



Central Administrative Tribunal  
Principal Bench, New Delhi

O.A. No. 3331/2019  
MA No. 2716/2020

This the 07<sup>th</sup> day of January, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**  
**Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Mrs. K. R. Deepa,  
Aged about 51 years,  
W/o Sh. P. L. Santonsh,  
R/o G-403, Steller Jeevan,  
Sector-I, Greater Noida West,  
Gautam Budh Nagar (UP).

(Working as Asstt. Director in Income Tax (I&CI), New Delhi)

2. Sh. Mani Shankar Bardoloi,  
Aged about 52 years,  
S/o Late Yadav Chandra bardoloi,  
R/o H. No. 37, Senduri Ali,  
Nabin Nagar, R. G. Barua Road,  
Guwahati.

(Working as Asstt. Director in Income Tax (I&CI), New  
Guwahati, Assam)

3. Sh. Vikas Chandra,  
Aged about 51 years,  
S/o Late Ram Shakal Roy,  
R/o Flat No. 507, Vedant Diamond,  
Sheh Nagar, Chhatrapati Square,  
Nagpur.  
(Working as Asstt. Director in Income Tax Central Circle,  
Nagpur)

4. Sh. Prabhat Kumar Saxena,  
Aged about 55 years,  
S/o Late V.P. Saxena,  
R/o ACIT-13 (3) (2), R. No. 229,  
Aayakar Bhawan, M.K. Road,  
Mumbai.  
(Working as Asstt. Director in Income Tax)

R/o TPS-II, 4<sup>th</sup> Floor,  
 Mayur Bhawan,  
 Connaught Place,  
 New Delhi.  
 (Working as Asstt. Director of Income Tax) Group A



12. Sh. Anil Kumar,  
 Aged about 50 years,  
 S/o Late Harbir Singh,  
 R/o Room No. 340, CR Building,  
 ITO, IP Estate, New Delhi.  
 (Working as ACIT, Circle 24 (1))

13. Sh. Rakesh Kumar,  
 Aged about 55 years,  
 S/o Sh. Janki Prasad,  
 R/o 1202, Ratangiri Apartment,  
 Ghaziabad (UP)  
 (Working as Asstt. Commissioner of Income Tax)  
 ... Applicants  
 (Group A)

(through Mr. Surinder Kumar Gupta , Advocate)

### Versus

Union of India through

1. Secretary,  
 Ministry of Finance,  
 Department of Revenue,  
 North Block, New Delhi.

2. Chairman,  
 Central Board of Direct Taxes,  
 Department of Revenue,  
 North Block, New Delhi.

3. Secretary,  
 Union Public Service Commission,  
 Dholpur House, Shahjahan Road,  
 New Delhi.  
 ... Respondents

(through Manjeet Singh Reen , Advocate)

5. Sh. Sumit Dasgupta,  
Aged about 50 years,  
S/o Sh. Saray Chandra Dasgupta,  
R/o 19/2C, Selimpur Road,  
Khakuria, Kolkata.  
(Working as Asstt. Director in Income Tax)

6. Sh. Manoj Kumar,  
Aged about 52 years,  
S/o Sh. Manphool Singh,  
R/o H. No. 195, Sector-4,  
Kurukshetra, Haryana.  
(Working as Asstt. Director in Income Tax, CBDT, New Delhi.)

7. Sh. Sangeet Bansal,  
Aged about 51 years,  
S/o Late S. K. Bansal,  
R/o 406, Nanda Tower,  
Kaushambi, Ghaziabad (UP).  
(Working as Asstt. Director in Income Tax (Publicity))

8. Sh. Harshai Meena,  
Aged about 54 years,  
S/o Sh. Bhauraya Meena,  
R/o 18, Aishwarya Bungalows,  
Near H.P. Petrol Pump,  
Motera, Ahmedabad.  
(Working as Asstt. Director in Income Tax, mehsana, Gujrat)

9. Mrs. Kulwinder Kaur,  
Aged about 52 years,  
W/o Sh. S. Gurpal Singh,  
R/o 3<sup>rd</sup> Floor, Grand Walk Mall,  
Ferozpur Road, Ludhiana,  
(Working as Asstt. Director in Income Tax TDS Circule,  
Ludhiana).

10. Sh. Rajiv Ratan Singh,  
Aged about 51 years,  
S/o Sh. Lalit Ratan Singh,  
R/o Room No. 379A, C.R. Building,  
I.P. Estate, New Delhi.  
(Working as Asstt. Director in Income Tax, (HQ) (Infra), New Delhi).

11. Ms. Sushila,  
Aged about 54 years,  
W/o Sh. Sanjay Kumar,



**ORDER (Oral)**

**Justice L. Narasimha Reddy, Chairman:**



The applicants were selected and appointed as Income Tax Inspectors in the year 1992. About ten years thereafter they were promoted to the post of Income Tax Officer (ITO) in 2001. They became due for promotion to the post of Assistant Commissioner of Income Tax (ACIT). However, in the context of fixation of inter se seniority, uncertainty that prevailed, in the light of the Judgment of the Hon'ble Supreme Court in N.R. Parmar's case, the DPC for promotion to the post of ACIT did not take place for quite some time. As a matter of fact, a proposal forwarded to the UPSC for convening DPC was returned on 11.12.2015.

2. The applicants were promoted as ACIT, on ad hoc/in situ basis, vide order dated 07.04.2016. It was mentioned therein that they shall continue to discharge the functions of ITO only. The regular DPC was convened in 2019 and vide order dated 16.05.2019 they were promoted to the post of ACIT on regular basis. In the context of promotion to the post of Deputy Commissioner of Income Tax (DCIT) four years of standing in the feeder category i.e. ACIT is essential. While the applicants insist that the services rendered by them from 07.04.2016 onwards is required to be counted for determining their eligibility, respondents state that it is only the services rendered after the regular appointment i.e. 16.05.2019, that can be counted. The

applicants made a detailed representation on 28.05.2019 in this behalf. Complaining that no orders have been passed thereon they filed this OA with a prayer to declare the action of the respondents in not considering the cases of the applicants for promotion to the post of ACIT in the DPC held in December 2018 as illegal and arbitrary,  to direct the respondents to count their service from the date on which they started functioning as ACIT, for determining their eligibility for further promotion.

3. The applicants contend that it is for no fault of them, that the holding of DPC was delayed and once they started discharging the functions of ACIT from 07.04.2016 onwards, the same is required to be reckoned for promotion.

4. The respondents filed a detailed counter affidavit. It is stated that the service rendered by the applicants from 07.04.2016 cannot be treated as valid, for promotion to the next higher post. It is stated that the arrangements made vide order dated 07.04.2016, extended from time to time, was purely ad hoc in nature and since it is not on the basis of selection by UPSC, it does not hold good for the purpose of promotion.

5. We heard Mr. S.K. Gupta, learned counsel for the applicants and Mr. Manjeet Singh Reen, learned counsel for the respondents.

6. The applicants were appointed as Income Tax Officers in the year 2001 and acquired eligibility to be promoted to the post of ACIT,

which is on the basis of selection. The appointment to the post of ACIT is partly through direct recruitment and partly through promotion. On the question of determining of seniority of the direct recruits on the one hand and promotees on the other, voluminous litigations ensued. In *Union of India and Ors. v. N.R. Parmar* 2013 SCC 340, the Hon'ble Supreme Court held that irrespective of the dates on which the competitive examinations were held or the actual appointments take place, the direct recruitment of a candidate shall be with effect from the concerned year of the batch, and not otherwise. It is a different matter that in the recent past, the said judgment was held to be not good in law, in *K. Meghachandra Singh v. Ningam Siro* in Civil Appeal No.8833-8835/2019 decided on 19.11.2019.

7. May be, on account of uncertainty in fixing the seniority between direct recruit ITOs and promotee ITOs, the DPC for promotion to the post of ACIT did not take place, till the year 2019. Obviously, with a view to avoid stagnation of the applicants, the department promoted them on ad hoc, and on *in situ* basis, vide order dated 07.04.2016. The applicants want their services as ACIT, to be reckoned from that date. In their counter affidavit, the respondents stated that it cannot be taken into account in view of the fact that the arrangement was not as a sequel to the selection by the UPSC, and that the applicants continued to hold the substantive post of ITO, even after such ad hoc promotion as ACIT.

8. Be that as it may, the respondents themselves recognized the services of the applicants and in fact they routed proposal for relaxation, in favour of the applicants to the DOP&T. Under these circumstances, a final view needs to be expressed so that the applicants would know as to whether they stand in the context of eligibility to earn promotion.

9. We, therefore, dispose of the OA directing the respondents to pass orders on the representation dated 28.05.2019 within a period of eight weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

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(Mohd. Jamshed)  
Member (A)

(Justice L. Narasimha Reddy)  
Chairman

pj/sunil/vb/ankit/