

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 64 of 2003

Friday, this the 22nd day of December, 2006

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

1. Issac Varghese,
S/o. K.I. Varkey,
Upper Division Clerk,
Office of the Deputy Commissioner of
Central Excise, Ernakulam I Division,
Central Excise Bhavan, Kathrikadavu,
Residing at Qr. No. 54, Central Excise
Staff Quarters, Kakkanad.
2. P. Manoj,
S/o. Parameswaran Unni,
Upper Division Clerk,
Office of the Deputy Commissioner of
Central Excise, Ernakulam II Division,
Central Excise Bhavan, Kathrikadavu,
Residing at Qr. No.36/11, Central Excise
Staff Quarters, Kakkanad.
3. Shyne M. Stephen,
S/o. Late P.E. Stephen, Working as
Lower Division Clerk, Office of the
Deputy Commissioner of Central Excise,
Ernakulam II Division,
Central Excise Bhavan, Kathrikadavu,
Residing at Manakkattu House,
Attachakkal P.O., Koni.
4. Sindhu M.S.,
W/o. K.R. Krishnna Kumar,
Lower Division Clerk, Office of the
Deputy Commissioner of Central Excise,
Central Excise Bhavan, Kathrikadavu,
Residing at Quarters No. 42, Central
Excise Staff Quarters, Kakkanad.

... Applicants.

(By Advocate Mr. Shafik M.A)

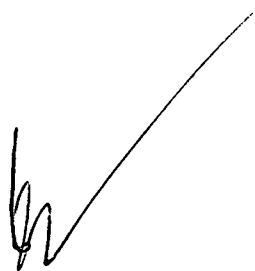
v e r s u s

1. Union of India represented by Secretary,
Ministry of Finance, New Delhi.
 2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
 3. The Chief Commissioner of Customs and
Central Excise, Kerala Zone, Central Revenue
Building, I.S. Press Road, Kochi - 18
 4. The Commissioner of Central Excise,
C.R. Building, I.S. Press Road, Kochi - 18.
 5. Association of Customs and Central Excise
EDP Officers, Cochin Commissionerate, Kochi,
represented by its Vice President, I.V. Seena,
W/o. Parameswaran, Tax Assistant, Commissioner
of Central Excise, Service Tax Division,
Kathrikadavu, Ernakulam, Residing at
'Kedaram', Vallikavu Lane, Puthiya Road,
Irumpanam P.O., Tripunithura, Ernakulam.
 6. Mathew Philip, S/o. M.M. Philip,
Tax Assistant, Office of the Chief Commissioner
of Central Excise, C.R. Building, I.S. Press Road,
Kochi, Residing at Central Excise Quarters No.48,
Kakkanad, Ernakulam District.
- ... Respondents
- (By Advocate Mrs. K. Girija, ACGSC for R1 to R4 and
Mr. T.C. Govindaswamy for R5 & R6)

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

Alternative prayers, as hereunder have been made in this OA and the
same are as under:-

- (i) To call for the records relating to Annexure A/1 to A/9 and to
quash Annexure A1 to the extent it merges a technical cadre with
the ministerial cadre and also consequentially to quash Rule 5 of
Annexure A2(A) and Rule 4 of Annexure A3(A) to the extent it
places the Upper Division Clerk and Data Entry Operators in the





same grade, making both of them enblock senior and making inter se placement on the basis of date of regular appointment in the respective grade;

- (ii) To declare that the merger of totally different cadres of DEOs and ministerial cadre without considering the difficulties of the applicants and without considering the dissimilarities of both the cadres is per se illegal, arbitrary, and violative of the equality clauses enshrined in Articles 14 and 16 of the Constitution of India.

Or in the Alternative

- (iii) To direct the respondents to assign seniority to the DEOs at the bottom of the seniority list of Senior Tax Assistants and Tax Assistants after the existing ministerial cadres;
- (iv) To direct the respondents to reconsider the decision in light of the pleadings contained in this O.A. And to keep the conducting of the DPC for promotion to the vacancies of Senior Tax Assistants in Cochin Commissionerate in abeyance or to consider the applicants or to consider the applicants only immediately as directed in Annexure A/5 and to grant consequential promotion to the applicants;
- (v) To issue such other appropriate orders or directions this Court may deem fit, just and proper in the circumstances of the case.

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- 2. Briefly the facts of the case are as under:-

- (a) The applicants are aggrieved by the proposal to merge the cadres of Data Entry Operators (DEO, for short) a purely technical cadre recruited locally, alongwith the ministerial cadres of LDC, UDC and Tax Assistants working under the respondents. The applicants are further aggrieved by Rule 5 of the Recruitment Rules for the posts of Senior Tax Assistants published with GSR No. 39 (E), in the Gazette of India dated 16.1.2003 and draft Recruitment Rules for Tax Assistants, circulated as per letter No. F.No.A.12018/48/2000-AD-III-B dated 6.11.2002 issued by the 2nd respondent. The applicants are also aggrieved by the Notification dated 16.1.2003 issued by the respondents by which the initial constitution of the Senior Tax Assistants under the Central Excise and Customs Department is fixed under Rule 5 by merging Data Entry Operators are also merged with the ministerial cadre. The applicants are further aggrieved by Notification dated 2.5.2003 by which Central Excise and Customs Department Tax Assistant (Group-C post) Recruitment Rules, 2003, Rule 4 of which has further been varied and fixes the seniority of the merged cadres of UDC and DEO Grade-A on the basis of the date of regular appointment to the respective grade.
- (b) The applicants 1 and 2 are continuing as LDC without a promotion. The applicants have completed the required number of years of service and fervently hopeful of getting promoted to the cadre of Inspector.
- (c) Data Entry operators were recruited in the pay scale of Rs.1150-25-1500 (pre-revised). All those who were recruited prior to the said rules in the pay scale of Rs. 950-1500 were also deemed to have been appointed as per the said rules. They were not
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through Staff Selection Commission and were regularised in their respective cadre. The pay of the DEO Grade-A was refixed at Rs. 4000-100-6000 (pre-revised 1200-2040). They were later given promotion as DEO Grade-B (Rs. 4500-125-7000) also, after completion of six years qualifying service without even passing a single departmental examination. The promotion channel of DEO Grade-A is to the cadre of DEO Grade-B in 4500-125-7000 scale, DEO Grade-C Rs. 5000-150-8000 and DEO Grade-D 5500-175-9000 without any departmental examination, whereas ministerial staff were recruited through Staff Selection Commission through competitive examination and further promotions are granted only on qualifying in the promotional examinations prescribed as per as per the Recruitment Rules for the posts of UDC, Tax Assistants and Inspector. Lower Division Clerk (Group-C Ministerial) in the scale of Rs. 3050-75-3950-80-4590 is recruited through Staff Selection Commission. Upper Division Clerk (Group-C Ministerial) in the scale of Rs. 4000-100-6000 is recruited through Staff Selection Commission or through promotion from LDC with 7 years regular service and on passing departmental promotion examination in Technical (Central Excise and Customs Act & Rules) and Administrative subjects. A directly recruited UDC has to pass the departmental retention examination. The cadre of Tax Assistant (pre-restructured) in scale Rs. 4500-125-7000 is filled by 100% promotion from UDC who has completed 3 years of regular service and passing departmental examination with 50% of marks.

- (d) For the post of Inspector of Central Excise (Rs. 5500-175-9000) 33 1/3 % is earmarked for promotion for Ministerial staff and 66 2/3 % by direct recruitment through Staff Selection Commission. For promotion of Ministerial officers to the higher posts, passing of



examination is compulsory whereas for a DEO, promotion is given on completion of the prescribed period of time only and as per the existing rules they are not eligible for promotion to the post of inspector of Central Excise since promotion examination is not prescribed for them. As per the present proposal in Annexure A/2 Rules and A/3 draft rules the DEOs are equated with the existing Tax Assistants and UDCs and are inducted into the new cadre along with their seniority in the earlier cadre. Consequently, a relatively junior UDC who have joined after going through the rigorous recruitment process of the SSC or by undergoing the promotional examination is being placed below a DEO, who happened to be appointed earlier that too locally without going through any known recruitment process, and again stands to lose his chances of promotion to some one who is inducted into the cadre through the backdoor. The present exercise of merging a technical cadre along with the ministerial cadre is not at all proper and correct. By merging the cadres of DEOs and the ministerial staff together, all those DEOs will be placed en-bloc above most of the ministerial staff which will result in revision of seniority and reduction of promotional prospects to the applicants.

- (e) The All India Federation of the applicants have submitted a representation to the then Minister of Finance showing the duties and responsibilities and the difference in the nature of work. In spite of the same, impugned order was issued proposing to merge a technical cadre with the ministerial cadres.

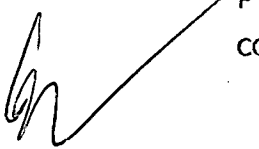
3. Grounds of challenge as contained in para 5 of the OA are as under:-

- (a) Merger of a purely technical cadre of DEO along with that of the



ministerial cadre of DEO is per se illegal.

- (b) Merger of a dissimilar cadres can only be due to the malafide pressure exerted on the department.
- (c) The act amounts to treating unequals equally and thereby violates the equality enshrined in Articles 14 and 16 of the Constitution of India.
- (d) If at all the said cadres are to be merged, then all the benefits conferred to them as the Technical cadre are to be withdrawn first to make them on par with the ministerial cadres and then the cadres can be merged, without much heartburn to the existing cadres. The action of the respondents is highly arbitrary.
- (e) The provision for promotional avenues and merging of two divergent cadres has no co-relation or nexus. It is always open to the competent authority to make a provision for promotional avenues to a related cadre but there is no necessity to merge two different cadres that too to the detriment to one existing cadre.
- (f) The applicant being one among the senior most UDC, his chance for promotion to the Senior Tax Assistant is now denied.
- (g) The existing ministerial establishment is required to pass in the computer examination and other related matter for redesignation as Tax Assistant itself. However, at this stage asking them to possess such a qualification has no rational justification and correlation to the restructuring concept.

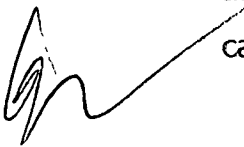


- (h) The applicants have also acquired a vested right to be promoted due to efflux of time and operation of the rules. As per catena of decisions of Hon'ble Supreme Court on the point of legitimate expectation, as can be seen in the case of PTR Exports (Madras) Pvt. Limited vs. Union of India, their rights for further promotion cannot be taken away by bringing in an entire divergent cadre in the midst that too to the detriment to the existing cadres.
- (i) The present exercise is only at the behest of DEOs, without any consultations with any expert agency, purely on the basis of a decision taken by the officials of the 2nd respondent, who are susceptible to irrelevant considerations due to undue influence of all nature.
- (j) The qualification, duties and responsibilities attached to the posts are entirely different.

4. Respondents have contested the OA and their version is as under:-

- (a) The Central Government had taken an exercise for restructuring of the Customs and Central Excise Department keeping in mind the following objectives:
 - (i) Creation of tax administration which is officer-oriented, technology driven, positively responsive and assessee friendly;
 - (ii) Maximisation of revenue productivity;
 - (iii) Reinforcement of the Directorates of Anti-Evasion and Revenue Intelligence;



- (iv) Speeding up of the process of disposal of appellate cases;
 - (v) Reorganisation of the Training Directorates;
 - (vi) Achieving faster speed in decision making;
 - (vii) Reducing the interface with the tax payer;
 - (viii) Achieving the objective of zero-tolerance to corruption;
 - (ix) Downsizing of the department;
 - (x) Higher motivation through improved management of career prospects in all cadres of Group 'A', 'B', 'C' and 'D'.
- (b) The cadre-restructuring plan has come into existence with the approval of the Cabinet and is a policy matter which is beyond the jurisdiction of this Tribunal as it relates to a policy decision taken by the highest executive authority.
5. Private Respondents 5 and 6 have filed their reply and their contention is as under:-
- (a) The original applicant seeks for some incidental and alternative reliefs. The original applicants are not entitled to any of the reliefs prayed for.
 - (b) The original applicants cannot join together and file, the present Original Application.
 - (c) There is no comparison as between the Lower Division Clerks, Upper Division Clerks or DEOs. All the three cadres ceased to exist on and with effect from 19.7.01 from the date the new service called "Senior Tax Assistants" and "Tax Assistants" came into life.
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The averment that DEOs being a Technical cadre etc. is far from truth and hence denied.

- (d) The contention that the action of the respondents is a mistake committed by the department is without substance and merit.

6. The applicants have filed their rejoinder to the reply filed on behalf of the official respondents and in the said rejoinder, they have described the functional responsibilities of the Tax Assistant. They have also added copies of the covering letter to the Draft Recruitment Rules for Group C posts of Inspectors, Senior Tax Assistants etc., vide Annexure A-10 and A-11.

7. By a Misc. Application, the applicants have added to the records a copy of the proposal for outsourcing Data Entry work, vide Annexure A-12.

8. Rejoinder to the reply filed on behalf of respondents No. 5 and 6 has also been filed by the applicants.

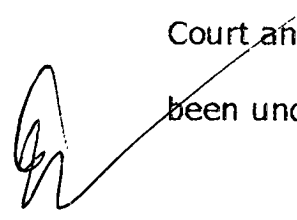
9. The official respondents have also filed an additional affidavit to hammer home the point that the merger of various cadres has been taken at the Cabinet level and the same is in order.

10. Counsel for the applicant has vehemently argued that merger of the cadre of ministerial and technical is illegal and invalid as they are functionally



immiscible. And assuming without accepting that the two cadres could be amalgamated, even then, the DEO should secure back bench only in seniority.

11. Counsel for the Private respondents has made a preliminary objection as to the joint application inasmuch as while some individuals are Inspectors and some are UDCs, their they do not have common cause of action. Again, in so far as attack on the recruitment Rules relating to senior tax Assistants, it is the case of the private respondents that the said rules would apply to UDCs with special pay and none of the applicants falls within this cadre. It has also been contended by the counsel for respondents that the issue involved is no longer res-integra inasmuch as the Madras Bench in OA Nos. 558, 538 and 909 of 2003, the Allahabad Bench in the case of OA No. 501 of 2005 vide order dated 02-09-2005 and the Lucknow Bench in OA No. 259/2003 vide order dated 12-05-2004 have quashed Rule 4(4) & 4(5) and 5(3) and 5(4) respectively of the Central Excise and Customs Department Tax Assistant (Group 'C' post) Recruitment Rules 2003 and Central Excise and Customs Department Senior Tax Assistant (Group 'C' post) Recruitment Rules 2003 and thus nothing survives. Counsel for the official respondents has, however, submitted that the order of the Madras bench of the Tribunal has since been challenged before the Hon'ble High Court and stay has been obtained. As regards Allahabad Bench order, it has been understood that while Writ Petition is pending in Allahabad High Court,



no stay has been granted in that case.

12. Counsel for the applicant argued that the three decisions had not dealt with the vires of merger and as such, his case is slightly different from the other cases decided by the Madras, Allahabad and Lucknow Benches. Again, counsel for the applicants argued that in so far as merger is concerned, the other Benches considered only the equation of posts and not any other aspect, including the functional responsibility and in the instant case, the functional responsibilities being entirely different, there cannot be a possibility of merger.

13. Arguments were heard and documents perused. Though the counsel for the applicant submitted that merger of the two cadres was not under challenge in the other O.As before Madras, Allahabad and Lucknow tribunals, para 8 of the Allahabad order does reflect that the applicants in that O.A. had questioned the very merger. The Bench referred to S.P. Shivprasad Pipal vs. Union of India (1998) 4 SCC 598 and extracted the following passage from the said judgment:

"16. The appellant, however, contends that as a result of the merger his promotional chances have been very adversely affected because his position in the seniority list has gone down. Rule 9 of the Central Labour Service Rules, 1987 under which the merger is effected, lays down the rules of seniority. It provides that the inter se seniority of the officers appointed to the various grades mentioned in Schedule I at the initial constitutional stage of the service shall be determined according to the length of regular continuous service in the



grade subject to maintenance in the respective grade of inter se seniority of officers recruited in their respective original cadres. The proviso to this Rule prescribes that although Assistant Labour Commissioner (Central), Labour Officer and Assistant Welfare Commissioner shall be equated, all Assistant Labour Commissioners (Central) holding such posts on or before 31-12-1972 shall be en bloc senior to Labour Officers and (2) Senior Labour Officers and Regional Labour Commissioners shall be equated. But all Regional Labour Commissioners holding such posts on or before 2-3-1980 shall be en bloc senior to the Senior Labour Officers.

17. Explaining the proviso the respondents have said that before 31-12-1972 Assistant Labour Commissioners were in a higher pay scale than Labour Officers. The parity between their pay scales came about only from January 1973. That is why to preserve their inter se position, Assistant Labour Commissioners appointed prior to 31-12-1972 have been placed above Labour Officers. Similarly, Regional Labour Commissioners drew a higher pay scale than Senior Labour Officers prior to 1980. The parity has come about in 1980 and hence Regional Labour Commissioners holding such posts on or before 2-3-1980 have been placed above Senior Labour Officers.

18. The seniority rules have thus been carefully framed taking all relevant factors into consideration. The respondents have also pointed out that as a matter of fact, by reason of the merger, the appellant has not, in fact, suffered any prejudice and he has also received promotions.

19. However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in *Union of India v. S.L. Dutta*(1991) 1 SCC 505 examined this contention. In *S.L. Dutta case*(1991) 1 SCC 505a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the *State of Maharashtra v. Chandrakant Anant Kulkarni*(1981) 4 SCC 130 this Court held that a mere chance of promotion was not a condition of service and the fact that there was a reduction in the chance of promotion would not amount to a change in the conditions of service."

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14. In so far as the power of the Government to merge two cadres, as held in the case of ***State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117, , "23.*** The right of the State to change its policy from time to time, under the changing circumstances is neither challenged nor could it be."

15. Again, for a merger to be legally valid, all that is required is, as held by the Apex Court in the case of ***"Union of India v. S.B. Vohra, (2004) 2 SCC 150,"*** is that merger of the cadres must be made in terms of the statutory rules. This has been so in the instant case. Thus, merger of two cadres cannot be questioned.

16. Coming to the three decisions of Madras Bench, Allahabad Bench and Lucknow Bench, we find that Madras Bench order has been under challenge and as per the counsel for respondents, there operates a stay of the order. In so far as Allahabad Bench is concerned, there is no stay, though a writ petition is stated to have been filed. That there is stay operating in respect of the order of the Madras Bench does not mean that the said order cannot be followed by the coordinate Bench. It has been held in the case of ***ESI Corpn. v. All India ITDC Employees' Union, (2006) 4 SCC 257,*** as under:-

12. As has been pointed out by S.C. Agrawal, J., speaking for a three-Judge Bench in *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn.*²: (SCC p. 9, para 10)



"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. (emphasis in original)"

And as per the judgment of the Apex Court in the case of ***Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644***, the Apex Court has held as under:-

This Court in the case of *Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel*² while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai case*³ and of Macleod, C.J., in *Haridas case*⁴ did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in *Bhagwan v. Ram Chand*⁵:

2) AIR 1968 SC 372 : (1968) 1 SCR 455

3) *Pinjare Karimbhai v. Sukla Hariprasad*, (1962) 3 Guj LR 529

4) *Haridas v. Ratansey*, AIR 1922 Bom 149(2) : 23 Bom LR 802

5) AIR 1965 SC 1767)



Thus, this Bench is bound by the decisions of the coordinate Benches and incidentally, the Vice Chairman is a party to the decision in the Madras Bench order, while the Judicial Member is a party to the decision in the Allahabad Bench order.

17. Thus, it is held that merger of the two cadres is legal and just. The case of the applicants in so far as it challenges the vires in merger is rejected, while in so far as the alternate prayer, the decision in the case of the other Benches shall equally apply to the case of the applicants.

18. The OA is accordingly disposed of with the above observations. No costs.

(Dated, the 22nd December 2006)


Dr. K B S RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

CVR.