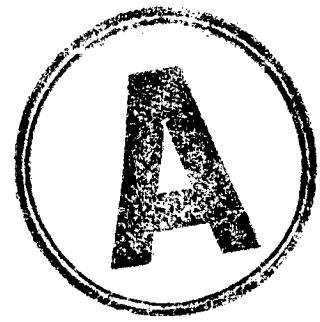


**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 326/2004, 328/2004 & 329/2004

WEDNESDAY THIS THE 30th DAY OF NOVEMBER, 2005



C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

O.A. 326/2004

1 Beena Kumari C/o V. Mukundan
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2 Somasekharan Nair, S/o PN Parameswaran Pillai
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3 Leela P W/o R. Unnikrishnan
Senior Tax Assistant
Office of the Commissioner of Income Taxes
CR Building, IS Press Road,
Kochi-682 018. Applicants

By Advocate Mr. B. Raghunathan

Vs.

1 Union of India represented by the
Secretary to Government
Ministry of Finance
Government of India
New Delhi.

2 The Chairman
Central Board of direct Taxes, North Block
New Delhi-110 001

3 Director of Income Tax (Systems)
Aiwan-e-Ghalib, Matha Sundri Lane
New Delhi-110 002

4 Chief Commissioner of Income Taxes
IS Press Road
Kochi-682 018. Respondents

By Advocate Mr. TPM Ibrahimkhan, SCGSC

O.A. 328/2004

- 1 Ajitha K. D/o P. Krishna Pillai
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Kowdiar, Thiruvananthapuram-695 003
(QrNo. 308, Income Tax Quarters
Kowdiar, Thiruvananthapuram-695 003)
- 2 Nandakumar R. S/o N. Ravindranathan Thampi
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Kowdiar, Thiruvananthapuram-695 003
(Nandalekha, TC 12/367, Ulloor Medical College PO
Thiruvananthapuram-695 011)

.....Applicants

By Advocate Mr. B. Raghunathan

Vs

- 1 Union of India represented by the
Secretary to Government
Ministry of Finance
Government of India
New Delhi.
- 2 The Chairman
Central Board of direct Taxes, North Block
New Delhi-110 001
- 3 Director of Income Tax (Systems)
Aiwan-e-Ghalib, Matha Sundri Lane
New Delhi-110 002
- 4 Chief Commissioner of Income Taxes
IS Press Road
Kochi-682 018
- 5 Commissioner of Income Tax,
Koawdiar
Thiruvananthapuram-695 003

Respondents

By Advocate Smt. Mariam Mathai

OA No.329/2004

- 1 Subhalekshmy Ammal R W/o Mony PS
Senior Tax Assistant
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Kowdiar, Thiruvananthapuram-695 003
(TC 28/2168, Opp.; Padma Stores, Near Ganapathy Temple
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Thiruvananthapuram-695 023)
- 2 B. Suresh Kumar S/o Balakrishna Pillai
Tax Assistant, Office of the
Commissioner of Income Taxes
Kowdiar, Thiruvananthapuram-695 003
(Vadakkevila veedu, Peyad PO
Thiruvananthapuram-695 573)

.....Applicants

By Advocate Mr. B. Raghunathan

Vs.

- 1 Union of India represented by the
Secretary to Government
Ministry of Finance
Government of India
New Delhi.
- 2 The Chairman
Central Board of direct Taxes, North Block
New Delhi-110 001
- 3 Director of Income Tax (Systems)
Aiwan-e-Ghalib, Matha Sundri Lane
New Delhi-110 002
- 4 Chief Commissioner of Income Taxes
IS Press Road
Kochi-682 018
- 5 Commissioner of Income Tax, Kowdiar
Thiruvananthapuram-695 003 ..Respondents

By Advocate Smt. K. Girija, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

Since the applicants in the above OAs are identically placed and pray for similar reliefs, the OAs are being disposed of by this common order. All the applicants are Data Entry Operators appointed in the respondents' department in the pre-revised scale of pay of 1200-2040. The applicants in OA 326/04 and 328/04 were Graduates at the time of entry in the service and the applicants in OA 329/04 acquired Graduation later in April, 1993 and October, 1991. The prayer of the applicants is that they are entitled to the pay scale of 1350-2300 since similarly placed persons have been granted the pay scale on the basis of various judgments of this Bench as well as other coordinate Benches of this Tribunal which have been confirmed and have also been implemented by the respondents. The brief facts are that the Fourth Central Pay Commission had recommended the scale of pay of 1350-2200 and 1200-2040 w.e.f. 1.1.86 to the Electronic Data Processing Operators/Data Entry Operators. These recommendations were made applicable from 1986. Since there were certain anomalies, another Committee namely Dr. Seshagiri

Committee was constituted to inquire into the matter. The recommendations of the Committee for granting the scale of pay of 1350-2200 to the Data Entry Operators was accepted by the first respondent w.e.f. 11.9.1988. The DEOs in the Census Department filed OAs before the various Benches of this Tribunal claiming the benefit w.e.f. 1.1.1986. The Hyderabad and Lucknow Benches allowed such applications in OA 957/1990 and 389/1991 respectively. The SLPs filed by the respondents were dismissed by the Hon'ble Supreme Court. On this basis, similar judgments were passed by other Benches of the Tribunal and the SLPs were also rejected by the Hon'ble Supreme Court. Following the said judgments and other similar judgments in OA 204/01 this Bench allowed OA 721/01 filed by nine DEOs working in the office of the Commissioner of Income Tax, Cochin granting the pay scale of 1350-2200 to the applicants therein w.e.f. the date of entry in the service. Since the nature & quality of work done by the applicants and the qualifications and method of recruitment are also the same denial of the same benefits to the applicants herein is challenged as violative of Articles 14 and 16 of the Constitution of India. The applicants seek the following reliefs:

(a) to issue a writ of certiorari or any other appropriate writ, direction or order calling for the records leading to Annexures A1 to A3 and quash the same

(b) to issue an order or direction to the respondents to grant the scale of pay of Rs. 1350-2200 (pre-revised) with all other consequential service prospects to the applicants with effect from the date of their joining service as Data Entry Operators.

© to issue an order or direction to the respondents to pay the arrears of salary on fixation of pay in the scale of Rs. 1350-2200 (pre-revised) with due increments on that basis and disburse the same

(d) to grant such other reliefs the applicants may pray for and which this Hon'ble Tribunal deems fit and proper.

2 In the reply statement the respondents have admitted the service particulars of the applicants and the factual position regarding the decision of the various Benches of the Tribunal on the issue. However, it is stated that in the case of the applicants in OA 724/01, the Chairman, Central Board of Direct Taxes while considering the rules/orders/instructions prevailing in this regard finally decided that the applicants are not entitled to the pay scale w.e.f. from the date of appointment as DEOs. In view of the Board's decision the 4th respondent had issued the impugned orders rejecting the case of

the applicants. On examining the case it was found that there was a distinction. As per the Board's decision the scale of 1350-2200 was given to the DEOs appointed before the promulgation of the amended rules and the DEOs who were recruited from the examination/test on which Matriculation was the prescribed minimum qualification was not to be granted the higher scale. Hence, the applicants in the present OA cannot be said to be similarly placed with the applicants in O.A. 30/97 on the above grounds. Writ Petition No, 12074/2004 has been filed before the Hon'ble High Court of Kerala for quashing this Bench direction in OA 204/2001. Hence the OAs are devoid of merit and liable to be dismissed.

3 A rejoinder has been filed by the applicants denying the above contentions and also enclosing the final judgment of the Hon'ble High Court on the Writ Petition filed against the order of this Bench dated 25.10.2002 in O.A. 204/2001.

4 We have heard the arguments of both sides. The learned counsel for the applicants pointed out that in view of the observations of the Hon'ble High Court in in Writ Petition © 12074 of 2004 upholding the decision of the Tribunal the prayer of the applicants have to be allowed. It was also brought to our notice that the contentions of the respondents in the reply statement that a distinction must be drawn between those who entered the service before the amendment of the rules and those who entered after, based on the minimum qualification of Graduation or Matriculation, has been specifically discussed by the Hon'ble High Court in paras 3 and 4 of the judgment and the Court has upheld the decision of the Tribunal and held that the applicants could not be discriminated. The applicants in these OAs were additional respondents 3 to 9 in the Writ Petition before the Hon'ble High Court and therefore their claims had to be allowed.

5 The learned counsel also brought to our notice the distinction between the applicants in OA 326/2004 and 329/2004 who are Graduates at the time of entry in the service and the two applicants in O.A. 328/2004 who obtained graduation later. In support of the case of the applicants in O.A. 328/2004 the judgment of the Madras Bench of the Tribunal in OA 632/2002 Annexure A-8 in which one of the applicants acquired Graduation after appointment was relied. That OA has been allowed directing the

respondents to place the applicants who acquired the qualification in the higher pay scale from the date on which he acquired the qualification and the counsel argued that the same relief may be granted to the applicants in OA 328/2004 as they acquired the required qualification in April, 1993 and October, 1991 respectively. The learned ACGSC who appeared for the respondents concurred with the submission of the learned counsel for the applicants as it was based on the legal position.

6 In view of the above discussions and the legal position enunciated, the judgment of this Tribunal in OA. 204/2001 has become final as confirmed by the Hon'ble High Court. The applicants in these OAs being similarly placed to the applicants in OA 204/2001 and OA 632/2002 of the Madras Bench to the extent mentioned above we hold that the prayers in the applications are to be allowed. Accordingly, the respondents are directed to grant the scale of pay of 1350-2200 with all consequential benefits to the applicants in OA 326/2004 and 329/2004 w.e.f. from the date of their joining and to the applicants in O.A. 328/2004 w.e.f. the date they obtained the Graduation namely April, 1993 and October, 1991. The OAs are accordingly allowed. No costs.

Dated...3rd.....November, 2005

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

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