

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.561/2007

Thurs day, this the 23rd day of October, 2008.

CORAM:

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

1. Hemalatha Jayaram,
W/o C.P.Jayarajan,
Tax Assistant, Income Tax Appellate Tribunal,
Kakkanad, Kochi, residing at:
SFA, Padma Gardens,
Sanskrit College Road, Tripunithura.
2. V.S.Ramesh, S/o Late V.R. Sankunny,
Sr. Tax Assistant,
O/o Commissioner of Income Tax, Thrissur,
Residing at: Vellamparambil House,
Kavalam Post, Thrissur District,
PIN -680 711.Applicants

(By Advocate Shri V.N.Ramesan Nambisan)

Vs.

1. The Chief Commissioner of Income-tax,
C.R.Buildings, I.S. Press Roads, Cochin.
2. Chairman,
Central Board of Direct Taxes,
New Delhi.
3. Union of India, represented by Secretary
to Government of India,
Department of Revenue,
Ministry of Finance, New Delhi. Respondents

(By Advocate Shri P.Parameswaran Nair, ACGSC)

The application having been heard on 10th October, 2008,
the Tribunal on 23-10-08 delivered the following:

ORDER

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

The two applicants in this OA joined the Income Tax Department as L.D.Cs. The hierarchy consisted of L.D.C., U.D.C. and above. In or about 2001

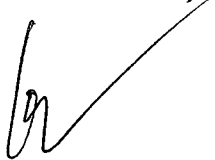
there was a scheme of restructuring in the income tax department, whereby, U.D.Cs were designated as Tax Assistants and those of the L.D.Cs who could pass the Computer Skill examination would be absorbed as Tax Assistants in the scale of pay of Rs 4000 – 6000. The applicants were successful in their examination and were accordingly absorbed in the aforesaid scale.

2. With effect from 9th August, 1999, the Government had introduced A.C.P. Scheme which enabled the government employees to have two financial upgradations after, respectively, 12 years and 24 years, provided they enjoyed no promotion. The applicants, on the basis of the fact that they had not been promoted to the post of Tax Assistant but were only absorbed in the restructuring scheme, claimed the first financial upgradation after completion of 12 years of their service. However, this had not been accepted to by the respondents, on the ground that whenever a person is placed in a higher scale consequent to the restructuring (here from LDC to Tax Assistant), such placement will be deemed to be a promotion for the purpose of A.C.P. Annexure A-4 and A-5 refer.

3. The applicants have approached this Tribunal seeking the following reliefs

To call for the records of the case and to issue

- a) an order quashing Annexures A4 and A5 both dated 26.6.2007;
- b) to declare that going by Annexure A6 order on the Assured Career Progression Scheme and the clarifications issued by the 1st respondent at Annexures 7 and 8, applicants are entitled for the benefit of financial assistance on completion of 12 years continuous regular service, i.e. In the case of the 1st applicant with effect from 12.7.2005 and in the case of the 2nd applicant with effect from 7.2.2003;
- c) to direct respondents 2 and 3 to grant the benefit of Annexure 6 'ACP' scheme to the applicants with effect from the date on which they have completed 12 years of regular service in the Department and arrears of pay and allowances with interest and cost.



4. The following are the main grounds of challenge: -

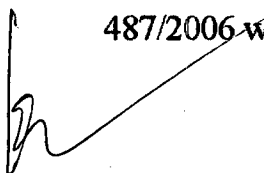
- a) As per clarifications given at serial Nos. 35, 52 and 55 of Memorandum dated 18th July 2001, vide Annexure A-8 restructuring in the hierarchy cannot be treated as promotion.
- b) As per clarification at point 1 in the Memorandum dated 10-02-2000 also, the mobility under ACP Scheme shall be in the hierarchy existing after merger of pay scales by ignoring the promotion.
- c) Even a Group D employee with five years' service plus matriculation qualification and having exposure to computer/key punching operation would be positioned as Tax Assistant, which means that an LDC with 12 years of service is equated with a Group D employee of 5 years.
- d) The purpose of grant of ACP is to avoid genuine stagnation and hardship faced by an employee due to inadequate promotional avenue. The applicants have put in 12 years' service without any promotion.

4. Respondents have contested the O.A. According to them, on the implementation of the restructuring plan approved by the Union Cabinet, vide DOMS letter dated 04-06-2001 as amended, in the year 2000 - 01, the Upper Division Clerks in the scale of pay of Rs 4000 - 6000 were merged with the newly created cadre of Tax Assistant in the scale of Rs 4,000 - 6000. After this, all the Lower Division Clerks, in the scale of pay of Rs 3050 - 4590 except those who have not qualified the computer skill examination for promotion were also

absorbed as Tax Assistant in the newly created cadre in the scale of Rs 4000 – 6000 to the extent of vacancies allocated for each charge. Annexure R-2 refers. The balance would be filled up as and when such LDCs qualify in the computer skill and if there be any balance, then these would be filled up in accordance with the ratio for promotion from the feeder grade and direct recruitment as per Annexure R-3 order dated 19-07-2001. The above would show that those who are the beneficiaries of promotion by way of restructuring are not entitled to the first financial upgradation. And, this was followed in an identical case, vide Annexure R-4 order dated 10th May 2006. Again, it has been submitted that in so far as LDCs are concerned, the post of LDC has not been completely merged with Tax Assistant and in the hierarchy, the same still exists. Further, duties of LDCs and Tax Assistants have been duly identified. The higher responsibility, higher pay scale, higher qualification (qualification in computer skill) would all make the difference between the posts of LDC and Tax Assistant.

5. The applicants have filed their rejoinder, reiterating their stand and have stated that had this been a promotion, then the pay fixation would have been in a particular fashion and the financial benefit afforded to them due to restructuring has no relevance.

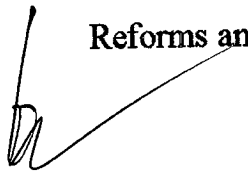
6. In their additional reply statement, the respondents have annexed as Annexure R-10, a copy of order dated 07-03-2008 of this Tribunal in OA No. 487/2006 which deals with the same issue and where the OA was dismissed.



7. Counsel for the applicant argued that the clarifications given vide point No. 1 of Annexure A-7, point Nos. 35 and 55 of Annexure A-8 clinch the issue. Restructuring would not in any way affect the entitlement of the applicants for A.C.P. He has further submitted that the authority relied upon by the respondents, vide Annexure R-10 is of least assistance to the respondents inasmuch as in that case the entitlement of the applicants therein for ACP fell prior to the date of restructuring.

8. Counsel for the respondents submitted that with the restructuring, the post of Tax Assistant has been made as post where element of direct recruitment exists. In respect of those LDCs who are absorbed as Tax Assistants on their having passed the computer skill tests, the same has to be treated as promotion. It was on this ground that the applicant's claim for ACP has been rejected.

9. Arguments were heard and documents perused. The applicants have joined as L.D.Cs. When the ACP Scheme was introduced, they had not put in 12 years of service. Before they could complete 12 years of service, restructuring had taken place and they having got the compute skill, have been absorbed as Tax Assistants. As regards entitlement to ACP benefits, certain clarifications in the case of restructuring have been given by the Department of Personnel and Administrative Reforms and the same are as under:-



S.No.	Point of doubt	Clarification
1	<p>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?</p>	<p>Since the benefits of upgradation under 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.</p>

S.No.	Point of doubt	Clarification
35	Whether placement/ appointment in higher scales of pay based on the recommendations of the pay Commissions or 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?	<p>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/upgradation. 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/upgradation.</p> <p>If the rationalised/restructured grades require possession of a specific nature of qualification and experience, not specified for the existing posts in pre-rationalised set up, and existing incumbents in pre-rationalised scales/pre-structured grades, who are in possession of the required qualification/experience are placed directly in the rationalised upgraded post, such placement will also not be viewed as promotion/upgradation. However, if existing incumbents in the pre-rationalised grades who do not possess the said qualification /experience are considered for placement in the corresponding rationalised grade only after completion of specified length of service in the existing grade, then such a placement will be taken as promotion/upgradation.</p>

S.No.	Point of doubt	Clarification
		<p>Where placement in a higher grade involves assumption of higher responsibilities and duties , then such upgradation will be viewed as promotion/upgradation.</p> <p>Where only a part of the posts are placed in a higher scale and rest are retained in the existing grade, thereby involving redistribution of posts, then it involves creation of another grade in the hierarchy requiring framing of separate recruitment rules for the upgraded posts. Placement of existing incumbents to the extent of upgradations involved in the upgraded post will also be treated as promotion/upgradation and offset against entitlements under the ACPS.</p> <p>For any doubts in this regard, matter should be referred to the Department of Personnel and Training (Establishment 'D' Section) giving all relevant details.</p>

S.No.	Point of doubt	Clarification
52	<p>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', and 'A' and 'C' i.e. the entry level and the first promotional grade are in the same scale. What shall be his entitlements under ACPS.</p>	<p>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 promotion 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 1.0.2.2000. 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 can not 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 O.M.dated 10.2.2000, pay in such cases shall be fixed under the provisions of FR 22 (i)(a)(1) subject to a minimum benefit of Rs.100.</p>

S.No.	Point of doubt	Clarification
55	A cadre has been restructured with proper sanction but the recruitment rules for the restructured grades are still to be framed. Whether the individuals be granted financial upgradation in the existing hierarchical order or in the revised hierarchical order introduced subsequently.	Financial upgradation under ACP Scheme is to be allowed under the hierarchy existing as on 9.8.1999 or at the time one becomes eligible, which ever is later. Since a new hierarchy has come into being, financial upgradations may be allowed only in the restructured hierarchy. If model Recruitment Rules exist for such restructured grades, then Screening Committee may review cases on the basis of such model rules? Otherwise, ACPS may be allowed after finalisation of Recruitment Rules but the benefit may be allowed from the due date.

10. Applicants rely upon the above clarifications to hammer home his point that in their being absorbed as Tax Assistant, the same cannot be a case of promotion and as such, they are entitled to ACP benefits. In so far as the creation of Tax Assistant is concerned, the same is by way of a clear recruitment Rule vide Annexure R-9 dated 2nd September 2003. This Rule provides for appointment as Tax Assistant (Serial No. 2) as well as L.D.Cs (Serial No. 9). In so far as Tax Assistant is concerned, the mode of recruitment is 25% by promotion from among eligible group C/D employees with a minimum service of 5 years and with prescribed qualifications. Thus, restructuring is not by way of abolition of the post of LDCs altogether.

11. As regards absorption of the applicants and similarly placed L.D.Cs as Tax Assistants, the same took place prior to the coming into force of the Recruitment Rules and the respondents have invoked the provisions contained in Annexure R-3 order dated 19-07-2001 read with their earlier order dated 10-07-2001. The said memorandum provides for vacancies kept alive for LDCs to be absorbed as Tax Assistant on their acquiring the computer skill. It is only after such absorption,

that the remaining ones would be thrown open to be filled in from among the Group D employees with requisite qualifications (to the extent of 25%) and the balance by direct recruitment. In Annexure R-2 and R-3, such an absorption of L.D.Cs has been clearly indicated as promotion.

12. The erstwhile UDCs in the Income Tax Department were only re-designated as Tax Assistants and in their case it is a mere change in nomenclature.

13. If the contention of the applicants is accepted that their absorption is on account of restructuring coming within the purview of the clarifications contained in the above extracted clarification points, the same would lead to an anomalous situation as explained hereafter. An individual joined the department in 1987 as LDC and he did not have any promotion till 9-8-99. He would then be getting one financial upgradation under the ACP Scheme and would be placed in the scale of pay of Rs 4000 – 6000. Another individual who joined as LDC much later, having not put in 12 years before the restructuring, but having the computer skill is absorbed as Tax Assistant in the scale of pay of Rs 4000 – 6000. If the latter is now granted financial upgradation in the scale of Rs 5000 - 8000, it would amount a person rank junior in the grade of LDC being placed in the higher pay scale. It is to avoid such an anomalous situation, that such LDCs being absorbed as Tax Assistants are treated as having been promoted, to bring them at par with other L.D.Cs who had been either promoted as UDC or had been afforded first financial upgradation.

14. The authority relied upon by the respondents fully applies in this case and we are in respectful agreement with the same. Attempt made by the counsel for the applicant to distinguish that case from the case of the applicants stating that in

that case the financial upgradation was granted prior to merger has thus to fail.

15. In view of the above, the OA fails and is dismissed. No cost.

Dated the23rd.....October, 2008.


Ms.K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER