

1 o.a. no. 350.615.2018 with m.a. no. 350.320.2018 with ma. No. 791.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

Date of order: 13.12.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

No. O.A. 350/00615/2018
M.A. 350/00320/2018
M.A. 350/00791/2018

1. Ashim Mukherjee,
Aged about 29 years,
Son of Shri Sitaram Mukherjee,
Residing at Dharampur, Mukherjee Lane,
Post Office and Police Station – Chinsurah,
District – Hooghly, Pin – 712 101
And working to the post of Stenographer Grade-I
In the office of the Principal Chief Commissioner
Of Income Tax, West Bengal & Sikkim,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata – 700069.
2. Subhasis Chatterjee,
Son of Shri Jagan Chatterjee,
Residing at Tematha, Shibtala, Moran Road,
Post Office – Gondalpara,
Police Station – Chandernagore,
District – Hooghly, Pin – 712137
And working to the post of Stenographer Grade-I
In the office of the Principal Chief Commissioner
Of Income Tax, West Bengal & Sikkim,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata – 700069.
3. Amit Mukherjee,
Son of Shri Sitaram Mukherjee,
Residing at Dharampur, Mukherjee Lane,
Post Office and Police Station – Chinsurah,
District – Hooghly, Pin – 712101
And working to the post of Stenographer Grade-I
In the office of the Principal Chief Commissioner
Of Income Tax, West Bengal & Sikkim,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata – 700069.
4. Ashim Sil,
Son of Shri Sakti Pada Sil,
Residing at 8/616, Old Kapasdanga,
Post Office and District – Hooghly,

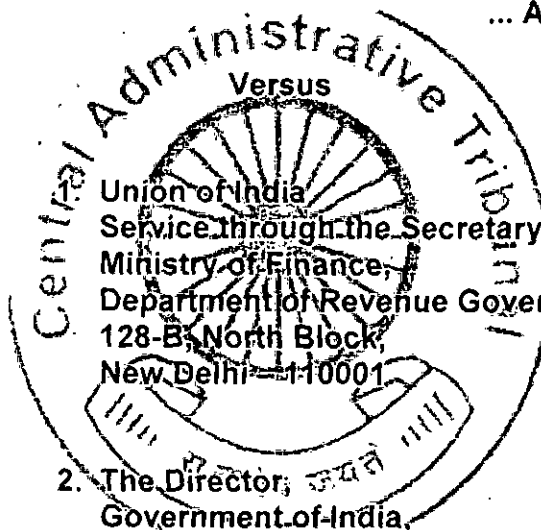
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Pin - 712103

And working to the post of Stenographer Grade-I
In the office of the Principal Chief Commissioner
Of Income Tax, West Bengal & Sikkim,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata - 700069.

5. Falguni Saha,
Daughter of Shri Swapan Kumar Saha,
Residing at 385/1, Vivekananda Road, Vivekpally,
Post Office - Sheoraphuli,
Police Station - Serampore,
District - Hooghly, Pin - 712223
And working to the post of Stenographer Grade-I
In the office of the Principal Chief Commissioner
Of Income Tax, West Bengal & Sikkim,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata - 700069.

... Applicants.



1. Union of India
Service through the Secretary
Ministry of Finance,
Department of Revenue Government of India,
128-B, North Block,
New Delhi - 110001

2. The Director,
Government of India,
Ministry of Finance,
Central Board of Direct Taxes,
Directorate of Income Tax
(Human Resource Development),
ICADR Building, Plot No. 6,
Vasant Kunj Institutional Area, Phase-II,
New Delhi - 110070;
3. The Principal Chief Commissioner of Income
Tax,
West Bengal & Sikkim,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata - 700069.

... Respondents.

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No. O.A. 350/259/2013
 M.A. 350/164/2014
 M.A. 350/211/2018
 M.A. 350/282/2013
 M.A. 350/325/2013
 M.A. 350/384/2017
 M.A. 350/395/2013
 CPC. 350/76/2013

1. Suniti Kr. Gayen,
 S/o. Tejendra Nath Gayen,
 Aged about 44 years,
 Working as OS under
 Respondent No. 3,
 Residing at Vill. – Vivekananda Pally,
 P.O. + P.S. – Sonarpur,
 Kolkata – 700 150.

2. Arshad Reza,
 S/o. Md. Nassiruddin,
 Aged about 39 years,
 Working as OS under
 Respondent No. 3,
 59/J G.J. Khan Road,
 Kolkata – 700 039.

3. Sunil Kr. Mahato,
 S/o. Bisundeo Mahato,
 Aged about 43 years,
 Working as OS under
 Respondents No. 3,
 Residing at BE No. 21,
 House No. 24/1,
 P.O. – Kankinara,
 24 Parganas (N) – 743 126.

4. Satyanarayan Maity,
 S/o. Indu Bhushan Maity,
 Aged about 42 years,
 Working as OS under
 Respondent No. 3,
 Residing at 10, Ghoshal Para Lane,
 Nabagram, P.O. – Mallikpara,
 Sehranpore – 712203.

5. Biplab Kumar Mallik,
 S/o. Kubir Chandra Mallik,
 Aged about 41 years,
 Working as OS under
 Respondent No. 3,
 Residing at Saparaipur,
 P.O. – Santoshpur,
 Maheshtala,
 Kolkata – 700 142.

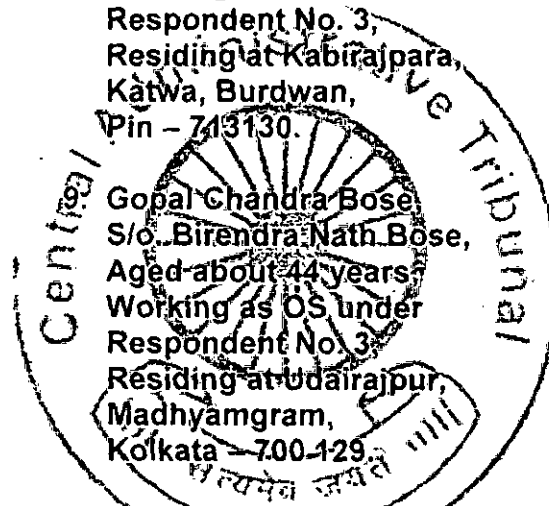
6. Bikash Mahara,
 S/o. Neel Ratan Mahara,

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Aged about 45 years,
Working as OS under
Respondent No. 3,
Residing at 1 No. Bangashree Palli,
Bhadreswar, P.O. – Angus,
Hooghly – 712221.

7. Swapan Das,
S/o. Bhagaban Das,
Aged about 44 years,
Working as OS under
Respondent No. 3,
Residing at Kalitala, H.N. Nag Road,
P.O. – G/P Colony,
Jagachla,
Howrah – 711 112.

8. Debasis Rudra,
S/o. Lal Mohan Rudra,
Aged about 39 years,
Working as OS under
Respondent No. 3,
Residing at Kabirajpara,
Katwa, Burdwan,
Pin – 713130.



9. Gopal Chandra Bose,
S/o. Birendra Nath Bose,
Aged about 44 years,
Working as OS under
Respondent No. 3,
Residing at Udairajpur,
Madhyamgram,
Kolkata – 700 129.
10. Sanjib Biswas,
S/o. Sudhir Ranjan,
Aged about 41 years,
Working as OS under
Respondent No. 3,
Residing at Biswas, 303,
Ashalata Apartment,
26, Ho-Chi-Minh Sarani,
Kolkata – 700 061.

11. Subir Khan,
S/o. Narottam Khan,
Aged about 41 years,
Working as OS under
Respondent No. 3,
Residing at 117, J.C. Khan Road,
Lake View,
Mankundu,
Hooghly – 712139.

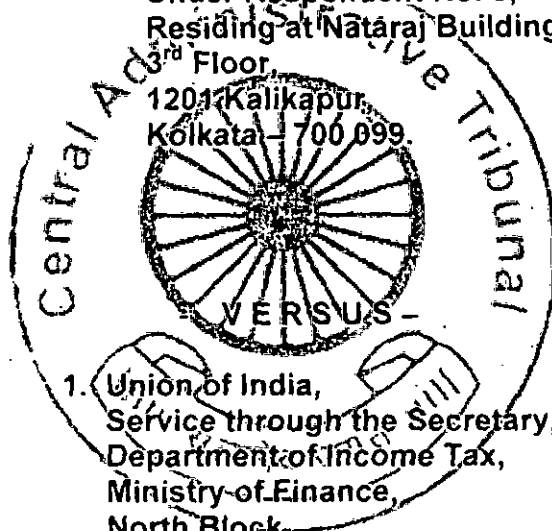
12. Santanu Ghosh,
S/o. Arabinda Ghosh,

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Aged about 42 years,
Working as OS under
Respondent No. 3,
Residing at 341, Sishir Kunja Chinsurah,
Pin - 712 107.

13. Biplab Kumar Debnath,
S/o. Mahitosh Debnath,
Aged about 39 years,
Working as OS
Under Respondent No. 3,
Residing at Vill. - Taldharia,
P.O. - Kora Chindigarh,
Dist. - 24 PGS (N),
P.S. - Barasat,
Pin - 700 130.

14. Dibakar Mridha,
S/o. Sachindranath Mridha,
Aged about 42 years,
Working as OS
Under Respondent No. 3,
Residing at Nataraj Building,
3rd Floor,
1201 Kalikapur,
Kolkata - 700 099.



.. Applicants

1. Union of India,
Service through the Secretary,
Department of Income Tax,
Ministry of Finance,
North Block,
New Delhi - 110 001.
2. Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi - 1.
3. Chief Commissioner of Income Tax (CCA),
P7, Chouroungy Square, Aakar Bhavan,
Kol - 69.
4. Sukanya Guha Majumder,
Income Tax Inspector,
Posted under Commissioner of Income Tax,
Kolkata - I, P7, Chowringee Square,
Aayekar Bhavan,
Kol - 69.
5. Sujoy Saha,
Income Tax Inspector,

bel

Posted under Commissioner of Income Tax,
Kolkata – XXI, Kolkata.
P7, Chowringee Square,
Aayekar Bhavan,
Kol – 69.

.. Respondents

For the Applicants : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. R. Halder, Counsel
Ms. R. Basu, Counsel.
Mr. A. Chakraborty, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Two O.A.s, bearing Nos. 259 of 2013 and No. 615 of 2018 have been taken up together for adjudication as the applicants in the former, ministerial staff and applicants in the latter, namely, Stenographers, are both aspirants for promotion to Inspectors of Income Tax and have variously challenged certain policy notifications of the Respondent authorities.

2. Heard both Ld. Counsel, examined pleadings and documents on record. Written notes of arguments have been filed.
3. O.A. bearing No. 615 of 2018 has been filed by ad-hoc Stenographers (Gr. I) praying for the following relief:-

"(a) Leave be granted to move one single application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have got a common grievances against the same impugned proposal for draft of Recruitment Rules and all of them are similarly circumstanced person.

(b) To quash and/or set aside the impugned paragraph No. (vi) of the Order No. 19 being File No. PCCIT/WB&S/Pers./49/DPC/4E/01/2017-18 dated 25.4.2018 issued by the Assistant Commissioner of Income Tax, Headquarters (Personnel & Establishment), Kolkata whereby they have taken a decision that despite all applicants found fit in the DPC for

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promotion to the post of Income Tax Inspectors and despite they have cleared the departmental examination at this moment, the promotion order cannot be issued in terms of order dated 4.6.2014 passed by this Hon'ble Tribunal in the case of Suniti Kr. Gayen & ors. Vs. Union of India & ors., in O.A. No. 259 of 2013 and M.A. No. 350/00164 of 2014, where there is no nexus between the case of present applicants and the case of Suniti Kr. Gayen's and there is no such interim order has been granted by this Hon'ble Tribunal in the case of Suniti Kr. Gayen's, the respondent authority cannot issue any promotion order in respect of that applicants of Suniti Kr. Gayen to the post of Income Tax Inspector, therefore, withholding the promotion order in respect of the present applicants by wrong reading of the order dated 4.6.2014 in the case of Suniti Kr. Gayen's is otherwise bad in law and illegal and under any circumstances, the present applicants who are found fit in the DPC and who also qualified the departmental examinations for promotion to the post of Income Tax Inspector from Stenographers' Cadre, the promotion order on the basis of such DPC as well as on the basis of qualified in the departmental examination cannot be withheld under any circumstances by the respondents and the respondent authority be directed to issue promotion order immediately in favour of the applicants to the post of Income Tax Inspectors against the vacancy year of 2017-18 with effect from the date when DPC is recommended the same along with all consequential benefits;

(c) To pass an appropriate order directing the respondent authority to issue promotion order in favour of the present applicants to the post of Income Tax Inspector who are belonged to Stenographers' Cadre and have been declared successful in the Departmental Examination for the post of Income Tax Inspector and in terms of the Recruitment Rules existing in the field dated 8th September, 1986, an order of promotion to the post of Income Tax Inspectors be issued with effect from the date when they are became eligible for the same along with all consequential benefits;

(d) To quash and/or set the proposal of draft Recruitment Rules for the post of Executive Assistant dated 5.8.2016 issued by the Income Tax Officer of Directorate of Income Tax, Human Resource Development, Central Board of Direct Taxes being Annexure A-14 of this original application without filling up the vacancy to the post of Income Tax Inspectors from the Stenographers' Cadre by violation of the statutory Recruitment Rules existing in the field dated 8th September, 1986.

4. M.A. No. 320 of 2018 is a prayer for joint prosecution under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987. Since the applicants have a common cause of action and common interest, the M.A. is allowed and is disposed of accordingly.

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M.A. No. 791 of 2018 was filed on 11.10.2018 praying for early disposal. As the matter has been finally heard on 13.11.2018 and reserved for orders, this M.A. becomes infructuous and is disposed of accordingly.

5. In O.A. No. 615 of 2018, the moot issue is that the applicants, Stenographer Gr. II, functioning as adhoc Stenographer Gr. I, had been declared successful in the departmental selection process for adhoc promotion to the post of Income Tax Inspectors and, that, upon filing an earlier Original Application No. 109 of 2018, disposed of on 9.2.2018, the respondent authorities were directed to consider the representations of the applicants for holding meetings of Departmental Promotion Committee (DPC) for the post of Income Tax Inspectors on the basis of statutory recruitment rules of 1986 and to pass a reasoned order within a specific time frame.

That, thereafter, an office order was issued on 25.4.2018 by the concerned respondent authority, in compliance to the orders of the Tribunal, in which the respondent department had admitted that, although the applicants were considered by the Departmental Promotion Committee held for adhoc promotion to the grade of Income Tax Inspectors against vacancies for the vacancy year 2017-2018, and, although they were found fit for such adhoc promotion for Inspector of Income Tax, it was decided not to grant such adhoc promotion to the applicants and other similarly placed Stenographers to the grade of Income Tax Inspectors as it was apprehended that such promotions may violate the observations of Central Administrative Tribunal, Kolkata Bench in its interim order dated 4.6.2014 in O.A. No. 259 of 2013. Being seriously aggrieved, inter alia, with such observations made by the respondent authorities in the speaking order dated 25.4.2018 (Annexure A-21 to the O.A.), the applicants have approached the Tribunal, inter alia, for redressal of their grievance in the instant O.A.



6. As the contents of the speaking order is under challenge, the same is examined in detail. The order is reproduced as under:-

"GOVERNMENT OF INDIA
O/o. THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
WEST BENGAL & SIKKIM
AAYAKAR BHAWAN, P-7, CHOWRINGHEE SQUARE, KOLKATA - 700 069

F. No.: PCCT/ WB & S/ Pers./ 49/ DPC/ 4E/ 01/ 2017 - 18/

Date: 25.04.2018

ORDER NO.: 19

Whereas Shri Ashim Mukherjee, Shri Subhasis Chatterjee, Shri Amit Mukherjee, Shri Ashim Sil, and Smt. Falguni Saha, all presently working as ad-hoc Stenographers, Grade-I (erstwhile Stenographers, Grade-II), in the West Bengal & Sikkim region, of the Income Tax department, had filed an O.A. bearing No. 350/109/2018, before the Hon'ble Central Administrative Tribunal (CAT), Calcutta Bench, Kolkata, praying for conduct of DPC within a specific period of time for considering their promotion to the post of Income Tax Inspector as they had already passed the departmental examination for Income Tax Inspector and rendered themselves eligible for such promotion as per the extant Recruitment Rules for the said cadre.

Whereas the Hon'ble CAT, Calcutta Bench, Kolkata, vide its order dated 09.02.2018, in the matter, has directed this department, the respondent of the said case, ".....to examine and verify the case of the applicants and if the applicants are found suitable and genuine as per the Recruitment Rules, in extent, their case will be considered for placing the matter before the DPC. The respondent authorities are also directed to consider and dispose of the individual representations dated 8.1.2018 within a period of two months from the date of receipt of the copy of this order with a reasoned and speaking order"

The cases of the applicants, as aforesaid, for promotion to the grade of Inspector of Income Tax, have been duly examined with reference to the relevant office records, in pursuance of the aforesaid order dated 09.02.2018, of the Hon'ble CAT, Calcutta Bench, Kolkata. On such examination, it is observed that,

- (i) All the applicants are presently working as Stenographer, Grade - II (erstwhile Stenographer, Grade - III, with Grade Pay: Rs. 2,400/-). However, they have been allowed ad-hoc promotion to the grade of Stenographer, Grade - I (erstwhile Stenographer, Grade - II, with Grade Pay: Rs. 4,200/-), during the current Vacancy Year: 2017 - 18.
- (ii) All the applicants were eligible for ad-hoc promotion as Inspector of Income Tax, as per the provisions of the relevant recruitment rules, against the vacancies of the Vacancy year: 2017 - 18.
- (iii) The cases of the applicants were considered by the DPC held for ad-hoc promotion to the grade of Inspector of Income Tax, against the vacancies of the Vacancy year: 2017 - 18, and they were found 'FIT' for such ad-hoc promotion as Inspector of Income Tax, on the basis of their ACRs/ APARs for the relevant period, by the said DPC.
- (iv) However, the concerned DPC also recorded the following comments in the minutes regarding the Stenographers, Grade - III, with Grade Pay: Rs. 2,400/-, including the applicants:

"13. It was noted by the Committee that, some persons holding the post of Stenographers, Grade-II (erstwhile Stenographers, Grade-III, with a Grade Pay of Rs. 2400/-), and who had subsequently been promoted to the grade of Stenographer, Grade-II, with a Grade Pay of Rs. 4200/-, purely on an ad-hoc basis, were included in the panel as their names came into the consideration zone against the vacancies earmarked for them by counting their regular service in the grade of Stenographers, Grade-II (erstwhile stenographers, Grade-III, with a Grade Pay of Rs. 2400/-). However, the Committee desired to keep it on record that, such recommendations in respect of Stenographers, Grade-II (erstwhile Stenographers, Grade-III, with a Grade Pay of Rs. 2400/-), were made by the Committee in the capacity of a recommending authority only. Final decision regarding releasing names of such persons from the panel for actual ad-hoc promotion would be taken by the appointing authority keeping in view the interim order of the Hon'ble CAT, Calcutta Bench, Kolkata, delivered on 04.06.2014, in the case of Suniti K. Gayen & Others -vs.- Union of India & Others."

- (v) In the aforesaid order dated 04.06.2014, the Hon'ble CAT, Calcutta Bench, Kolkata, had observed that, Stenographer, Grade-II (erstwhile Stenographer, Grade-III), is not a feeder grade for promotion to the grade of Inspector of Income Tax. That order was passed by a two - member bench of the Hon'ble CAT, Calcutta Bench, Kolkata. The operating part of this order is as under:

"....However, from a clarification dated 27.05.14 of the Dy. Director of Income Tax (HRD) we find that the Stenographer Grade II (erstwhile Stenographer III) are to be considered only for Stenographer I and such grades are to merge with executive Assistants (EA grade). As such we find that the contention of the applicant is a mere apprehension and it is unambiguously clarified by the respondents in para 4 of the said instruction dated 27.05.14 that Stenographers II (erstwhile Stenographer III) are to be considered for Stenographer I and not for the post of Inspector. As such no cause of action has arisen for the present.

Respondents are however, directed to adhere to their instructions and file reply within a period of four weeks in order to indicate whether they are proposing to fill up Inspector ITI posts with Steno Grade III."

- (vi) In view of such comments of the DPC as already mentioned above, the matter was considered by the administration, keeping in view the interim judgement of the Hon'ble CAT, Calcutta Bench, Kolkata, dated 04.06.2014, and it was decided not to grant such ad-hoc promotions immediately to the applicants, and other similarly placed stenographers, to the grade of Inspector of Income Tax, since it might violate the aforesaid observation of the Hon'ble CAT, Calcutta Bench, Kolkata, in its interim order dated 04.06.2014. However, the matter was referred to the Principal Director General of Income Tax (HRD), CBDT, New Delhi, vide this office letter bearing No. PCCT/ WB & S/ Pers./ 49/ DPC/ 4E/01/ 207 - 18/ 26 dated 02/ 03.04.2018. Clarification from the Principal Director General of Income Tax (HRD), CBDT, New Delhi, is awaited.

It is clear from the above observations that, the applicants have already been considered for ad-hoc promotion to the grade of Inspector of Income Tax, against the vacancies of the Vacancy year: 2017 - 18, by the concerned DPC, and they were also found 'FIT' for such ad-hoc promotion. However, no order effecting such ad-hoc promotion, in respect of the applicants, as per the recommendation of the DPC, has been passed in view of the interim order of the Hon'ble CAT, Calcutta Bench, Kolkata, dated 04.06.2014, in the case of Suniti K. Gayen & Others -vs.- Union of India & Others.

With this order, all the representations of the applicants in the matter stand disposed of.

-Sd-

(Anupam Majumder)

Assistant Commissioner of Income Tax
Headquarters (Personnel & Establishment), Kolkata"

The following is inferred from the above mentioned speaking order:-

- 1) The applicants are substantively working as Steno Gr. II but were allowed ad hoc promotion to Steno Grade I during vacancy year 2017-18.
- 2) The applicants were eligible for ad hoc promotion as Inspector of Income Tax as per provisions of relevant recruitment rules against the vacancy year 2017-2018.
- 3) The case of the applicants were considered by the DPC for ad hoc promotion to the grade of Inspector of Income Tax against the vacancies for the vacancy year 2017-2018 and they were found 'FIT' for such ad hoc promotion as Inspector of Income Tax on the basis of their ACR/APARs, for the relevant period, by the said DPC.
- 4) The concerned DPC recorded that while the DPC's comments were in the capacity of a recommendatory authority, final decision would be taken by the appointing authority keeping in view the interim order of CAT, Calcutta Bench delivered on 4.6.2014 in Suniti Kr. Gayen v. Union of India & ors.
- 5) While issuing the said order the Tribunal had observed as follows:-

"It is unambiguously clarified by the respondents in para 4 of the said instruction dated 27.4.2014 that Stenographers II (erstwhile Steno III) are to be considered for Steno I and not for post of Inspector.

Respondents are, however, directed to adhere to their instructions and file reply within a period of four weeks in order to indicate whether they are proposing to fill up Income Tax Inspector posts with Steno Gr. III."

- 6) Given the above observations of the Tribunal dated 4.6.2014 in O.A. No. 259 of 2013 (Suniti Kr. Gayen v. U.O.I. & ors.) the respondent authorities

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have decided not to grant ad hoc promotions to applicants, even though found fit to avoid violation of CAT's orders.

The respondents have further admitted as follows:-

As per Recruitment Rules read with DOMS instruction dated 4.6.2001 of F.No. 48/1/2001-AP/DOMS, Ministerial cadre posts viz. Tax Assistant, Sr. Tax Assistant, Office Superintendent and Stenographers' cadre posts viz. Stenographer Gr. I, II & III, form feeder grades for promotion to the grade of Inspector subject to 3 years service in the grade and passing the Departmental Examination for Income Tax Inspectors.

It is, therefore, necessary to understand as to how the clarification dated 27.5.2014 of the Deputy Director of Income Tax (HRD), particularly para 4 thereof, was interpreted to be an embargo on grant of promotion to the applicants. Clarification dated 27.5.2014 is reproduced as under, and the following are inferred therefrom:

"F. No. HRD/CM/102/10/2014-15/1510

Dated: 27/05/2014

To,

The Principal Chief Commissioners of Income Tax,
Gujarat / Karnataka & Goa / Madhya Pradesh & Chattisgarh/
Odisha / NWR / Tamil Nadu / Delhi / NER / Andhra Pradesh/
Rajasthan / UP (West) & Uttarakhand / Kerala/
West Bengal & Sikkim / UP (East) / Mumbai/
Nagpur / Bihar & Jharkhand / Pune.

Sir/ Madam,

Subject: Instructions for conducting of DPCs for vacancy year 2013-14-reg.

Kindly refer to the subject mentioned above. DPCs are to be conducted for Group B & C grades (and also for the posts of Pr. Administrative Officer, which is a Group 'A' post) by the Pr. CCsIT for the vacancy year 2013-14. The DPCs have to take into account the increase in number of posts in these grades as a consequence of Cabinet approval in this regard. The notification of revised Recruitment Rules for these grades is currently under process. Also, new Recruitment Rules are to be notified for the Executive Assistant grade. All this is likely to take some more time and it would not be advisable for conduct of DPCs after notification of new/revised Recruitment Rules.

2. DoPT, vide their OM no. AB. 14017/79/2006-Estt.(RR) dt. 6.9.2007 has emphasised that as RRs are statutory in nature, they will not cease to operate unless they are repealed. The observations of the Supreme Court in Uol v. V. Ramakrishnan

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viz., "Draft Rules cannot form the basis of promotion, when rules to the contrary are holding the field" have been reproduced in this OM.

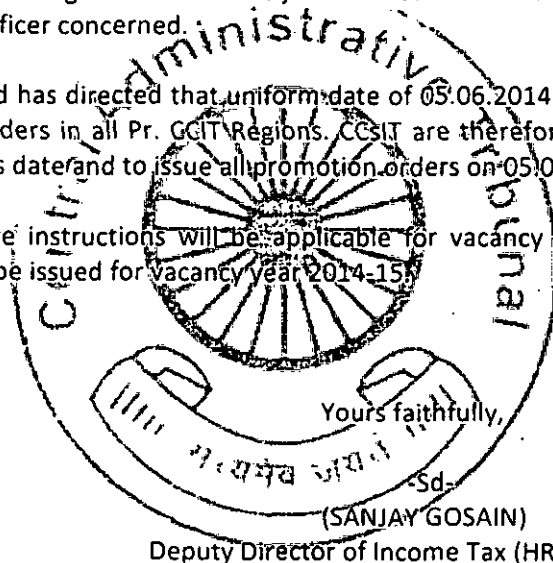
3. Accordingly, I am directed to request you to kindly conduct DPCs on basis of the existing Recruitment Rules for the respective grades.

4. For the 'Executive Assistant' (EA) grade, which has been approved to be created by merger of the grades of OS, Sr. "TA" & Steno Gr.I, the new Recruitment Rules for Executive Assistant cadre is also not yet notified. Therefore, I am directed to clarify that current Recruitment Rules for the grades of OS, Sr. TA & Steno Gr. I (which would merge into the single cadre of Executive Assistant upon notification of the Recruitment Rules for the latter) may be utilized by DPCs. In other words, DPCs for promotion of Sr. TA to OS, TA to Sr. TA & Steno Gr.II (erstwhile Steno Grade III) to Steno Gr. I are to be conducted. For the limited purpose of quantifying vacancies of r conducting DPCs, the number of posts notified for the EA grade may be further trifurcated in each CCA region among Os/Sr. TA/Steno Gr.I in the same ratio as the pre-restructuring number of sanctioned posts in these grades.

5. It is further clarified that as per the existing DoPT and CBDT instructions on inter-Region. transfer for the purpose of reckoning prescribed years' regular service in the grade, the service rendered by an inter-region transferee in the old region shall not be counted in the new region which he has joined on such transfer, if the transfer is on the request of the officer concerned.

6. The Board has directed that uniform date of 05.06.2014 has been fixed for issue of promotion Orders in all Pr. CCIT Regions. CCIT are therefore requested to conduct DPCs prior to this date and to issue all promotion orders on 05.06.2014.

7. The above instructions will be applicable for vacancy year 2013-14. Separate instructions will be issued for vacancy year 2014-15.



The above instructions, upon analysis, deciphers the following:-

- (i) The instructions are valid for conducting DPC only for the year 2013-14 and that separate instructions would be issued for vacancy year 2014-2015. No separate instructions for holding DPC for the year subsequent to the year 2013-2014 have been produced before us.
- (ii) The Revised Recruitment Rules along with new Recruitment Rules for Executive Assistant Grade are yet to be notified and the preparation is under process.

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- (iii) The DPCs from Stenographer Gr. III to Stenographer Gr. I are to be conducted pending new recruitment rules for Executive Assistant cadre which was to create a merger of the grades of OS/Sr. TA/Steno Gr. I.

From the above, two things are abundantly clear:

- (a) That the clarification related only for holding DPC for the year 2013-2014 and not thereafter and the present applicants, whose promotions are being considered for the year 2017-2018, are not covered by the same.

- (b) The said clarification allowed DPCs to be held for Stenographer Gr. II only for the purpose of promotion to Stenographer Gr. I. No clarification/views were offered on the promotion channel of the Stenographers to the post of Inspectors of Income Tax.

Hereafter, we refer to the respondents' instructions dated 4.6.2001 on filling up posts in Gr. 'B', 'C' and 'D' consequent to restructuring plan approved by the Union Cabinet and the instructions for filling up posts of Inspectors by promotion are extracted as follows (emphasis supplied):-

"Subject: Filling up of posts in Group 'B', 'C' & 'D' consequent to restructuring plan approved by the Union Cabinet – instructions – reg.

X x x x x x x x x x

INSPECTOR

Annexure

	RECRUITMENT YEAR 2000-2001	RECRUITMENT YEAR 2001-2002
Cadre	Inspector	Inspector
Pay Scale	5500-175-9000	5500-175-9000
Cadre Strength	9490	9490
Feeder cadres &	100% by promotion with one year relaxation in the qualifying service	2/3rd of vacancies by promotion

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Eligibility conditions	<p>Office Superintendent Assistant Tax Assistant UDC Steno Grade I/II/III With three years service in the respective grade and should have qualified the Departmental Examination for Income Tax Inspectors. The names of all such qualified candidates shall be arranged cadre wise in two separate lists for each cadre. In the first list the names of all the qualified candidates falling in the cadre shall be arranged in order of seniority in the department. In the second list the names of all the qualified persons falling in the cadre shall be arranged according to the date or as the case may be the year of passing the Departmental Examination provided that the persons who pass the examination on the same date shall be arranged according to seniority in the Department. On the approval of persons in the said list relating to each cadre by the Departmental Promotion committee the names of all the selected candidates shall be arranged in two select lists in the ratio of 3:1, one containing the names of persons from both the cadre on the basis of seniority and the other containing the names of the persons from both the cadres on the basis of the date or as the case may be the year of passing the departmental examination. Vacancies in the promotion quota shall be filled from the said two lists in such a manner that the ratio of 3:1 is maintained between the ministerial cadre and the Steno Cadre. For the purpose persons working in the higher grade will rank senior to persons working the lower grade. In other words there are only two changes made to the existing recruitment rules i.e. relaxation of one year in qualifying service and diversion of direct quota to promotion</p>	<p>1/3rd by direct recruitment. DR vacancies intimated to the Implementation Cell for necessary approval from the Dept. of Expenditure For filling up. Eligible cadres Office Superintendent Senior Tax Assistant (the merged cadre incl. DEO Grade C and DEO Grade B) Tax Assistant UDC Steno Grade I/II/III With three years service in the respective grade and should have qualified the Departmental Examination for Income Tax Inspectors. The names of all such qualified candidates shall be arranged cadre wise in two separate lists for cadre. In the first list the names of all the qualified candidates falling in the cadre shall be arranged in order of seniority in the department. In the second seniority list, the names of all the qualified persons falling in the cadre shall be arranged according to the date as the case may be the year of passing Departmental Examination provided that persons who pass the examination on that date shall be arranged according to senior Department. On the approval of persons in the list relating to each cadre by the Departmental Promotion Committee the names of all the candidates shall be arranged in two select the ratio of 3:1, one containing the persons from both the cadre on the seniority and the other containing the names persons from both the cadres on the base date or as the case may be the year of passing departmental examination. Vacancies of promotion quota shall be filled from the lists in such a</p>
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	quota.	manner that the ratio of 3:1 is maintained between the ministerial cadre (including the DEOs) and the Steno Cadre. For the purpose persons working in the higher grade will rank senior to persons working in the lower grade. In other words, existing recruitment rules for the cadre are to be followed.
Composition and inter-se seniority in the cadre	Inspectors remaining in the cadre for want of promotion: Others as per their order of selection by the DPC	Inspectors remaining in the cadre for want of promotion: Others as per their order of selection by it.
Method of determining vacancies	1. Sanctioned Strength. 2. Working strength. 3. Number of vacancies (1-2)	1. Sanctioned Strength. 2. Working strength. 3. Number of vacancies (1-2)

The instructions dated 4.6.2001 clarifies that:

- (a) The existing recruitment rules for the cadre are to be followed.
- (b) That, Steno Gr. IV/III/II are all feeder posts for promotion to Inspectors of Income Tax.

The Respondents confirmed during hearing that the instructions dated 4.2.2001 continue to prevail.

The respondents have furnished a communication dated 17.11.2015 in which the Deputy Commissioner of Income Tax, Hqrs. (Pers. & Estt), Kolkata on behalf of the Principal Chief Commissioner of Income Tax, West Bengal & Sikkim had stated as follows:-

"F. No. : Review DPC for promotion to ITI (Sub.) / 2015 - 16 / 12616 Date: 17.11.2015

To
The Income Tax Officer, Hqrs. (OSD),
O/o. the Principal Chief Commissioner of Income Tax,
West Bengal & Sikkim,
Aayakar Bhawan,
Kolkata

Sub: Speedy settlement of the case of Suniti Kr. Gayen & Ors. -vs- Union of India & Ors. in OA No. 259 of 2013 read with MA No. 350/00164/2014 - pursuance of - request for.

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Ref.: Interim judgement of the Hon'ble CAT, Calcutta Bench, Kolkata, in OA No. 259 of 2013 read with MA o. 350/00164/2014 dated 04.06.2014.

Please refer to the above.

The Hon'ble CAT, Calcutta Bench, Kolkata, had passed an interim judgement dated 04.06.2014, inter – alia, observing that Stenographers, Grade – II (erstwhile Stenographers, Grade – III) are to be considered only for promotion at Stenographer, Grade – I, and not for the post of Inspector of Income Tax. While passing such interim order, the Hon'ble CAT, had referred to the Para 4 of the CBDT's letter dated 27.05.2014.

On careful reading of Para 4 of the letter dated 27.05.2014, it appears that the process of conducting DPCs for promotion to the Grades of Office Superintendent, Senior Tax Assistant, & Stenographer, Grade – I, has been elaborated therein, pending the notification of recruitment rules for the grade of Executive Assistant, approved to be created in the process of restructuring. Nowhere in the said paragraph, it has been mentioned that Stenographers, Grade – II (erstwhile Stenographers, Grade – III) will not be considered for promotion as Inspector of Income Tax.

However, in view of such observation of the Hon'ble CAT, Stenographers, Grade – III (since re – designated as Stenographer, Grade – II, with Grade Pay of Rs. 2400/-), otherwise satisfying the eligibility conditions as per the relevant recruitment rules, were kept out of consideration while holding the original DPG for promotion to the grade of Inspector of Income Tax, against the vacancy year: 2013 – 14. Similar stand was also taken while holding original DPGs for promotion to the said grade (Inspector of Income Tax) for the vacancy years: 2014 – 15, & 2015 – 16.

In the process of implementation of the judgement of the Hon'ble Apex Court in the N. R. Parmar case, the panels for promotions to the grade of Inspector of Income Tax, for the vacancy years: 2013 – 14, 2014 – 15, & 2015 – 16, have also been reviewed by holding review DPCs. The review DPCs, while drawing up revised panels for the said vacancy years, have taken a contrary stand, and observed that Stenographers, Grade – III, cannot be kept out of consideration, if they satisfy other eligibility conditions, since the relevant recruitment rules categorically prescribe Stenographer, Grade – III, as one of the feeder grades. On the basis of such observation, it has included names of Stenographers, Grade – III (since re – designated as Stenographer, Grade – II, with Grade Pay of Rs. 2400/-), in the revised panels finalized by it for the post of Inspector of Income Tax, with a comment that such inclusion is made by it only as a recommending authority, and the final decision regarding release of the names of such persons from the panels for actual promotion as Inspector of Income Tax, has to be taken by the appointing authority, keeping in view the interim judgement of the Hon'ble CAT, as aforesaid.

In the backdrop of the situation elaborated above, the matter has been examined by the Principal Chief Commissioner of Income Tax, West Bengal & Sikkim, with all relevant rules & records, and it has been decided to pursue the matter through the departmental counsel in the Hon'ble CAT, Calcutta Bench, Kolkata, for expeditious settlement of the issue.

Under the circumstances, I am directed to request you to pursue the matter in the Hon'ble CAT, Calcutta Bench, Kolkata, on top priority basis so as to ensure the expeditious final judgement from that end in the matter.

It may also be mentioned in this context, that this department has already filed its version in the case, as directed by the Hon'ble CAT, Calcutta Bench, Kolkata, in its interim judgement as mentioned herein above, stating inter – alia, that Stenographer, Grade – III, is a feeder Cadre for promotion as Inspector of Income Tax, as per the

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existing recruitment rules, and they cannot be kept out of consideration in normal course. It may also be mentioned that, recruitment rules are statutory in nature, and they cannot be altered or modified by issuing mere executive instructions.

This issues with the approval of the Principal Chief Commissioner of Income Tax, West Bengal & Sikkim.

(SANAT KUMAR RAHA)

Deputy Commissioner of Income Tax, Hqrs. (Pers. & Estt.), Kolkata
For the Principal Chief Commissioner of Income Tax, W.B. & Sikkim"

This communication confirms the view that para 4 of letter dated 27.5.2014 of CBDT did not anywhere state that Steno II (erstwhile Steno III) will not be considered for promotion as Inspector of Income Tax. This view has been reiterated by the respondents in their reply in O.A. No. 259 of 2013, wherein the respondents had categorically affirmed that any such interim order as prayed for by applicants in O.A. 259 of 2013 would deny promotion to other eligible candidates.

The CBDT in their letter dated 1.6.2018 has also clarified that "as per existing RRs, the posts of Steno Gr. II (erstwhile Steno Gr. III) continues to be the feeder grade for the post of Steno Gr. I as well as Income Tax Inspectors subject to fulfillment of other criterion for passing of departmental examination."

7. Accordingly, we are of the considered view that as because:-

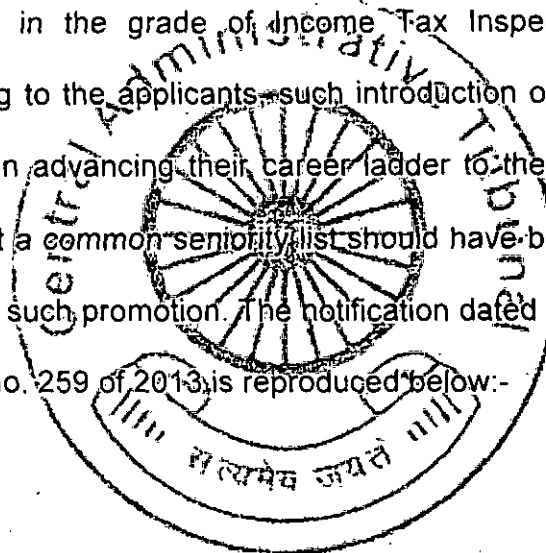
- (a) The applicants admittedly have been declared 'fit' by the respondent authorities in the DPC held for adhoc promotion to the post of Inspector of Income Tax against vacancies for the vacancy year 2017-2018 and found fit for such adhoc promotion as Inspector of Income Tax on the basis of ACR/APAR for the relevant period by the said DPC.
- (b) The clarification dated 27.5.2014 of the Deputy Director, Income Tax (HRD) that has been referred to in the Tribunal's order dated 4.6.2014 under no way applies to the vacancy year 2017-2018 to promotion to Inspectors of Income Tax and given the fact that

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instructions of 4.6.2001 continue to prevail, there appears to be no impediment in actual implementation and grant of promotion on adhoc basis to the applicants for the vacancy year 2017-2018.

Hence, the respondents are at liberty to grant promotion to the applicants as per law towards ad hoc promotion as Inspector of Income Tax untrammelled by observations dated 4.6.2014 in O.A. No. 259 of 2013.

In O.A. No. 259/2013, the applicants, who were holding the posts of Office Superintendents in the office of CIT, Kolkata are aggrieved by notification dated 8.9.86 of Department of Revenue, Ministry of Finance which prescribed the quota of 3:1 from the Ministerial cadre and Stenographers' Cadre respectively for filling up vacancies in the grade of Income Tax Inspectors earmarked for promotion. According to the applicants, such introduction of quota was going to act as a constraint in advancing their career ladder to the post of Inspector of Income Tax and that a common seniority list should have been published before holding any DPC for such promotion. The notification dated 8.9.96 which is being challenged in O.A. No. 259 of 2013 is reproduced below:-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 8th Sept., 86

NOTIFICATION

GSR 768 In exercise of the powers conferred by the Proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Income Tax Department (Inspector) Recruitment Rules, 1969, namely:-

1. (1) These rules may be called the Income Tax Department (Inspector) Recruitment (Amendment) Rules, 1986.
- (2) They shall be deemed to have come into force on the 1st day of October, 1985.

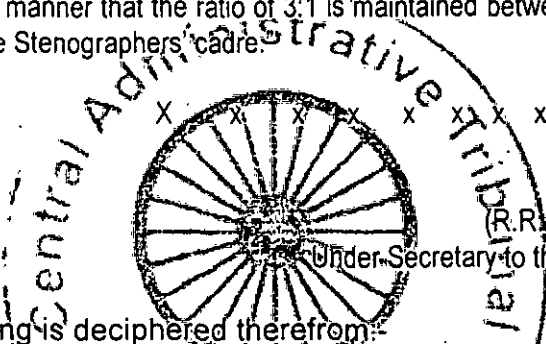
In the Schedule to the Income-tax Department (Inspector) Recruitment Rules, 1969:-

- (a) In column 3, for the word and figures "Class III", the word and letter "Group C" shall be substituted;

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- (b) In column 11, for the existing entries and the Note thereunder, the following entries shall be substituted, namely:-

"Supervisors Grade-I and Grade-II, Head Clerks, Tax Assistants and Upper Division Clerks (hereafter referred to as the Ministerial Cadre), and Stenographers Grade-I, Grade-II and Grade-III (hereafter referred to as Stenographers' Cadre), with 3 years' service in the respective grade, who have qualified in the Departmental Examination for Income-tax Inspectors. The names of all such qualified candidates shall be arranged Cadre-wise, in, two separate lists for each Cadre. In the first list, the names of all the qualified candidates falling in a Cadre shall be arranged in order of seniority in the Department. In the second list, the names of all the qualified persons falling in a Cadre shall be arranged according to the date or, as the case may be, the year of passing the Departmental Examination, provided that the persons who pass the examination on the same date shall be arranged on the approval of persons in the said lists, relating to each Cadre, by the Departmental Promotion Committee, the names of all the selected candidates shall be arranged in two select lists in the ratio of 3:1, one containing the names of the persons from both the Cadres on the basis of the date or, as the case may be, the year of passing the Departmental Examination. Vacancies in the promotion quota shall be filled from the said two select lists in such a manner that the ratio of 3:1 is maintained between the Ministerial Cadre and the Stenographers' cadre."



 The following is deciphered therefrom:-

That, (i) This notification introduces the Income Tax Department Inspector Recruitment (Amendment) Rules, 1986 which will come into force from 1st day of October, 1985;

(ii) That, there will be two cadres, namely, Ministerial, comprising Supervisor Gr. I, Gr. II, Head Clerks, Tax Assistants and UDCs and the Stenographers' cadre, comprising Stenographer Gr. I/II/III. Incumbents in both cadres with three years service in the respective grades who have qualified in the departmental examination for Income Tax Inspectors shall be arranged cadre-wise. There shall be two lists in each cadre, the first will comprise all qualified candidates arranged in the order of seniority in the Department. In second, the names of all qualified incumbents in a cadre arranged according to the date or the year of passing the departmental examination.

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(iii) After consideration of the DPC, the names of all selected candidates shall be arranged in two select lists in the ratio of 3:1, one containing the names of persons from both the cadres on the basis of seniority and the other containing names of persons from both cadres on the basis of the date or the year of departmental examination.

(iv) Vacancies in the promotional quota shall be filled from the said two select list in such a manner that the ratio 3:1 shall be maintained between the Ministerial and the Stenographers' Cadre. The applicants in O.A. No. 259 of 2013 have advanced the following grounds for claiming their relief:-

- (a) That, fixing ratio 3:1 ratio by the notification so challenged is discriminatory and violates Article 14 and 16 of the Constitution of India as because an incumbent holding the post of a Stenographer Gr. III will be posted to the promotional Inspector just after completion of three years but those appointed in the Ministerial Cadre will take about 15 to 17 years to reach the said promotional avenue.
- (b) Due to introduction of the new policy, the juniors (private respondents in the O.A.) will become senior to the applicants as because they would be promoted earlier to Inspector of Income Tax as compared to the applicants.

The respondents have contended that, following the directions of CBDT vide their letter dated 27.5.2014, a supplementary DPC meeting was held on the basis of existing recruitment rules and in adherence to the directions of the CAT, Calcutta Bench dated 4.6.2014. The DPC further met on 10.6.2014 to review the panels for regular promotion against the vacancies of 2013-2014 and that a consolidated panel was finally drawn up and the zone of consideration was determined as per existing gradation lists of the feeder grades as restricted by the directions of the Tribunal dated 4.6.2014.

That, the ratio of 3:1 for Ministerial and Stenographers' cadre respectively was made operational with effect from 1.10.1985 much before

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joining of the applicants in the department and that no new policy had been framed by Government of India so as to deprive the applicants from their promotion. The applicants were appointed in terms of recruitment rules which existed much earlier to their entry into government service and that the government in its right and capacity of the employer had an inherent right to amend the recruitment rules of any cadre. According to the respondents, the officials of ministerial cadre have two separate avenue of promotion, one is to the grade of Inspector and other is to the grade of Administrative Officer and that despite submissions made by the applicants to the contrary, nowhere in the communication of CBDT dated 31.5.2013 it has been proposed that the post of Executive Assistant is a feeder post to Inspector of Income Tax. The communication dated 31.5.2013 only refers to constitution of a new cadre, which is only proposed and yet to be notified.

According to the respondents, the delay in promotion of the applicants is not attributable to any infirmity in the recruitment rules but is on account of the fact that number of candidates eligible from the Ministerial cadre is much larger than that in the Stenographers' cadre and as the said recruitment rules does not discriminate on the basis of caste, creed, religion, place of birth etc. the said cannot be said to be violative of the provisions contained in the Constitution of India.

Upon a perusal of instructions for filling up of post of Inspector as notified on 4.6.2001, it is seen that all the feeder cadres will, after three years of service in their respective cadre, and after qualifying in the departmental examination, will become eligible for the post of Income Tax Inspectors subject to their recommendation by the DPC on satisfaction of other suitable criteria as prescribed. Hence, no discriminatory clause or provision is detected in the said instruction which emanates from the recruitment rules of 1969 as amended in 1986.

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The applicants have challenged the 1986 notification as a new policy. This argument is not tenable as because the applicants have only been appointed from 1996 onwards and, under no circumstances, a policy which was prevalent for almost a decade prior to the appointment, can be challenged as a new policy by the applicants who have actually been appointed on the basis of Rules which prevailed at the time of their entry and which was not under challenge at the entry stage. In the written notes of arguments, the respondents have furnished a list whereby it is seen that 8 of the 13 applicants in O.A. 259 of 2013, namely, Shri Suniti Kr. Gayen, Arshad Reza, Sunil Kr. Mahato, Satyanarayan Maity, Biplab Kumar Mallick, Bikash Mahara, Swapan Das, Debasis Rudra and Gopal Chandra Bose have already been promoted as inspectors since June, 2014/December, 2014 respectively. The respondents have not averred anywhere that the remaining applicants in O.A. 259/2013 will be deprived of their scope of promotion once eligible for the same.

It is trite, that, once candidates participated in a promotional process the principle of estoppel, applies. As held in **Union of India v. M. Chandrasekharan, (1998) 3 SCC 694** candidates who appeared in the DPC after being made aware of the procedure for promotion cannot question the procedure even if unsuccessful in the same. The applicants are undoubtedly the beneficiaries of the notification of September, 1986 which they now seek to challenge and, after having accepted promotion on the basis of such policy, they cannot turn around and question the principle of equity involved in the same.

The applicants in O.A. No. 259 of 2013 have challenged the notification dated 8.9.1986. The applicants in O.A. No. 615 of 2018 have challenged notification dated 5.8.2016. It has been held by the Hon'ble Apex Court in the **State of Orissa v. Bhikari Charan Khuntia, (2003) 10 SCC 144** recruitment is a matter of policy and the policy decision of government

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regarding recruitment/promotion is not amenable to judicial review unless the same is arbitrary. The Hon'ble Apex Court as in ***Union of India v. Puspa Rani (2008) 9 SCC 242*** has further held that the Courts should not lay down modes and procedures for recruitment and the only scope of judicial review arises if proved that the decisions were malafide or influenced by extraneous reasons. In the instant matter, no arbitrariness is established as because both cadres have been given equal opportunity of promotion. In fact, for every three incumbents in Ministerial cadre, only one incumbent in Stenographers' cadre are to be considered for promotion to Income Tax Inspector. It is not the case of the Stenographers that they have been discriminated against in the 1986 policy. Neither have the applicants established that any malafide or extraneous considerations have guided the 1986 notification and we do not find any scope of judicial review that prompts us to intervene in the same. The notification dated 5.8.2016 assailed by applicants in O.A. No. 615 of 2018 is in a draft stage and it is the prerogative of the Respondents to finalize the same after considering objections as received thereupon.

In ***N.T. Devin Kutti and others v. Karnataka Public Service Commission and others (1990) 3 SCC 157***, the Hon'ble Apex Court, inter alia, held that where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with existing Rules or Govt. orders and, if, it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and government orders. The court further held that selection must be regulated in accordance with the rules and orders which were in force on the date of advertisement.

Following the Hon'ble Apex Court's decisions in ***B.L. Gupta and another v. MCD (1998) 9 SCC 223***, ***Y.V. Rangaiah v. J. Sreenivas Rao (1983) 3 SCC 284***, ***P. Ganeshwar Rao v. State of AP (1989) SCC (L&S) 123***

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and *P. Mahendra v. State of Karnataka (1990) 1 SCC 411* as well as *Vimal Kumari v. State of Haryana (1998) 4 SCC 114*, it emerges that the competent authority may take a decision to amend the Rules and fill up all vacancies in accordance with amended rules. If such a decision is taken by the competent authority, that would justify the delay in making the promotion against the existing vacancies.

8. O.A. No. 615 of 2018 is, therefore, disposed of with a direction to the respondents to grant promotion to the applicants therein according to law and without being untrammelled by observations of the Tribunal dated 4.6.2014. This Tribunal does not deem it fit to intervene in the process of finalization of draft recruitment rules of Executive Assistants dated 5.6.2018.

M.A. bearing No. 320 of 2018 for joint prosecution is allowed and disposed of accordingly. M.A. No. 791 of 2018 for early disposal is infructuous as the Tribunal has heard the matter finally and has disposed of the same.

O.A. No. 259 of 2013 is disposed of without any intervention in the policy notification dated September, 1986. At the same time, the respondent No. 3, namely, the Chief Commissioner of Income Tax, Aayakar Bhawan, Kolkata is directed to examine the representations of applicants in O.A. No. 259 of 2013 and to recommend to the competent authority the scope of introducing recruitment/promotional policies with particular reference to intake at the entry point of the cadre. The exercise should be completed within 8 weeks of the date of receipt of this order.

M.A. No. 325 of 2013, M.A. 282 of 2013 and M.A. No. 164 of 2014 praying for stay of DPC have become infructuous given the fact that 8 of 13 applicants in O.A. No. 259 of 2013 have been promoted after conducting regular DPC and there is no justifiable ground for their grievance in this regard. M.A. No. 384 of 2017 for early hearing is disposed of with the issue of the orders in O.A. No. 259 of 2013. CPC No. 76 of 2013 arising from O.A. No. 259 of 2013 is also disposed of as the respondents have categorically asserted that there has been

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no violation of the orders of the Tribunal dated 8.8.2013 and no promotion was given to the Stenographers to the post of Inspector of Income Tax in abidance to the Tribunal's orders with respect to the same.

With these directions, O.A. No. 615 of 2018 as well as O.A. No. 259 of 2013 are disposed of along with related M.A.s and CPC. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Bidisha Banerjee)
Judicial Member

