

**Administrative Tribunal
Principal Bench**

**OA No.2497/2019
MA No.2727/2019**

New Delhi, this the 4th day of September, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Shri Yogendra Krishna Gaiha,
Aged about 69 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Sh. Janardan Das Gaiha,
R/o 114, Golf Apartments,
Sujaan Singh Park 3,
Maharshi Raman Marg,
New Delhi-110003
Code No.75032
2. Mrs. Malsomi Sailo,
Aged about 66 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
W/o Mr. Lalhmangaiha Sailo,
R/o House No.T-50,
Evergreen Estate, Tuivamit,
Aizawl-796009 (Mizoram)m
Code No.75050.
3. Shri Lalhmangaiha Sailo,
Aged about 70 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Brig. T. Sailo,
Evergreen Estate, Tuivamit,
Aizawal-796009 (Mizoram)
Code No.74054
4. Shri Pramod Kumar Chopra,
Aged about 69 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Sh. B.P. Chopra,
R/o 92, Sector 11 A,
Chandigarh-160011,
Code No.72036.

5. Shri TBC Rozara,
Aged about 67 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Sh. B. Sangkhuma,
R/o A-1, (A)/3, Chaltlang,
Aizawl-796012,
Code No.75051.
6. Shri Sushil Kumar Gupta,
Aged about 72 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Sh. Satya Parkash Gupta,
R/o D-128, Sector-40,
Noida-201303
Code No.72024.
7. Smt. Namita Shukla (L.R.),
Aged about 59 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
W/o Late Sh. Nandkishore Shukla (IRS),
R/o House No.93,IRS Co-operative Group,
Housing Society, Abhay Khand,
Phase-II, Indirapuram,
Ghaziabad, U.P.
Code No.73002.
8. Shri K.P. Singh,
Aged about 68 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Sh. Ram Naryan Singh,
R/o C-904, Aishwarya Complex,
Errora Park,
Vadodara-390007
Code No.75026.
9. Shri S.P. Pandey,
Aged about 70 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Sh. Shobah Nath Pandey,
R/o 907, Panchtirth Apartment,
Near Jodhpur Cross Road, Satellite,
Ahmedabad-380015,
Code No.74036.
10. Shri K.P. Mandal,
Aged about 73 years,
Chief Commissioner of Income Tax/DGIT (Retd.)

S/o Late Shri Durga Prasad Mandal,
R/o C-21, Samprat Residency,
Premchand Nagar Road, Satellite,
Ahmedabad-380015
Code No.72052.

11. Shri Subir Kumar Mitra,
Aged about 70 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Sh. Sudir Kumar Mitra,
R/o Gaurav Apartment,
7-A Lake Place, Flat No.4, 4th Floor,
Kolkata-700029 (West Bengal),
Code No.74039.
12. Ms. Purnima Singh,
Aged about 67 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
W/o Sh. S.S. Singh,
R/o A-150, Sector 43,
Noida-201303 (U.P.)
Code No.78047.
13. Shri Jamil Ahmad,
Aged about 69 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Shri Vaddoo Aliar Badruddin,
R/o A-23, Sector-35,
Noida-201201 (U.P.),
Code No.76035.
14. Shri Ram Priya Sharan,
Aged about 71 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Shri Saryu Sharan Sinha,
R/o C-101, Sector-49,
Noida-201301 (U.P.)
Code No.71021.
15. Shri Kamlesh Argal,
Aged about 68 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Dr. Rajeshwar Prasad Argal,
R/o 4th Floor, Rajeshwar,
MIG-15, Shiv Nagar, Damoh Road,
Jabalpur-482002.
Code No.74045.

16. Shri Balkishan Gupta,
Aged about 70 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Shri Sat Narain Gupta,
R/o B-6, Ranjit Singh Block,
Asian Games Village,
New Delhi-110049
Code No.73033.
17. Shri Manoj Misra,
Aged about 69 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Shri Shiv Prasad Misra,
R/o C-45A, Gangotri Enclave, Alaknanda,
New Delhi-110009
Code No.75015.
18. Shri Qaiser Shamim,
Aged about 68 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Sh. S.S. Hasan,
R/o Apartment 603, Tower 17,
Commonwealth Games Village,
Near Akshardham Temple,
New Delhi-110092
Code No.74038.
19. Shri Har Prasad Kain,
Aged about 67 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
Spouse Name Lata Kain,
R/o House No.180 J, Lane W-6B,
Near Country Club, Sainik Farms,
New Delhi-110062
Code No.79069.
20. Shri Sada Shiv Bajpai,
Aged about 67 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Sh. Ram Prasad Bajpai,
R/o R-524, Ground Floor,
New Rajender Nagar,
New Delhi-110060
Code No.76043.

21. Ms. Gita Kripalani,
Aged about 72 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
D/o Late Sh. H.C. Kripalani,
R/o D-41, Retreat Apartment,
20 I.P. Extension, Patparganj,
New Delhi-110092
Code No.71026.
22. Shri Arindam Lahiri,
Aged about 70 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Sh. Kailashnath Lahiri,
R/o Villa-D, Prestige Samudra,
Darshan, Cakra Village,
Goa-403206
Code No.72003.
23. Shri A. Selvaraj,
Aged about 70 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Shri R. Ananthappan,
R/o 203 Padma Block
Mahalakshmi Malika,
6, Ratnavel Pandian Road,
Golden George Nagar,
Chennai-600107 (Tamil Nadu)
Code No.72026.
24. Shri C.R. Ravichandhran,
Aged about 72 years,
Chief Commissioner of Income Tax/DGIT (Retd.)
S/o Late Sh. C.R. Rajagopalachari,
R/o No.51, First Main Road,
West C.I.T. Nagar,
Chennai-35 (Tamil Nadu)
Code No.71010.

...Applicants

(By Advocate : Shri Krishna Kumar)

Versus

1. Union of India,
Through Secretary,
Ministry of Finance,
Department of Revenue,

North Block, Govt. of India,
New Delhi-110001.

2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, Govt. of India,
New Delhi-110001.
3. The Secretary,
Govt. of India,
Department of Pension and Pensioners' Welfare,
Ministry of Personnel, Public Grievances and
Pensions,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110003.
4. Secretary to Govt. of India,
Department of Expenditure,
Ministry of Finance,
North Block, Govt. of India,
New Delhi-110001.

...Respondents

(By Advocate : Shri Satish Kumar)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman :-

The applicants herein retired as Chief Commissioners of Income Tax (CCIT) in the Ministry of Finance. The Department of Revenue under the Ministry of Finance, restructured the cadre w.e.f. 23.05.2013. Earlier there used to exist 116 posts of CCIT in the HAG scale of 67,000-Rs.79000/-. As a result of restructuring, 26 posts of CCIT were upgraded as

Principal CCIT in the apex scale of Rs.80,000/- and 90 posts were upgraded to, and one additional post was created in CCIT (Rs.75500-80000) HAG+.

2. The applicants contend that they are entitled to be put in the HAG+ scale. Earlier they made a representation and when the same was not considered, they filed OA No.3406/2018 and other similar OAs. They were disposed of, with a direction to the respondents to pass orders on the representation. In compliance with the same, the respondents passed orders on 12.03.2019 and on other dates, taking a view that the claims of the applicants cannot be accepted. According to them, the similar claim made in the OA No.478/2015 and OA No.1087/2015, before this Tribunal in Arbind Modi & Ors. and P.R. Ravikumar, retired, CCITs, was rejected through judgment dated 12.08.2015. Mention was also made to SLP No.16231 and 29383 of 2018, wherein, the Hon'ble Supreme Court stayed the orders passed by the Hon'ble High Court of Delhi in ***Union of India Vs. Shri Rajendra*** and ***Union of India Vs. Ramphal***. Individual orders were passed in respect of the applicants herein. Those orders are challenged in this OA, collectively.

3. The applicants contend that the restructuring was done on acceptance of the recommendations of the 6th Central Pay Commission by the Union Cabinet and there cannot be any difference between an officer who retired before or after 01.01.2006, or for that matter, any other date. Reliance is placed upon the orders passed by the Madras Bench of this Tribunal in OA No.95/2015 dated 21.04.2016 and the Hon'ble Madras High Court in WP No.7909/2017.

4. We heard Shri Krishna Kumar, learned counsel for applicant and Shri Satish Kumar, learned counsel for respondents, at length, at the stage of admission.

5. The applicants held the post of CCIT, by the time they retired from service. The restructuring of the post in the helm of the administration took place in the year 2013. The manner, in which the restructuring has been effected, is indicated in the preceding paragraph. The applicants are of the view that they too, are entitled to the HAG+ scale. In compliance with the directions issued by this Tribunal in various OAs filed by the applicants

herein, the respondents passed a typical order dated 12.03.2011, which reads as under :-

ORDER

Whereas, the issue is regarding fixation of pension, as is being claimed, by a number of retired Chief Commissioners/Director Generals of Income Tax (CCsIT/DGsIT) on account of upgradation of pay scale in the grade of CCIT/DGIT due to cadre restructuring in the Income Tax Department held in May, 2013. In this reference, an Original Application (OA) No.3406/2018 has been filed by Shri Yogendra Krishna Gaiha, CCIT (Retd.) & Ors. before Hon'ble CAT, Principal Bench, Delhi. The Hon'ble CAT, vide order dated 14.09.2018, directed as under :-

"...without going into the merits of the case, the permitting the applicants to make appropriate representations ventilating their grievances to the respondents within a period of two weeks from the date of receipt of a certified copy of this order. On receipt of such representations from the applicants, the respondents shall consider the same and pass appropriate reasoned and speaking orders thereon, within a period of 90 days therefrom, in accordance with law.

2. Whereas, in view of Hon'ble CAT's order dated 14.09.2018, Shri Yogendra Krishna Gaiha and a number of officers, who have retired prior to cadre restructuring have submitted their representation for allowing the benefit of upgraded scale of pay of the post of CCIT.

3. Whereas, with approval of Cabinet, cadre restructuring was undertaken/implement in Income Tax Department w.e.f. 23.05.2013 and the post of CCIT (HAG) was upgraded as per following details :-

Sl. No.	Existing Post & Pay Scale attached (As on 22.05.2013)	Sl. No.	Revised Post & Pay Scale (As on 23.05.2013)
1.	CCIT (Rs.67000-79000/-)	1.	26 posts upgraded as Pr.CCIT (Rs.80000/- (Fixed),

	HAG posts	116	Apex Scale.
		2.	90 posts upgraded and 01 additional post created as CCIT (Rs.75500-80000/-) HAG+ i.e. Total 91 posts.

4. Whereas, vide this Department's OM dated 23.07.2013, it was clarified that posts of Chief Commissioner of Income Tax stands upgraded from HAG scale of Rs.67000-79000/- to HAG+ scale of Rs.75500-80000/- w.e.f. 23.05.2013. The pay of the officers holding post of CCIT/DGIT shall be regulated in terms of FR 23 of FRSR (General Rules).

5. Whereas, no benefit of up-gradation of CCIT post to HAG+ was admissible to those CCsIT who retired prior to 23.05.2013 when the post was operating in HAG. Accordingly, their pension was fixed in the then pay scale of Rs.67000-79000/-.

6. Whereas, the Department sought the advice of DoP&PW, being the nodal Department, in the matter, DoP&PW advised as under :-

"The question of revision of pension in the upgraded pay scale was considered by Hon'ble Supreme Court in Civil Appeal No.3174/2006-K.S. Krishnaswamy Vs. Union of India & Others in connection with the petitions filed against the orders issued for revision of pension after 5th Central Pay Commission. In the order dated 23.11.2006 in that case, Hon'ble Supreme Court upheld the decision of the Government not to allow the benefit of upgraded pay scales for the purpose of revision of past pensioners w.e.f. 01.01.2006. Hon'ble Supreme Court also considered various earlier judgments of Apex Court in Nakara's case, Amamath Goel's case, Indian Ex-servicemen League's case, etc. and observed that the ratio of these judgments was not applicable for allowing the revised pension based on the upgraded pay scales."

7. Whereas, apart from the above, a similar matter of allowing HAG+ was also discussed by Hon'ble CAT, PB, Delhi in OA NO.478/2015 and 1087/2015 filed by Shri Arbind Modi & Ors. and Shri P.R. Ravikumar, respectively. Further, vide a common order dated 12.08.2015, in both the

cases, the Hon'ble CAT decided the matter in favour of Department and the same upheld by Hon'ble High Court.

6. Whereas, it is also stated that the following cases, on a similar issue, have also been subjudice before the Hon'ble Supreme Court:-

(i) UoI Vs Shri Rajendra in SLP No.16231/2018. Hon'ble Court vide its order dated 03.07.2018 has stayed an order dated 14.09.2017 of Hon'ble Delhi High Court in WP(C) No.8113/2016 allowing the benefit of upgraded scale.

(ii) UoI Vs. Ramphal in SLP No.29383/2018 as referred to by the applicants. Hon'ble Supreme Court vide its order dated 29.10.2018 has stayed order dated 03.06.2016 of Hon'ble Delhi High Court in WP(C) No.3035/2016.

9. Keeping in view of the advice of DoP&PW, it has been held that the officers, who retired prior to cadre restructuring, are not entitled for the benefit of up-graded pay scale of the post of CCIT for revision of their pension as they have never worked on the upgraded post of CCIT.

10. This issues in compliance of the order dated 14.09.2018 of Hon'ble CAT, Principal bench, New Delhi, in O.A. No.3406/2018. With this, all representations from the concerned retirees stand disposed of."

Similar orders have been passed in respect of other applicants also.

6. From a perusal of the order extracted above, it is evident that though some posts of CCIT in HAG were upgraded to HAG+, the movement thereto, is by way of selection, under the relevant service rules. It is not as if every Chief Commissioner of Income Tax is entitled to

move automatically to HAG+ scale. Further this very issue was examined by this Tribunal in OA No.478/2015 through an elaborated judgment dated 12.08.2015. Though a different view was taken by the Hon'ble High Court of Delhi in **Rajendra Vs. UOI & Ors.** and **Ramphal Vs. UOI & Ors.**, and the Hon'ble Supreme Court stayed the same. As of now, the matter is under consideration by the Hon'ble Supreme Court. So far as this Tribunal is concerned, the issue has already been decided at its level.

7. The applicants place reliance upon an order passed by the Madras Bench of this Tribunal in OA No.95/2015. No reference is made to the orders passed by the Tribunal in OA No.478/2015 in **Arbind Modi & Ors. Vs. UOI & Ors.** The discussion was also not with reference to the relevant selection process from HAG to HAG+.

8. Therefore, we do not find any merit in the OA and the same is accordingly, dismissed. It is needless to mention that if the Hon'ble Supreme Court grants the relief to the similarly placed retired officers, as the

applicants, they can claim the same in an appropriate manner, as and when the final adjudication takes place.

Pending MAs, if any, stand disposed of.

There shall be no orders as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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