



Government of India
Income Tax Department
Office of the Principal Chief Commissioner of Income Tax, Kerala
Central Revenue Building, I.S. Press Road, Kochi – 682 018.

F.No.11/Estt/14/CC-CHN/2015-16

Date : 31st March 2016

ORDER No.105/2015-16

Sub.: Estt. Group 'C' Non gazetted – Senior Tax Assistant – Promotion & Posting – reg. –

The Hon'ble Central Administrative Tribunal, Ernakulam Bench while considering the OA filed by Shri. Rakesh GS and Shri. Pradeep Gokul AV seeking promotion from grade of Tax Assistant to Senior Tax Assistant on 17.07.2015 ordered that:

“In case the DPC is considering the vacancies of 2015-16, the applicant may also be considered provisionally subject to the final outcome of the Original Application”

On 20.07.2015, The Hon'ble CAT directed as under:

“It is made clear that in case the DPC is convened on a future date also, the applicant shall also be considered provisionally subject to the final outcome of the Original Application”

No time limit was assigned by the Hon'ble CAT in convening DPC in the orders referred above. Certain clarification were sought from the office of DGIT[HRD] vide letter dated 28.07.2015 and 10.09.2015. As no reply was received, as approval for conduct of DPC was granted by Pr.CCIT, Kerala on the basis of notes of subordinate officers.

The DPC when convened on 06.11.2015 inter alia complied with the interim direction of Hon'ble CAT, Ernakulam Bench vide Order[s] dated 17.07.2015 & 20.07.2015 [OA No.180/549/2015 filed by Shri. Rakesh G.S and Shri Pradeep Gokul, TAs. The Departmental Promotion Committee that was convened on 06/11/2015 considered the name of Shri. Rakesh G.S. and Pradeep Gokul, Tax Assistants, for Promotion to STA grade. After carefully considering the Recruitment Rule for STA, Hon'ble CAT's Interim direction, CBDT [HRD]'s instruction dated 17.06.2015 and DoPT's OM dated 28.05.2014, the said Committee had unanimously come to the conclusion after considering the case of officials that they are not fit for promotion with reference to para 5 of CBDT[HRD]'s instruction dated 17.06.2015 which stipulated that the service rendered by an inter-region transferee in the old region shall not be counted in the new region which he has joined on such transfer. The said committee had also pointed out that as on 01.04.2015 [crucial date of eligibility as per DoPT's OM dated 28.05.2014] Rakesh G.S. has completed only 1 year in this region and Shri. Pradeep Gokul was not even working in this region on the crucial date. Accordingly their case was not recommended and the minutes of the DPC was approved by competent authority and orders were issued.

In order dated 04.03.2016 [copy received in this office on 10.03.2016], the Hon'ble CAT observed as under:

“If taken into account past service of the applicants, they are eligible to be granted promotion to the post of Senior Tax Assistant. It shall be done subject to the final outcome of this OA, within a period of two weeks”

Thereafter on 23.03.2016, application for stay was filed by this Office before the Hon'ble CAT on the basis of HRD's letter in F.No.C-18013/70/2011-V&L [Pt.I] dated 05/02/2016 citing the stay granted by the Hon'ble Supreme Court in a similar case [Shri. Ramesh Kumar Panwar]. The Hon'ble CAT in its order dated 28/03/2016 as under:

“for reporting compliance of the interim order of this Tribunal dated 04.03.2016 and for filing reply statement finally, list this case on 01.04.2016”

To implement order of Hon'ble CAT, DPC again met on 31.03.2016 at 3.30 PM. The Committee fully agreed with the findings of the 1st Departmental Promotion Committee held on 06/11/2015. It was also noted that in a similar case, Hon'ble Supreme Court has stayed the operation of the Judgement of Hon'ble Rajasthan High Court in the case of Shri. Ramesh Kumar Panwar [CC No.1691/2016]. Since the direction of Hon'ble CAT

has to be complied with, the committee unanimously decided to consider the previous services rendered by the officials in their old region for eligibility purpose as per the direction of the Hon'ble CAT.

Though the DPC convened on 06/11/2015 considered the case of Shri. Rakesh G.S, there was no specific direction to count the past service in other regions as per the interim order of Hon'ble CAT dated 17.07.2015 & 20.07.2015. Vide Order dated 04/03/2016, specific direction were given by the Hon'ble CAT to provisionally promote the Original Applicants by counting their past services in other charges. Hence Rakesh is being considered for promotion based on the specific direction of Hon'ble CAT, taking into account all facts and orders including the fact that Shri. Rakesh G.S joined the region prior to 01.04.2015.

As far the case of Pradeep Gokul. A.V was concerned, his past services were counted for promotion. But DoPT vide its OM No.22011/6/2013-Estt(D) dated 28.05.2014 has decided that the crucial date for determining eligibility for promotion in case of financial year-based vacancy year would fall on 01/04/2015 for RY: 2015-16. This committee has noted that Shri. Pradeep Gokul . A.V joined Kerala Region only on 13.04.2015. The official has not even joined Kerala Charge on the crucial date of eligibility ie on 01.04.2015. The committee was of the opinion that since the official was not available at the disposal of the Kerala Charge on the crucial date of eligibility for promotion, he was not entitled to be included in the select list panel as per extant instruction.

The Hon'ble CAT, Ernakulam Bench has issued a specific direction on this specific case which was binding and has to be implemented. A specific direction in a specific case is binding and overrules all other aspects. Though the committee after considering the case of Shri. Pradeep Gokul, found him unfit for promotion, the committee recommended to include him in the list based on the specific direction of the Hon'ble Tribunal.

The minutes of the DPC was submitted to the competent authority for approval. On the basis of the approval of the competent authority, Shri. Rakesh GS and Shri. Pradeep Gokul AV is granted provisional promotion to the grade of of Senior Tax Assistant for 2015-16 in compliance with Hon'ble CAT's Order dated 04.03.2016 and 28.03.2016.

The provisional promotion of the above officials are granted subject to the final outcome of OA No.180/00549/2015 or any further interim orders. Further, the promoted officials are to be informed that their promotion/seniority is liable to be changed on the basis of Judicial decision/Administrative reasons or due to any other reason. It is made clear that the seniority will be re fixed after final order of the Hon'ble CAT considering other eligible candidates.

Fixation of pay of the above officials in the promoted cadre shall be made with reference to the CCS (Revised Pay) Rules, 2008. If any of the officials has been granted financial upgradation under the Modified Assured Career Progression Scheme [MACPS], the entitlement of such officials for the increase in total pay by 3% at the time of fixation of pay on promotion is required to be verified by the Head of Office concerned with reference to Department of Personnel & Training's O.M. No.35034/3/2008-Estt.(D) dated 19.05.2009 [item no.4 of Annexure-I] prior to sanctioning the same.

The officials getting promotions are posted in the same office where they are presently working and they will continue to do the duties presently assigned to them until further orders. The postings will be reviewed in AGT 2016.

Sd/-

A.MOHAN

Commissioner of Income Tax [Admin & TPS]

Copy to:

1. The CCIT, Thiruvananthapuram / The DGIT(Inv.), Kochi.
2. I.T. Ombudsman, Kochi.
3. All Pr. CsIT/CsIT and Pr. DsIT/DsIT in Kerala Region.
4. All Heads of Office in Kerala Region.
5. The Officials concerned through respective Heads of Office - The Heads of offices are directed to serve this order on the official concerned.
6. The ZAO, CBDT, Kochi/Thiruvananthapuram and all FPU's.
7. The AD(OL), Kochi / The Systems Officer, Computer Centre, Kochi.
8. All Officers and Sections in the office of Pr.CCIT, Kerala, Kochi.
9. The General Secretary, IRS Association / ITGOA/ITEF/ITSEWA, Ernakulam.

