

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 06.10.2009**
Judgment delivered on: 12.10.2009

+ **W.P. (C) No. 2747 of 2006**

SH. NARESH KUMAR BAOND Petitioner
Through: Mr. S.S. Tiwari, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

J U D G M E N T

VIPIN SANGHI, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner to challenge the order dated 20.04.2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1998/2004 whereby the original application preferred by the petitioner under Section 19 of the Administrative Tribunal Act has been dismissed.

2. The petitioner was working as a Head Draughtsman with the respondent. The said post was one of the posts in the drawing office cadre. On the basis of an arbitration award made in the year 1982 in

the case of CPWD, restructuring and renaming of the cadre of Draughtsman in various departments/ministries of Government of India was undertaken. Ministry of Defence also adopted the same. By restructuring and renaming of the cadres, the post of Senior Draughtsman and Head Draughtsman were clubbed as a single category and were given the nomenclature Draughtsman Grade I. Prior to the restructuring, Head Draughtsman enjoyed a higher pay scale than Senior Draughtsman. Upon restructuring the pay scale of Head Draughtsman was fixed as the pay scale of Draughtsman Grade I. All Head Draughtsmen were placed enblock senior to Senior Draughtsman. Consequently, upon the restructuring and renaming of the cadre of Draughtsman, the petitioner was re-designated as Draughtsman Grade I and was one of those placed enblock senior to those designated as Draughtsman Grade I who were earlier holding the posts of Senior Draughtsman.

3. The next promotional post from the post of Head Draughtsman used to be the post of Chief Draughtsman. Admittedly, under the recruitment rules for the post of Chief Draughtsman, there was a prescription of three years regular service in the grade, and there was also a prescription that the candidate has to pass a departmental qualifying test to be eligible for promotion. Even though the restructuring and renaming took place as aforesaid, we may note that the recruitment rules for the post of Chief Draughtsman continued to provide for promotion to the post of Chief Draughtsman from the post of Head Draughtsman. Therefore, it is clear that while the

aforesaid restructuring and renaming of the cadre of Draughtsman took place on 16.10.1995, the nomenclature of “Head Draughtsman” as used in the recruitment rules for the post of Chief Draughtsman was not amended, and consequently the expression “Head Draughtsman” continued to be used in the recruitment rules for the post of Chief Draughtsman, and not the nomenclature of Draughtsman Grade I which was the new name given to the single cadre created upon merger of the post of Senior Draughtsman and Head Draughtsman.

4. The submission of the petitioner before the tribunal was that in terms of the communication dated 16.10.1995 whereby the restructuring and renaming of the cadre had taken place, unless the existing statutory recruitment order (SRO) was amended, including for the post of Chief Draughtsman, no appointments could be made to the various grades of Draughtsman. He submits that the recruitment rules / SRO were not amended and consequently the respondents could not have undertaken the process of making appointments to the post of Chief Draughtsman which, inter alia, provided the clearing of qualifying test by the Head Draughtsman to become eligible for the post of Chief Draughtsman. The tribunal rejected the aforesaid submission of the petitioner and, in our view, rightly so.

5. We may extract the relevant portion of the communication dated 16.10.1995 which was issued vide Cmde DCP for the Chief of Naval Staff with the 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 CPWD.” This communication, inter alia, stated :

“2. The following guidelines may be followed while implementing

(a) There will be only three non-gazetted grades of D Men in the NAVY viz. D Men Grade-III (now tracer) D’Men Grade-II, (now D’Man) and D Man Grade-I (Now senior D Man)

(b).....

(c)

(d) The existing Senior D’Man who are placed in revised pay scale of Rs. 1600-2660 shall rank enbloc Junior to the existing Head D’Man. As a consequence of this order there will be no promotion from the grade I (Senior D’Man) to Head D’Man.

3. The existing SRO for the Drawing Office Cadre will be modified to bring it on par with that of CPWD D’Man. Therefore, no future appointments to the various grade of D’Man shall be made till the revised SRO is promulgated.

4. It is requested that action to implement the Govt. orders may be taken expeditiously.”

6. The petitioner admittedly appeared in the departmental qualifying examination for being considered for the post of Chief Draughtsman but failed to clear the same. It is only thereafter that he preferred the aforesaid original application by contending that unless recruitment rules / SRO was amended, no appointment could be made to the post of Chief Draughtsman by placing reliance on the aforesaid extract from the communication dated 16.10.1995.

7. As rightly observed by the tribunal the recruitment to the post of Chief Draughtsman has no bearing on the restructuring of the various posts in the cadre of Draughtsman below that level. The restructuring and renaming had taken place only in respect of the three non-gazetted grades of Draughtsman in the Navy, namely, Draughtsman III (earlier known as Tracer) Draughtsman Grade II (earlier known as Draughtsman) and Draughtsman Grade I (earlier comprising of Senior Draughtsman and Head Draughtsman). There was no change either in the structure or the nomenclature for the post of Chief Draughtsman. The position with regard to the recruitment rule for the post of Chief Draughtsman was not altered and it continued to remain same even after the issuance of the aforesaid communication dated 16.10.1995 as it was before. The so called restructuring / renaming did not affect the post of Chief Draughtsman. So far as the petitioner is concerned, he was entitled to make himself eligible for being considered for the post of Chief Draughtsman by, inter alia, taking the departmental qualifying test and clearing the same before the communication dated 16.10.1995 was issued, and even thereafter. His chances of promotion were also, in no manner, adversely affected, inasmuch as, it was merely a departmental qualifying test which he had to clear and it was not a test to assess his merits vis-a-vis the other candidates. Therefore, merely because others, who prior to the restructuring and renaming of the posts were holding the posts of Senior Draughtsman, had also become entitled to make themselves eligible for consideration for promotion to the post of Chief Draughtsman, the chances of promotion of the petitioner were in no

way adversely affected as the seniority of the petitioner vis-a-vis those who were earlier occupying the post of Senior Draughtsman was maintained and the test was merely a departmental qualifying test and not a test to determine the inter se merit of all the candidates. Merely because the respondents had changed the nomenclature from “Head Draughtsman” to the nomenclature “Draughtsman Grade I” in the recruitment rules for the post of Chief Draughtsman, in our view, it made no difference, inasmuch as, the post of Head Draughtsman had been renamed as Draughtsman Grade I by clubbing the posts of Senior Draughtsman and Head Draughtsman into single post. It appears that even after the issuance of the communication dated 16.10.1995, from time to time the appointments to the post of Chief Draughtsman had been made by the respondents. Admittedly, even the petitioner had participated in such a process by appearing in the departmental qualifying test which he failed to qualify. This being the position there was no prejudice that was caused to the petitioner merely on account of the SRO not being amended prior to undertaking the process of making appointments to the post of Chief Draughtsman.

8. In any event, the post of Chief Draughtsman was not touched by the communication dated 16.10.1995 and, therefore, the so called embargo placed on making future appointments to the various grades of Draughtsman till the revised SRO was promulgated, did not apply for making appointments to the post of Chief Draughtsman.

9. We find that the petitioner sought exemption from appearing in the departmental qualifying test and this prayer of the petitioner has

been rejected by the tribunal. We fail to appreciate as to how, in any event, even if the submission of the petitioner were to be accepted, the petitioner could have prayed that for making appointment to the post of Chief Draughtsman, the petitioner should be exempted from appearing in the departmental qualifying test even though the same has to be necessarily cleared by all candidates in terms of the recruitment rules for the said post.

10. Learned counsel for the petitioner has sought to place reliance on the decision in ***Syed T.A. Naqshbandi and Others Vs. State of Jammu & Kashmir and Others*** (2003) 9 SCC 592 wherein the Supreme Court observed :

“The conditions of service of members of any service for that matter are governed by statutory rules and orders, lawfully made in the absence of rules to cover the area which has not been specifically covered by such rules, and so long as they are not replaced or amended in the manner known to law, it would be futile for anyone to claim for those existing rules/orders being ignored yielding place to certain policy decisions taken even to alter, amend or modify them.”

11. In our view the said decision does not advance the case of the petitioner. This is for the simple reason that even if one were to ignore the restructuring and renaming of the cadre, the position so far as the petitioner is concerned would not change. Even before the said restructuring and renaming of the cadres, the petitioner, who was a Head Draughtsman was required as per the recruitment rules for the post of Chief Draughtsman, to undertake the departmental qualifying test. He could not have sought exemption from appearing in the said

test under any circumstance. For the aforesaid reasons we find no merit in this petition and dismiss the same leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

(ANIL KUMAR)
JUDGE

OCTOBER 12, 2009
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