

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.309/2001

Monday this the 7th day of January, 2002.
CORAM:
HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. V.E.Chandran,
Sepoy,
Special Customs Preventive Divisional Office,
Kallai, Kozhikode.
2. Kerala Central Excise and Customs Group D
Officers Association,
Cochin & Kozhikode Commissionerates,
Rep. by its General Secretary,
P.X.Antony, Central Revenue Buildings,
I.S.Press Road,
Cochin-18.Applicants

(By Advocate Sri C.S.G.Nair)

vs.

1. Union of India,
Represented by the Secretary,
Ministry of Personnel,
Public Grievances & Pension,
South Block,
New Delhi-110001.
2. Chairman, Central Board of Excise & Customs,
North Block,
New Delhi-110001.
3. Commissioner of Central Excise & Customs,
Cochin Commissionerate,
Central Revenue Buildings,
I.S.Press Road,
Cochin-682 018.
4. Commissioner of Central Excise & Customs,
Kozhikode Commissionerate,
Central Revenue Buildings.,
Mananchira, Kozhikode. Respondents

(By Advocate Sri C.Rajendran, SCGSC)

The Application having been heard on 4.12.2001, the
Tribunal on 7.1.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The first applicant is a Sepoy working in the
Special Customs Preventive Divisional Office, Kozhikode who
has completed 24 years of service and the second applicant

is the Kerala Central Excise and Customs Group D Officers Association, Cochin and Kozhikode Commissionerates represented by its General Secretary. Their grievance is that the second financial upgradation in terms of the Assured Career Progression Scheme for the Central Government civilian employees (A1) to the scale of pay of Rs.3050-75-3950-80-4590(LDC scale) as is implemented by order dated 23.8.1999 of the Government of India, Ministry of Finance, Department of Revenue(A2) is being denied to the Sepoys who have completed 24 years of service on the ground that they do not possess SSLC/Matriculation qualification which is prescribed for the post of Lower Division Clerks. The allegations in the application are briefly stated as follows:

2. The first applicant who has not passed SSLC examination joined the Central Excise Department as Sepoy in Group D on 24.5.1975. As per Annexure A1 scheme Group D employees on completion of 12 and 24 years of service are entitled to the first and second financial upgradations on the basis of seniority cum fitness without reference to educational qualification as by such financial upgradation the employees continue to perform the same duties which they had been performing and privileges related to higher status such as invitation to ceremonial functions, deputation to higher posts etc. would not be available to them. As per the order dated 23.8.99 of the Government of India ,Ministry of Finance(A2), the second financial upgradation due to the Sepoys in the Central Excise and Customs Department is to

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the pay scale of L.D.C. Rs. 3050-75-3950-80-4590. All the Sepoys who completed twelve years of service got the first financial upgradation. Though the first applicant completed 24 years of service in May 1999 he was not given the second financial upgradation for the reason that he did not possess the educational qualification of SSLC. The Sepoys of Central Excise/Customs, Patna, Bangalore, Delhi and Calcutta Commissionerates who have completed 24 years of service have been granted the second financial upgradation without insisting on the educational qualification. In reply to the representation of the first applicant claiming the second financial upgradation he was served with the Annexure A8 order of the 4th respondent stating that he did not have the educational qualification of SSLC and therefore he was not eligible to get the second financial upgradation. Though the second applicant raised the issue in the J.C.M. there was no favourable decision. In reply to the representation made by the second respondent in this regard the Govt. of India, Ministry of Finance, Department of Revenue issued the order dated 12th February 2001 (Annexure A11) stating that Sepoys and Havildars who do not possess educational qualification of SSLC /Matriculation which is the recruitment qualification for the post of LDC cannot be granted the second financial upgradation. The first respondent thereafter issued O.M.No.35034/2/2001 Estt(D) dated 1.6.2001 (Annexure A12) providing that Group D employees on completion of 24 years of service would be allowed second financial upgradation atleast to the pay scale of Rs.2750-4400 and that Group D employees who are Matriculates will be eligible to the second financial

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upgradation to the scale Rs. 3050-4590. This classification of Group D employees as Matriculates and non-Matriculates for the purpose of denying the pay scale of Rs.3050-4590 to non-Matriculates is arbitrary, irrational and opposed to the spirit behind the Assured Career Progression scheme. By Annexure A12 denying second financial upgradation to non-Matriculate Sepoys who have served for 12 years a right vested in them under Annexure A1 scheme is sought to be taken away which is not permissible. With these allegations, the applicants pray that impugned orders A8, A11 and A12 may be set aside declaring that Group D employees who have completed 24 years of service and found fit for promotion are eligible for second financial upgradation irrespective of their educational qualification and the respondents be directed to grant the second financial upgradation to the applicants with consequential benefits.

3. The respondents contend that the recruitment qualifications for the post of LDC being Matriculation or equivalent, Group D employees who do not possess that qualification do not fulfill the normal promotion norms and therefore in accordance with condition No.6 of the same (A1) non-Matriculates are not entitled to the second financial upgradation to the scale of 3050-4590(LDC scale).

4. We have carefully gone through the all the material on record and have heard at length the arguments of Sri C.S.G.Nair, the learned counsel of the applicant and Sri C.Rajendran, the Senior Central Government Standing Counsel

appearing for the respondents. That as per the order dated 23.8.99 of the Government of India ,Ministry of Finance, Department of Expenditure(A2) second financial upgradation in the cadre of Sepoys is to the pay scale of UDC Rs.3050-4590 is not disputed and is evident from Annexure A2. However this financial upgradation is being denied to the first applicant and other members of the second applicant association solely for the reason that they do not possess the educational qualification of Matriculation or equivalent which is the prescribed qualification for recruitment as L.D.C. Learned counsel of the applicant argued that financial upgradation not being a promotion as even on such upgradation the employee would be discharging the same duties of a Group D employee without enjoying the status of the higher post, the insistence on possession of educational qualification for financial upgradation is the result of an erroneous interpretation of condition No.6 of the Annexure A1. He further argued that this action of the respondents based on the erroneous interpretation defeats the purpose of the scheme,which is to provide a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. We find considerable force in this argument of the learned counsel. In all the three impugned orders A8, A11 and A12 the ground for denying the claim of the applicants for second financial upgradation is that Group D officials who do not possess the educational qualification (SSLC)

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prescribed for recruitment to L.D.C do not qualify for the second financial upgradation in view of condition No.6 in Annexure A1 to the Assured Career Progression Scheme. The paragraph No.6 regarding conditions for grant of benefits under the ACP scheme reads as follows:-

"6. Fulfillment of normal promotion norms(bench-mark, departmental examination, seniority-cum-fitness in the case of Group D employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government Accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions deputation to higher posts,etc) shall be ensured for grant of benefits under the ACP Scheme."

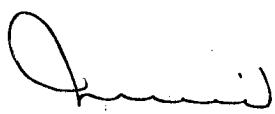
(emphasis supplied)

It can be inferred from the underlined stipulation that in the case of Group D employees the condition precedent for grant of the financial upgradation first and second is only seniority cum fitness. Possession of educational qualification prescribed for appointment as L.D.C. does not appear to be a pre-condition. It is not easy for a Group D employee to acquire the educational qualification prescribed for recruitment to the post of L.D.C. Therefore a Sepoy does not have adequate promotional avenues. The scheme itself was evolved to mitigate the hardship of such employees. By giving the financial upgradation what is made available is only a financial benefit and not an elevation in status. They continue to be Sepoys performing the same duties as before but enjoying only a higher pay scale after

rendering service for a specified period without any promotional chance. We are of the considered view that the view taken by the respondents as reflected in the impugned orders as also in their written statement that passing Matriculation is a condition precedent for financial upgradation to the scale Rs.3050-4590 to Group D employees like the applicants is erroneous and is repugnant to the provision of the Assured Career Progression scheme. Further while the second financial upgradation in the cadre of Sepoys in the Central Excise and Customs is to the pay scale of Rs.3050-4590 as is evident from Annexure A2, the impugned order Annexure A12 dated 1st June 2001 issued by way of clarification providing that financial upgradation to non-Matriculate Group D would be only to the scale Rs.2750-70-3800-75-4400 is also unsustainable as it is arbitrary, discriminatory and irrational and opposed to the spirit of the Assured Career Progression Scheme. Such a differentiation is not made on the basis of any intelligible differentia which bears a nexus with the objective sought to be achieved by the scheme.

5. In the light of the above discussion, we find that the impugned orders are liable to be set aside and that it has to be declared that Group D employees in the cadre of Sepoys/Havildars in the Department of Central Excise and Customs are entitled to the second financial upgradation to the scale Rs.3050-4590 even though they do not possess the educational qualification of Matriculation if they are not otherwise unfit for promotion.

6. In the result declaring that the Group D employees in the cadre of Sepoys/Havildars in the Central Excise and Customs Department are on completion of 24 years of service and being found fit for promotion entitled to the second financial upgradation to the scale of Rs.3050-4590 even if they do not possess the educational qualification of Matriculation or its equivalent, we set aside the impugned orders Annexures A8,A11 and A12 and direct the respondents to consider the first applicant and similar Sepoys/Havildars who are members of the second applicant association for the second financial upgradation on their completion of 24 years of service and to grant them the second financial upgradation to the scale Rs.3050-4590 with effect from the due date with consequential monetary benefits even though they do not possess educational qualification of Matriculation or its equivalent, if they are not found otherwise unfit for promotion by the screening committee. The above exercise shall be completed within a period of 3 months from the date of receipt of a copy of the order. No costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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