

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/1149/2017

HYDERABAD, this the 3rd day of March, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



1. P.V.Uma Prasad,
Data Entry Operator Gr. 'B',
S/o. Late.P.S.M.Prasada Rao,
Aged 48 years, D.No.8-90-21/4,
Dwarakanagar Phase-2,
Near Ayyappaswamy Temple,
Uppal, Hyderabad-39.
2. Sri.K.S.K. Chakravarthy,
Data Entry Operator Gr.'B',
S/o.K.K.Chakravarthy,
Aged 48 years, R/o.H.No.2-104,
Maruthinagar, Hyderabad-500035.
3. P.V.Subrahmanyam,
Data Entry Operator Gr.'B',
S/o.P.Peda Venkateswarlu,
Aged 48 years, R/o. Plot No.320,
H.No.8-6-299/1,Road No.6,
Sri Srinivasapuram colony,
Behind Govt. Hospital, Vanasthalipuram,
Hyderabad-70.
4. Smt.K.Radha Rani,
Data Entry Operator Gr. 'B',
W/o.G.V.R.Prasad,Aged 47 years,
R/o.Plot No.79, H.No.12-7-112/18/5,
Kesavanagar Colony, New Mettuguda,
Secunderabad-17.
5. S.Srinivas Reddy,
Data Entry Operator Gr. 'B',
S/o.S.A.Narasimha Reddy,Aged 48 years,
Flat no.205,H.No.1-7-1/155 &159,
Halika Residency, Srinivasa Nagar colony,
Temple Alwal, Secunderabad-500010.
6. K.Jayanth,
Data Entry Operator Gr.'B',
S/o.Late.K.Bhaskar Rao,Aged 45 years,
Flat No.304,Vasavi Homes, Chaitanyaapuri,

Hyderabad-500060.

7. S.Anuradha,
Data Entry Operator Gr.'B',
W/o.S.Suryanarayana,aged 46 years,
H.No.12-13-307,Street No.2, Flat No.201,
Sai Shaili Residency,Tarnaka, Secunderabad-500017.
8. G.Jayakar,
Data Entry Operator Gr.'B',
S/o.G.B.Robert, aged 49 years,
EWS-II-43, West Parsigutta,
Hyderabad-500020.
9. A.Madhavi,
Data Entry Operator Gr.'B',
W/o.T.Srinivas,Aged 49 years, H.No.10-49,
Gayathri Nagar Phase IV,Jillellaguda,
Saroornagar Mandal,R.R.District.-97
10. B.Sailaja,
Data Entry Operator Gr.'B',
D/o.B.Krishna, aged 43 years,
H.No.11-2-1136, Nampally,
Bazarghat, Hyderabad-1.
11. V.Radha, Data Entry Operator Gr.'B',
W/o.B.Narsimha Reddy, aged 49 years,
H.No.1-6-480/A, Zamistanpur,
Musheerabad, Hyderabad.

...Applicants

(By Advocate : Smt N.S. Lakshmi)

Vs.

1. Union of India, Rep. by its Secretary,
Department of Personnel & Training,
Shastri Bhavan, New Delhi.
2. Union of India, Rep. by its Secretary,
Ministry of Home Affairs, New Delhi.
3. The Registrar General, India,
Ministry of Home Affairs,
2/A, Man Singh Road, New Delhi-110011.
4. The Director of Census Operations,
CGO Complex, Koti, Hyderabad, Telangana.

...Respondents.

(By Advocate : Sri V. Vinod Kumar, Sr. CGSC.)



ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)



2. The OA is filed challenging the impugned order dt. 03.05.2017 passed by the 3rd respondent denying promotion to the applicants to the post of Senior Supervisor.

3. Brief facts of the case are that the applicants, who worked for the respondents organization at A.P. Directorate as Data Entry Operators- B (DEO-B) in the EDP cadre (Electronic Data Processing) for the period 1991-93 were granted ACP in Junior Supervisor scale between 2003 & 2005. In the 6th CPC, the posts of Junior Supervisor and Senior Supervisor were merged with grade pay of Rs.4200. Applicants were granted two financial up-gradations under MACP, the first one with grade pay of Rs.4200 in 2006 and the second one with grade pay of Rs.4600 in 2011. Respondents restructured the EDP cadre on 10.2.2016. Applicants represented on 1.7.2016 for being promoted as Sr. Supervisor as per their date of eligibility. When queried under RTI, it was informed that there were 23 posts vacant in the Sr. Supervisor cadre. Aggrieved for not being granted the promotions as Sr. Supervisors, the OA is filed.

4. The contentions of the applicants are that other colleagues who joined along with the applicants and are working in other Directorates got promoted as Junior Supervisor as well as Sr. Supervisor, resulting in they being granted the grade pay of Rs.5400 under ACP, whereas applicants though they completed 24 years of service between 2006-2008 could not reap a similar benefit. Besides, they became senior to the applicants. Though the applicants have completed 25 years of service, they could not

get the benefit of ACP since it was replaced by MACP scheme. In addition, when the proposal to promote them after rendering 26 years of service as Sr. Supervisor was sent, it was turned down though there were 23 vacancies available in the said cadre. On the contrary, statistical cadre personnel were granted the promotion based on existing Recruitment Rules (RR). The stand taken by the respondents for not granting promotion is that the cadre restructuring is under progress in respect of the applicants and RRs are to be accordingly revised. This stand is against DOPT memo dated 27.3.1997 wherein it was stated that pending revision of RRs, promotion can be effected based on existing RR. Same principle was enunciated in WP 7963/2004 dated 2.3.2005 [2005(5) ALT 252]. If applicants are not promoted as Sr. Supervisors, they would not get the benefit of cadre restructuring. In the existing cadre, the next higher grade to Sr. Supervisor is Assistant Director, whereas in the cadre restructuring it is proposed to create new posts of DPA Grade A, DPA Grade B and Programmer, the DPA Grade A being equivalent to Sr. Supervisor. The residency period proposed for promotion from DPA grade A to DPA grade B is 5 years and from DPA Grade B to Programmer is 2 years. The applicants have 8 to 10 years to retire and hence after restructuring applicants may at the most get promoted as Programmer and not as Asst. Director, which is provided for in the existing cadre. Aggrieved when OA 1246/2016 was filed, it was directed to represent and accordingly, when a representation was submitted, the same was rejected on grounds for reasons stated supra. Applicants plead that if Sr. Supervisor posts do not exist, then they have to be re-designated as DPA – A or DPA-B.

5. Respondents in their reply statement state that the applicants filed OA 1246/2016 which was disposed directing to dispose the representations submitted and accordingly the representations submitted were examined and rejected on 3.5.2017 on the ground that Sr. Supervisor cadre ceased to exist and RRs are being framed to undertake promotions. The OA suffers from multiple causes of action and for seeking plural remedies since the applicants are challenging the rejection order dated 3.5.2017 as well as, to place them in the restructured cadre by protecting their seniority. AT (Procedural Rules) do not permit OAs with the defects pointed out. Promotions have been effected to the Sr. Supervisor posts before cadre restructuring and the proposal to promote the applicants as Sr. Supervisor was sent by A.P Directorate, without knowing that the Sr. Supervisor posts do not exist. Hence applicants promotions could not be taken up. Further, applicants cannot demand promotions in the new restructured hierarchy when the RRs are under finalisation. The colleagues referred to by the applicants are seniors. The existence of 23 vacancies is denied and that the RTI reply was given based on the earlier position. RTI reply does not create a legal right for promotion. Statistical Cadre is a different cadre wherein no new posts were created by any cadre review and hence no comparison can be made with the said cadre. In the statistical cadre promotions were effected to the Sr. Compiler cadre, whereas in respect of the applicants cadre, the Sr. Supervisor cadre was merged with DPA – Grade A, thereby increasing the number of posts of the later cadre vide memo dated 10.2.2016. The Data Entry stream was merged to the EDP cadre so as to improve the promotional opportunities in general and in particular for the Data Capturing cadre, as well as to facilitate adoption of



new technologies. The DOPT memo and the judgment delivered in the writ petition cited are not relevant since there are no vacant Sr. Supervisor posts. As per rules promotions are to be effected and rules cannot be violated as observed by the Hon'ble Supreme Court. Applicants cannot seek selective application of rules to suit their convenience. Cadre review is for the overall benefit of the staff and not for a few. Draft RR have been circulated to the stake holders vide letter dated 21.3.2017 and the rules of promotion to the cadre of DPA grade B are being worked out. All the Sr. Supervisors in the A.P. Directorate have been re-designated as DPA Grade A after cadre restructuring on 10.2.2016.

6. Heard both the counsel and perused the pleadings on record.
7. I. The dispute is about promoting the applicants as Sr. Supervisors before effecting cadre restructuring of Electronic Data Processing Cadre (EDP) in the respondents organisation. The contentions of the applicant are that they are in the cadre of Junior Supervisor in the existing cadre structure and hence eligible to be promoted as Sr. Supervisors. Thereon depending on eligibility and performance as Asst. Directors. In the cadre restructuring the senior supervisor post is equated to DPA -A and the next levels in sequence are DPA -B, Programmer, A.D. Therefore, the applicants grievance is that when they were eligible, the proposals sent to promote them as Sr. Supervisors, were negated on grounds that there were no supervisor posts consequent to restructuring of the EDP Cadre. However, the applicants obtained information under RTI which reveals that there were 23 Sr. Supervisory Vacancies, for which the

explanation given by the respondents is that they existed prior to the restructuring. On the day of final hearing, the Ld. Applicant's counsel submitted that the respondents have promoted the applicants as Sr. Supervisors on 9.9.2019 and a copy of the memo has been uploaded by the Ld. Respondents counsel, which was quiet fair on his part. After going through the memo, we are surprised that the respondents after having denied that the Sr. Supervisor posts do not exist and that they have been merged with the DPA-A posts due to restructuring, could grant the promotions to the said cadre to the applicants. Rarely, we come across situations where respondents vow something by filing a reply affidavit and thereafter, take a diagonally opposite decision, contravening their contentions in the reply statement. The OA was filed in 2017 and the decision was taken in 2019. A reading of the reply statement reveals that the respondents have taken great pains to state grounds for denying the relief sought. After doing so, the climax is unexpected. However, it is the respondents decision and we do not want to further comment on the same. Nevertheless, the relief sought by the applicants has been partly granted, by promoting them as Sr. Supervisors. The Ld. Counsel for the applicants has pointed that the applicants have to be granted promotion from 2016, since they were eligible by the said year.

II. In view of the decision taken by the respondents to promote applicants as Sr. Supervisors in 2019, the aspect of promoting applicants from the dates they are eligible as claimed by the Ld. Counsel for the applicants, has to be examined from the point of view of respondents policy, extant rules and in accordance with law, with proper application of

mind and a comprehensive decision has be taken within a period of 6 months from the date of receipt of this order. Respondents are accordingly directed.



III. With the above directions, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/