

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 4720 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 5712 of 2017**  
**TO**  
**SPECIAL CIVIL APPLICATION NO. 5719 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 5841 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 5944 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 5945 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 5990 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 6460 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 6488 of 2017**  
**With**  
**SPECIAL CIVIL APPLICATION NO. 6832 of 2017**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE M.R. SHAH**  
**and**  
**HONOURABLE MR.JUSTICE B.N. KARIA**

sd/-

sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>NO</b>
2	To be referred to the Reporter or not ?	<b>NO</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

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MUKESHKUMAR MANSUKHBHAI SOLANKI....Petitioner(s)

Versus

UNION OF INDIA & 4....Respondent(s)

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Appearance:

MS. M.L. SHAH, SR ADV WITH MR. HARDIK V VORA, ADVOCATE for the  
Petitioner(s) No. 1

MR C B UPADHYAYA, ADVOCATE for the Respondent(s) No. 5  
MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 1 - 4

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**CORAM: HONOURABLE MR.JUSTICE M.R. SHAH**

and

**HONOURABLE MR.JUSTICE B.N. KARIA**

**Date : 28/07/2017**

**CAV JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1.0. As common question of law and facts arise in this group of petitions, all these petitions are decided and disposed of together by this common judgment and order.

2.0. At the outset, it is required to be noted that this is a glaring example of total inaction on the part of the respondent department in not following and / or complying with the judgment and order passed by the Hon'ble Supreme Court in the case of Union of India & Ors. vs. N.R. Parmar & Ors reported in (2012) 13 SCC 340 and in not revising the seniority list in the cadre of ITO since last more than 5 years and on the contrary the department has continued to grant the promotion on ad hoc basis in the cadre of ITO operating the seniority list Pre-N.R. Parmar (supra)decision of the Hon'ble Supreme Court. It is also required to be noted at this stage that even in the year 2013 the Central Administrative Tribunal and thereafter in the year 2014, the Division Bench of this Court directed to prepare the revised seniority list as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) and thereafter even Contempt Proceedings were initiated and the directions were issued, till date the seniority list in the cadre of ITO has not been revised as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) which has been rendered as far as back in the year 2012 and therefore, the respective petitioners have no other alternative but to approach this Court by way of present Special Civil Applications

making the grievance about inaction on the part of the department in not revising the seniority list in the cadre of ITO by following the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) and consequently in not granting the promotion to the petitioners to the post of ACIT.

3.0. The facts leading to the present petitions in nutshell are as under:

3.1. That the dispute is with respect to the promotion from the post of ITO to the post of ACIT. That all these respective petitioners are serving in the Income Tax Department since number of years and at present all these petitioners are working as ITO and are claiming promotion from the post of ITO to the post of ACIT.

3.2. It is not in dispute that the respondent department is required to revise and prepare the final seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra). That as on one hand the department was not revising the seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) and on the other hand the department continued to operate the seniority list pre-N R Parmar (supra) decision and were filling up the post in the cadre of ACIT by way of promotion on ad hoc basis and therefore, some of the petitioners approached the learned Central Administrative Tribunal by way of OA No.145 of 2013. That the learned Tribunal vide final judgment and order dated 19.09.2013 disposed of the said OA and issued the following directions;

*"1. The respondents shall in accordance with the Parmar decision finalise the new seniority list after considering*

*the 150 objections within a period of one month.*

- 2. The Chief Commissioner shall constitute a committee of five senior officers to look into the objections on a day to day basis and give a report to the CC within one week of such entrustment CC shall ensure that they are free for this purpose.*
- 3. This Committee shall consider the date of appointment as pointed out by Mr.Rao, so that the Supreme Courts order cannot be manipulated in any manner.*
- 4. At the end of one month period, a new final seniority list shall be brought into effect and positions of all concerned shall be re-arranged forthwith.*
- 5. If there are any lacunae in the determination made by the CC, all such employees are hereby granted liberty to approach the Tribunal for redressal of their grievances on their individual representations that they have already submitted and also which they may submit after the recating is done highlighting their specific grievance. Therefore, the interest of all the general public in having the best governance possible, the interest of all the employees in having the rightful level of seniority and the department in proper utilisation of their employees force shall be finalised if the time factor is expeditiously kept as proposed and directed.*
- 11. The learned counsel for applicant would like to clarify that paragraphs 33 of the Apex Court in the case of N R Parmar are of crucial in nature. We do not propose to do so. We can only assert that whatever the Hon'ble Apex Court has decided, is the law of the land. We do not have power to add to it, subtract from it or clarify it.*
- 12. At this point of time, the learned counsel for respondents pointed out that in fact in OA Nos. 145/2013 and 146/13, they have not actually invited objections and therefore, the Board will issue a preliminary notification to this effect within one week from today and such affected officers shall be given three weeks from today to file their objections. The same committee after the earlier exercise is over shall consider this objection also in the light of Parmar Judgment and give a report to the CC or the Board as the case may be within one month from today. The report shall be sent to the Central Board of Direct Tax by the CC or if it is a committee appointed by the Board directly to it and the CBDT shall issue necessary orders within the next one month. The employees*

*affected by any such order are hereby granted liberty to approach the Tribunal for redressal of their grievances on their representations that they have already submitted or to be submitted on their individual grievance."*

3.3. That despite the above directions, the Department did not comply with the directions issued by the learned Tribunal and therefore, the respective petitioners preferred Contempt Petition before the learned Tribunal being CP No.45 of 2013 in OA No.145 of 2013 making grievance that respondents have willfully disobeyed the order passed by learned Tribunal dated 19.09.2013 in OA No.145 of 2013. That the learned Tribunal dismissed the said CP. That being aggrieved and dissatisfied with the order passed by the learned Tribunal dated 29.04.2014 in CP No.45 of 2013 in OA No. 145 of 2013 one of the applicant preferred Special Civil Application No.7465 of 2014 before this Court. After taking note of the submission made by the learned counsel for the Department that entire seniority list will have to be considered by the CBDT and looking to the proposal and other requirement which will take some more time, by order dated 17.06.2014, the Division Bench of this Court disposed of the aforesaid Special Civil Application No.7465 of 2014 by observing that it is expected that such seniority list may be finalized as far as possible by 15.10.2014.

3.4. Despite the above order passed by the Division Bench of this Court, the Department neither complied with earlier order passed by the Tribunal in OA No. 145 of 2013 nor even complied with the order passed by the Division Bench of this Court in SCA No. 7465 of 2014 and no steps were taken to prepare and finalize the seniority list and therefore, some of the petitioners preferred Contempt Petition before before this Court being Miscellaneous Civil Application No.1150 of 2016 to take appropriate action against the department, under the provisions of Contempt of Courts Act. It appears that thereafter even during the

pendency of the Contempt Petition, the Department on one had did not comply with the earlier orders and did not prepare and finalize the seniority list, however on the other hand continued to fill up the post of ACIT on ad hoc basis, therefore, the applicant of Miscellaneous Civil Application No. 1150 of 2016 submitted one Civil Application (For Direction) No.6862 of 2016 restraining the department from giving promotion to the post of ACIT on ad hoc basis. That after hearing the learned counsel for the department, the Division Bench of this Court passed the following order on 10.10.2016.

*"Mrs. Bhatt, learned advocate for the respondent nos.1 and 2, seeks time for placing on record affidavit of the concerned respondent to overcome the technical plea raised that the said respondent has not filed any affidavit.*

*Mrs. Bhatt, learned advocate, indicated that though on earlier occasion the statement was made, now Court may pass appropriate order, as the statement was enuring till the affidavit was filed.*

*On 12.09.2016, this Court passed the following order;*

*Mrs. Mauna M. Bhatt, learned advocate for the respondent seeks time and invites the court's attention to the order dated 3.8.2016 and in all fairness submits that the said statement shall continue till the affidavit is filed on the next date of hearing. At the request of learned advocate Mrs. Mauna Bhatt, the matter is adjourned to 20th September, 2016. The statement made by Mrs. Mauna Bhatt, learned advocate for the respondent shall continue till the next date of hearing.*

*It is recorded in the above order that Mrs. Bhatt's statement was to be continued till the next date of hearing.*

*The entire contention is based upon the discriminatory treatment meted out to the applicant and similarly situated persons in the State of Gujarat, despite there being a clear order of the Supreme Court in their favour. The enigmatic omission to follow the order of the Supreme Court on ostensible reason of some disparity on account of some proceedings in the High Court or Tribunal, would surely not be permitted to be perpetuated. Hence, we are of the prima*

*facie view that when the counsel for the respondent nos.1 and 2 has sought time to overcome the technical objection of no affidavit on behalf of the respondent no.1, despite the time being granted, we fail to understand as to why there was no affidavit from the Chairperson of the C.B.D.T. - respondent no.1.*

*Learned counsel for the respondent nos.1 and 2 submitted that the affidavit, which is filed at page 55 dated 20.09.2016, is along with due authority from the Chairperson of C.B.D.T. and hence though the same is in order, in case if it is required to be treated as no affidavit so far as respondent no.1 is concerned, let there be one more date and adjournment so that the technical objection could be overcome. When the Court is inclined to accept the request for adjournment so as to enable the counsel for the respondents to complete the formality of pleadings, it would be in the fitness of thing that the statement ought to have been continued. However, when the counsel has pleaded her inability to continue with the statement, this Court is of the view that the adjournment shall not in any manner create any prejudice to the applicant and similarly situated persons.*

*Hence, the status quo as on date be continued qua promotions from the cadre of Income Tax Officers to Assistant Commissioner of Income Tax.*

*Put up on 15.11.2016. "*

3.5. That the aforesaid Miscellaneous Civil Application No.1150 of 2016 came up for hearing before the Division Bench of this Court. In the aforesaid Contempt Petition, an affidavit in reply was filed on behalf of the Department, more particularly, Chairperson of the Central Board of Direct Taxes on 27.01.2017. In para 3 and 4 of the Additional Affidavit filed on 27.01.2017, it was stated as under:

*“3. I humbly submit that pursuant to above, the details were called for from AD-VI-Section of CBDT. The said Section has intimated the tentative time frame of six months by which, the decision of the Hon’ble Supreme Court in the case of N.R. Parmar is intended to be complied with in the cadre of ITO. The time frame given by AD-VI, Section of CBDT is as under :*

<i>Action to be taken by the</i>	<i>Expected time to be</i>
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<b>Board</b>	<b>taken</b>
A draft All India inter-se Seniority List of Income Tax Officers will be prepared interpolating all the seniority list of ITOs.	2 months (Appx.)
The draft Seniority List will be published on the Departmental website seeking comments/objection of the stakeholders, if any.	1 month (Appx.)
To address the objection/comments so received in the Draft All India inter-se Seniority List ITOs.	2 months (Appx.)
Preparation of Final All India inter-se Seniority List of ITOs after implementation of N.R.Parmar	1 months (Appx.)

4. *In view of the above, it is humbly submitted that the respondents are making all possible efforts to complete the said exercise and therefore, there is no willful inaction on their part, so as warrant action in the present proceedings.*

3.6. That relying upon the statement on oath of the Chairperson, CBDT, the Division Bench of this Court vide order dated 14.03.2017 disposed of the aforesaid contempt petition granting time to the department to revise the seniority list in the cadre of ITO upto 27.07.2017.

3.7. In the meantime, some of the petitioners again approached the learned Central Administrative Tribunal making the grievance against the respondent as to the inaction on the part of the respondent in initiating the process of permission to the post of ACIT on the basis of the seniority list bearing no. 23012/4/2012-Ad.VI dated 1.9.2015.



However, the learned Tribunal did not entertain the said OA in view of the order passed by the Division Bench of this Court in Miscellaneous Civil Application No. 1150 of 2016, by which, the Division Bench passed order of status quo with respect to the post of ACIT. Hence, respective petitioners have preferred present Special Civil Applications. While issuing the notice in the present proceedings, the Division Bench passed the following the order:

- "1. Draft amendment granted. To be carried out forthwith.*
- 2. Heard Shri M.S.Trivedi, learned advocate for the petitioner.*
- 3. Notice returnable on 22<sup>nd</sup> March 2017. Having regard to the facts and circumstances and order dated 10.10.2016 passed in Civil Application (for direction) No.6862 of 2016 in Misc. Civil Application No.1150 of 2016 in Special Civil Application No.7465 of 2014 and order dated 28.2.2017 passed in Original Application No.31 of 2017 by the Central Administrative Tribunal, the ground assigned for rejection of Original Application is pendency of above proceedings in the High Court of Gujarat. Further, if the respondents are allowed to go ahead with the exercise undertaken by them of effecting promotion to the post of Assistant Commissioner of Income Tax ignoring the directions issued by the Apex Court in the case of N.R.Parmar v. Union of India and others, it may result into anomaly and complications, we deem it just and proper to grant prayer to the extent that the respondents are hereby restrained from taking further steps pursuant to the communication dated 22.12.2016 and 14.2.2017 to prepare the penal for the vacancy of the year 2016-17 for promotion to the post of Assistant Commissioner of Income Tax.*
- 4. It will be open for the respondents to approach this Court in case of any administrative exigency before the returnable date.*
- 5. Direct service is permitted."*

3.8. That thereafter, the Department preferred Civil Application No.4296 of 2017 in Special Civil Application No.4720 of 2017 with a request to vacate the interim relief granted earlier, granted vide order dated 03.03.2017. That all these petitions came up for admission

hearing for admission hearing before the Division Bench of this Court on 04.04.2017 along with aforesaid Civil Application No.4269 of 2017 and while issuing the Rule in all these petitions and continuing the ad-interim relief granted earlier and while dismissing the Civil Application No.4269 of 2017, the Division Bench passed the detail speaking order running into 14 pages, which reads as under:

- "1. Heard learned Advocates for the parties.
  2. *In this writ petition filed by the writ petitioner, the basic grievance is about non-implementation of the judgment delivered by the Apex Court in the case of **Union of India & Ors. Vs. N.R.Parmar & Ors**, reported in (2012) 13 SCC, 340 [Per : Hon'ble Mr. Justice J.S.Khehar][as His Lordship then was] and statement made by learned Counsel appearing for the Income Tax Department before a Division Bench of this Court in SCA No.7465 of 2014, which is recorded in the order dated 17.06.2014 that entire seniority of Income Tax Officers (ITOs) will have to be considered by Central Board of Direct Taxes looking to the proposal and other requirements which will take some more time and the Court expected that such seniority list may be finalized as far as possible by 15.10.2014 and the petition came to be disposed of.*
- 2.1 *Later on, Civil Application (for direction) No.6862 of 2016 in MCA No.1150 of 2016 in SCA No.7465 of 2014 was preferred by the writ petitioner of SCA No.7465 of 2014 on the ground that discriminatory treatment was meted out to the applicant and similarly situated persons in the State of Gujarat despite there being a clear order from the Apex Court in their favour (**Union of India Vs. N.R.Parmar (supra)**). An affidavit was submitted on behalf of the Department and status quo order was passed and the Court directing that status quo as on date, viz. 10.10.2016 to continue qua promotions from the cadre of ITOs to Assistant Commissioner of Income Tax (ACITs) and the case was adjourned on 15.11.2016.*
  - 2.2 *Meanwhile, Original Application No.31 of 2017 was preferred by one of the aggrieved ITOs before the Central Administrative Tribunal, Ahmedabad Bench raising grievance against initiation of the process for promotion to the post of ACIT on the basis of seniority list dated 01.09.2015 being contrary to the judgment in the case of **Union of India Vs. N.R.Parmar (supra)**. However, in*

view of pendency of Civil Application (for direction) No.6862 of 2016 in MCA No.1150 of 2016 in SCA No.7465 of 2014 before the High Court, the Tribunal thought it fit not to deal with the prayer of the applicant in the OA subject to the order that may be passed by the High Court in the above pending matters, reserving liberty to the applicant to approach the Tribunal as and when circumstances warrant. The above order passed by the Tribunal on 28.02.2017 in OA No.31 of 2017 is under challenge before this Court in this writ petition, in which emphasis is led on non-compliance of the declared law on determination of seniority qua direct recruits viz-a-viz promotees based on rotation of quota principles and specific questions answered by the Apex Court in the above decision (**Union of India Vs. N.R.Parmar (supra)**) about what should be the process date on which direct recruits can be considered for seniority viz-a-viz promotees.

2.3 In spite of decision rendered by the Apex Court on 27.11.2012 and more than 4 years and 4 months have passed, yet the respondents have not finalized all India seniority list of ITOs as directed and accordingly, reliefs are claimed in this petition to restrain the respondents from operating tentative provisional seniority list of ITOs for promotion to the posts of ACITs on ad hoc basis.

2.4 On 03.03.2017, this Court issued notice making it returnable on 22.03.2017, whereby the respondents were restrained from taking further steps pursuant to the communications dated 22.12.2016 and 14.02.2017 to prepare the panel for the vacancies of the year 2016-17 for promotion to the posts of ACITs. It is pertinent to note that MCA (for contempt) No.1150 of 2016 filed in SCA No.7465 of 2014, came to be decided on 14.03.2017 by which certain paras of additional affidavit dated 27.01.2017 filed therein by the respondent Department came to be reproduced and relying on that, interim relief granted in that application came to be vacated.

2.5 On the strength of above order dated 14.03.2017 passed in contempt proceedings, Civil Application (for vacating interim relief) No.4296 of 2017 is filed by the respondent Department in which it is stated that time is taken to finalize the seniority list of ITOs based on conclusions and directions in the judgment in the case of **Union of India Vs. N.R.Parmar (supra)**, since in the case of Rajiv Mohan, it appears that, contrary judgment was given than

in the case of **Union of India Vs. N.R.Parmar (supra)** and the Principal CCIT, UP (West) sought clarification regarding the manner in which the seniority is to be re-cast and after processing file and seeking opinion of Department of Legal Affairs, it was decided finally that there would not be violation of any judgment in the case of **Union of India Vs. N.R.Parmar (supra)** and accordingly, time is consumed, but now as more than 200 posts are vacant in the cadre of ACITs for the vacancy year 2016-17, Department may be permitted to fill up such vacancies by granting promotions to eligible ITOs whose names are reflected in provisional seniority list for the list of seniority prepared in the year 2015. It is also submitted that in case if the Court is not inclined to vacate interim relief as prayed for, it can be modified by keeping posts in question vacant for aggrieved writ petitioners, otherwise not only administration but public interest would also suffer.

3. Learned Counsel for the Department has re-emphasized certain paras in the affidavit in reply dated 31.03.2017 filed on behalf of respondent Nos.1, 2 and 3 and submitted that whenever an incumbent is found eligible and directions were given by the Tribunal, ad hoc promotion is issued to the cadre of ACIT for the vacancy year 2015-16 and all possible efforts are made to comply with directions issued in the case of **Union of India Vs. N.R.Parmar (supra)** by the Apex Court, but it is not possible now to state before this Court about specific time limit within which such seniority list of ITOs will be prepared.
4. Learned Counsel appearing for newly joined respondent No.5 one of the affected officers also contended that though he is eligible to be considered for promotion to the post of ACIT, by virtue of operation of interim relief granted by this Court on 03.03.2017, the Department is unable to undertake further exercise and therefore, the case of respondent No.5 deserves to be considered accordingly. The arguments canvassed by learned Counsel for the Department are adopted for the purpose of prayer to vacate the interim relief. Further, learned Counsel for respondent No.5 has taken us through the judgment in the case of **Union of India Vs. N.R.Parmar (supra)** and submitted that conclusions and directions were reached in the above decision based on the questions fell for consideration before the Apex Court and our attention is drawn to questions that fell into consideration and answers given by the Apex Court.

Accordingly, it is submitted that delay, if any, on the part of the Department is because of administrative reasons which shall not come in the way of respondent No.5, who is otherwise eligible and in zone of consideration for promotion to the post of ACIT.

5. Having heard learned counsel for the parties, it is necessary to refer to para 15 of the above judgment, which reads as under:

15. Some direct recruits again approached the CAT, Principal Bench by filing Original Application no.2307 of 1999 (Sanjeev Mahajan & Ors. vs. Union of India & Ors.) alleging, that while drawing the seniority list dated 8.2.1999, the Department of Income Tax had not applied the quota and rota principle. On 23.2.2000, the CAT, Principal Bench disposed of OA no.2307 of 1999, and other connected original applications (Krishan Kanahiya & Ors. vs. Union of India, OA No.676 of 1999; H.P.S Kharab & Ors. vs. Union of India & Ors., OA no.387 of 1999; Muneesh Rajani & Ors. vs. Union of India & Ors., OA no.964 of 1999) by a common order. In paragraph 7 of its order the CAT, Principal Bench, narrated the issues which came up for its determination as under:

7. The short question which is posed for our consideration is as to what is the precise date on which direct recruits can be considered for seniority vis-à-vis the promotees. Whether it is (i) the date on which the vacancies have arisen; (ii) the date when the same have been notified by the department by sending requisitions to the Staff Selection Commission; (iii) the date on which selection by the Commission is made; (iv) the date when the selection is reported to the department; or (v) the date on which the direct recruit actually assumes office.

5.1 The answers given by the Apex Court to the above so recorded in the judgment read as under:-

28. The following conclusions have been drawn by us from the O.M. Dated 3.7.1986:-

28.1 If adequate number of direct recruits (or promotees) do not become available in any particular year, rotation of quotas for the purpose of determining seniority, would stop after the available direct recruits and promotees are assigned their slots for the concerned recruitment year.

**28.2** *To the extent direct recruits were not available for the concerned recruitment year, the promotees would be bunched together at the bottom of the seniority list, below the last position upto which it was possible to determine seniority, on the basis of rotation of quotas. And vice versa.*

**28.3** *The unfilled direct recruitment quota vacancies for a recruitment year, would be carried forward to the corresponding direct recruitment vacancies of the next year (and to subsequent years, where necessary). And vice versa. In this behalf, it is necessary to understand two distinct phrases used in the OM dated 3.7.1986. Firstly, the phrase in that year which connotes the recruitment year for which specific vacancies are earmarked. And secondly, the phrase in the subsequent year, which connotes carried forward vacancies, filled in addition to, vacancies earmarked for a subsequent recruitment year.*

**28.4** *The additional direct recruits selected, against the carried forward vacancies of the previous year, would be placed en-bloc below the last promotee. And vice versa.*

**40.** *The following conclusions, in our view, can be drawn from the OM dated 3.3.2008:*

**40.1** *The OM dated 3.3.2008 is in the nature of a clarification, to the earlier consolidated instructions on seniority, contained in the OM dated 3.7.1986 (referred to and analysed, in paragraph 21 above).*

**40.2** *The term available used in para 2.4.2 in the OM dated 3.7.1986 has been clarified to mean, both in case of direct recruits as well as promotees, for the purpose of fixation of seniority, would be the actual year of appointment & after the declaration of the result/selection, i.e., after the conclusion of the selection process, and after the completion of the pre-appointment formalities & (medical fitness, police verification, etc.).*

**40.3** *As per the OM dated 3.7.1986, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would not get seniority with reference to the year in which the vacancy arose, or the year in which the recruitment process was initiated, or the year in which the selection process was conducted.*

*40.4 As per the OM dated 3.3.2008, when appointments are made against unfilled vacancies in subsequent year(s), the persons appointed would get seniority of the year in which they are appointed on substantive basis.*

*5.2 Then, the Apex Court examined the effect of OM dated 03.03.2008 on the subject of inter se seniority between direct recruits and promotee by raising the following questions:*

*43.1 Would the OM dated 3.3.2008 supersede the earlier OMs dated 7.2.1986 and/or 3.7.1986?*

*43.2 And, would the OMs dated 7.2.1986 and 3.7.1986 negate the OM dated 3.3.2008, to the extent that the same is repugnant to the earlier Oms (dated 7.2.1986 and 3.7.1986)?*

*5.3 By undertaking the exercise in detail about subjects of both the Oms dated 07.02.1986 and 03.07.1986 vis-a-vis OM dated 03.03.2008 in para 52 held as under:*

*52. 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. Thus, the issue involved in these writ petitions is no more*

*res integra* and already concluded by the Apex Court in the above decision.

6. In the context of the above issue raised before us by the petitioner for redressal his grievance about non-compliance of conclusions and directions issued in the case of **Union of India Vs. N.R.Parmar (supra)**, undisputed fact remains that though 4 years and 4 months have passed, yet no final, common all India level seniority list of ITOs is prepared. The excuse on the part of the Department about administrative constraints which have come in their way and seeking opinion of the Department of Legal Affairs about the situation which had arisen after decision in the case of Rajiv Mohan being contrary to the judgment in the case of **Union of India Vs. N.R.Parmar (supra)** and clarification sought in this regard by the Principal CCIT, UP (West), according to us *prima facie* would not only be misconceived but meritless inasmuch as, the decision rendered in the case of Rajiv Mohan was *qua* grievance raised by an individual, which had no apparent conflict with the law laid down by Their Lordships in the case of **Union of India Vs. N.R.Parmar (supra)**. Barring vague assertions about delay based on above case in the application for vacating interim relief, no other ground appears. The Department has tried to take shelter under duties to be performed for collection of taxes, a sovereign function, to which we are not unmindful. However, at various stages and forums, grievance of the eligible officers like the petitioner remains unanswered and statements were made before this Court to complete the exercise as early as possible.
7. Even the last affidavit which was filed on 27.01.2017 before this Court in contempt proceedings also, reveals expected time to be taken of not more than 2 months for preparing draft of All India inter-se seniority list of Income Tax Officers by interpolating all the seniority list of ITOs and then to be published on the website of the Department. Such *ad hocism* on the part of the Income Tax Department in the appointment of important post of ACIT de hors the directions issued in the case of **Union of India Vs. N.R.Parmar (supra)** and cannot be permitted even on the ground of administrative exigencies unless final seniority list of ITOs based on all India seniority is completed within time bound schedule. Even today, while passing this order, we have asked learned Counsel for the Department to seek instructions and state whether within specific time limit, it is possible for the concerned authority to prepare finally all



*India list of ITOs. However, she is unable to make any such statement.*

8. *Accordingly, we find no reason either to vacate or modify the interim relief granted on 03.03.2017 and considering overall facts and circumstances of the case, we find that writ petition deserves to be admitted.*
9. *Hence, **RULE** returnable on **05.05.2017**. I.R. to continue till final disposal of the writ petition.*
10. *In view of the aforesaid order, Civil Application (for vacating interim relief) No.4296 of 2017 is disposed of. "*

3.9. That thereafter, all these petitions were finally heard by this Court on 20.07.2017. We heard the learned counsel for the respective parties at length on final hearing. However, at the request of learned advocate for the department and so as to enable her to get further instruction from the CBDT/ Department, all these petitions were adjourned to 25.07.2017. Ms. Mauna Bhatt, learned counsel for the Department has stated at the bar that she has no further instruction from the department / CBDT. Under the circumstances, we have heard all these petitions finally.

4.0. Ms. M.L. Shah, learned Senior Advocate has appeared on behalf of the respective petitioners and Ms. Mauna Bhatt, learned advocate has appeared on behalf of the respondent department.

5.0. Ms. Shah, learned counsel for the respective petitioners has vehemently submitted that as such inaction on the part of the respondent in not revising the seniority list in the cadre of ITO which is required to be revised as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) is deliberate, willful, arbitrary and discriminatory and violation of Article 14 of the Constitution of India.

5.1. It is submitted by Ms. Shah, learned counsel for the respective

petitioners that it is an admitted position and not even disputed by the learned counsel for the department that department is required to revise the seniority list in the cadre of ITO considering the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra). It is submitted that on one hand and despite the fact that decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) is rendered in the year 2012 and even thereafter also number of orders are passed by the learned Tribunal as well as this Court, the seniority list in the cadre of ITO has not been revised till date. It is submitted that on one hand there is inaction on the part of the department in not finalizing / revising the seniority list in the cadre of ITO and on the other hand, the department has continued to give promotion to the post of ACIT on ad hoc basis by operating the seniority list pre-N.R. Parmar (supra) decision.

5.2. It is submitted by Ms. Shah, learned counsel for the respective petitioners that not revising the seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) and granting promotion on ad hoc basis by operating the seniority list prepared Pre-N.R. Parmar (supra) decision, the valuable rights of the petitioners are affected. It is submitted that department has granted promotion on ad hoc basis in the cadre of ACIT who are junior to the petitioners and thereby petitioners are vitally affected.

5.3. Ms. Shah, learned counsel for the respective petitioners has submitted that in the case of petitioner of Special Civil Application No.4720 of 2017 i.e. Mukeshkumar Solanki if the revised seniority list is prepared as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) and in fact as per the draft revised seniority list, he would be at serial no. 3058 in draft seniority list of ITO and one Sher

Singh would be at serial no. 3074. It is submitted that the said Sher Singh has been granted promotion to the post of ACIT by giving deemed date of promotion as on 26.04.2005 and thereafter he has been granted further promotion to the post of Deputy Commissioner on 28.03.2012. It is submitted that therefore, the action of the respondent is discriminatory and violation of Article 14 of the Constitution of India.

5.4. Ms. Shah, learned counsel for the petitioners has submitted that even UPSC refused to call DPC unless and until the seniority list is revised considering the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra).

5.5. Ms. Shah, learned counsel for the respective petitioners has further submitted that even subsequently one another employee working as ITO in the office of the respondent, namely Shri Jatashankar s/o Laxminarayan Meena approached the learned Central Administrative Tribunal by way of OA No.376 of 2015. It is submitted that the said OA was preferred at the time when respondents were holding DPC for the purpose of promotion from the cadre of ITO to the cadre of ACIT for the vacancy year 2014-15. It was submitted before the learned Tribunal that DPC is proposing to consider the officer in the cadre of ITO for promotion to the post of ACIT on the basis of the seniority list that was in vogue prior to the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra). It is submitted that the OA came to be allowed by the learned Tribunal vide judgment and order dated 17.06.2016 and respondents were directed to consider the case of the original applicant for ad hoc promotion to the cadre of ACIT for the vacancy year 2015-16 in the meeting of the DPS scheduled to be held on 20.06.2016, irrespective of the ranking in the seniority list in the pre-N.R. Parmar or post- N.R. Parmar. It is submitted that department

has accepted and implemented the said judgment and order passed by the learned Tribunal in OA No.376 of 2015 and said Jatashanker Meena has been granted the promotion on ad hoc basis to the post of ACIT. It is submitted that however in the case of the petitioners, the case of the petitioners are not considered for promotion to the post of ACIT even on ad hoc basis.

5.6. Ms. Shah, learned counsel for the respective petitioners has further submitted that even on the statement made by Chairperson, CBDT made on oath in Miscellaneous Civil Application No.1150 of 2016 before the Division Bench while disposing of the Miscellaneous Civil Application, Division Bench granted time to the department to complete entire process and revise seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) on or before 27.07.2017. It is submitted that despite the above, at present draft seniority list at the stage of objection. It is submitted that only in the month of May 2017, the department published the draft revised seniority list in the cadre of ITO and invited the objections within 15 days. It is submitted that therefore, either there is a gross inaction on the part of the department and / or there is deliberate attempt on the part of department for whatsoever reasons not to revise the seniority list which the department is bound to revise as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra).

5.7. It is vehemently submitted by Ms. Shah, learned counsel for the respective petitioners that respective petitioners have legitimate expectations of their cases being considered to the next higher promotional post. It is also legitimately expected that juniors may not march over them because of the inaction on the part of the department

in not revising seniority list. It is submitted that because of such inaction on the part of the respondent department and granting promotion to their juniors on ad hoc basis has resulted into heart burning amongst the employees. It is vehemently submitted by Ms. Shah, learned counsel for the respective petitioners that therefore, the action is discriminatory and violative of Articles 14 and 16 of the Constitution of India.

Making above submissions, it is requested to allow the present petition and direct the department to finalize the revised seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) and to operate the same within the stipulated time and in the meantime respondents be restrained from filling up the post of ACIT on the basis of promotion on ad hoc basis and / or otherwise operating the seniority list prepared pre-N R Parmar (Supra) decision and / or to consider the case of the respective petitioners for promotion to the post of ACIT even on ad hoc basis either on the basis of draft revised seniority list or irrespective of ranking the seniority list in the pre- N R Parmar (Supra) decision or post- N R Parmar (Supra) decision as has been done in the case of one Jatashanker Meena- applicant of OA No. 376 of 2015.

6.0. Ms. Mauna Bhatt, learned counsel for the department has tried to justify the delay in not revising and / or finalizing the seniority list as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra). It is submitted that after the decision of the Hon'ble Supreme Court in the case of N R Parmar (supra) which was rendered in the year 2012, it is true that the department was required to revise the seniority list. However, before that the department was also required to revise the seniority list in the cadre of Inspector which was feeder cadre and therefore, it took time. It is submitted that thereafter the department had already now started process of revising the seniority list in the cadre

of ITO and the draft revised seniority list has been prepared and published in the month of May 2017 and the objections are invited against the draft revised seniority list granting 15 days time. It is submitted that the department has received 100 objections which are required to be dealt with and considered while finalizing the revised seniority list. It is submitted that therefore, the delay if any on the part of the department in not finalizing the revised seniority list, cannot be said to be deliberate and / or willful and with a mala fide intention.

6.1. Ms. Bhatt, learned counsel for department has requested to grant some more time to the department to prepare and publish final revised seniority list in the cadre of ITO and thereafter to operate the revised seniority list.

6.2. It is submitted by Ms. Bhatt, learned counsel for the department that in the meantime looking to the number of vacant post in the cadre of ACIT the public interest would suffer and therefore, the department may be permitted to fill up the post of ACIT by promotion on ad hoc basis by permitting the department to operate the seniority list which at present is in existence i.e. pre-N R Parmar (supra) decision. It is submitted that granting stay against the filling up the post of ACIT would be against the public interest. Therefore, relying upon the decision of the Hon'ble Supreme Court in the case of Prabhjot Singh Mand and ors vs. Bhagwati Singh and ors reported in (2009) 9 SCC 435, it is requested to permit the department to fill up the post of ACIT on promotion on ad hoc basis till the revised seniority list in the cadre of ITO is finalized.

Making above submissions, it is requested to dismiss the present petition.

7.0. Heard the learned advocates for the respective parties at length. The grievance which is voiced in the present group of petitions by the respective petitioners who are serving as Income Tax Officers in the Income Tax Department is that on one hand the Department is not revising the seniority list in the cadre of ITO, which the department is required to revise as per the decision of the Hon'ble Supreme Court in the case of N R Paramr (Supra) and on the other hand the Department is filling up the post of ACIT (Promotional Post) on ad hoc basis by operating seniority list pre-N.R.Parmar (supra's) judgment. Therefore, it is the case on behalf of the respective petitioners that because of the inaction on the part of the Department in not revising the seniority list in the cadre of ITO their right to consider their case for promotion from the post of ITO to ACIT has been affected. Learned counsel for the respondent -Department is not at all disputing that the Department is not required to revise the seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Paramr (Supra). However, it is the case on behalf of the department that as now the process for revising the seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Paramr (Supra) has already commenced / begun and some more time is likely to be taken, it is requested to grant some more time to the department to complete the process of revise the seniority list in the cadre of ITO and in the meantime to permit the department to fill up the post of ACIT (Promotional Post) on ad hoc basis by operating seniority list which the department was operating i.e. pre-N.R. Parmar (supra) decision.

7.1. However, it is required to be noted that the decision of the Hon'ble Supreme Court in the case of N R Paramr (Supra) was rendered in the year 2012 and thereafter department was required to take immediate steps and / or required to take steps within the reasonable

time to revise the seniority list in the cadre of ITO. There is no justification at all at least from 2013-14. There is total inaction on the part of the department either deliberately and / or willfully and / or for some other reasons, but the fact remains that for number of years no steps are taken to revise the seniority list in the cadre of ITO. At this stage, it is required to be noted that earlier the learned Central Administrative Tribunal in OA No. 145 of 2013 in its order dated 19.09.2013 issued the directions directing the department to revise the seniority list. However, for considerable long time, the department failed to comply with the said direction. The directions issued by the learned Tribunal vide order dated 19.09.2013 in OA No. 145 of 2013 are reproduced herein above. Therefore, the original applicant of OA No.145 of 2013 preferred Contempt Petition, however the learned Tribunal dismissed the contempt petition, against which, said applicant preferred Special Civil Application No.7465 of 2014. It was submitted on behalf of the department that entire seniority list will have to be considered by the CBDT and looking to the other requirement to be followed, which will take some more time and therefore, vide order dated 17.06.2014, the Division Bench of this Court disposed of the aforesaid Special Civil Application No.7465 of 2014 by observing that it is expected that such seniority list may be finalized as far as possible by 15.10.2014. Despite the above, the Department did not revise the seniority list and therefore, the Contempt Proceedings were initiated being MCA No.1150 of 2016. In the meantime, as the department continued to operate the seniority list prepared pre-N R Parmar (supra) decision and were giving promotion on ad hoc basis to their juniors, Civil Application was preferred for interim order and the Division Bench granted order of status quo. Even at the time of hearing of the aforesaid contempt petition, the Department itself in the additional affidavit dated 27.01.2017 came out with time bound programme /expected time to be



taken for finalizing of the revised seniority list and while disposing of the aforesaid Miscellaneous Civil Application vide order dated 14.03.2017, the Division Bench granted time upto 27.07.2017 to the department to revise the seniority list. Though, the order was passed on 14.03.2017, even the draft revised seniority list came to be published by the department in the month of May 2017 only. The delay right from 2014 and even thereafter has not been explained. Therefore, there is a total inaction on the part of the department in not revising the seniority list in the cadre of ITO, which the department is bound to revise as per the decision of the Hon'ble Supreme Court in the case of N R Paramr (Supra). Inaction on the part of the Department has as such affected the rights of the respective petitioners to consider their case for promotion to the post of ACIT. The respective petitioners while serving in the department shall have the legitimate expectations at least to consider their case for promotions to the next post i.e. ACIT, more particularly when the juniors to them have got the promotion may be on ad hoc basis.

7.2. At this stage, few decisions of the Hon'ble Supreme Court on legitimate expectations are required to be referred to and consider. In the case of Ramchandra Dayaram Gawande vs. Union of India reported in 1996(10) SCC 420, the Hon'ble Supreme has observed that though no employee has a right to promotion, but has right to be considered for promotion according to the Rules. It is observed and held that every incumbent of a substantive post in lower cadre has a legitimate expectation for promotion and to be considered for promotion in accordance with the Rules. It is further observed by the Hon'ble Supreme Court in the said decision that preparation of selection list in accordance with the appointment by promotion Regulations is a precondition which requires to be prepared every year. It was held to be a mandatory duty. It is further observed that it subserves the object of the Rules and affords

an equal opportunity to promote officers to reach higher echelons of the service. It would inculcate dedicated service assiduously discharging the duties with integrity, honesty, exhibiting ability, straight forwardness with missionary zeal of self confidence. It is further observed that failure to prepare the list and accord chances of promotion would inhibit efficacy in service and generate dishonesty and manipulation.

7.3. In the case of the Union of India and Another vs. Hemraj Singh Chauhan and ors reported in (2010) 4 SCC 290, it is observed and held by the Hon'ble Supreme Court that right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. It is further observed that the guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution. In the said decision, the Hon'ble Supreme Court has also observed that both the Central and State Government are to act as a model employer which is consistent with their Rule in a welfare State. Before the Hon'ble Supreme Court though the statutory mandate of a cadre review exercise every five years is qualified by the expression "ordinarily", the Hon'ble Supreme Court has held that statutory duty which is cast on the State Government and the Central Government to undertake cadre review exercise every five years is ordinarily mandatorily subject to exceptions which may be justified in facts of the given case. It is observed that however lethargy, inaction and sense of responsibility cannot fall within the category of just exceptions.

7.4. In another decision in the case of Union of India vs. Hindustan Development Corporation reported in (1993) 3 SCC 499, the Hon'ble Supreme has observed and held that mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a

distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. It is further observed by the Hon'ble Supreme Court in the said decision that every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process.

8. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions to the facts of the case on hand inaction on the part of the department in not revising the seniority list in the cadre of ITO has affected the right of the petitioners to consider their case for promotion. The legitimate expectations of the petitioners of being considered for promotion have been defeated by the act of the department (inaction on the part of the department). Unreasonable inaction on the part of the department in not revising the seniority list in the cadre of ITO has stood in the way of the petitioners chances of promotion from being fairly considered when it is due for such consideration and the delay has made them ineligible for such consideration. Not only that indemnify granting of promotion to the post of ACIT on ad hoc basis to some of the juniors has resulted into discriminatory treatment which is violative of Article 14 of the Constitution of India. Considering the draft revised seniority list, it appears that those who would juniors in the seniority list if prepared on the basis of the decision of the Hon'ble Supreme Court in the case of N.R. Parmar (supra), some of them are already promoted as ACIT on ad hoc basis. The Department is bound to perform its duty diligently, by not revising the seniority list in the cadre of IT, which the Department is bound to revise as per the decision of the Hon'ble Supreme Court in the case of N.R. Parmar (supra), the same can be termed as even arbitrary

and even mala fide

8.0. At this stage, it is required to be noted that even after 2014 years the UPSC also refused to call DPC till seniority list in the cadre of ITO has been revised as per the decision of the Hon'ble Supreme Court in the case of N.R. Parmar (supra).

9.0. Now so far as the request made on behalf of the Department to permit the Department to fill up the post of ACIT by way of ad hoc promotion by permitting them to operate select list pre-N.R. Parmar (Supra) decision is concerned, the aforesaid cannot be accepted. It is required to be noted that as such earlier such prayer of the department has been rejected twice by this Court. Even otherwise, grant of such prayer would tantamount to permitting the Department to operate the select list which will be contrary to the decision of the Hon'ble Supreme Court in the case of N.R. Parmar (supra) and thereby nullifying the decision of the Hon'ble Supreme Court in the case of N.R. Parmar (supra). Still, a suggestion was made to learned counsel for the Department that if the Department is so much worried about public interest in filling up promotional post, they may operate the draft revised seniority list. However to that, Ms. Bhatt, learned counsel for the Department stated that she has no further instructions. On one hand, the Department wants to fill up the promotional post on ad hoc basis by operating seniority list which can be said to be in vogue and just contrary to the decision of the Hon'ble Supreme Court in the case of N.R. Parmar (supra). However they do not want to give promotion to the petitioners even on ad hoc basis by operating draft revised seniority list. The aforesaid stand on the part of the Department is absolutely unfair. At this stage, it is required to be noted that as such some what similar orders came to be passed by the Central Administrative Tribunal in the

case of one Jatashanker Meena in OA No. 376 of 2015 who was similarly situated to that of petitioners and the Tribunal directed the Department to consider his case for promotion to the post of ACIT irrespective of the ranking in the seniority list in the pre-N.R. Parmar or post- N.R.Parmar and to give him ad hoc promotion and to consider his case for promotion on ad hoc basis. It is reported that the Department has accepted the said decision and thereafter considered the case of Shri Jatashanker Meena and he has been granted promotion to the post of ACIT on ad hoc basis. However, so far as petitioners are concerned, the Department is not agreeable for the aforesaid and therefore, the action of the respondent is discriminatory and violative of Article 14 of the Constitution of India.

10. Despite the aforesaid facts and circumstances, the learned Tribunal has refused to grant any relief as prayed in the OA's, which ought to have been considered by the learned Tribunal on merits. As the learned advocates for the respective parties have made elaborate submissions on merits, instead of remanding the matter to the learned Tribunal we ourselves have considered the matter on merits, more particularly, in light of the earlier orders passed by the Division Bench of this Court, which are referred to herein above,

11. In view of the above and for the reasons stated above, all these petitions are allowed / disposed of with the following directions:

- (1). That the Department to finalize the revised seniority list in the cadre of ITO within a period of 8 weeks from today without fail. The Department to complete the entire process of finalization of revised seniority list in the cadre of ITO within the period of two months from today, without fail and submit the compliance report before this Court in the present proceedings just on completion of

above two months.

- (2). As already ordered earlier till the revised seniority list in the cadre of ITO as per the decision of the Hon'ble Supreme Court in the case of N R Parmar (Supra) is finalized and the cases of the respective petitioners are considered for promotion to the post of ACIT, as already ordered earlier the respondents are restrained from filling up the post of ACIT on promotion on ad hoc promotion by operating the select list pre-N.R. Parmar (Supra) decision.
- (3). However, during the aforesaid two months it will be open for the department to grant ad hoc promotion on the post of ACIT in the meantime and till revised seniority list in the cadre of ITO is finalized, by operating the draft revised seniority list and thereby to consider the case of the respective petitioners for promotion to the post of ACIT on ad hoc basis, as was done in the case of applicant of OA No.376 of 2015 - Shri Jatashanker Meena.
- (4). In any case, the aforesaid exercise shall be completed and the revised seniority list in the cadre of ITO be finalized within a period of two months from today as stated above, and immediately, thereafter case of the respective petitioners be considered for promotion to the post of ACIT forthwith.

Rule is made absolute to the aforesaid extent in each of the petitions. No costs.

sd/-  
(M.R. SHAH, J.)

sd/-  
(B.N. KARIA, J.)

Kaushik