

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 276 of 2011

Thursday, this the 13th day of September, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. G. Sunilkumar, S/o. Gopalakrishna Pillai, aged 41 years, working as Inspector of Income Tax, O/o. the Commissioner of Income Tax, Central Revenue Building, IS Press Road, Ernakulam, Kochi - 682 0118, and Residing at Melekodivilaveedu, Chithranelloor, Peroor PO, Kilimanoor, Thiruvananthapuram- 695 601.
2. N. Valsakumar S/o. M.K. Narayanankutty Nair, aged 48 years, working as Inspector of Income Tax, O/o. the Joint Commissioner of Income Tax, Range-I, Ayakar Bhavan, Mananchira, Kozhikode-673 001, and Residing at Harmony, 1/341-C, West Hill, Near Vikram Maidan, Kozhikode - 673 005.
3. K.N. Shaji, S/o. K.N. Narayanan, aged 46 years, working as Inspector of Income Tax, O/o. the Joint Commissioner of Income Tax, Range-I, Ayakar Bhavan, Shakthan Thampuran Nagar, Thrissur, and Residing at T.C. 4/856-1, Parvathi Nagar, Kowdiar PO, Thiruvananthapuram - 695 003. **Applicants**

(By Advocate Mr. N. Nandakumara Menon, Sr.
 Mr. P.K. Manoj Kumar)

versus

1. Union of India, rep. by its Secretary to the Government, Ministry of Personnel, Public Grievances and Pension, North Block, New Delhi-110 001.
2. The Secretary to Government of India, Ministry of Finance, Revenue Department, North Block, New Delhi-110 001.
3. The Central Board of Direct Taxes, North Block, New Delhi -110 001
Represented by its Chairman.



4. The Chief Commissioner of Income Tax,
Central Revenue Building, IS Press Road,
Ernakulam, Kochi-682 018. Respondents

(By Advocate Mr. George Joseph, ACGSC)

This application having been heard on 03.09.2012, the Tribunal on
13-09-12 delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

In compliance with the order of this Tribunal dated 30.07.2008 in OA No. 299/2007, the respondents had dereserved 7 SC/ST vacancies in the cadre of Income Tax Inspectors and filled those posts by general candidates in the year 2009-10. They further promoted the applicants, 3 in number, who are general candidates to 3 vacancies out of 4 vacancies of the Income Tax Inspectors which arose in 2010-11, the 4th vacancy being a reserved vacancy, vide orders dated 18.06.201, 16.07.2010 and 01.11.2010. On realising that they were promoted against reserved vacancies without prior dereservation, the respondents after giving an opportunity of being heard reverted the applicants to the post of Stenographers vide order dated 28.03.2011 (Annexure A-13). Aggrieved, the applicants have filed this O.A. for the following reliefs:

- (i) Call for the records leading to Annexures A-13 to A-16;
- (ii) To declare that Annexures A-13 to A-16 are unsustainable in the eyes of law;
- (iii) Issue appropriate orders and quash Annexures A-13 to A-16;
- (iv) Issue appropriate order or direction to the 4th respondent to restore all benefits enjoyed by the applicants as Income Tax Inspectors before issuing Annexure A-13 within a reasonable time;



(v) To grant such other reliefs as this Hon'ble Tribunal may deem fit, just and necessary; and

(vi) To grant the cost of this Original Application.

2. The applicants contended that during 2010-11, 4 posts of Income Tax Inspectors were available for Stenographers Grade, out of which 2 should go to Stenographers of general category and 2 should go to SC/ST since more than 50% of vacancies cannot be reserved from current vacancies. In the absence of any qualified SC/ST candidate belonging to Stenographers Grade, reversion of the applicants is against Articles 14 and 16(4B) of the Constitution of India. The 50% vacancies available for general category cannot be taken away. The impugned Annexure A-13 order does not disclose any public interest, administrative exigency, punishment or any abolition of post so as to enable the respondents to revert the applicants. The applicants were reverted without any cogent reasons, necessity, justification and exigencies. The impugned Annexure A-14 to Annexure A-16 orders are unsustainable in the eyes of law as they are contrary to well settled position of reservation, dereservation, carry forward reservation, backlog vacancies and current vacancies. The impugned orders directly go against Annexure A-19 O.M. dated 15.07.2008 which deals with treatment of backlog reserved vacancies of SCs, STs and OBCs as a distinct group and non-applicability of 50% ceiling thereon. Article 16 (4B) of the Constitution of India is completely overlooked. The respondents have not produced any piece of evidence to support their contention that counting of current vacancies would begin only after the carry forward reservation is restored. There is no SC/ST candidate qualified from the Stenographers cadre available for promotion to the post of Income Tax Inspectors.

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3. Per contra, the respondents contended that the promotions made to the grade of Income Tax Inspectors from the Stenographers channel are clearly not in accordance with the instructions contained in Department of Personnel & Administrative Reforms O.M. No. 36011/3/76-Estt.(SCT) dated 22.01.1977 by an oversight, which was rectified by order dated 28.03.2011. Applying the instructions in O.M. dated 22.01.1977, the dereserved vacancies vacancies of the year 2009-10 are to be carried forward to the year 2010-11. The counting of current vacancies could begin only after the status of 07 carry forward reserved vacancies of 2009-10 are restored. As one of the vacancies is caused by the promotion of an SC candidate, the remaining 3 vacancies are to be treated as reserved category vacancies. As per Department of Personnel and A.R letters dated 19.12.1978 and 06.01.1981, the reserved vacancy should not be filled up by the general category unless it is dereserved. Non availability SC/ST candidate does not mean that reserved vacancies should be straight away filled up by general category candidates without following the procedure for dereservation.

4. The applicants in the rejoinder statement submitted that the Department of Personnel & Administrative Reforms vide O.M. No. 09.02.1982, based on Hon'ble Supreme Court judgement in the case of *Soshit Karmachari Sangha vs. Union of India*, clarified that fresh reservation alongwith carried forward reservation should be restricted to 50% of total reservation available on a particular occasion. As per O.M. No. 36012/5/97/Estt.(Res.) Vol.II dated 20.07.2000, it was pointed out that as per Article 16(4B) of the Constitution of India not more than 50% of the current year vacancy can be kept as reserved.



The O.M. Dated 15.07.2008 states that the ceiling of 50% reservation of filling of reserved vacancies would apply only to the vacancies which arise in the current year and the backlog reserved vacancies of SC & ST in case of promotion of earlier years, would be treated as separate vacancies of the year in which they are filled for determining the ceiling of 50% reservation on total number of vacancies. The filling up of prospective or current vacancies en bloc for SC/ST candidates who are not available to benefit from the same even for coming years is arbitrary and illegal. There is no rule of law to fill up the dereserved vacancies en bloc in the current year. As per Annexure A-26, a separate list on the basis of seniority is to be maintained for Stenographers cadre in the matter of promotion to the post of Income Tax Inspectors. The vacancies in the year 2010-11 are current year vacancies. Any kind of reservation of current year vacancy is limited to 50% by the Hon'ble Supreme Court and subsequently by the Department of Personnel and Training. The shortfall of reservation/carried forward reservation is to be adjusted out of current year vacancies subject to 50% ceiling.

5. We have heard Mr. N. Nandakumara Menon (Sr.) with Mr. P.K. Manoj Kumar and Mr. George Joseph, learned ACGSC appearing for the respondents and perused the records.

6. Reservation of government jobs for reserved categories is an affirmative action for ensuring social justice. It is not in public interest to keep vacancies of reserved categories unfilled indefinitely for want of qualified hands. At the same time, filling up of reserved posts by general candidates by carrying forward the reserved vacancies without due diligence will defeat the purpose

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of reservation. The issues of reservation, ceiling on reservation and dereservation etc. are to be handled with utmost care and sensitivity and due application of mind to the relevant provisions in the Constitution, rules and instructions. Otherwise, justice will not be done to the reserved categories, injustice will be perpetrated in the name of reservation and demoralisation of the staff would set in and public interest would suffer. In the instant case, the respondents rely on paragraph 2 of the Department of Personnel and A.R. O.M. Dated 22.01.1977, which is reproduced as under:

"2. After a reserved vacancy is de-reserved in accordance with the procedure mentioned in para 1 above, the reservation is to be carried forward to subsequent three recruitment years. The 'carry forward' of reservation means that in the subsequent year, an equal number of vacancies will be reserved in addition to the normal reservations becoming due in that year according to the roster. Any recruitment of Scheduled Castes/Scheduled Tribes candidates in such year of carry forward is first to be counted against the reservation brought forward from the previous years and then against the normal reservations accruing during the year. The procedure for de-reservation mentioned in para 1 above should be followed every time when a vacancy which is treated as reserved, either on account of carried forward reservation or on account of a fresh reserved point in the roster has to be filled by a general candidate due to non-availability of candidates belonging to Scheduled Castes or Scheduled Tribes, as the case may be. The reservation is due for getting lapse only after it is carried forward or three recruitment years. Approval of this Department is not necessary for the lapsing of the reserved vacancy at the end of the third year of carry forward."

It would appear that the respondents are right in carrying forward the dereserved vacancies of 2009-10 to 2010-11, but the factual position is that since 1977, there are 2 landmark judgements of the Apex Court limiting the reservation of vacancies to 50% of current vacancies and linking of reservation to post based roster, insertion of Article 16(4B) in the Constitution by the 81st



amendment and other instructions of the Government of India in the matter.

Article 16(4B) of the Constitution is reproduced as under:

"16(4B): Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year."

As per Article 16(4B) not more than 50% of the vacancies can be reserved.

Further, the relevant extract from the Department of Personnel and A.R. letter No. 36012/3/78-Estt, (SCT) dated 09.02.1982, is reproduced as under:

"The undersigned is directed to refer to the Department of Personnel & A.R. Office Memorandum No. 16/3/73-Estt.(SCT) dated 27.12.1977 in which it has been stated that the carried forward reserved vacancies would be available together with the current reserved vacancies for utilization even where the total number of such reserved vacancies exceed 50% of the vacancies filled in that year provided that the overall representation of SC and ST in the total strength of the concerned grade or cadre is found to be inadequate i.e. the total number of Scheduled Caste/Scheduled Tribe candidates in that grade has not reached the prescribed percentages of reservation for SC/ST respectively in the grade, as a whole.

2. The validity of this Office Memorandum has been reconsidered in the light of the judgment delivered by the Supreme court on 14.11.1980 in Writ Petition No. 1041-1044 of 1979 (Akhil Bharatiya Soshit Karmachari Sangh Vs. Union of India). In this case, all the three judges constituting the Division Bench have remarked that the total reservation on a particular occasion should not exceed 50% of the total vacancies. It has now been decided in modification to the instructions contained in the Office Memorandum dated 27.12.1977 that in future, fresh reservation along with carry-forward reservation should not exceed 50 per cent of the total vacancies available on a particular occasion.

3. It may happen that due to this 50% limit, it will not be possible to accommodate all the reservations which have



accumulated due to the carry-forward principle. Hence the surplus above 50% shall be carried forward to the subsequent years of recruitment, subject, however, to the condition that they do not become three recruitment years only which is the maximum period for carrying forward the reservations from the year to year and lapse. Hence, to save the lapsing of the reservations, it will be proper to accommodate the oldest carry-forward reservations first.

For example, there are 5 carried forward reservations spreading over three preceding recruitment years in the following manner:-

	SC	ST
Third Year	1	
Second Year	1	1
First Year		2

Suppose 6 vacancies occur in the succeeding year, 3 should be reserved taking into consideration the 50% limit. As the oldest carried forward reservations have to be accommodated first, one SC of third year and one SC and one ST of second year are to be reserved out of the 6 vacancies available. The two ST reservations of first year will be carried forward to next recruitment year and they will be considered as in the second year of carry forward in the next recruitment year."

(emphasis supplied)

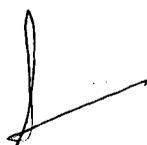
7. The O.M. No. 36033/1/2008-Estt (Res) dated 15.07.2008, states that the ceiling of 50% reservation on filling of reserved vacancies would apply to the vacancies which arise in the current year and that the backlog reserved vacancies of SC and ST in case of promotion of earlier year will be treated as separate and distinct group and would not be considered together with the reserved vacancies of the year in which they are filled for determining the ceiling of 50% reservation on total number of vacancies of that year.

8. A conjoint reading of the above citations should show that 50% limitation on reservation would apply to current vacancies and the backlog vacancies of SC and ST in case of promotion of earlier year would be treated separate and



distinct group not coming under the said category. When sufficient number of SC and ST candidates are not available, such vacancies can be dereserved after following the prescribed procedure and filled by the candidates from general quota; in such cases, the reservation is carried forward to subsequent three recruitment years and thereafter, the said reservation will lapse. The shortfall of reservation/carried forward reservation is to be adjusted out of current year vacancy subject to 50% ceiling. The argument of the 4th respondent that counting of current vacancy will begin only after adjusting carried forward vacancy has no basis. He erred in relying exclusively on O.M. Dated 22.01.2007 disregarding the instructions issued subsequently.

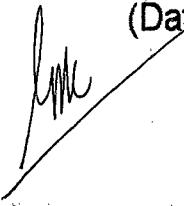
9. As per Annexure A-26 dated 26.08.1987, 4 separate lists and rosters are to be prepared for filling up of vacancies to the grade of Income Tax Inspectors by promotion as there are 4 channels for promotion to the said cadre. The 4 vacancies that arose in 2010-11 are current vacancies in the Stenographers channel for promotion to the post of Income Tax Inspectors. Therefore, 50% ceiling on reservation would apply to this channel on a stand alone basis. It should not be mixed up with another channel. In the instant case, reservation is limited to 2 posts only. Therefore, we hold that in respect of promotions of the 1st and 2nd applicants being in the general category quota, dereservation will not apply. The 3rd applicant has been promoted against a reserved vacancy without prior dereservation as per prescribed procedure. In regard to the 3rd vacancy of Income Tax Inspector in 2010-11 in the channel of Stenographers cadre, prescribed procedure for dereservation should be followed and thereafter, the 3rd applicant can be considered for promotion.

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10. In the result, Annexures A-14 and A-15 are set aside. Annexure A-13 is quashed to the extent it covers the applicants No. 1 and 2 in this O.A. As regards the 3rd applicant, the respondents may proceed as per law.

11. The O.A. is partly allowed as above with no order as to costs.

(Dated, the 13th September, 2012)


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER

cvr.