INCOME TAX GAZETTED OFFICERS' ASSOCIATION

I.T.G.O.A. ZINDABAD

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To
TheChairman,
Central Board of Direct Taxes,
New Delhi.

Respected Sir,

Subject: Anomalies in the draft All India Seniority List of ITOs circulated on 23.5.2017 after implementation of decision of the Hon'ble Supreme Court in the case of Union of India vs. N.R. Parmar& Others (CA No.7514-7515 & others) at the regional levels- regarding.

Kindly refer to the discussions held with your goodself on the subject mentioned abovein the meeting held on 27.05.2017 with the representatives of JCA.As your honour is well aware that the ITGOA is trying to provide all assistance to the Task Force/HRD / CBDT in speedy completion of the 'implementation of the NRP Judgment' across the country and subsequent finalisation of the all India seniority list of ITOs correctly so as to reduce / minimise the avoidable further litigation in the matter.

We have analysed the draft seniority list for ITOs dated 23rd May 2017 and the region-wise revised lists in various cadres for the purpose. During the process of such exercise, it has been noticed that the revised seniority list in the cadre of Inspector prepared by some charges is not correct / not in accordance with the advisory issued by CBDT/ in violation of extant rules for uniform implementation of NRP. The chargewise discrepancies / issues are mentioned below for your kind consideration:

1. **Analysis of ITI's seniority list of GUJARAT :**

Gujarat Charge has prepared/revised seniority in the cadre of ITIs on the basis of the minutes of the meeting conducted on 15.4.2015 by the administration with representatives of ITEF and ITGOA of the State Unit.

1.1 As per the minutes of the meeting held on 15.4.2015 (copy enclosed) that a good number of Inspectors promoted on regular basis as per the original DPCs from RY 1993-94 to RY

2012-13 have been held to be **ad-hoc in the process of implementation of NRP** applying clause 2.4.4 of the DOPT OM **No.22011/7/86-Estt.(D)dated 3.7.1986** which states as under **:**

> *"2.4.4 With a view to curbing any tendency of under-reporting/suppressing the vacancies to be notified to the concerned authorities for direct recruitment, it is clarified that promotees will be treated as regular only to the extent to which direct recruitment vacancies are reported to the recruiting authorities on the basis of the quotas prescribed in the relevant recruitment rules. Excess promotees, if any, exceeding the share failing to the promotion quota based on the corresponding figure, notified for direct recruitment would be treated only as ad-hoc promotees."*

1.2 As per the minutes of meeting dated 15.4.2015, the year wise detail of the promotee Inspectors held to be ***ad-hoc*** is as under:

S. No.	Recruitment Year	No. of Promotee Inspectors held as ad hoc
1	1993-94	59
2	1994-95	93
3	1995-96	95
4	1996-97	123
5	1997-98	156
6	1998-99	189
7	1999-00	163
8	2004-05	28
9	2010-11	27
10	2011-12	26
11	2012-13	16

1.3 This whole exercise of conducting more than 100 review DPCs spread over more than 25 years in various cadres including TA, Sr. TA/ UDC, Inspector and ITO was only to implement the decision of Hon'ble Supreme Court and there is no reason for any charge / unit to assume facts and figures which are not supported by any record / document.

1.4 It is apparent from the list of Gujarat charge that the number of promotions to the cadre of Inspector effected at the time of original DPC has been changed and**regular promotions made in original DPCshave been converted to ad-hoc promotions in respect of Promotee Inspectors** at the time of review DPC. This appears to be incorrect as there is no document to support such arbitrary decision. Further, from the time of original DPC till the time of review DPC on 15.04.2015, this issue of suppression of DR vacancies was never raised at any point of time.

1.5 The intent behind the introduction of Clause 2.4.4 is to curb the deliberate tendency of under reporting of DR vacancies. **The reporting of vacancies from the year 1990 was done by the CBDT and not by the respective CCsIT**. If at all there is any under reporting, it is not just for Gujarat Charge but for all the 18 charges. However the fact remains that **there is no evidence of deliberate suppression in reporting of DR vacancies** in all the above mentioned years.

1.6 On verification of the minutes dated 15.04.2015, it is noticed that vacancy of DR Inspectors were calculated without any basis. The actual vacancy position of the charge should have been worked out on the basis of actual vacancy arisen in that charge during the year and should have been worked out from the vacancy register maintained in the respective charge. **Gujarat Charge has worked out the vacancies of DR Inspectors by mathematically calculating @ 50% of the total promotions to the cadre of Inspectors, which is only an imaginary figure**.

1.7 A copy of Board's letter F. No. A-12018/19/93-Ad.VII dated 29.10.1993 (attached herewith) regarding **diversion of 358 DR quota post to PR quota** in the cadre of ITI was handed over to your goodself in the meeting held on 27.05.2017. The annexure-I to the letter clearly shows **that 35 posts of Inspectors in DR Quota in Gujarat were diverted to PR quota** and therefore provision of Para 2.4.4 of O.M dated 03.07.1986 applied by Gujarat Region by assuming facts is incorrect and needs to be corrected immediately.

1.8 If at all the promotee Inspectors are to be treated as ad-hoc and carried forward to next year for regularisation as mentioned in the Minutes dated 15.04.2015, their date of regularisation has to be as per clause 2.4.4 i.e. they can be regularised from the date corresponding DR is made available and not from the date of ad hoc promotion. In fact all such Inspectors were promoted on regular basis and cannot be treated as ad hoc after 15-20 years of regular service. It is unprecedented and is arbitrary. I**n the revised seniority list of ITIs the date of promotion of Inspectors treated to be ad-hoc remains unchanged and the date as per the original DPC was adopted**. This has given rise to an anomalous situation in which the date of promotion of ITIs placed in RY 1994-95 and RY 1995-96 falls in FY 1993-94 (Sr.No.620 to 710 of revised seniority list of ITIs). Similarly, the date of promotion of ITIs of RY 1999-00 falls in FY 1994-95 (Sr.No.753 to 776 of revised seniority list of ITIs). These are only illustrative examples and the revised seniority list of ITIs contains full of such discrepancies. The Pr.CCIT, Gujarat may be asked to clarify as to **how the date of promotion of these ITIs can be fixed 4 to 5 years prior to the recruitment year** and why this anomaly has been ignored at the time of review DPC.

1.9 In view of the above, the claim of suppression in reporting of DR vacancies is without any basis and treatment of promoted Inspectors as ad-hoc at the time of review DPC appears to be incorrect and baseless. Hence, **the revised seniority list of ITIs in Gujarat Region appears to be faulty, incorrect and manipulative**. These discrepancies deserve to be set right.

1.10 **More importantly, the review DPCs in the grade of ITOs for various RYs are based on the above mentioned faulty and incorrect seniority list of ITIs which results into faulty**

revision of the seniority of the ITOs of Gujarat Region, which also deserves to be corrected before finalisation of all India Seniority List of ITOs.

1.11 It is also to bring to your kind notice that no other region has implemented Para 2.4.4 of DOPT OM dated 03.07.1986. **The Pr.CCIT, Gujarat may be directed to attend to the matter immediately and do the needful.**

2) <u>Wrong fixation of seniority of 2000-01 & 2001-02 promotions</u>

It is seen from the draft seniority list that approximately 1000 promotion took place on 18.06.2001 itself against the available vacancies of R.Y. 2000-01 (mostly restructuring vacancies) and approximately 500 promotions for R.Y. 2000-01 & 2001-02 took place in the month of November 2001 (mostly ITO to ACIT promotion of consequential vacancies). Some promotions in very small numbers (around 100) also took place in between 18.06.2001 & November 2001and December 2001 to March 2002. As per seniority rules, 1000 ITOs promoted on 18.06.2001 should rank senior to ITOs promoted in between 18.06.2001 to November 2001, who in turn should be ranked senior to 500 ITOs promoted in November 2001. Similarly ITOs of R.Y. 2001-02 should be assigned seniority on the basis of their dates of promotion order. This discrepancy appearing in the draft seniority list needs to be corrected and **the Task Force is to be directed accordingly**.

3) <u>Mistakes in adoption of vacancies for the RY 2000-01 and 2001-02</u>

On verification of the revised seniority list in the cadre of ITOs, It is noticed that while calculating the available vacancies "on account of promotion to the grade of ACsIT", there is variation in the number of vacancies taken in the RY 2000-01 and 2001-02 and also Board's subsequent letter vide F.No.A-32013/2/2002-Ad. VI dated 21/02/2002 in which vacancies arisen in ITO cadre on account of promotion to the grade of ACsIT was communicated by the CBDT bifurcating the same for all CCIT (CCA) charges. The same for vacancy year 2000-01 and 2001-2002 are as under.

SL No	Region	No. Of Promotion as per earlier list VY 2000-01	No. Adopted in Revised List	No. Of Promotion as per earlier list VY 2001-02	No. Adopted in Revised List
1	BIHAR	52	78	21	5
2	DELHI	88	132	91	55
3	PUNE	103	119	31	10
4	RAJASTHAN	67	95	28	10
5	AP	61	74	32	19

This discrepancy has resulted into preparation of faulty seniority for these RYs.which needs to be corrected and **the Task Force is to be directed accordingly**.

4) <u>Note on seniority list of Inspectors of Delhi Charge</u>

Delhi Charge has adopted Exam Year as the Recruitment Year for the DR Inspectors which is against the advisory issued by HRD. This is against the spirit of uniform implementation and there is every possibility of further litigation by other units in this regard. Hence, it is requested that **the Pr CCIT, Delhi may be advised to implement the decision as per the Advisory**.

5) <u>Note on seniority list of Inspectors UP(East)</u>

UP(East) has revised the seniority list before the issue of the Advisory and they have taken the year of examination as the Recruitment year which is against the advisory dated 27/11/2014 and against the spirit of uniform implementation. This may lead to further litigation. The **Pr CCIT, UP(E) may be directed to revise the list as per the advisory.**

6) <u>Allahabad CAT order challenging the seniority list prepared in UP (West) region</u>

SanjeevBimbisariye, ITO and others from UP (west) have filed a petition before the CAT Allahabad in OA No. 330/00216/2017 challenging the revised seniority list prepared by Pr CCIT, Kanpur on 17/3/2017 and vide and order dated 11.04.2017 has ordered to maintain the status-quo. A detailed letter has been submitted by ITGOA ob 20/04/2017 (copy enclosed) on the issue.

Further, in UP (West) region, it is found that the Direct recruits Inspectors as well as UDCs who have not joined/decline to join or in the cases of Dossier returned, has been placed in the respective years which is also against the para 2.4.2 of DOPT OM dated 03.07.1986 which provides fixation of seniority of actually available persons. Moreover, in this region, seniority of the care of stenographer has also been revised which is not in the mandate given in the advisory. A detailed letter has been submitted by ITGOA on 20/04/2017 (copy enclosed) on the issue.

In UP (West) all direct recruits Inspectors have been placed in the bottom in the gradation list of Inspectors for R.Y. 1991-92 and 2001-02. No rota quota has been applied for determination of seniority between direct recruits and promotees Inspectors. All this is causing unnecessary litgation and so, the **Pr CCIT, UP(W) may be directed to revise the list accordingly.**

7) <u>Guwahati CAT order challenging the seniority list prepared in NER region</u>

Being aggrieved on the revision of the seniority in the cadre of Income Tax Officer, four officers had preferred appeal against the recommendations of the Review Departmental Promotion Committee dated 19.12.2014, before the Hon'ble CAT, Guwahati Bench, Guwahati. The Hon'ble CAT, Guwahati Bench, Guwahati held that the judgement of Hon'ble Apex Court in the case of N.R. Parmar Vs. UOI & Ors will take its effect from the date of judgement i.e. 27.11.2012 i.e. this decision is to be applied prospectively not retrospectively and hence the

revision of inter-se-seniority by the review DPC on the pretext of N R Parmar is not applicable.**The V & L Section, CBDT may be directed to file petition in higher Court against this order of CAT, Guwahati**.

8) <u>Representation and CAT cases by Inter charge transferees</u>

Many of the inter-charge transferees have filed petition before various CATs that their seniority list was fixed wrongly in the revised list and **this may be taken care of by the Task Force**.

9) <u>Mistake in adoption of Deemed Date of Joining(DDoJ)</u>

In the revised seniority list published by the Board, the deemed date of joining of inspectors was taken on the basis of ITO's seniority list which is incorrect. The DDoJ should have been adopted on the basis of ITI seniority in the respective charges. Some of the other glaring mistakes are pointed out as under :

9.1 The deemed date of joining as ITI of SmtRashmiMathur, an inter-charge transferee (Sl No. 141) is wrongly taken as 31/07/1987(her date of joining in the parent charge) instead of 25/07/1990 (her date of joining in Mumbai Charge) which resulted into fixation of wrong DDOJ to 113 officers s from Mumbai Charge who are senior to her (from Sl No 29 to 141).

9.2 The deemed date of joining of Sri Sivaraj Singh Chahal (Sl No 1581) from UP(West) Charge was wrongly taken as 11.5.1990 instead of the correct date of joining of 11.5.1992 which resulted into wrong fixation of seniority of ITOs from Sl No 1569 to Sl No 1581.

9.3 Sri Arvind Kumar (Sl No 254) from UP(East), Sri PremVir Singh(Sl 348), Sri Anil Kumar (Sl No 1582) and Sri BalKishanGopal (Sl No 1583) Ramesh Jha (Sl No. 908) from Delhi, Sri Sanjay Kumar Singh (Sl No. 311) form Rajasthan, Sri PrabhakarRao D (Sl No 993) and Devendranath Reddy (Sl No. 994) from AP etc are getting an advantage of three years or more in DDOJ when compared to their actual date of joining as Inspector.. These DDoJ seems to be incorrect and correctness of the same is to be verified.

This may be taken care of by the Task Force.

10) <u>New Criteria of Preparation of Seniority list on RY wise</u>

The all India seniority of ITOs is historically prepared on the basis of decision of CBDT dated 18/9/1974 that date of appointment as ITO in the respective charges will be the sole criterion for fixation of seniority. DPC date is not taken as criteria because the Date of promotion of the persons may be different according to the date of arising of vacancies in that charge. If the promotion is done on the same date in different states, then DOB is the criterion.

The draft seniority list published now is Recruitment Year wise which has no sanction of any such guidelines. Due to adoption of new crieteria about 112 ITOs promoted after 01/04/2003 for the RY 2002-03 is now placed above those promoted prior to them in the RY 2003-04. Likewise 62 ITOs promoted after 01/04/2004 for the RY 2003-04 is now placed above those promoted prior to them in the RY 2004-05 and so on.

Adopting a new criteria will definitely lead to litigations because persons appointed as ITOs even in 2009 is placed senior to ITOs appointed in 2004-05 which is against the basic criteria of date of appointment

Apart from above, adoption new criteria will unsettle the settled seniority of earlier batches. The revision of seniority is for the limited purpose of implementation of Apex Court Judgment in NR Parmar and introduction a new criteria was not at all envisaged.

From the scrutiny of the list, it also appears that RY adopted by different charges is not correct and many charges have adopted year of DPC as the RY. In order to get the correct RY, Vacancy Register or DPC minutes for the earlier years are required which may not be available in many charges for the period from 1992-93 onwards. . So adopting of RY with an unverified data will result into fixation of wrong seniority and lead into a plethora of litigation.

The Task Force may be directed accordingly.

11) <u>Relegation of DoO/DoJ of post NRP juniors instead of upgradation of their new senior</u>

In the process of revision of Seniority List of Income Tax Officers in implementation of NRP Judgment, some officers have been moved upwards after holding of Review DPCs and even placed (deemed to be promoted) against just preceding or earlier Recruitment Years compared to the Recruitment Years against which they were originally promoted.

In such cases **the date of order or joining** in the grade of ITO of the immediate junior in that grade (ITO) should be notionally taken as the date of order/joining of the officers so elevated in the Seniority List [following the process mentioned in the Para 18.4.3 of DOPT's OM No. 22011/5/86- Estt. (D) dated 10.04.1989, which was upheld by the Hon'ble Apex Court in the case of K.B. Rajoria]

But while drawing the all India Seniority List, the complete opposite rationale has been applied. Instead of notionally elevating the date of order/joining of such upwardly moved officer(s) after Review DPC at per with the original date of order/ joining of the officer(s), now just junior to him/them, the date of order/ joining of the officer(s), now just junior to such elevated officer(s), has been downwardly altered or relegated to the original date of order/ joining of such elevated officer(s).

For example:

Officers@ Sl. No. **2321** to **2324** : Date of original Order /Joining : **12.12.2013** against **R.Y. 2003-04**, now **elevated to RY 2002-03** and made senior to the Officers at Sl. No**. 2325** to **2339**, originally promoted against **RY2002-03** [Date of Order/ Joining : **25.02.2003]** and still in RY 2002-03 (post NRP).

Hence the Date of Order/ Joining of the Officers@ Sl. No. **2321** to **2324** should have been elevated to **25.02.2003.** But instead of elevating them, their Date of Order/Joining has been remained constant [at **12.12.2003]** and the Date of Order/ Joining of the Officers below @ Sl. No**. 2325** to **2339**has been **relegated** to **12.12.2013.**

The Task Force may be directed accordingly.

To sum up, it is in the interest of the Department and its officers that a correct and faultless seniority list is published so as to minimise the litigation on the issue and in order to achieve that the discrepancies pointed above may be looked into.

Thanking you,

Yours sincerely,

(Bhaskar Bhattacharya)
Secretary General

Copy for information to:

1. The Member (P & V), CBDT
2. JS (Admin.), CBDT

(Bhaskar Bhattacharya)
Secretary General