

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 487 / 2006

Friday, this the 7th day of March, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MRS O.P.SOSAMMA, ADMINISTRATIVE MEMBER

1. K.N.Purushothaman,
Senior Tax Assistant,
O/o the Chief Commissioner of Income Tax,
2nd Floor, Central Revenue Building,
I.S.Press Road,
Kochi-682 018.
2. Beena Jacob,
Senior Tax Assistant,
O/o the Chief Commissioner of Income Tax,
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3. C.P.Rajesh,
Senior Tax Assistant,
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4. Padmaja Harikrishnan,
Tax Assistant,
O/o the Senior Authorised Representative,
Kendriya Bhavan,
Kakkanad, Cochin.
5. Jayakumar G.R,
Tax Assistant,
O/o the Chief Commissioner of Income Tax,
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6. Sreekumar P.G.
Tax Assistant,
O/o the Additional Commissioner of Income Tax,
2nd Floor, Central Revenue Building,
I.S.Press Road,
Kochi-682 018.

- Applicants

(By Advocate Mr OV Radhakrishnan, Senior with Mr Antony Mukkath.)

1. Chief Commissioner of Income Tax,
Kochi, Central Revenue Building,
I.S. Press Road, Kochi-18.
2. Central Board of Direct Taxes,
represented by its Chairperson,
North Block, New Delhi.
3. Union of India
represented by the Secretary to Government of India,
Department of Revenue,
Ministry of Finance, New Delhi.Respondents

(By Advocate Mr. TPM Ibrahimkhan, SCGSC)

This application having been finally heard on 24.1.2008, the Tribunal on 7.3.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The point of dispute in this O.A is, whether it is required to grant the Financial Upgradation under the Assured Career Programme (ACP for short) Scheme to an employee who has been placed in the higher scale consequent upon the restructuring or not. In other words, whether such placement will be deemed to be a promotion for the purpose of granting financial upgradation under the ACP Scheme or not.

2. The facts in brief are that the first applicant entered service as Lower Division Clerk (LDC for short) on 26.12.1988 and on completion of 12 years of continuous service in that grade as on 26.12.2000, he was granted the first financial upgradation to the next higher grade in the pay scale of Rs.4000-6000 under the ACP scheme vide Annexure A-1 dated 15.12.2000. Similarly, the applicants No. 2, 3, 4, 5 and 6 on completion of 12 years of continuous service in the cadre of LDC on 17.11.2000, 15.11.2000, 3.5.2001, 14.3.2001 and 7.1.2000



respectively were also granted financial upgradation to the next higher scale of Rs.4000-6000(Annexure A-3, A-6, A-8 and A-10 orders). Meanwhile, the Union Cabinet had approved the restructuring Plan of the department in its meeting held on 31.8.2000 and the same was conveyed on 6.9.2000. Accordingly, the 2nd respondent notified the revised sanctioned strength at different levels in the Income Tax Department with the concurrence of Department of Expenditure vide Annexure A-12 letter dated 30.3.2001. Along with the said letter, the revised regionwise allocation of posts at different levels were also published. All the LDCs were required to pass the eligibility test of computer knowledge for absorption as Tax Assistants in scale Rs.4000-6000. On passing the test, the applicants were absorbed as Tax Assistants on various dates in the scale of pay Rs.4000-6000. Accordingly, the pay of the applicants 1 to 6 were also brought to the scale of pay Rs.4000-6000 as Tax Assistants and fixed their pay at the initial stage of Rs.4000/-.. They were not granted any fixation of pay as their absorption as Tax Assistants was in the same scale of pay Rs.4000-6000. Thereafter, the 1st, 2nd and 3rd applicants were promoted to the next higher grade of Senior Tax Assistant in the scale of pay Rs.5000-8000 were on 1.6.2001, on 1.9.2005 and on 1.2.2006 respectively. The contention of the applicants is that they were entitled to be placed in the scale Rs.5000-8000 which is the next higher scale of Tax Assistants in the scale of Rs.4000-6000 ignoring the placement given to them under the ACP scheme as per the Annexure A-1, A-3, A-6, A-8, and A-10 orders.

3. In support of their aforesaid contention, the applicants relied upon the office memorandum dated 9.8.1999 issued by the DOPT by which the ACP scheme was introduced. According to the said memorandum, the ACP scheme need to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate



promotional avenues. They have also drawn support from Annexure A-21 office memorandum dated 10.2.2000 wherein the DOPT issued the following clarifications and directed all the Ministries and Departments to implement the ACP scheme strictly in keeping with the DOPT OM dated 9.8.1999 read with the clarifications and Annexure A-22 office memorandum dated 18.7.2000 wherein it has been stated that cases where the ACP Scheme has already been implemented shall be reviewed/rectified the same are not found to be in accordance with the scheme/clarifications:

"Since the benefits of upgradation under the ACP Scheme (ACPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

4. The counsel for applicant has also relied upon the order of this Tribunal in O.A.175/2001 in **M.K.Rajan v. Union of India and others** decided on 12.4.2002. The grievance of the applicant in that case was that he was appointed as a direct recruit Processing Assistant in the scale of pay Rs.380-560 with effect from 16.9.1976. Thereafter, he was promoted as Laboratory Assistant in the scale of Rs.425-700 with effect from 21.1.1981. On implementation of the report of the 4th Central Pay Commission, both the aforesaid posts were clubbed together and placed in the same scale of pay Rs.1400-2300 with effect from 1.1.1986. While so, on implementation of the report of the 5th CPC, 6 posts of Processing Assistant and 2 posts of Laboratory Assistant in the Integrated Fisheries Project, Kochi were merged to form a common feeder grade for promotion to the grade of Processing Technologist in the scale of Rs.5000-8000. Thereafter, the applicant therein sought conferment of the first ACP only in the scale of Rs.6500-10500 on completion of 12 years of



service from his initial appointment as Processing Assistant. The 3rd respondent, however, issued orders granting him the first ACP in the scale of Rs.5500-9000 with effect from 9.8.1999. Since the next promotional post of the Processing Assistant was Processing Technologist in the scale of Rs.6500-10500, the applicant again made representation for giving him the benefit of first ACP in the scale of Rs.6500-10500 with effect from 9.8.1999. However, the same was rejected on the ground that he had availed himself of one promotion from the post of Processing Assistant to that of Laboratory Assistant prior to 1.1.1996, and he was eligible for the second financial upgradation in the scale of Rs.6500-10500 applicable to the hierarchical grade of Processing Technologist with effect from 15.9.2000 and therefore the grant of first ACP to him in the scale of Rs.5500-9000 with effect from 9.8.1999 was not in order and held that was given to him inadvertently and it will have to be withdrawn. The applicant challenged the aforesaid decision of the respondents in the said O.A. This Tribunal allowed the O.A and directed the respondents to consider the case of applicant for grant of scale Rs.6500-10500 as first ACP with effect from 9.8.1999 and the second ACP in the scale of Rs.7450-11500 with effect from 15.9.2000. While doing so, the Tribunal relied upon office memorandum dated 10.2.2000 (Annexure A-21) and the first point of doubt and its clarification which is as under:

"S.No.1 Point of doubt"

Two posts carrying different pay scales constituting two rungs in a hierarchy have now been placed in the same pay scale as a result of rationalisation of pay scales. This has resulted into change in the hierarchy in as much as two posts which constituted feeder and promotion grades in the pre-merged scenario have become one grade. The position may be clarified further by way of the following illustration: prior to the implementation of the Fifth Central Pay Commission recommendation, two categories of posts were in the pay scales of Rs.1200-1800 and Rs.1320-2040 respectively. The latter being promotion post for the former. Both the posts have now been placed in the pay scale of Rs.4000-6000. How the benefits of the ACP Scheme is to be allowed in such cases?

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Clarifications Since the benefits of upgradation under ACP Scheme (SCPS) are to be allowed in the existing hierarchy, the mobility under ACPS shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

The Tribunal has also considered the following point at Sl.No.52 and the clarification given thereto, which is extracted below:

"Doubt 52: Following the recommendations of the Pay Commission, feeder and promotional posts have been placed in the same scale. Consequently, hierarchy of a post comprises of Grades 'A', 'B' and 'C' i.e the entry level and the first promotional grade are in the same scale. What shall be his entitlements under ACP?

Clarification: Normally, it is incorrect to have a feeder grade and a promotional grade in the same scale of pay. In such cases, appropriate course of action is to review the cadre structure. If as a restructuring, feeder and promotional posts are merged to constitute one single level in the hierarchy, then in such a case, next financial upgradation will be in the next hierarchical grade above the merged levels and if any promotions has been allowed in the past in grades which stand merged, it will have to be ignored as already clarified in reply to point of Doubt No.1 of O.M. dated 10.2.2000. However, if for certain reasons, it is inescapable to retain both feeder and promotional grades as two distinct levels in the hierarchy though in the same scale of pay, thereby making a provision for allowing promotion to a higher post in the same grade, it is inevitable that benefit of financial upgradation under ACPS has also to be allowed in the same scale. This is for the reason that under the ACPS, financial upgradation has to be allowed as per the 'existing hierarchy'. Financial upgradation cannot be allowed in a scale higher than the next promotional grade. However, as specified in Condition No.9 of the ACP Scheme (vide DOP&T OM dated 10.2.2000, pay in such cases shall be fixed under the provisions of FR 22(1)(a)(1) subject to a minimum benefit of Rs.1000."

6. In the reply statement the respondents have contended that even after the restructuring of the Department, the post of UDC in the scale of Rs.4000-6000 continued to remain in the cadre for want of vacancies in higher cadres which were merged with the newly created cadre of Tax Assistants in the scale



of pay of Rs.4000-6000. After this, the LDCs, in the scale of Rs.3050-4590, except those who have not qualified in the computer skill examination for promotion, were absorbed as Tax Assistants in the scale of Rs.4000-6000 and the LDCs who were hitherto working in the pay scale of Rs.3050-4590 were placed in the higher scale of Rs.4000-6000 by way of absorption after qualifying the computer skill examination conducted by the Department. They have also submitted that the CBDT vide letter dated 10.2.2000 (Annexure R-7) (Annexure A-21 in this O.A) clarified that the basic criterion to allow the higher pay scale under the ACP Scheme should be whether a person is working in the same pay scale for the prescribed period of 12 to 24 years. According to them, the applicants were working previously in the grade of LDC in scale Rs.3050-4590 and they were granted financial upgradation in scale of pay Rs.4000-6000 in the years 2000/2001/2002 on completion of 12 years in the previous scale and, therefore, their claim that they are eligible for ACP in the next higher scale of pay Rs.5000-8000 in the cadre of Senior Tax Assistant cannot be accepted as the ACPS has been introduced in the department only with effect from 9.8.1999 and that at the time of implementation of the Scheme, the applicants were working against the then prevailing grade of LDC in the scale of pay Rs.3050-4590 and next higher scale of pay was that of UDCs in the scale of Rs.4000-6000. Hence the financial upgradation under the ACPS was granted to the applicants in the existing hierarchy of pay scale as per the standard/common pay scales. They have also submitted that there is no change in the hierarchy of pay scale even after restructuring. Since the applicants have been placed in the scale of Rs.4000-6000 by way of absorption to the cadre of tax Assistant on qualifying the eligibility test conducted by the Department according to the recruitment rules applicable for the year 2000-01 issued by the DOMS vide letter dated 4.6.2001 as amended vide letter dated 19.7.2001, they are eligible for financial upgradation under ACPS in the scale of pay of Rs.4000-6000 only on



completion of 12 years in the scale of pay of Rs.4000-6000. In this regard they have also relied upon Annexure R-8 office memorandum dated 18.7.2000 of the DOPT. They have referred to the point of doubt at Sl.No.35 and the clarification given to it which is extracted below:

Sl.No.35 Point of Doubt:

Whether placement/appointment in higher scales of pay based on the recommendations of the Pay Commissions of Committees set up to rationalise the cadres is to be reckoned as promotion/financial upgradation and offset against the two financial upgradations applicable under the ACP Scheme?

Clarification: Where all the posts are placed in a higher scale of pay, with or without a change in the designation, without requirement of any new qualification for holding the post in the higher grade, not specified in the Recruitment Rules for the existing post, and without involving any change in responsibilities and duties, then placement of all the incumbents against such upgraded posts is not be treated as promotion/upgradadtion. Where, however, rationalisation/restructuring involves creation of a number of new hierarchical grades in the rationalised set up and some of the incumbents in the pre-rationalised set up are placed in the hierarchy of the restructured set up in a grade higher than the normal corresponding level taking into consideration their length of service in existing pre structured/pre rationalised grade, then this will be taken as promotion/upgradadtion."

In this regard, they have also relied upon the doubt raised at Sl.No.27 and the clarification given thereto which is also extracted as under:

"The ACPS is to act as a 'safety net' to provide relief in cases of acute stagnation. The concept of 'Senior-Junior' is quite alien to the idea behind the ACPS recommended by the Fifth Pay Commission which had also quite specifically recommended against it. Benefits granted under the Scheme are "personal" in nature and in recognition of long hardships faced by stagnating employees. Moreover, it does not grant any status related benefits nor does it change the seniority position. Senior will continue to be senior even if his junior has earned upgradations under ACP. Relief granted to Government servants facing stagnation/hardships visualised by ACPS cannot provide a ground for claiming identical relief by others who are not similarly circumstances."



According to them, the clarification point raised at 52 quoted above is applicable only in the case of merger before granting of ACP. In the case of applicants, they were given the financial upgradation before the merger and granting of the higher scale on completion of 12 years of service under the ACP scheme will not in any way make them entitled for the pay scale of Rs.5000-7000. In fact the UDCs having pay scale of Rs.4000-6000 who could not be promoted to the post of Senior Tax Assistants on restructuring due to non-availability of vacancies were also merged along with Tax Assistants in the scale of Rs.4000-6000 itself.

7. We have heard Shri O.V.Radhakrishnan, Senior Advocate for the applicant and Shri T.P.M.Ibrahim Khan, SCGSC for respondents. We have also perused the entire records. The undisputed fact in this case is that the applicants were working as Lower Division Clerks in the scale of Rs.3050-4590. On completion of 12 years continuous service in the same grade and scale they were granted the 1st financial upgradation in the scale of Rs.4000-6000 in the scale attached to the promotional post of UDCs in the year 2000/2001. During the same period, the post of UDC in the scale of pay of Rs.4000-6000 were merged with the post of Tax Assistants in the same scale. In other words, after the restructuring of the Department, the applicants' pay has been made equivalent to that of Tax Assistant and post of UDC did not exist any further. Had the merger taken place before the applicants became entitled for 1st financial upgradation, the respondents would have granted the same scale on upgradtion i.e. Rs.4000-6000. Later on, when the applicants who were still LDCs with upgraded pay of Tax Assistants, they were given the same scale of pay of Rs.4000-6000. They got promotion as Senior Tax Assistants in the scale of pay of Rs.5000-8000 only on 1.6.2001. The applicants contention is that they were required to be placed in the scale of Rs.5000-8000 ignoring the ACP benefits given to them earlier placing then in the scale of Rs.4000-6000. It is

9

here that the 1st point of clarification given in the DOPT OM dated 20.2.2000 becoming relevant. It says that "*An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade.*" Thus clarification does not apply in the present case. The applicants have been upgraded from the pay of LDC to the pay of UDC but it got merged with the pay of the Tax Assistants. He did not get any promotion before the merger of pay scales. In fact he was promoted from the merged post of Tax Assistant to Senior Tax Assistant in the higher scale of pay. Therefore, there is no promotion which is required to be ignored. The issue involved in O.A.175/2001 (supra) is different. In that case the applicant was promoted from Processing Assistant in the same scale of Rs.380-560 to Laboratory Assistant in the scale of Rs.425-700 on 21.1.1981. Later with effect from 1.1.1986 both the posts were merged in the scale of Rs.1400-2300 to form a common feeder grade to the grade of Processing Technologist in the scale of Rs.5000-8000. Therefore the applicant sought conferment of 1st financial upgradation under ACP Scheme in the scale of Rs.6500-10500 on completion of 12 years of service from his initial appointment as Processing Assistant. The question that considered was "*whether when two posts carrying different pay scale constituting two rungs in a hierarchy have been placed in a common pay scale as a result of rationalisation of pay scales, a person promoted to the higher of the two grades before equalisation is entitled to count his service in the lower scale for the purpose of benefits under the ACP Scheme?*". Relying on Doubt No.1 and clarification given thereto in OM dated 10.2.2000 (supra) and Doubt No.52 in DOPT OM dated 18.7.2001 (supra), the Tribunal directed the respondents to consider the applicant for grant of the scale of Rs.6500-10500 as first ACP with effect from 9.8.99 and the second ACP in the scale of

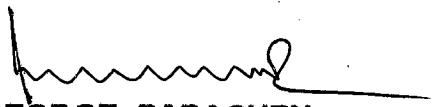


Rs.7450-11500 with effect from 15.9.2000 as the applicant had on those dates become eligible for the first and second ACPS respectively and issue the consequential orders. In the light of the above discussion, we find merit in the stand taken by the respondents to deny the 1st ACP to applicants in the scale of Rs.5000-8000. We accordingly dismiss the O.A with no order as to costs.

Dated, the 7th March, 2008.



O.P. SOSAMMA
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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