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Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No.472 of 2009

AW

Original Application No. 223 of 2010

AW

Original Application No. 226 of 2010

Order Reserved On 18.12.2013

Order Pronounced on 27-01-2014

**Hon'ble Mr. Navneet Kumar, Member(J)
Hon'ble Ms. Jayati Chandra Member (A)**

O. A. No.472 of 2009

Akhilesh Srivastava, aged about 48 years, son of Late R. S. Srivastava presently posted as Tax Assistant in the office of Additional Commissioner of Income-Tax, Central Circle, Lucknow, also residing at House no. B-2011, Sector '3', Indiara Nagar, Lucknow.

By Advocate Sri A. K. Srivastava.

Applicant

Versus

1. Union of India, through Secretary Revenue, Government of India, Ministry of Finance, North Block, New Delhi.
2. Chairman, Central Board of Direct Tax ,North Block, New Delhi.
3. Chief Commissioner of Income-Tax, (Cadre Controlling Authority), Ashok Marg, Lucknow.

Respondents

By Advocate Sri S. P. Singh.

O. A. No.223 of 2010

Krishana Kumar Bajpai aged about 44 years S/o Sri Babu Lal Bajpai at presently posted as Tax Assistant in the Office of Additional Commissioner of Income-Tax, Range-IV), Lucknow also residing at H. No. 551Ka/349 Jha, Sukh Lal Marg, Madhuban, Nagar, Alambag, Lucknow.

Applicant

By Advocate Sri A. K. Srivastava.

Versus

1. Union of India, through Secretary Revenue, Government of India, Ministry of Finance, North Block, New Delhi.
2. Chairman, Central Board of Direct Tax ,North Block, New Delhi.
3. Chief Commissioner of Income-Tax, (Cadre Controlling Authority), Ashok Marg, Lucknow.

Respondents

By Advocate Sri R. Mishra.

O. A. No.226 of 2010

Dinesh Kumar aged about 47 years S/o Late Ram Pyare at presently posted as Tax Assistant in the Office of Additioanl commissioner of IncomeTax, Rane IV, Lucknow also residing at H. No. 512/565 2nd Lane Hishatganj, Lucknow.

Applicant

By Advocate Sri A. K. Srivastava.

Versus

1. Union of India, through Secretary Revenue, Government of India, Ministry of Finance, North Block, New Delhi.
2. Chairman, Central Board of Direct Tax ,North Block, New Delhi.
3. Chief Commissioner of Income-Tax, (Cadre Controlling Authority), Ashok Marg, Lucknow.

Respondents

By Advocate Sri S. P. Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application has been preferred under Section 19 of the Central Administrative Tribunal Act, 1985 with the following reliefs:-

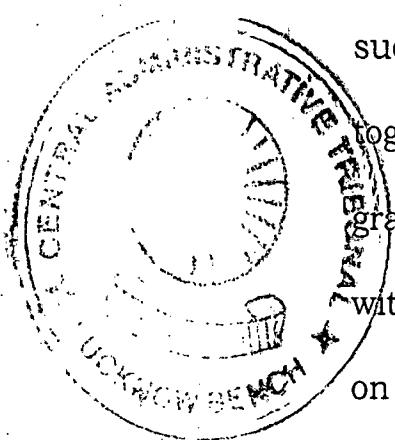
(i) That this Hon'ble Tribunal may kindly be pleased to direct the Opp. Parties to grant the benefits of first financial upgradation to the applicant on the basis of completion of 12 years as well as 24 years of his regular service under the Assured Career Progression Scheme dated 09.08.1999 without ensuring condition No. 6 thereof

(ii) That this Hon'ble Tribunal may kindly be pleased to direct Opposite party No. 2 and 3 to decide the representation of the applicant dated 19.5.2009 sent by him through proper channel for the grant of benefits of first and second financial up gradation under Assured Career Progression Scheme dated 09.08 1999 without ensuring the condition No. 6 thereof.

(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 opp. Parties.

(iv) The cost of the application may kindly be awarded in favour of the applicant and against the opp. Parties.

2. The issue involved in all these OAs are similar as such, all the three original applications are taken up together. In the present O.As, the applicants are claiming grant of financial up gradation, and also claiming parity with one Shri R. K. Srivastava who has been granted benefit on the basis of an order passed in O.A. No. 242 of 1998 passed by the coordinate Bench at Jabalpur. The learned counsel for the applicant has also categorically pointed out that the first and second financial upgradation has been granted to the applicant and they are claiming the 3rd financial upgradation under the scheme. It is also pointed out by the learned counsel for the applicant that the applicant joined the department of Income Tax as LDC. The recruitment Rules were framed and subsequently, the fresh recruitment Rules 2003 were issued and the same was circulated vide letter dated 9.11.2003 mentioning therein the recruitment Procedure, eligibility criteria education and other qualifications including the pay scale



for Data Entry Operators designated as Tax Assistant in the Department of Income Tax. It is also submitted by the learned counsel for the applicant that the applicant initially appointed as LDC, and subsequently absorbed in the cadre of Data Entry Operator designated as Tax Assistant in 2001 and during this period i.e. in 1999, Assured Career Progression Scheme for Central Government Civilian Employees was introduced for Group 'B', 'C' and 'D' employees for their respective financial up gradation on completion of 12 years and 24 years of service and subject to, fulfillment of certain conditions. It is also pointed out by the applicant that all the applicants have completed 29 years of their regular service in the department of Income Tax and fulfills criteria, as such the benefit is to be extended to them under the ACP Scheme. All the applicants also preferred the representation to the Chairman, Central Board of Direct Taxes, Lucknow for their kind consideration for granting the benefit as extended to one Sri R. K. Srivastava in terms of the decision given by the Hon'ble High Court of Madhya Pradesh at Jabalpur in W.P. No. 1460 of 2001. It is also pointed out that the respondents have also preferred SLP before the Hon'ble Apex Court against the order of the Hon'ble Madhya Pradesh High Court and the SLP was also dismissed by the Hon'ble Apex Court.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it is categorically pointed out by the respondents that the applicants were initially appointed as Lower Division Clerk in the year 1981 and absorbed in the cadre of Tax Assistant on 8.2.2008 in the pay scale of Rs. 4000-100-6000

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after qualifying prescribed departmental examination. It is also pointed out by the respondents that the name of the applicant was placed before the screening committee meeting held in April 2010 for grant of financial upgradation under MACP and the finding/observation of the screening committee in the case of the applicant has been placed in the sealed cover. However, the respondents have denied that the case of the applicant is similarly situated as of R. K. Srivastava who has already been granted the benefit of the ACP in terms of the direction of Hon'ble Court. It is also mentioned by the respondents that the applicant was appointed as LDC where as Sri R. K. Srivastava joined the department as Inspector in different scales. It is also argued by the learned counsel for the respondents that since the applicants were initially appointed as LDC and could not qualify the departmental examination were not entitled to financial upgradation under ACP scheme dated 9.8.99. On the basis of the aforesaid submissions, the learned counsel for the respondents vehemently argued that since the applicants are not entitled for the benefit.

4. The learned counsel appearing on behalf of the applicant filed the rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. It is once again pointed out by the applicant that no financial upgradation under ACP Scheme has been given to the applicant in his almost entire service career in the respondents organization. As regard, the grant of pay scale to the applicants is concerned, it was not on account of any financial upgradation but it was only on account of the absorption of the services of the applicant on the post of LDC in the cadre of Data Entry Operator designated as Tax

Assistant. Through rejoinder reply, it is also pointed out by the applicant that the case of the applicant was considered and they were denied the financial upgradation under ACP Scheme as his case was kept under the seal cover. But after considering the representation of the applicant, the financial upgradation under MACP was granted but the same was not correctly granted as such, the applicant preferred O.A. 92 of 2011 which is still pending for final adjudication. It is also pointed out by the learned counsel for the applicant that so far as the financial upgradation under ACP Scheme is concerned, the applicants were never considered as such, the question of seal cover in that regard does not arise in the case of the applicant. Not only this, as mentioned by the learned counsel for the applicant that the grants of financial upgradation as per the Scheme Dated 9.8.1999, is to be considered by the respondents which was not done by the respondents and the applicant has also submitted the representation to that extent as well.

5. Learned counsel appearing on behalf of the respondents filed supplementary reply, which is taken on record.
6. Heard the learned counsel for the parties and perused the record.
7. Admittedly, all the applicants of the above O.As joined the respondents organization and the 5th Central Pay Commission in its report had made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. There are certain changes which have been imposed as per the said ACP Scheme. The ACP Scheme envisages merely

placement in the higher pay scale/grant of financial benefits only to the government servant concerned on personal basis and it shall therefore neither amount to functional/regular promotion, nor confirm any privileges or status relating to the higher cadre/post/grade. It is also to be pointed out that one of the employee of the same department namely Shri R. K. Srivastava preferred O.A. before the Tribunal and thereafter the matter went up to the Hon'ble High Court. While deciding the Writ Petition, No. 1460 of 2001, the Hon'ble High Court has been pleased to observe that if a petitioner submits a representation within 6 weeks to the competent authority, he shall decide the case of the applicant in accordance with the terms and condition of the ACP Scheme and decide the same within a period of 8 weeks from the date of receipt of the representation. The matter subsequently went up to the Hon'ble Apex Court and the Hon'ble Apex Court also dismissed the Special Leave Petition. Subsequently the applicant preferred the representation and requested for extending the benefit at par with R. K. Srivastava whose case was decided by the Hon'ble High Court and subsequently, the respondents issued an order wherein, applicant is granted the second financial upgradation under the ACP Scheme and was placed in the higher pay scale. But the said benefit is not correctly granted to the applicants.

8. Considering the submissions made by the learned counsel for the parties, we are of the considered view that the respondents being an model employee they should have taken a decision on the applicants representations and subsequently their reminders. As such, we dispose of the O.A. with a direction to the respondents to

decide the applicants representation in accordance with the terms and condition of the Scheme. The said decision be taken within a period of three months from the date of receipt of copy of this order and the decision so taken shall be communicated to the applicant.

9. With the above observation, O.A. is disposed of. No order as to costs.

Vidya

Navneet Kumar
Member (J)

Rao N
29/01/204
Section Officer
Central Administrative Tribunal
Lucknow Bench
Lucknow.