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Central Administrative Tribunal, Principal Bench

O.A.No.33/2002

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P.Singh, Member(A)

New Delhi, this the 23rd day of October, 2002

1. Laxmi Narain
s/o Sh. Chote Lal
r/o 112 D Mohammedpur Village
P.O. R.K.Puram, New Delhi-110066
2. Mrs. Surinder Gulati
w/o Shri M.C.Gulati
r/o J-28 Beriwalla Bagh
Hari Nagar, New Delhi-110064 .. Applicants

(By Advocate: Shri Deepak Verma)

versus

Union of India, through

1. The Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi
2. The Secretary
Dept. of Expenditure
Ministry of Finance
North Block, New Delhi
3. The Director General
Indian Council of Medical Research (ICMR)
Ansari Nagar, P.B. 4911
New Delhi - 110 029. ... Respondents

(By Advocate: Shri V.K. Rao)

O R D E R

By Shri M.P.Singh, M(A):

The applicants, two in number in this OA, are seeking direction to refix their pay in the revised pay scale of Rs.5500-9000 w.e.f. 1.1.1996, with all consequential benefits.

2. The brief facts of the case are that the applicants were recruited as Data Entry Assistants in the grade of Rs.1400-2300, in the year 1987. The qualification prescribed for the said post was either (i) a Degree with one year experience or (ii) 10 + 2 with 4 to 5 years experience in Data

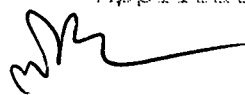


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Entry. Applicants fulfilled the latter qualification. Consequent upon Seshagiri Committee report, the pay scale of the post of Data Entry Operator was revised from 1400-2300 to Rs.1600-2660 and the post was re-designated as Data Entry Operator - D w.e.f.11.9.1989. The Vth Pay Commission has recommended the revision of the pay scale of DEOs from 1600-2660 to Rs.5500-9000 w.e.f 1.1.1996. The aforesaid revised scale is given to junior DEOs-D (Sl. No.2 & 4 of Seniority List Annexure-A5). Whereas the applicants at Sl.No.1 & 3 in the said seniority list who are admittedly senior are given the lower revised pay scale of Rs.5000-8000 w.e.f. 1.1.1996. Aggrieved by this, they have filed this OA, claiming the aforesaid relief.

3. The respondents, in their reply, have stated that, vide letter dated 30.8.2000, they have implemented the recommendations of the Vth Pay Commission contained in Part-B and C of the Govt. of India notification dated 30.9.1997. Accordingly, the incumbents of the post of EDP including Data Entry Assistant, who were possessing the requisite qualification of graduation, were given the higher pay scale. The applicants who did not have the requisite qualification and hence were not given higher scale of pay.

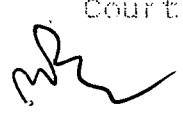
4. The applicants made a representation for giving them still higher pay scale of Rs.5500-9000 as recommended under Part-B and C of the report by the Vth Pay Commission, the respondents sanctioned higher pay scale of Rs.5500-9000 only to those incumbents of DEA grade D who possessed the qualification of Graduation/Post Graduation with diploma in Computer Application which is a pre-requisite as stipulated in para



55.71 of the Vth CPC report. The case of the applicant was considered by the Anomaly Committee vide their proceedings dated 6.11.2001 but they could not be considered for higher pay scale Rs.5500-9000 as they are not holding the degree of Post Graduation nor have a graduate diploma in Computer Applications.

5. The other incumbents of DEOs, who are in the scale of Rs.5000-8000, and do not possess the requisite qualification for higher pay scale have also not been given the higher pay scale. Hence the action of the respondents cannot be stated as violation of rules and regulations.

6. Heard the rival contention of the parties and perused the record. During the course of the arguments, the learned counsel for applicant has submitted that at the time of their recruitment to the post of DEA in 1987, the applicants possessed the alternate qualification prescribed in the Recruitment Rules. Thus their appointment to the post of DEO-D was in accordance with the Recruitment Rules. The requirement of higher qualification for appointment to the post of DEO on the recommendation of the Vth CPC can be made applicable only from a prospective date and cannot be applied retrospectively to the applicants who were appointed to the post long back. It is further submitted by the learned counsel for the applicant that there cannot be two separate pay scales in the same grade, i.e., Data Entry Operator one in the higher scale of Rs.5500-9000 and the other in the lower pay scale of Rs.5000-8000 for the incumbents of the post who are performing the same duties. In support of his claim he has relied upon the following Judgments of the Hon'ble Supreme Court:

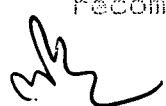


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1. Ex-Major N.C.Singhal v. Director General, Armed Forces Medical Services, New Delhi, AIR 1972 SC 628.
2. Dr. S.M.Ilyas & Ors. v. Indian Council of Agricultural Research & Ors., 1993(1) SLR 60.
3. Shri P.N.Dhawan v. State of Himachal Pradesh and Ors., 1973 (2) SLR 595.
4. Miss A.R. Neelayadakshni & Ors. Vs. University of Delhi and Others, 2002(2) AI SLJ 245
5. State of Mysore Vs.B. Basavalingappa 1986(4) SLR 169

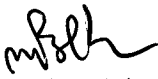
7. On the other hand, learned counsel for respondents has submitted that the respondents have prescribed two different pay scales one for the DEO possessing the higher educational qualification and the other for the DEO who do not possess the higher qualification. It has been done as per recommendation made by the Vth CPC in Part 'B' and 'C' of their report. He has also submitted that the Judgements of the Hon'ble Supreme Court relied upon by the applicant are distinguishable and not applicable in the present case.

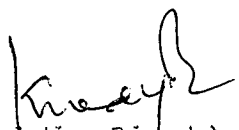
8. We have carefully considered the rival contentions of both the parties and perused the recommendation made by the Vth CPC with regard to the revision of the pay scales of DEO. We find that vide para 55.71 of their report, the Vth CPC has recommended the pay scale of Rs.1640-2900 for Data Entry Operator Grade 'D'/Junior Console Operator/Data Processing Assistant 'A'/Scientific Assistant in place of Rs.1600-2660. We also find from part 'B' of the Gazette of India Notification that the aforesaid pay scale has been revised to Rs.5500-175-9000 as a result of acceptance of the recommendations of the Vth CPC. No specific condition, whatsoever, has been recommended by the Pay Commission, while recommending this pay scale.



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9. Therefore, in view of what has been stated above and having regard to the ratios arrived at in the aforementioned judgements relied upon by the applicants, the present OA is allowed. We hold that the applicants are entitled to pay scale of Rs.5500-9000 with effect from 1.1.1976 alongwith other consequential benefits flowing from refixation of their pay in the aforesaid revised scale of pay. There shall be no order as to costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/rao/