

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 34/2004

(13)

New Delhi, this the 24th day of November, 2004

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S. A. SINGH, MEMBER (A)**

1. R.K. Chandel S/o B D Chandel,
R/o E-16/594, Tank Road, Karol Bagh,
New Delhi -110005
2. Rakesh Kumar Kahol,
S/o Late Sh. K C Kahol,
R/o RZ-110 Gali No. 18
Bashisht Park, New Delhi.
3. Ms Kusum Lata.
D/o Shri Sunder Lal,
R/o F-249, Pandav Nagar,
Mayur Vihar, Phase No.1,
Delhi.
4. K K Ramanathan, S/o Sh K R Krishnan,
R/o 469, IT Colony,
North Pitampura, New Delhi-110088
5. Ms Sushma Kochar W/o Mahesh Kochar,
R/o 178, Sector - 12,
R K Puram , New Delhi

.....Applicants

(By Advocate: ShrA K Behra)

VERSUS

1. The Union of India through the Secretary,
Min. of Finance, North Block, New Delhi -110001
2. Central Board of Direct Taxes through its Chairman,
North Block, New Delhi -110001

3. Chief Commissioner of Income Tax,
Central Revenue Building, New Delhi – 110002

.....Respondents.

(By Advocate: V.P. Uppal,)

ORDER (ORAL)

BY HON'BLE SHRI S.A SINGH, MEMBER (A)

The respondents issued an advertisement dated 23.7.1988 for appointment of Data Entry Operators (DEO). The qualification prescribed for the said post was Graduate. The applicants, five in numbers, appeared in the examination and were declared successful in the competition and were appointed as DEOs in the year 1989.

2. The applicants along with other persons selected against the same advertisement were placed in the scale of Rs.1200 – 2040 while Data Entry Operators having qualification of graduation appointed prior to this advertisement were given scale of Rs.1350-2200/-.

3. Aggrieved by this discrepancy a number of DEOs posted in various parts of India, made a representation to CBDT for grant of scale of Rs.1350-2200/- to those having Graduation qualification, from the date of their appointment. Since this was not agreed to number of O.As were filed before various benches of the Tribunal. One such OA was O.A.No.632/2002 and it was decided by the Madras Bench of the Tribunal on 7.1.2003 with the direction that the respondents should grant the scale of Rs. 1350-2200/-, Similar applications before other Benches were also allowed by the benches..

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4. The applicants in the present OA had earlier filed OA 350/2003 which was disposed of by order dated 20.02.2003 with a direction to the respondents to dispose of the representation. The respondents however, rejected the representations vide the impugned order dated 30.9.2003. Aggrieved by this rejection the applicants filed the present OA seeking quashing of the impugned order dated 30.9.2003 and seeking directions to respondents to grant the scale of Rs. 1350-2200/- from the initial date of appointment.

5. The main grounds of the applicants is that they all are having graduation qualification and they were appointed in response to advertisement dated 23.7.1988 as such they are entitled to same benefits as similarly situated Data Entry Operators in the matter of grant of the scale. Further the judgements delivered by the Madras Bench, Hyderabad Bench, Ernakulam Bench, Jabalpur Bench and Lucknow Bench of this Tribunal would be applicable in 'rem' and not in 'persona'. Moreover the applicant in OA 632/2003 before the Madras Bench who were appointed with applicant No. 4 in the present OA had already been granted the scale of Rs.1350-2200/- from the date of initial appointment as Data Entry Operator.

6. Needless to state that the application has been contested on the ground that qualification of the Data Entry Operator in the advertisement dated 23.7.1988 was only matriculation and that respondents have not granted pay scale of Rs.1350-2200/- to those DEOs recruited against the amended recruitment rules 1988 wherein matriculation was made essential qualification in lieu of Graduation.

7. The respondents pleaded that in the case of Shri T.L.N. Reddy and Others Vs UOI & Ors. in OA 170/1995 Hyderabad Bench of the Tribunal had held that even though the advertisement laid down a lower qualification i.e. Matriculation,



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the rules in force at that time was graduation and it was on this technical ground that D.E.Os who were graduates be treated to have been recruited on the basis of prior Recruitment Rules and hence granted the higher scale. However, the ratio of this judgement would not be applicable to the applicants as the date of notification of the Recruitment rules by the CBDT was on 22.7.88 i.e. one day prior to the publication of advertisement and the advertisement was issued in terms of the amended rules dated 22.7.1988. This fact was not kept in view by the Hon'ble Tribunal while giving the judgement as it attach sanctity to the date of publication of the rule in the Gazette rather than the notification by CBDT. The applicants are not entitled for this higher scale because in the advertisement the post of DEOs the qualification prescribed is matriculation and it was immaterial if the person with higher qualification applied for the post. It was not mentioned that persons with graduation would be given any preference over persons having minimum prescribed educational qualification of matriculation.


8. We have heard the counsels for the parties and gone through the documents placed on record. The basic facts are not contested. The applicants had applied against advertisement dated 23.7.88. CBDT issued the changed recruitment rules on 22.7.88 i.e. one day prior to publication of advertisement wherein Graduation was the prescribed qualification. In OA No.632/2002 the Madras Bench of this Tribunal allowed the higher scale of Rs. 1350-2200 to the applicants of that OA on the consideration that even though advertisement dated 23.7.88 had specified matriculation as qualification for the post but as per the rules in force on the date of the advertisement graduation was the stipulated qualification because the new recruitment rules were gazetted only after the date of advertisement. This Judgement of the Hyderabad Bench of the Tribunal was

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upheld by the Andhra Pradesh High Court. The Madras Bench of CAT had also come to the conclusion that the applicants are entitled to the higher pay scale because on the date of publication of the advertisement the amended Recruitment Rules had not been notified in the Gazette though notified by CBDT.

9. The present applicants are covered on all fours by the judgement in OA 632/2002 of Madras Bench and as such OA ~~is~~^{is} allowed. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

Patwal/