

Chandraprakash Madhavrao Dadwa and Others

Vs

Union of India and Others

Review Petition (C) No. 2096 of 1995 In Civil Appeal No. 5008 of 1998

(S.B. Majmudar, M. Jagannadha Rao JJ)

25.09.1998

JUDGMENT

M. JAGANNADHA RAO, J. –

1. This review application has been filed by the petitioners in Special Leave Petition (Civil) No. 16646 of 1995 to review the order dated 1-9-1995 dismissing the said SLP at the stage of admission. The basis for the said review petition is as follows. Under the impugned order dated 2-7-1990, the Union Government had done two things :

(1) it changed the designation of the review petitioners from Data Processing Assistants in the National Sample Survey Organisation (NSSO) to Data Entry Operators (and gave them a particular scale) which according to the petitioners amounts to reversion to an entry grade below that of Data Processing Assistants to which they were recruited;

(2) it changed the designation of certain other officers in NSSO from Data Processing Supervisors into Data Processing Assistants (and gave the latter a particular scale of pay).

The petitioners, who fall under (1) above filed SLP (C) No. 16646 of 1995, questioning their redesignation as Data Entry Operators. The same was dismissed in limine on 1-9-1995. But in SLP (C) No. 18948 of 1995 filed by the Data Processing Supervisors falling under (2) above questioning their redesignation, notice was ordered and later, leave was granted. The matter was registered as Civil Appeal No. 16741 of 1995 and the appeal was ultimately allowed on 9-12-1996 setting aside their redesignation as Data Processing Assistants and the particular scale of pay that was given to them. The petitioners contend in this review petition that, on the same analogy, the redesignation of the petitioners as Data Entry Operators Grade B and giving them a lower scale is also bad in law. The petitioners also rely upon a subsequent order dated 15-5-1996 of the Government of India by which the impugned order dated 2-7-1990 has been modified insofar as Punch Key Operators in the Field Division of NSSO are concerned.

2. Because of the above material, notice was issued in this review petition on 3-3-1997. After hearing counsel, we are of the opinion that the above material is sufficient for allowing the review petition. Accordingly we allow the review petition. The SLP is taken up and leave is granted. In fact, with the consent of counsel, the appeal itself has been heard as the parties have filed copies of the pleadings, documents and affidavits. We shall, therefore, proceed to decide the appeal.

3. During the pendency of this review petition, Government of India have passed a fresh order dated 11-3-1998 modifying the impugned order dated 2-7-1990. Arguments have been submitted before us in regard to the order dated 11-3-1998.

4. We may mention a few more facts. The appellants are 48 in number and have all been directly recruited in 1978 and thereafter as "Data Processing Assistants" in the scale of Rs. 330-560 in the Data Processing Division of the National Sample Survey Organisation (hereinafter called the NSSO), Department of Statistics, Ministry of Planning, Government of India. They were so recruited under the NSSO (Data Processing Division and Survey, Design and Research Division) (Data Processing Assistant) Rules, 1977 (hereinafter called "the 1977 Rules"). The next stage of promotion is to the post of Data Processing Supervisor in the scale of Rs. 425-800 which post is governed by the NSSO (Data Processing Division and Survey, Design and Research Division) (Data Processing Supervisor) Recruitment Rules, 1978 (hereinafter called "the 1978 Rules"). Thereafter the promotion is to the post of Data Processing Superintendent.

5. The appellants put on several years of service as Data Processing Assistants from various dates after 1978 and in the year 1990, the impugned order dated 2-7-1990 was passed. The said order stated that :

(i) Key Punch Operators in Field Division of NSSO in Rs. 950-1500 would be called Data Entry Operators Grade B in the scale of Rs. 1350-2200;

(ii) the existing Data Processing Assistants of NSSO like the appellants who were in the scale of Rs. 1200-2040 would now get the scale of Rs. 1350-2200;

(iii) under the same order the existing Data Processing Supervisors were redesignated as Data Processing Assistants of NSSO and were to get the scale of Rs. 1600-2660;

(iv) similarly Data Processing Superintendents in the scale of Rs. 1640-2900 would now be called Senior Data Processing Assistants in the scale of Rs. 2000-3200.

6. The officers who were immediately above the appellants namely Data Processing Supervisors as well as the appellants, Data Processing Assistants moved the Central Administrative Tribunal. The former filed OA No. 755 of 1990 challenging their redesignation as Data Processing Assistants and the denial of the scale of Rs. 2000-3200. The OA was dismissed on 7-3-1995 and they filed SLP (C) No. 18948 of 1995 which, after leave was granted, was registered as Civil Appeal No. 16741 of 1995. By judgment dated 9-12-1996, the said appeal was allowed holding that the erstwhile Data Processing Supervisors could not have been designated as Data Processing Assistants. It was also held that as they were holding the scale of Rs. 1400-2300, they were entitled to the revised scale of Rs. 2000-3200 meant for Data Processing Supervisors and not the scale of Rs. 1640-2900 w.e.f. 1-1-1986 proposed to them in the order dated 2-7-1990 treating them as Data Processing Assistants.

7. The appellants, the Data Processing Assistants in the scale of Rs. 1200-2040, filed OA No. 625 of 1990 in the Tribunal claiming that their redesignation as Data Entry Operators Grade B was illegal and that they were entitled to the revised scale of Rs. 1600-2660 meant for Data Processing Assistants and not to the scale of Rs. 1350-2200. The Tribunal dismissed the OA on 7-3-1995 being the same day on which it dismissed OA No. 755 of 1990 filed by the Data Processing Supervisors. Against the order, SLP (C) No. 16646 of 1995 has been preferred by the appellants, the Data Processing Assistants. This SLP was initially dismissed on 1-9-1995. Now the SLP has been

restored by allowing Review Petition No. 2096 of 1995.

8. We have, therefore, granted leave in SLP (C) No. 16646 of 1995 and by the consent of the parties, the civil appeal is being finally disposed of now.

Rival contentions based on the 2-7-1990 order of the Government of India

9. In this appeal, it is contended by the learned Senior Counsel for the appellants, Mrs Shyamla Pappu, that the appellants were directly recruited in NSSO under the statutory Rules of 1977 as Data Processing Assistants and they were in the course of time entitled under the 1978 Rules to be "promoted" as Data Processing Supervisors. The 48 appellants were predominantly doing data processing work right from 1978 and almost entirely by 1990 and the impugned order resulted in illegally removing them from the Data Processing stream because of a slight change in the qualifications for recruitment of Data Processing Assistants. Consequently the shifting of the appellants to the Data Entry stream and the refusal to grant them the revised scale of Rs. 1600-2660 applicable to Data Processing Supervisors, was illegal. A person directly recruited to a post could not be shifted to a post which was not in the Rules but was in a different stream carrying scales inferior to the one to which the appellants were entitled, i.e., Rs. 1600-2660 in the Data Processing stream. That would amount to change in the qualifications with retrospective effect. Further administrative orders could not be inconsistent with the Rules. Even treating the order dated 2-7-1990 as not consistent with the Rules, it changed the essential qualifications, removed the appellants from the posts to which they were recruited and in which posts they were confirmed (i.e. in the Data Processing stream), and shifted them to a post not in the Rules and that too into a different stream in the NSSO and in a lesser scale than the one due to them. Any change in the essential qualifications could only be prospective and should not affect those who were already recruited to the posts. Otherwise, it would be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

10. On the other hand, learned Senior Counsel for the Union of India, Shri P. P. Malhotra, contended that the administrative order dated 2-7-1990 was not inconsistent with the Rules of 1977 or 1978, that two new streams - the Data Processing stream and the Data Entry stream were recommended by the Dr Seshagiri Committee in 1987 and on 11-9-1989, by the Finance Ministry and in implementation thereof, the order dated 2-7-1990 was passed by the Ministry of Planning (Statistics Department). The order dated 2-7-1990 fixed slightly higher essential qualifications which the appellants did not possess. The appellants were doing only data entry work and not data processing work, though they were recruited as Data Processing Assistants. Data Processing Assistants like the appellants in the scale of Rs. 1200-2040 were, therefore, rightly brought into the Data Entry stream and redesignated as Data Entry Operators Grade B in the scale of Rs. 1350-2200. At the same time, Data Processing Supervisors in the scale of 1400-2300 were redesignated as Data Processing Assistances as an entry scale and given Rs. 1600-2660 rather than the revised scale of Rs. 2000-3200 applicable to Data Processing Supervisors. It may be that the erstwhile Data Processing Supervisors so redesignated as Data Processing Assistants came to this Court and succeeded in Civil Appeal No. 16741 of 1995 by getting restored to their original designation as Data Processing Supervisors and also to the revised scale of Rs. 2000-3200 rather than the revised scale of Rs. 1600-2660 proposed in the impugned order dated 2-7-1990. But that judgment must be confined to that case alone inasmuch as no general principle was laid down therein. It may be that consequentially for the present, after the 2-7-1990 order, there may be a vacuum in the posts of Data Processing Assistants in the NSSO - because (i) those recruited by that designation like the appellants have now become Data Entry Operators Grade B and (ii) those Data Processing Supervisors who were redesignated as Data Processing Assistants have got back the said designation

and scale because of the judgment of this Court in Civil Appeal No. 16741 of 1995. If there is a vacuum in the NSSO in the posts of Data Processing Supervisors in the scale of Rs. 1600-2660, those posts can be filled by direct recruitment as proposed in the 2-7-1990 order and as per the Model Rules issued by the orders of the Central Government dated 13-2-1990 (Ministry of Personnel, Public Grievances & Pension) where certain higher qualifications have now been prescribed for that post. The appellants do not have those qualifications now prescribed and cannot, therefore, be continued as Data Processing Assistants. In 1990, additional functions have been prescribed for this category and the appellants do not have the skills necessary for performing those functions.

Rival contentions based on the 16-3-1998 order of the Union Government

11. We shall now refer to the contentions regarding the 16-3-1998 order. Learned Senior Counsel for the Union of India, Shri P. P. Malhotra has also relied upon this order of the Government of India, Department of Planning (Statistics Department) dated 16-3-1998 passed in modification of the order dated 2-7-1990. Under the order dated 16-3-1998, the former Data Processing Assistants in the scale of Rs. 1200-2040 will continue to be redesignated as Data Entry Operators, but instead of being called Data Entry Operators Grade B as in the 2-7-1990 order, they will now be in four new grades. In the Data Entry stream, the first level of posts will be in Grade IV in the scale of Rs. 1350-2200 (143 posts in all departments, including NSSO); the second will be Grade III in the scale of Rs. 1400-2300 (with 95 posts); the third will be Grade II with the scale of Rs. 1600-2660 (with 60 posts) and the fourth will be Grade I in the scale of Rs. 2000-3200 (with 120 posts). The appellants who were recruited in 1978 or later as Data Processing Assistants and who were in the scale of Rs. 1200-2040 in 1990 would now be placed in the Data Entry Operators Grade IV with the scale of Rs. 1350-2200. Over a period, depending upon the number of years of regular service, they could get promotion to Grade III, then to Grade II and finally to Grade I. According to the learned Senior Counsel for the Union of India, their position improved from what it was when they were Data Processing Assistants inasmuch as, in the Data Entry stream, they have now four new grades. The appellants were mainly doing data entry work all these years and could not be continued in the Data Processing stream after 2-7-1990.

12. Coming to the Data Processing stream, the contention for the Union of India is that under the 16-3-1998 order, this stream will consist of Data Processing Assistants in the scale of Rs. 1600-2660 now called Grade III (rather than Data Processing Assistant simpliciter as per the 2-7-1990 order). After the shifting of the appellants to the Data Entry side, the resultant vacancies of Data Processing Assistants would have to be filled by direct recruitment, the basic qualifications now being slightly higher than what they were in the 1977 Rules when the appellants were recruited as Data Processing Assistants. The appellants do not possess these new qualifications and hence they are not entitled to be once again redesignated as Data Processing Assistants. Nor can they perform the entire functions now attached to the post of Data Processing Assistants. The appellants have already become Data Entry Operators by the 2-7-1990 order. This reclassification does not offend Articles 14 and 16 of the Constitution of India. These orders dated 2-7-1990 and 16-3-1998 are not inconsistent with the statutory Rules.

13. On the other hand, learned Senior Counsel for the appellants, Mrs Shyamla Pappu, submitted in reply to the above arguments that the order dated 16-3-1998 was equally invalid. The appellants were doing data processing work although and not data entry work since the time they were recruited as Data Processing Assistants. They satisfied whatever essential qualifications were then fixed for that post at that time of their recruitment. The latest order is illegal inasmuch as it

continues the shifting of the appellants from the Data Processing stream to the Data Entry stream and it continues the redesignation of the appellants as Data Entry Operators Grade IV. The impugned order amounts to removing the appellants from the posts to which they were recruited and in which they were confirmed in 1989. As the revised scale of Data Entry Operators Grade IV, i.e., Rs. 1350-2200 is less than the revised scale of Rs. 1600-2660 applicable to Data Processing Assistants, there is a clear violation of Articles 14 and 16 of the Constitution of India. Similar downgradation was done in the case of the erstwhile Data Processing Supervisors when they were redesignated as Data Processing Assistants in a lower scale of Rs. 1600-2660 and the same was struck down by this Court in Civil Appeal No. 16741 of 1995. The principle of that case should be applied to the case of the appellants. The impugned orders dated 2-7-1990 and 16-3-1998 created a vacuum in the posts of Data Processing Assistant, particularly after the judgment of this Court in Civil Appeal No. 16741 of 1995 dated 9-12-1996, which was never intended under the Rules. The order of 16-3-1998 is worse than the order dated 2-7-1990 inasmuch as now the appellants will have to start from Grade IV in the scale of Rs. 1350-2200 and move to Grade III in the scale of Rs. 1400-2300 and only then to the scale of Rs. 1600-2660 given to Grade II Data Entry Operators. They could never be redesignated as Data Processing Assistants because that post is now placed in a different stream.

14. During the final submissions, Shri P. P. Malhotra, learned Senior Counsel for the Union of India, stated across the Bar that the Government was prepared to place these 48 appellants of NSSO in Grade III of Data Entry Operators Grade III in the scale of Rs. 1400-2300 rather than in Grade IV bearing the scale of Rs. 1350-2200. The said stand was taken in view of the upward revision of the pay scales pursuant to the Pay Commission recommendations. These were the broad submissions before us.

15. For the purpose of deciding the issues, we shall have to refer to the rules and orders chronologically from 1973.

The 1973, 1977 and 1978 Rules and the appellants' recruitment as Data Processing Assistants

16. At the outset, we may state that the Rules in force in the NSSO, namely the NSSO (DPD, SD & RD) Class III (Non-Ministerial Posts) Recruitment Rules 1973 were applicable for recruitment to the posts of Computing Operator (225 posts), Machine Operator (68 posts) and Key Punch Operator (80 posts) which were in the scale of Rs. 130-300. These large number of posts, it will be noticed, were on the Data Entry side.

17. On the other hand, the NSSO Rules, 1977 were applicable to Data Processing Assistants giving them the scale of Rs. 330-560. The 1978 Rules were applicable to Data Processing Supervisors in the scale of Rs. 425-800. These posts it will be noticed were in the Data Processing stream.

18. The posts of Data Processing Assistants numbering 88 posts were shown in the 1977 Rules in the scale of Rs. 330-560 and the 48 appellants were recruited to those posts on or after 1977 and only as Data Processing Assistants.

19. In our view and as explained in greater detail later, the position so far as NSSO was concerned, was that under the Rules, a distinction was there between the Data Entry Operators governed by one set of Rules of 1973 and the Data Processing Assistants and Supervisors governed by the 1977 and 1978 Rules.

20. It is no doubt true that prior to 1977 Rules in NSSO there was no distinct cadre styled as the Data Entry Operators but there were Machine Operators, Key Punch Operators and Computers who were doing data entry work. That all these three cadres of employees doing data entry work got merged into one common cadre of Data Processing Assistants from 1977 onwards. However, the fact remains that the review petitioners were recruited to the common cadre of Data Processing Assistants after 1977 and were primarily assigned data processing work.

The Fourth Pay Commission (1986)

21. The Fourth Pay Commission in its Report (1986) felt that all matters concerning the Data Entry and Data Processing staff be decided by an expert body. Thereafter, a committee known as "Dr Seshagiri Committee" went into the question of revision of pay scale and restructuring in various departments of the Government, including NSSO.

The Dr Seshagiri Committee (1987)

22. The Dr Seshagiri Committee initially appointed a sub-committee to go into various questions. The said Sub-Committee gave the following significant directions stating that there should be two streams - one relating to data entry and another relating to data processing.

23. The Sub-Committee stated in para 9(6) referring to Data Entry Operators, as follows :

"Some EDP personnel at present viz. KPO/DEOs (Key Punch Operators and Data Entry Operators) are performing work of a repetitive nature and which does not involve any S&T (Science & Technology) content in it. Treating such staff as S&T, with attendant benefits as at present available in some of the S&T departments, has created an anomalous structure vis-a-vis other clerical staff, who may be working on electronic typewriters with memory, word processors, direct entry machines, terminals etc...

It is recommended that KPOs/DEOs be classified as Data Entry Operators. The representative from the Department of Personnel was strongly of the view that this category could not be treated as S&T since they were performing jobs of a repetitive nature. After detailed discussions also, therefore, the following five grades are recommended for them, as in the Ministry of Railways :

DEO Grade A : Rs. 1350-2200

DEO Grade B : Rs. 1400-2300

DEO Grade C : Rs. 1600-2660

DEO Grade D : Rs. 2000-3200

DEO Grade E : Rs. 2375-3500

(selection grade)

A further grade of 'AA' in regard to non-graduates in the scale of Rs. 1150-1500."

Thereafter, the Sub-Committee referred to "Data Processing Assistants" and Programmers. It said :

"This work will require intellectual skills in programming, computer etc. Such work will not be of a routine type. Hence such personnel in the Government should be provided opportunities to give their best."

The Sub-Committee recommended the following scales and designations so far as this stream is concerned :

#(i) "Data Processing Assistant A : Rs. 1640-2900 Direct entry for graduates in Science, Mathematics, Economics, Commerce, Statistics, or other areas as decided by the organisation with knowledge of programming, systems operations (to be judged by suitable tests) and/or Certificate, Diploma in Computer Application.(ii) Data Processing Assistant B : Rs. 2000-3200 By promotion from Data Processing Assistant A and eligibility for promotion is at least 5 years in grade."##

It is important to notice that whereas in the 1977 Rules, it was sufficient for recruitment as Data Processing Assistants to have a degree in the above subjects, it is now stipulated that there should be a test for evaluating the knowledge in programming etc. Such a test is not necessary if the candidates are having a Diploma or Certificate in Computer Application. Referring to existing staff, the Sub-Committee, however, stated :

"However, for the new entrants in S&T departments, the scheme as at para 9 above will be applicable."

Again in its general recommendation in para 12(a) under the heading Data Entry Operator, the Sub-Committee reiterated that it was agreed that "the minimum qualification for the Data Entry Operators should be graduation. However, this should not be applicable to the existing staff". In sub-para (b) of para 12, under the heading Data Processing Assistant A, it was stated that the Sub-Committee would finally recommend the scale of Rs. 1640-2900 rather than Rs. 1600-2660.

24. The Dr Seshagiri Committee then endorsed the recommendations of the Sub-Committee on 15-5-1987. At that meeting, apart from Dr Seshagiri, ten other senior officials including Director (PP), Department of Personnel & Training, Director General, Central Statistical Organisation, Director (NIC) were present. The said Committee issued a tabular statement containing the final recommendations consisting of (I) Data Entry Operators Grade 'AA' in the scale of Rs. 1150-1500; Grade A : 1350-2200 direct recruitment for graduates; Grade B : 1400-2300 by promotion; Grade C : Rs. 1600-2660 (promotion); Grade D : Rs. 2000-3200 (promotion); Grade E : Rs. 2375-3500 (selection grade) (II) Data Processing Assistants A : Rs. 1640-2900 (direct entry for graduates with knowledge of programming/system operations; Data Processing Assistants B : Rs. 2000-3200 etc.

25. Nowhere in the above Report, it was recommended that in view of the slightly different qualifications now fixed for Data Processing Assistants, those specifically recruited earlier under the statutory Rules as Data Processing Assistants were to be dislodged therefrom and be brought into the Data Entry stream. Even with regard to extra qualifications now prescribed, the Committee clearly stated that they should not be applied to existing staff.

The 11-9-1989 order of the Government of India (Finance Ministry) (Expenditure Department) and the Model Rules of 13-2-1990

26. This order of the Finance Department dated 11-9-1989 shows that the Department accepted the Dr Seshagiri Committee recommendations almost in toto except for very slight modifications. (I) The Data Entry grades are to consist of - Grade A : Rs. 1150-1500 (entry grade for SSC with knowledge of data entry work); Grade B : Rs. 1350-2200 (entry grade for graduates with knowledge of data entry work and by promotion from Grade A); Grade C : Rs. 1400-2300 (by promotion); Grade D : Rs. 1600-2660 (by promotion); Grade E : Rs. 2000-3200 (by promotion); (II) Data Processing grades are to consist of - Data Processing Assistants A : Rs. 1600-2660 (for graduates with Diploma/Certificate in Computer Application); Data Processing Assistants Grade B : Rs. 2000-3200 (by promotion) etc.

27. In para (2) of the order, it was directed that all Ministries/Departments with EDP posts should review the designation, pay scales and recruitment qualifications. In the order it was stated that during the review, the existing statutory Rules must be kept in view. The order states in para 5 as follows :

"The qualifications etc. indicated against each grade in para 1 above are only illustrative and departments/ministries will carry out the review of existing EDP posts in accordance with the Recruitment Rules as already prescribed by them. To ensure uniformity in regard to Recruitment Rules for the EDP posts, Department of Personnel & Training is being requested to devise Model Recruitment Rules which can be adopted by the Ministry/Department."

28. It is, therefore, clear that the Finance Ministry expressly required that review be done in accordance with the Rules and there is no indication whatsoever that those recruited as Data Processing Assistants under the statutory Rules in any department are to be shifted as Data Entry Operators because of the slight modification in the essential qualifications. By orders dated 12-1-1990, it was stated that the revised scales would be effective from 11-9-1989. On 13-2-1990, the Model Rules were prepared by the Department of Personnel on the above lines for the posts referred to above in the two streams.

The grievance starts

The 2-7-1990 notification of the Ministry of Planning/Department of Statistics

29. The grievance of the appellants started with this order of the Department of Statistics dated 2-7-1990 by the Ministry of Planning. As already stated, the order dated 2-7-1990 redesignated the Data Processing Supervisors in the scale of Rs. 1400-2300 as Data Processing Assistants in the scale of Rs. 1600-2660 rather than in the revised scale of Data Processing Supervisors of Rs. 2000-3200. Likewise the Data Processing Assistants in the scale of Rs. 1200-2040 were redesignated as Data Entry Operators Grade B in the scale of Rs. 1350-2200 rather than in the revised scale meant for Data Processing Assistants of Rs. 1600-2660. The reduction in the scale was also an additional grievance of the appellants.

30. The order dated 2-7-1990 does not by itself assign any reason whatsoever as to why, - at any rate, in NSSO where there were although two streams - the Data Processing Supervisors should be redesignated as Data Processing Assistants or as to why those like the appellants who were directly recruited as Data Processing Assistants in NSSO should be redesignated as Data Entry Operators Grade B. It was only stated that the order was being issued pursuant to the orders of the Department of Expenditure, Ministry of Finance dated 11-9-1989 and, therefore, revision of designations and

scales of pay was being undertaken. Further, there is a clear error in this order dated 2-7-1990 when it says in para 4 as follows :

"In the meantime, the existing provisions of the relevant Recruitment Rules will continue to apply except in respect of designations and pay scales which will stand revised as indicated in para 1 above."

The above observations, in our view, are not correct in law. The executive orders cannot conflict with the statutory Rules of 1977.

31. The annexure to the 2-7-1990 order enumerates the fresh "job functions" of the various posts in the Data Entry and Data Processing streams, as now stipulated. (In the affidavit of the Union of India filed in the review petition - to be referred to later - it was stated that the appellants though recruited as Data Processing Assistants earlier would not be able to take up at least 7 of the new functions assigned to Data Processing Assistants now. We shall deal with this aspect later.)

32. The Department of Personnel & Training and the Ministry of Finance observed that the order dated 2-7-1990 issued by the Department of Statistics "was not in consonance with the structure indicated in the OM of the Ministry of Finance (Expenditure Department) dated 11-9-1989 (see para 2 of the Government of India order dated 16-3-1998).

Board of Arbitration and assurance of the Government to reconsider the order dated 2-7-1990, if need be

33. As stated in the additional affidavit of June 1997 of Shri R. Ravi, Under-Secretary, Planning Ministry, Department of Statistics, the dispute between the parties was referred to the Board of Arbitration and during the hearing of the case there on 8-4-1993, the claim was withdrawn by the staff side. The reason was this : the award which is on record reveals that Shri Narendra Gupta, Deputy Secretary from the official side "assured that the Department would be prepared to re-examine the entire matter afresh and as and when it is re-agitated".

The affected parties move the CAT (1990) and the cases are disposed of on 7-3-1995

34. As already stated, the appellants filed OA No. 625 of 1990 while the Data Processing Supervisors filed OA No. 725 of 1990 and they were dismissed by separate judgments on 7-3-1995. The affected parties moved the Supreme Court. As already stated, the appeal preferred by the former Data Processing Supervisors had since been allowed.

The first modification of the 2-7-1990 order by the order dated 15-5-1996 upon objections raised by the Finance Ministry on 11-9-1989

35. The first modification of the order dated 2-7-1990 came on 15-5-1996. This order related to the Field Operators Division of the Department of Statistics, Ministry of Planning. In para 2 of this order, it was admitted that the Department of Personnel & Training and the Ministry of Finance, objected to the order dated 2-7-1990 as "being not in consonance with the OM of the Ministry of Finance dated 11-9-1989". The Government modified the 2-7-1990 order by stating that :

"(i) Out of the Key Punch Operators (KPO) in the scale of Rs. 950-1500, 5 of them will be designated as Data Entry Operators Grade A in the revised scale of Rs. 1150-1500; 2 as Data Entry Operators Grade B in the scale of Rs. 1350-2200 and 2 as Data

Entry Operators Grade C in the scale of Rs. 1400-2300."

36. The appellants strongly rely on this order to contend that if the KPOs who in 1990 were in the scale of Rs. 950-1500 in the Field Division were fitted into the scales of Rs. 1150-1500, 1350-2200 and 1400-2300, the appellants who were in 1990, in the scale of Rs. 1200-2040 could not have been redesignated as Data Entry Operators Grade B in the scale of Rs. 1350-2200. As we shall show later, this argument need not be gone into inasmuch as the solution to the problem can be found elsewhere.

The Fifth Pay Commission (1996-97) recommending review of designations

37. It is stated in the affidavit of the Union of India, filed in the review petition on 6-6-1997 that the Fifth Pay Commission "examined the demand of the (NSSO Employees') Association", i.e., upgradation of pay scale of DEOs and DPAs to Rs. 1600-2600 and Rs. 1640-2900 respectively and recommended that "the status quo be maintained as DEO Grade B and DPA had already recommended higher pay scale on the implementation of Dr Seshagiri's Report (i.e. pursuant to the directions of the Fourth Pay Commission) and that the Fifth Pay Commission

"further recommended that the demand of the Association for redesignation of the posts DEO Grade B and DPA as DPA Grade A and DPA Grade B may however be reviewed by the DOs".

38. The Fifth Pay Commissioner, therefore, required the designation to be reviewed. The counter-affidavit unfortunately lays more stress on the "status quo" part of this recommendation rather than the recommendation regarding fresh "review" of designations. If this advice was heeded and proper review done, the order dated 16-3-1998 would not, in our opinion, have been passed.

The second modification of the 2-7-1990 order by the impugned order dated 16-3-1998; grievance of the appellants not redressed (order made subject to present review proceedings; or be reviewed do novo, if need be)

39. We have referred to this order earlier in a brief fashion. We shall now go into some details. As already stated, this order continues the redesignation of Data Processing Supervisors as Data Processing Assistants (in spite of the judgment of this Court in Civil Appeal No. 16741 of 1995 at least so far as NSSO is concerned) and also continues the redesignation of Data Processing Assistants as Data Entry Operators Grade B.

40. While it is admitted in para 2 of this order that the Department of Personnel & Training and the Finance Ministry (Department of Expenditure) had objected that the order dated 2-7-1990 was not in consonance with the orders of the Finance Department dated 11-9-1989, nothing was done to meet the objections. While retaining the status quo as on 2-7-1990 in respect of the redesignation of Data Processing Assistants as Data Entry Operators, the order dated 16-3-1998 only created two more pay scales - DEO Grade II as Rs. 1600-2660 and DEO Grade I as Rs. 2000-3200 on the Data Entry side and DPA Grade I as Rs. 2375-3500 on the Data Processing side. In para 9(d), it was stated that

"as a result of reclassification now being effect in respect of EDP staff in the DPD (Planning Department), where two separate streams, viz., Data Entry stream and Data Processing stream have been created, it is possible that some of the present DEO Grade B (i.e. some appellants) will be placed in the scale of DEO Grade I of

Rs. 2000-3200, even though they are junior to the redesignated DPA Grade III who will be placed in the scale of Rs. 1600-2660".

41. That would mean that the respondents admit that even if the appellants were brought from the Data Processing stream to the Data Entry stream, not all the appellants would be placed in the scale of Rs. 1350-2200 as was done under the 2-7-1990 order. Further, the order would admit that some of the Data Processing Supervisors redesignated as Data Processing Assistants - with lesser service than that of some of the appellants - might go into Grade B of Rs. 1400-2300 and some into higher grades. This was so stated in spite of nothing the judgment in Civil Appeal No. 16741 of 1995 which had already struck down the redesignation of Data Processing Supervisors as Data Processing Assistants in NSSO. Para 6 of the order dated 16-3-1998 stated that the Rules would be amended.

42. It is, however, important to note that para 9(c) stated that the "redesignation of EDP posts will also be subject to the judgment to be delivered by the Supreme Court in the review petition [No. 2096 of 1995 in SLP (C) No. 16646 of 1995] filed by C. M. Dadwa & others (presently DEO Grade B)".

43. That the respondents had some reservations about what they had done in the matter of redesignation and fixation of revised scales in the NSSO is evident from para 15 of the counter-affidavit of the Union of India filed on 6-7-1997 in the review petition. It was stated there as follows :

"The Department feels that, in case they (i.e. DPAs and DEOs Grade B) are not willing to accept the redesignations, which was part of a whole package prepared for them, the Department may consider withdrawing the order of 2-7-1990 and reverting them to their original designation of DPS and DPA, respectively, with the corresponding pay scales as they were drawing prior to 2-7-1990. Thereafter, the Department would review the entire position de novo."

In other words, it appears that the Department was not sure in regard to what it had done to the appellants. The Department further admitted :

"The Fifth Pay Commission has also recommended that while status quo should be maintained in respect of pay scales, we suggest that the Department of Statistics may review the matter."

The counter-affidavit filed by the Union of India in the review petition

44. Having stated at one stage, that a further review could be made, the Union of India, however, tried to justify its action by listing out several reasons, (a) to (e), as follows :

(a) The three posts of Computers, Machine Operators and Key Punch Operators, which were redesignated as Data Processing Assistants were also posts involving data entry work.

(b) The replacement of scale of Rs. 1200-2040 was granted to Data Processing Assistants after the Fourth Pay Commissioner made its recommendation.

(c) The Fourth Pay Commission and the Department of Electronics suggested uniform pay scales and designations in all government departments in respect of EDP

posts.

(d) On the basis of Dr Seshagiri Committee Report, the Ministry of Finance on 11-9-1989 issued orders prescribing pay scales and designations for EDP posts. Government departments were asked to review the designations, pay scales, recruitment and qualifications for EDP posts.

(e) The Department of Statistics issued orders dated 2-7-1990 redesignation the then Data Processing Assistants as Data Entry Operators Grade B but it simultaneously increased the pay scales from Rs. 1200-2040 to Rs. 1350-2200.

(f) Maybe, some of the appellants were confirmed as DPAs as far as records could be verified.

(g) The essential qualification for Data Processing Assistants (present) is a Degree in Computer Application or knowledge of programming, systems operations and systems analysis. Since former Data Processing Assistants (present Data Entry Operators Grade B) including the appellants have not been recruited on this basis, therefore, they could not claim the designation and pay scale of Data Processing Assistants. [We may state that there is a factual mistake here. The qualification now prescribed is not a Degree in Computer Application but only graduation plus Certificate or Diploma in Computer Application. In the 16-3-1998 order as well as the Model Rules prepared by the Ministry of Personnel on 13-2-1990 also, it is stated that the qualification is only graduation plus a Certificate of Diploma in Computer Application or knowledge of programming, systems operations and systems analysis (to be judged through suitable tests). In fact paras 7.7 and 13.2 of the same affidavit run contrary to the above statement and those paras do not speak of a Degree in Computer Application.]

(h) The job description for the present Data Processing Assistants shows that in addition to functions specified for Data Entry Operators Grade B, there are 7 more functions and hence the appellants cannot claim the designation and pay scale of Data Processing Assistants.

(i) There are also some persons who were recruited after July 1990 into Grade B of Data Entry Operators and they were never functioning as Data Processing Assistants.

(j) The appellants were not brought down in rank or status. The reorganisation was only done to bring about uniformity as per the instructions of the Ministry of Finance. The appellants could not have any grievance as they were given higher pay scales.

(k) Civil Appeal No. 16741 of 1995 was allowed because of the lack of response from the Department and not on merits. Hence that judgment had no application here.

(l) The Fifth Pay Commission permitted maintenance of status quo of scales and recommended only reclassification of posts.

45. Annexure I to the order of 16-3-1998 shows the scales and posts as follows :

#(A) Data Entry stream : Formerly Now Posts(i) Data Processing Asstt. Data Entry Operator 1350-2200 - Gr. IV 143(ii) " - do - 1440-2300 - Gr. III 95(iii) " - do - 1600-2660 - Gr. II 60(iv) " - do - 2000-3200 - Gr. I 12(B) Data Processing stream :(1) Data Processing Supervisor Data Processing Asstt. 175 1400-2600 Gr. III 1600-2660(2) Data Processing Supdt. Data Processing Asstt. 70 2000-3200 Gr. II 2000-3200(3) * * * Data Processing Asstt. 42 Gr. I 2375-3500##

The changes in the essential qualifications from 1977 to 2-7-1990 and the 16-3-1998 order for recruitment to the posts of Data Processing Assistants

46. We have noticed under the 1977 Rules for direct recruitment of Data Processing Assistants, the essential qualification was a Degree in Arts or Commerce with Statistics (sic or) Mathematics as one of the subjects. It was desirable to have a Computer's Certificate or other certificates as specified therein.

47. The Dr Seshagiri Committee recommended a scale of 1150-1500 for non-graduate Data Entry Operators and Rs. 1350-2200 for graduates by direct recruitment. Grades B to D are by promotion and E by selection. So far as Data Processing Assistants' scale of 1640-2900 was concerned, the Committee recommended qualification requirement as graduate in Science, Mathematics, Economics, Commerce, Statistics with knowledge of programming, system, operations to be judged through tests and/or Certificate, Diploma in Computer Application.

48. The Finance Ministry in its letter dated 11-9-1989 also stated that for the post of Data Entry Operator B - 1350-2200, graduates with knowledge of data entry work could be considered. But so far as Data Processing Assistants Grade A were concerned, they said that the scale would be 1600-2660 (and not 1640-2900) and qualifications would be, in addition to graduation, knowledge of programming, systems operations and systems analysis (to be judged through suitable tests). In the schedule to their order, they said as follows :

#(I) Data Entry stream :(i) Data Entry Operator Gr. B : (1) Direct. 1350-2200 i) Degree of a recognised university. (ii) Should possess a speed of not less than good key depressions per hour for data entry work. Preference will be given to those who possess a Degree in Science, Maths, Commerce, Economics, Statistics. (2) Promotion of Data Entry Operator Gr. A with 6 years' regular service.(ii) Data Entry Operator Gr. C : (1) Promotion of Data Entry 1400-2300 Operator Gr. B with 3 years ... in grade or (2) by transfer.(iii) Data Entry Operator Gr. D : (1) Promotion for Gr. C with 1600-2600 4 years' regular service in grade or (2) by transfer.(II) Data Processing stream :(1) Data Processing Asstt. Gr. A : (i) Degree in Science, Maths, 1600-2600 Economics, Commerce, Statistics. (ii) Diploma/Certificate in Computer Application or knowledge of programming, systems operations and systems analysis (to be judged through suitable tests).##

The above qualifications were also reflected in the Model Rules prepared by the Department of Personnel on 13-2-1990.

49. It will be noticed that while the 1977 Rules referred to the essential qualifications for the post of Data Processing Assistant as graduation and the desirable qualification as Diploma or Certificate in Computer Application or knowledge in certain systems, these latter orders dated 2-7-1990 and 16-3-1998 stipulated graduation plus Diploma/Certificate in Computer Application or knowledge of the

systems to be evaluated by tests.

Reasons as to why the 2-7-1990 and 16-3-1998 orders are arbitrary and illegal

50. We have made a detailed survey of the rules and orders right from 1973 insofar as they are relevant for this case. In the light of the above, it is now necessary to give our reasons as to why the two impugned orders cannot be held valid :

(1) To start with, there appears to us that so far as the NSSO was concerned, there were two sets of Rules, one for the Data Entry stream and another for the Data Processing stream. In the 1973 Rules for the Data Entry stream, there were posts of Computers, Machine Operators and Key Punch Operators and the number of posts was fairly large, namely, 225, 68 and 80 respectively. The 1977 Rules applied to the Data Processing stream at the entry level, namely, to the posts of Data Processing Assistants, which were 88 in number. Then there were 12 posts of Data Processing Supervisors under the 1978 Rules to be filled in also by promotion of the Data Processing Assistants. Another set of Rules of 1978 related to 15 posts of Data Processing Superintendents.

In our view, therefore, so far as the NSSO was concerned right from 1973-1977, there was a definite and clear demarcation of the Data Entry stream and the Data Operation stream. In the present case, the 48 appellants who were recruited as Data Processing Assistants were also confirmed as such by orders dated 25-8-1989/28-8-1989 as per Annexure B to the review application with effect from 4-8-1989.

(2) The appellants did satisfy the qualifications meant for these posts at the time of recruitment and were recruited accordingly. It might be that the Dr Seshagiri Committee and the 11-9-1989 order of the Government and the Model Rules of 13-2-1990 made slight changes in the qualifications, namely, that apart from a Degree, they should have a Certificate/Diploma in Computer Application or knowledge in certain computer processes to be subjected to a test at the stage of recruitment. In our view, such a change in qualifications could be made so far as future recruitment was concerned and could not affect those who were already recruited. To now say that the appellants did not have the Diploma/Certificate or had not been recruited on the basis of tests would, in our opinion, amount to imposing these qualifications with retrospective effect and such an action, even if made by rules, would be arbitrary. If made retrospective, and if the earlier recruitment or confirmations in the posts were to be disturbed, that would also be arbitrary. These would clearly violate Articles 14 and 16 of the Constitution of India.

(3) In the affidavit of the Union of India filed in the review petition, it was stated that in the functions of Data Processing Assistants referred to in the proceedings of the Department of Statistics dated 29-6-1990 and in Enclosure No. 12018/1/96 dated 16-3-1998, there were at least 7 functions which were in addition to the function to be performed by those who were now redesignated as Data Entry Operators Grade B. Assuming it to be so, the mere fact that certain additional functions were to be performed by the Data Processing Assistants is no defence for lifting them from their confirmed posts and shifting them into the Data Entry stream.

(4) More importantly, the appellants could not be said to be merely performing data entry work from 1977 or thereunder up to 2-7-1990. We have shown that there were a large number of posts in NSSO to which recruitment could be made under the 1973 Rules for data entry work, viz., Computer, Machine Operator and Punch Key Operators. Assuming that the appellants who were recruited as Data Processing Assistants were also entrusted with certain data entry work, that would not mean that the appellants who were recruited as Data Processing Assistants were recruited for data entry work only. Such a contention, if accepted, would result in the obliteration of the distinction in recruitment under the 1973 Rules and recruitment under the 1977 Rules. Such a view cannot, therefore, be accepted.

On this factual issue, the following averments in the affidavits are important. It was clearly stated by the appellants in para 4.6 of their affidavit filed in the OA before the Tribunal as follows :

"4.6. ... the applicants submit that because of rotation of the Data Processing Assistants for doing the three trades which were earlier being done by Computer, Key Punch Operator and Machine Operator, each of the Data Processing Assistants has been doing the work of data processing. In fact data processing is an integral part of the job of Data Processing Assistants employed by the organisation."

In the counter filed by the Union of India before the Tribunal, it was admitted :

"It is submitted that the statements in para 4.6 of the application are admitted to the extent that Data Processing Assistants (DEO Grade B) are assigned work entailing data processing and other activities apart from data entry by rotation-basis."

But when we come to the affidavit of the Union of India filed in this Court on 6-6-1997, we find the following stand taken in para 7.3 :

"It will be seen that the very basis of recruitment of the former DPAS, including the petitioners, was for data entry work and not for data processing which requires higher skills and qualifications."

Our conclusion from the above facts and statements is that the Union of India cannot be permitted to say that the appellants were recruited as Data Processing Assistants for doing data entry work.

(5) The Dr Seshagiri Committee was clear that the new qualifications now suggested should not be made applicable to existing employees. The order of the Finance Department dated 11-9-1989 also stated that the existing Rules have to be kept in mind. The Fifth Pay Commission also suggested a review of the designations. This was not done properly.

(6) It is no doubt true that in the Data Entry stream, there are now several grades, A, B, C, D, E (Grades I to V); it is true that though Grade IV in the same scale of Rs. 1350-2200 is made applicable to Data Processing Assistants, there are also two higher grades in the scales of Rs. 1440-2300/1600-2660 and Rs. 2000-3200.

But it is no satisfaction to the appellants that as Data Entry Operators in Rs. 1350-2200 scale, they can get promotion from stage to stage, up to the grade in the scale of Rs. 2000-3200. The fact remains that that scale can be reached only after passing

through two other grades.

(7) The affidavit of the Union of India dated 6-6-1997 repeatedly mentions that it has become necessary to redesignate the appellants (i.e. Data Processing Assistants) as Data Entry Operators inasmuch as the appellants do not possess certain skills attributed to the posts of Data Processing Officers for performing the various additional functions required to them. It is stated that in addition to the list of functions of Data Entry Operators Grade B, the new Data Processing Assistants under the 2-7-1990 order are required to perform 7 other functions which are assigned to the Data Processing (sic Officers) in the function not listed in the orders DOS/EDP/90 dated 26-9-1990 as well as the function referred to in the enclosure to Order No. 12018/1/96-Ann. IV dated 16-3-1998.

Assuming that some functions now expressed in the orders dated 2-7-1990 or 16-3-1998 are, according to the Union of India, not capable of being performed by the appellants, that does not mean that they can be shifted from the Data Processing stream to which they have been recruited in 1977 or thereafter - and in which posts they have been confirmed in 1989 - to the other stream of Data Entry.

(8) In fact, removing them from their confirmed posts of Data Processing Assistants might in law even offend Article 311 of the Constitution of India.

(9) We have shown while referring to the orders dated 2-7-1990 and 16-3-1998 above that there was non-application of mind by the authorities to several important factual and legal aspects when the redesignation procedure was adopted suddenly. We reiterate those reasons.

(10) We may also mention at this stage the stand taken by the respondents in the counter-affidavit filed on behalf of the Union of India by Shri R. Ravi, working as Under-Secretary in the Ministry of Planning, Department of Statistics. In the said affidavit, at p. 66 of Vol. 1 in these review proceedings, the deponent in para 7.1 has observed that "the Government of India after considering the Seshagiri Committee Report prescribed the pay scales for EDP posts in the various ministries and rationalised their pay structure. Accordingly, vide order dated 2-7-1990, this Department (NSSO) redesignated the posts and notified the change as follows :

"For Data Processing Assistant, the revised designation as shown to be DEO Grade B Rs. 1350-2200 while for Data Processing Supervisor, the revised designation is shown as DPA Rs. 1600-2660."

However, thereafter in para 7.7 the differences in pay scales, qualifications, job descriptions etc. amongst the employees concerned of NSSO are submitted in a tabular form and it is seen from the said table that for DEO (Grade B) the pay scale justified is Rs. 1350-2200 while for DPA (post-1990) the pay scale shown is Rs. 1600-2660. So far as the latter pay scale is concerned, various distinct features, are pointed out in connection with the employees who can justify their claim for the said higher pay scale. It is the contention of the learned Senior Counsel, Smt Shyamla Pappu for the review petitioners, that all the review petitioners satisfy these additional requirements for getting the pay scale of Rs. 1600-2660. She, however, submitted that the requirement of suitable tests as mentioned in the qualifications as per Recruitment Rules for such employees indicated opposite

Note No. 2 at p. 78 would not become relevant as these review petitioners were already recruited as direct recruit Data Processing Assistants years back. We find considerable force in the said contention of the learned counsel for the review petitioners. Shorn of the requirement of being judged by suitable tests, all other requirements for an employee for earning the higher pay scale of Rs. 1600-2660 are said to be satisfied by the review petitioners. If that is so and on which aspect learned Senior Counsel, Shri Malhotra for the respondent-Union of India could not effectively offer any contradiction, it becomes obvious that even according to the respondents themselves, the review petitioners would be entitled to be placed in the higher pay scale of Rs. 1600-2660 which they claim in the present proceeding and which scale now stands revised further upwards as per later Pay Commission recommendations. This is an additional reason for granting appropriate relief to the review petitioners.

To put it in a nutshell, the change in the essential qualification made in 1990 or 1998 or the additional functions now required to be performed by the appellants could not retrospectively affect the initial recruitment of the appellants as Data Processing Assistants nor their confirmation in 1989. Recruitment qualifications could not be altered or applied with retrospective effect so as to deprive the recruits of their right to the posts to which they were recruited nor could it affect their confirmations.

51. In our view, the above reasons are more than sufficient to meet the various points raised by the Union of India in its counter, which we have set out above.

52. For all the above reasons, the impugned orders dated 2-7-1990, 16-3-1998 and all other orders which have the effect of redesignating the appellants - who were recruited as Data Processing Assistants - as Data Entry Operators in the scale of 1350-2200 (or 1400-2300 by concession of counsel) are arbitrary, illegal and ultra vires and are declared violative of Articles 14 and 16 of the Constitution of India. The appellants are declared entitled to the designation of Data Processing Assistants Grade III (also called earlier as Grade B) in the scale of Rs. 1600-2660 with effect from 1-1-1986, the date when the Fifth (sic Fourth) Pay Commission scales came into force. The appellants are also entitled to the scale of Rs. 500-8000 with effect from 1-1-1996 in view of the government orders passed in connection with the Fifth Pay Commission recommendations.

53. It is made clear that the judgment is applicable only to those 48 appellants who were directly recruited as Data Processing Assistants in NSSO, Department of Statistics, Ministry of Planning.

54. The appeal is allowed as stated above. There will be no order as to costs.

55. IA No. 1 in SLP (C) No. 19257 of 1995 may be listed before an appropriate Bench.