

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O. No. 553/2003 with OA 550/2003

This the 18th day of December, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

HON'BLE SH. S. A. SINGH, MEMBER (A)

OA NO. 553/2003

1. Shri R. K. Sharma
S/o Shri N. P. Sharma
Res: 17G/459, Vasundhara
Ghaziabad (UP)-201012
(01.01.1986)
2. Shri A. K. Shrivastava
S/o Late Shri R. P. Shrivastava
Res: A-103/7B, Shalimar Garden Ext.-1,
Shahibabad, Ghaziabad (UP)
(01.01.1986)
3. Shri R. K. Bhasin
S/o Late Shri T. R. Bhasin
Res: C4E/134, Janakpuri,
New Delhi-58
(01.01.1986)
4. Shri J. C. Kalra
S/o Shri K. C. Kalra
Res: A-77, Pandara Road
New Delhi
(27.08.1989)
5. Shri S. P. Singh
S/o Shri Nathi Singh
Res: 35/306, Supertech Enclave
Shalimar Garden, Ext-I,
Shahibabad, Ghaziabad (UP)
(21.12.1990)
6. Shri Prakash Bhatia
S/o Shri Sitaldas M. Bhatia
Res: A-2/141, Paschim Vihar
New Delhi-110063
(09.02.1994)
7. Shri M. Rajan
S/o Late Shri M. K. Madhavan
Res: F-126/S-4, Dilshad Colony,
Delhi-110095
(17.02.1992)

8. Smt. Neera Rani
D/o Shri Harihar Prasad
Res: BG-5/47C, Paschim Vihar
New Delhi-63
(27.11.1991)
9. Shri Om Prakash
S/o Late Shri Dault Ram
Res: C-7.118A, Keshav Puram
Delhi-110035
(01.01.1986)
10. Shri Siddhartha Kumar Gupta
S/o Shri Sitaram Nagaria
Res: C/o Balbir Singh, 2253/B-71,
Mandir Wali Gali, Shadipur Village,
New Delhi-110008
(01.01.1986)
11. Shri Sudhir Puranik
S/o Shri D. M. Puranik
Res: B-2693, Netaji Nagar
New Delhi-110023
(01.01.1986)
12. Smt. Shashi Jain
W/o Shri Rajiv Jain
Res: B-4, Sector-8, Dwarka,
New Delhi-110045
(01.01.1986)
13. Shri Raj Nath Gupta
S/o Late Shri Rangai Ram
Res: H. No. 10, Gali No. 4
Main Shyam Park, Shahibabad
Ghaziabad (UP)
(01.01.1986)
14. Shri Shaji Peeter
S/o Shri Peeter
Res: 137/8, Sector-I, Pushpa Vihar,
New Delhi-110017
(27.09.1991)
15. Smt. Kamla Rani Nayyar
W/o Shri Mukhtiar Singh
Res: G-260, Nanak Pura,
MotiBagh-II, New Delhi-110021
(17.07.1990)

16. Smt. Leena Gupta
W/o Shri Rajat Gupta
Res. R/2/239, Raj Nagar,
Ghaziabad (UP)
(28.11.1994)
17. Smt. Savitri Devi
W/o Shri Kanwal Nain
Res. G-73, Hari Nagar, Jail Road
New Delhi
(01.01.1986)
18. Shri G. D. Singh
S/o Late Shri SDS Verma
Res: C-523, Sarojini Nagar
New Delhi-110023
(01.01.1986)
19. Smt. P. D. Sobti
W/o Shri Kewal Krishan Sobti
Res: 192A, Pocket B,
Mayur Vihar Phase-II
Delhi-110091
(29.05.1989)
20. Shri Shish Ram
S/o Late Shri Sumera singh
Res: 17/283, Kalyan Puri
Delhi-110091
(01.01.1986)
21. H. C. Gauba
S/o Late Shri Lachman Dass Gauba
14/119, subhash Nagar
New Delhi-110027
(01.01.1986)
22. Smt. Indra Kumari Dureja
W/o Shri Jagdish Lal
Res: A-243, Kalkaji Double Story
New Delhi-110019
(29.05.1989)
23. Shri Har Pal Singh
S/o Late Shri Ram Lal
Res: 160/3, Andrews Ganj
New Delhi-110049
(29.05.1989)

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24. Shri Ramadhar Prasad
S/o Shri Adeya Prasad
Res: 1107, M. S. Timar Pur
New Delhi-110049
(09.02.1994)
25. Smt. Santosh Goswami
W/o Shri A. K. Goswami
Res: C4/8A, Keshav Puram,
New Delhi-110035
(29.05.1989)
26. Shri T. D. Kataria
S/o Late Shri B. D. Kataria
Res: D-145, Jhil Mil Colony
Delhi-110095
(29.05.1989)
27. Shri Prit Pal Singh
S/o Late Shri Wattan Singh
Res: D-866, Mandir Marg
New Delhi-110001
(09.02.1994)
28. Shri Mangal Sain
S/o Shri Kale Singh
Res: 79-A, Kundan Nagar
PO Laxmi Nagar
Delhi-110092
(18.03.1991)
29. Shri Harish Chand Bansal
S/o Late Shri J. D. Bansal
Res. Qtr. No. 812, Sector-V
R. K. Puram, New Delhi-110022
(17.07.1990)
30. Shri Ramesh Chand
S/o Shri Behari Lal
GI-909, Sarojini Nagar,
New Delhi-110023
(29.05.1989)
31. Shri Kalyanjit Chattopadhyay
S/o Shri Biswanath Chatterjee
Res: M-388A, Sector-23
Rajnagar, Ghaziabad (UP)-20102
(20.01.1992)
- 31A. Rani Katyal W/o H. K. Katyal
D-119, Sarojini Nagar
New Delhi-03
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32. Smt. Bina Trehan
W/o Shri Inder Mohan Trehan
Res: I-240, Sarjini Nagar
New Delhi-23
(29.05.1989)
33. Shri M. L. Rustogi
S/o Late Shri Prabhu Dayal
Res.: 1575/30, Naiwala Karol Bagh
New Delhi-110005
(01.01.1986)
34. Shri V. K. Bhatia
S/o Late Shri M. B. Lal
Res: B/2, 2278 Vasant Kunj
New Delhi-110070
(29.05.1989)
35. Shri B. M. Aggarwal
S/o Late Shri Jogi Ram Aggarwal
R/o 633, 2nd Floor,
Dr. Mukharjee Nagar
Delhi-110009
(29.05.1989)
36. Shri S. P. Verma
S/o Late Shri Darlari Lal
R/o 2470 Naiwara, Chawri Bazar
Delhi-110006
(01.01.1986)
37. Ram Rattan Gupta
S/o Late Shri Devi Dayal Gupta
H. No. 9322, Shahi Mohalla,
West Rohtas Nagar,
Shahdara, Delhi-32
(09.02.1994)

(By Advocate: Ms. Madhu Tewati_a)

Applicants

VERSUS

1. Union of India
Through its Secretary
Ministry of Defence
South Block, New Delhi
2. Joint Secretary (Training) &
Chief Administrative Officer
Ministry of Defence
C-II, Hutments, New Delhi

(By Advocate: Sh. M.M. Sudan)

.....Respondents

(15)

OA NO. 550/2003

1. Sh. Dileep Kumar
(DPA 'A'-JCB-Ministry of Defence)
D-132, New Seelampur Market,
Delhi-110053.
2. Ms. Govindaraju Rajprabha,
W/o Sh. K. Murugan,
Data Processing Assistant 'A',
JCB-Ministry of Defence,
R/o AB-810, Sarojini Nagar,
New Delhi-110023.

(By Advocate: Ms. Madhu Tewatia)

Versus

1. Union of India
through its Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Joint Secretary (Training) &
Chief Administrative Officer,
Ministry of Defence,
C-II Hutments, New Delhi.

(By Advocate: Sh. M.M. Sudan)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By this common order we shall be deciding two
OAs as the facts are more or less identical.

OA 553/2003

This is an OA jointly filed by 37 applicants.
All of them are aggrieved of the orders dated 9.1.2002
which has been addressed to all the applicants separately
whereby the representations of the applicants stated
to have been disposed of vide impugned order.

/s/

2. The applicants are aggrieved of the disposal of their representation as it is against their interest.

3. Facts in brief are that the applicants were working as Technical Assistants (hereinafter referred to as TAs) in the Joint Cipher Bureau (hereinafter referred to as JCB) Ministry of Defence on dates mentioned against the name of each of the applicants as per memo of parties.

4. 4th Pay Commission in paragraph 11.45 suggest that the department of Electronics should examine and suggest the re-organisation of the existing EDP posts and prescribe uniform pay scales and designations.

5. Pursuance to that Department of Electronics undertook the task of rationalisation of the pay scale of EDP posts and a revised pay structure for the EDP posts was introduced. The 4th Pay Commission had recommended the grant of revised pay scales w.e.f. 1.1.1986. On these lines the pay scale of EDP posts in the JCB working in different grades were also revised and the posts were redesignated after due sanction of the President of India.

6. The posts of TAs against which these applicants are working were redesignated as DPA Grade-B (Rs.2000-3200) but in the notification some provisions were also added so it would be relevant to extract the relevant portion hereinbelow:-

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"Part A: Provisions for initial grant of revised pay scales

Sr. No.	Existing Category	Revised Category	Provisions
(1)	(2)	(3)	(4)
1.			
2.			
3.	Technical Assistant (Rs. 1400-40-1600-50-2300)	DPA Grade-B (Rs. 2000-60-2300-EVB-75-3200) EB-60-2600)	(a) Graduates in Science/ Mathematics/ Statistics Economics subject and having a certificate in computer Programming will be placed in the scale of Rs. 2000-3200 (Data Processing Assistant Grade-B). (b) Those who do not possess the above qualifications will be placed in the scale of Rs. 1660-2660 (Data Processing Assistant Grade-A).

Note: The concerned individuals will be placed in the scale of Rs. 2000-3200 or Rs. 1600-2660, as the case may be, from 11.9.1989 or from the date of their regular appointment in the grade of Technical Assistant whichever is later".

[Signature]

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7. The perusal of this provision under Column 4 would go to show that only those TAs were placed in DPA Grade-B (Rs.2000-3200) who were possessing the qualification of Graduate in Science/Mathematics/Statistics/Economics and having a certificate in Computer Programming and those who did not possess the above qualifications were placed in the scale of Rs.1600-2660 and were designated as DPA Grade-A.

8. Thus applicants who were placed in the lower grade of DPA Grade-A felt aggrieved by this and filed OA Nos. 2691 and 2516 of 1996 challenging their placement as DPA Grade-A and particularly when some of the juniors to the applicants were placed in the higher grade of DPA Grade-B on the basis of their qualification.

9. The main plea of the applicants was that the order placing the applicants in DPA Grade-B and DPA Grade-A in different grades was discriminatory and violative of Articles 14 and 16 of the Constitution of India and for this purpose they had relied upon a judgment in OA No. 725/97 in the case of B.N. Sharma Vs. U.O.I. & Others and belong to different cadres but under the same respondents, the Tribunal in that case had also held that the criteria, as envisaged in the Government of India OM in their case, would not apply. The judgment was accepted by the U.O.I. as no appeal was filed so on the same analogy on the basis of

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qualification of the TAs the applicants are also entitled to be redesignated as DPA Grade-B and are also entitled to the pay scale of Rs.2000-3200.

10. The OAs filed by those TAs who were placed as DPA Grade-A were disposed of with the directions that the respondents shall consider the cases of the applicants without insisting on eligibility criteria prescribed subsequently in the year 1995 as the orders will not apply retrospectively and respondents were held to be at liberty to reconsider their case in the light of the judgment given in B.N. Sharma (Supra). No appeal was filed against that order also.

11. On reconsideration after the disposal of the remaining OAs, the department came out with another order dated 11.11.1997 whereby the Government of India instead of granting the restructured grade of DPA Grade-B to all the existing TAs granted the said restructured designations of DPA Grade-B only to 29 TAs on the basis of seniority-cum-vacancy position leaving out the applicants, thereby creating a category within a similarly placed category whereas all the TAs should have been placed in the grade of DPA Grade-B. Thus the applicants allege that even while granting the grade of DPA Grade-B on seniority basis is also arbitrary and discriminatory to the applicants who had been left out.

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12. The counsel for the applicants further submitted that as regards the case of B.N. Sharma is concerned, though in OA 725/97 directions were given to the Government of India to consider the case of B.N. Sharma who had filed another case before this Tribunal which was registered as 1741/97 (B.N. Sharma-II). Second order dated 10.1.1997 in the case of B.N. Sharma was further modified by the order dated 8.10.1997 which was also quashed and the respondents were directed to grant the revised scale of Programmer viz. Rs.2375-3500 to all the applicants and issue appropriate orders in respect of the incumbents of these posts of Programme Assistants redesignated earlier as DPAs and/or Statistical Investigators in the light of the observations made. There also the Government has also tried to create different cadres and that too on the basis of seniority but that too was also quashed.

13. Respondents then filed a Writ Petition before the Hon'ble High Court. High Court also dismissed the petition of the Government and the order of the Tribunal was maintained.

14. So now the applicants plead that since they were similarly situated and their case is identical with the case of B.N. Sharma so the respondents cannot create two cadres of IAs for EDP Grade-A and EDP Grade-B and all those incumbents who were working as IAs are to be placed in the grade of EDP-B (Rs.2000-3200). Since their representations have been rejected so the



applicants have also assailed the same on the grounds that the order passed by the respondents is in total contravention of the principles of law enunciated by the Hon'ble Delhi High Court in the case of U.O.I. Vs. B.N. Sharma. The reasoning given by the Government for creating two cadres out of the TAS - EDP Grade-A and EDA Grade-B is totally discriminatory and violative of Article 14 of the Constitution of India and it is also pleaded that all the similarly situated persons on the date of placement were bound to be treated equally and that no discrimination amongst the employees could be made by the respondents either on the basis of vacancies or on the basis of qualification or on the basis of seniority. It is submitted that the judgment of the Hon'ble Delhi High Court is fully applicable in the instant case and respondents could not have refused or deny the benefits of the said judgment.

15. The respondents are contesting the OA. There are no denial to the facts of the case. The main plea of the respondents is that when the OAs of the applicants OA Nos. 2691 and 2516 of 1996 were disposed of by the Tribunal, the Tribunal in its order dated 30.5.1997 had granted liberty to the applicants to approach the Tribunal if any further grievance survives by the order to be passed by the respondents.

16. It is further submitted that the orders dated 11.11.1997 and 22.12.1997 were accepted by all concerned including the applicants and the same were not challenged

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before this Tribunal even by exercising the liberty granted and since the applicants had not approached this Tribunal so their OA is barred by time, therefore, the said order has attained finality and cannot be assailed after a period of 5 years and as such the OAs are barred by time and the same should be dismissed.

17. In the rejoinder, the applicants pleaded that after the judgment of B.N. Sharma had been affirmed by the Hon'ble High Court of Delhi that has given a fresh cause of action and that is why the applicants had been making representations on the basis of judgment and since the representation has been decided only on 9.1.2003 so the applicants immediately approached the Tribunal and the OA is well within time.

OA 550/2003

18. In OA 550/2003 there are two applicants who have also a grievance about the placement of IAs into two different cadre, i.e., EDP Grade-B and EDP Grade-A. The only distinguishing feature of this OA with OA 553/2003 is that these two incumbents had applied in response to an advertisement for appointment to the post of IAs and these two applicants could join the service after the same had been bifurcated by the department into the EDP Grade-B and EDP Grade-A and these two applicants were given the post of DPA Grade-A. These two applicants also claim since they have the same qualification and their appointment process had already been initiated before

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these services were bifurcated so they are deemed to be TAs for the purpose of this case and they are also entitled to the benefits of the judgment in B.N. Sharma's case.

19. This OA is also opposed by the respondents. The respondents in their case has pleaded that since they have joined after the creation of two cadres DPA Grade-A and DPA Grade-B and they were offered the DPA Grade-A who have been willfully offered so they cannot claim that as they have worked as TA so they should be given the benefit of the judgment in the case of B.N. Sharma.

20. We have heard the learned counsel for the parties and gone through the records of the case.

21. The only short question involved in this case is whether the present OA is barred by time since the applicants could not approach the Tribunal after the case of B.N. Sharma-II was decided by the Tribunal or after the two earlier OAs had been allowed, i.e., OA Nos. 2691 and 2516 of 1996 and when the comprehensive order was passed by the department. In our view the pleas taken by the respondents are not tenable because as per the judgment given by the Hon'ble Delhi High Court in B.N. Sharma's case, it was only redesignation of post from TAs to EDP Grade-B and all other consideration was irrelevant. In Sharma's case also it was also found that the case of Statistical and Programme Assistant was also to be a redesignation of the post as a Programmer and the

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Hon'ble Delhi High Court categorically held that the cadre of Investigator and Programme Assistant could not have been bifurcated by reasons aforementioned letter dated 6.12.1994 and the Hon'ble High Court agreed with the contentions of the respondents (applicants in the OA) to the effect that the post of Programmer should not be considered to be creation of a fresh post but the same may be taken to be redesignation of the existing posts. The same situation is here. The judgment given in B.N. Sharma-II (supra) is fully applicable on facts as well as in law.

22. Besides that we may also mention that the letters and the documents filed on record would go to show that the department while considering the representations of the applicant had also taken into consideration the case of B.N. Sharma as if the department itself was satisfied with the law as laid down in B.N. Sharma at the initial stages when B.N. Sharma-I was decided. When B.N. Sharma-II was decided, it was also stated that the same was applicable to the applicants also since in their documents they did mention the case of B.N. Sharma also which is quite manifest there in the Annexure P-4 when order dated 11.11.1997 was passed.

23. The counsel for the applicants has also referred to a judgment in the case of K.C. Sharma and others Vs. U.O.I. and Others (Civil Appeal No.5082/1997 decided on 25.7.1997) reported in AISLJ wherein it was

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held that "the application filed by similarly placed persons should not be rejected for bar of limitation". Applying the law laid down by the Hon'ble Supreme Court in K.C. Sharma case we find that the department in this case also cannot take up the plea of limitation.

24. In view of our discussion above, OA 553 of 2003 deserves to be allowed.

25. As regards OA 550 of 2003 is concerned, the learned counsel for the respondents had pointed out that at the time of redesignation of the post it was specifically mentioned that subsequently to the issuance of the orders dated 20.1.1995 in the case of persons who have come against vacancy meant for the post of direct recruitment to the grade of TAS, they will be placed in the scale of Rs.1640-2660 from the date of appointment, which we find is a policy decision of the Government. Moreover when the reports recommending the redesignation of posts had come into effect on that date when these two applicants were not working as Technical Assistants and were still under the process of selection, so as per the policy decision taken up by the Government they had been rightly placed under EDP Grade-A (Rs.1640-2660) so no interference is called.

26. In view of the discussion above, the OA 553/2003 is allowed and the order dated 9.1.2003 is quashed.

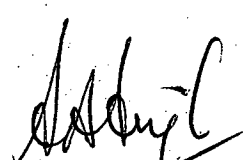
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27. Respondents are directed to grant the category of EDP Grade-B with the revised grade of DPA Grade-B to the applicants with effect from 1.1.1986 or with effect from the date of appointment whichever is later in terms of the judgment of the Delhi High Court in B.N. Sharma (supra).

28. These directions may be implemented within a period of 4 months from the date of receipt of a copy of the order.

29. OA No. 530/2003 is accordingly dismissed.

No costs.


(S.A. SINGH)

MEMBER (A)


(KULDIP SINGH)

MEMBER (J)

/Rakesh