

ITGOA/Cadre Restructuring/2013-14

7<sup>th</sup> August, 2013

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

*Respected Madam,*

**Sub : Reply to representation by members of IRS Association on Cadre Restructuring Issues - regarding.**

This is with reference refer to the representation that are being submitted by some direct recruit ACIT/DCIT to your goodself. Copy of the draft representation alongwith forwarding letter are enclosed for your ready reference. **In the said representation there are some misleading facts and arguments** and some of the conclusions drawn therein are highly derogatory and deplorable as they have been directed to tarnish the image of promotee officers as a whole. Further, certain adverse remarks on ITGOA, the only recognized service association of the promotee officers of the Department are not acceptable to us.

2. With regard to the above, **we wish to place following correct facts**, for the benefit of those who are interested to know the fallacy of above representation and **for those who have an unbiased disposition** with firm belief in equity & fairplay:

a. **No effect of CRC-2001 on seniority of officers of 2002 batch & later batches**

Out of 993 posts of ACIT consequent to CRC-2001, which were decided to be filled-up by only promotion, 984 regular promotions of ITO to ACIT was effected on 7-11-2001 (910) & 27-9-2002 (74). It was apprehended that this large number of promotions will adversely affect future promotional prospect of Direct Recruit IRS Officers of 2002 batch onwards.

But, the fact is that 2002 & 2003 batch officers have been promoted as JCIT with 1 year relaxation i.e. 1 year before it was normally due. Such relaxation is sought for 2004 and is required for future batches also, even without considering 527 new vacancies due to CRC-2013.

Another fact worth noting is that out of 984 ITOs who were promoted as ACIT on regular basis, in 2001 & 2002, only 250 officers or so are still in service and none of them have sufficient service left for reaching the grade of CIT.

b. **Facts about current Cadre Restructuring (CRC-2013)**

In the Cadre Restructuring-2013, 527 supervisory posts (CCIT to JCIT) have been created whereas 822 posts (including 620 reserves) have been created at the cutting edge level i.e. DCIT/ACIT. **Consequential vacancies at the level of ACIT will be 1349 which is to be filled-up in next 5 years** i.e. 270 for each year @ 50% by promotion and 50% by Direct Recruitment. **In effect, majority of these posts will remain unfilled for next 3 to 5 years.** In F.Y.s 2013-14 and 2014-15, a total of only 270 ACIT posts are likely to be filled i.e. Promotion @ 135 per year, as 270 DR of these two years will be available only after 2 years as recruitment process cannot commence before Feb. 2014.

- c. Thus quota for Direct Recruitment in IRS for next five years would be around 250 to 270 (135 CRC Vacancy + 115/135 being 50% of regular vacancy). But, for effective cadre management and as per UPSC norms the ideal DR quota shall be around 150 per year and UPSC will not be inclined to recruit more. Here DOPT OM No. No. I-11011/1/2009-CRD dated 14-12-2010 is relevant *"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."*

Thus, effectively every year around 100 to 120 posts of ACIT, out of direct recruitment quota will remain vacant and even after 5 years of CRC, there will be around 500 to 600 posts of ACIT remaining vacant. Further, if by citing 1:1 rule number of Promotion is restricted to number of direct recruitment (such a proposal is already under contemplation), then 5 years from now more than 1200 posts (out of a sanctioned strength of 2914 i.e. more than 40%) would be vacant. **There is no need to highlight, that these 1200+ vacant posts will have to held as additional charge by the balance 60% DCIT/ACIT which will include Direct Recruit IRS Officers,** who are being told to submit the petition. The vacancy position in the grade of DCIT/ACIT will further aggravate, if existing 300+ vacancy and 527 CRC vacancy in the grade of JCIT is filled-up, which will render 2000+ posts of DCIT/ACIT vacant i.e. 70% of strength.

- d. The only ad-hoc way to somehow reduce vacancy in the grade of DCIT/ACIT is to leave matching number of JCIT vacant. Keeping large number of posts vacant, in the grade of ACIT and/or JCIT, for a considerably long period i.e. more than 5 years is bound to **adversely affect the revenue collections.** Hence, Government or Union Cabinet can never make such a decision of leaving huge number posts in DCIT/ACIT and/or JCIT vacant. If such large number of posts at cutting edge level and at first supervisory level, are kept vacant, it is anybody's guess as to **how the promised growth in revenue in the coming years will be achieved.** Further, there is a likelihood that these posts can be abolished by DOPT, in future.

This contention of ours is established by the minutes of Cabinet meeting held on 23-5-2013 (copy got under RTI) which reads as under :

No.20/CM/2013  
CABINET SECRETARIAT

EXTRACTS FROM THE MINUTES OF THE MEETING  
OF THE CABINET HELD AT 1730 HOURS, ON  
THURSDAY, 23<sup>rd</sup> MAY, 2013, IN PANCHAVATI, 7,  
RACE COURSE ROAD, NEW DELHI.

Case No.165/20/2013

Item 11

Restructuring of the Income Tax Department.

The Cabinet considered the note dated 08.05.2013 from the Ministry of Finance (Vitta Mantralaya), Department of Revenue (Rajaswa Vibhag) and approved the proposals contained in paragraph 11 thereof.

Thus, it is the CBDT's proposal to keep the posts of DCIT/ACIT and/or JCIT vacant, for a considerably long period and now the blame is being conveniently shifted to the Union Cabinet.

- e. In para '3' of the representation, Inspector of Income Tax is being referred to as the cutting edge level. There is no need to say anything more on this proposition, as everyone knows as to which grade forms the cutting edge level. Further, in the same paragraph ITGOA's contention that Cadre Restructuring is for those who are already in service and not for those who are in school/college with specific reference to the pentafurcation of only ACIT vacancy (which will result in such schoolian/collegian who will be joining as DR ACIT after 4/5 year will rank senior to ITO with assessment experience of 12 years or more), is being countered with the argument that ITGOA also wants the ACIT Posts for such Schoolian/Collegian who will be joining as Direct Recruit Inspector. Here, it is clarified ITGOA's concern is for ITOs with around 10/12 years experience as on today, whose promotions are being deliberately delayed and not for any schoolian/collegian who are likely to join DR Inspectors.
- f. In para 4 of the representation, there is a mention of existence of only one grade in Group 'B' i.e. ITO in our department. Only for the sake of clearing such doubts Grade Pay of ITO is 4800 and that of Sr TA is 4200 & Inspector is 4600 and ACIT's Grade Pay is 5400. So there is no possibility for any other grade in Group 'B'. Further, the existence of 50% Promotion Quota in IRS ensures smooth career progression for DR IRS Officers. Further there is no scope for comparing our Dept. with Central Excise, because of difference in circumstance. Central Excise is Inspector oriented department, whereas ours is officer oriented. Therefore, **for the sake of those with some flair for equity, comparative stagnation of DR & PR** in our Department is mentioned as under:

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 working as ITO (only 1 promotion in 23/22 Years)	91
- do -	1992	2001	Still working as ITO (only 1 promotion in 21 Years)	172
- do -	1993	2001	Still working as ITO (only 1 promotion in 20 Years)	163
- do -	1994	2001	Still working as ITO (only 1 promotion in 19 Years)	90
<b>Total...</b>				<b>516</b>

Thus **stagnation of I.T.O is presently 12 years** and with the present scheme of dividing the 1349 vacancy (consequent to CRC-2013) in to 5 years, **stagnation of ITO will go up to 15-16 years**, which is not there in any other grades.

Grade	Year of joining 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 ITOs is 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.

- g. In para '5' of the representation there is reference to other Central Govt. service where direct recruitment is 2/3<sup>rd</sup>. **Here, evolution of IRS over last 5/6 decades needs to be analysed.** In 1950s & 1960s the ratio of DR in IRS was 80% and then it was revised to 66.67%. But at that time PRs were getting 3 year weightage in seniority i.e. Promotees of R.Y. 2010-11 will be considered as senior to DR of 2008 batch. **This practice of granting weightage in seniority to Promotees** was challenged by DRs in the case of **SG Jaisinghani [AIR 1967 SC 1427]**, but was **upheld by Hon'ble S.C.** in its order dt. 22-2-1967. Besides, **such weightage for Promotees is still in place, in IAS/IPS etc. But, in IRS the system of weightage in seniority to PRs was done away with in 1973 by increasing the ratio of PR from 33.33% to 50%** and it is in this context that the Hon'ble S.C. in the cases of **B.S.Gupta-II [1975(3) SCC 116]** & **Kamal Kanti Dutta [1980 (4) SCC 38]** held the rules to be just & fair. **Hence, there is no room for revisiting the Quota Rule of 50:50 for DR & PR without a relook on the rule for weightage in seniority to PRs**, which is upheld by Hon'ble S.C.

- h. In para '7' DOPT OM dated 20-11-2009 on the attributes of organized Group 'A' Service is referred to. But, the important 'NOTE' in the same OM is purposely omitted and the same is reproduced here below :

**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.

From the above, it is clear that either this aspect has skipped the attention or the same is purposely glossed over, with an intention to cause a fear psychosis in the minds of the authorities while taking any decision about relaxing the IRS Rules and divert DR Quota to PR Quota. **But what purpose will be achieved?** Bulk direct recruitment even for a single year, in the past, has caused stagnation problems for that batch and subsequent batches, which had to be resolved through CRC. If such big batches of DR continue for 5/10 years, it will lead to stagnation, which will be beyond any CRC exercise.

- i. There are allegations in the said representation that the relaxation in CRC-2001 and diversion of DR quota to Promotion, has resulted in PRs occupying more than 50% of posts in IRS, thereby affecting the promotional prospects of DR, is not borne out by facts. As on date Promotees form only 32% of total IRS officers i.e. 31% in the grade of Addl./Jt.CIT and 49% in DCIT/ACIT. Further, the very fact that there is a rule specifically empowering CBDT to relax (Rules 15), strikes at the suggestion that there should be no relaxation and diversion of DR quota to PR quota. **Lastly, the allegation that Promotee Officers & ITGOA has forced a systematic & persistent violation of rules, is unfathomable, as the entire CBDT is manned by only DR IRS Officers and many former President of IRS Association have been elevated as Member (P) & Chairman-CBDT.**

3. Reference to case laws of BS Gupta-II & Kamal Kanti Dutta (supra) in para '6' is totally out of place, because of complete change in facts & circumstances, as of now i.e. Promotions which were impugned in those cases were Ad-hoc promotions and the seniority rules then in force were as per DOPT OM No. 9/11/55-RPS dated 22-12-1959, stipulated definite slots for PR & DR and whenever the slot fell vacant due to retirement or any other reason, the PR or DR as the case may be, from below will jump over his/her next senior, to occupy the vacant slot. But, this system of vacant slots & frog jumping in seniority has been dispensed with since 1986 with the issuance of DOPT OM No.35014/2/80-Estt.(D) dt 7.2.1986, O.M.No. 22011/7/86-Estt.(D) dt 03.07.1986. Following case-laws of Hon'ble Supreme Court are relevant on the subject :

**A.Janardhana – 1983 SCC L&S 467 (Division Bench and Order dt.26-4-1983)**

*"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."*

**N.K.Chauhan Vs. State of Gujarat – 1977 (1) SCC 308 (Division Bench)**

**Para 32(3) of the judgement dated 1-11-1976**

*".....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) 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."*

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

**[1991 SCC(2) 715] 5 Judge Constitution Bench**

In Para 44 of **Order dated 02-05-1990**, 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."*

**S.P. Gupta Vs. St. of J & K – [2000 (7) SCC 561] (Division Bench)**

In para 79, of the judgment dated 28-4-2000, it is held :

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

After going through the above 4 case-laws of Apex Court which is more recent than SG Jainsinghani (Order dt. 22-2-1967), BS Gupta-II (Order dt. 16-8-1973) and Kamal Kanti Dutta (25-4-1980), harping upon these old case-laws which were pertaining to a period with different facts & circumstances, is surely with an ulterior motive to mislead all, on the subject matter.

4. On a comprehensive consideration of the facts extolled in paras 2 'a' to 2 'i' and 3 above, the following poser to the CBDT as a whole, is only logical :

- a) **Is CBDT not aware of the correct facts & circumstances on the issue of seniority ?** This is because, it was the CBDT which had filed Writ Petition in the Hon'ble Delhi High Court against the CAT (PB) Order dated 02-11-2010, in the case of Vikas Keraba Suryawanshi & Ors Vs. UOI (OA-1052/2010) filed by 5 DRs of 2002 & 10 DRs of 2003, challenging the seniority of regular PRs of 2000 and 2001. This litigation has resulted in delay of JCIT Promotion of 2000 & 2001 batch and their Addl. CIT promotion is likely to be affected.
- b) **The deliberate misconception that is being propagated amongst DR IRS Officers will vitiate the office atmosphere, by polarizing Officers in to two warring groups of DR & PR.** Is this a desirable situation? Can CBDT allow such a thing to happen? If not, then what steps does CBDT intend to take, to stem such undesirable developments?

5. We beseech upon your fair sense of judgment and take unbiased stand on the issue and **take such steps as to clear the deliberate misconception**, that is being spread amongst those Officers, who in future will be manning the posts of CIT/CCIT and even that of Member-CBDT and Chairman-CBDT. This is required, **in the best interest of Revenue and congenial office atmosphere.**

Thanking you,

Yours sincerely,



(RAJESH D. MENON)  
SECRETARY GENERAL

Encl. As above  
(copy of draft representation by DR)

Copy to :

- i. All Members of CBDT - For information.
- ii. DGIT - HRD - For information.
- iii. All Members of IRS Association

With a request to give a dispassionate and practical consideration to the correct factual position on the matter of service, seniority & promotion and take an informed decision, upholding the principle of equity & fairplay.



SECRETARY GENERAL