

**CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD**

OA/021/00893/2016

Date of Order : 12-07-2018

Between :

1. A Babu Reddy S/o Sri A V Krishna Reddy,
Aged about 49 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Regional Office,
3-4-763, Barkatpura, Hyderabad residing at 11-9-187,
Vijayapuri Colony, SBI Colony, Kothapet, Hyderabad-500035.
2. V V Chandrasekhar S/o Sri V C Rangappa (Late),
Aged about 48 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Regional Office,
Hyderabad, residing at H.No.1-2-234/13/27,
Aravinda Nagar, Domalguda, Hyderabad-500029.
3. K Nageswara Rao S/o Sri K Kutumba Rao
Aged about 48 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Regional Office,
Hyderabad, residing at 12-11-1584, Boudha Nagar,
Secunderabad, Hyderabad-500061.
4. K V S Rama Rao S/o Sri K Srinivasa Rao,
Aged about 47 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Regional Office,
Hyderabad residing at Q No.22,EPFO Quarters,
Barkatpura, Hyderabad-500027.
5. M Venkateswarlu S/o Sri M Govinda Swamy,
Aged about 48 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub Regional Office,
Karimnagar, residing at H.No.5-6-240, Road No.6,
Vaidehi Nagar, Vanasthalipuram, Ranga Reddy Dist.
6. E Srinivas S/o Sri E Venkata Mallu (Late),
Aged about 48 years , Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub Regional Office,
Karimnagar, residing at H.No.4-1-177, Subhash Nagar,
Kothur Street, Hanamkonda, Warangal Dist.-506001.
7. L D Norbert S/o Sri L Dennis (Late),
Aged about 45 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Kukatpally, residing at Flat No.202, Om Sai Heights, Hemanagar,
Boduppal, Hyderabad-500039.

8. V Hema Malini W/o Sri T Shyam Sunder,
Aged about 44 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Kukatpally, residing at Flat No.504, Thirumala Venkatadri Nilayam,
Central Excise Colony, Shivam Road, Hyderabad-500013.
9. A Balnath S/o Sri A Narayana,
Aged about 45 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Regional Office,
Nizamabad, residing at Q No.17, EPFO Quarters,
Nyalkal Road, Nizamabad-503001.
10. T Janardhan S/o Sri T Anjaiah,
Aged about 46 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Patancheru, residing at 4-1167, Durganagar, Dilsukhnagar,
Hyderabad-500060.
11. C V S S C Sastry S/o Sri C Venkat Rao (Late),
Aged about 48 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Patancheru, residing at Flat No.206, Swathi Apartments,
Nallakunta, Hyderabad-500044.
12. V Rama Mohan S/o Sri Subrahmanya Sastry
Aged about 48 years , Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Rajahmundry, residing at 77-4-1, Gandhipuram-3
Dwarampudi Raghava Street, Rajamahendravaram-533103.
13. P V Chandrasekhar S/o Sri Mallikarjuna Rao
Aged about 47 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Kadapa, residing at 1/1824, Yashoda Nilayam, Gandhi Nagar,
Yerramukkapally, Kadapa-516004.
14. E Lakshmi Narayana S/o Sri E Pardhasaradhi,
Aged about 47 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Kadapa, residing at Flat No.201, Mohan Residency,
Near SBI, ITI Circle, Kadapa – 516004.
15. Nune Ramesh S/o Sri Lakshmikantha Rao,
Aged about 46 years, Occu : Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Warangal, residing at 2-4-1467/3,Ashokak Colony,
Hanamkonda-506001.
16. Kona Srinivasu Babu S/o Sri Ramachandra Rao,

Aged about 44 years, Occu : Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Warangal, residing at 1-1-831,Siddarthanagar,
Kazipet, Warangal-506004.

17. D S CH Sekhara Kumar S/o Sri D V Subba Rao,
Aged about 46 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Regional Office,
Guntur, residing at Flat No.104, Brindavan Residency,
1st Lane, Brindavan Gardens, Near Ayyappa Swamy Temple,
Guntur – 522006.
18. G R L Narayana S/o Sri G G Setty
Aged about 45 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Rajahmundry, residing at 2-57-3, 7th Street, Shambhu Nagar,
Alcot Gardens, Rajamhendravaram-533101.
19. D Hari Hara Swamy S/o Sri Subrahmanyam
Aged about 46 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Visakhapatnam, residing at 2-27-1, Sector 6, MVP Colony,
Visakhapatnam-530017.
20. M Ravi Kumar S/o Sri M Prasada Rao
Aged about 46 years, Occu: Data Processing Assistant,
Employees'Provident Fund Organization, Sub-Regional Office,
Visakhapatnam, residing at 10-8-8/2, Kanithi Road,
Gajuvaka, Visakhapatnam-530026.Applicants

AND

1. Union of India represented by its
Secretary to Government of India,
Ministry of Labour & Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi-110 001.
2. The Central Board of Trustees represented by its
Ex-Officio Secretary/Central Provident Fund Commissioner,
Bhavishya Nidhi Bhawan, 14-Bhikaiji Cama Place,
New Delhi-110 066.
3. The Central Provident Fund Commissioner,
Bhavishya Nidhi Bhawan, 14-Bhikaiji Cama Place,
New Delhi-110 066.
4. The Regional Provident Fund Commissioner (HRM),
Employees'Provident Fund Organisation,
Min. Of Labour & Employment, Govt of India,

Bhavishya Nidhi Bhavan, 14-Bhikaiji Cama Place,
New Delhi-110 066.

5. The Additional Central Provident Fund Commissioner,
Andhra Pradesh, Telangana & Orissa, Zonal Office,
Bhavishya Nidhi Bhawan, 3-4-763, Barkatpura,
Hyderabad-500 027.
6. The Regional Provident Fund Commissioner (Grade-I),
Employees'Provident Fund Organization,
Regional Office, Bhavishya Nidhi Bhawan,
3-4-763, Barkatpura, Hyderabad-500 027.
7. The Regional Provident Fund Commissioner (Grade-I),
Employees'Provident Fund Organization,
Regional Office, Bhavishya Nidhi Bhawan,
Nyalkal Road, Nizamabad-503001.
8. The Regional Provident Fund Commissioner (Grade-I),
Employees'Provident Fund Organization,
Regional Office, Bhavishya Nidhi Bhawan,
Krishnanagar, 3rd Lane, Guntur-522006.
9. The Regional Provident Fund Commissioner (Grade-II),
Employees'Provident Fund Organization,
Sub-Regional Office, 15-21/48,Balajinagar,
Kukatpally, Hyderabad-500072.
10. The Regional Provident Fund Commissioner (Grade-II),
Employees'Provident Fund Organization,
Sub-Regional Office, 12-1, Susheeram Complex,
Patancheru, Hyderabad-502319.
11. The Regional Provident Fund Commissioner (Grade-II),
Employees'Provident Fund Organization,
Sub-Regional Office, 2-7-271/A,
Mukarampura, Karimnagar-505001.
12. The Regional Provident Fund Commissioner (Grade-II),
Employees'Provident Fund Organization,
Sub-Regional Office, 24-7-207/15, 100 ft Dargah Road,
Kazipet, Warangal-560004.
13. The Regional Provident Fund Commissioner (Grade-II),
Employees'Provident Fund Organization,
Sub-Regional Office, 58-14-86, Marripalem
VUDA Layout, NAD Post, Visakhapatnam-530009.
14. The Regional Provident Fund Commissioner (Grade-II),
Employees' Provident Fund Organization,

Sub-Regional Office, Golden Plaza, 2nd & 3rd Floor,
Danavaipet, Rajahmundry-533103.

15. The Regional Provident Fund Commissioner (Grade-II),
Employees' Provident Fund Organization,
Sub-Regional Office, 1/30, Railway Station Road,
Yerramukkapaly, Kadapa – 516004. ...Respondents

Counsel for the Applicant: Mr.V.VenkateswaraRao

Counsel for the Respondents : Mr.G.Jayaprakash Babu, SC for EPF

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER

(Oral order per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

Heard Mr. V. Venkateswara Rao, learned counsel appearing for the applicant and Mr. G. Jayaprakash Babu, learned Standing Counsel appearing for the Respondents.

2. Originally the applicants were working as Data Entry Operators (DEOs Gr. A for short) in the Respondents organization. The Respondents organization thought that there was a need for reorganization of the DEOs cadre and consequently declared DEO cadre as dying cadre and new cadre of Data Processing Assistants was created. As per the Recruitment Rules the Data Processing Assistants have to be recruited by means of direct recruitment. As per the new Recruitment Rules, 100% of posts are required to be filled by direct recruitment. The post was classified as Group - C Non-Gazetted Non Ministerial with scale of pay in Pay Band

Rs.9300-34800/-

(Rs.6500-10500/- (pre-revised)) with grade pay of Rs.4,200/-. As a one time relaxation on cadre restructuring, the existing Data Entry Operators (Grade - A, B & C) possessing the minimum educational qualifications with six years regular service shall be deemed to have been appointed from the date of notification of the rules. It was also mentioned in the notification that those Data Entry Operators who do not possess the minimum educational qualifications will be appointed on regular basis only on acquiring the minimum educational qualifications within two years from the date of notification of the Recruitment Rules. The Gazette notification of Recruitment Rules was circulated by the 3rd Respondent herein vide his letter dated 24.09.2009.

3. The Data Entry Operators were converted as Data Processing Assistants in September, 2009 appointing the applicants herein as Data Processing Assistants by conversion in the pay band Rs.9300-34800 with the Grade pay of Rs.4200/- with effect from 30.05.2009. Thereafter posting orders were issued and the applicants reported in various offices of the organization as Data Processing Assistants. Posting orders were issued on 20.10.2009. Subsequently by implementing the recommendations of 6th Central Pay Commission, the 3rd Respondent vide his letter dated 19.05.2010 has granted the Grade Pay of Rs.4,600/- in place of Grade Pay of Rs.4,200/- with effect from 30.05.2009 to all the Data Processing Assistants.

4. The 3rd Respondent vide his letter dated 11.08.2016 issued a

clarification that the DEOs who are converted to DPAs are not entitled for increment at the rate of 3% either on 30.05.2009 or on acquiring the requisite qualification. The 3rd Respondent issued letter dated 11.08.2016 making certain clarifications regarding pay scale of DEO who have been converted as DPAs. The relevant portion of the paras 10 and 11 reads as under :-

“10. Inspite of the above, certain field offices treating the conversion as promotion or direct recruitment had allowed increment initially from the date of notification 30.05.2009 or on acquiring qualification of 6 years regular service and arrears of Grade Pay from the date of notification. This is highly irregular.

11. In view of the above, it is directed that the implementation of the 7th pay revision to such DPAs who have received excess payments will be done only after regularising the excess payment made. The excess pay drawn be recovered forthwith and in one lumpsum from the arrears of the pay due to them from 01.01.2016 to 31.07.2016 on implementation of the recommendations of 7th Pay Commission. If the amount of arrears falls short of the recoveries to be made, the same should be recovered from the revised pay of August, 2016.”

5. Aggrieved by the same, the applicants filed the present OA challenging the letter dated 11.08.2016 and the consequential recovery orders issued by the Respondents directing recovery of the excess amount from the applicants.

6. The Respondents in their reply statement, in para-4, contended interalia as follows :-

“... consequent to the creation of cadre of DPA, the Employees Provident Fund Organization Data Processing Assistant Recruitment Rules, 2009 (hereinafter denoted as RRs), were notified in the Gazette of India with effect from 30.05.2009 in the Pay Band of Rs.9300-34800 with grade pay of Rs.4200 to be filled 100% by the method of Direct Recruitment. However, provisions were made in the RRs for placement of existing DEOs to the grade of DPA with a onetime relaxation to those who were possessing the minimum educational qualification prescribed and also for such regular DEO Grade A, B and C who did not possess the prescribed qualifications, to be appointed as DPA if they acquire such qualifications within 2 years of the notification of the RRs as explained hereinafter.”

7. It is contended by the Respondents that the erstwhile cadre ie the DEO cadre was declared as dying cadre in the organization with the creation of post of DPA after restructuring of the posts in the technical cadre to be filled by direct recruitment. The existing incumbents including the applicants who fulfilled the eligibility conditions were converted as DPAs by constitution of Screening Committee to scrutinize their educational qualifications and their service records. Such DEOs were converted as DPAs with effect from 30.05.2009 and subsequently in batches as and when they acquired the essential qualifications.

8. It is contended that the implications of the FR.22(I)(a)(2) is that the pay of the DPA upon conversion shall be fixed at the stage of the time scale which is equal to his pay in respect of the old post held by the incumbent on regular basis, or if there is no stage, the next stage above to the pay drawn in their old post plus who were converted as DPAs were allowed to draw higher Grade Pay of Rs.4600/- besides their pay in the Pay Band. According

to the Respondents, on the basis of recommendations of 6th Central Pay Commission, a further provision has been made for fixation of pay of the employees appointed as fresh recruits on or after 01.01.2006. The pay fixation in respect of such employees has to be done in terms of the Entry level Pay prescribed in Section-II of Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008. Minimum pay has allowed as Entry level Pay for the post of DPA falling in Pay Band-2 is as per table given below :

PB-2 (Rs.9300-34800)		
Grade Pay	Pay in the Pay Band	Total
4200	9300	13500
4600	12540	17140
4800	13350	18150

Nextly it is submitted that inspite of the clear instructions in the matter of pay fixation, the alleged controversy has arisen due to allowing Entry level Pay to the DPAs on conversion treating them at par with direct recruitment employees for whom separate pay has been recommended by the 6th Central Pay Commission as explained above. The pay of the applicants as well as the other DPAs has been erroneously fixed by allowing them Entry level Pay of Rs.17140 (Rs.12540/- plus Grades Pay of Rs.4600/-) corresponding to the pay structure applicable in the case of direct recruitment appointees on or after 01.01.2006. It is further submitted that vide Office Memorandum No.1/12008-IC, dated 13.11.2009, higher Grade Pay has already been implemented for the DPAs as per the recommendations made in Part-B, Sec. I of First Schedule to CCS (Revised

Pay) Rules, 2008. The entry level pay recommended in First schedule, Part A, Section – B a separate recommendation in respect of fresh recruits. Both the recommendations cannot be applied simultaneously to the same set of employees. The applicants as well as similarly placed DPAs cannot claim simultaneous Entry level Pay under separate instructions which does not apply to them. The Entry level Pay is not applicable to the applicants and similarly placed existing officials of the organization. Despite the fact that the Headquarters had issued instructions and guidelines in the matter for fixation of pay of the DPA, the concerned RPFC In-charge have fixed the pay of the newly converted DPAs by wrong interpretation of the rules by treating them at par with direct recruit employees by giving them Entry level Pay which is applicable to only direct recruited employees in terms of Part-A Section-II of First Schedule of CCS (Revised Pay) Rules, 2008 recruited on or after 01.01.2006.

9. Thus the version of the Respondents seems to be that the applicants who were initially working as DEOs cannot be allowed the pay of DPAs who were directly recruited and therefore the pay fixation which was made on par with directly recruited DPAs is wrong and the recovery is required to be made. Therefore the Respondents issued the impugned proceedings proposing recovery from the pay of the applicants. After filing of the OA, the Tribunal passed an interim order suspending the impugned order dated 11.08.2016 passed by the 3rd Respondent. It is argued by the learned counsel appearing for the applicant that the applicants who were originally working as DEOs were appointed by granting one time relaxation. Their pay

scale shall be on par with direct recruit DPAs and there shall not be any discrimination. According to the learned counsel, there cannot be two sets of pay scales to the employees who are equally placed.

10. On the otherhand, the learned Standing Counsel appearing for the Respondents would submit that the appointment of the applicants as a one time measure cannot be construed either as promotion or as a direct recruitment and therefore they cannot be given pay scale on par with newly direct recruit DPAs. In the alternative the learned standing counsel for the respondents submits that, in the OA, it is mainly contended that the re-fixation of pay and recovery was done without any notice to the applicants, the matter may be remitted to the Competent Authority to pass appropriate order after affording opportunity of hearing to the applicants.

11. I do not accede to the submission made by the learned Standing Counsel for the Respondents that the matter requires fresh consideration in view of the fact that the matter is no longer res-integra since it has been decided by the Madras Bench of Central Administrative Tribunal and subsequently it was confirmed by the Hon'ble High Court of Madras. Learned counsel appearing for the applicant invited my attention to the order passed by the Madras Bench of CAT in OA No. 1652/2013, dated 27.07.2016 wherein the identical issue has been dealt with and held as follows :

“ The only question which is in dispute is regarding how the fitment is to be granted for such of those DEOs who are appointed to the cadre of DPA by way of one time relaxation. The nature of

relaxation granted is only by way of relaxing the rule that prescribes direct recruitment as the only method of appointment to the cadre of DPA. Since the respondent organization realized that the DEO was a dying cadre and candidates with requisite educational qualification were available, they had granted the one time relaxation and brought them into the DPA cadre. It is also seen from the material papers placed on record that in the other Commissionerates, similarly placed DEOs who were absorbed in the DPA cadre have been granted fitment at the level Rs.12540 + GP 4600. Even though in the case of the applicant also initially the same fitment was granted, subsequently the respondents sought to revise the fitment downwards to Rs.11180/- . The applicant herein is a Science Graduate and only based on the fact that he had fulfilled the initial requirements for such absorption, by way of conversion into the DPA cadre, he was granted appointments in the DPA cadre with effect from the date of notification of the new DPA cadre. In that scenario, and also considering the fact that similarly placed employees in other Commissionerates were granted fitment at Rs.12540, there is no justification for the respondents to deny that benefit only to the applicant in the Regional Provident Fund Commissioner's Office, Madurai. Accordingly, I find the applicant has successfully established his case for grant of relief prayed for and therefore the impugned order dated 02.07.2013 is quashed and set aside and the respondents are directed to restore the fixation of pay granted to him as per the original order bearing No.TN/RO/MDU/Adm/A7/Pay fix/DPA/2010 dated 19.08.2010, within a period of four weeks from the date of receipt of a copy of this order. The OA is allowed. No costs.”

12. The Respondents have challenged the order passed in OA No.1652/2013, dated 27.07.2016 before the Hon'ble High Court of Madras by filing WP No.7202/2017 and the same was dismissed confirming the order passed by the Chennai Bench of CAT. In para-3 of the order in WP

No.7202 of 2017, the Hon'ble High Court held as follows :-

“7. Per contra, the learned counsel for the first respondent, drawing our attention to various circulars and also gazette notification dated 20th May 2009, wherein it has been stated that as a one time relaxation on cadre restructuring, the existing Data Entry Operators (Gr-A) / (Gr-B) (Gr-C) possessing the minimum educational qualifications with six years of regular service shall be deemed to have been appointed from the date of notification of the rules, would submit that there cannot be two different pay scales for the same cadre on the ground that one is on direct recruitment and another is on conversion / absorption by way of one time relaxation. He would rely upon the decision of the Delhi High Court in the case of GOVERNMENT OF NCT OF DELHI AND ANOTHER v. SOMVIR RANA AND OTHERS (W.P.(C) 2634/2017 CM APPL 11450/2017 – dated 23.3.2017) in support of his submission which also came to be confirmed by the Apex Court.

13. The Hon'ble High Court of Madras accepted the contention put forth on behalf of the Respondents in the Writ Petition which is to the effect that there cannot be two different pay scales in the same cadre one on Direct Recruitment and the other is by way of conversion as one time relaxation. Accepting the contention of the Respondents, the Hon'ble High Court of Madras has held as follows :

“8. After going through the factual position of the case and the materials placed before us, especially Note-1, of the schedule annexed to the gazette notification dated 20th May, 2009, as found from page 4 of the typed set of papers, we find that the very order of promotion of the first respondent herein shall be deemed to have been appointed from the date of notification of such rules and therefore, we have no hesitation to hold that the order passed by the Central Administrative Tribunal does not suffer from any irregularity or illegality and it is based on the gazette notification and the pay

fixation of the petitioner in this case at Rs.12540/- does not warrant any interference”.

14. In view of the above discussion, it emerges that identical issue has been finally adjudicated by the Chennai Bench of Central Administrative Tribunal in OA No. 1652/2013 and the same has been confirmed by the Hon’ble High Court of Madras in WP No. 7202 of 2017. The Hon’ble High Court of Madras confirmed the pay fixation of Data Entry Operator on par with the directly recruited Data Processing Assistants and disapproved the re-fixation of pay by the Department in the lower grade. The Original Application therefore succeeds.

15. The letter issued by 3rd Respondent re-fixing the pay of the applicants dated 11.08.2016 and the consequential orders issued by him directing recovery of the alleged excess amount from the applicants is also set aside.

16. The Original Application is allowed accordingly. No order as to costs.

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 12th July, 2018.
Dictated in Open Court.

vl

