

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 335/2008

This the 23rd day of September, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

1 C. Beena Kumari W/o V. Mukundan
Senior Tax Assistant
O/o the Commissioner of Income Tax (Central)
Opposite Maharaja's Ground, Kochi-11
residing at Chandralayam, Ravipuram
Kochi-15

2 P. Leela W/o R. Unnikrishnan
Senior Tax Assistant
O/o the Additional Commissioner of
Income Tax (Range-III)
IS Press Road,CR Building,Ernakulam
residing at Aiswarya, No. 49/172-C
Padam road, Elamakkara, Kochi-20

Applicants.

By Advocate Mr. T.C. Govindaswamy

vs.

- 1 Union of India represented by the Secretary to the Govt. Of India Ministry of Finance, Department of Revenue New Delhi.
- 2 The Director General Central Board of Direct Taxes Department of Revenue, Ministry of Finance, New Delhi.
- 3 The Chief Commissioner of Income Tax Central Revenue Building IS Press road, Kochi-18

4 Jacob Ebenezar,
Office Superintendent
Range-I, IncomeTax Department
CR Buildings,IS Press road,
Kochi-18

5 Sunny George
Office Superintendent
Range-I, Ayakar Bhavan
Kannothumchal,
Cannanore. Respondents

By Advocate Mr. T. P. M. Ibrahim Khan, SCGSC
By Advocate Mr. M.R. Hariraj for R 4 & 5

The Application having been heard on 15.9.2009 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants who are working as Senior Tax Assistants is aggrieved by the denial of seniority vis-a-vis erstwhile juniors on merger of DEOs and Tax Assistants cadres.

2 The applicants were appointed as Lower Division Clerks in the Income Tax Department on 8.4.1993 and 19.5.1993 respectively. While continuing so, a number of posts of Data Entry Operators were created in the newly formed Computer Centre. By order dated 5.5.1989 both the applicants were directed to work in the Computer Centre. At the time of induction in the cadre, better career prospects was projected by the respondents. After a due process of selection, they were appointed as Data Entry Operators, on completion of probation they were confirmed in the posts w.e.f. 1.2.1986 (A1 & A2). They were directed to give a notional resignation from the cadre of LDC for this purpose. In the course of time, the applicants found that they have absolutely no chance for advancement in their career vis-a-vis their

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counterparts in the ministerial service. Therefore, they requested for reversion to their parent cadre which was rejected. Their request for promotion to the post of Inspector of Income Tax was also rejected (A-4). While the ministerial cadre progressed further as UDC, Tax Assistants, Inspectors etc. the applicants had to continue in the initial recruitment grade. In order to mitigate the grievances of DEOs cadres, certain posts of DEO Grade-B and C were created. While so, a new cadre of Senior Tax Assistant and Tax Assistants was constituted by amalgamation of the incumbents in the Ministerial as also the cadre of Data Entry Operators cadres w.e.f. 2000-01. (A5), which was modified by Annexure A-6. The grievance of the applicants is that their juniors in the erstwhile LDC cadre who had continued in the Ministerial cadre marched over the applicants. Therefore, aggrieved, they filed this O.A. for restoration of their seniority over the juniors and for consequential benefits. The main grounds urged are (i) when the ministerial cadre was merged with the Data Entry Operators cadre, the applicants are entitled to be placed above their juniors in the LDC cadre (ii) refusal on the part of the respondents is arbitrary, discriminatory, contrary to law and violative of the constitutional guarantees enshrined in Articles 14, 16, 21 and 300-A, (iii) the respondents are bound to take appropriate action by forwarding the representations at A-10, A-11 & A-12 etc. to the competent authority.

3 Respondents 1 to 3 and 4 & 5 filed separate reply statements.

4 Respondents 1 to 3 in their reply statement submitted that the applicants were appointed to the newly created technical cadre of DEO in the higher scale of Rs. 1200-2040 (pre-revised) while the scale of pay of LDC was only Rs. 950-1500 (pre-revised). They were appointed to the DEOs attached to the Computer Centre through separate selection process common to both departmental and direct recruits, appointed after obtaining technical resignation from the post of LDC at their own volition. The DEOs

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posts were further upgraded to DEO Grade B, C & D. Consequent upon the cadre restructuring their seniority on their promotion as Sr. Tax Assistants has been fixed as per the notification. The grievances of the applicants if any were redressed when cadre restructuring was implemented during 2000-01 and 2001-02. They further submitted that the applicants are presently working as Office Superintendents in the scale of Rs. 5500-9000 (pre-revised) on promotion from Senior Tax Assistants.

5 The party respondents in their reply submitted that there was no compulsion from any quarter on the applicants to become DEOs. There was no misrepresentation that the stream of DEOs would have better prospects in career. As a matter of fact the applicants have resigned their original posts. If the applicants miscalculated their prospects by joining DEOs cadre it is exclusively their mistake. They also submitted that there is no rule to restore seniority for those who have given up their lien in a cadre. An identical claim made in O.A. 486/2004 was rejected by the Tribunal. They denied any merger of DEOs with ministerial cadres in A-5 or A-6.

6 The applicants filed rejoinder stating that even though they got higher scales as DEOs, in the long run they became juniors to those who were less meritorious as evident in Annexure A-8.

7 We have heard learned counsel for the parties and perused the records produced before us.

8 The grievance of the applicants in short is, despite their entry in the new cadre of DEOs in 1989 by qualifying a competitive examination, they had not received any better promotion prospects, on the other hand, their erstwhile juniors in the LDC cadre who could not pass the competitive examination for appointment as DEO benefited hugely. The respondents submitted that there was no compulsion for the applicants to join the DEO

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cadre and that the cadre of DEOs were getting higher pay scale and the department has restructured the cadre removing shortcomings if any. We do find that, at the time of introduction of the new DEO cadre, there was no better promotion prospects. The point that might have attracted the applicants would be that the DEO cadre was a new cadre carrying a higher scale of pay than that of LDC. The applicants might have visualised a better career scenario. The Department later introduced higher B, C and D grades in DEOs cadre which resulted in redressing the grievances of the applicants to a great extent. The DEOs Grade-A, & B were made feeder cadres of Senior Tax Assistant. The DEO and ministerial cadres were merged in accordance with date of entry in the respective cadres.

9 The applicants on appointment to the cadre of DEO was granted the pay scale of Rs. 1200-2040. But those who could not qualify the test of DEO continued in the LDC cadre of Rs. 950-1500 and later in due course, got promoted as UDC. On account of restructuring DEO cadre got merged with ministerial cadre w.e.f. 2001-02, whereas many of the LDCs got promoted as UDC. On restructuring, they were brought into the cadre of Tax Assitants w.e.f. 2000-01. As a matter of fact, many of the alleged juniors of the applicants on account of restructuring scheme were further promoted to Senior Tax Assistants while the applicants remained as Tax Assistants.

10 The promotion prospects in the DEO cadre were not bad as projected by the applicants. The different grades of DEOs and the posts available in each grade as on 1994 is given below:

<u>Grade</u>	<u>No. of Posts</u>	<u>Scale of pay</u>
Grade-A	340	1200-2040
Grade-B	228	1350-2200
Grade-C	99	1400-2300
Grade-D	99	1600-2660

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11 Though the applicants have joined service as LDC in the Income Tax Department, consequent on selection through competitive examination, they have resigned from that post to join the newly formed cadre of DEO. They have not opted to come back within the stipulated period of lien. Hence, no junior senior relationship continued with the erstwhile colleagues. Both the cadres had different channel of promotion. When both the DEO and ministerial cadres were amalgamated, the fixation of seniority was based on the entry in the particular grade, as per the notification. The applicants cannot say that the erstwhile colleagues are junior or senior to them as they are in entirely different cadres.

12 The applicants have relied on the order of this Tribunal in O.A. 18/2006. The applicants in that case were deemed to have been transferred along with their posts from CMFRI to Central; Institute of Brackish Water Aquaculture, Chennai. While so, their services were shifted to come under the administrative control of CMFRI and they were transferred to Kochi as surplus staff, ranked junior to the existing staff of CMFRI. The applicants challenged the assignment of lower seniority. The Tribunal allowed the O.A. observing as follows:

"Once from the main stream for a certain period, a bifurcation had been made and later the same had been brought back to the original stream, the effect of bifurcation may affect the career prospects of the individuals only so long as the bifurcation existed. Once the merger takes place, the original seniority has to be maintained. In the process, perhaps some of the applicants would have got accelerated promotions while in CIBA. However, if in the combined seniority they were to lose the same, it is inevitable. Similarly, some of the individuals who were juniors to the applicants but not transferred to CIBA would have some accelerated promotions in CMFRI and on the applicants having staged a come back, their position may have to undergo a change. On the basis of Om Prakash' case (supra) this is also inevitable."

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The case of the applicants in the case on hand is different. The applicants have appeared in the competitive examination conducted for appointment to the new cadre of DEOs on their own volition. The Department has no role in their decision making process, subsequent change in cadre, etc. Therefore, the order cited above is not helpful to the applicants.

13 The party respondents relied on the order of the Tribunal in 486/04. It is a case filed against the rejection of the representation of the applicant therein for inclusion of DEO Gr. B for consideration to the post of Office Superintendent, which was dismissed by the Tribunal. That order is not relevant in this case.

14 In view of the above discussion, the applicants have not been able to point out any injustice done to them by the respondents Department. The OA is dismissed. No costs.

Dated 23rd September, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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