

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.10456-57/2004**

Date of Decision: 31.01.2011

Sh.Dileep Kumar & Anr. Petitioners

Through Mr. R.K. Saini, Advocate

Versus

UOI & Anr. Respondents

Through Mr. R.V. Sinha and Mr. A.S. Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | <i>To be referred to the reporter or not?</i> | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

1. The petitioners have challenged the order dated 18th December, 2003 passed by the Central Administrative Tribunal, Principal Bench in OA No. 550/2003 titled as Sh. Dileep Kumar & Anr Vs. UOI & Anr., declining the claim of the petitioners to direct the respondents to grant the re-designated category of DPA(B) along with the revised grade of DPA(B) to the petitioners w.e.f. the date of their respective appointments.

2. Brief facts to comprehend the disputes between the parties are that petitioner No. 1 applied for the post of Technical Assistant in the

Armed Forces Headquarters, Ministry of Defense through the UPSC and petitioner no. 2 also applied for the post of Technical Assistant in Armed Forces Headquarters, Ministry of Defense against the substantive vacancies through the UPSC.

3. By a letter dated 2nd February, 1995, issued by the Govt. of India, Ministry of Defense, petitioner no. 1 was informed of having been nominated by UPSC for appointment to the post of Technical Assistant re-designated as DPA(A). Pursuant thereto by a letter dated 2nd August, 1995, the post of Technical Assistant DPA(A) was offered to the petitioner no. 1 and by order dated 22nd August, 1995 petitioner No. 1 was appointed as DPA (A) in the scale of 1600-2660.

4. Petitioner no. 2 was informed of having been nominated by UPSC for appointment to the post of Technical Assistant by letter dated 16th May, 1996 and by letter dated 20th June, 1996, he was appointed as DPA(A) in the grade of 1600-2660 w.e.f. 13th June, 1996.

5. Pursuant to the report of 4th Pay Commission, in paragraph 11.45 suggesting re-organization of EDP post and to prescribe uniform pay scales and designation, department of Electronics undertook the task of rationalization of the pay scales of EDP posts and the revised pay structures for EDP posts. The 4th Pay Commission had recommended the grant of revised pay scales w.e.f. 1st January, 1986. On 8th January,

1991, the pay scales of EDP Posts in the Joint Cipher Bureau (hereinafter referred to as JCB), Ministry of Defense in different grades of EDP (Discipline) were revised and the posts were re-designated. Vide order No. A/26031/EDP/JCB/CAO/CP/GI Ministry of Defense office of JS (Trg) and CMO dated 20th January, 1995, the sanction of the President of India was conveyed in the placement of incumbents to the EDP posts in JCB, MO, Defense in different grades of the EDP Discipline posts.

6. Though the petitioners had not been appointed by 20th January, 1995 on which date, the rationalization of pay scale/structure of EDP post in JCB was done, some of the Technical Assistants, who were already working, were placed in Grade-B, 2000-3200 who were possessing the qualification of Graduate in Science/Maths/Statistics/Economics and who had a certificate in Computer Programming whereas other Technical Assistants who did not possess the above qualifications were placed in the scale of 1600-2660 and were not designated as DPA(B). Those Technical Assistants, who were placed in the lower grade of DPA(A), had challenged their placement in Grade-A especially as certain juniors of some of the Technical Assistants were placed in the higher grade of DPA Grade-B on the basis of their qualification. These Technical Assistants, who were already employed, had filed original applications, which were disposed of with the direction that the respondents shall consider without insisting on eligibility

criteria prescribed in the year 1995, as the order will be retrospective. On reconsideration, another order dated 11th November, 1997, was issued by Govt. of India restricting the DPA(B) only to 29 Technical Assistants on the basis of seniority-cum-vacancy position. Consequently, a number of Technical Assistants other than 29 Technical Assistants, who had been granted DPA(B), challenged the action of the respondent by filing an original application being OA 553/2003 titled as 'Sh. R.K.Sharma & Ors. Vs. UOI & Anr.', which was also disposed of vide order dated 18th December, 2003. The petition of such Technical Assistants was allowed holding that similarly situated persons on the date of placement were bound to be treated equally and there could not be discrimination amongst the employees on the basis of vacancies or on the basis of seniority.

7. In the case of the petitioners, the respondents, however, took the plea that the petitioners joined after creation of two cadres, i.e., DPA(A) and DPA(B) and since they were offered DPA(A) and the said grade was willingly accepted, the petitioners cannot claim that since they have worked as Technical Assistants so they should be given DPA(B). The respondents also opposed the petition on the basis of delay. The respondents contended that at the time of re-designation of the post, it was specifically mentioned that subsequent to the issuance of order dated 20th January, 1995, in case of persons, who have come against vacancy meant for the post of direct recruitment to the grade of

Technical Assistants, they will be placed in the scale of Rs. 1640-2600 from the date of appointment. The relevant note-3 of letter No. A/26031/EDP/JCB/CAO/CP/GI dated 20th January, 1995 is as under:-

“3. Subsequent to the issuance of these orders in the case of persons become available on the basis of selection made by the UPSC against the vacancies released in the past for direct recruitment to the grade of Technical Assistant, they will be placed in the scale of Rs. 1600-2660 (DPA Grade A) from the dates of their appointment. ”

8. Considering the facts and circumstances, the Tribunal has declined the relief prayed by the petitioners to place them from the date of their appointment in DPA grade(B) on the ground that at the time of re-designation of the post it was specifically mentioned that subsequent to the issuance of order dated 20th January, 1995, in the case of persons who would come against the vacancies meant for the post of direct recruitment to the grade of TAs, they will be placed in the scale of Rs. 1640-2660 (DPA Grade-A) from the date of appointment. The Tribunal also held that since this being a policy decision of the Govt. and the report recommending the re-designation of post had already come into effect on the date when the petitioners were to work as Technical Assistants and they were still under process of selection, as per the policy decision, they have been rightly placed under DPA grade (A) 1640-2660 and no interference is called for. The petitioners have challenged the order of the Tribunal dated 18th December, 2003

declining them the relief to place them in the DPA(B), inter alia, on the grounds that the petitioners were recommended for appointment which was re-designated as DPA(B) and therefore, on the basis of qualification stipulated in the Recruitment Rules of 1989 they could only be appointed as DPA grade(B). It was further asserted that the reports recommending the re-designation of posts had come into effect on that date when these two applicants were selected to work as Technical Assistants.

9. According to the learned counsel Mr. Saini, the letters issued by Govt. of India informing the petitioners of having nominated by UPSC for appointment to the post of Technical Assistant, re-designated as DPA(A) was on the face of it erroneous as the post of Technical Assistant had been re-designated as DPA(B) (2000-3200) on the basis of qualification criteria and therefore, the petitioners should be appointed as DPA grade (B). The learned counsel contended that since the selection process had commenced prior to 20th January, 1995, therefore, though they had been appointed in August, 1995 and June, 1996 they were eligible for appointment to the DPA grade (B).

10. According to the petitioners, since the selection process had started with respect to the vacancies which existed prior to GI order dated 20th January, 1995, the said order was fully applicable to the petitioners in terms of grant of pay scale and that they could be

appointed only to DPA grade (B). It is asserted that the petitioner No. 1 has done his B.Sc.(PCM), M.C.A.(Masters in Computer application) whereas petitioner No. 2 is a B. Tech. in Computer Science, therefore, the petitioners could not be placed to DPA grade(A). According to the learned counsel, the ratio of order dated 18th December, 2003 in OA 553/2003 titled Sh. R.K. Sharma & Ors. Vs. UOI & Anr. is fully applicable to the case of the petitioners also.

11. The petitioners also challenged the dismissal of their review application on the ground that their case did not fall within Rule-22(3) (f) (i) as the petitioners did not want to re-argue the matter. The petitioners challenged the order of the Tribunal dated 8th March, 2004 in RA NO. 78/2004 & MA 519/2004 in OA 550/2003 Dileep Kumar & Ors. Vs. UOI & Anr in not condoning the delay in filing the review application on the ground that satisfactory explanation had not been given for the delay in filing the review application.

12. We have heard the learned counsel for the parties in detail and have also perused the record. This cannot be disputed that the petitioners had not been appointed till 20th January, 1995. The petitioners cannot equate themselves with those technical assistants who had already been employed by the said date. Rationalization of pay scale/structure of EDP post, carried by notifications dated 20th January 1995 categorically stipulated that subsequent to the issuance of the

order in the case of persons becoming available on the basis of selection made by the UPSC against vacancies released in the past for direct recruitment to the grade of technical assistants, they will be placed in the scale of Rs.1600-2660 (DPA Grade A) from the dates of their appointment. Perusal of the application of the petitioners filed before the Tribunal also reveals that the relief claimed by them was to set aside the order dated 9th January 2003 keeping inconsonance with the principle of equal treatment enshrined in Article 14 of the Constitution of India and to grant them re-designated category of DPA (B) along with revised grade. The petitioners did not challenge the specific stipulation in the letter dated 20th January, 1995 that the selection made by the UPSC against the vacancies released in the past for direct recruitment to the grade of technical assistants, such selectees shall be placed in the scale of Rs.1600-2660 (DPA Grade A) from the dates of their appointment. The application challenging their appointment in DPA (Grade A) had also been filed six years after their placement in the said grade.

13. This cannot be disputed that other stipulations in the said letter were for those technical assistants who had already been working. The learned counsel for the petitioners has not denied that the petitioner no.1 vide letter dated 2nd February 1995 was intimated that he had been selected for the post of Technical Assistant (re-designated Grade A). While accepting the offer joining the service, the petitioners did not

object, but claimed that the offer issued to them was erroneous. From the perusal of the letter dated 20th January, 1995 it is also apparent that it was applicable to existing employees only as a one-time measure. Respondents had also issued RRs for the post of DPA 'A' and DPA 'B' as per which the existing technical assistants had been re-designated as DPA 'A'. The petitioners could not rely on the ratio of the judgment in the case of B.N.Sharma & ors given by the Tribunal in OA 725 of 1997 as the applicant's in that case were working as programme assistant/statistical investigators in the pay scale of Rs.1640-2900 which was re-designated as programmer. It was held that the educational qualification could not be insisted for existing employees retrospectively. The facts in the case of the petitioners are apparently distinguishable and they cannot claim equality on the basis of said order.

14. Even in the petition filed by the petitioner against the order of the Tribunal declining the relief to place them in DPA 'B', the petitioners have not challenged the stipulation in the letter dated 20th January, 1995 that the selectees against the vacancies released in the past for direct recruitment to the grade of technical assistant will be placed in the scale of Rs.1600-2660 (DPA Grade A) from the dates of their appointment. Rather the petitioner has prayed for a writ of mandamus directing the respondents to appoint them as per the terms of letter dated 20th January, 1995. The petitioners who were appointed later on

and who had accepted their appointment to DPA Grade A cannot claim that they be treated at par with those who had already been appointed by the said date. In view of the specific stipulation in the said letter, the petitioners cannot rely on the fact that the process of selection had started prior to said letter of 20th January, 1995.

15. In the circumstances there are no grounds to interfere with the order of the Tribunal declining the petitioners the relief to place them in DPA `B' on their appointment in 1995 and 1996. The petitioners have failed to point out any illegality or un-sustainability in the order of the Tribunal requiring exercise of jurisdiction by this Court under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is dismissed. Parties are, however, left to bear their own costs.

ANIL KUMAR, J.

VEENA BIRBAL, J.

JANUARY 31, 2011

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