



**Central Administrative Tribunal
Principal Bench**

OA No. 675/2016
MA No. 3578/2019

Order reserved on : 04.02.2020
Order pronounced on: 11.02.2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

1. Mr. R.S.Rathore,
Aged 56 years
Son of Shri D.R. Rathore,
Resident of S-90A, Sunder Block,
Shakar Pur,
Delhi-110092.
2. Mr. Madan Mohan
Son of Late Shri Bachhi Ram
Resident of G I-885, Sarojini Nagar,
New Delhi-110023.
3. Mr. Jawahar Singh
Age 55 years
Son of Late Shri K. Singh,
Resident of D-749, Mandir Marg,
New Delhi-110001.
4. Mr. Devender Kumar
Aged 55 years
Son of Late Shri Sunder Lal
Resident of 219, Hari Nagar,
Ashram, New Delhi.
5. Mr. Shashi Bhushan
Age 56 years,
Son of Shri Vachispati Sharma,
Resident of I-908, Sarojini Nagar,
New Delhi-110023.
6. Mr. Sohan Singh Rawat
Aged 53 years,
Son of Late Shri B.S.Rawat,
Resident of C4c/384, Janak Puri,
New Delhi-110058.



7. Mr. Vivek Tyagi,
Aged 51 years,
Son of Shri P.P.Tyagi,
Resident of G-430, Sarojini Nagar,
New Delhi-110023.
8. Mr. Mukesh Kumar,
Aged 55 years,
Son of Late Shri Badri Prasad
Resident of House No.3631,
Ram Nagar Ext., Shahdara,
Delhi-110092.
9. Ms. Neeru Jain, Age 52 years,
Daughter of Late Shri Khrm Chand Jain,
Resident of BD-4A, Shalimar Bagh,
Delhi-110088.
10. Ms. Bimla Rani, Age 54 years,
Daughter of Late Shri Ram Saran Das,
Resident of 2/4, Kavita Colony,
Kirari Road, Nagloi, Delhi-110041.
11. Ms. Neelam Taneja,
Age 54 years,
Daughter of late Shri Laxman Das,
Resident of 596, Sector-31, Faridabad,
Haryana.
12. Ms. Usha Rana,
Age 52 years,
Daughter of Late Shri K.S.Rawat,
Resident of F-74/2, Andrews Ganj,
New Delhi-110049.
13. Ms. Tripta Soni,
Age 53 years,
Daughter of Shri Laxman Dass Sethi,
Resident of Pocket-A, Mayur Vihar, Phase-II
New Delhi-110091.
14. Ms. Parvinder Gulati,
Age 54 years,
Daughter of Shri N.L.Wadhwa,
Resident of 2A/56, Ramesh Nagar,
New Delhi-110015.
15. Ms. Naishrity Mathur,
Age 53 years,



Daughter of Late Shri P.Prasad
Resident of 817 Type-III, Sector-9,
R.K.Puram, New Delhi-110066.

16. Mr. Sunil Dawar,
Age 53 years,
Son of Late Shri K.D.Dawar,
Resident of 207, Block-12, Lodhi Road,
New Delhi-110023.
17. Ms. Darshan Nandwani,
Age 52 years,
Daughter of Late Shri Pyare Lal Baweja,
Resident of 2/77. Subhash Nagar,
New Delhi-110027.
18. Mr. Mahesh Chand Sharma,
Age 56 years,
Son of Late Shri K.L.Sharma,
Resident of C-11/40, Sector-5, Rohini,
Delhi-110085.
19. Ms. Hemlata Radhwani,
Age 55 years,
Daughter of late Shri Kewal Ram Khemani,
Resident of 42D, Block J & K, Dilshad Garden,
Delhi-110095.
20. Ms. Promila Bhatti,
Age 54 years
Daughter of Late Shri Ram Kala,
Resident of 94/2, Dewat Colony,
Khera Dewat Road, Gurgaon (Haryana).
21. Ms. Kamlesh Kandpal,
Age 54 years,
Daughter of Sh. K.D.Bhatti,
Resident of House No.17, Sector-1,
R.K.Puram, New Delhi-110022.
22. Mr. N.C.Kaushik,
Age 53 years,
Son of Late Shri Chander Pal,
Resident of 178/4, Gali No.2,
Padam Nagar, Kishan Ganj,
Delhi-110007.

... Applicants

(By Advocate: Sh. Pramod Kumar Sharma)

VERSUS

Union of India through

1. Secretary,
Ministry of Defence,
South Block, New Delhi.
2. J.S. (Trg.) and C.A.O.,
Ministry of Defence,
E Block, Hutments,
New Delhi-110011.
3. Director General
Director General Information System/GS Branch,
IIIrd Floor, Rao Tula Ram Marg,
Delhi Cantt-110010.
4. Mr. R.K.Kapil,
Employee Code No.A122054.
5. Mr. S.K.Maurya,
Employee Code No.A147521
6. Mr. Pavan Kumar,
Employee Code No.A144281
7. Mr. Ram Karan Meena
Employee Code No.A147097
8. Mr. Madhu
Employee Code No.A140890.
9. Mr. Ravi Kumar
Employee Code No.A142683
10. Mr. Anil Kumar
Employee Code No.A147109
11. Mr. Krishnavi S
Employee Code No. A265155
12. Mr. Harsh Goel
Employee Code No. A264976
13. Mr. S S Pandharinath
Employee Code No. A265902



14. Mr. Narendra Kumar
Employee Code No. A265704
15. Mr. Mahadik Bala Srinivasa Rao
Employee Code No. A266206
16. Mr. Divya Jyoti
Employee Code No. A265209
17. Mr. SVC Yedida
Employee Code No. A265890
18. Mr. Vijay Kumar Dasari
Employee Code No. A266800
19. Mr. Prasanth M
Employee Code No. A245108
20. Mr. V Gayathri
Employee Code No. A266660

All are C/O Director General Information System/
GS Branch/MISO
Rao Tula Ram Marg, Delhi Cantt-110010.

... Respondents

(By Advocate: Sh. L.C.Singhi for respondents No.1 to 3
Sh. M.K.Bhardwaj for respondents No.4 to 20)

ORDER

By Hon'ble Mr. Pradeep Kumar, Member (A)

Applicants were appointed as "Computer" in Ministry of Defence in the year 1983 in the pay scale of Rs.260-400. In due course, this scale was replaced with Rs.950-1500. The next promotion lied to the post of "Senior Computer" in the pay scale of Rs.1200-2040. Further promotion lied to the post of "Statistical Assistant" in the pay scale of Rs.1400-



2300 and thereafter as “Statistical Investigator” in Rs.1640-2900.

The applicants pleads that they were promoted to the post of “Senior Computer” in the year 1997.

2. Applicants also plead that some time in the year 1994 certain re-organization had taken place on the basis of a Committee set up by the Department of Electronics on the recommendations of the 4th CPC. The directives were issued on 06.12.1994. The existing category of Senior Computer (pay scale Rs.1200-2040) was re-designated to Data Processing Assistant (DPA) Grade-A (pay scale Rs.1600-2660). However, along with this financial upgradation, certain educational qualifications were also specified for this re-designation as under:

“(a) Graduates in Science/Mathematics/Statistics/Economics and having either a Diploma in Computer Applications or an ‘O’ level certificate (under the Scheme of Department of Electronics) will be placed in the scale of Rs.1600-2660 (Data Processing Assistant Grade-A).

(b) A departmental test would be conducted in respect of the individuals who do not possess a Diploma in Computer Applications or an ‘O’ level certificate, and

(i) Those who pass the test will be placed in the scale of Rs.1600-2660 (Data Processing Assistant Grade-A).

(ii) Those who fail to qualify the test will be placed in the scale of Rs.1350-2200 (Data Entry Operator Grade-B).

Note – The concerned individuals will be placed in the scale of Rs.1600-2660 or Rs.1350-2200, as the case may be, from 11-09-89 or from the date of their regular appointment to the grade of Senior Computer/Data Entry Operator Grade-B, whichever is later.”



3. The applicants were not having the qualification of graduation, as prescribed for pay scale Rs.1600-2660. Accordingly, they were re-designated as Data Entry Operator Grade-B in the pay scale of Rs.1300-2200. Applicants felt aggrieved and challenged the same by filing OA No.365/2007 and OA No.2535/2006. This was allowed vide decision pronounced on 10.07.2014. The directions passed by the Tribunal read as under:

“23. In the circumstances and for the aforesaid reasons, we allow the OA No.365/2007 and OA No.2535/2006, and direct the respondents to grant the benefit of re-fixation of pay with all consequential benefits w.e.f. 01.01.1986 to the applicants. The respondents shall complete this exercise within four months from the date of receipt of a copy of this order. There shall be no order as to costs.”

4. In compliance thereof, the applicants were granted the pay scale of DPA Grade-A Rs.1600-2660 with effect from the date they were promoted as Senior Computer.

The applicants plead that with this, they should also be treated to have been promoted as DPA Grade-A w.e.f. 15.01.1997.

5. Further promotion of DPA Grade-A lied to the post of Programmer (Group-B Gazetted) in the pay scale of PB-2 with Grade Pay Rs.4600). Applicants are aggrieved that a panel for the same was issued vide notification dated 10.02.2016



wherein their names have been left out and their juniors have been empanelled.

Being aggrieved, applicants filed the instant OA and they sought relief in the form of directions to set aside the notification dated 10.02.2016. Certain other reliefs have also been sought.

The employees, who have been empanelled for the post of Programmer for the year 2011-12 to 2014-15 have also been arrayed as private respondent No.4 to 20 in the OA.

6. Applicants rely on the judgment in the two OAs referred in para 3 above and the Recruitment Rules notified by the Ministry of Defence on 19.02.2001.

7. Applicants also bring out that the DPA Grade-A were to be promoted to the post of DPA Grade-B and thereafter to the post of Programmer. In the wake of 6th CPC recommendations, the post of DPA Grade-B (pay scale Rs.6500-10500) and Programmer (Rs.7450-11500) were merged and granted the replacement pay scale of PB-2 + GP Rs.4600.

The post of DPA Grade-A (pay scale Rs.5500-9000) and DPA Grade-C (pay scale Rs.5000-8000) were also merged into DPA Grade-A (PB-2) plus GP of Rs.4200.



8. With this merger, the applicants also plead that they are eligible for promotion for the post of Programmer based upon the Recruitment Rules notified by the Ministry of Defence on 19.02.2001. It is pleaded that in accordance with these rules in respect of promotion to the post of DPA Grade-B, the requisite eligibility was “DPA Grade-A in the revised pay scale of Rs.5500-9000 of Armed Forces Headquarters and Inter Service Organizations with three years regular service in the grade”.

Applicants plead that since they had already been granted the pay scale of DPA Grade-A (Rs.1600-2660) w.e.f. 15.01.1997 in terms of the decision of the Tribunal in OA No.365/2007 and they are senior to the private respondents No.4 to 20. Accordingly, they cannot be left out and ought to have been considered. However, their names were missing from the select panel of Programmer and hence the grievance.

9. Per contra, the respondents opposed the OA. It was pleaded that the applicants are senior to private respondents No.4 to 20. It was further brought out that the approved panel issued on 10.02.2016 was based upon the DPC meetings held on 11.01.2016. This DPC comprised of senior officers. The relevant records, which were annexed as Annexure-1 to the DPC recommendations, were also produced in the counter reply.



It was brought out that the applicants herein did not possess the requisite qualification of graduation which was specified as per the re-organization orders issued on 06.12.1994 (para 2 supra). Accordingly, the applicants were assessed as ineligible for the post of Programmer for the years 2011-2012 and onwards whereas the private respondents No.4 to 20 were considered as eligible in these various years and accordingly the DPC made recommendations to the effect to promote them and it was this panel which was approved and notified on 10.02.2016.

10. The respondents further brought out that OA No.365/2007 and 2535/2006 decided on 10.07.2014 had granted the higher pay scale of Rs.1600-2660 as was applicable to DPA Grade-A with effect from the same date the applicants were promoted as “Senior Computer” on 15.01.1997. This was not a promotion to the post of DPA Grade-A but simply financial upgradation to the applicants since they were already working and were the serving employees and they should not be denied the grant of a higher pay scale as was approved on re-organization. It was mentioned that the minimum specified qualification was graduation for the pay scale of Rs.1600-2660 whereas for non-graduates, the pay scale recommended was Rs.1350-2200 which also was higher vis-à-vis the pay scale of “Senior



Computer” which was Rs.1200-2040. The applicants being non-graduates were, therefore, initially granted the pay scale of Rs.1350-2200.

11. In view of the foregoing, there is no merit in the OA and the same is required to be dismissed. Learned counsel for respondents also relied upon a judgment by Hon’ble Apex Court in **R. Prabha Devi and others vs. Government of India and others**, AIR 1988 SC 902. In this judgment the Hon’ble Apex Court has held as under:

“15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post.

xxx xxx xxx

This eligibility condition has to be fulfilled by the Section officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post.”

12. Matter has been heard at length. Sh. Pramod Kumar Sharma, learned counsel represented the applicants, Sh. L.C. Singhi, learned counsel represented the official respondents No.1 to 3 and Sh. M.K. Bhardwaj, learned counsel represented the private respondents No.4 to 20.



13. Applicants herein were recruited to the post of “Computer” in the year 1983. They do not have the qualification of graduation in Science or Technology subjects. As per their own channel of promotion, the applicants were promoted to the post of “Senior Computer” in the year 1997.

In view of technological advancement, certain re-organization had taken place and all posts were upgraded. This entailed higher qualification also which was also specified. Therefore, such of the “Senior Computers”, who had the qualification of graduation in Science/Maths/Statistics/Economics and were having either a diploma in computer application or an ‘O’ level certificate, were to be placed in the pay scale of Rs.1600-2660 to the post of DPA Grade-A. As per this re-organization order, a departmental test was to be conducted in respect of such employees who do not possess a diploma or an ‘O’ level certificate. Those who passed such a test were to be placed in the pay scale of Rs.1600-2660 with the designation of DPA Grade-A and those who failed to qualify the said test were to be placed in the pay scale of Rs.1350-2200 and were to be designated as Data Entry Operator Grade-B.

14. In due course of time, the pay of Rs.1350-2200 was replaced with another pay scale of Rs.5000-8000 while the pay scale of Rs.1600-2660 got replaced with Rs.5500-9000 in



the 5th CPC (w.e.f. 01.01.1996). Grant of higher pay scale of Rs.1600-2660 to the applicants by the Tribunal in OA No.365/2007 is in the context of not to deny the existing employees the benefits of re-organization. However, this by itself does not mean that eligibility requirement for the still higher post of Programmer can be lowered.

Merely because these two scales were merged at the time of enforcement of 6th CPC pay scales from 01.01.2006, it does not also mean that the applicants who did not possess the qualifications of graduation, as brought out hereinabove, were already promoted to the post of DPA Grade-A. Being existing employee, they were simply granted the financial upgradation.

15. Be that as it may, their seniority as DPA Grade-A was maintained and the relevant DPC, which met on 11.01.2016 for considering the promotion to the post of Programmer (Group-B Gazetted PB-2 + GP Rs.4600), had assessed the eligibility of all candidates including the applicants.

In consideration to the qualifications prescribed in the relevant Recruitment Rules for the post of Programmer, which was already in force, the DPC considered the applicants also and did not find the applicants eligible and they were adjudged as "Ineligible" and thus they were not empanelled. These DPC minutes were attached to the counter reply dated 22.11.2016.



The rejoinder was submitted by applicants on 02.03.2017. However, there was no averment made in respect of this assessment by DPC.

16. Therefore, the plea of the applicants that since they were granted the pay scale of DPA Grade-A and thereafter the pay scales of DPA Grade-A and Programmer were merged at the time of 6th CPC, the applicants should be treated as DPA Grade-A/Programmer, completely ignoring the essential qualifications prescribed in the relevant Recruitment Rules for the post of “Programmer”, is without any basis and is not acceptable. OA is thus without any merit and the same is dismissed. No order as to costs.

17. In view of the above, pending MA No.3578/2019 stands disposed of.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

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