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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7433/2016**

UNION OF INDIA AND ORS Petitioners

Through Mr. Arun Bhardwaj, Advocate.

Versus

MRIDULA GUPTA Respondent

Through Mr. Ashutosh Lohia, Mr. Rohan
Dewan, Ms. Archana Saxena and Mr.
Aditya Rathee, Advocates.

+ **W.P.(C) 10410/2017**

UNION OF INDIA AND ORS. Petitioners

Through Mr. Jaswinder Singh, Advocate.

Versus

NEERU SINGHAL Respondent

Through Mr. Vir Chand Yadav, Advocate

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

% **20.01.2020**

Dr. S. Muralidhar, J.:

1. These are two petitions by the Union of India through the Ministry of Defence ('MOD'), challenging the orders of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') which raise a common question and are accordingly being disposed of by this common order.

2. W.P.(C) No. 7433/2016 is directed against an order dated 17th May, 2016 passed by the CAT in OA No. 1959/2010 filed by Ms. Mridula Gupta, whereby a direction was issued to the MOD to grant her the re-designated category of Programmer and then grant to her one-time placement in the

next higher grade of Senior Programmer, in accordance with the policy laid down in the letter dated 6th December, 1994, with effect from 1st January, 1986, along with all consequential benefits.

3. The second W.P.(C) No. 10410/2017 is directed against an order dated 9th March, 2017 passed by the CAT in OA No. 4518/2011. The CAT by the said order allowed the said OA filed by Ms. Neeru Singhal, following its order in Ms. Mridula Gupta's case and granting the same relief to Ms. Singhal.

4. The background facts are that on the basis of the recommendations of the Seshagiri Committee, the Electronics Data Processing ('EDP') cadre of the Central Government employees was rationalised by an Office Memorandum ('OM') dated 11th September, 1989 issued by the Ministry of Finance ('MOF'). The said rationalisation was based on the functional requirements of a particular Department, without having to create new grades in all the Ministries/Departments. Thereafter, by an MOD letter dated 8th January, 1991, the existing officials in the grade of Programme Assistant ('PA'), in the pay scale of Rs.1640-2900, were re-designated and placed in the grade of Data Processing Assistant ('DPA'), Grade-B in the pay scale of Rs.2000-3200.

5. The important factor to be noted here is that the OM dated 11th September, 1989 itself made a distinction between the Data Entry Operators ('DEOs') and Programmers. As per the aforementioned OM dated 11th September, 1989, DPA, Grade-B was a feeder post for the post of

‘Programmer’, since the work profile of a Programme Assistant (‘PA’) was to assist in programming. It is stated that these PAs used to assist GSO-2 (System Analysis and Programming) which was usually manned by a person brought on transfer or deputation, if not by direct recruitment. Since this was a specialised task, the requirement of having a post-graduate qualification was prescribed for both the recruitment methods in the Recruitment Rules (‘RRs’) by Gazette Notification dated 18th March, 1985.

6. It is stated that EDP employees, complaining of stagnation, made a representation against the rationalisation made by the letter dated 8th January, 1991. With the concurrence of the MOD (Finance), the EDP cadre was further rationalised by the MOD letter dated 6th December, 1994. In terms of this letter, Statistical Investigators/PAs in the pay scale of Rs.1640-2900 were to be placed in the grade of Programmer in the scale of Rs.2375-3500, subject to meeting educational qualifications/experience. These rationalised scales were to be made effective from 11th September, 1989.

7. On implementation of the said letter dated 6th December 1994, some of the Senior Statistical Investigators/PAs, who could not be placed in the grade of Programmer due to the lack of requisite qualification/experience, filed OA No. 725/1997 in the CAT. In the said case, filed *inter-alia* by Badri Nath Sharma (hereafter, referred to as the ‘**B. N. Sharma** case’), the CAT allowed the prayers in the said OA and directed the Respondents to place the applicants therein in the grade of Programmer.

8. Since the Department implemented those directions only partly, by

placing only 16 officers, as according to the Department only 16 posts were authorised in that grade, Sh. B. N. Sharma and others again filed OA No.1748/1998 in the CAT seeking placement of all eligible officers as Programmers. When this OA was allowed by the CAT, the Department filed CWP No. 1212/1999 in this Court. By an order dated 10th January 2002, this Court dismissed the said writ petition and observed as under:

“Reference has been made to unrevised scale of Rs. 1640-1900. It is true that by reason of the said letter certain qualifications were prescribed and only 16 posts were created but the fact remains that the petitioner at the later stage did not insist therefor. If all those incumbents for statistical investigator and programme assistant irrespective of their qualifications could be placed in the revised category as programmer in the scale of Fs. 2375-3500, creation of 16 posts become irrelevant. It may be held that intention of the petitioner was to grant only 16 posts of programmer to the statistical investigator and programme assistant, the same would amount to creation of a category within a category and same would be hit by Article 14 of the Constitution of India. It is a basic principle that a separate cadre on the basis of educational qualification or seniority could be made only by a statute or statutory rules. The cadre of investigator and programme assistant would not have been bifurcated by reason of aforementioned letter dated 6.12.1994. It is not even an executive instruction within the meaning of Article 77. The stand of the petitioner would have been appreciated had they insisted that only those who possessed the qualification as mentioned in letter dated 6.12.1994 would be re-designated in the post of programmer and placed in the pay scale of Rs. 2375-3500 and others. The conditions for re-designation have been laid. All those who were similarly situated on 6.12.1994 were bound to be treated equally. No discrimination so far as those employees are concerned can be made by the petitioner herein. In the said fact of the matter we agree with the submission of the counsel for the respondent to the effect that having regard to the changed situation, **the post of programmer should not be considered to be creation of a fresh post but the same may be taken to be re-designation of the existing**

posts.” (emphasis supplied)

9. The Petitioners/Department implemented the aforesaid judgment of this Court by placing all Statistical Investigators/PAs in the grade of Programmer with effect from 11th September, 1989.

10. Turning now to the cases at hand, Ms. Mridula Gupta who was recruited in the Programming Stream as PA (DMIS) in 1983 was re-designated as DPA Grade-B in terms of the MOF letter dated 11th September, 1989. In purported implementation of the said letter dated 11th September, 1989, the MOD issued a letter dated 8th January, 1991 but omitted the designation of Programmer and pay scale corresponding to it. By subsequent letter dated 6th December, 1994 Ms. Gupta was to be granted a one-time promotion as Senior Programmer. When she was not so placed, she made representations.

11. Initially Ms. Gupta filed OA No. 124/2007 in the CAT which was disposed of by an order dated 25th October, 2007, with a direction to the Petitioners to pass a speaking order in respect of her representations. When the above order dated 25th October, 2007 was not implemented, Ms. Gupta filed the second OA being 1418/2008. Pursuant to the orders passed by the CAT in the said OA, the Petitioners issued a letter dated 26th May, 2009 denying her the relief claimed.

12. This led Ms. Gupta to file a third OA No. 1959/2010, which finally came to be allowed by the impugned order dated 17th May, 2016. The CAT explained that once the OM dated 11th September, 1989 came into effect,

“the post of Programmer in the pay scale of Rs.2375-3500 was the only direct recruit post with Post Graduation criteria”. Accordingly, the CAT accepted the claim of Ms. Gupta that she could only have been adjusted against this post. The CAT was of the view that there was no question of adjusting her against DPA, Grade-B as that was a promotional post to DPA Grade-A, for which the essential qualification was graduation. Since Ms. Gupta was recruited as post graduate, “she could not be made equivalent to DPA Grade-B”. The CAT further explained that when the subsequent letter dated 6th December, 1994 was issued, “the whole exercise was to restructure the cadre and provide a higher pay scale to all the posts indicated in that letter. Annexure A-1 of that also shows that all the posts have been given a higher pay scale through this letter.”

13. Learned counsel for the Department sought to argue that “since the applicant was adjusted against DPA, Grade-B in the pay scale of Rs.1640-2900, she would be covered by Column (4) of this letter, which is upgradation of Programme Assistant in the pay scale of Rs.1640-2900 to Programmer in the pay scale of Rs.2375-3500 with entry qualification of Post Graduation”

14. The CAT rejected the above contention and held as under:

“In our opinion, this is where the mistake lay because according to the CM dated 11.09.1989, as we have seen, the applicant could only have been adjusted against the post of Programmer in the pay scale of Rs.2375-3500. However, in 1994 through a circuitous route, the respondents downgraded the applicant to DPA Grade-B and then treated him as Programme Assistant and not as Programmer as per OM dated 11.09.1989, and then showed it as an upgradation to Programmer.

This was a grave error committed by them and this cannot be sustained by any stretch of logic or reason. In fact, the findings of the High Court in the aforesaid Writ Petition also becomes relevant here that the post of Programmer should not be considered to be creation of a fresh post but the same may be taken re-designation of the existing post of Programme Assistant.”

15. The CAT further explained that the true purport of the MOD order dated 6th December, 1994 was to ensure that the present incumbents of the posts mentioned in the said letter be given “a jump in their pay scales without the need for following the normal promotion and they be "placed" in the higher scales with change of designation as per Annexure I. For future, when employees are “promoted” to those posts the new designation/higher pay scale would apply.”

16. According to the CAT, since in terms of the letter dated 6th December, 1994 the upgradation as Programmer was automatic, there could be no difficulty in giving Ms. Gupta the one-time promotion as Senior Programmer in the scale of Rs.3,000-4000 per month. Therefore, the aforementioned directions came to be issued by the CAT.

17. In the case of Ms. Neeru Singhal, when she was not granted the same relief, as was granted in the **B.N.Sharma** case, she filed OA No. 2263/2008. The said OA was partly allowed by the CAT by a judgment dated 27th October, 2010 directing the Petitioners to revise the pay scale in the post of Programmer with effect from 28th January, 1988. As regards placement in the higher grade of Rs. 3000-4500, liberty was granted to Ms. Singhal to raise the issue in appropriate proceedings.

18. When the Department failed to implement the above judgment and Ms. Singhal filed a Contempt Petition No. 398/2011, the Department correctly placed her as Programmer in the scale of Rs.2375-3500. After this anomaly had been rectified, she was entitled to her one-time promotion as Senior Programmer in terms of the letter dated 6th December, 1994, which was not granted to her.

19. This led Ms. Singhal to file the second OA No. 4518/2011 for granting her that benefit in terms of the letter dated 6th December, 1994. She pointed out that she had been recruited in the EDP programming post under the extant Recruitment Rules (RRs) dated 21st January, 1985 in the revised pay scale of Rs.1640-2900 and that she had been wrongly demoted as DPA, Grade-B in the revised lower scale of Rs. 2000-3200.

20. The CAT, following its earlier order in the case of Ms. Mridula Gupta, by an order dated 9th March, 2017 allowed Ms. Singhal's OA and granted to her the same relief as was granted to Ms. Gupta.

21. This Court has heard the submissions of Mr. Jaswinder Singh, learned counsel and Mr. Arun Bhardwaj, learned counsel appearing for the Union of India in both petitions. The Court has also heard the submissions of Mr. Ashutosh Lohia, learned counsel for Ms. Mridula Gupta and Mr. Vir Chand Yadav, learned counsel appearing for Ms. Neeru Singhal.

22. The central plank of the submissions of counsel for the Petitioners is the

judgment of the Supreme Court in *Union of India v. T. V.L. N. Mallikarjuna Rao* (2015) 3 SCC 653. This decision discussed the OM dated 11th September, 1989 in the context of EDP. Consequent upon the aforementioned OM, persons who were working in lower posts of 'Key Punch Operator' ('KPO') in the scale of Rs. 950-1500, were re-designated as DEO, Grade-A. They claimed that they were entitled to the scale of Rs.1350-2200.

23. Several benches of the CAT were approached. While in some cases claims of the persons working as KPO were affirmed, in others same were denied. In one such instance, the CAT, Madras Bench dismissed the claim of Mr. Mallikarjuna Rao. Thereafter, the Madras High Court was approached and the order of the CAT, Madras Bench was set aside.

24. The Union of India then filed Special Leave Petitions ('SLPs') in the Supreme Court of India. According to the Supreme Court, the CAT and the High Court failed to notice that the post of DEO, Grade B in the pay scale of Rs.1350-2200 was a promotional grade and that only those with six years of experience were eligible for such promotion. In other words, it was held that the CAT erred in holding that the DEOs, Grade-A or Grade-B were performing similar duties and were hence entitled to equal pay for equal work. In this regard, the Supreme Court observed as under:

“The promotional grade and entry grade cannot have the same pay scale and in the absence of declaration that rationalisation of pay scale of Electronic Data Processing posts made by Office Memorandum dated 11-9-1989 is illegal, no such benefit could have been granted.”

25. According to the Petitioners, this judgment holds that “EDP employees are not entitled to higher pay scale merely on the basis of their qualifications and service rendered in particular grade”. Although the said decision in ***T. V. L. N. Mallikarjuna Rao (supra)*** did not discuss the MOD letter dated 6th December 1994, the Petitioners now contend that in view of the said judgment, the letter dated 6th December 1994 “does not hold good” and the placement of the Respondents herein in the grade of Programmer “is also not legally correct”.

26. The Court is unable to agree with the above submission for more than one reason. The first, which is the most obvious, is that the Supreme Court had no occasion to deal with the MOD letter dated 6th December, 1994 and, in particular, the central purpose of the said letter, which was to place/promote employees in different grades in accordance with the provisions contained in Annexure-I thereto “as a one time measure”. In fact, going by this letter, even DEO, Grade-A would not automatically be promoted as DEO Grade-B. They would have to complete 12 years regular service as DEO Grade-B.

27. Be that as it may, the judgment in ***T. V. L. N. Mallikarjuna Rao*** did not concern either the re-designation of PA, DMIS as ‘Programmer’ or the further promotion of Programmer to Senior Programmer.

28. What is crucial to note here is that both the Respondents here had the requisite educational qualifications while they were in the grade of Programme Assistant. It is because they met the criteria of educational

qualifications, that they stood re-designated as 'Programmer', in terms of the MOD letter dated 6th December, 1994. Those who did not meet that educational qualification were placed in the lower two grades i.e. 'DPA, Grade-B'.

29. At this stage, it must be reiterated that there is a distinction between a DEO and 'Programmer'. The same yardstick must not be used for both posts while interpreting the OM dated 11th September, 1989. The judgment in **T. V. L. N. Mallikarjuna Rao** dealt only with DEOs and not with Data Processing or Programming staff, or more importantly, Programmers and Senior Programmers. The post of Programmers in the grade of Rs.2375-3500, even as per the OM dated 11th September, 1989, was an entry grade for holders of a degree in Engineering or post graduate degree in Science/Maths.

30. The second reason is that the Petitioners have no explanation why the Respondents were not entitled to the same relief as was given in the **B. N. Sharma** case. It must be recalled that by the judgment dated 10th January 2002, while upholding the order of the CAT dated 23rd April, 1997 in OA No. 725/1997, this Court emphasised that "the post of Programmer should not be considered to be creation of a fresh post but the same may be taken to be re-designation of the existing post". This Court interpreted the MOD letter dated 6th December, 1994 and clearly held that all those who are similarly situated on 6th December 1994, irrespective of educational qualification "were bound to be treated equal".

31. The cases of the Respondents herein were on an even better footing, as they fulfil both the educational qualification and technical requirements. With the Petitioners having accepted the decision dated 10th January, 2002 of this Court, it is no longer open to them to deny that both the Respondents herein stood placed in the re-designated post of Programmer in the scale of Rs.2375-3500 and further, that in terms of the MOD letter dated 6th December 1994, they were entitled to one-time promotion as Senior Programmer.

32. The Court therefore concurs with the CAT's impugned order dated 17th May, 2016 in the case of Ms. Mridula Gupta (OA No. 1959/2010), which has been followed by it in its order dated 9th March, 2017 in the case of Ms. Neeru Singhal (OA No. 4518/2011), that as far as the Respondents herein are concerned, in terms of OM dated 11th September 1989, they could have been adjusted only against the post of Programmer in the pay scale of Rs.2375-3500.

33. For all of the aforementioned reasons, the Court finds no merit in these petitions and they are dismissed as such. The interim orders stand vacated. The consequential orders implementing the decision of the CAT in both petitions be issued not later than eight weeks from today.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 20, 2020/mw