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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1705/2003

New Delhi, this the 13th day of February, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

1. All India Cipher Staff Association

(DCPW) (Regd.)

through its Secretary

Shri Sukh Das, Cipher Assistant

Block No.9, CGO Complex

Lodhi Road

New Delhi - 03.

2. B.S.Anand Cipher Operator

& Jt. Secretary

All India Cipher Staff Association (DCPW) (Regd.)

Directorate of Co-ordination of Police

Wireless (DCPW)

Block No.9, CGO Complex

Lodhi Road

New Delhi - 03.

... Applicants

(By Advocate: Ms. Madhu Tewatia)

Versus

1. Union of India

through the Secretary

Ministry of Home Affairs

New Delhi.

2. Director Police Telecommunications

Directorate of Co-ordination

(Police Wireless)

Ministry of Home Affairs

Block No.9, CGO Complex

Lodhi Road

New Delhi - 03.

3. Joint Cipher Bureau

through Secretary

Ministry of Defence, South Block

New Delhi.

... Respondents

(By Advocate: Sh. M.M.Sudan for Rs-1 and 2 and

None for Respondent No.3)

O R D E R

Justice V.S. Aggarwal:-

M.A.No. 1455/2003:

MA is allowed subject to just exceptions.

Filing of the joint application is permitted.



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O.A.No.1705/2003:

2. In the year 1966, the Directorate of Co-ordination Police Wireless in the Ministry of Home Affairs earlier consisted of two cadres, namely, Wireless (Operational) and Maintenance (Technical).

3. As a result of a review that was carried out by the Government of India after the border clashes between India and China in the year 1962, it was found that information of intelligence value was being leaked out through the enclair transmission of classified messages over the Police Radio Grids of Directorate of Coordination (Police Wireless), Ministry of Home Affairs as well as of the States/Union Territories. For the elimination of this "Breaches of Radio Communication Security", the Government suggested to the States/Union Territories that Cryptography (a science which provides secure coverage to Confidential, Secret and Top Secret information) should be introduced in their respective Police Radio Networks, in order to provide secure means of transmission of messages having national security value.

4. Accordingly, the Directorate of Coordination (Police Wireless), Ministry of Home Affairs which earlier had only two cadres, i.e., Wireless and Maintenance, saw the birth of the third branch named as the Cipher cadre. It was implemented by Directorate of Co-ordination Police Wireless by taking experienced/specialized Cipher Officers/Staff

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on deputation and by recruitment of Ex-servicemen of the Army/Joint Cipher Bureau, Ministry of Defence. The Cipher cadre is alleged to have been identified as a very important and a higher cadre than the other cadres of Wireless and Maintenance.

5. Through out, it is contended that as per the recruitment rules the pay scale of Cipher cadre was higher than that of Wireless cadre. According to the applicants, the post of Wireless Operator and Wireless Supervisors were feeder posts for promotion to the post of Cipher Operators and Cipher Assistants respectively. It is stated that 39 Wireless Operators and 9 Wireless Supervisors were promoted to the post of Cipher Operators and Cipher Assistants respectively.

6. It is contended that the nature of duties and responsibilities of the Cipher staff is the same all over India, namely, Army, Air-Force, Navy, Railways, Ministry of External Affairs, RAW, Ministry of Finance, Para-Military Force, State Police Organisation, etc. The duties and responsibilities of Wireless staff are restricted to transmitting unclassified messages only, which is 100% unsafe and liable to interception whereas the duties and responsibilities of Cipher cadre are much higher and numerous as it deals with classified i.e. Secret and Top Secret communications/matters between the Centre and States using comparatively more sophisticated Cipher Machines than Wireless staff. It is very sensitive and needed higher responsibility.

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7. For considering the sensitive nature of the duties and job responsibility from the point of National Security, the Fifth Central Pay Commission after a careful study of the duties and responsibilities of the Cipher staff and the pay scales of the staff in the other Ministries and Departments, made recommendation to give higher pay scales to Cipher staff than the Wireless staff. The recommendations contained in the report of the said Pay Commission were accepted by the Central Government and the following pay scales were given to the Cipher staff and the Wireless staff respectively:

Name of Post	Existing (old) pay scale	New (revised) pay scale wef 1.1.1996
Cipher Operator	Rs.1350-2200	Rs.4500-7000
Wireless Operator	Rs.1320-2040	Rs.4000-6000
Cipher Assistant	Rs.1400-2600	Rs.5000-8000
Wireless Supervisor	Rs.1400-2300	Rs.4500-7000

8. While recommending the aforesaid pay scales to the Cipher cadre and the Wireless cadre no special provision in the grant of pay scales, based on qualification was made by the Fifth Central Pay Commission. This was so because the Wireless cadre also constituted the feeder cadre for the Cipher cadre. The post of Cipher Operator continues to be the promotion post for the post of Wireless Operator while the post of Cipher Assistant continues to be the promotion post for Wireless Supervisor.

9. It is asserted that maintenance cadre is working under the operational command and control of maintenance cadre officers. The grievance put forward is that the scales of Wireless Operators and Wireless



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Supervisors have been revised and placed higher than the Cipher staff though those posts are feeder posts for Cipher Operators and Cipher Assistants. It is contended that the impugned order so passed is discriminatory.

10. The applicant, by virtue of the present application, seeks quashing of the impugned orders rejecting the representation of the applicants and for a direction to enhance the pay scale of Cipher staff, i.e., Cipher Operators and Cipher Assistants to appropriate level so as to make their pay scales higher than those granted to the Wireless staff by the order of 10.1.2002.

11. To keep the record straight it can well be mentioned that by the order of 10.1.2002, the scales of Wireless Operator, Wireless Supervisor and Senior Supervising Officer have been revised:

"In the pursuance to Ministry of Finance approval for re-structuring of Group 'B' and 'C' posts in the Operational and Technical Wings of Directorate of Coordination, Police Wireless, the under mentioned posts are placed in the following pay scales with immediate effect:-

<u>"Operational Wing</u>		<u>Technical Wing</u>	
Post	Pay Scale (Rs)	Post	Pay Scale (Rs)
Wireless Operator	5000-8000 (4000-6000)	Radio Technician	5000-8000 (4500-7000)
Wireless Supervisor	5500-9000 (4500-7000)	Technical Asstt/ Technical Asstt(Maint)	5500-9000 (4500-7000)
Senior Supervising Officer	5500-9000 (5500-9000)	Senior Technical Assistant	5500-9000 (5500-9000)

Note: The figures in brackets indicate existing pay scales.

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2. This issues with the approval of MHA and IFD vide their Dy. No.38/Fin.IV/02 dated 8.1.2002."

12. Earlier the applicants had filed an Original Application which was disposed of and directed the respondents to decide the representation of the applicants. The same has been rejected on 10.4.2003 by the following order:

"Shri Pankaj Srivastava, Cipher Assistant of this Directorate may refer to his representation dated 14.1.2002 on the above cited subject. In this connection he is informed that his request has been examined thoroughly and the findings are as follows:-

1. The re-structuring of the Technical and Operational Wings of DCPW has been undertaken by the Implementation Cell of Ministry of Finance. The pay scales awarded to the grades of the two wings based on the graduate level direct recruitment qualifications to its entry grades based on the recommendations of the Fifth Central Pay Commission as done in other cases in the Central Govt. Offices.

2. The entry level direct recruitment qualification for the Cipher Operator is Matric. There was no specific recommendations of the Fifth Central Pay Commission in respect of the Cipher Personnel of DCPW.

3. The recruitment rules for the post of Wireless Operator is to undergo changes due to the re-structuring of its cadre. Thereby Wireless Operator may not be the feeder grade for promotion to Cipher Operator.

2. In view of the above mentioned facts, it is clear that since the re-structuring has been done by the Ministry of Finance in respect of Technical and Operational Wings of DCPW based on the direct recruitment qualifications which is higher than the entry level qualification of Cipher Personnel, this can not be compared with making previous reference. The representation is therefore disposed of.

3. This issues with the approval of Ministry of Home Affairs and Ministry of Law & Justice vide their Dy. No.643/JS(PM)/03 and 636/03 dated 28.2.2003 and 21.3.2003 respectively."

13. In the reply filed, the respondents have contested the application. It is pleaded that in Cipher Wing direct recruitment is made in Typist



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Keyman and Cipher Operator grades. The Typist Keyman is promoted to Cipher Operator grade. The next promotion grades are Cipher Assistant, Technical Superintendent (Cipher) and Extra Assistant Director (Cipher).

14. After implementation of the Fifth Central Pay Commission, it was found that no specific recommendations were made by the Commission for upgradation of the scales of grades like Wireless Operator, Radio Technician, Cipher Operator and their supervisory grades. Therefore, only the replacement scales were given to all of the grades of the office of Directorate of Coordination.

15. In January, 2002 the Implementation Cell of Ministry of Finance restructured the pay scales of Technical and Operational Wings. The pay scales awarded to the incumbents to the entry grade of these two wings are similar as recommended by the Fifth Central Pay Commission for the direct recruits with B.Sc level qualification in the Central Govt. Offices. The base for revision of the scales made by Ministry of Finance in these two grades is the B.Sc level qualification in the recruitment rules for the direct recruits. Although in the rules there is a provision for recruitment of Matriculate with Certificate of Proficiency issued by Ministry of Communication for Wireless Operator, these qualifications have become redundant as the Ministry of Communication has discontinued the issue of Certificate of Proficiency.

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16. Prior to restructuring, the pay scales of Cipher Operator and Cipher Assistant were Rs.4500-7000 and Rs.5000-8000 respectively. The scales of Wireless Operators and Wireless Supervisor were Rs.4000-6000 and Rs.4500-7000. After restructuring, the scales of Wireless Operators and Wireless Supervisor are placed at Rs.5000-8000 and Rs.5500-9000 respectively. It has been further contested that the direct recruitment qualification for the post of Typist Keyman is Matric. The main duties attached to this grade is typing and they do not handle any classified documents. From here, the Typist Keyman personnel are promoted to Cipher Operator grade in the scale of Rs.4500-7000. It is denied that Wireless Operators and Wireless Supervisor were feeder cadres for promotion to the Cipher Operator and Cipher Assistants.

17. The main argument advanced by the learned counsel for the applicants in this regard was that the post of Wireless Operators and Wireless Supervisor were feeder cadres for promotion to Cipher Operator and Cipher Assistants. These posts in the feeder cadre have been placed in the higher scale than the post to which they were to be promoted and therefore the applicants could not be placed in a lower scale.

18. On behalf of the respondents, it was contended that educational qualifications can be a parameter to fix the scales. According to them for the post of Wireless Supervisor and Wireless Operators, B.Sc is the minimum qualification. In support of his contention, the learned counsel has

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relied upon the decision of the Supreme Court in the case of Government of West Bengal v. Tarun K. Roy and Ors., JT 2003(9) SC 130.

19. We do not dispute the said proposition that when educational qualifications are different the State can provide scales accordingly.

20. Can in the facts of the present case this argument of the respondents holds good? We find that on perusal of the record the same is to be stated to be rejected.

21. Respondents had made available the recruitment rules for the post of Wireless Operators. In Column-9 the essential qualifications are:

"(i) Matriculation or equivalent and 2nd class certificate of competency by Ministry of Communication or equivalent.

OR

Passed Grade-II trade test of Wireless Operator conducted by Army, Navy or Air Force.

OR

2) B.Sc with Physics, Chemistry and Mathematics from a recognised University.

Desirable

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22. They have also placed on record the recruitment rules for Radio Technician. In Column-9 the essential qualifications have been mentioned:

Essential

Graduate with Communication or Electronics as one of the subjects

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OR

Graduate with Physics and Mathematics and having atleast one years' practical experience of Radio or Electronics.

OR

- a) Matriculation and
- b) (i) Diploma in Radio Engineering or Radio Communication or allied subjects issued by a recognised Board or Institute.

OR

- (ii) Passed grade II Proficiency Test of Radio Technicians conducted by the Directorate of Coordination (Police - Wireless).

OR

- (iii) Certificate in Electronics Trade (Two years course) of the Industrial Training Institute (according to revised syllabus of 1972) with two years' experience in the trade.

Note: The above qualifications under (b) are relaxable in respect of ex-servicemen and serving personnel of the Indian Armed Forces with suitable technical standard.

Desirable: 1 year Practical experience."

23. It is obvious from the aforesaid that when the respondents state that B.Sc with Physics, Chemistry and Mathematics is the minimum qualification, they are incorrect. This is so evident that matriculation or equivalent and 2nd Class certificate of competency by Ministry of Communication or equivalent also makes a person eligible.

24. When respondents contend that now certificate is not issued by the Ministry is of a little significance. Any person who has earlier obtained the certificate can still be eligible with a matriculation certificate. The recruitment rules have not been amended. Thus, the very basis of the



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argument that persons with higher educational qualifications are eligible for these posts must be rejected.

25. Same is the preposition with respect to post of Wireless Supervisor.

26. Reverting back to the post particularly of Cipher Operator, the Column-12 of the same indicates that Wireless Operators are in the feeder cadre. The relevant portion reads:

Promotion:

Typists (Keyman) with 6 years service in the grade and who have qualified in a cryptographic basic course.

OR

Wireless Operators who have passed the Directorate of Coordination (Police (Wireless) Retention test (Not applicable) to the W/Opr. appointed in DCPW from the Defence service and BSF) and possess 3 years experience in communication duties in Directorate of Coordination (Police Wireless) and have qualified in cryptographic course.

Short Term Contract:

Persons of State/Central Police Radio Organisations/Defence services who have undergone Grade III Cipher Course of DCPW."

27. In case of Cipher Assistants, the Wireless Supervisors are in the feeder cadre.:

Promotion:

Cipher Operators who have passed cryptographic Course Grade-I with six years service as Cipher Opr. in Directorate of Co-ordination (Police Wireless), failing which from wireless supervisors with two years service in the grade and who have qualified in the Grade-II Cryptographic Course.

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Transfer on deputation:

Suitable officers holding equivalent or analogous posts or officers holding posts in the scale of Rs.1350-2200/- or equivalent in Cipher Organisations under Central or State Governments with 3 years service in the grade. (Period of deputation, ordinarily not exceeding three years).

Short-term Contract:

Retired officials of the Central/State Police Radio Organisations of the rank of Inspector or equivalent belonging to Cipher category."

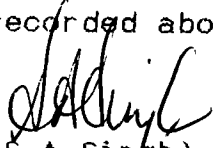
28. In fact, the applicants have produced the list of such persons which is Annexure-P5 to indicate that 9 persons from Wireless Supervisors were promoted to Cipher Assistants. and 15 Wireless Operators were promoted to Cipher Operators. There is no denial to this fact. Thus, it is obvious that these posts of Wireless Operators and Wireless Supervisors are in the feeder cadre. But as has been indicated above they have been given the higher scale which we have already reproduced above.


29. It is well known that equality and arbitrariness are sworn enemies. When a person is in lower scale, and which is in the feeder cadre to a promoted post like Cipher Operator and Cipher Assistant is being placed at an higher scale. The arbitrariness is writ large because there is no corresponding increase for the Cipher Operator and Cipher Assistants.

30. In view of the above, we make it clear that it is entirely for the concerned Ministry to fix the scales, but even it should not be less than the post which are in the feeder cadre.

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31. For these reasons, we allow the present application and quash the impugned orders. It is directed that the respondents should consider the question to enhance the pay scale of Cipher Assistants and Cipher Operators in the light of the findings recorded above.

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(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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