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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.753 of 1993.

(per Hon'ble Sri B.S.JAI PARAMESHWAR, MEMBER (J)

Date: April 17 1997.

Between:

Gudise Abraham .. .. Applicant.

And

1. Staff Selection Commission,  
represented by its Secretary,  
Block No.12, Lodi Road,  
New Delhi -110 003.
2. The Regional Director, Staff  
Selection Commission, E.V.K.  
Sampath Buildings, 2nd floor,  
Madras -600 006.
3. The Chief Commissioner of Income  
Tax, Andhra Pradesh, Ayakar Bhavan,  
Basheerbagh, Hyderabad.
4. The Secretary, Central Board of  
Direct Taxes, North Block,  
New Delhi. .. Respondents.

Name of the counsel for Applicant: Sri G.V.R.S. Vara Prasad

Name of the Counsel for Respondents:Sri V.Rajeswara Rao for  
Sri N.V.Ramana.

CORAM:

Hon'ble Shri R.Ranga Rajan, Member (A)

Hon'ble Sri B.S. Jai Parameshwar, Member (J)

JUDGMENT.

Learned Counsel -  
Heard Sri G.V.R.S. Vara Prasad for the applicant  
and Mr. V.Rajeswara Rao for Sri N.V.Ramana, the learned  
counsel for the respondents.

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This application was filed under Section 14(1)(a) of the Administrative Tribunals Act, 1985 on June 30, 1993.

In this application the applicant has sought for the following reliefs:

- 1) to declare the Memorandum No.1 7/7/91-C1 dated 17--6--1993 of the 1st respondent as highly illegal and arbitrary and to set aside the same;
- ii) to direct the respondents 1 and 2 to release the names of the candidates for appointment to the posts of Inspectors of Income Tax in Andhra Pradesh charge from S.C. category and physically handicapped category from out of the candidates qualified in December, 1991 examination and
- iii) to declare that in the event of applicant's name being released either in S.C. category or physically handicapped category for appointment, the applicant shall be entitled to all the consequential benefits like seniority etc., treating him as having been appointed on the day on which the back-log vacancy arose.

The facts in brief are to the following effect:

(a) the applicant claims to be a person belonging to the Scheduled Caste community. He asserts that he is a physically handicapped person having deformity in his lower limb. During the year, 1991, the applicant was working

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as U.D.C., in the office of the Income Tax, Vijayawada.

(b) In response to the Employment News No.24 dated 30-8-1991 issued by the Respondent No.1, the applicant submittd his candidature for the post of Inspector of Income Tax and Central Excise Examination, 1991. The proposed examination was to fill up the vacancies that may fall vacant between 1--3--1992 and 28--2--1993 or between 1--4--1992 and 31--3--1993. The Roll No. of the applicant was 6170245. The written examination was conducted on 22--12--1991. He came out successful in the written examination. He was asked to appear for viva-voce test held on 13--6--1992. He appeared for the same. The Respondent No.1 published on 5-11--1992, the list of selected candidates allotted to various posts in the various Departments in the respective States.

(c) Accordingly 10 posts of Inspectors of Income-tax (unreserved - 8, S.C. 1 and Ex-Servicemen 1) were allotted to Andhra Pradesh Charge.

(d) The applicant could not find his name in the Select list. According to him he fared well in the Viva-voce test and was expecting to be one of the candidates in the select list.

(e) It is his case that no candidates under the Physically handicapped quota was allotted to the Income Tax Department in the Andhra Pradesh charge, that out of

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total of 31 candidates among the selected S.C. candidates, 30 candidates were allotted to the Central Excise Department in Andhra Pradesh and only one candidate to the Income Tax Department, that the physically handicapped person alone was eligible for post of Inspector in the Income Tax Department and was not eligible for appointment in the Central Excise Department, that on 18-3-1993 he submitted a representation to the 1st Respondent bringing to his notice, the vacancy position and requested him to take action to forward his name to the respondents for appointment either against the S.C. quota or against the physically handicapped quota ~~as~~ <sup>for</sup> the appointment to the post of Inspector of Income Tax based on the examination held in December, 1991, that there was no response to his representation, that there were backlog vacancies of Inspectors of Income Tax to be filled in by direct recruitment in Andhra Pradesh Charge, that he requested the Respondent No.3 to address Respondent No.1 to release the names for filling up the said backlog vacancies, that he was confident that his name would be or likely to be released for appointment as Inspector of Income Tax in Andhra Pradesh Charge, that again on 18/23-4-1993 he made another representation to the 2nd respondent stating that subsequent to the declaration of results, the 3rd respondent addressed the 1st Respondent regarding backlog vacancies to be filled up by S.C. / physically handicapped

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candidates and thus requested the 2nd respondent to consider the facts and do the needful since he was the only candidate eligible, that he made another representation dated 18/23-4-1993 to Respondent No.1 bringing to his notice that he was the only in-service candidate in the Department belonging to S.C., and Physically handicapped category and as such he requested the 1st Respondent to release his name for the post of Income Tax Inspector in A.P.Charge, that R-1 forwarded a copy of ~~in~~ his representation dated 18/23-4-1993 to the 2nd respondent to look into the matter and to send a suitable reply, that by the impugned Memo, the 1st respondent informed him that his result was checked again with reference to his representation that he did not find a place in the select list against S.C. quota candidates due to his low merit position, <sup>and</sup> that there was no physically handicapped category vacancy reported from A.P.Charge for the post of Inspector of Income Tax during 1991 examination, that during the year 1992, the Respondent No.1 again advertised for recruitment to the posts of Inspectors of Income Tax and Central Excise, that examination was conducted on 22-12-1992 that the results having been announced the 3rd respondent appears to have addressed a letter during the first week of

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December, 1992 informing the existence of five backlog vacancies of Inspectors of Income Tax to be filled in by recruitment against S.C. quota that again during February, 1993, the 3rd respondent appears to have addressed for release of another 6 S.C. candidates and a physically handicapped candidate, <sup>that</sup> thus there are 11 backlog vacancies in the Income Tax Department in Andhra Pradesh Charge to be filled in, that the impugned Memo has been issued without proper verification and in a casual manner, that the quota reserved for the Physically handicapped person is 3% i.e., every 33rd vacancy must go to a physically handicapped person, that the Inspectors of Income Tax in Andhra Pradesh Charge as could be seen from the establishment list as on 1-1-1991 was as under:

Sl.No. in the Establishment List.	Year of appointment.	Category to which the candidates belongs.
37.	1982.	OC-PH
46.	1983.	OC-PH
106.	1987	ST-PH
169.	1989	OC-PH
204.	1988	OC-PH
224.	1989	OC-PH
319.	1991	OC-PH

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(f) The applicant further stated that the 3rd respondent had committed a mistake in working out the reserved vacancies while bringing it to the notice of the respondents 1 and 2 and that he has, therefore, been constrained to file this O.A.

The Regional Director (Southern Region), Staff Selection Commission has filed the counter on behalf of the respondents.

In the counter, it is stated, that the procedure for selection of candidates has been detailed in para 15 of the detailed advertisement for the Examination, that as per the said procedure detailed in para 15, the reserved vacancies would be filled up by the eligible S.C., and S.T. candidates who were lower in merit than the last general candidate on the merit list but otherwise found suitable for appointment by relaxed standards, that as per the procedure adopted and followed by the Commission the reserved vacancies in the Grade of Inspectors of Income-tax etc., by Examination are to be collected by the Central Board of Direct Taxes, that CBDT had reported 10 vacancies in the Grade of Inspectors of Income Tax in A.P. Charge for 1991 examination, that accordingly, 10 candidates were

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selected and recommended to the Department, that the applicant did not find place in the select list, that during 1991 Examination, no physically handicapped vacancy of the Inspectors of Income-tax was reported to the Commission in A.P. Charge, that the question of considering the selection of the applicant against the Physically Handicapped category did not arise, that the Commission prepared a select list on the basis of the vacancies reported by the CBDT, that the applicant has no locus standi to report any so called unfilled or backlog vacancies of Inspectors of Income Tax, that the applicant is not entitled to claim any right for appointment in any of the vacancies reported subsequent to the declaration of the select list of 1991 examination, that his contention that he was the only Physically handicapped candidate eligible is not correct, that none of the physically handicapped candidates had applied for the examination from Andhra Pradesh Zone for consideration and for inclusion in the select list under the relaxed standards, that by the impugned Memo the position was clearly explained to the applicant, that the examination was conducted on All India Basis in accordance with the vacancy position submitted by the CBDT, that the assessment of vacancies is the concern of the User Department i.e., the CBDT in this case, that the Respondent No.1 cannot take

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cognizance of any vacancy which is not reported to it in accordance with the prescribed procedure, that under the procedure adopted by the Commission, the CBDT is responsible to report the vacancy position to the Commission, that either the Respondent No.1 or the 2nd Respondent <sup>not</sup> can take cognizance of any vacancy, backlog or otherwise if reported to it directly by the 3rd respondent, that 1992 examination constitute the vacancy position for the purpose of preparing the list for 1992 only, that the candidates who did not qualify in 1991 examination are not entitled to be considered against the vacancies that might be reported for the subsequent examination as per rules, that the result of the applicant was verified by the Commission with reference to his merit position and the vacancies reported by the CBDT, that the select list was prepared and announced by the Head Quarters of the Commission in accordance with the vacancy position furnished to it, that the Respondent No.2 is not in a position to furnish any material or information to the Respondent No.1, that Respondent No.1 was fully equipped with facts and materials relating to the case of the applicant and to verify his performance in the examination, that the 1st respondent forwarded the additional copy off the representation of the applicant

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to the 2nd respondent in a routine manner for disposal, that the 3rd respondent submits that there was no backlog of vacancies reserved for Physically handicapped category till December, 1992 and that the vacancy arose subsequently, that was available to the examination to be held in 1992, that because of the low merit position, the applicant cannot claim to be considered for selection against any of the vacancies which will form the basis for the subsequent 1992 examination, that the impugned Memorandum has been issued by the Respondent No.1 after due verification of the results of the applicant and it is proper, valid and according to law, that there are no reasons to interfere with the said Memorandum, that it is not correct for the applicant to make hypothetical assessment to the effect that his name would find a place in any such select list, that, in case the name of the applicant is released against the vacancies proposed to be filled under 1992 examination, it would affect the employment prospects of the genuine candidates for the subsequent examination that even otherwise , it infringes the policy of the examination, that the vacancies reported subsequent to the announcement of the results or select list can only be considered for preparing the select list in the subsequent examination, and that therefore, there are no merits in this O.A.

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The applicant filed his reply statement asserting the averments made in the O.A., and disputing the claims of the respondents. It is submitted that even the Respondent No.3 is empowered to report the vacancy position to the Respondent No.1 and that on that basis the Respondent No.1 could take necessary steps to fill up the vacancies. It is, however, stated that the Respondent No.3 failed to assess the exact vacancy position for 1991 examination. He, however, asserted that there is a post against physically handicapped category in 1991 in Andhra Pradesh Charge.

To this reply, the Respondent No.2 filed rejoinder stating that the Vacancy Circular was being issued on year to year basis calling for consolidated vacancy position in respect of various Collectorates of Central Excise (CCE) Commissioners of Income Tax (CIT), Central Board of Excise and Customs (CBEC), Central Board of Direct Taxes (CBDT), that the results of the written part of the examination is declared on the basis of the consolidated vacancy position initially reported to the Commission before finalizing the results, that the 1st respondent does not entertain any vacancy reported directly to it by CCEs/CITs, such as, the third respondent, that this fact has been clearly mentioned in the circular issued by the CBDT, that the vacancy position should be intimated direct ~~to~~ by

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CIT/CCE to the CBDT and the CBDT to Staff Selection Commission, that CBDT while calling for the vacancy position of Inspectors of Income Tax from various Commissioners of Income Tax, specifically indicated in its vacancy Circular to the effect that the vacancy position should be intimated direct to the CBDT and not to the Staff Selection Commission, that the 1st respondent considers only the consolidated charge-wise vacancies received from the Boards, that once the result of Inspectors of Central Excise, Income Tax etc., Examination is published, no reserve or waiting list is prepared for that particular examination and any short fall or additional vacancies are collected from the ~~CCE/CIT~~ CCE/CIT by the CBDT which consolidates such vacancies and reports zone-wise vacancies to the 1st respondent for the next year's examination, that in view of the said procedure, the 3rd respondent has no authority to report any vacancy of Inspector of Income Income-tax directly either to the first or to the second respondent, that the vacancies of Inspectors of Income Tax reported by the third respondent directly to the first or to the second respondent will not be taken

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taken cognizance by either of them, that the vacancies that might become available in the office of the Respondent No.3 after the release of the select list on the basis of 1991 Examination have to be reported to the 1st respondent through the CBDT and all such vacancies will constitute "vacancy position" for the subsequent examination and that the applicant had failed to qualify himself in the 1991 examination.

Further, it is submitted that the Hon'ble Supreme Court of India in the case of U.P. BHUMI SUDHAR NIGAM LTD., Vs. SHIV NARAIN GUPTA (reported in ~~1994~~ 28 ATC (SC) 67) held that "unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies", that in this case it is not the case of the applicant that the comparative merit of the candidates who appeared for the 1991 Examination and as reflected by their performance has been ignored and appointment has been made on consideration other than those of merit, that the applicant is relying upon hypothetical assertion that had the additional vacancies been included, then, he might have had found a place in the Select List, that the 1st respondent is only an Agency on behalf of the various Departments of the Government of India to effect recruitment but not the appointing authority.

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that the 1st respondent has no prerogative to determine the number of vacancies available and the number of vacancies to be filled up at a given point of time, that as regards the number of vacancies of Inspectors of Income Tax, the CBDT had reported to be filled up only 10 vacancies in A.P. Charge at the time of the declaration of results of 1991 examination vide letter dated 8-5-1992 (Annexure R3) that the said vacancy position was confirmed by their letter dated 23/29th October, 1992 (Annexure R-4) that, accordingly, for the 10 vacancies reported by the CBDT for the 3rd respondent's Office, ten candidates were recommended for appointment, that as regards the vacancies reported to the 1st respondent by the CBDT to be filled up from the results of the subsequent examination i.e., Inspectors of Central Excise, Income Tax etc., 20 vacancies were reported by the CBDT vide its letter dated 2-12-1993 (Annexure R5) and only 20 candidates were recommended against those 20 vacancies, that no additional vacancies for the office of the Respondent No.3 were reported by the CBDT to be filled in from the results of 1992 examination before the declaration of the results of the said examination, that therefore, the claim of the applicant to fill up 11 subsequent backlog vacancies of Inspectors of Income Tax in the office of the 3rd respondent which were not reported by the CBDT

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from out of the results of the 1991 Examination after the declaration of the results of the said examination is not tenable and that the O.A., be dismissed.

The main point required to be considered in this O.A., is:

"Whether the CBDT (Central Board of Direct Taxes) or the Respondent No.3 is the Competent Authority to report the vacancies position to Respondent No.1?"

The respondents have relied upon the Circular Instructions dated 30-1-1992 (Annexure R1). This relates to the Examination conducted by the 1st respondent in 1991 to fill up the vacancies falling during the period from 1-3-1992 to 28-2-1993 (in 1991 Examination).

As per Ex.R-1, the Chief Commissioner of Income Tax, all the Commissioners of Income Tax, all Director General of Income Tax, the Director General of Income Tax, National Academy of Direct Taxes, Nagpur were requested to send a consolidated statement showing Zonewise (Charge-wise), Category-wise number of

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vacancies for the posts of Inspector of Income-tax to be filled in during the period from 1-3-1992 to 28-2-1993 from the results of the aforesaid examination (1991 examination). They were also specifically requested to intimate the vacancy position in the prescribed form direct to the secretary, the CBDT and not to the Staff Selection Commission, the Respondent No.1. This clearly indicates that the Respondent No.3 was not in any way authorised to intimate the vacancy position to the Respondent No.1. The contention of Respondent No.1/that it will take cognizance of the vacancy position as reported by the CBDT alone, therefore, has to be accepted.

The respondents relied upon a decision of the Hon'ble Supreme Court of India. They have furnished the extract of the Judgment in that case. It is at Annexure R-2. The Hon'ble Supreme Court in U.P. BHUMI SUDHAR NIGAM LTD., (1994) v. SHIV NARAIN GUPTA (1994) 28 ATC SC 67 d/11.7.1994, has been pleased to observe:—  
Wherein the Hon'ble Supreme Court observed:

"This Court has authoritatively laid down that even if a vacancy is available and the employer bona fide declines to make an appointment, the candidate in the select list has no right whatsoever to claim appointment. In the present case the post was abolished by the Board of Directors in the year, 1991. Shiv Narain Gupta in fact challenged before the High Court about the action of the Corporation in abolishing the post. Neither the facts of this case nor the

law on the subject warranted any interference by the Constitution Bench. Judgment in SHANKARSON DASH case (supra) was cited before the learned Single Judge of the High Court. We are constrained to say that the learned Judge failed to appreciate the binding ratio of the said judgment."

We humbly feel that the Respondent No.3 is not the competent Authority to report the vacancy position to Respondent No.1. He has to report the vacancy position zonal-wise, categorywise and charge-wise only to the CBDT. The CBDT is the Authority which has in various departments taken into cognizance of the vacancy position and to request the Respondent No.1 to take steps to fill up the said vacancies.

The next case of the applicant is that there was one reserved post of S.C. / Physically handicapped category. As already submitted the applicant claims the post against the reserved SC/PH category. The respondents in unequivocal terms have stated and asserted that during the year 1990-91 there was no post of S.C. / Physically handicapped post of Inspector of Income Tax against the reserved SC / Physically handicapped category <sup>had</sup> become

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vacant between 1-3-1992 and 28-2-1993. It is an admitted fact that during the year, 1991 the Respondent No.1 was asked to fill up only 10 posts in the Andhra Pradesh Charge. There ~~was~~ was no post reserved against SC/Physically handicapped category during 1991.

The applicant has not come up to the level in the 1991 examination. When once the select list is announced by the Respondent 1 that is the end of the matter. The Respondent 1 cannot announce the additional panel of names even if it comes to its notice the existence of further vacancies. When once the select list is announced, any vacancy that may come to the notice of the Respondent No.1 requires to be filled up only from out of the select list of successful candidates in the subsequent examination. There is nothing like preparing a waiting list in 1991 ~~the year 1992~~ Examination. If that were so, at the time of announcement of the select list itself, the Respondent No.1 could have published the waiting list of candidates against the subsequently reported vacancies.

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Therefore, in our opinion, once the select list is published, then the Respondent No.1 cannot publish a supplemental list, even though he comes to know the existence of vacancies either backlog or otherwise. Such vacancies can only be filled up on the basis of the results of the successful candidates in the select list prepared in the subsequent competitive examination. The Respondent No.1 is, therefore, justified in saying that publication of supplemental list would deny the genuine candidates who are eligible to appear for the subsequent examination.

Hence, we have come to the conclusion that the CBDT alone is the Authority to give vacancy position to the Respondent No.1. The Respondent No.3 is in no way responsible or entitled to request the Respondent No.1 to fill up the backlog vacancies or otherwise. Mere sending the representation of the applicant to the Respondent No.2 does not mean that he can consider the representation of the applicant. The respondents have submitted that they sent the additional copy of the representation of the applicant to the Higher Authorities in a routine manner.

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The applicant cannot insist upon the respondents to fill up a particular post even though accepting for a moment that a certain post was vacant. In view of the principle laid down by the Hon'ble Supreme Court of India, the applicant cannot claim any right to any post since he has not come out ~~as~~ successful in 1991 examination. There is nothing on record to show that the applicant was the next immediate eligible candidate under SC/Physically handicapped category to be sponsored or recommended.

The Respondent No.1 after considering the representation has sent the impugned Memo to the applicant wherein, it is stated, that the applicant had not fared well in the 1991 examination. The applicant's name did not find a place in the select list against the reserved quota due to his low merit position and that there was no physically handicapped S.C. vacancy reported from the Andhra Pradesh Charge for the post of Inspector of Income Tax during the period ~~is~~ from 1.3.1992 to 28-2-1993. The Respondent No.1 was within his power to intimate the applicant the factual position through the impugned Memorandum.

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We find no illegality or irregularity in the  
said Memorandum.

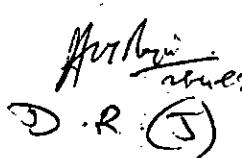
We are, therefore, of the opinion that the  
applicant is not entitled to any of the reliefs  
claimed in this O.A.

The O.A., is dismissed. No order as to  
Costs.

  
B.S. JAI PARAMESHWAR,  
MEMBER (J)

  
R. RANGARAJAN,  
MEMBER (A)

Date: 17 April, 1997.

  
D.R. (J)

sss.

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TYPED BY  
COMPARED BY

CHECKED BY..

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. RAO, M(A)  
AND

THE HON'BLE SHRI B.B. JAI PARAMESHWAR,  
M(J)

DATED:

17/4/97

ORDER/JUDGEMENT

R.A/C.P/M.A. No.

in

D.A. No. 753/83

ADMITTED INTERIM DIRECTIONS ISSUED  
ALLOWED

DISPOSED OF WITH DIRECTIONS  
DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

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II COURT

