

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.37/98

Wednesday, this the 29th day of November, 2000.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

T.G.Pankajakshan Nair,
S/o late Gopalan Nair,
working as Tax Assistant(on adhoc basis),
Office of the Chief Commissioner of Income Tax,
C.R.Building, I.S.Press Road,
Cochin-682 018. - Applicant

By Advocate Mr N Unnikrishnan

Vs

1. Union of India represented by
the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi-110 001.
3. The Chief Commissioner of Income Tax,
Central Revenue Building,
I.S.Press Road,
Cochin-682 018.
4. Shri V.Vijayamohan,
Tax Assistant,
Income Tax Office,
QMC/842, Hospital Road,
Quilon-691 001.
5. Smt.Annamma Abraham,
Office of the Additional Commissioner
of income Tax,
Ernakulam Range,
C.R.Building,
I.S.Press Road,
Cochin-682 018.

6. Shri K.A.Rajendran,
Tax Assistant,
Income Tax Office,
Public Library Building,
Shastri Road,
Kottayam.
7. Shri S.M.Gangadharan,
Tax Assistant,
Aayakar Bhavan,
Kannothunchal,
Cannanore-670 006.
8. Shri G.Sasidharan,
Tax Assistant,
Office of the Additional Director of
Income Tax(Investigation),
Aayakar Bhavan, Kowdiar,
Thiruvananthapuram-695 003. - Respondents

By Advocate Mr PR Ramachandra Menon, ACGSC(for R.1 to 3)

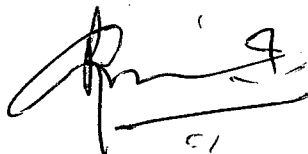
The application having been heard on 9.11.2000, the Tribunal on 29.11.2000 delivered the following:

O R D E R

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who is working as Tax Assistant on adhoc basis under the 3rd respondent filed this Original Application seeking the following reliefs:

- i) to call for the records leading to the issue of Annexures A-6, A-7, A-9 & A-11;
- ii) to declare that Annexure A-6,(so far as it promotes the applicant only on ad hoc basis) Annexure A-7, (so far as it relates to the promotion of respondents 4 to 8) Annexures A-9 and A-11 are illegal, arbitrary, malafide, unreasonable, unfair and unjust and, therefore, violative of the provisions of Departmental



Promotion Rules, Constitution of India as well as the principles of natural justice and, therefore, to quash the same;

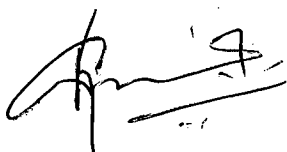
iii) to direct the third respondent to consider the claims of the applicant for promotion to the post of Tax Assistant with effect from the month of May, 1996 with all consequential benefits of promotion and seniority over respondents 4 to 8 and to pass appropriate orders within a reasonable time;

iv) to grant such other reliefs as this Hon'ble Tribunal may deem just and necessary to grant;

AND

v) to grant the cost of this OA as the applicant, being a low paid employee is being forced to file suit to get justice in each and every issues.

2. According to applicant's statement in the OA, the Department conducted an examination in June, 1995 for the post of Income Tax Inspectors, results of which were sent to the respective Chief Commissioner of Income Tax by the Central Board of Direct Taxes in December, 1995. In respect of Kerala charge, the result had been published by the Commissioner of Income Tax, Cochin on 3.1.1996. After declaration of the



result of Income Tax Inspectors Examination, 1995, 36 Upper Division Clerks as listed in A-2 had acquired the eligibility conditions for the post of Tax Assistant as existing then. While so, Central Board of Direct Taxes in its letter No.A 12018/DD/95-Ad-VII dated 21.12.95 relaxed the eligibility conditions for promotion to the post of Tax Assistant. 3rd respondent in pursuance of the relaxed eligibility conditions prepared a list of qualified Upper Division Clerks for promotion to the post of Tax Assistants and 16 Upper Division Clerks were promoted as Tax Assistants. As the relaxation made in the eligibility conditions for promotion to the post of Tax Assistant affected the promotion chances of the applicant, the applicant challenged the same before this Tribunal in OA No.76/96. By an interim order dated 1.2.96 in MA No 86/96 and M.A. No.97/96 in OA No.76/96, this Tribunal in its order dated 1.2.96 held that the promotions made would be purely provisional and no further promotions would be made to the category in question without further orders. The said OA 76/96 was finally decided by Annexure A-4 order dated 15.7.97. In compliance of A-4 order, the 3rd respondent by A-5 order dated 31.7.97 cancelled the promotions of 16 Upper Division Clerks made to the post of Tax Assistants, and on the basis of the review Departmental Promotion Committee held on 31.7.97, 15 Upper Division Clerks who had qualified for the post of Tax Assistants as per the pre-relaxed standards were promoted by the same order in terms of para 4 therein. By the same order 7 UDCs who had been promoted on the basis of relaxed eligibility



conditions were reverted. According to the applicant, against 20 regular vacancies available during the year 1995-96, only 15 promotions were made and the remaining vacancies were carried over to the next year for giving promotion to the Upper Division Clerks under the reserved category as sufficient number of qualified Upper Division Clerks under the reserved category were not available. Applicant further submitted that 3rd respondent by another order (Annexure A6) dated 31.7.97 promoted employees to various categories on adhoc basis including Tax Assistants. Out of 7 UDCs who were promoted as Tax Assistants, the name of the applicant appeared at Sl.No.3 therein. By yet another order dated 31.7.97, 8 persons were promoted as Tax Assistants. According to the applicant, out of these 8, respondents 4 to 8 appearing at Sl.Nos. 1 to 5 in A7 had not qualified in the Departmental Examination for Income Tax Inspectors conducted in June, 1995 or in any earlier examination and that they acquired the eligibility condition for promotion as Tax Assistant only in the examination conducted in June, 1996 result of which was declared in the last week of December, 1996. Aggrieved by the erroneous implementation of A-4 order in OA 76/96 and offering adhoc promotion to the applicant against regular vacancies and giving regular promotion to the respondents 4 to 8, applicant submitted A-8 representation dated 4.8.97 to which he received a reply dated 14.8.97 from the 3rd respondent. Applicant filed further representation A-10 dated 19.8.97. He also met the 3rd respondent in person. Applicant received A11 memorandum dated



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15.10.97 rejecting the claim of the applicant for promotion as Tax Assistant. As the applicant felt that the directions of this Tribunal issued on 15.7.97 in OA 76/96 had been wrongly implemented by the respondents by misinterpreting the same he filed this original application seeking the reliefs mentioned earlier.

3. ~~Third respondent~~ ^{the} 1, filed detailed reply statement resisting the claim of the applicant. According to him, ^{the} department implemented the directions contained in the order of the Tribunal in OA No.76/96 properly by reverting those UDCs who had been promoted on the basis of relaxed eligibility conditions and issuing fresh promotion orders on the basis of review DPC on 31.7.97 and the applicant was also promoted as Tax Assistant on adhoc basis on 31.7.97 by A-6 order. It was submitted that A11 order was passed by the 3rd respondent after considering the entire facts and circumstances and perusing the relevant orders issued in this regard. According to them the applicant did not have any legal/enforceable cause of action and that the OA was devoid of any merit and none of the grounds raised in support of it could be held as tenable. They prayed for dismissal of the OA.

4. Applicant filed rejoinder reiterating the points made in the OA.

5. Private respondents 4 to 8 did not put in appearance inspite of being issued with notice.



6. Heard the learned counsel of the applicant and the official respondents. We have given careful consideration to the submissions made by the learned counsel for the parties as well as the rival pleadings and have perused the documents brought on record.

7. The facts which are not in dispute are that the applicant's seniority position was at Sl.No.21 in the list of eligible employees for promotion after the declaration of the result of the Income Tax Inspectors Examination conducted in June 1995, on 3.1.1996 on the basis of the pre-relaxed eligibility condition. Applicant had approached this Tribunal by filing O.A.76/96 against the Departments' action of issuing promotion orders dated 24.1.96 and 31.1.96 to the cadre of Tax Assistant on the basis of relaxed standards of eligibility conditions as contained in the letter of Central Board of Direct Taxes dated 21.12.95. The Tribunal by A-4 order dated 15.7.97 allowed O.A.76/96 and held as follows:

"(a) The Recruitment Rules cannot be relaxed in derogation of the Recruitment Rules by executive instructions A.1 and A.1 has not been issued in exercise of any power of relaxation of the Recruitment Rules.

(b) As a consequence A.1 is quashed and consequentially the list A.2 of UDCs qualifying for promotion as Tax Assistants having regard to the relaxed rule A.1 is also quashed.

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(c) All promotions granted during the period 21.12.95 and 12.6.96 in pursuance of the relaxed rules A.1 will accordingly be void.

(d) The third respondent will consider the case of the applicant in the light of his qualifying in the examination held in June, 1995 in accordance with the Recruitment Rules A.3 and pass appropriate orders on his promotion as Tax Assistant within one month."

To comply with the above instruction Department conducted Review DPC on 31.7.97. By A-5 order dated 31.7.97, the promotion of 16 UDCs effected as per orders dated 24.1.96 and 31.1.96 as Tax Assistants were treated as cancelled and on the basis of the pre-relaxed eligibility condition, 15 UDCs were promoted as Tax Assistants. It is stated in A-5 order that in the review DPC only 15 officials were found to be qualified as per the pre-relaxed standard as against 16 officials including one belonging to SC in the orders issued on 24.1.96 and 31.1.96 because in the review DPC no qualified SC candidate was available. By another order A-7 dated 31.7.97 promotion of 8 UDCs including respondents 4 to 8 were ordered by the department. By yet another order A-6 dated 31.7.97 department promoted 7 UDCs including the applicant as Tax Assistants on ad hoc basis.

8. Applicant's case is that the department had not implemented the direction of this Tribunal in O.A.76/96

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properly. According to him, while in the DPC conducted on 31.7.97, for implementing the orders of the Tribunal in the said O.A., ineligible candidates i.e. respondents 4 to 8 had been considered resulting in he being promoted only on ad hoc basis by A-6 order. He claimed that he should have been promoted on regular basis. He is relying on paras 6.4.1 and 6.4.2 of the Departmental Promotion Committee Rules(DPC Rules for short) as published in Swamy's Compilation of Seniority and Promotion of Central Government Employees(Annexure A-13). Respondents also rely on the same Rule for their action.

9. Para 6.4.1 and 6.4.2 of the Departmental Promotion Committee Rules reads as under:

"6.4.1. Where for reasons beyond control, the DPC could not be held in a year(s), even though the vacancies arose during that year (or years), the first DPC that meets thereafter should follow the following procedures:-

- (i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.
- (ii) Consider in respect of each of the years those officers only who would be within the field of




choice with reference to the vacancies of each year starting with the earliest year onwards.

- (iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on.

6.4.2. Procedure for filling up further vacancies in the same year : Where a DPC has already been held in a year further vacancies arise during the same year due to death, resignation, voluntary retirement, etc., or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, the following procedure should be followed:

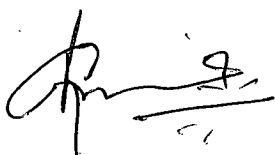
- (i) Vacancies due to death, voluntary retirement, new creations, etc., clearly belonging to the category which could not be foreseen at the time of placing facts and materials before the DPC. In such cases, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If, for any reason, the DPC cannot meet for the second time, the procedure of drawing up of year-wise panels may be followed when it meets next for preparing panels in respect of vacancies that arise in subsequent year(s)."



10. Relying on the above Rules, applicant's case is that the review DPC which met on 31.7.97 ought not to have considered the respondents 4 to 8 as they had qualified only in the Income Tax Inspectors Examination conducted in 1996, the results of which were announced only in the last week of December 1996.

11. According to the Rule 6.4.1(ii), in respect of each of the years, only those officers who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards are to be considered. In the present case, the earliest year is 1995-96, in which admittedly there were only 20 vacancies. In the seniority list of qualified UDCs as per pre-relaxed standards applicant's position was 21. Therefore the applicant cannot claim promotion as Tax Assistant during 1995-96.

12. During 1996-97 according to the applicant, including the 5 reserved vacancies which were carried forward and deemed to have been dereserved (as no scheduled caste/Scheduled Tribe were available) there were 10 vacancies (5+5 which occurred in May 1996) out of which 9 were to be filled up from general category employees and as the results of the Income Tax Inspectors Examination 1996 was declared only in the last week of December, 96, against those 9 vacancies only those who passed in the Income Tax Inspectors Examination 1995 ought to be considered. According to the official respondents, on




31.7.97 a review DPC met to consider the case of the applicant in the light of his qualifying in the examination held in June 95 and a regular DPC was held thereafter to determine the persons to be promoted in the vacancies arising after the original DPC on 31.1.96 and arising upto 31.3.98, in which the candidates who had qualified in the examination as on 31.7.97 were considered. They pleaded that considering the candidates who were qualified in the 1995 examination alone could not be considered according to the Recruitment Rules.

13. We note from para 6.4.1 of the DPC Rules relied on by both the applicant and the official respondents and reproduced above that where DPC could not be held in a year and is held subsequently, DPC should consider all those who would be within the field of choice. In this case the applicant whose results of Income Tax Inspectors Examination was declared on 3.1.96 was considered for the vacancies which arose in 1995-96. On the same analogy we hold that candidates whose results of Income Tax Inspectors Examination was declared in the last week of December, 96 will be eligible for being considered for the vacancies of 1996-97. In this view of the matter, we do not find any substance in the plea of the applicant that such candidates should not have been considered by the respondents in the regular DPC held on 31.7.97 and accordingly we reject the same.

14. In the pleading and A-8 to A-10 representations, applicant had stated regarding reservation based on 22 1/2% as

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also dereservation not being done because of administrative delay. He had also disputed the contention of the respondents that for SC/ST certain number of posts were carried forward every year. He filed A-15 statement showing particulars of promotions made to the post of Tax Assistants from UDCs from 1990 to 1995 and submitted that no such carry forward was done in earlier years. Respondents had not made any submissions regarding the above or denied the above pleas. There is no explanation from them as to why no action for dereservation of the reserved vacancies was taken especially when there was a shortage of Tax Assistants which had earlier prompted the official respondents to resort to relaxation of the standards for a pass in the Income Tax Inspectors Examination. Further as per the law laid down by the Hon'ble Supreme Court in R.K.Sabarwal's case (AIR 1995 SC 1371) as further held in Virpal Singh Chowhan's case (JT 1995(7) SC 231) from 10.2.95, percentage of reservation was to be on the basis of number of posts in a cadre and not on the basis of the vacancies occurring from time to time. From A-11 impugned order, we find that the regular DPC convened on 31.7.97 was to fill up 15 vacancies (both carried forward and fresh vacancies upto 97-98) and out of these, 7 were earmarked for SC/ST candidates, including the 5 carried forward reserved vacancies of 1995-96. This would mean that for the year 96-97 there were 15 vacancies of Tax Assistants including 5 carried forward vacancies. As the applicant is at serial No.21 amongst the eligible UDCs for consideration for promotion as Tax Assistants for the year



95-96, he would have been at Sl.No.6 in the list of eligible UDCs' for consideration for promotion as Tax Assistant for 96-97(including the five senior UDCs who qualified in the Income Tax Inspectors Examination 1996) if all the 20 vacancies of 95-96 were filled up by the review DPC. Similarly, as there were 10 vacancies during 96-97, applicant would have been eligible for regular promotion. In the above background, we are of the view that computation of the reserved vacancies as per the law laid down by the Hon'ble Apex Court before the review DPC and regular DPC held on 31.7.97 is very important in this case.


15. In the light of the foregoing in the interest of justice, we are of the considered view that the applicant's claim for regular promotion as Tax Assistant on the basis of the DPC meeting held on 31.7.97 needs to be examined afresh taking into consideration the above aspects. Accordingly we direct the third respondent to correctly assess the number of vacancies to be earmarked for SC/ST for the years 1995-96 and 1996-97 on the basis of the law laid down by Hon'ble Supreme Court and the contentions of the applicant made in reference to A-15 and then consider the claim of the applicant for regular promotion as Tax Assistant as a result of the DPC proceedings held on 31.7.97 within a period of three months from the date of receipt of the copy of this order. If as a result of such



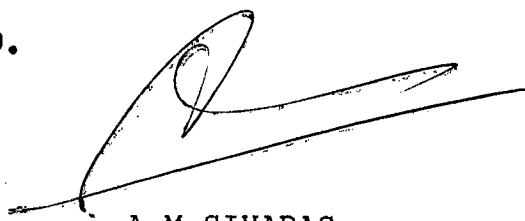
reconsideration, the applicant becomes entitled for regular promotion as Tax Assistant, the consequential benefits, if any, shall be given to him within a period two months thereafter.

16. We dispose of the Original Application as above with no order as to costs.

Dated the 29th November, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A7: True copy of order F.No.11/Estt/4/CC/CON/97 dated 31.7.97 issued by the third respondent, the Chief Commissioner of Income-tax, Central Revenue Building, I.S.Press Road, Cochin-18.
- A6: True copy of order F.No.11/Estt/12/CC/CON/97 dated 31.7.97 issued by the third respondent.
- A9: True copy of order F.No.11/Estt/4/CC/CON/95 dated 14.8.97 issued by the third respondent.
- A11: True copy of memorandum F.No.11/Estt/4/CC/CON/95 dated 15.10.97 issued by the third respondent.
- A1: True copy of the relevant portions of Office Procedure (Administration) Item No.12 Tax Assistants - Manual of Office Procedure (Administration) 1982.
- A2: True copy of list of persons prepared by the Chief Commissioner of Income Tax, Cochin.
- A3: True copy of order dated 1.2.96 in MA No.86/96 and MA No.97/96 in OA No.76/96 passed by this Tribunal.
- A4: True copy of order dated 15.7.97 in OA No.76/96 passed by this Tribunal.
- A5: True copy of order F No.11/Estt/4/CC/CON/95 dated 31.7.96 issued by the third respondent.
- A8: True copy of representation dated 4.8.97 submitted by the applicant.
- A10: True copy of representation dated 19.8.97 submitted by the applicant.
- A13: True copy of Rule 6.4.1. and Rule 6.4.2. of DPC Rule published in Swamy's Compilation on Seniority and Promotion in Central Government Services.
- A15: True copy of statement showing the particulars of promotions made to the post of Tax Assistants.