

\$~1.

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

+

Date of Decision:07.02.2019

% **W.P.(C.) No. 8206/2018**

MISS VINOD KHANNA AND ANR.

..... Petitioner

Through: Ms. Jaswinder Kaur, Adv.

Versus

UNION OF INDIA AND ORS.

.....Respondent

Through: Mrs. Suparna Srivastava, CGSC with
Mr. Tushar Mathur, Advs. for R-1 to
R-4.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE VINOD GOEL

VIPIN SANGHI, J. (ORAL)

1. The petitioners have preferred the present writ petition to assail the order dated 06.09.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, (the Tribunal) in O.A. No. 2782/2016. The Tribunal has rejected the said Original Application preferred by the petitioners wherein the primary dispute raised by them was with regard to their re-designation as, and the fixation of their pay scales as, Data Entry

Operators (DEO) Grade “B” with effect from 01.01.1986 in terms of O.M. dated 11.09.1989.

2. We may observe that the petitioners have been re-designated as DEO with effect from 11.09.1989, and the narrow dispute relates to the anti dating of the re-designation and grant of pay scale to DEO from 01.01.1986.

3. The petitioners were working with the Central Water Commission (CWC) as IBM Operators. With advancement of technology, the work that the petitioners were earlier performing did not survive. Their nature of responsibilities/ work changed, and the issue arose with regard to the re-designation of all such employees as DEO.

4. The Ministry of Finance, Department of Expenditure, Government of India issued an office memorandum on 11.09.1989 on the subject of rationalization of pay scales of Electronic Data Processing posts. A perusal of the said office memorandum shows that the Fourth Central Pay Commission made recommendations suggesting that the Department of Electronics should examine and suggest re-organization of existing Electronic Data Processing posts, and prescribe uniform pay scales and designations in consultation with the Department of Personnel.

5. Consequently, a committee was set up by the Department of Electronics in November, 1986. After examining the recommendations made by the said committee, the Government decided to introduce the pay structure as contained in O.M. dated 11.09.1989. The said office memorandum, inter alia, contained the following clauses:

“6. The pay structure given in para 1 above is applicable to EDP posts as such and not to the cadres of Clerks, Telephone Operator, Telegraphist, Office Assistant, Stenographers, etc., who may be utilized partly or wholly for EDP work. Where there is a doubt if any post falls in the category of EDP posts, references may be made direct to National Information Centre (NIC), Ministry of Planning, New Delhi, for clarification.

7. As regards, the recommendations of Committee for pay scale of the post of System Analyst and above, **it has been decided to leave it to user Ministries/ Departments/ Organisations to determine pay scales in consultation with Financial Advisor, keeping in view level of posts, duties and responsibilities, recruitment qualifications etc. relevant to the post.**” (emphasis supplied)

6. The CWC decided to re-designate the posts of IBM Operators as DEO Grade “B” with effect from 11.09.1989. It appears that some of the employees of the CWC were aggrieved and preferred O.A. No. 560/1999 wherein they sought grant of EDP pay scales from 01.01.1986. Consequently, an order was issued on 25.01.2001 re-designating those applicants as DEO Grade “B” with effect from 01.01.1986. Pertinently, the petitioners were not amongst those who were re-designated as DEO from 01.01.1986. Only in the year 2007, some of the petitioners sought to raise a similar claim by preferring O.A. No. 2568/2008. After a couple of rounds, they preferred the aforesaid Original Application in 2016 to press their claim.

7. The Tribunal has rejected the said Original Application by observing that the petitioners were not working as DEO prior to 11.09.1989. The Tribunal also observes that the qualifications under the Recruitment Rules for the post of IBM Operators and DEO are different and distinct.

8. The submission of learned counsel for the petitioner is that the petitioners are entitled to seek parity, firstly, with the other employees of CWC, who were granted relief vide order dated 25.01.2001 passed by the CWC, and also with other employees of the Government, who are performing the same nature of duties and shouldering the same responsibilities as the petitioners, and who have been granted re-designation from 01.01.1986. In this regard, she places reliance on the decision of this Court in W.P. (C.) No. 5296/2000, *Udai Pal & Ors. v. UOI & Ors.*, decided on 22.09.2011.

9. On the other hand, the submission of learned counsel for the respondent is that the office memorandum dated 11.09.1989 itself makes it clear that it was left to the user Ministries/ Departments/ Organisations to decide on the aspect of the pay scales in consultation with the Financial Advisor, keeping in view level of posts, duties and responsibilities, recruitment qualifications etc. relevant to the post.

10. So far as the CWC is concerned, it has taken its decision to grant the re-designation to the petitioners as DEO Grade “B” with effect from 11.09.1989.

11. He points out that so far as the decision of this Court in *Udai Pal* (supra) is concerned, the same was premised on the recommendations made by the 4th Central Pay Commission, which have expressly been set out in the said decision. However, no such recommendation was made by the 4th Central Pay Commission in respect of autonomous organizations such as the CWC.

12. Having heard learned counsels and perused the record, we find no merit in the present petition. The CWC is an autonomous body and, thus, it was for the CWC to determine as to how the recommendations of the Committee referred to in the office memorandum dated 11.09.1989 were to be implemented. It was for the CWC to determine whether to implement the said recommendations; the class of employees in respect of whom and the manner in which the recommendations were to be implemented and; the date from which the same were to be implemented. It goes without saying that such decisions have significant financial ramifications and this explains why the OM dated 11.09.1989 left the decision to be taken by the user Ministries/ Departments/ Organisations in consultation with the financial advisor.

13. Merely because the recommendations may have been implemented from 01.01.1986 in respect of railway employees, is no ground to implement the same with effect from 01.01.1986 in respect of the petitioners. The petitioner constituted a separate class, and cannot be placed in the same class as the Railways. Moreover, in respect of the Railways, a specific recommendation was made in the 4th Central Pay Commission. Undisputedly, that cannot be said about the CWC. So far as the office order

dated 25.01.2001 issued by the CWC is concerned, it is evident that the same was issue in compliance with the order passed by the Tribunal in O.A. No. 560/1999 on 17.05.2000. The petitioners were not parties in those proceedings and they sought to raise their claim for anti dating their re-designation from 01.01.1986 about 17 years later.

14. The cause of action arose in favour of the petitioners in 1989 when they should have agitated their grievance. Thus, on merits as well as on account of bar of limitation, we are of the view that the petitioners are not entitled to any relief.

15. Dismissed.

VIPIN SANGHI, J.

VINOD GOEL, J.

FEBRUARY 07, 2019

N.Khanna