

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.299/07

Wednesday, this the 30th day of July, 2008

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Dr.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

1. The Kerala Income Tax Stenographers' Association,
(A unit of all India Income Tax Stenographers
Association, New Delhi) Central Revenue Building,
I.S.Press Road, Ernakulam, Kochi – 682 0118
represented by its Secretary Shri.K.V.Jacob.
2. K.Unnikrishnan,
S/o.V.Kumaran Nair,
Working as Stenographer Grade – I,
O/o. The C.I.T. (Appeals), KERA Bhavan,
6th Floor, S.R.V.H.S. Road, Cochin – 11.
Residing at "Rohitham", Kalavamkodam P.O.,
Cherthala.

...Applicants

(By Advocate Mr.N.Unnikrishnan)

Versus

1. The Chief Commissioner of Income Tax,
Central Revenue Building, I.S.Press Road,
Ernakulam Bench, Kochi – 682 0118.
2. The Central Board of Direct Taxes,
North Block, R.K.Puram, New Delhi
represented by its Chairman.
3. Union of India represented by its Secretary
to the Government, Ministry of Personnel
& Training, North Block, New Delhi.
4. The Secretary to Government,
Ministry of Finance, Revenue Department,
North Block, New Delhi.
5. The Liaison Officer for Scheduled Caste
& Scheduled Tribes, (Joint Commissioner
of Income Tax), Aayakar Bhavan,
Shakthan Thampuran Nagar,
Thrissur – 680 001.

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6. The Secretary,
National Commission for Scheduled Caste
& Scheduled Tribes, Lok Nayak Bhavan,
New Delhi. ...Respondents

(By Advocate Mrs. Mini R Menon, ACGSC)

This application having been heard on 15th July 2008 the Tribunal
on30.07.2008 delivered the following :-

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The short question involved in this case is whether the respondents
were under an obligation to de-reserve the vacancies which remain unfilled
for a substantial period.

2. The facts of the case as contained in the O.A are as under :-

(a) The first applicant is an Association of Stenographers of the
Income Tax Department working under the Kerala Charge,
represented by the Secretary who is also working in the Income Tax
Department. The second applicant is presently working as
Stenographer Grade II at Kochi. For promotion to the post of Income
Tax Inspector ratio of 3:1 was fixed between the Ministerial and
Stenographers Cadre. Respondents are bound to keep the roster
rotation intact. In Kerala Charge none of the SC/ST candidates are
available for the last more than 20 years except three are available
but they have not passed required Departmental Examination. The
total number of posts kept in reservation quota is as under :-

Stenographer (Seniority)	-	Scheduled Caste	-	3 Nos.
" (Date of passing)	-	do	-	3 Nos.
" (Seniority)	-	Scheduled Tribe	-	2 Nos.
" (Date of passing)	-	do	-	1 No.
				9 Nos.

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Out of these first three positions were being carried for more than 3 years. Fourth position fell vacant in November, 2001 and the fifth position fell vacant in January, 2004. Vide Annexure A-1 order dated 26.8.1987, quota system was introduced between the Ministerial group and Stenographer group and paragraph two thereof relates to reservation of SC/ST between the two groups. According to this, separate rosters for each mode of promotion will have to maintained. So far as the Ministerial group is concerned, there is no dearth of SC/ST candidates. However, in the case of Stenographers, no qualified candidates are available for more than twenty years. Respondents carry forward reserved posts for a long period without seeking de-reservation. It affects the Stenographers like the 2nd applicant and others. As per the order dated 24.8.1989 the provisions of reservation apply only to promotions other than all cases of direct recruitment as de-reservation has banned in direct recruitment with effect from 1.4.1989. AS per OM dated 19.12.1978 and letter dated 6.1.1981, a vacancy reserved for SC/ST can be de-reserved in accordance with the prescribed procedure and filled up by a general candidate in case of no suitable candidate belonging to SC/ST, as the case may be, available to fill up such reserved vacancy. Appointing Authority should take all possible steps to secure SC/ST candidates for appointment against the reserved vacancies and propose de-reservation when it becomes inevitable. A reserved vacancy can be filled up by the general candidate after de-reservation of vacancy. As per OM dated 8.2.1991 if no suitable candidate is available for appointment to a reserved vacancy, the authorities may either keep the post vacant or de-reserve the

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vacancy. In spite of carry forward of the vacancies for more than three recruitment years, when no SC/ST Stenographer is qualified and available for appointment, the respondents ought to have taken steps to de-reserve the vacancy and fill up the same as per seniority position of Stenographers for promotion to the post of Inspectors, in which event as many as 9 out of 15 eligible candidates could be promoted.

(b) The matter was represented to the 1st and 2nd respondents by letter dated 29.3.2005 submitted by the first applicant vide Annexure A-2. Again the first applicant addressed a letter to the 5th respondent, the Liaison Officer for SC/ST, Income Tax Department by letter dated 5.4.2005 vide Annexure A-3. It is understood that the matter was referred to the 2nd respondent, i.e. the Central Board of Direct Taxes, New Delhi for necessary action. No further action was taken.

(c) Aggrieved, the applicants had filed O.A No.789/05 which was disposed of with a direction to the 3rd respondent to consider the Annexure A-2 & A-3 representations within a time frame of four months vide order dated 14.11.2005 at Annexure A-4.

(d) Meanwhile, the 3rd respondent has issued an Office Memorandum dated 23.5.2006 which reads as follows :-

“3. Attention is invited to this Department's O.M.No.36012/17/2002-Estt (Res.) dated 6.11.2003 which provides that if sufficient number of SC/ST candidates fit for promotion against reserved vacancies are not available, such

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vacancies may be de-reserved as per prescribed procedure and filled up candidates by other communities. Attention is also invited to this Department's OM No.36011/25/79-Estt (Res.) dated 16.11.1979 which delegates powers to the Ministries/Departments of the Government of India to accord approval to the de-reservation of reserved vacancies in case of recruitments made by promotion subject to the following conditions :

- (1) there is neither an SC nor an ST candidate available or eligible for promotion in the feeder cadre (s) specified in the relevant service/recruitment rules/orders;
- (2) A copy of the proposal for de-reservation in the appropriate prescribed proforma is sent for information immediately to (i) The Commissioner for S.Cs and S.Ts (now the National Commission for Scheduled Castes in case of vacancies reserved for the S.Cs and the National Commission for Scheduled Tribes in case of the vacancies reserved for Scheduled Tribes) and (ii) to the Department of Personnel & Training.
- (3) The proposal for de-reservation has been seen and concurred in by the Liaison Officer of the Ministry/Department.
- (4) The proposal for de-reservation is agreed to at a level not lower than that of Joint Secretary to the Government of India, in the administrative Ministry/Department (proper) concerned.
- (5) In the event of a disagreement between the appointing authority and the Liaison Officer the advice of the Department of Personnel & Training has been obtained.

4. Department of Revenue is advised to consider the representations of the applicant (s) referred to above, to pass appropriate orders in the matter and communicate the same to the applicant (s), etc; as per directions of the Hon'ble CAT, Ernakulam Bench. This Department may also be informed about the action taken in the matter." Annexure A-5 refers.

(e) As per extant rules dated 6.11.2003, if SC/ST candidates fit for promotion against reserved vacancies are not available, such vacancies are to be de-reserved as per prescribed procedure and filled up candidates by other communities. Further the following are certain paras relevant to this case :-

"In cases of promotion including promotion by selection from Group 'C' to Group 'B' within Group 'B' and from Group 'B' to the lowest rung of Group 'A', if sufficient number of SC/ST candidates

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fit for promotion against reserved vacancies are not available, such vacancies may be de-reserved as per prescribed procedure and filled by candidates of other communities.

In cadres having 13 or less number of posts where 14 point L-shaped rosters are applied, if a reserved vacancy is filled by a candidate belonging to other community after de-reservation, the reservation will be carried forward for subsequent recruitment year. Such carry forward of reservation would be permitted for three subsequent recruitment years. In the third year of carried forward of reservation, the vacancy will be treated reserved for the concerned category, but if it cannot be filled by reservation in the third year of carried forward of reservation by a candidate of the concerned category, reservation will be treated as lapsed and it will be filled as an unreserved vacancy.

It is possible that some posts reserved for S.Ts might have been filled by SC candidates by exchange of reservation or vice versa before issue of this OM. Such cases need not be reopened. However, if number of SC or ST candidates appointed by reservation including by exchange of reservation between S.Cs and S.Ts is in excess of reservation prescribed for them, such excess representation may be adjusted in future recruitment."

(f) Being aggrieved by the non-compliance of Annexure A-4 order the applicants moved CPC No.82/06 in OA No.789/05. Vide Annexure A-7 as a pre-emptive approach, the claim of the applicants was rejected merely based on O.M.No.AB-14017/30/89 Estt. (RR) dated 10.7.1990 stating that "it has been decided that the posts reserved for SC/ST candidates in the grade of ITI cannot be de-reserved since the recruitment to the grade of Income Tax Inspector is made both by promotion and by direct recruitment and if the reserved vacancies falling in the promotion quota cannot be filled due to non-availability of eligible persons belonging to SC/STs in the feeder cadre, the same may be temporarily diverted to the direct recruitment quota and filled by recruitment of candidates belonging to S.Cs/S.Ts in accordance with the provisions in the recruitment rules."



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(g) The above goes against Annexure A-4 order issued by the Hon'ble Tribunal. 2/3rd vacancies should be filled in by promotion and 1/3rd by direct recruitment. Hence at any point of time it cannot be interchanged or excess percentage prescribed. At any point of time, percentage earmarked for the direct recruitment vis-a-vis the promotion cannot be exceeded. On the other hand, when a reserved vacancy could not be filled up for three consecutive recruitment years, necessary proposal to get the vacancy de-reserved should be initiated. This is well fortified by Annexure A-6 Memorandum also. To defeat the Contempt of Court Case Petition, the first respondent filed affidavit dated 27.11.2006 with a letter (Annexure A-10) dated 20.3.2006 issued by the Under Secretary to the Government of India on Annexure A-9 Memorandum dated 10.7.1990 that he has rejected the claim of the applicants. Annexure A-10 is in reply to letter dated 30.9.2005 of the first respondent and not in respect of direction issued in O.A.No.789/05 which was dated 14.11.2005. The applicant, therefore, prayed for the following reliefs :-

1. Call for the records leading to the non-de-reservation of vacancies of Income Tax Inspectors of SC/ST quota available to Stenographers existing in Kerala Charge under the first respondent for more than twenty years.
2. To declare that the respondents are bound to de-reserve the vacancies of Income Tax Inspectors of SC/ST quota available to Stenographers in the Kerala Charge and to consider and fill up posts from general Stenographers within a reasonable time.
3. Declare that Annexure A-7, A-9 and A-10 are unsustainable in the eyes of law and therefore, to quash the same.
4. Direct the respondents to take necessary immediate action to get the vacancies of Income Tax Inspectors of SC/ST categories in the Kerala Charge pending unfilled available to

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Stenographers de-reserved within a reasonable time with retrospective date and to take all necessary action for further selection and promotion of the Stenographers to the post of Income Tax Inspectors within a reasonable time.

3. The respondents have contested the O.A. According to them, the 3rd respondent sent proposals to the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi, to issue orders of de-reservation of reserved category posts in the promotion quota vide letter dated 19.5.2005 for de-reserving 13 posts for promotion to the post of Inspector of Income Tax including 8 posts of Stenographer quota reserved for SC/ST members vide Annexure R-1. The CBDT vide their letter dated 20.3.2006 (Annexure A-10) relying on DoP&T's instructions dated 10.7.1990 (Annexure A-9) communicated that the post reserved for SC/ST candidates in the grade of Income Tax Inspector cannot be de-reserved since the recruitment to the grade of Income Tax Inspector is made both by promotion and direct recruitment and if the reserved vacancies falling in the promotion quota which cannot be filled due to non-availability of eligible persons belonging to S.Cs/S.Ts in the feeder cadre, the same may be temporarily diverted to the direct recruitment quota and filled by recruitment of candidates belonging to S.Cs/S.Ts in accordance with the provisions in the recruitment rules. It has also been informed that Board's approval has been obtained to fill up the vacancies of SC/ST in the grade of ITI from promotion quota to the Direct Recruitment quota by relaxing the provisions in the Recruitment Rules.

4. The applicants have filed their rejoinder in which they have stated that while the Additional Commissioner has recommended de-reservation of the posts vide Annexure A-1, it is the Central Board of Direct Taxes

which refuses the promotion.

5. Counsel for the applicants submitted that the respondents are relying upon the 1990 O.M whereas tacitly the same stands superseded by the provisions of Annexure A-6 O.M dated 6th November 2003. As such the O.A deserves to be allowed.

6. Counsel for the respondents submitted that the decision communicated to the applicants is based on 10.7.1990 (Annexure A-9 order issued by the nodal Ministry).

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 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

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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.

(Dated, this the 30th day of July, 2008)



K.S.SUGATHAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

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