

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No. 3042/2016
MA No.2810/2018
MA No.3906/2018
MA No.4254/2018
MA No.4710/2018
MA No.4711/2018

Reserved on: 28.11.2018

Pronounced on: 18.12.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

1. All Indian Naval Draughtsman Association
Through :
Kamal Singh
President
Age about 57 years
Working as Draughtsman Gr-I
DND (SSG), IHQ, MOD (N)
R/o 1107, Pocket-3
Sector-19, Dwarka
New Delhi-75
2. Sudershan Kumar Mudgal
General Secretary
Age about 53 years
Working as Draughtsman Gr-I
In DWE, IHQ, MOD (N)
"C" Wing, Sena Bhawan
New Delhi-110075
3. Davender Nath Chaudhary
Aged about 30 years
Executive Committee Members
Working as Draughtsman (C)
In Directorate of Ship Production
IHQ, MOD(N), D-1 Wing, 2nd Floor
Sena Bhawan, New Delhi-110011

4. Rohit Kumar
 Age about 25 years
 Working as Draughtsman (L)
 In Directorate of Ship Production
 Integrated Headquarter
 Ministry of Defence (Navy)
 Sena Bhawan, New Delhi-110011

5. Sachin Solanki
 Aged about 23 years
 Working as Draughtsman (E)
 In Directorate of Ship Production
 Integrated Head Quarters
 Ministry of Defence/Navy
 Sena Bhawan, New Delhi

6. Gaurav
 Aged about 28 years
 Working as Draughtsman (C)
 In Directorate of Ship Production
 Integrated Headquarter
 Ministry of Defence (Navy)
 DSP, Sena Bhawan
 New Delhi.

...Applicants

(By Advocate: Shri Kunal Kalra)

Versus

Union of India

1. The Secretary
 DOP&T
 New Delhi
2. The Secretary
 Ministry of Defence
 Sena Bhawan
 New Delhi

3. Chief of Naval Staff
Ministry of Defence
Sena Bhawan
New Delhi
4. The Flag Officer
Commanding-in-Chief
Civilian Recruitment Cell
Head Quarters
Southern Naval Command
KOCHI-682004
5. Sarjeet, aged about 27 years
s/o Shri Raghu Veer
r/o V&PO Pingore
Tehsil Hodal
Distt. Palwal-121105
6. Surender Kumar, aged about 28 years
s/o Shri Jai Singh
r/o V&PO Babain, Tehsil Shahabad
Distt. Kurukshetra-136156
7. Meenakshi, aged about 27 years
d/o Shri Sheesh Ram
r/o WZ-348, Basai Dara Pur
New Delhi-110015
8. Dharmender Singh, aged about 26 years
s/o Shri Sube Singh
V&PO Bawania
Tehsil & Distt. Mahendergarh-123034
9. Bharat Sagar, aged about 27 years
s/o Shri Mahender Singh
r/o G-102, Harkesh Nagar
New Delhi-110020

10. Hansraj Bhardwaj, aged about 28 years
s/o Shri Girdhari Lal
V&PO Meesa
Tehsil & Distt. Palwal-121102
11. Vikas Kumar, aged 28 years
s/o Shri Naresh Kumar
r/o RZ-61/8A, Street No. 18
Vashisht Park, Pankha Road
New Delhi-46
12. Rohit, aged about 23 year
s/o Shri Ravinder
r/o House No. 139
Village Kaluwas, P.O. Paluwas
Distt. Bhiwani-127021
13. Rechal Massey, aged about 26 years
d/o Shri Robert Massey
r/o of E-78 (First Floor)
Anandwas, Shakurpur
Delhi-110034
14. Ved Prakash, aged about 29 years
s/o Shri Dharam Singh
r/o V&PO Bhiduki, Mohalla Udnaka
Tehsil Hodal, Distt. Palwal-121107
15. Shivani Dewan, aged about 21 years
d/o Shri Anil Kumar
House No. 214/4 Marla
Model Town
Gurugram-122001

16. Ruchi Sharma, aged about 27 years
d/o Shri Surender Pal Sharma
r/o House No. W-108/1
Chander Shekhar Azad Gali No. 4
Babarpur, Shahdara
Delhi-32
17. Manoj Singh Rawat, aged about 28 years
s/o Shri Darwan Singh Rawat
r/o A-77, Durga Park
Dallupura, Near Durga Mandi
Delhi-110096
18. Alka Sharma, aged about 31 years
W/o Shri Rahul Sharma
r/o 41A/1, Yusuf Sarai
New Delhi-110016
19. Narender, aged about 28 years,
V&PO Pingore, Tehsil Hodal,
Distt.Palwal-121105
20. Ravinder Hudda,
Aged 27 years,
Vill. Bhoopgarh, P.O. Marroli,
Tehsil Hodal, Distt. Palwal-121106
21. Ravi Bhushan Prasad,
Aged 28 years,
C-118, Qutub Vihar, Part-II
Near Hanuman Chowk,
Goiyla Dairy, New Delhi-110071
22. Shaurav Awasthi,
Aged 27 years
121, Vill. Hathithan, P.O.
Bhuntar, Tehsil & Distt. Kullu, H.P.

23. Amit Pratap Singh,
Aged 28 years
Vill. Katra Indra Kunwar,
P.O. Dherna, Distt.
Pratapgarh-230002
24. Manjeet Kumar Tiwari,
Aged 26 years
Vill. Nadroi, P.O. Lodha,
Distt. Aligarh-202140
25. Ashish Dhyani,
Aged about 27 years
Vill & P.O. Bhoun, Patti Eria
Kottalla, Distt. Pauri
Garhwal-246277
26. Gopal,
Aged 31 years
H. No.12/A, Street No. 2
(Banjare Wali Gali, Mukesh Nagar,
Shahdara, Delhi-110032
27. Manish Sharma,
Aged 29 years,
32/1011, DDA Flats,
Madangir, New Delhi-110062
28. Tripta Sharma,
Aged 31 years
C-69A, Gali No. 5, Ganesh Nagar,
Pandav Nagar Complex,
Opp. Mother Dairy East,
Delhi-1100092
29. Sandeep Kumar,
Aged 25 years
V&PO Manoharpur, Distt. &
Tehsil Jind-126102
30. Pradeep K Singh,
Aged 27 years
1779, NH IV, Faridabad

31. Gaurav Chauhan,
Aged 27 years
H. No. 425, Krishna Colony,
Palwal, Haryana
32. Ravi Kant
Aged 27 years
H. No. 435, W. No. 11,
Rajinder Nagar, Kalyat
Distt., Kaithal-136117
33. Sanjeet Kumar,
Aged 32 years
H. No. 1755, CPWD Quarters,
Faridabad-121001
34. Dharambir,
Aged 26 years
Gopalpur, Rohtak
35. Tisha Tomy
Aged 30 years
Chullithara House
Blaparambu Road
Palluruthy P.O.
KOCHI-682006
ERNAKULAM DISTT.
36. Pooja Prasenan
Aged 29 years
H. No. XXVII/272
Kollara House
PWD Road, Nettor P.O.
KOCHI-682 040
ERNAKULAM DISTT.
37. Akhila KS
Aged 24 Years
c/o Office Superintendent
INS Dronacharya
Fort Kochi

Kochi-682 001
 ERNAKULAM DISTT. ...Respondents

(By Advocate: Shri Gyanendra Singh for Official Respondents and
 Shri Vidya Sagar for Private Respondents)

ORDER

Hon'ble Mr. A.K. Bishnoi, Member (A):

The present OA has been filed by the applicants seeking the following reliefs:-

- “(i) To call for the records of the case and allow this original application.
- (ii) To quash and set aside the impugned advertisement at Annexure A-1 to this application.
- (iii) To direct the respondents to convene the requisite DPC for promotion to the merged post of Draughtsman Gr.I (Proposes Senior Draughtsman) in the Grade Pay of Rs.4200/- and consider the applicants for promotion.
- (iv) To direct DOP&T to approve proposed amendment in RR's of Draughtsman Gr-I (proposed Designation Senior Draughtsman) submitted by Navy in January, 2015 without waiting for preparation of model RR's for single post as RR's of lower post already amended.
- (v) To pass such other and further orders which the Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.
- (vi) To allow the Original Application with cost.”

2. Briefly the facts of the case, as stated by the applicants, are that All India Naval Draughtsman Association represents Draughtsman and all applicants, working as Draughtsman in

different branches in the Ministry of Defence/Navy. Earlier, their hierarchy for the Draughtsman in the Navy was as below:-

Sl. No.	Designation	Scale of Pay	Category as per RRs
1	Draughtsman Gr-III	Rs. 4000-6000	Group "C"
2	Draughtsman Gr-II	Rs.5000-8000	Group "C"
3	Draughtsman Gr-I	Rs.5500-9000	Group "B" Non Gazetted

2.1 After the implementation of the recommendations of the 6th Central Pay Commission, Draughtsman Grade-I and Grade-II were merged w.e.f. 01.01.2006 and became Senior Draughtsman vide order dated 05.04.2010. After merger, the position emerges as follows:-

Sl. No.	Designation	Revised Scale of Pay of 6 th CPC	Grade Pay	Category as per RR's
1	Draughtsman	Rs. 5200-20200 (Pay Band-I)	Rs.2400/-	Group "C"
2	Draughtsman Gr-I (Proposed Senior Draughtsman)	Rs.9300-348000 (Pay Band-2)	Rs. 4200/-	Group "B" Non-Gazetted

2.2 Subsequently, the Navy issued the order of merger of these cadres through order dated 21.12.2010. However, despite the lapse of substantial time, the Recruitment Rules (RRs) of Draughtsman after the merger are still not finalised.

2.3 The Navy then notified for recruitment of 486 post of Draughtsman with Grade Pay of Rs.4200/- Group 'B'. It has been

submitted that the qualifications prescribed in the advertisement for this post are lesser than of the existing Draughtsman, which is the feeder cadre of Draughtsman Grade-I (now re-designated as Senior Draughtsman).

2.4 The applicants have challenged this Advertisement for Draughtsman Grade-II mainly on the following grounds:-

- i) After the merger of Draughtsman Grade-I & Grade-II w.e.f. 01.01.2006, Draughtsman Grade-II does not exist and it has been re-designated as Senior Draughtsman with Grade Pay of Rs.4200/-.
- ii) After the merger as per DoPT memorandum dated 24.03.2009 DPCs have to be constituted for the higher/highest grades for the merged grade. The applicants, who were working as Draughtsman (earlier Draughtsman Grade-III), are the feeder cadre for the post of this merged cadre, in which the higher merged grade is that of Draughtsman Grade-I. They should have been considered for promotion, failing which the option to fill up the post by deputation should have been explored.

3. The respondents in their counter while admitting the factual situation regarding merger of Draughtsman Grade-I and Grade-II

have submitted that the RRs for Senior Draughtsman have not yet been finalized. Out of the sanctioned strength of 1038, 486 posts of Senior Draughtsman are lying vacant. As per the existing RRs, there is no provision of direct recruitment for Draughtsman Grade-I. Since the method of promotion and deputation has failed, the only way to fill up the vacancies was to go for direct recruitment by following the Recruitment Rules of erstwhile Draughtsman Grade-II. They have cited difficulties that would result in not filling up of the vacancies.

4. The applicants have filed rejoinder, more or less reiterating the points raised in the main OA.

5. We heard the learned counsel for the applicants and the respondents.

6. Learned counsel appearing on behalf of the applicants submitted that the respondents have invited applications for recruitment to the post of Draughtsman Grade-II in the Mechanical/Construction and the Electrical Disciplines while there is no Grade-II now after merger with Grade-I. However, the pay structure that has been given in the advertisement is that which is applicable for the merged cadre of Draughtsman Grade-I and Grade-II (now re-designated as Senior Draughtsman). If the respondents

are following the existing RRs, as the RRs have not been amended after the merger then they should have as per standing instructions followed the procedure which is laid down for Draughtsman Grade-I and as per this direct recruitment is not allowed. The qualifications which have been prescribed are also that of the erstwhile Grade-II largely. Here also certain changes have been inexplicably made. Whereas for the erstwhile Grade-II the relaxation in age for Government servants was upto the age of 40 years in case of general candidates and 45 years in case of SC/ST candidates the advertisement mentions it as 05 years. It is contended that in the absence of valid RRs, recruitment cannot be made as per the advertisement issued in the Employment News of 30th July-5th August, 2016.

7. The learned counsel for the applicants has also placed on record the Clarifications issued by IHD MoD (Navy), Dte. of Civilian Manpower Planning and Recruitment regarding recruitment of merged posts.

(a) The relevant portion of the Communication dated 10.02.2015 reads as under:

“3.....It needs to be ensured that all essential/desirable qualifications of the higher posts of the posts so merged, are considered for the recruitment process. Additionally, the minimum educational qualification for any post is to be specified as Matriculation (10th Class Pass) in the Advertisement.”

(Emphasis supplied)

(b) The relevant portion of the communication dated 06.04.2015 regarding advertisement for vacant posts after merger reads as under:

“1. It has come to the notice of IHQ/MoD (Navy) that while advertising for various posts for recruitment, especially for posts that have been merged, the column for essential and desirable qualifications is strictly not as per the Statutory Recruitment Order (SRO)/RRs/guidelines from time to time.

2. The qualifications for the posts are mentioned in each SROs. SROs being statutory in nature, no administrative order can override the same.

3. **In case of merger of one or more posts, the SROs of higher post will be applicable.”**

(Emphasis supplied)

8. Learned counsel for the respondents argued that because of the large number of existing vacancies it is necessary to start the process of direct recruitment as the other avenues of promotion and deputation have not succeeded for filling up of the vacancies.

9. In support of the act of the respondents towards filling up of the vacancies in the absence of amended RRs, the learned counsel for the respondents also referred to Part-II Frequency of Meetings of OM dated 08.09.1998 of DoP&T, the relevant portion of which reads as under:

“Holding of DPC meetings need not be delayed or postponed on the ground that Recruitment Rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy, unless rules made subsequently have been expressly given retrospectively effect. Since amendment to Recruitment Rules

normally have only prospective application, the existing vacancies should be filled as per the Recruitment Rules in force.”

10. The learned counsel for the respondents relied on the decision of the Hon’ble Apex Court in **Union of India & Others v. Somasundram Viswanath & Others**, [AIR 1988 SC 2255] on the issue of conflict between executive instructions and rules made under Article 309 and law made by the appropriate Legislature.

11. The learned counsel for the private respondents referred to the order of the Hon’ble Supreme Court in the case of **Nagpur Improvement Trust v. Yadaorao Jagannath Kumbhare & Others**, [(1999) 8 SCC 99] and drew attention to the portion as reproduced below:

“8.....In this view of the matter and concededly, no rules having been framed by the State Government in exercise of power under Section 21 of the Act, the Trust/Board was fully empowered to take administrative decisions in the matter of appointments and promotions to different posts including the posts requiring professional skill and consequently the resolution of the Board taken in accordance with sub-section (2) of Section 22 of the Act deciding to promote the employees to the post of Assistant Engineer cannot be said to be invalid or inoperative. The High Court, therefore, in our view fell in error to hold that the appointments made to the posts of Assistant Engineer are invalid in law.

He has also contended that the OA is not maintainable since multiple reliefs have been sought.

12. We have carefully gone through the pleadings and documents on record and also the arguments advanced by the learned counsel for both sides.

13. It is an admitted fact that Draughtsman Grade-I and Grade-II after having merged with effect from 01.01.2006 were re-designated as Senior Draughtsman with Grade Pay of Rs.4200/- and Draughtsman Grade-III has been re-designated as Draughtsman in the Grade Pay of Rs.2400/-. It is also admitted that fresh RRs after the merger have not yet been finalized. On the issue of RRs in the case of merger of posts it has been settled by IHQ MoD (Navy), Dte. of Civilian Manpower Planning and Recruitment through Clarification dated 10.02.2015 that pending revision of RRs all essential/desirable qualifications of the higher posts of the posts so merged. Their communication dated 06.04.2015 also makes it clear that in case of merger of one or more posts, the SROs of higher post will be applicable. The DoPT Memorandum dated 24.03.2009 also mandates that:

“Where two or more scales have been merged, higher/highest grade will be the DPC for the merged grade.”

Though this is not a case of promotion the principle remains the same.

14. As regards the decision of the Hon'ble Apex Court cited by the learned counsel for the respondents in the case of **Union of India & Others v. Somasundram Viswanath & Others** (supra), it lays down the larger position of law, which is not a subject matter in the instant OA. As regards the decision in the case of **Nagpur Improvement Trust** (supra), it is clear that the facts and circumstances of the case were quite different from those in the present matter. Hence no justification can be provided by the respondents in favour of the action by relying on this judgment.

15. On the issue of multiple reliefs, we find that this argument is not well founded as the reliefs that have been sought in the OA form part of the same pack of grievances which are intrinsically linked.

16. In the light of the above, it is evident that the respondents have gravely erred in inviting applications through the advertisement published in the Employment News of 30th July-5th August, 2016 under the caption "Draughtsman Grade-II" when the said Grade-II was no longer in existence having already been merged with Grade-I and the merged grade being re-designated as Senior Draughtsman. While doing so, they have mentioned that it is now Senior Draughtsman and the pay structure has also been indicated as that of Senior Draughtsman. However, the

qualifications that have been prescribed are similar to that for the erstwhile Draughtsman Grade-II. Thus, it is a strange case of picking up some aspects of the post-merger scenario and mixing them with some from the pre-merger situation. Even while doing so, instead of following the procedure as was prescribed for the erstwhile Draughtsman Grade-I, being the higher grade, as has been clarified in Para-7 above, it has been aligned to that for the erstwhile Draughtsman Grade-II, both in terms of method of recruitment as also qualifications. It may be noted that the RRs for the erstwhile Draughtsman Grade-I prescribed the method of recruitment as promotion failing which by deputation and there was no scope for direct recruitment as is sought to be done through the process advertised.

17. In the circumstances, the OA is allowed to the extent that the impugned advertisement dated 30th July-5th August, 2016 is quashed and set aside. However, this order shall not preclude the respondents from filling up the Senior Draughtsman Grade Posts, by following the RRs of Draughtsman Grade-I, pending finalisation of the RRs for Senior Draughtsman Grade, if they are advised so or the circumstances warrant.

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18. All pending MAs stand disposed of accordingly. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

CC.