

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 194/05, O.A. 81/2006 & O.A. 82/2006

Friday, this the 7th day of December, 2007.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

O.A.194/2005

....Applicant

1. R.Lalithamma,
Senior Tax Assistant,
O/o the Additional Commissioner of Income Tax,
Range-2, W-2, Salary Circle,
Trivandrum.
2. S.Ramakrishnan Pillai,
Senior Tax Assistant,
O/o the Additional Commissioner of Income Tax,
AayakkarBhavan, Kawdiar
Trivandrum-695 003.
3. Lali Bai Rajasekharan,
Senior Tax Assistant,
O/o Income Tax Office,
Circle-1, Alleppey,
4. C.S.Madhusoodanan Nair,
Senior Tax Assistant,
O/o the Director General of Income Tax
(Investigation), Ernakulam South, Cochin-16.
5. D.N.Vijayan,
Senior Tax Assistant,
O/o the Additional Comrissioner of Income Tax,
Range-1, Trivandrum.
6. K.Sugathan,
Senior Tax Assistant,
O/o the Additional Commissioner of Income Tax,
Kollam Rang, Kollam.
7. C.S.Muraleedharan Nair,
Senior Tax Assistant,
O/o the Commissioner of Income Tax,
Thiruvananthapuram-3.

8. Aleyamma Vincent,
Senior Tax Assistant,
Income Tax Office,
Mattancherry.
9. S.Bhasi,
Senior Tax Assistant,
O/o Commissioner of Income Tax,
CR Buildings, Ernakulam,
Kochi-18.
10. T.P.Hariharadmjan,
Senior Tax Assistant,
O/o Additional Commissioner of Income Tax,
Range-III, CR Building, IS Press Road,
Cochin-18. Applicants

(By Advocate Mr MR Hariraj)

V.

- 1 Union of India represented by
the Secretary to Government of India,
Department of Revenue,
Ministry of Finance,
New Delhi.
2. The Central Board of Direct Taxes,
represented by its Chairperson,
New Delhi.
3. The Chief Commissioner of Income Tax,
Cochin.
4. M.J.Roy,
Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Thiruvalla Range, Thiruvalla.
5. Solomon Antony,
Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Range-3, Ernakulam.
6. P.N.Raghunath,
Office Superintendent,
O/o the Chief Commissioner of Income Tax,
Central Revenue Buildings, Cochin.
7. J.Pushkaran,
Office Superintendent,

O/o the Additional Commissioner of Income Tax,
Aluva Range, Aluva.

8. Rosamma Mathew,
Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Thiruvalla Range, Thiruvalla.
9. Madhusoodanan Nair,
Office Superintendent,
O/o the Additional Commissioner of Income Tax.
Central Circle, Thiruvananthapuram.
10. VV Dinesh,
Office Superintendent,
O/o the Joint Commissioner of Income Tax,
Range-I, Kannur.
11. Sandosh Kumar,
Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Range-III, CR Building, IS Press Road,
Ernakulam.
12. K Ajitha,
Office Superintendent,
O/o the Deputy Commissioner of Income Tax,
Central Circle, Kollam.Respondents

(By Advocate Mrs Aysja Youseff for R.1 to 3)

(By Advocate Mr Shafik MA for R. 4 to 12)

O.A.81/2006

1. Ajitha K,
Office Superintendent,
O/o the Deputy/Assistant Commissioner of Income Tax,
Central Circle, Mannanai Complex, Anda Mukkom,
Kollam.
2. Sandosh Kumar K.A.
Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Range-2, C.R.Building, IS Press Road,
Kochi-18. Applicants

(By Advocate Mr OV Radhakrishnan, Senior with Mr Antony Mukkath)

1. Union of India represented by the Secretary to Government of India, Department of Revenue, Ministry of Finance, New Delhi.
2. Central Board of Direct Taxes, represented by its Chairperson, North Block, New Delhi.
3. Chief Commissioner of Income Tax, Kerala, Central Revenue Building, IS Press Road, Kochi-18.
4. S.Bhasi,
Senior Tax Assistant,
O/o Commissioner of Income Tax,
CR Building, Ernakulam, Cochin-18. - Respondents

(By Advocate Mr PS Biju, ACGSC for R.1 to 3)

(By Advocate Mr MR Hariraj for R-4)

O.A.82/2005

1. Thomas George,
Office Superintendent,
O/o the Additional Commissioner of Income Tax,
Range-1, CR Building, IS Press Road,
Kochi-18.
2. Babu Kurian,
Office Superintendent,
O/o the Commissioner of Income Taxes (Computer Operations),
CR Building, IS Press Road,
Kochi-18. - Applicants

(By Advocate Mr OV Radhakrishnan, Senior with Mr Antony Mukkath)

v.

1. Union of India represented by the Secretary to Government of India, Department of Revenue, Ministry of Finance, New Delhi.
2. Central Board of Direct Taxes, represented by its Chairperson, North Block, New Delhi.
3. Chief Commissioner of Income Tax, Kerala, Central Revenue Building,

IS Press Road, Kochi-18.

4. S.Bhasi,
Senior Tax Assistant,
O/o Commissioner of Income Tax,
CR Building, Ernakulam, Cochin-18. - Respondents

(By Advocate Mrs K Girija, ACGSC for R.1 to 3)

(By Advocate Mr MR Hariraj for R-4)

This application having been finally heard on 5.10.2007, the Tribunal on 7.12.2007 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

1. These three OAs are inter-related and, therefore, they are disposed of by this common order. All the applicants in these OAs are working under the Chief Commissioner of Income Tax, Cochin (Respondent No.3). The applicants in OA 194/2005 are Senior Tax Assistants and seeking promotion as Office Superintendents based on their seniority as Senior Tax Assistants. Their grievance is against the letter No.48/1/2001-AP/DOMS/141 dated 4.6.2001 (Annexure A-2) and letter No.48/1/2001/AP/DOMS/403 dated 19.7.2001 (Annexure A-3) issued by the Directorate of Organisation and Management Studies (DOMS for short) under the Central Board of Direct Taxes (CBDT for short). These letters contain the detailed instructions regarding the manner of filling up of vacancies in various cadres of Group 'B', 'C' & 'D' including Office Superintendents, Senior Tax Assistants, Tax Assistants, DEO Grade 'B' and 'C'. They are also aggrieved by CBDT letter No.41015/19/2002-Ad.VII(Pt) dated 7.3.2005 (Annexure A-1) according to which the DPC Meetings was to be held to fill up vacancies in various grades in the prescribed manner as contained in the aforesaid DOMS instructions. For promotion to the post of Office Superintendent, the DPC for the year 2002-03 onwards shall be held in accordance with the DOMS instructions as applicable for the year 2001-02 till further orders and the feeder cadre and the eligibility

conditions for the same were as under:

"Category "A"

Sr. TA with at least two years of service as Assistant/Head Clerk.

Category "B"

DEO Grade C with at least two years service in the grade and have qualified the Ministerial Staff Examination Category "C"

Pre-restructuring cadre of Tax Assistants with 3 years service in the grade and DEO Grade B with at least 3 years of service in the grade and have qualified the Ministerial Staff Exam."

The applicants in O.A.81/2006 were initially appointed as Data Entry Operators and the applicants in O.A. 82/2006 were initially appointed as Upper Division Clerks. They were subsequently promoted as Senior Tax Assistants and then as Office Superintendents on purely temporary and provisional basis in the years 2001 and 2005 respectively. Their grievance is about their impending reversion to the post of Senior Tax Assistant on implementation of the CBDT letter No.41015/40/2005.Ad.VII dated 8.12.2005 containing the instructions for promotion to the post of Office Superintendent. They are also aggrieved by the 3rd Respondent's (The Chief Commissioner of Income Tax, Kerala) letter F.No.11/Estt/CC-CHN/2005-06 dated 7/2/2006 by which the promotions already granted to some of the officials as Income Tax Inspector/Office Superintendents against the vacancies pertaining to the years 2002-03, 2003-04 and 2005-06 were ordered to be reviewed and to re-fix their inter-se seniority. At the admission stage of these two OAAs, on a *prima facie* consideration of the case, this Tribunal restrained the respondents from reverting the applicants as an interim measure.

2 Before we go into the merits of the individual cases, the following facts, which culminated in the aforesaid letters dated 8.12.2005 and 7.2.2006, common in all the three O.As, are required to be narrated.

3 In the year 2000-2001, the various cadres in the Income Tax

Department underwent a restructuring. The primary objective of realigning of functions of the Department was in the context of massive induction of information technology. It was envisaged that consequent to extensive use of information technology, some existing functions of LDCs and UDCs will be done away with and LDCs and UDCs will be required to do Data Entry work on computers. Prior to the restructuring, the line of promotion was from UDCs (scale of Rs.4000-100-6000) to Head Clerk (Rs.5000-150-8000) and then to Supervisor Grade II (Rs.5500-175-9000). Promotion to the post of Head Clerk from UDC was based on seniority, subject to qualifying in the Ministerial examination held for that purpose. Later, an intermediary post of Tax Assistant in the scale of Rs.4500-175-7000 was created between UDCs and Head Clerks and promotion to that grade was made after a limited departmental examination held among the qualified UDCs. The post of Head Clerk and Supervisor Grade II were subsequently re-designed as Assistants and Office Superintendents. After the restructuring, the erstwhile UDC posts were replaced by the posts of Tax Assistant in the same scale of Rs.4000-100-6000 and the erstwhile posts of Tax Assistant in the scale of Rs.4500-125-7000 was considered as a dying cadre. The post of Head Clerk/Assistant was re-designated as Senior Tax Assistant in the scale of Rs.5000-150-8000. The posts of DEO Grade 'A', 'B' and 'C' were also merged with Tax Assistant and Senior Tax Assistant. The post of Office Superintendent continued to be in the scale of Rs.5500-175-9000. The DEOs Gr.A, B and C were promoted in their cadre in the year 2000-2001 as per existing Recruitment Rules and were merged in the cadre of Tax Assistant or Sr. Tax Assistant as the case may be, in the year 2001-2002 on the basis of the posts held by them in 2000-01. A similar opportunity was given to LDCs for promotion as UDCs (redesignated as Tax Assistant) and UDC for promotion as Head Clerk/Assistant (redesignated as Senior Tax Assistant) in 2000-01 prior to the merger of the ministerial and data entry cadres in 2001-02. The condition regarding passing of Ministerial Staff Examination has been applied uniformly and nobody has been discriminated against. For example, Upper

Division Clerks and Data Entry Operators Grade 'A' working in the identical scale of pay and having passed the Ministerial Staff Examination are included in the feeder grade of Sr.Tax Assistant in 2001-02. Eligibility condition for promotion of pre-restructuring Tax Assistants and Data Entry Operators Grade 'B' to the cadre of Sr.Tax Assistants are also identical.

4. Pending finalisation of the recruitment rules, the respondents issued letter No.48/1/2001-AP/DOMS/141 dated 4.6.2001 (Annexure A-2 in OA 194/2005) by which detailed instructions regarding the method of filling up of the vacancies in various Group B, C and D consequent to the restructuring for the accumulated years 2000-01 and 2001-02 were prescribed and the DPC for the purpose of promotion of Income Officer (ITO) was also decided to be held on 18.6.2001. Noticing certain anomalies in the aforesaid instructions in Annexure A-2, the respondents issued the Annexure A-3 F.No.48/1/2005-AP/DOMS/403 letter dated 19.7.2001 substituting with the new instructions for promotion to the cadre of Office Superintendent, Senior Tax Assistant, Tax Assistant, DEO Grade B and DEO Grade C.

5. Meanwhile, the respondents have issued A-4 approved draft Income Tax Department (Group C) Recruitment Rules, 2001 applicable to the following cadres.

"Inspector of Income Tax, Office Superintendent, Senior Tax Assistant, Stenographer Grade-I, Stenographer Grade-II, Stenographer Grade-III, Data Processing Assistant Grade-A, Staff Car Driver (Special Grade), Staff Car Driver (Grade-I), Staff Car Driver (Grade-II), Staff Car Driver (Ordinary Grade), Lower Division Clerk, Notice Server, Gestetner Operator."

According to the said Rules, for promotion to the post of Office Superintendents, Senior Tax Assistants who have put in 3 years regular service in the grade were eligible and in the case of Senior Tax Assistants, Tax Assistants who have rendered a minimum regular service of 3 years service in the grade and have

qualified departmental examination were eligible. Thereafter, the respondents have issued letter No.F No.41015/19/2002 AD.VII (PT.II) dated 7.3.2005 (impugned in all the three cases) regarding holding of DPC for promotion to the posts of (i) Senior Tax Assistants and Tax Assistants, (ii) Income Tax Inspectors, Office Superintendents and Stenographers Grade-I and (iii) Group D employees. As per the Board's directions contained in said letter dated 7.3.2005 (Annexure A-17 in OA 81//06) promotion to the cadre of Office Superintendents were effected in Kerala Region for the recruitment years 2002-03, 2003-04, 2004-05 and 2005-06 as stipulated in the instructions applicable for the recruitment year 2001-02 circulated vide DOMS's letter in F.No.48/1/2001-AP/DOMS/141 dated 4/6/2001 (amended vide letter in F.No.48 1/2001-AP/DOMS/403 dated 19/7/2001), considering the eligible candidates under Category 'B' and Category 'C' (no eligible candidates under Category 'A') in the said rule.

6 Thereafter, the CBDT issued the impugned letter F.No.41015/40/2005-Ad.VII dated 8/12/2005. It has been stated therein that henceforth, all promotions to the grade of Office Superintendent shall be made in accordance with the Draft Recruitment Rules as approved by the DOP&T according to which the post of Office Superintendent is a Group B non-gazetted, Ministerial Selection post and promotion to that grade will be made from the grade of Senior Tax Assistants who have put in 3 years of regular service in the grade. The draft Recruitment Rules further provided that if a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that trade, all persons senior to him in the grade shall also be considered for promotion notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation. Further, the feeder cadres stipulated in Category 'C' (pre-structured cadre of Tax Assistants and DEO Grade-B) as mentioned in the Recruitment Rule for the year 2001-02 is not applicable for promotion to the cadre of Office Superintendents after

the recruitment year 2001-02 and that promotion to the cadre of Office Superintendent has to be effected as per the Draft Recruitment Rules circulated by the Board i.e. Promotion to the post of Office Superintendents is to be made only from the grade of Senior Tax Assistants who have rendered 3 years service in the grade. For the financial year 2002-03 and 2003-04, if no eligible candidates were available then such vacancies cannot be filled up. As per Board's letter dated 07/03/2005, the DOMS's instructions dated 4.6.2001/19.7.2001 in respect of the year 2001-02 were to be applied in respect of cadres which were in place during the recruitment years 2002-03 and onwards. All such pre-restructuring TAs (Rs.4500-7000) who got their promotion as Senior TAs in 2001-2002 cannot be considered for promotion to the grade of OS under the category 'C' as they can no longer get promotion to higher grade by counting the seniority of such cadre, which they discarded long ago.

7 Thereafter, respondent No.3 vide letter No.F.No.11/Estt/CC/CHN/2005-06 dated 7.2.2006, considering the aforesaid Board's letter dated 8.12.2005 and 30.1/2006 directed to Review the promotions already effected by convening a Review DPC meeting to review the promotions made to the cadre of Income Tax Inspector for the recruitment year 2005-06 and Office Superintendent for the recruitment years 2002-03, 2003-04, 2004-05 and 2005-06. On such review, the inter se seniority and promotions of some of the officials were likely to be affected. The following were the findings of the review DPC held on 24.2.2006:

Recruitment year 2002-03

"A regular DPC meeting was held on 23.3.2005 for promotion for the post of Office superintendent (which was reviewed on 24.3.2005) wherein the eligibility for promotion to the cadre of O.S as per DOMS instructions applicable for the recruitment year 2001-02 under category 'C' were pre-restructured Tax Assistants with 3 years service and DEO Grade-B with at least 3 years service in the grade and have qualified the Departmental Examination for the ministerial staff. Accordingly, a panel of 12 General category officials was drawn and promotions

were effected on 24.3.2005. As per Board's letter in F.No.41015/40/2005-Ad.VII dated 8.12.2005 it has been intimated that the DOMS instructions in respect of promotion to the post of O.S. for the recruitment year 2001-02 would not be applicable after the recruitment year 2001-02, as the pre-restructuring cadres of Tax Assistants and DEO Grade-B had already been taken care of in the recruitment instructions of Senior Tax Assistants. Since none of the officials of the panel prepared by the regular DPC held on 24.3.2005 have completed two years regular service in the grade of Senior Tax Assistants, the review DPC came to the finding that none of the officials in the panel drawn for the recruitment year 2002-03 were eligible for promotion as O.S. for the year 2002-03."

Recruitment Year 2003-04

"A regular DPC meeting was held on 23.3.2005 for promotion for the post of Office Superintendents which was reviewed on 24.3.2005 wherein the eligibility for promotion to the cadre of O.S as per DOMS instructions applicable for the recruitment year 2001-02 under category 'C' were pre-restructured Tax Assistants with 3 years service and DEO Grade-B with at least 3 years service in the grade and have qualified the Departmental Examination for the ministerial staff. Accordingly, a panel of 15 General category officials was drawn and promotions were effected on 28.3.2005. As per Board's letter in F.No.41015/40/2005-Ad.VII dated 8.12.2005 it has been intimated that the DOMS instructions in respect of promotion to the post of O.S for the recruitment year 2001-02 would not be applicable after the recruitment year 2001-02, as the pre-restructuring cadres of Tax Assistants and DEO Grade-B had already been taken care of in the recruitment instructions of Senior Tax Assistants. Since none of the officials of the panel prepared by the regular DPC held on 24.3.2005 have completed two years regular service in the grade of Senior Tax Assistants, the review DPC came to the finding that none of the officials in the panel drawn for the recruitment year 2003-04 were eligible for promotion as O.S for the year 2003-04."

Recruitment Year 2004-05

"A regular DPC meeting was held on 23.3.2005 for promotion for the post of Office Superintendent wherein the eligibility for promotion to the cadre of O.S as per DOMS instructions applicable for the recruitment year 2001-02 under category 'C' were pre-restructured Tax Assistants with 3 years service and DEO Grade-B with at least 3 years service in the grade and have qualified the Departmental Examination for the ministerial staff. Accordingly, a panel of 17 General category officials was drawn. A regular supplementary DPC meeting was also held on 25.4.2005 for filling up of 2 consequential vacancies arisen in the cadre of OS on account of

supplementary DPC meeting held in the cadre of ITI for the year 2004-05 wherein a panel of 4 candidates were drawn in which 2 were from OS. A panel of 2 candidates were drawn in the above supplementary DPC. As per Board's letter in F.No.41015/40/2005-Ad.VII dated 8.12.2005 it has been intimated that the DOMS instructions in respect of promotion to the post of O.S for the recruitment year 2001-02 would not be applicable after the recruitment year 2001-02, as the pre-restructuring cadres of Tax Assistants and DEO Grade-B had already been taken care of in the recruitment instructions of Senior Tax Assistants.

Recruitment Year 2005-06

"A regular Departmental Promotion Committee meeting was held on 25.4.2005 for promotion for the post of Office superintendent (O.S) wherein the eligibility for promotion to the cadre of O.S as per DOMS instructions applicable for the recruitment year 2001-02 under category 'C' were pre-restructured Tax Assistants with 3 years service and DEO Grade-B with at least 3 years service in the grade and have qualified the Departmental Examination for the ministerial staff. Accordingly, a panel of 27 General Category officials was drawn. For the same reasons mentioned above in respect of recruitment year 2004-05, a review DPC was necessitated to review the promotions effected to the grade of OS for the recruitment year 2005-06 also. As the eligibility criteria for promotion to the cadre of O.S has since changed as per the latest instructions, the seniority/promotion of the officials who have already been promoted by the regular DPC on the basis of the then existing eligibility criteria were affected. As a result the officials namely, Shri Babu Kurian (one of the applicants in O.A.82/2006), Shri N V Joy and Shri PV Thampi, who have been promoted as OS on the basis of the regular DPC held on 25.4.2005 for the recruitment year 2005-06 did not find place in the new panel now drawn up for promotion for the recruitment year 2005-06 and have to be reverted. Therefore, the ad hoc promotion as OS granted to Shri N.V.Joy and Shri PC Thampi were cancelled vide order dated 8.3.2006. However, on the basis of the interim order passed by the Hon'ble Central Administrative Tribunal, Ernakulam Bench dated 20.2.2006, it has been decided not to effect reversion of Shri Babu Kurian till the final outcome of the O.A.82/2006 filed before the Hon'ble Central Administrative Tribunal, Ernakulam Bench."

OA 194/2005

8 The applicants (10 in number) in this OA are aggrieved by the aforesaid CBDT letter dated 7.3.2005 (Annexure A1) by which it was directed to hold DPC meetings to fill up vacancies in Group 'C' and 'D' posts by promotion in the prescribed manner. The submission of the applicants is that by implementing the

instructions contained in CBDT letter dated 7/3/2005 (Annexure A-1) instructions, juniors of the applicants in the erstwhile grade of Tax Assistants would get promoted. As per the Annexure A-5 disposition list of Non Gazetted Establishment issued the respondents as on 1.1.2004, the applicants are at Sl.Nos.5, 6, 8,12, 21, 23, 26, 32, 73 and 141. Their apprehension is that they would not be considered for promotion to the post of Office Superintendent on the ground that they did not have 2 years service as Assistant/Head Clerk and the respondents refused to reckon their service as Senior Tax Assistants as qualifying service for promotion. As a result of this anomalous situation the juniors of the applicant in the very same seniority list would be considered on the ground that they have served as Tax Assistants (pre-restructured) and they would be included in category C based on their seniority in the cadre of Tax Assistants. Applicants 1 to 7 were appointed as Tax Assistants at some point of time but they were juniors in the said cadre. They were appointed to Senior Tax Assistants cadre based on their seniority in the UDC cadre. Because of this anomalous situation, those at Sl.No.7, 10, 11, 13 to 18, 20, 22, 24,25, 27 to 29, 31, 33 to 41, 43 to 44 etc. of the same seniority list would be promoted to the cadre of Office Superintendent before the applicants. According to the applicants, A-1 impugned letter dated 7.3.2005 is a hasty step taken by the respondents for convening the DPC. They have also stated that the respondents have made the very same kind of promotion earlier in 2001-02 also by promoting 5 of the juniors in the cadre of Senior Tax Assistants as Office Superintendents in the scale of Rs.5000-9000 with effect from 28.12.2001 by issuing the A-6 order dated 28.12.2001. The applicants did not challenge that order as they were not actually affected by such promotion at that time. According to the applicants, the promotion to the cadre of Head Clerk/Assistant were made from among the UDCs and Tax Assistants based on their seniority in the UDC cadre. Though appointments were given as Tax Assistant from among the UDCs, the Tax Assistants continue in the gradation list of UDC and they are considered for promotion to Head Clerk/Assistant based on the date of their entry in the cadre of

UDC. In this regard, the applicants have produced A-7 and A-8 disposition lists of Tax Assistants and UDCs as on 1.1.1999. For appointment to the cadre of Senior Tax Assistants under Annexure A-3 is from the combined seniority list of Tax Assistant and UDC, the seniority reflected in Annexure A-8 was relied on as is evident from the Annexure A-9 order of the 3rd respondent by which both Tax Assistants and UDCs were promoted to officiate as Senior Tax Assistants in the scale of pay Rs.5000-8000. They have also contended that the post of Tax Assistants always remained outside the normal hierarchy of the ministerial cadre and it never resulted in supersession of seniors. Hierarchally Upper Division Clerks and Tax Assistants remained under the supervision of Head Clerk and for promotion to that cadre, there existed no advantage to the Tax Assistant. When restructuring was done, cadre were formed parallel to the cadre of UDC and Head Clerk. The cadres of Lower Division Clerk and Tax Assistant did not have parallel in the restructured hierarchy. This is why Lower Division Clerks and Tax Assistant are considered as dying cadres.

9. In the reply, the official respondents have submitted that the party respondents were working as UDC in the scale Rs.4000-8000 under the 3rd respondent and as per the then existing rules, their next promotion was to the cadre of Head Clerk in the scale of pay Rs.5000-7000 based on their seniority. Subsequently, the cadre of Tax Assistants in the scale of Rs.4500-7000 was introduced between the cadres of UDCs and Head Clerks. The promotion from the cadre of Head Clerk was to the post of Supervisory Grade-II in the scale of pay Rs.5000-9000 and the cadre of Supervisory Grade-II was re-designated as Office Superintendents and Head Clerk was re-designated as Assistants. When the department was restructured in the year 2000, the cadre of UDC was abolished and the new cadre of Tax Assistants was created in its place in the same scale of pay Rs.4000-6000 and the pre-structured Office Assistants in the scale of Rs.4500-7000 became a dying cadre. They have further submitted that for the

vacancies arisen during the year 2002-03 promotions were made strictly in accordance with the Board's instructions conveyed by A-1 letter dated 7.3.2005 and the instructions of the DOMS at A-2 and A-3 were not merely departmental instructions but were amendments to the pre-structured recruitment rules of various posts and they have assumed the statutory status from the date of their issue as per ex post facto amendment issued with the approval of MOS(R) vide Annexure R-1 memorandum dated 22.11.2002.

10 As regards the applicants were concerned, the respondents submitted that they were pre-structured UDCs and they were promoted as Senior Tax Assistants in 2001-02. Since none of them had completed 2 years of service as Senior Tax Assistants, they were not considered eligible for promotion to the post of Office Superintendents for the vacancies arisen during 2002-03 as per A-1 order. They have also stated that as per A-10 Board's letter dated 8.12.2005, the DOMS instructions in respect of promotion to the post of Office Superintendent for the year recruitment year 2001-02 would not be applicable after the said recruitment year 2002-03 as the pre-structured cadres of Tax Assistants and DEO Grade-B had already taken care of in the instructions of Senior Tax Assistants. It has also been stated that all promotions to the grade of Office Superintends shall be in accordance with the draft Recruitment Rules as approved by the DOPT which stipulated that Senior Tax Assistants with 3 years regular service are eligible for promotion as Office Superintendents. The CBDT has also clarified vide letter dated 30.1.2006 as under:

"All promotions for the period prior to 8.12.2005 were to be effected in pursuance to the instructions issued vide Board's letter dated 7.3.2005 and any subsequent promotions are to be made in accordance with the Draft Recruitment Rules.

For the financial year 2002-03 and 2003-04, if no eligible candidates were available then such vacancies cannot be filled up. As per Board's letter dated 7.3.2005, the DOMS's instruction dated 4.6.2001 and 19.7.2001 in respect of year 2001-02 were to be applied in respect of cadres which were in place during the recruitment years 2002-03 and onwards. All such pre-restructuring TAs (Rs.4500-7000) who got their promotion as Senior TAs in 2001-02 cannot be considered for promotion to the grade of OS under the

category C as they can no longer get promotion to higher grade by counting the seniority of such cadre, which they discarded long ago.

All the Senior Tax Assistants who were promoted by 31.12.2001 in pursuance of DOMS's instructions dated 4.6.2001 and 19.7.2001, were eligible for promotion to the grade of Office Superintendents in the year 2004-05 as they were having 2 years regular service as on the crucial date i.e. 1.1.2004."

In terms of the aforesaid letter of the Board dated 8.12.2005 and the clarification dated 30.1.2006, a review DPC was held on 24.2.2006 for the recruitment years 2002-03, 2003-04, 2004-05 and 2005-06. As per the said instructions and clarifications issued by the Board, those who are eligible for promotion to the cadre of O.S for recruitment years 2002-03, 2003-04 and 2004-05 are the Senior Tax Assistants who have rendered 2 years regular service in the grade as on 1.1.2004. As the eligibility criteria for promotion to the cadre of Office Superintendent has since been changed as per the latest instructions, the seniority/promotion of the officials who have already been promoted by the regular DPC on the basis of the then existing eligibility criteria were affected. The consideration list for the Review DPC was prepared on the basis of the disposition list of Senior Tax Assistants and orders promoting all the ten applicants in the O.A. have already been issued vide Annexure R1(a) letter dated 8.3.2006. It also shows the existing position as well as the revised position along with the deemed dates of promotion. The deemed dates of promotion of the 1st applicant to the 9th applicant are shown in the revised list at Sl.No.3,4,6,9, 17, 19, 22, 28 & 73 respectively. The 10th applicant was promoted as Office Superintendent vide order dated 8.3.2006.

11 The private respondents 4 to 9 and 10 to 12 have filed a reply through their advocate Mr Shafik M.A. He submitted that the cadres of Tax Assistants was created in the Income Tax Department way back in 1978 vide Annexure R4(a) order of the Government of India dated 31.3.1978 on the recommendations of the Direct Taxes Enquiry Committee. This was done by upgrading 4,148 posts of UDCs (1/3rd of the strength of UDCs) with a view to

provide more experienced and competent ministerial staff to deal with important aspects of clerical work, particularly in the companies and investigation circles. Being an intermediary cadre between UDCs and Head Clerks, the Tax Assistants were required to perform higher duties and responsibilities like complex tax calculations in important revenue circles, Special Audit, internal audit duties etc. The posts of Tax Assistant were filled entirely by promotion from the cadre of Upper Division Clerks, on 'Selection' basis, on the recommendations of a duly constituted D.P.C. Only those U.D.Cs who have rendered a minimum service of 3 years in that grade in the Department and who have secured at least 40% marks in the Incometax Inspectors' Departmental Examination were eligible for consideration for promotion. After the creation of Tax Assistants, many qualified UDCs superseded their seniors. The new cadre of Tax Assistants created in the scale of Rs.4000-6000 was entirely different from the re-structured Tax Assistants. The newly created Tax Assistants cadre included the pre-structured LDCs also in bulk, after they qualified in a computer proficiency test. They have also denied the submission of the respondents that the pre-structured cadre of Tax Assistants had become a dying cadre as the pre-structured cadre of UDCs/LDCs also become extinct. He has also given the following basic structure of the cadres before and after restructuring:

<u>Before Restructuring</u>	<u>After Restructuring</u>
Pre-structured TA (4500-125-7000)	Senior Tax Assistant (5000-8000)
Pre-structured UDCs (4000-100-6000)	Senior Tax Assistant (5000-150-8000) (Senior among UDCs) TAs (4000-100-6000) (Juniors in UDCs)
Pre-structured LDCs (3050-75-3590-80-4540)	Tax Assistants (4000-100-6000)

He has further submitted that the restructured Tax Assistants post became the bottom level post of Ministerial cadre whereas before restructuring the post of Tax Assistant was through promotion on having qualified prescribed departmental

examinations. His further contention was that the draft Recruitment Rules mentioned in the O.A was only a draft and has no relevance whatsoever before it became final. The anomaly, if any exists, it was only due to the fact that the applicants had not passed the test for further promotion as Tax Assistants at the right time and the juniors of the applicants were persons drawing a higher scale of pay of Rs.4500-7000 and they were holding a promotional post available to UDCs in the scale Rs.4000-6000 by virtue of their qualifying the departmental examination and passing such examination was a boost to one's career in the department as they got a chance of promotion to the post of Inspector which is considered as an Income Tax Authority as per the Income Tax Act. Those who have taken the pains to qualify an examination prescribed by the department are, of course, benefited whereas those who have not bothered in this direction avoiding the benefits of promotions as well as financial benefits in the nature of advance increments are affected adversely. They have therefore submitted the impugned orders are not at all arbitrary, illegal or unfair or violative of Articles 14 and 16 as alleged by the applicants.

12 The private respondents have also filed an additional reply stating that the seniority positions of the applicants in the cadre of UDCs or the present cadre of Senior Tax Assistants and seniority positions of their juniors in the respective cadres are due to the fact that in the absence of relevant recruitment rules, person who are already working in a higher cadre with more scale of pay were given preference over those working in a lower cadre with less scale of pay and this general principle was adopted for merger of different cadres as the recruitment rules for the newly created posts were not formulated. For the promotion to the cadre of Head Clerk/Assistant effected the pre-structured Tax Assistant were treated as higher post and UDC, were treated lower post because the relevant recruitment rule was framed in that manner by the department.

O.A.81/2006

13 The applicants in this O.A. were initially recruited and appointed as Data Entry Operator (DEO) in the scale of Rs.1200-2040 (later revised as Rs.1350-2200) on the basis of the selection made in the year 1989. In implementation of the restructuring and constituting the cadre of Senior Tax Assistant the Applicants along with 16 others were appointed to Officiate to the re-designated post of Senior Tax Assistant in the scale of Rs.5000-8000 vide Annexure A-11 order dated 28.12.2001. The contention of the Applicants is that the Annexure A-11 order dated 28.11.2001 was not an order of promotion but it was only as a result of restructuring as they were not picked up to the higher grade or cadre on the basis of their eligibility and seniority for promotion from the feeder cadre to the higher cadre. The second applicant has, therefore, filed a representation to the 2nd respondent claiming promotion to the post of Senior Tax Assistant during the recruitment year 2000-01 on the basis of his seniority. As the above representation did not yield any reply or relief, he filed O.A.611/2001 along with five others and the same was disposed of on 25.6.2003 directing the 2nd respondent to consider the representations of the applicant and to give them appropriate reply. In compliance of the above order, the respondents considered the representation of the second applicant but rejected the same vide Annexure A-12 Memorandum dated 12.9.2003 stating as under :-

"The instructions contained in Directorate of Income Tax (O&MS) letters dated 04-06-2001 and 19-07-2001 aim at re-designation, merger and redeployment of the existing staff. These instructions are applicable to various cadres and inter-se seniority has been fixed according to Rules. After having considered the matter carefully, Government is of the view that instructions issued by DOMS dated -04-06-2001 and 19-07-2001 are fair and equitable in terms of their applicability to various cadres and no injustice has been done to the petitioners. The representations of the above petitioners are disposed of accordingly, as being without merit."

Thereafter, the applicants and others were again promoted to officiate as Office

Superintendents vide A-13 order dated 28.3.2005. Thereafter the 1st respondent has issued impugned order dated 8.12.2005 (A-15) to hold DPCs for promotion to the grade of Office superintendents. In terms of the aforesaid instructions, the 1st respondent has issued A-16 order dated 7.2.2006 by which 122 officials were promoted as Income Tax Inspectors/Office Superintendents against vacancies pertaining to the recruitment years 2002-03, 2003-04, 2004-05 and 2005-06. According to the applicants, the stand of the official respondents as reflected in A-15 and A-16 is contrary to law and unsustainable in terms of the A-7 and A-8 amendment to the Recruitment Rules made for effectively implementing Government policy in regard to restructuring the Income Tax Department.

14. The respondents 1 to 3 in their reply statement, have submitted that the Government had ordered restructuring of Income Tax Department by A-7 order dated 4.6.2001 and by A-8 order dated 19.7.2001 and the Applicants were governed by the Annexure A-8 order relating to cadres of Office Superintendents, Senior Tax Assistants etc. and pursuant to the same, they were promoted as Senior Tax Assistants by A-11 dated 28.12.2001. They have further submitted that prior to A-7 restructuring on 4.6.2001, there were 2 cadres in Group C (i) the ministerial cadre comprising of LDC, UDC, Tax Assistant, Assistant etc. and (ii) non-ministerial cadre comprising of DEO in grades A B and C. Prior to restructuring, the non-ministerial cadre personnel could not go to the ministerial cadre. The applicants belong to the non-ministerial cadre and they were initially appointed as DEOs. After the restructuring, the post of DEOs in Grades A, B and C was abolished. They were again promoted as Office Superintendents on provisional basis by the Annexure A-13 order dated 28/5/2000 for the vacancies of 2003-04. They have also filed Annexure R-1(i) letter dated 30.1.2006 informing that all promotions for the period prior to 8.12.2005 were to be effected in pursuance of the instructions issued by Board's Annexure A-10 letter dated 7.3.2005 and subsequent promotions are to be made in accordance with the

draft Recruitment Rules. For the financial year 2002-03 and 2003-04, if no eligible candidates were available then such vacancies cannot be filled up. As per the aforesaid Board's letter dated 7.3.2005, the DOMS's Annexure A-7 and A-8 instructions dated 4.6.2001 and 19.7.2001 in respect of year 2001-02 were to be applied in respect of cadres which were in place during the recruitment years 2002-03 and onwards. All such pre-restructuring Tax Assistants (Rs.4500-7000) who got their promotion as Senior Tax Assistants in 2001-2002 cannot be considered for promotion to the grade of Office Superintendents under the category 'C' as they can no longer get promotion to higher grade by counting the seniority of such cadre, which they discarded long ago. However, all the Senior Tax Assistants who were promoted by 31.12.2001 in pursuance of DOMS's instructions dated 4.6.2001 and 19.7.2001, were eligible for promotion to the grade of Office Superintendents in the year 2004-05 as they were having 2 years regular service as on the crucial date i.e. 1.1.2004."

15 The respondents have further submitted that based on Annexure R-1 instructions, the Annexure R-2 list of Senior Tax Assistants to be considered for promotion as Office Superintendents based on the seniority list published on 1.1.2004 was prepared and placed before the review DPC held on 24.2.2006. The review DPC reviewed the promotions effected to the cadre of Office Superintendents for the recruitment years 2002-03, 2003-04, 2004-05 and 2005-06. The said review DPC was held in pursuance of the Board's letter in F.No.41015/40/2005-Ad.VII dated 8.12.2005 and clarification dated 30.1.2006. As a result, the seniority position in the cadre of Office Superintendent have undergone certain changes which have necessitated the preparation of a revised seniority list. Accordingly, the respondents have issued Annexure R-3 revised Seniority List dated 8.3.2006 of Office Superintendents showing the existing position as well as the revised position along with the deemed date of promotion. The officials, viz, Smt K Ajitha and Shri K.A.Sandoshkumar (applicants in this

O.A.) along with some other officials, who have been promoted as Office Superintendents on the basis of regular Departmental Promotion Committee held on 23.3.2005 for the recruitment year 2003-04 did not find place in the new panel drawn up promotion for the carried forward vacancies of earlier years and for the year 2004-05 and have to be reverted. However, on the basis of the interim order passed by this Tribunal dated 20.2.2006, they are continuing as Office Superintendents. As a result, these officials were accommodated against unanticipated subsequent vacancies and therefore, more eligible officials could not be promoted. They have also submitted that the applicants did not find place in the panels prepared on the basis of DPCs convened for promotion for the year 2005-06 and 2006-07 also. However, by the aforesaid Annexure R-3 order dated 8.3.2006 all the applicants in O.A.194/2005 have since been promoted and accordingly their grievances have been redressed and the said O.A has become infructuous.

16 In the rejoinder, the applicants have submitted that the proposed reversion of the applicants from the post of Office Superintendents would amount to reduction in rank and it will be penal action and therefore their promotion as Office Superintendents made vide Annexure A-13 order cannot be recalled without compliance of Article 311(2) of the Constitution. Again, it is their contention that no recruitment rules as approved by the DOPT have been published and until the recruitment rules are published in the Official Gazette, the same cannot be operated. Because of the draft recruitment rules which have not been given retroactive operation, the promotions already effected on regular basis cannot be reviewed to the prejudice and predicament of the applicants. They have also filed Annexure A-18 and A-19 orders dated 30.3.2005 and 29.11.2001 respectively and submitted that the UDCs and Tax Assistants merged as Senior Tax Assistants consequent upon the restructuring were promoted to the cadre of Inspector of Income Tax for the vacancies of the year 2004-05 even without completing three

years service in the cadre of Senior Tax Assistants and similarly the officials at SI.Nos.18,20,22 and 23 in Annexure A-18 were promoted as Senior Tax Assistant as per order dated 29.11.2001. They have also submitted that Annexure A-7, A-8 and A-10 are applicable in the case of Income Tax Inspectors as well as Office Superintendents and, therefore, the applicants are also entitled to reckon their service rendered in the grade of Data Entry Operators which ceased to exist consequent on the merger and restructuring the post as Senior Tax Assistant. They have, therefore, submitted that since the Senior Tax Assistants who got promotion as Office Superintendent were alone discriminated in the matter of promotion by issuing Annexure A-15 and A-16 letters, they are liable to be set aside.

O.A.82/2006

17. The applicants in this O.A were initially recruited and appointed as UDCs. After the restructuring of the cadre of Senior Tax Assistants, the applicants and 139 others were promoted to officiate as Senior Tax Assistants vide Annexure A-10 order dated 4.7.2001 with the stipulation that the promotions were purely on temporary and provisional basis and liable to be terminated at any time without notice. Thereafter, the 1st applicant (Shri Thomas George) and the 2nd applicant (Shri Babu Kurian) were also promoted to the cadre of Office Superintendents purely on provisional and temporary basis with the condition to terminate those promotions at any point of time without notice vide Annexure A-11 order dated 28.4.2005 and Annexure- A12 dated 28.11.2005 respectively.

18. As in the case of the applicants in O.A.81/2006, the applicants herein are also aggrieved by the letters dated 8.12.2005 and 7.2.2006 (Annexure A-14 and A-15 respectively).. The other submissions of the applicants herein are identical to those in O.A.81/2006.

19. The respondents have submitted that in the panel prepared, Shri Thomas George (one of the applicants in O.A.82/2006) finds a place at Sl.No.3 whereas Sri Babu Kurian (another applicant in O.A.82/2006) could not find a place. It is submitted that in the seniority list of Senior Tax Assistants, Shri Babu Kurian is far below the other eligible candidates for promotion as OS who also had not found a place in the panel for the recruitment year 2006-07. On the basis of the above panel for the year 2006-07, Sri Thomas George could have been promoted as OS with effect from 2.5.2006 only and his seniority position would have been below the position of Sri PC Thampi and above the position of Sri Surendran. Similarly, in the place of Sri Babu Kurian another eligible candidate could have been promoted. However, Sri Thomas George and Sri Babu Kurian could not be reverted in view of the order of the this Tribunal. On the basis of the above panel, 9 officials have been promoted as OS on regular basis and three officials have been promoted on ad hoc basis against the vacancies arisen on account of retirement and consequential promotion to higher cadre. It is submitted that since the applicants who are liable to be reverted as per the review DPC had to be accommodated by not reverting them in view of the direction of the this tribunal, more eligible officials could not be promoted on the date on which they should have been promoted as per their seniority position arrived on the basis of the clarification of the Board.

20. The interest of the 4th respondent (Sri Bhasi) in this OA is the same as that those of the private respondents in O.A.194/2005 who have specifically disputed the interpretation given in Annexure A-7 and its explanation to the vacancies for the year 2002-03 onwards. He has pointed out that Annexure A-13 provides that vacancies from 1005 December should be filled based on the draft recruitment rules. He has also denied the contention of the applicants that Annexure A-7 has a statutory seal based on Annexure A-8. According to him, Annexure A-7 is only an executive order issued in relaxation of the recruitment

rules and there was nothing wrong in clarifying it by Annexure A-14 and implementing such clarification by Annexure A-15.

21 We have heard Shri MR Hariraj, learned counsel for applicants in O.A.194/2005, Shri OV Radhakrishnan, Senior counsel for applicants in O.A.81/2006 and O.A.82/2006, Mrs Aysha Youseff for R.1 to 3 and Shri Shafik MA for respondents 4 to 12, Shri PS Biju, ACGSC for R.1 to 3 in O.A.81/2006, Shri MR Hariraj for R.4 in O.A.82/2006, Mrs K Girija, ACGSC for R.1 to 3 in O.A.82/2006 and MR Hariraj for R.4 in O.A.82/2006. We find that the reliefs sought by the applicants in OA-194/2005 has already been met by the respondents during the pendency of this OA by issuing the letter No.11/Estt/CC-CHN/2005-06 dated 8.3.2006 by which the seniority position in the cadre of Office Superintendent have been revised and all the applicants have been promoted as Office Superintendent. This was done in pursuance of the Board's letter No.41015/40/2005-Ad-VII dated 8.12.2005 and the clarification dated 30.1.2006. In our considered view the aforesaid letter dated 8.12.2005 and 30.1.2006 are legal and valid. The respondents have effected all promotions prior to 8.12.2005 in pursuance of the CBDT letter dated 7.3.2005. The subsequent promotions were made in accordance with the draft Recruitment Rules. We do not find any illegality or infirmity in these promotions. Resultantly the aforesaid letter dated 8.3.2006 is upheld. Since the respondents themselves have redressed the grievances of the applicants in this case during the pendency of the OA, it has become infructuous and it is disposed of accordingly. For the very same reasons, OA 81/06 and 82/06 should fail. They are, therefore, dismissed. The interim order passed in these

OAs restraining the respondents from reverting the applicant till these OAs are disposed of is also vacated. There shall be no orders as to costs in these OAs also.

Dated, the 7th December, 2007.

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

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