

CENTRAL ADMINISTRATIVE TRIBUNAL
 ERNAKULAM BENCH
O.A. NO.92/2010

Dated this the 14th day of June 2011

CORAM

HON'BLE MR.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
 HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

- 1 M.Sivankutty, S/o Madhavan Pillai, Office Superintendent, O/o Dy.Commissioner of Income Tax Central Circle, Kollam. R/o 'Revathi', Pathirappally, Kudapparakunnu P.O, Trivandrum - 43.
- 2 Sathish Kumar D, S/o late P.Deverajan, Office Superintendent, O/o Commissioner of Income Tax CR Building, I.S Press Road, Cochin - 18 R/o Pandikasala Parambu, N.F Gate, Trippunithura.

Applicants

By Advocate Mr.M.R.Hariraj

Vs

- 1 Union of India, represented by its Secretary to the Govt, Ministry of Finance, Revenue Department North Block, New Delhi.
- 2 The Cengtral Board of Direct Taxes, North Block, R.K.Puram, New Delhi represented by its Chairman.
- 3 The Chief Commissioner of Income Tax, Central Revenue Building, I.S Press Road, Ernakulam, Kochi.
- 4 R.Lakshmi Narayan, SG-I, O/o Addl.CIT, Range-1, Trivandrum.
- 5 T.G Sreekumar, SG-I, O/o Addl.CIT, Kottayam Range,Kottayam
- 6 K.Suresh;kumar, SG-II, O/o Joint CIT, Central Range, Kochi.
- 7 K.Manikandan, SG-II, O/o ADIT(Inv.), Palakkad.
- 8 N.R.Aathma, SG-II, O/o Jt.CIT, Central Range, Trivandrum.

9 G.Sunilkumar, SG-II, O/o Addl.DIT (Inv), Trivandrum.

10 V.V.Scaria, SG-II, O/o Addl.CIT, Alappuzha Range, Alappuzha

11 O.Rajumon, SG-III, O/o I.T Office, Thodupuzha.

12 N.Valsakumar, SG-III, O/o Addl.CIT, Range-1, Kozhikode.

By Advocate Mr.Sunil Jacob Jose SCGSC for R1-3
Mr.N.Unnikrishnan for R4-12..

The Application having been heard on 24.5.2011 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicants working as Office Superintendents in the respondents department are aggrieved by the order of the 3rd respondent promoting private respondents No.4 to 12 to the post of Income Tax Inspectors.

2. Brief facts of the case are that consequent upon the order of the CAT Ernakulam Bench dated 30.7.2008 in OA No.299/07 the respondents No.3 had forwarded a proposal to respondent No.2 for de-reservation of posts reserved for SC/ST in the cadre of Income Tax Inspector (ITI for short) falling under the promotion quota of Stenographer Group Seniority/Date of passing to the Board. On getting approval of the CBDT for de-reservation of 5 SC and 2 ST vacancies belonging to the promotion quota of Stenographer Group Seniority/Date of passing, the impugned order was passed. According to the applicant the vacancies of Income Tax Inspector has to be filled by the ratio of 3:1 between the 'ministerial cadre' and

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'Stenographer's cadre'. The applicants alleged that they are the senior most Office Superintendents who have passed the Income Tax Inspector examination and have entered the service in 1983 and 1984 respectively where as the private respondents came to the cadre in 1995. It is also alleged that the number of promotees belonging to Stenographer's cadre is in excess of the ratio prescribed. They averred that the deserved vacancies should have been apportioned between ministerial and stenographer cadres in the ratio of 3:1 as prescribed in the Recruitment Rules. The representation in this regard to the third respondent has not elicited any reply from the respondents and hence this OA.

3. Separate replies have been filed by the official respondents 1-3 and private respondents 4-12. The official respondents in their reply submitted that the vacancies were filled up in compliance with the orders of this Tribunal in OA 299/2007. They submitted that the number of post of Income Tax Inspector given by the applicants is not correct. They have furnished the correct figures as given below:

	<u>Figure shown in OA</u>	<u>Actual figure</u>
Total number of Inspectors as per the disposition list as on 1.1.09	175	176
No.of direct recruitments included in the list as on 1.1.09	9	7
No.of Inspectors who joined by way of inter-charge transfers accommodated in the direct quota included in the list	2	4
Death/retirements of ITIs is after 1.1.09 and as on the date of OA(*16 includes 10 officials from the Stenographer cadre and	14	16

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6 officials from the ministerial cadre.

Inspectors promoted as Income tax officers after 1.1.09 and as on date of filing of the OA	15	19
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The official respondents have submitted that going by the actual figures as above and after taking into account the 23 promotions effected to the cadre of Inspector of Income Tax in the ratio of 3:1 from the ministerial and stenographer cadres respectively, after 1.1.09 and as on the date of this O.A, the representation of officials from stenographers channel is 35 in the total working strength of 155 promotee officials in the cadre of Inspector of Income Tax as on the date of the OA. It may be submitted here that after getting promotion to the post of Inspector of Income Tax in the ratio 3:1, the strength of each channel cannot be maintained in the same ratio as the post of Income Tax Inspector is the only feeder cadre of Income Tax Officer. The eligibility criteria for effecting promotion to the post of Income Tax Officer is seniority, subject to qualifying the departmental examination. Those who do not pass the departmental examination will remain as Inspector in the disposition list while the qualified juniors will go ahead of them for the purpose of promotion to the post of Income Tax Officer irrespective of the channel to which they belong. They further submitted that the vacancies de-reserved wholly belong to the vacancies kept unfilled in the stenographer's channel. Therefore the applicants have no case and the OA deserves to be dismissed.

4. The private respondents No.4 to 12 in their reply reiterated more or less the same that have been stated in the reply of the

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official respondents. They further stated that year of commencement of service is not a qualifying factor for promotion to the post of Income Tax Inspector. The applicants joined as Lower Division Clerk and the private respondents as Stenographer Gr.III which carries a higher scale of pay than that of the LDC. Moreover LDCs do not belong to the feeder cadre of Income Tax Inspectors. Therefore the year of commencement of service as LDC is not a qualifying factor for promotion to the post of ITI. They pointed out that Smt.C.K Sajini who commenced her service as LDC in 1991 was promoted as UDC in 1995 and she got further promotion as Income Tax Inspector (ITI for short) in the year 2009, whereas the contestant respondents are lagging behind even though they are seniors to Smt.C.K Sajini in service. They also contraverted the stand of the applicant that there is excess representation of those from Stenographer cadre in the I.T.I cadre. They pointed out that many changes have taken place in the Annexure A-6 list of ITIs who are promotees from the steno cadre. 10 of them have retired in 2009 and two in 2010. Therefore out of the present working strength of 135 ITIs there are only 30 from the Stenographer cadre which is below the number prescribed for them. Moreover, once promotion is effected as ITI there is no distinction among them as promotees from Steno or Ministerial staff. Further promotion to Income Tax Officer is made on the basis of departmental examination. So in case those ITIs from Stenographer cadre do not qualify in the departmental examination they will have to retire as ITI and in such a situation there will be more ITI promotees from the Stenographer cadre. Therefore according to the private respondents quota-rota is to be maintained only at the time of promotion from the two separate lists of eligible officials from Ministerial and

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Stenographer cadres in the ratio of 3:1 as per the existing Recruitment Rules. Hence they averred that the promotion of 7 Stenographers against the 07 de-reserved posts from their ear-marked quota will not disturb the ratio to be maintained for promotion to ITI cadre. From 01.01.09 onwards promotion was granted to 15 officials out of which there were only 2 from the Stenographer cadre. Hence the averment of the applicants that there is excess representation of Stenographer cadre in ITI cadre as a result of promotion is not true to the facts. They affirm that the attempt of the applicants is only to protract and delay the fruit of de-reservation of the post of Stenographer cadre as ordered by this Tribunal in O.A 299/07 filed by Kerala Income Tax Stenographers Association and another. The applicants are trying to interfere with the Annexure A-7 order which has become final at this point of time without filing any appeal if they were aggrieved by it. Hence under the guise of this O.A they want to unsettle the Annexure A-7 order of this Tribunal. The contention of the applicants that the unfilled vacancies of SC/ST for three years in the ministerial cadre has not been taken up for de-reservation is irrelevant as it was for the ministerial staff to take up the matter with the competent authority or through a judicial forum. There was a shortage of 7 vacancies in the quota of Stenographer cadre only due to non-availability of qualified SC/ST candidates in the Stenographer cadre. Therefore the plea of the applicants that the enblock promotion of Stenographers will tilt the prescribed ratio of promotion in favour of stenographers is not correct. As the 7 posts of Inspectors were left unfilled from the unfilled SC/ST vacancies allotted to stenographer's cadre, on de-reservation, these vacancies can be filled by only the eligible qualified stenographers.

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5. We have heard the learned counsel for the parties and perused the records.

6. It is seen that this issue has a history of litigation. The Stenographers Association has been representing to the competent authorities for de-reserving SC/ST vacancies which could not be filled up due to lack of eligible officials in stenos cadre for quite a long time. In the absence of any favourable response from the competent authorities the applicants filed O.A 789/05 which was disposed by this Tribunal in its order dated 14.11.2005 with a direction to the official respondents to consider their representation within a time frame of 4 months. The applicants moved CP(C) 82/06 in O.A 789/05 alleging non-compliance of the order of this Tribunal. The claim of the applicant was rejected by the respondents based on O.M No.AB-14017/30/89 Estt.(RR) dated 10.07.1990 stating that the post reserved for SC/ST will not be de-reserved but will be diverted to direct recruitment quota of ITI. However, this O.M was superseded by another O.M No.36012/17/2002-Estt(Res) dated 06.11.03 which permitted de-reservation due to non-availability of eligible officials in the feeder category. Exchange of reservation between SCs and STs was also discontinued by this O.M. Based on the strength of this O.Ms the applicants again approached this Tribunal by filing the O.A 299/07. As the vacancies of ITI from the quota of Stenographer cadre remained unfilled for more than 20 years, the O.A was allowed directing the respondents to get the vacancies of SC/ST which remained unfilled de-reserved and consider the case of the eligible general candidates against such de-reserved posts. This order of this Tribunal has become final and the respondents complied with the order of this

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Tribunal by getting the 7 posts de-reserved and promoting 7 eligible general category stenographers against these vacancies.

7. The applicants have taken up a plea that these vacancies should have been thrown open to all the general candidates in the feeder category including ministerial cadre and not only to the stenographer cadre. During the course of argument the counsel for the applicant cited the Honourable Supreme Court judgment in the case of The State of Punjab versus Dr.Bhatnagar reported in (1999) Vol.2 SCC 330 and the case of All India Federation of Central Excise versus Union of India and others reported in (1999) 3 SCC 384. The relevant para 11 in the judgment rendered in the case of Mr.Bhatnagar is extracted below:-

" 11. "11" Where recruitment to a cadre is from two sources and the Service Rules prescribe quota for recruitment for both sources a question would always arise whether the quota rule would apply at the initial stage of recruitment or also at the stage of confirmation. Ordinarily, if quota is prescribed for recruitment to a cadre, the quota rule will have to be observed at the recruitment stage. The quota would then be correlated to vacancies to be filled in by recruitment but after recruitment is made from two different sources they will have to be integrated into a common cadre and while so doing, the question of their inter se seniority would surface. "

The dictum laid down in both judgments supra is that quota should apply to vacancies. Therefore we see force in the plea of the counsel for the applicant that vacancies should have been apportioned among the eligible qualified candidates in the feeder categories.

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However in the cases cited supra the issue of a subdivision within the feeder category to the promotee quota did not arise in the earlier case while it was so, in the latter. Moreover, in this particular case the promotion to ITI is effected based on the lists drawn up in the manner prescribed in the Annexure A-2 Recruitment Rules to ITI. 2/3 of the vacancies in ITI are filled up by promotion and 1/3 by direct recruitment. The eligible feeder category for ITI are the posts of Office Superintendents, Assistants, Tax Assistants, UDC and stenographer Grade I, II, III. The ministerial cadre will include Office Superintendents, Senior Tax Assistants, Tax Assistants and UDC while the stenographer will make a separate category. Regarding the arrangement of names of the qualified candidates, the manner of preparation is extracted below from Annexure A-2.

" The names of all such qualified candidates shall be arranged cadre wise in two separate lists for each cadre. In the first list the names of all the qualified candidates falling in the cadre shall be arranged according to the date or as the case may be the year of passing the Departmental examination provided that the persons who pass the examination on the same date shall be arranged according to seniority in the Department. On the approval of persons in the said list relating to each cadre by the Departmental Promotion Committee the names of all the selected candidates shall be arranged in two select lists in the ratio of 3:1, one containing the names of persons from both the cadre on the basis of seniority and the other containing the names of the persons from both the cadres on the basis of the date or

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as the case may be the year of passing the departmental examination. Vacancies in the promotion quota shall be filled from the said two lists in such a manner that the ratio of 3:1 is maintained between the ministerial cadre and the Steno Cadre. For the purpose persons working in the higher grade will rank senior to persons working in the lower grade. "

8. The points reserved in the special representation roster of ITI for SC/ST will be distributed between the two cadres of ministerial staff and stenographers. In this particular instance the points reserved for SC/ST in the Stenographer cadre remained unfilled for many years which prompted the private respondents to seek judicial remedy. In the order of this Tribunal in O.A 299/07 there was a specific direction to get these vacancies de-reserved and filled up by eligible general candidates. The relevant paras are extracted below:-

7. Arguments were heard and documents perused. Under the existing rules reservation has to be ensured in respect of various posts held both by promotion as well as direct recruitment. Whereas in case of direct recruitment with effect from 1.4.1989 the provisions of de-reservation has been withdrawn, it continues to subsist in respect of posts to be filled on promotion basis. This distinction between direct recruitment and promotion for the purpose of de-reservation has a definite purpose. When vacancies are not filled up under direct recruitment quota by the reserved candidates, the general candidates at large may not feel affected. Again there is every likelihood of SC/ST candidates being available for direct

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recruitment sooner or later. That may not be the case in respect of posts to be filled by promotion. For example, in the very instant case no qualified SC/ST candidates are available for the past about twenty years, whereas qualified hands in the general category are awaiting for vacancies under general quota for promotion. This situation will lead to disgruntlement amongst general candidates who are to be awaiting for vacancies under general quota, while vacancies are available unfilled against the reserved quota. The de-reservation provisions thus serves a valid purpose by making available the vacancies for general candidates.

8. In the event of the vacancies being diverted as proposed or contended by the respondents towards direct recruitment, obviously the same would imbalance the ratio between direct recruitment and promotion quota. In that event Stenographers category which even otherwise has got only very little percentage allotted for promotion to the post of Income Tax Inspector would suffer a further dent in their promotion prospects. Such a situation is not congenial to the Administration.
9. In view of the above the O.A is allowed. Annexure A-9 to Annexure A-11 impugned orders are hereby quashed and set aside. Respondents are directed to strictly follow the procedure for de-reservation of the unfilled vacancies of SC/ST for three years and consider the case of the eligible general candidates against such de-reserved posts. This may be done within a period of eight months from the date of communication of this order. No costs."
9. A perusal of para 8 clearly shows that the Tribunal wanted the de-reserved vacancies to go to the general candidates in the stenographer category. For years together the general qualified

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candidates in the stenographer cadre lost out because the vacancy which could have been filled up by them if the post had been de-reserved in time remained unfilled which made them the losers in the game. In addition due to the shortage of 7 posts they had to bear the additional burden of work. This did not happen to those qualified general candidate in the ministerial cadre. If there are reserved SC/ST points remaining unfilled in the vacancies allotted to ministerial cadre as they now claim nothing prevented the applicants/assiciation from taking up the issue with the first respondent for getting these posts de-reserved. It can done now also. In that event the promotion can be effected to these eligible general candidates of the ministerial cadre. In the event of 7 vacancies being thrown open to the general candidates in the feeder category, the stenographers category will get only one post out of 7, as the posts are filled up with 3 officials from ministerial cadre followed by one from the stegographers and again three from the ministerial cadre. The reserved points which will come up in the special representation roster of ITI will again be rotated among ministerial cadre and stenographer cadre which will once again adversely impact, the promotion prospects of eligible officials in the stenographers cadre. Paras 8 and 9 of the order of this Tribunal read together, clearly bring out the direction, for the respondents, who, in

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turn have implemented it in the manner it was intended. The Annexure A-7 order of this Tribunal has become a binding judgment and the respondents cannot be faulted for complying with the order contained therein. It is pertinent to refer to the judgment of the Apex Court in the case of Ruplal Vs Lt.Governor through Chief Secretary, Delhi and others; 2000 SCC (L&S) 213. Para 12 is extracted below:-

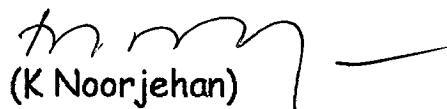
" At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. This Court in the case of Tribhovandas Purshottamdas Thakkar v.Ratilal Motilal Patel while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

" The judgment of the Full Bench of the Gujarat High Court was binding upon Raju.J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai case and of Macleod, C.J., in Haridas case did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the

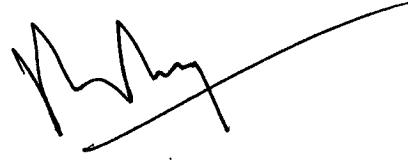
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question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by courts of coordinate authority or of superior authority. "

10. In view of the above we do not find any infirmity with the action of the respondents. Accordingly, the O.A is dismissed. There is no order as to costs.



(K Noorjehan)
Administrative Member



(Justice P.R Raman)
Judicial Member

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