

**Central Administrative Tribunal
Principal Bench**

OA No.140/2017

New Delhi, this the 3rd day of July, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

P.D. Taneja, 61 years,
Joint Commissioner of Income Tax (Retd.),
F.I.U.-136, Pitampura,
New Delhi-110088.

...applicant

(By Advocate : Shri S.C. Saxena)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
North Block,
New Delhi.

...respondents

(By Advocate : Shri P. K. Singh for Shri Rajeev Kumar)

ORDER (ORAL)

Mr. Justice Permod Kohli, Chairman :-

The applicant was initially appointed as Inspector in the Income Tax Department. He was inducted to Indian Revenue Service (IRS) in 2003 and was promoted as Assistant Commissioner

of Income Tax (ACIT) w.e.f. 15.02.2005 on the basis of seniority etc. He was further promoted as Deputy Commissioner of Income Tax (DCIT) on 01.01.2009. The applicant was considered for ad hoc promotion to the post of Joint Commissioner of Income Tax (JCIT) by the Screening Committee held in September, 2013 to consider as many as 179 eligible DCITs. Out of 179 eligible DCITs, 164 were promoted on ad hoc basis as JCIT w.e.f. 01.10.2013. The name of the applicant did not figure in the said promotion order. It is admitted case of the parties that the case of the applicant was deferred on account of non-availability of the ACR for the year 2011-12 (July 2011 to March 2012) and the same could not be produced as his representation against the adverse remarks in the ACR for the year 2011-12 by the Reviewing Officer was pending. The adverse remarks in the ACR of the applicant for the year 2011-12 were communicated to him on 02.01.2013. The applicant made representation against the adverse remarks on 16.01.2013, which was later accepted by the respondents vide order dated 11.11.2013 (Annexure-A/5) with the following remarks:-

“4. AND WHEREAS, upon such consideration, the Competent Authority has come to the conclusion that the adverse remarks given in the APAR of Shri P.D. Taneja, DCIT for the F.Y. 2011-12 (01.07.2011 to 31.03.2012) stand expunged and obliterated. The Competent Authority also decided that the overall grading given by the Reviewing Officer stands expunged and be obliterated. The overall grading of 8.61 given by the Reporting Officer is restored.

5. The representation dated 16.01.13 of Shri P.D. Taneja, DCIT addressed to the Chief Commissioner of Income-tax (CCA), New Delhi is disposed off accordingly.”

2. Later, the applicant was also promoted vide order dated 03.02.2014 (Annexure-A/6) to the post of JCIT on ad hoc basis from the prospective date i.e. the date of issuance of order. He made a representation seeking his promotion with effect from the date his junior, namely, Yatendra Singh, who was promoted w.e.f. 01.10.2013. This representation has been rejected vide the impugned order dated 11.05.2016 (Annexure-A/1), which reads as under :-

“I am directed to refer to your representation dated 02.05.2016 on above cited subject and to state that in case of ad-hoc promotion, proforma promotion under NBR is not allowed. Therefore, your request for promotion to the grade of JCIT w.e.f.m 01.10.2013 cannot be acceded to as per extant instructions.”

3. The claim of the applicant is, however, resisted by the respondents in the counter affidavit. Insofar as the factual averments are concerned, all averments are admitted. The only ground for denying the ad hoc promotion to the applicant to the post of JCIT with effect from the date his junior was promoted is stated in reply to grounds 5.1 to 5.16. The relevant averments made are reproduced hereinafter :-

“It is further stated that DOP&T vide their ID Note No.1066947/15-Estt. (Pay.II) dated

23.05.2015 has clarified in file bearing No.F.No.A-35011/10/2006-Ad. VI (Part) (copy enclosed) that the extant instructions do not provide for proforma promotion in case “purely fortuitous officiating promotions”. The proforma promotions under NBR may not be allowed in case of ad-hoc promotion. Accordingly, the representation of Shri P.D. Taneja (03565), JCIT (Retd.) for considering his request to issue a corrigendum to order No.18/2014 dated 03.02.2014 for altering the date of effectiveness of order with effect from 01.10.2013 instead of 03.02.2014 was dealt with and his request was denied vide order letter 11.05.2016.”

4. From the perusal of the aforesaid ground, we find that the claim of the applicant for promotion from the date of promotion of his junior has been declined only on the ground that the proforma promotions under NBR are not allowed in case of ad hoc promotions. This ground is totally baseless and irrelevant insofar as the controversy in the present case is concerned. Promotions made by the respondents in the year 2013 vide order dated 01.10.2013 were also on ad hoc basis and so is the position when the applicant was promoted on 03.02.2014. The reason for according ad hoc promotions are indicated in both the orders i.e. pendency of SLP (C) No.21339/2012 before Hon’ble Supreme Court. From perusal of both the orders and also the pleadings of the parties, we notice that mere pendency of SLP before the Hon’ble Supreme Court in absence of any interim direction will not be an impediment even for regular promotions and, thus, the denial of promotion to the applicant from the date the junior was promoted,

particularly after the upgradation of his ACR is totally unjustified, illegal and unwarranted in law.

5. Learned counsel for applicant has also relied upon some judgments of this Tribunal, particularly the judgment dated 30.05.2016 passed in OA No.1754/2012 **Mrs. Amrita Raj Vs. UOI & Ors.** wherein under the similar circumstances following directions were issued :-

“12.In the light of the mandate of law laid down by the Hon’ble Supreme Court and other judgments referred to hereinabove, we allow this OA with the following directions:

- (1) The respondents shall communicate the below benchmark ACRs to the applicant, i.e., for the years 1998-99 and 1999-2000 within a period of one month providing opportunity of fifteen days to the applicant to represent against the below benchmark gradings.
- (2) On receipt of representation from the applicant, the competent authority would take a decision on the question of upgradation or otherwise of the ACR gradings within one month.
- (3) In the event the below benchmark ACRs are upgraded, the applicant shall be considered for promotion by the review DPC within one month thereafter.
- (4) If the applicant earns promotion to the grade of Senior Architect, she would be entitled to all consequential benefits, viz., promotion from the date respondent No.5 was promoted, and all service benefits including further consideration for promotion to the post of Chief Architect with effect from the date respondent No.5 as empanelled/promoted.

Let the entire exercise be completed in terms of the aforesaid directions and outcome communicated to the applicant.”

6. It is admitted case of the parties that the applicant is senior to Yatendra Singh in the Civil List of DCITs as notified on 01.01.2013. The applicant's name figured at Sl. No.38, whereas the name of Yatendra Singh figured at Sl. No.42, who was promoted as JCIT on ad hoc basis on 01.10.2013. The only reason as to why the applicant was not considered for promotion was non-availability of his ACR for the period 2011-12. It is also admitted position that representation against the adverse remarks in ACR for the period 2011-12 was pending before the competent authority. The competent authority has already granted the relief to the applicant by upgrading his ACR vide order dated 22.11.2013, quoted hereinabove. Not only the ACR of the applicant has been upgraded, he has also been promoted to the post of JCIT on ad hoc basis vide order dated 03.02.2014, though prospectively. As a matter of fact on upgradation of his ACR, the applicant being found fit by the Reviewing Officer/Screening Committee, he was entitled to be promoted to the post of Joint Commissioner of Income Tax with effect from the date his junior was promoted. This relief has been illegally denied to him. The case of the applicant is covered by the judgment referred to hereinabove.

7. In the above circumstances, we allow this OA with the following directions :-

- i) The impugned order dated 11.05.2016 is hereby set aside.
- ii) Respondents are directed to treat the applicant having been promoted w.e.f. 01.10.2013 and issue consequential order in this regard within a period of one month from the date of receipt of a copy of this order.
- iii) Needless to say that the seniority of the applicant shall be reckoned as JCIT from 01.10.2013 placing him above his junior, namely, Yatendra Singh.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘rk’