

**Central Administrative Tribunal
Principal Bench**

OA No.1959/2010

New Delhi, this the 17th day of May, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. P. K. Basu, Member (A)**

Km. Mridula Gupta
D/o Late G. S. Gupta
R/o J-249, Sarojini Nagar,
New Delhi 110 023.

.... Applicant.

(By Advocate : Shri Amit Anand)

Versus

1. The Secretary
Ministry of Defence,
South Block,
New Delhi.

2. The Joint Secretary (TRG) & CAO
Ministry of Defence,
South Block,
New Delhi.

3. The CGDA
West Block-V,
R. K. Puram,
New Delhi 110 066.

... Respondent.

(By Advocates : Shri Rajinder Nischal)

: O R D E R (ORAL) :

P. K. Basu, Member (A) :

The applicant was appointed as Programme Assistant (DMIS) to the newly created post on ad hoc basis on 13.07.1983 in the pay scale of Rs.550-900 impending framing of Recruitment Rules, which were framed and duly notified vide SRO 48 dated 21.01.1985. Her

appointment was extended for one more year vide letter dated 12.07.1984 (Annexure AA-3), and then time and again vide various orders till her regularisation vide letter dated 03.12.1985 as per Recruitment Rules dated 21.01.1985.

2. Vide Office Memorandum dated 11.09.1989, the Department of Expenditure rationalised the pay scales of Electronic Data Processing posts, designation of posts and entry qualification, which, *inter alia*, reads as under:-

Sl.No.	Designation of post	Pay Scale	
Data Processing/Programming Staff			
1.	Data Processing Assistant Grade 'A'	Rs.1600-2660	Entry grade for graduates with Diploma/Certificate in Computer application.
2.	Data Processing Assistant Grade 'B'	Rs.2000-3200	Promotional Grade.
3.	Programmer	Rs.2375-3500	Direct Entry for holders of Degree in Engineering or post-graduation in Science/Maths etc. or post-graduation in Computer Application. Or By promotion from Data Processing Assistant Grade 'B' .
4.	Senior Programmer	Rs.3000-4500	Promotional Grade.

Thereafter, vide Ministry of Defence letter dated 08.01.1991 on the subject of Revision of Pay Scales of EDP Posts on the basis of the Report of the Committee set up by the Department of Electronics on the recommendations of the Fourth Central Pay Commission, the post of Programme Assistant, DMIS in the pay scale of Rs.1640-2900 had been declared equivalent to Data Processing Assistant Grade-B, DMIS (revised pay scale of Rs.2000-3200). The order stated that the revised pay scale will be w.e.f. 11.09.1989.

3. Thereafter, Ministry of Defence issued letter dated 06.12.1994 on the same subject referring to the earlier order dated 08.01.1991, conveying the sanction of the President to the placement/promotion of the incumbents of the posts of Computer, Senior Computer, Statistical Assistant, Statistical Investigator and Programme Assistant, mentioned at serials 1,4,8,11 and 12 of para 1 of the letter *ibid*, in different grades of the EDP discipline posts as per the provisions contained in enclosed Annexure-I, subject *inter alia* to the following conditions:-

- “ (b) The concerned employees will be placed/promoted in different grades, in accordance with the provisions contained in Annexure-I, as a one time measure. All future recruitment/appointment, as and when necessary, will be made in accordance with the relevant recruitment rules, to be framed as per the Model Recruitment Rules laid down by DoP&T read with the Guidelines dated 15.9.93 prescribed by Ministry of Defence (Finance).”

Sl. No.4 at Annexure A-1 to the aforesaid letter indicated that the existing category of Programme Assistant would now be equivalent to revised category of Programmer in the pay scale of Rs.2375-3500, and the revised educational qualification will be as follows:-

“Existing Category	Revised Category	Revised Provision
Programme Assistant (Rs.1640-2900)	Programmer (Rs.2375-3500)	(a) Those who possess the following qualifications/ experience will be placed In the scale of Rs.2375-3500 (Programmer) :- (i) Master’s Degree in Statistics/Mathematics (with statistics)/Operation Research/Physics or Commerce (with Statistics). Or Degree in Engineering/Computer Science or equivalent.”

4. The matter came up before the Hon’ble High Court of Delhi in CWP No.1212/1990. The said writ petition of the respondents was dismissed vide order dated 10.01.2002. It is relevant to quote the following portion of the order as this would clarify the facts as well:-

“....Backdrop of events, is indicative of the fact that although the petitioner in terms of letter dated 8.1.1991 (P3) granted revised scale to statistic investigator, Programme assistant, in the pay scale of Rs.2000-3200 it appears that had considered the matter afresh having regard to the objections raised by the respondent herein, inasmuch as while issuing the letter dated 6.12.1994, they had not stated that the revised category for the post of statistical investigator and programme assistant would be for those who had been placed in revised pay scale of 200-3200. Reference has been made to unrevised scale of Rs.1640-1900. It is true that by reason of the said letter certain qualifications were prescribed and only 16 posts were created but the fact remains that the petitioner at the later stage did not insist therefor. If all those incumbents for statistical investigator and programme assistant irrespective of their qualifications could be placed in the revised category as programmer in the scale of Rs.2375-3500, creation of 16 posts become irrelevant. It may be held that intention of the petitioner was to grant only 16 posts of programmer to the statistical investigator and programme assistant, the same would amount to creation of a category within a category and same would be hit by Article 14 of the Constitution of India. It is a basic principle that a separate cadre on the basis of

educational qualification or seniority could be made only by a statute or statutory rules. The cadre of investigator and programme assistant would not have been bifurcated by reason of aforementioned letter dated 6.12.1994. It is not even an executive instruction within the meaning of Article 77. The stand of the petitioner would have been appreciated had they insisted that only those who possessed the qualification as mentioned in letter dated 6.12.1994 would be redesignated in the post of programmer and placed in the pay scale of Rs.2375-3500 and others. The conditions for re-designation have been laid. All those who were similarly situated on 6.12.1994 were bound to be treated equally. No discrimination so far as those employees are concerned can be made by the petitioner herein. In the said fact of the matter we agree with the submission of the counsel for the respondent to the effect that having regard to the changed situation, **the post of programmer should not be considered to be creation of a fresh post but the same may be taken to be re-designation of the existing posts** (emphasis supplied)."

The respondents in their counter affidavit have stated that the High Court order dated 10.01.2002 was implemented by them by placing all the Statistical Investigators/Programme Assistants in the grade of Programmer w.e.f. 11.09.1989 without insisting on educational qualification vide office order dated 29.05.2002, as amended vide corrigendum dated 23.09.2002.

5. Thereafter, Shri B. N. Sharma and others have filed OA No.984/2005 seeking placement in the grade of Programmer w.e.f. 01.01.1986 instead of 11.09.1989. The said OA was allowed and accordingly implemented. Since the applicant was not a party in that case, she was not given the benefit of the aforesaid judgment. Aggrieved from this, she approached the Tribunal by filing OA No.124/2007 seeking placement in the grade of Programmer w.e.f. 01.01.1986, and placement in the next higher grade of Rs.3000-4500 as has been done in other cases of similarly situated persons. This OA was disposed of with the direction to the respondents to

pass a speaking order. The respondents passed a speaking order and informed the applicant that her claim has not been acceded to.

6. The applicant thereafter filed OA No.1418/2008 seeking the following reliefs:-

- “ (i) Placement in the grade of Programmer (Rs.2,375-3,500) w.e.f. 01.01.86 instead of 11.9.89 and seeking necessary correction in the order dated 08 Jan 91 by substituting Programmer in lieu of DPA ‘ B’, DMIS, then giving next placement grade to the applicants.
- (ii) Then again placement in the next higher grade (Rs.3,000-4,500) as has been done in other case of similarly situated persons.”

The aforesaid OA was partly allowed vide order dated 23.01.2009 directing the respondent to accord the revised pay scale of the post of Programmer to the applicant w.e.f. 01.01.1986 with arrears as was given to the identically situated persons. This Hon’ble Tribunal also directed that consideration of the applicant’s claim to be deemed as holder of EDP post w.e.f. promulgation of letter dated 06.12.94 now be re-examined, which will, as a consequence, bestow to the applicant grant of appropriate revised scale as Programmer w.e.f. 01.01.1986 by passing a reasoned order. In compliance to the direction of this Tribunal, Order No.A/4300/OA-1418/CAO/P-2 dated 26.05.2009 was issued to place the applicant in the grade of Programmer w.e.f. 01.01.1986 and a speaking order dated 26.05.2009 was issued denying the claim of the applicant for replacement in the next higher grade in the pay scale of Rs.3000-4500 as has been done in other similarly situated persons, on the following grounds:-

- “(a) Since in the Govt. letter No.A/26031/EDP/CAO/CP dated 06.12.94 nowhere specified grant of a scale of Rs.3,000-

4500 and maximum scale that has been provided in the Govt. letter for Programme Assistant is in the pay scale of Programmer (Rs.2375-3500) which has already been given to the applicant who was Programme Assistant as on 01.01.1986. There is no merit to grant her the scale of Rs.3000-4500 as claimed by her.

- (b) Regarding placement in next higher grade (Rs.3000-4500) as has been done to other similarly situated persons is concerned, it is mentioned that not a single applicant has either sought for placement in next higher grade nor has been granted by any Court. They all have simply claimed for not insisting the educational qualification on the ground that educational qualification cannot be applied retrospectively and accordingly, placement in the higher scale as provisioned in Govt. letter dated 06.12.94 have been granted.”

Being aggrieved by this, the applicant has filed the present OA seeking the following reliefs:-

- “ (i) Direct the respondents to correctly implement the judgment of the Hon’ble Delhi High Court dated 10.01.2002 passed in CWP 1212/99 for the applicant recruited under the extent of Recruitment Rules dt.21 Jan 1985, by granting to the applicant the re-designated category of Programmer first and then granting the one time placement in the next higher grade w.e.f. 01 Jan 1986 as per Parar 1 of the order dated 06.12.1994 and
- (ii) To grant any other benefit which may deem fit and proper by this Hon’ble Tribunal in the interest of justice and
- (iii) To award cost to the applicant who has dragged into litigation unnecessarily due to callous attitude of the respondents.”

7. Learned counsel for the applicant argued that the applicant was a direct recruit who had come through UPSC in 1983 in the pay scale of Rs.550-900. On 03.12.1985, she was regularised on the post of Programme Assistant Grade-B non-gazetted. In 1989, when the rationalisation of pay scales took place the post of Data Processing Assistant Grade-B in the pay scale of Rs.2000-3200 was a promotional grade for which the entry grade was Data Processing Assistant Grade-A in the pay scale of Rs.1600-2600 with

Graduation and Diploma/Certificate in computer application as entry qualification. The post of Programmer was indicated in the pay scale of Rs.2375-3500 with direct entry for holders of Degree in Engineering or post-graduation in Science/Maths etc. or post graduation in computer application. Therefore, the first argument put forth by the applicant is that the decision of the respondents equating him with Data Processing Assistant Grade-B is erroneous for the reason that this is a promotional post, and secondly the entry grade qualification for Data Processing Assistant Grade-A, which is the feeder post for DPA Grade-B, is Graduation, whereas the applicant was a post graduate at the time of his entry and the RRs of 1985 also stipulates Post Graduation for the post of Programme Assistant. Therefore, the only post against which she could have been shown as a result of OM dated 11.09.1989 is that of Programmer in the scale of Rs.2375-3500 as this is the only direct entry post with post graduation degree. In fact, by putting him equivalent to DPA Grade-B, the respondents have downgraded her position.

8. Learned counsel further argued that when letter dated 06.12.1994 was issued it was specifically for giving 'one time advantage' to the post of Computer, Senior Computer, Statistical Assistant, Statistical Investigator and Programme Assistant, and placed them on a revised higher scale but the respondents erroneously downgraded applicant and made him equivalent to DPA Grade-B (1640-2900) in Col. 4 of Annexure of 1994 letter. They showed him against the post of Programme Assistant DMIS in the

pay scale of Rs.1640-2900 and granted the upgraded designation of Programmer (Rs.2375-3500) with entry qualification of Post Graduation. Learned counsel for the applicant argued that as per letter of 1989, he could have only been designated as Programmer in the scale of Rs.2375-3500 and even after so called upgraded scales under which every category got benefit, the applicant remains a Programmer, as a result of which, the applicant got left out from the 'one time placement' advantage envisaged in letter dated 06.12.1994. It is, therefore, argued that in the above circumstances, the applicant should be placed in at least the next higher scale, i.e. Rs.3000-4500 w.e.f. 01.01.1986. In this regard, he referred to the aforesaid judgment of the Hon'ble High Court, which we have already noted that the Hon'ble High Court has held that the post of Programmer should not be considered to be creation of a fresh post but the same may be taken as re-designation of the existing post of Programme Assistant.

9. Learned counsel for the applicant further drew our attention to the RRs notified vide Notification dated 21.01.1985 (Annexure AA-2), and subsequently to the schedule concerning Programme Assistant where the scale of pay has been indicated as Rs.550-900 under Column (4), and essential qualification has been prescribed as Master's Degree in Statistics/Mathematics/Operations Research/Physics or Economics/Commerce etc. in column (7). However, in Column (10), under method of recruitment, a Note is added, which is as follows:-

“ Note : The suitability of persons holding the posts of Statistical Assistant and Senior Computer on

regular basis on the date of commencement of these rules in the erstwhile organisation of Army Statistical Organisation (ASO) and Army HQ EDP Centre and fulfilling the eligibility conditions mentioned below will be initially assessed by the Commission for appointment to the posts of Programme Assistant in the scale of Rs.550-900 **at the initial constitution.**”

It is, therefore, argued that the applicant was appointed as a Programme Assistant in the pay scale of Rs.550-900 at the initial constitution through Union Public Service Commission.

10. Learned counsel for the respondents drew our attention to the reasons as to why the applicant’s request for placement in the next higher grade in the pay scale of Rs.3000-4500 was rejected, contained in para 11 of the counter reply, which we have already reproduced in para 6 above, wherein it is stated that no case for grant of pay scale of Rs.3000-4500 is made out in favour of the applicant. It is further argued that as per the aforesaid letter of 1989 the pay scale of Rs.3000-4500 meant for Senior Programmer and not for Programmers, and, therefore, it cannot be granted to the applicant. Learned counsel for the respondents also drew our attention to sub para (b) of OM dated 06.12.1994, which reads as under:-

“(b) The concerned employees will be placed/promoted in different grades, in accordance with provisions contained in Annexure-I as a one time measure. All future recruitment/appointment, as and when necessary, will be made in accordance with the relevant recruitment rules, to be framed as per the Model Recruitment Rules laid down by DoP&T read with the Guideline dated 15.9.93 prescribed by Ministry of Defence (Finance).”

Learned counsel for the respondents tried to argue that the wording of this para and also preamble to this letter has used the

expressions “Placement/Promotion” or “Placed/Promoted” and contended that letter dated 06.12.1994 does not in any way indicate that each and every post indicated in that letter would actually get an upgraded scale and in the case of the applicant, even if she was a Programmer, she would get the scale of Programmer, and there was no question that she has to be necessarily given an upgraded scale. It was, however, clarified by him that though the word “Placement/Promotion” has been used, the higher scales were granted to the incumbents purely as an upgradation and the normal procedure followed for promotion, i.e., DPC etc. was not followed.

11. We have heard learned counsel for the parties.

12. There is no doubt that the applicant was appointed as Programme Assistant (DMIS) in the initial constitution as a direct recruit in the pay scale of Rs.550-900 through Union Public Service Commission, first on ad hoc basis and then regularised vide order dated 03.12.1985. Once OM dated 11.09.1989 came into existence, and posts and pay scales were notified in the DP cadre, the post of Programmer in the pay scale of Rs.2375-3500 was the only direct recruit post with Post Graduation criteria, and, therefore, we accept the claim of the applicant that she could only have been adjusted against this post. There was no question of adjusting her against DPA Grade-B as that was promotional post to DPA Grade-A and the essential qualification in DPA Grade-A was Graduation, and therefore, one who has been recruited and then regularised against the RR of 1985, which stipulates the minimum qualification for the

post against which the applicant was recruited as Post Graduation, there is no way that she could be made equivalent to DPA Grade-B.

13. When letter dated 06.12.1994 was issued, it was clear from that that the whole exercise was to restructure the cadre and provide a higher pay scale to all the posts indicated in that letter. Annexure A-1 of that also shows that all the posts have been given a higher pay scale through this letter. The respondents here insisted that since the applicant was adjusted against DPA Grade-B in the pay scale of Rs.1640-2900, she would be covered by Column (4) of this letter, which is upgradation of Programme Assistant in the pay scale of Rs.1640-2900 to Programmer in the pay scale of Rs.2375-3500 with entry qualification of Post Graduation. In our opinion, this is where the mistake lay because according to the OM dated 11.09.1989, as we have seen, the applicant could only have been adjusted against the post of Programmer in the pay scale of Rs.2375-3500. However, in 1994 through a circuitous route, the respondents downgraded the applicant to DPA Grade-B and then treated him as Programme Assistant and not as Programmer as per OM dated 11.09.1989, and then showed it as an upgradation to Programmer. This was a grave error committed by them and this cannot be sustained by any stretch of logic or reason. In fact, the findings of the High Court in the aforesaid Writ Petition also becomes relevant here that the post of Programmer should not be considered to be creation of a fresh post but the same may be taken as re-designation of the existing post of Programme Assistant.

14. The argument of learned counsel for the respondents that letter dated 06.12.1994 speaks of placement/promotion and, therefore, there is no guarantee that there will be upgradation of all the posts mentioned in that letter is an argument which we note only to reject it. The subject of the letter, the contents of the letter and Annexure A-1 of the letter clearly indicates as to what is in the mind of the framers of this policy, which is that all the present incumbents of those posts be given a jump in their pay scales without the need for following the normal promotion and they be “placed” in the higher scales with change of designation as per Annexure I. For future, when employees are “promoted” to those posts the new designation/higher pay scale would apply. The respondents’ interpretation of ‘placement/promotion’ is absurd. Now, clearly by equating the applicant as DPA Grade-B through Programme Assistant in the pay scale of Rs.1640-2900 and then showing it as upgraded to the post of Programmer in the pay scale of Rs.2375-3500 is as a result of complete misplaced logic by the respondents and cannot be supported.

15. Similarly, the argument on behalf of the respondents that pay scale of Rs.3000-4500 is assigned to Senior Programmer and hence cannot be given to the applicant is specious. The letter dated 06.12.1994 is only an upgradation as the respondents themselves have clarified that upgradation is automatically given without following any procedures for promotion such as DPC etc. Therefore, we do not see how this will come in the way of denying the applicant pay scale of Rs.3000-4500.

16. In conclusion, we are of the clear opinion that the applicant has been wrongfully denied the benefit, first in 1989 OM by not designating her as Programmer in the pay scale of Rs.2375-3500 and then again denying her the benefit of letter dated 06.12.1994 granting upgradation to the next pay scale of Rs.3000-4500. The OA is, therefore, allowed. Respondents are directed to grant the applicant the re-designated category of Programmer and then grant her one time placement in the next higher grade in accordance with policy stated in letter dated 06.12.1994 w.e.f. 01.01.1986 with all consequential benefits. The time frame allowed for implementation of this order is two months from the date of receipt of copy of this order. No costs.

(P. K. Basu)
Member (A)

(Permod Kohli)
Chairman

/pj/