PROCEEDINGS OF THE ADDL.COMMISSIONER OF COMMERCIAL TAXES (LEGAL)

O/O THE COMMISSIONER (CT), ANDHRA PRADESH, HYDERABAD

PRESENT: SRI D.RAMACHANDRA REDDY, BSc, B.L, CAIIB, MBA.

**CCT’s Ref.No.DX2/ 392/2012-1, Zone-III, dated: 11-10-2012**

Sub: SUITS – O.A No.8932/2011 filed by Sri K.Rama Rao and (5) others (DR ACTOs of Zone-III) before the Hon’ble APAT - Interim orders – guidelines issued by Government – Placement shown those who are not found places in the Revised integrated seniority list of ACTOs for the panel year 1975-76 to 1991-92 of Zone-III– preparation of subsequent panel years from 1992-93 to 1999-2000 as per available vacancies - Notice issued - Objections called for- Examined – Orders passed – Reg.

 Ref:-1. Integrated seniority list published in A.P Extraordinary Gazette No.119, dt.25-03-2004

 2. Govt. Memo. No.39070/CT.I (2)/2011, Rev (CT.I) Dept, dt.20-12-2011

 3. CCT’s Ref.No.DX2/942/2011Zone-III, dated 23-04-2012.

 4. Hon’ble High Court orders dt.09-04-2001 in W.P No.24335/1999 and 14538/2000 filed by Sri Y.R Sai Mohan Raj and others read with Govt.Memo No.39367/CT.I(1)/2011, Revenue (CT.I) Department, dated 20-09-2011,.

 5. Interim orders dt.15-02-2012 in O.A No.841 of 2012 filed by Sri K.Venkateswara Rao, CTO and (4) others.

 6. CCT’s Ref.No.D1/983/2011, dt.30-09-2011 delegation of subjects to Senior Officers O/o the CCT, A.P, Hyderabad.

 7. CCT’s Ref.No.DX2/393/2012, dt.29-05-2012.

 8. Judgment of Hon’ble APAT dt.22-07-2003 in O.A No.6022 of 2001 and batch and

 as modified in OA.No.5058 of 2004 and batch, dated.11-08-2009.

 9. Revised show cause notice dt.29-05-2012 was published in the A.P Gazette.381/103

(Part No.II), dated.09-07-2012.

 10.CCT’s Ref.No.DX2/390/2012, dt.17-8-2012.

 11. DC(CT), Guntur-II Rc.No.820(A)/2012-D2, dt.2-8-2012 along with Objections of Sri R.Venugopal Rao, DCTO.

12. Objections filed by Sri D.Krishna, CTO I/c, dt.27-7-2012.

13. Objections filed by Smt.P.Dhana Lakshmi, DCTO, dt.28-7-2012.

14. Objections filed by Smt.S.Vanajakshi, DCTO, dt.NIL.

15.. Objections filed by Sri A.B.M.Somayaji, ACTO (Retired), dt.27-6-2012.

16.. DC(CT), Guntur Rc.No.182/2005/A4, dt.17-7-2012 along with objections of Sri A.B.M.

 Somayaji, ACTO (Retired), Smt.G.Subbaroyal, DCTO and Sri M.Venkateswarlu, DCTO.

17.Objections filed by Sri B.Bhashu, CTO (Retired), dt.20-7-2012.

18. Objections filed by the CTNGO’s Association, Guntur (Regd.No.600/2004), dt.20-7-12.

@@@

 The Government has informed vide reference second cited, that in O.A No.8932/2011 filed by Sri K.Rama Rao, presently working as Commercial Tax Officer, Khairatabad and (5) others, the Hon’ble APAT, in its interim orders, dt.22.11.2011, has directed the 1st respondent (i.e. Principal Secretary, Revenue Dept.,) to consider and pass appropriate orders on the appeal dt.16.08.2010 pending before the 1st respondent (i.e. Govt.) in terms of Memo No.263/CT.I(2)/2011, dated.29.06.2011 of the 1st respondent issued in favour of Direct Recruit ACTOs of Zone-VI.

Accordingly, in the reference 3rd cited, since the details regarding the panel year wise numbers of vacancies in substantive/temporary posts are scrutinized, the panels of ACTOs of Zone-III (i.e. Guntur Nodal Division) prepared and published in the A.P Gazette No.119, dated 24-03-2004 on the mentioned lines of Government Memo. No.263/CT.I (2)/2011, dated.29.06.2011 read with Govt. Memo. No.39070/CT.I (2)/2011, Rev (CT.I) Dept, dt.20-12-2011 and rectified the defects therein duly pushing down the Rank Promotees, who are in excess of the quota allotted to them for the panel years from 1975-76 to 1991-92 published in A.P Gazette No.119, dated 24-03-2004, as per the Rota-quota rule, below the Direct Recruit Candidates (including the applicants) who occupied their own slots. Consequently, certain RPs has not found placements / panel years i.e. those who are relegated earlier panel years, now their names are placed to the subsequent panel years as per available vacancies for the panel years from 1992-93 to 1999-2000 of Zone-III

 In the reference 4th cited, the Hon’ble High Court issued the following modified orders as under:-

1. Final seniority list in the posts of DCTOs be made on the basis of final seniority of ACTOs after interspersing them at Zonal Level.
2. By interspersing the seniority of DCTOs at State level, the final seniority list of CTO has to be prepared.
3. At each stage of ACTOs and DCTOs, it is Rule 33 (a) of the APS SS Rules which will govern the aspect of seniority and
4. While considering the final seniority list of CTOs and consequential promotions, it is the seniority based upon Rule 33(a) referred to above which will govern and not the temporary promotions in the said cadre of DCTOs.

In the reference 5th cited, Sri K.Venkateswara Rao, CTO has filed O.A No.841/2012 before the Hon’ble Tribunal and the Hon’ble APAT issued interim order dt.15-02-2012 to the effect that “Pending disposal of the OA, there shall be an interim direction to the respondents 1 and 2 to effect promotions to the post of Assistant Commissioner of Commercial Taxes on regular or incharge or adhoc basis on the basis of revised seniority list of DCTOs prepared subsequent to the revision of seniority list of ACTOs as per Government Memo No.263/CT.I(2)/2011, dated 29-06-2011 if already prepared and if not, to prepare the seniority list and then effect promotions.”

 As per the guidelines mentioned in the reference 2nd and 3rd cited, the matter is re-examined in the case of Guntur nodal Division i.e. Zone-III for the panel years from 1992-93 to 1999-2000 and the vacancies are identified as per the guidelines of the reference 2nd and 3rd cited and in the integrated seniority list of ACTOs of Zone-III for the panel years 1992-93 to 1999-2000 vide Dist.Gagette No.35, dt. 30-04-2010 is being revised and this revised notice is being issued duly pushing down the Ranks Promotees who occupied in excess of the quota available to them as per the Rota-Quota Rules guidelines.

In the case of appointment to the post of Asst. Commercial Tax Officer, where recruitment to service is both by direct recruitment and transfer, the cycle meant for direct recruits/transferees should be arrived at on the following basis.

 In the case of direct recruits appointed, they are entitled for appointment against 40% of substantive vacancies in the permanent cadre. After AP Commercial Tax Subordinate Service Rules’1990 came into force they are entitled for 4 vacancies in a cycle 10 vacancies which arises in the services vide G.O Ms No.81 Rev (CT.I) Department, dated 03-02-1990.

Statement showing the vacancies available to DR and RPs of Guntur-I of Zone-III

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Panel year | 1992-93 | 1993-94 | 1994-95 | 1995-96 | 1996-97 | 1997-98 | 1998-99 | 99-2000 | Total |
| Total ACTO Vacancies arosed | 34 | 34 | 29 | 25 | 20 | 21 | 11 | 10 | **184** |
| Converted more than 10 years vacancies) |  | 3 |  |  |  |  |  |  | **3** |
| Converted more than 10 years vacancies (DR 40%) |  | 1 |  |  |  |  |  |  | **1** |
| Converted more than 10 years vacancies (RP 60%) |  | 2 |  |  |  |  |  |  | **2** |
| Total DR vacancies to be filled (40%) | 14 | 15 | 12 | 10 | 8 | 8 | 4 | 4 | **75** |
| Total RP vacancies to be filled (60%) | 20 | 22 | 17 | 15 | 12 | 13 | 7 | 6 | **112** |
|  | **Unfilled DRs Vacancies** |  | **Excess RPs filled** |  |
|  | Upto 1991-92 | 55 | From 92-93 to 99-2000=60 |  | Upto 1991-92 | 37 | **From 92-93 to 99-2000(-) 04** |
|  | Total upto 1999-2000 | 135 |  |  | Total upto 99-2000 | 33 | **To be relegated** |

It is to inform that the total number of vacancies of ACTOs in Guntur Nodal Division of Zone-III for the period from 1992-93 to 1999-2000 are (184) out of which (75) are meant to be filled with Direct Recruits, but filled (15) and (112) to be filled with Rank Promotees, but filled (108). While filling the vacancies meant for Rank Promotees, for the panel years from 1992-93 to 1999-2000, the vacancies meant for SCs/STs are duly carried forward to the subsequent panel years, where qualified and eligible personnel were not available during the particular panel year and the same were filled as and when qualified personnel found and they are placed as per their date of joining as per provisions under Rule 33 (a) of APS&SS Rules. The Direct Recruits, inter-se, are placed in the year have joined in the same rank order communicated by the APPSC. While determining inter-se-seniority, between DRs and RPs, date of joining of DRs was taken into consideration duly following Rule 33 (a) mentioned above. The City List candidates are appropriately placed in the respective panel year in which they are appointed by transfer. Accordingly, the excess RP quota candidates, if any, are perforce to be relegated to subsequent panel years.

In view of the legal position this approach is adopted in a uniform manner. Wherever persons promoted in earlier years have been relegated to subsequent panel year for want of vacancies in the earlier years, they are placed in appropriate panel years now.

 Seniority of a member of service has to be fixed in terms of Rule 33 of the APS&SS Rules, i.e. with reference to the date of appointment in accordance with the rules and not with reference to the date of confirmation (full membership) after taking action in terms of rules 25 and 29 of the APS&SS Rules by placing full members as a class above the approved probationers and probationers.

 For counting seniority from the date of appointment, one should be appointed in accordance with the rules, for example – (a) he should have necessary qualifications and experience prescribed under the rules, (b) he should satisfy the rules of reservation if rule of reservation is applicable (c) he should have been appointed within the quota prescribed, if any, under rule and (d) the procedure prescribed, if any, for such appointment. If a person does not satisfy any of the conditions prescribed under the rules at the time of appointment his seniority has to be counted not from the date of such appointment but from the date on which he satisfied the requirement of the rules.

 In case of transferees appointed, they are entitled for 60% of the vacancies in the permanent cadre and also all the vacancies that arise temporary posts. After the AP Commercial Tax Subordinate Service Rules, 1990 came into force, transferees would be entitled for 5 vacancies in a cycle of 10 (excluding vacancy meant for a city list candidates) which arise in the service.

 The vacancies referred to above for the purpose of calculation of quota does not include stopgap or fortuitous or short time vacancies like leave vacancies etc., The names of individuals, who earlier might have been promoted as ACTO, but who retired before substantive vacancy arose for them in any particular panel year i.e who were no more in service at the time of arising of vacancy, do not find place in this proposed seniority list.

According to the APCT Subordinate Service Rules the method of appointment to the post of ACTO is (i) By Direct Recruitment (DR) and (ii) By appointment by transfer (R.P). The ratio (10 point cycle) between the DRs/RPs is 40:60.

The revised integrated seniority list of ACTOs for the panel year 1992-93 to 1999-2000 of Zone III finalized on 23-4-2012 and for the panel years from 1992-93 to 1999-2000 of Zone-V is also to be finalized respectively. As per the Govt. Memo. No.39070/CT.I (2)/2011, Rev (CT.I) Dept, dt.20-12-2011duly following the Rota-Quota has been revised in CCT’s Ref.No.DX2/942/2011 Zone-III dt.23-04-2012. However, for the Zone-III the earlier seniority list (which is being now revised) from the panel year 1992-93 to 1999-2000 of ACTOs required revision on the basis of the Government in Memo. Ref. No. 263/CT.I (2)/2011, Rev (CT.I) Department dated 29-6-2011 issued in case of Zone-VI, read with the interim orders dt.22-11-2011 in O.A No.8932/2011 by the Hon’ble APAT, Hyderabad. Accordingly, the matter is re-examined and the vacancies are calculated duly following the A.P CT SS rules 1990 as prescribed by the govt. in the said memo and prepared a show cause notice for revising integrated seniority list of ACTOs of Zone-III for the panel years 1992-93 to 1999-2000, as per the guidelines mentioned thereon after verification of records of CCT’s office and as per Dist.Gazette No.35. Dated 16-04-2010. Accordingly, the vacancies available in the concerned panel years are taken and panels are drawn.

Rule 4(b) of APS & SS Rules’1996:-Direct Recruitment: where the normal method of recruitment to any service, class or category includes direct recruitment, the proportion in which the special rules may require vacancies to be filled by persons recruited direct shall be applicable to all substantive vacancies and direct recruitment shall be made only against the substantive vacancies.

Explanation:-(i) For the purpose of this rule, notwithstanding anything contained in these rules or special or adhoc rules, substantive vacancies shall mean all vacancies in the permanent cadre and all vacancies in the posts which have been in existence for more than 5 years.

In the reference 6th cited, the Commissioner (CT), A.P Hyderabad in his proceedings No.D1/983/2011, dt.30-9-2011 has ordered the allotment of service matter and disciplinary cases of ACTOs to the Addl. Commissioner (CT) Legal for quick and smooth administration of the related work. In view of the CCTs orders and subjects delegated to the undersigned, the Addl. CCT legal has issued the revised integrated show cause notice as per the orders of the Commissioner (CT), A.P Hyderabad.

Thus, the persons, shown in the annexure-A and B to this revised notice, may file their written objections if any within fifteen (15) days from the date of publication in the Departmental Web site (www.apct.gov.in), failing which, it will be construed that they have no objections to file and orders as deemed fit under law would be passed without any further notice in the matter.

 Accordingly, the revised Show Cause Notice for the panel year 1992-93 to 1999-2000 has been published in Departmental website. Further, the revised show cause notice is published in AP Gazette, Part-II Extraordinary No.381/103 dated 09-07-2012 from page 27 to 34 vide ref 9th cited.

 In the reference 10th cited, the interested persons were allowed to peruse the records on 24-08-2012 in CCT’s conference Hall against the proposed to be revised integrated seniority list of ACTOs for the panel year from 1992-93 to 1999-2000 of Zone-III.

 The objections of the Direct Recruit ACTOs, City list ACTOs, Rank promotee ACTOs and those under SC/ST category and the reply on their objections are discussed as under:-

 In the reference 11th to 13th cited, Sri R.Venugopal Rao, DCTO, Sri D.Krishna, CTO I/c and and Smt.P.Dhana Lakshmi, DCTO have filed their objections and stated that they were joined as ACTOs in the panel year 1994-95. All DRs ACTOs (14 members) of Zone-III are joined in the month of June 1995 and placed in the panel year 1994-95 below the names of Rank Promotes.

 Placing the names of the DR ACTOs below the Rank Promotes is contrary to Rules in force. In the panel year 1994-95 all the ACTO posts arised in the month of July and August only. All DR ACTOs of 1995 batch joined in June 1995 and all are placed in 1994-95, before the date of joining of DR ACTOs in the panel year 1994-95, there is no vacancy available meant for Rank Promotes. Hence, placing 14 Rank promote ACTOs above their batch names is not a valid., pushing their names down below the above mentioned Rank Promotes without valid reasons or ground. Therefore, they requested to place DR ACTOs of 1995 batch above the names of Rank Promote ACTOs in the panel year 1994-95.

**Reply to the above objections**:- The objections filed by certain DR ACTOs vide reference cited have been examined with reference to this office records and noticed that there are 17 vacancies were arised prior to date of joining of DR ACTOs 1995 batch, out of 17 vacancies 7 vacancies meant for DRs and the remaining 10 vacancies meant for RPs. Hence, 10 vacancies are placed with rank promotes above DRs and the remaining Rank promotes are relegated below the names of DRs in the panel year 1994-95.

 In the reference 14th cited, Smt.S.Vanajakshi, DCTO filed objections and stated that she belongs to ST category and requested not to disturb her name in the seniority list of ACTOs which was published in the Guntur District Gazettee No.35, dt.16-04-2010 and placed at S.No.67 in the panel year 1994-95 and was considered for promotion to the post of DCTO as per Gazette NO.119, dt.25-3-2004 the seniority list for the panel year 1992-93 to 2004-05 in terms of G.O.Ms.NO.81 At present in the panel year 1992-93 to 2004-05 placing her name below DR ACTOs of 1995 batch is not correct. The individual requested to save her from the relegation from the panel years 1994-95 to 1996-97.

**Reply to objections: -** The objections raised by the individual are examined. As per the orders of the Hon’ble High Court dt.09-04-2001 in W.P No.24335/99 & 14538/2000 read with Hon’ble APAT orders dt.22-07-2003 in O.A No.6022/2001 and batch cases and also the clarificatory orders dt.11-8-2009/15-12-2009 in O.A No.5054/2009 and batch of others and also as per statutory provisions of General Rules, the vacancies meant for SCs/STs have been calculated as per the vacancies available in the concerned panel years as per the Rota-quota rule, where qualified and eligible personnel were found they are placed as per their date of joining under Rule 33(a) of APS & SS Rules’1996 and where vacancies are not available they are relegated to subsequent panel years in comparison with others subject to the orders of inclusions issued by the Government assigning notional dates in the particular panel years wherever applicable. Hence, their name was placed in the appropriate panel years as per the availability of vacancies. As there is no availability of ST vacancy during the years in which the individual requested placement, she has to be relegated to the subsequent panel years when ST vacancy found available.

 In the reference 15th cited, Sri A.B.M.Somayaji, ACTO (Retired) has filed objections and stated that Direct Recruitment shall be made only against substantive vacancies in permanent cadre under Rule 6 (b) of A.P.S & SS Rules, like-wise in the panel year 1992-93 and 1994-95 out of total 63 vacancies, 32 posts were newly sanctioned. As such the newly sanctioned posts shall not be proportionate between Direct Recruitees and Rank Promotes. Out of 63 vacancies 51 vacancies (newly sanctioned + 60% of 31 vacancies) are to be earmarked to the Rank Promotees and the remaining vacancies are to be earmarked to Direct Recruitees, whereas in the show cause notice 37 vacancies have been earmarked to the RPs against 51 vacancies. Hence, the individual has requested to rectify the anomaly.

 In the reference 16th and 17th cited, Sri M.Venugopal Rao, ACTO and Sri B.Bhashu, CTO (Retired) have filed objections and stated that certain temporary posts were arised during the panel year 1975-1992 which are not in existence for more than 3 years or less were also been converted as substantive vacancies keeping in view the provisions contained under Rule-31 of APS & SS Rules 1996 by issuing Government order vide G.O.Ms.NO.576, Revenue (SS) Department, dt.24-4-1982. Hence, in the instant period (i.e., 1-9-1975 to 8-3-1983) operation of rule 6(b) of APSS&S Rules 1963 and 4(b) of APSS & S Rules 1996 will automatically ceased and no rule provisions of 6(b) of APSS &S Rules 1963 in this matter will be operated, except by following Govt.memo.No.39070/CT.1(2)/2010, Revenue (CT.I) Department, dt.20-11-2011.

 Further, they submitted that there are 21 vacacnies meant for RPs have not found place in the panel years 1975-76 to 1991-92 and pushed down to the subsequent panels as per the revised proceedings of Addl.Commissioner (CT), Legal. Hence, they requested to make justice to the RPs who suffering by not being fixed in proper panel years.

**Reply to the above objections:-** Though 32 ACTO posts were sanctioned during 1992-93 to 1994-95, at that time they were temporary, but now after lapse of 19 years all these vacancies have been substantive, hence apportioned to DRs also according to their quota. Even assuming that all temporary vacancies have to be filled with RPs initially, they shall not be entitled to count for seniority from that panel year without any substantive vacancy .

In the reference 18th cited the CTNGO’s Association, Guntur (Regd No.600/2004 filed objections and stated that based on the certain guidelines indicated by APAT in O.A.No.6022/ 2001 the DR appointed prior to 8-3-1983 they are entitled for appointment against 40% of substantive vacancies in the permanent cadre. After 8-3-1983 and before the APCTSS Rules come in to force they are entitled not only for 40% of substantive vacancies in permanent cadre but also for 40% of substantive vacancies in temporary posts in terms of Rule 6 of APCT S&SS Rules, 1990 into force they are entitle for 4 vacancies for a cycle of 10 vacancies which arises in the services.

1. In this connection, it is humbly submt that, for the year 1975-76 there are 12 newly sanctioned posts arosed. Keeping in view of the Govt. Memo., dt.20-12-2011 all the temporary vacancies were to be allocated to transferees. But in the order, it is noticed, 60% of regular vacancies of 15 (ie., 60% of 15 posts =9 posts) were allotted, instead of 12 temporary vacancies + 9 substantive vacancies ie., 21 vacancies.
2. Further there are 2 newly sanctioned posts aroused in the year 1977-78 which covered. Keeping in view of the Govt.Memo, dt.20-12-2011 all the temporary vacancies were to be allocated to transferees. But in the order, it is noticed, 60% OF REGULAR VACANCIES (I.E., 60% OF 3 POSTS = 2 temporary vacancies + 2 substantive vacancies i.e. 4 vacancies.
3. Further there are 17 newly sanctioned posts aroused in the year 1980-81 which covered. Keeping in view of the Govt. Memo.dt.20-12-2011 all the temporary vacancies were to be allocated to transferees. But in the order, it is noticed, 60% of regular vacancies (ie., 60% of 2 posts = 1 post) were allotted, instead of 17 temporary vacancies + 1 substantive vacancy i.e, 18 vacancies.

 The Association further stated that as per G.O.ms.No.576, Revenue (SS) Department, dt.24-4-1982, certain vacancies which are existence for more than 3 years and converted into permanent posts. Accordingly 31 ACTOs have become permanent, out of which 12 ACTOs meant for DR for the year 40% quota similarly 2 vacancies converted into permanent one vacancy meant for DR vide G.O.769, dt.11-8-1987.

 At present they are requested there are 21 vacancies meant for RPs have not found place in the panel year 1975-76 to 1991-92 and pushed down to subsequent panels as per the revised proceedings of Addl.Commissioner (CT), Legal which requires revision and do justice to RPs who are suffering by not being fixed in proper panel years.

**Reply to the above objections:-** The objections raised by the Association have been examined with regard to vacancies arose during the panel years. The Government in Memo. Ref. No.263/CT.I(2)/2011, Rev (CT.I) Department, dated 29-06-2011 has clearly mentioned to scrutinize the panels of ACTOs and to rectify the defects pointed out, as per guidelines issued Govt.Memo.No.263/CT.I (2)/2011 Rev (CT.I) Department, dated 29-06-2011 duly pushing down the Rank Promottes, if any who are in excess of the quota allotted to them, as per the quota-Rota rule, below the Direct Recruit Candidates, including the appellants who occupy their own slots. Accordingly, the matter is re-examined and the vacancies are calculated duly following the Rota-Quota Rules as prescribed by the govt. in the said memo and prepared a show cause notice for revising integrated seniority list of ACTOs I for the panel years 1975-76 to 1991-92 and 1992-93 to 1999-2000, as per the judgment of Hon’ble APAT in O.A No.6022/2001, dated 02-7-2003 and as further explained by the Hon’ble APAT in O.A No.2678/2008 and 5058/2004 (and batch) dt.11-08-2009 ( 15-12-2009)

 Further, it is inform that though the 31 newly sanctioned posts aroused during the years from 1975-96 to 1980-81, at that time they were temporary, but now after lapse of 31 years all these vacancies have been substantive, hence apportioned to DRs also according to their quota. Even assuming that all temporary vacancies have to be filled with RPs initially, they shall not be entitled to count for seniority from that panel year without any substantive vacancy meant for RPs. Hence the objection is devoid of merits.

 The revised Integrated Seniority List shall be subject to outcome of SLP’s/ WP’s/ OA’s/ C.As pending, if any, before the respective Appellate forums.

 A copy of this revised seniority list is also available on the internet and can be accessed at the web address: [www.apct.gov.in](http://www.apct.gov.in) .

Encl: Annexure-A and B

 Sd/-D.Ramachandra Reddy Addl. Commissioner (CT) Legal

To

All the affected candidates as shown in Annexure-A & B above through the Deputy Commissioner (CT), Guntur-I Nodal division.

Copy to the Deputy Commissioner (CT), Guntur-I Division

Copy to Departmental Web Site O/o the CCT, A.P Hyderabad as noted above.