

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A. ~~XXX~~ No 1741 of 1997

Decided on: 13/10/97

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B.N. Sharma & Ors.Applicant(s)

(By Shri V.K. Rao Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By Shri Advocate)
shri J.S. Joshi, Director (U) on behalf of respondents
1 to 3, Shri K.B.S. Rajan and Mrs. Meera Chhibber, counsel.
CORAM:

THE HON'BLE ~~SHRI~~ MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or
not? *yes*

2. Whether to be circulated to the other Benches *NO*
of the Tribunal?

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1741 of 1997

New Delhi this the 13th day of October, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. B. N. Sharma
S/o Shri P.D. Kaushik
R/o X/624 Sarojini Nagar,
New Delhi-23.
2. R. S. Mongia
S/o Shri Lal Chand Mongia
R/o 19 Promise Apartment,
Vikas Puri,
New Delhi-18.
3. J. J. K. Jain
S/o Shri S.S. Lal
R/o Sector I/55 R.K. Puram,
New Delhi-22.
4. V. K. Jain
S/o Shri J.P. Jain,
R/o Sector I/78 R.K. Puram,
New Delhi-22.
5. A. S. Manchanda
S/o Shri K.S. Manchanda
R/o 11/215, Government Quarter, Dev Nagar,
New Delhi-110 005.
6. Smt. R.R. Pushkarna
W/o Shri Y.R. Pushkarna
R/o Sector-III/298, Sadiq Nagar,
New Delhi-110 049.
7. Smt. Sharda Pandhi
W/o Shri S.K. Pandhi
R/o B-6/44/1 Safdarjung Enclave,
New Delhi-110 029.
8. Mohinder Singh
S/o Late Shri Ram Swarup
R/o Village & P.O. Shahbad Mohammadpur,
New Delhi.
9. K. R. Joshi
S/o Shri B.R. Joshi
R/o 19 Type III North West Motibagh,
New Delhi-21. Applicants

By Advocate Shri V.K. Rao.

Versus

Union of India through

1. Secretary
Ministry of Defence,
South Block,
New Delhi-11.

2. Joint Secretary (Training)
Chief Administrative Officer,
Ministry of Defence,
C-II, Hutmants,
New Delhi-11.

3. Secretary,
Ministry of Finance,
North Block,
New Delhi.

4. Dr. T.R. Gaba
S/o Shri B.R. Gaba
I-3/30 Sector-15, Rohini,
Delhi-85.

5. Shri T. Swaminathan
S/o Late Shri K. Thyagrajan
R/o A-524/II N.H. IV,
Faridabad-121001.

6. Shri Vinay S. Pyati
S/o Late Shri S.N. Pyati
Sector-V/740 Pushpa Vihar,
New Delhi-110 017.

7. Smt. Neeru Singhal
W/o Shri Vipin Singhal
R/o C-114 Lohia Nagar,
Ghaziabad U.P. Respondents

Shri J.S. Joshi, Director (U) on behalf of respondent Nos. 1 to 3.

Shri K.B.S. Rajan, learned counsel for respondents 4 to 6.

Mrs. Meera Chhibber, learned counsel for respondent No. 7.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

This is the second round of litigation by the applicants. In the earlier application O.A. No. 725/97 they were aggrieved that the respondents by their order dated 10.1.1997 gave the benefit of the pay scale of Rs. 2375-3500 in the grade of Programmer to some of the juniors who were Programme Assistants/Statitistical Investigators redesignated as Data Processing Assistants Group 'B'. The above placement in the grade of Progammer was in pursuance of the respondents letter of 6.12.94 by

which Statistical Investigators in AFHQ and ISO and Programme Assistant/DMIS who possess the Master's Degree in the relevant subject were placed in the grade of Rs.2375-3500. The above O.A. was disposed of with the direction to the respondents to review or reconsider the question of giving the same benefit to the applicants as was given to their juniors in accordance with the orders passed in December, 1994. It was observed that the requirement of Master's Degree be insisted upon only for new entrants who entered the service after 1994 but could not be applied retrospectively when there was no provision for such qualification. Respondents were, therefore, directed to reconsider the entire case and pass appropriate orders. In pursuance of this direction, the respondents passed another order dated 24.7.1997 whereby the benefit of scale of Rs.2375-3500 was given only to 4 persons in the Programme Assistants' case who possessed the Master's Degree and fulfilled the experience required and were placed as Programmers in the aforesaid scale. It was stated that the post of Programmer was created in the process of restructuring of the grades and out of 16 posts of Programmers, 10 were to be filled from the category of erstwhile Statistical Investigators and 6 were to be filled from the erstwhile Programme Assistants and these two categories were distinct and inter-se seniority was also fixed separately for the purpose. The applicants' grievance is that the respondents have not carefully implemented the directions of the Tribunal and have by their impugned order given the benefit of the grade of Programmers in the scale of Rs.2375-3500 to such of those

Programme Assistants and Statistical Investigators who have Post Graduate Qualification. During the course of the hearing of this application, the respondents brought out that the applicants who were erstwhile Programme Assistants were eligible for placement against these posts of Programmers, for the remaining 10 posts of Programmers to be filled from among the erstwhile Statistical Investigators. The Tribunal, however, directed that the respondents must pass appropriate orders in pursuance of the judgment dated 23.5.97 in O.A. No. 725 of 1997 and file a reply before the next date of hearing. In the light of the aforesaid observation, the respondents passed another order dated 8.10.1997. In this order, the respondents approved the placement of 10 officials of the Statistical Investigators Category and 6 from the Programme Assistants category who were on service as on 11.9.1989 as per their seniority as Programmer without stipulation of the qualification as per the directions of the Tribunal. By this order, they had also cancelled the earlier order dated 23.1.1997 and the note of 24.7.97. These revised orders are opposed by three other petitioners in MA 2530/97 who joined this application as respondents as their interests were affected. Similarly another applicant who was the direct recruit in the grade of Programme Assistant who was granted the grade of Programmer in Rs.2375-3500 w.e.f. 10.1.1997 and which was subsequently cancelled by the respondents by their letter of 8.10.1997 also became aggrieved and has got impleaded

in this application as respondent No. 7. The impleadment applications were allowed and the cases of the applicants as well as of the impleaded private respondents were heard.

2. The main grounds of challenge are as follows:-

(i) They were appointed after being found fit in accordance with the then prevailing Recruitment Rules vide SRO dated 19.1.1995 annexed at Annexure A-5 and were appointed as Programme Assistants on a regular basis.

(ii) When the implementation of the orders of the Government of India O.M. dated 11.9.1989 was considered, the sub-committee which went into the question took into account the qualification, job requirement of the existing EDP posts and recommended that the Programme Assistants/ DMIS be placed in the scale of Rs.2375-3500. Despite this, the respondents flouted their own recommendations and revised the scales by changing their designation also as Data Processing Assistants (DPA for short) and placed them in the scale of Rs.2000-3200.

(iii) By restructuring the cadre by their order dated 6.12.94, they have placed the Statistical Investigators/Programme Assistants redesignated as Programme Assistants as Rs.2375-3500 with a stipulation that those persons who do not have Post Graduate

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Experience be placed in Grade 'B' DPA in Rs.2000-3200 which was challenged in O.A. No. 725/1991 successfully. They have not implemented the order of the Tribunal, leading to the filing of the present application.

(iv) The respondents who sought impleadment by their impleadment application M.A. Nos. 2350 and 2351 of 1997 are aggrieved by the cancellation of respondents order dated 10.1.1997 and the note of 4.7.1997 by which they were granted placement in the scale of Rs.2375-3500 as Programmers; from 11.8.1989 in the case of Shri K.R. Gaba, from 28.2.1990 in the case of Shri Swaminathan and from 2.5.90 in the case of Shri Vinay Pal. In the revised order these respondents were not included for placement as Programmers in the higher scale of Rs.2375-3500.

(v) The applicant in M.A. 200/1998 (respondent No.7) also aggrieved as her name also does not figure in the officials who were given higher scale of Rs.2375-3500 as Programme Assistants although she was appointed as a Direct Recruit Programme Assistant through Union Public Service Commission as per Recruitment Rules and she also has Post Graduate Qualification and was originally included for placement in the higher grade as Programmer by the respondents order dated 10.1.1997.

3. There is no dispute in regard to the fact that the applicants were recruited in terms of the then

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existing Recruitment Rules notified on 31.1.1985 as per which the applicants were considered eligible for the post of Programme Assistants in terms of the note below Recruitment Rules which provided as follows:-

" The suitability of persons holding the post of Statistical Assistant and Senior Computer (as in the case of the applicants) on regular basis on the date of the commencement of these rules and fulfilling the eligibility conditions as mentioned below will be initially assessed by the Commission for appointment to the post of Programme Assistants in the scale of Rs.550-900 in the initial stage of constitution:-

(a)(i) Statistical Assistants with 5 years regular service in the grade or with 9 years combined regular service in the Sr. Computers

(ii) Sr. Computers with 9 years regular service in the grade; and

(b) possessing the following:-

(1) Formal training in Computer Programming/Operations.

(2) Knowledge of one or more of the Programme languages.

(3) Two years experience of electronic date processing work".

4. In accordance with these, the applicants therein were appointed as Programme Assistants by the order of the respondents at Annexure A-6. Later on, in pursuance of the Finance Ministry's O.M. dated 12.1.1990, the respondents reviewed the EDP posts on the basis of the report of the Committee set up by the Department of Electronics insofar as they are applicable to the respondents' department and revised the scale of pay and designation of the category of the Programme Assistants/ DMIS and Programme Assistants, AIR Headquarters and Statistical Investigators AFHQ/ISO who were all in the

scale of Rs.1640-2900, as Data Processing Assistants Grade 'B' DMIS, Data Processing Assistants AIR Headquarters and Data Processing Assistants Grade 'B' AFHQ/ISO in the grade of Rs.2000-3200 by the order dated 8.1.1991. Even after this redesignation and upgradation of scale to Rs.2000-3200 it appears that there was resentment and demand for better promotional avenues. Consequently, the respondents embarked on restructuring of the cadre and accordingly their order dated 6.12.1994 was issued. This order has two components. One is regarding the authorisation of post by which out of 23 posts of DPA Grade 'B', six posts were upgraded to that of Programmers and 17 posts were left in the Lower Grade of DPA Grade 'B'. The other component of this order was that for the post of Programmer to be placed in the scale of Rs.2375-3500, the Statistical Investigators/Programme Assistants who were originally in the scale of Rs.1640-2900 were to possess Post Graduate Qualification in the relevant subject or Degree in Engineering or Computer Science. They are also required to have three years experience of Electronic Data Processing. In the case of those who do not possess the above qualification, they were to be placed in the scale of Rs.2000-3200 Data Processing Assistants Grade 'B' and these scales will come into effect from 11.1.1989 or from the date of the regular appointment, whichever is later. Respondents' case is that none of the applicants have been adversely affected. The rational for restructuring was provided by the Ministry of Finance guidelines of 15.9.1997 which provided for an appropriate ratio between Data Processing

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Assistants and Programmers and accordingly, out of 23 posts, 7 posts were created in the higher grade of Programmers and the balance was left in the grade of DPA Grade 'B'. Respondents assert that being a policy matter, restructuring and the number of posts in these grades cannot fall within the purview of the Tribunal. They also contend that when the restructuring orders were issued in 1994, applicants had never challenged these orders. They further contend that by the order of the Tribunal dated 23.5.97, prescribing a Post Graduate Qualification in the restructured scenario for the grade of Programmer in the scale of Rs.2375-3500 was never struck down. The only direction given was that these qualifications cannot be applied retrospectively thereby depriving the scale of Programmers to the seniors. In pursuance of this direction, the respondents issued the letter of 24.7.1997 to as many as 4 persons in the category of Programme Assistants who possessed Master's Degree and fulfilled the experience requirements, and were placed as Programmers in the higher grade. These persons happened to be juniors to the applicants but they were placed in the higher scale prospectively. The respondents submit that when the O.A. came up for hearing on 18.8.1997, the Tribunal directed the respondents to pass appropriate orders in pursuance of the order dated 23.5.97. Therefore, the respondents have to issue their revised letter of 8.10.1997 wherein 16 persons were placed in the scale of Programmers on the basis of seniority and 10 of them were Statistical Investigators and 6 from Programme Assistants Grade. It is stated by the respondents that three of the applicants

in this O.A. were also beneficiaries of the order and were given higher scales given to their junior. This naturally affected the individuals who were earlier given the benefits of higher scale on the basis of educational qualification but otherwise did not come within the number of vacancies based on seniority. The official respondents further contended that the private respondents belonging to different category from that of applicants, namely, Statistical Investigators and there were no directions regarding the Statistical Investigators scheme and the respondents letter of 8.10.1997 should have confined only to Programme Assistants. The official respondents, however, contend that since the Tribunal had clearly held that persons who did not possess the qualification could not be excluded, the respondents are bound to apply the same principle in the case of Statistical Investigators also for placement in the Grade of Programmers. In the light of this, they maintain that they have faithfully implemented the orders of the Tribunal.

5. We have carefully considered the arguments of the learned counsel for the applicants as well as for the impleadment respondents and have heard them in detail. We have also perused the relevant records.

6. We have given our anxious consideration to the pleadings of the official respondents. They have placed the written submissions on record.

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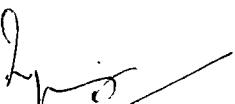
7.. When the respondents placed the Statistical Investigators/Programme Assistants in the upgraded scale of Rs.2000-3200 with the revised designation of Data Processing Assistants Grade 'B', there was no stipulation of any qualification. It was a simple case of upgradation. The problem arose when the respondents restructured the cadre of DPA Grade 'B', for 23 posts. It is to be noted that when restructuring was done it was with reference to the post mentioned at S.Nos.1, 3, 4, 11 and 12 of para 1 of the letter dated 8.1.1991. and this was supposed to cover the post of DEO Grade 'A', Grade 'B' and Grade 'C'. The post at S.Nos. 11 and 12 were that of Statistical Investigators of AFHQ/ISO and Programme Assistants DMIS who were redesignated as Data Processing Assistants Grade 'B'. As per this restructuring, 23 posts of DPA Grade 'B' under the ADG systems were restructured out of which 6 posts were upgraded as Programmers DMIS and the rest of 17 posts were continued in the DPA Grade 'B' and the Programmers were given the higher scale of Rs.2375-3500 with Post Graduate Qualification and three years experience as mentioned above. We find that these modifications in the educational qualification as a result of restructuring and upgradation of some of the posts of DPA Grade 'B' has been introduced by the respondents letter dated 6.1.1994 and the annexure thereto. There is no averment in the pleadings of the official respondents that these modifications in the educational qualifications etc. were done in modification of the Recruitment Rules. In any case, the Recruitment Rules have not been amended to reflect the changes contemplated in the educational

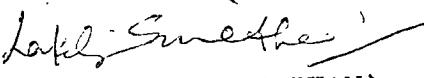
qualification and revised designation. In the circumstances, redesignation of Programme Assistants DMIS/Statistical Investigators AFHQ/ISO as Programmers in the higher grade while stipulating Post Graduate Qualification does not have any legal basis by way of corresponding amendment to the Recruitment Rules and, therefore, cannot be implemented by the respondents to the disadvantage of the Programme Assistants/Statistical Investigators originally redesignated as DPA grade 'B' by the earlier order dated 8.1.1991. In view of this, the upgraded scale of Rs.2375-3500 cannot be denied to the applicants as they were duly recruited as Programme Assistants/Statistical Investigators under the extant Recruitment Rules of 1985. In our considered view respondents cannot also frustrate the benefits of revision of pay scales and placement/promotion of incumbent Programme Assistants/Statistical Investigators by applying revised educational qualifications by way of prescribing Post Graduate Qualifications for the incumbents. Revision of cadre structure Posts and new educational qualifications have necessarily to be incorporated as part of Recruitment Rules which, as and when incorporated in amended Recruitment Rules, could only have prospective application and would apply only to the future recruits/promotees to these posts.

8. In the light of the above, we are unable to sustain the order of the respondents as contained in their impugned letter dated 10.1.1997 and as modified and cancelled by their order dated 8.10.1997. These are accordingly quashed. Respondents are, therefore, directed to grant the revised scale of Programmer viz. Rs.2375-3500 to all the applicants and

issue appropriate orders in respect of the incumbents of these posts of Programme Assistants redesignated earlier as DPAs and/ Statistical Investigators; in the light of the observations made in this order. In the result, this application is disposed of as above.

There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

Rakesh