



Income Tax Gazetted Officers Association

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ITGOA/Cadre Restructuring/2013-14

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To,
The DGIT (Inv.), Delhi &
Chairman of Sub-Committee No. 5
(on amendment to IRS Recruitment Rules),
New Delhi.

Respected Sir,

Sub : Rejoinder of ITGOA on averments of IRS Association - reg.

Please refer to the Representation of IRS Association (All India Body) which was submitted during the course of this committee meeting of 26-8-2013.

2. ITGOA wishes to place on record its clarification on the averments of IRS Association, which is referring to ITGOA's contention on CRC-2013 :

At the very outset, ITGOA wishes to state that this Sub-Committee No. 5, is mandated to suggest amendments or new Recruitment Rules for IRS, which will become effective for & from next recruitment year. Hence, this representation of IRS Association, especially with regard to ITGOA's suggestion for filling-up ACIT posts (atleast to the extent of Promotion Quota i.e. 50%) in the interest of Revenue and also to reduce stagnation in the level of ITO, to this sub-committee is unwarranted.

ITGOA has taken care to avoid any insinuating remarks on IRS Association's averments, but wishes to place factual and legal position in right perspective, for a correct appreciation of issues involved.

On Para '1'

Union Cabinet on 23-5-2013 (in case no.165/20/2013) approved Finance Ministry's proposal as per para 11 of its note dated 8-5-2013. Thus, it is not correct to state that the decision to stagger the filling-up of ACIT posts over a period of 5 years is the Cabinet Decision. On the contrary, it was the proposal of CBDT/HRD which was purely guided by IRS Association members and not that of any other authority like DoR, DoE, DoPT, Cabinet Secretariat or GoM.

On Para '2'

The IRS Rules 1988 which provides for filling-up of ACIT posts @ 50% of vacancy by Direct Recruitment and balance 50% by Promotion [Rule 7(2)], also has Rule 15 which is the 'power to relax' and this cannot be an ornamental rule and has to be used for exigencies like the present one i.e. Huge vacancies likely to remain vacant. Further, DoPT OM No. I-11019/12/2008-CRD dated 20-11-2009 clearly states that:

Note:- The existing Organised Group 'A' Services have evolved over a period of time and may have minor deviations owing to their respective functional requirements. The services already declared as such need not, however be reviewed.

Hence, there is no threat to the status of 'Organised Group A Service' to IRS, even if there is relaxation in any one year.

On Para '3'

By Promoting ITOs as ACIT, who have worked as a Group 'B' Officer out of which more than 6 years was as Assessing Officer and who have put in a total service of 19 to 23 years with indepth knowledge & experience of Revenue Collection, no one can say that organizational efficiency will be adversely affected.

On Paras '4', '4.1' & '4.2'

These are Quota Rule and Rota Rule as provided in IRS Rules 1988. But, the conclusion drawn is incorrect, because the Quota Rule says that 50% of ACIT Vacancy shall be filled-up by Direct Recruitment and other 50% of ACIT vacancy shall be filled by promotion of ITO and there is no stipulation of restricting the number of promotion to the number of vacancies reported to UPSC for recruitment through Civil Services Examination. Here, the optimization of Direct Recruitment as per DoPT OM No. 2/8/2001-PIC dated 16-5-2001 is relevant which restricted only direct recruitment & not promotion.

On Paras '5' to '5.7'

In these Paras 5 case-laws have been mentioned, but the said case-laws are not analysed with correct factual position as on today. Besides, these case-laws are prior to DoPT OMs issued in 1986 i.e. 7-2-1986 & 3-7-1986 [35014/2/80-Estt(D) & 22011/7/86-Estt(D)] which dispensed with the system of definite slots for PR and DR with provision for later entrants from one source to occupy such slots with march-over regular incumbents from other source. Besides, there is one major difference in factual position in these case-laws and that existing later i.e. Promotions then was purely Ad-hoc, but which was regular afterwards. Hence, the said case-laws are put in correct perspective along with recent case-laws :

S.G. Jaisinghani Vs UOI [AIR 1967 SC 1427] Order dated 22-02-1967

The case relates to validity of Seniority Rule of Income Tax Service, Class I Grade II vis-à-vis improper implementation of Quota, when there was a weightage of 3 years for PR over DR i.e. a PR of a particular year would rank senior to all DRs of that year and also DRs of 2 previous years. Besides, the **Promotion to ITO Class-I Grade II in excess of the quota**, which was challenged, **was not by any specific relaxation** and that the **promotions at that time were not on regular basis.**

Para 13 (Page 1434 of the judgement)

*“ We are accordingly of the opinion that promotees from Class II, Grade III to Class I, Grade II service in excess of the prescribed quotas for each of the years 1951 to 1956 and onwards **have been illegally promoted.**”* (emphasis supplied)

Further, in the same para, it is held that :

*“As we have already indicated, the quota rule is linked up with the seniority rule and unless the quota rule is strictly observed in practice, it will be difficult to hold that the seniority rule i.e. rule 1(f)(iii) and (iv), is **not unreasonable.**”*

(2 negative terminology i.e. ‘not’ and ‘unreasonable’ is used together)

Thus, the above findings are, “Where Quota Rule breaks down or is relaxed (as in instant case), it will be difficult to hold that Seniority Rule (Rule 9(iii) of IRS Rules), is reasonable and this is reiterated in para 23 of the Hon’ble SC’s Order in B.S. Gupta (1st).

In the instant case, there is no such weightage to PRs. Besides, **diversion of 496 ACIT posts (for years 2000-01 and 2001-02) from DR to PR Quota was by specifically relaxing the Quota Rule** [i.e. Rule 7(2)] in terms of Rule 15 of IRS Rules 1988, with due approval of DOPT and UPSC and the **consequent promotions were on regular basis.**

Thus on the above facts, this case law is clearly distinguishable & is not relevant.

B.S. Gupta (1st) Vs UOI [1973 (3) SCC 1] Order dated 16-08-1972

As these appeals flows directly from the Order in the case of S.G.Jaisinghani, the facts with respect to existence of **2 years weightage to PRs** over DRs, absence of any specific **relaxation of Quota Rule** and the **promotions then being not on regular basis held as ‘illegal’ by Hon’ble SC**, is equally relevant here also.

Following findings in the order is relevant : **Para 23 (Page 15 of the judgment)**

*“ This court in Jainsinghani’s case (supra) has clearly expressed that **if the quota rule was not strictly adhered to, it would be difficult to uphold the seniority rule as reasonable..... In our opinion, with the upgrading of a large number of posts and the appointments to them of promotees, the quota rule collapsed and with that the seniority rule also.**”*

B.S. Gupta (2nd) Vs UOI [1975 (3) SCC 116] Order dated 16-04-1974

Facts about lack of any specific relaxation to the quota rule and relevant promotions being not on regular basis (in other words promotions on officiating basis only), is same as in the cases of S.G. Jaisinghani and B.S.Gupta (1st).

Following findings in order are vital : **Paras 9 (Page 122 & 123 of the judgment)**

*“ The Government was fully aware of this binding nature of the principles in the matter of recruitment and therefore, when it made promotee appointments knowingly in excess of the quota available to them, it calculated that these appointments were liable to be regularized in subsequent years when quota vacancies were available to the promotees. That is why when **promotee appointments were made from 1957 onwards, they were made on an officiating basis** and every promotee was informed that the question as to how his seniority amongst the officers would ultimately be decided, was still under consideration.”* (emphasis supplied)

Thus, while considering para 22 of the order, where the effect of a Direct Recruit of 1966 becoming senior to a Promotee of 1962 is upheld, **the fact that the said Promotee of 1962 was only on an officiating basis, is vital and cannot be ignored.** Hon'ble SC has held the promotions from 1959 onwards, as '**haphazard promotions**' and in para 18 it is observed that the concerned PRs had all been promoted at a time when there were no posts earmarked for them and being promoted in very large numbers from 1959 to 1962, further promotions were made impossible in the years 1963, 1965, 1967 to 1970.

These facts are not there at present, because the promotions effected in the year 2001 was against specific posts earmarked for Promotees, 50% of 993 posts (working out to 497) as per Quota Rule i.e. Rule 7(2) and balance 50% (i.e. 496) being DR Quota diverted to PR specifically, in terms of a relaxation order dated 31-8-2011 with approval of DOPT & UPSC. Besides, even with the large number of promotions in 2001, there were regular promotions to the grade of ACIT in the subsequent years i.e. 2002, 2003, 2004, etc.

Thus on the facts and circumstances, the case law is not at all relevant.

Kamal K. Dutta Vs UOI 1980 (4)SCC 38/HK Sajnani Vs.UOI 1990(Sup) SCC577 Orders dated 25-4-1980 / 16-3-1990 of Hon'ble Apex Court

These Writ Petitions sought a review of the decisions in the cases of S.G. Jainsighani, B.S. Gupta (1st), B.S. Gupta (2nd), which was rejected by Hon'ble Apex Court. Hence, facts such as lack of any specific relaxation to quota rule and **PR of earlier years who were placed below DR of later years, were actually promoted on Ad-hoc/officiating basis (para 51 of the order)**, as applicable in the earlier cases is relevant in these cases also.

All the above 5 case laws relied by the respondents, were of period prior to 1986, when the Seniority Rule underwent a major change with the issue of DOPT OMs dated 7-2-1986 and 3-7-1986, whereby the earlier system of designated slots for PR and DR, was dispensed with.

Para 3 of DOPT OM dated 7-2-1986

"..... while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years would be dispensed with. Thus if adequate number of direct recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits are not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits who became available."

The above principle of bunching of left-over or remaining promotees, after rotation of PR and DR of a particular year and kept at the bottom of the seniority list of that year, is reiterated in DOPT OM dated 03-07-1986 at para 2.4.2

This aspect will also render the principles enunciated in the above judgements, not applicable to the facts and circumstances of the instant case.

N.K.Chauhan Vs. State of Gujarat [1977 (1) SCC 308] Order dated 1-11-1976

Findings of the Hon'ble Apex Court in the following paras deserves attention, in the present context :

Para 32(3) at page 325 of the judgement

*".....The impact of this position is that if sufficient number of direct recruits have not been forthcoming in the years since 1960 to fill in the ratio due to them and those deficient vacancies have been filled up by promotees, **later direct recruits cannot claim 'deemed' dates of appointment for seniority** in service with effect from the time, according to the rota or turn, the direct recruits' vacancy arose. **Seniority will depend on the length of continuous service** and cannot be upset by later arrivals from the open market." (emphasis supplied)*

Para 40(d) at page 329 of the judgement

".....Promotees regularly appointed during period A in excess of their quota, for want of direct recruits (reasonably sought but not secured and because tarrying longer would injure the administration) can claim their whole length of service for seniority even against direct recruits who may turn up in succeeding periods."

S.P. Gupta Vs. St. of J & K [2000 (7) SCC 561] Order dated 28-4-2000

In this case, the promotees were appointed on an Ad-hoc basis, which fact becomes clear from **para 79** of the order :

*“ Summarising the position, we therefore hold that **the ad hoc / stopgap service of promotees cannot be treated as non-est**”*

But in recent times, promotees in I.T. Dept. were appointed on a regular basis.

Further, in para 79, Hon'ble SC has held :

*“Seniority has to be worked out between direct recruits and promotees **for each year.**”*
(emphasis supplied)

In **para 80 and 81**, the following is held :

“80...It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such slot was available under the direct recruitment quota.

81. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment.....”

Direct Recruit Class II Engg. Officers Vs. State of Maharashtra

[1991 SCC (2) 715] Order dt. 2-5-1990 of **5 judge Constitution Bench**

In Para 44 of, it is held as under :

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.”

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.”

A. Janardhana - 1983 SCC L&S 467

“It is therefore time to clearly initiate a proposition that a direct recruit who comes in to service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 14 and 16.”

From the above analysis, it will be evident that the case-laws that have been cited by IRS Association are relevant to situation prior to issue of DoPT OM in 1986 (7-2-1986 & 3-7-1986), which brought a paradigm shift in the seniority rule in Government service. This coupled with the fact that promotions to the grade of ACIT (then ITO Class-I ; Grade II) was on Ad-hoc/Officiating basis unlike during the period after 2001, the said case-laws have no application.

In fact, in the recent judgments of Hon'ble Apex Court (including that of the case of NR Parmar, which has been relied upon by HRD in preparing the new draft IRS Rules), it has been held that PR & DR of the same vacancy year have to interspaced i.e. in the ratio of 1:1 and any delay in promotion cannot result in pushing down the PRs to be equated with DR of later years.

On Paras '6' to '6.2'

In these paras, while only one aspect has been highlighted i.e. allotment of earlier year's IRS batch to Promotees, by ignoring the fact about delay in promotion to the grade of ACIT, which cannot be attributed on the promotees. Even at the cost of repetition, the delay in conduct of DPC for ACIT in the last 21 years is mentioned here under :

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	8

Therefore, granting of IRS Batch of the vacancy year to the Promotees is only a small compensation to the undue & unjust delay in the conduct of DPC and is actually a right of the PRs. Further, promotion to these PRs as DCIT (STS) on completion of 4 years from such vacancy year is only consequential. Here, what is required to be appreciated is that these PRs are not fresh recruits like DRs, but are continuously working as Assessing Officers and in case the promotion was held in time, they also would have completed the requisite 4 years like a DR.

On Paras '7' to '7.11'

It is a fact that new posts in the grade of Jt.CIT to CCIT is 527, while that in the grade of DCIT/ACIT is only 822 (including Reserves). But this has been glossed over by a deft reference to some parts as under :

- Existing strength of ACIT i.e. 734 is compared to additional post of 786. Thus the increase in ACIT is 107.08%. But, what has been ignored is that increase in DCIT posts are 36 against an existing strength of 1358 which works out to mere 2.6%. Hence, a correct appreciation would be to take both ACIT & DCIT posts together, which will show that increase is 822 against 2094 i.e. 39.2%. For supervisory posts against an existing strength of 2100, the increase is 527 which works out to 25.1%. Thus, increase in cutting edge level in IRS i.e. DCIT/ACIT is not commensurate with increase in supervisory level.
- It is no one's case that grades above Jt. CIT are not supervisory level.

UPSC norms of restricting Direct Recruitment to 150 and DOPT OM No. I-11011/1/2009-CRD dated 14-12-210 stating "*The Cadre Controlling Authorities are, however, advised not to resort to any bulk recruitment as it would create a bulge in the structure leading to stagnation at later stage. This may be kept in view while projecting recruitment planning.*" are stark facts. It is only an intrigue, as to how & why IRS Association wishes to turn away their eyes from future stagnation in IRS?, if there are big batches of DR IRS year after year. Probably in their zeal to oppose ITGOA, the fact about number of direct recruitment in recent times, have been overlooked. In fact, for the last 6 years the batches are not less than 150 and if for next 5 years, if the same is going to be 200+, then even with Cadre Restructuring, such future stagnation cannot be corrected and there will be a situation where from the same batch of IRS there will be officers of 3 grades out of SAG, HAG HAG+ & Apex Scale, which will cause serious heart-burns bringing with it lack of cohesion in office atmosphere.

Even after such lengthy discussion, IRS Association has failed to point out even one instance when promotional prospect of a DR has been spoilt by a PR. But, the fact subsequent to 2001 Cadre Restructuring is that Promotion to JCIT(JAG) is with one year's relaxation for & from 2000 batch onwards. Further, it is a fact that out of 984 Promotee ACIT of CRC-2001 hardly 250 survive in service today. Another important fact is that, today even in JTS (ACIT) Prmotees are less than 50% of total working strength. All these only means that relaxation of Quota Rule and diversion of DR Quota to PR Quota do not affect the service at all, because the shelf life of PR are very less i.e. 18 to 20 years, and it is a fact that PRs ensure smooth progress of DRs in any organization, which is pyramidal in structure i.e. less number of posts at senior level.

Reference to agitation resorted to by ITGOA is uncalled for, because for any Service Association 'Negotiation' and 'Agitation' are two hands to work with. Moreover, IRS Association is also a service association and ought to respect the working of other service associations, including ITGOA.

There is a dichotomy in the contentions of IRS Association. On one hand they are saying that diversion of DR Quota to PR Quota in CRC-2001 was on account of abolition of 5586 posts in Group 'C', but on the other hand the said diversion is also assailed on the ground of organizational efficiency etc.

Comparison of I.T. Dept. with CBEC & CAG is also uncalled for, because of the nature of work and organization structure. Ours is an officer oriented one, whereas Customs/Central Excise is Inspector oriented. Further, the observation that Inspectors with 3 years are getting promoted as ITOs is far from truth and will be clear from the following chart :

STAGNATION FACED BY ITO VIS - À - VIS DR I.R.S OFFICERS

Grade	Year of joining the Department	Year of Promotion as ITO	Present Status	Number of such Officers
Inspector of Income Tax	1990 & 1991	2001	Still ITO (only 1 promotion in 23/22 Years)	91
Inspector of Income Tax	1992	2001	Still ITO (only 1 promotion in 21 Years)	172
Inspector of Income Tax	1993	2001	Still ITO (only 1 promotion in 20 Years)	163
Inspector of Income Tax	1994	2001	Still ITO (only 1 promotion in 19 Years)	90
Total...				516

Thus **stagnation of I.T.O is presently 12 completed years** and with the present scheme of dividing the 1349 vacancy (consequent to Cadre Restructuring-2013) in to five years, **stagnation of I.T.O will go up to 15-16 years**, which is not there in any other grades.

Grade	Year of joining the Department	Year of Promotion as DCIT/JCIT/ Addl. CIT/ CIT	Present Status
ACIT(Assistant Commissioner)	1990	1994/1999/2008/2011	Presently CIT (i.e. 4 promotions)
- do -	1991	1995/2000/2009/2012	Presently CIT (i.e. 4 promotions)
- do -	1992	1996/2001/2010	Presently Addl. CIT (i.e. 3 promotions)
- do -	1993	1997/2002/2011	Presently Addl. CIT (i.e. 3 promotions)
- do -	1994	1998/2003/2012	Presently Addl. CIT (i.e. 3 promotions)

After Cadre Restructuring-2013, **DR IRS Officers up to 1994 batch will become CIT** i.e. 4 promotions from their date of joining the department within a period of 19 years. Thus stagnation of Promotee Officers are glaring i.e. just 1 promotion in 19 to 23 years, whereas Direct Recruit IRS Officers in the same department and during same period have got 4 promotions.

Further, it is a fact that a DR IRS Officer joining as ACIT (JTS) has the scope to reach Apex Scale i.e. 7 elevations during service period, whereas a DR Inspector with such 7 elevations (including the 4800 to 5400 in ITO grade) will have to reach CIT (SAG). But, the fact is that hardly any DR Inspector reaches the level of CIT and a very few reach the level of Addl. CIT i.e. just 6 elevations. Further, as the ratio of DR Inspector is only 1/3rd vacancy, most of our members retire in the level of ITO & DCIT/ACIT. Hence, grievance of IRS Assn. is misplaced

On Paras '8(a)' to '8(h)'

Most of the contentions in these paras have already been answered above and for sake of brevity are not repeated here. But those points which are not covered above are as under :

Total vacancy in ACIT due to CRC-2013 is 1349 and promotion quota as per RR is 50% thereof i.e. 675. IRS Association is having objection to one-time promotion of this 675 also and for this they are stating that such enmasse promotion will reduce the number of trained staff down-below. But, in this argument a fact that is conveniently overlooked is that around 1500 new posts of ITOs and 4000 posts of Inspectors have been created in the same Cadre Restructuring and the same are to be filled at one go. From this, double standard of IRS Association is evident.

The contention of lack of training facility for such huge number of PR ACIT is made without appreciating that only 10 weeks training is given to PRs and this can be done in 3 or 4 batches in a year.

As regards, specialized nature of work in I.T. Dept. etc. the IRS Association is conveniently closing its eyes to the fact that PR ACITs have already worked as ITO for more than 12 years out of which minimum 6 years are in Assessment area and balance in Investigation, Administration, TDS, Exemption etc. Besides, they have also worked as Inspectors for around 10 to 12 years, besides qualifying 2 departmental exam (i.e. of Inspector & ITO) Thus, these officers can easily assume higher responsibility unlike DR ACITs who are straight from college and lack this kind of exposure to departments highly specialized work.

On Para '9'

While the extolling the virtues of phased manner of implementing Cadre Restructuring, two aspects have been completely overlooked and they are :

- Firstly, Cadre Restructuring is mainly to address the present stagnation and also the present functional needs.
- Such phased manner is not being adopted for other grades in the department.

Hence, this argument is only shallow and artificial.

3. ITGOA requests that the above clarifications are taken on record because it firmly believes that such one-sided and myopic views if not effectively rebutted, can blur the decision making process, if not now but in posterity, which will not be in the interest of IRS, Income Tax Department and Country as whole.

Thanking you,

Yours sincerely,



**(RAJESH D. MENON)
SECRETARY GENERAL**