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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO. 180/00511 of 2015**

**Wednesday, this the 27<sup>th</sup> day of November, 2019**

**CORAM**

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member  
Hon'ble Mr.Ashish Kalia, Judicial Member**

1. Jayan N.R.,  
Aged 41 years,  
S/o Ramakrishnan,  
Tax Assistant,  
Office of Joint Commissioner of Income Tax,  
Range II, Aayakar Bhavan,  
Thrissur, residing at Njarasseri Valappil,  
Punnamparambu,  
Vadakkancherry.
2. Satheesh Kumar S.,  
Aged 41 years,  
S/o Sreedharan Nair,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Central Range Kawdiar,  
Thiruvananthapuram,  
residing at Karthika,  
Chandramangalam,  
Amachal PO, Kattakkada,  
Thiruvananthapuram – 695 572.
3. Binal Sathyadasan,  
Aged 29 years,  
S/o Samuel Thomas,  
Tax Assistant,  
Office of Income Tax Officer,  
(Intelligence and Criminal Investigation),  
Ayakar Bhavan, Kozhikode,  
residing at SS Abode,

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37/1837/C, IP Krishnan Road,  
Karaparamba, Kozhikode – 673 010.

... Applicants

(By Advocate Mr.P.Ramakrishnan)

Versus

1. Union of India,  
represented by Secretary to Government,  
Ministry of Finance,  
Central Board of Direct Taxes,  
Directorate of Income tax,  
ICADR Bhavan,  
New Delhi – 110 001.
2. The Chief Commissioner of Income Tax (CCA),  
Central Revenue Building, I.S.Press Road,  
Ernakulam, Kochi – 682 018.
3. S.Tito,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Kollam Range,  
Railway Station Road,  
Kollam – 691 001.
4. P.Rasna,  
Tax Assistant,  
Office of the Commissioner of Income Tax,  
Mananchira,  
Kozhikode – 676 001.
5. Shailesh M. Pai,  
Tax Assistant,  
Office of the Commissioner of Income Tax,  
Mananchira,  
Kozhikode – 676 001.
6. T.T.Babu,  
Tax Assistant,  
Office of the Principal Chief Commissioner of Income Tax,  
C.R.Building, IS Press Road,  
Kochi – 682 018.

7. Jose Anand G.,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
(TDS), Aayakar Bhavan,  
Kawdiar, Thiruvananthapuram – 695 003.
8. R.I.Fasa,  
Tax Assistant,  
Office of the Principal Chief Commissioner of Income Tax,  
C.R.Building, IS Press Road, Kochi – 682 018.
9. K.Anil Kumar,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Kollam Range,  
Near Karbala Junction,  
Kollam – 691 001.
10. Jisha P.M.,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Central Range, Mananchira,  
Kozhikode – 676 001.
11. K.K.Anil Kumar,  
Office of the Director General of Income Tax,  
Aryabhangi Pinnacle, S.A.Road,  
Kochi – 682 020.
12. Jeevan A.L.  
Tax Assistant,  
Office of the Income Tax Officer (I&C10,  
Aayakar Bhavan, Kawdiar,  
Thiruvananthapuram – 695 003.
13. Hemalatha,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Kannur Range,  
Aayakar Bhavan,  
Kannur – 670 301.
14. Chitra,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,

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- Range I, Aayakar Bhavan,  
Kawdiar,  
Thiruvananthapuram – 695 003.
15. K.I.Rasheed,  
Tax Assistant,  
Office of the Commissioner of Income Tax,  
(TDS), Central Revenue Building,  
IS Press Road, Ernakulam,  
Kochi – 682 018.
16. D.Shaji,  
Tax Assistant,  
Office of the Commissioner of Income Tax,  
(Internal Audit), Aayakar Bhavan,  
Sasthri Road, Kottayam – 686 001.
17. S.Sunil Kumar,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
(Exemption),  
Aayakar Bhavan,  
Kawdiar,  
Thiruvananthapuram – 695 003.
18. K.Aswathy,  
Tax Assistant,  
Office of the Chief Commissioner of Income Tax,  
Central Revenue Building,  
IS Press Road,  
Ernakulam,  
Kochi – 682 018.
19. M.Madhukumar ,  
Office of the Assistant Director of Income Tax,  
(Investigation), Aayakar Bhavan,  
Sasthri road,  
Kottayam – 686 001.
20. R.Dhanesh,  
Tax Assistant,  
Office of the Assistant Director of Income Tax,  
(Investigation), Aayakar Bhavan, Kawdiar,  
Thiruvananthapuram – 695 003.

21. Girija Madhu Pillai,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Aayakar Bhavan,  
English Church Road,  
Palakkad – 678 001.
22. V.Raghunath,  
Tax Assistant,  
Office of the Chief Commissioner of Income Tax,  
Central Revenue Building,  
IS Press Road,  
Ernakulam, Kochi – 682 018.
23. Preetha J.R.,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Aayakar Bhavan, English Church Road,  
Palakkad – 678 001.
24. H.V.Sindhu,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
(TDSO, Aayakar Bhavan,  
Kawdiar,  
Thiruvananthapuram – 695 003.
25. Shyju Joseph,  
Tax Assistant,  
Office of the of Income Tax Officer,  
Ward I, Ayakar Bhavan,  
Vidya Nagar,  
Kasaragode – 671 121.
26. M.K.Alikunju,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
(Investigation), Central Revenue Building,  
IS Press Road,  
Ernakulam, Kochi – 682 018.
27. Deepam V.C.,  
Tax Assistant,  
Office of the Commissioner of Income Tax,  
Central Revenue Building, IS Press Road,

Ernakulam, Kochi – 682 018.

28. M.Mahesh,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Range II, Aayakar Bhavan, Kawdiar,  
Thiruvananthapuram – 695 003.
29. Sujesh K.,  
Tax Assistant,  
Office of the Commissioner of Income Tax,  
Aayakar Building, Kozhikode.
30. P.K.Suresh Babu,  
Tax Assistant,  
Office of the Commissioner of Income Tax,  
Aayakar Building,  
Thrissur – 680 001.
31. Geetha S.Kurup,  
Tax Assistant,  
Office of the Commissioner of Income Tax (II),  
Central Revenue Building,  
IS Press Road,  
Ernakulam, Kochi – 682 018.
32. P.Anju,  
Tax Assistant,  
Office of the Assistant Commissioner of Income Tax,  
(TNP), Central Revenue Building,  
IS Press Road,  
Ernakulam, Kochi – 682 018.
33. Amal Dev M.V.,  
Tax Assistant,  
Office of the Commissioner of Income Tax (II),  
Central Revenue Building,  
IS Press Road,  
Ernakulam, Kochi – 682 018.
34. A.Remya,  
Tax Assistant,  
Office of the Commissioner of Income Tax(II),  
Central Revenue Building,  
IS Press Road,

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Ernakulam, Kochi – 682 018.

35. Deepika,  
Tax Assistant,  
Office of the Addl. Commissioner of Income Tax,  
Range-II, Ayakar Bhavan,  
Kozhikode - 673 001
36. A.Rajesh,  
Tax Assistant,  
Office of the Income Tax Officer  
(Intelligence), Aayakar Bhavan,  
Kozhikode – 673 001.
37. Mani Neroth,  
Tax Assistant,  
Office of the Addl. Commissioner of Income Tax,  
Range-II, Ayakar Bhavan,  
Kozhikode – 673 001.
38. Sajan Baby,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Range-II, Aaykar Bhavan,  
Thrissur – 680 001.
39. Biju Augustine,  
Tax Assistant,  
Office of the Commissioner of Income Tax (II).  
Central Revenue Building, IS Press,  
Ernakularm, Kochi – 682 018.
40. Marian C Tharyan,  
Tax Assistant,  
Office of the Principal Chief Commissioner of  
Income Tax, C.R.Building, IS Press Road,  
Kochi – 682 018.
41. Suleesh Sukumar,  
Tax Assistant,  
Office of the Joint Commissioner of Income Tax,  
Manachira, Kozhikode – 676 001.

**..... Respondents**

(By Advocate, Mr. Sinu G Nath, ACGSC for Respondents-1&2 and Shri

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T.C.Govindaswamy for Respondents-8, 11, 13 to 18, 20,21, 23 to 27, 29 30, 32 to 39, 41 )

This application having been heard on 21<sup>st</sup> November, 2019, the Tribunal on 27<sup>th</sup> November, 2019 delivered the following :

### **ORDER**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER**

OA No.511/2015 is filed by Shri Jayan and two others, who are Tax Assistants in the Income Tax Department, Kerala Region, aggrieved by the inaction of the respondents to consider them for promotion as Senior Tax Assistants. The reliefs sought in the OA are as follows:

- a) Hold that the applicants are entitled to be considered and appointed as Senior Tax Assistants before granting such appointments to respondents-3 to 41.
- b) Issue an order directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to consider and appoint the applicants as Senior Tax Assistants to the vacancies of the year 2014-2015.
- c) Issue an order directing the 2<sup>nd</sup> respondent to consider and dispose of Annexure A7 and similar representations submitted by applicants 2 and 3 in accordance with law, and
- d) such other orders and directions as are deemed fit in the facts and circumstances of the case.

2. The 1<sup>st</sup> applicant joined service as Group D employee in the year 2002 and had been promoted to the grade of Tax Assistant on 28.06.2009. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants were recruited for appointment as Tax Assistants by

the Staff Selection Commission in the Combined Graduate level examination recruitment year 2010-11 (Annexure A1 & A2).

3. The seniority of Tax Assistants is governed by various Office Memoranda issued by the Ministry of Personnel and Training as also instructions issued by CBDT. Consequent to the judgment of Hon'ble Supreme Court in **Union of India & others vs. N.R.Parmar & others- 2012 (13) SCC 340**, Government took action to pre-date the year of recruitment to the date when the process of recruitment had been initiated during the recruitment year in which the vacancy had arisen. The applicants herein got the benefit of **N.R.Parmar**.

4. On the other hand Respondents-3 to 12 have become Tax Assistants only in the year 2011 and Respondents 13 to 41 are Tax Assistants who came on inter-charge transfer from other Regions to Kerala Region, only after May, 2012. The Government of India had also issued a letter dated 14.05.1990 as per which an inter-charge transferee would not be entitled to count the service rendered under their erstwhile charge for the purpose of seniority. The first applicant has seniority w.e.f. the year 2009 and Applicants-2&3 are entitled to seniority w.e.f. 2010, by virtue of the judgment of N.R.Parmar and consequent instructions at Annexure A3.

5. The applicants submit that the post of Senior Tax Assistant is a non

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selection post and as per recruitment rules, is filled up by promotion from Tax Assistant, who have rendered three years regular service in the grade and have qualified in the prescribed departmental examination for ministerial staff (Annexure A5). The applicants possess the above criteria, thus making them eligible for promotion to the post of Senior Tax Assistant.

6. Consequent to the steps taken by the 2<sup>nd</sup> Respondent to fill up the vacancies of Senior Tax Assistants of the year 2014-15 by calling for Confidential records of Respondents-3to41, the applicants submitted objections pointing out that they are seniors to Respondents-3 to 41 and ought to be considered for promotion to the post of Senior Tax Assistants (Annexure A7). But there has been no action from the respondents on these lines. As grounds, the applicants reiterate the contentions raised in the OA. They contend that the steps taken to promote Respondent-3to41, juniors to the applicants without considering Annexure A7 representation is arbitrary, discriminatory and violative of Articles 14 and 16 of Constitution of India.

7. A reply statement is filed by Respondent-2 denying the contentions raised by the applicants in the OA. The Respondent-2 submit that as per DOPT OM dated 17.09.1998, the crucial date for determining the eligibility of officers for promotion for the vacancy year would fall on 1<sup>st</sup> January

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immediately preceding each vacancy year (Annexure R2(10)). The applicants are not eligible to be considered in the DPC for the vacancy year 2014-15, as they had not passed the departmental examination for the ministerial staff as on 01/01/2014.

8. Heard Shri Prathap on behalf of Shri P.Ramakrishnan, learned Counsel for the applicants, Shri Sinu G. Nath, learned ACGSC for Respondents-1&2, Shri T.C.Govindaswamy for Respondents-8, 11, 13-18, 20, 21, 23-27, 29, 30, 32-39 & 41). All pleadings and documentary evidence are examined.

9. The applicants in the case are indeed senior to the Respondents-3 to 41. However, qualifying in the departmental examination on the crucial date of determining eligible for promotion is a necessary prerequisite. An extract of the relevant provision in the Recruitment Rules at Annexure A5 is as below:

'12. *Grade from which recruitment by promotion/deputation/absorption /short-term contract re-employment is to be made.*

*100% by promotion from amongst Tax Assistants who have rendered a minimum regular service of three years in the grade and have qualified the prescribed departmental examination for Ministerial staff.*

***Promotee Tax Assistants will not be eligible for promotion as Senior Tax Assistant till they qualify the departmental examination for data entry skills of 5000 key depressions per hour.***

*(emphasis supplied)*

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*If a junior person is considered for*

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*promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation.*

10. The applicants admittedly had not qualified in the departmental examination as on 01.01.2014. Facts being as above, the applicants do not have a case. The OA is dismissed as devoid of merit. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K.BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

**sd**

**List of Annexures in O.A. No.180/00511/2015**

1. Annexure A1 - True copy of appointment order dated 19/10/2011

issued to 2<sup>nd</sup> applicant.

**2.** Annexure A2 - True copy of order of appointment dated 19/10/2011 issued to the 3<sup>rd</sup> applicant.

**3.** Annexure A3 - True copy of letter dated 7/11/2014 issued by the Government of India, Ministry of Finance, Central Board of Direct Taxes.

**4.** Annexure A4 - True copy of letter dated 14/5/1990 issued by the Government of India.

**5.** Annexure A5 - True copy of Recruitment Rules for the post of Senior Tax Assistant.

**6.** Annexure A6 - True copy of letter dated 10/12/2014 issued by the Income Tax officer (H), Kochi.

**7.** Annexure A7 - True copy of objections dated 19/6/2015 submitted by the 1<sup>st</sup> applicant.

**8.** Annexure R2(1) - True copy of OM in No.22011/3/98-Estt(D) dated 17/09/1998.

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