

14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1243/97

T.A. No.

Date of decision 27-7-98

Sh. Hiramani Semwal and Ors. Petitioner

Sh. P. P. Khurana

... Advocate for the
Petitioner(s)

VERSUS

VOI & Ors

... Respondents

Sh. Tirlochan Rout, Sr. AO... Advocate for the Respondents
Departmental representative
(Presenting Officer)

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi
(Smt. Lakshmi Swaminathan)

Member (J)

15

Central Administrative Tribunal
Principal Bench

O.A. 1243/97

New Delhi this the 27th day of July, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri K. Muthukumar, Member(A).

1. Hiramani Semwal,
Son of Shri Bhawani Dutt,
R/o A-207, Kidway Nagar,
New Delhi.
2. P.S. Jain,
son of Shri C.D. Jain,
R/o 1/A-89, Moti Bagh,
New Delhi.
3. B.C. Katoch,
son of Shri Asha Chand,
R/O SS/914, R.K.Puram,
New Delhi.
4. Ram Gopal,
son of Shri Chattar Singh,
R/O V-Sarur Pur,
PO :Balabh Garh,
Distt. Faridabad.
5. Smt. Manjeet Sarna,
wife of Shri M.S. Sarna,
R/o 12/106, Double Story,
Dev Nagar, New Delhi.
6. Smt. Avinash Rishi,
wife of Shri O.P. Rishi,
R/o S-1/652, R.K.Puram,
New Delhi.
7. Smt. V.P. Chadha,
wife of Shri R.C. Chadha,
R/o 13/2, Double Story,
Dev Nagar, New Delhi.
8. Smt. Mithlesh Bhardwaj,
wife of Shri V.D. Bhardwaj,
R/O 16/40, Old Rajinder Nagar,
Delhi.
9. Anil Kumar Jain,
Son of Shri M.L. Jain,
R/o B-29, Arjun Nagar,
New Delhi.
10. Satish Kumar,
son of Shri Kundan Lal,
R/o I/A-339, Moti Bagh,
New Delhi.
11. Smt. R.K. Bajaj,
wife of Shri L.D. Bajaj,
R/O C-150, MIG-DDA Flat,
Saket, New Delhi.

12. N.L.Khurana,
son of Shri Harnam Dass,
R/o 1206,Krishna Mander Wale Gali,
Najafgarh, Delhi.
13. Smt.Darshan Bhalla,
wife of Shri S.K.Bhalla,
R/o G-343,Srinivas Puri,
New Delhi.
14. Smt.P.V.Sharma,
wife of Shri P.L.Sharma,
R/o Village Sarol,
P.O.Sarhol,
District- Gurgaon.
15. Smt.Sharda Budhraja,
wife of Sh.R.S.Budhraja,
R/O A-14 D,DDA Flat Munirka,
New Delhi.
16. Smt.Saroj Chopra,
wife of Shri I.M.Chopra,
R/O Sector-8,Q-365,
R.K.Puram, New Delhi.
17. R.M.Garg,
son of Shri B.P.Garg,
R/O GI-761,Sarojni Nagar,
New Delhi.
18. Smt.Parvash Uppal,
wife of Sh.K.L.Uppal,
R/O ED-136/2,Tagore Garden,
Delhi.
19. Smt.Surjeet Kaur,
wife of Shri Harbash Singh,
R/O C-8/E, DDA Flat,
Munirka, New Delhi.
20. Smt.Urmil Duneja,
wife of Shri M.R.Duneja,
R/O H-128,Nanak Pura,
New Delhi.
21. P.C.Sharma,
son of Shri Ajushia,
R/O DG-III/139,
Vikas Puri, New Delhi.
22. Smt.Tripta Burman,
wife of S.Burman,
R/O F-28,Moti Bagh,
New Delhi.
23. Smt.Kanta Neb,
wife of Shri D.R.Neb,
R/O J-97,Saket,New Delhi.

18

24. H.S.Pathania,
son of Sh.Jaishi Ram,
R/o Sector 7/1117, R.K. Puram,
New Delhi.

25. Smt. Urmil Jeruth,
wife of Shri S.P. Jeruth,
R/o D-1/77, Janakpuri,
Delhi.

26. Smt. C.K. Saini,
W/o Shri J.M. Saini,
R/o A-8/Brig Vihar,
Pitam Pura,
New Delhi.Applicants.

By Advocate Shri P.P. Khurana.

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
New Delhi.

2. The J.S. (Trg) & CAO,
Ministry of Defence,
C-II, Nutments,
New Delhi.Respondents.

Shri Trilochan Rout, Sr. Administrative Officer (Presenting Officer).

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants have filed this application against the respondents' order dated 3.4.1997, on the ground that while they ought to have been promoted and given the pay scale of Rs.1600-2600 as DPA "A", they have only been given the promotion scale of Rs.1400-2300 with effect from the date of issue of the letter instead of 11.9.1989 as done in other cases.

2. The applicants have submitted that they joined service with the respondents in different years between 1964-1968 and have also been promoted as Senior Computers in the year 1987-89 in the pay scale of Rs.1200-2040. By Office Memorandum dated 11.9.1989 on the subject of rationalisation of pay scales of Electronic Data Processing (EDP) posts, Data Entry Operators,

Grade "C" (DEO "C") were given the pay scale of Rs.1400-2300. In Para 2 of the same Memorandum, it is mentioned that all Ministries will review the designation, pay scales and recruitment qualification of their posts and revise the same in consultation with their Financial Advisers. It was further mentioned in Para 5 that the qualifications, etc. indicated against each grade in Para 1 are only illustrative and the Departments/ Ministries will have to carry out the review of existing EDP posts in accordance with the Recruitment Rules as already prescribed by them. The respondents then issued the letter dated 8.1.1991 in which they have stated that the President had revised the pay scales of the undermentioned posts in Armed Forces Headquarters (AFHQ) and Inter Service Organisations (ISO) in accordance with the letter dated 11.9.1989 and indicated the revised pay scales as follows:

S.No.	Post	Existing	Revised Design-	Revised Pay
		Pay Scale	ation	Scale
4.	Senior Computer, AFHQ/ISOs	1200-2040	Data Entry	1350-2200
			Operator	
			Gde-B AFHQ/ ISOs	
6.	Statistical Assistant AFHQ/ISOs	1400-2300	Data Entry	1600-2660
			Operator	
			Gde-D	
			AFHQ/ISOs	

11. Statistical 1640-2900 Data Processing 2000-3200
 Investigator, Assistant Gde-B,
 AFHQ/ISOs AFHQ/ISOs

The revised pay scales were to take effect from 11.9.1989. However, the respondents again issued another letter dated 6.12.1994 further providing for placement/promotion of EDP personnel in the revised pay scales as follows:

S.No.	Existing Category	Revised Category	Revised provisions
1.	Computer, AFHQ & ISOs	DEO Grade-C (1400-2300) (950-1500)	(As per details at Serial No. 2 of Part B.)
2.	Senior Computer, AFHQ & ISOs	(1600-2660) (1200-2040)	(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).

18/

(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 11.9.89 or from the date of their regular appointment to the grade of Senior Computer/Data Entry Operator Grade-B whichever is later.

Part-B: Provisions for further promotion.

S.No., Category	Provisions
1. Data Entry Operator Grade-A	Will be considered for promotion as Data Entry Operator Grade-B

(Serial 1 (C) (Rs.1350-2200) as and when under Part (A). they complete 12 years' regular service as Computer/Data Entry Operator Grade-A.

2. Data Entry Operator All those who complete a minimum of Grade-B 4 years' service in the grade will be (Serials 1(a) & (b) considered for promotion as Data and 2(b) (ii) under Entry Operator Grade-C (Rs.1400- Part "A") 2300)

3. According to the Ministry of Defence, Armed Forces Headquarters and Inter Service Organisations (Statistical Grade "C" posts) Recruitment rules, 1987, the Senior Computers in the grade of Rs.1200-2040 were deemed to have been appointed in the corresponding post shown in clause (b) of the Table under Rule 4 as DEO Grade "B" in the grade of Rs.1350-2200. The applicants have submitted that as the Senior Computer/DEO Grade "B" with seven years regular service was entitled to be promoted as DEO Grade "D" in the scale of Rs.1600-2660, but by the respondents' order dated 3.4.1997 the applicants who were DEO Grade "B" were appointed as DEO Grade "C" in the scale of Rs.1400-2300 from the dates they assumed charge in the higher posts. Shri P.P. Khurana, learned counsel for the applicants has submitted that there is no post of DEO Grade "C" in the Recruitment Rules. The other main contention of the learned counsel, is that most of the applicants have completed 30 to 35 years service before being promoted as Senior Computers with effect from different dates. They have also submitted that by introducing the qualification of Graduation in Science,

Grade "B" whichever is later which they cannot do because for the same post two different scales cannot be prescribed. He has also submitted that additional educational qualifications cannot be

Mathematics, Statistics, Economics or Diploma in Computer Applications for being placed in the DPA Grade "A" in the scale of Rs.1600-2600, in fact, what the respondents are trying to do is to amend the Recruitment Rules by executive instructions. The learned counsel has vehemently argued that when the Recruitment Rules do not provide for any such qualification, including Graduation or Diploma in Computer Applications as provided in the letter dated 6.12.1994 for promotion to DPA Grade "A" which is equivalent to the post of DEO Grade "D" under the Rules, the respondents could not have, by issuing the letter dated 6.12.1994, specified these qualifications. Another objection is that under sub-clause (b) of this letter a departmental test would be conducted in respect of those individuals who do not possess a Diploma in Computer Applications or an 'O' level certificate and those who pass will be placed in the higher scale of Rs.1600-2660 as that of DPA Grade "A". He has submitted that since the applicants have already put in more than 30 years of service in the Department, the department cannot prescribe a qualifying test at this stage and the further condition that those individuals who are above 50 years shall also not be given the training or the opportunity to take the qualifying examination in Computer Applications is patently arbitrary and unreasonable. He has also objected that in the Note below para 2 of this letter the concerned individuals are being placed in two scales, namely, Rs.1600-2660 and Rs.1350-2200 from 11.9.1989 or from the date of their regular appointment to the grade of Senior Computer/DEO Grade "B" whichever is later which they cannot do because for the same post two different scales cannot be prescribed. He has also submitted that additional educational qualifications cannot be imposed on the applicants retrospectively and that too contrary to the existing rules by the impugned letter of 1994. For these reasons, Shri P.P. Khurana, learned counsel, has urged that the

applicants should be granted the pay scale of Rs.1600-2660 without insisting on the higher qualifications as they admittedly have years of experience as Senior Computers/DPA Grade 'A'. They rely on the judgement of the Tribunal in B.N. Sharma Vs. Union of India & Ors. (O.A. 725/97).

4. The respondents have filed their reply disputing the above averments. We have also heard Shri Trilochan Rout, SAC and Presenting Officer on behalf of the respondents. They have submitted that as a result of the recommendations of the IVth Central Pay Commission a Committee had been set up for reorganisation of the EDP cadres existing in various departments and rationalisation of these posts in accordance with the Ministry of Finance's instructions. These conditions were to be effective w.e.f. 11.9.1989. They have submitted that the EDP cadres pertaining to AFHQ and ISO were restructured and revised pay scales were introduced by letter dated 8.1.1991. The existing grade of Computer (Rs.950-1500) was revised to the restructured Grade of DEO 'A' in the scale of Rs.1150-1500, Senior Computers in Rs.1200-2040 to DEO 'B' in the pay scale of Rs.1350-2200, Statistical Assistants in Rs.1400-2300 to the grade of DEO 'D' in Rs.1400-2600 and Statistical Investigators and Programme Assistants in the pay scale of Rs.1640-2900 were redesignated as Data Processing Assistant 'B' in Rs.2000-3200. Subsequently, the Recruitment Rules regulating the method of recruitment to some of the posts, namely, DEO Grades 'D', 'B' and 'A' in AFHQ and ISOs were issued under SRO 8 dated 30.12.1991 (Annexure R-1). This was followed by another SRO 140 dated 10.8.1991 to regulate recruitment to the post of DPA Grade 'B' (Annexure R-2). They have submitted that there was a persistent demand by the EDP staff to institute further better career and promotional avenues. After reviewing the situation, they have

submitted that a second revision of pay scales was introduced by letter dated 6.12.1994 in which they have required Graduation or Diploma in Computer Applications for placement of the officers in the higher level of pay scale of Rs.1600-2660 which has been challenged by the applicants.

5. The respondents have submitted that 12 Senior Computers who did not possess either a Diploma in Computer Applications or an 'O' level certificate, but were graduates, were required to sit in the departmental test. On qualifying the test, they were also to be placed as DPA 'A'. They have also submitted that only one DEO 'D' qualified and he was placed as DPA 'A' and those who did not fulfil the conditions laid down in the letter of 6.12.1994 continued as DEO 'B'. They have also submitted that the remaining officials in the grade of DEO 'B' were later granted promotion as DEO 'C' in the pay scale of Rs.1400-2300 after completion of the stipulated minimum of four years service in the grade of DEO 'B' as provided in para 2 -Part B of the letter dated 6.12.1994. According to them, by this letter issued in December, 1994, they have also restructured the existing EDP cadres. They have also submitted that since the applicants did not possess the requisite qualifications, they have been continued as DEO 'B' and on their fulfilling the minimum required period of four years, they were promoted to the grade of DEO 'C' on 3.4.1997. The Presenting Officer has submitted that these were promotions and not placements and hence the claim of the applicants that they should be considered to be placed as DPA 'A' w.e.f. 11.9.1989 in line with placements in other grades is not justified as they did not fulfil the required qualifications prescribed in the department's letter dated 6.12.1994. He had

8/

also stated that the applicants have not made any representations against the action taken by the respondents in issuing the letter dated 6.12.1994 before they filed the O.A.

6. We have carefully considered the pleadings and the submissions made by Shri P.P. Khurana, learned counsel, and Shri Trilokchand Rout, Presenting Officer

7. The main grievance of the applicants is that in view of the letter dated 6.12.1994 issued by the respondents, they have not been placed as DPA 'A' in the scale of Rs.1600-2660 and have only been placed in the grade of DEO 'B' in the scale of Rs.1350-2200. While the respondents have submitted that this letter has been issued on their further revision and consideration of the demands of the EDP staff to institute better career and promotional avenues this has been stoutly denied by the applicants. There is merit in the arguments advanced by Shri P.P. Khurana, learned counsel, that the respondents cannot impose additional educational qualifications or conditions on the existing employees, such as the applicants, which did not exist in 1989 by their letter dated 6.12.1994 and that too contrary to the requirements prescribed in the existing Recruitment Rules. In the Recruitment Rules notified on 30.12.1991 (SRO 8) under the table below Rule 4, Senior Computers in the scale of Rs.1200-2040 have been deemed to have been appointed as DEO 'B' in the scale of Rs.1350-2200 from the date of commencement of the Rules. In these Rules, it is also provided that the persons holding the post of DEO 'B' with seven years regular service in the grade are eligible for consideration for promotion to the post of DEO 'D' in the scale of Rs.1600-2660. It is also seen that the post is a non-selection post and the method of recruitment is by way of promotion failing which by transfer on deputation. The

respondents' contention that by the impugned letter dated 6.12.1994 they have tried to give better placement to Senior Computers who have the qualifications provided in the letter so that they can be replaced in the DPA grade "A" in the scale of Rs.1600-2660, is, therefore, contrary to the statutory Rules. It is settled law that statutory Rules cannot be amended, and that too retrospectively, by executive instructions like the letter of 6.12.1994. While the prescription of additional qualifications like a Degree in Science or Mathematics or Diploma in Computer Applications may, if at all, be prescribed for new entrants who enter into service after the publication of the circular/ letter dated 6.12.1994, they cannot be insisted upon in the case of those persons who are already in service. Apart from this, the letter dated 6.12.1994 also provides for two scales of pay to persons holding the same post which again is without any rational basis and is arbitrary and unsustainable.

8. In the result, for the reasons given above, the actions taken by the respondents based on the letter dated 6.12.1994 for placement/promotion of EDP personnel which adversely affects the rights of the applicants are untenable and illegal. Accordingly to this extent, the letter dated 6.12.1994 is quashed and set aside. In the facts and circumstances of the case, the respondents shall consider the applicants' cases for promotion in terms of the existing Recruitment Rules and reconsider the issues in the light of the observations made above. This shall be done within three months of the date of receipt of a copy of this order and they shall pass appropriate orders with intimation to the applicants. In

B

case ~~and~~ of the applicants have any further grievance, it is open to them to pursue ~~the~~ remedies in accordance with law. No order as to costs.


(K. Muthukumar)

Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

"SRD"