

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.794 OF 2003

New Delhi, this the 2th day of December, 2003

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI SARWESHWAR JHA, ADMINISTRATIVE MEMBER

Mr. B.K. Biswas
L-2/14A, DDA Flats,
Kalkaji, New Delhi.Applicant.
(By Advocate : Ms. K. Iyer with Mr. Manoj Chatterjee)

Versus

1. Union of India
Through the Secretary,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi-110001.
2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi-110001.
3. The Director-AD-VI,
Central Board of Direct Taxes,
North Block,
New Delhi-110001.
4. The Director-DI (RSP+PR)
6th Floor, Mayur Bhavan,
New Delhi-110001.
5. Director Income Tax (System),
ARA Building, Jhandewalan Ext.,
New Delhi.
6. Under Secretary,
AD - VI Section,
Central Board of Direct Taxes,
North Block,
New Delhi-110001.
7. Shri Rakesh Bhushan,
S/o Late Shri Bharat Bhushan,
Aged 48 years,
R/-139, Ram Nagar,
Delhi-110051.
8. Shri S.R. Gautam,
S/o Late J.P. Gautam,
Aged 56 years,
R/o Flat No.1181, Laxmibai Nagar,
New Delhi.
9. Shri V. Swaroop,
S/o Shri B.S. Sharma,
Aged 54 years,
R/o Sector-IV-391, R.K. Puram,
New Delhi-110022.

(16)

10. Shri Praveen Punj,
S/o Late M.R. Punj,
Aged 42 years,
R/o L-II/131-A, DDA Flats,
Kalkaji, New Delhi-110019.
 11. Ms. Amita Sharma,
W/o Shri Ashwani Sharma,
Aged 40 years,
R/o E-16, Green Park Extension,
New Delhi.
 12. Shri P.K. Kar,
S/o Shri Narasingh Kar,
R/o Type-III, Qrs. No.11,
New Block, Central Revenue Colony,
Rajasma Vihar, Bhubaneswar-751 004.
- Respondents
(By Advocate : Shri V.P. Uppal)

O R D E R {oral}

SHRI SHANKER RAJU, MEMBER (J) :

Applicant has sought in this OA consideration for promotion to the post of Assistant Director (Systems) from the date of sanction of the post, i.e., 9.1.1987 with all consequential benefits, like placing him above respondent nos.7 to 11 in the seniority list.

2. Brief relevant factual matrix as emerged from the pleadings is as under:-

3. Electronic Data Processing (EDP) cadre of Income Tax Department was initially consisted of Data Entry Operators (DEO), who were recruited under the Income Tax Department (Attached and Subordinate Offices) Data Entry Operators Recruitment Rules, 1987. In 1990, vide GS 362 new rules, i.e., Directorate of Income Tax (Systems), Programme Assistant/Console Operators Recruitment Rules, 1990 came into force.

The eligibility for promotion to PA/CO was the Data Entry Operators with ten years regular service and eligibility for promotion to Group 'A' post, i.e., Programme, was the PA/COs with five years of experience.

4. On restructuring of Income Tax Department in 1994, the cadre of DEO was abolished and new cadres of DEOs Grade 'A' and DEOs Grade 'B' were created. The Recruitment Rules of 1994 were notified on 13.12.1994 and these Rules superseded the earlier Rules of Income Tax Department (Attached and Subordinate Offices) Data Entry Operators Recruitment Rules, 1987.

5. In 1995, DEO Grade 'C' and DEO Grade 'D' were notified vide notification dated 6.2.1995. On 18.8.1994, the Department of Revenue, Central Board of Direct Taxes restructured the cadre of PA/COs in Income Tax Department in two cadres, i.e., Data Processing Assistant Grade 'A' in the pay scale of Rs. 1600-2600 and Data Processing Assistant Grade 'B' in the pay scale of Rs.2000-3200. These were effective w.e.f. 11.9.1989.

6. In 2001, on account of major cadre restructuring, the cadres of DEOs Grade 'A', 'B' and 'C' were merged in the non-technical cadre of Tax Assistants and Senior Tax Assistants, whereas the cadre of DEO Grade 'D' was upgraded and merged in the cadre of DPA Grade 'A' with pay protection as per the

Board's order dated 19.7.2001. With the result, 23 DEOs in Grade 'A' were merged in the cadre of DPA grade 'A'.

7. Applicant was directly recruited as Programme Assistant, later on restructured as DPA Grade 'A'. Applicant contends that he has been directly recruited to the post of PA which was re-designated as DPA Grade 'A' and was promoted as Programmer on 16.6.1993. It was later on re-designated as DPA Grade 'B'. Being aggrieved with disparity in pay scale, applicant had filed OA 1443/1996 which was partly allowed on 19.5.2000 with a direction to the respondents to fix the scale of applicant with effect from the date of his promotion as Programmer (DPA - Gr. B) on 16.6.1993 in the pay scale of Rs.2000-3200.

8. Thereafter respondents no.7 to 11 approached the Tribunal vide OA No.2516/2000 seeking counting of the services rendered during the period of deputation till the date of absorption for the purpose of considering the eligibility for promotion from the post of Programme Assistant/Console Operator. Aforesaid OA was allowed by the Tribunal vide order dated 19.4.2001. In compliance of the said order of this Tribunal, the respondents had passed an order dated 27/28.6.2002 whereby these private respondents no.7 to 11, who were officiating as PA, were promoted as Programmer Grade 'A' on 1.8.1993 onwards after

completing five years as PA/CO. These five private respondents were further appointed to officiate in the grade of Assistant Director (Systems) (re-designated post of Programmer Grade 'A') on regular basis vide order dated 26.11.2002.

9. Learned counsel of the applicant contends that the applicant was recruited in 1978 as PA/CO and as such he was entitled for promotion from the post of PA/CO to Assistant Director (Systems) on completion of five years, i.e., in 1983. Though it was not done due to non-availability of sanctioned post. But in 1987, on account of sanctioned post of Assistant Director (Systems) with a creation of five posts, the applicant was not considered and was not granted promotion, as these private respondents no.7 to 11 had been directly promoted from PA to Assistant Director (Systems). It is contended that despite having eligibility for the post of Assistant Director (Systems) in 1983, applicant's claim was not acceded to. By referring to the DOP&T's OM dated 25.5.1988 regarding model Recruitment Rules for Group 'A' and Group 'B' posts in Electronics Data Processing discipline, it is stated that the applicant should have been considered for the post of Assistant Director at the time of consideration of his juniors.

10. By referring to OA 2516/2000 decided on 19.4.2001, it is contended that it was not the intention of the Tribunal to divest away the right of

the applicant for promotion though the private respondent's deputation was to be counted. Other eligible candidates should have been considered as well.

11. On the other hand, Shri V.P. Uppal, learned counsel for the respondents contested the OA and opposed the contentions raised by the applicant. According to him, applicant was recruited to the post of PA on 23.11.1987 by Income Tax Department under CBDT and posted in the Directorate of Income Tax (Research Statistics Publication and Public Relation). It is stated that the applicant was recruited in terms of the Directorate of Inspection (Research Statistics and Publication) Group 'C' and Group 'D' posts Recruitment Rules, 1975 where the PA grade was Group 'C' post in the pay scale of Rs.1400-2300. Upper Division Clerk (UDC) with three years services in the Directorate and with certain qualifications could become Programme Assistant. Feeder cadre for Programmer was Programme Assistant. The highest level of which Programme Assistant could rise was the level of Programmer in the pay scale of Rs.1640-2900. Post of Programmer was re-designated as DPA Grade 'A' and not as DPA Grade 'B'. The existing PA/COs were re-designated as Data Processing Assistant Grade 'A' with pay protection, in view of the order passed in OA No.1143/1996. Applicant's pay was fixed in the pay scale of DPA Grade 'B' in Rs.2000-3200 w.e.f.16.6.1993. Service rule applicable to the

applicant do not provide for promotion to the post of Programmer (Group A) after completion of five years. He was not entitled to become Programmer which is a Group 'A' post under the Recruitment Rules, 1990.

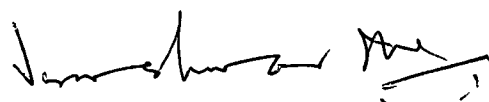
12. We have carefully considered the rival contentions of the parties and perused the material placed on record.

13. In our considered view, the claim of the applicant that private respondents are juniors cannot be countenanced whereas the private respondents have been appointed as Programmers by virtue of the decision of the Tribunal and were placed in the pay scale of the post in 1993 onwards on account of counting of the services rendered on deputation till absorption, which was allowed by the Tribunal vide aforesaid order and in pursuance thereto the order dated 26.11.2002 was issued whereby the private respondents, who were appointed as PA (CO) initially, regularised as Programmers Grade 'A' and now redesignated as Assistant Director (Systems) in the pay scale of Rs.2200-4000 from 1.8.1993 onwards. Earlier to it, they had been promoted on adhoc basis as Assistant Director (Systems) on probation.

14. In order to claim benefits of model Recruitment Rules and consideration alongwith the juniors, it has to be established that the private respondents are junior to them. The applicant was

recruited not in terms of the Directorate of Inspection (Research Statistics and Publication) Group 'C' and Group 'D' posts Recruitment Rules, 1975 whereas the Programmer was in the grade of Group 'C' post having the pay scale of Rs.1640-2900. Data Processing Assistant Group B is a group B post and on re-structuring in 1994 of the cadre of PA/CO, existing PA/CO were designated as DPA Group A with pay protection. Service rules applicable to the applicant did not provide promotion to the post of Programmer Group 'A' on completion of five years. As the applicant was made a Programmer in 1993 whereas the private respondents have been designated as Programmer and promoted earlier to this date, they cannot be treated as juniors to the applicant.

15. Having regard to the above, as the applicant has miserably failed to establish that private respondents 7 to 11 are his juniors, he is not entitled for the relief. The present OA is bereft of merit and is accordingly dismissed.


(SARWESHWAR JHA)
ADMINISTRATIVE MEMBER


(SHANKER RAJU)
JUDICIAL MEMBER

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