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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 47 of 1989

Ex-Ax No.

Date of Decision : 21.2.91

Mr. K.R. Akole and another

Petitioner.

Mr. M. Lakshmana Rao

Advocate for the
petitioner (s)

Versus

Union of India and 3 others

Respondent.

Mr. N.R. Devaraj, SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *Y*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Y*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)


HONM
M(J)


HRBS
M(A)

44

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.47 of 1989

DATE OF JUDGMENT: 21-2-1991

BETWEEN:

Mr. K.R.Akole

Mr. C.K.Kumaran

Applicants

AND

1. Union of India, Secretary,
Ministry of Railways,
Railway Board,
New Delhi.

2. The General Manager,
South Central Railway,
Secunderabad.

3. The Chief Engineer (Open Line),
South Central Railway,
Secunderabad.

4. The Chief Engineer (Construction),
South Central Railway,
Secunderabad.

Respondents

FOR APPLICANT: Mr. M.Lakshmana Rao, Advocate

FOR RESPONDENTS: Mr. N.R.Devaraj, SC for Railways

CORAM: Hon'ble Shri J.Narasimha Murthy, Member (Judl.)
Hon'ble Shri R.Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed for a relief to direct the respondents to pay to the applicant the equal pay and allowances to that of/Assistant Programmers in the EDP Centre irrespective of the designation of the post they hold with effect from 1.11.1984. The contents of the petition are briefly as follows:-

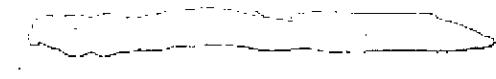
The applicants are graduates in Civil Engineering. When they were working as Design Assistants in the pay scale of Rs.550-750, applications were invited for the Ex.cadre post of Assistant Programmer in the pay scale of Rs.650-960 in the proceedings dated 3.6.1980 of the Chief Personnel Officer, from the eligible serving employees with a Degree in Civil Engineering, specialised knowledge in the field of the numerical methods of analysis in the field of the Fortran Programming and knowledge of job controlling, knolwedge of advanced system like I.B.M/370 including experience in processing of Tape Disc files. After verifying confidential reports and service registers, candidates were called for a written test and successful candidates were interviewed. The applicants were successful both in the written test and the interview and they were empanelled. The first applicant was consequently promoted as Assistant Programmer in the pay scale of Rs.650-960 with a pay of Rs.710/- and posted to the office of the Chief Engineer (Open Line) in the Office Order dated 3.12.1980, and he joined duty on 4.12.1980. Similarly, the 2nd applicant was promoted as Assistant Programmer with effect from 25.9.1981 by the Office Order dated 15.10.1981 and he joined duty on 15.10.1981. They are discharging their duties satisfactorily without any complaint.

2. The 1st respondent issued restructuring orders dated 16.11.1984 and sanctioned a special allowance of Rs.125/- per month to the Assistant Programmers with effect from 1.11.1984 and it was circulated by the General Manager's office in its Serial Circular No.147/1984 dated 28.11.1984. Hence, the 1st applicant represented for payment of the same to the Chief Personnel Officer (Engg.) on 4.2.1985 through proper channel. He sent reminders dated 2.7.1985 and 18.7.1988. Similarly, the 2nd applicant also made a representation to the 4th respondent during 1986. Though the 2nd and 3rd respondents recommended the same, the 1st respondent rejected the sanction of special allowance of Rs.125/- per month to the applicants, without any reason.

3. The Assistant Programmers in the EDP Centre are recruited from graduates of any discipline but not necessarily Engineering graduates. The candidates need not have any prior knowledge or experience. After recruitment they are trained. They purchase soft ware packages from outside and feed data through development programmes occassionally. The Assistant Programmers in the Engineering units work not only similar but more sophisticated and scientific programs. They are more qualified and more experienced with more knolwedge but with less pay.

4. The 1st respondent failed to consider the above facts and rejected the grant of special allowance to the applicants in his letter dated 13/14.7.1987. He also found fault with the recruitment of Assistant Programmers from outside EDP Centre and directed redesignation of the posts

as Chief Draftsman/Chief Designer Assistant. This letter was not communicated to the applicant. Irrespective of the recruitment from 1977 onwards is justified or not, since they worked as Assistant Programmers in the Engineering unit and ~~that~~ they performed not only ~~similar~~ but also more sophisticated and scientific work than the Assistant Programmers in the EDP centre, the special allowance cannot be denied to them. Mere ~~redesignation~~ of the post with same duties cannot prevent their entitlement to the special allowance.

5. The Chief Engineer justified the existence of the posts of Assistant Programmer in his office from 1977. He is the Principal Head of the Department for all Engineering units in the zone. He recruited the Civil Engineering graduates with experience and knowledge having regard to the nature of work in his Department. The zonal authorities therefore recommended to the 1st respondent to reconsider the case of the applicants but the first respondent in his letter dated 5.7.1988 refused the same and this was also not communicated to the applicants. After coming to know the same, the first applicant made a representation to the 2nd respondent for sanctioning the special pay and continuation of the post of the Assistant Programmer but no orders were received so far. 

6. The Assistant Programmers of EDP Centre as well as Engineering units work under the same employer viz., Railway administration with similar responsibilities and similar working conditions. The Doctrine of equal work and equal pay therefore applies. It is not open to the respondents to discriminate the applicants with others in payment of salary and allowances. The respondents are under consti-

tutional obligation to ensure that equal pay is paid for equal work. Hence, the applicants filed this application.

7. The respondents filed a counter with the following contentions:-

The scale of pay of Assistant Programmers working in the Electronic Data Processing Centre (EDP Centre) was Rs.650-960 (3rd pay commission). Subsequently, when Assistant Programmer posts were created in Civil Engineering Department in 1977 by the local Railway administration, the pay scale of Rs.650-960 was attached. The Railway Board vide their letter dated 16.11.1984 made a specific mention that the Assistant Programmers in the pay scale of Rs.650-960 working under EDP Centre would have a special pay of Rs.125/- per month from 1.11.1984. As the applicants were not working in the EDP Centre, and ~~some~~ were working in Engineering Department, ^{they} were not given the benefit of the special pay. Again, the Railway Board while introducing the revised pay scale (4th pay commission) vide letter dated 24.9.1986 effective from 1.1.1986, replaced the scale of pay of Assistant Programmer of EDP Centre viz., Rs.650-960 with special pay of Rs.125/- per month by scale Rs.2375-3500. Since the Assistant Programmers in Civil Engineering Department were not covered by these rules and had not been drawing the special pay of Rs.125/- per month, the applicants were only allowed the pay scale of Rs.2000-3200 (4th pay commission) which is equivalent to the existing pay scale of Rs.650-960 without special ^{pay} of Rs.125/- per month. Hence, the claim of the applicants that they also should be allowed the scale of Rs.2375-3500, which is applicable only to the Assistant Programmers of EDP Centre is not tenable.

8. The Railway Board, in their letter dated 16.11.1984 stated that the Assistant Programmers in the pay scale of Rs.650-960 under EDP Centre are eligible for special pay of Rs.125/- per month from 1.11.1984. On a representation by the 1st applicant for the same benefit, a reference was made to the Railway Board vide letter dated 25.2.1986 asking for clarification whether the special pay of Rs.125/- per month be granted to the Assistant Programmers in the Civil Engineering Department also on par with the Assistant Programmers working in the EDP Centre. In reply, the Board vide their letter dated 13/14.7.1987 advised that the creation of the post of Assistant Programmers outside Data Processing Centre was itself incorrect and therefore directed that an immediate action should be taken to re-designate the posts ~~as~~ CDMs/CDAs etc., as the case may be relevant to the category from which the present incumbent was drawn. The Board also clarified that the question of grant of special pay to this post held by the applicants or grant of scale Rs.2375-3500 without special pay with effect from 1.1.1986 ~~would~~ not arise. It is therefore evident that the Assistant Programmers in the Civil Engineering Department are not entitled to the sanction of the special pay of Rs.125/- per month with effect from 1.11.1984 and/or replacement of existing scale by Rs.2375-3500 from 1.1.1986.

9. Initially, when the post of Assistant Programmer in the pay scale of Rs.650-960 was created, necessity was felt to fill up the same immediately. It was, therefore, decided to secure a person who was already in possession of knowledge in the field of computer programming. Hence, the graduates (not necessarily Engineering graduates) ^{who} ~~can~~ were given the training in the said ^{field} ~~can~~ also man the post of Assistant Programmer created in the Civil Engineering Department.

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10. According to the Board's decision contained in their letter dated 13/14.7.1989, Assistant Programmers working in offices other than EDP Centre are ~~xx~~ not entitled to special pay or scale of pay of Rs.2375-3500 and these posts were re-designated as CDAs in proceedings dated 31.1.1989 and dated 2.2.1989 which were communicated to all concerned. The applicants are bound by these decisions of the Board since one of the terms and conditions of their employment to Railway service is that they will be governed by the provisions of the Indian Railway Codes and other extent orders as ~~amended~~ issued from time to time. As such, the applicants are not entitled ~~xx~~ either to special pay prior to 1.1.1986 or to the pay scale of Rs.2375-3500 from 1.1.1986, and the application is liable to be dismissed.

11. The learned counsel for the applicants, Shri M. Lakshmana Rao and the learned Standing Counsel for the Railways/Respondents, argued the matter. It is a fact that for want of hands, the respondents have taken Civil Engineering graduates working as Design Assistants in the pay scale of Rs.550-750 and applications were invited for the Ex-cadre post of Assistant Programmer in the pay scale of Rs.650-960 by the proceedings of the Chief Personnel Officer dated 3.6.1980. After verifying the confidential reports and service registers, the candidates from the Civil Engineering Department were called for a written test and interviews were also conducted. After they became successful ^{and promoted} they were empanelled ~~as~~ Assistant Programmers in the pay scale of Rs.650-960. The pay of the 1st applicant was fixed at Rs.710/- The 2nd applicant was also promoted as Assistant Programmer in the pay scale of Rs.650-960.

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12. While so, the respondents issued restructuring orders in its letter dated 16.11.1984 and sanctioned a special pay of Rs.125/- per month to the Assistant Programmers ~~working~~ with effect from 1.11.1984. It was circulated by the General Managers office in its circular dated 28.11.1984. The 1st applicant submitted a representation for payment of the same to the Chief Personnel Officer (Engineering) on 4.2.1985 through proper channel followed by two reminders. Though the 2nd and 3rd respondents recommended the claim of the applicants, the 1st respondent rejected the same. The 1st respondent also found fault with the recruitment of the Assistant Programmers from outside EDP Centre and directed redesignation of the posts ~~of~~ as Chief Draftsman/ Chief Designer Assistant. According to the respondents, only the Assistant Programmers working in the EDP Centre are entitled to get the special pay of Rs.125/- per month and the persons who are designated as Assistant Programmers from the outside EDP Centre cannot get the same. The applicants made representations and their representations were rejected by the respondents.

13. The Engineering Graduates i.e., the applicants herein were taken as Assistant Programmers ~~in~~ the pay scale ~~of~~ similar to that of the Assistant Programmers working in the EDP Centre i.e., in the pay scale of Rs.650-960. After holding a written test and also an interview and after verifying the antecedents, the applicants were taken as Assistant Programmers on par with the Assistant Programmers working in the EDP Centre. The applicants should not be discriminated from the Assistant Programmers working in the EDP Centre. The applicants claim the special pay of Rs.125/-



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per month on par with the Assistant Programmers working in the EDP Centre. Only when the applicants claimed the special pay of Rs.125/- per month, after restructuring, the respondents took a stand that the Assistant Programmers working in the EDP Centre are treated separately but not on par with the Assistant Programmers working in the Civil Engineering Department.

¶14. The applicants were selected and appointed as Assistant Programmers after a due process. That the nature of duties which the applicants are performing are the same as in the E.D.P. Unit had not been denied by the respondents. Yet, the respondents denied the applicants the special pay of Rs.125/- p.m. from 1.11.1984 to 31.12.1985 and the revised scale from 1.1.1986 onwards. While revising the pay scale the respondents had taken into account the special pay of Rs.125/- p.m. in the case of those working in the E:D.P. Unit while denying the same to the same set of people performing similar duties outside the E.D.P. Unit. The attempt of the respondents to justify this on the ground that creation of the posts of Assistant Programmers outside the Data Processing Centre was itself incorrect is not acceptable. If, as a policy, the respondents do not want the Assistant Programmers outside the Data Processing Centre, it is open to them to transfer persons like the applicants to the E.D.P. Unit but they cannot discriminate against them on the simple plea that they are outside the Data Processing Centre. We are, therefore, of the opinion that the applicants are entitled to the special pay of Rs.125/- p.m. in the same manner as those working in the E.D.P. Unit and also the revised pay scale applicable to

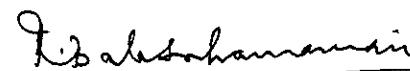
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similar set of people working in the E.D.P. Unit. We, therefore, direct the respondents to give these benefits to the applicants within three months of the date of this judgment.

15. The application is accordingly allowed. There is, however, no order as to costs.



(J. NARASIMHA MURTHY)
Member (Judl.)



(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 11/2/1991



Deputy Registrar (J.)

5/3/91.

To

1. The Secretary, Ministry of Railways,
Railway Board, New-Delhi.
2. The General Manager, South Central Railway,
Secunderabad.
3. The Chief Engineer (Open Line),
South Central Railway,
Secunderabad.
4. The Chief Engineer (Construction),
South Central Railway, Secunderabad.
5. One Copy to Mr. M. Lakshmana Rao, Advocate,
H. No. 1-9-9/5/2, Azamabad, Hyderabad-500020.
6. One Copy to Mr. N. R. Devaraj, SC. for Rlys, CAT., Hyderabad.
7. One Copy to Mr. J. Narasimha Murthy, Member (J), CAT., H. d. vsp
8. One Copy to Mr. R. Balasubramanian, Member (AO), CAT., Hyd.
9. ~~Two~~ Spare Cop (2)

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