

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1834/2013

Order reserved on: 9.02.2016
Pronounced on: 16.02.2016

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

1. Ankit Garg
S/o Shri Ishwar Chand Garg
R/o B ½, Arjun Mohalla
Gali No.3, Moujpur,
Delhi-53
2. Nishant Raj
S/o Shri Kaushal Kishore Singh
Permanent Address : New Chitragupta Nagar
P.O. Lohia Nagar, Kankarbagh,
Patna-800020 (Bihar)

Present Address : C-5, Nawada Housing Colony,
Dwarka More, Uttam Nagar, New Delhi-110059
3. Gautam Kumar
S/o Shri Arjun Prasad Singh
Permanent Address : Vill. Mahabigha
P.O. Ben, P.S. Ben, District Nalanda,
State, Bihar-803114

Present Address : RZ-139 B, 60 Feet Road
Nand Vihar, P.O. Kakraula
Sector-16, Dwarka, New Delhi-78
4. Rakesh Khandelwal
S/o Shri Satyanarayan
r/o 1/161, Khichri Pur
Near Bus Stand Kalyan Puri,
Delhi-91
5. Binay Kumar
S/o Shri Rameshwar Prasad
Permanent Address : Mohalla Rambhadra
Ramchoura Kounhara Road,
Near Church, P.O. Hajipur
Distt. Vaishali, State-Bihar
Pin-844101

Present Address : B-22, Bhagwati Garden,
Near Rama Park, - 59

5. Dharmendra Kumar Sinha
S/o Shri Madhusudan Prasad Sinha
Permanent Address : Prem Kunj, Nathun Singh Lane,
Chaintola, Mussalahpur, P.O. Mahendru,
Patna-800006

Present Address : C-2, Mohan Garden Nawada,
Uttam Nagar, New Delhi-59

... Applicants

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Union of India
Through its Secretary,
Ministry of Commerce and Industry,
Department of Industrial Policy & Promotion,
Udyog Bhawan, New Delhi
2. The Controller General
Office of Controller General Patents,
Design and Trade Marks
Boudhik Sampada Bhawan,
First Floor, S.M. Road,
Antop Hill, Mumbai-400037
3. The Assistant Registrar
(Head of Office)
Trade Marks Registry,
Boudhik Sampada Bhawan,
Plot No.32, Sector-14,
Dwarka, New Delhi-110075
4. The Joint Controller
(Head of Office)
Patents Office,
Boudhik Sampada Bhawan,
Plot No.32, Sector-14,
Dwarka, New Delhi-110075

... Respondents

(Through Shri Amit Anand, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants appeared in the Combined All India Open Examination 2010 conducted by the Staff Selection Commission (SSC) for recruitment to the posts of Data Entry Operator (DEO) in various offices of the Union of India namely Controller General Patents, Design and Trade Mark (CGPDTM) under the Ministry of Commerce; Ministry of Agriculture; and Comptroller and Auditor General of India.

2. The applicants were selected and appointed in the year 2011 in the office of CGPDTM. It has been alleged by them that allotment of selectees to either of the three offices was not made in accordance with merit position obtained by the candidates.

3. The controversy arises because the Grade Pay of DEO in the office of CGPDTM is Rs.1900/- in Pay Band-I while in the other two offices, the post carries the Grade Pay of Rs.2400/- in Pay Band-I. Therefore, since it is alleged that the allocation of selected candidates amongst the three offices was random and not based on their merit position, the applicants claim is that they have been offered a post with lesser Grade Pay while those below them in merit list got a post with Grade Pay of Rs.2400/-.

4. It is further stated by the applicants that the minimum essential qualifications for all the three offices for which examination was conducted, were the same.

5. Para 13 of the advertisement required the candidates to indicate in the application form the order of preference for the posts of DEO. Para 13 is quoted below for easy reference:

"13. Preference

A candidate will be required to indicate in the application form for the Examination, the order of preference for the posts of Data Entry Operator and Lower Division Clerk.

Further detailed preference as below will be obtained at the time of Skill Test.

A. Preferences of Departments/ Offices for allocation/ subject to availability of confirmed number of vacancies for the concerned Offices/ Ministries)

Data Entry Operator :

- A. Comptroller & Auditor General of India
- B. Ministry of Agriculture
- C. Office of the Controller General Patents, Designs & Trade Marks Mumbai
- D. Any other Department/ Office not mentioned above."

6. The applicants made representations, which were also supported by CGPDTM as is evident from their letters dated 7.07.2014, 25.08.2015 and 4.08.2015 (Annexure AA-2 to additional affidavit filed by the respondents dated 18.12.2015). However, the Ministry of Commerce vide impugned order dated 2.01.2013 has rejected their claim on the ground that it is clearly mentioned in the advertisement published in the Employment News dated 17.07.2010 that SSC will hold an All India Open Competitive Examination for recruitment to the posts of Data Entry Operators in Pay Band-I, Grade Pay Rs.2,400/- in the M/o Agriculture, CAG and Grade Pay of Rs.1900/- for O/o

CGPDTM, Mumbai. Aggrieved by this order, the applicants have filed the instant OA seeking the following reliefs:

- “(a) quash and set aside the impugned order
- (b) direct the respondents to immediately pay the applicants Grade Pay of Rs.2400/- p.m.
- (c) direct the respondents to take all appropriate steps for giving effect to relief claimed at (b) above.
- (d) direct the respondents to pay to the applicants the arrears of grade pay from the date of appointment of the applicants with interest.
- (e) award costs of the proceedings.”

7. The grounds on which claims are made are:

- (i) That not following the merit list and appointing the applicants against a post carrying lower Grade Pay than other candidates below them in the merit list, is illegal, arbitrary and violative of the Constitution of India.
- (ii) The post of DEO was created for the first time in CGPDTM in the year 2008 and, therefore, it ought to have been created in the Pay Band with such Grade Pay as recommended by the VI CPC. Our attention was drawn to para 3.8.11 of the VI CPC recommendations pertaining to Electronic

Data Processing (EDP) staff, where they have recommended DEO Gr.A as PB-I with Grade Pay of Rs.2400/-.

- (iii) The mere reason that it was mentioned in the advertisement that the Grade Pay is 1900/- does not mean that the applicants claim for Grade Pay Rs.2400/- does not lie. A government employment is not a mere contract but a status. The government service though initiated as contract, does not remain a contract, once the appointment is made. Once appointment is made to a post or office, the government servant acquires a status and his rights and obligations are no longer determined by consent of parties. The legal position of a government servant is more one of status than of contract.
- (iv) In every government department, ministry or autonomous organization of the government, the minimum Grade Pay for Data Entry Operator is Rs.2400/- and CGPDTM appears to be a sole exception.
- (v) Wherever higher qualification viz. Graduation is the requirement towards minimum educational qualification for the post of DEO, the Grade Pay is Rs.2800/-.

Wherever the prescribed minimum educational qualification is non-graduate the Grade Pay is 2400/- universally.

- (vi) The nature of duties and responsibilities, the mode and manner of recruitment, the essential qualifications for the post of DEO are similar as in other organizations.

8. The applicants placed reliance on judgment of the Hon'ble Supreme Court in **Hindustan Times and others Vs. State of U.P. and another**, (2003) 1 SCC 591 and specifically drew our attention to para 39, which reads as follows:

"The respondents being a State, cannot in view of the equality doctrine contained in [Article 14](#) of the Constitution of India, resort to the theory of "take it or leave it". The bargaining power of the State and the newspapers in matters of release of advertisements is unequal. Any unjust condition thrust upon the petitioners by the State in such matters, in our considered opinion, would attract the wrath of [Article 14](#) of the Constitution of India as also [Section 23](#) of the Indian Contract Act. See [Central Inland Water Transport Corpn. Ltd. Vs. Brojo Nath Ganguly](#) [(1986) 3 SCC 156] and [Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress](#) [AIR 1991 SC 101]. It is trite that the State in all its activities must not act arbitrarily. Equity and good conscience should be at the core of all governmental functions. It is now well settled that every executive action which operates to the prejudice of any person must have the sanction of law. The executive cannot interfere with the rights and liabilities of any person unless the legality thereof is supportable in any court of law. The impugned action of the State does not fulfill the aforementioned criteria."

It is contended that the applicants were in no position to bargain with the respondents and, therefore, they accepted the

appointment in the Grade Pay of Rs.1900/- but as per the Supreme Court judgment, that cannot be held against them.

9. Lastly, it was submitted that from the letter dated 23.11.2015 written by the Ministry of Commerce and Industry, it is clear that the post of DEO was created in October 2008 and, therefore, the Grade Pay of Rs.1900/- was erroneously given by the respondents as by that time, the VI CPC recommendations had already come and the DEOs were recommended Grade Pay of Rs.2400/- in PB-I.

10. In their reply, the respondents have taken the stand that the advertisement has not been challenged by the applicants. It is stated that in the advertisement itself, it was made absolutely clear that the post of DEO in CGPDTM will be in Grade Pay of Rs.1900/- in Pay Band-I and in the other two offices, it would be in the Grade Pay of Rs.2400/- in Pay Band-I. Therefore, since the applicants have been appointed in accordance with the terms and conditions of the advertisement and they had applied with open eyes, relief sought by them cannot be granted.

11. The respondents have also placed before us through their additional affidavit copy of order dated 22.10.2008 conveying to CGPDTM sanction of the competent authority for creation of certain posts including that of DEO in the pay scale of Rs.3050-4590. It is argued that pay scale of Rs.3050-4590 was replaced by PB-I with the Grade Pay of Rs.1900/-. Thus, the respondents have made no mistake in granting the replacement scale of VI CPC to the applicants.

12. The respondents placed reliance on Constitution Bench judgment in **Satish Chandra Anand Vs. The Union of India**, 1953 SCR 655, where the Hon'ble Supreme Court held as follows:

"The State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound."

13. We have heard the learned counsel for the parties and gone through the pleadings available on record.

14. It is a fact that the advertisement clearly stated that the post of DEO in the office of CGPD TM will be in Pay Band-I with Grade Pay of Rs.1900/- while in the other two offices, it would carry Grade Pay of Rs.2400/- in Pay Band-I. Therefore, the applicants were aware of the pay scale attached to the post while submitting applications. As per the advertisement, the applicants were required to indicate in the application form the order of preference for the posts of DEO. They have nowhere stated that they had indicated preference in the application form. Therefore, the applicants cannot now take the plea that they have been allocated to CGPD TM with lesser Grade Pay of Rs.1900/- wrongly. Moreover, if one reads para 3.8.11 of the VI CPC recommendations regarding EDP staff, the present pay scale of DEO Gr. A has been indicated as Rs.4000-6000. It becomes clear from the letter dated 4.08.2015 of the Ministry of Commerce as well as order dated 22.10.2008 regarding creation

of new posts that in case of DEO in CGPDTM, the pre-revised scale of Rs.3050-4590 was revised to PB-I with the Grade Pay of Rs.1900/-. As such, para 3.8.11 of the VI CPC recommendations does not refer to DEO posts in the pay scale of Rs.3050-4590. It is evident that the DEO in CGPDTM have always been in the pay scale of Rs.3050-4590 and the correct replacement scale for them is PB-I with Grade Pay of Rs.1900/-. The applicants knew this when they applied. They have not been able to establish that they had given preference for other two offices. In fact, there is not even a whisper in the OA or even during the course of arguments on this count and, therefore, they cannot rake up the claim of merit based selection at this stage.

15. Moreover, the judgment of the Hon'ble Supreme Court in Hindustan Times (supra) does not relate to the issue before us in the OA and is thus not applicable in the present case. Nobody has thrust the appointment on the applicants.

16. On the question of qualifications being the same and job requirements being similar and, therefore, seeking to justify same Grade Pay for DEOs in all the departments is an issue which is beyond the ambit of this Tribunal. The Hon'ble Supreme Court has held in a catena of judgments [**Union of India & Another Vs. P. V. Hariharan & Anr.** SCC (L&S) 838 and **Union of India & Ors. Vs. Makhan Chandra Roy** AIR 1997 SC 239] that the matter of pay scales lies with the Expert Bodies, like Pay Commission and it is not for the Courts or Tribunals to fix the pay scales. It should be best left to be

decided by expert bodies like Pay Commissions. Therefore, we cannot enter into a de novo exercise.

17. In the light of aforestated facts, we are of the considered opinion that there has been no arbitrary or malafide action on the part of the respondents. The OA, therefore, does not succeed and is dismissed. There shall be no order as to costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/dkm/