

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 174 of 1993
TxXXX No.

DATE OF DECISION 13-8-1993

Shri Joshi Akkeshkumar J & Ors. Petitioner

Shri P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri R.P. Bhat Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel Vice-Chairman

The Hon'ble Mr. V. Radhakrishnan Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

NO.

1. Shri Joshi Alkeshkumar J,
F-2, Alap Flats,
Opp. Anjali Theatre,
Vasna Road, Ahmedabad - 7

2. Association of Railway & Post Employees
Through its Treasurer
Shri R.C. Pathak,
F-2, Alap Flats,
Opp. Anjali Theatre,
Vasna Road, Ahmedaba ,7. Applicants

Shri P.H. Pathak Advocate

Versus

1. Union of India through
The Secretary,
Central Board of Direct Taxes,
Government of India,
New Delhi - 1.

2. Director of Income-Tax (Systems)
AIWAN-E-GHALIB,
Mata Sundri Lane,
New Delhi - 110 002.

3. Cheif Commissioner (Admn.),
& CIT Gujarat -I,
Income-Tax, Navrangpura,
Ahmedabad - 380 009 Respondents

Shri R.P. Bhat Advocate

O R A L O R D E R

IN

O.A. No.174/93

Per Hon'ble Shri N.N. Patel

Vice-Chairman

Reply filed by Shri Bhat on behalf of the respondents be taken on record. The respondents are directed to indicate latest by 27-8-93 as to when they are going to finalise the question of framing Revised Recruitment Rules for the post of Data Entry Operator and to take other

necessary steps envisaged by office memorandum issued by the Government of India Ministry of Finance dated 28-9-89. The memorandum is of 1989 and it is rather regrettable that the question is not finalised even after a lapse of 4 years. We, therefore, hope that the matter ^{will be} is finalised at the earliest.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice-Chairman.

DATE	OFFICE REPORT	ORDERS
27-8-93		<p>At the request of Mr. Bhatt adjourned to 3-9-93 to indicate as to what steps are taken in the matter after our direction dated 13-8-93.</p> <p><i>VRK</i> 7</p> <p>(V. Radhakrishnan) (N.B. Patel) Member (A) Vice Chairman.</p> <p>*AS</p>
3-9-93		<p>Mr. Bhatt is not present. The matter is adjourned to 22-9-93 on which date the question of grant of interim relief will be seriously considered. we are not informed as to what steps are taken pursuant to our directions dated 13-8-93.</p> <p>Call on 22-9-93.</p> <p><i>VRK</i> 7</p> <p>(V. Radhakrishnan) (N.B. Patel) Member (A) Vice Chairman</p> <p>*AS.</p>

DATE	ISSUE REPORT	ORDER
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22/9/93	<p>In compliance with our order dated 13/8/93, Mr.Bhatt produces a Telex message received from the Central Board of Direct Taxes by the Chief Commissioner, Income Tax. The same may be taken on record.</p> <p>Adjourned to 21.10.1993.</p>	
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<p> (V. Radhakrishnan) Member (A)</p> <p> (N.B. Patel) Vice Chairman</p>	
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aab

OA 174/93

Date	Office Report	Order
21-10-93		<p>Mr. Pathak seeks interim relief in favour of the employees mentioned at Sr. 1,2 & 3 of Annexure A on the ground that they are recruited pursuant to the applications in response to the advertisement No.24/87 (Copy produced by Mr. Pathak may be taken on record as Annexure A-6) on the ground that these three employees are Graduates. He submits that in the reply itself higher scale of Rs. 1350 - 2200 is proposed for Graduate Recruits to the post of Data Entry Operators and, therefore, these three employees should be granted higher scale 1350-2200 by way of interim relief. The reply clearly shows that the proposed higher scale for Graduate Recruits to the post of Data Entry Operators is still in the stage of proposal pending before the Ministry. Furthermore in the reply it is stated that the higher scale as proposed is proposed to be applicable to those direct Graduate Recruits who would pass the examination prescribed for recruitment to the post.</p> <p>In these facts and circumstances, we are not inclined to grant interim relief as prayed for by Mr. Pathak in respect of Graduate Recruits mentioned in Annexure A. Furthermore the question is only of monetary relief and, bearing that fact also in view, we are not inclined to grant interim relief as claimed by Mr. Pathak before we decide the controversy whether the applicants are</p>

Date	Office Report	Order
		entitled to parity on the ground that other similarly situated in other Department are getting the scale of 1350 - 2200.
		Mr. Bhatt seeks sometime stating that he has already written to the Department to expedite the process & finalise & promulgating the Rules. Adjourned to 22-11-1993 to await the response of the Department to the suggestion of Mr. Bhatt
		<i>12</i>
22/11/93		(V. Radhakrishnan) Member (A) (N.B. Patel) Vice Chairman.
10.1.1994.		*AS.
		Mr. P.H. Pathak is present. Mr. Bhatt is not present. For want of time, adjourned to 10.1.1994.
		<i>12</i>
		(V. Radhakrishnan) Member (A) (N.B. Patel) Vice Chairman
	a.a.b.	
		As Mr. P.H. Pathak being sick the matter is adjourned to 14.02.1994.
		<i>12</i>
		(K. Ramamoorthy) Member (A) (N.B. Patel) Vice Chairman
		AIT

OA 174193

Date	Office Report	Order
16/2/94	o. Benachb. revo. phd (lot. 1.8.) narrated by	other. As the Learned Member of the Bench is not available, the matter is adjourned to 17-2-94..... K. RAMAMOORTHY MEMBER [A]
17-2-94		others As the Learned Member of the Bench is not available, the matter is adjourned to 17-3-94..... K. RAMAMOORTHY MEMBER [A]
17-3-94		For want of time the matter is adjourned to 16-6-94. K. RAMAMOORTHY MEMBER [A]
16.6.1994.		At the request of Mr. P. H. Pathak, adjourned to 10.8.1994. (K. Ramamoorthy) Member (A)

(N. B. Patel)
Vice Chairman

(N. B. Patel)
Vice Chairman

Date	Office Report	Order
10.8.94		<p>Time being over, adjourned to 14.10.1994.</p> <p><i>BR</i></p> <p>(V. Radhakrishnan) Member (A)</p>
		<p><i>NP</i></p> <p>(N.B. Patel) Vice Chairman</p>
		<p>aab</p>
14-10-94		<p>Sick/Leave note by applicants/Respondents' advocate. Adjourned to 1-12-94.</p> <p><i>BR</i></p> <p>(V. Radhakrishnan) Member (A)</p>
		<p><i>NP</i></p> <p>(N.B. Patel) Vice Chairman</p>
1.12.94		<p>Adjourned to 27.1.1995 at the joint request of the learned advocates, as new Rules are stated to have been framed having a bearing on the question involved.</p> <p><i>BR</i></p>
		<p>(K. Ramamoorthy) Member (A)</p>
		<p><i>NP</i></p> <p>(N.B. Patel) Vice Chairman</p>
		<p>p/npm</p>

Date	Office Report	ORDER
27-1-95		<p>Reply tendered by Mr. Bhatt taken on record. Adjourned to 31.1.95 as Mr. Pathak is not present.</p> <p>R</p> <p>(K. Ramamoorthy) Member (A)</p>
31.1.95		<p>(N.B. Patel) Vice Chairman</p> <p>vtc.</p> <p>Mr. Pathak seeks adjournment. Having heard him and Mr. Bhatt, we find that there is now no question of according any priority to this case as Rules are framed for fixing salary for the post of Data Entry Operator. The only dispute now might be as to whether the Rules have retrospective or prospective effect. The matter may, therefore, be listed for final hearing in due course.</p> <p>R</p> <p>(K. Ramamoorthy) Member (A)</p>
29/7/99	<p>placed from DCPH. on 29-7-99 issued on 25-8-99.</p> <p>RPAD to Res. 1 & 3 are received Notice for Res. 2 is returned</p> <p><u>THURSDAY</u> 27-7-99</p> <p>Hon VC and Hon MCJ are on official tour. Adj. to 1st/99 24 Desch CO COI</p>	<p>(N.B. Patel) Vice Chairman</p> <p>vtc.</p>

Date	Office Report	O R D E R
15.9.99		Adjourned to 20.10.1999.
		<p style="text-align: center;">(A.S.Sanghavi) Member (J)</p> <p style="text-align: right;">(V.Ramakrishnan) Vice Chairman</p>
20.10.99		<p style="text-align: center;">vtc.</p> <p>Mr. Pathak present. Mrs. Bhatt was present earlier but not now. Adjourned to 01.12.99.</p>
		<p style="text-align: center;"><u>PN</u></p> <p style="text-align: center;">(P.C. Kannan) Member (J)</p> <p style="text-align: right;">(V. Ramakrishnan) Vice Chairman</p>
1.12.99		<p style="text-align: center;">mb</p> <p>Mr. Pathak says that there is some decision of the Lucknow Bench regarding this issue. There may be other decisions particularly in Bengalore Bench regarding the issue. Adjourned to 12.1.2000.</p>
		<p style="text-align: center;"><u>PN</u></p> <p style="text-align: center;">(A.S.Sanghavi) Member (J)</p> <p style="text-align: right;">(V.Ramakrishnan) Vice Chairman</p>
12.01.2000		<p style="text-align: center;">vtc.</p> <p>Mr. Pathak had prayed for an adjournment as he is busy in the High Court.</p>
		<p style="text-align: center;">Adjourned to 02.02.2000.</p>
		<p style="text-align: center;"><u>PN</u></p> <p style="text-align: center;">(P.C. Kannan) Member (J)</p> <p style="text-align: right;">(V. Ramakrishnan) Vice Chairman</p>
		<p style="text-align: center;">mb</p>

DATE

कार्यालय टिप्पणी
OFFICE REPORTआदेश
ORDER

2-2-2000

Reply file by Railway
Counsel is separated
and it will be put up
in proper file after
obtaining correct no. of ref
from Railway Counsel

AS/2/2000

Time is prayed for on behalf of Mr. R. P. Bhatt. We find that reply statement filed by the then railway counsel in the case of Asharam Mohandas Vs. Union of India & ors. is wrongly enclosed with this O.A. presumably because the counsel had given the O.A. no. 194/93. Obviously this number is wrong. Registry to locate the relevant file and link the reply statement there. Adjourned to 1-3-2000.

AS
(A.S. Sanghavi)
Member (J)

VR
(V.Ramakrishnan)
Vice Chairman

ss

1.3.2000

Mr. Pathak has filed a leave note. Adjourned to 22.3.2000.

AS
(A.S. Sanghavi)
Member (J)

VR
(V.Ramakrishnan)
Vice Chairman

Pkn

तारीख
DATEकार्यालय टिप्पणी
OFFICE REPORTआदेश
ORDER

22.03.2000

Mr. Pathak has filed a leave
as ~~also~~ also Mrs. Bhatt. This is a
1993 matter, call on 13.04.2000,

Re(P.C. Kannan)
Member (J)(V.Ramakrishnan)
Vice Chairman

mb

It is stated that an identical issue
has been considered by the Bangalore
Bench of this Tribunal. Mrs. Bhatt prays
for time to produce a copy of the Judg-
ment. Divusion Bench matter, adjourned
to 11.05.2000.

(V.Ramakrishnan)
Vice Chairman

mb

Adjourned to 06.07.2000.

Ar(A.S.SANGHAVI)
MEMBER ((J))*M*(V.RAMAKRISHNAN)
VICE CHAIRMAN

MB

There is a leave note from

Mrs. Bhatt. Mr. Pathak present.

Adjourned to 17.7.2000.

M(V.Ramakrish-
Vice Chair

vtc.

DA

कार्यालय टिप्पणी
OFFICE REPORT

17.7.2000

Mr. Pathak present. Mrs. Bhat present. Adjourned to 4.8.2000.

PN
(P.C.Kannan)
Member (J)

VM
(V.Ramakrishnan)
Vice Chairman

vtc.

4.8.2000

Mr. Pathak prays for time. Adjourned to 17.8.2000.

PN
(P.C.Kannan)
Member (J)

VM
(V.Ramakrishnan)
Vice Chairman

ab

17.8.2000

At the request of Mr. Pathak, adjourned to 11.9.2000.

PN
(P.C.Kannan)
Member (J)

VM
(V.Ramakrishnan)
Vice Chairman

ab

DATE

कार्यालय टिप्पणी
OFFICE REPORTआदेश
ORDER

11.9.2000

Mr. Pathak present. Mrs. Bhatt is not present today. To give one more chance, adjourned to 22.9.2000.

PN
(P.C. Kannan)
Member (J)

RV
(V. Ramakrishnan)
Vice Chairman

ab.

None for the parties. Adjourned to 28.9.2000.

AS
(A.S. Sanghavi)
Member (J)

RV
(V. Ramakrishnan)
Vice Chairman

vtc.

Mrs. Bhatt says that some amendment have been made to the Recruitment Rules and she would be filing an additional statement to bring them on record.

Adjourned to 19.10.2000.

PN
(P.C. Kannan)
Member (J)

RV
(V. Ramakrishnan)
Vice Chairman

vtc.

DA 174 1883

82 v 1350 - 200

1987

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Amst. Oct. 20. 1918

↓ also for or also with

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Jan 7. 1973

Page 42

200

for
for 31. 1200.00
980 and for

for Kinder-Mkt - 200
Milk 1300. 200.

No ~~down~~ frost

Two polar bear skins deposited
for 16 — Jan 19th

Am 16

11th May 1988
Punjab

DATE

OFFICE REPORT

O R D E R

4.12.2000

This is a 1993 matter and has to be disposed of without further delay. At the request of both counsel, adjourned to 14.12.2000.

AS
(A.S. Sanghavi)

Member (J)

VR
(V.Ramakrishnana)

Vice Chairman

MV

14.12.2000

Mr. Pathak is not present. Adjourned to 2.1.2001.

PK
(P.C. Kannan)

Member (J)

VR
(V.Ramakrishnan)

Vice Chairman

MV

2-1-01

Heard both the sides. Reserve
for order

PK
(P.C. Kannan)
M(J)

VR
(V.Ramakrishnan)
VC

perfectly submitted

This matter was reserved for order but due to said absence of Hon. Mr. P.C. Kannan M(J) judgement is not pronounced. This matter may be fix for hearing on 22/12/2001.

Noted
Noted
P.U.P
P.H.K.L.L
Adm
(5/12/01)
Hon. Mr.

22/12/2001

Pathak
C.O.I

102
M/M/2001

281

DATE : OFFICE REPORT

O R D E R

19.10.2000

At the request of Mrs.Bhatt, adjourned to 14.11.00

(A.S.Sanghavi)
Member (J)(V.Ramakrishnan)
Vice Chairman

vtc.

Mrs. Bhatt is not present to day.
Adjourned to 21-11-2000.(P.C.Kannan)
Member (J)(V. Ramakrishnan)
V.C.

11.2000

Ms. Bhatt not present. Adjourned to
28.11.2000.(A. S. Sanghavi)
Member (J)(V. Ramakrishnan)
Vice Chairman

pmr

11/2000

Seen Resolution of the Bar Association
that as a mark of respect to the memory
of late Shri J.M.Thakor, Advocate
General, the lawyers are abstaining from
work today. Adjourned to 4.12.2000.(P.C.Kannan)
Member (J)(V.Ramakrishnan)
Vice Chairman

दिनांक Date	कार्यालय टिप्पणी Office Report	आदेश Order
22.2.2001		Heard both sides. Reserved for orders. (A.S.Sanghavi) Member (J)
28-2-2001	Judgement pronounced to day in open court <i>R. S. Patel</i> C.J.	(V.Ramakrishnan) Vice Chairman vtc.

दिनांक
Dateकार्यालय टिप्पणी
Office Reportआदेश
Order

22.2.2001

Heard both sides. Reserved for orders.

(A.S.Sanghavi)
Member (J)(V.Ramakrishnan)
Vice Chairman

vtc.

28-2-2001

Judgement
pronounced to day
in open court.*B. D. Patel
C.J.*

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. 174/93

Date of Decision- 28 - 2 - 2001

<u>Joshi Alkeshkumar J.</u>	Petitioner(s)
<u>& another</u>	
<u>Mr. P.H.Pathak</u>	Advocate for the Petitioner

Versus

<u>Union of India & Ors</u>	Respondents (s)
<u>Mr.M.R.Bhatt & Co.</u>	Advocate for the Respondents
- Mrs. Bhatt	

CORAM:

1. Hon'ble Mr. V.Ramakrishnan, Vice Chairman.
2. Hon'ble Mr. A.S.Sanghavi, Judicial Member.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

1. Joshi Alkeshkumar J.
2. Association of Railway &
Post Employees
Through its Treasurer, R.C.Pathak
having office at X F-2 Alap Flats
Opp: Anjali Theatre
Vasna Road, Ahmedabad-7. Applicants

Advocate: Mr. P.H. Pathak

Versus

1. Union of India
Notice to be served through
Secretary
Central Board of Direct Taxes
Government of India
New Delhi- 110 001.
2. Director of Income Tax (Systems)
AIWAN-E-GHALIB
Mata Sundri Lane
New Delhi-110 002.
3. Chief Commissioner (Admn)
& CIT Gujarat- I
Income Tax Navrangpura-
Ahmedabad- 9.

Respondents

Advocate: M. R. Bhatt & Company-
Mrs. Bhatt

JUDGEMENT

IN Dated 28-2-2001

O.A./174/93

Per Hon'ble Mr. V. Ramakrishnan; Vice Chairman:

The applicants whose names are given in Annexure A have been recruited as Data Entry Operators by the Income-tax Department in various circles of Gujarat and they have approached the Tribunal seeking a direction to

the respondents that as they are graduates, they should be given the higher pay scale of Rs.1350-2200 instead of the scale of Rs.1200-2040 which was given to them on their appointment.

2. We have heard Mr. Pathak for the applicants and Mrs. Bhatt for the respondents.

3. As a part of computerisation in the Income-tax Department, Government had sanctioned a large number of posts of Data Entry Operators in the pay scale of Rs.1200-2040. The Department had framed Recruitment Rules (Income-tax Deptt.- Attached Subordinate Offices) Data Entry Operators & Recruitment Rules 1987. As per these rules, posts of Data Entry Operators (DEO) were to be filled up by direct recruitment and the minimum educational requirement was Graduate of recognised University with knowledge of Data Entry work. The rules also provided that they carry the scale of Rs.1200-2040. Subsequently in July 1988 the essential qualification was reduced from that of Graduates to Matriculation. It is stated that the present applicants applied in response to the advertisement No. 30-A/88 (Annexure A-1) which fixed the last date of receipt of applications as 8th August 1988. This

advertisement made it clear that the minimum educational qualification is Matriculation with Training in Data Entry Operator and the post carried the pay scale of Rs.1200-2040. The applicants underwent the selection process and were given appointment and on their appointment, their pay was fixed at the minimum of the scale of Rs.1200-2040.

The IVth Central Pay Commission which had submitted its report in 1986 had recommended that Government should examine and suggest reorganisation of existing electronics data processing posts and prescribe uniform pay scales and designations. The Government considered the recommendations through a committee and the Ministry of Finance issued an O.M. dated 28.9.1989 prescribing five grades for Data Entry Operators starting from Grade A to Grade E. Grade, C D & E were entirely promotional grades. Data Entry Operator (DEO) Grade-A was the entry grade with higher secondary education as minimum qualification and carried a scale of Rs.1150-1500. DEO Grade-B was also entry grade for graduates with knowledge of Data Entry work

PM

and also promotional grade for Data Entry Operator Grade-A. This O.M. (copy is at Annexure A-3) advised the various departments to conform to this structure. Para 2 of this O.M. reads as follows:-

" 2. All Ministries/Departments having Electronic Data Processing Posts under their administrative control will review the designation, pay scales and recruitment qualification of their posts and revise the same in consultation with their Financial Advisers to the extent necessary as per pay structure indicated in para 1 above. Where it is found necessary to revise the pay scales of existing posts, notification will be issued by concerned Ministry/Department and copy of notification endorsed to Implementation Cell, Department of Expenditure. The revised pay scales will be operative from the date of issue of notification by concerned Ministry/Department."

Pursuant to the O.M. of Ministry of Finance dated 28.9.89, the Revenue Department revised the Recruitment Rules by a Notification dated 11th May 1994 where they also prescribed DEO Grade-A as Entry Grade for those who possess 8th Standard educational qualification with knowledge of data entry work with the scale of Rs.1150-1500. However, the persons who were recruited on the basis of earlier advertisement which prescribed the minimum qualification

as Matriculation and who were given the scale of Rs.1200-2040 were permitted to draw pay in that scale as personal to them. The recruitment rules also provides for DEO Grade-B where the minimum qualification was a Degree of a Recognised University with knowledge of Data Entry Work. This grade was to be filled up 75% by promotion from Grade-A (where Matriculates could also have joined) and 25% by direct recruitment and this carries a higher scale of Rs.1350-2200.

The department decided to extend the scale of Rs.1350-2200 to those who were recruited prior to July 1988 when the minimum ^{graduation} educational qualification was ^{Grade} with knowledge of data entry work in lieu of the pay scale of Rs.1200-2040 as DEO Grade-B. However, the circular dated 11th May 1994 (copy at Annexure B alongwith further reply of the respondents of January 1995) specifically provides in para 3 as follows:-

"3. It may please be ensured that no Data Entry Operator, who was recruited from examination/test for which Matriculation was the prescribed minimum qualification, (after amendment of the Rules in July, 1988) is granted the higher scale of Rs.1350-2200, irrespective of whether he might be possessing graduate or higher qualifications at the time of appoint-

Mr

ment. If any such person has been erroneously granted pay scale of Rs.1350-2200 on the basis that he was Graduate at the time of recruitment though the prescribed minimum qualification for the test at which he appeared was Matriculate, this mistake should be corrected immediately and such persons may be brought in the scale of Rs.1200-2040."

The present applicants contend that as they are graduates they should be given the higher scale of Rs.1350-2200. However, they have not specifically challenged the provisions of para 3 of the circular referred to above.

4. Mr. P.H.Pathak for the applicant states that it is not in dispute that applicants are graduates. The Government have taken a decision to allow the higher scale of Rs.1350-2200 to those direct recruits who are Graduates. While the department has extended that scale to those graduates who were recruited earlier the same facility ought to have been given to the present applicants. Mr. P.H.Pathak also submits that ~~what~~ is required is proficiency and speed for making key depressions and the applicants are doing the same work as others who had been given the higher scale of Rs.1350-2200. He also contends that in some other departments, namely, the Census Department the Data Entry Operators have been given the higher scale of Rs.1350-2200 and denial of the same to the present

applicants while extending it to some others doing the same type of work would be discriminatory and is in violation of Article 14 of the Constitution. He also relies on the decision of the Allahabad Bench of this Tribunal dated 10.12.92 while disposing of OA/389/91. He has made available a typed copy of judgement which is taken on record. He says that the applicants are therefore entitled to the higher pay scale and denial of the same would be arbitrary and would amount to discrimination.

5. Mrs. Bhatt for the respondents opposes the O.A. She submits that the case of the applicants cannot be equated with those who had been recruited when the minimum educational qualification was graduation. The Government after careful consideration had decided to introduce two separate entry scales one for those who are Matriculates or 8th Standard passed and another for those where the minimum qualification required is Graduation. The applicants had responded to the advertisement where the minimum qualification was clearly laid down as Matriculation. The pay scales also were brought out in the advertisement

and the same was given to them on their appointment. The pay scale of Rs.1200-2040 ^{Rs.} is higher than that scale prescribed in the Recruitment Rules for DEO Grade- A but as the applicants had been offered the higher scale of Rs.1200-2040 earlier, they have been allowed to retain the same as personal to them. They cannot compare their position with those who are recruited prior to the amendment to the Recruitment Rules when the minimum educational qualification was graduation. They had competed with non-graduates and who might have been absorbed, as D.E.Cs. As the entry grade for non-graduates is not Rs.1350-2200, the applicants are not entitled to the same. Mrs. Bhatt also does not agree that other Government departments have all given the higher scale of Rs.1350-2200 to all graduates including those who had completed at the time when the minimum educational qualification was Matriculation. The applicants have not brought out specific instances which are identical to the present O.A. She also

argues that the decision of the Allahabad Bench will not assist the present applicants.

6. We have considered the contentions of both sides.

7. The main ground urged in support of the O.A. is that the refusal to give the scale of Rs.1350-2200 amounts to discrimination. It is stated that the DEOs who are recruited earlier in the preceding year when the minimum qualification was graduation with the knowledge of data entry work were given the higher scale and they do the same work as the present applicants who are also graduates. It is also contended that what is essential is the speed in making key depressions and not the academic educational qualification. It is stated that the present applicants continued to do the same work as those who ^{were} ^{VM} recruited in the preceding year. It is also submitted that in some other departments of the Govt. such as Census Organisation, all Data Entry Operators have been given the scale of Rs.1350-2200. There is also reliance on the decision dated 10.12.92 of the Allahabad Bench in the case of Shivanand Pathak & Ors. vs. Union of India in OA/389 of 1991..

8. The contention that the action of the respondents is discriminatory does not have much substance. The present applicants had appeared in response to the advertisement which made it clear that the minimum educational qualification was Matriculation with knowledge of Data Entry work and they were informed that the pay scale was Rs.1200-2000. The last date for receipt of application was 8.8.1988 and the rules were amended in July 1988 reducing the educational qualification to that of Matriculation. It is very likely that a number of Matriculates would have applied in response to advertisement and the applicants would have competed alongwith them and got themselves selected. Even though they are graduates they cannot compare themselves with the candidates of the preceding recruitment when the minimum qualification was laid down as graduation with knowledge of data entry work. It is open to the department to prescribe the qualification and to amend the same when required. It is also open to Government to allow a better pay scale for posts where ^{essential} the/minimum qualification is higher and such an approach is not discriminatory and does not offend Article 14. The present applicants

cannot therefore compare themselves with those who had applied when the minimum educational requirement was graduation and not Matriculation. It has been argued that what was important was the speed in making key depressions and not the academic qualification and that it would be discriminatory to prescribe different pay scales for different grades. So far as this aspect is concerned we note that pursuant to the recommendations of the Fourth Central Pay Commission, an expert body had gone into this question and suggested rationalisation of pay scales of Electronics data processing posts. It had prescribed two different entry grades namely Grade-A in the scale of Rs.1150-1500 where the minimum qualification was Higher Secondary with knowledge of data entry work and also Grade-B to be filled up partly by promotion and partly by direct recruitment. For DEO Grade-B the minimum qualification was Graduation with knowledge of data entry work and it was allotted a higher pay scale of Rs.1350-2200. The applicants may be graduates but they had competed at a time when the minimum qualification laid down was Matriculation and they cannot claim the higher scale of DEO Grade-B. Whatever may be the assessment of the applicants with

regard to the nature of work, the fact remains that an expert body had gone into this question and the pay scales in this category were rationalised in respect of the various departments of the Central Government and the same was communicated by the Ministry of Finance O.M. dated 28.9.1989. It is not for the Tribunal or for the applicants to substitute their opinion for that of the Government in this regard. When the applicants had competed with Matriculates they should be taken to have been absorbed in the lower grade of DEO Grade-A and not in that of DEO Grade-B where the minimum qualification was fixed as Graduates. The fact that the applicants are graduates would not alter that position. To concede to their demand that they should be given higher pay scale of Rs.1350-2200 solely on the ground that they are graduates would result in a situation where differential treatment would be meted out to persons appointed on the basis of the same recruitment namely those who had responded to the advertisement No. 30-A-88. To give the present applicants the higher pay scale while denying the same to those who had succeeded and had been appointed on the basis of the same recruitment but who are not graduates would be grossly discrimina-

tory. The present applicants were informed clearly that they were appointed in the scale of Rs.1200-2040 and even after restructuring of the cadre by prescribing the scale of Rs.1150-1500 to DEO Grade-A they have been allowed to retain their pay in the higher pay scale of Rs.1200-2040.

It has also been stated that some other departments of the Government of India have allotted higher pay scales to DEO. We have not been informed as to the minimum educational qualification prescribed for such cases and the nature of work say in Census Department vis-a-vis Income-tax Department. We also note that in the context of the O.M. dated 28.9.1989 there is no basis for a presumption that all the DEOs have been given higher pay scale by all other departments except Income-tax Deptt. In the absence of any material to substantiate this contention, we do not accept the same.

9. We also hold that the judgement relied upon by Mr. Pathak is not of much ~~assistance~~ assistance to the applicants. From a copy of the judgement of the Allahabad Bench in the case of Shivanand Pathak and Ors vs. Union of India & Ors. in OA/389/1991 decided on

10.12.1992, we find that the Tribunal had noted that the claims of the petitioners therein for higher pay scale of Rs.1350-2200 was allowed by the department itself but only w.e.f. 11.9.89. The Tribunal held that there was no justification for fixing such cut-off date and have directed them to grant that scale w.e.f. from which 1.1.86 which is the date \angle the Fourth Pay Commission's recommendations were implemented. In the present case, the issue involved is not the cut-off date but admissibility of the higher scale itself and as such the decision of the Allahabad Bench of this Tribunal is clearly distinguishable.

10. In the light of the foregoing discussion, we hold that there is no merit in the O.A. and we dismiss the same with no orders as to costs.

Aman
(A.S.Sanghavi)
Member (J)

V.Ramakrishnan
28/1/93
(V.Ramakrishnan)
Vice Chairman

12
Sr. No. 4/R-4

Dated: 18/12/03

Submitted : Hon'ble Vice Chairman &

Hon'ble Mr. A.S.Sanghavi, Member (J)

~~Hon'ble Mr. G.C. Srivastava, Member (A)~~

Certified Copy of order dated 14/10/03 in CA/
Spt. C.A. No. 9586 of 01 passed by the
Supreme Court/High Court against the Judgment/Order
Order passed by this Tribunal in CA/174/93 is placed
for perused please.

Petition withdrawn

26/12/03
07/1

Received 07/12/03
S.P. (J)

DR
D.R. (J) *7/1*
Registers

Hon'ble Vice Chairman

Received 07/12/03

Hon'ble Mr. A.S.Sanghavi, Member (J)

X/2011

~~Hon'ble Mr. G.C. Srivastava, Member (A)~~

Hon'ble Mr. Shanker Prasad, Member (A)

URGENT

Decree Despatch No.

Date

39718

19/10/01

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 9586 of 2001
(Under Article(s) 226 of the Constitution of India)

1. DIGANT INDRAVADAN DAVE & ORS.

Petitioners

VS

1. UNION OF INDIA & ORS.

Respondents

TO

1. UNION OF INDIA

2. DIRECTOR OF INCOME TAX

(SYSTEM)

THRO' SECRETARY, CENTRAL BOARD
OF DIRECT TAXES, GOVT. OF
INDIA, NEW DELHI.

AIWAN - E- GHALIB,
MATA SUNDRI LANE,
NEW DELHI - 110 002.

3. CHIEF COMMISSIONER (ADMN)
INCOME TAX, NAVRANGPURA,
AHMEDABAD.

& CIT GUJARAT-I

4. THE CENTRAL ADMINISTRATIVE
TRIBUNAL, STADIEM ROAD,
AHMEDABAD. (REF.O.A.NO.174/1993)



Upon reading the petition of the above named Petitioners presented to this High Court of Gujarat at Ahmedabad on 26/09/2001 praying to grant the prayers and etc...

And whereas upon the Court ordered 'Rule' to issue on 17/10/2001

And Whereas Upon hearing

MR SHALIN N MEHTA for the Petitioner no. 1-33

MR MANISH R BHATT for the Respondent no. 1-3

MR BB NAIK for the Respondent no. 1,2,3

Court passed the following order :-

CORAM : R.K.ABICHANDANI AND K.M.MEHTA,JJ.

DATE : 14.10.2003

The petitioners have filed this petition.....
.....Liberty to move in case of any difficulty.

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

Registry
11/12/03

11/12/03
On 01/10/03
DPO

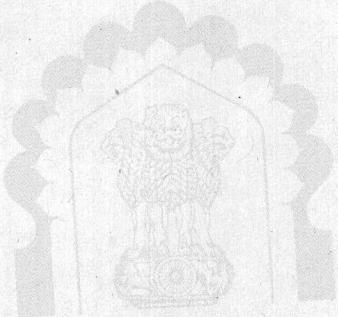
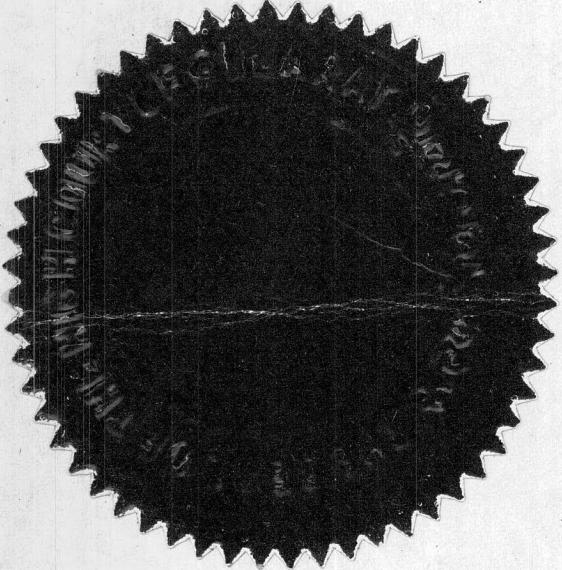
Witness BHAWANI SINGH, Esquire Chiet Justice at Ahmedabad
atoresaid this 14th day of Oct, 2003.

By the Court

*S
21/12/2003*

✓ For Deputy Registrar
This . day of Nov 2003

Note : This writ should be returned
duly certitied within 2 weeks.
(610) 031120



सत्यमव जयते

THE HIGH COURT
OF GUJARAT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9586 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI *sd/v*
 and
 HON'BLE MR.JUSTICE K.M.MEHTA *sd/v*

=====

1. Whether Reporters of Local Papers may be allowed
 to see the judgements? *yes*

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy
 of the judgement?

4. Whether this case involves a substantial question
 of law as to the interpretation of the Constitution
 of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned
 Magistrate/Magistrates.Judge/Judges,Tribunal/Tribunals?

NO

DIGANT INDRAVADAN DAVE
 Versus
 UNION OF INDIA

Appearance:

1. Special Civil Application No. 9586 of 2001
 MR SHALIN N MEHTA for Petitioner No. 1-33
 MS MONA M. BHATT for MANISH R BHATT for Respondent No. 1-3
 MR BB NAIK for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
 and
 HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 14/10/2003
 ORAL JUDGEMENT
 (Per : HON'BLE MR.JUSTICE K.M.MEHTA)

1. The petitioners have filed this petition under
 Articles 226 and 227 of the Constitution of India,
 challenging the judgment and order dated 28th February,
 2001, passed by the Central Administrative Tribunal,
 Ahmedabad Bench (hereinafter referred to as 'the
 tribunal') in Original Application No.174 of 1993 filed
 by one Shri A.J.Joshi & Others, dismissing their

application in which they had claimed that being graduates they were entitled to the pay-scale of Rs.1350-2200 instead of Rs.1200-2040 which was given to them on their appointment as Data Entry Operators.

2. The facts giving rise to this petition are as under:

2.1 All the petitioners are working as Data Entry Operators in the Income Tax Department. The petitioners are Graduates. In the year 1987, the Income Tax Department had framed the Income Tax (Attached and Subordinate Offices) Data Entry Operators Recruitment Rules, 1987 (hereinafter referred to as 'the said Rules'). As per said Rules, the post of Data Entry Operators was to be filled in by direct recruitment and the minimum qualification for appointment to the said post was a Bachelor's Degree from a recognised university with knowledge of data entry work. The pay-scale prescribed for such Data Entry Operator appointed under the Recruitment Rules, 1987 was Rs.1200-2040.

2.2 It is the case of the petitioners that the educational qualification was modified by the amended rules called "Income Tax Department (Attached & Subordinate Offices) Data Entry Operators' Recruitment (Amendment) Rules, 1988 (in short "the amendment Rules, 1988"). The said amendment rules were published in the official gazette on 13.8.1988. By the amendment rules,

the minimum educational qualification required for appointment to the post of Data Entry Operator was reduced from "Graduate" to "Matriculation".

2.3 In view of the aforesaid amendment, an advertisement No.30-A/88 was published by the Central Employment Exchange, Ministry of Labour (DGE&T) on 25.7.88 for filling up 347 vacancies arising in the post of Data Entry Operators. The essential qualification mentioned in the said advertisement for eligibility was (1) Matriculation, (2) Training in data entry operation and (3) speed of not less than 8900 key depressions (without mistake). The pay scale prescribed in the said advertisement for the post of Data Entry Operator was Rs.1200-2040.

2.4 Pursuant to the aforesaid advertisement, all the petitioners had applied and their applications were received by respondent No.1 on or about 8th August, 1988. The petitioners state that all of them were holding a Bachelor's Degree though the advertisement dated 25.7.88 prescribed minimum qualification as Matriculation for eligibility. The petitioners state that after a regular selection process, they were appointed to the post of Data Entry Operator in the month of February, 1989.

2.5 The petitioners state that the Government of India, Ministry of Finance, Department of Revenue, Income Tax Department issued a Notification dated 11.5.94, superseding the Income Tax Department (Attached and Subordinate Offices) Data Entry Operators Recruitment

Rules, 1987 and framing the Income Tax Department Data Entry Operators Recruitment Rules, 1994. The said rules provided for five grades of Data Entry Operators from 'A' to 'E'. Data Entry Operator Grade 'A' was made the entry grade with Higher Secondary Education as the minimum qualification and carrying the pay scale of Rs.1150-1500. Data Entry Operator Grade 'B' was both the entry grade for Graduates with knowledge of data entry work and the promotional grade for Data Entry Operators Grade 'A' carrying pay-scale of Rs.1350-2200. The appointment to the post of Data Entry Operator Grade 'B' was to be made 75% by promotion from amongst the Data Entry Operators Grade 'A' and 25% by direct recruitment from amongst Graduates with knowledge of data entry work.

2.6 It is the case of the petitioners that on 11.5.94 a letter was addressed by the Deputy Secretary, Government of India to all Chief Commissioners of Income Tax, all Director Generals of Income Tax and the Commissioners of Income Tax in respect of restructuring of the cadre of Data Entry Operators in the Income Tax Department. It was stated in para 2 of the said letter that the new pay-scale of Rs.1350-2200 of Data Entry Operator Grade 'B' would be extended to all Data Entry Operators recruited prior to July 1988 when the minimum educational qualification was "Graduate" under the Income Tax Department (Attached and Subordinate Offices) Data Entry Operators Recruitment Rules, 1987. Such DEOs were to be designated as DEOs Grade 'B' and to be placed in the pay-scale of Rs.1350-2200 w.e.f. 22.12.93. However, it was stated in para 3 of the said letter dated 11.5.94

that DEOs who were recruited at a time when "Matriculation" was the prescribed minimum qualification (after amendment of the Recruitment Rules in July, 1988) would not be granted the higher pay scale of Rs.1350-2200 irrespective of whether they were possessing a Bachelor's Degree or higher qualifications at the time of appointment.

2.7 Being aggrieved and dissatisfied with the said action, the petitioners filed Original Application No.174/93 before the Central Administrative Tribunal, Ahmedabad Bench. It is the case of the petitioners that as per para 3 of the letter dated 11.5.94, the petitioners were specifically excluded from the benefit of the higher pay-scale of Rs.1350-2200 even though they were Graduates when they were appointed and would therefore fall in the category of Data Entry Operator Grade 'B' after restructuring of the cadre of Data Entry Operators pursuant to the Recruitment Rules, 1994.

2.8 The petitioners had also produced certain documents before the Tribunal. Before the Tribunal, the department contested the application by filing an affidavit-in-reply.

2.9 The Tribunal by its judgment and order dated 28.2.2001, held that when the applicants had competed with Matriculates (eventhough they were graduates) they should be taken to have been absorbed in the lower grade of DEO Grade 'A' and not in that of DEO Grade 'B' for which the minimum qualification was fixed as "Graduates";

the fact that the applicants are graduates would not alter that position. The Tribunal further held that if the demand of the applicants be accepted namely higher pay scale of Rs.1350-2200 be given on the ground that they are graduates would result in a situation where differential treatment would be meted out to the candidates appointed on the basis of the same recruitment namely those who had responded to the advertisement No.30 - A/88. The Tribunal further held that if the present applicants are given the higher pay scale while denying the same to those who had succeeded and had been appointed on the basis of the same recruitment but who are not graduates that would be grossly discriminatory. The Tribunal, therefore, rejected the application.

3. Mr. Shalin Mehta, the learned advocate for the petitioners has relied upon the judgment of the Central Administrative Tribunal, Hyderabad, in Original Application No.170 of 1995 decided on 9.12.1997 which was rendered in the context of identical facts. The Tribunal after considering the facts and circumstances of the case and after referring to the Article 39(d) and Article 14 of the Constitution of India and after referring to the judgments of the Hon'ble Apex Court in the case of N.T. Devin Katti Vs. Karanataka Public Service Commission and others reported in 1992(2)SLR page 378, P.Ganeswar Rao and others vs. State of Andhra Pradesh and others reported in 1988 (4) SLR page 548, observed on page 12 as under:

"... In view of the principles annunciated in the cases referred to above the only conclusion that can be drawn is that the applicants were appointed as DEOs on the basis of the Rules that were in existence prior to 23.7.88 or 13.8.88, that means that the applicants were appointed as DEOs wherein the minimum educational qualification required, was a bachelor's degree in any of the discipline. The contention of the Respondents in this behalf cannot be accepted."

Then on page 13 it has been observed as under:

".... In our humble view the question of allocation of posts of DEOs Gr.A & B to Hyderabad Region is not material. The question is whether the applicants can be treated as having recruited against graduation qualification or matriculation qualification. As already observed, even though the amended Rules 1988 were not in operation the Respondents advertised the notification dt.23.7.88 the educational qualification for the post of DEO as matriculation. The amended Rules 1988 came into force on 13.8.1988. In that view of the matter we have formed an opinion that the applicants were appointed as DEOs against the graduation qualification."

3.1 It was also observed that applicants in that case were also Graduates and, therefore, the Tribunal held that they were recruited as DEO against the graduation qualification and ultimately the Tribunal granted the following reliefs:

"(i) The applicants shall be deemed to have been appointed as DEOs as against Graduation qualification under the un-amended Rules, which were in existence earlier to 13.8.78.

(ii) The applicants are to be fitted notionally in the scale of pay of Rs.1350-2200 in accordance with the rationalisation of posts Dt.11.9.89 (Annexure-6) from the dates of their appointment to the post.

(iii) The applicants shall be entitled to the monetary benefits only from 2.2.1995."

3.2 Being aggrieved and dissatisfied with the said judgment, the department filed a Writ Petition being No.9305 of 1998 before the Division Bench of the Andhra Pradesh High Court. The Division Bench of the Andhra Pradesh High Court (Coram: Chief Justice S.B.Sinha (as His Lordship then was) and Justice S.R.Nayak) observed in paras 8 and 9 of the judgment as under:

"para.8 The doctrines of equal pay for equal work and the parity in posts are different concepts. There cannot be any doubt whatsoever that grant

of a different scale of pay either on the basis of qualification, experience, the nature of the job and other relevant factors is permissible in law. In the instant case, however, the respondents have been performing the same job. They had the same qualification. In that situation the only question which arises for consideration is as to whether they can be differently treated having regard to the fact that in the advertisement, contrary to the existing rules, it was notified that minimum qualification would be matriculation.

"para.9 Article 39(d) of the Constitution of India, having regard to the various decisions of the apex court, must be read in juxtaposition with Article 14 thereof. As in the instant case at no point of time the respondents were treated differently with those other data entry operators. There is no dispute with the fact that the respondent Nos.2 to 4 herein possess the same educational qualifications as that of the data entry operators Grade B. To treat them differently in the matter of grant of scale of pay and/or placing them in a lower category as a result whereof the posts held by them are made feeder posts for promotion to category B of data entry operators, having regard to the peculiar facts and circumstances in our opinion, would not be justified. The rules as were existing at the relevant point of time provided for the minimum

educational qualification of the data entry operator to be graduate. The respondents fulfilled the said criteria. The rules stood amended only with effect from 13.8.1988 when the selection process had already begun. It is now a well settled principle of law that the rules which are existing at the point of time when selection process began would apply and not the amended rules by reason whereof minimum qualification prescribed became different. The relevant rules being in the nature of subordinate legislation would apply prospectively."

3.3 Ultimately the Division Bench of the Andhra Pradesh High Court dismissed the writ petition filed by the department.

4. The differentiation which is sought to be made between the graduate Data Entry Operators appointed prior to the amendment in the rules by lowering the eligibility criterion to matriculate from graduation and those appointed thereafter has no reasonable nexus with the object sought to be achieved by creating Grade 'B' and given higher pay-scale of Rs.1300-2200 to the DEOs having higher educational qualification of graduation.

5. The graduate Data Entry Operators whether recruited prior to or after the amendment in the said Recruitment Rules stood on the same footing and belonged to the same cadre, doing similar work, and, giving of lower pay scale to those Graduates who were appointed

after 13th August, 1988, would be an inviduous discrimination against them, when identically qualified persons in the same cadre were given the higher pay-scale of Rs.1350-2200 on restructuring the services into five groups and by putting them in Grade 'B'. The very purpose of giving the higher pay-scale to Grade 'B' Data Entry Operators was to give a higher pay-scale on the basis of their being graduates. Therefore, similar benefit ought to be given to those graduates who were recruited as Data Entry Operators even after the amendment in the rules.

6. We are told by the learned counsel appearing for the revenue that the Central Board of Direct Taxes have accepted the decision of the Andhra Pradesh High Court confirming the decision of Central Administrative Tribunal, Hyderabad, by which those who were appointed after the amendment in the Recruitment Rules on 13th August, 1988, were directed to be given the higher pay-scale of Rs.1350-2200 applicable to Grade 'B' DEOs. Even the petitioners, who were appointed after 13th August, 1988, stood on the same footing as those who were given such benefits by the Central Administrative Tribunal, Hyderabad, as confirmed by the High Court of Andhra Pradesh, which decisions are accepted by the Central Board of Direct Taxes as stated by the learned counsel for the revenue. It is also pointed out to us by the learned counsel that the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, have issued instructions on 4th September, 2003, to all the Chief Commissioners of Income

Tax, agreeing to extend the benefit of the order of Central Administrative Tribunal, Principal Bench passed on 29.9.2002 to all identically placed Data Entry Operators Grade 'B' working in the Income Tax Department. It is clear from the stand taken by the CBDT by accepting the decision of the Andhra Pradesh High Court and also from the tenor of the communication dated 4th September, 2003, that the whole idea is to extend the benefit of higher pay-scale of Rs.1350-2200 to all the graduate Data Entry Operators, irrespective of whether they were appointed prior to the amendment or after the amendment of the rules. The learned counsel for the petitioners therefore states that since the CBDT has now accepted the decision of the Andhra Pradesh High Court of giving the higher pay-scale of Rs.1300-2200 in respect of the identically situated graduate DEOs who were appointed after the amendment Rules, 1988, the petitioners seek permission to withdraw this petition at this stage. Permission is granted. Since the benefit of the higher pay-scale Grade 'B' is already agreed to be given by the CBDT to the graduate DEO's appointed after the amended rules, 1988, it is understood that similar benefit will be extended also to the petitioners. The petition is permitted to be withdrawn subject to the aforesaid observations. Rule is discharged with no order as to costs. Liberty to move in case of any difficulty.

Sd/-

(R.K. Abichandani, J.)

For order of the Court

D/23/10/03
Deputy Registrar

syed/

ANITA
21/10/03
22/10
H

Sd/-

(K.M. Mehta, J.)

TRUE COPY

AS/

Private Secretary
to the Hon'ble Judge,
High Court of Andhra Pradesh

TRUE COPY

5

Assistant Registrar
The 21 day of October 2003

Encl/

200

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH AHMEDABAD.

Serial No. 18

Register No. 5

Page No. 7

Date: 18/6/07

Respectfully Submitted:

Hon'ble Vice Chairman,

Hon'ble Member(A),

Hon'ble Member(V),

Certified copy of order dated 11-5-2007 in C/A/Special C.A.No 9586/01

of 2001 passed by the Hon'ble Supreme Court/Hon'ble High Court against the

Judgment/Oral Order passed by this Tribunal in Original Application No 174/03

placed for perusal please.

Dealing Clerk

SECTION OFFICER(D)

Position of this case is : 1. Confirming CAT Orders

2. Partly allowed.

3. Reversing CAT Order.

✓ Registrar,

Hon'ble Vice Chairman

Hon'ble Member(A),

Hon'ble Member(V),

These are the earlier orders in the special CA proceeding with about 8 intervening orders in between.

TIME LIMIT

Rule of 26/09/07

Decree Despatch No. 6446/07
Date

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Special Civil Application No 9586 of 2001
(Under Article(s) 14, 16, 226 of the Constitution of India)

1. DIGANT INDRAVADAN DAVE & ORS.

vs
1. UNION OF INDIA & ORS.

Central Admin. Tribunal
Ahmedabad Bench

Petitioners

Inward No. 565.....

Respondents

Date..... 08/10/07

To

1. UNION OF INDIA

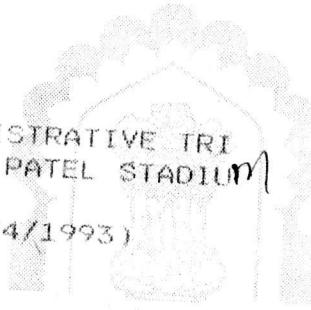
THRO' SECRETARY, CENTRAL BOARD
OF DIRECT TAXES, GOVT. OF
INDIA, NEW DELHI.

2. DIRECTOR OF INCOME TAX
(SYSTEM)
AIWAN - E- GHALIB,
MATA SUNDRI LANE,
NEW DELHI - 110 002.

3. CHIEF COMMISSIONER (ADMN)
INCOME TAX, NAVRANGPURA,
AHMEDABAD.

& CIT GUJARAT-I

4. THE MEMBER
THE CENTRAL ADMINISTRATIVE TRI-
BUNAL, OPP SARDAR PATEL STADIUM
M. AHMEDABAD
(ORI. APPLN NO. 174/1993)

Upon reading the petition of the above named Petitioners presented
to this High Court of Gujarat at Ahmedabad on 26/09/2001 praying to
grant the prayers and etc... 

And whereas upon the Court ordered "Rule" to issue on 11/05/2007
And Whereas Upon hearing

MR SHALIN N MEHTA for the Petitioner no. 1-33
MR MANISH R BHATT for the Respondent no. 1-3
MR BB NAIK for the Respondent no. 1,2,3
RULE SERVED for the Respondent no. 2,3

Court passed the following order :-

CORAM : M.S. SHAH, J. & H.B. ANTANI, J.
DATE : 11/5/2007

1. The petitioners have preferred the present....respondents are
directed to grant higher pay....Rule is made absolute.No costs."

(COPY OF THE ORDER/JUDGEMENT IS ATTACHED HEREWITH)

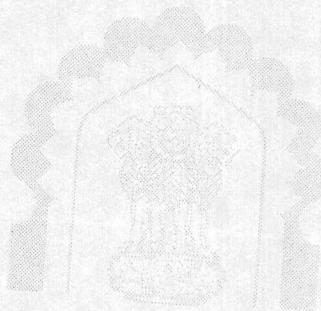
Witness YAD RAM MEENA, Esquire Chief Justice at Ahmedabad
aforesaid this 11th day of May, 2007.

By the Court

93/36
Deputy Registrar
This day of Jun 2007

Note : This writ should be returned
duly certified within 2 weeks.
(3332) 040620

S.C. No. 9586/01.



સત્યમેવ જયતે
THE HIGH COURT
OF GUJARAT

GUJARAT HIGH COURT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 9586 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

AND

HONOURABLE MR.JUSTICE H.B.ANTANI

=====

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

SL

SL

MR

=====

DIGANT INDRAVADAN DAVE AND OTHERS - Petitioners
Versus
UNION OF INDIA AND OTHERS - Respondents

=====

Appearance :

MR SHALIN N MEHTA for the Petitioners.
MS MAUNA BHATT for the Respondents.

=====

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 11/05/2007

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The petitioners have preferred the present petition under Articles 226 and 227 of the Constitution of India challenging the judgment dated 28-02-2001 passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in Original Application No. 174 of 1993 whereby the Original Application was dismissed and the petitioners were denied the pay-scale of Rs. 1350 - 2200 of Data Entry Operators ("DEO", for short) Grade-B from September 1989.

2. The petitioners are working as DEO in the Income Tax Department. They are Graduates and appointed as DEO in pursuance of the advertisement bearing No. 30-A/88 dated 25-07-1988 published by the Central Employment Exchange, Ministry of Labour. Original Application No. 174 of 1993 was preferred by two applicants, namely, Aikesh Joshi, who is petitioner No. 29 in the present petition, and the Association of Railway and Post Employees. Since Original Application No. 174 of 1993 was preferred by the Association of Railway and Post employees on behalf of all the petitioners, they have got the *locus standi* to prefer the present petition in their individual names.

The Income Tax Department had framed the Income Tax Department (Attached And Subordinate Offices) Data Entry Operators Recruitment Rules, 1987. As per these Recruitment Rules, the post of DEO was required to be filled up by direct recruitment and the minimum qualification for appointment to the said post was Bachelors Degree from a recognized university with the knowledge of data entry work. The pay-scale prescribed for Data Entry Operator was Rs. 1200 - 2040. It is submitted that since there was non-availability of Graduates for appointment to the post of DEOs, respondent No. 1 amended the Recruitment Rules of 1987 on 22-07-1988 and the minimum educational qualification which was required for appointment to the post of DEO was

reduced from "**Graduate**" to "**Matriculation**".

The advertisement was issued bearing No. 30-A-88 on 25-07-1988 by Central Employment Exchange, Ministry of Labour for filling up on 347 vacancies in the post of DEOs. The essential qualification which was mentioned in the advertisement for the eligibility was:- (i) Matriculation; (ii) Training in different Data Entry Operation; and (iii) Speed of not less than 8900 Key Depressions (without mistake). The pay-scale which was prescribed in the said advertisement for the post of DEO was Rs. 1200 - 2040. The last date for receipt of the application was mentioned as 08-08-1988. The petitioners had applied to the post of DEO in pursuance of the advertisement dated 25-07-1988. It is further submitted that all the petitioners were holding Bachelor's Degree though the advertisement dated 25-07-1988 prescribed minimum qualification as Matriculation for the eligibility. After the regular selection process was completed, the petitioners were appointed to the post of DEO in the month of February 1989.

The Office Memorandum dated 28-08-1989 was issued by the Ministry of Finance whereby 5 Grades for DEO, starting from A to E was prescribed. The Grades C, D & E were entirely promotional grades. DEO Grade-A was the Entry Grade with Higher Secondary Education as the minimum qualification carrying pay-scale of Rs. 1150 - 1500. DEO Grade-B was also an Entry Grade for the Graduates with knowledge of data entry and promotional grade for DEO Grade-A. Subsequently, the Government of India in the Ministry of Finance issued another Notification dated 11-05-1994 which superseded the DEOs Recruitment Rules 1987 and subsequently, Income Tax Data Entry Operators Recruitment Rules, 1994 were framed. The said Rules also provided for 5 Grades of DEO from A to E.

It is submitted that on 11-05-1994, the Deputy Secretary, Government of India addressed letter to all the Chief Commissioners of Income Tax with regard to restructuring of the cadre of DEOs in the Income Tax Department and it was stated in the said letter that new pay-scale of Rs. 1350 – 2200 of DEO Grade B would also be extended to all the DEOs recruited prior to July 1988 when the minimum educational qualification was "Graduate" under the Income Tax Department, DEO Recruitment Rules, 1987. Thus, the DEOs were to be designated as DEO Grade B and to be placed in the pay-scale of Rs. 1350 – 2200 wef 22-12-1993. It was further stated in the said letter dated 11-05-1994 that the DEOs, who were recruited at a time when "Matriculation" was the prescribed minimum qualification, would not be granted the higher pay-scale of Rs. 1350 – 2200 irrespective of the fact that whether they were possessing a Bachelor's Degree or a higher qualification at the time of appointment. The petitioners were appointed after the amendment of the Recruitment Rules, 1987 when the minimum qualification for the appointment to the post of DEO was brought down from "Graduate" to "Matriculation." Thus, as per the said letter dated 11-05-1994, the petitioners were specifically excluded from the benefit of higher pay-scale on Rs. 1350 – 2200 though they were Graduates and would fall in the category of DEO Grade-B after restructuring of the cadre of DEOs in pursuance of the Recruitment Rules 1994.

The denial of respondent No. 1 to grant the petitioners higher pay-scale of Rs. 1350 – 2200 of DEOs Grade-B from the date of appointment came to be challenged by the petitioners by preferring Original Application No. 174 of 1993. The Central Administrative Tribunal, by order dated 28-02-2001 dismissed the Original Application. Thereafter, aggrieved by the said order, the petitioners preferred the present petition wherein the matter came up before the Division Bench of this Court (Coram: R. K.

Abichandani & K. M. Mehta, JJ.) and by order dated 14-10-2003, the following observations were made in para-6 of the order:

"We are told by the learned counsel appearing for the revenue that the Central Board of Direct Taxes have accepted the decision of the Andhra Pradesh High Court confirming the decision of the Central Administrative Tribunal, Hyderabad, by which those who were appointed after the amendment in the Recruitment Rules on 13th August, 1988, were directed to be given the higher pay-scale of Rs. 1350-2200 applicable to Grade 'B' DEOs. Even the petitioners, who were appointed after 13th August, 1988, stood on the same footing as those who were given such benefits by the Central Administrative Tribunal, Hyderabad, as confirmed by the High Court of Andhra Pradesh, which decisions are accepted by the Central Board of Direct Taxes as stated by the learned counsel for the revenue. It is also pointed out to us by the learned counsel that the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, have issued instructions on 4th September, 2003, to all the Chief Commissioners of Income Tax, agreeing to extend the benefit of the order of Central Administrative Tribunal, Principal Bench passed on 29.9.2002 to all identically placed Data Entry Operators Grade 'B' working in the Income Tax Department. It is clear from the stand taken by the CBDT by accepting the decision of the Andhra Pradesh High Court and also from the tenor of the communication dated 4th September, 2003, that the whole idea is to extend the benefit of higher pay-scale of Rs. 1350 - 2200 to all the graduate Data Entry Operators, irrespective of whether they were appointed prior to the amendment or after the amendment of the rules. The learned counsel for the petitioners therefore states that since the CBDT has now accepted the decision of the Andhra Pradesh High Court of giving the higher pay-scale of Rs. 1350 - 2200 in respect of the identically situated graduate DEOs who were appointed after the amendment Rules, 1988, the petitioners seek permission to withdraw this petition at this stage. Permission is granted. Since the benefit of the higher pay-scale Grade 'B' is already agreed to be given by the CBDT to the graduate DEO's appointed after the amended rules, 1988, it is understood that similar benefit will be extended also to the petitioners. The petition is permitted to be withdrawn subject to the aforesaid observations. Rule

is discharged with no order as to costs. Liberty to move in case of any difficulty."

However, as the benefit of the higher grade was not given to the petitioners by respondent No.1, the petitioners were constrained to approach the Court for reviving the earlier petition which was withdrawn by them and the petition came to be revived by order dated 18-06-2004.

2. Mr. Shalin Mehta, learned Advocate for the petitioners, submitted that in view of the advertisement issued by the Central Employment Exchange, Ministry of Labour, New Delhi bearing No. 30-A/88, the minimum qualification for DEOs was reduced from Graduation to Matriculation. The learned Advocate submitted that even in view of the decision rendered by the Andhra Pradesh High Court, confirming the decision of the Central Administrative Tribunal, Hyderabad, the petitioners be also given the higher pay-scale of Rs. 1350 - 2200 as applicable to Grade-B DEOs. It is further submitted by the learned Advocate that since the petitioners, who were appointed after 13th August, 1988 stood on the same footing, as those who had been given such benefits by the Central Administrative Tribunal, Hyderabad, which was confirmed by the Andhra Pradesh High Court and the decision was accepted by the Central Board of Direct Taxes, the petitioners also ought to have been given such benefit. The learned Advocate also placed reliance on the subsequent decisions rendered by the Central Administrative Tribunal, Ernakulam Bench passed in Original Application No. 204 of 2001 on 25-10-2002, which was in respect of giving the higher pay-scale to the DEO Grade-B. The order passed by Central Administrative Tribunal was confirmed by High Court of Kerala in WP (C) No. 12074 of 2004 (S) decided on 26-05-2005. The matter, thereafter, went right up to the Hon'ble Supreme Court where the Hon'ble Supreme Court, ultimately, dismissed the appeal preferred by the Commissioner of Income Tax and Others. The

Hon'ble Apex Court, thus, confirmed the order passed by the High Court of Kerala at Ernakulam which confirmed the order passed by the Central Administrative Tribunal at Ernakulam. In view of the aforesaid ruling given by the Hon'ble Apex Court, the petitioners cannot be denied the higher pay-scale in the grade of Rs. 1350 - 2200 as they are identically situated with other employees. Thus, the learned Advocate submitted that the petitioners who are similarly situated cannot be given dissimilar treatment by respondent No. 1 and the petition, in view of the aforesaid facts and circumstances, requires to be allowed.

3. As against the aforesaid submission, Ms. Mauna Bhatt, learned Advocate representing the respondents, vehemently submitted that the petitioner No. 29 Alkesh Joshi and Association of Railway and Post Employee had filed Original Application No. 174 of 1993 before the Ahmedabad Bench. 32 other petitioners who are joined in the present petition had not preferred the Original Application before the Ahmedabad Bench and, therefore, 32 petitioners cannot agitate the issue which was not agitated by them before the Central Administrative Tribunal, Ahmedabad and, therefore, on this preliminary ground, the petition deserves to be dismissed. The learned Advocate further submitted that the principle of equal pay for equal work is only applicable to the employees who are similarly situated and forming the same class. Even assuming without admitting that benefits of higher pay-scale are extended to the petitioners, then there will be a discrimination amongst the DEOs who are appointed on the basis of same advertisement and it is likely to open avenues for further litigation. That the judgment of the Andhra Pradesh High Court on which the reliance is placed by the learned Advocate for the petitioner is distinguishable on the facts, as in that case, it has been observed that the amendment in the Recruitment Rules to the grade of DEOs came into force from 13-08-1988. As against that in the present

Hon'ble Apex Court, thus, confirmed the order passed by the High Court of Kerala at Ernakulam which confirmed the order passed by the Central Administrative Tribunal at Ernakulam. In view of the aforesaid ruling given by the Hon'ble Apex Court, the petitioners cannot be denied the higher pay-scale in the grade of Rs. 1350 - 2200 as they are identically situated with other employees. Thus, the learned Advocate submitted that the petitioners who are similarly situated cannot be given dissimilar treatment by respondent No. 1 and the petition, in view of the aforesaid facts and circumstances, requires to be allowed.

3. As against the aforesaid submission, Ms. Mauna Bhatt, learned Advocate representing the respondents, vehemently submitted that the petitioner No. 29 Alkesh Joshi and Association of Railway and Post Employee had filed Original Application No. 174 of 1993 before the Ahmedabad Bench. 32 other petitioners who are joined in the present petition had not preferred the Original Application before the Ahmedabad Bench and, therefore, 32 petitioners cannot agitate the issue which was not agitated by them before the Central Administrative Tribunal, Ahmedabad and, therefore, on this preliminary ground, the petition deserves to be dismissed. The learned Advocate further submitted that the principle of equal pay for equal work is only applicable to the employees who are similarly situated and forming the same class. Even assuming without admitting that benefits of higher pay-scale are extended to the petitioners, then there will be a discrimination amongst the DEOs who are appointed on the basis of same advertisement and it is likely to open avenues for further litigation. That the judgment of the Andhra Pradesh High Court on which the reliance is placed by the learned Advocate for the petitioner is distinguishable on the facts, as in that case, it has been observed that the amendment in the Recruitment Rules to the grade of DEOs came into force from 13-08-1988. As against that in the present

case, in OM dated 11-05-1994, it is clearly mentioned that the amendment came into force wef July 1998. The learned Counsel has cited the following judgments in support of the submissions canvassed at the Bar:

- (i) (2004) 4 SCC 646
- (ii) (2004) 1 SCC 347
- (iii) (1994) 2 SCC 521
- (iv) (1998) 2 SCC 542
- (v) AIR 2001 SC 1877
- (vi) (1997) 3 SCC 321
- (vii) AIR 2002 SC 2589
- (viii) AIR 2002 SC 964

The learned Advocate further submitted that if the observations made by the Central Administrative Tribunal is taken into proper perspective, then the case of the petitioners is required to be treated as a fresh case and they cannot now be allowed to agitate the issue at a belated stage. The learned Advocate further contended that merely because the benefit was given to some of the employees, who had preferred the petition before the Hyderabad Bench of the Central Administrative Tribunal or before the Ernakulam Bench of the Central Administrative Tribunal, the same benefit cannot be extended to the petitioners as their case stands on a different footing. Even otherwise, as per the submission of the learned Advocate, the petition is devoid of the merits and as it is thoroughly misconceived, it requires to be dismissed.

4. Having heard the learned Counsel Mr. Shalin Mehta for the petitioners and Ms. Mauna Bhatt for the respondents and on perusal of the order passed by the Central Administrative Tribunal in Original Application No. 174 of 1993 as well as the earlier order passed by the Division Bench of this Court on 14-10-2003 in Special

Civil Application No. 9586 of 2001, we are of the considered view that the benefit which was given to the DEOs, who had preferred the application before the Central Administrative Tribunal, Hyderabad and which was confirmed by the Andhra Pradesh High Court as well as the benefits given to the DEOs, who had preferred the application before the Ernakulam Bench by preferring Original Application No. 204 of 2001, which was confirmed by the Kerala High Court as well as by the Hon'ble Apex Court, is required to be given to the petitioners as they are also similarly situated. When the final decision is confirmed by the Hon'ble Apex Court, we are not in a position to distinguish the case of the petitioners as submitted by the learned Advocate on behalf of the respondents. The petitioners who entered the service as DEOs with basic educational qualification of Graduation to their credit would in our view be entitled to the entry grade of pay-scale of Rs. 1350 – 2200. Even, as per the Government Resolution, the minimum qualification was reduced from Graduation to Matriculation. The claim, thus, made by the petitioner with regard to the pay-scale of Rs. 1350 – 2200 is just and proper in the facts and circumstances of the case and requires to be upheld. We have also considered the other submissions canvassed by the learned Advocate for the respondents with regard to the maintainability of the petition as well as the principle of equal pay for equal work which is applicable only to the employees who are similarly situated and forming the same class. There is no force in the submissions canvassed by the learned Advocate on behalf of the respondents and the contentions raised by the learned Advocate are stated to be rejected. We have also considered the judgments cited by the learned Advocate for the respondents and there is no dispute about the ratio laid down in those judgments. However, we find that the respondents cannot derive any benefit to support their case on the basis of those judgments.

5. In view of the foregoing discussion, we quash and set aside the judgment dated 28-02-2001 passed by the Central Administrative Tribunal, Ahmedabad Bench in Original Application No. 174 of 1993 and allow the petition with the following reliefs:

- (i) The respondents are directed to grant higher pay-scale of Rs. 1350 – 2200 to all the petitioners from September 1989.
- (ii) The arrears of difference of higher pay-scale of Rs. 1350 – 2200 is also required to be given to all the petitioners with all the consequential benefits within three months from the date of receipt of this judgment.

Rule is made absolute. No costs.

SL
[M. S. SHAH, J.]

SL
[H. B. ANTANI, J.]

/shamnath

By order of the Court

Deputy Registrar

6/6/01 6/6/01 6/6/01

FORM NO. 21
(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

CA/PA/RAT/174/ 174 of 93

Mr. Alicesh J. Joshi & ORS APPLICANT (S)

VERSUS

Union of India & Ors. RESPONDENT (S)

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Certified that the file is complete in all respects

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Signature of S.O. (J)

19/8/13

Signature of Dealing Hand