

SUPREME COURT OF INDIA

Union of India Through Secretary

Vs.

Anju Jain

C.A.No.50 of 2015

(Sudhansu Jyoti Mukhopadhaya and Prafulla C. Pant JJ.)

06.01.2015

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave granted.

2. The appellants have preferred this appeal against order dated 1st August, 2013 passed by the High Court of Delhi at New Delhi in W.P. (C) No.2736 of 2013. By the impugned order, the High Court affirmed the order dated 17th March, 2012 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as, 'the CAT') and dismissed the writ petition preferred by the appellants herein.

3. The factual matrix of the case is as under:

The case of the Respondent Nos. 1 and 2 is that they were initially appointed as Junior Machine Operators(JMO)/Key Punch Operators w.e.f. 05.05.1987 and 19.05.1987 respectively on temporary basis in the pay scale of Rs.950-20-1150-EB-25-1500. Later on, their services were regularized w.e.f. 19.05.1989. Subsequently, on the recommendations of the Economic Reform Commission and the Staff Inspection Unit, the posts of Junior Machine Operator, Senior Machine Operator and Comptometer Operator in the office of appellant no.2 were abolished w.e.f. 27.07.1995. However, on the request of the respondents, their services were adjusted against the vacant posts of Computer(feeder) which was a promotional post but with the condition that the respondents will draw only the salary and pay and allowances as admissible to the posts of Junior Machine Operator which

they were holding prior to 27.07.1995. Later on, respondents were adjusted against the vacant post of Computer by way of ad hoc promotion w.e.f. 04.11.1997 in the pay scale of Rs.4000-100-6000. On 18.05.1999, at the time of granting First Financial Upgradation under ACP Scheme, the pay of the respondents was re-fixed in the same scale of Rs.4000-100-6000, which was the scale they were already granted.

In the meantime, consequent upon the introduction of the Scheme of rationalization of pay scales for Electronic Data Processing cadre, the cadre was restructured and at the entry level Data Entry Operator (DEO) Grade A and above that the post of Data Entry Operator (DEO) Grade B, etc. were created. Accordingly, the post of Junior Machine Operator in the pre-revised scale of Rs.950-1500 was re-designated as DEO, Grade 'A' and was granted the scale of pay of Rs.1150-1500 w.e.f. 01.01.1986. Similarly, the post of Computer in the pre-revised scale of Rs.1200-2040 was re-designated as DEO, Grade 'B' in the scale of pay of Rs.1350-2200 effective from 01.01.1986.

It appears that inspite of re-designation of the post of Junior Machine Operator as Data Entry Operator Grade 'A' the respondent nos.1 and 2 were not granted scale of pay of Rs.1150-1500 with effect from their date of initial appointment.

4. Being aggrieved respondent nos.1 and 2 preferred O.A. No.3690 of 2011 before the CAT for re-fixation of their pay in the scale of Rs.1150-1500 w.e.f. 05.05.1987 and 19.05.1987 respectively i.e. from the date they joined as Junior Machine Operators.

5. The CAT vide order dated 17th March, 2012 allowed the application and set aside the order passed by the authorities with following observation and direction:

"5. We have heard the learned counsel for the parties and considered the averments made by them. We have also perused the various judgments relied upon by the learned counsel for the applicants. In our considered view, the submission of the respondents does not have any merit. Admittedly, both the applicants were initially appointed to the post of JMO which has been identified as an EDP post and reclassified as Data Entry Operator, Grade 'A'. On having been declared surplus, they were adjusted against the post of Computer which is another identified EDP post which was reclassified as Data Entry Operator, Grade 'B'. Therefore, the

submission of the respondents that there was difference between the posts occupied by the applicants and other Data Entry Operators is merely a technical one with no consequence and, therefore, it is rejected. Consequently, we hold that the applicants shall be treated as Data Entry Operators Grade 'A' in the scale of pay of Rs.1150-1500 (pre-revised) with all consequential benefits such as re-fixation of their pay, upto date arrears of pay and allowances from the respective dates of their appointments i.e. 05.05.1987 and 19.05.1987. They shall also issue necessary orders in this regard, within a period of two months from the date of receipt of copy of this order. There shall be no order as to costs."

6. Aggrieved by the aforesaid order, the appellants filed W.P.C) No.4003 of 2012 before this Court. However, the same was dismissed as withdrawn with liberty to file a review petition before the CAT seeking review of order dated 17th March, 2012. The Review Application being R.A. No.260 of 2012 was dismissed by the CAT on 15th February, 2013.

7. In view of the aforesaid fact, another Writ Petition No.2736 of 2013 was preferred by the appellants before the High Court of Delhi which was rejected by the High Court by impugned order dated 1st August, 2013 with a direction to the appellants that those who were working as Junior Machine Operators have to be treated as Data Entry Operators Grade 'A' in the scale of Rs.1150-1500 and shall be given subsequent replacement of scale of pay Rs.4000-6000 with benefit from the date of their appointment as Junior Machine Operators.

8. Aggrieved by the aforesaid order, the appellants have preferred the present appeal before this Court.

9. The learned counsel for the respondents contented that the respondents were initially appointed as Junior Machine Operators and on being declared surplus they were adjusted against the posts of Computer limiting their pay scale to that of Junior Machine Operators. Both those posts were identified as Electronic Data Processing posts. Hence, their case is fully covered by the decision of the Tribunal dated 31.07.2000 in OA No. 2639/1999 titled Babu Lal & Ors. v. Union of India & Ors. wherein it was held that the DEOs/DPAs covered under MOF (DOE) O.M. dated 11.09.1989 and hence they are entitled to re-fixation of their pay in the respective scales with effect from their initial date of appointment.

10. The learned counsel for the appellants has contended that the cases of the respondents are not exactly similar to those of the O.As relied upon by the

respondents. According to them, even though the respondents have been initially appointed w.e.f. 05.05.1987 and 19.05.1987 as Junior Machine Operators, the said posts have been abolished w.e.f. 27.07.1995 and they were adjusted against the post of Computer on their request, they are not entitled to refixation of their pay with effect from their date of initial appointment.

11. We have considered the rival contention raised by the learned counsel for the parties and have perused the record.

12. The question relating to rationalisation of pay scales of Electronics Data Processing posts in different departments of Ministries of the Government of India was noticed and considered by this Court in 'Secretary, Department of Personnel, Public Grievances & Pension & Anr. Vs. T.V.L.N. Mallikarjuna Rao', C.A.No.10862 of 2014 etc. etc. This Court by its judgment dated 9th December, 2014 in the said case noticed the Office Memorandum No. F.7(1)/IC/86(44) dated 11th September, 1989 issued by the Government of India, Ministry of Finance, Department of Expenditure whereby on the recommendation of the Fourth Central Pay Commission and further recommendation made by the Committee constituted by the Government of India, pay scale of Electronic Data Processing posts likewise Key-Punch Operator, Punch Verifying Operator, Planning Assistant, etc. were rationalized. The relevant portion of the said office memorandum reads as follows:

"No.F.7(1)/IC/86(44) Government of India Ministry of Finance Department of Expenditure Implementation Cell New Delhi, dated 11th Sept: 89 OFFICE MEMORANDUM Sub: Rationalisation of pay scales of Electronic Data Processing posts:

The undersigned is directed to refer to the recommendations of Fourth Central Pay Commission contained in paragraph 11.45 of the Report wherein it was suggested that the department of Electronic should examine and suggest reorganisation of existing Electronic Data Processing posts and prescribe uniform pay scales and designations in consultation with the Department of Personnel. In pursuance of above suggestion, a Committee had been set up by Department of Electronics in November, 1986. After careful consideration of the recommendations made by this Committee, Government of India has decided to introduce following pay structure for Electronic Data Processing posts:-

S. No.	Designation of post	Pay scale		
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1. |Data Entry |Rs.1150-1500 |This will be entry Grade |
|Operator Grade | |for Higher Secondary |
|'A' | |with |
| | |knowledge of Data Entry |
| | |work.
 2. |Data Entry |Rs.1350-2200 |This will be entry grade |
|Operator Grade | |for graduate with |
|'B' | |knowledge of Data Entry |
| | |work of promotional Grade|
| | |for Data Entry Operator |
| | |Grade 'A'
 3. |Data Entry |Rs.1400-2300 |Promotional Grade |
|Operator Grade | | |
|'C' | | |
 4. |Data Entry |Rs.1600-2660 |Promotional Grade |
|Operator Grade | | |
|'D' | | |
 5. |Data Entry |Rs.2000-3500 |Promotional Grade |
|Operator Grade | | |
|'E' | | |
- |Data Processing/Programming Staff |

1. |Data Processing |Rs.1600-2260 |Entry Grade for Graduates| | |Assistant Grade | |with | | |'A' | |Diploma/certificate in | | | |Computer | | | |Applications. | 2. |Data Processing |Rs.2000-3200 |Promotional Grade | |Assistant Grade | | |'B' | | | 3. |Programmer |Rs.2375-3500 |Direct Entry for holders | | | |of Degree in Engineering | | | |or post-graduation in | | | |Science/Maths etc. or | | | |post graduation in | | | |Computer | | | |Application | | | |Or | | | |By promotion from Data | | | |Processing Assistant | | | |Grade 'B' | 4. |Senior Programmer|Rs.3000-4500 |Promotional Grade |

2. All Ministers/Department having Electronic Data Processing posts under their administrative control will review the designation, pay scales and recruitment qualification of their posts and revise the same in consultation with their Financial Advisor to the extent necessary as per pay structure indicated in para 1 above. Where it is found necessary to revise the pay scale of existing post notification will be issued by concerned Ministry/Department and copy of the notification and order will be sent to Implementation Cell and Department of Expenditure. The revised pay scales

will be operative from the date of issue of notification by concerned Ministry/Department.

If as a result of above review, pay scale of any post undergoes a change the pay of existing incumbents will be fixed as per fundamental Rule 23 read with FR 22(a)(ii).

The review suggested in para 2 above will be made only with reference to existing Electronic Data Processing posts and it will not be necessary to create all the grades in all Ministries/Departments, as it will depend on requirements of user Department. If Ministry/Department proposes to create any grade which is not existing at present it will be done with approval of financial advisors and subject to procedures laid down for the purpose.

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 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 Ministry/Department."

13. It was further noticed that in view of the aforesaid OM No.F.7(1)/IC/86(44) dated 11th September, 1989, Department of Personnel and Training, Ministry of Personnel, Public Grievance & Pensions, Government of India by O.M.No.AB 14017/75/89-Estt.(RR) dated 13th February, 1990 forwarded a copy of the Model Recruitment Rules for various categories of posts in the Electronic Data Processing Discipline. Further, this Court also noticed the Electronic Data Processing Discipline (Group C Technical Posts) Recruitment Rules, 1992 issued by the President of India in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, from Department of Revenue, Government of India, Department of Personnel of Training, Ministry of Personnel, etc. Having noticed the aforesaid guidelines and Rules in Secretary, Department of Personnel, Public Grievances & Pension & Anr. Vs. T.V.L.N. Mallikarjuna Rao this Court observed as follows:

"8. From the Office Memorandum and Rules, as noticed above, the following facts emerge:

(i) In view of the recommendations of Fourth Central Pay Commission (paragraph 11.45 of the Report), the Government of India constituted a

Committee to suggest the reorganisation of existing department of Electronic Data Processing posts such as Data Entry Operator which were in the scale of pay of Rs.950-1150.

(ii) By Office Memorandum dated 11th September, 1989, pursuant to the aforesaid suggestions the Government of India decided to introduce pay structure for Electronic Data Processing posts with separate nomenclatures that is: (i) Data Entry Operator Grade 'A' - Rs.1150-1500 with entry Grade for Higher Secondary with knowledge of Data Entry work; (ii) Data Entry Operator Grade 'B' - is promotional post of Data Entry Operator Grade 'A', similarly Data Entry Operator Grade 'C' is promotion post of Data Entry Operator Grade 'B' and Data Entry Operator Grade 'D' is promotion post of Data Entry Operator Grade 'C' and Data Entry Operator Grade 'E' is promotional post of Data Entry Operator Grade 'D'.

For such promotion, the person is not only and required to be qualified but must fulfill experience condition in the lower grade for promotion to the higher post."

14. In the present case the respondents were appointed as Junior Machine Operator/Key Punch Operator w.e.f. 05.05.1987 and 19.05.1987 respectively on temporary basis in the pay scale of Rs.950-20-1150-EB-25-1500. Subsequently, their services were regularised w.e.f. 19.05.1989. In view of the Government of India O.M. dated 11th September, 1989 the posts of Junior Machine Operators/Key Punch Operators were re-designated as Data Entry Operator Grade 'B' in the pay scale of Rs.1150-1500 w.e.f. 01.01.1986. Therefore, respondent nos.1 and 2 became entitled to receive salary in the pay scale of Rs.1150-1500 with effect from their date of initial appointment i.e. 05.05.1987 and 19.05.1987 respectively.

15. Admittedly, the posts of Junior Machine Operator, etc. were abolished and, therefore, they were adjusted to the post of Computer. Though the respondents were adjusted against the posts of Computer w.e.f.04.11.1997, the adjustment was so made with a condition that they have been drawing the salary and pay and allowances as admissible to the posts of Junior Machine Operator which they were holding prior to 27th July, 1995. Therefore, the respondents though hold the posts of Computer they were entitled to the pay scale of Rs.1150-1500 w.e.f. 27.07.1995.

16. The respondents have taken plea that their adjustment against the vacant post of Computer by way of ad hoc promotion w.e.f. 04.11.1997 in the pay scale of

Rs.4000-100-6000 but there was nothing on record to suggest that they were granted ad hoc promotion w.e.f. 04.11.1997. Further, the designation of post of Computer was changed to Data Entry Operator Grade 'B'. In absence of any order of promotion no finding can be given whether the respondents were entitled to next higher scale of pay. However, if they were entitled for higher scale as per ACP scheme and granted by the competent authority they will continue to receive the same.

17. In view of the finding as recorded above, no interference is called for against the impugned judgment dated 01st August, 2013 passed by the High Court and the order passed by the Tribunal as the High Court rightly held that the respondents to be treated as Data Entry Operator Grade 'A' in the pay scale of Rs.1150-1500 from the date of their initial appointment and subsequent replacement of pay scale of Rs.4000-6000 from the date the pay scale was so revised.

18. The appeal is dismissed but there shall be no orders as to costs.