



Income Tax Gazetted Officers' Association

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To

The Office Bearers of CHQ,

The Presidents/General Secretaries of all Units,

The members,

ITGOA

Dear Comrades,

As you are aware that after N.R. Parmar judgment pronounced by the Hon'ble Supreme Court on 27.11.2012 on the issue of inter se seniority of Direct Recruits and Promotees, the inability of the Authority to implement the judgment within a reasonable time led to plethora of court cases and even stay on promotion to the grade of ACIT. So, we were constrained to bite the bullet by accepting the ad-hoc ACIT promotion of 2014 Batch as an interim measure, which the Board decided to do at that point of time. But things didn't end up due to the issuance of the DoPT's OM dated 30.09.2016 on reservation, which pushed back all regular promotions by UPSC inordinately. Finally, the embargo was lifted after the clarifications issued by the Hon'ble SC in 2018 but by then, the damage was done. ACIT promotions of the subsequent batches, too, took place on ad-hoc basis only.

As a result, regularisation of those batches was also delayed by several years. The worst part of it is that the same persons suffered (or to be suffered) once again, when it comes to their next promotion to the grade of DCIT. Despite no fault of theirs and discharging all statutory duties, their ACIT tenure on ad-hoc basis was not taken into consideration while counting the qualifying service. It's important to mention that these adhoc promotions made against regular vacancies and they discharged all statutory functions as ACIT, which were to be performed as per the Income Tax Act and other related Statutes. Finally, 2014 PR batch got their STS on 01.01.2022 (due on 01.01.2019) and in case of 2015 PR Batch, it was from 01.01.2023 (due on 01.01.2020). The 2016 PR batch (along with 2017 & 2018 batches) got regularized in ACIT only in 2022 and still working as ACsIT. At the same time, the Direct Recruit officers of 2014, 2015, 2016, 2017 and 2018 batches were granted their STS on 01.01.2019, 01.01.2020, 01.01.2021, 01.01.2022 and 01.01.2023 respectively.

In the case of grant of NFSG i.e., Addl.CIT promotion, it was a smooth sailing irrespective of delay in ACIT promotion up to the PR officers of 2008 batch (covered by 1:1), who got their NFSG promotion from the due date (01.01.2021) along with their DR counterparts. Thereafter for the reasons unknown, the issue of promotion vs. upgradation was raked up and the matter was referred to the DoPT, though in Rule 7(4) of the latest IRS RRs, notified long back in 2015, clearly describes it as promotion. By virtue of the clarification supposedly issued by DoPT on the issue, the benefit of the 'Next Below Rule', a corollary to any promotion, has since been withdrawn for 2009 batch and left over 2008 batch PR officers who were promoted in 2010. Therefore, those two batches and subsequent PR

batches are denied NFSG along with their DR juniors. The benefit of NFSG, even if treated as upgradation, is allowable at least from the 1st January of the year of Group A promotion, as clearly clarified in the DoPT's latest OM dated 21.12.2022. But that too is being denied. As a result, the PR officers of 2008 (left over), 2009 and 2010 batches are still working as JCIT when their counterpart junior DRs are working as Addl.CIT after grant of NFSG and getting higher pay since the 2009 and 2010 batches DRs were granted NFSG as on 01.01.2022 and 01.01.2023 respectively.

In both the cases of grant of STS and NFSG, the discrimination towards the PR officers has been at the peak. Both the issues of STS (inclusion of the ad-hoc period while counting the minimum qualifying period) and NFSG (allowing the benefit of Next Below Rule) had been referred to the DoPT several times but to no avail. The matter of grant of STS to PRs was once referred to the Ministry of Law (DoLA), which also issued a favourable opinion with support of Hon'ble Supreme Court rulings stating that STS may be granted after counting of adhoc period if the promotions are against regular vacancies and the service is uninterrupted. Also, several affected individuals approached the Hon'ble CAT on the issue of STS, but any effective direction is yet to be obtained. From the very beginning, the CHQ followed up both the issues giving highest priority and mobilized all possible resources to effectively represent the issue before all competent authorities.

During the process, we found the Board to be sympathetic to the sufferings of our members, but the deplorably lackadaisical attitude of HRD directorate, the unit supposedly created to clinch such issues favourably, played the role of the spoilsport. For an example, despite the clearly favourable legal opinion of DoLA on STS issue, HRD sat on it conveniently, until our members took personal initiative to obtain copy of the legal opinion through RTI and the Board was accordingly informed. Also, the HRD sat on the clarification of DoPT regarding counting of period required to be eligible for NFSG for PR officers, which is in contrary to what is clearly mentioned in the IRS RR, 2015, and even the Board was not made aware of that anomalous clarification of DoPT when the note for allowing NFSG to 2008/2009 batch PR officers was prepared. Even in the case of preparing the proposal for ACIT promotion for 2019, 2020 & 2021 batches, HRD took more than four months' time to simply collect the APARs, when its own instructions clearly depict how to complete the process timely, even when ORUs/Reporting Officers/ Reviewing Officers failed to discharge their duties, and delayed the promotion unnecessarily. We found that the cause of delay in all the ACIT promotions is mostly because of not providing of concerned APARs within time for which they are supposed to work in advance and for which this HRD directorate exists to function.

While pursuing the issues in the DoPT, we were given to understand that these problems can only be sorted out if the IRS RRs are suitable amended. Considering all the handicaps, we managed to get the proposals unofficially mooted by DoPT to amend the IRS RRs to address the issues arising out of ad-hoc and delayed ACIT promotions and with consistent persuasion and sympathetic approach of the Chairman, CBDT, a committee was constituted by the Board to examine the need to amend the IRS RRs. ITGOA was also given a representation in this committee through our President. Our objective was very clear from the beginning that not only to amend the rules but efforts to be made to amend the rules retrospectively. Our demand of retrospective amendments in RR is supported by following:

- (i) IRR RR, 1988 were amended retrospectively in 1995, so there is a precedence.
- (ii) Hon'ble Supreme Court in various case laws such as (a) B. S. Valera vs. Union of India (1969 AIR 118) (b) ITO, Alleppey vs. M.C.Poonnesse & others (170 AIR 385), (c) Union of India vs. Pushpa Rani & others (Civil Appeal Nos.6934-6946 of 2005) etc. has ruled that service rules can be amended retrospectively.
- (iii) The DOPT in its FAQ No.3 on Amendments in RRs has provided that normally RRs are prospective unless the Recruitment Rules are amended retrospectively. This clearly shows that the same can be amended retrospectively.

Things were moving in the right direction with regard to the proposed amendments until the last meeting of the committee, scheduled for 23.05.2023 and 24.05.2023. On 23.05.2023, though a general consensus could be reached on the amendments proposed to be brought in, all the members except our representative were adamant for the prospective amendments only. Our representative made it clear that the retrospective amendment would give justice to the members of the ITGOA and the committee members were convinced. Finally, the committee members agreed for retrospective amendments with regard to grant of NFSG and the draft amendments were put up for signatures. Suddenly, it was again opposed by one of the committee members and the ADG, HRD, as a member of the committee, by vetoing the attempt of finding the breakthrough, dictated and overruled that retrospective amendments will not be made. The only logic opposing the retrospective amendments was given by them that the DoPT will never agree and it will delay the process. On this, our representative submitted that let us try step by step. Let the Committee accept it at first place, then we can pursue it in DoPT highlighting the problems already faced by PRs due to delay in DPCs, such as, denial of NFSG to 2008, 2009 & 2010 PR officers when DRs up to 2010 are already granted and delay in grant of STS to 2014 onwards PR officers w.r.t. their counterpart DRs. How can a welfare state discriminate and accept a situation where DRs of 2018 are DCIT and PRs of 2016 to 2018 are ACIT? We also relied upon the past precedence, Hon'ble SC judgements and DoPT FAQ. When further discussed, the ADG or others opposing the retrospective amendments, could not give even any concrete and acceptable alternative proposal to redress the grievances of PR officers due to loss of promotion/upgradation in STS and NFSG grades.

However, the ADG concluded the meeting on 23.05.2023 without a consensus and any further discussion and asked all including our representative to sign the draft. As the draft was changed several times during the day, our representative rightly asked for the copy of the final draft, so that the same could be properly perused, discussed with other officer bearers and submitted after signing with a suitable note of dissent, if required. Our representative told the committee that the date of 24.05.2022 was also fixed for the meeting so he would sign on 24th morning after due diligence. He further agreed that other members could sign the final draft immediately. However, he was refused to be shared with the draft or to be allowed to sign on the next day (though scheduled for the meeting), though our representative explained as to why the members' interests are of prime importance and cannot be compromised. The ADG, HRD also took a dig at the Association's activities by her comments and our representative rebutted the wild allegations suitably. However, our representative was not allowed to have a copy of the final draft for his perusal and was asked to sign the draft then and there. It was categorically told to our representative that he would not be allowed to sign the draft amendments proposal next morning. Having no option left, our representative left the place without signing the draft which could have been done with due diligence and

application of mind. Thus, our representative, who had worked for preparing the proposed amendments for the committee, was prevented to sign the draft proposals.

We remember that the ADG, HRD used to pass derogatory comments to the Association functionaries in past as well. We strongly condemn such act and our condemnation is not against any individual but this very anti-PR officers attitude per se. In our history of past 90 years since foundation, we have faced many arrogant and highhanded officers. The attitude of such officers has been highly unprofessional and against the spirit of the duties assigned to them. They forget that our association is formed with the right provided under the Article 19(1)(c) of the Constitutions and duly recognised by the CCS(RSA) Rules, 1993. Unfortunately, these officers are not properly trained with regard to dealing the association functionaries in a professional manner. While functioning in their positions, they also forget that the present Government is sympathetic towards the problems faced by its employees and it is working in a nice manner to generate employments at every level. The CBDT is also sympathetic to the cause of the PR officers and trying to resolve the issues positively. But the Directorate of HRD, which was created with the idea of developing it as a great boon to the employees of the Department, has eventually become the bane of the life of the PR officers and the degree of bigotry is only increasing, even when the higher-ups including the Hon'ble Chairman, CBDT and the Hon'ble Revenue Secretary are ever-sympathetic to the cause of the PR officers. It is an irony that we have to approach the Hon'ble Chairman, CBDT time and again, eating up his very busy time-schedule, to place/discuss our issues as because the ADG, HRD, who is handling most of our issues, is not ready for discussion. It is clearly not acceptable as we are feeling that the Directorate of HRD is losing its relevance with regard to the problems faced by the PR officers. Not a single DPC for ITO to ACIT promotion has been held in time since formation of the HRD directorate. We strongly feel that the inaction of this Directorate is the main cause for delay in ITO to ACIT promotion and so, all further discriminations. We are fully aware of our rights and know how to protect them. Considering the recent developments, we apprehend a prolonged struggle ahead to achieve our legitimate goals. So, we feel it proper to apprise our members and appeal to them to be ready for participating in any programme declared by the CHQ.

With warm regards,

Yours comradely,



(Bhaskar Bhattacharya)
Secretary General