

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 224 OF 2011

Monday, this the 28th day of May, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. Jayakumar S., Senior Accountant,
Book I Section, O/o the Accountant General (A&E),
Kerala, Thiruvananthapuram, Now residing at
T.C. 8/897(4), House No. 168, Avantika,
Arayalloor, Elluvila Nagar, Thirumala,
Thiruvananthapuram.
2. N. Sasidharan, Senior Accountant,
AC Section, O/o the A.G. (A&E), Kerala,
Thiruvananthapuram, Now residing at
Sunitha Mandiram, Perunguzhy (P.O),
Muttupalam – 20.
3. Narayanan Nair.K.K., Senior Accountant,
DAE 6 Section, O/o the A.G. (A&E), Kerala,
Thiruvananthapuram, Now residing at V.P 16/36,
Mini Bhavan, Perukavu (P.O), Ex-Service Nagar,
Thiruvananthapuram – 7
4. Jothibhas M, Senior Accountant,
DAE 5, O/o the A.G. (A&E), Kerala,
Thiruvananthapuram, Now residing at Aswathi,
Mavarathalakonam, Nalanchira (P.O),
Thiruvananthapuram – 15.
5. Indiramma A, Senior Accountant,
EDP(PF) Section, Now residing at Aswathi,
Mavarathalakonam, Nalanchira (P.O),
Thiruvananthapuram – 15.
6. K. Prasannan, Senior Accountant,
LA4 Section, Now residing at Ambady House,
Padanilam (P.O), Nooranadu, Alappuzha – 8
7. Rajee Rajan, AAO (Adhoc),
Book I Section, Now residing at Surabhi,
BLRA-55, Panchami Lane,
Marakkamuttom, Neyyattinkara (P.O),
Thiruvananthapuram – 695 121.
8. Chacko K.M., Senior Accountant, EDP(PF) Section,
Now residing at M.G.R.A – 23, T.K.D. Road,
Marappalam, Pattom, Thiruvananthapuram – 21.

9. Vinod. V.G, Senior Accountant, PF-13 Section, Now residing at T.C. 24/161, Thycaud (P.O), Thiruvananthapuram – 14.
10. Prastina Andrews, Senior Accountant, EDP(PF) Section, Now residing at T.C.11/1014, Nanthancode, Kowdiar (P.O), Thiruvananthapruam – 16.
11. Sobha Kumar B, AAO(A) EDP(PF) Section, Now residing at Venkita Nivas, Sastha Nagar, Sivankovil Street, Karamana, Thiruvananthapuram – 2.
12. Vasantha Sudarsanan, Senior Accountant, EDP(PF) Section, Now residing at 'Swathi', K.P. XI 145-A, RBA-34, Ramapurathu Lane, NCC Road, Ambalamukku, Thiruvananthapuram – 3.
13. Sreeju Kumarji, Senior Accountant, GE 9 Section, Now residing at Central Government Officer's Colony, Qr. No. 35, Block – 6, Type III, Melethumele, Vattiyoorkavu (P.O), Thiruvananthapuram – 695 013.
14. Jalajakumari G.S, Senior Accountant, AC Section, Now residing at T.C. 50/490 (3) A-9, Mayoora Lane, Maruthoorkadavu, Karamana (P.O), Thiruvananthapuram – 14.
15. Sheeba Cyrus, AAO(A), TM Section, Now residing at AAO(A)/TM, TC 27/1946, Chirakulam Road, Thiruvananthapuram – 1.
16. Roshini V., Senior Accountant, TM Section, Now residing at 'Krishna Kripa', Karakkattu Lane, Nemom (P.O), Thiruvananthapruam – 3.
17. R. Sasikala, Senior Accountant, LA-CELL (MCA) Section, Now residing at Neeranjanam, VPS : 316 (A), Vattavila, Thirumala (P.O), Thiruvananthapuram – 6
18. Sumarethnam R, Senior Accountant, Pen-7 section, Now residing at T.C.18/183(1), D.S. Villa, Kunnappuzha, Aramada (P.O), Thiruvananthapuram – 5

19. Bindu M.L, Senior Accountant, PF 47 section, Now residing at Vara-311, Hill View Lane, Arappura Road, Vattiyoorkavu, Thiruvananthapuram – 3.
20. Preetha V.S, AAO, PM Section, Now residing at T.C. 9/2208, Saranath Kurup's Lane, Sasthamangalam, Thiruvananthapuram – 12,
21. K.S. Shibu, Senior Accountant, DAE-2 section, Now residing at T.C. 16/411 (i), 'Kunnel', Veerabhadra Garden, Pottakuzhy, Pattom (P.O), Thiruvananthapuram – 16.
22. Gettis Mary R, IAD, Senior Accountant, Now residing at J.M House, T.C. 34/472, Kannanthura, Beach (P.O), Thiruvananthapuram – 7.
23. R. Rajeev Sekhar, Senior Accountant, DC-3, Now residing at "Rakendu", Devi Nagar, Kannamoola, Thiruvananthapuram – 5.
24. Venugopala Varma G.K, Senior Accountant, Canteen Cell, Now residing at 'Kauthubham', VARA-570, Arappura, Thiruvananthapuram – 13
25. Pahad P.S., Senior Accountant/EDP-PF, Now residing at Bismillah, House No. 46, Mosque Lane, Kesavadasapuram, Thiruvananthapuram – 13.
26. Vijaya R., AAO(A)/Bills (OE), Now residing at Omkar, TC 50/1468(12), TARA – 24, Vilayil Lane, Thaliyal, Karamana (P.O), Thiruvananthapuram – 2.
27. Annie Anto, Accountant/GE 16, Now residing at VRA-A39, Near Khadi Board Office, Vanchiyoor, Thiruvananthapuram – 20.
28. Nalini Menon, AAO, PF 36, Now residing at FNRA – 9, Poonthi Road, Kumarapuram, Thiruvananthapuram – 22.
29. Biju Aravind, Senior Accountant, RRD (Pen) section, Now residing at 'Karunya', VC No. 9/431, PCRA.A12, Peyad (P.O), Thiruvananthapuram – 21.
30. Suma A.S., AAO/BK-2, Now residing at 'Raduvi', Near CSI Church, Keraladityapuram, Powdikonam (P.O), Thiruvananthapuram – 15.

31. Anilkumar K.S, Senior Accountant/RRD(Pen),
Now residing at TC6/483 (4), Anuragh,
Arappura, Vattiyoorkavu (P.O),
Thiruvananthapuram – 13.

32. Maya P.I, AAO (Adhoc), PAO-2 section,
Now residing at House No. 305-D,
Darshan Nagar, Peroorkada – 695 009,
Thiruvananthapuram – 13.

33. Boban M.S, Senior Accountant, GE-18 section,
Now residing at TC 41/2186, Valiapalli Road,
Manacaud (P.O) – 12.

34. Hari Sankar N, Senior Accountant/DC 4,
Now residing at CPRA 21, Lakshmi Vikas,
Statue, Thiruvananthapuram – 12.

35. Baby Abraham, Senior Accountant,
EDP(PF), Now residing at 35-A Bapuji Nagar,
Pongummoodu, Medical College (P.O),
Thiruvananthapuram – 11

36. A.N. Saboora, Senior Accountant/PF-1,
Now residing at Shalimar, House No. 28-A,
N.V. Nagar, Peroorkada, Thiruvananthapuram – 13.

37. Vanathi A, Senior Accountant, PR Cell -2,
Now residing at 20/98C, 'Rajarajeswari',
Edaitharu, Palace Ward, Kuzhithurai,
Kanyakumari District – 11

38. Neena P., Senior Accountant/GE 30,
Now residing at Quarter No. 8, Type IV,
C.G.O Complex, Poongulam – 18.

39. Elizabeth Mini Jacob, Senior Accountant,
DAE-2 Section, Now residing at Flat No. 305,
Block II, EMS Nagar, Pattoor,
Thiruvananthapuram – 12. - Applicants

(By Advocate Mr. R.V. Sreejith)

Versus

1. Union of India, represented by the
Controller and Auditor General of India,
10, Bahadur Shah Zafar Marg,
New Delhi – 110 002.

2. The Accountant General (A&E),
Kerala, Thiruvananthapuram – 695 002. - Respondents

(By Advocate Mr. V.V. Asokan)

ORDER**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER**

When the case was taken up for consideration, neither the applicants nor their counsel was present. No representation was made.

Dismissed.

(Dated 28th May, 2012)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

ax

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.224 /2011

Tuesday, this the 14th day of August, 2012.

CORAM

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

1. Jayakumar S., Senior Accountant, Book I Section, O/o the Accountant General (A&E), Kerala Thiruvananthapuram, now residing at T.C.8/897(4), House No.168, Avantika, Arayalloor, Elluvila Nagar, Thirumala, Thiruvananthapuram-16.
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38. Neena P., Senior Accountant/ GE 30, now residing at Quarter No.8, Type IV, C.G.A. Complex, Poongulam-18.

39. Elizabeth Mini Jacob, Senior Accountant, DAE-2 section, now residing at Flat No.305, Block II, EMS Nagar, Pattoor, Thiruvananthapuram-12. Applicants

(By Advocate Mr R.V.Sreejith)

V.

1. Union of India, rep. by the Controller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi-110 002.

2. The Accountant General (A& E) Kerala, Thiruvananthapuram-695 002.

(By Advocate Mr V.V.Asokan)

This application having been finally heard on 06.08.2012, the Tribunal on 14.08.2012 delivered the following:



ORDER

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

The legal issue involved in this OA is as to whether the applicants are entitled to the deputation allowance and if so, what should be the extent of deputation allowance applicable to them during their deputation period as Data Entry Operators.

2. Two sets of persons were deputed to function as Data Entry Operators.

They are:

- (a) Clerks in the scale of Rs 3050 – 4590 and
- (b) Accountants in the pay scale of Rs 4000 – 6000/-.

3. The pay scale attached to the post of Data Entry Operators is Rs 4000 – 6000. Rules are very clear on deputation allowance in that if a person on deputation opts for the pay scale attached to the deputation post, he will be entitled only to that pay scale unless the individual opts for deputation allowance. Such an option is desired by those who are in the lower pay scale in their parent cadre, like the Clerks in this case. When the pay scales of the deputation post and the post held by the deputationist in the parent department is identical, during the period of deputation, the individual would claim the deputation allowance which is the prescribed percentage of his pay.

4. In the case of the applicants in this OA, a peculiar situation arose in that, some of them, during the period of deputation, were afforded their first/second financial upgradation, which had brought them to a pay scale of Rs 4,500 – 7000 which is higher than the pay scale of the deputation post of Data Entry Operators. Normally deputation from a post carrying higher scale of pay to a post carrying lower scale of pay is not permissible. In the case of the applicants,

due to administrative exigencies, some of the applicants were allowed to continue to hold the post of Data Entry Operators, though their pay scale in the parent department became higher due to the grant of the financial upgradation. But, such individuals who were drawing the higher pay scale were not allowed the deputation allowance.

5. While grant of financial upgradation created a peculiar situation as stated above, the revision of pay scales of Data Entry Operators as well as the posts held by the applicants in the parent department in the wake of acceptance of the recommendations of the sixth Central pay commission has created yet another complication. The erstwhile pay scale of Rs 4000 – 6000 attached to the post of Data Entry Operators was revised to Rs 5200 – 20200 with grade pay of Rs 2,400/- and the pay scale of the accountants (Rs 4000 – 6000) was revised to Rs. 5,200 – 20,200 with grade pay of Rs 2800/-. The erstwhile pay scale of Rs 4,500 – 7000 of the Senior Accountants underwent an upward revision of Rs 9,300 – 34,800/- plus Grade Pay of Rs 4,200. All the revised pay scales were effective from 01-01-2006. While initially, 40% of the arrears arising out of the aforesaid revision of pay scales were duly paid to the applicants, when it came to the question of payment of 60% of the arrears of pay and allowance, the respondents have restricted the grade pay of Rs 2,800 and Rs 4,200 as the case may be to Rs 2,400/- which is the grade pay attached to the post of Data Entry Operators. This was so done on the basis of clause (g) of the order No. 2/22A/2008-Estt(Pay II) dated 03-09-2008, which reads as under:-

"In case where the deputation is to a post with a lower grade pay, the officer going on deputation will draw the grade pay attached to the deputation post without any change in the band pay that was being drawn in the post being held before the deputation."

6. The grievance of the applicants is two fold -

- (a) That the order dated 03-09-2008 cannot be made applicable to the applicants whose deputation is much anterior to the issue of the said order.
- (b) Assuming without accepting that the order dated 03-09-2008 is applicable to the applicants, there is no question of retrospective application of the said order, to take away the benefits already granted to the applicant in respect of higher Grade Pay applicable to the post they hold in the parent cadre.
- (c) Representation vide Annexure A-8 to A-45 still remain unanswered by the respondents.

Hence, this OA, seeking the following reliefs:-

- i) To direct the respondents to grant the applicants the grade pay attached to the post of Accountants and Senior Accountants as the case may be, with effect from 1.1.2006 with interest till the date of payment.
- ii) To declare that clause (g) of Annexure A2 O.M is not applicable to the applicants as they were depute years back.
- iii) To direct the respondents 1 and 2 to consider and pass orders on Annexures A8 to A45 representations as expeditiously as possible, and at any rate within a time limit to be fixed by this Hon'ble Tribunal, considering the recommendations in Annexure A4 and Annexure A45.

7. Respondents have stated in para 4 of their reply that the the first respondent had issued letter dated 14-06-2011 to the effect that the Accountant-DEOs are also eligible for the grade pay of the parent cadre as prayed for in the O.A.

8. In their rejoinder the applicants have stated that the respondents have not executed the order of the first respondents in its entirety in that certain amounts are still due to them. And, in this regard, Annexure A-46 representation has been made. In addition, vide Annexure A-47, the respondents have stated that clerks/typists on deputation as DEOs on promotion as Accountant may continue

to work on deputation with grade pay of present cadre. In such circumstances, no deputation allowance shall be admissible to them. It has also been clarified that Annexure A-1 letter of 19-04-2004 is not applicable w.e.f. 01-01-2006.

9. In their rejoinder the applicants claim that they are entitled both to the grade pay admissible to them in the parent cadre as also deputation allowance.

10. Counsel for the parties advanced their arguments on the lines as contained in the pleadings.

11. Arguments were heard and documents perused. A part of the grievance (in respect of Grade Pay) stands already redressed. Para 4 of the reply refers. The only question is about the entitlement of Deputation allowance for those whose scale of pay in the Parent Cadre is identical with that of Data Entry Operator.

12. The applicants are accountants and they have been performing the duties of Data Entry Operators. This is a deputation post and rules on deputation allowances are as under:-

"3.3. A person in a higher Grade Pay/scale of pay shall not be appointed on deputation to a post in lower Grade Pay/Scale of Pay if the deputation is from Central Government to Central Government and also in cases where the scale of pay and dearness allowance in the parent Cadre post and *ex cadre* post are similar.

X X X X

4.1 An employee on deputation/foreign service, may elect to draw either the pay in the scale of pay of deputation/foreign service post or his/her basic pay in the parent cadre plus deputation (Duty) Allowance thereon plus personal pay, if any.....

4.3 The borrowing authority shall obtain the option of the employee within one month from the date of joining the *ex cadre* post

unless the employee has himself furnished the option.

4.5 The option one is exercised shall be final.

4.7 However the employee may revise the option under the following circumstances which will be effective from the date of occurrence of the same:-

(a) When he/she receives pro forma promotion or is appointed to non-functional selection grade or upgradation of scale in the parent cadre.

(b)

(c) when the scale of pay of the parent post on the basis of which his emoluments are regulated during deputation/foreign service or of the ex-cadre post held by the employee on deputation/foreign service is revised either prospectively or from retrospective date.

5. Pay fixation

5.1 When an employee on Deputation/foreign service elects to draw pay in the scale of pay attached to the ex-cadre post, his/her pay may be fixed as under :-

(i) Deputation from Central Government to Central Government
If the scale of pay/Grade Pay of the ex-cadre post is higher, the pay may be fixed after adding one increment to the existing pay in the Pay Band of the parent cadre post. The grade pay corresponding to the ex-cadre post would thereafter be granted in addition to this pay in the pay band. However, in cases where the fixation of pay in the ex cadre post involves change of Pay Band also, if the pay in the Pay Band after adding the increment is less than the minimum of the Pay Band corresponding to the grade pay of the ex cadre post, the pay in the pay band will be fixed at the minimum of the Pay Band.

In case the grade pay/scale of employee's cadre post and the ex cadre post are identical, the employee would continue to draw his/her existing basic pay.

6. Deputation Allowance:

6.1: The Deputation Allowance admissible shall be at the following rates:-

(a) In case of deputation within the same station, the allowance will be paid at the rate of 5% of the employee's basic pay subject to a maximum of Rs 2,000/- p.m.; and

(b) In other cases, Deputation Allowance will be payable at the rate of 10% of the employee's basic pay subject to a maximum of Rs 4,000/-.

13. If the above rule is pressed into service in the case of the applicants, by virtue of paragraph 3.3 extracted above, the applicants would not be entitled to continue on deputation. If this condition has to be relaxed, then paragraph 10 of the consolidated instructions stipulate that any relaxation of these terms and conditions will require the prior concurrence of the Department of Personnel and Training. If by virtue of the Comptroller and Auditor General of India being the Constitutional body, such a prior concurrence is not required, and if the said authority, who is respondent No. 1 in this OA has accorded his approval for continuance of the applicants in the deputation post, as stated in paragraph 4, then a like order shall have to be passed by the said authority in respect of the quotation of allowance. There is no provision in the fundamental rules wherein it has been stipulated that the higher pay scale attached to the deputation post or deputation allowance as per paragraph 6 of the Fundamental Rules can be denied to a deputationist.

14. Denying deputation allowance to the applicants whose pay scale and Grade Pay in the Parent Cadre are higher than those attached to the deputation post would mean that they have to work without any incentive. Again, others having lower pay scale in the Parent Cadre would be granted pay scale attached to the deputation post, which would be sizable. If this anomalous situation is to be obviated, then, grant of Deputation Allowance to the applicants is the lone ventilation. Or else, the applicants may have to be repatriated after paying the deputation allowance from the initial date of deputation till the date of their repatriation to the parent cadre.

15. In view of the above, the OA is disposed of with a direction to the respondents that as regards deputation allowance, a conscious decision be taken at the level of Respondent No. 1 and if it is proposed to grant 5%

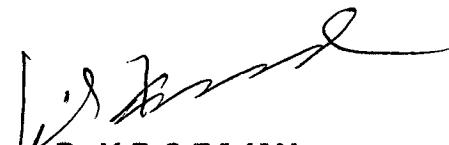


deputation allowance, the same be passed, however, from the date of deputation. If it is decided to repatriate the applicants, then accordingly suitable orders be passed, but in any event, grant of 5%/10% deputation allowance as the case may be, for the period the applicants had performed the duties of Data Entry Officers cannot be withheld and the same shall have to be paid, irrespective of their continuance in the deputation post or repatriation to parent department. If any amount has been recovered in the past, the same shall be refunded forthwith.

16. This order shall be complied with, within a period of two months from the date of communication of this order. No cost.



K. NOORJEHAN
ADMINISTRATIVE MEMBER



Dr K.B.S. RAJAN
JUDICIAL MEMBER

trs