

O.A Nos. 495, 534 and 535 of 2011

Tuesday, this the 3rd day of July, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

O.A.No.495/2011

Sandosh Kumar K.A.,
Office Superintendent,
Office of the Commissioner of Income Tax (TDS),
Kochi, CR Building, IS Press Road,
Ernakulam, Cochin-682 018. - Applicant

(By Advocate M/s Dandapani Associates)

v.

1. The Chief Commissioner of Income Tax,
C.R. Building, Ernakulam,
Cochin-682 018.
2. The Central Board of Direct Taxes,
North Block, New Delhi-110 001,
represented by its Secretary.
3. Union of India represented by
the Secretary, Ministry of Finance,
North Block, New Delhi-110 001.
4. The Departmental Promotion Committee,
represented by Chairman,
Office of the Chief Commissioner of Income Tax (CCA),
CR Building, I.S.Press Road,
Cochin-682 018. - Respondents

(By Advocate Mr S.Jamal, ACGSC)

O.A.No.534/2001

Dinesh.V.V.,
S/o M Krishna Marar,
Administrative Officer,
O/o the Joint Commissioner of Income Tax,
Kannur Range, Kannur. - Applicant

(By Advocate Mr M.R.Rajendran Nair, Senior with Mr M.R.Hariraj)

v.

1. Union of India represented by the
Secretary to Ministry of Finance,
New Delhi-110 001.
 2. Central Board of Direct Taxes represented by
its Chairman, Ministry of Finance,
New Delhi.
 3. Chief commissioner of Income Tax (CCA),
C.R.Buildings, I.S.Press Road,
Cochin-18.
 4. Subhalakshmi Ammal,
Office Superintendent,
O/o Commissioner of Income Tax,
Kowdiar, Thiruvananthapuram-695 003.
 5. Sandosh Kumar.K.A.,
Office Superintendent,
O/o Commissioner of Income Tax (TDS),
C.R.Buildings, I.S.Press Road,
Cochin-18.
 6. C.Beena Kumar, Office Superintendent,
O/o Commissioner of Income Tax ,
C.R.Buildings, I.S.Press Road,
Cochin-18.
 7. K.P.Somasekharan Nair, Office Superintendent,
O/o the Director General of Income Tax (INV),
Madaparambil Buildings, South Railway Station Road,
Cochin-16.
 8. P.Leela, Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Range-I, C.R.Buildings, I.S.Press Road,
Cochin-18.
 9. B.Sureshkumar, Office Superintendent,
O/o the Joint Commissioner of Income Tax,
Kottayam Range, Public Library Building,
Sasthri Road, Kottayam-686 001.
 10. S.Soundera Raj, Office, Superintendent,
O/o the Additional Commissioner of Income Tax,
Range-I, Kowdiar, Thiruvananthapuram.
- Respondents

(By Advocate Mr Pradeep Krishnan, ACGSC for R.1 to 3)

(By Advocate Mr K.R.B.Kaimal, Senior with Mr B.Unnikrishna Kaimal for R.4 to 10)

O.A.No.535/2011

1. V.K.Gopinathan, S/o late TG Krishnankutty Panicker, Administrative Officer, O/o the Commissioner of Income Tax (Appeals), Kera Bhavan, Jewel Junction, Cochin-682 011.
2. K.R.Rajendran, S/o K.P.Raman Nambiar, Administrative Officer, O/o the Commissioner of Income Tax (Central), Kandamkulathy Towers, M.G.Road, Cochin-11.
3. K.C.Sunitha, W/o N Rajaramdas, Inspector of Income Tax, O/o the Commissioner of Income Tax (Central), Kandamkulathy Buildings, M.G.Road, Cochin-11.
4. P.Vatsala Sumedha, W/o K Achuthankutty, Inspector of Income Tax, Range-2, Thrissur.
5. Girish Soman, S/o P.Somasundaram, Inspector of Income Tax, O/o the Commissioner of Income Tax-II, C.R.Buildings, I.S.Press Road, Kochi-682 018.
6. P.K.Jinan, S/o V.I.Karthikeyan, Inspector of Income Tax, O/o the Joint Commissioner of Income Tax, Alappuzha Range, Alappuzha.
7. P.N.Reghunath, S/o late N Kesava Kurup, Inspector of Income Tax, O/o the Chief Commissioner of Income Tax, C.R.Building, I.S.Press Road, Kochi-682 018.
8. K.Gopinathan, S/o Kanoor Kunhircaman Nair, Inspector of Income Tax, O/o the Commissioner of Income Tax, Aayakar Bhavan, Sakthan Thampuram Nagar, Thrissur.
9. Solomon Antony.N, S/o N.C.Anthony, Inspector of Income Tax, O/o the Chief Commissioner of Income Tax, C.R.Building, I.S.Press Road, Kochi-682 018.
10. Madhusoodanan Nair.G.R., S/o late Gopalakrishnan Nair, Inspector of Income Tax, O/o Joint Commissioner of Income Tax, Range-I, Aayakar Bhavan, Trivandrum-3.
11. R.Jagadeesachandran, S/o late V.Ramakrishna Panicker, Inspector of Income Tax, I.T. Office, Aluva, Kap Shopping Complex, Pump Junction, Aluva.
12. Vijayan.P., S/o late M.R.Chandran, Inspector of Income Tax, O/o the Additional

Commissioner of Income Tax, Range-2, Aayakar Bhavan,
S.T.Nagar, Trichur-680 001.

13. Thomas Varghese, S/o Ouseph Varghese,
Inspector of Income Tax, O/o the Joint Commissioner
of Income Tax, Alappuzha Range, Alappuzha.
14. S.Raveendranath, S/o N Sivaram Pillai,
Administrative Officer, O/o the Director of Income
Tax (CIB), Kandamkulathy Buildings, M.G.Road,
Cochin-11.
15. T.Rajan, S/o P Anandan,
Inspector of Income Tax, Kannur Range, Kannur.
16. A.O.Shoba, D/o A.P.Oomen,
Inspector of Income Tax, O/o the Additional Director
of Income Tax, Devi Kripa, Pallikukku, Pettah,
Thiruvananthapuram-695 024.
17. Jacob Ebenezer Issac, S/o late F.C.Isaac,
Inspector of Income Tax, O/o the Chief Commissioner
of Income Tax, Trivandrum.
18. Sunny George, S/o T.J.George,
Inspector of Income Tax, Kannur Range, Kannur.
19. Anil G Nair, S/o K.G.Nair,
Inspector of Income Tax, O/o the Additional
Commissioner of Income Tax, Devi Kripa,
Pallimukku, Pettah, Trivandrum-695 024.
20. Sathish Kumar D, S/o late P Devarajan,
Inspector of Income Tax, O/o the Commissioner of
Income Tax, C.R.Buildings, Kochi-18.
21. M.K.Mohanan, S/o late V.K.Krishna Pillai,
Inspector of Income Tax, O/o the Joint Commissioner
of Income Tax, Range-I, Thrissur.
22. Hemalatha Anilkumar, W/o N Anil Kumar,
Inspector of Income Tax, O/o the Joint Commissioner
of Income Tax, Range-I, Aayakar Bhavan, Thrissur.
23. O.Madhusoodhana Menon, S/o late N.P.Menon,
Office Superintendent, O/o the Assistant Director of
Income Tax(Investigation), Thrissur.
24. Mohan Paul, S/o P.M.Paul,
Office Superintendent, O/o Director of Income Tax
(CIB), Kandamkulathy Buildings, M.G.Road,
Cochin-11.
25. N.Ramesh, S/o Ramesh N,
Office Superintendent, O/o the Chief Commissioner of
Income Tax, Trivandrum.

26. B.Gopakumar, S/o A Bhaskaran Nair,
Office Superintendent, O/o the Additional
commissioner of Income Tax, Central Range,
Devikripa, Pallimukku, Pettah,
Trivandrum-24. - Applicants

(By Advocate Mr M.R.Rajendran Nair, Senior with Mr M.R.Hariraj)

v.

1. Union of India represented by the
Secretary to Ministry of Finance,
New Delhi-110 001
2. Central Board of Direct Taxes represented by
its Chairman, Ministry of Finance,
New Delhi.
3. Chief Commissioner of Income Tax (CCA),
C.R.Buildings, I.S.Press Road, Cochin-18.
4. Subhalakshmi Ammal, Office Superintendent,
O/o Commissioner of Income Tax, Kowdiar,
Thiruvananthapuram-695 003.
5. Sandosh Kumar K.A., Office Superintendent,
O/o commissioner of Income Tax (TDS),
C.R.Buildings, I.S.Press Road, Cochin-18.
6. C.Beena Kumari, Office Superintendent,
O/o Commissioner of Income Tax, C.R.Buildings,
I.S.Press Road, Cochin-18.
7. K.P.Somashekharan Nair, Office Superintendent,
O/o the Director General of Income Tax (INV),
Madaparambil Buildings, South Railway Station Road,
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O/o the Additional Commissioner of Income Tax,
Range-I, C.R.Buildings, I.S.Press Road,
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9. B.Sureshkumar, Office Superintendent,
O/o the Joint Commissioner of Income Tax,
Kottayam Range, Public Library Building,
Sasthri Road, Kottayam-686 001.
10. S.Soundera Raj, Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Range-I, Kowdiar, Thiruvananthapuram. - Respondents

(By Advocate Mr Pradeep Krishnan, ACGSC for R.1 to 3)

(By Advocate Mr K.R.B.Kaimal, Senior with Mr B.Unnikrishna Kaimal for R.4 to 10)

This applications having been finally heard on 14.06.2012, the Tribunal on 03.07.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

As the above mentioned applications have identical issues, these applications are considered to this single order. For the purposes of references, OA No. 534 of 2011 has been taken as the pilot case. While in two cases, i.e. OA No. 534 of 2011 and 535 of 2011 challenge the order relating to revision of seniority to the detriment of the applicants therein, OA No. 495 of 2011 has been filed for a direction to execute the said order.

2. As ravelled facts of the cases have augmented the complexity of the issue involved, it is essential that the background of the entire facts of the case with terse sufficiency is narrated and and the same is as in the succeeding paragraphs.

3. All the applicants belong to the Income-tax Department. In the said department, earlier, there existed a post named as Data Entry Operator (D. E. O) with the then scale of pay of Rs.1200-2040. The essential qualification for holding the said post, as provided for in the then existing Recruitment Rules of 1987 is graduation. It appears that when in 1988, certain vacancies of D.E.Os arose, the respondents notified such vacancies and invited applications from those who possessed the aforesaid educational qualification of graduation. However since there were no takers, the respondents considered diluting the qualifications from graduation to matriculation or its equivalent. Such a decision by the Department was taken on July 22, 1988 and Gazette notification in this regard came to be published on August 13, 1988. After the aforesaid decision

and before the gazette notification, an advertisement was issued on July 23, 1988 for filling up the post of DEO with the revised qualifications of matriculation or equivalent. Annexure A4 refers. In response to the same, many individuals applied and the applicant in OA 534/2011 was one such candidate with the matriculation as the qualifications. There were graduates also who participated in the selection to the said post of DEO. The applicant in OA 534 of 2011 came out victoriously and secured first rank. Thus he entered the Department as DEQ in July 1989.

4. The Ministry of Finance had issued Office Memorandum dated September 11, 1989 proposing creation of intermediate grades in the post of DEO with two different pay scales of Rs 1150 – 1500 and Rs 1350 – 2200 . These had been named as Data Entry Operator Grade A and Grade B respectively. In addition, there were certain higher posts in the said hierarchy of Data Entry Operators in the said memorandum; and the Ministry of Finance had desired various Ministries to undertake a review of the existing posts of Data Entry Operators on the same lines as contained in the aforesaid Office Memorandum dated September 11, 1989. Instructions in this regard as contained in paragraph 2 of the said Office Memorandum read as under:

"2. All Ministries/Departments having Electronic Data Processing posts under their administrative control will review the designation, pay scales and recruitment qualification of their posts and revise the same in consultation with their Financial Advisers to the extent necessary as per pay structure indicate din para 1 above. Where it is found necessary to revise the pay scale of existing posts, notification will be issued by concerned Ministry/Department and copy of notification endorsed to Implementation Cell, Department of Expenditure. (The revised pay scales will be operative from the date of issue of notification by concerned Ministry/Department)."

5. The aforesaid Office Memorandum underwent a slight modification as could be seen from Annexure A-9 which reads as under:-

"The undersigned is directed to refer to paragraph 2 of this Ministry's O.M of even number dated the 11th September, 1989 (Sl.No.240 of Swamy's Annual, 1989) on the subject noted above wherein it has been provided that the revised pay scales of Electronic Data Processing posts will be operative from the date of issue of Notification by concerned Ministry/Department. The matter has been reconsidered by Government and it has been decided that the revised pay scales will take effect from 11th September, 1989, irrespective of the Notification issued by Ministry's/Departments."

6. In so far as the respondents organisation is concerned, there was no immediate action taken in the wake of the Ministry of Finance Office Memorandum and seniority lists of Data Entry Operators appointed as per the earlier Recruitment Rules has been maintained and periodically updated. It was sometimes in the end of 1993 that formal amendment to the Recruitment Rules of Data Entry Operators had been made incorporating the provisions as contained in the Ministry of Finance Office Memorandum cited above. Annexure A-10 refers. Since earlier there was only one grade of Data Entry Operator with the total number of 568 Data Entry Operators in the pay scale of Rs. 1200 – 2040, the aforesaid number had been divided into two parts respectively 340 and 228 and allocated to Data Entry Operators Grade A and B respectively. The respondents had taken a conscious decision to afford the higher pay scale of Rs. 1350 – 2200 to all those who were appointed in the post of DEO prior to the selection conduction in 1988 as at that time the minimum qualification required was Graduation. In so far as those selected in the wake of the 1988 notification, a specific mention was made that all should be placed in the pay scale of Rs 1150 – 1500, irrespective of they being Graduate or Matriculates. And, accordingly, the applicant in OA no. 534 of 2011 and the private respondents therein were placed as DEO Gr. A with the scale of pay of Rs 1150 – 1500. The said Annexure A-10 order also stated that the existing incumbents would be continued to be paid pay in the pay scale of Rs 1200 – 2040 and the same would be personal to them and would be designated as DEO grade A till

they are promoted as DE0 grade B. Vide annex A-12, certain promotions were made and here again the applicant was promoted first compared to private respondents.

7. By Annexure A11, the Ministry had issued an order to the effect that those Data Entry Operators who had been inducted into the service prior to the 1988 Amendment Rules, would be placed in the pay scale of Rs 1350-2200 and would be designated as Data Entry Operators grade B. The said order further specified that it should be ensured that no Data Entry Operator, who was recruited from examination/test for which matriculation was prescribed minimum qualification, (after amendment of the rules in July, 1988) is granted the higher pay scale of Rs.1350-2200, irrespective of whether he might be possessing graduate or higher qualifications at the time of appointment. If any such person has been erroneously granted pay scale of Rs.1350-2200, on the basis that he was graduate at the time of recruitment though the prescribed minimum qualification for the test at which he appeared was matriculation, this mistake should be corrected immediately and such persons may be brought in the scale of Rs.1200-2040.

8. It is pertinent to mention here that in the selection for the post of the DEO, conducted in 1988, though the requisite qualifications mentioned were only matriculation, the select list also comprised of persons who were graduates. Never the less, in so far as promotion to grade B is concerned, the same was in the order of seniority in grade A which in turn was based on the rank obtained in the selection. Thus be a graduate or matriculate, seniority is based on merit and there is no difference in pay scale between graduates and the matriculate is DE0. Annex A 12 order had been issued on the above basis only.

9. In addition to promotion to the post of Data Entry Operator grade B, the applicant was further promoted to grade C as is evident from Annexure A 4. At the relevant point of time, the applicant was the lone individual who had been promoted to the post of DEO as could be seen from Annexure A. 15.

10. Sometimes in 2001, the respondents had brought in restructuring inasmuch as the posts of Clerks and Data Entry Operators et cetera had been made the feeder post for the post of tax assistant and senior tax assistant. Annexure A 18 refers. Seniority position in the grade of Data Entry Operators had its own impact on the seniority in the post of Tax Assistant or Senior Tax Assistant. Insofar as applicant in OA No. 534/2011 is concerned, as he had reached grade C Data Entry Operator, he was redesignated as Senior Tax Assistant in the same pay scale since the pay scales of the two posts are identical. Annexure A 20 refers. Similarly, the party respondents were also redesignated to the grade of Senior Tax Assistants vide Annexure A 21. In the seniority list of Senior Tax Assistants, the name of the applicant has been shown at serial number 1.. Party respondents figure in much lower place.

11. One Shri Sandosh Kumar (Applicant in OA No. 495 of 2011) moved the Tribunal by filing OA No. 204/2001 which was decided on October 25, 2002. This individual is a graduate and was selected in the selection held in 1988 (under the Amended Recruitment Rules). On the basis of the order dated May 11, 1994, though he was a graduate, as his scale remained at Rs 1200 – 2040, his claim before the Tribunal was as under:

(a) To issue an order or direction to the 1st respondent to grant the scale of pay of Rs.1350-2200 as Data Entry Operator Grade B with effect from 13.7.1989 to the applicant and to quash Annexure A1 memorandum to the extent of the direction to the effect that the benefits as peer decisions of the Central Administrative Tribunal, Madras/Ernakulam Bench cannot be extended to the applicant.

(b) to issue order or direction to the 1st respondent to effect the pay fixation of the applicant under the Central Civil Service (Revised Pay) Rules, 1997, grant all benefits thereunder and permit the applicant to file fresh option under the said rules.

(c) to direct the first respondent to draw and disburse the consequential arrears of pay and allowances within such period as this Hon'ble Tribunal may deem fit."

12. The Tribunal rendered a finding to the effect that the applicant's case is that he, being a graduate entered the service as Data Entry Operator and that therefore he should be entitled to the Entry grade scale of Rs.1350 – 2200. This claim was held to be perfectly in order. In the above case, the Tribunal, took into account the decision of certain coordinate benches which had already decided issue of identical nature and accordingly following such precedents, the Tribunal allowed the OA and directed that the applicant be placed in the scale of pay of Rs 1350 – 2200 in Grade B and this benefit was extended from the date of his joining the service. The applicant was also made entitled to consequential benefits. Annexure A-16 refers.

13. Respondents not being satisfied with the above order of the Tribunal, approached the Hon'ble High Court challenging the order of the Tribunal. The High Court in para 5 of its judgment dated May 26, 2005 had recorded as under:-

"The distinction that had been drawn by the Tribunal was that when the vacancies were notified and selection proceedings commenced, the minimum qualification was Matriculation and therefore, a Graduate could have aspired for the higher pay scale, on appointment on par with the benefits his colleagues came to be conferred with. This is a view, which is reasonable, and not, of course, decried in service jurisprudence. If so viewed, the applicants could not have been discriminated from his counterparts who were recognised as entitled to higher scale of pay. This alone has been granted by the Tribunal, and we are reluctant to interfere in the matter, especially since the issue has been settled years back."

While things stood as above, the party respondents who were earlier promoted/redesignated as Senior Tax Assistants were also to be reverted by Annexure A-25 order dated 07-02-2006. This order was subjected to challenge in OA No. 81 of 2006. Simultaneously certain other O.As were filed and a common order dated December 7, 2007 came to be passed as per Annexure A 26. The claim of the applicants in the O.As stood dismissed.

14. It appears that many attempts were made by the said Sandhosh Kumar in respect of ACP etc., which he had meant as a consequential benefit arising out of the order in one of the O.As filed by him and Annexure A-31 is the ultimate decision of the Respondent. negating such claim.

15. The aforesaid Sandosh Kumar moved the Tribunal through OA No. 116 of 2007 wherein his claim related to consequential benefits arising out of the order of the Tribunal in OA 204/2001 which included promotion to higher posts on the basis of advancement of his date of appointment as grade B Data Entry Operator from 11-09-1989, as per the order of the Ministry of Finance. To support his claim the applicant had brought to the notice of this Tribunal a number of decisions regarding implementation of the consequential order of the Ministry of Finance in creating intermediate posts in respect of Data Entry Operators. Implementation of the order of the Ministry of Finance by various regions in different forms and different manners created confusion and there appeared to be total lack of uniformity in extending the benefits of Ministry of Finance OM dated 11-09-1989. The solution for resolving the issue as appropriate in the considered view of the Tribunal was to give a direction to the Secretary, Ministry of Finance to consider all the cases in proper perspective and arrive at a judicious decision in a uniform manner. Thus, A 32 order came to be issued by the Tribunal in which the operative portion has been as under: --

"25. Accordingly, the OA is disposed of with a direction to the respondent to make out a statement of case as stated above and forward the same to the Secretary, Ministry of Finance for a final decision. The applicants on his part shall make available to the first respondent details of all the cases in other Commissionerate and assist the Commissioner in making out a comprehensive statement to be referred to the Secretary, Ministry of Finance within a month. As the drill involved is sufficiently time-consuming a period of six weeks from the date of submission of the inputs by the applicant is calendared for preparation of a statement of case by the first respondent and four months thereafter for consideration by the Secretary, Ministry of Finance and his decision may be communicated to the applicant within one month thereafter. It is fervently hoped that the judicious decision that could be arrived at by the Secretary would put a quietus to the long ranging litigation."

16. The above order this Tribunal was complied with by the respondents and after the Regional Commissioners of a few Regions where different interpretations were made to the order of the Ministry of Finance dated September 11, 1989 had deliberated the issue and furnished their opinion, the secretary, Ministry of Finance considered the entire issue and certain orders were passed. Annexure A-2 order dated March 31, 2011 refers. In the wake of such an order the Ministry of Finance, the Regional Office/Department at Kochi has issued Annexure A-1 order dated May 13, 2011. . By this order, the seniority of the Data Entry Operators has been shuffled whereby the graduates stole a march over the matriculates in the 1988 selection. This has been issued without due notice to the affected candidates and the applicant in OA No. 534/2011 having been severely affected, has moved this OA seeking the following reliefs:-

- (i) Quash Annexure A1 and A2;
- (ii) Grant such other reliefs as may be prayed for and the court may deem fit to grant, and
- (iii) grant the costs of this Original Application.

17. The applicants in OA 535/2011 are working in various capacities in the ministerial faculty and by virtue of Annexure A1 order dated May 13, 2011 (which is the same order challenged in the aforesaid OA 534 of 2011) their seniority having also been affected, they have moved the present OA 535/2011 and the relief sought by them is as under: –

(iv) Quash Annexure A1 and A2;

(v) Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

(vi) grant the costs of this Original Application.

18. OA 495/2011 has been filed by Sandosh Kumar for implementation of the order dated May 13, 2011 as he is the beneficiary of the said order. In other words insofar as his claim is concerned, he wants execution of the order passed by the Department in the wake of the order of this Tribunal in OA No. 116 of 2007.

19. In all the above applications, there are certain party respondents as well. Both the official respondents as well as party respondents have filed their reply. The respondents contested the OA stating that all that the department had done was bringing uniformity as directed by the Tribunal in the order in OA No. 116/2007. Private respondents also justified the action respondents.

20. After the pleadings are complete, the case was heard at length. Counsel for the applicant in O.A. Nos 534 of 2011 and 535 of 2011 emphasised that right from the beginning the intention of the Ministry of Finance in respect of order dated September 11, 1989 had been that the posts of Data Entry Operators were to be bifurcated and in so far as graduates and concerned, higher pay scale of Rs.1350 – 2200 should be granted. The claim of the applicants in

various benches were also either fixation of their pay in the aforesaid pay scale and/or for grant of designation as Data Entry Operator grade B. There had been no whisper in any of the orders of the Tribunal as to the grant of seniority. True, consequential benefits were ordered and interpretation of the same should have been restricted to payment of arrears of pay and allowances but not in any event affording seniority on the basis of qualifications possessed by some candidates. The Counsel argued that in the year 1988 or 89, there was no post of Grade A or Grade B in Data Entry Operator. Initially graduates were eligible to apply to the post of Data Entry Operator, and when in the year 1988 notification was issued calling for applications for the post of Data Entry Operator with the scale of pay of Rs.1200 – 2040, not many applications were received. This had resulted in the Department having a re-look in respect of qualification requirement. Thus in July 1988 the Department took a conscious conclusion that the qualification requirement for the post of Data Entry Operator should be diluted to the level matriculation. Immediately on its approval and before Gazette notification, advertisement appeared in the media calling for applications from matriculates for the post of Data Entry Operator. In this advertisement, there has been no nomenclature of Grade A or Grade B of Data Entry Operator. In fact the designations with intermediate Grades were not there at that point of time. All those who had been selected have been placed on merit on the basis of their performance and applicant in OA No. 534 of 2011 had a comfortable position and was appointed as Data Entry Operator, and he is only a Matriculate. The nomenclature of Grade A and Grade B within Data Entry Operators surfaced in the Income Tax Department only in 1993 end or beginning of 1994 when the posts have been bifurcated into two (as explained in one of the above paragraphs.) The department did try to induct only graduates against the vacant posts by publishing an advertisement calling for applications only from graduates but since the response was poor, they were compelled to lower down the

qualification requirement and Matriculation was prescribed as the minimum Academic qualification. Obviously, the vacant posts could not be filled up on the basis of the Recruitment Rules that prevailed prior to the amendment and filling up of the posts as per the Revised Recruitment Rules should be held to be a conscious decision. In that event, there is no question of segregating the selected persons as Graduates and non Graduates, much less, affording higher grade the least grant of seniority in the higher grade ignoring the merit position. In fact, the Ministry of Finance had clearly held in paragraph No. 3 of OM dated 11 May 1994 that there is no question of enhancing the pay scale to Graduates to the exclusion of non graduates selected as per the 1988 notification. It was only by Tribunals that the decision was taken that the doctrine of equal pay for equal work would be rendered otiose in case the graduates were not granted higher pay scale. And, the High Court of Kerala in its judgment vide para 5 of Annexure A-17 in unequivocal term held that what has been granted is only pay (meaning thereby no other benefit, much lest seniority on the basis of graduation). In fact the claim of the individuals themselves was not to that extent. The counsel referred to various seniority list of various Regions to hammer home the point that even after 1989, one could find within the same recruitment year, matriculates having been placed above the degree holders. The decision of the Tribunal in OA No. 116 too had only directed that uniformity be kept in all the Regions and it would not have been the intention of the Tribunal that in maintaining uniformity there could be violation of certain other statutory rules. Thus, even if in some of the Directorates, there happened to be graduates who had entered in service in the wake of their selection conducted after the notification vide Annexure A-4, had been granted seniority, such a grant of seniority being an untended benefit should not have been extended to others. There is no question of negative equality.

21. Counsel for the applicant further argued that by their act of issuing the impugned orders the respondents have only attempted to unsettle the settled matter of seniority of the Data Entry Operator as early as from 1988, which is impermissible in view of catena of decisions of the Apex Court wherein the Apex Court has held that settled matter cannot be permitted to be unsettled. In this regard, and in respect of other legal issues, the applicant's counsel relied upon the following decisions:-

(2010) 4 SCC 301

(2009) 9 SCC 902

(2009) 16 SCC 615

(2006) (12) SCC 709 para15

22. Senior Counsel for the private respondents invited the attention of the Tribunal to the order of the Tribunal in OA No. : 116 of 2007 and submitted that the action of the respondents is only in compliance with the aforesaid order of the Tribunal. Referring to the background of the case, the senior counsel stated that various benches of the Tribunal have consistently held that the order of the Ministry of Finance affording higher pay scale of Rs.1350- 2200 for graduate Data Entry Operators is keeping in tune with the doctrine of equal pay for equal work. Associated to the revised pay scales is the designation of Data Entry Operator Grade B. Group B Data Entry Operator is that set of direct Entry DEOs having the qualification of graduation. The senior counsel further stated that once the pay scale has been revised and corresponding designation granted, the logical corollary is that the individuals who have been placed in the higher pay scale and designations should be placed accordingly in the seniority list the Data Entry Operators, Grade B being above grade A. It has also been stated by the senior counsel for the party respondents that the decision of the respondents is only after the Apex Court has upheld various orders of the Tribunal as could

be seen from Annexure R-1 series filed by the private respondents. The elaborate order in OA No. 116 of 2007 by this Tribunal is with a view to maintaining uniformity all through the Department. The senior counsel emphasised that the order of the Tribunal cannot be faulted with and that the decision of the respondents is thoroughly uniform.

23. Counsel in the official respondents traced the background of the case and submitted that the impugned orders cannot be held to be illegal.

24. Senior counsel appearing for the applicants in OA No. 495 of 2011 stated that the impugned orders in OA 534 of 2011 deserve to be upheld by this Tribunal as the same is in the process of implementation of the order of the Tribunal in OA No. 116 of 2007.

25. Arguments were heard and documents perused. When the Tribunal passed order in OA No. 116 of 2007, all that it stated was to follow uniformity and consistency in all the Regions. This implied that any uniform decision taken would be subject to and within the ambit of rules and regulations. If a Region has granted a concession, which is not contemplated in the Rules, for maintaining uniformity, the same need not be extended. For, negative equality is not contemplated in Fundamental rights to equality as held by the Apex Court in the case of **State of Orissa vs Mamata Mohanty (2011) 3 SCC 436**, wherein the Apex Court has held as under:-

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh (1995) 1 SCC 745, Yogesh Kumar v. Govt. of NCT of Delhi (2003) 3 SCC 548, Anand Buttons Ltd. v. State of Haryana

(2005) 9 SCC 164, K.K. Bhalla v. State of M.P. (2006) 3 SCC 581, Krishan Bhatt v. State of J&K (2008) 9 SCC 24, Upendra Narayan Singh and Union of India v. Kartick Chandra Mondal.)

26. The impugned orders were issued on the ground that while implementing the Tribunal's order, regarding the higher pay scale and designation as DEO Grade B, certain Regions have granted seniority from the date of initial appointment made in pursuance of the 1988 notification and the same is followed in this Region as well. The Committee which deliberated the issue of maintaining uniformity as per the orders of the Tribunal in OA No. 116 of 2007 had completely lost sight of the fact that the settled legal position in regard to revision is seniority is that settled seniority position cannot be unsettled. In this regard, counsel for the applicant in OA No. 534 of 2011 has invited the attention to the decision of the Apex Court in the case of **H.S. Vankani vs State of Gujarat (2010) 4 SCC 301** wherein the Apex Court has observed that unsettling the settled seniority is an error.

27. Again, when the initial advertisement for appointment was for DEO simplicitor, without any intermediate degrees in between, there is no question of bifurcation of the candidates selected as one of graduates and the other of below graduates and affording of higher seniority to graduates. The vacancies that would have been kept pending till the decision to lower down the qualification requirement took place would mean that there has been a conscious decision to keep such vacancies as there were no takers when applications from graduates only were called for. In this regard, the decision of the Apex Court in the case of **K. Ramulu (Dr) vs S. Suryaprakash Rao (Dr), (1997) 3 SCC 59** wherein the Apex Court has held as under:-

"12. The same ratio was reiterated in Union of India v. K.V. Vijeesh. Thus, it could be seen that for reasons germane to the decision, the Government is entitled to take a decision not to fill

up the existing vacancies as on the relevant date. Shri H. S. Gururaja Rao, contends that this Court in Y.V. Rangaiah v. J. Sreenivasa Rao had held that the existing vacancies were required to be filled up as per the law prior to the date of the amended Rules. The mere fact that Rules came to be amended subsequently does not empower the Government not to consider the persons who were eligible prior to the date of amendment. It is seen that the case related to the amendment of the Rules. Prior to the amendment of the Rules two sources were available for appointment as Sub-Registrar, namely, UDCs and LDCs. Subsequently, Rules came to be amended taking away the right of the LDCs for appointment as Sub-Registrar. When the vacancies were not being filled up in accordance with the existing Rules, this Court had pointed out that prior to the amendment of the Rules, the vacancies were existing and that the eligible candidates were required to be considered in accordance with the prevailing Rules. Therefore, the mere fact of subsequent amendment does not take away the right to be considered in accordance with the existing Rules. As a proposition of law, there is no dispute and cannot be disputed. But the question is whether the ratio in Rangaiah case would apply to the facts of this case. The Government therein merely amended the Rules, applied the amended Rules without taking any conscious decision not to fill up the existing vacancies pending amendment of the Rules on the date the new Rules came into force."

28. There is neither a legal sanction for grant of seniority to graduate entrants as D.E.O. selected in the wake of 1988 notification, nor is the same in accordance with the dictum laid down by the Apex Court in matters of seniority as settled seniority cannot be unsettled. Thus, it is amply clear that when the respondents have tried to maintain uniformity, an error has been committed by them in matter of seniority. The seniority of the applicants in OA No. 534 of 2011 and 535 of 2011 in the grade of Data Entry Operator had been decided long back, some score of years ago and the same had been followed in grant of promotions to higher posts. As such, such a settled seniority cannot now be permitted to be upset by grant of higher seniority to Graduates when the seniority had been fixed on merit irrespective of qualifications. As such, the two O.As, i.e. OA No. 534 of 2011 and 535 of 2011 deserve to be allowed and OA No. 495 of 2011 is liable to be dismissed. We order so. Consequently, the impugned orders in OA No. 534 of 2011 and 535 of 2011 are

quashed and set aside. Respondents are directed not to disturb the seniority of the applicants therein.

29. Under the circumstances, there shall be no orders as to costs.

sd

K.NOORJEHAN
ADMINISTRATIVE MEMBER

sd

Dr K.B.S.RAJAN
JUDICIAL MEMBER

trs

CERTIFIED TRUE COPY
Date

Deputy Registrar