

(2020) 02 CAT CK 0017

In the Central Administrative Tribunal

Case No : Original Application No. 675 Of 2016, Miscellaneous Application No. 3578 Of 2019

R.S. Rathore And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Citation : (2020) 02 CAT CK 0017

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Pramod Kumar Sharma, L.C. Singhi, M.K. Bhardwaj

Final Decision : Dismissed/Disposed Of

Judgement

Pradeep Kumar, Member (A)

1. Applicants were appointed as "Computer" in Ministry of Defence in the year 1983 in the pay scale of Rs.260-400. In due course, this scale

was replaced with Rs.950-1500. The next promotion led to the post of "Senior Computer" in the pay scale of Rs.1200-2040. Further promotion

led to the post of "Statistical Assistant" in the pay scale of Rs.1400- 2300 and thereafter as "Statistical Investigator" in Rs.1640- 2900.

The applicants plead that they were promoted to the post of "Senior Computer" in the year 1997.

2. Applicants also plead that some time in the year 1994 certain re-organization had taken place on the basis of a Committee set up by the Department

of Electronics on the recommendations of the 4th CPC. The directives were issued on 06.12.1994. The existing category of Senior Computer (pay

scale Rs.1200-2040) was re-designated to Data Processing Assistant (DPA)

Grade-A (pay scale Rs.1600-2660). However, along with this financial upgradation, certain educational qualifications were also specified for this re-designation as under:

â??(a) Graduates in Science/Mathematics/Statistics/ Economics and having either a Diploma in Computer Applications or an â??Oâ? level certificate

(under the Scheme of Department of Electronics) will be placed in the scale of Rs.1600-2660 (Data Processing Assistant Grade-A).

(b) A departmental test would be conducted in respect of the individuals who do not possess a Diploma in Computer Applications or an â??Oâ? level

certificate, and

(i) Those who pass the test will be placed in the scale of Rs.1600-2660 (Data Processing Assistant Grade-A).

(ii) Those who fail to qualify the test will be placed in the scale of Rs.1350-2200 (Data Entry Operator Grade-B).

Note â?" The concerned individuals will be placed in the scale of Rs.1600-2660 or Rs.1350-2200, as the case may be, from 11-09-89 or from the date

of their regular appointment to the grade of Senior Computer/Data Entry Operator Grade-B, whichever is later.â??

3. The applicants were not having the qualification of graduation, as prescribed for pay scale Rs.1600-2660. Accordingly, they were re-designated as

Data Entry Operator Grade-B in the pay scale of Rs.1300-2200. Applicants felt aggrieved and challenged the same by filing OA No.365/2007 and

OA No.2535/2006. This was allowed vide decision pronounced on 10.07.2014. The directions passed by the Tribunal read as under:

â??23. In the circumstances and for the aforesaid reasons, we allow the OA No.365/2007 and OA No.2535/2006, and direct the respondents to grant

the benefit of re-fixation of pay with all consequential benefits w.e.f. 01.01.1986 to the applicants. The respondents shall complete this exercise within

four months from the date of receipt of a copy of this order. There shall be no order as to costs.â??

4. In compliance thereof, the applicants were granted the pay scale of DPA Grade-A Rs.1600-2660 with effect from the date they were promoted as

Senior Computer.

The applicants plead that with this, they should also be treated to have been promoted as DPA Grade-A w.e.f. 15.01.1997.

5. Further promotion of DPA Grade-A lied to the post of Programmer (Group-B Gazetted) in the pay scale of PB-2 with Grade Pay Rs.4600).

Applicants are aggrieved that a panel for the same was issued vide notification dated 10.02.2016 wherein their names have been left out and their

juniors have been empanelled.

Being aggrieved, applicants filed the instant OA and they sought relief in the form of directions to set aside the notification dated 10.02.2016. Certain

other reliefs have also been sought.

The employees, who have been empanelled for the post of Programmer for the year 2011-12 to 2014-15 have also been arrayed as private respondent

No.4 to 20 in the OA.

6. Applicants rely on the judgment in the two OAs referred in para 3 above and the Recruitment Rules notified by the Ministry of Defence on

19.02.2001.

7. Applicants also bring out that the DPA Grade-A were to be promoted to the post of DPA Grade-B and thereafter to the post of Programmer. In

the wake of 6th CPC recommendations, the post of DPA Grade-B (pay scale Rs.6500-10500) and Programmer (Rs.7450-11500) were merged and

granted the replacement pay scale of PB-2 + GP Rs.4600.

The post of DPA Grade-A (pay scale Rs.5500-9000) and DPA Grade-C (pay scale Rs.5000-8000) were also merged into DPA Grade-A (PB-2) plus

GP of Rs.4200.

8. With this merger, the applicants also plead that they are eligible for promotion for the post of Programmer based upon the Recruitment Rules

notified by the Ministry of Defence on 19.02.2001. It is pleaded that in accordance with these rules in respect of promotion to the post of DPA Grade-

B, the requisite eligibility was â??DPA Grade-A in the revised pay scale of Rs.5500-9000 of Armed Forces Headquarters and Inter Service

Organizations with three years regular service in the gradeâ??.

Applicants plead that since they had already been granted the pay scale of DPA Grade-A (Rs.1600-2660) w.e.f. 15.01.1997 in terms of the decision

of the Tribunal in OA No.365/2007 and they are senior to the private respondents No.4 to 20. Accordingly, they cannot be left out and ought to have

been considered. However, their names were missing from the select panel of

Programmer and hence the grievance.

9. Per contra, the respondents opposed the OA. It was pleaded that the applicants are senior to private respondents No.4 to 20. It was further brought out that the approved panel issued on 10.02.2016 was based upon the DPC meetings held on 11.01.2016. This DPC comprised of senior officers. The relevant records, which were annexed as Annexure-1 to the DPC recommendations, were also produced in the counter reply.

It was brought out that the applicants herein did not possess the requisite qualification of graduation which was specified as per the re-organization orders issued on 06.12.1994 (para 2 supra). Accordingly, the applicants were assessed as ineligible for the post of Programmer for the years 2011-

2012 and onwards whereas the private respondents No.4 to 20 were considered as eligible in these various years and accordingly the DPC made

recommendations to the effect to promote them and it was this panel which was approved and notified on 10.02.2016.

10. The respondents further brought out that OA No.365/2007 and 2535/2006 decided on 10.07.2014 had granted the higher pay scale of Rs.1600-

2660 as was applicable to DPA Grade-A with effect from the same date the applicants were promoted as 'Senior Computer' on 15.01.1997.

This was not a promotion to the post of DPA Grade-A but simply financial upgradation to the applicants since they were already working and were

the serving employees and they should not be denied the grant of a higher pay scale as was approved on re-organization. It was mentioned that the

minimum specified qualification was graduation for the pay scale of Rs.1600-2660 whereas for non-graduates, the pay scale recommended was

Rs.1350-2200 which also was higher vis-à-vis the pay scale of 'Senior Computer' which was Rs.1200-2040. The applicants being non-

graduates were, therefore, initially granted the pay scale of Rs.1350-2200.

11. In view of the foregoing, there is no merit in the OA and the same is required to be dismissed. Learned counsel for respondents also relied upon a

judgment by Hon'ble Apex Court in R. Prabha Devi and others vs. Government of India and others, AIR 1988 SC 902. In this judgment the

Hon'ble Apex Court has held as under:

'15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post.

xxx xxx xxx

This eligibility condition has to be fulfilled by the Section officers including senior direct recruits in order to be eligible for being considered for

promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be

considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility

condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he

can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-

ride it in the matter of promotion to the next higher post.â??

12. Matter has been heard at length. Sh. Pramod Kumar Sharma, learned counsel represented the applicants, Sh. L.C. Singhi, learned counsel

represented the official respondents No.1 to 3 and Sh. M.K. Bhardwaj, learned counsel represented the private respondents No.4 to 20.

13. Applicants herein were recruited to the post of â??Computerâ? in the year 1983. They do not have the qualification of graduation in Science or

Technology subjects. As per their own channel of promotion, the applicants were promoted to the post of â??Senior Computerâ?? in the year 1997.

In view of technological advancement, certain re-organization had taken place and all posts were upgraded. This entailed higher qualification also

which was also specified. Therefore, such of the â??Senior Computersâ?, who had the qualification of graduation in Science/Maths/

Statistics/Economics and were having either a diploma in computer application or an â??Oâ? level certificate, were to be placed in the pay scale of

Rs.1600-2660 to the post of DPA Grade-A. As per this re-organization order, a departmental test was to be conducted in respect of such employees

who do not possess a diploma or an â??Oâ? level certificate. Those who passed such a test were to be placed in the pay scale of Rs.1600-2660 with

the designation of DPA Grade-A and those who failed to qualify the said test were to be placed in the pay scale of Rs.1350-2200 and were to be

designated as Data Entry Operator Grade-B.

14. In due course of time, the pay of Rs.1350-2200 was replaced with another pay scale of Rs.5000-8000 while the pay scale of Rs.1600-2660 got

replaced with Rs.5500-9000 in the 5th CPC (w.e.f. 01.01.1996). Grant of higher pay scale of Rs.1600-2660 to the applicants by the Tribunal in OA

No.365/2007 is in the context of not to deny the existing employees the benefits of re-organization. However, this by itself does not mean that eligibility

requirement for the still higher post of Programmer can be lowered.

Merely because these two scales were merged at the time of enforcement of 6th CPC pay scales from 01.01.2006, it does not also mean that the

applicants who did not possess the qualifications of graduation, as brought out hereinabove, were already promoted to the post of DPA Grade-A.

Being existing employee, they were simply granted the financial upgradation.

15. Be that as it may, their seniority as DPA Grade-A was maintained and the relevant DPC, which met on 11.01.2016 for considering the promotion

to the post of Programmer (Group-B Gazetted PB-2 + GP Rs.4600), had assessed the eligibility of all candidates including the applicants.

In consideration to the qualifications prescribed in the relevant Recruitment Rules for the post of Programmer, which was already in force, the DPC

considered the applicants also and did not find the applicants eligible and they were adjudged as "Ineligible" and thus they were not empanelled.

These DPC minutes were attached to the counter reply dated 22.11.2016.

The rejoinder was submitted by applicants on 02.03.2017. However, there was no averment made in respect of this assessment by DPC.

16. Therefore, the plea of the applicants that since they were granted the pay scale of DPA Grade-A and thereafter the pay scales of DPA Grade-A

and Programmer were merged at the time of 6th CPC, the applicants should be treated as DPA Grade-A/Programmer, completely ignoring the

essential qualifications prescribed in the relevant Recruitment Rules for the post of "Programmer", is without any basis and is not acceptable. OA

is thus without any merit and the same is dismissed. No order as to costs.

17. In view of the above, pending MA No.3578/2019 stands disposed of.