

16

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

\*\*\*\*

O.A.NO.76 OF 2004

29<sup>th</sup> November 2006

**HON'BLE MR.J K KAUSHIK, JUDICIAL MEMBER AND  
HON'BLE MR.R R BHANDARI, ADMINISTRATIVE MEMBER.**

P.D. Sharma S/o Late Shri Jaggannath Sharma, 59 years about,  
R/o Badada Bagh, Gali No.1, Bhilwara Official Address Income  
Tax Inspector in the office of Income Tax Officer, Bhilwara.

.... Applicant

By: Mr.Kamal Dave, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Finance,  
Government of India, New Delhi.
2. Chief Commissioner of Income Tax, Rajasthan, Central  
Revenue Building, Near Statue Circle, Jaipur (Raj.).
3. Secretary, Central Board of Direct Taxes, New Delhi.
4. Commissioner of Income Tax, Udaipur (Raj.)

.... Respondents

By: Mr. Vineet Mathur, Advocate.

**ORDER**

**(HON'BLE MR.J.K.KAUSHIK,JM)**

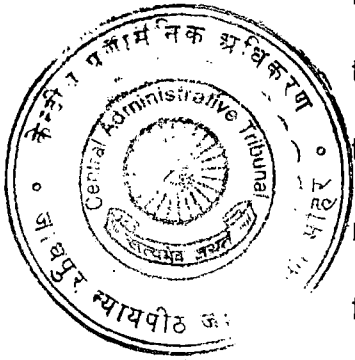
Shri P.D. Sharma has, inter-alia, prayed for issuance of  
direction to the respondents to grant him benefit of financial up  
gradation under ACP Scheme, as per his entitlement with all the  
consequential benefits and also to implement the judgment of  
this Bench of the Tribunal, amongst other reliefs.

2. We have heard learned counsel for both parties and have  
carefully perused the pleadings as well records of this case.

17

-2-

Skipping up superfluities, the material facts leading to filing of this case are that the applicant was initially appointed as Vaidya and was drawing pay in the pay scale of Rs.425-640 (revised Rs.1400-2300/5000-8000), at the time when he was declared surplus from 1.3.1974. He was re-deployed in the office of Inspecting Assistant Commissioner, Income Tax, New Delhi, where he joined his duties on 16.8.1974, as UDC. The pay scale of post of UDC was lower than that of Vaidya, but his pay was protected on account of the fact that he was in the higher pay scale prior to the declaration as surplus. He was further promoted to the post of Tax Assistant in the year 1982. However, his pay in the scale of Rs.425-640, was protected since the pay scale for the post Tax Assistant was also in lower grade than the one he was already drawing. His pay reached to the maximum of the pay scale of Rs.1400-2300 on 1.6.1991 and he faced stagnation. He filed an Original Application No.381 of 1993 wherein this Bench of the Tribunal was pleased to direct the respondents to find out some avenues of promotion in respect of the applicant. He made numerous representations and the response was that the same were forwarded to the CBDT.

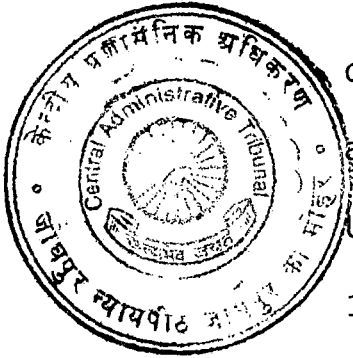


3. The further facts of the case are that the Government of India formulated a Scheme known as Assured Career Progression Scheme, (for short "ACP Scheme"), in furtherance of the recommendations of the 5th CPC. The scheme provided that on completion of 12 years and 24 years of regular service, the

22

- 3 -

benefit of two financial up gradations would be given if otherwise not earned. The applicant remained under the corresponding grade of Rs.5000-8000, ever since his appointment, but he has not been allowed any benefit under the scheme. The applicant was, however, promoted to the post of Head Clerk in the same/identical pay scale of Rs.5000-8000, and then to the post of Inspector in the pay scale of Rs.5500-9000 w.e.f. 26.9.2001. The Original Application has been filed on numerous grounds narrated in para 5 and its sub paras which we shall deal with in the later part of this order.

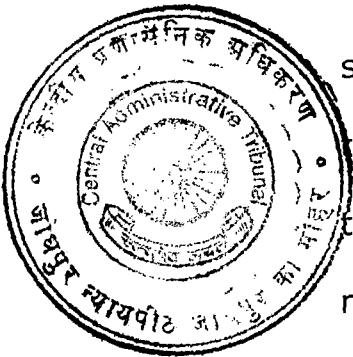


4. The respondents have contested the case and have filed a detailed and exhaustive reply. It has been averred that the applicant has enjoyed numerous promotions from the post of UDC to Tax Assistant and Tax Assistant to Head Clerk in the year 1989 and 1999 respectively, therefore, he is not entitled to get any financial up gradation in the relevant scheme of the Government of India. The case of the applicant was duly considered as per the directions of this Bench of the Tribunal in the case filed by him but it was not found feasible to grant him any promotion or other benefits. It has been averred that the very scheme provides that if prior promotion on regular basis have also been received by an employee; no benefit under the ACP Scheme shall accrue to him. Therefore, the case of the applicant for grant of benefit under the ACP Scheme has been rejected. His case has been duly considered and the action of

-4-

the respondents in not granting him financial up gradation (s) is absolutely just, proper and correct. The original Application deserves to be dismissed.

5. Both the learned counsel for the parties have amplified the averments made in the respective pleadings. They have also made us to traverse through various orders relating to the redeployment of the surplus employees regarding the pay scales and their equivalence for the various posts on which the applicant was deployed. A letter-dated 25.8.2005 has also been filed on our demand. The learned counsel for the applicant has tried to demonstrate that the applicant is drawing his pay in the same pay scale since his appointment till he got his promotion to the post of Inspector in the year 2001. He has submitted that the applicant was not given any promotion/any benefit in the next pay scale available on the cut off date of ACP Scheme i.e. 9.8.1999, despite the fact that he has completed 12/24 years of satisfactory service and fulfilled the eligibility conditions, as per provisions envisaged under the Scheme.



6. Per contra, learned counsel for the respondents has stressed the defence version of the respondents and has submitted that multiple promotions were given to the applicant and the question of grant of any financial up gradation does not arise in his case. He has also submitted that the verdict of this Bench of the Tribunal in the earlier case was duly considered but there was no

*[Handwritten signature]*

1  
20

14

way out except to reject his case. In this view of the matter, the action of the respondents is well in order and in consonance with the rules in force.

7. We have considered the rival submissions put forth on behalf of both the parties. As far as factual aspect of the matter is concerned, there seems to be no doubt that applicant remained drawing his pay in the same pay scale ever since his appointment on the post of Vaidya and on all subsequent posts till he enjoyed his promotion to the post of Inspector Rs. 5500-9000 in the year 2001. He remained in the revised grade of Rs. 5000-8000, equivalent to its previous pre-revised pay scales. He was no doubt given certain promotions but in lower scale with pay protection, as per the orders of the Government of India in force. This position was also observed by this Bench of the Tribunal in the earlier order dated 2.12.1994 passed in O.A.No.381/93 in the case of the applicant. Para 14 with is relevant is reproduced as under:

" 14. Respondents have passed the order dated 3.8.1993 (Annexure A/1) holding that the letter dated 13.9.91 does not apply to the applicant. Technically, the respondents are right, but it is a case in which the applicant suffered because of his deployment and declaration as surplus. Since the inception of his service, he is holding the grade in which he was initially appointed.

He has reached the stagnation not earned anything by way of promotion or higher pay scale even after serving the State for a period of about 25 years. Applicant's case is hard case and needs consideration by the respondents".

The perusal of the aforesaid observations of this Bench of the Tribunal in the earlier case of the applicant makes it evident



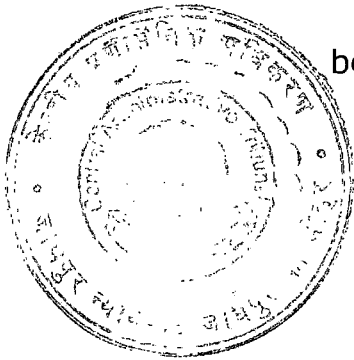
22

21

-6-

that the applicant has remained in the same scale of pay at least upto the year 2001.

8. Now, we would advert to the position relating to the issue as to whether a person who remains to draw his pay in the same pay scale and certain promotions are given, on the lower post or even on identical scale of pay, whether one would be entitled for getting the benefit under ACP Scheme or not. Incidentally, we have very recently dealt with similar issue in another case of **Jasveer Singh & Ors Vs. Union of India & ors** OA No. 129/2005 decided on 15.11.2006, wherein the following clarification vide OM dated 27.1.2000, was taken into consideration and it has been held that in such cases, one would be entitled for grant of benefit under the ACP Scheme.



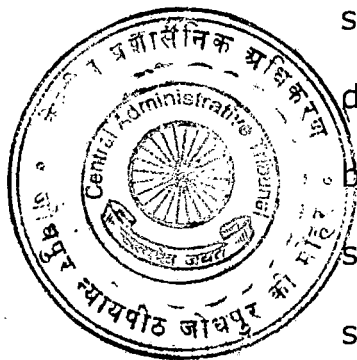
"Whether the ACP Scheme is applicable to employees who were promoted from a post, which was carrying lower pay scale at the relevant time, to a post carrying higher pay scale but subsequently the pay scale of such lower post was upgraded at par with the pay scale of the promoted post based on job evaluation:

If the higher grade post to which posted on promotion carries identical pay scale, the individual will not be considered as having got one promotion."

From the aforesaid factual and legal aspect of this case we have no hesitation in holding that the applicant would be entitled to two up gradations as on 9.8.99 since he had completed 24 years of service, as on that date. In this way, there is ample force in the contentions of the learned counsel for the applicant.

22

12/8/16



9. In view of what has been said and discussed above and the legal position crystallized, we have reached to the inescapable conclusion that this Original Application has ample force and substance. It stands allowed accordingly. The respondents are directed to consider the case of the applicant for grant of benefits under ACP Scheme on completion of 12/24 years of service w.e.f. 9.8.1999 and if the applicant is found fit for the same, and then he shall be extended to all the consequential benefits including the revised pensionary benefits. It is scarcely necessary to mention that the necessary adjustment shall be made in respect of subsequent promotion given to the applicant as aforesaid etc. No costs.

*R R Bhandari*  
**(R R BHANDARI)**  
**Administrative Member**

*J K Kaushik*  
**(J K KAUSHIK)**  
**Judicial Member**

HC\*

A/c for Kanwal Daul

Bhewaria  
5/12/06

9  
5/12