

Anup Sarma and ors. Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Guwahati

Decided On : Sep-23-2004

Reported in : (2005)(3)SLJ39CAT

Judge : R B Vice, P a K.V.

Appellant : Anup Sarma and ors.

Respondent : Union of India (Uoi) and ors.

Judgement :

1. 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 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(J)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 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 in 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. 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 relate 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 v. J. Sreenivasa Rao, and State of Rajasthan v. R. Dayaland Ors., .

4. 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 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: 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 Grades 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: 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.

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 Grades 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. 1600-2600 (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.

6. Prom 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 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 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 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 Grades 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 claims 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 deals with promotions by selection and regradation. Rules

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 Ors. v. Debashis Kar and Ors., 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 EME 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 19.10.1994. 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 Draftsman working in CPWD were revised as under: 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 Grades 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 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 8.10.1985 that O.M. dated 13.3.84 as well as the order of Ministry of Finance dated 3.7.1984 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 of 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 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 19.10.1984 to which we have already referred. By the aid Office Memorandum Government of India after considering request of staff side that the scales of pay allowed to Draughtsmen Grades I, II, and III working in CPWD on the basis of the Award of Board of Arbitration, may be extended to Draughtsmen Grades 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 scales of pay subject to certain minimum period of service as mentioned in Clauses (a), (b) and (c) of the O.M. The Apex Court has pointed out

that the benefit of this revision of pay scale 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 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.

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 Grades 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 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 and Ors.

v. The Secretary, Ministry of Science and Technology, New Delhi and Ors., O.A. No. 52/96 and the decision in Tulsiram Sharma and Ors. v. Union of India and Ors., 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 and Ors. v. Tulsiram Sharma and Ors., 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. 425/436 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 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.

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