

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 675/97  
with  
O.A. 753/97

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New Delhi this the 10th Day of September 1997.

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

OA No. 675/97

1. Shri Sudhir Chandra.

Additional Commissioner of Income Tax,  
Range-26, C.R. Building, I.P. Estate,  
New Delhi.

2. Prakash Chandra Chhotaray,  
Additional Director Income Tax (Inv.)  
(HQRS) Mayur Bhawan, Connaught Place,  
New Delhi.

3. Debabrata Dass,  
Additional Commissioner of Income Tax  
Audit-I, Mumbai.

4. Smt. Rama Das,  
Addl. Commissioner of Income Tax,  
Range 8, Mumbai.

5. Ms. Usha Govindan  
Addl. Commissioner of Income Tax,  
Range 6, Bangalore.

6. M. Narasimhappa,  
Addl. Commissioner of Income Tax, Mysore

7. N.K. Shukla,  
Addl. Director of Income Tax,  
(Exemptions) 7th Floor, Mayur Bhawan,  
Connaught Circus, New Delhi.

8. C.S. Kahlon,  
Addl. Commissioner of Income Tax,  
Range 2, C.R. Building, I.P. Estate,  
New Delhi

Petitioners

(By Advocate: Shri P.P. Khurana)

-Versus-

1. Union of India,  
through the Secretary to  
the Government of India,  
Ministry of Finance, Dept. of Revenue,  
North Block, New Delhi.

2. Union Public Service Commission,  
Through its Secretary,  
Dholpur House,  
Shahajahan Road, New Delhi

(By Advocate: Shri V.P. Uppal)

Respondents

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1. Smt. Arti Sawhney,  
Wife of Shri A.K. Sawhney,  
Addl. Comm. of Income-Tax (Vig.),  
New Delhi
2. Shri Ashwani Kumar,  
Son of Late Shri Ranjit Prasad,  
Addl. Commissioner of Income-Tax (Range-1)  
New Delhi.
3. Shri Ramji Sinha,  
Son of Shri H.N. Sinha,  
Director (Hqrs.),  
CBDT, New Delhi. ....

Petitioners

(By Advocate: Shri Pankaj Nath)

-Versus-

1. Union of India,  
Through Secretary,  
Dept. of Revenue,  
Ministry of Finance, New Delhi.

2. The Chairman  
Central Board of Director Taxes,  
North Block,  
New Delhi.

3. Union Public Service Commission,  
through its Chairman,  
16, Dholpur House,  
Shahajahan Road, New Delhi

Respondents

(Shri V.P. Uppal)

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

This application under Section 19 of the Administrative  
Tribunal Act, 1985 was filed by eight applicants working as  
Additional Commissioner of Income Tax/Additional Director of  
Income Tax and are seeking a direction from this Court to  
hold the Departmental Promotion Committee meeting for filling  
up the 21 vacancies declared in the grade of Commissioner of  
Income Tax. The meeting for which, according to the  
applicant was due to take place in April/May 1996. It was  
also stated that these 21 vacancies were calculated by the  
respondents on the basis of both existing and anticipated

vacancies in the grade of Commissioner of Income Tax and the necessary requisition was sent to Union Public Service Commission with a few months delay. It was also stated by the petitioner that the Confidential Reports of the petitioners till the end of March, 1995 were also forwarded to the respondents for consideration of the records for the purpose of promotion at the instance of the UPSC.

2. It was stated that, subsequently by an order dated November 1996, 77 additional posts were created and the respondents are now proceeding to fill up all the 77 as well as 21 vacancies together without following the rule of holding of DPC yearwise which according to the petitioner would affect the career prospects of the petitioners. In case both the newly created 77 additional posts of Commissioner of Income Tax are clubbed with the previous 21 vacancies, the zone of consideration would be highly enlarged and many of the juniors who are far down in the seniority list are likely to be considered and on the basis of the bench-mark the petitioners are likely to be continued ignored for promotion which otherwise would have been available to them, had the meeting of the DPC was held in time to fill up the 21 vacancies of Commissioner of Income Tax, in accordance with the rules. In support of the case of the petitioner, para 3.1 of the instructions of the DOP&T contained in OM dated 10.4.1989 was relied upon and the said para is reproduced herebelow:

The DPCs should be convened at regular annual intervals to draw panels which could be utilised on making promotions against the

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vacancies occurring during the course of a

year. For this purpose it is essential for

the concerned appointing authorities to

initiate action to fill up the existing as

well as anticipated vacancies well in advance

of the expiry of the previous panel by

collecting relevant documents like CRs,

integrity certificates, seniority list etc.

for placing before the DPC. DPCs could be

convened every year if necessary on a fixed

date e.g., 1st April or May. The

Ministries/Departments should lay down a time

schedule for holding DPCs under their control

and after laying down such a schedule the

same should be monitored by making one of

the officers responsible for keeping a

watch over the various cadre authorities to

ensure that they are held regularly. Holding

and holding of DPC meetings need not be delayed or

postponed on the ground that recruitment

rules for a post are being reviewed/amended.

A vacancy shall be filled in accordance with

the recruitment rules in force on the date of

the DPC and ~~subsequent~~ vacancy, unless rules made subsequently have

been expressly given retrospective effect.

Since Amendments to recruitment rules

have general scope, it will normally have only prospective application,

unless retrospective. ~~the~~ existing vacancies should be filled as

soon as possible per the recruitment rules in force.

Amendments to existing rules for filling vacancies should be made only after consultation with concerned authorities.

3. The respondents by way of reply submitted that even though the rules require that the meeting of the DPC for the previous year in the ordinary circumstances should take place in April/May, 1996 in accordance with the rules, in the present case the meeting was only called for and the same was decided to be convened only on 27.9.1996. But due to certain unavoidable circumstances the said meeting was further postponed. It was in the meantime that the Government of India issued a Notification on 27.11.1986 whereby 77 new posts of Commissioner of Income Tax were created, and accordingly a DPC was to consider by a meeting on 24.2.1997 by way of selection from among the eligible candidates to the posts of Commissioners of Income Tax to consider not only the previous existing 21 vacancies but also those 77 vacancies that has arisen subsequently by a Notification dated 27.11.1986, since all the vacancies have arisen, according to the respondents, in the year 1996-1997, in accordance with the rules they are to be bunched together and the selection should take place by one and the same DPC from among candidates within the zone of consideration determined in accordance with the rules. It was also stated by the respondents that they were considering a representation from among the SC/ST candidates for convening the DPC for consideration of promotion to the post of Commissioner of Income Tax both the previous 21 posts as well as the 77 newly created posts. The idea seems to be that in accordance with the rules of extended zone of consideration larger number from among the reserved communities would have come within the zone of consideration, if all the posts are bunched together.

4. Whatever be the reasons the sole question is to be considered in this case is whether the previous 21 vacancies had arisen one year prior to the newly created 77 posts of Commissioners of Income Tax. Admittedly the newly created 77 posts were created only by a Notification by an order dated 27.11.1996 and the DPC to be convened on 24.2.1997. It is an admitted case that the respondents could not anticipate these 77 vacancies and consider them as anticipated vacancies in accordance with rules during the previous year and those 77 new posts can only be considered as newly created existing vacancies, that existed during the year 1996-1997 as per the order dated 27.11.1996. It was also submitted that the persons who are now being considered against the new 77 posts of Commissioners of Income-tax would also be considered along with the records upto March, 1996 by DPC being convened on 24.2.1997.

5. The question now left to be decided is to whether the 21 posts for which the DPC was to take place in accordance with the rules in April/May, 1996 subsequently postponed to September, 1996 and again further postponed to be held in Feb., 1997 along with the 77 newly created posts are vacancies of the year 1995-96 or not. If the said 21 vacancies belongs to the previous years, those vacancies could not have been clubbed along with the 77 newly created posts and that would violate the rule of year-wise selection, adversely affecting the career prospects of the petitioners whose service records upto March 31,1995 were only scrutinised by the present DPC.

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6. The relevant rules to determine the existing as well as, anticipated vacancies are the one contained in the same OM referred to above dated 10.4.1989. Para 4.1 and 4.2 is relevant and is being reproduced below:-

4.1 It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possibly. For this purpose the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc., should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year-wise separately.

4.2.3. No proposal for holding a DPC or Selection Committee should be sent to UPSC until and unless all the ACRs complete and upto date are available. In certain cases involving collection of large number of ACRs, the proposal can be sent only if at least 90% of the ACRs (upto date and complete) are available. Every effort should be made to keep the ACRs dossiers upto date, lest this aspect is advanced as the reason for not holding DPCs in time. The officer referred in para 3.1 should also be responsible for monitoring the completion of the ACR dossier".

7. According to this Notifiction all clear vacancies arising out of retirement and regular long term deputation existing one year, are to be considered under the head of existing and anticipated vacancies. Short term vacancies of duration of less than one year are to be ignored and

stipulation that in case where there have been a delay in holding DPC for a particular year or more, vacancies should be indicated yearwise separately.

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8. By way of written submission, the respondents have clarified the yearwise available vacancies to this court. According to them there were eight vacancies that have arisen due to the fact that the persons who were holding the said posts had proceeded on deputation, assuming that the said period of deputation is more than one year. The names of those persons were also given in the said affidavit. They were :-

1. Smt. Rashmi Choudhury
2. Sh. Vijay Mathur
3. Sh. Hardayal Singh
4. Sh. Joginder Pal
5. Sh. Vinod Kumar
6. Sh. G.L.Garoo
7. Sh. C.L. Bakolia
8. Smt. Sudarshan Prashar

8. Apart from that, according to the respondents in the affidavit, there were 15 anticipated vacancies for which requisition was sent to the UPSC and these anticipated vacancies were arising out of promotion to the grade of Chief Commissioner of Income-tax. Even though the respondents proceeded to consider these 15 vacancies as anticipated vacancies at the time when the requisitions were sent in the DPC held in the previous year, the contention of the respondents at present is that due to certain unavoidable circumstances those 15 anticipated vacancies did not arise as anticipated. The question is whether the anticipation was correct or not or whether the anticipated vacancies has actually arisen or not, these 15 vacancies would remain in the category of anticipated vacancies in accordance with the rules stated below. We are

of the opinion that these were the vacancies correctly anticipated in accordance with the rules by the respondents, as anticipated at the time when the total available vacancies were calculated, in the previous year even though the said vacancies did not actually become available for appointment.

9. The respondents have also included some vacancies and shown them as arising due to retirement of various incumbents. On the other hand at page 81, the petitioners had produced a list of Chief Commissioners/Commissioner of Income-tax who were to be retitled in the year 1996, the names of the persons and the date of retirement are reproduced herebelow:-

1. S.S.Bhatia (30.4.96), 2. N.I.Rangachary (30.6.96),
3. C.V. Gupte (30.6.96), 4. Ram Acharya (30.6.96), 5. D.B. Lal (31.7.96), 6. V.P.Shamsuddin (31.7.1996), 7. G.S. Sidhu (31.8.1996), 8. Smt. K. Shukla (30.9.96), 9. R.C. Handa (30.9.96), 10. P.Pardhan (30.9.96), 11. S.K. Lal (31.10.96), 12. D.Laxmi Narayana (31.10.1996), 13. S.K. Roy (30.11.96), 14. P. Radhakrishnan (31.12.96), and 15. U.P.Singh (31.12.1996)

10. The submissions of the petitioners were that there were sufficient vacancies existing as well as anticipated at the time when the previous requisition was sent to the UPSC and those vacancies also belonging to the previous year and the respondents themselves have substantiated these facts in the submissions to this court. There was a dispute as to the exact number of vacancies existed and anticipated in accordance with the rules. Whatever be the exact number projected, the respondents themselves had sent a requisition

for 21 posts and the claim of the petitioner is only for consideration of their candidature against 21 posts in accordance with their ACRs submitted to the UPSC for the previous year. In the facts and circumstances, we are of the opinion that 21 vacancies or more had arisen for consideration for the previous year as existing as well as anticipated, in accordance with the above cited rules and these vacancies should have been subjected to selection by a meeting which should have been held in April/May, 1996 in accordance with the rules, and the respondents cannot club these vacancies alongwith 77 newly created vacancies, as they are under a mandate to consider them separately in year-wise panels.

11. In the circumstances, we would proceed to issue directions to the respondents to consider the petitioners or any other persons who were eligible in accordance with the rules applicable during 1995-96 against the 21 vacancies, as if it existed in the previous year, the DPC of which was to be held in April/May, 1996; thereafter a subsequent <sup>event</sup> additional newly ~~77~~ vacancies shall be subject to selection from among the remaining eligible candidates in accordance with the rules.

12. In the premises this O.A. is allowed to the extent mentioned above and the respondents are directed to hold the DPC in accordance with observations above and in case the DPC has already taken place, the result of the same shall be declared in accordance with the observations made herein above.

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13. This O.A. is allowed to the extent stated above,  
no order as to costs.

(S.P. Biswas)  
Member (A)

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

\*Mittal\*

Attested  
KSC  
12/9/57  
C/C-D