

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO.452 of 2006.

FRIDAY this the 4 th day of APRIL , 2008

C O R A M

**HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

- 1 Madhu Mohan Pillai S/o G. Chellappan Pillai
Senior Tax Assistant,
O/o Additional Commissioner
of Income Tax Range, Kollam
residing at 'Sree Vishakham', Mynagapilpally PO
(South) Kollam
- 2 C.K.Sajini W/o Ajimon A.R.
Senior Tax Assistant,
O/o Additional Commissioner
of Income Tax ,Range-II, CR Building,
IS Press Road, Kochi-18
residing at Aji Mandiram, Poothotta,
Kochi.
- 3 Roy M.K. S/o M.P. Kuriakkose
Senior Tax Assistant,
O/o Additional Commissioner
of Income Tax, Range-1, Kochi-18
- 4 Jayasree S. Nair,
Senior Tax Assistant,
O/o Additional Commissioner
of Income Tax, KAP Complex, Alwaye. Applicants

By Advocate Mr. K.S. Bahuleyan

Vs.

- 1 Chief Commissioner of Income Tax
CR Building, Kochi-682 018
- 2 The Secretary
Central Board of direct Taxes
North Block, New Delhi.

3 Union of India represented by
the Secretary to the Govt. of India
Ministry of Finance,
New Delhi.

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicants in this O.A. are working as Senior Tax Assistants in the Income Tax Department. They were appointed as LDCs on various dates between 1986 and 1989. After passing the departmental examination for ministerial staff they were promoted as UDCs in the year 1995/1996. On 4th July, 2001 the UDCs of the Department including the applicants were re-designated as Tax Assistants which has identical pay scale as UDCs. This was done as part of restructuring of various cadres of the Department. On 28.12.2001 the Data Entry Operators (DEOs) who were also in the same pay scale as UDCs were re-designated as Tax Assistants. Thus, the two cadres of UDCs and DEOs were merged. For determining the seniority in the Tax Assistants cadre the respondents adopted the principle of the date of entry into the respective cadres of UDCs/DEOs. The applicants are aggrieved that two distinct cadres of UDCs and DEOs were merged in the cadre of Tax Assistant without taking into account the nature of duties and responsibilities, which is a violation of Article 14 and 16 of the Constitution. While the UDCs were entrusted with duties pertaining to administration, assessment and collection, audit, recovery, the Data Entry Operators discharged only the function of entering data in to the



computer. Further, the educational qualifications required for the UDCs was a graduate degree; the qualification required for Data Entry Operators is only matriculation. The applicants have relied on the judgment of the Madras Bench of the Tribunal in O.A. 558, 538 and 909 of 2003 where an identical issue was involved. The Madras Bench of the Tribunal had quashed the relevant rules 5(11) of the Central Excise and Customs department Senior Tax Assistant (Group-C post) Recruitment Rules 2003 and Rule 4(4) of the Central Excise & Customs department Tax Assistant (Group-C post) Recruitment Rules, 2003. These rules stipulates the principle for determining seniority of UDCs vis-a-vis Data Entry Operators after merger of the two cadres. The Madras Bench of the Tribunal had directed the respondents to apply fair, just and rational principle in determining the seniority while integrating the different cadres and to recast the seniority on a fair and rational basis keeping in view the principles laid down by the Apex Court in the case of State of Maharashtra Vs. Chandrakant A. Kulkarni (1981 (4) SCC 130). The applicants contend that they ought to have been promoted with effect from 4.7.2001; instead they have been promoted as Senior Tax Assistant with effect from 24.3.2005.

2 The applicants have sought the following reliefs:

(i) To call for the files leading to Annexure A-9 and examine the same.

(ii) To quash Annexure A-3 order as far as it relates to the applicants and to declare that the applicants are entitled to be promoted as Senior Tax Assistants in the pay scale of Rs. 5000-150-8000 w.e.f. 04.07.01 with all consequential benefits. Or direct the respondents to promote them as Senior Tax Assistants at least w.e.f. 28.12.01 the date of promotion of the DEOs as per Annexure A-4 with all consequential benefits.

(iii) To quash the Annexure A-2(a) Recruitment Rules for the post of Tax Assistants for the years 2000-01 and 2001-02.

(iv) To quash Annexure A2 Recruitment Rules for the post of Senior Tax Assistants for the year 2001-02

(v) To declare that the Seniority List of TAs/STAs as on 1.1.02 and 1.1.04 are illegal and irregular and therefore calls for review.

(vi) To direct the respondents to place the applicants above the DEOs absorbed on 28.12.01 as STAs and to revise the Seniority list of STAs as on 1.1.02 and 1.1.04 accordingly.

(vii) To direct the 2nd respondent to consider and pass orders on A-7 and similar representations submitted by the applicants on merits at the earliest.

(viii) Award costs of and incidental to this application.

(ix) grant such other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3 The respondents have contested the O.A. In the reply filed in September, 2006 they have contended that the applicants could not be promoted as Senior Tax Assistants in 2000-01 due to lack of sufficient vacancies. The UDCs were re-designated as Tax Assistants as per the scheme of cadre restructuring. The seniority in the new cadre was determined on the basis of the date of entry into the pre-restructuring cadre of UDCs/DEOs. The restructuring was done with the objective of re-aligning the functions of the Department in the context of massive induction of information technology. When cadres performing different functions have to be merged, the interest of all the cadres have to be kept in mind and a balancing process becomes inevitable. It is for the administrative Department to decide the parameters of merger taking



into account the interests of all the cadres and the larger interest of the Department. After the Recruitment Rules were published on 2nd September, 2003, applicants had not completed 3 years service as Tax Assistants and hence they could not be promoted. Subsequently, for the vacancies relating to the years 2002-03 (upto 1.9.2003), based on instructions given by the department, promotions were given on the basis of pre-structured seniority. The applicants were thus promoted in March, 2005.

4 The respondents filed an additional reply in response to the rejoinder. In the additional reply it has been contended that prior to restructuring the UDCs and DEOs were in the identical pay scales of Rs. 4000-100-6000. The scale of pay is fixed on the basis of duties and responsibilities attached to the post. The requirement of graduation for UDCs is applicable only for direct recruitment. The representation made by the applicants have been considered and rejected. The restructuring plan has been approved by the Union Cabinet. The judgment of the Madras Bench of the Tribunal in O.A.558/03 is not applicable to this case as facts are not identical. The said judgment is being challenged by the Central Board of Customs & Excise in the Hon'ble Supreme Court. In an identical matter in O.A. 852/05, this Bench of the Tribunal had dismissed the O.A. It was observed in the judgment of the Tribunal in O.A. 852/05 that:

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"..... Tribunal has held in the above judgment that on issues relating to restructuring and merger of posts and determination of seniority between cadres arising out of restructuring exercise in the Income Tax Department had been agitated earlier in various Benches of the Tribunal and the restructuring exercise has been upheld by the

various pronouncements of the Tribunal and the High Court and restructuring in the respondents department has become a fait accompli. In these circumstances, the challenges to these policy decisions and recruitment rules at this stage are also not tenable. Once the restructuring has come into effect the clock cannot be put back on the basis of any alleged illegalities in the principles of cadre restructuring exercise carried out by the department.

5 In the additional rejoinder filed by the applicants it has been contended that the applicants had already become Tax Assistants before the DEOs were re-designated, and therefore the applicants should be placed above the DEOs in the seniority list (on the basis of date of entry into the cadre of Tax Assistants). The applicants should be considered for promotion with effects from 28.12.01, the date on which the DEOs were promoted as Senior Tax Assistants. If the judgment of the Madras Bench is upheld by the Hon'ble Supreme Court, the applicants will also be entitled to get the benefit. All the issues agitated by the parties have not been considered by this Bench of the Tribunal while deciding O.A. 852/05. In O.A. 64/2003 the Bench of the Tribunal had held that the decision of the Madras Bench shall equally apply to the applicants. Even though the merger of the two cadres has been held to be legal and just by Tribunals the rule relating to the seniority has been held to be unfair and directed to review the matter. If the order in identical cases pertaining to Department of Customs and Excise and Customs is implemented it is to be made applicable to UDCs and DEOs of the Income Tax Department also.

6 We have heard the learned counsel for the applicants Shri K.S. Bahuleyan and the learned counsel for the respondents Shri TPM

Ibrahim Khan, SCGSC. We have also perused the documents carefully.

7 The reliefs sought by this applicants are identical to the reliefs sought by the applicants in O.A. 852/05 which was dismissed by this Tribunal on 26.4.2007. The applicant in that O.A. was was also similarly placed as the applicants in this O.A. While dismissing the O.A. 852/05 it was observed by this Tribunal that:

“..... issue relating to restructuring and merger of posts and determination of seniority between cadres arising out of restructuring exercise in the Income Tax Department had been agitated earlier in various Benches of the Tribunal and the restructuring exercise has been upheld by the various pronouncements of the Tribunal and the High Court and restructuring in this department has become a fait accompli. In these circumstances, the challenges to these policy decisions and recruitment rules at this stage are also not tenable.”

8 We are in agreement with the above mentioned observation of the Tribunal as regards the issue of merger of the two cadres is concerned. We are therefore not inclined to grant the prayer seeking quashing of recruitment rules for the years 2000-01 and 2001-02 which are part and paracel of the merger scheme.

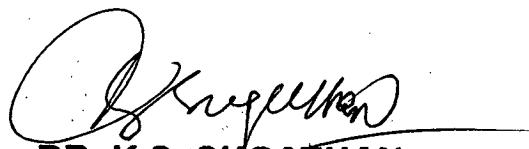
9 We have also taken note of the judgment of this Tribunal in O.A. No. 64/03 decided on 22.12.2006 wherein it was held that


“merger of the two cadres is legal and just. The case of the applicants in so far as it challenges the vires in merger rejected, while so far as the alternate prayer the decision in the case of the other Benches shall equally apply to the case of the applicants.”

10 It is an admitted fact that the merger of these two cadres of UDC and DEOs are part of the policy decision of the Government to rationalise the Tax administration and introduce modern technology. As pointed out by the respondents when different cadres have to be merged the government has to take into consideration the interest of the various merging cadres as well as the larger interest of the Department. The merger of these two cadres was implemented in the respondent Department as well as in the Central Board of Excise and Customs; both wings come under the Ministry of Finance, Department of Revenue. The principle adopted for determining inter-se seniority between merging cadres have been challenged by the UDCs in both the wings of Customs & Excise and Income Tax. In respect of the Customs and Central Excise the decision of the Madras Bench of the Tribunal in O.A. 558/03 was the subject matter of a W.P. before the Hon'ble High Court of Madras. The respondents have stated in their reply that the judgment of the Madras Bench of the Tribunal has been upheld by the Madras High Court but the Central Board of Excise and Customs is contemplating to file an SLP in the Hon'ble Supreme Court. Since the merger is a part of the rationalisation/restructuring scheme implemented in the two sister organisations of Income Tax and Customs & Excise whatever policies adopted by the Central Board of Excise and Customs should also become applicable to the Central Board of Direct Taxes. In the additional rejoinder filed by the applicant on 1.2.08 it has been submitted that "even though the merger of the two cadres of UDCs and DEOs into the new cadre of Tax Assistant has been held to be legal and just by different Tribunals the rule relating to the seniority has been held to be

unfair and directed to review the matter. If the order of the Tribunal in an identical case pertaining to Department of Excise and Customs is to be implemented it is to be made applicable to the UDCs and DEOs in the Income Tax Department also." We appreciate this submission on behalf of the applicants and accordingly we consider it appropriate to direct the respondents that if and when it is decided to implement the decision of the Madras Bench of the Tribunal in O.A. 558, 538 and 909 of 2003 by the Central Board of Excise and Customs, the same shall also be made applicable to the applicants herein. With the above direction, the O.A. is disposed of. No costs.

Dated 4.4.2008



DR. K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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