

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 92 of 2011

Reserved on 11.5.2015

Pronounced on 19.05.2015

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Akhilesh Srivastava, aged about 50 years, S/o late Sri N.S. Srivastava, present posted as Tax Assistant in the office of Additional Commissioner of Income Tax, Central Circle, Lucknow.

.....Applicant

By Advocate : Sri A.K. Srivastava.

Versus.

1. Union of India through the Secretary in the department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), Aaykar Bhawan 5 Ashok Marg, Lucknow.
3. Chairman of Screening Committee under MACP scheme, office of Chief Commissioner of Income Tax (CCA), Aaykar Bhawan, 5-Ashok Marg, Lucknow.
4. Director (Establishment) Department of Personnel & Training, North Block, New Delhi.

.....Respondents.

By Advocate : Sri K.K. Shukla

Alongwith

Original Application No. 177 of 2011

Krishna Kumar Bajpai, aged about 45 years, S/o Sri Babu Lal Bajpai, presently posted as Tax Assistant in the office of the Chief Commissioner of Income Tax, Lucknow also residing at H.No. 551/Ka/349 Jha/1 Sukh Lal Marg, Madhuban Nagar, Alambagh Lucknow.

.....Applicant

By Advocate : Sri A.K. Srivastava.

Versus.

1. Union of India through the Secretary in the department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), Aaykar Bhawan 5 Ashok Marg, Lucknow.
3. Chairman of Screening Committee under MACP scheme, office of Chief Commissioner of Income Tax (CCA), Aaykar Bhawan, 5-Ashok Marg, Lucknow.
4. Director (Establishment) Department of Personnel & Training, North Block, New Delhi.

.....Respondents.

By Advocate : Sri K.K. Shukla

J. Chandra

Alongwith

Original Application No. 179 of 2011

Dinesh Kumar, aged about 48 years, S/o late Sri Ram Pyare, presently posted as Tax Assistant in the office of Additional Commissioner of Income Tax, Range IV, Lucknow.

.....Applicant

By Advocate : Sri A.K. Srivastava.

Versus.

1. Union of India through the Secretary in the department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), Aaykar Bhawan 5 Ashok Marg, Lucknow.
3. Chairman of Screening Committee under MACP scheme, office of Chief Commissioner of Income Tax (CCA), Aaykar Bhawan, 5-Ashok Marg, Lucknow.
4. Director (Establishment) Department of Personnel & Training, North Block, New Delhi.

.....Respondents.

By Advocate : Sri Ajay Kumar Singh

ORDER

Since the facts and relief(s) claimed in all these O.A. are same and similar and as such all these O.As have been heard together and are being disposed of by a common order.

2. The relief(s) claimed in O.A. No. 92/11 is being reproduced below:-

- (i) *This Hon'ble Tribunal may kindly be pleased to direct the respondent no.2 to rectify the order no. 34 dated 11.8.2010 as contained in Annexure no.7 to the Original Application by allowing the IInd financial up-gradation of Grade Pay of Rs. 4200/- to the applicant by keeping his 26 years long and regular service in view, under the modified ACP Scheme w.e.f. 1.9.2008.*
- (ii) *This Hon'ble Tribunal may kindly be pleased to direct the Opposite party no.2 to decide the representation dated 25.8.2010 as contained in Annexure no.8 to the Original Application.*
- (iii) *Any other relief(s) which this Hon'ble Tribunal deem fit and proper under the circumstances of the case may also be passed in favour of the applicant and against the respondents.*
- (iv) *Cost of the application may kindly be awarded in favour of the applicant against the respondents."*

3. The relief(s) claimed in O.A. no. 177/11 is as under:-

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- (i) *This Hon'ble Tribunal may kindly be pleased to direct Opposite party no.2 to rectify the order no. 9 dated 30.4.2010 as contained in Annexure no.4 to this Original Application by allowing the IInd financial up-gradation of Grade pay of Rs. 4200/- to the applicant by keeping his 29 years long and regular service in view, under the modified ACP Scheme w.e.f. 1.9.2008.*
- (ii) *This Hon'ble Tribunal may kindly be pleased to direct the Opposite party no.2 to decide the representation dated 7.7.2010 as contained in Annexure no.5 to the Original Application.*
- (iii) *Any other relief(s) which this Hon'ble Tribunal deem fit and proper under the circumstances of the case may also be passed in favour of the applicant and against the Opposite parties.*
- (iv) *Cost of the application may kindly be awarded in favour of the applicant against the Opposite parties”.*

4. The relief(s) claimed in O.A. no. 179 of 2011 are as follows:-

- (i) *This Hon'ble Tribunal may kindly be pleased to direct Opposite party no.2 to rectify the order no. 9 dated 30.4.2010 as contained in Annexure no.4 to this Original Application by allowing the IInd financial up-gradation of Grade pay of Rs. 4200/- and IIIrd financial up-gradation of Grade Pay of Rs. 4600/- to the applicant by keeping his 30 years long and regular service in view, under the modified ACP Scheme w.e.f 1.9.2008 and 3.12.2009.*
- (ii) *This Hon'ble Tribunal may kindly be pleased to direct the Opposite party no.2 to decide the representation dated 7.7.2010 as contained in Annexure no.5 to the Original Application.*
- (iii) *Any other relief(s) which this Hon'ble Tribunal deem fit and proper under the circumstances of the case may also be passed in favour of the applicant and against the Opposite parties.*
- (iv) *Cost of the application may kindly be awarded in favour of the applicant against the Opposite parties”.*

5. The facts of leading case (O.A. No.92 of 2011) are being mentioned here-in-below:-

The applicant in O.A. No. 92 of 2011 had joined the department as Lower Division Clerk (In short LDC) on 9.3.1984; while the applicant in O.A. No. 177/11 had joined as LDC on 17.11.1981; whereas the applicant in O.A. No.179 of 2011 had joined LDC on 3.12.1979. All the applicants were entitled financial up-gradation under ACP as introduced in the department by memorandum dated 9.8.1999 after completion of 12/24 years of regular service if no regular promotions are made during the said period. The applicants continued to work as LDCs without any financial up-gradation despite introduction of ACP scheme.

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Under the restructuring scheme dated 6.9.2000, the post of LDCs, (Rs. 3050-4590) UDCs (4000-6000) and Data Entry Operator Gr.'A' (4000-6000) were merged into one new cadre designated as Tax Assistant by giving a common standard having Grade Pay of Rs. 2400/- in the pay band-1 pay scale of Rs. 4000-6000/-. The applicants were designated as Tax Assistant w.e.f. 15.2.2001 by order dated 26.7.2001 and since then all the applicants have been working as Tax Assistants. The Ministry of Personnel, Department of Personnel & Training has introduced Modified Assured Career Progression Scheme (in short MACP) by means of O.M. dated 19.5.2009. In the said scheme, three financial up-gradations were provided at the intervals of 10, 20 and 30 years of continuous regular service if no promotion has been granted (Annexure no.3). The office of Chief Commissioner of Income Tax by means of letter dated 4.8.2009 sought the list of eligible officers including the applicants alongwith requisite details, which were sent vide letter dated 12.9.2009 including the name of the applicants. The vigilance clearance was also obtained. However, by means of order dated 30.4.2010 containing the list of 53 officials of the department to whom the benefit of financial up-gradation under MACP has been granted, was issued (Annexure no.5) excluding the applicants' names. Being aggrieved, the applicants preferred representation before the respondents. During the pendency of representation, the Opposite party no.2 passed an order dated 11.8.2010 granting IInd financial up-gradation of Grade Pay of Rs. 2800/- w.e.f. 1.9.2008 to the applicants of O.A. no. 92/2011, 177/2011. However, the applicant no. 179 of 2011 has been granted IInd financial up-gradation of Grade Pay of Rs. 2800/- w.e.f. 1.9.2008 and IIIInd financial up-gradation of Grade Pay of Rs. 4200/- w.e.f. 3.12.2009. The applicants, thereafter, preferred representations to the respondents, but no heed was paid by them; hence these O.As.

6. The respondents have contested the claim of the applicants by filing a separate Counter Reply through which they have stated that the Central Board of Direct Taxes (CBDT) for the purpose of promotion of various cadres including Tax Assistant, a new cadre of Tax Assistant (pre-revised pay scale of Rs. 4000-6000 corresponding to Grade Pay of Rs. 2400 as VIth CPC

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recommendations came into existence). This included the erstwhile UDCs (Rs. 4000-6000 corresponding to Grade Pay Rs. 2400 as per 6th CPC recommendations), and LDCs (pre-revised pay scale of Rs. 3050-4590 corresponding to Grade Pay of Rs. 1900/- as per 6th CPC recommendations). It was also directed vide instructions dated 19.7.2001 that all LDCs in order to be posted as Tax Assistant and draw higher pay scale will have to acquire computer skills prescribed thereon and those who had not acquired computer skills would continue to draw the pay of LDCs and continue to be designated as LDCs. All the applicants have passed computer skills test and they were absorbed as Tax Assistant vide orders dated 26.7.2001, 8.2.2008 and 28.3.2008 respectively. Thus the claims of the applicants for grant of financial up-gradation under MACP for granting of Grade Pay of Rs. 4200/- is not justified. More-over the post of LDCs still continues in the department although it continues as a promotional post for Group 'D' persons.

7. The applicants have filed Rejoinder Replies separately to the Counter Replies filed by the respondents denying the contentions made therein and reiterating the averments made in their respective O.As.

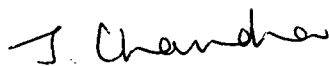
8. We have heard the learned counsel for the parties and have also perused the pleadings available on record.

9. The facts, as brought out by the respective applicants, are not in dispute. The only issue for adjudication before us is whether the re-designation and consequential pay difference from LDCs to Tax Assistants granted to the applicants w.e.f. 15.2.2001 tantamount to a promotion/financial up-gradation and, they are, therefore, not entitled for 2nd financial upgradation under MACP. It is seen that the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes had issued the order dated 19.7.2001 (Annexure no. CA-1 in O.A. no. 177 of 2011) on the subject of filling up of posts in Group 'B', 'C' and 'D' consequent to restructuring plan approved by the Cabinet-corrigendum to the instructions had clearly stated that in the cadre of Tax Assistant in the pay scale of Rs. 4000-6000/- there were 8895 posts and the same were to be filled up firstly from UDC remaining in the cadre

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for want of vacancies in higher cadres, balance to be filled up by LDCs passing the computer skill examination and the rest will be kept vacant for LDCs who have no computer skill examination till they pass the computer skill examination. It is also made clear therein that those who had not acquired computer skills will work against the post of Tax Assistant, but will draw the pay of LDCs and continue to be designated as LDCs. After counting such numbers, 25% of the balance vacancies to be filled by other candidates from feeder cadre and 75% of the vacancies by direct recruitment. This would indicate that the cadre of LDC continues to be in existence and many persons who would, never in their career, acquire computer skills would continue to remain as LDC. Therefore, in our opinion for those persons who acquired necessary computer skills shift from the pay scale of LDCs to the current pay scale of Tax Assistant would be tantamount of stepping up of pay and, therefore, not covered by the provisions contained in MACP for the purpose of determining whether the person as spelt out 10 years continuous in the same Grade Pay.

10. For the reasons stated hereinbefore, we do not find any good ground to interfere in these O.As. All the O.As are accordingly dismissed. No costs.



(Ms. Jayati Chandra)
Member (A)

Girish/-



(Navneet Kumar)
Member (J)