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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 1473/1994

New Delhi, this 20th day of January, 1995

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. Shri Jai Bhagwan
s/o late Shri Raghu Nath
AZ 42-C, Gitanjali Park
Gali No.6, West Sayarpur, New Delhi-46
2. Shri Birendra Singh
s/o late Shri Ram Piyan Singh
19/229, Panchkuin Road, New Delhi-1

Applicants

By Shri T.C. Aggarwal, Advocate

versus

Union of India, through

1. The Secretary
Union Public Service Commission
Dholpur House, New Delhi
2. The Secretary
Ministry of Finance
North Block, New Delhi

Respondents

By Shri M.K. Gupta, Advocate

ORDER(oral)

The reliefs claimed in this OA are as under:

- (i) The respondents by directed to fix pay of applicants as Data Entry Operator (Grade B) Rs.1350-2200 with effect from 11.9.89 with arrears and interest @ 15% per annum; and
- (ii) Benefit of reorganisation be given from 1.1.86 with arrears.
2. The learned counsel for the respondents referred to the preliminary objection in the reply filed. It is argued that two different and distinct reliefs have been prayed for which are prohibited in terms of Rule 10 of CAT(Procedure) Rules, 1987.
3. The learned counsel for the applicants says he is withdrawing the second relief prayed for in this OA and prays for liberty to raise this relief in a separate

proceeding. Liberty granted. Hence, only the Relief No.(i) is being considered in OA 1473/94.

4. The applicants were promoted on ad hoc basis as Mechanical Operators vide order dated 28.2.93 (Annexure A-2) with effect from 1.3.83. They were subsequently regularised with effect from 16.11.87(Annexure A-7) in this post.

5. Based on the recommendations of the IV Central Pay Commission, reorganisation of Electronic Data Processing posts was undertaken and vide order dated 17.7.91 (Annexure A-6), the posts of Mechanical Operator(General Central Service, Group C, Non-gazetted, non-ministerial) were restructured as per details given below:

| S.No. | Designation & classification | Scale of pay | No.of posts | Remarks including the criteria for conversion |
|-------|---|--------------------------------------|-------------|---|
| i) | Data Entry Operator Grade 'A' (General Central Service, Group 'C' Non-Gazetted) | Rs.1150- 25-1500 | 16 | All posts of MOs the incumbents of which possess a regular service of less than 6 years in the grade as on 11.9.89. |
| ii) | Data Entry Operator Grade 'B' (General Central Service, Group 'C' Non-Gazetted) | Rs.1350 30-1440- 40-1800- EB-50-2200 | 14 | All posts of MOs the incumbents of which possess a regular service of 6 years and above but less than 9 years in the grade as on 11.9.89. |
| iii) | Data Entry Operator Grade C (General Central Service, Group C non-gazetted) | Rs.1400-40- 1800-EB-50- 2300 | 16 | All posts of MOs the incumbents of which possess a regular service of 9 years or more in the grade as on 11.9.89 |

6. As per the above scheme, Mechanical Operators who have put in less than 6 years regular service as on 11.9.89 are eligible only for the scale of Rs.1150-1500.

The applicants were granted this scale on reorganisation. The applicants represented that they should be fixed in the scale of Rs.1350-2200 with effect from 11.9.89 taking into account their ad hoc service because of which they had completed more than 6 years service but less than 9 years on this date. This request was granted and Memo dated 4.1.94 has been issued stating that in the light of the principles laid down by the Hon'ble Supreme Court, it has been decided to regularise the ad hoc service rendered by the applicants in the erstwhile Mechanical Operator Grade. Accordingly the applicants were placed in the post of DEO Grade B (Rs.1350-2200) with effect from 11.9.89. This memorandum denied payment of arrears to the applicants from that date and mentioned that the applicants pay would be fixed on notional basis. Apparently, the intention was to extend the benefit of higher scale only from 4.1.94 though notional fixation was given from 1989.

7. This OA has been filed praying for a direction to fix the pay of the applicants in the scale of Rs.1350-2200 with effect from 11.9.89 and payment of arrears with interest.

C/S

8. The Learned counsel for the applicant argued that the respondents having decided to regularise the applicants' service can not take a stand that the grant of scale of Rs.1350-2200 is only from 4.1.94. There is no logic in denying the arrears from 11.8.89.

9. The learned counsel for the respondents argued that the applicants had not discharged the duties of DEO Grade B till the issue of the memo dated 4.1.94. They have been given the benefit of DEO Grade B only from this date as they have been discharging the duties of the higher post after 4.1.94 only. Reliance was placed on the observations of their Lordships of the Hon'ble Supreme Court in 1989-Vol.10-ATC-378 Paluru Ramakrishna Vs. UOI. This is a case where back wages were not awarded when the seniority list was revised and consequently the applicants were promoted retrospectively. I note that this is a case where the grant of higher scale had arisen due to change in seniority position. Change of seniority is not the basis for the grant of the higher scale in ~~relation~~ to the applicants in this OA and hence the citation is not of relevance. Instructions initially issued, based on 17.7.91 Memo were revised on the consideration shown by the respondents that the adhoc services of the applicants could be treated as regular for the purpose. The learned counsel for the respondents argued that the benefit given was itslef ^{a concession} A I do not propose to go into the merits of treating adhoc service as regular service since this is not the issue before me. The respondents having regularised the adhoc service and having provided for a replacement scale cannot deny the arrears. I do not

find any argument or rationale for denying the benefits which flow out of the decision to grant the higher scale from 11.9.89. Accordingly, the respondents are directed to fix the applicants in the scale of Rs.1350-2200 w.e.f 11.9.89 and pay the arrears from this date, within a period of 3 months from the date of receipt of this order.

10. However, in the circumstances of the case, I do not find it justified to award interest on the arrears to be paid now.

12. The O.A. is disposed of on the above lines. No costs.

P.T.Thiruvengadam

Member(A)

20.1.95

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