

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 4620/2011

New Delhi this the 14th day of October, 2015

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

1. Achiles Nigam
Q.No.568, Kamla Nehru Nagar,
Ghaziabad
2. Vijay Pal,
H.No. 179E/1,
Basant Nagar, New Delhi
3. Sandeep Kumar Garg
A-338, Moti Bagh,
New Delhi-110021
4. Ranjana
Q.No.15, Plot No.9
Karkardooma, Delhi
5. Vinod Kumar
H.No.B-60, Street No.1
West Vinod Nagar, Delhi-92
6. Vikas Verma
Q.No.525, Kamla Nehru Nagar,
Ghaziabad
7. Kamla Rani
C-161, Albert Square,
R.K. Ashram Marg,
New Delhi
8. Rajender Kaur
H.No.WZ-412/2
Nanak Pura, Hari Nagar,
New Delhi-64
9. Shashi Bala Sharma
J-3/50A, J-Extension
Laxmi Nagar, Delhi-92
10. Sunita - I
H.No. 120, Julana Basti
Choti Chopal, Mahipal Pur

New Delhi-110037

11. Sunita - II
Z-50, Shyam Vihar Ph-I
Najafgarh, New Delhi-110043
12. Shashi Kumar
A-13, Pink Apartments,
Paschim Vihar,
New Delhi
13. Meenu
F-1/76, Nanak Pura,
New Delhi

... Applicants

(Through Shri Harish Sharma, Advocate)

Versus

1. The Secretary,
Government of India
Ministry of Labour & Employment
Directorate General of Employment & Training
Shram Shakti Bhawan,
Rafi Marg, New Delhi-110001
2. The Secretary
Government of India
Ministry of Statistics & Programme Implementation
SSS Division,
Sardar Patel Bhawan
Sansad Marg, New Delhi-110001

... Respondents

(Through Shri A.K. Singh and Shri Rajinder Nischal, Advocates)

ORDER

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

The applicants were recruited as Junior Computers/Comptometer Operators in the Ministry of Labour and Employment between the years 1997 and 2000. In the year 2002, the respondents formed a Subordinate Statistical Service (SSS) and notified the SSS (Group C) Rules 2002 by notification dated 12.02.2002, including within its ambit the services of various ministries of Government of India handling statistical work. The applicants' cadre got left out from inclusion in SSS

Group 'C'. Moreover some identified posts of Investigators were included in the applicants' cadre in SSS, thus depriving them from further promotions even in their cadre.

2. In response to a legal notice sent by the applicants, the Directorate General of Employment and Training (DGE&T) vide its communication dated 23.08.2011 replied as follows:

"I am directed to refer to your Legal Notice dated 23/7/2011 on the subject mentioned above and to state that on the recommendations of Fifth Pay Commission, Subordinate Statistical Services was formed in 2002 vide M/o Statistics & Programme Implementation's Notification dated 12.02.2002. The posts of Junior Investigators and Sr. Investigators of DGE&T were included in the SSS. Prior to formation of SSS the post of J.I. was a promotional post and filled by promotion of Junior Computers/ Comptometer Operators. The post of Sr. Investigator was promotional post and filled by promotion of Jr. Investigators.

2. As per the Notification, the posts which are in the pay scale of Rs.4000-6000/- and 4500-7000/- were included as feeder cadre for filling up of the post of Statistical Investigator Gr.II (equivalent of J.I). The post of Junior Computers/ Comptometer Operators of DGE&T was not included in the feeder cadre because of the pay scale of Rs.3050-4590 (pre-revised). As Junior Computers/ Comptometer Operators are the feeder cadre for the promotion to the post of Jr. Inv./ Sr. Inv., they have left with no promotional avenues.

3. In order to include Junior Computer/ Comptometer Operator of DGE&T in the feeder cadre of SSS, proposal to upgrade their pay scale was taken up in 2002 but the same was regretted by the Finance Division observing that there is no need of Junior Computers/ Comptometer Operators in the environment of PC. Upgradation of pay scale has also not been agreed to just to make them eligible for feeder cadre for some other post. However, ACP/MACP are being granted to this cadre as per DOP&T guidelines.

4. The proposal for encadering the Junior Computers/ Comptometer Operators of DGE&T as Senior Computer with 8 years regular service was forwarded to M/o Statistics & Programme Implementation but the same was returned back with the remarks that "the RRs of SSS are under finalization with DOP&T. Once the RRs will be finalized/ approved, SSS Division may be approached for relaxation etc."

3. Being aggrieved by the action of the respondents, this OA has been filed seeking the following reliefs:

- (a) Issue directions to the Respondents for placing the Applicants in the upgraded replacement scales of pay in terms of recommendations of the V Central Pay Commission and further direct the Respondent No.1 to take immediate decision on the assurances contained in its impugned letter No.DGE&T-A-11014/1/2002-Adm.I dated 23.08.2011 for ensuring the Applicants to have appropriate promotional avenues in their service.
- (b) Direct the Respondents to include the Applicants in the restructured service constituted by the Respondent No.2 Ministry in terms of Notification dated 12.02.2002 even if it requires relaxing the revised eligibility standards fixed by Respondent No.2 and consider the Applicants eligible to be promoted to the promotional posts from the dates they became eligible for the same on the basis of qualifications as were required prior to Pay Commission's report as other employees limited to the arbitrary number fixed for inclusion in the restructured services from their cadre and who were included in the restructured service through arbitrary demarcation of posts in the Respondent No.1 Ministry.

- (c) Direct the respondents to revise the grade of pay of the applicants with retrospective effect and to treat them as promoted to the posts on the basis of their notional seniority of being considered eligible for the posts from such retrospective dates when they could have become eligible if the revised pay in replacement scale would have been accorded to them as per the recommendations of V Central Pay Commission and on the introduction of restructured services in terms of notification dated 12.02.2002.
- (d) Direct the respondents to issue necessary instructions in the matter to pay the arrears of restructured pay to the applicants in terms of the dates on which they were eligible to be placed in the grade of restructured pay and notionally eligible for promotions.
- (e) To award costs in favour of the applicant.

4. It is clear from the above facts that this is in the domain of the Union of India to decide how they have to constitute SSS, which are the level of posts that they have to include and which are the posts not to be included and what are the rules to be followed in this regard.

5. The respondents have clarified that they have notified the SSS Rules vide notification dated 12.02.2002.

6. We are of the view that once a policy decision has been taken and that stands notified, there is no scope for the Tribunal to intervene in such policy decision taken by government unless the applicants challenge that notification itself on the ground of this being arbitrary or illegal. In **Mallikarjuna Rao and others**

Vs State of Andhra Pradesh and others, (1990) 2 SCC 707, the Hon'ble Supreme Court held that:

"It is neither legal nor proper for the High Courts or the Administrative Tribunal to issue directions or advisory sermons to the executive in respect of sphere which is exclusively the domain of the executive under the Constitution."

Further in **P.U. Joshi and others Vs. Accountant General, Ahmedabad and others**, (2003) 2 SCC 632, the Hon'ble Supreme Court held that:

"10.....Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State....."

7. In view of above, we do not wish to interfere in this matter except to the extent that now that the Recruitment Rules (RRs) have been finalized, the respondents may consider the request of the applicants in light of their own assertion in letter dated 23.08.2011 that once the RRs are finalized/ approved, SSS Division may be approached for relaxation etc. The OA is disposed of with the above directions. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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