

Central Administrative Tribunal

Principal Bench

8

OA-550/2004

New Delhi this the 7th day of December, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.K. Malhotra, Member (A)

1. Shri R.K. Walia
Employee Code No. A057228
2. Shri J.K. Paliwal
Employee Code No. A057088
3. Shri S.C. Saini
Employee Code No. A057273
4. Shri Shobha Walia
Employee Code No. A056896
5. Smt. Tara Nirwal
Employee Code No. A056883
6. Shri S.K. Pawa
Employee Code No. A057187
7. Shri R.K. Sood
Employee Code No. A057301
8. Shri S.A. Francis
Employee Code No. A057190
9. Smt. Promila Wadhwa
Employee Code No. A056867
10. Shri Inderjeet Kanojia
Employee Code No. A057075
11. Shri Dilip Kumar Pal
Employee Code No. A057161
12. Smt. Madhu Seghal
Employee Code No. A057004
13. Smt. Indira Sharma
Employee Code No. A056995
14. Smt. Renu Bala Gupta
Employee Code No. A056911
15. Shri Kuldip Singh Pathania
Employee Code No. A057174
16. Smt. Asha Mishra
Employee Code No. A056838
17. Smt. Mamta Sharma
Employee Code No. A056966

18. Smt. Sushma Gupta
Employee Code No. A057033

19. Smt. Urmila Devi
Employee Code No. A056940

20. Shri Gurcharan Singh
Employee Code No. A057091

21. Kulmohan Singh
Employee Code No. A057231

22. Shri S.K. Gupta
Employee Code No. A057327

23. Shri A.K. Bajaj
Employee Code No. A057116

24. Smt. Poonam Vaid
Employee Code No. A056784

25. Smt. Devki Devi
Employee Code No. A057020

26. Shri Ishwar Singh
Employee Code No. A057343

27. Shri M.S. Rana
Employee Code No. A057103

28. Smt. Laxmi Gupta
Employee Code No. A056797

29. Smt. Meena Jhamb
Employee Code No. A056812

30. Shri Vinod Bhardwaj
Employee Code No. A057286

31. Shri Satish Chander
Employee Code No. A057330

32. Smt. Ram Kishan
Employee Code No. A057314

33. Shri Bishamber Dayal
Employee Code No. A057129

34. Smt. Chander Prabha
Employee Code No. A056768

(All C/O Joint Secretary (Training) &
CAO/CAO-P2, Ministry of Defence,
C-II, Hutmants, New Delhi.

Applicants

(By Advocate: Shri R.K. Sharma)

Versus

Union of India

Through

AO

1. Secretary
Department of Expenditure
Ministry of Finance
North Block, New Delhi.
2. Secretary,
Ministry of Defence,
New Delhi.
3. Joint Secretary(Training) &
CAO/CAO-P2, Ministry of Defence,
C-II, Hutmants, New Delhi.

Respondents

(By Advocate: Shri B.K. Aggarwal)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J):

Heard the counsel.

2. Applicants impugn respondents' order dated 4.8.2003 whereby extension of benefit in OA-1325/98 Shri Chandu Lal & Ors. Vs. Union of India & Ors. has been denied to the applicants.

3. The brief factual matrix is that applicants are working as Technical Clerk. They seek placing in DEO 'B' w.e.f. 1.1.86 with all consequential benefits.

4. Learned counsel for applicants contends that altering the conditions of an administrative order cannot be made effective retrospectively. In this view of the matter, citing example of Technical Assistants who have approached this Court in OA-1741/97 in **B.N. Sharma & Ors. Vs. Union of India & Others** decided on 13.10.1998

contended that this plea has been forfeited and as the Recruitment Rules incorporated in amended Recruitment Rules are observed to have prospective application. OA was allowed and this ratio was followed by a Coordinate Bench of this Tribunal in OA-553/2003 in **R.K. Sharma & Ors. Vs. Union of India & Ors.** decided on 18.12.2003. Further stating that the decision in **B.N. Sharma's** case (supra) has been affirmed by the High Court of Delhi in CWP-1212/99 decided on 10.1.2002 and hence attained finality and also implemented.

5. On the other hand, learned counsel for respondents referred to the decision of the Apex Court in **V. Markendeya & Others Vs. State of Andhra Pradesh and others** 1989 (3) SLR 37 and inter-alia relied upon a Constitution Bench decision of the Apex Court in **State of Mysore Vs. P. Narsingh Rao** 1968 (1) SCR 407 and also the decision of the Apex Court in **Shyam Babu Verma and others Vs. Union of India & Others** 1994 (1) SLR 827 to contend that differential treatment accorded on the basis of educational qualification has a reasonable nexus with the objects sought to be achieved and is not violative of Article 14 of the Constitution of India. In so far as cut off date of 11.9.89 is concerned, relying upon the decision of Apex Court in **Dr. P.N. Puri & Others Vs. State of UP and others** (1996) 7 SCC 493, it is contended that a cut off date cannot be examined in judicial review being a policy decision of the Government. Learned counsel further stated that apart from educational qualifications, length of service is also a criteria which also makes a case of the applicant which is distinguishable in OA-3316/2001. As such extension of benefit cannot be *granted* to the applicants. In so far as policy decision is concerned, the same is amenable to the judicial review by us if it is found that the policy decision is *mala fide* and violative of Articles 14 and 16 of the Constitution of India, applicants cannot be treated unequally which will amount to creating a class within the class.

6. Technical Assistants who had approached this court being aggrieved with the action of the respondents that the effective date of 1.1.86 has no reasonable nexus with the objects sought to be achieved and these qualifications have been introduced retrospectively through an administrative instruction. Applicants who are Technical Clerks are to be applied the above ratio *mutatis mutandis* and as in their case the qualifications have been introduced retrospectively, we do not deny that such a qualification on the basis of educational requirement is permissible but the Recruitment Rules for want of any specific

provisions incorporated cannot be applied retrospectively to the detriment of the employees ~~modifying~~ ^k altering their service conditions.

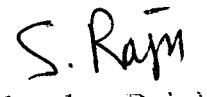
7. In this view of the matter, over-ruling the objections raised by the learned counsel for the respondents, we are of the considered view the decisions in the case of B.N. Sharma as well as in OA-337/2002 are squarely applicable in the case of applicants being a ratio laid down in aforesaid cases.

8. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed and set aside. Respondents are directed to extend the benefits of the decisions (*supra*) to the applicants herein by granting DEO 'B' grade w.e.f. 1.1.86 with all consequential benefits within a period of three months from the date of receipt of a copy of this order.

No costs.


(S.K. Malhotra)

Member (A)


(Shanker Raju)

Member (J)

cc.