

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.229/97, O.A.No.392/98 and O.A. No.397/98

WEDNESDAY, THIS THE 15TH DAY OF DECEMBER, 1999.

C O R A M:

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

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. No. 229/97

N.P. Madhusoodanan S/o late Gopala Pisharady  
Income Tax Inspector,  
Income Tax Office (Division II)  
Kochi.

residing at D-83, Income Tax Quarters  
Panambilly Nagar.

..Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the  
Secretary to Government of India  
Ministry of Finance, New Delhi.
2. Chairman,  
Central Board of Direct Taxes,  
New Delhi.
3. Chief Commissioner of Income Tax,  
Cochin.
4. K. Sadanandan,  
Income Tax Officer,  
Special Ward, Senior Tax Division II  
Calicut.

.. Respondents

By Advocate Mr. James Kurian for R 1-3  
Advocate Mr. Anand for R-4

O.A. No. 392/98

A.V. Venu  
Inspector of Incometax  
Office of the Deputy Commissioner of  
Incometax (Assessment),  
Special Range I, C.R. Building,  
I.S. Press Road,  
Cochin-682018.

..Applicant.

By Advocate Mr. P. Balakrishnan

Vs.

1. The Chief Commissioner of Incometax  
C.R. Building, I.S. Press Road,  
Cochin-682 018



2. The Secretary,  
Central Board of Direct Taxes  
North Block,  
New Delhi.
3. The Union of India represented by  
its Secretary, Ministry of Finance,  
North Block,  
New Delhi.
4. Sri K. Sadanandan  
Incometax Officer, Special Ward,  
Incometax Office, Division-II  
Calicut.
5. Sri P. Para meswaran  
Incometax Officer,  
Alwaye.
6. Sri K.G. P. Menon,  
Incometax Officer,  
Thiruvalla.
7. Sri K.R. Somasundaram,  
Incometax Officer,  
Palghat.

..Respondents.

By Advocate Mr. James Kurian for R 1-3

By Ms Lalitha Nair for R-4

O.A. No. 397/98

Sri N.G. Mohandas  
Incometax Inspector  
In;cometaxs Office, Ayakar Bhavan  
SAktan Thampuran Nagar,  
Trichur-1.

..Applicant

By Advocate Mr. P. Balakrishnan

Vs.

1. The Chief Commissioner of Incometax,  
CR Building, IS Press Road,  
Cochin-682 018
2. The Secretaray  
Central Board of Direct Taxes,  
North Block, New Delhi.
3. The Union of India represented by its Secretary  
Ministry of Finance, North Block  
New Delhi.
4. Sri K. Sadanandan,  
Incometax Officer,  
Splecial Ward, Incometax Office,  
Division II, Calicut.

Sri T.G. Vijayaraghavan,  
Tax Recovery Officer,  
West Fort, Trichur-4



6. Sri P. Parameswaran  
Incometax Officer,  
Alwaye.
  7. Sri C.R. Pillai,  
Tax Recovery Officer,  
Usha Complex,  
Vadayattukotta,  
Quilon.
  8. Sri P.K. Prabhakaran,  
Incometax Officer,  
Office of the Commissioner of Incometax,  
CR Building, I.S. Press Road,  
Cochin-18.
  9. Sri K.G. P. Menon  
Incometax Officer,  
Thiruvalla.
  10. Sri K.R. Somasundaram,  
Incometax Officer,  
Palghat.
- ..Respondents

By Advocate Mr. P.R. Ramachandra Menon for R 1-3  
Mr. Anand for R-4

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

In these three Original Applications, the issue under challenge is the empanellment and promotion to the posts of Income Tax Officers Group 'B' in the Kerala Circle in 1995-96 and 1996-97. Therefore, these three O.As were heard together and are disposed of by this common judgment. We propose to give the factss common to all the three O.As which are not in dispute first. The O. A. - specific pleadings will be detailed thereafter followed by submissions of learned counsel for parties, their consideration and conclusions arrived at. Decisions will be given in the end.

Each aplpicant in the respective O.A. was working  
as Income Tax Inspector under the Commissioner of



Income Tax, Cochin. Income Tax Inspectors are eligible for promotion to the post of Income Tax Officers Group 'B' (ITO for short) as per the Income Tax Officer Group-B posts Recruitment Rules, 1994 (Annexure A1 of O.A. 229/97). As per these Rules, Income Tax Inspectors in Grade Rs. 1640-2900 with three years regular service in the grade and those who have passed the Departmental Examination for Income Tax Officer are eligible for promotion as ITO. The post is a selection post and promotions are made as per the recommendation of the Departmental Promotion Committee (DPC for short).

3. A DPC for promotion to the cadre of ITO in Kerala Region was convened in April, 1995 and four were promoted, 3 against existing vacancies and one against the retirement vacancy in May, 1995. In September, 1995, 12 posts of ITOs were sanctioned by the Central Board of Direct Taxes (CBDT for short) for Kerala Region. For filling up these additional posts, a supplementary DPC was held in September, 1995 and eleven general candidates were promoted in September, 1995. After 1.4.96 the regular DPC for the year 1996-97 was held in May, 1996. The following five persons who were empanelled by the DPC in May, 1996 were promoted as ITO by A2 order (of O.A. 229/97) dated 15.5.96

S/Sri 1.T.G. Vijayaraghavan

2. D. Parameswaran

3. C.R. Pillai

4. P.K. Prabhakaran

5. K. Sadanandan

4. The Departmental examination for Income Tax Officers was held in July, 1995 and the results were declared in February, '96. Sri P. Parameswaran (6th



respondent in O.A. No. 397/98 and 5th respondent in O.A. 392/98) and Sri Sadanandan (4th respondent in all the O.As) qualified in the examination.

O.A. 229/97.

5. The applicant has approached the Tribunal through this O.A. aggrieved by the action on the part of the respondents in not considering him for promotion as ITO against the vacancy which had arisen during the recruitment year 1995. The applicant stated in the O.A. that 18 vacancies of ITOs arose in 1995. Against the 18 vacancies, 15 were filled up in the same year and 3 vacancies were left unfilled. Applicant stated that by A2 order dated 15.5.96 on the basis of the empanellment made by the DPC in May, 1996 another 5 persons were promoted as ITO. Out of the 5 promoted in May, 1996 one Sri T. G. Vijayaraghavan had requested that his name need not be considered in the year 1995 and S/Sri P. Parameswaran and Sadanandan were not eligible to be considered for promotion in the recruitment year 1995 as they were successful in the departmental qualifying test only in February, 1996. In support of this, applicant filed a true copy of the order dated 8.2.96 as A3. According to the applicant, 6 vacancies of ITOs were there before the DPC when it met in May, 1996, 3 of 1995 and 3 of 1996. According to the applicant 3 out of the total 5 of the empanelled were not eligible to be considered against vacancies of 1995. Only S/Sri C. R. Pillai and Prabhakaran were eligible to be considered against vacancies of 1995 and hence one vacancy of 1995 remained vacant and the applicant was eligible to be promoted against that vacancy. He represented the matter by A4 representation dated 26.4.96 to the 1st respondent. By A5 reply dated 28.1.97 his A4



representation was rejected. According to the applicant in the reply it was admitted that the 4 vacancies of 1995 were not filled up in that year and even after the 1996 DPC one more vacancy remained. According to the applicant, the action of the respondents in not filling up the 4 vacancies of the year 1995 on the ground that they were reserved vacancies was arbitrary and unjust since there was over-representation for SC community. According to the applicant, as on 30.9.95, 15 S.C. persons were working as ITOs which was in excess of the quota prescribed. He submitted that A5 did not say anything about applicant's contention that S/Sri Vijayaraghavan, P. Parameswaran and Sadanandan could not have been accommodated against the 1995 vacancies and hence A5 order was cryptic and passed without application of mind. Further, the applicant claimed that the non-filling up of all the vacancies which arose in 1995 had resulted in his not being promoted. He further submitted that when Shri T.G. Vijayaraghavan had requested not to consider him against 1995 vacancy and S/Sri Parameswaran and Sadanandan were not eligible to be considered for promotion in 1995, their consideration as well as appointment against 1995 vacancies were illegal. Promotion of the 4th respondent by way of reservation as per A4 was in violation of equality of opportunity in matters relating to employment guaranteed by Articles 14 and 16 of the Constitution of India as settled in Sabharwal's case (1995 (2) SCC 745). The applicant claimed that he was the seniormost eligible Inspector who would have been promoted against the vacancy had the 4th respondent not been promoted. He sought the following reliefs:



(i) To quash Annexure A2 to the extent it relates to the promotion of 4th respondent, and Annexure A5.

ii) To declare that applicant is entitled to be considered for promotion as Income Tax Officer Group 'B' against a vacancy which arose during the recruitment year 95.

(iii) To direct the respondents to consider applicant for promotion as Income Tax Officer Group B against a 1995 vacancy.

(iv) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and

(v) Grant the cost of this Original Application."

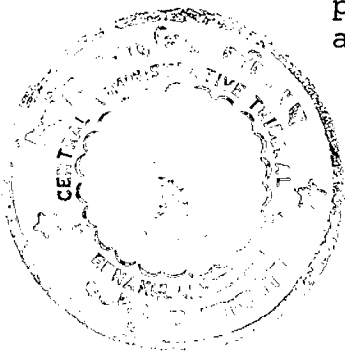
6. A reply statement was filed on behalf of the respondents 1 to 3 resisting the claim of the applicant. According to the respondents against a total of 7 vacancies during 1995-96 two were reserved for SC/ST candidates and in the absence of qualified SC/ST candidates, two vacancies were decided to be kept unfilled and hence 5 persons were empanelled in the DPC held in April, 1995. Out of 5 empanelled 3 were promoted in April, 1995 and the 4th was promoted on 31.5.95. When the last empanelled person was waiting, the CBDT sanctioned 12 additional posts of ITOs by order dated 6.9.95 and as on 6.9.95 the following vacancies existed:

Additional posts sanctioned	12
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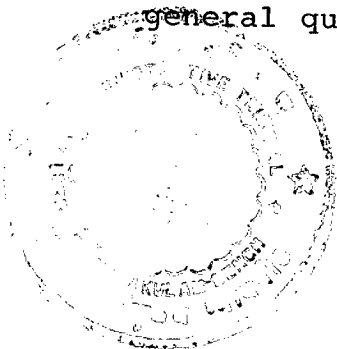
Subsequent retirement vacancies falling on 30.11.95 (2) and 28.2.96 (1)	3
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Vacancy on account of subsequent promotion of an Incometax Officer as Assistant Commissioner	1
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Total:	16
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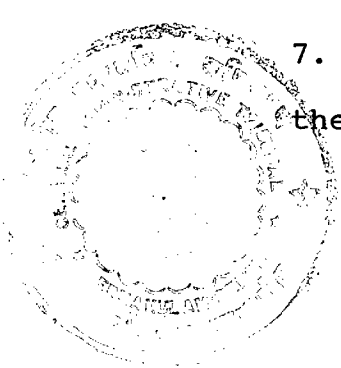
Against 16 vacancies which existed on 6.9.95, one person who was available in the panel formed in April, 1995 was promoted on 11.9.95. Thus 15 vacancies were to be filled in September, 1995 and accordingly a supplementary DPC was held in which 15 persons were empanelled. Out of this, 4 vacancies were earmarked for reserved category. It was stated that efforts were made to dereserve the reserved category vacancies but the same did not prove fruitful. This resulted in 11 Inspectors being promoted to the cadre of ITO as a result of the supplementary DPC held in September, '95. According to the respondents, the vacancies were reported to the DPC correctly financial year wise. They relied on R1 memorandum dated 17.10.94 issued by the Department of Personnel and Training and submitted that the vacancies were to be calculated financial year wise and the same had been done correctly. They further submitted that during the year 1995 against 20 vacancies 16 promotions were made and ITO being a group 'B' post the unfilled vacancies of SC/ST were not allowed to be carried forward to the next year. They submitted that for the purpose of carry forward and exchange of reservation, 'Recruitment Year' would mean Calendar year. Thus, out of 4 vacancies left unfilled, 3 arose during the calendar year 1995 and 1 arose in the calendar year 1996. According to them 3 vacancies which arose in 1995 could not be filled up by SC/ST candidates and they stood lapsed as on 31.12.95 leaving only one vacancy for SC/ST as on 1.1.96. According to them there was an additional vacancy which arose on 30.9.95 on account of death of an Income Tax Officer. Thus, as on 1.1.96 there were 4 vacancies in general quota and one in reserved quota. They stated that



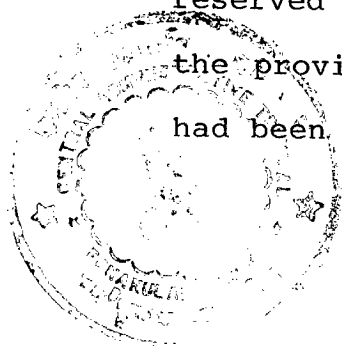


the results of the departmental examination for ITOs held in July, 1995 were expected at any time after 1.1.96 and therefore it was not considered appropriate to conduct a supplementary DPC immediately after 1.1.96. Results of the 1995 ITO Examination were declared on 8.2.96. In the DPC which was held in May, 1996 after 1.4.96, 6 vacancies were considered which included the five vacancies mentioned above and the vacancy caused due to retirement on 30.5.96. Out of six, one was reserved for SC and one for ST. Respondents submitted that after the declaration of the results of the Departmental Examination for ITOs held in 1995 there was only one S.C. candidate available for promotion. Therefore, the DPC held in May, 1996 prepared a panel of 5 persons consisting of 4 general candidates and one S.C. candidate leaving one vacancy for S.T. unfilled. Accordingly the empanelled candidates were promoted as ITOs. They further submitted that Sri T. G. Vijayaraghavan only requested that he may not be considered for promotion during the years 1994 and 1995 and accordingly he was considered in the DPC held in the year 1996. Similarly S/Sri P. Parameswaran and K. Sadanandan appeared in the Departmental Examination for Income Tax Officers held in July, 1995, results of which were declared in February, 1996. According to para 4 of A3 the date of passing should be reckoned as 3.7.95. They submitted that they had followed the reservation policy/method that had been issued by the Government and in the absence of any rule/order amending the then existing policy/method, they were bound to follow the existing orders. They submitted that the O.A. was devoid of any merit and was liable to be dismissed.

7. Applicant filed rejoinder wherein he reiterated the points brought out in the O.A.



8. In the reply statement filed by the 4th respondent it was submitted that as per Department of Personnel & Training O.M. No.22011/9/89-Estt (D) dated 17.10.94, the vacancies to be reported in the DPC had to be calculated financial yearwise in any department where the annual confidential reports are written financial yearwise. As in the Income Tax Department, ACRs were written in financial yearwise the vacancies reported to the DPC were calculated financial yearwise. Further, it was submitted that the post of ITO being a Group 'B' post vacancies of SC and ST were not allowed to be carried forward to the next year. Thus, out of the 4 vacancies left unfilled from the total of 20 vacancies 3 having been arisen during the calendar year 1995, as on 1.1.96 there were 4 vacancies in general quota and one in reserved quota. He claimed that he was eligible to be considered for promotion in the recruitment year 1995. He had appeared in the departmental examination held in July, 1995 results of which were declared in February, 1996 only and according to the extant instruction as in A3 the date of passing of examination was to be considered as 3.7.95 even though the results were declared in February, 1996. According to the 4th respondent the one remaining single vacancy was earmarked for the S.T. candidate and the applicant could not be considered against the same. He submitted that there was no excessive representation for the reserved category. He filed the disposition list of 1996 published by the Income Tax Department to show that there were 17 S.C.(including the 4th respondent) and 1 S.T. in the cadre of ITOs. It was submitted that exchange of reserved vacancies between S.C. and S.T. in accordance with the provisions contained in MHA letter R4(Q) dated 25.3.70 had been done earlier and hence he submitted that the sum of



the SC and ST ITOs should be taken while computing the total reserved posts. He submitted that with this position there was no excess reservation. He submitted that 4 out of 6 vacancies considered by the DPC held on May/1996 were actually the vacancies which could not be filled up against the 12 additional posts allocated by the Board in September, 1995, for want of qualified reserved candidates and out of these 4 additional posts that could not be filled in the previous year, the 1st and the 4th vacancies were reserved points for SC and ST respectively as per the 40 point roster. He claimed that since the first post out of the 4 additional posts had been reserved and earmarked in the Roster for S.C. till he was appointed in that point as ITO in May, 1996, the question of application of the decision of the Hon'ble Supreme Court in Sabharwal's case did not arise. He further submitted that even the procedure of exchange of vacancies between the reserved categories of S.C. and S.T. was not applied as the vacancy was generated naturally and earmarked for S.C. with allocation of additional posts of ITO and that he was the only qualified S.C. candidate to be considered for the reserved post which remained unfilled in the roster. He prayed for dismissal of the O.A.

9. Applicant filed rejoinder to the 4th respondent's reply statement. He submitted that ACRs were written financial yearwise as also for assessment of the vacancies and preparation of panel by DPC. However, for consideration of the dereservation and lapse of roster points for SCs and STs 'calendar year' is taken as the criteria and therefore he submitted that there was a contradiction in adopting 'recruitment year' for different purposes. He submitted that even if the 'recruitment year' was adopted as financial it would not adversely affect his case. He claimed



that in the panel prepared on 11.9.95 on the basis of the seniority, the following 4 persons remained:

- i. C.R. Pillai
2. P.K. Prabhakaran
3. N.P. Madhusudanan (applicant)
4. N.G. Mohandas.

He further reiterated the points mentioned by him in the O.A.

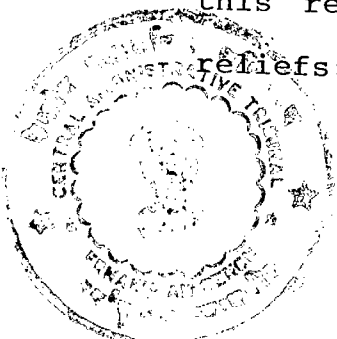
10. An additional reply statement was filed by the 4th respondent wherein he brought out the various OMs issued by the Government of India in the matter of reservation for SC and ST and also brought on record the 40 point roster of ITOs for the Recruitment year 1978 to 1996 (R4-2(D)).

O.A.NO. 397/98

11. The applicant in this O.A who was working as an Inspector of Income Tax has approached this Tribunal through this O.A. aggrieved by A3 letter dated 23.1.98 issued by the 1st respondent in reply to his representation.

12. According to the applicant in the supplementary DPC meeting held in September, 1995 for filling up 15 vacancies and according to his information he was the 15th person empanelled by the DPC. By A2 promotion order dated 11.9.95, 11 empanelled candidates were promoted as ITO. He claimed that if the 4 unfilled vacancies were also filled he would have been promoted as ITO and as there was no justification for keeping the 4 posts vacant, he represented to the first respondent by A1 representation dated 15.7.97 which was rejected by A3 reply dated 23.1.98. Aggrieved by this reply he has filed this O.A. seeking the following reliefs:

1. To quash Annexure A3 and direct the 1st Respondent to modify the orders issued in the



matter of promotions to the cadre of Incometax Officers subsequent to 31.12.95;

2. To declare that the applicant is entitled to be promoted against a vacancy which arose in the year 1995 on the basis of the empanellment in the DPC held in September, 1995 and to promote the applicant and to grant all consequential benefits including salary, etc.

3. To modify Annexure A4 to the extent it relates to the promotions of 4th and 6th respondents.

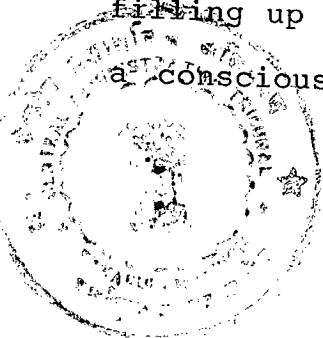
4. To grant such other reliefs as the Hon'ble Tribunal considers appropriate; and

5. Grant cost of this application.

13. Basically the applicant is challenging the reasons given by the first respondent in A3 reply that the 4 vacancies remained unfilled as they were reserved vacancies for SC & ST and due to non-receipt of dereservation order from the Board they could not be filled up. The applicant gave the details of the 40 point roster for the years from 1994 to 96 along with the names of the incumbents and submitted that out of the 4 reserved vacancies kept unfilled, two vacancies were filled up treating the posts as dereserved in the recruitment year 1995 itself. According to him, the remaining 2 reserved vacancies had been adjusted by appropriating them to the recruitment year 1996 by appointing the 4th respondent an S.C candidate and the 7th respondent an unreserved candidate. According to him out of the 15 vacancies for which 15 unreserved candidates were empanelled in September, 1995 DPC, 4 posts were wrongly appropriated to the recruitment year 1996 out of which only 2 were reserved vacancies as per Roster points 28/40 and 31/40. He also submitted that the 4th and 6th respondents were not qualified for consideration by May, 1996 as they



qualified in the examination only in February, 1996. He further submitted that the 4th and 6th respondents were promoted in the recruitment year 1996 against vacancies for recruitment year 1995 in spite of the fact that there were persons left in the empanelled list of September, 1995 DPC, by conduct of a fresh DPC in May, 1996 ignoring the rules on the subject. He further submitted that even the consideration of the 4th respondent, a reserved candidate by the DPC held in May, 1996 and consequent promotion by order dated 15.5.96 was illegal as the vacancies reported to the DPC being 6 and the extended zone of consideration being five times the vacancies in the case of SC and ST, the 4th respondent would not fall within the extended zone of consideration. Giving a list of persons qualified in the departmental examination for ITOs taking into account the persons qualified in the results which were declared on 8.2.96, applicant submitted that the 4th respondent ranked at Sl. No. 31 and hence was not eligible for consideration by the DPC in May, '96. According to the applicant, the first respondent committed grave error in appropriating vacancies in the recruitment year 1995 to the recruitment year 1996 especially when there were empanelled persons available and the vacancies which would arise on 1.3.96 was also reported to the DPC held in September, '95. Further, the first respondent ought to have filled up posts said to have been reserved for candidates in 1995 itself in the manner done in the case of Sri C.R. Pillai at roster No. 31/40 in 1996. Further, as no reserved candidates were eligible to be considered in the DPC held in September, 1995 and empanelling of 15 belonging to unreserved candidates for filling up 15 vacancies, the Appointing authority had taken a conscious decision to dereserve the vacancies as there



..15..

were no reserved candidates available for consideration. The first respondent who was the appointing authority as well as the person responsible for reporting the vacancies to the DPC, at the time of promotion of officials, taking a contrary stand was erroneous and arbitrary.

14. The 8th respondent in this O.A. filed a reply statement in which while admitting the facts stated by the applicant in the O.A. submitted that according to his information he was the 13th person among those empanelled by the DPC in September, '95 and he was the second affected person because the department failed to fill the 4 vacancies. He submitted that he had also approached the first respondent through the representation dated 27.11.95 (R1) for which he received a reply dated 22.12.95 (R2) in which it had been stated that the matter had been referred to the CBDT. According to the 8th respondent his representation was still pending with the Department for final disposal. He further submitted that on conducting another DPC he was promoted as ITO as 4th person bringing two other persons Sri T.G. Vi. jayaraghavan and Sri P. Paramewaran above his senior Sri C.R. Pillai. He also submitted that bringing in these two persons were against DPC rules as submitted by the applicant in the O.A. He prayed that his case may also be considered by the Tribunal in pari passu with the applicant as he was senior to the applicant and was also in the original DPC list as senior to the applicant.

15. The first respondent filed reply statement. According to him 12 additional posts of ITOs were allocated by the Board to the Kerala Region with a direction to fill them up by holding supplementary DPC. Accordingly,



supplementary DPC was held in September, 1995 which considered apart from the above said 12 posts sanctioned, retirement vacancies and vacancies on account of promotion. Out of the 15 vacancies, 4 vacancies were reserved for SC/ST as they fell against reserved points in the 40 point roster. Since no reserved candidates were available for consideration, the supplementary DPC prepared a panel of 11 general candidates and extended panel of 4 general candidates subject to the decision about dereservation of 4 vacancies by the competent authority viz. CBDT. Therefore, only 11 persons could be promoted and the remaining four vacancies which were reserved for SC/ST candidates had to be kept unfilled due to non-receipt of dereservation order from the CBDT. Since the dereservation order was not received from the Board and as per reservation policy for Group 'B' cadre there was no provision for carry forward of reservation, the extended panel of four general candidates against the reserved points prepared by the DPC had no validity. He further submitted that he had taken up the matter of dereservation with the 2nd respondent by his letter dated 31.10.95. However, the Liaison Officer for SC/ST had objected to the proposal of dereservation stating that 19 SC/ST candidates had taken up the examination for ITOs and some were likely to clear the examination and accordingly requested to defer dereservation order until results of the examination were announced in February, 1996. Only one S.C. candidate viz. the fourth respondent, got through the examination. The DPC held in May, '96 considered his name and found him fit for promotion along with four general candidates. Accordingly, four general candidates and one SC candidate were promoted as ITO Group B as per order dated 15.5.96. Regarding the contentions of the





applicant that the 4th and 6th respondents ought to have been considered only in the DPC after 1.10.96 as their Annual Confidential Reports (ACRs) were written in '96 and therefore they were ineligible for consideration by the DPC held in May, 1996, respondents referred to R1 O.M. dated 19.7.89 and submitted that the contention was without factual or legal basis. According to the respondents 4th respondent completed 3 years in the grade of Income Tax Inspector and became qualified as early as on 1.10.98 and 6th respondent became qualified on 1.10.95 and both of them had passed departmental examination for ITO held in 1995 results of which were declared in February, 1996. He submitted that there was no O.M/order directing the person passing the departmental examination in a particular year even if he had qualifying/<sup>service</sup>should wait upto next October for being considered for promotion to that grade. He referred to the cases of 9th and 10th respondents who were considered in the DPC held on May, 1997, they having acquired qualifying service for being considered for promotion to ITO as early as on 1.10.86 and 1.10.90 respectively even though they passed the departmental examination for ITO held in '96 the results of which were announced only in May, 1997. He denied that the appointing authority had taken a conscious decision to dereserve the vacancies. He submitted that the 4 persons in the panel drawn up by the supplementary DPC held in September, 1995 belonged to general category. Therefore, they could not be posted against the reserved vacancies without dereserving the same. He submitted that A2 representation dated 15.7.97 was carefully considered by the first respondent in the light of the various orders/instructions on the subject



and A3 order dated 23.1.98 was issued to the applicant and that the same was quite in order. He submitted that the cause of action in this case arose in the year 1995 when the DPC met for filling up the 15 vacancies which did not promote the applicant and the applicant never chose to challenge the same and had approached the Tribunal only on 12.3.1998 and therefore, the same was highly barred by limitation and must be dismissed on this score alone.

16. The applicant filed rejoinder wherein he reiterated the submissions made in the O.A.

17. The right of fourth respondent to file reply statement stood forfeited due to non-filing in spite of several opportunities and other respondents did not file any reply statement.

O.A. 392/98

18. The applicant who was working as Inspector of Income Tax filed this O.A. aggrieved by A1 letter dated 23.1.98 received by him in reply to his representation A2 dated 30.7.97.

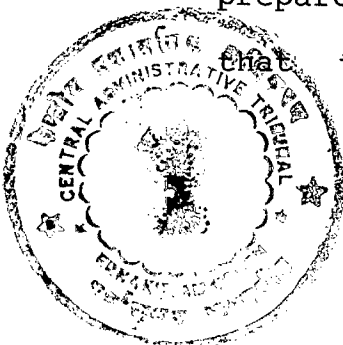
19. Applicant's case is that had the 4 unfilled vacancies of 1995 were also filled up then he would have been the first person to be considered in the next DPC held in 1996 for promotion as ITO. He submitted that instead, during May, '96 DPC, 4 persons empanelled in September, 1995 were again considered together with the 4th respondent as a candidate and the 5th respondent who were not eligible for consideration as per rules as both qualified in the



Departmental Examination the result of which was declared in February, 1996. He submitted that A2 representation dated 30.7.97 were preferred by him detailing his grievances to the first respondent and the same was rejected by A1 reply dated 23.1.98 by first respondent. Aggrieved by this reply, through this O.A. he sought the following reliefs:

- (1) To quash Annexure A1 and direct the 1st respondent to modify all orders issued in the matter of promotions to the cadre of ITO subsequent to 31.12.95.
- (2) To direct the 1st respondent to correctly determine the vacancies for the May, 1996 DPC after promoting the persons empanelled in the DPC held in September, 1995.
- (3) To convene a review DPC of the May, 1996 DPC after considering only persons qualified to be considered for promotion in the DPC, and to modify the order of promotion at Annexure A3 and modify all subsequent orders of promotion;
- (4) To grant such other reliefs as the Hon'ble Tribunal considers appropriate.
- (5). Grant cost of this application.

20. A reply statement was filed on behalf of the Respondents 1, 2 and 3 in which the chronological sequence of events and the details of vacancies reported to the DPC from April, 1995 onwards were given. It was submitted that 11 general candidates were promoted in September, 1995 and a proposal for dereservation was sent to the Board but since no dereservation orders were received the extended panel prepared by the DPC had no validity. Respondents submitted that there was no justification for the applicant's



statement that had 4 vacancies also been filled, the applicant would have been the first person to have been considered in the next DPC held on May, 1996. As regards the 4th and 5th respondents's eligibility they reiterated the stand taken by them in the other two O.As. It was submitted that there was no chance for the applicant for having been considered in the DPC held in May, 1996 and May, 1997.

21. Applicant filed rejoinder wherein he reiterated the points raised in the O.A.

22. A reply affidavit was filed by the 4th respondent. He submitted that while his promotion was effected the method of promotion was based on the principles of vacancy based Roster System (40 point roster). Relying on R4(a) O.M. dated 2.7.97 issued by the Govt. of India Ministry of Personnel, Public Grievance and Pensions, he submitted that his promotion effected during '96 could not be altered on the basis of the principles enunciated in the said memorandum. He submitted that the respondents 1 to 3 were following 40 point roster system till 2.7.97. He referred to Chapter/<sup>4</sup> para 4.1(iii) of Brochure on Reservation for SC/ST in service of Government of India, 8th Edition (1993) and para 4.2 and submitted that the actual number of vacancies to be reserved for SC/ST in any recruitment year should be determined on the basis of points in the roster and also taking into account reservation brought forward from previous years the total number of reservations should not exceed 50 per cent of the total number of vacancies filled in that year. He submitted/<sup>Annexure</sup> R4(b) an extract of the Brochure, in support of the above contention. He submitted that the zone of consideration in the case of SC/ST candidates was

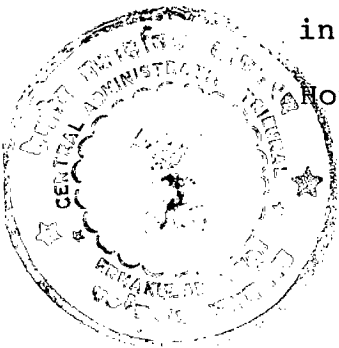
five times the number of vacancies in support of which he submitted R4(c) O.M. dated 22.4.92. He submitted that in case of promotion by selection from Group 'C' to Group 'B' where carrying forward of reservation is not permitted, and vacancies could be exchanged between S.C. and S.T. in the same year of recruitment. He filed R4(e) true copy of the extract of relevant part of Chapter 11 of the Brochure on Reservation as annexure to reply statement. He prayed for dismissal of the O.A. on the following additional grounds:

(i) Appointing authority could not fill up the reserved vacancies with the general candidates unless he consciously chose to dereserve the reserved vacancies as per the procedure laid down. Since no such dereservation had been made by the appointing authority the 4 vacancies could not be filled up with general candidates and the reserved vacancies were carried forward to the next year.

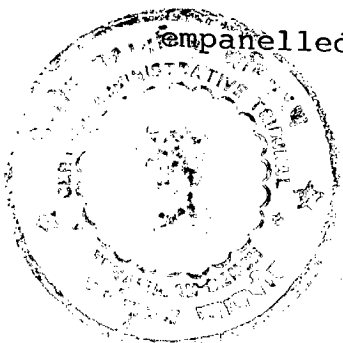
(ii) The applicant was not a candidate among the 15 candidates empanelled for the Supplementary DPC held in September, 1995 for filling up of 15 vacancies of ITO. Therefore it is not proper for the applicant to pray for promoting the general candidates against the 4 unfilled reserved vacancies.

23. Other respondents did not file any reply statement.

24. Heard learned counsel for the parties. The learned counsel for the applicant in O.A. 229/97 took us through the pleadings in the O.A. and argued extensively in the matter. He submitted that after the judgment of the Hon'ble Supreme Court in Sabharwal's case, the action of the

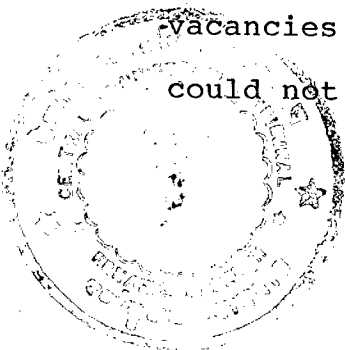


respondents in making reservation for S.C. community in excess of the percentage prescribed for them was illegal. According to him as against prescribed 15% reservation for S.C. in the cadre of ITOs as on 30.9.95, 18% ITOs actually were S.C. Hence making further reservation for S.C. was irregular. He relied on A6, A7 and A8 decisions of this Tribunal in O.A. No. 186/94 and other O.As dated 22.9.95 (Ernakulam Bench), O.A. No. 626/95 and other O.As dated 5.1.96 (Jabalpur Bench) and O.A. No. 1258/96 dated 19.2.97 (Ernakulam Bench) respectively in support of his submissions. He further submitted that Sri Vijayaraghavan who had expressed his unwillingness to be posted in 1995 should not have been promoted in May, 1996 against a 1995 vacancy. Similarly, the 4th respondent and another Sri Parameswaran could not have been accommodated against the vacancies of 1995 in May, 1996 as they had passed the departmental examination for ITO only in February, 1996. Learned counsel for the applicants in O.A. 392/98 and 397/98 submitted that while he agreed with the arguments advanced by the learned counsel for the applicant in O.A. 229/97 he submitted that the 4th respondent Sri Sadanandan in O.A. 229/97 who is also respondent No. 4 in each of the O.A. 392/98 and 397/98 could not have been considered by the DPC which met in May, 1996 as he was beyond the zone of consideration. He submitted that according to the seniority list, the fourth respondent was at Sl. No. 31 and there being only 6 vacancies for the year 1996-97, the 31st candidate would be beyond five times the number of vacancies and on this score alone consideration of Sri Sadanandan was not in accordance with the rules. He further submitted that had the 4 vacancies of 1995-96 been filled up by the 4 empanelled Income tax Inspectors including the applicants in



O.A. 229/97 and O.A. 397/98 in the next DPC held in May, 1996, the applicant in O.A. 392/98 would have come up for consideration.

25. The learned counsel representing the 4th respondent in all the O.As argued the matter extensively taking us through the various provisions of the reservation rules. According to him, the vacancy based roster was in force during 1995-96 and 1996-97 till the issue of post based roster issued by the Department of Personnel & Training on 2.7.97. He submitted that the judgment of the Hon'ble Supreme Court in Sabharwal's case, relied on by the applicant in the O.A. is a judgment inter-parties and will become effective for other departments only when administrative orders were issued by the Government which was done only on 2.7.97. He further submitted that the DPC could not empanel general candidates against reserved (of O.A.229/97) vacancies advised to it. He relied on R-4-2(c)/instructions dated 8.2.91 issued by the Department of Personnel & Training in this connection. He submitted that empanelment of 15 candidates by the DPC which met in September, 1995 was not in accordance with the rules when there were only 11 general vacancies. He further submitted that there was an error by the department in computing the reserved vacancies for the supplementary DPC in September, 1995. <sup>Actually 5 reserved</sup> vacancies were available as against four advised to DPC. Further, he submitted that in accordance with the rules general candidates would not have any claim on reserved vacancies unless the vacancies were dereserved with the approval of the competent authority. When no dereservation of reserved vacancies was done by the competent authority the applicants <sup>promotion</sup> could not claim/against the reserved vacancies. Further,



he submitted that had the vacancies been correctly assessed the DPC met in September, 1995 there would have been 7 vacancies to be filled up by the DPC of May, 1996 and therefore, he-the 4th respondent-who is at Sl. No. 31 would have been within the zone of consideration which would be upto Sl. No. 35. He further submitted that there was no excess reservation of S.C. community in the grade of ITO as four of them were against S.T. vacancies under the rule of exchange of vacancies between SC and ST when candidates of ST community were not available for promotion. He argued that the total number of reserved vacancies should be

computed taking the total of 15% for SC and 7.5% for ST. He submitted that on this basis there should have been 19 reserved community ITOs whereas there were only 17 SC/ST officials as on 30.9.95 and with the promotion of 4th respondent in May, 1995 it became 18. He submitted that if 4 exchange vacancies are taken out, only 12 SC candidates as on 30.9.95 would be there against the prescribed percentage of reservation for SC. He submitted that there was nothing irregular in the promotion of the fourth respondent.

26. We have given careful consideration to the pleadings made by the parties and the submissions of the learned counsel for the parties and have also perused the documents brought on record. We have framed the following issues for consideration:

(i) Were the vacancies correctly assessed and advised to the DPC which met in September, 1995?

(ii) Was it correct for the DPC to recommend general candidates against reserved posts?

(iii) Were the consideration of S/Sri Vijayaraghavan, Parameswaran and Sadanandan by the DPC which met in May, 1996 is in order?





(iv) What is the effect of the decisions to the issues (i), (ii) & (iii) on the reliefs sought for through these three O.As?

Issue No. (i):

27. From the reply statements the vacancy position of ITO Group 'B' for the two DPCs for 1995-96 are as follows:

28. DPC of April, 1995

i) Existing vacancies	3
ii) Anticipated vacancies due to retirement May, '95 (1), November, '95(2) and February, '96(1)	4
Total:	<u>7</u>

29. According to 40 point reservation roster the above 7 vacancies were from roster points (R.P. for short) 12 to 18 and hence one vacancy each at R.P. 14 and R.P. 17 was reserved for SC and ST and rest 5 were unreserved vacancies. As no eligible SC/ST Incometax Inspectors were available, 5 general category Incometax Inspectors were empanelled and four were promoted as ITO Group 'B' and the two reserved vacancies were kept vacant.

30. DPC of September, 1995.

(i) Addl. posts of ITO Group 'B' sanctioned for Kerala Region	12
(ii) less post filled by promotion from 4/95 panel	(-) 1
(iii) Balance	<u>11</u>
(iv) Anticipated retirement vacancies in 11/95(2) & 2/96 (1)	3
(iv) Anticipated vacancy due promotion of one ITO Group 'B' as Asst. Commissioner of Incometax	1
Total:	<u>15</u>



31. According to the respondents these 15 vacancies were at R.P. 17 to 31 of the 40 point roster. Two vacancies each were reserved for SC (at R.P. 22 and 28) and ST (at R.P. 17 and 31) respectively. As no eligible SC/ST Incometax Inspectors were available the DPC in addition to recommending 11 Incometax Inspectors for promotion as ITO Group 'B' made an extended panel of four Incometax Inspectors against the four reserved vacancies whose promotion was subject to the competent authority sanctioning their dereservation. The following were in the extended panel:

1. C.R. Pillai
2. P.K. Prabhakaran
3. N.P. Madhusoodanan (applicant in O.A. 229/97)
4. N.G. Mohandas. (applicant in O.A. 397/98)

32. The vacancies of 1995-96 fell at roster points 12/40 to 31/40 of the 40 point reservation roster of which R.P. 14/40, 22/40 and 28/40 are for SC and 17/40 and 31/40 are for ST.

33. According to paras 11.1 and 11.2 of Chapter 11 of the Brochure at R 4-2(E) in case of promotion by selection from Group 'C' to Group 'B' carrying forward of reservation are not permitted and vacancies can be interchanged between Scheduled Castes and Scheduled Tribes in the same year of recruitment. 'Recruitment Year' means a 'Calendar Year' as per Note (i) of this Chapter. From these rules, it is evident that there was a mistake in advising the vacancies and break up of vacancies by the Department as had been stated by the fourth respondent. The R.P. at 14/40 will not lapse in September, '95. Thus the break up as per 40 point vacancy based roster should have been 10 UR, 3 SC and 2 ST. Thus, there was a mistake in advising the vacancies to the DPC in



September, '95 even on the basis of vacancy based roster. However, Hon'ble Supreme Court in R.K. Sabarwal and Others Vs. State of Punjab and Others (1995 (2) SCSCS 745) held that once the roster point promotions were all made in respect of the reserved candidates the roster ceased to operate. Unless any of the reserved candidates already promoted had retired or been further promoted etc. and unless there was a vacancy generated at the points already filled, fresh candidates from the reserved candidates could not be promoted by further operation of the roster. It was held that reservation quota would be against posts and not against vacancies. The judgment was prospective i.e. from 10.2.95 - the date of the judgment. Hon'ble Apex Court held:

" The reservation provided under the impugned Government instructions are to be operated in accordance with the Roster to be maintained in each Department. The roster is implemented in the form of 'running account' from year to year. The purpose of running account is to make sure that Scheduled Castes/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of 'running account' in the impugned instructions has to be so interpreted that it does not result in excessive reservation.

...When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for reserved categories is achieved. We see no justification to operate the 'roster' thereafter. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class, neither a SC/ST category candidate can occupy a slot in the roster earmarked for a general category. The 'running account' is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive..."

34. Thus, after 10.2.95 reservation for SC/ST is to be provided only in accordance with the law as declared by the Hon'ble Supreme Court as above. In view of this, arguments

put forth by the learned counsel for the 4th respondent (in all the O.As) and the pleadings of the official respondents that the judgment of R.K. Sabarwal will become operative in the department only when instructions to the effect is received from the Government and that the department had followed the then existing instructions/rules of the Government in the matter of reservation for SC/ST in promotion respectively are not tenable and cannot be accepted. Such a view has been taken by this Tribunal in the decisions at A6 and A8 of this Bench and A7 of Jabalpur Bench.

35. There is no dispute that the prescribed percentage of reservation in promotion for Scheduled CAs and Scheduled Tribe employees is 15 and 7½ respectively. It is not also in dispute that as on 30.9.95, with the sanction of additional 12 posts of ITOs, the total sanctioned strength of ITOs was 85 and there were 16 Scheduled Caste and 1 Scheduled Tribe ITO in the cadre. With this, the position as on 30.9.95 emerges as follows:

Sanctioned strength of ITOs	85
No. of SC ITOs on roll	16
No. of ST ITOs on roll	1
Total No. of SC/ST ITOs on roll	17
No. of SC ITOs @ 15%	12.75
No. of ST ITOs @ 7.5%	6.375
Total @22.5%	19.125 say 19

36. From the above it may be seen that the shortfall in reserved community ITOs is two. Learned counsel for the applicant in O.A. No. 229/97 would argue that the availability of SC and ST officers should be taken



separately and the combined position should not be taken into consideration for deciding the extent of further reservation. Learned counsel for the 4th respondent in all the O.As would argue that even though there were 16 SC officers, 4 of these SC officers have become ITOs because of the principle of exchange as provided for in para 11.2 of Chapter 11 of the Brochure (Annexure R 4-2(E) of O.A. No. 229/97 and abstract of 40-point roster filed along with the additional reply statement.

37. We have carefully considered the rival submissions. The rule of exchange between the Scheduled Caste and Scheduled Tribe vacancies in the absence of candidates belonging to the appropriate community by the candidates belonging to the other community was in existence prior to the judgment in Sabarwal's case. The judgment was prospective from 10.2.95. We are of the view that for proper implementation of the judgment the four SC employees appointed as ITO on the basis of the exchange rule should be counted against ST reserved points. If such a course is not adopted there being only one ITO belonging to ST it would be taken that there is a shortfall of 5 ST ITOs and steps would be taken to make good the same. This would result in ST posts being reserved in excess of the prescribed quota. Thus, as on 30.9.95, in a cadre of 85 posts of ITOs there were actually 17 SC/ST officers as against the prescribed 19 SC/ST posts leaving 2 reserved posts as shortfall.

38. As per the prescribed percentage there should be 12.75 SC posts and 6.375 ST posts in the cadre which can be rounded off as 13 SC posts and 6 ST posts. This adjustment in our view is permissible on the ground that by this the excess 0.375 posts of ST is transferred to SC and the same

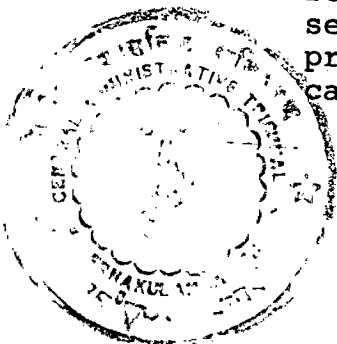
is in accordance with the principle laid down by the Hon'ble Supreme Court that " No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class, neither a SC/ST category candidate can occupy a slot in the roster earmarked for a general category." In view of the detailed analysis as above, we are of the view that out of 85 ITOs Group 'B' posts 13 and 6 should be treated as reserved for SC and ST. As against this as on 30.9.95 there were only 12 SC and 5 ST (1 ST + 4 SC on exchange) were available. Hence, the cadre of ITOs had a short fall of two reserved posts one each to be filled by a SC and ST candidate. Therefore, the DPC held in September, 1995 for filling up the 15 vacancies, the break up should have been advised as 13 General + 1 SC + 1 ST instead of 11 General + 2 SC + 2 ST. Therefore, the issue No.1 is answered in the negative.

Issue No. (ii)

39. In R.K. Sabarwal's case, the Hon'ble Supreme Court held "No General category candidate can be appointed against a slot in the roster which is reserved for the Backward Class, neither a SC/ST category candidate can occupy a slot in the roster earmarked for a general category."

40. In the O.M. dated 1.11.80 filed by the 4th respondent in O.A. No.392/98 as Annexure R 4(F) following cited/instructed:

It is to be impressed upon all the appointing authorities that vacancies reserved for Scheduled Castes/Scheduled Tribes are meant to be filled up by member of these communities only and dereservation of reserved vacancies should not be resorted to as a matter of routine, without making serious and sustained efforts as prescribed to procure Scheduled Castes and Scheduled Tribes candidates and before exhausting all the avenues



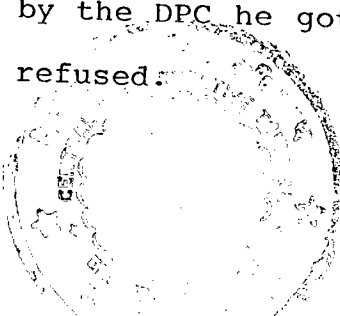
for obtaining Scheduled Castes/Scheduled Tribes candidates. No reserved vacancy can be filled up by general community candidates unless it is dereserved and the reservation carried forward to three subsequent recruitment years wherever possible."

41. From the foregoing judicial pronouncement as well as Government instructions it is evident that reserved posts/vacancies cannot be filled up by General candidates. According to the Government's instructions reserved vacancies can be filled up by General candidates only if they are dereserved. In this particular case dereservation of reserved vacancies had not been done. The proposal for dereservation itself was not concurred in by the Liaison Officer for SC/ST and when referred to the CBDT no orders were received. When above is the position the DPC cannot recommend General candidates against the reserved vacancies by empanelling them. As a consequence such wrongly empanelled candidates do not acquire any rights for promotion also. The DPC can only recommend the number of candidates of appropriate community as per the advice given to it.

42. Accordingly, issue No. (ii) is answered in the negative.

Issue No. (iii)

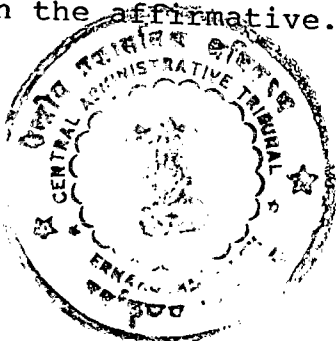
43. There is no dispute among the parties that Sri T.G. Vijayaraghavan is senior to each of the applicants in these O.As and that he had requested for not being considered for promotion during 1994 and 1995. Therefore, considering him for promotion in the DPC held in May, 1996 cannot be faulted because as a result of the recommendation by the DPC he got promoted only in 1996 - which he had not refused.



44. There is no dispute that S/Sri Parameswaran and Sadanandan appeared in the Departmental Examination for Incometax Officers held in July, 1995 and the results of the examination was declared in February, 1996. In A3 order dated 8.2.96 (in O.A. No. 229/97) declaring the results of the Departmental Examination of ITOs held in July, 1995, it had been clearly indicated in para 4 that the date of passing the examination should be reckoned as 3.7.95. In view of this the plea that they were not eligible for consideration by DPC held in May, 1996 is without any basis and has only to be rejected. In fact as per the O.M. dated 19.7.89 issued by the Department of Personnel & Training (Annexure R1 of O.A. No.397/98) these two employees had become eligible for the DPC for the year 1995-96 itself, as their date of passing the departmental examination for ITO is declared as 3.7.95.

45. Another plea taken was that Sri SAdanandan, an SC candidate could not have been considered in the DPC held in May, 1996 as he fell outside the zone of consideration i.e. beyond the five times the assessed vacancies. We have already reproduced the law laid down by the Hon'ble Supreme Court and the Government's instruction in the matter of filling up the reserved posts/vacancies. There is no dispute that Sri Sadanandan was the only SC Incometax Inspector eligible for being considered as ITO in the DPC held in May, 1996. Therefore, we are of the view that the rule relied upon by the applicants for the plea of non-eligibility of Sri Sadanandan has no applicability and the DPC of May, 1996 has correctly considered him.

46. In view of the foregoing we decide issue No.(iii) in the affirmative.





Issue No. (iv)

47. Now we will examine the effect of our decision to the above issues on the DPCs held in April, 1995 and September, 1995 and May, 1996.

48. In April, 1995, the assessment of vacancies for the DPC was done for the financial year 1995-96. We hold that the assessment of vacancies for the DPC on financial year basis is in order for the category of ITOs in the light of R-1 O.M. dated 17.10.94/ (of O.A. 229/97) For this, DPC the vacancies were assessed as 7 out of which one each were reserved for SC and ST. This being after 10.2.95, the law laid down by the Hon'ble Apex Court will be applicable. In April, 1995 the cadre strength of ITOs was 73 (85 minus 12 posts sanctioned in September, 1995) in which we find from O.A. 229/97 and R 4-2 (D) of the same O.A. that there were 16 ITOs belonging to SC & ST which is about 22½% of the reserved quota prescribed for SC/ST. Any additional reserved candidate will be exceeding the quota. However, only 5 general candidates were empanelled by this DPC keeping one vacancy each of SC and ST. In the assessment of vacancies for this DPC, three retirement vacancies occurring in November 1995 (2) and February, 1996 (1) were also taken. Due to the sanction of 12 additional posts supplementary DPC was held in September, 1995 even before the select list formed as a result of the DPC of April, 1995 was exhausted. Therefore, no prejudice is actually caused to any one due to keeping two vacancies reserved in the April, 1995 DPC and not empanelling general candidates. Further, the select list of April, 1995 DPC is not under challenge before us.

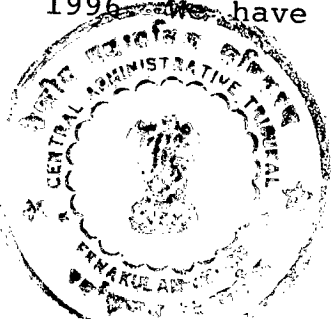
49.

Now coming to the DPC of September, 1995, we have already come to the conclusion under issue No. (i) that the



correct assessment of vacancies for this DPC should be 13 General + 1 SC + 1 ST. As against this the assessment was made as 11 General + 2 SC + 2 ST. If the vacancies were correctly assessed and advised to the DPC, this would have resulted in two seniormost employees viz. S/Sri C.R. Pillai and P.K. Prabhakaran (included in the extended panel) being xxxxxxxxxxxx included in the Select List and only two reserved vacancies would have remained unfilled. Thus, the applicants in O.A. No. 229/97 and O.A. No. 397/98 would not have found a place in the Select List of the DPC held in September, 1995 even if the law laid down by the Hon'ble Apex Court in Sabarwal's case had been followed by the department. The applicants in O.A. No. 229/97 and 397/98 have themselves accepted in the <sup>respective</sup> O.As that they were at Sl. No. 14 and 15 respectively of the Select list prepared by the September, 1995 DPC.

50. We have already held under issue (ii) that the DPC cannot recommend more general employees than intimated to it. If the correct assessment had been advised to the DPC, S/Sri C.R. Pillai and Prabhakaran could have been included in the Select list formed by the DPC in September, 1995. But they are not before the Tribunal in these O.As. Thus, factually four vacancies remained unfilled including the one occurred on 1.3.96 due to retirement. Taking the vacancy due to death of an ITO which occurred on 30.9.95 and the retirement vacancy which occurred on 31.5.96 and the above vacancies, for the May, 1996 DPC the break up of SC and ST was one each and the rest were General. The DPC which met in May, 1996 had enlisted the candidates for 4 General and 1 SC vacancy leaving the ST post vacant. Thus, we do not find any infirmity in the select list formed in May, 1996. We have already held under issue No. (ii) that S/Sri



Vijayaraghavan, Parameswaran, Sadanandan were eligible to be included in the Select List by the DPC which met in May, 1996. Therefore, there is no infirmity in A2 promotion order dated 15.5.96 in O.A. No. 229/97. By A5 impugned order dated 28.1.97 the request of the applicant in O.A. No.229/97 through A4 representation for review of the three DPCs had been rejected. We have also come to the same conclusion in spite of our finding of issue No. (i) against the respondents. Therefore, the prayer for setting aside A5 order (in O.A. 229/97) is rejected.

51. By A3 impugned order dated 23.1.98 the request of the applicant in O.A. No.397/98 through A1 representation for promotion had been rejected. We have also come to the same conclusion in spite of our finding of issue No. (i) against the respondents. Therefore, the relief sought for quashing A3 is rejected.

52. By A1 impugned order dated 23.1.98 the request of the applicant in O.A. No. 392/98 through A2 representation for review of the three DPCs in 1995 and 1996 and his promotion had been rejected. We have already held that applicants in O.A. No. 229/97 and O.A. No. 397/98 are not eligible for inclusion in the select list of DPC held in September, 1995 and the one held in May, 1996. When such is the case, we do not find that the applicant in this O.A. is eligible for consideration for promotion in the DPC held in May, 1996 as he is junior to the applicants in O.A. No.229/97 and O.A. No. 397/98. Therefore, we reject this reliefs sought for by the applicant in this O.A.



53. In view of the detailed analysis given in the foregoing paragraphs, applicants in O.A. No. 229/97, O.A. No. 397/98 and O.A. No. 392/98 are not entitled to the reliefs sought for by each of them in the respective O.As.

54. Accordingly, O.A. No. 229/97, O.A. No. 397/98 and O.A. No. 392/98 are dismissed with no order as to costs.

Dated the 15th December, 1999.

Sd/-  
G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER

Sd/-  
A. M. SIVADAS  
JUDICIAL MEMBER

kmn



List of Annexures referred to in this Order

O.A. 1229/97

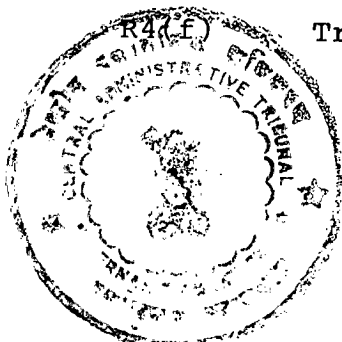
- A2 True copy of the order No.11/Estt/1/CC/96 dated 15.5.96 issued by the 3rd respondent.
- A3 True copy of the order No. CIT/D.E/Estt./4/95-96 dated 8.2.96 issued by the Commissioner of Incometax, Cochin.
- A4 A true copy of the representation dated 24.6.96 submitted by the applicant to the 3rd respondent.
- A5 True copy of the order No. 23/Estt/25/CC/96 dated 28.1.97 issued by the Assistant Commissioner of Incometax for the 3rd respondent.
- R4-2(D) True copy of the 40 point Roster in the cadre of ITOs Group 'B' Recruitment year 1978-96.

O.A. 397/98

- A1 True copy of representation dated 15.7.97 from the applicant addressed to the first respondent.
- A2 True copy of the order of promotion No.11/Estt/1/CC/Con/95 dated 11.9.95 issued by the 1st respondent.
- A3 True copy of letter No.23/Estt/33/GG/97-98 dated 23.1.98 from the 1st respondent to the applicant.
- A4 True copy of order No.11/Estt/1/CC/Con/96 dated 15.5.96 issued by the 1st respondent.
- R1 Petition dated 27.11.95 of the 8th respondent addressed to the 1st respondent.
- R2 Memorandum F.No. 23/Estt/19/CC/95-96 dated 22.12.95 from the 1st respondent addressed to the 8th respondent.

O.A. 392/98

- A1 True copy of letter No.F.23/Estt/32/CC/97-98 dated 23.1.98 from the 1st respondent addressed to the applicant.
- R4 (b) True copy of the chapter 4 of the Brochure on Reservation for SC/ST in service of Govt. of India, 8th Edition
- R4(c) True copy of OM No. 220011/1/90-estt(D) New Delhi dated 22.4.92
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