

Central Administrative Tribunal
Principal Bench

O.A. 2013/1998

New Delhi this the 8th day of February, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

O.P. Verma son of
late Shri Shiv Charan Dass,
R/o C-6, Minto Road Complex,
Red Quarters,
New Delhi-110002.

... Applicant.

(By Advocate Shri G.D. Gupta)

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Industry, Udyog Bhawan, New Delhi.
2. The Development Commissioner (Small Scale Industries), Nirman Bhawan, New Delhi.
3. The Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel & Training), North Block, New Delhi. ... Respondents.

(By Advocate Shri Gajender Giri)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicant has filed this application stating that he is aggrieved by the action of the respondents in not encadring the post of Electric Typewriter Operator (ETO) which he has been holding for the past 23 years, in the cadre of Central Secretariat Clerical Service (CSCS) as UDC.

2. The brief relevant facts of the case which are not disputed are that the applicant has been employed as ETO in the office of Respondent 2 from 1.12.1975. He

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has stated that he had been selected as a direct recruit against an advertisement which ~~did~~^{has} appeared in the newspapers. His grievance is that this is an isolated post. Earlier although there were three such posts, at present there is only one post which is occupied by him. Shri G.D. Gupta, learned counsel has submitted that the issue regarding encadrement of the posts of ETO in the clerical service had been put forward before the 5th Pay Commission which had required the Department to expedite the process of encadrement of these posts in an organised clerical service. It was further recommended that pending encadrement, the incumbents would be governed by the recommendations made in respect of Assured Career Progression Scheme (ACPS). Learned counsel has submitted that subsequently the applicant had been given in-situ promotion but the grievance still persists regarding encadrement of the posts of ETO in the clerical service. He has submitted that the applicant has reliably learnt that the Internal Finance Wing of the Department of Industrial Policy and Promotion had recommended that the two posts of ETO which were lying vacant be abolished and one which was filled by the applicant may be encadred into the post of UDC in CSCS. For this purpose, he had filed MA 34/2001 seeking a direction to the respondents to produce the relevant file for which time had also been granted by Tribunal's order dated 8.1.2001.

3. ~~Today~~ When the case was listed for final hearing on 29.1.2001, Shri Gajender Giri, learned counsel for the respondents had, however, sought more time to

produce the records which in the circumstances of the case was not agreed to as the respondents had sufficient time to bring the records, if they so wanted.

4. The respondents in their reply have not denied the fact that the 5th Central Pay Commission had examined the applicant's representations and recommended that the Department may expedite the encadrement of the posts of ETO in an organised clerical service. According to them, they have considered the matter in consultation with the concerned Department, including the Department of Personnel and Training. That Department has observed that they would have no objection to the induction of a vacant post into the CSCS but apparently have rejected the encadrement of the post of ETO which is at present held by the applicant in that cadre.

5. As mentioned above, the learned counsel for the applicant has submitted in MA 34/2001 that the concerned Internal Finance Wing of the Department of Industrial Policy and Promotion had recommended that two posts of ETO lying vacant be abolished and one which was filled by the applicant may be encadred in the post of UDC. We are unable to agree with the contention of the learned counsel for the respondents that Respondent 3 has no objection for induction of the posts of ETO but not to the post filled by the applicant. Admittedly, out of three posts of ETO which were earlier available with Respondent 2, two are lying vacant and are to be abolished or have already been abolished according to the respondents and the only left over post is that occupied by the applicant. The reason for this stand is not given

in the counter affidavit nor was it satisfactorily explained during the hearing. We are aware of the fact that creation/merger and encadrement of posts is essentially a matter for the Government to decide taking into account the relevant factors. However, in the light of the specific recommendations of the 5th Pay Commission regarding encadrement of the posts of ETO, the stand taken by the respondents that they can only encadre the posts of ETO if they are vacant and cannot encadre the post which is presently occupied by the applicant does not appear to have a reasonable nexus to the object sought to be achieved. In particular, it is also relevant to note that out of the three posts of ETO, there is only one post at present which is held by the applicant.

6. Shri G.D. Gupta, learned counsel has submitted that the applicant's pay as ETO is in the same pay scale as that of UDC, namely, Rs.1200-2040 (pre-revised). He has, therefore, urged that the applicant may be directed to be encadred in the CSCS as UDC so that he can have ~~some~~ promotional avenues in future. He has relied on *Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar and Ors.* (AIR 1988 SC 1033).

7. Taking into account the particular facts and circumstances of the case, including the recommendations of the 5th Pay Commission, we find force in the submissions made by the learned counsel for the applicant. The rejection of the applicant's request for encadrement of the single post of ETO in an organised

clerical service has, therefore, to be looked into by the respondents again and if necessary by relaxation of the Rules.

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8. In the result, the O.A. succeeds and is allowed with the following directions:-

The respondents to take appropriate action to encadre one post of ETO held by the applicant in CSCS in the post of UDC, in accordance with the aforesaid recommendations of the 5th Pay Commission. Necessary action in this regard shall be taken within four months from the date of receipt of a copy of this order. No order as to costs.

(Govindan S. Tampi)
Member(A)

'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman(J)