



**JOINT COUNCIL OF ACTION**  
**INCOME TAX EMPLOYEES FEDERATION &**  
**INCOME TAX GAZETTED OFFICERS' ASSOCIATION**  
A-2/95, Manishinath Bhawan, Rajouri Garden, New Delhi-110 027



*Joint Convenors :*

Rupak Sarkar  
08902198000  
[itefcentral@gmail.com](mailto:itefcentral@gmail.com)

Bhaskar Bhattacharya  
08902198888  
[secgenitgoachq@gmail.com](mailto:secgenitgoachq@gmail.com)

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

Sir,

**Sub: Expeditious disposal of the Court Case regarding the notional fixation of pay from 01-01-1996 - Request regarding.**

Kindly refer to the above.

In connection to this, we would like to narrate the following facts:

There was a historical Pay parity, in 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Central Pay Commission, between the Inspectors/equivalent and the Group B Officers (ITO/equivalent) in the CBDT/CBEC (DoR) with similar posts in Organized Accounts Service Cadre, Railway Accounts Service Cadre, GSI, CBI, IB etc.

The 5<sup>th</sup> CPC had disturbed this historical pay parity between the Inspectors/equivalent (1640-2900 @4<sup>th</sup> CPC) and Group B Officers (ITO/equivalent; 2000-3200@4<sup>th</sup> CPC) in CBDT/CBEC (DoR) with similar posts in Organized Accounts Service Cadre, Railway Accounts Service Cadre, GSI, CBI, IB etc. when the cadres in those Departments were unilaterally upgraded to 6,500-10,500 and 7,500-12,000 whereas the equivalent cadres in CBDT/CBEC were initially been granted 5,500-9,000 and 6,500-10,500 respectively.

After prolonged agitation (under the banner of Coordinating Committee of the Departments of Revenue) and judicial intervention (Hon'ble Jabalpur CAT Order in the case of C.E. Department), a High power Committee was formed and acting upon its recommendation, the G.O.I. upgraded the scale of Group B Officers (ITO/equivalent) to 7,500/- - 12,000/- from 6,500/- - 10,500/- and that of Inspectors/equivalent to 6,500/- - 10,500/- in the CBDT/CBEC (DoR) w.e.f 21.04.2004 (F.No.6/37/98-IC) with prospective effect. The **notional effect from 01-01-1996, as demanded, was not granted** in the CBDT/CBEC (DoR) whereas in several other Departments, under exactly similar situation, upgraded pay (for payment on actual basis) was allowed prospectively, **but with notional effect w.e.f 01.01.96** (the effect date of 5<sup>th</sup> CPC implementation).

When several rounds of deliberations, discussions, submissions etc. failed, ITGOA CHQ filed the O.A. before the Hon'ble CAT, Mumbai Bench, for notional fixation keeping parity with the Organized Accounts Service Cadre, Railway Accounts Service Cadre, CPWD (Divisional Accountants), GSI and other similarly placed Departments.

The entire reliance was placed on the **Equality Clause** of the **Constitution**, which was violated by practicing differential treatment: one for DoR (**No Notional Effect**) and other for other Departments (**with Notional Effect**). This reliance placed was passed the legal test when the Hon'ble CAT, Mumbai Bench, observed that *absolute equality is not contemplated in Equality Clause of the Constitution* and in

ITGOA's case that was followed. In the OA, ITGOA never objected to or questioned the different dates of effect of upgradation for payment on actual basis, but only prayed for **the same date of notional effect** (i.e. from 01.01.96). Thus ITGOA only prayed for to restore back the violation in Equality Clause of Constitution (different dates for notional fixation) and never prayed for **Absolute Equality** (i.e. not only the same date for notional fixation, but the same date for actual upgradation). So ITGOA's prayer is **constitutionally valid and was not turned down by the court of law.**

The Hon'ble CAT discussed threadbare all the case laws cited by ITGOA and the Department and 3 distinct types can be identified: 1. Upheld applicant's case and even ordered for arrear payment from the date of notional fixation 2. Upheld applicant's case but no arrear from the date of notional fixation and 3. Upheld the Government's authority to give effect of any upgradation (i.e. **fixing the date of actual effect**). But none of the case laws, cited by the Department empowers the Government to differentiate among the Departments to fix the **date of notional effect**. Thus ITGOA's prayer is also **legally immune** to any citations.

In the body of the order itself, the Hon'ble CAT quoted a part of the note put up by the OSD while obtaining the approval of the Hon'ble FM for upgrading the pay in the DoR as follows "*this would also be in **consonance** with the decision taken at the time of upgrading of pay scales of various Accounts staff wherein the higher pay scale necessitated in Ministry of Railways ( on account of their established relativity vis-a-vis commercial clerks in that Ministry having disturbed) was extended to the analogous posts in All the Organized Accounts Departments of the Central Government*". Supporting the ITGOA' argument, the Hon'ble CAT observed that "consonance" in case of Pay Revision had only taken place and the same hadn't been extended to 'Notional Fixation'. It was further observed that neither the OSD nor the Hon'ble FM anywhere specifically denied to allow notional fixation benefit while allowing the pay on 'prospective basis'. Hence the Hon'ble Court thought that 'consonance' had to be extended to 'notional fixation'. **Its final conclusion was as follows: "All the above cases would go to show that when equal pay scale is justified, the least that the Government should afford is that the revised pay is admissible with effect from a uniform date notionally, though the date of revised pay scale on actual basis may differ."**

Hence it may be unequivocally concluded that the claim made by ITGOA is **constitutionally valid, legally upheld and factually correct**. And so, the Department should not pursue the legal recourse any further against the judgment of the Hon'ble CAT, Mumbai Bench.

To shrug off the image of "**continuous litigant**", the Government has adopted "Minimum Litigation Policy", be it for its own employees or other citizens and several measures have been taken on that direction. In Income Tax Department only, to minimize the litigation, the Government enhanced the tax effect limit for filing further appeal **retrospectively** ( Instruction No. 21 of 2015) and already filed appeals (below current enhanced limit) are being withdrawn on war footing basis under strict monitoring. But the same Department took a diametrically opposite stand for its own officers.

Since 2004 (the year of effect of actual payment), Income Tax Department has undoubtedly been the most consistent and best performing Central Government Department, where **achievements are measured in tangible terms** and not hypothetically. The probable beneficiaries (in case the G.O.I. accepts the CAT Order), are presently either Additional Commissioner or Joint Commissioner or Deputy Commissioner or Assistant Commissioner or Income Tax Officer i.e. the entire cutting edge level officers of the Income Tax Department. It is not prudent to keep them **demoralized**, when the same notional benefit has been voluntarily allowed to 132 posts of various Departments (Page-14 of CAT Order). The country cannot afford its best performers to be **motivationally perished** at this juncture, when a welfare state like ours desperately needs collection of more Revenue like never before for its ambitious development projects.

The monetary burden was declared as Rs. 12 Crore per annum in the CAT order itself (in the year of 2012). For those Government Servants, who are collecting 8.00 Lakh Crore per annum for the Country, the Government can afford Rs. 12 Crore or little more per annum just to bring in parity with other Departments.

But the Department filed WP in Mumbai High Court against the CAT order. Though the Law Ministry had not advised for the said WP, the Department went ahead as per the advice of the Expenditure Ministry, on the only ground of the huge financial implications in implementing this CAT order. Unfortunately, since the filling of WP, the case has not come up for hearing. In this connection, it is requested that **the CBDT may direct Pr. CCIT, Mumbai, to request the Hon'ble Court to take up the case on priority since the delay is going to perpetuate the financial burden on the State exchequer. The Department may also request Sri Anil Singh, ASG, to expedite the proceeding.**

Thanking you,

Yours sincerely,

   
**(Bhaskar Bhattacharya)      (Rupak Sarkar)**  
**Joint Convenors**