

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 2639/1999
M.A. NO. 2672/1999

(14)

New Delhi this the 31st day of July, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE SHRI JUSTICE V. RAJAGOPALA REDDY, VC(J)

1. Babu Lal S/O Amiachand,
R/O F-295A, Lado Sarai, Mehrauli,
New Delhi-110030.
2. Mrs. N.V. Harrison W/O Vinay Harrison,
R/O 9, Nimri Colony,
Delhi-110052.
3. Miss Usha Kumari D/O S.R. Chandekar,
R/O Sector 12/72, R.K. Puram,
New Delhi-110066.
4. Mrs. S.D. Meena W/O S.R. Meena,
R/O C-356, Lodi Colony,
New Delhi-110003.
5. Mrs. Paramjeet Dutta W/O Sunil Dutta,
R/O Sector 8/607, R.K. Puram,
New Delhi-110066.
6. Mrs. Mangli Kumari Dobhal
W/O Prakash Dobhal,
R/O D-826, Netaji Nagar,
New Delhi. Applicants

(By Shri Deepak Verma, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Industry,
Ind. Policy & Promotion,
Udyog Bhawan,
New Delhi.
2. Secretary,
Dept. of Expenditure,
Ministry of Finance,
North Block,
New Delhi.
3. Joint Secretary,
Dept. of Ind. Policy & Promotion,
Udyog Bhawan,
New Delhi. Respondents

(By Shri D.K. Srivastava proxy for Shri V.S.R. Krishna,
Advocate)

O R D E R (ORAL)

(V5)

Shri Justice Ashok Agarwal :

By an order passed on 4.7.2000, the following issue has been referred to the Full Bench :

"Whether EDP staff working in different departments are entitled to parity in the pay scales with other EDP staff who have been granted pay scale w.e.f. 1.1.86, or w.e.f. 11.9.89, as has been granted to them by the office memorandum dated 11.10.89?"

2. Applicants are all Electronic Data Processing (EDP) personnel and working as Data Entry Operators (DEOs) in the Ministry of Industry, respondents herein. By the present O.A., they pray for re-fixation of their pay in their respective pay scales with effect from 1.1.1986 instead of 11.9.1989 when their pay was re-fixed. They also seek to impugn the office memorandum No.A-11014/1/99-E.II dated 29.10.1999 at Annexure A-1 whereby their request for re-fixation of pay w.e.f. 1.1.1986 has been rejected on the ground that the judgments of the Tribunal which granted relief similar to the one claimed in the present application would be applicable only to the applicants in the said applications.

3. The Fourth Pay Commission's recommendations which came into force w.e.f. 1.1.1986 had suggested that Data Entry Operators may be given the revised scale. The Seshagiri Committee was constituted by the Government of India on the recommendations of the Fourth Pay Commission. The grievance referred was in relation to pay scale of Data entry Operators performing the same work in different departments under the Government of India. The said Committee

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noted that the nature of duties and responsibilities attached to the Data Entry Operators was identical in all departments and there was no difference in the qualifications and duties and, therefore, recommended that the pay scales as recommended for the office of Registrar General may be given to all of them. Aforesaid pay scale was extended to Data Entry Operators in different departments but only w.e.f. 11.9.1989 and not from 1.1.1986. Following this, a series of O.As. came to be instituted and by various judgments passed by the Tribunal, pay scales have been extended w.e.f. 1.1.1986 as prayed. Consequential relief of payment of difference of salary for the period from 1.1.1986 to 11.9.1989 has also been granted. Applicants in the present O.A. claim reliefs similar to the ones which have been granted by this Tribunal in several O.As. To mention a few, O.A. No. 1759/97 decided on 18.5.1998, O.A. No. 1599/97 decided on 29.5.1989, O.A. No. 955/97 decided on 9.1.1998, O.A. Nos. 2454/97 and 2650/97 decided on 2.2.2000 as also O.A. No. 357/95 decided by the Jaipur Bench.

4. When the present O.A. was taken up for hearing before a Division Bench to which one of us (Ashok Agarwal, J., Chairman) was a party, reliance was placed on behalf of respondents on a decision of this Tribunal in O.A. No. 2346A/95 decided on 18.11.1999 which has taken a view contrary to the one which has been taken in the aforesaid O.As. By the aforesaid order of this Tribunal in O.A. No. 2346A/95 this Tribunal while considering a claim similar to the one made in the present O.A. and other O.As., has

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dismissed the O.A. placing reliance on a decision of the Supreme Court in Union of India & Ors. v. Secretary, Madras Civil Audit and Accounts Association & Anr., (1992) 20 ATC 176, by observing as follows :

"The 4th Pay Commission had suggested, inter alia, that in respect of large number of EDP posts which are existing in various Ministries/Departments, other than the Department of Railways, which have been dealt with separately in Chapter 10, there should be a regularly constituted service for staff engaged on EDP work. In this connection, they had recommended that the Department of Electronics should examine the matter and suggest reorganisation of the existing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel which exercise will naturally take some time. The applicants cannot, therefore, claim that their case is similar to the EDP staff in the Railway Administration because the Pay Commission itself had dealt with them separately. They had also recommended that the Government will have to take specific decisions to give effect to the revised pay scales from a suitable date keeping in view all relevant aspects, including the administrative exigencies. Admittedly, in pursuance of the 4th Pay Commission's recommendations, the Government has carried out the exercise to consider the replacement pay scales to the incumbents of the various EDP posts and issued the impugned O.M. dated 11.10.1989 which gave effect to the revised pay scales from 11.9.89. We respectfully follow the observations of the Hon'ble Supreme Court in Union of India & Ors. Vs. Secretary, Madras Civil Audit and Accounts Association and anr. (supra) that giving two different dates of implementation of the recommendations in respect of the EDP personnel being dealt with here does not violate the principles of equality enshrined in Articles 14 and 16 of the Constitution. In the light of the Supreme Court judgement which is fully applicable to the facts of this case, which we are bound to follow in the present case, we find the contentions of the applicants that there must be parity in the pay scales with the other EDP staff which were given the pay scales w.e.f. 1.1.1986 on the recommendations of the 4th Pay Commission cannot be accepted and are accordingly rejected. In the circumstances, OA fails and is dismissed. No order as to costs."

M.J.

5. As aforesaid conflicting views had been brought to the notice of the Bench, present issue by an order passed on 4.7.2000 has been referred to the present Full Bench.

6. We have heard Shri Deepak Verma, the learned counsel appearing on behalf of ^{applicants} ~~respondents~~ as also Shri D.K.Srivastava, the learned proxy counsel for Shri V.S.R.Krishna appearing on behalf of respondents.

7. A reference to the decision of the Supreme Court in the case of Union of India v. Secretary, Madras Civil Audit and Accounts Association (supra) can usefully be made. The Supreme Court in the aforesaid case was concerned with Office Memorandum (O.M.) dated 12.6.1987 issued by the Government of India, Ministry of Finance, Department of Expenditure. The question which had arisen for consideration before the Supreme Court was whether the benefit of the aforesaid O.M. was to be given effect from 1.4.1987 as indicated in the O.M. or w.e.f. 1.1.1986. Aforesaid O.M. dated 12.6.1987 was based on the recommendations of the 4th Central Pay Commission which consisted of two parts. The first part recommended corresponding scales of pay for the existing posts in the Accounts Wing giving effect from 1.1.1986. The other part contained in para 11.38. Pursuant to those recommendations the Government decided to implement the same w.e.f. 1.4.1987. The aforesaid pay scales related to the posts of Accounts Officers which were newly created promotional posts. The second part of the recommendation of the Pay Commission clearly indicated that the number of posts

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to be placed in these scales were to be identified by the Government and the Government could, therefore, decide and then give effect ^{to the same} at a later date. The following observations of the Supreme Court will indicate that the Court was considering the grant of pay scales in respect of posts which had been newly created; the same did not relate to posts which were already in existence, as is the case in the case at hand :

"4.....The second part of the recommendations relates to treatment of scales of pay of Rs.1400-2000 and Rs.2000-3200 as functional grades requiring promotion as per normal procedure and also the number of posts to be placed in these scales of pay. These recommendations clearly fall in the category of other recommendations and the Pay Commission itself has indicated that in respect of such recommendations the government will have to take specific decisions to give effect from a suitable date. The government, therefore, had to take the decision in respect of number of posts to be placed in these scales of pay. In this context it is relevant to refer to paragraph 4 of the Office Memo dated June 12, 1987. It reads as under :

(4) The question regarding number of the posts to be placed in the higher scales of pay has been under the consideration of the government and it has now been decided that the ratio of number of posts in higher and lower scales in the Organised Accounts cadres as well as in Accounts Wing of the IA&AD may be as follows:

(i) Section Officer(SG) Rs.2000-6-2300
-EB-75-3200 80 per cent

(ii) Section Officer Rs.1640-60-2600-
EB-75-2900 20 per cent

(iii) Senior Accountant Rs.1400-40-
1600-50-2300-EB-60-2600 80 per cent

(iv) Junior Accountant Rs.1200-30-1560
-EB-40-2040 20 per cent

.....But the Pay Commission also pointed out that the posts in the scales of pay of Rs.1400-2000 and Rs.2000-3200 should be treated as functional grades requiring promotion as per normal procedure and it was



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left to the government to decide about the number of posts to be placed in these scales....

"5.....In this context it is also necessary to note that the post of Assistant Accounts Officer was not in existence earlier which is now brought under a functional grade. For that purpose necessary rules have to be framed prescribing the eligibility etc. and the Senior Accountants who have completed three years' regular service in the grade are upgraded to this post....."

"6.....It cannot be said that on that date the posts identified subsequently were also in existence. In such a situation the principle of equal pay for equal work is not attracted on January 1, 1986."

8. Aforesaid decision, in our view, is clearly distinguishable. Aforesaid decision related to posts which were newly created promotional posts. As far as applicants in the instant case are concerned, no new posts have been created; they have merely been re-designated as Data Entry Operators/Data Processing Assistants. The Supreme Court in a later decision in the case of **Chandraprakash Madhavrao Dawda & Ors. v. Union of India & Ors.**, 1998 (2) SCSLJ 390 was concerned with the interpretation to be given to the very same O.M. dated 11.9.1989 with which we are concerned in the instant case. In regard to the very same issue, the Supreme Court has concluded as under :

"61. For all the above reasons, the impugned orders dated 2.7.90, 16.3.98 and all other orders which have the effect of redesignating the appellants - who were recruited as Data Processing Assistants - as Data Entry Operators in the scale of 1350-2200 (or 1400-2300 by concession of counsel) are arbitrary and illegal, ultra-vires and are declared violative of Articles 14 and 16 of the Constitution of India. The appellants are declared entitled to the designation of Data Processing Assistants grade II (also called earlier as gr B) in the scale of Rs. 1600-2660 with effect from 1.1.1986, the date when the IV Pay Commission scales came into force. The appellants are also entitled to the scale of

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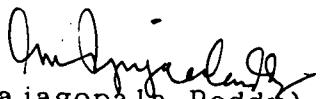
Rs. 5000-8000 with effect from 1.1.96 in view of the government orders passed in connection with the Vth Pay Commission recommendations."

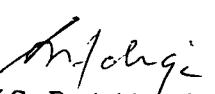
Aforesaid decision has been followed by a later judgment of the Supreme Court in the case of **Kamlakar & Ors. v. Union of India & Ors.**, 1999 (3) SLJ 307 whereby the benefit which had been granted to the appellants in the earlier decision was extended also to others who had approached the Supreme Court in the aforesaid case.

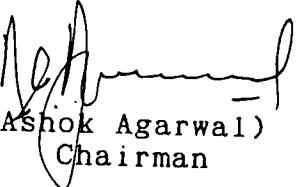
9. In our judgment, if one has regard to the aforesaid decisions of the Supreme Court, we have no hesitation but to hold that applicants in the present O.A. are entitled to the benefit of the aforesaid O.M. of 11.9.1989 with effect from 1.1.1986.

10. The reference is accordingly answered in the aforesated terms.

11. Present O.A. is accordingly allowed. Respondents will grant the benefit of the aforesaid O.M. dated 11.9.1989 to applicants with effect from 1.1.1986. They will accordingly grant the consequential benefits arising from this order to applicants within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.


(V. Rajagopala Reddy)
Vice-Chairman(J)


(S.R. Adige)
Vice-Chairman(A)


(Ashok Agarwal)
Chairman

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