

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00606/15

Date of Order: 21.02.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Subhash Kumar No. 2 Son of Shyam Babu Das.
2. Navin Kumar Paswan, Son of Lakshmi Paswan.
3. Sanjeev Kumar No. 6, Son of Ram Pravesh Sharma.
4. Santosh Kumar No. 3, Son of Yogendra Das.
5. Shobha Kumari D/o Sheo Dayal Singh.
6. Narendra Kumar, Son of Shiv Shankar Prasad.
7. Ashish Ranjan Kumar, Son of Vijaya Prasad.
8. Anurag Kumar, Son of Sita Ram Singh.
9. Subhash Kumar Choudhary, Son of Suresh Choudhary.
10. Anupama Sinha, D/o Indrajit Prasad.
11. Surabhi Sinha, D/o Yogendra Prasad Jamuar.
12. Amit Kumar, Son of Mithilesh Prasad.
13. Manoj Kumar, Son of Pappu Prasad.
14. Pankaj Kumar Akela, Son of Jai Prakash Prasad.
15. Raj Kumar, Son of Bhagat Ram.
16. Sonu Kumar, Son of Ashok Kumar.
17. Bipul Kumar Dubey, Son of Ramjee Dubey.
18. Sanket Bihari Prasadi, Son of Jagdish Prasad.

All are Data Entry Operator, Office of the Accountant General (Audit), Bihar Patna.

19. Rajesh Kumar, Son of Rajendra Prasad Rajak.
20. Priti Kumar, D/o Tek Narayan Singh.
21. Deepali Gupta, D/o Kamal Kishore Gupta.
22. Sandeep Kumar Chaudhary, Son of Pradeep Chaudhary.
23. Raju Ranjan Kumar, Son of Baijnath Gope.
24. Ram Lal Soren, Son of Bhoju Soren.
25. Pankaj Kumar, Son of Brij Nandan Paswan.

All are Data Entry Operator, Office of the Accountant General (A&E), Bihar, Patna.

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Comptroller General of India, 9, Deen Dayal Upadhyay Marg, New Delhi-110124.

2. The Principal Accountant General (A&E), Bihar, Bir Chand Patel Path, Patna- 800001.
3. The Accountant General (Audit), Bihar, Bir Chand Patel Path, Patna- 800001.
4. The Deputy Accountant General Cum Examiner of Local Accounts, LAD (SS-I), Bir Chand Patel Path, Patna- 800001.

.... Respondents.

By Advocate: - Mr. Bindhyachal Rai

ORDER
[ORAL]

Per Dinesh Sharma, A.M:- The applicants are Data Entry Operators under the respondents in the Pay Scale of Rs. 5200-20000, Grade Pay Rs. 2400. They have prayed for direction to the respondents to grant them promotion to the post of Console Operator in the Pay scale of Rs. 5200-20200, Grade Pay Rs. 2800 and Senior Console Operator in the Pay scale of Rs. 9300-34800, Grade Pay Rs. 4200, with effect from the date of completion of probation period of two years and from the date of completion of five years after the initial appointment, in view of clause-9 of the appointment letter dated 3.5.2010.

2. The respondents have denied this claim. According to them, a government servant has only a right to be considered for promotion in accordance with the statutory rules and there is no legal or vested right for promotion. The Government was in the process of amending the Recruitment Rules to provide for promotion of Data Entry Operators to the post of Console Operator. Till these rules come into force, there is no right conferred on the applicant for consideration for promotion to the post of Console Operator/Sr. Console Operator.

3. We have gone through the pleadings and have heard the learned counsels of both the parties. During the course of the arguments, the learned Counsel for the respondent informed that the new Recruitment Rules for the Posts of Data Entry Operators have already been published in the Gazette of India on 16.1.2016 as G.S.R. 12, dated 13.1.2016. Some of the applicants have already got promotion under these rules and the case of others will be considered. Learned counsel for the respondents again drew attention to paragraph 9 of the offer of appointment (Annex A/1) under which the applicants were recruited, stating that they were already eligible for promotion under this clause and the department's waiting for publication of new recruitment rules was unjustified. The relevant paragraph is reproduced below:

“ 9. On successful completion of the probation period and after rendering requisite length of service with satisfactory service records, he/she will be eligible for promotion to the higher post of Console Operator in the Pay Band-I with Grade Pay of Rs.2800 and Sr. Console Operator in the Pay Band -3 (Rs. 9300-34800 and Grade Pay of Rs. 4200).

(He/she may also get promotion in the Supervisory cadre consisting of Asstt. Audit Officer/Audit Officer/ Sr. Audit Officer after passing the Section Officer Grade Examination).”

4. It is obvious from a plain reading of this paragraph that it does not make it mandatory to promote the applicants as console operators at the end of probation period and as Sr. Console operator at the end of five years, as prayed by the applicants. This only made them “eligible” for such promotion “after rendering requisite length of service with satisfactory service records”. Thus, no right accrues to the applicants to claim promotion

on this ground at the end of five years. The Government has now changed the relevant Rules to provide for their promotion as Data Entry Operator Grade “B” (with scale equivalent to that of the Console Operator) on completion of 5 years of regular service. This gives the applicants an avenue for first promotion to a post of the same scale as indicated in paragraph 9 of the offer for appointment.

5. The Government, as a model employer, should do its utmost to fulfil the promises it makes to its prospective employees at the time of offering employment. Therefore, though no right, as claimed by the applicants, is created by the above quoted paragraph 9 to grant promotion on completion of 5 years, there is certainly a promise to offer them avenues of two promotions in the scales of pay mentioned, on their completion of requisite conditions. The Government has already promulgated the amended recruitment rules which provide for promotion of Data Entry Operators Grade I to the post of Data Entry Operator Grade B, on completion of 5 years of regular service as Data Entry Operator Grade I. This fulfils the first part of the promise made in the paragraph 9 quoted above. We do not find anything in these Rules produced before us that gives the Data Entry Operators (applicants) any chance for a second promotion.

6. We, therefore, direct the respondents to consider the cases of all those applicants (still not promoted) who fulfil the 5 years regular service condition, for promotion as Data Entry Operator Grade B, wherever vacancies exist, if they fulfil all the other conditions required for such promotion. Besides this, in order to fully keep the promise given in the offer

of appointment, we direct the respondents to consider further amending the recruitment rules to provide for a second avenue for promotion (to a post equivalent to the scale of Sr. Console Operator) with whatever requisite qualifications they may consider appropriate, for consideration for this second promotion.

7. The OA is disposed of accordingly. No orders as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member