


CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT INDORE
Original Application No. 139 OF 2003

Bilaspur, this the 3rd day of February, 2005

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. Sudhir Jamindar S/o Shri Pyarelal Jamindar,
Aged : 49 years,
Occupation : Inspector of Income Tax.
R/o 17, Bairathi Colony No.1,
Indore -452004(MP).
2. Dayachand Rathi S/o Late Shri Ratanlal Rathi,
Aged : 52 years,
Occupation : Inspector of Income Tax.
R/o 234, suniket Apartment, Khajarana Road,
Indore-452001(MP).
3. Sushil Atre S/o Late Shri Sitaram Atre,
Aged : 52 years,
Occupation : Inspector of Income Tax
R/o B/M-42 Deen Dayal Upadhyaya Nagar,
Sukhlia, Indore-452010(MP).
4. Ashok Kumar Sharma S/o Late Shri Keshavdas
Sharma, aged : 52 years,
Occupation : Inspector of Income Tax.
R/o Block, C-3/13 Income Tax Colony,
Residency Area,
Indore-452001(MP).
5. Kamal Kumar Gupta S/o Shri Champalal Gupta,
Aged 55 years,
Occupation : Senior Tax Assistant.
R/o 114-D Sudama Nagar,
Indore-452009(MP).
6. Dalip Singh Othi S/o Sardar Veer Singh Othi
Aged : 53 years,
Occupation : Inspector of Income Tax
R/o Block, C-6/36 Income Tax Colony,
Residency Area,
Indore - 452001(MP).

Applicants

 (By Advocate - Shri Sanjay Jamindar)

Versus

1. The Union of India
Through The Secretary,
Ministry of Finance,
(Department of Revenue)
North Block, New Delhi - 110001.
2. The Director(Establishment),
Ministry of Personnel, Public and Pensions,
(Department of Personnel and Training),
North Block, New Delhi - 110001.
3. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
(Department of Revenue)
North Block, New Delhi-110001.
4. The Chief Commissioner of Income Tax (CCA)
Aayakar Bhawan, Hoshangabad Road,
Bhopal.
5. The Chief Commissioner of Income Tax,
Aayakar Bhawan, White Church Road,
Indore - 452001.

Respondents

Respondents

(By Advocate - Shri B.da.Silva)

ORDER

By M.P. Singh, Vice Chairman -

By filing this Original Application, the applicants have sought the following main reliefs :-

“(9.2) To quash the Order No.02 of 2001 dated 4.10.2001 (Annex.A/11) and order No.2 of 2002-2003 dated 01.05.2002 (Annex.A/12) of respondent No.4 and letter dated 18.03.2002 (Annex.A/2) and (Annex.A/13) of respondent No.4.

(9.3) To award a time bound specific direction to the respondents to allow the benefit of ACP Scheme considering the



fact that "the intermediary grade of Assistant(5000-150-8000) between the grade of a 'Qualified UDC' (4000-100-6000) and 'Inspector of Income Tax ' (5500-175-9000) does not constitute a rung in hierarchy, placement in the intermediary grade of 'Assistant' may not be counted as promotion for the purpose of ACP Scheme. However, the pay allowed in the intermediary grade may be protected as personal pay to save the official from financial loss"


(9.4) To direct the respondents to grant First Financial upgradation in the grade of (5500-175-9000) for 'Inspector of Income Tax' and Second Financial upgradation in the grade of (6500-200-10500) for 'Income Tax Officer' to the applicant No.1 & 3 for completing 12 years & 24 years of regular service under ACP Scheme.

(9.5) To direct the respondents to grant Second Financial upgradation in the grade of (5500-175-9000) for 'Inspector of Income Tax' to the applicants No.2, 4, 5 & 6 for completing 24 years of regular service under ACP Scheme.

(9.6) To direct the respondents to withdraw the Condition No.8 of Assured Career Progression Scheme as it is illegal, arbitrary and against the principle and law of natural justice.

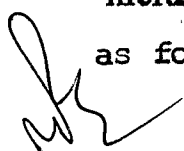
(9.7) To direct the respondents to allow the claim for anomaly to the applicants at the instances where ever the Junior to them allowed higher grade under the ACP Scheme."

2. The brief facts of the case are that the applicants are working as LDCs/UDCs with the respondent-department i.e. Income-tax Department. The Government of India has introduced Assured Career Progression (for short 'ACP') Scheme w.e.f. 9.8.1999 to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. As per this scheme, it has been decided to grant two financial upgradation as recommended by the 5th Central Pay Commission and also in accordance with the Agreed Settlement dated 11.9.1997 in relation to Group-C and D employees, on completion of 12 years and 24 years of regular service. The applicants are claiming ACP promotions in the Income-tax department. Their contention is that they have been granted promotion but not as per the hierarchy prescribed in the Income-tax department for LDCs and UDCs. It is stated by them that the upward mobility under the ACP



scheme shall be strictly in the existing hierarchy and shall be according to the entitlement only. The applicants have further contended that the respondent no.4 in his orders dated 4.10.2001 (Annexure-A-11) and 1.5.2002 (Annexure-A-12) had followed the principle of existing hierarchy according to entitlement only for the purpose of grant of promotions under the ACP scheme in the cases where UDCs entitled for promotion to the post of Assistant, but failed to follow the principle in the cases where UDCs entitled for promotion to the post of Inspector. The respondent no.4 has also not categorized the cadre of UDC as a 'qualified UDC' and an 'unqualified UDC' by granting the same grade of Rs.5000-150-8000 as first financial upgradation and Rs.5500-175-9000 as second financial upgradation to each of the them under the ACP scheme, while in the Income-tax Department, the cadre of UDC is a well defined post and has two categories of UDCs for promotional benefits viz. 'qualified UDC' and 'unqualified UDC'. Qualified UDC means an UDC who has qualified the departmental Inspector's Examination for promotion to the post of Inspector of Income-tax. Unqualified UDC means an UDC who has not qualified any departmental examination for future promotional benefits. They only get the promotion to the post of Assistant etc. on the basis of their seniority. The applicants have further submitted that the Department of Personnel & Training vide clarification dated 10.2.2000 has clarified that 'the placement in the intermediary grade may not be counted as promotion for the purpose of ACP Scheme. However, the pay allowed in the intermediary grade may be protected as personal pay. The learned counsel for the applicants has contended that the qualified UDCs ought to have been granted the first financial upgradation to the post of Inspector and second financial upgradation to the post of Income-tax Officer, whereas the respondents have granted them the first upgradation to the post of Assistant/ Head Clerk and second upgradation to the post of Inspector. Hence this O.A.

3. The respondents in their reply have given in detail the normal hierarchy of promotional grades in the Income-tax Department, which is as follows :



LDC
(Direct recruitment/promotion from Grp.D)

On passing DE for Ministerial Staff

UDC
(Direct recruitment/promotion from LDC)

On Passing DE for ITI and subject

to vacancies/year of passing

Head Clerk	On Passing DE for ITI & subject to	ITI

	vacancies/year of passing	

OS On passing DE for ITI &

On seniority /year of passing

AO Gr.III

ITO (Grp.B)

A reference was made to the Central Board of Direct Taxes, New Delhi's regarding the hierarchy of the post of Tax Assistant for the purpose of grant of financial upgradation. The CBDT vide their letter dated 9.7.2001 have informed that the matter was referred to the DOPT who have advised as under:

“The DOPT has advised that Tax Assistants retain their basic seniority in the grade of UDC and the grade of Tax Assistant cannot be treated as promotional grade in the normal hierarchy of UDCs. Therefore, under the ACP Scheme, UDCs including Tax Assistants in the offices of the CCIT may be allowed financial upgradation in the normal hierarchical grade of Assistant/Head Clerk (Rs.5000-8000) subject to fulfillment of all promotional norms and other conditions specified in the A.C.P.Scheme”.


Therefore, subject to the fulfillment of other conditions, the two financial upgradations available to an official who has joined as LDC(S-

5) first in the cadre of UDC (S-7) then in the cadre of Head Clerk because there is no scale as S-6 in the Income-tax department and for the purpose of ACP, promotion from UDC scale (S-7) to Tax Assistant (old) (S-8) is not to be treated as promotion. Similarly, subject to the fulfillment of other conditions, the two financial upgradations available to an official who has joined as UDC (S-7) are first in the cadre of Head Clerk (S-9) and then in the cadre of OS/Inspector (S-10) because for the purpose of ACP, promotion from UDC (scale S-7) to Tax Assistant (old) (S-8) is not to be treated as promotion.

3.1 The ACP scheme does not differentiate between qualified UDC and unqualified UDC. Thus, in respect of applicants 1 & 3, the next grade for the purposes of ACP Scheme is Assistant and not Inspector of Income-tax. The 2nd upgradation will be Inspector of Income-tax. In respect of applicants 4 & 5, the next grade for the purposes of ACP is UDC and then Head Clerk, and not Inspector of Income-tax/OS. In respect of applicants 2 & 6, they had been granted two promotions before 9.8.1999, hence as per the scheme, they were not eligible for any further upgradation.

4. We have heard the learned counsel of both the parties and perused the records. We have also given careful consideration to the arguments advanced on behalf of both the sides.

5. The admitted facts of the case are that the applicants 1 and 3 were appointed as UDCs and applicants 2, 4, 5 & 6 were appointed as LDCs. By filing this OA, they are claiming relief of two financial upgradation as provided under the ACP Scheme introduced on 9.8.1999 by the Government of India. According to the applicants, the first upgradation for the UDCs should be to the post of Inspector of Income Tax and the second upgradation should be to the post of Income-tax Officer, whereas according to the respondents the first upgradation to the UDCs is to the post of Head Clerk and second upgradation to the post of Inspector.



According to the respondents there is no difference under the ACP scheme between the qualified UDCs and unqualified UDCs. According to the respondents, applicants 2 & 6 have already got two promotions before 9.8.1999, therefore, they do not have any case for grant of financial upgradations under the ACP Scheme. As regards applicants 4 & 5, they were appointed as LDCs, the first upgradation will be for them to the post of UDC and the second upgradation in their normal line will be to the post of Head Clerk, which had already been granted to them. Similarly, applicants 1 & 3 who were appointed as UDC got the first ACP promotion to the post of Head Clerk and thereafter as Inspector. It is not in dispute that the post of Head Clerk is ~~not~~ in hierarchy of the Income-tax and the UDCs are ~~not~~ appointed as Head Clerk. This fact is also admitted by the applicants except they have stated that this is being granted to the unqualified UDCs. This contention of the applicants is not correct as it is not supported by any rules or instructions issued on the subject. ^{Moreover, the post of Head clerk carry a higher pay scale of Rs. 5000-8000 as compared to that of UDC.} We also find from the perusal of records that the scale of the post of Inspector has been further upgraded from Rs.5500-9000 to Rs.6500-10500 and the applicants 1 & 3 who have been appointed as Inspector will now be in the scale of Rs.6500-10500. We also find from the chart prepared by the respondents that even the applicants 2,4 & 6 have also been promoted to the post of Inspector, although they joined as LDCs in the Income-tax Department.

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6. In view of the discussions made above, we do not find any illegality or irregularity by the respondents in granting the first financial upgradation from the post of UDC to the post of Head Clerk and the second financial upgradation to the post of Inspector.

7. In the result, for the reasons stated above, we do not find any merit in this Original Application and the same is accordingly dismissed, however, without any order as to costs.

(Madan Mohan)

Judicial Member

(M.P. Singh)

Vice Chairman