



Income Tax Gazetted Officers Association

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ITGOA(CHQ)/Agitation/2012-13

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

Madam,

**Sub : Agitation against delay in promotions to ACIT
and other related issues – reg.**

Please refer to the above & CBDT's Letter dtd. 8-2-2013 bearing F. No. B.12020/6/2012-Ad.IX(Pt.) in reply to our letter dt. 5-2-2013.

2. Correct status of the issues/demands is mentioned here below:

i. Immediate holding of DPC for ITO to ACIT for RY 2012-13

CBDT's Clarification:

As per advice of UPSC, the matter has been referred to DOP&T for their concurrence/comments on the holding of DPC for ITOs to ACITs for recruitment year 2012-13 and it is expected that DOP&T would furnish their comments in couple of days. We are confident that DPC will be held before 31.3.2013

Correct status & ITGOA's response:

- DOPT OM No. 22011/5/86-Estt(D) dated 10-4-1989, directs authorities to initiate action to fill-up existing as well as anticipated vacancies **well in advance of expiry of previous panel** by collecting relevant documents like ACR/APAR etc.
- The above was reiterated in DOPT OM No.22011/9/98-Estt(D) dated 8-9-1998, where it is stated that **Administrative action for convening DPC be initiated at least 8½ Months before commencement of vacancy year and DPC be held at least 2 months before commencement of vacancy year.** Thus DPC for R.Y. 2012-13 should have been held before 31-1-2012.
- The above model calendar has been reiterated again vide DOPT OM No. 22011/1/2011-Estt(D) dtd. 11/3 & 25/3/2011.

- DPC for ITO to ACIT has never been held in time, as will be seen from the following table :

Panel Year	Month of Promotion	DPC to be held by	Delay (in Months)
1991-92	December 1991	January 1991	10
1992-93	June 1993	January 1992	16
1993-94	April 1994	January 1993	14
1994-95	January 1995	January 1994	11
1995-96	January 1996	January 1995	11
1996-97	February 1997	January 1996	12
1997-98	January 1998	January 1997	11
1998-99	January 2001	January 1998	35
1999-00	January 2001	January 1999	23
2000-01	November 2001	January 2000	21
2001-02	November 2001	January 2001	09
2002-03	November 2003	January 2002	21
2003-04	January 2005	January 2003	23
2004-05	November 2006	January 2004	33
2005-06	November 2006	January 2005	21
2006-07	May 2007	January 2006	15
2007-08	October 2008	January 2007	20
2008-09	October 2008	January 2008	08
2009-10	September 2010	January 2009	19
2010-11	March 2012	January 2010	25
2011-12	March 2012	January 2011	13
2012-13	Not held	January 2012	14
2013-14	Not held	January 2013	1

- Therefore, CBDT's clarification for the delay in holding DPC by referring to Hon'ble SC's order dtd 27-11-2012 in NR Parmar and advice of UPSC and reference to DOPT etc, is only a ploy to hide **the real intention of CBDT to deliberately delay the promotion and thereby prevent entry of promotees in IRS, in a systematic way.** This fact will become more evident in the issue no. (vii).
- ITGOA vide its letter dated 11-12-2012 had informed factual position **that the last ITO likely to be promoted as ACIT is DR Inspector of 1990-91 & 1991-92** and ITOs who has raised objection are DR Inspectors who have joined in 1995-96 and would be placed in the year 1993-94. Hence, there is no problem in conduct of DPC.
- Even during the meeting of JCA with Chairperson on 17-12-2012, it was assured that DPC will be held on 18-12-2012 and the fact of reference to DOLA was not mentioned by official side and DPC was deferred on account of SC Order in NR Parmar which is on seniority of Inspector and not that of ITO.

- Judgment of Hon'ble SC in the case of NR Parmar is on inter-se seniority of Inspector and therefore it has to be first implemented in that grade. But, promotions of Inspector to ITO is going on unhindered with a rider that the orders are subject to change on account of the said judgment. This clearly reveals the CBDT's real intention is to prevent the entry of promotee in IRS cadre.
- As per DOPT OM No. 28027/9/99-Estt(D) dated 1-5-2000, Court Orders against Govt. of India Instructions on service matter, will not be implemented by the concerned Department/Ministry without referring to DOLA and DOPT. In the NR Parmar's case, DOPT OM dated 3-3-2008 has been quashed by the Hon'ble SC in the case of seniority of Inspectors of Income Tax and the CBDT can implement the decision only after consulting DOLA/DOPT. However, CBDT's reference to DOLA/DOPT is not w.r.t implementation of the said order, but it is on whether promotion of ITO to ACIT can be effected or not, even when its effect on the ITO's seniority is indirect, which cannot be made without holding review DPC for ITO. Besides, this will require first assigning correct seniority to PR Inspectors who have joined as DR UDC/LDC, by holding review DPC for Inspector.
- Even if the Seniority of ITOs are considered as under dispute, on account of the judgment in the case of NR Parmar (which is on seniority of Inspectors), the DOPT OM No. 28036/8/87-Estt(D) dated 30-3-1988 provides that unless there is an order of stay/injunction, DPC be held for regular promotion on the basis of existing seniority list and that the order must contain a provision that the promotions is subject to final decision.
- On 19-12-2012, Member (P) had assured that the DPC will be held by 15-1-2013. But, in the clarification dated 8-2-2013 it is mentioned that DPC will be held by 31-3-2013. All these only makes it clear that **CBDT is not at all serious w.r.t the DPC for ITO to ACIT** and is simply referring the matter to different agencies like DOPT, DOLA, UPSC without highlighting the correct fact, which will be more clear in the issue no. (iii).

ii. Immediate regularisation of Ad-hoc JCIT from 2000 to 2003 batch officers & conduct DPC for consequent vacancies of ACIT.

CBDT's Clarification

In the issue of regularisation of Ad-hoc JCST of 2000 and 2001 batches for which DPC was conducted by UPSC, since the matter is sub-judice before the Apex Court, it is being sent to Ld. ASG for his opinion. The 2002 and 2003 batches will thereafter be considered by UPSC to whom timely reference will be made accordingly.

Correct status & ITGOA's response

- DPC for regular promotion to the JCIT grade, for 2000 & 2001 batch officers was held on September 2010 and CAT (PB) vide its order dated 27-11-2010 directed that the same will not be given effect to.
- CBDT filed Writ [WP(C) 8018 of 2010] against the said order of CAT and **Hon'ble Delhi HC vide its order dated 6-7-2012, quashed/set-aside the stay order of CAT (PB) and directed that the CBDT (petitioner) was free to give effect to the DPC held on September 2010.**
- CBDT first wrote to UPSC, seeking its opinion on the matter which **replied in August 2012 stating that the order of Hon'ble Delhi HC was very clear.**
- CBDT has made a reference to DOPT on the ground that the panel is more than a year old, without appreciating that **there was no administrative delay in confirming the panel.** The delay was on account of a court injunction.
- Against the Order of Hon'ble Delhi HC, some DR-IRS officers of 2002 & 2003 batch have filed an SLP [21339 of 2012] in Hon'ble SC, but **no stay has been granted by the Apex Court.** Therefore, the clarification to the effect that the matter is sub-judice bring out partisan role of CBDT which is manned by all DR-IRS Officers, whose insidious intention is to prevent any promotee from becoming a JCIT, a supervisory grade. Here another aspect that cannot be overlooked is that **while CBDT is engaging ASG to defend on a pay scale matter in Mumbai HC and in Delhi HC ASG was representing, in the Apex Court, no such senior law-officer has been appointed,** which gives an impression of CBDT siding with DR-IRS officers.
- Meanwhile the **PR Officers** (members of ITGOA) who are not regularised as **JCIT are retiring regularly, without any benefit in their pension etc.** which are being fixed in the DCIT grade.

- The above action of CBDT has resulted in causing a vacancy of 535 in the grade of DCIT/ACIT (due to Ad-hoc promotion to the grade of JCIT of 2000 to 2003 batch officers) in addition to the regular vacancy of 143 for RY 2012-13. The said 535 vacant posts of DCIT/ACIT are not being filled-up on the ground that the JCIT promotion is on Ad-hoc basis, **without appreciating the fact that the posts are regular and only the promotion is Ad-hoc because of the stay by CAT (PB) and even that has been set-aside by the Hon'ble Delhi HC.**

iii. Finalisation of All India Seniority List of ITOs promoted after 18/6/2001 before 31-03-2013.

CBDT's Clarification

All India Seniority List of ITOs will now be affected by the Supreme Court judgment in NR Parmar's case. The requisite details are still awaited from some regions. Your assistance to help the CC Regions will help in quickening the process.

Correct status & ITGOA's response

- **CBDT has not issued any uniform seniority guidelines to the 18 CCIT regions**, as a result of which different criteria like 'Year of Joining', 'Vacancy/Recruitment Year', 'Year of Exam' etc. for allotting the seniority of DR Inspectors and this is the main cause of vexatious litigation going upto Apex Court.
- **CBDT is having requisite information about the correct vacancy year for each and every Exam for Inspectors conducted by Staff Selection Commission**, some of which are:

<u>Exam</u>	<u>Vacancy Year</u>	<u>CBDT's letter no. & date</u>
1990	1991-92	A-12021/1/91-Ad.VII ; 15-1-1991
1991	1992-93	A-12021/2/92A-Ad.VII ; 30-1-1992
1992	1993-94	A-12021/1/93-Ad.VII ; 20-1-1993
1993	1994-95	A-12021/14/94-Ad.VII ; 31-5-1994
1994	1995-96	A-12021/7/95-Ad.VII ; 22-2-1995

But these facts have neither been brought before the Hon'ble Apex Court (as can be seen from Order dated 27-11-2012), nor has it been highlighted in the Member (P) DO Letter to all the CCIT(CCA) asking for the cascading effect of the said SC Order in the seniority of ITO.

Besides, the **CBDT has not sought the opinion of DOPT on the implementation aspect of the said judgment of Hon'ble SC in NR Parmar's case, as required by DOPT OM dated 1-5-2009.**

- The above coupled with the fact that **CBDT took around 9 years to finalise the All India Seniority List of ITO promoted on 18-6-2001** (as it was finalised in January 2010) **and that too only after full help rendered by ITGOA, makes clear the CBDT's intention to delay the promotion to the grade of ACIT and thereby prevent the entry of promotees in to the IRS Cadre.**
- CBDT's partisan role comes to the fore here, because the **Hon'ble SC's in the case of SK Shukla, which is reiterated in the case of SK Sahni, PK Singh etc. is not being implemented in a uniform manner to all similarly placed officers because there the issue was promotion of ACIT to DCIT where there are DR-IRS Officers also. But, in the case of NR Parmar, as no DR-IRS Officers are involved, CBDT is keen to implement it uniformly and that too from year 1986 knowing fully well that Administratively it will take around 3/4 years and then getting review DPCs for 25 years in the grade of ACIT will be an impossibility,** given the fact about delay in regular DPC mentioned at issue no. (i). **The only purpose is to delay the entry of Promotees in IRS cadre.**

iv. Up-gradation of Pay scale of AO & PS i.e. GP of Rs.4800

CBDT's Clarification

The proposal of up-gradation of pay scale of AOs and PS with grade pay of Rs.4800/- which was twice sent for reconsideration to Deptt. Of Expenditure has not been agreed to by it. ITGOA has already been informed in the meeting of Grievance Redressal Committee under the chairmanship of Member (P) and Member (IT) on 8-1-2013. It seems that this has not been informed to the Members.

Correct status & ITGOA's response

- Grievance Redressal Committee is not the final authority to decide on the issue.
- **ITGOA cannot remain a mute spectator to the injustice of denial of pay commensurate to Gazetted status of AOs & PS** and therefore even with information about DOE not agreeing this demand cannot be dropped.
- **CBDT is making a feeble attempt** to drive a wedge amongst the membership of ITGOA by its statement that the fact about denial of this demand by DOE told to ITGOA on 8-1-2013 has not been informed to the Members, which is a mere guess or surmise. ITGOA lodges its stanch protest to such divisive tactics of the CBDT.

- v. **Provide laptop and data card to all AOs and PS, as now this is a functional necessity. Similarly, newly promoted ITOs be also given new laptops instead of old ones.**

CBDT's Clarification

For providing of Laptop and data card etc. a committee headed by DIT (Infra) had been constituted in January 2013 and its recommendations will be submitted by 15-2-2013

Correct status & ITGOA's response

ITGOA has been demanding this for past 5/6 years. This demand could have been very well met from 'OE' also as the total out lay will not be more than Rs. 5 Crores. But CBDT has turned a deaf ear to this. Now with functional necessity the said demand must be acceded and no committee's report must come in the way of this.

- vi. **Promotion of ACIT to DCIT for 2006 & 2007 batch should be w.e.f 1-1-2011 & 1-1-2012 and promotion of left-out officers of earlier batches be expedited. Also, correct Civil List No. be allotted to those DRs who have taken technical resignation (especially of 2006 to 2008 batch) and give correct seniority to PR with consequential effect on Promotion to DCIT.**

CBDT's Clarification

The matter of ante-dating of promotion of ACIT to DCIT for 2006 and 2007 batches has after approval of Hon'ble Finance Minister on 1-1-2013 been referred to DOPT for their comments

Correct status & ITGOA's response

- **For promotion of ACIT to DCIT, no outside agency like UPSC is involved. Therefore, the failure to hold timely DPCs is squarely on the CBDT** for which the officers are made to suffer loss both financial and career-wise.

- In this again, as PR officers are of advanced age they retire and go away with a permanent loss in their retirement benefit also and CBDT is oblivious of the plight of such officers, given its partisan role which comes to the fore in the next issue.

- There are many instances, where the DR IRS Officers who have taken technical resignation to join IAS/IPS are deliberately not allotted Civil List Number and to that extent the PR ACITs are denied their correct seniority, which will be higher in the same R.Y. and thereby adversely affecting their promotion as DCIT. This fact has been brought to the notice of CBDT for 2006 and 2007 batch, but without any avail.

vii. Initiate thorough discussion with ITGOA on the issue of 'Year of Induction'.

CBDT's Clarification

The issue of 'year of induction' is being taken up in the proposed amendment of the IRS Rules.

Correct status & ITGOA's response

- CBDT's Partisan attitude, utter **disregard for transparency and inclusive approach in Adminsitration is evident here.** The demand was for a thorough discussion on the subject with ITGOA whose members have 50% stake in IRS and the clarification is that it is being taken-up in the proposed amendment of IRS Rules.
- This issue has been raised vide ITGOA's letter dtd 17-5-2012 to Chairman-CBDT, discussed in Meeting with Chairman on 30-5-2012 and on 17-12-2012. **But till date the proposals have not even been shown to ITGOA. Even the RTI application for copy of order-sheet noting has been rejected by the O/o DGIT (HRD).**
- The above conduct and the casually worded clarification is only confirming the dubious intentions of CBDT, to harm the career prospect of Promotee Officers and ITGOA cannot be expected to remain silent on such blatant wrong doings.
- ITGOA (only recognised service association of officers in IT Dept.) only demands a thorough discussion before a formal proposal is sent to DOPT for incorporating the concept of 'Year of Induction' in the IRS Rules. It is any body's guess, why CBDT wants to bring in this concept surreptitiously in to the Recruitment Rule without any discussion, only to further its devious design as a counter to the DOPT OMs and Judgments of various HC and that of Apex Court (including that of NR Parmar) which lays down that inter-spacing of PR & DR would be of the same year and left-over officers will be bunched at the bottom of that year.

viii. **Finalise IRS Civil List, on the basis of extant rules.**

CBDT's Clarification

The IRS Civil List is under finalisation.

Correct status & ITGOA's response

The last published IRS Civil List was as on 1-1-2006 and as per Order of Hon'ble Delhi HC, this Civil List is the Seniority List. Factually, the IT Dept. is not having any other Seniority List of IRS Officers. Thus, **in effect there has been no IRS Seniority List of IRS Officers who have joined from 2006 to till date and this clarification is being given whenever this demand is raised.**

Here again the partisan attitude of the CBDT with its **intention to deny any regular promotion to higher grades to the promotee officers**, is abundantly clear and ITGOA will protest against this till a judicious resolution of the same.

ix. **Transfer back of ACIT & DCIT who have been subjected to cross-country transfer.**

CBDT's Clarification

The reconsideration of earlier made transfer of ACITs and DCITs will be taken-up during Annual General Transfer (AGT) in the month of March 2013 and request of officers affected by the cross country transfer, would be considered keeping in view of exigencies of the administrative efficiency.

Correct status & ITGOA's response

- In the posting order of ACITs promoted in March 2012, grounds of working spouse and children's education was implemented selectively and when ITGOA represented, administrative exigency was stated as a reason.
- But such administrative exigency i.e. vacancy in WB/Chennai was not considered while posting the probationers of 2010 batch whose posting was also done in 2012, mainly in Mumbai, Delhi and other regions, to the exclusion of regions with acute shortage. These officers are relatively younger and will have less difficulty or personal problems. Thus, it is clear that these regions were deliberately kept vacant for posting the Promotee officers whose advanced age is compounding their problems manifold.

- CBDT had assured that with the promotion of RY 2012-13, the grievance of cross-country transfers would be corrected as there are more than 25 ACIT who after completing cooling-off period of 2 years have opted for transfer to W.B. from where there will be good number of promotions, who can be sent to places from where officers are willing to come back to W.B.
- Similarly, there are many promotee JCITs who have been posted cross country and which needs to be corrected.

x. Implement Cadre Restructuring proposal of ITGOA/ITEF in toto

CBDT's Clarification

The proposal of implementation of Cadre Restructuring of ITGOA/ITEF is expected to be cleared by 31st March, 2013 as assured by Hon'ble FM for which ITGOA was already informed.

Correct status & ITGOA's response

ITGOA is not taken into confidence as to the discussions that are taking place between CBDT & DOPT/Cabinet sub-committee. But, crucial facts such as reduction of 207 posts in the grade of DCIT was kept under wraps. This was discussed only when ITGOA made an issue of it.

Therefore, it is abundantly made clear that CBDT must at least inform about the final proposal along with justification for the same, so that ITGOA can inform of the progress to its members.

xi. Provide adequate supporting staff immediately and till such time our members shall not be responsible for any lapses.

CBDT's Clarification

No separate clarification, as this issue has been taken together with issue no. (x).

Correct status & ITGOA's response

- Here again the utter apathy of CBDT to the plight of hapless officers with unmanageable work-load is evident, as CBDT does not consider this demand, warranting a separate reply.

- Two promotee officers in Chennai have already succumbed to the stress due to excessive work-load and have expired. Another officer is in ICU after an accident while returning to work after his request for extension of leave was rejected due to workload. In other regions the officers are resorting to VRS on account of heavy work-pressure. ITGOA cannot allow this issue to continue which will put lives of its members at risk.
- CBDT is fully aware of lack of complementary staff and the problems relating thereto, as DGIT (HRD) was present in the meeting at Chennai on 21/1/2013. **Still no decision have been taken with regard to assistance for discharge of duties.**

3. In view of the above stark facts, it is quite evident that the partisan attitude of CBDT is not allowing it to appreciate the very genuine issues, which have been raised for a very long time without any effective resolution. Hence, the status mentioned in CBDT's letter dated 8-2-2013 is nothing but a bureaucratic response to the issues that are very vital for the very survival of ITGOA's member in the service, with their dignity and self-respect intact.

4. ITGOA is conscious of the statutory duties of its member officers and would take this opportunity to assure that subject to the manpower and infrastructural constraints, **its members have been discharging these statutory duties even at the risk of their very life (refer the death of 2 Officers in Chennai region).** Still ITGOA wishes to assure that **its members will perform its statutory duties and the ongoing agitation will not come in the way of their discharge of duties.**

5. **CBDT may please note that the present agitation launched by ITGOA, is in line with the Civil Disobedience Movement which is the path shown by revered Mahatma Gandhi, Father of the Nation, to fight against injustice and ITGOA firmly resolves to persist with it, till a judicious resolution of its legitimate demands.**

Yours faithfully,



**(Rajesh D. Menon)
SECRETARY GENERAL**