

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application NO. 116 of 2007

TUESDAY, this the 22ND day of September, 2009.

CORAM:

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

**Santhosh Kumar K.A.,
Office Superintendent,
Office of the Commissioner of Income Tax
(CC - Cochin), CR Building,
I S Press Road, Ernakulam,
Cochin : 682 018**

...

Applicant.

**(By Advocate Mrs. Sumathi Dandapani (Sr.) with
Mr. Mathew Kuriakose)**

v e r s u s

- 1. Chief Commissioner of Income Tax,
C.R. Building, Ernakulam,
Cochin – 682 018.**
- 2. Central Board of Direct Taxes,
North Block, New Delhi : 110001,
Represented by its Secretary.**
- 3. Union of India, Represented by
The Secretary, Ministry of Finance,
North Block, New Delhi : 110 001**
- 4. V.K. Gopinathan,
Office Superintendent,
Income Tax Office,
Mattancherry Asoka Building,
Chakkanattu Junction,
Karuvelipady, Cochin – 682 005**
- 5. K.R. Rajendran,
Office Superintendent,
Office of the Commissioner of Income Tax,
Trichur Ayakar Bhavan, Saktan Thampuran
Nagar, Trichur – 680 001**

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6. **C.K. Philip,**
Income Tax Inspector,
Office of the Additional Commissioner of
Income Tax, Kollam Range,
Near Karbala Junction, Railway Station Road,
Kollam : 691 001

7. **C. Rajeswari Menon,**
Income Tax Inspector,
Office of the Additional/Joint Commissioner
of Income Tax, Palakkad, Aayakar Bhavan,
English Church Road, Palakkad – 14.

8. **P.C. Markose,**
Income Tax Inspector,
Office of the Additional/Joint Commissioner
of Income Tax, Aluva, KAP Commercial Complex,
R.S. Road, Aluva: 683 101 ... **Respondents**

[By Advocates Mrs. K. Girija, ACGSC (R1-3) and
 Mr. M.R. Hariraj (R4 & 8)]

**The Original Application having been heard on 9.9.09, this
 Tribunal on 22.09.09 delivered the following :**

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The facts of the case as per the OA are as hereunder:-

(a) The applicant, a graduate, joined the service of respondents on 13.07.1989 as Data Entry Operator in the pay scale of Rs 1200- 2040. Later on, in the wake of the IV Pay Commission recommendations, from 11.09.1989, the post of Data Entry Operators had been bifurcated as Data Entry Operator Grade A and Grade B, with the pay scales of Rs 1150 – 1500 and Rs 1350 – 2200 respectively. The latter post is tenable by Graduates with knowledge of Data Entry Work or Promotional grade for Data Entry Operator. Annexure A-1 order dated 11th September 1989 refers. As per the same, the effective date for the revised pay scales would be from the date of

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Notification by the concerned Ministries. . The effective date of the revised pay scales as above has been clarified as 11-09-1989 in Order dated 12-01-1990 vide Annexure A-2. As the respondents had not extended the higher pay scale to the applicant though he was fully qualified, he filed OA No. 204/2001 which was allowed by the Tribunal vide order dated 25th October, 2002, declaring that the applicant is entitled to the higher scale w.e.f. the date of joining the service, i.e. 13-07-1989 and is also entitled to the consequential benefits. Annexure A-3 refers. The said order was implemented, vide Annexure A-5. The High Court has also upheld the decision of the Tribunal vide Annexure A-6. Vide Annexure A-4, when restructuring took place, the post of DEO Grade B had been re-designated as Senior Tax Assistant (Rs 5000 – 8000) which formed the feeder grade for the post of Office Superintendent and above the same is the post of Administrative Officer. According to the applicant, the said grade B was omitted to be placed as feeder grade for the higher post in the year 2000 – 2001, while the same was introduced in 2001-2002. Despite the inclusion in 2001-02, none of the then Grade 'B' D.E.O. was promoted to the grade of Office Superintendent. In fact, though the order of this Tribunal directed the respondents to place the applicant in DEO Grade B with consequential benefits, according to the applicant, he was not considered for promotion on the basis of his holding the post of DEO Grade B w.e.f. 13-07-1989, whereas those who were in the pre-revised grade of Rs 4000 – 6000 and ranked below the applicant in the pre-restructuring stage have all stolen a march over the applicant and promoted to the post of Office Superintendent. Thus, the applicant preferred OA No. 611/2001 which was disposed of, , with a direction to the respondents to dispose of the representation filed by the applicant. The representation having been rejected, the applicant moved OA No. 486/2004 challenging the rejection order and with an identical prayer as

in 611/01. This was, however, dismissed on 24-05-2006. The applicant filed another OA No. 162/2004 alleging that seniority has not been given to the applicant on the basis of his placement in DEO Group B Grade and this was disposed of with a direction to the respondents to dispose of the representation. The applicant again brought to the notice of the Tribunal through MA 1202 of 2005 in OA No. 162/2004 that the representation had not been disposed of and in implementation of order dated 01-02-2006 in the said MA the respondents had issued the impugned Annexure A-9 Memorandum dated 18th August, 2006 rejecting the claim of the applicant. The applicant filed yet another representation dated 20th March 2006 referring to an identical case of a different Commissionerate and requested for consideration of the case of the applicant for promotion as Office Superintendent. Annexure A-8 refers. This was also dismissed vide Annexure A-10 Memorandum. The said two Memoranda vide Annexure A-9 and A-10 are under challenge in this O.A.

2. The applicant has filed this OA contending that the respondents had not given the "consequential benefits" as ordered vide order in OA 204/01, which includes consideration for promotion to the grade of Office Superintendent, on the strength of the service rendered in the feeder category of DEO Grade B w.e.f. 13-07-1989. and the relief claimed by the applicant includes the following:-

(a) Call for the records leading to issue of Annexure A-9 order No. 42/1/CC/Estt/2004 dated 18.08.2006 issued by the first respondent and Annexure A-10 Memorandum No. 23/Estt/98/CC-CHN/2006—7 dated 10.07.2006 issued by the first respondent.

(b) Direct the respondents 1 to 3 to promote that applicant to the post of Office Superintendent from 2001-2002 itself, considering

his entry of service as DEO Grade-B from 13.07.1989 from the date of promotion of respondents 4 to 8.

(c) Declare that the applicant is entitled to be promoted as Office Superintendent from 2001-02 itself considering his entry of service as DEO Grade-B from 13.07.1989 in preference to respondents 4 to 8.

3. The OA is resisted both by the Official as well as party respondents.

Their contentions are as under:-

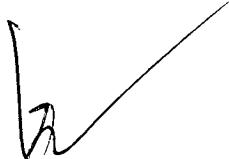
(a) Contention by the Official respondents:

The applicant had already filed OA 162/04 and 486/04 advancing the self same contention that the consequential benefit in the matter of promotion to the grade of Office Superintendent has not been granted to him and that some of his juniors have been promoted. OA No. 162/04 was disposed of by this Hon'ble Tribunal directing the respondents to dispose of the applicant's representation. The applicant's representation was considered and disposed of vide memorandum dated 18-08-2006, wherein his request was rejected. Meanwhile, the applicant approached this Tribunal by filing OA No. 486/2004 wherein the main prayer of the applicant was to direct the respondents to include the cadre of DEO Gr. B also for consideration to the post of Office Superintendent and Senior Tax Assistant above that of the Restructured Assistants and UDCs in the Recruitment year 2001 itself and similar amendment brought out in relation to the recruitment year 2001-2002 with a further prayer to direct the 3rd respondent to promote the applicant to the cadre of Office Superintendent/Senior Tax Assistant retrospectively in the recruitment

year 2000 – 01 itself and grant him all the benefits like seniority/further promotion on that basis. While disposing of the said OA the Tribunal clearly took note of the fact that the main grievance of the applicant is that he should have been promoted as Senior Tax Assistant in the year 2000 – 01 in preference to UDCs who are in the lower scale than of DEO Grade II. When OA 204/01 was implemented, the applicant could not point out any specific injustice meted out to him. The applicant cannot now be permitted to make further claim based on the strength of the direction in OA 204/01 to grant consequential benefits.

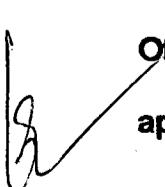
4. Applicant has filed his rejoinder to the reply of the official respondents, reiterating the contentions as contained in his OA. In a further affidavit, he has also annexed a copy of the order dated 24th October 2007 in OA 84/2006. In the said order, it has been held that once the pay scale is granted the designation attached to the post is the consequential relief to be granted to the applicant.

5. In response to the rejoinder, the respondents (1 to 3) filed additional reply stating that the claim in OA 162/04 is being reiterated by the applicant in the present OA also; that Annexure A1 and A-2 referred to by the applicant in the present OA were already referred to in OA 204/2001; that respondent Nos. 4 to 8 of the present OA are the same persons who were promoted vide Annexure A-4 of OA No. 162/04 and it was the claim of the applicant in the said OA that he may be considered for promotion as Office Superintendent along with those persons. And the said OA having already been disposed of, the applicant's attempt is to reagitate the earlier claim which already stands disposed of. The term consequential benefit as contained in the earlier decisions meant only monetary benefits, which had been afforded to the applicant. This view has been reiterated by the High Court while dismissing WP(C) No. 12074/2004

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(Annexure A-6). It is incorrect to contend that the applicant had been promoted as DEO Gr. B from 13-07-1989. He was promoted to the said post only in 1994. He moved the Tribunal in OA 204/2001 much later than the date of his promotion and this Tribunal had granted only the pay scale of DEO Gr. B and not the seniority as DEO Gr. B. The applicant never challenged his appointment to the cadre of DEO Gr. B by way of promotion by the order dated 01-07-1994 claiming advancing the date of his promotion in his OA No. 204/2001 or any subsequent OA. Applicant could not succeed in agitating against the common seniority in respect of himself and the party respondents, vide order in OA 611/2001 and 486/2004. As regards comparison with another individual in Bhopal Region, the same cannot be banked upon by the applicant as the promotion orders in that case are liable to be reviewed as stated in Annexure A-8 and further in so far this commissionerate is concerned, the promotions effected by the officer of the first respondent is strictly in consonance with the instructions and guidelines issued by the CBDT from time to time.

6. In the additional rejoinder the applicant contended that his case is identical to that of the case in Bhopal Commissionerate, where the Graduate DEO Grade-B was afforded the pay of Rs 1350 – 2200 with effect from the entry into service as Data Entry Operator, vide Annexure A-15. It is illogical to grant higher pay scale but deny the designation, as scale of pay and designation of the post are two sides of the same coin. The seniority in the cadre of DEO Grade B from 13-07-1989 is a concomitant with the retrospective grant of scale by virtue of the order of this Tribunal, however, the benefit of the post has been denied illegally. When in Bhopal Commissionerate the benefit of assignment of the date of promotion as Grade B DEO has been granted and promotion granted as Office Superintendent, the same should have been followed in the case of the applicant as well. The applicant has annexed as Annexure A-13 which is a copy



of the Jabalpur Bench

of the order dated 24th October 2007 in OA No. 84/2006, whereby the respondents were directed to grant the applicants in that OA the designation of DEO Grade B with effect from the date when they were granted the pay scale of Rs 1350 – 2200 with all consequential benefits.

7. In the second additional reply the official respondents have added that the decision of the Jabalpur Bench is under challenge before the High Court of Madhya Pradesh in WP(C) No. 3161/2008(S). Again, when the applicant's prayer has been denied by this Tribunal, he cannot take advantage of any other judgment even if the same is implemented by the department in the circumstances of that case falling under different jurisdiction of the Tribunal. In addition the fact that OA No. 81/2006 filed by the applicant has been rejected (vide Annexure R-3) has also been highlighted.

8. Additional rejoinder to the additional reply has been filed by the applicant adding to the pleadings the decision by the Principal Bench at New Delhi, Mumbai Bench and Patna Bench of the CAT and the judgment of the High Court of Patna, upholding the decision of the CAT, Patna Bench. The High Court of Patna has held as under:-

"6. Mr. Tripathi assailed the order of the Tribunal on a number of grounds. We are not inclined to entertain those submissions purely for practical reasons. From the order of the Tribunal it is apparent that identical controversies arose at different places in the Country and at least six or seven Benches of the Central Administrative Tribunal, including its Principal Bench took the view that the Data Entry Operators who were Graduates at the time of their appointment would get the scale of Rs. 1350-2200 notwithstanding the fact that their appointments were made prior to coming into force the statutory rules in 1994. In many cases the Tribunals' decisions were affirmed by the different High Courts and those decisions have also been made effective and carried out by the departmental authorities across the country. In this isolated case, therefore, it will be wholly unfair and improper to take a view contrary to the view taken by the Tribunal which is being applied whole over the country. On

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this consideration alone we are satisfied that the matter does not warrant any interference by this Court in exercise of its writ jurisdiction."

9. Yet another reply had been filed by the official respondents, stating that the decision of Mumbai Bench cannot be interpreted to mean that seniority should be given from a date prior to the date of creation of the post of Gr. B DEO in 1994.

10. Party respondents have filed their counter. They have alleged that the applicant is before the Tribunal with unclean hands and has disentitled himself to any discretionary indulgence. Reference was made to the earlier claim in OA 486/2004 which was dismissed by the Tribunal. The claim now projected by the applicant is hit by constructive res judicata. The party respondents have referred to order dated 28th December 2001 by the respondents whereby the applicant had been granted the post of Sr. Tax Assistant w.e.f. 28-12-2001.

11. The Senior counsel for the applicant gave a brief history of the past cases filed by the applicant and the same are in the tabulation form as under:-

OA NO	RELIEF CLAIMED	RELIEF GRANTED
204/01	Grant of pay of Rs 1350 – 2200 as D.E.O. Gr. B w.e.f. 13-07-1989; pay fixation under Revised Rules 1997 and all benefits thereunder and consequential arrears.	Allowed with all the consequential benefits (This had been upheld by the High Court in WP(c) 12074/04.
611/01	To declare that the two phased restructuring is illegal.	Disposed of, with a direction to the respondents to decide the pending representation.
162/04	Grant of seniority taking into account appointment as DEO Gr. B from 13.07.1989	Disposed of, with a direction to the respondents to decide the pending representation.

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OA NO	RELIEF CLAIMED	RELIEF GRANTED
486/04	To include cadre of DEO Gr. B also for consideration to the post of Office Superintendent and Senior Tax Assistant in the recruitment year 2000 – 01 itself.	Dismissed.
81/2006	Services rendered as DEO should be reckoned for the purpose of seniority	Dismissed. Writ petition is pending before H.C.

12. The relief sought for by the applicant in this OA includes the following:-

"To direct the respondents to promote the applicant to the post of Office Superintendent from 2001-2002 itself, considering his entry of service as DEO Gr. B from 13-07-1989 from the date of promotion of private respondents."

13. The senior counsel argued that the relief sought for in the earlier O.As and the present O.A. would go to prove that the case is not hit either by res-judicata or constructive res judicata.

14. The senior counsel referred to the order of this Tribunal in OA No. 204/2001 which provided for "all consequential benefits" and as such, the benefits cannot be confined to mere arrears of pay alone but also the seniority as the pay scale attached to DEO Gr. B made available to the applicant should accompany the corresponding seniority.

15. Counsel for the official respondents submitted that the relief sought for in OA No. 204/2001 revolves round pay scale and attendant consequential benefits and there is no whisper of seniority or benefits arising out of seniority.

16. The counsel for party respondents submitted that the case is hit by principles of res judicata in view of the fact that the claim of the applicant in OA 486 of 2004 and the relief in the subsequent OA aimed at seniority and

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promotion to the post of Office Superintendent taking into account the services rendered as DEO Gr. B w.e.f. 13-07-1989.

17. Arguments were heard and documents perused. The question is as to whether the applicant's case is hit by res judicata or constructive res judicata or whether the applicant cannot claim the relief of 'consequential benefits' arising out of the order in OA 204/01 at this distance of time.

18. First as to the issue of res judicata: The tabular column contained above would show the relief claimed and granted. 204/01 as claimed by the respondents confines itself only to pay scale and consequential arrears. Thus, the applicant cannot presume that the same included also redesignation and consequential promotion as Office Superintendent. OA 486/04 relates to advancing Cat. C introduced for recruitment year 2001-02 to the preceding recruitment year 2000-01. This also cannot be construed to mean redesignation and consequential promotion. 611/2001 as well as 162/2004 have been disposed of without going into merits and with a direction to dispose of the representation. Hence, these also cannot result in the present OA being hit by principles of res judicata. Lastly 81/2006 which relates to seniority in the grade of DEO and this having been dismissed, the writ petition is pending before the High Court. This OA, if the claim of the private respondent is taken into account that seniority is different from counting of experience for the purpose of promotion, may not be fatal to the case.

19. The claim of the applicant for promotion to the higher Grade taking into account his position as DEO Gr. B is not just based on his own case. He relies upon a number of decisions as contained in Annexure A-14 (OA No. 84 of 2006 of the Jabalpur Bench which ruled that pay scale granted means,

designation attached to the post is the consequential relief to be granted to the applicant) Order of the Chief Commissioner of Income Tax, Bhopal vide Annexure A-15, whereby two individuals similarly situated in Bhopal Commissionerate have been granted promotion to the post of Office Superintendent, Order dated 23rd March, 2004 in OA 781/03 of the Mumbai Bench, vide Annexure A-20, which afforded pay scale, seniority and other consequential benefits, promotion order dated 18th July, 2006 of the Chief Commissioner of Income Tax Delhi, passed in pursuance of order dated 24.11.2004 in OA 34/2004 of the Principal Bench of the Tribunal, order dated 25th July 2006 of the High Court of Judicature at Patna in CWJC No. 3153 of 2005, whereby the High Court observed that where the Tribunals decisions were affirmed by different High Courts and those decisions have also been made effective and carried out by the Departmental authorities across the country, it will be wholly unfair and improper to take a view contrary in isolated case. This observation of the Hon'ble High Court is respectfully applied to the facts of this case also.

20. It is pertinent to mention that there there cannot be any difference on account of two posts coming under different commissionerate. In the case of **Y.K. Mehta v. Union of India, 1988 Supp SCC 750** the Apex Court has held as under:-

"When two posts under two different wings of the same Ministry are not only identical, but also involve the performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay."

21. The above decision of the Apex Court is based on the provisions of Art. 39(d) of the Constitution, which is one of the Directive Principles.

22. As early as in 1960, a Constitution Bench of the Apex Court has, in the case of *All India Station Masters' and Asstt. Station Masters' Assn. v. General Manager, Central Railway, (1960) 2 SCR 311*, held as under:-

"8. It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment."

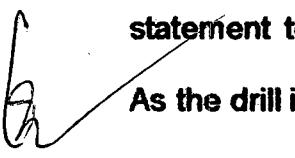
23. Undoubtedly, various Commissionerates fall within the same Ministry of Finance. From the narration of events as contained above and the decisions of various Tribunals/High Courts, it is clear that consistency has not been maintained with reference to the issue by the Respondents. Somewhere the higher pay scale alone is granted to graduate DEOs, somewhere it is coupled with seniority; Somewhere the decision of the CAT is accepted and somewhere the same is agitated before the High Court. The Patna High Court has in crystal terms refused to interfere with the decision of the CAT.

24. May be that contesting the case of the applicant by the Commissionerate would be fully justified had there been no other case of identical nature. When the applicant produces decisions after decisions of other Tribunals and orders of implementation, it would not be appropriate that Respondent No. 1 brushes the same aside stating that they belong to different commissionerate. Though Commissionerate may be different, the Head of all converges to the Ministry of Finance, which is common to all. There must be a uniform policy in this regard. Though the reply from the official respondents is

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one for Respondents 1 to 3, which include the Secretary, Ministry of Finance, it is highly doubtful that these replies are vetted by the said Respondent. When different Commissionerates follow different methods in regard to the subject matter, it is for the Secretary, Ministry of Finance to consider all such cases and arrive at a uniform conclusion to maintain consistency. "Consistency is a virtue" (See Secy. State of Karnataka vs K. Umadevi (2006) 4 SCC 1 at para 20). Leaving the matter to the discretion of the Commissionerates would result in different treatments in identical cases, which would directly result in hostile discrimination and would directly infringe the right to equality enshrined in our Constitution, as held in the case of *Air India v. Nergesh Meerza, (1981) 4 SCC 335*, wherein the Apex Court has held, "Article 14 forbids hostile discrimination". After all the policy for all the Commissionerate is one and rules/regulations are equally applicable. When divergent decisions have been taken by other Commissionerate, it is only appropriate that the case of the applicant is referred to the Secretary, Ministry of Finance, by preparing a comprehensive statement of case, indicating therein the details of other cases referred to by the applicant/respondents for consideration of the Secretary, Ministry of Finance, who would, sure enough, take the advice from the Legal Advisor, ascertain the position from other Commissionerates and arrive at a conscious and just conclusion.

25. Accordingly, this OA is disposed of with a direction to the respondent, to make out a statement of case as stated above and refer the same to the Secretary Ministry of Finance for a final decision. The applicant on his part shall make available to the first respondent details of all the cases in other Commissionerate and assist the Commissioner in making out a comprehensive statement to be referred to the Secretary, Ministry of Finance within a month.

 As the drill involved is sufficiently time consuming, a period of six weeks from the

date of submission of the inputs by the applicant calendared for preparation of a statement of case by the first respondent, and four months thereafter for consideration by the Secretary, Ministry of Finance and his decision may be communicated to the applicant within one month thereafter. It is fervently hoped that the judicious decision that would be arrived at by the Secretary would put a quietus to the long ranging litigation.

26. No costs.

(Dated, the 22nd September, 2009)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.