

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 1139/2003

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New Delhi, this the 30<sup>th</sup> day of January, 2004

Hon'ble Mr. Justice O.P.Garg, Vice-Chairman (J)  
Hon'ble Mr. Sarweshwar Jha, Member (A)

1. Mrs. S.K.Vij, W/o Sh. S.C.Vij  
EPT 37, Sarojini Nagar, New Delhi.
2. Mrs. Santosh Kumari, W/o Rajendra Kumar  
3114, Kalkaji Extn. New Delhi.
3. Mrs. Snehlata Mehta, W/o Sh. C.L.Mehta  
GH/2-111/C, Pashchim Vihar, Delhi.
4. Mrs. Loveleen Jain, W/o Sh. V.K.Jain  
B-160, Moti Bagh, New Delhi.
5. Mrs. P.K.Vijayalakshmi,  
W/o Sh. C.V.T.Nair  
Vilayil Veedu, TC 29/1488, MKK Nair Road  
(MGR-A-100) Palkalangara, Trivendrum.

.....Applicants

(By Advocate Sh. Deepak Verma)

V E R S U S

1. Union of India through  
The Secretary  
Ministry of Statistics & P.I.  
Sardar Patel Bhawan, Sansad Marg  
New Delhi - 110 001.
2. The Secretary  
Dept. of Expenditure,  
Ministry of Finance  
North Block, New Delhi - 110 001.
3. The Dy. Director General  
Computer Centre  
East Block X, R.K.Puram  
New Delhi - 110 066.

.....Respondents

(By Advocate Sh. R.N.Singh)

O R D E R

Shri Sarweshwar Jha,

The applicants, who are Data Processing Assistants (DPA), have preferred this OA seeking refixation of their pay in the scale of Rs.1600-2660 w.e.f. 1-1-1986 or the date of their joining as DPA, whichever is later, as done in the case of their juniors/other DPAs. They have pleaded that their cases are similar to the ones decided by this Tribunal on 11-2-2002 in OA 1332/99. According to them, the DPAs junior

  
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to them have been allowed re-fixation of their pay in the said scale of pay (Rs.1600-2660) w.e.f. 1-1-1986 or the dates of joining, whichever is later, with consequential benefits. The said decisions of the Tribunal are reported to have been upheld by the Hon'ble High Court while disposing of the CWP No.4473/2002 filed by the Union of India against the said order of the Tribunal.

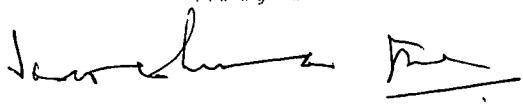
2. In this connection, the applicants have also referred to the judgement of the Hon'ble Supreme Court given on 25-9-98 in a case (Dadwa's case) filed by the DPAs of the respondents department in which the Hon'ble Apex Court, among other things, held that the said scale of pay having been granted to DPAs w.e.f. 1-1-1986 in pursuance of the IV Central Pay Commission, re-designation and re-classification of the DPAs to their dis-advantage, was arbitrary and violative of the Constitution.

3. On perusal of the orders of the Tribunal in OA 1332/99, (Annexure A-2), it is observed that the applicants in the said OA had joined the Department of Statistics directly as DPAs in the pre-revised pay scale of Rs.1200-2040 between 1987 and 1990. On rationalisation/revision of scales of pay of the Electronic Data Processing (EDP) posts, the said Department changed the stream of the applicants in the said OA from data processing to data entry and re-designated them as Data Entry Operators in the scale of Rs.1350-2200. They were aggrieved by the said re-designation and accordingly they prayed for their fitment in the scale of pay of Rs.1600-2660. As already referred to above, the said re-designation was held to be arbitrary and illegal being violative of Articles 14 & 16 of the Constitution. While the respondents in the said case, had sought to argue that the

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benefits of the judgement of the Hon'ble Supreme Court in the said case were not to be available to the applicants for the reasons given in para 3 thereof, it was observed by the Tribunal that the Hon'ble Apex Court had held that the DPAs could not be re-designated as Data Entry Operators (DEOs) with lower scale and that they had to be declared as DPAs Gr. III in the scale of pay of Rs. 1600-2660 as per the IV CPC report. The said directions of the Hon'ble Supreme Court are reported to have been extended to others similarly placed vide the Hon'ble Supreme Court's order in Kamiakar's case. Finally, the Tribunal in their order held that the ruling of the Hon'ble Supreme Court in Dadwa's case (supra) was squarely applicable to the applicants in the said OA and accordingly the OA was allowed with all consequential benefits including payment of arrears, fitment in the revised scale consequent to the recommendations of the Vth Central Pay Commission and consideration for promotion to higher posts.

4. The respondents have, however, taken a position that there is no cause of action justifying filing of this OA in terms of what the respondents have said vide their letter dated 20-2-2003 (Annexure A-1). Briefly, they appear to be still considering the matter and not having come to any definite decision as yet. They have contended that the applicants should have waited till six months/20-8-2003 before they rushed to the Tribunal. This contention of the respondents, however, does not hold water when seen in the light of the fact that their counter reply has been filed only in September, 2003, after a period of six months, as stipulated in the Section 2 of the Administrative Tribunals Act, 1985.



5. Discussing the matter on merit, it has been observed that the respondents have not been quite categorical in their reply whether the scale of pay of Rs.1600-2660 has been extended to the applicants as prayed for by them. They have merely made a reference to the orders of the Tribunal dated 11-2-2002 given in OA 1332/99 without being unambiguous on whether they are considering extending the benefits of the said orders to the applicants in this case.

6. Elaborating the reply, they have, however, referred to the distinction which they have drawn between the direct recruits as well as the promotees to the grade of DPA and have taken a position that the DPA Gr.'A' were required to put in more than four years service as DPA/TL and also to undergo aptitude test, and accordingly the applicants were considered and promoted to the posts of Jr. Programme Asstt. (now re-designated as DPA Gr.A) from various dates of 1986. In their opinion, the contention of the applicants for their promotion to the re-designated post of DPA Gr.'A' ignoring the post of DPA/TL is against the Recruitment Rules and may lead to serious anomaly in the cadre. They have also referred to the applicants having filed an OA 2289/98 seeking revision of their pay scale w.e.f. 1-1-1986 and have confirmed that the orders of the Tribunal in the said case have since been implemented by them and benefits including payment of consequential monetary benefits also allowed to them. They have submitted that the scale of pay of DPA/TL was Rs.1350-2200 whereas the scale of pay of Jr. Programme Asstt. (re-designated as DPA Gr.'A') is Rs.1600-2660/-.. The applicants have, therefore, wrongly claimed the benefit of the post of DPA Gr.A with effect from the date when they were promoted as DPA/TL. By implication, they could not have become DPA Gr.'A' without having first been promoted to the

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post of DPA/TL. They have distinguished the applicants from the directly recruited OPAs on the ground that they were initially recruited as P.C.O., subsequently promoted as P.C.S. and DPA/TL and further to the post of Jr. Programme Assistant (DPA Gr. 'A'). The applicants, according to them, are not, therefore, right in claiming that the pay scale of the post of DPA/TL was revised to Rs.1600-2660/- from Rs.1200-2040/-, in the process ignoring the intermediately scale of pay of Rs.1350-2200/- which was the scale of pay of the post of DPA/TL. The applicants have been given the pay scale of Rs.1600-2660/- with effect from their promotion to the post of Jr. Programme Assistant (re-designated as DPA Gr.A) with effect from different dates in the year 1988 as detailed in reply to paragraph 1 of the OA. Though they have not said whether their claim for being given the scale of pay of Rs.1600-2660/- against the post of DPA Gr.A is being considered to be given to them w.e.f. 1-1-1986 with reference to their juniors, in the absence of anything having been said to the contrary specifically, it is assumed that reference by the applicants to the benefits having been given to their juniors has not been given a careful consideration by the respondents and accordingly the same has not been refuted by them in clear terms.

7. The applicants have reinforced their claim for being given the scale of pay of Rs.1600-2660/- as has been granted to the applicants in OA 1332/99 decided on 11-2-2002 with reference to their juniors, as in their opinion, their cases are identically and similarly placed and as such is covered by the decisions given in the said OA by citing again the decisions of the Hon'ble Supreme Court in C.M.Dadwa v. Deptt. of Statistics & Ors. (JT 1998 (6) SC 60) as referred to in the OA decided by this Tribunal, as mentioned above.

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and also the Full Bench decision in the case of Satyender Kr. Rana v. Govt. NCTD & Ors. (2003 (2) ATJ 11). It appears that the applicants have relied on the following principles as held by the Tribunal in the said case :-

'It is also relevant to note that the Hon'ble Supreme Court has in a number of judgements deprecated the stand taken by the Government that unless parties approach the Courts/Tribunal each time they cannot be extended similar benefits. They have commented that the Government being a model employer, they should suo moto extend the same benefits as granted to similarly situated person and should not compel those persons to knock at the doors of the Courts to seek such benefits.'

Therefore, in the facts and circumstances of the case and having implemented similar orders of the Tribunal which are squarely based on the judgement of the Hon'ble Supreme Court in Subhash Chandra Sharma's case (supra), we see no reason why the same benefits ought not to be extended to the applicants who are similarly situated, i.e., those who have been employed by the respondents themselves as Part-Time Teachers in the Adult Education School.'

8. A copy of the decision of the Hon'ble Apex Court in Kamlakar & Ors. v. UOI & Ors. (JT 1999 (4) SC 486) has also been placed on record by the applicants, in which, the Hon'ble Apex Court, has, among other things, held as follows :-

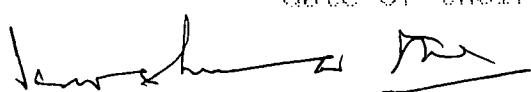
'Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given. The birth marks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale - which were matters common to all of them before the impugned order of the Government of India was passed on 27-7-1990, then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible.'

9. On consideration of the rival contentions of the parties, it is observed that the applicants are simply claiming that their cases are identical with those decided by this Tribunal in OA 1332/99 on 11-2-2002 and are thus

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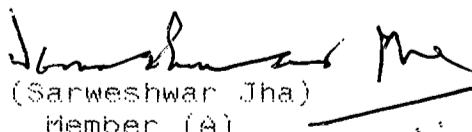
squarely covered under the decisions in the said OA. The principles which have been upheld by the Apex Court in the cases which have been referred to above also appear to be relevant in the case of the applicants and warrant consideration of the matter on the same lines as done in the cases as referred to hereinabove and the same benefits being extended to them if their juniors have already been given the necessary benefits as prayed for by the applicants in their OA. It has already been observed by the Hon'ble Apex Court, while deciding the case of Kamlakar (supra), that "any distinction between DPAs who are direct recruits and those who are promotees is not permissible". Moreover, it would be incumbent on the respondents to see whether similarly placed employees junior to the applicants have been given the same benefits, i.e., the scale of pay of Rs.1600-2660/- w.e.f. 1-1-1986 or the date of their joining as DPA whichever is later. It would also be appropriate for the respondents to refer to the relevant aspects of the decisions of the Tribunal, particularly the aspect relating to the applicants in the said OA having been deemed to have been appointed as DPAs from the date of their appointment to the posts of DEO Gr.B under the circumstances as indicated in the said orders. It has been observed in the said orders that 'this should be so, as the very basis on which the applicants have been appointed as DEOs Gr.B, i.e., the order dated 2-7-90 has been struck down and the same no longer holds the field'. The said OA was disposed of in terms of the prayer made in clause (a) of the said OA which read as under :-

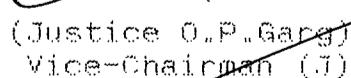
(a) This Hon'ble Tribunal be pleased to set aside the order dated 31st December, 1998 at Annexure P-1 to this application and be further pleased to direct the respondents to make the new pay scale of Rs.1660-2660 instead of Rs.1350-2200 in respect of applicants from the date of their appointments.

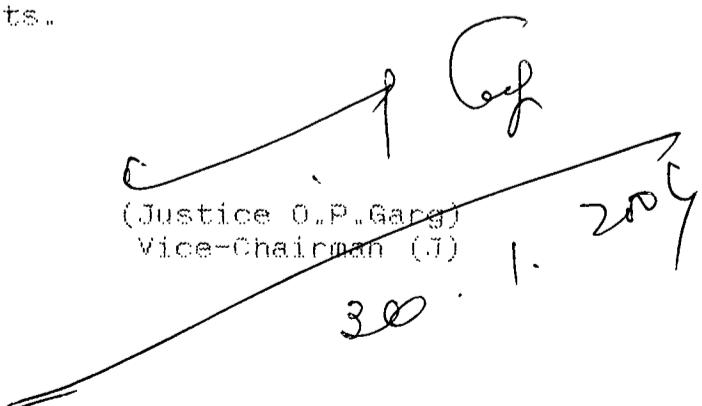


10. It is thus observed that not only the benefits directed to be given by the Tribunal vide the decisions in OA 1332/99, are applicable to the applicants in the present OA for the reasons that their juniors have been granted the said benefits as claimed by them, it has also been held that they will be deemed to have been appointed as DPAs when they were appointed to the post of DEO Gr.B with the orders dated 2-7-90 in this regard having been struck down and the same not holding good. In the present case, therefore, it would be considered relevant if the applicants would be treated to have been placed in the same situation when they were DPA/TL and, therefore, as a corollary, would need to be given the same consideration after verifying and ensuring that they are otherwise similarly placed. There is no doubt that the applicants cannot be ignored on the question of the said benefits being given to them if similar benefits have been given to their juniors.

11. Accordingly, having regard to the facts and background of the case, we are inclined to take a view that the ends of justice would be met if the present OA is allowed with directions to the respondents to treat the applicants as DPAs Gr.III in the scale of pay of Rs.1600-2660/- W.e.f. 1-1-1986 or the date of their joining whichever is later with all consequential benefits as given to the applicants in OA 1332/99. The respondents are directed accordingly. They are further directed that this order shall be implemented within three months from the date of receipt of a copy of this order. No order as to costs.

  
(Sarweshwar Jha)  
Member (A)

  
(Justice O.P. Ganguly)  
Vice-Chairman (J)

  
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