

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.249/2008

Reserved on 21.11.2013.

Pronounced on 2nd December.

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Akhilesh Srivastava, aged about 47 years, son of Late Sri R.S. Srivastava, presently posted as Tax Assistant in the Office of Additional Commissioner of Income Tax, Range V, Lucknow , also residing at House No.B-2101, Sector '3', Indira Nagar, Lucknow.

-Applicant.

By Advocate: Sri A.K. Srivastava.

Versus.

1. The Union of India, through Secretary, Revenue, Government of India, Ministry of Finance, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Secretary, Department of Personnel & Training (Recruitment Rules Division), Government of India, New Delhi.
4. The Chief Commissioner of Income Tax (Cadre Controlling Authority) Ashok Marg, Lucknow.
5. The Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi.

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6. The National Security Council Secretariat, 3rd Floor, Sardar Patel Bhawan, Sansad Marg, New Delhi, through its Section Officer (Administration).

-Respondents

By Advocate: Sri. Asheesh Agnihotri.

O R D E R

Pre Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

(i). That this Hon'ble Tribunal may kindly be pleased to quash the order dated 31.3.2008, passed by the Deputy Commissioner of Income Tax (Headquarters), Lucknow, as contained in Annexure No.9 in compilation 1 of this application.

(ii). That this Hon'ble Tribunal may kindly be pleased to direct the Opposite Parties to revise and upgrade the pay scale of Applicant working as Data Entry Operator designated as Tax Assistant in the Department of Income Tax from Rs.4,000-100-6,000 to Rs.5,000-150-Rs.8,000 as payable to Date Entry Operators working in the Department of National Security Council Secretariat, Government of India, New Delhi, in order to make it equal with parity with effect from 15.2.2001 the date from which the Applicant has been working as Data Entry Operator, designated as Tax Assistant in the department of Income Tax.

(iii). Any other relief(s) which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case may also be passed in favour of the Applicant and against the Opposite Parties.

(iv). The cost of the application may kindly be awarded in favour of the Applicant against the Opposite Parties."

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2. The case of the applicant is that he was appointed as LDC in the Income Tax Department w.e.f. 9th March, 1984. A decision was taken to restructure the departmental working and consequentially the various posts. The cadre of LDCs was absorbed in the cadre of Data Entry Operator Grade 'A' in the pay-scale of Rs.4000-100-6000 and designated as Tax Assistants. Subsequently, Recruitment Rules for Tax Assistant dated 4.6.2001 was framed and recruitment rules for recruitment of Group-'B', 'C' and 'D' post was issued by letters dated 4.6.2001 and 27.12.2001. The second set of recruitment rules in place of earlier Recruitment Rules of 2000 were issued on 2.9.2003. In these rules, the recruitment procedure, eligibility criterion, education and other qualifications including the pay-scale from the post of Data Entry Operator, re-designated as Tax Assistant in the Department of Income Tax have been given. The eligibility test of Computer knowledge was held for Pre-structured L.D.Cs. All qualified L.D.Cs. were than absorbed in the cadre of Tax Assistant in the new pay-scale of Rs.4000-100-6000. The applicant, therefore, became Tax Assistant in the department of Income Tax w.e.f. 15.2.2001. His name finds place at Serial Number.7 in the order dated 26.7.2001 (Annexure-5).

3. The applicant came across an Advertisement for filing up the vacancies of Data Entry Operators in the office of National Security Council Secretariat, Government of India, New Delhi published in Employment News dated 19th May to 25th May, 2007. The

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recruitment was sought to be made on the post of Data Entry Operator in which the pay-scale is shown as Rs.5000-150-8000. The eligibility criteria was shown a Degree from recognized University and a speed not less than 8000 key depression per hour in data entry work. The applicant, who is doing similar work as Date Entry Operator re-designated as Tax Assistant from 15.2.2001 in the pay-scale of Rs.4000-100-6000 on the principles of "Equal pay for equal work" has claimed parity with the pay-scale of Rs.5000-150-8000 in his current post of Data Entry Operator in the Income Tax Department.

4. The respondents have refuted the claim of the applicant by filing counter reply stating therein that the applicant was absorbed in the first level of restructuring done in the year 2001 wherein required eligibility qualification is 5000 key depression per hour in Data Entry work/Tax Assistant. The Advertisement placed in Employment News on the basis of which the applicant has sought pay parity is on the post of Date Entry Operator Grade-C having a pay scale of Rs.5000-150-8000. The applicant is seeking the same pay-scale which is available in the National Security Council, which is a separate and distinct entity from the Income Tax department. Moreover, the advertisement clearly specifics that the vacancies are sought to be filed up on deputation basis. Normally when any vacancy is sought to be filled up on deputation basis, a higher pay and allowances is offered in order to attract competent persons. It is additionally made clear in para-2 of the

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advertisement that no separate deputation allowance would be admissible.

5. The applicant, infact, is seeking to rewrite the entire Recruitment Rules of the department including the sanctioned strength of vacancies/posts and the scale of pay sought to Rs.5000-150-8000 that is the next level of promotion in the scale of Rs.5000-150-8000 is as Senior Tax Assistant. This higher pay scale of Senior Tax Assistant is 100% to be filled up by promotion from Tax Assistant Grade 'B'. By giving the same scale to Tax Assistants/Data Entry Operators as the Senior Tax Assistant the consequence would be a merger of posts thereby denying the opportunity of one level of promotion.

6. The applicant has filed Rejoinder reply rebutting the Counter Affidavit more or less reiterating the same points as taken in O.A.

7. We have heard the learned counsel for both the parties and perused the entire material available on record.

8. It is an admitted fact that the applicant was absorbed as Tax Assistant/Data Entry Operator in the department by virtue of administrative decision taken in the year 2001 for restructuring in the department. The restructuring resulted in not just in a re-organizing of

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work, but also in realignment /readjustment/re-designation of posts as is evident in letter No.R No.IC/TECH.TR/2000-2001/136 dated 07 November 2000. The LDCs are placed in the pay scale of Data Entry Operators Grade 'A' in the pay scale of Rs.4000-100-6000 and to be designated as Tax Assistant which could be a new cadre. The accompanying rule for eligibility test of computer knowledge of one time absorption of LDCs into the cadre of Data Entry Operators Grade 'A' has the qualifying standard is minimum date entry speed of 5000 count key depression per hour.

9. The applicant has sought pay parity between 2 distinct pay levels i.e. Data Entry Operator Grade-'A' which is actually designated as Tax Assistant having a pay-scale of Rs.4000-100-6000 and Data Entry Operator Grade-'C' having a pay-scale of Rs.5000-150-8000 which is the respondents department is designated as Sri. Tax Assistant and is a promotion post.

10. There is no question of giving a person a pay-scale without verifying that there is a post available for that pay-scale. In the present case the applicant seeks parity between different departments i.e. Income Tax and National Security Council. There is no All India Cadre of Data Entry Operators. In fact while broadly the nature of work and qualifications are the same the pay-scale are different and the entry to various scales in various department are generally as per the Recruitment Rules of those departments. The concept of "equal pay for equal work" does not lie in the vacuum. The 'equal pay for

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equal work' has to be seen within the context of the particular employer or particular department.

11. Infact giving a higher pay-scale can only be given if there are post available. It is squarely within the purview of such department to decide what number of posts are required and what should be the minimum qualifications for such posts. The issue of number of posts also includes both the nomenclature of the post and the pay-scale thereon. The respondents had exercised their administration wisdom in restructuring the department and promulgating the Recruitment Rules. The Tribunal cannot interfere in the matter of creation of posts and the determination of pay-scale and the eligibility criterion thereon. In this case it is relevant to refer to judgment of the ***Hon'ble Supreme Court in the case of In Commissioner, Corporation of Madras Vs. Madras Corporation Teacher Mandran (1997) 1 SCC 253: AIR 1997 SC 2131***, The Hon'ble Court had allowed special leave appeal filed against orders of Administrative Tribunal in O.A. No. 708 and 1685 of 1993 in which the Tribunal had directed that certain posts in Madras Corporation be created and had prescribed certain qualifications for the same. The Hon'ble Supreme Court passed the following order while allowing the appeal stated as under:-

Para 4. Under these circumstances as stated earlier the question is whether the Tribunal can give directions to create a post with direction for pay scale or to prescribed the minimum qualifications for the post?. It is a well settled legal position that it is the legal or

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executive policy of the Government to create a post or prescribe the qualification for the post. The Court or Tribunal is devoid of power to give such direction. The impugned direction, therefore, be clearly illegal.

12. In State of Haryana Vs. Navneet Verma (2008) 2

SCC 65; AIR 2008 SC 417, Hon'ble Supreme Court had held that the power to create or abolish post vests with the government. Further whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity.

13. In view of the above, therefore, in our view the O.A. is misconceived and is accordingly dismissed. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Mr. Agrawal
(Navneet Kumar)
Member (J)

Amit/-