

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.3581 of 2014

This the 12th day of December, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Mrs. Surekha Soni,
W/o Shri Anil Soni,
R/o A-10, South Extension, Part-I,
New Delhi-110049.

....Applicant

(None present)

VERSUS

Union of India
Through

1. The Secretary,
Ministry of Statistics & Programme Implementation,
Govt. of India,
Sardar Patel Bhawan, Sansad Marg,
New Delhi-01.
2. The Director,
Bureau Police Research & Development,
Ministry of Home Affairs,
CGO Complex, Lodhi Road,
New Delhi.
3. The Director,
National Crime Records Bureau,
Ministry of Home Affairs,
R.K.Puram,
New Delhi.
4. The Secretary,
Department of Personnel & Training,
Govt. of India, North Block,
New Delhi-01.

.....Respondents

(By Advocate : Shri A.K. Singh)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

None for the applicant. This Court proceeds to adjudicate this matter under Rule 15 of the CAT (Procedure) Rules, 1987 and accordingly, learned counsel for the respondents heard.

2. This is the second round of litigation, as earlier applicant filed OA No.3749/2011 and this Tribunal vide Order dated 11.9.2013 disposed off the same with the following directions:-

“14. Since the respondents rejected the case of the applicant for inclusion of her isolated post in Subordinate Statistical Service with effect from the date of its inception with all consequential benefits on the sole ground that the applicant is similarly situated like the Data Entry Operators in the Data Processing Division (DPD) and Survey Design and Research Design (SD/RD) of National Sample Survey Organization who are the applicants in OA No.767/2009 vide Office Memorandum dated 12.11.2010 (Annexure A17) and in view of the above findings, the 1st Respondent is directed to re-consider the claim of the applicant afresh, after consultation with the DoPT (Respondent No.4), and pass appropriate orders within a period of two months from the date of receipt of a copy of this order. Accordingly, the OA is disposed of with the aforesaid terms. No order as to costs.”

3. Now by filing this OA, the applicant is seeking the following reliefs:-

- “i) To quash and set aside the OM’s 6/2/2014 and 2/5/2014 issued by respondent no 1. and
- ii) To direct the Respondents to encadre the name/post of the applicant in Subordinate

Statistical Service w.e.f. the date of inception of SSS with all consequential benefits.

- iii) Any other orders may also be passed as this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case.
- iv) To allow the OA with cost."

4. The factual matrix of the case is that the applicant joined the service of Bureau of Police Research and Development (Respondent No.2) as Statistical Assistant on 17.01.1986, on her selection through the Staff Selection Commission. In the year 1987, the Statistical Section of Respondent No.2 was merged with the staff of Respondent No.3 (National Crime Records Bureau).

4.1 On 6.05.1991, the post of Statistical Assistant wherein the applicant is working was re-designated as Data Processing Assistant Grade 'A' (DPA Gr. 'A') and in the year 1996, the applicant was promoted as Statistical Investigator in the pay scale of Rs.2000-3200 (pre-revised) [Rs.6500-10500 (revised)]. Again w.e.f. 11.12.1996, the said post of Statistical Investigator has been re-designated as Data Processing Assistant Gr. 'B' [DPA Gr. 'B'].

4.2 It is stated that in pursuance of the recommendations of the 5th CPC, and in consultation with the Department of Personnel & Training, Department of Expenditure and various

other Ministries and Departments, the Subordinate Statistical Service (SSS) was constituted with the following grades:

- “1. Statistical Investigator Grade I Rs.7450-225-11500
2. Statistical Investigator Grade II Rs.6500-200-10500
3. Statistical Investigator Grade III Rs.5500-175 - 9000
4. Statistical Investigator Grade IV Rs.5000-150 – 8000”

4.3 When the respondents, though the applicant is discharging similar functions to that of the various categories of posts, which were included in the Subordinate Statistical Service, have not included the applicant's post, i.e., DPA Grade 'B' into the Subordinate Statistical Service, the applicant through Respondent No.3 made representations for the same.

4.4 The 1st Respondent though initially sought various clarifications from 3rd Respondent, in this regard, but finally vide Office Memorandum dated 12.11.2010, stated that similarly situated persons, who are working as Data Processing Assistants Grs.III and II employed in the Data Processing Division (DPD) and Survey Design and Research Design (SDRD) of National Sample Survey Organization, under Ministry of Statistics and Programme Implementation, i.e., the Respondent No.1, have filed OA No.767/2009 seeking for their inclusion in Subordinate Statistical Service, and

though the said OA was originally allowed by order dated 17.10.2009, but on filing a Writ Petition in the Hon'ble High Court of Delhi, the said order was set aside and the OA was restored for fresh adjudication, and that unless final orders are passed in the said OA, it is not possible to include the post of the applicant into SSS.

4.5 The respondents vide their counter filed to the OA 3749/2011, while denying the claim, *inter alia*, submitted that this Tribunal vide its order dated 25.08.2011 dismissed the said OA No.767/2009. It is further submitted that the Review Application No.393/2011, filed by the applicants therein, was also dismissed by order dated 01.12.2011. Accordingly, the respondents submit that since the applicant in this OA is also similarly situated and sought for an identical direction in identical circumstances, the said OA was also liable to be dismissed.

4.6 Counsel for the applicant in applicant's earlier OA, distinguished the case of the applicant from that of the applicants in OA No.767/2009, *inter alia*, by raising the following grounds: the duties and responsibilities of the applicant, who originally appointed as Statistical Assistant and later promoted as Statistical Investigator, are different from that of the duties and responsibilities of Data Processing Assistants Grade II and III, who are the applicants in OA

No.767/2009; and the applicant has not taken any additional service benefits like the applicants in OA No.767/2009.

4.7 This Tribunal in the said OA perused the Order of this Tribunal dated 25.08.2011 in OA No.767/2009 and noted that wherein the following specific issues were framed for consideration:

- i) Are the functions performed by the applicants essentially/predominantly statistical in character?
- ii) Does the grant of benefits to them as EDP personnel pose an impediment in the claimed induction in SSS?
- iii) Are the respondents justified in taking the impugned decision of non-inclusion of the applicants in SSS taking into account the views taken by the expert bodies and even admitted by the administrative Ministry at some point of time.
- iv) Does the decision of the respondents suffer from any vitiating factor warranting interference in judicial review?

4.8 After elaborately discussing the respective contentions, finally the said OA was dismissed being found devoid of any merit.

4.9 This Tribunal further observed that in both the O.As, the respective applicants, mainly state that they are also discharging the same duties and responsibilities of those

posts, which are included in the Subordinate Statistical Service (SSS) and hence, they are also entitled to be included in the said service. In OA No.767/2009 the applicants were originally appointed as Data Processing Assistants and this Tribunal after detailed consideration of the case, having held that the applicants therein are not performing the functions of essentially/predominantly statistical in character dismissed the said OA.

4.10 This Tribunal in earlier OA 3749/2011, observed as follows:-

“11... that the applicant was admittedly appointed initially as Statistical Assistant in the statistical section of Respondent No.2 and had been promoted as Statistical Investigator before the said posts were re-designated as Data Processing Assistant Grade ‘A’ and Grade ‘B’ respectively. It is also not the case of the respondents that on re-designation of the post, the functions performed by the applicant are changed. Therefore, the decision in OA No.767/2009 is not applicable to the facts of the present case.

12. Further, the respondents in their counter categorically stated that in response to the Ministry’s OM dated 27.02.2003 (Annexure A11), the 3rd Respondent (NCRB) vide their letter dated 06.08.2003 (Annexure A12) that though the post of Statistical Investigator has been re-designated as Data Processing Assistant, Gr. ‘B’, the incumbent is continuing to function in the statistical unit of their Bureau, and since the said clarification received from NCRB was too late, the incumbent and the post offered could not be included in SSS cadre. In this view of the matter also, the applicant’s claim cannot be rejected by equating with that of the Data Processing Assistants of National Sample Survey Organization.

13. Mere nomenclature of a post cannot solely determine whether it can be included in a particular service or not. That is why, this Tribunal in OA 767/2009, after elaborately examining the functions being performed by the applicants therein and having found that they are not performing the functions essentially/predominantly statistical in character, held that they are not entitled for inclusion of their posts in SSS. In case of the applicant's post, the respondents without conducting any independent exercise, whether the applicant performing the functions essentially/predominantly statistical in character, though the 3rd Respondent vide Annexure A-12, categorically stated that 'although, the posts have been re-designated, the incumbents are continuing to function in the statistical unit of the Bureau, refused to include applicant's post into SSS, by quoting the judgment of this Tribunal in OA 767/2009."

In the above circumstances, this Tribunal disposed off the earlier OA 3749/2011 filed by the applicants with certain directions as quoted above.

4.11 In compliance of the aforesaid observations of this Tribunal, the respondents have passed the orders dated 6.2.2014, which reads as under:-

“Office Memorandum

Sub : Encadrement and absorption of Smt. Surekha Soni in Subordinate Statistical Service - Regarding

In compliance of order dated 11.9.2013 passed by Hon’ble Tribunal, Principal Bench, New Delhi in O.A. No.3749/2011 the claim of Smt. Surekha Soni has been examined in consultation with DOP&T and it has been noticed that her claim to get encadred/absorbed into SSS may not be entertained on the following grounds:-

	Statistical Investigator Grade I & II (Now	DPA-A & DPA-B
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	Sr. Statistical Officer & Jr. Statistical Officer)	
Educational Qualification	<p>A candidate for direct recruitment to the grade of Statistical Investigator Grade-II (Now Junior Statistical Officer) of the service must have obtained the following educational qualifications, namely:-</p> <p>(a) Bachelor's Degree in any subject from a recognized University or Institute with at least 60% in Mathematics at 12th Standard level;</p> <p>(b) Bachelors Degree in any subject with Statistics as one of the subjects at degree level.</p>	<p>Master's degree in Computer Applications or Computer Science or BE/B.Tech in Engineering or Computer Science or Computer Technology from a recognized University or Institute</p> <p>OR</p> <p>BE/B.Tech in Electronics or Electronics and Communication from a recognized University or Institute with two year's experience in Electronic Data Processing work including experience of actual programming</p> <p>OR</p> <p>"A" level Diploma under DOEACC Programme or PG Diploma in Computer applications or Computer System and Management of Information System and Computer Technology or IT offered under university programme or post polytechnic Diploma in Computer Applications or Computer System and Management or Information System and application or computer science or Computer Technology or IT awarded by the State Council of Technical Education.</p> <p>OR</p> <p>Post Graduate Diploma in Electronics or Electronics and Communication offered under University Programme or Post Polytechnic Diploma in Electronics or Electronics and Communications awarded by the State Council of Technical Education with two year's (DPA-A)/three years' (DPA-B) experience in Electronic Data Processing work including experience of actual programming</p>
Pay Scale	Statistical Investigator Grade II (Now JR. Statistical Officer) is in pay scale of PB-2 Rs.9300-	DPA-B is in the pay scale of PB-2 Rs.9300-34800+G.P. 4600/- Group B, Gazetted

	34800+G.P. 4200/- Group B, Non-Gazetted	
Functions performed	Collection, compilation, analysis, interpretation, of statistical data, Overall Supervision including monitoring of data collection, preparation of reports, paying personal field visit in far flung areas to collect data etc.	Procurement, maintenance and upkeep of hardware & software including network maintenance, documentation, development and maintenance of Crime Criminal Applications, Preparation of study material and conducting training for functional level officers, customization of Crime Criminal Applications as per state requirements, Implementation of systems, providing support for users of Crime Criminal application, assistance in administration of Data Centre and Network Assistance.

In view of above, Smt. Surekha Soni is not holding same or equivalent post in the light of Pay Scale/Grade, educational qualifications, functions performed by S.I.Gr. II of SSS (Now Jr. S.O.). As per revised RRs of SSS notified vide notification dated 31.5.2013, encadrement of post and subsequent absorption in SSS could be done at the level of S.I. Gr. II (Now Jr. S.O.) only. Moreover, it has been decided vide MOS&PI OM dated 12.06.2012 that Individual Encadrement and absorption into service would not be considered. In view of above narrated facts, Smt. Surekha Soni could not be absorbed in Subordinate Statistical Service (SSS) with retrospective date.”

4.11 Aggrieved by the aforesaid OM, the applicant represented to the respondent No.1 on 12.3.2014 and the respondent no.1 considered the same and vide Office Memorandum dated 2.5.2014 rejected the same, which reads as follows:-

“Sub:Encadrement and absorption of Smt. Surekha Soni in Subordinate Statistical Service-regarding

The undersigned is directed to refer to your representation dated 12.03.2014 received on the above subject and to say that Ministry's vide O.M. of even No.Dated 6th February 2014 has already communicated that as per revised RRs of SSS notified vide 31st May 2013, encadrement of post and subsequent absorption in SSS could be done at the level of S.I. Gr.II (Now Jr. S.O.) only. Further absorption from retrospective date cannot be taken. In view of above, Smt. Surekha Soni could not be absorbed in Subordinate Statistical Service (SSS) with retrospective date."

4.12 Being aggrieved by the aforesaid OMs, the applicant has filed this OA seeking the reliefs as quoted above.

5. Although applicant challenged the impugned orders on various grounds, however, in ground **d.** of the OA, the applicant herself stated that the applicant is not having any qualification of DPA-B as mentioned in OM of 6.2.2014 but is possessing the qualification of B.A. Economics and M.A. Economics and as such eligible.

6. It is relevant to mention here that similar issue had earlier been raised before this Tribunal in OA No.4503/2014 and this Tribunal dismissed the same and the applicants in the said OA also preferred Writ Petition (Civil) Nos.8437/2015 and 9921/2015 before the Hon'ble Delhi High Court and the High Court also dismissed the same vide Order dated 12.11.2017, relevant paras of the said judgment reads as under:-

“59. In our view, when the Government takes a considered decision to frame a service in a particular manner by creating fixed number of posts for all the different grades created therein, there would be no cause for the Court, except in very compelling circumstances, to interfere with the said policy decision of the Government. It is evident that the policy decision regarding filling up of the various posts created under the Rules of the SSS was done after considering the various posts offered to them by different Ministries/ Departments/Organisations. The Respondent No.1 had taken a well considered decision, and it would be totally unworkable if the Courts were to interfere and insist that persons inducted in Group „C“ service should now be inducted in a Group „B“ service, merely because their pay scale has now been enhanced with retrospective effect and is still not matching any of the Group „B“ posts in the SSS.

60. In our view the action of the Respondents, in giving the Petitioners an option to either continue in the post in which they were inducted in SSS with the grant of a higher pay scale on personal basis to them, or to go back to Labour Bureau (Respondent No.-6) if they so desire, is more than fair in such circumstances.

61. It is also true that though in normal circumstances, as contended by Ms. Singh-learned senior counsel for the Petitioners, that a person en-cadred in a service at the time of its constitution or at any subsequent stage cannot be de-cadred, but, keeping in view the exceptional circumstances due to which the pay scale of the Petitioners is no longer matching with the pay scale of the post in which they were inducted, the only available option to the Respondents was to give the Petitioners a choice to go back to the Labour Bureau if they so desired and work in a Group „B“ post in the Labour Bureau, or continue in the SSS at the post in which they were absorbed.

62. We have also considered the plea of the learned senior counsel for the Petitioners that, once the Respondents had en-cadred Assistant Superintendent from NSSO holding the similar pay scale of Rs.5500-9000/- in Group „B“ posts in the SSS, there was no reason as to why the Petitioners should not be treated in a similar manner. Her plea, therefore, is that refusal of the Respondents to en-cadre the Petitioners, who are holding the same pay scale as held by Assistant Superintendent (NSSO), in Group „B“ posts is

discriminatory and in clear violation of Article 14 and 16 of the Constitution. On the other hand the contention of Mr. Narula, learned counsel for the Respondents is that decision to en-cadre an Assistant Superintendent(NSSO) in the Group „B“ service was a conscious policy decision of the Government of India taken even before notification of the SSS.

63. We find that there was a difference in the pre-revised scale of Assistant Superintendent of NSSO(FOD) and of Statistical Investigator Grade-II in Labour Bureau. The pre-revised pay scale of Assistant Superintendent of NSSO was Rs.1600-2660/-, whereas that of the post of Statistical Investigator Grade-II held by the Petitioners in the Labour Bureau was Rs.1400-2300/-. Thus, it becomes evident that at the time of the constitution of the SSS itself, a conscious policy decision had been taken to encadre Assistant Superintendent of NSSO in Group „B“ posts of the SSS. The methodology used for their induction in Group „B“ posts was that all the existing 1388 posts of Assistant Superintendents of NSSO (FOD) in the pay scale of Rs.1600-2660/- (Revised Rs.5500-9000/-) were abolished by upgrading 861 posts in the pay scale of Rs.6500-10500/- , and downgrading the remaining 527 posts to the pay scale of Rs.5000-8000/-. The upgraded posts were included under Schedule I and II of SSS Group „B“ Rules dated 12.02.2002, while the downgraded posts were included under Schedule I and III of SSS Group „C“ Rules dated 12.02.2002.

64. We also find force in the contention of the learned counsel for the Respondents, that as per the Group „B“ service rules, only two posts were provided in the Schedule I of the Group „B“ rules-the same being that of Statistical Investigator Grade-I and Grade-II with the pay scale of Rs.7450-225-11500/- & Rs.6500-200-10500/- respectively. Therefore even with the admitted pay scale of higher pay scale of Rs.5500-9000/-, the Petitioners could not by any means be en-cadred in the Group „B“ service of SSS. In fact, on their own showing, the Petitioners“ enhanced pay scale does not fit into the prescribed pay scales of Group „B“ posts in the SSS. Therefore, we are unable to accept the plea of the learned senior counsel for the Petitioners that, merely because they have been classified as holders of Group „B“ posts by the Labour Bureau, which classification itself, we find has been challenged by the Respondents 1, 2 & 3, they have a right to be inducted in Group „B“ service of the SSS.

65. There is also merit in the submission of Mr. R.N. Singh, learned counsel for the Respondents No. 7-10 that, once the invitation to the Petitioners by the SSS was for Group „C“ post, the Petitioners cannot contend that they should be en-cadred into Group „B“ posts with retrospective effect. Even otherwise, we also find merit in the submissions of Mr. Singh, that the post of Statistical Investigator Grade-III, which is the only post which is having a matching pay scale of Rs.5500-9000/- as has now been granted to the Petitioners in the Labour Bureau, is a non-functional post and can be filled only by promotion and, therefore, the Petitioners cannot be allowed to be directly inducted into these posts as per the Group „C“ Rules of the SSS.

66. We have also considered the judgments relied upon by the learned counsel for the Respondents and we deem it appropriate to refer to the case of **Dr. Rajinder Singh v. The State of Punjab & Ors.** (2001) 5 SCC 482, wherein Supreme Court observed in para 8 as under:-

“8. The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality, conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the rules, the Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a Government Order and ignoring the mandate of Article 309 of the Constitution.”

67. It would also be appropriate to refer to the decision of the Supreme Court in the case of **P.U Joshi & Ors v. The Accountant General, Ahmedabad & Ors.** (2003) 2 SCC 632, wherein the Supreme Court has reiterated the well settled legal position that questions relating to constitution pattern, nomenclature of posts, cadres etc., pertain to the field of policy and are within the exclusive discretion and jurisdiction of the State. In the case of

P.U. Joshi (*supra*), the Supreme Court in para 10 observed as under:-

“10. We have carefully considered the submissions made on behalf of both parties. 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 and 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. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.”

68. Thus, we find that once the statutory rules of the SSS both for Group „B“ and Group „C“ prescribed a particular method for en-cadrement as well as prescribed specific pay scales for induction, no direction can be given to the Respondents to en-cadre the

Petitioners and to induct them either as Statistical Investigators Grades-III, a Group „C“ post or as Statistical Investigators Grade-II, a Group „B“ post since they admittedly do not fulfill the requirement of the statutory rules. Though we find merit in the plea of the learned senior counsel for the Petitioners that the benefit of the enhanced pay scale cannot be denied to them, but on this ground alone, we cannot give a direction to the SSS to treat them as holders of Group „B“ posts in the SSS as we find that their encadrement in Group „B“ posts would be wholly contrary to the statutory rules of the SSS. In these circumstances, we are of the view that the only manner in which the Petitioners, if they so desire, can be treated as holders of Group „B“ posts is by going back, upon de-cadrement, to their parent department, the Labour Bureau, which has now, admittedly, treated their said post as a Group „B“ post. In our view this methodology worked out by the Respondent is just and fair and does justice to all the parties involved. The Petitioners having been declared as holders of Group „B“ post in the Labour Bureau cannot be compelled to continue to work in a Group „C“ posts in the SSS and so have rightly been given the option to go back to Labour Bureau, if they so desire.

69. Having considered the matter from all possible angles, we find absolutely no merit in the present Petition. There is no infirmity in the order passed by the Tribunal. The writ petition is dismissed, with no order as to costs.”

7. Having considered the matter from all angles and also in view of detailed reply given by the respondents, it becomes clear that it is not open to the applicant to demand that in view of same pay scale, she though enjoyed, her post be considered for inclusion in SSS. It is relevant to mention that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be not correct or legal

inasmuch as it would deprive the security of tenure and right of equality, conferred upon the civil servants under the constitutional scheme. This Court is of the considered view that it is not open to the Tribunal to give any direction to the respondents to amend the rules and encadre the post occupied by the applicant into the SSS.

8. In view of the above facts and circumstances of the case, we do not find any merit in this OA and the same is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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