

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

OA No. 333 of 2006

Date of order : 24/11 May, 2011

C O R A M

Hon'ble Mr. Justice Anwar Ahmad, Member [Judicial]

Hon'ble Mr. A.K.Jain, Member [Administrative]

1. Vishwajeet Kumar, A/c No.8319983, Data Entry Operator, Grade-B, son of Shri Bijay Shankar, resident of Mohalla – Kazipur, P.O. - Bankipur, District- Patna.
2. Gopal Prasad Gupta, A/c No. 8319985, Date Entry Operator, Grade – B, son of Late Nathuni Prasad Gupta, resident of Mohalla – Bibigangj, Dalvar Road, PO -Danapur, District – Patna.
3. Dilip Kumar, A/c No. 8319986, Data Entry Operator, Grade – B, son of Shri Brij Bhushan Prasad, resident of Mohalla – Dhanher, PO – Ekangar Sarai, District – Nalanda.
4. Umesh Kumar Sinha, A/c No. 8319984, Data Entry Operator, Grade – B, son of Shri Sueo Sharan Sinha, resident of Mohall – Nathupur Road, P.O. Kurthaul, District – Patna.
5. Deepak Kumar Gupta, A/c No. 8319981, Data Entry Operator, Grade -B, son of Shri Ganesh Gupta, resident of Mohalla – Jamalpur Gogri, P.O.- Jamalpur Gogri, District – Jamalpur.
6. Kaushal Kishore Srivastava, A/c No. 831988, Data Entry Operator, Grade -B, son of Shri Rajendra Prasad Srivastava, resident of Mohall – Gudri Rai Ki Chowk, P.O.- Chppra, District – Patna.
7. Awadh Narayan Verma, A/c No.8319987, Data Entry Operator, Grade – B, presently Section Officer [Accounts], son of Late Ramdas Prasad resident of Mohalla – Mathlaxmanpuri, P.O. Gulzarbagh, District – Patna.

Applicants No. 1 to 4 are presently posted at the Electronic Dara Processing Centre, Office of the Controller of Defence Accounts, Patna -19 and Applicants No.5 to 7 are presently posted in the Pay and Accounts Office [other Ranks], Sikh Regimental Centre, Ramgarh cantt. Under the Office of the Controller of Defence Accounts, Patna -19.

Applicants

By Advocate : Shri Pradip Kumar.

Vrs.

1. The Union of India through the Secretary, Ministry of Defence [Finance Division], New Delhi.

(Signature)

2. The Controller General of Defence Accounts, West Block-V, R.K.Puram, New Delhi-110066.
3. The Deputy Controller General of Defence Accounts [EDPS], EDP Centre, Office of the C.G.D.A., West Block-V, R.K.Puram, New Delhi-110066.
4. The Controller of Defence Accounts, Patna, Rajendra Path, Patna -19.
5. The Assistant Controller of Defence Accounts [AN], Patna, Rajendra Path, Patna -19.
6. The Assistant Controller of Defence Accounts I/C, Pay and Accounts Office [other ranks] Sikh Regimental Centre, Ramgarh Cantt.
7. The Office Incharge, E.D.P. Centre, Office of the Controller of Defence Accounts, Patna, Rajendra Path, Patna -19.
8. The Senior Accounts Officer [AN], Office of Controller of Defence Accounts, Patna, Rajendra Path, Patna-19.
9. The Accounts Officer [AN], Office of the Controller of Defence Accounts, Patna, Rajendra Path, Patna - 19.

Respondents.

By Advocate : Shri S.C.Jha, ASC

ORDER

Mr. Justice Anwar Ahmad, Member [A] : -

This original application has been filed by Vishwajeet Kumar and six others for the following reliefs :-

“[I] For quashing letter dated 15.12.2005 issued by Respondent No.9 [Annexure-A/9].

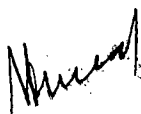
[II] For a direction to the respondents to consider the cases of the applicants by a duly constituted Screening Committee in terms of the A.C.P.

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Scheme in view of the issuance of Annexures – A/6 and A/7 within a reasonable period of time and accordingly to grant applicants the first financial up-gradation w.e.f. due dates, in the pay scale of Rs.5000-8000 as per the A.C.P. Scheme as clarified from time to time and in vogue at the relevant time.

[III] For any other direction/directions as your Lordships deem fit and proper in the facts and circumstances of this case.”

2. The learned counsel for the applicants submits that the applicants were initially appointed on 22.07.1988 on the post of Junior Key Punch Operator in temporary capacity. The post of Junior Key Punch Operator was re-designated as Data Entry Operator, Grade 'A' vide order dated 20.07.1988 [Annexure-A/2] . After six years of service, the applicants were promoted to the post of Data Entry Operator, Grade – 'B' under order dated 16.08.1995 [Annexure-A/3]. In spite of having completed six years of regular service on the post of Data Entry Operator, Grade 'B' in the year 2001, the applicants were not promoted to the higher grade of Date Entry Operator, Grade 'C' for the reasons best known to the respondents. He submits that this Tribunal passed order dated 07.08.2002 in OA No. 311 of 2002 wherein the present applicants were also party [applicants], directing the respondents to give effect of the pay scale of Rs.1150-1500 in Data Entry Operator, Grade 'A' with effect from 01.01.1986 instead of 11.09.1989 or from the date of initial appointment whichever is later and the said order was given effect to by the respondents [Annexure-A/4]. He submits that the Respondent No.3 under letter dated 04.01.2005 [Annexure-A/6] directed that the same pay scale of Rs.



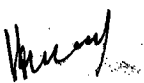
1350-2200 be implemented to both categories of all DEOs i.e. Grade 'A' and Grade 'B' obtaining an undertaking from the Data Entry Operators as was done while implementing the interim order of the Mumbai High Court. It was further stipulated that it is, therefore, requested that an undertaking in duplicate may be obtained from the Data Entry Operators and their pay may be fixed in the pay scale of Rs. 1350-2200 with effect from 01.01.1986 or from the date of appointment whichever is later. Pursuant to the aforesaid letter [Annexure-A/6], the office of the Respondent No.4 in particular, the office of Respondent No.1 issued letters dated 20.01.2005, whereby the pay of applicants and others were fixed in the pay scale of Rs. 1350-2200 with effect from 01.01.1986, i.e. from the date of their initial appointment [Annexure-A/7]. He submits that the applicants have completed 12 years of regular service in the pay scale of Rs. 1350-2200. The applicants, therefore, submitted representation on 08.08.2005 [Annexure-A/8] to the Respondent No.4 for the grant of first financial up-gradation under the ACP Scheme. He submits that the Respondent No.9 rejected the legitimate claim of the applicants for the grant of first financial up-gradation under the ACP Scheme in the pay scale of Rs. 5000-8000 after the issuance of Annexures-A/6 and A/7 under the ACP Scheme Annexure-A/1 read with clarification no.1 regarding the aforesaid ACP Scheme as contained in Annexure-A/1. He submits that this impugned letter is not in accordance with rules and hence it is fit to be set aside. He, therefore, submits that the OA be allowed and the relief be given to the



applicants.

3. The learned counsel for the respondents on the other hand submits that though the pay scale of Date Entry Operators, Grade- 'A' and 'B' have been made identical in compliance of the interim order of Hon'ble Mumbai High Court, yet neither the scales have been merged nor any of the above two posts have been abolished. He submits that as per the Recruitment Rules, for regular promotion DEO 'B' is next in the hierarchy to DEO 'A' and similarly DEO 'C' is next in the hierarchy to DEO 'B'. He submits that therefore, DEO 'A' are to be considered for financial up-gradation in the Grade of DEO 'B' after 12 years of service if not already promoted and DEO 'B' are to be considered for 2nd Financial up-gradation in the grade of DEO 'C' if not already promoted after completion of requisite length of service i.e. 12 years subject to fulfillment of all the promotion norms in accordance with condition no.6 and 7 of the ACP Scheme. He submits that the applicant as such will be eligible for second financial up-gradation in the grade of DEO 'C' only after completion of 24 years of service. So he submits that the impugned letter Annexure-A/9 is rightly been issued and hence the OA is fit to be dismissed.

4. During the course of arguments, this Tribunal made some query to the learned counsel for the respondents who thereafter called for instructions from the respondents. On receipt of instructions, he has filed supplementary written statement as under :-



“That the aforesaid case was heard on 19.04.2011 by the Hon'ble Tribunal and during the course of argument the Hon'ble Tribunal directed to furnish information on the point stated below :-

- [i] Whether final order has been passed by the Hon'ble Mumbai High Court confirming the interim order granting same pay scale of Rs. 1350-2200 to be implemented to both categories of all DEOs i.e. Grade 'A' and 'B' by obtaining an undertaking from the DEOs?
- [ii] It is made clear that the Bombay High Court has already passed final judgment on 27.07.2008 confirming its earlier interim order. It is further stated that no appeal has been filed before the Hon'ble Supreme Court of India on the legal advice of Additional Solicitor General and the matter regarding further course of action is pending with the Ministry.
- [iii] Whether financial up-gradation granted to DEOs pursuant to Annexure-A/6 have been reviewed/rectified or not ?

It would be relevant to point out here that the H.Q. Vide letter dated 29.11.2005 contained at Annexure-R/3 at page 18 requested all PCs DA/CS DA to review and rectify the cases where the DEOs have been allowed financial up-gradation contrary to the position and directions laid down in the H.Q. Circular dated 07.07.2000.

In this context, it would be appropriate to inform this Hon'ble Tribunal that pay of DEOs grade 'A' and 'B' fixed earlier vide the office Part-II order No.46 dated 31.01.2005 has since been rectified/revised vide part-II order No.523 dated 28.12.2006, vide said order pay scale of one Sri Rajendar Rangroo A/c No. 8328082 OM has been revised.”

5. Considered the facts and circumstances of the case and the arguments advanced on behalf of the learned counsels for both sides together with the supplementary written statement filed on behalf of the respondents. Considering



the averments made in the supplementary written statement we are of the view that the OA is fit to be allowed.

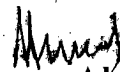
6. In the result, the OA is allowed and the impugned letter dated 15.12.2008 [Annexure-A/9] is set aside with the directions to the respondents to consider the cases of the applicants by a duly constituted screening committee in terms of ACP Scheme in view of issuance of Annexures-A/6 and A/7 for granting the first financial up-gradation to the applicants with effect ^{from} the due date in the pay scale of Rs. 5000-8000 as per the ACP Scheme within a period of three months from the date of receipt of this order.

7. The applicants are directed to make available a copy of this order to the respondents within ten days from the date of receipt of certified copy of this order.

No order as to costs.



[A.K.Jain]
Member [Administrative
mps.



[Anwar Ahmad]
Member [Judicial]