

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 575 OF 2008

Monday....., this the 12th day of October, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

B. Sukesh,
S/o. C. Balakrishnan,
Statistical Investigator, Gr. III,
Directorate of Census Operations,
CGO Complex, Poonkulam,
Vellayani P.O., Trivandrum,
Residing at : No. TC-4/1931,
PCWA-A54, Pandit Colony,
Kavadiar P.O., Trivandrum.

... Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Home Affairs, New Delhi.
2. The Registrar General, India,
(Govt. of India, Ministry of Home Affairs),
2-A, Mansingh Road, New Delhi : 110 001
3. The Deputy Director,
Directorate of Census Operations, Kerala,
CGO Complex, Poonkulam,
Vellayani P.O., Trivandrum – 22
4. The Joint Director,
Directorate of Census Operations, Kerala,
CGO Complex, Poonkulam,
Vellayani P.O., Trivandrum – 22
5. The Director,
Directorate of Census Operations, Kerala,
CGO Complex, Poonkulam,
Vellayani P.O., Trivandrum – 22

... Respondents.

(By Advocate Ms. Aysha Youseff, ACGSC)



The Original Application having been heard on 05.10.2009, the Tribunal on12-10-2009..... delivered the following:

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

A few dates and events are absolutely necessary to have a hang of the case. The same are as hereinafter narrated.

09-08-1999: Introduction of Assured Career Progression in respect of certain categories of government employees. Applicant is covered under the said scheme.

01-01-1996: Implementation of the recommendations of the Fifth Central Pay Commission. Also, recommendations of the Pay Commission in respect of restructuring of the Statistical Cadre in various departments. Para 70.8 of the report refers

29-09-2000: Implementation of the restructuring as recommended by the V Central Pay Commission (vide Annexure A2) By this, the erstwhile hierarchy consisting of Asst. Compiler (Pay Scale Rs 3050 - 4590), Copmputor (Pay Scale Rs 4000 - 6000), Statistical Assistants (Pay Scale Rs 4500 - 6000) and Investigators (Pay Scale Rs 5500 - 9000) has been restructured as Assistant Compilers (Pay Scale Rs 3050 0 4590), Compilers (Pay Scale Rs 4000 - 6000) Senior Compilers (Pay Scale Rs 4500 - 7000), Statistical Investigator (Gr. III) (Pay Scale Rs 5000 - 8000) Statistical Investigator (Gr. II) Pay Scale Rs 5500 - 9000) and Statistical Investigator (Gr. I) (Pay Scale Rs 6500 - 10500). Existing incumbents to various posts as on 22-09-2000 to be placed in the identical scale or higher scale on the basis of seniority and also on fulfillment of specified experience as for promotion to the higher grade as per the



said order dated 22-09-2000. For such placement, direct recruitment vacancies to the extent needed would be filled up by promotion as a one time measure and if after so catering also, there are excess individuals, they would be adjusted against the future vacancies.

24-10-2000: All the statistical assistants in the then existing statistical cadre in the pay scale of Rs 4500 – 7000 were to be placed in the new grade of Statistical Investigator Gr. III in the scale of pay of Rs 5,000 – 8,000 with retrospective effect from 01-01-1996. Other placements as per order dated 29-09-2000 to take place w.e.f. 30-09-2000 (This date was subsequently modified to read as 29-09-2000). Annexure A-3 refers. Distribution of the posts of Statistical Investigator Gr. III, Senior Compilers and Compilers for Kerala have been allotted as respectively 22, 11 and 29.

28-05-2001: Orders issued with regard to placement of incumbents to the post of senior compiler (w.e.f. 29-09-2000) and compilers (w.e.f. 29-09-2000). The applicant had been placed under the latter post. Annexure A-4 refers.

15-06-2001: Orders passed placing the various individuals including the applicant to the post of Statistical Investigator Gr. III with effect from various dates as contained therein. Applicant was placed in the said post of Statistical Investigator in the scale of pay of Rs 5000 – 8000 w.e.f. 18-10-2000. All the seniors who were granted the said placement on various other dates, were uniformly brought to a single date of 29-09-2000 i.e. the date when the restructuring came into effect. Annexure A -5 read with A-8 refers.

2. While the above is the position with regard to the entire cadre, as regards the applicant, the following are the details:



03-08-1970: Applicant entered the services of the respondents as Assistant Compiler in the then grade of Rs 110 – 150/260-400 (3050-4590 Fifth Central Pay Commission).

1980: Granted one promotion as Computer in the grade of Rs 330 – 560/1200 – 2040/Rs 4000 – 6000.

09-08-1999: Applicant became eligible for the second financial upgradation on completion of 24 years of service or 09-08-1999 whichever is later. The applicant was in the pay scale of Rs 4000 – 6000.

01-06-2000: Affording the second ACP, the applicant was placed w.e.f. 9-8-1999 in the pay scale of Rs 4,500-7000 (and giving the benefit of deferring the same till the date of drawal of the increment in the old scale) and fixing the pay w.e.f. 01-04-2000 in Rs 5625/-

02-08-2001: As the pay scale of Statistical Assistant was replaced by Rs 5000-8000 with retrospective effect from 01-01-1996, the above ACP was revised and the applicant placed in the scale of Rs 5000 – 8000, w.e.f. 01-04-2000 in the stage of Rs 5750.

04-08-2003: As the audit objected to the above fixation stating that the benefit of one notional increment had been granted both at the time of fixation in the scale of Rs 4500- 7000 as well as at the time of fixation in the scale of Rs 5000 – 8000, the pay was revised and the applicant placed in the stage of Rs 5600 w.e.f. 01-04-2000.

18-10-2000: The applicant was placed in the post of Statistical investigator Gr. III (pay scale Rs 5000 – 8000) on regular basis.

2. The Grievance of the applicant: The grievance of the applicant is that vide Annexure A-6, it has been clarified -

"The financial upgradation under the ACP Scheme has been provided to the incumbents of the post of Computer in its promotional post of Statistical Assistant in the pay scale of Rs 4500 – 7000 w.e.f. 09-08-1999. However, since the pay scale of Statistical Assistant has later been upgraded retrospectively w.e.f. 01-01-1996, the financial upgradation to the incumbents of the post of computer shall now be provided to them in the upgraded pay scale of Rs 5000 – 8000 instead of Rs 4500 – 7000"

3. According to the applicant the above is ultra vires of Annexure A-2 and the ground raised in this regard vide Ground A is as under:-

" The applicant begs to submit that the fixation of pay of the applicant as Senior Compiler, Statistical Investigator Gr.III etc. is to be made only in the light of Annexure A2 order dated 29 Sept 2000 which is the foundation of the revised cadre structure. It may be noticed that the same is retrospective with effect from 1.1.1996 only in the matter of placing all the existing Statistical Assistants in the office of RGI and Directorates of Census Operation in the grade of Statistical Investigator Gr.III. For all other material purpose as, every other part of Annexure A2 revised structure would come into force only with effect from the date of the order, namely, 29.9.2000. The existing incumbents in the posts of Investigator, Statistical Assistant, Computer and Assistant Compiler shall be placed in the order of seniority against the posts in the new structure of the statistical cadre having the identical scales or in the higher pay scales if they have completed requisite number of regular service in the equivalent posts in the existing cadre as laid down in the proposed method of recruitment for the higher posts in the new structure without conducting the formal departmental promotion committee meeting. In other words, in order to be placed in the higher grade in the new cadre structure or promoted to the new cadres in the revised hierarchy, one must fulfill the requisite conditions for promotion as mentioned in the proposed method of recruitment by promotion in Annexure A2. In fine, if one is to be brought over to the cadre of Senior Compiler as on 29.9.2000, if he

were to be a Statistical Assistant, he can be directly brought over to the cadre of Sr. Compiler since he is in the identical pay scale. But if he were to be a computer (previous designation), to be fitted as Senior Compiler in scale Rs.4500-7000 (revised new service) he must put in 5 years regular service as a Computer in scale Rs.4000-6000 or he must be a Computer in scale Rs.4000-6000, with 8 years service as Computer and Assistant Compiler in scale Rs.3050-4590 put together. Similarly, if a Computer were to be fitted/promoted as Statistical Investigator Gr.III, he must first be promoted as Sr. Compiler and as Senior Compiler and Computer (erstwhile Computer) put together he must have eight years of combined service. The cadre of Statistical Assistants as it existed was not upgraded with effect from 1.1.1996 to the scale of pay of Rs.5000-8000. Only the incumbents were granted the benefit of Rs.5000-8000. In so far as the applicant is concerned, going by Annexure A2 read with Annexure A3 and since the applicant did not fall within the first 11 among the Computers, he was designated / adjusted as Compiler on 29.9.2000, as if he had been regularly promoted/ appointed to that post with effect from 29.9.2000. Thereafter, if any vacancies were to arise on the same date in the cadre of Senior Compiler consequent on the promotion of the Senior Compilers as Statistical Investigator Gr.III (newly formed] after adjusting the existing Statistical Assistants, the applicant must be promoted as Senior compiler with in scale Rs. 4500 - 7000 with effect from the same date, which the respondents seem to have done. Since the applicant would be a Sr. Compiler 8 years combined service as Sr.Compiler and Compiler (Computer) put together, the applicant was promoted as Statistical Investigator Gr. III with from 18.10.2000 by Annexure A5 order. There is no direction in Annexure A2 to revise the benefits of any ACP to anyone in particular, while implementing Annexure A2 orders. Thus, from the facts of the applicant's case, it may be seen that he was initially appointed as an Assistant Compiler on 3.8.1970 and as a Computer during 1980. As on 9.8.99 he was rightly granted the financial upgradation in the scale of pay of Rs.4500-7000. As on 29.9.2000. 11 posts of Sr. Compilers were sanctioned for the Kerala Circle by Annexure A3 order. Since Vacancies in the Cadre of Statistical Investigators, Gr.III existed the applicant was rightly fitted so by Annexure A5 order as Statistical Investigator Gr.III with effect from 18.10.2000. Between 9.8.99 and 29.9.2000 the applicant had not undergone any regular promotion and, therefore, the applicant's adjustment as Sr.



Compiler as on 29.9.2000 should be treated as regular promotion/appointment to the post Sr. Compilers in scale Rs.4500-7000 (the grade which was granted to the applicant under the ACP Scheme). Since the applicant stood regularly promoted/adjusted as Sr. Compiler in scale Rs.4500-7000, he became entitled to be considered and promoted as Statistical Investigator Gr.III as on the date the vacancy arose i.e 18.10.2000 and accordingly he was promoted with effect from 18.10.2000 from the cadre of Sr. Compilers. As on 18.10.2000, in the scale of pay of Rs.4500-7000, the applicant was drawing a basic pay of Rs.5625/-. The applicant is entitled to have his pay fixed in the cadre of Statistical Investigator Gr.III in scale Rs.5000-8000 under FR 22(1). Hence the applicant is entitled to have his pay fixed at the stage of Rs.5,900/- as on 18.10.2000 in scale Rs.5000-8000. Annexures A6, A7, A12, A13, A14, A16, A19 and A20, to the extent they deny the benefits as aforesaid, are arbitrary, discriminatory, contrary to law and hence violative of Articles 14 and 16 of the Constitution. "

4. The core issue: According to the applicant, his second ACP should have been granted in the scale of pay of Rs 4,500 – 7000 (statistical assistant) and then he should be given the promotion to the grade of Rs 5000 – 8000 w.e.f.18-10-2000.

5. According to the respondents, however, the pay scale fixed vide order dated 04-08-2003 is correct.

6. The situation in this case:

(a) Originally there was a particular hierarchy till 28.09.2000 and the same was Assistant Compiler (3050 – 4590); Computer (4000 – 6000) and statistical Assistant (4500 – 7000) and above.

(b) w.e.f. 01-01-1996, the pay scale of Statistical Assistant had been revised to Rs 5000 – 8000.

(c) w.e.f. 09-08-1999, the applicant who was holding the post of computer and who had put in more than 24 years of service on that date became entitled to the grant of ACP.



(d) w.e.f. 18-10-2000 the applicant was promoted as Statistical Investigator in the grade of Rs 5000 – 8000.

7. **The rule position:** The DOPT has given the following clarification when there is change in the hierarchy or when a cadre undergoes restructuring at the time when ACP is due. The same is as under:-

<i>Point</i>	<i>Clarification</i>
A cadre consists of 4 Grades - "A" "B" "C" and "D" (in ascending order). Upon restructuring of a cadre, Grade "B" is abolished from a date subsequent to 9-8-1999. Employees recruited in Grade "A", who are eligible for financial upgradation on or after 9-8-1999 but before the date of effect of restructuring, get first/second financial upgradation in Grade "B" and "C" respectively but those who become eligible for financial upgradation after the restructuring has been effected, are entitled to the first financial upgradation in Grade "C" and second financial upgradation in Grade "D". This is anomalous. The cases of earlier set of employees should be reviewed and they may be allowed financial upgradations as applicable to the latter category of employees.	The benefit of ACP Scheme is to be allowed as per the hierarchy existing, as on the date the employees become eligible for financial upgradation under ACPs. Cadre/hierarchical structures are never static and are always subject to review based on recommendation of Pay Commission/Expert Committees or otherwise and it is not possible to review the entitlements under ACPS already earned every time a cadre is reviewed. ACPS is only a temporary solution to provide relief to stagnating employees and the lasting solution for stagnation lies in review of cadre structures, as regular promotions will be earned in such restructured grades. All the employees will benefit from such cadre restructuring.

8. Telescoping the above rule position upon the facts of the case, the following situation would emerge:-

9. The applicant was originally appointed as Assistant Compiler. He got one promotion to the post of Computer in 1980. His next promotional post as on 9-8-1999 in the then existing hierarchy is statistical Assistant. This was originally in the grade of Rs 4500 – 7000 but with retrospective effect from 01-01-1996 underwent an upward revision at Rs 5000 – 8000. Thus, the applicant's entitlement under ACP would as on 09-08-1999 be fixation of pay

in the scale of Rs 5000 – 8000. He chose to avail of this benefit w.e.f. 01.04.2000, when also the same hierarchy continued. Thus, his pay as on 01-04-2000 would be fixed as under:-

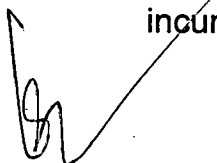
Pay in the scale of Rs 4000 – 6000 as on 09-08-1999:	Rs 5300
Pay in the scale of Rs 4000 – 6000 as on 01-04-2000:	Rs 5400
Pay after adding Notional increment in the lower scale of pay	Rs 5500
Stage in the higher pay scale of Rs 5000 – 150 – 8000	Rs 5600

10. His position as on 28-09-2000 : Functioning as Computer, with the benefit of 2nd ACP in the scale of Rs 5000 – 8000. He has not been promoted to the post of Statistical Assistant as on that date.

11. Now, as per order at Annexure A-2, dated 22nd September, 2000, the adjustment of the incumbents as on that date in the new hierarchy as under:-

“ The following procedure shall be adopted for placement of existing incumbents in the cadre :

- (i) The existing incumbents in the post of Investigator, Statistical Assistant, Computer and Assistant Computer shall be placed in the order of seniority against the posts in the new structure of the statistical cadre having the identical pay scales or in the higher pay scales if they have completed requisite number of years of regular service in the equivalent posts in the existing cadre as laid down in the proposed method of recruitment for the higher posts in the new structure, without conducting the formal Departmental Promotion Committee Meeting.
- (ii) The direct recruitment quota would be used for the placement of the existing incumbents to the extent necessary, as a one time measure. The direct recruitment quota shall be filled up later with the releasing of the posts due to promotion, retirement, etc. of the incumbents.
- (iii) In case, requisite number of posts are not available in the equivalent pay scale in the new cadre, the incumbents shall be adjusted against the strength of



the higher or lower posts till the posts in the equivalent scale are available. They may be also adjusted against posts created for Census of India 2001, if necessary.

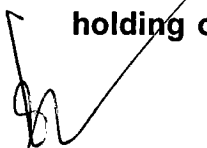
The said order also provided for as under:

" The placing of all the existing Statistical Assistants in the Office of RGI and Directorates of Census Operation in the grade of Statistical Investigator Gr.III will be implemented with effect from 1.1.1996. The rest of the benefits to the existing incumbents will be given from the date of issue of this Order."

12. Since the pay scale of statistical assistant had been revised w.e.f. 01.01.1996 Rs 5000 – 8000 w.e.f. 01.01.1996 and since the same pay scale is available in the restructured cadre in the post of Statistical Investigator, the respondents had permitted placing of all the then existing Statistical Assistants in the grade of Statistical Investigator Gr. III w.e.f. 01.01.1996. In respect of other posts, the date of restructuring has been kept as 29-09-2000 only.

13. Thus, the applicant's position as on 29-09-2000 would be that he having been functioning as Computer in the pre-restructured grade, was placed as compiler in the grade of Rs 4000 – 6000, vide Annexure A-3. Again, as on 18-10-2000, the applicant was promoted in the grade of Statistical Investigator Grade III, in the scale of pay of Rs 5000 – 8000. Annexure A-5 read with A-6 refers.

14. Thus the fixation of pay on grant of ACP as on 09-08-1999 (or for that matter as on 01-04-2000) when the new hierarchy was not born, had been rightly fixed as per Annexure A-19 in the scale of Rs 5000 – 8000 as per the clarification given above. **Application of Annexure A-2 comes only w.e.f. 22-09-2000 and not anterior to it in the case of the applicant who was holding only the post of Computer as on that date.** By the time his case



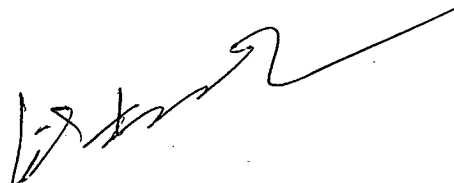
comes within the above provision, he had already received the second financial upgradation as on 01-04-2000 but in the same post of Computer. As such, considering his seniority position in the said grade, further promotion to the grade of Statistical Investigator Grade III has been given in the very same grade of Rs 5000 – 8000 w.e.f. 18-10-2000. If the applicant has any grievance in regard to grant of promotion to the higher grade of Statistical Investigator, Grade III, he has to have the grievance redressed in accordance with law. He cannot mix the same with the ACP which was paid to him as per the rules w.e.f. 01-04-2000.

15. Thus, we do not find any illegality in the impugned order. The O.A. is thoroughly misconceived and hence **dismissed**. No costs.

Dated, the 12th October, 2009.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs