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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 584/91

~~Transfer Application No~~

DATE OF DECISION: 10/3/94

Shri V.G. Sovani and others Petitioner

Shri R.R. Dalvi Advocate for the Petitioners

Versus

Shri M. Gurusamy and others Respondent

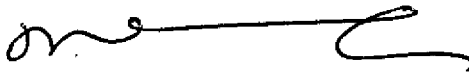
Shri Ravi Shetty for Advocate for the Respondent(s)
Shri R.K. Shetty.

CORAM :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri R. Rangarajan, Member (A)

1. To be referred to the Reporter or not ? *m*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *m*


(R. Rangarajan)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(5)

Original Application No. 584/91

Shri V.G. Sovani and others
V/s.

... Applicants.

Shri M. Gurusamy,
Regional Provident Fund
Commissioner, Maharashtra
and Goa, 341, Bhavishyanidhi
Bhavan, Bandra (East)
Bombay.

Shri B.N. Som,
Central Provident Fund
Commissioner, 9th floor
Mayur Bhavan, Cannought
Circus, New Delhi.

Shri V.P. Sawney, Secretary
to the Government of India,
Ministry of Labour
Mantralay,
New Delhi.

... Respondents.

CORAM : Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.
Hon'ble Shri R. Rangarajan, Member (A).

Appearance:

Shri R.R. Dalvi, counsel
for the applicant.

Shri Ravi Shetty for Shri
R.K. Shetty, counsel
for the respondents.

JUDGEMENT

Dated: 10.3.94

¶ Per Shri R. Rangarajan, Member (A) ¶

36 employees of the Employees Provident Fund Organisation, presently working as Data Entry Operators in E.D.P. Section in Maharashtra have filed this application for setting aside respondent No.1's circular No. MH/PF/ADM-I/D.E.O./91/1028 dated 3.7.91 and respondent No.2's circular No.P-II 38(18)/Computer/10315 dated 22.4.91 as being totally unjust and unwarranted, and to give a direction to introduce Grade B in the scale of Rs. 1350 - 2200 and further avenues of promotion as per G.I.M.F. O.M. No. F 7(1)/IC/86(44) dated 11.9.89 and to declare the post of Data Entry Operators as technical and for further progress in the E.D.P. Organisation.

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2. A circular No. MH/PF/Coord.I/Compt/89/47 dated 15.9.89 was issued, calling for applications from LDCs/UDCs who are willing to be considered for posting in E.D.P. Cell as Data Entry Operators with a special pay of Rs. 40/- per month. The Data Entry Operators were employed after undergoing the selection. They were further trained and posted as Data Entry Operators on regular basis until further orders in terms of letter dated 7.5.90 Annexure A-2 (emphasis added). While they were working so the impugned circular dated 3.7.91 was issued calling for applications from LDCs to fill up the post of Data Entry Operators in the Computer Cell, Regional Office, Bombay as ex-cadre appointment on purely temporary basis upto 28.2.92 in the pay scale of Rs. 1150 - 1500 from among the existing LDCs who possess proficiency in typing.

3. The Data Entry Operators who were working as LDCs/UDCs earlier have represented to respondent No.1 and respondent No.2 for continuing them as Data Entry Operators and giving them higher scale and avenue of promotion as per letter No. F 7(1)/IC/86(44) dated 11.9.89; but their representations were not considered and options were asked from LDCs for filling up of newly created 51 posts of Data Entry Operators in the scale of Rs. 1150 - 1500 by circular dated 3.7.91. Aggrieved by the above action of the respondents they have filed this OA praying for the above mentioned relief.

4. The main contentions of the applicants are that they are regularly appointed as Data Entry Operators in terms of letter dated 7.5.90 and hence they cannot now be dis-lodged from the post of Data Entry Operators by appointing the LDCs as per fresh notification

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dated 3.7.91. They further contend that the erstwhile UDCs who are now working as Data Entry Operators will lose heavily if higher scale of pay of Rs. 1350 - 2200 ^{is} ~~are~~ not introduced in terms of letter dated 11.9.89 and that scale is available in the Department of Revenue, Central Board of Direct Taxes and in Income Tax Department. They further contend that higher scale as introduced in the Department of Revenue, Central Board of Direct Taxes and Income Tax should also be introduced in Employees Provident Fund Organisation and present incumbents are allowed to continue in that grade to avoid loss of emoluments. If the same is not agreed to and by the circular dated 3.7.91 only LDCs are considered and posted as Data Entry Operators, it is against the principle of equity and natural justice.

5. The respondents in their written statement have submitted that pending introduction of recruitment rules for Data Entry Operators in the grade of Rs. 1150 - 1500, the 51 posts which are now sanctioned as Data Entry Operators are treated as ex-cadre posts and filled purely on temporary basis from among the existing LDCs who possess the proficiency in typing as the scale is only Rs. 1150 - 1500. UDCs who are in the scale of Rs. 1200 - 2040 cannot be fitted against the lower scale of Rs. 1150 - 1500 as they will lose in their total emoluments. Hence they justify the circular dated 3.7.91 calling for volunteers from LDCs to be posted to the newly created 51 posts of Data Entry Operators.

6. We have heard Shri Dalvi counsel for the applicant and Shri Ravi Shetty for the respondents. The office order dated 7.5.90 (Annex. A 2) indicates

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that the postings of LDCs /UDCs who were appointed as Data Entry Operators with a special pay of Rs. 40/- on regular basis is only until further orders, though these posts are not indicated as adhoc. The word "until further orders" will clearly give the meaning that they cannot claim permanency, to be continued in that post indefinitely. Hence the contention of the applicants that they are to be continued in that post as they were regularly appointed as Data Entry Operators and should be given higher scale of pay to avoid any monetary loss cannot be accepted in toto. They can be continued only if, they can be continued without any loss of emoluments fulfilling the other service conditions. If because of the scale of pay of the UDCs which is higher than the scale of Rs. 1150 - 1500 cannot be continued to avoid monetary loss they will have to be repatriated to their erstwhile cadre. Office order dated 7.5.90 (Annex. A 2), in our opinion does not give the applicant any vested right to be continued indefinitely.

7. The second contention is that the higher scale of pay for Data Entry Operators in grade 'B' in the scale of Rs. 1350 - 2200 has to be introduced to avoid loss of emoluments of UDCs and to provide further avenue of promotion as per the letter dated 11.9.89. The pay revision and fixation of scale cannot be decided by the Tribunal. These are matters of policy and has to be decided by the competent authority on the recommendation of the Expert Committee. The Supreme Court in a number of cases had held the above view. In view of this the Tribunal is not competent to direct the respondents either to give higher grade or to provide further avenue of promotions as prayed for by the applicants. This being a matter of policy it has to be decided by the Government after following the due

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process of law. Hence we cannot accede to the request of applicants for giving them the scale of Rs.1350 -2200 and other avenue of promotion in terms of letter dated 11.9.89.

8. The learned counsel for the applicant has stated that the grade of Rs. 1350 - 2200 has been introduced both in the Department of Revenue, Central Board of Direct Taxes and Income Tax Department. As stated earlier, the Tribunal is not competent to give any direction regarding introduction of new scale and further avenue of promotion. Further no material was placed before us to compare the nature and type of work done by the Department of Revenue, Central Board of Direct Taxes and Income Tax department vis-a-vis the Employees Provident Fund Organisation. Hence the submission that the higher scale which has been introduced in the other departments should also be introduced in Employees Provident Fund Organisation has no force and hence this contention has only to be rejected.

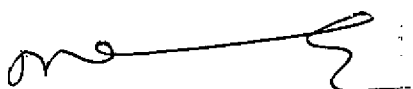
9. Under the above circumstances we think it fit and proper to give the following direction.

10. The UDCs who are in the grade of Rs. 1200 - 2040 and now posted as Data Entry Operators shall be allowed to continue ~~as~~ Data Entry Operators till they reach maximum pay of Rs. 1500/- in the grade of Rs.1150 - 1500 and after reaching Rs. 1500/- as they will lose monetarily they shall be repatriated back to ~~the~~ parent cadre of UDCs, if they so desire. In case they are not willing to be repatriated as UDCs back to their parent cadre they may be continued as Data Entry Operators if they are willing to forego monetary benefits. The vacant post thus created and other new posts created now shall be filled in accordance with the circular dated 3.7.91. In future also as and when the UDCs

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presently working as Data Entry Operators reach the pay stage of Rs. 1500/- in the scale of Rs. 1150 - 1500 they shall be sent back as UDCs and the vacancy thus created shall also be filled in accordance with recruitment rules to be formulated.

11. O.A. is disposed of accordingly. No costs.



(R. Rangarajan)
Member (A)



(M.S. Deshpande)
Vice Chairman

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