

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.60/2008

FRIDAY, this the *31st* day of October 2008

C O R A M :

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

HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER

1. **KENDRIYA VIDYALAYA NON-TEACHING STAFF ASSOCIATION**
represented by its General Secretary C.S.Prem,
S/o.late C.G.Stephen,
Residing at Chiramel House,
Thoppumpady, Kochi – 682 005.
2. **K.SUNDARESAN, S/o.Kesavan,**
Group 'D' Staff, Kendriya Vidyalaya,
Pangode, Trivandrum District.
Residing at Vakiyakonoth Moozhiyil Puthen Veedu,
Moongode, Peyad P.O., Trivandrum District.
3. **N.T.CHANDRAN, S/o.N.T.Govindan,**
(Retired Group 'D' Staff,
Kendriya Vidyalaya No.I. Calicut)
Residing at Revathy House,
Melekuzhambarath, Vengeri P.O.,
Calicut – 673 010. ...Applicants

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. **The Commissioner,**
Kendriya Vidyalaya Sangathan,
18 – Institutional Area, Shahid Jeet Singh Marg,
NEW DELHI – 110 016.
2. **The Assistant Commissioner,**
Kendriya Vidyalaya Sangathan,
Regional Office, I.I.T.Campus,
CHENNAI – 600 006.
3. **The Secretary to the Government of India,**
Ministry of Personnel, Public Grievances
& Pensions, Department of Personnel & Training,
North Block, NEW DELHI – 110 001. Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

**This application having been heard on 16.10.2008
the Tribunal on *31-10-08* delivered the following :-**



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

The Kendriya Vidyalaya Non-teaching Staff Association, and two ^{are} others, the applicants in this O.A. Their grievance is that the Group D employees are not extended the benefit of A.C.P. Scheme on the ground that they do not possess the requisite qualification for promotion to the next higher post of LDC/ Lab Attendants. The second applicant is a serving employee while the third is retired one.

2. Briefly the case of the applicants is that all the Group D employees have educational qualifications of less than VIII Standard. Appointment to the post of Lab attendant is by way of promotion failing which by Direct Recruitment and the educational qualification prescribed is Middle pass with General Science. And, appointment to the post of LDC is by way of Direct recruitment to the extent of 90% and by way of promotion in respect of the balance 10% and the qualification for promotion to the post of L.D.C. is matriculation.

3. A scheme called the ACP Scheme has been introduced w.e.f. 9-8-1999 in respect of Government employees vide Annexure A-3 and condition No. 6 thereof reads as under:-

"6. Fulfilment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees etc.,) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purpose and restriction of the ACP scheme for financial and certain other benefits (House Building Advance, allotment of Government



accommodation, advances etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts etc.) shall be ensured for grant of benefits under the ACP Scheme;."

The above scheme with all the attendant conditions had been extended to the employees of KVS, vide Annexure A-4.

4. Vide Annexure A-5 Office Memorandum dated 01-06-2001, certain clarifications have been given by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) which stipulate as under:-

No.35034/2//2001-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions.
(Department of Personnel and Training)

New Delhi-110001
June 1, 2001.

OFFICE MEMORANDUM

Subject:- Grant of financial upgradations under the Assured Career Progression Scheme to Group'D' civilian employees of the Central Government – clarification regarding.

The undersigned is directed to say that the clarification issued by the Department of Personnel and Training (DoP&T) in reply to the Point of Doubt No.9 vide Office Memorandum (O.M.)No.35034/1/97-Estt(D)(Vol.IV) dated February 10, 2000 regarding financial upgradations admissible under the Assured Career Progression (ACP) Scheme to the Group'D' civilian employees of the Central Government has been reviewed in the light of the Ministry of Finance (Department of Expenditure) O.M.No.6/1/98IC-I dated February 12, 2001 (Copy enclosed), whereby an elongated pay-scale of Rs.2610-60-2910-65-3300-70-4000 (S-2A) has been introduced with effect from 1.1.1996 in replacement of the pre-revised elongated pay-scale of Rs.775-12-871-14-955-15-1030-20-1150, which was applicable to all Group 'D' employees, other than those in the industrial and workshop categories and in the Railways. It has accordingly been decided that financial upgradations under the ACP Scheme introduced vide DoP&T O.M.No.35034/1/97-Estt(D) dated August 9, 1999, shall be



allowed to Group 'D' civilian employees of the Central Government in the revised hierarchical grades/pay-scales after taking into account the revised elongated scale S-2A, wherever applicable, provided that all the conditions specified in the ACP Scheme, including fulfillment of all promotional norms are met. This is, however, subject to the following:-

First financial upgradation on completion of 12 years of regular service shall be at least to the pay-scale of Rs.2610-60-2910-65-3300-70-4000 (S.2A).

The second financial upgradation on completion of 24 years of regular service shall be at least to the pay scale of Rs.2750-70-3800-75-4400 (S-4). However, where Group 'D' civilian employees of the Central Government are Matriculates and are eligible for promotion to the post of Lower Division Clerk (LDC), the second financial upgradation in their case shall be at least to the pay-scale of Rs.3050-75-3950-80-4590 (S-5).

The above decisions shall be effective from August 9, 1999 which is the date of introduction of the ACP Scheme.

The financial upgradations under the ACP Scheme already granted to Group 'D' employees should, as such, be reviewed and revised in the light of the above decisions.

In certain Ministries/Departments/Organisations, Group 'D' employees initially recruited at S-2/S-3 level have been allowed financial upgradation under the ACP Scheme in the LDC Grade (S-5) even without possession of prescribed educational qualification viz. Matriculation. Such upgradation has been allowed erroneously, as in terms of the Condition No.6 of the ACP Scheme notified on August 9, 1999, fulfillment of all promotional norms (including educational qualification, if any, specified in the relevant Recruitment Rules/Service Rules), prescribed for grant of regular promotion is an essential requirement for grant of financial upgradations in the hierarchical grades. Such cases should, therefore, be reviewed and excess payments already made be recovered forthwith.

All Ministries/Departments may give wide circulation to these decisions for general guidance and appropriate action in the matter.

Sd/-
(K.K.JHA)
DIRECTOR (Establishment)

 All Ministries/Departments of the Government of India

5. Vide Annexure A-6, the office of the C & A.G. made further clarification in this regard, which states as under:-

A.G.(Audit) H.Sectt.
AG Pt.No.607 dt.22.10.01
Office of the Comptroller and Auditor General of India
New Delhi – 110 002.

Circular No.41/NGE/2001
No.1140 NGE(App.)/34-2001 Vol.II
Dated 18th October, 2001.

To All Heads of Department in IA&AD
(as per mailing list).

Subject:- Grant of financial upgradation under the ACP
Scheme to Group 'D' Civilian employees of the
Central Govt.

Sir/Madam,

I am directed to refer to DoP&T O.M. No.35034/2/2001-Estt (D) dated 1.6.2001 wherein it has been clarified that the persons recruited to the pay scale of Rs. 2550-3200 shall be allowed 1st and 2nd financial upgradations at last to the pay scales of Rs.2610-4000 and Rs/2750-4400 respectively.

Some field Offices have sought clarification whether the Group'D' employees who do not possess the educational qualification for promotion to the post of Record Keeper shall also be allowed 2nd financial upgradation to the pay scale of Rs. 2750-4400 (S-4). The department of P&T to whom the matter was referred have since clarified that the Group'D' employees who do not possess the educational qualification of 8th standard shall also be allowed 2nd financial upgradation to the pay scale of Rs. 2750-4400 (S-4) in relaxation of condition No.6 of ACP Scheme notified on 9.8.99.

.....

Yours faithfully

Sd/-
(A.K.SINHA)
SR.ADMINISTRATIVE OFFICER (APP)

6. The Group D employees have been the beneficiaries of the



aforesaid scheme but by Annexure A-7 order dated 31-10-2007, the same was sought to be withdrawn, with a further direction to recover the amount paid to the employees.

7. The First applicant took up the case with the authorities vide Annexure A-8 representation dated 05-12-2007. It was stated therein that since the Group D employees do not have qualifications required for further promotion, they must be deemed to be holding the isolated posts and on the same basis of Annexure A-6 order of the C & A.G., the Group D employees should be allowed to continue to enjoy the ACP. And in any event, recovery cannot be effected as the same is not on any mis-statement of the employees. Reliance was placed upon the decision of the Apex Court in the case of Shyam Babu Verma. And, as there has been no response, the applicants have moved this Tribunal with the following prayer:-

i) Call for the records leading to the issue of Annexure A7 and quash the same;

ii) Declare that the Group 'D' employees of the KVs irrespective of the fact they have the qualification of VIII Std. or not are entitled to be granted the 1st financial upgradation in the scale of pay of Rs.2750-4400 if they do not possess the qualification of matriculation and to the scale of pay of Rs.3050-4590 if they possess the qualification of matriculation;

iii) Direct the respondents to grant the applicants and the members of the 1st applicant Association represented in this O.A. all consequential benefits from such day from which they are entitled to in terms of Annexure A3 read with Annexure A4 with all consequential arrears of pay and allowances arising therefrom;

8. At the time of admission hearing, stay of Annexure A-7 order has been ordered vide order dated 28-01-2008.

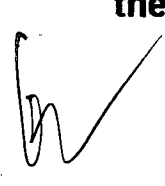


9. Respondents have contested the O.A. According to them, since the ACP can be granted only when the requisite conditions are fulfilled and condition No. 6 not being fulfilled in this case, the group D employees who do not possess VIII standard qualifications, are not entitled to any ACP and recovery is inevitable.

10. Counsel for the applicant emphasized upon Annexure A-5 and A-6 orders and contended that where provisions exist for induction into Group D grade with qualifications less than VIII standard, and where persons were so inducted into service, they should be treated as having been holding isolated posts.

11. Counsel for the respondents submitted that since Recruitment Rules provide for promotion to the post of Lab Attendant and LDCs, the posts held by the Group D employees cannot be treated to be isolated.

12. Arguments were heard and documents perused. Annexure A-6 is specific that group D employees who do not possess the educational qualifications of 8th standard shall also be allowed the 2nd financial upgradation to the pay scale of Rs 2750 – 4400 in relaxation of condition No. 6 of the ACP Scheme notified on 9th August, 1989. This is the clarification given by the DOPT which issued the Annexure A-5 order. Annexure A-5 and A-2 orders are in whole clarifications of the Annexure A-2 order dated 09-08-1999 which has been extended to the KVS, vide Annexure A-2 order. Thus, Annexure A-5 and A-6




orders equally apply to employees of KVS and in view of the fact that for group D employees who are not holders of the qualifications of VIII Standard, are to be given relaxation to the requirement of qualifications for higher post, such a relaxation is available to group D employees of KVS as well.

13. Thus, the OA is allowed to the extent that all the Group D employees with qualifications less than VIII standard are entitled to the two financial upgradations, (a) in the scale of Rs 2610 – 4000 (first Financial upgradation) and (b) Rs 2750 – 4400 (second financial upgradation). If the applicants and other members of the Applicant No. 1 have been paid the above said ACP benefits, they are entitled to retain the same and Annexure A-7 shall not be applicable to them. Instead, if for any reason, any of them who do not possess the requisite qualification as VIII Standard have been granted any higher pay scale under the ACP, the same shall have to be reviewed and reduced to the above level though no recovery on account of erroneous fixation of pay shall be made, in view of the fact that such a recovery cannot be made as per the law laid down by the Apex Court in the following cases:-

(a) Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18:
"....it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

(b) Bihar SEB v. Bijay Bhadur, (2000) 10 SCC 99 :
"We do record our concurrence with the observations of this Court in Sahib Ram case 1 and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not



possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time."

(c) Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709 :

"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide Sahib Ram v. State of Haryana, Shyam Babu Verma v. Union of India, Union of India v. M. Bhaskar and V. Gangaram v. Regional Jt. Director):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

(d) Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492 :

"We do record our concurrence with the observations of this Court in Sahib Ram case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point



of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. "

14. No cost.

Dated the 31st October, 2008.


Ms.K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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