

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.589/08

&

O.A.No.591/08

Friday this, the 29th day of January, 2010

CORAM:

**HON'BLE SRI GEORGE PARACKEN, MEMBER(J)
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)**

O.A.No.589/08

C.K.Ramachandran, aged 58 years,
S/o (late) K.Karunakara Kurup,
Superintendent of Central Excise,
Calicut Commissionerate, Calicut,
Residing at: House No.29/2400-C,
"Laxmi Padmani", Pipe Line Road,
Kuthiravattom Post, Calicut-673 016.

.. Applicant

By Advocate: Sri T.C.Govindaswamy

vs.

1. Union of India, represented by
The Secretary to the Govt. of India,
Ministry of Finance, Department of Revenue,
New Delhi.
2. The Joint Secretary (Administration),
Central Board of Excise & Customs,
Ministry of Finance, Department of Revenue,
New Delhi.
3. The Chief Commissioner of Central Excise & Customs,
Kochi-682 018.
4. The Commissioner of Central Excise & Customs,
Calicut Commissionerate, Calicut.
5. The Secretary to the Government of India,
Department of Personnel & Training,
Government of India, New Delhi.

.. Respondents

By Advocate: Mr. Millu Dandapani, ACGSC

O.A.No.591/08

V.Sadanandan.Nair, aged 62 years,
S/o K.Krishnan Nambiar,
(Retd. Superintendent of Central Excise,
Calicut Commissionerate, Calicut),
Residing at: No.2/18-A, Mannilparamba,
East Hill, Calicut-673 005.

.. Applicant

By Advocate:Sri T.C.Govindaswamy

vs.

1. Union of India, represented by
The Secretary to the Govt. of India,
Ministry of Finance, Department of Revenue,
New Delhi.
2. The Joint Secretary(Administration),
Central Board of Excise & Customs,
Ministry of Finance, Department of Revenue,
New Delhi.
3. The Chief Commissioner of Central Excise & Customs,
Kochi-682 018.
4. The Commissioner of Central Excise & Customs,
Calicut Commissionerate, Calicut.
5. The Secretary to the Government of India,
Department of Personnel & Training,
Government of India, New Delhi.

.. Respondents

By Advocate :Mr.Sunil Jacob Jose, SCGSC

The application having been heard on 13.01.2010,the Tribunal on

delivered the following:-

ORDER

HON'BLE SHRI K.GEORGE JOSEPH, MEMBER(A):

O.A.Nos.589/08 and 591/08 were heard together as the applicants in both the cases were aggrieved by an order denying the benefit of the financial upgradation under the Assured Career Progression Scheme.

O.A.No.589/08

2. The applicant joined the service as Stenographer on 21.9.1971 in the ministerial cadre in the Central Excise & Customs Department. The regular channel of promotion in this cadre is to the post of Deputy Office Superintendent/Administrative Officer/Chief Administrative Officer etc. There is another line of promotion to 25% of the vacancies in the executive cadre of Inspector of Central Excise through a competitive examination. The applicant joined the Inspector's cadre on 15.3.75, later promoted as Superintendent on 17.3.93.

3. Persons appointed by direct recruitment as Inspectors of Central Excise later than the applicant are granted the benefit of promotion as Superintendent and later the second financial upgradation on completion of 24 years of service the pay scale of Assistant Commissioner of Central Excise under the Assured Career Progression Scheme. But the applicant is denied any upgradation to the pay scale of Assistant Commissioner of Central Excise. Hence the O.A.

O.A.591/08

4. The applicant was appointed as Lower Division Clerk on 29.6.1964 in the Central Excise and Customs Department. He was promoted as Upper Division Clerk in 1972. He joined the Inspector's cadre in the quota of 25% vacancies through a process of competitive examination on 15.3.75. He was further promoted as Superintendent on 16.3.1993. He is also denied upgradation on completion of 24 years in the pay scale of Assistant Commissioner.

5. Both the applicants seek a declaration that they are entitled to be granted the benefit of second financial upgradation/stepping up of pay with effect from 9.8.99 in the scale of pay of Rs.8000-13500 with all consequential arrears of pay and allowances arising therefrom.

6. The grounds for relief are the same in both the O.As. They were denied the second financial upgradation on the ground that the ACP scheme of Haryana Govt. is different from the ACP scheme of the Central Govt. Therefore the Supreme Court's

judgment in Appeal(Civil) No.3250/2006 is case specific and is not applicable to the ACP formulated for the Central Govt. employees and that no anomaly is fixed under the ACP scheme of the Central Govt. which is purely personal to the employees and has no relation to the seniority of the employees.

7. The applicants contend that the above grounds are totally without application of mind and not based on the relevant consideration. A reading of the judgment of the Apex Court and also the ACP scheme of the Central Govt. would show that the judgment in rem uniformly applicable to all those who are covered under identical schemes. The judgment of the Apex Court is a declaration of law binding upon all authorities including the executive and judicial as evident from Article 141 of the Constitution of India.

8. The respondents contested the O.A. The fact that there is a selection process prescribed by the recruitment rules for promotion to the post of Inspector will not make it akin to direct recruitment. The promotion of the applicants to the post of Inspector cannot be deemed to be a direct recruitment. As the applicants have already been given two promotions no benefit under the ACP scheme will accrue to them. The applicants were promoted first as Inspector and then as Superintendent. The juniors of the applicants who got the benefit of the ACP scheme did not get two regular promotions from the grade in which they were appointed as direct recruits. The period of regular service for grant of the benefits under the ACP scheme is to be counted from the grade in which an employee was appointed as a direct recruit. The judgment of the Apex Court in Civil Appeal No. 3250/2006 dated 2.8.2006 which held that persons like the applicants therein are entitled to have their pay stepped up in the higher scale at par with their juniors refers to the ACP scheme of the Haryana Govt. The respondents are following recruitment, seniority, promotion and all service conditions of the Central Govt. The ACP scheme formulated by the respondents is not in line with that formulated by the State Governments, the conditions, benefits, restrictions being different. The applicant is taking one part of the scheme in isolation and quoting the Supreme Court judgment which is beneficial to them without reference to other conditions of the scheme. The ACP of the Central Govt. has no relation or co-relation with the Haryana Govt. ACP scheme. Therefore the said

Supreme Court judgment will not have no impact in this case.

9. In the rejoinder filed by the applicants it was submitted that the promotion/appointment of the applicants to the posts of Inspector of Central Excise is to be treated as direct recruitment and not otherwise. The selection process on the material date was competitive in character and that too by considering persons belonging to different cadres. The Assured Career Progression Scheme which was under the consideration of the Apex Court was for all material purposes at par with that of the ACP scheme of the Central Govt. The only distinction is that the ACP scheme of the Haryana Govt. the financial upgradations were on completion of 10 years and 20 years, whereas in the ACP scheme of the Central Govt. the same were on completion of 12 and 24 years. The Haryana scheme came into effect from 1.1.06 whereas the Central Govt. scheme came into effect on 9.8.99.

10. In the additional reply the respondents countered the fact that there is a selection process prescribed by the recruitment rules for promotion to the post of Inspector will not make it akin to direct recruitment. The cadre of Stenographer and the cadre of Upper Division Clerk were two of the feeder cadres for promotion to the post of Inspector and hence it is a normal promotional avenue for both the applicants. As the applicants got two regular promotions after their direct recruitment as Stenographer and Lower Division Clerk they are not entitled to any benefit under the ACP scheme.

11. Arguments were heard and records perused.

12. The applicants' contentions rely solely on the decision of the Apex Court in Civil Appeal No.3250/06. The Central Govt. was not a party in the case. It was not impleaded. It was not heard. It had no locus standi in the case. Therefore as far as the Central Government is concerned, it is a case specific concerning only the Govt. of Haryana. The Central Government is not bound by the decision of the Apex Court in the cited case. The applicants are different from the Haryana Govt. employees inasmuch as they are governed by different recruitment rules and service conditions. When the employees are recruited through different sources and have different

conditions of service, they are not similarly placed and cannot seek equal treatment.

13. The ACP scheme of the Govt. of Haryana is different from the ACP scheme of the Government of India. The former was implemented with effect from 1.1.96. The latter from 9.8.1999. In the Haryana scheme the benefit of ACP is granted on completion of 10 years and 20 years whereas the same is available in the ACP scheme of the Govt. of India on completion of 12 years and 24 years. It is not the case of the applicants that they should be given the benefits of ACP scheme from 1.1.1996 or on completion of 10 and 20 years. They are asking for the benefit of stepping up to remove anomaly in the wake of granting ACP benefits to the Haryana Govt. employees on the strength of a decision of the Apex Court. Stepping up is raising the pay of senior employee to the level of the pay of junior employee when the junior employee is receiving a higher salary than the senior. The applicants are picking and choosing whatever is favourable to them from a scheme not applicable to them. The applicants are governed by the ACP scheme of the Govt. of India. Relevant extracts from Annexure-1 to the ACP scheme of Govt. of India, are reproduced below:-

"1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on **personal basis** and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;"

"5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular a promotions (including in-situ promotion as fast-track promotion availed through limited departmental competitive examination) **availed from the grade in which an employee was appointed as a direct recruit.** This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;"

"5.2. Residency periods(regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;"

"8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme;

(emphasis supplied)

14. The applicants are not eligible to get the benefit of ACP scheme in Govt. of India which is applicable to the Central Govt. employees, to which category the applicants belong, having already got two promotions in their career. They are not direct recruits to the cadre of Inspectors because they got promoted to that cadre through a closed competitive process limited to the feeder cadres on account of their being in the feeder cadres for the post of Inspector and were eligible to be promoted to that cadre. Direct recruitment is a open competitive selection.

15. There are specific provisions to treat the benefits of ACP as personal to the employee and shall have no relevance to seniority in the ACP Scheme of Govt. of India. When the financial upgradation is treated as personal, anomaly of senior drawing less pay than junior does not arise and stepping up of the pay of the senior is therefore out of question. On this issue the Central Govt. was not heard in C.A.No.3250/06 or in any identical matter. Therefore as far as the Govt. of India is concerned, it is a not a case in rem as contended by the applicants, but a case specific to the Haryana Govt. When decision is given per incuriam, it is not binding on the Central Govt. The contentions of the applicants are without any substance.

16. The reliefs sought by the applicants are against the specific provisions of the ACP scheme of the Govt. of India which alone is applicable to the applicants. The applications are ill-conceived, mischievous and purely experimental, without any merit whatsoever.

17. Devoid of merit, the O.A.s are dismissed. No costs.

(K. GEORGE JOSEPH)
MEMBER(A)

(GEORGE PARACKEN)
MEMBER(J)

/njf/