



INCOME TAX GAZETTED OFFICERS' ASSOCIATION

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I. T. G. O. A. ZINDABAD

Date: 17-09-2015

To,
The Chairperson,
Central Board of Direct Taxes,
New Delhi.

Sir,

Subject : Implementation of decision of the Hon'ble Supreme Court in the case of Union of India vs. N.R. Parmar & Others (CA No. 7514-7515 & others) - Issue of advisory – correction thereof - Regarding –

Please refer to the advisory issued vide F. No. HRD/CM/220/14/2013-14/4275 dated: 29-09-2014, another advisory issued vide F. No. HRD/CM/220/14/2013-14/6672 Dated: 07-11-2014 in supersession of the earlier and the corrigendum of the advisory issued vide F. No. HRD/CM/220/14/2013-14/7912 dated 16-01-2015 to the Pr.CCsIT by the HRD on the Implementation of decision of the Hon'ble Supreme Court in the case of Union of India vs. N.R. Parmar & Others.

2. In this regard, it is submitted that the ITGOA has received various representations from its members highlighting that the advisory made by the HRD in respect of the Inspector cadre requires modifications in respect of certain years. Various submissions and supporting documents have been provided by the members and such details are highlighted herein under:

Examination Year 1991:

In Point No.4 of the advisory, while replying to the dates of requisition letters, it has been advised that *"Till the vacancy year 1991-92, CCIT(CCA)s were requisitioning the Direct Recruits directly from SSC. The dates of requisition letters (vacancy year-wise), as intimated by CCIT(CCA) to SSC, should be available from their records. In the subsequent years, the notifications of vacancies were made to SSC by the Board"*. Further in Annexure-1, against vacancy year 1992-93, it has been mentioned that *"Letter to SSC not available. However, the letter of SSC forwarding the dossiers to CCIT, Ahmedabad, mentions the CBDT letter no. A-*

12021/2/92/Ad.VII dt. 03.06.1992". Finally, the recruitment year of the direct recruits has been mentioned as 1992-93 against the Inspectors recruited through the Examination of 1991. The issue of such advisory for Examination Year 1991 is arbitrary and without complete basis in view of the following:

- (i) Till the vacancy year 1991-92, the respective CCIT(CCA)s were requisitioning directly from SSC, it is most likely that they themselves have sent requisition letter to the SSC for the Vacancy year 1991-92 and Examination of 1991. It is also important to note that at that time, dossiers were directly sent by the Zonal Centre of SSC to the concerned CCIT(CCA).
- (ii) The Examination of 1991 was conducted in 1991 itself following the advertisement in this same year. The vacancies till year 1991-92 were reported by the CCIT(CCA) to the SSC directly. Therefore, if any DPC is conducted by the CCIT(CCA) in 1991-92 and the vacancies are reported in the same vacancy year to the SSC, it is most likely that the Inspectors recruited through 1991 examination are sent to the concerned CCIT(CCA) against the requisition made by them for year 1991-92.
- (iii) While delivering the judgement of N. R. Parmar, the Hon'ble, Supreme Court has found that for 1993 examination, not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year 1993-94, in which direct recruit vacancies had arisen.
- (iv) As per the spirit of the N .R. Parmar judgement, the initial requisition has to be taken into consideration and not the last requisition, whether by CCIT(CCA) or by CBDT. When the CCIT(CCA) has already made the requisition in the year 1991-92 itself, there is no need to take any cognizance for any subsequent letter of CBDT for same purpose, which might have been written in the next year.
- (v) Even otherwise, the letter of SSC forwarding the dossiers to CCIT, Ahmedabad cannot be generalized for all regions in view of any requisition already made by them in the year 1991-92.
- (vi) If the requisition sent by the CBDT to the SSC is not available on record then determination of the seniority cannot be based on the document, which is not even available.

In view of the above, the advisory for the examination year 1991 needs to be modified/revised. The CCIT(CCA) may be advised to utilize the date of requisition letter sent by them to SSC against the Inspectors recruited through 1991 examination in order to determine their correct recruitment year as has been done in the cases of pre 1991 examination years.

Examination Year 1993:

In the advisory, the recruitment year of the direct recruits has been mentioned as 1994-95 against the Inspectors recruited through the Examination of 1993 on the basis of the requisition letter dated 27.07.1994. The issue of such advisory for Examination Year 1993 is incorrect and contrary to the judgement of the Hon'ble Supreme Court in view of the following:

- (i) The judgement of delivered by the Hon'ble Supreme Court on 27.11.2012 has been given together in following case:
Civil Appeal Nos. 7514-7515 of 2005: Union of India & Ors. Versus N.R. Parmar Ors.
WITH
Civil Appeal Nos. 3876-3880 of 2007: Mukund Lal & Anr. Versus Pritpal Singh & Ors
WITH
Civil Appeal No. 7516 of 2005: Virendra Kumar & Ors. Versus Union of India & Ors.
WITH
Transferred Case (C) No. 91 of 2006: Pritpal Singh & Ors. Versus Union of India & Ors.
WITH
Transferred Case No.....2012 (Arising out of T.P. (C) No. 681 of 2006): Union of India & Ors. Versus R.K. Bothra & Ors.
- (ii) In Para 9 to 16 of the judgement, the facts of the case have been mentioned by the Hon'ble Supreme Court. These facts relate to one of the case before the Hon'ble Court, which was the Transferred Case (C) No.91 of 2006 (Pritpal Singh & Ors. vs. Union of India & Ors.), which is clear from plain reading of the judgement.
- (iii) In Para 9, it has been mentioned that *"The vacancies for the year 1993-94 which were identified to be filled up by way of promotion were referred to the Departmental Promotion Committee (hereinafter referred to as "the DPC"), whereas, those identified to be filled up by direct recruitment, were simultaneously referred to the Staff Selection Commission (hereinafter referred to as "the SSC")."* Further in Para 11, it has been mentioned that *"On the receipt of a requisition pertaining to the post of Income Tax Inspectors from the Income Tax Department, the SSC issued advertisements in May/June, 1993, inviting applications for appointment by way of direct recruitment, against vacancies of Income Tax Inspectors of the year 1993-94. To fill up these vacancies, the SSC held the Inspectors of Central Excise and Income Tax Examination, 1993. All the petitioners in TC (C) no.91 of 2006 responded to the aforesaid advertisement."*
- (iv) In Para 33, the Hon'ble Supreme Court has summarized the case as under:
"33. Having interpreted the effect of the OMs dated 7.2.1986 and 3.7.1986 (in paragraphs 20 and 21 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by the SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed

by the rival parties, is common in all matters being collectively disposed of. In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal, that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter se seniority between the direct recruits and promotees, carried out through the OM dated 7.2.1986, and the compilation of the instructions pertaining to seniority in the OM dated 3.7.1986, leave no room for any doubt, that the "rotation of quotas" principle, would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year."

- (v) In Para 33, the Hon'ble Supreme Court has also observed that "*The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of*". This shows that the facts of the other cases contained in the judgement are also same.
- (vi) The observations made by the Hon'ble Supreme Court are based on the submissions made by the parties on affidavit. The Department has also given its submissions of affidavit and defended the cases of the direct recruit Inspectors. This factual position has been also confirmed on behalf of the Department in the Court.
- (vii) In view of the above, it is crystal clear that the SSC Examination of 1993 was conducted for appointment by way of direct recruitment against vacancies of Income Tax Inspectors of the year 1993-94.
- (viii) Therefore, the assignment of the recruitment year 1994-95 against the Inspectors recruited through the Examination of 1993 is contrary to the judgement of the Hon'ble Supreme Court.
- (ix) The issue of such advisory for the Inspectors recruited through the Examination of 1993 also invites contempt of the Hon'ble Supreme Court since the judgement of the Hon'ble Court cannot be implemented other way.
- (x) In view of the averments made by the Department before the Hon'ble Supreme Court, the date of requisition mentioned in the advisory as 27.07.1994 cannot be correct.

In view of the above, the advisory for the examination year 1993 needs to be revised and the Inspectors recruited through this examination need to be placed in the recruitment year 1993-94. On the same lines, the Inspectors of 1991 & 1992 examination need to be placed in the recruitment year 1991-92 & 1992-93 respectively since they are equally senior to the Inspectors of 1991 examination.

Examination Year 1995:

In the advisory, the Inspectors recruited through the Examination of 1995 have been assigned different recruitment years in respect of different regions. For WB & Sikkim, AP & Telangana, NER, Kerala, TN & Pondicherry, Karnataka, Odisha and Bihar & Jharkhand, the seniority of DRs is assigned in recruitment year 1996-97 based on selection made on basis of examination held on 03.12.1995 and requisition dated 26.06.1996. However, for NWR, Delhi, Rajasthan, UP(W), UP(E), Mumbai, Pune, Nagpur, Gujarat and MP & Chhattisgarh, the Seniority of DRs is assigned in recruitment year 1999-2000 based on selection made on basis of re-examination held on 07.03.1999 and fresh requisition called for by SSC in respect of these Regions, which was sent on 07.06.1999. The issue of such advisory for Examination Year 1995 is incorrect and discriminatory, which is issued misinterpreting the judgement of the Hon'ble Supreme Court in view of the following:

- (i) The requisition dated 26.06.1996 was given by the CBDT to the SSC for direct recruitment of Inspectors for all the regions across the country.
- (ii) In few zones of SSC, containing NWR, Delhi, Rajasthan, UP(W), UP(E), Mumbai, Pune, Nagpur, Gujarat and MP & Chhattisgarh regions, the examination of 1995 held on 03.12.1995 was cancelled and a re-examination held on 07.03.1999.
- (iii) Another requisition was given to SSC on 07.06.1999 for candidates against the re-examination held on 07.03.1999.
- (iv) In the N.R. Parmar case, the Hon'ble Supreme Court have held that if the process of direct recruitment is initiated, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.
- (v) For the candidates of NWR, Delhi, Rajasthan, UP(W), UP(E), Mumbai, Pune, Nagpur, Gujarat and MP & Chhattisgarh regions too, the process of selection was initiated vide the requisition dated 26.06.1996 but it could be completed only after re-holding of examination on 07.03.1999.
- (vi) The delay in completion of recruitment process was never attributable on the part of the candidates of NWR, Delhi, Rajasthan, UP(W), UP(E), Mumbai, Pune, Nagpur, Gujarat and MP & Chhattisgarh regions.
- (vii) In the process of cancellation of examination held on 03.12.1995 and re-examination on 07.03.1999, the candidates of NWR, Delhi, Rajasthan, UP(W), UP(E), Mumbai, Pune, Nagpur, Gujarat and MP & Chhattisgarh regions do not lose their right of seniority to be assigned to them through the original requisition dated 26.06.1996 in their cases.

In view of the above, the advisory for the examination year 1995 for NWR, Delhi, Rajasthan, UP(W), UP(E), Mumbai, Pune, Nagpur, Gujarat and MP & Chhattisgarh regions needs to be corrected and candidates of these regions needs to be treated at par with the candidates of

WB & Sikkim, AP & Telangana, NER, Kerala, TN & Pondicherry, Karnataka, Odisha and Bihar & Jharkhand regions. All such persons recruited through the same examination year need to be placed in the same recruitment year 1996-97.

Examination Year 1996 & 1999:

In the advisory, the Inspectors recruited through the Examination of 1999 have been assigned the seniority of in recruitment year 2001-02 based on the requisition dated 28.11.2001. Similarly, the Inspectors recruited through the Examination of 1999 have been assigned the seniority in recruitment year 2001-02 based on the requisition dated 10.08.2001. The issue of such advisory for Examination Year 1996 and 1999 both is incorrect and based on wrong facts in view of the following:

- (i) The requisition for 1999 examination is shown as 10.08.2001 whereas the same for 1996 examination is 28.11.2001. This is not possible that the requisition for subsequent year is sent prior the requisition of an earlier year. The dates of letters are, therefore, incorrect.
- (ii) The letter of requisition was sent to the Staff Selection Commission by the CBDT vide F. No. A 12021/14/99-AD.VII dated 15.02.2000 and the vacancies pertain to the period 1.04.1998 to 31.03.2000, which are to be filled on the basis of results of combined Examination for Graduate Level Posts, 1999. This letter is mentioning CCIT charge wise vacancies. A copy of this letter is enclosed herewith for ready reference.
- (iii) The letter dated 10.08.2001 sent by the CBDT, referred to in the above advisory was merely confirmation of the vacancies intimated earlier vide letter dated 15.02.2000 and it was sent on the specific request of the Staff Selection Commission regarding confirmation of vacancies before declaration of final result.
- (iv) In the judgement of Rajesh Kumar & Another Versus Union of India & others, in O.A. No. 1593/2004, M.A. No. 2860/2010, the Hon'ble Principal Bench of the Central Administrative Tribunal in their judgement dated 06.09.2011, have quoted that the CBDT had intimated 83 vacancies for direct recruits for the post of Inspector of Income Tax in the year 1996 for the Examination of 1996 but the examination held on 28.04.1996 was cancelled in 1998. Thereafter fresh requisition was sent to the SSC in the year 1999 for total 121 posts out of which 57 were earmarked for general candidates. This requisition included the backlog vacancies of 1996 also. A copy of this judgement is enclosed herewith for ready reference.
- (v) It is, therefore, crystal clear that the requisition for 1999 examination was sent on 15.02.2000 in the recruitment year 1999-2000 itself and the requisition for 1996 examination was sent prior to that in 1996 itself.

- (vi) The delay in completion of recruitment process was never attributable on the part of the candidates of these examination years. In the process of such delay, the candidates of these examinations do not lose their right of seniority to be assigned to them through the original requisitions in their cases.

In view of the above, the advisory for the examination years 1996 and 1999 needs to be modified. The date of requisition letter in the advisory for the Inspectors for the vacancy year 1998-99 & 1999-2000 recruited through Combined Graduate Level Examination 1999, needs to be changed to 15.02.2000 and hence the recruitment Year needs to be amended to 1999-2000. Consequently, the year of seniority in respect of Inspectors recruited through Examination Year 1996 needs to be amended and be fixed in the year 1996-97 based on the requisition sent for the 1996 examination in the year 1996 itself.

3. In view of the abovementioned facts and circumstances, it is requested that suitable corrigendum to the advisory may be issued in respect of the years mentioned hereinabove at the earliest for the sake of justice to the affected persons and to avoid unnecessary unrest & future litigations in the matter.

Thanking you,

Encl. As above

Yours faithfully,

Sd/-

(Bhaskar Bhattacharya)

Secretary General

Copy to the DGIT(HRD), CBDT, for information and necessary action.

Sd/-

(Bhaskar Bhattacharya)

Secretary General