

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

....

Original Application No. 687/2001

Jabalpur, this the 11th day of August 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

1. Sudhir Kumar Gupta
Data Entry Operator.
2. Sanjay Kumar Joshi
3. Rajendra Kumar Das
4. T.C. Chacko
All Date Entry Operators Grade 'A'
O/O Commissioner of Income Tax,
Central Revenue Building, Napier Town
Jabalpur (MP). ...Applicants

(By Advocate: Shri A.P. Shrivastava)

versus

1. Union of India through
Secretary
Ministry of Finance,
North Block,
New Delhi.
2. Central Board of Direct Taxes,
Ministry of Finance,
North Block,
New Delhi.
3. Chief Commissioner of Income Tax,
Central Revenue Building,
Hoshangabad Road,
Bhopal.
4. Chief Commissioner of Income Tax,
Central Revenue Building,
Civil Lines, Raipur (MP). ...Respondents

(By Advocate: Shri B.Da.Silva)

ORDER

By Madan Mohan, Judicial Member -

By filing this original application, the applicants
have sought the following main reliefs:-


- a) The applicants may first be promoted as DED Grade

'B', DED Grade 'C' and DED Grade 'D' by deemed DPC by considering their period of service.


- b) After the applicant is promoted to the old cadre he may be placed in equivalent posting in the new cadre.
- c) while posting applicant in new cadre he may be given two increments to compensate the loss of seniority pay etc.
- d) considering the length of service of the applicant in the department applicant may be exempted from appearing in the Ministerial examination.
- e) restructured policy being unequal and discriminatory may be quashed.
- f) That restructured policy being discriminatory may be directed to be modified to make it fair and judicial.
- g) The Chairman, C.B.D.T., New Delhi (respondent no.2) may be directed to decide representation submitted by the applicants on 9.2.2001 (A/10), 13.3.2001 (A/11) 9.4.2001 (A/12) and on 16.7.2001 (A/13).

2. The brief facts of the are that the applicants, in consequence to rules framed by the Govt. of India, Ministry of Finance (Department of Revenue) dated 24.9.1987 (A/3), were appointed as Data Entry Operator by order dated 17.4.89 in the Income Tax Department at Jabalpur (A/4) on probation for a period of two years in the scale of Rs. 1200-2040/-. This pay was equivalent to the post of Upper Division Clerk. The cadre of DED was restructured in 1993 (A/5) in four cadres and in different pay scales. The respondents vide their letter dated 11.5.1994 (A/6) directed all heads of the department that "According to the income tax Department (DEOs) Recruitment Rules, 1994, all the DED's Gr. 'A' who have rendered five years service as DED are eligible for promotion against promotion quota vacancies of DED Gr. 'B' in the pay scale of Rs. 1350-2200. It is requested that all the eligible DEOs Gr. 'A' may be considered immediately

for promotion to the post of DEO Gr. 'B' in accordance with the recruitment rules". The applicants were however not considered for promotion as they were told that there were no sanctioned post of Grade 'B' DEOs. In 1995 the respondents framed rules for recruitment in the post of D.E.O. Grade 'C' and DEO Grade 'B' (A/7). The applicants were appointed in April, 1989 and had they got their regular promotion in time their position would have been as Grade 'A' in April, 89 Grade 'B' in May, 1994; Grade 'C' in May, 1997 and Grade 'D' in May, 2001. The applicants submit that the nature of duties of DEO included Tax accounting system, allotment of PANs, allotment of TAN, processing of Income Tax returns, computerisation of various activities of the department, implementation of various packages supplied by the respondents and may such other work. The computer centre also extends support to various sections of the department which includes investigation wing, administrative wing and other associated unit and field officers. Since 1989 to 1998 the working of computer section increased to many folds. It is worth mentioning here that net collection of income tax during the year 1989 which was Rs. 110 crores has reached to Rs. 1108 crores in 1998 an increase of over 1000%. The cadre of DEOs had always been a separate and independent cadre and its nature of duties never included knowledge of income tax laws, accounts or office procedures. Their duty included looking after the PAN, processing of challans and some such jobs. The respondents, however, by letter dated 17.3.1999 (A/8) asked all the heads of the department that DEO may be permitted to appear in departmental examination of income tax department. This relaxation was made without providing any facility of practical experience or training. During these years the number of tax payers have increased considerably. The budget collection has also increased many times. All these development compelled the




Govt. to restructure income tax department. The plan of restructure was accordingly proposed which was approved by the Union Cabinet in its meeting held on 3.8.2000. In consequence to the above decision the respondents by letter dated 19.7.2001 issued instructions regarding filling of vacancies at various cadres, creation of new posts/cadres, abolition of some old cadres, the details of cadre from where these posts will be filled up and eligibility criteria. The above exercise included merger of cadre of DED Gr. 'A' with the post of Tax Assistant in the pay scale of Rs. 4000-6000 (A/2). In accordance with the date of entry in their respective cadre. The pre-restructuring cadre of L.D.G. were deemed to be allowed ~~the~~ the seniority w.e.f. 2000-2001. They were, however, required to clear the computer skill required. With this merger those officials who have entered the department later to the applicants will be placed above the applicants, and thus applicants have been put into disadvantageous position. The new rule also provides merger of the DED Grade 'B' and DED Grade 'C' with Senior Tax Assistants. Thus, promotion to the cadre of DED Grade 'B' and DED Grade 'C' has been done away with (A/2). The next promotion is only in the cadre of Senior Tax Assistant in the pay scale of Rs. 5000-8000/-. The criteria for promotion has been made as DED 'A' 3 years; service and qualified ministerial examination. Thus it has been made necessary to pass ministerial examination. The ministerial examination consists of Income Tax Laws, income tax calculation and office procedure and so on. The applicants have neither studied those subjects nor has any experience of working in the above field. The department has also not taken any steps to impart training to computer personal in the above subject. The condition of promotion has thus been made very difficult. The criteria of recruitment to senior Tax Assistant would be from the feeder cadre (A/2). The



existing Senior TA, DEO Grade 'C', DEO Grade 'B', Pre-restructuring TA has been placed in an advantageous position. The UPSC who are dealing in tax laws and tax calculation will be able to pass the departmental examination early and would find place above the DEO Grade 'A'. Thus the DEO Grade 'A' will be going downwards and other official of junior cadre would be overtaking him. The most disadvantaged persons would thus be DEO Grade 'A' who have put in 12 years of service and who are stagnating at the same old scale in which they joined. Now their promotion criteria has been made very difficult and DEO Grade 'A' would be fruitlessly trying to clear examination and other LDC & UDC's would be overtaking them one by one, whereas they will be helplessly waiting for their chances to come. The applicants submitted their representations before the Chairman, Central Board of Direct Taxes vide their representations dated 9/2/2001 (A/10); 13.3.2001 (A/11); 9.4.2001 (A/12) and 16.7.2001 (A/13) but the said representations remained undecided. Hence, this O.A. has been filed seeking the aforesaid reliefs.


3. Heard the learned counsel for the parties.

4. It is argued on behalf of the applicants that neither they have studied the required subjects nor any experience of working in the required fields. The department has also not taken any steps to impart training to computer personal in the subjects of Income tax laws, income tax calculation and office procedure and so on. Hence, the condition imposed for promotion i.e. qualifying the ministerial examination has thus made very difficult for the applicants. It is further argued that the L.D.C. and U.D.Cs are well conversant with the income tax law, income tax calculation and other related office procedure than the applicants hence they, being juniors to the applicants, would be overtaking the applicants in promotion due to introduction of ministerial examination which is made necessary for promotion and the same is to the disadvantage of the applicants. It is further argued that this



condition of qualifying the ministerial examination should be directed to be waived in respect of the computer personnel like applicants. The learned counsel for the applicants has relied upon certain decision of the C.A.T. passed in OA No. 448/2002 & other connected matters, OA No. 850/2000 in support of the claim of the applicants. It is further argued that the applicants' representations in this regard are also pending with the Chairman, Central Board of Direct Taxes for final decision.


5. In reply, the learned counsel for the respondents argued that although the job assigned to the applicants, is largely confined to the data entry and other allied assignments, the total ignorance of income tax laws as claimed by them cannot be accepted since all the packages do require certain amount of knowledge of I.T. laws/rules. This fact is also supported by the applicants' averments in para no. 4.5 of the O.A. It is further argued that the ministerial staff examination consists of the precis & Drafting, office procedure (with & without books), practical test and Hindi test. Hence, it is not correct to say that the ministerial staff examination consists of the papers on income tax laws, income tax calculation, office procedure etc. The passing marks of the examination is 40% in all the papers except practical test for which it is 50%. Thus it is not a very tough examination which cannot be cleared by the DEOs for getting next promotion in the scale of Rs. 5000-8000/-. It is further argued that the cases relied upon by the applicants are not applicable to the present case as they do not relate to the subject matter of the present case rather they relate to the pay elevation which benefit has already been given to the applicants by elevating their pay scale to Rs. 1350-2200 vide CCIT (CCA), Bhopal's order dated 29.10.2002 (R/1).

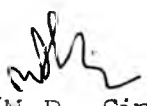


6. After hearing the learned counsel for both the parties and careful perusal of the material on record and orders passed in various OAs by the Tribunal and relied upon by the applicants, we find that the orders of the Tribunals, relied upon by the applicants, do not related to the controversy involved in the present case. The present case relates to pay anomaly and the benefit accruing from the said judgments has already been granted to the applicants by upgrading their pay scale from Rs. 1200-2040/- to Rs. 1350-2200/- vide CCIT (CCA), Bhopal's order dated 29.10.2002 (Annexure R-1). Hence, the rulings cited by the applicant has no force, as they relate to the pay elevation, which benefit has already been granted to the applicants.

6.1. It is the settled legal position that the Tribunal cannot interfere with the method of selection adopted by the Government in accordance with the policy framed by them unless it is against the provisions of the Constitution and it has not been applied uniformly. We have also noticed that the applicants had preferred their respective representations dated 9.2.2001 (Annexure A/10), 13.3.2001 (Annexure A/11), 9.4.2001 (Annexure A/12) and 16.7.2001 (Annexure A/13) to the Chairman, Central Board of Direct Taxes i.e. respondent No. 2, which are still pending for final decision.

7. In view of the above, we deem it appropriate to direct the respondent No. 2 to consider the representations of the applicants submitted on 9.2.2001 (Annexure A-10), 13.3.2001 (Annexure A-11), 9.4.2001 (Annexure A-12) and 16.7.2001 (Annexure A-13) and take a decision by passing a reasoned, speaking and detailed order within a period of four months from the date of receipt of a copy of this order under intimation to the applicants. We do so accordingly. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman