

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 599/88
T.A. No.

199

DATE OF DECISION 29-10-1990.Sh.M.C.Gautam & ors.

Petitioner Applicants

Shri B.T.Kaul,

Advocate for the Petitioner(s) Applicant

Versus the
Union of India through/Secretary
Ministry of Finance & others Respondents

Sh.P.H.Ramchandani, Sr.Counsel

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. B.S.Sekhon, Vice Chairman(J)

The Hon'ble Mr. D.K.Chakraverty, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
 Mr. D.K.Chakraverty, Member)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by seven Inspectors in the Income-tax Department in the Delhi Charge. All the applicants belong to the Scheduled Caste category. They have prayed for issue of declaration that the D.P.C. held on 30th March, 1988 for promotion to the post of I.T.O. Group 'B' was not in accordance with law and direction to the respondents to hold fresh D.P.C. meeting for the year 1988 in accordance with law and consider the applicants, along with other eligible candidates, to fill up about 112 vacancies in Delhi Charge from the Seniority List drawn upto 1987.

2. The brief facts of the case are given below.

8 The applicants have passed the departmental examination

and have put in more than 3 years' service which qualifies them for promotion to the post of Income-tax Officer Group 'B'. In the Seniority List of all such Inspectors, who have qualified in the Departmental Test ^{upto 1987,} the applicants are placed in position numbers between 62 to 83. In accordance with the selection method for promotion to I.T.O. Group 'B' prescribed in Rule 3.5(2) of Chapter 5 of the Manual of Directorate of Inspection, the number of officers to be considered by the duly constituted Departmental Promotion Committee (D.P.C.) ordinarily extends to three times the number of vacancies. In case sufficient number of SC/ST candidates are not available, then the zone of consideration should be extended to five times only for SC/ST candidates. The reservation in favour of SC/ST is inter-changeable to the extent that if an ST is not available against the point reserved in the Forty Point Roster, then the same has to be filled from the SC candidates, if available, and vice-versa. The D.P.C. is required to prepare a panel of selected Inspectors on the basis of existing vacancies of I.T.O. Group 'B' as well as the vacancies likely to arise in the next one year in accordance with Rule 3.4 of Chapter 5 of the Manual ibid. The Central Administrative Tribunal have issued ^{similar} directions on 19.5.1987 in the case of Shri A.K. Mourya Vs. U.O.I & ors in OA No. 684/86 which was filed by certain Scheduled Caste Inspectors working in the Delhi Charge of the Income-tax Department.

3. The applicants have contended that the number of posts of I.T.O Group 'B' that are vacant and are likely to fall vacant during the course of

1988-89 would come to 102 as detailed below:-

(a) Conversion of I.T.O. Group 'A' to I.T.O. Group 'B' posts (Ministry of Finance letter dated 18.12.1987)	47
(b) Vacancies arising from promotion of I.T.O. Group 'B' (Ministry of Finance letter dated 5.1.1988)	11
(c)(i) Retirement of I.T.O. Group 'B'	16
(ii) Retirement of I.T.O. Group 'A' 50% thereof	3
(d) Vacant I.T.O. Group 'B' posts in Inspection Division.	6
(e) Vacancies expected from promotion of I.T.O. Group 'B' to I.T.O. Group 'A'.	10
(f) 30% of shortage in I.T.O. Group 'A' cadre.	9
TOTAL :	102

4. The applicants through their Union represented to respondent No.3 requesting for filling up of these posts through D.P.C which was held on 30.3.1988. However, they reliably learnt that the D.P.C. considered only ^{these} Inspectors who came within the zone of consideration for promotion to six posts of I.T.O. Group 'B' in Delhi Charge. The applicants' main grievance is that the respondents' action in artificially reducing the number of vacancies to be filled up narrowed down the zone of consideration. If the respondents had disclosed the correct number of clear and anticipated vacancies, the zone of consideration would have been large enough to bring the applicants' name for consideration and they would have succeeded in being promoted to the post of I.T.O. Group 'B' in view of the reservation points for SC/ST candidates in the 40 Point Roster. By way of illustration, it has been stated that if there were 13 vacancies to be filled up,

applicant No.2, who is placed at serial No.62 of the Seniority List, would have come into the consideration zone. They have alleged that the D.P.C. was asked to fill up only six vacancies with a view to keep the SC/ST candidates out of consideration zone and thereby denying them what they were otherwise entitled to under the law. In the Seniority List, there are about 12 eligible Inspectors from SC/ST categories and the number of vacancies available were adequate to bring all these officers in the field of consideration. It has been further alleged that in 1984, there were about 20 vacant posts but the Department decided to fill only 16 posts in order to keep applicant No.1 herein deliberately out of consideration zone as he happened to be the President of the Delhi Income Tax Scheduled Caste/Scheduled Tribe Employees Welfare Association.

5. The applicants have been given to understand that the respondents are going to fill up the existing vacancies by absorbing I.T.O. Group 'B' officers who have been in excess over the sanctioned strength in Delhi Charge. Such an action would be prejudicial to the legitimate rights of the applicants and would go against the affidavit given by the respondents to the Tribunal in the case of A.K. Meuria where it was stated that these excess officers working in Delhi Charge will not be absorbed in the existing and the expected vacancies.

6. As an interim measure, the applicants prayed for staying of the implementation of the recommendations of the D.P.C. held on 30.3.1988.

On 28.7.1988, the Tribunal has, as an interim measure, directed that out of six vacancies, one vacancy should be kept unfilled and even the appointments made to the five vacancies will be subject to the outcome of the main application and the appointees should be informed accordingly.

6. In the counter the respondents have denied the existence of 102 vacancies mentioned in the application. It has been asserted that in the Delhi Charge there are only 183 posts of I.T.O Group 'B' inclusive of 47 posts sanctioned in December 1987. After taking into account the retirements and the vacancies likely to arise the Department has correctly calculated that ~~clear~~ ¹ were only 6/vacancies ~~1~~ to be filled up during the year 1988-89. The D.P.C. considered all the eligible candidates within the zone of consideration for these six vacancies and since no eligible SC & ST candidates were available within the normal zone, it was extended to five times to consider only SC & ST candidates as per Government instructions. The averments relating to the DPC of 1984 have been stated to be denied. It is also/barred by limitation.

2 The claim of the applicants that the Department has given an affidavit in OA 684/86 to the effect that excess of Group 'B' officers working in the Delhi Charge would not be absorbed against existing and anticipated vacancies has been denied. The Department's version is that there are 53 Group 'B' Income Tax Officers in excess and normally until these vacancies are absorbed in a phased manner over a number of years there is no likelihood of promotion to the post of I.T.O. Group 'B' from the

cadre of Inspectors. It is for the Central Board of Direct Taxes to decide whether to release some more posts of I.T.O. Group 'B' for promotion and convert this extra strength to I.T.O. Group 'B' or transfer some of these posts to other charges where there is shortage. It has been decided, through an amendment to the Finance Act, 1987, that the posts of I.T.O. Group 'A' should be re-designated as Assistant Commissioner of Income Tax with effect from 1.4.88. As such I.T.O Group 'B' cannot be posted to function as an Assistant Commissioner after that date. The excess of ITO Group 'B' posts also cannot be adjusted against the posts of Assistant Commissioner of Income Tax. Since all the six clear and anticipated vacancies have been duly considered by the D.P.C. in accordance with rules and as all the officials who have been empanelled are senior to the applicants they are not entitled to any relief.

7. In the rejoinder to the counter, the applicants have reiterated their stand that respondents have not taken all the vacancies into account. In addition to the vacancies mentioned in their application, it has been stated that six more vacancies have arisen as a consequence of the death of Shri Sabbruddin, voluntary retirement of Shri Lal Singh Thapar, Shri R.P.Bhatnagar and Shri Chaman Singh and two more vacancies have arisen due to deputation of Shri R.P.Suri and Shri R.P.Pandia. As regards vacancies arising from the anticipated promotion of ITO Group 'B' to ITO Group 'A' posts, which are made on all India basis there are 17 eligible officers in the Delhi Charge whose promotion can be anticipated for projection of future vacancies.

The respondents did not give correct position relating to anticipated vacancies which were ~~likely~~ likely to arise due to retirement of I.T.O/ Group 'B' officers in the year 1988 to the Tribunal in the case of A.K.Mourya Vs. Union of India. The applicants have pointed out that the panel prepared by the D.P.C ^{been} in June 1987 had already/exhausted in October 1987 which clearly establishes that the department did not place the correct position before the D.P.C.

8. It has been averred that the redesignation of the I.T.O. Group 'A' as Assistant Commissioner of Income Tax does not change the nature of the work being done by these officers and, therefore, the submission of the respondents that I.T.O. Group 'B' cannot be posted to function as Assistant Commissioner is wrong.

9. In Misc.Petition No.812/89 praying for early hearing of the OA, the applicants have stated that the respondents have held another DPC for the year 1988-89 on 27.2.89 on the basis of which 18 more Inspectors have been promoted to the post of I.T.O. Group 'B'. This also establishes the fact that there were existing and anticipated vacancies different and the respondents held two/D.P.Cs to prejudice the interest of the applicants who belong to SC category. In the meanwhile, the results of the Departmental Examinations of the year 1989 of the Inspectors in the Delhi Charge had been declared and the seniority of the applicants stands displaced. As a result these persons who were not eligible for promotion in the DPC held on

30-3-88 and 4-4-88 have been promoted by virtue of D.P.C. held on 27.2.89 to the disadvantage of the applicants.

10. We have heard the learned counsel of both parties and considered the rival contentions. We have also gone through the records of the case carefully including the proceedings of the D.P.C.

11. The main point for adjudication in this case is whether the number of vacancies in respect of which the D.P.C were to prepare a panel for the year 1988-89 was estimated as accurately as possible in accordance with the prescribed procedure and if not, whether there was any mala fide depression in the projected number of vacancies. Further, whether artificial reduction in the number of vacancies or holding of two different D.P.Cs for the same year prejudice the interests of the applicants, who belong to the SC category. At the very outset, we rule out any mala fide on the part of the respondents as the applicants has made only very vague allegations without any substance. As regards determination of regular vacancies, the following have been instructions/issued by the Government:-

* 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 possible. For this purpose the vacancies to be taken into account should be clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion of incumbents of one post/grade to higher post/grade and vacancies arising from creation of additional

posts on a long term basis and these arising out of deputation. As regards vacancies arising out of deputation, it is clarified that for the purpose of drawing up a select list for promotion, vacancies arising out of deputation for periods more than a 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 arising as a result of officers proceeding on leave, on deputation for a shorter period, training etc., should not be taken into account for the purpose of preparation of a panel."

The above instructions clearly imply that there is need for careful estimation in projecting the future vacancies. While retirement, number of promotions already decided upon, creation of additional posts for which sanctions have already issued etc. are precisely some known elements of estimation and, perhaps, subjectivity does come into play for predicting vacancies due to death and other casualties, voluntary retirement, resignation, creation of more posts and consequently faster rate of promotion than anticipated earlier, the number of persons sent on deputation etc. The vacancies estimated by the applicants, in support of which some factual data and some averments have been made, are many times more than the respondents' contention that there were only six vacancies anticipated in March 1988 when the D.P.C. met. One of the reasons for the major discrepancy between the two estimates could be the fact that the number of Group 'B' officers in the Delhi Charge is in excess over the sanctioned strength. The applicants' contention that there is a commitment by the respondents not to absorb these excess posts

against the existing and anticipated vacancies has been denied. The relevant portion from the judgement of the Tribunal in OA 684/86 is extracted below:-

"From the statement it is clear that while no vacancy existed as on 4.3.1987; 19 vacancies in Group 'B' were anticipated in view of the retirement of 19 Group B officers and that a decision to fill up these vacancies even by continuing the excess Group B officers over the sanctioned strength, was taken."

It is no doubt open to the respondents to decide whether or not to adjust the excesses in any cadre against future vacancies and if it is decided to adjust, whether it should be done at one go or in a phased manner. According to the judgement quoted above, the respondents had obviously opted in 1987 in favour of non-absorption or phased absorption. It would be only equitable and fair to continue the same policy so that the interests of the officials awaiting promotions are not adversely affected.

12. The factual matrix of the filling of the vacancies by the D.P.C. from 1984 is given below:-

<u>Date of the D.P.C.</u>	<u>Number of persons empanelled</u>
1984	16
18.6.87	29 (As per directions of the Tribunal)
30.3.88 & 4.4.88	6 (based on the seniority list of 1987)
27.2.89	21 (based on the seniority list of 1988)
1.6.89	22

13. It would be clear from the above that there has not been an even flow in the number of persons empanelled by the D.P.C. from year to year. After

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Empanelment of 16 persons in 1984 no empanelments were made for the years 1985 and 1986. In 1987, as per the directions of the Tribunal in OA 684/86 29 persons were empanelled. The applicants' statement that this long panel got exhausted by October 1987 itself has not been controverted by the respondents. That the number of vacancies estimated for the D.P.C meeting in March 1988 was low is obvious from the fact that during 1988-89 itself another panel and a much larger one at that, ~~had~~ had to be prepared by the D.P.C. held on 27.2.89. In just three months' time thereafter, another D.P.C empanelled 22 persons. From this factual matrix, we cannot but conclude that the estimation of vacancies for the D.P.C held in March 1988 was very much on the lower side. We are unable to accept the contention of the learned counsel of the respondents that the 21 additional posts arose subsequently and this has no bearing on the correctness of the earlier estimates. It appears to be rather unlikely that the sudden spurt in the number of vacancies towards the close of the year was entirely unanticipated.

14. Correct estimation of the likely number of vacancies is very important as the zone of consideration for promotion is determined in accordance with the number of vacancies proposed to be filled during the year. If the number estimated is unduly small many persons who would have been otherwise eligible will be debarred from consideration for that year. On the other hand, if the vacancies estimated are unrealistically large, many otherwise ineligible candidates, who are ^{lower} down in the seniority list, will come into the zone of consideration which would affect the promotion prospects of the senior

persons. Having a reduced number of vacancies and, therefore, a smaller zone of consideration would affect the chances of all candidates but the consequences would be particularly adverse in respect of SC& ST candidates. This is because, for these categories the zone of consideration is extendable to five times the number of vacancies and, if found fit and empanelled, the prospect of their being promoted is high in view of the 40 Point Roster applicable to them. As indicated earlier, the total number of persons actually empanelled for the year 1988-89 was 27 but because of the inaccurate estimation of vacancies, two separate D.P.C meetings had to be held. This has very clearly jeopardised the promotion prospects of the applicants because in March 1988, the zone of consideration for SC/ST candidates was extended only to 30(6x5) whereas the seniormost S.C candidate was at Serial Number 62 of the 1987 Seniority List. Had the D.P.C considered all the 27 vacancies for the year 1988-89 in March, 1988, the zone of consideration for SC/ST candidates would have been extended to 135(27x5) which is large enough to include not only all the applicants before us but also all other SC& ST candidates in the 1987 Seniority List. Government Instructions contemplate affording of such opportunity for consideration for promotion. Subject to being found fit, some of the applicants may have been empanelled in April 1988 and promoted against available vacancies under the 40 Point Roster. Further, the D.P.C of February 1989 had considered persons in the revised Seniority List upto 1988 which included some Inspectors who were not in the 1987 Seniority List. Had all the vacancies been considered by the D.P.C in March 1988 only the persons included in the 1987 Seniority List would have been considered. The

splitting of the D.P.C into two sittings for the 1988-89 vacancies due to initial wrong estimation of vacancies for the year and consideration of persons from the subsequent year's seniority list at February 1989 meeting of the D.P.C were irregular. This had adversely affected the promotion prospects of the applicants on both these counts because in March 1988 they were unjustly kept out of the zone of consideration and in February 1989 they had to face unfair competition from persons who were not at all eligible for consideration for promotion in March 1988.

15. During the hearing, we were informed that applicant Nos.2,3&4 have since been promoted from the February 1989 panel and applicant Nos.1,5 and 6 are likely to be promoted shortly from the June, 1989 panel. It is seen from the promotion order dated 1.3.1989 that applicant No.2 is at the bottom of the list while an ST officer, who was ^{not} ineligible as he was/in the 1987 seniority list, occupies a position above him. His inclusion is violative of the Government instructions.

16. In the conspectus of the facts and circumstances of the case, we allow the application with the following directions:-

- (a) The panels prepared by the D.P.C. in March-April 1988 and February 1989 are set aside and quashed;
- (b) The Respondents should convene a Review Departmental Promotion Committee to consider empanelment for 27 posts for the year 1988-89 based on the 1987 Seniority List;
- (c) The applicants empanelled by the Review D.P.C shall be promoted

to the posts of Income Tax Officer Group 'B' in accordance with their position in the panel as and when vacancies had actually arisen. They will be entitled to all consequential benefits; and

(d) The promotions already made on the basis of the March-April, 1988, February 1989 and June 1989 panels may not be disturbed except to adjust the inter-se seniority in accordance with the position as per the panel ^{to be} finalised by the Review D.P.C.

17. The Respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

The parties will bear their own costs.

D.K.Chakravorty
(D.K.CHAKRAVORTY)
MEMBER
29/10/1990

B.S.Sekhon
(B.S.SEKHON)
VICE CHAIRMAN
29-10-1990