

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 842/2004

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. Smt. Urvashi Roy,
Data Entry Operator,
Central Pension Accounting Office,
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Department of Expenditure,
Trikot-II, Bhikaji Cama Place,
New Delhi – 110 066.

R/o H-24, Nanakpura,
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2. Shri Sarjoo Sagar
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R/o B-272/9, Subhash Vihar,
North Ghonda,
Delhi- 53.

3. Shri Rakesh Kumar-II
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Phase-I, Najafgarh,
New Delhi – 43.

4. Shri Upender Nath,
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915/28, Jyoti Park, Gurgaon, Haryana.

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5. Shri Anil Kumar Rai
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Central Pension Accounting Office,
Ministry of Finance,
Department of Expenditure,
Trikoote-II, Bhikaji Cama Place,
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312/G6, Sector-16, Rohini
New Delhi.

6. Shri Atul Kumar Bhatnagar,
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7. Shri Shailesh Bhatnagar,
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Department of Expenditure,
Trikoote-II, Bhikaji Cama Place,
New Delhi – 110 066.

R/o D-153, Sector – 49,
Noida, U.P.

....Applicants

(By Advocate: Shri K. Venkataramani)

-versus-

1. The Chief Controller of Accounts (Pensions),
Ministry of Finance,
Department of Expenditure, CPAO
Trikoote-II, Bhikaji Cama Place,
New Delhi – 110 066.
2. Secretary (DOPT)
Ministry of Personnel PG & Pension,
North Block, New Delhi.
3. Controller General Accounts,
Ministry of Finance,
Department of Expenditure,
7th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

...Respondents

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(By Advocate: None)

ORDER

By Shri Shanker Raju, Member (J):

Applicants, who are DEOs Grade-B, assail respondents' order dated 25.07.2003 whereby their request for re-designation as Accountant after qualifying Junior Accounts Officer (Part-I) Examination at par with LDCs and for promotion to the post of Senior Accountant has been turned down.

2. Brief factual matrix is that on 23.8.1993, as the applicants and others fall within the cadre control of CGA, a decision was taken to merge cadres of DEOs with existing Group 'C' staff of CCAS cadre and as a result DEOs had been allowed to appear in JAO (Civil) examination on completion of three years service as DEOs. Some of the applicants, who were senior to the LDCs and drawing higher pay scales, represented to the authority for promotion as Accountants as was done in the case of LDCs who have been promoted as Accountants after having qualified JAO Part-I examination making available promotional avenues for the post of Senior Accountant. Due to anomaly, respondent no. 3 vide its letter dated 6.4.1995 informed respondent no. 1 that the issue regarding appointment of JAO (Civil) Part-I passed DEOs as Accountant is under consideration.

3. By a letter dated 2.4.1998 it was informed that DEOs posts in the office of CPAO are in the Group - B scale of Rs. 4500-7000 whereas the scale of Accountant is 4000-6000/-. On examination finding DEOs scale higher than LDCs and Accountants, this was not found feasible as the DEOs Grade-B would have been demoted. However, a representation has been preferred on the ground that

in other Government organizations like CBDT, the restructuring has been done and DEOs have been allowed promotional avenues by re-designation. As the representation was not responded to the same led to filing of OA 1004/2003. On disposal of the said OA, in pursuance of the directions, Office Memorandum dated 25.7.2003 was issued by the respondents rejecting the claim of the applicants, which has given rise to the present OA.

4. Learned counsel for the applicant Shri K. Venkataramni vehemently contended that the applicants have been meted out a differential treatment, which is not conducive and is in violation of Articles 14 & 16 of the Constitution of India. In this backdrop, it is stated that only seven DEOs have qualified JAO Part-I examination and they are the only DEOs left in the cadre and as the vacancies are available in Accountant cadre, re-designation will not cause any financial or administrative constraints.

5. Learned counsel states that when LDCs, junior to the applicants and drawing lower pay scale at the time of initial appointment, are promoted after three years of service as Accountant on qualifying JAO Part-I examination, depriving the applicants the same treatment is malafide exercise and is discriminatory as well. As such, even the policy decision taken by the Government can be interfered in a judicial review.

6. Learned counsel states that the cadre of DEOs has no promotional avenues and there is stagnation whereas the LDCs have avenues of promotion and depriving the applicants the same treatment for want of re-designation to promote them first to the post of Accountant and further to Senior Accountant, is not legally tenable.

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7. It is further stated that as per the doctrine of legitimate expectations and promissory estoppel, once the applicants have been allowed to appear in JAO Part-I examination, denying them re-designation is not in consonance with law. Accordingly, it is in this conspectus, stated that once the Accountants have been placed in the same pay scales, the ground to deny re-designation cease to exist.

8. Learned counsel relies upon the decision of the Apex Court in **O.Z. Hussain vs. Union of India**, AIR 1990 SC 311, to contend that when there is a disparity in the pay scales of two Wings of the Department, the same is discriminatory. In this conspectus, it is stated that the applicants are under the control of CGA. Giving the benefit of re-designation in other department is not a role apt to the Government, which is a model employer. Learned counsel further relies upon a Constitutional Bench decision of the Apex Court in **Managing Director, ECIL vs. B. Karunakar**, 1993 (4) SCC 727, to contend that in a democratic society the process of administration, legislation and adjudication are more clearly distinct than in a totalitarian society. The court can adjust the rights and law in accordance with changing tenets of public policy.

9. In the rejoinder, applicants have vehemently stressed upon re-designation by contending that applicants had been performing the same functions. Equal pay for equal work has been resorted to.

10. Since none appeared on behalf of the respondents, they have been set exparte and we proposed to dispose of the OA by resorting to Rule 16 of the CAT (Procedures) Rules, 1987. However, the contentions raised in the rebuttal in counter reply are considered.

11. In reply, the respondents state that out of 23 DEOs, who had earlier filed OA, only seven DEOs has come to this Tribunal. As such, a fresh decision cannot be taken in isolation for the present applicants in this OA. It is further stated that merger of two cadres is again a policy matter falling within the domain of Government and the applicants have no invidious right.

12. It is further stated that DEOs and Accountants belong to different classes their recruitment rules and sources of recruitment are different. Respondents have decided to keep the two cadres separate. However, DEOs have been permitted to appear in JAO (Civil) Part-I examination, this promotion avenue, according to them, is in addition to normal avenues of promotion within their cadre of DEOs but they cannot be treated at par with LDCs who have normal channel of promotion as Accountant which DEOs don't have. It is further stated that a Scheme has also been introduced in DEOs cadre and further restructuring of their cadre is under consideration of the Government. It is denied that no right has been created in favour of the applicants, which is because the merger had taken place in Central Board of Excise and Customs. Respondents have further contended that the DEOs do not directly jump to the post of Senior Accountant but they are firstly promoted as Accountant and then as Senior Accountant. Besides, most of the Accountants come as direct recruits. The feeder grade for promotion as Senior Accountant is Accountant and LDC.

13. We have carefully considered the rival contentions of the parties and have gone the material available on record.

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14. As regards policy decision of the Govt., the following observations have been made by the Apex court in **P.U. Joshi & Ors. vs. The Accountant General, Ahmedabad & Ors.**, 2003(2)

ATJ SC 624:

“We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and with in the exclusive discretion and jurisdiction of the State subject of course, to the limitations or restriction envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

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15. Apex Court in **S. Murugan and others vs. Union of India and Anr.**, 2002 (10) SCC 96 held that constitution and formation of a cadre is the prerogative of the employer and it is for the employer to decide which unit of service would constitute a cadre. However, with the changing scenario and applying the pragmatic approach even a policy decision of the Government is amenable to judicial review if it is found that such a decision is a malafide exercise of powers and is not in accordance with law as well and violative of Article 14 & 16 of the Constitution of India.

16. It is on the promise extended and a decision taken that DEOs Grade-B had been allowed to appear in JAO Part-I examination and having qualified the same, the Government have changed their stand to re-designate them as Accountant or provide them an opportunity for promotion as Accountant and Senior Accountant though in other departments like CBDT cadres have been merged.

17. It is also not in dispute that the cadre of DEOs Grade-B stagnates and there are no promotional avenues for the applicants. Earlier the request for re-designation was turned down because Accountants were in the lower pay scales but with equation of pay scales, the aforesaid ground cease to exist.

18. We have also found from the perusal of the functional requirements including discharge of duties by the DEOs that the applicants are performing the functions as of Accountants.

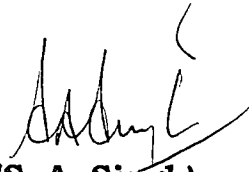
19. Equal pay for equal work is a doctrine which as a *sine qua non* of parity which requires at par functions and other factors before two classes are treated identical.

20. It is also trite law that one cannot be discriminated if he is similarly situate and forms the same class.

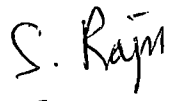
21. As a model employer, the Government is not only expected to meet out similar treatment to identically situated employees and if under the CGA, CBDT had given effect to the merger then not extending the same benefit to the applicants without any justification is not in accordance with law.

22. Apex Court in Union of India vs. K.S. Okkula Kannadigera, 2002 (10) SCC 226, has ruled that when the policy decision is not found in accordance with law the only direction in judicial review for reconsideration of the grievance of the applicants.

23. In the result, having regard to the above decision, we dispose of this OA with a direction to the respondents to reconsider the grievance/request of the applicants in the light of the contentions raised in their OA and rejoinder and pass a reasoned, detailed and speaking order within a period of three months from the date of receipt of a certified copy of this order. No costs.


(S. A. Singh)
Member (A)

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(Shanker Raju)
Member (J)