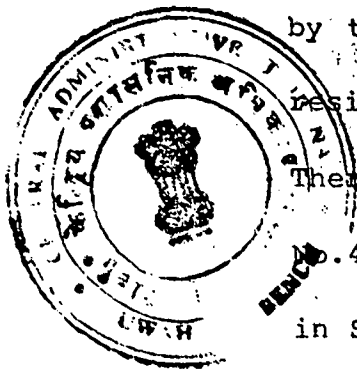
representation for conducting trade test on 15.11.2002 and vide letter dated 27.12.2002 applicant No.4 was informed that the residency period from one grade to another grade would be followed as per order dated 8.10.2002 of the Director, N.E.Circle, Shillong and asked the applicants not to make any further correspondence. The applicant No.4 was further informed in the said letter that in view of the letter dated 8.10.2002 residency period is required in case of Draftsman Grade-III for getting promotion to Draftsman Grade-II as per O.M.No.13(1)IC/91 dated 19.10.1994. The applicant challenge various impugned letters dated 18.7.2002 and 8.10.2002 (Annexure-IV) and seeks setting aside of the same. Their case further is that no amendment of Recruitment Rules has been made incorporating the residency conditions laid down in O.M. dated 19.10.1994 and as such the Recruitment Rules in Circular Order No.435/439(Administrative) are still in force and the promotion/upgradation from Grade III to Grade II has to be considered in terms of the said Circular Order No.439. The applicants rely upon averments made by the respondents in O.A.14/2002 filed before this Tribunal. The applicants, therefore, claim setting aside of letters dated 18.7.2002 and 8.10.2002 and direction to conduct trade test for effecting promotion/upgradation of the applicants to the



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cadre of Draftsman Grade II with effect from 1.1.2003 with all consequential benefits.

2. The respondents in the written statement have stated that prior to the implementation of judgment dated 17.7.97 of this Tribunal in O.A.52/96 and Principal Bench, CAT New Delhi order dated 7.2.2002 in O.A.No.2094/2001, the provisions laid down and Circular 435/439(Administrative) in respect of residency period for conducting trade test was followed which was two years in case of Grade III for being eligible for trade test of Grade II and promotion thereto. However, after the implementation of the judgment dated 17.7.97 of this Tribunal in O.A.52/96 and order dated 7.2.2002 of the Principal Bench of this Tribunal in O.A.2094/2001, the Draftsman of Survey of India are governed by the provisions made in the O.M. dated 19.10.94 and the residency period prescribed therein has to be followed. Therefore, according to the respondents Circular Order No.435/439 are not now applicable to the Draftsman working in Survey of India and the applicants cannot claim benefits of two separate set of rules. It is further averred in the written statement that revised recruitment rules for Draftsman Grade I, II and III, as per O.M. dated 19.10.1994 and Fifth Central Pay Commission report have already been sent to the Department of Science and Technology vide letters dated 25.5.2003 and 11.7.2003 for their approval.



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Accordingly, there is no merit in the application and it should be dismissed.

3. In reply the applicants have stated that O.A.52/96 was relating to extension of revised higher pay scale in terms of O.M. dated 19.10.94 and it does not relates to promotion. The present applicants claim promotion in terms of Circular Order 439. It is further contended that the O.M dated 19.10.94 cannot be treated as recruitment rules for Draftsman, in as much as no amendment of the recruitment rules has been carried out. Learned counsel for the applicant has placed reliance on Rangaiah vs. J.Sreenivasa Rao, 1983(3) SCC 284 and State of Rajasthan vs. R.Dayal or others, 1997(10) SCC 419.



We have heard learned counsel for the parties at length. The controversy which is required to be sorted out is whether the applicants, who are working in the cadre of Draftsman Grade III in the office of Survey of India, are governed by Circular Order No.439 (Administrative) or by O.M. dated 19.10.94 for the purpose of consideration for the promotion to next Grade II. We shall, therefore, first refer to the relevant part of Circular Order No.439 which deals with qualifications and trade test for Group C technical personnel. Rule 2 of the said circular provides that the grade of an individual in the Group 'C' service may be changed to a higher one in the following circumstances, which includes promotion by selection and on regradation. In

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terms of Rule 2(b) of the Circular Order No.439(Administrative), regradation is effected in recognition of technical competence and an individual in Group 'C' will be eligible to be regraded under Rule 6 to the next higher grade if he is qualified under the Appendix to these Rules and if it is considered that he has sufficient experience by virtue of length of service in his present grade. Rule 6(a) provides for regradation on the results of trade test in terms of Rule 6(b) thereunder. Rule 6(a) of the said Circular further provides that requests from the Directors should reach Surveyor General's Office by 30th September each year and all promotions as a result of regradation, re-classification/initial classification will normally take effect from the 1st January following. Rule 6(b) of the said Circular lays down that to assist the Directors in assessing the qualifications of candidates, Directors will periodically convene Trade Testing Boards to consider all eligible candidates to undergo the trade test as prescribed. In Rule 6(d) of the said Circular which has bearing on the controversy to be decided, reads as under :

"Personnel will have to complete the following minimum period in a particular grade before they can be promoted to the next higher grade provided their work and conduct have been satisfactory over the past one year:-

Grade IV .. 3 years
Grade III .. 2 years.

They will be allowed to take trade test for the next higher grades in the third and second year of grades IV and III respectively or in subsequent years."



Note :-The word "conduct" appearing above should be taken to mean conduct so far as it affects the professional work of an individual.

Marks should be allotted for all tests and a candidate should not be passed unless he has obtained at least 45% in each item of the test (except where specially stated otherwise) and 55% in the aggregate."

5. We may at this stage refer to O.M. No.13(1)-IC/91 dated 19.10.1994 of Government of India, Ministry of Finance, Department of Expenditure which deals with revision of pay scales of Draftsman Grade I, II and III in Government of India offices on the basis of award of Board of Arbitration in the case of Central Public Works Department. The said Office Memorandum is reproduced below :



No.13(1)-IC/91
Government of India
Ministry of Finance
Department of Expenditure

New Delhi the 19th Oct, 1994

OFFICE MEMORANDUM

Subject : Revision of pay scales of Draughtsmen Grade I, II and III in all Government of India Offices on the basis of the Award of Board of Arbitration in the case of Central Public Works Department.

The undersigned is directed to refer to this Department's O.M.No.F(59)-E.III/82 dated 13.3.84 on the subject mentioned above and to say that a Committee of the National Council (JCM) was set up to consider the request of the staff side that the following scales of pay allowed to the Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draughtsmen Grade I, II and III irrespective of their recruitment qualification, in all Government of India offices.

	Original Scale (re?)	Revised scale on the basis of the Award
Draughtsmen Grade I	425 - 700	550 - 750
Draughtsmen Grade II	330 - 560	425 - 700
Draughtsmen Grade III	260 - 430	330 - 560

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2. The president is now pleased to decide that the Draughtsmen Grade I, II and III in Offices/Departments of the Government of India other than in CPWD may also be placed in the scales of pay mentioned above subject to the following

- (a) Minimum period of service for 7 years placement from the post carrying scale of Rs.975-1540 to Rs.1200-2040 (pre-revised scale Rs.260-430 to Rs.330-560)
- (b) Minimum period of service for 5 years placement from the post carrying scale of Rs.1200-2040 to Rs.1400-2300 (pre-revised Rs.330-560 to 425-700).
- (c) Minimum period of service for 4 years placement from the post carrying scale of Rs.1400-2300 to Rs.1600-2660 (pre-revised Rs.425-700 to Rs.550-750).

3. Once the Draughtsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the recruitment rules.

4. The benefit of this revision of scale of pay scale be given with effect from 13.5.82 notionally and actually from 1.11.83.

Sd/-SHYAM SUNDER

Under Secretary to the Government of India"



6. From the above Office Memorandum it is clear that with reference to O.M.No.F(59)-E.III/82 dated 13.3.84 on the subject, a Committee of National Council (JCM) was set up to consider the request of staff side that the following scales of pay allowed to Draftsman Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration may be extended to Draftsman Grade I, II and III irrespective of their recruitment qualification in all Government of India offices. Accordingly, it was decided that Draftsman Grade I, II and III in offices/Departments of the Government of India

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other than in CPWD may also be placed in the scale of pay mentioned above subject to fulfillment of minimum period of service which in case of Draftsman Grade II is 5 years. It is clear from the above Office Memorandum that scales of Draftsman Grade I, II and III working in the CPWD had been revised, but the pay scales of the Draftsman in Grade I, II and III working in other Government departments had not been revised and for that purpose a Committee of National Council was appointed to consider the case of Draftsman Grade I, II and III of the other departments in Government of India and thereafter Government of India decided that the scales given to CPWD Draftsman Grade I, II and III should be extended to Draftsman Grade I, II and III in the other Government offices irrespective of their recruitment qualifications provided they fulfill the minimum period of service which in the case for Draftsman Grade III to Grade II is 5 years. It is important to note that Para 3 of O.M provides that once the Draftsmen are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid in the Recruitment Rules (emphasis supplied). Para 4 of the said Memorandum further provides that the benefit of this revision of scale of pay be given with effect from 13.5.82 notionally and actually from 1.11.83. The O.M therefore relates back and remedies the grievances of employees working in other establishments other than



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CPWD and grants them revised pay scales at par with CPWD Draughtsman and fixation in the revised pay scales with retrospective effect. And once the same is done further promotions have to be effected as per normal Recruitment Rules.

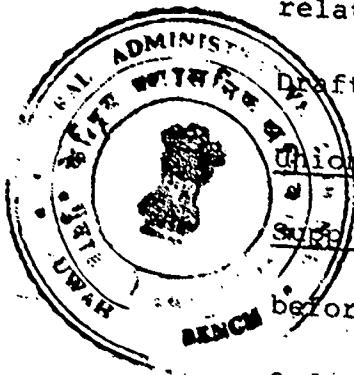
7. Therefore, a close reading of the said Office Memorandum dated 19.10.1994 goes to show that the said Memorandum provides for placing the Draftsman of other Government departments in the regular scales, namely, in the scales which are earlier been given to Draftsman Grade I, II and III of CPWD and the benefit of this revision of pay scale was extended with effect from 13.5.82 notionally and actually from 1.11.83. It is pertinent to note that Para 3 of this Memorandum enjoins that once the Draftsman are placed in the regular scales, further promotions would be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules. Therefore, Para 2 of the Memorandum will have no bearing in so far as the claim put forward by the applicants is concerned who shall be governed by Para 3 of the said Memorandum dated 19.10.1994 in relation to further promotion against available vacancies in higher grade and in accordance with normal eligibility criteria laid down in Recruitment Rules. The normal eligibility criteria laid down in the Recruitment Rules is laid down in Circular Order No.435, 436 and 439 (Administrative), which



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deals with promotions by selection and regradation. Rule 6(d) of the Circular Order 439 clearly contemplates that the personnel will have to complete the minimum period in a particular grade before they can be promoted to the next higher grade provided their work and conduct have been satisfactory over the past one year. The minimum period required for promotion from Grade III to Grade II is 2 years and trade test in order to determine the competency of the Draftsman for consideration to the next higher grade.

8. We shall at this stage refer to various rulings which have been placed before us. The question of parity in pay in relation to Draftsman working in Ordnance Factories and Draftsman Grade II in CPWD came up before the Apex Court in Union of India and others vs. Debashis Kar and others, 1995 Supp (3) SCC 528. The question which arose for consideration before the Apex Court was whether Draftsman employed in the Ordnance Factories and Workshops of FME in the Ministry of Defence are entitled to have their pay scale revised on the basis of Office Memorandum of Government of India, Ministry of Finance dated 13.3.1984 to which reference has been made in Office Memorandum No.13(1)-JC/91 dated 19.10.94. In that case the Apex Court noticed that on the basis of report of the Third Pay Commission, the pay scales of Draftsman employed in CPWD were revised. However, the said employees of the CPWD were not satisfied and claimed that they should have been placed on higher pay scale. The dispute was



referred to a Board of Arbitration and the Board of Arbitration gave Award on 20.6.1980 whereby the pay scales of Draftsmen working in CPWD were revised as under :

(i) Draughtsman Grade I	Rs.550 - 750
(ii) Draughtsman Grade II	Rs.425 - 700
(iii) Draughtsman Grade III	Rs.330 - 560

By the said Award it was directed that, pay of the Draughtsman shall be fixed notionally in their respective scales of pay from 1.1.1973, but for computation of arrears, the date of reckoning shall be 28/29.7.1978. In accordance with the said Award, the pay scales of Draughtsman in CPWD were revised vide order dated 10.11.1980. The Draughtsman employed in departments other than CPWD claimed the revision of their pay scale in the light of revision of pay scale in CPWD and on 13.3.1984 the Government of India, Ministry of Finance issued an Office Memorandum whereby it was directed that the scale of pay of Draughtsman Grade III, II and I in the office/department of the Government of India, other than the CPWD, may be revised as per revised scales for CPWD provided their recruitment qualification are similar to those prescribed in the case of Draughtsman in CPWD and those who do not fulfill the said qualifications would continue in the pre-revised scales. The Ministry of Defence on 3.7.1984 issued an order whereby the organisations were requested to take necessary action in terms of para 2 of the Office Memorandum dated 13.3.1984. It appears that in the



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Ordnance Factories under the control of Director General of Ordnance Factories no action was taken to revise the pay scales of Draughtsmen as per Office Memorandum dated 13.3.1984. A series of Writ Petitions were filed before the High Courts and Tribunals. In the Writ Petition filed before the Calcutta High Court, it was directed by order dated 8.10.85 that O.M. dated 13.3.84 as well as the order of Ministry of Finance dated 3.7.84 to revise the pay scales be implemented forthwith. The judgments of the various Benches of the Tribunal had taken the view that the qualifications which were required for appointment of Draughtsman in the Ordnance Factories as well as in the Army Base Workshops in EME were equivalent to qualifications which were prescribed for appointment in the post of Draughtsman Grade II in the CPWD and therefore, the respondents who were placed in the pay scale of Rs.335-560/- on the basis of the report of the Third Pay Commission were entitled to be placed in the revised pay scale of Rs.425-700/- in accordance with O.M. of the Ministry of Finance dated 13.3.1984. The Union of India assailed the view of the Tribunals and it was stated that qualifications for appointment in the post of Draughtsman on the Ordnance Factories and Army Base Workshops of EME cannot be treated as equivalent to the qualifications for appointment on the post of Draughtsman Grade II in CPWD and therefore, the said respondents are not entitled to the



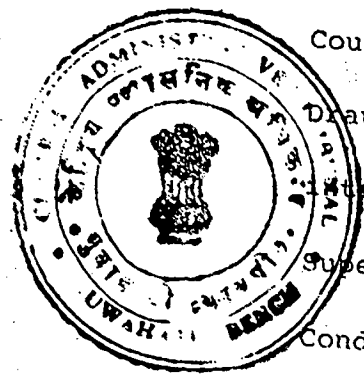
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benefit of revision of pay on the basis of the Office Memorandum dated 13.3.1984. During the pendency of the matter before the Apex Court, Government of India, Ministry of Finance issued Office Memorandum dated 19.10.1994 to which we have already referred. By the said Office Memorandum Government of India after considering request of staff side that the scales of pay allowed to Draughtsmen Grade I, II and III working in CPWD on the basis of the Award of Board of Arbitration, may be extended to Draughtsmen Grade I, II and III irrespective of their recruitment qualification, in all Government of India offices has decided that Draughtsmen I, II and III in all offices/departments of the Government of India other than in CPWD may also be placed in the revised scale of pay subject to certain minimum period of service as mentioned in clause (a), (b) and (c) of the O.M. The Apex Court has pointed out that the benefit of this revision of pay scales which is provided in O.M. dated 19.10.1994 had been given retrospectively with effect from the same dates as was given by the O.M. dated 13.3.1984, i.e. from 13.5.1985 notionally and actually from 1.11.1983. It was further observed by the Apex Court that in respect of Draughtsmen who fulfilled the requirement relating to the period of service mentioned in the same Office Memorandum dated 19.10.1994 on the relevant date the question whether their recruitment qualifications were similar to those in the case of Draughtsmen in CPWD would not arise and they would be entitled to the revised



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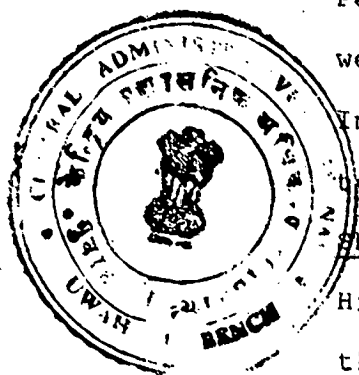
9. From the above judgment of the Apex Court it is clear that what was done vide O.M. dated 19.10.1994 was to effect revision of the pay scales in all Government of India offices on par with the Draughtsman Grade I, II and III working in the CPWD and for that purpose the Government had fixed minimum period of service for placement in the revised scales irrespective of recruitment qualifications in as much as the benefit of the revision of pay scale was to be given effect from 13.5.1982 notionally and actually from 1.11.1983. It is crystal clear from Para 3 of the said O.M. dated 19.10.1994 that once Draughtsmen were placed in regular scales (in fact revised scales) in terms of Memorandum dated 19.10.1994, all further promotions were to be made against available vacancies in higher grade and in accordance with the normal eligibility criteria laid down in the Recruitment Rules. The normal eligibility criteria in the Recruitment Rules is found in Circulars Order No.435/436 and 439(Administrative) and for that purpose minimum period in particular grade for promotion to next higher grade has been fixed at 2 years for Grade III. The applicants were appointed on 10.4.1995 and their promotions obviously will be governed by the Recruitment Rules in force which are contained in Circular Order No.435/436 and 439(Administrative). The respondents in the written statement have admitted that the Recruitment Rules have not been amended and the revised Recruitment Rules have been sent to the Department of Science and Technology vide letter dated 25.5.2003 and 11.7.2003 for their approval. Besides this, O.M. dated 19.10.94 provides for revision of pay scales retrospectively at par with CPWD scales and it does not embody any rule of recruitment nor is it in supercession of



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Recruitment Rules. The condition relating to minimum service relates to cases of revision of pay thereunder and cannot be imported in Recruitment Rules for the purpose of promotion. Therefore, there is no merit whatsoever in the stand taken by the respondents.

10. Our attention was drawn to the decision in Tulsiram Sharma & Others vs. The Secretary, Ministry of Science & Technology, New Delhi and others, O.A.No.52/96 and the decision in Tulsiram Sharma and others vs. Union of India & Others, O.A.14/2002. In both these applications the question which came up for consideration was in relation to the revision of pay scales with reference to O.M. dated 19.10.1994. The question which has been raised in the present application never cropped up in the said applications. In both those applications the Union of India had challenged the order before the High Court but the Writ Petitions Civil Rule No.4733 of 1997 and WP(C) No.9786/2003 were dismissed. Special Leave Petition filed by the Union of India before the Apex Court also dismissed. It is relevant to point out that in Union of India & Ors. vs. Tulsiram Sharma and others, Writ Petition(C) No.9786/2003, the Hon'ble High Court found that the matter pertained to revision in the pay scale in terms of O.M. dated 19.10.1994 and it was made clear that this revision in pay scale was on account of the particular number of years of service rendered by the respondents and it does not mean that they have been given promotion to the higher post.



11. In view of this the applicants shall be governed by the Recruitment Rules contained in Circular Order No.435/436 and 439 (Administrative) and their claim for promotion shall be governed thereunder. Since they have completed 2 years in Grade III, the appropriate authority shall have to take further necessary action in terms of the said Circular Order

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No.435/436 and 439 (Administrative) and conduct trade test and thereafter pass appropriate order in accordance with the respective rules contained in Circular Order No.435/436 and 439 (Administrative).

12. In view of the above, the application is allowed and impugned orders issued under letters dated 18.7.2002 and 8.10.2002 (Annexure-IV) are hereby set aside and the respondents are directed to conduct necessary trade test in terms of Circular Order No.439 (Administrative) within a period of 3 months from the date of receipt copy of this order and consider the case of the applicants and other Draftsmen who have completed 2 years in Grade III for the purpose of promotion to the next higher grade, namely, Grade II in accordance with the provisions contained in Circular Order No.435/436 and 439 (Administrative).

In the facts and circumstances we shall leave the parties to bear their costs.



TRUE COPY
सिद्धि

Sd/- Vice chairman
Sd/- Member

[Signature]
14-10-04

Private Secretary
Central Administrative Tribunal
Guwahati Bench
Guwahati-6

संसार : "महासर्वेक्षण"

Telegram : "SURVEYS"

फैक्स व दूरभाष : 0091-135-744064

Fax-cum-Telephone : 0091-135-744064

ई-मेल : sgo@nde.vsnl.net.in

E-Mail : sgo@nde.vsnl.net.in



भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA
महासर्वेक्षक का कार्यालय
SURVEYOR GENERAL'S OFFICE

हाक बक्स सं० 37, POST BOX No.37,

देहरादून-248001 (उत्तरांचल)-भारत।

DEHRA DUN-248001 (Uttaranchal), INDIA

Dated: 17 March, 2004.

No.E2-4238 /1196-B(T.R.S.)

To,

Addl. S.G.s:UP GDC/MP GDC/Rajasthan GDC/AP GDC/Maharashtra GDC

Directors:Uttaranchal GDC/Punjab & Chandigarh GDC/Haryana GDC/
J&K GDC/HP GDC/Assam & Nagaland GDC/Meghalaya &
Arunachal Pradesh GDC/Tripura, Manipur & Mizoram GDC/
Bihar GDC/West Bengal, Sikkim and A&N Island GDC/Orissa
GDC/ Jharkhand GDC/Chhattisgarh GDC/Gujarat & Daman &
Diu GDC/Goa GDC/Karnataka GDC/Tamilnadu & Pondicherry
GDC/Kerala & Lakshadweep GDC/Survey (Air) and Delhi
GDC/G&RB/DMC(D.Dun)/DMC(Hyd.)/STI/R&D/ NSDI/ B&P/
Nothorn Printing Group/Southern Printing Group/ Eastern
Printing Group/Western Printing Group.

SUB: Trade Test of Draftsman Gde.IV to III and Gde.III to Gde.II

In suppression of para 1(ii) of this office letter No-E2-6680/1196-B(TRS) dated 18-7-2002, arrangement may please be made to conduct the Trade Test of eligible Draftsman, as per C.O.439, from Grade IV to Grade III and Grade III to Grade II. The results of the Trade Test may be kept in abeyance till further order in view of O.A.No.1777/2003 and M.A.No.1510/2003-filed by Sh.M.S.Meena and Others V/S Union of India in Hon'ble CAT, Principal Bench, New Delhi.

An undertaking may be taken from each examinee that he/she is aware that the implementation of result of the test is subjected to the outcome of O.A.No.1777/2003 filed by Sh.M.S.Meena and Others V/S Union of India and Others in Hon'ble CAT Principal bench, New Delhi.

(M.V.Bhat) Brig.

DEPUTY SURVEYOR GENERAL,
for SURVEYOR GENERAL OF INDIA.

- Copy to:-
- Sh.N.P.S.Ahuja, President, Draftsman Cartographic Association, Dehra Dun for information with reference to Agenda Point No.1 of Minutes of the Meeting sent under this office letter No.J-4144/612-Draftsman dated 5-3-2004.
 - O.C.Workstudy, S.G.O. with reference to letter No.J-4144/612-Draftsman dated 5-3-2004.

38-104-Annexure-4
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ANNEXURE 'A'

TRADE TEST

DECLARATION

I, Shri/Smt./Kunt. Anup Sharma of M&Ar.P. GDC initially
classified as D'Man Grade IV on 01-4-1997
(Trade & Grade) (Date)
and promoted to D'Man Grade III on 01-1-2001
(Trade & Grade) (Date)
hereby declare that I am willing to appear in Meghalaya & Arunachal Pradesh GDC
Trade Test for promotion to D'Man Grade II.
(Trade & Grade)

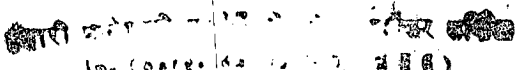
Station: Shillong
Date: 12-04-2004

Signature [Signature]
Name ANUP SHARMA
Trade & Grade D/man Gde III

COUNTERSIGNED

[Signature]

Station:
Date:


In-charge, Spatial Data Transforming Wing

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I am aware that the implementation of result of the test for which I am appearing, is subject to the outcome of O.A.No.1777/2003 filed by Shri M.S. Meena and others -Vs- Union of India and others in Hon'ble CAT Principal Bench, New Delhi.

Signature of individual: AAZ.

Name of individual: ANUP SHARMA.

Trade & Grade: D/man Gde III.