

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1997 of 2001

New Delhi, this the 18th day of September, 2003

HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)

1. Shri S.K. Dhawan
 2. Shri Anil Rana
 3. C.S. Sachdeva
 4. Shri V.K. Bhatnagar
 5. Shri A.N. Mishra
 6. Shri M.L. Zutshi
 7. Shri S.H. Korti
 8. Shri B.B. Manohar
 9. Shri R.C. Manke
 10. Shri P.T. Lavatre
 11. Shri M.D. Kuhikar
 12. Shri D.D. Ambulkar
 13. Smt. M.M. Lanjewar
 14. Smt. Anjali Saxena
 15. Smt. D.D. Kamble
-Applicants

All the applicants are working as Data Processing Assistants Grade-I

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Statistics and P.I.,
Sardar Patel Bhawan,
New Delhi.
2. The Secretary,
Department of Expenditure,
Ministry of Finance,
North Block,
New Delhi.
3. The Chief Executive Officer &
Director General,
National Sample Survey Organisation,
Ministry of Statistics & P.I.,
Sardar Patel Bhawan,
New Delhi.

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4. The Dy. Director General,
Data Processing Division,
National Sample Survey Organisation,
164, GLT Road,
Calcutta. ... Respondents

By Advocate: None.

O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

This is a joint application filed by 15 persons who are working as Data Processing Assistants in the office of the National Sample Survey Organisation, Ministry of Statistics and P.I., New Delhi.

2. The applicants are aggrieved of an OM dated 14.10.1998 issued by Department of Personnel and Training in terms of which the model recruitment rules for Group 'A' and 'B' posts in The Electronic Data Processing Discipline have been promulgated by the applicants who are working as DPA Grade-I have been deprived of their advancing in higher career opportunities.

3. The facts in brief are that the applicants were originally employed in the National Sample Survey Division of the Indian Statistical Institute in the year 1960 and as per their existing Recruitment Rules they had full opportunities to advance from the lowest post to any higher level depending upon the calibre and capability of each of the individual. This NSS Division of the Indian Statistical Institute was taken over by the Government of India and after holding a negotiation between the Government, Indian Statistical Institute and Indian Statistical Institute Workers Organisation amongst other terms and conditions of the take over, it was

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stipulated that there would be no deterioration in service conditions of the NSS Division and the employees were assured by the Government as per the minutes of tripartite meetings. It was also agreed that in the event of re-organisation, continuity of service and seniority will be maintained in the grade, scale, service conditions and none of the employees will be allowed to deteriorate.

4. Further in the year 1982 post equivalent to the existing Grade-IV of the Indian Statistical Service and above in the Data Processing Division of the National Sample Survey Organisation were encadred in the Indian Statistical Service as a result of which Sectional Heads/Technicians were made Assistant Directors and so on but the post of Deputy Sectional Head which was equivalent to the post of Superintendent were not indicated in the feeder list for ISS with the result that the promotional avenues of the applicants were completely blocked and further advancement denied. Therefore, the take over agreement was scuttled in 1982.

5. Since the benefit of this order was not extended to the applicants so they made a representation and it was in contravention of the undertaking given in the year 1972 and in the representation the applicants requested that the post of Superintendent in the Data Processing Division and Survey Design and Research Division be included in the feeder posts for promotion to the Grade-IV of ISS. However, the respondents stated that the matter is still under consideration.

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6. However, in pursuance to the recommendations made by the IVth Pay Commission, a Committee came to be constituted by the Government of India in the year 1986 with one Dr. N. Sheshagiri as its Chairman. The said Committee examined the matter and made recommendation to the Government of India with regard to the posts and pay scales in the Electronic Data Processing Organisation in the Government of India but in the meantime the designation of the applicants was changed from Superintendent to Senior Data Processing Assistant and they were placed in the grade of Rs.2000-3200 as per the order of department of Statistics dated 2.7.90 as a consequence of the order of the Ministry of Finance dated 11.9.1989. It is further submitted that in terms of the order dated 2.7.90 the Director, Data Processing Division dated 13.8.90 it was stated that "Government proposes to review the number of posts in different grades, methods of recruitment, qualification for recruitment/promotion qualifying service for promotion, eligibility to be in the feeder grade for ISS/Grade 'A' EDP posts. But inspite of all these holy and pious assurances, no review took place and no action was taken to place the applicants in the feeder grade of ISS/Grade 'A' EDP posts.

7. However, the order dated 2.7.90 was challenged before the CAT at Nagpur putting the Data Processing Supervisors illegally in the lowest scale of Data Processing Group viz. Data Processing Assistant. Matter had gone up the Hon'ble Supreme Court who were pleased to upgrade the pay scales of Grade 'B' Data Processing Assistant to Rs.2000-3200 and those who were already in

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the scale of Rs.2000-3200 filed an OA before the Principal Bench of the CAT, New Delhi claiming higher pay scale of Rs.2375-3500 which was allowed by the Hon'ble CAT from 1.1.1986.

8. It is further stated that by order dated 20.3.1992 passed by the Ministry of Planning, Department of Statistics the staff who were in the grade of Rs.1640-2900 were given eligibility for promotion to Grade-IV of ISS while those who were in the higher grades were debarred for being included in the feeder posts of Grade IV of ISS.

9. It is further stated that another factor which unfortunately came in the way of applicants promotion to Grade 'A' post happened in the year 1982 when all Group 'A' posts of Assistant Director, Deputy Director and higher to which the applicants (being Superintendents) were eligible for promotion against 20% quota were taken over/merged with the ISS with the result that the applicants were debarred for promotions against the said quota. Not only the Superintendents were debarred from promotion as Assistant Director/Deputy Director but they were also not placed in the feeder cadre of ISS when Assistant Directors/Deputy Directors and higher posts were merged in the ISS.

10. In terms of the OM dated 14.10.1998 the Department of Personnel and Training issued instructions to all the Ministries for preparing Model Recruitment Rules for Group 'A' and 'B' posts in the Electronic Data Processing discipline which provides that those Data

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Processing Assistant Grade 'B' in the scale of Rs.6500-10500 could advance to Group 'A' post also upto the post of Director. These model Recruitment Rules are in supersession of Recruitment Rules for various posts circulated vide OM dated 31.3.1987 and all the Ministries/Departments were advised to follow the Model Recruitment Rules in a time bound manner. The applicant's association also sent a representation to the Hon'ble Minister of State for Planning and Programme Implementation on 10.3.2000 requesting for implementation of the aforesaid Model Recruitment Rules in the NSSO, Data Processing Division also and provide higher career opportunities to Group 'B' officers. The respondents as per their letter dated 5.5.2000 have rejected the representation on the ground that the aforesaid OM dated 14.10.1998 has no direct relevance to the cadre structure of NSSO, Data Processing Division.

11. The OA is being contested by the respondents. The respondents in their reply pleaded that the applicants are categorised as Electronic Data Processing staff are not treated as statistical staff because of this only all the posts held by EDP staff in the Data Processing Division, NSSO were rationalised on the basis of the OM dated 11.9.1989 issued by the Ministry of Finance which was issued after considering the report of the Dr. Seshagiri Committee Report. This committee was set up by the Government of India on the basis of the recommendations of the 4th Central Pay Commission for rationalizing electronic data processing posts in the Departments/Ministries of the Government based on the OM dated 11.9.1989. The Department of Statistics issued an

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order dated 2.7.90 rationalizing EDP posts inter alia in DPD NSSO which was challenged by the All India EDP Employees (Group C) Association initially in different benches of the CAT and then by way of filing SLPs in the Hon'ble Supreme Court, requesting for direction to the respondents to fully comply with the OM of 11.9.1989 of the Ministry of Finance. Based on the directions of the Hon'ble Supreme Court, all the EDP staff in service as on 1.1.1986 were extended the benefits of the Seshagiri Committee Report vide order dated 4.8.2000. All this while the members of the All India EDP (Group C) Employees Association were arguing for higher pay scales on the basis of the report of Dr. Seshagiri Committee and now they are requesting for inclusion in the Subordinate Statistical Service.

12. If the members of the Associations were of the opinion that they were handling Statistical matters and not EDP matters, they should not have opted for the pay scales accepted by the Government for rationalizing EDP posts in Government.

13. It is further stated that the 5th CPC had made separate recommendations in the different Ministries. The question of extension of the benefits of the 5th CPC in respect of EDP staff was agitated before the Hon'ble Supreme Court in CCP No.3 of 1999 in SLP No. 18948 of 1995 in H.S. Nimje and Others Vs U.O.I. and Others and the respondents had then given an undertaking to the Hon'ble Supreme Court that the matter was under examination and the EDP staff in DPD would be extended the benefits of the recommendations of the 5th CPC after

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the examination was completed. It is also submitted that respondents had issued an order date 18.9.2001 extending the benefit of the recommendations of the 5th CPC to the EDP staff, whereby the entitled EDP staff have been granted higher replacement scale of Rs.7500-12000. Since the posts are EDP posts it is not proposed to take these EDP staff into the feeder grade of Indian Statistical Service.

14. It is further submitted that the Government has accepted the recommendations of the Assured Career Progression for Group 'B', 'C' and 'D' posts.

15. It is further submitted that under the scheme of ACP, a Government servant is entitled to two financial upgradations in his service, one each after completion of 12 years and 24 years qualifying service. This clearly implies that upto Group 'B' posts, a Government servant can expect two promotions/financial upgradations. Thus it is submitted that the applicants are assured of two promotions/financial upgradations in their career. The Government cannot create posts only to create promotional avenues for the existing staff. Creation of posts depends entirely on the operational necessity for the posts.

16. It is further stated that after the review of the existing feeder posts, this Ministry issued an order No.12016/3/92-ISS dated 2.9.96 giving the list of Statistical function posts recognised, in consultation with the UPSC as feeder posts for promotion to Grade-IV of ISS. Under item 16 of the letter (Annexure R-7) the

post recognised in the Ministry especially CSO, CPD, FOD, SDRD were recorded. Superintendent DPD (functional posts) were not recognised as feeder posts to Grade-IV (JTS) of ISS and were not included in the list accordingly.

17. It is further stated that on a similar issue seven applicants, employees of CSO (IS) Wing of the same respondent Ministry, who were also in the EDP scale and working with similar job specifications went to the Hon'ble Tribunal, Calcutta Bench and requested for inclusion in the feeder list for promotion to Grade IV of ISS. The prayer of the applicants were considered vide OA 310/96 which was rejected by the Hon'ble Tribunal vide their order dated 26.7.1996. Hence the petition deserves to be rejected at the admission stage itself.

18. We have heard the learned counsel for the parties and gone through the records.

19. It is an admitted case of the applicants themselves that initially they were employed under the National Sample Survey Organisation but subsequently they were shifted to Data Processing Division and presently they are working as Data Processing Assistant in the Data Processing Division of the National Sample Survey of India.

20. Since function of Data Processing Division and those services who are in the feeder cadre to the Indian Subordinate Service their functions have been recognised as different than those officers who are placed in feeder

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cadre and are eligible for ISS service so applicants cannot claim that they should be included in the list of feeder cadre for being included in ISS and in this regard judgment given by the Calcutta Bench Annexure R-6 fully covers the case where also the applicants were working as Sr. Data Processing Assistants have been denied the benefit of being included in the list of feeder cadre of ISS and this has been so done because their functions are basically different than those who are working on the statistical side. Similarly R-7 is a list of Statistical Functions Posts which have been recognised as feeder posts (s) for promotion to Grade-IV which has been done by the Expert Committee and this list is so exhaustive and includes persons working on the data processing side to be in the list of those functionaries who are performing statistical functions. Thus we find that the applicants do not have any right to claim inclusion in the feeder cadre post for the purpose of promotion to Grade-IV of ISS.

21. As regards the alternate prayer of the applicants that model rules framed by the Government which have been adopted by various Ministries so the respondents should also be directed to implement the notification of the department of personnel and thereafter to frame modified Recruitment Rules as per the directions of the Department of Personnel are concerned the respondents in their reply have pleaded that for the time being they have no requirement for adopting these rules and as and when the need would arise for higher post, posts will be created and since it also requires cadre re-structuring of EDP post in Data Processing Post

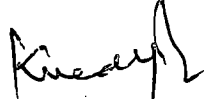
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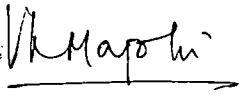


in NSSO so without that these rules cannot be adopted as these rules do have direct relevance of cadre structure of EDP. To our mind before adopting the model Recruitment Rules the cadre structure of EDP posts in DPD and as and when need is felt for higher posts, action will be initiated to create higher level posts and since the Ministry sees no operational requirement for Group 'A' posts so adopting of those model Recruitment Rules is useless.

22. In our view also merely adopting the rules is useless unless the posts are to be created or the cadre is restructured and Grade 'A' posts are brought in the DPD have even within the NSS itself. Merely adopting the rules is not required unless the operational requirement of Group 'A' post is required. Moreover this is also a policy decision and as such courts are not required to interfere in this matter.

23. Thus examining the case from all the angles OA is bereft of any merit and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)


(V.K. MAJOTRA)
MEMBER (A)

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