



I.T.G.O.A  
ZINDABAD

# Income Tax Gazetted Officers Association

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Date: 8<sup>th</sup> October, 2014

To  
The Chairman,  
Central Board of Direct Taxes,  
New Delhi.

Respected Sir,

Sub: Amendment of effective date of promotion in the Cadre of Deputy Commissioner of Income Tax- Request regarding.

Kindly refer to the above.

We would like to bring to your kind notice that the ACIT(JTS) of 2006 & 2007 batches had been appointed to officiate as Deputy Commissioner of Income Tax(STS) w.e.f. the date of assumption of the charge in terms of CBDT, New Delhi's Order Nos. 126 of 2012 & 193 of 2012 issued from F. No. A-32012/01/2011-AD.VI & F.No.A-32012/5/2012-AD.VI dated 20.06.2012 and 17.10.2012 respectively.

In this respect, we would like to state that the effective date of promotion of the ACsIT of 2006 & 2007 batch to the post of Deputy Commissioner of Income Tax needs to be amended as 01.01.2011 and 01.01.2012 respectively in view of the following reasons:

- i) That 165 Income Tax officers were promoted as Asstt. Commissioners of Income Tax by the CBDT on regular basis against the vacancy year 2006-07 vide Order No. 96 of 2007 dated 29.06.2007, issued from F. No. A-32013/7/2005-AD-VI and have been given seniority of 2006 batch.
- ii) That 172 Income Tax officers were promoted as Asstt. Commissioners of Income Tax by the CBDT on regular basis against the vacancy year 2007-08 vide Order No.141 of 2008 dated 27.10.2008, issued from F. No. A-32013/2/2008-AD-VI and have been given seniority of 2007 Batch.
- iii) The IRS Recruitment Rule provides that the persons who have not less than 4 years of service in the Junior Time Scale are to be promoted in the Senior Time Scale. The promotion is based on seniority cum fitness basis. Therefore the persons who have completed 4 years of service in the Junior Time Scale are entitled to be promoted immediately. The cutoff date for

reckoning of service is taken 1<sup>st</sup> of January of calendar year. Therefore the persons who have completed 4 years of service in Junior Time Scale on 1<sup>st</sup> of January of a particular year are entitled to be promoted in Senior Time Scale w.e.f. 1<sup>st</sup> January of that particular year.

- iv) It is respectfully submitted that while granting the senior scale of Deputy Commissioner of Income tax, the requisite criterion of four years of 'Regular Service' cannot be construed as the 'actual physical service' of 4 (four) years from the date of promotion order, but, it is to be construed as four years from the year of notional seniority of the batch allotted to the promotees i.e. the year 2006 or 2007, as the case may be. This interpretation of qualifying service for the senior scale is also supported by the judicial pronouncement of the Hon'ble supreme Court in the Union of India and Other - Vs - K.B. Rajoria reported in AIR 2000, S.C. Page No. 1819 wherein their Lordships have held to the effect that "Regular Service cannot be construed as actual physical service." The only benefit that accrues out of giving the seniority of an earlier year is that the candidate becomes eligible for subsequent promotion from the said notional year of seniority. On denial of the same, the loss is not only the loss of promotion but also the pecuniary loss due to non-availability of financial up-gradation.
- v) Following the aforesaid principle enunciated by the Hon'ble Supreme Court, the Hon'ble Central Administrative Tribunal (CAT), Jaipur Bench in O.A. No. 502/2004 in S.K. Shukla - Vs - Union of India and Others had passed orders directing the CBDT to consider granting of senior scale to Shri S.K. Shukla (00768) w.e.f. 01.01.2005. The Hon'ble CAT, Jaipur held that four years of service as ACIT (Jr. Scale) in the said case for the purpose of promotion to ACIT (Sr. Scale)/DCIT.
- vi) The above decision of the Hon'ble CAT, Jaipur was upheld by the Hon'ble Rajasthan High Court in Writ Petition No. 5885/2005, vide order dated 01.11.2006. It was held that since Shri S.K. Shukla was promoted as ACIT (JS) against the vacancy quota for the year 2000, he completed four years of service in the feeder post in the year 2004 and he was entitled to be considered for promotion as ACIT(SS)/DCIT against the vacancy for the year 2004.
- vii) Both these orders have been upheld by the Hon'ble Supreme Court, vide order dated 26.02.2006 by dismissing the SLP/Civil No. 3087/2007 filed by the Department against the order of the Rajasthan High Court. Thus, the issue of counting of regular service in the grade of ACIT(JS) from the quota year against which the officer is promoted has already been decided and has attained finality. CBDT had also given effect to the said orders by amending the date of upgradation of S.K. Shukla to the post of the DCIT from 01.01.2006 to 01.01.2005.
- viii) The facts in the case of Shri S.K. Shukla mentioned above are identical to the facts in the cases of officers promoted to ACIT in the years 2006 & 2007 in so far as the granting of senior scale is concerned.
- ix) In terms of DOPT Circular/Instruction OM No. 22011/9/98-Estt.(D) dated 08.09.1998 read with the OM of even no. dated 13.10.1998 (Model Calendar for DPC and related matters), the effective date for promotion applicable to the vacancy for the year 2006 should be 01.01.2006. Hence, for all officers appointed as ACIT against the vacancy for year 2006, the senior scale should have been granted with effect from 01.01.2011 after completion of 4(four) years of regular service in the same grade irrespective of the fact that the promotion order was

issued in the month of June, 2007. Similarly, for every officer who had been appointed as ACIT against the vacancy for year 2007, the senior scale should have been granted with effect from 01.01.2012 after completion of 4(four) years of regular service in the same grade irrespective of the fact that the promotion order was issued in the month of October, 2008.

- x) According to the ratio in the case of Shri S.K. Shukla, which became the law of the land on its being upheld by the Hon'ble Supreme Court, seniority for granting of senior scale to such promotees should be reckoned from the vacancy quota year allotted to them. Therefore, the date of effect of granting of senior scale to them should be 01.01.2011 & 01.01.2012 respectively, as discussed above.
- xi) The promotion of 2006 & 2007 Batch in the Senior Time Scale is made from June 2012 and October 2012 respectively as the DPC for promotion was conducted in the aforesaid months whereas the persons concerned were entitled to be promoted on 01.01.2011 and 01.01.2012 respectively. But they were denied promotion from the date of their entitlement on the ground that the DPC was conducted late and they assumed charge after the DPC. During the earlier years the DPCs for STS were conducted late for 2002, 2003, 2004 and 2005 Batches but they were promoted w.e.f. 1<sup>st</sup> of January 2007, 2008, 2009 and 2010 respectively.
- xii) The promotion in Senior Time Scale is non-functional promotion and it does not require the number of posts available for this promotion. It is only linked with a period of service required and seniority cum fitness. Thus when a person has completed the requisite period of service, he is entitled to be promoted in Senior Time Scale w.e.f the date of Model Calendar. The delay in conducting DPC is not attributable to him and he cannot be denied promotion. An entitled person cannot be denied promotion in the name of administrative delay and apathy. Further there is no O.M. who purports that the non-functional promotion is to be granted from the date of assumption of Charge of that post.

2. We would, therefore, earnestly request your goodself that ACsIT of 2006 & 2007 batches may kindly be promoted to the post of Deputy Commissioner of Income-Tax (STS) with retrospective effect from 01.01.2011 & 01.01.2012 respectively with all consequential service benefits at the earliest.

Soliciting for your urgent intervention in this matter.

Thanking you.  
Yours faithfully,



(Bhaskar Bhattacharya)  
Secretary General

