

Central Administrative Tribunal
Principal Bench, New Delhi.

DA-2637/96

New Delhi this the 11th day of April, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Sh. S.P. Biswas, Member(A)

1. Income Tax Gazetted Services Federation
through its General Secretary,
V.K. Sreedharan, having his office
at Room No.19, Aayakar Bhavan,
Maharani Karve Road, Mumbai-400 020
R/o at 15/373 CGS Quarters,
Sector-VII,
Antop Hill, Mumbai-400 037.
2. G. Krishnan,
Income-tax Officer,
r/o B-408, Gokuldham,
Opp. Dindoshi, Goregaon(East),
Mumbai-400 063. ... Applicants

(through Mrs. Shyamla Pappy, Sr. Counsel with
Sh. Jagjit Singh, advocate)

versus:

1. Union of India,
through the Secretary(Revenue),
Ministry of Finance, North Block,
New Delhi-1.
2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance, North Block,
New Delhi-1. ... Respondents

(through Sh. V.P. Uppal, advocate)

ORDER

delivered by Hon'ble Sh. S.P. Biswas, Member(A)

Heard rival contentions of the learned
counsel for both the parties.

2. The only point for determination is whether
the impugned order dated 27.11.1996, if implemented,
will have serious adverse affect on the promotional
prospectus of applicant No.2, and other members of the
Income Tax Gazetted Services Federation - the
applicant No.1.

3, A feeling has come to stay that a limited few officers (IRS-IT) of the cadre are trying to get benefit at the cost of others (promotee officers). This feeling has got complicated on account of (a) claims and counter-claims on both sides and (b) by the proposal of creation of 77 additional posts of CITs by keeping in abeyance 63 posts of Deputy Commissioner of Income Tax (DCTTs) and 58 posts of Senior Assistant Commissioner of Income Tax (ACITs).

4. Smt. Shymala Pappy, the learned counsel for the applicants argued that the impugned order, being a product of the 4th Cadre Review of IRS (IT), envisages non-filling of 121 time scale posts and this is going to adversely affect the interest of promotee officers who are awaiting over a long period of time ranging from 8 to 12 years for promotions to the grade of ACITs (Senior Scale). Many of the members retiring in 1997 and immediately thereafter will loose their last chance of promotion because of the shrinkage in the cadre strength of ACITs (Senior Scale) from a total number of 1096 to 925. The counsel argued that the impugned order is not in public interest and has been issued at the instance of the officials belonging to Indian Revenue Service at the cost of the career and future prospects of the members of the Income Tax Gazetted Services Federation. The creation of 77 posts of Commissioners has not been justified by the respondents on the basis of accrual of addition revenue to the exchequer but on the basis of matching savings as expressly brought out in para-5 of the

impugned order. It has also been mentioned that the respondents have not come out with clean hands in exposing the public interest in creation of 77 posts of Commissioner of Income Tax. On the contrary, by creating 77 top level supervisory functional posts, the respondents have consciously neglected future career prospects of the Field Functionary Executives who really matter in the collection of revenue. It has been further argued that the impugned order will have snowballing effect on the entire structure of the department as it overlooks the interest of elderly members of the federation who would now retire without fulfilling legitimate expectations of promotion. Loss of such a huge number of posts in the Senior Scale of ACIT is likely to adversely affect not only the members of the federation but also the entire cadre of 50,000 officials in group-C & D categories.

5. The respondents, on the contrary, have submitted that 77 posts of CTTs will be subsumed in the posts to be created as a result of the 4th Cadre review of IRS (IT) which would be formulated and finalised shortly and thus the decision is temporary. Apprehensions of the applicants are, therefore, unfounded and uncalled for. In so far as the applicants are concerned, it is utmost important to them that 585 posts of ACITs (Junior Scale) remain unaffected and the proposed Scheme ^{does not} envisage any allocation in that. In so far as the Senior Scale of ACITs is concerned, the members of the Indian Revenue

Service and promotee officers appointed as ACIT (Junior Scale) are both equally eligible after putting in 4 years of service in the Junior Scale of ACIT. Once a person is appointed as ACIT (Junior Scale), it is immaterial whether an officer joined as a direct recruit or as a promotee. Thus, by keeping the number of posts of ACITs (Junior Scale) unaffected, the question of any damaging effect on the promotional prospects of promotees alone would not arise. In a nutshell, the Scheme of promotions envisaged in the impugned order are intended to bring about the following benefits, submitted the learned counsel for respondents:-

- (i) The Scheme meets the functional interest of the organisation;
- (ii) it will reduce the current level of stagnation and help the Government meeting the legitimate aspirations of the members of the service;
- (iii) it will help the Government in deciding inter-service parity in respect of avenue of promotion; and
- (iv) the revised cadre structure will not adversely affect the career prospects of any class of officers, particularly promotees to the service.

6. In support of the above contentions, Shri V.P Uppal, the learned counsel for the respondents made strenuous efforts to suggest that with the acceptance of the recommendations, there will be an addition of around 428 posts at various levels in the IRS and the same would definitely be reflected at the lower level of ACIT (Junior Scale). The time taken for promotion from one post to another would decrease resulting in accelerated/expeditious promotions and this would definitely benefit the incumbents at the lowest level. At present, the officers in the Senior Scale have to stagnate for 7 years or more and this blocks promotional prospects of ACTIs in Junior Scale which, in turn, reduces the entry of officers in IRS from amongst ITO Grade-B. With the creation of additional posts at the higher levels, the lower ranks in the cadre will have salutary effects, the learned counsel argued.

7. We have gone through the proposals carefully and applied our mind to find out if they are fair, just and equitable in the facts and circumstances of the case. Rule 7(2) of the Indian Revenue Service Rules, 1988 provide that 50% of the vacancies in the grade of Asstt. Commissioner of Income-Tax (Junior Scale) shall be filled by direct recruitment on the basis of competitive examination and 50% of the vacancies by promotion of Income Tax Officers on the basis of selection. Once an officer is appointed as Assistant Commissioner (Junior Scale), he becomes a Member of IRS and gets merged with direct

recruits so far as to make a common cadre of Asstt. Commissioners ACITs (Junior Scale). On such appointment as Assistant Commissioner (Junior Scale), there is a common seniority list in terms of Rule 9 and thereafter the promotion to the post of Asstt. Commissioner (Senior Scale) is made from that common list as per Rule 7(3) of the Service Rules, 1988. Since there is no reduction at the Junior Time Scale ~~as~~ level i.e. ACIT (Junior Scale) which numbers 585 ~~at~~ present, the promotee officers are not likely to be affected. On entry into the lowest rank of Group-A, any step for altering promotional prospects would effect direct recruits as well as promotees equally without any discrimination. We find that the Government have powers under Rule 3(3) to make temporary alterations in the sanctioned strength of duty posts in various grades as it thinks necessary. We also find that the cadre review proposals envisage measure in the strength of officers from 1353 to 1785 from the level of DCIT to CCIT. Even if 177 posts of the ACITs in the Senior Scale are kept in abeyance as a temporary measure, as proposed, the additionality in the number of higher posts will have a definite positive benefits on the entire structure. This is because vacancies in higher posts will have to be filled from those at the lower level. The learned counsel for the applicants could not effectively controvert this point when we brought this aspect to her attention. The respondents have submitted that the posts of CCITs/CITs have been created on the basis

of a policy decision taken at the highest level. The post of CITs have also been allocated amongst various authorities in such a way that there is a better tax administration. The executive is vested with an inherent power to initiate actions in public interest.

8. We find that the decisions of the Hon'ble Supreme Court in the case of All India Federation of Central Excise Vs. the Union of India and Others ^{cited by the counsel for applicant} (Writ Petition (Civil) No.306 of 1988) do not have relevance in the facts and circumstances of the case. It is a well settled law that the rule which merely affects chances of promotion cannot be regarded as varying condition of service. This view has been confirmed in a decision of Constitutional Bench of the Hon'ble Supreme Court in the case of Ram Chandra Shankar Devedhau Vs. State of Maharashtra reported in 1974(1) SCC 317 (para 15). What has been stipulated in the impugned order is an act of policy decision on behalf of the respondents. This Tribunal while exercising its power of judicial review cannot function as an appellate authority and intervene in the policy matters (see Asif Hameed Vs. State of J & K reported in AIR 1989 SC page 1906). Even in a recent decision of the Apex Court, namely, Indian Railway Mechanical Service Vs. Indian Railway Traffic Service reported in SLR 1993(2) 579, it has been held that the administrative authorities has the power to change the percentage of the posts that could be

ear-marked for a particular cadre of service vis a sation vis other cadres in the same organi-sation so as to avoid predominance of a particular cadre for the purpose of better promotional prospects. In yet another decision of the Hon'ble Supreme Court in the case of Tech. Executive (Anti Pollution) Welfare Association Vs. Commissioner of Transport Dept. & Anr. reported in JT 1997(4) S.C. 172, it has been held that

"The Tribunal is not competent to give directions to law down the policy or to issue directions to create promotional avenues. Such a direction would amount to entrenching upon area of policy making which is exclusively within the purview of the appropriate Government. The Tribunal, therefore, was right in rejecting the application and holding that there was no contempt."

9. In the facts and circumstances of the case, we do not find any ground, much less any valid ground, to interfere in the matter. The O.A. fails on merit and is accordingly dismissed. No costs.


(S.P. Biswas)
Member(A)


(Dr. Jose P. Verghese)
Vice-Chairman(J)

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