

Delhi High Court

M.S. Datta vs Union Of India (Uoi) And Ors. on 13 August, 1973

Equivalent citations: (1975) ILLJ 376 Del

Author: J Singh

Bench: J Singh, P Raj

JUDGMENT

Jagjit Singh, J.

1. Six writ petitions (Nos. 1231, 1280, 1281, 1299, 1300 and 1301 of 1972) were instituted by certain Additional Commissioners of Income-tax for getting quashed the proceedings of the Departmental Promotion Committee dated September 10, 1971 and October 5, 1972, for selection of officers for officiating promotion to the grade of Commissioners of Income-tax.

i Some incidental reliefs were also claimed.

2. On April 3, 1973, Shri P.R. Abrol withdrew his petition (No. 1300) as his character roll was upgraded after selections by the Departmental Promotion Committee and a recommendation has been made to the Government for reviewing his case.

3. The remaining five writ petitions are being disposed of by a single judgment as the main points involved therein are the same. The petitioners in these five cases have hereinafter, where necessary, been referred to as "the petitioners".

4. Petition No. 1231 is on behalf of Shri M.S. Datta, Additional Commissioner of Income-tax, Mysore, Bangalore. He had joined the Income-tax Department in December, 1943, as Income-tax Inspector and was promoted as Income-tax Officer, Class II, on May 20, 1946. His promotion as Income-tax Officer, Class I took place in November, 1950. In August, 1957, he came to be promoted as Assistant Commissioner of Income-tax. In May, 1970, he was promoted as Additional Commissioner of Income-tax.

5. In January, 1971, Shri Datta was selected to work on deputation with the Ministry of Foreign Trade and worked till November 28, 1972, as Financial Adviser and Chief Accounts Officer of the Cotton Corporation of India Limited. Thereafter, he came back to his own parent department and assumed charge as Additional Commissioner of Income-tax at Bangalore.

6. Petition No. 1280 was filed by Shri G.S. Basanti, Additional Director (Vigilance), Directorate of Inspection and Investigation, New Delhi. On the basis of a competitive examination held in the year 1945 by the then Federal Public Service Commission he was selected for the post of Income-tax Officer, Class I. He assumed charge of the post of Income-tax Officer, Class I on January 2, 1947. In 1954, he was posted as Income-tax Officer, Special Circle, Ambala, to which post a special pay was attached. He came to be promoted as Assistant Commissioner of Income-tax in August, 1956, and also worked as Appellate Assistant Commissioner and Inspecting Assistant Commissioner. In the year 1969 he was selected for the post of Deputy Director of Inspection in the Directorate of Inspection (Income-tax) to which post also special pay was

attached. In the year 1970 he was selected as Additional Commissioner and assumed charge in that capacity on May 20, 1970. With effect from December 1, 1972, he has been working as Additional Director (Vigilance) in the Directorate of Inspection and Investigation. The post of Additional Director (Vigilance) is manned by appointing an Additional Commissioner of Income-tax. While working on that post the Officer so appointed gets a special pay of Rs. 200 per month in addition to his salary as Additional Commissioner.

7. Petition No. 1281 is by Shri Shyam Singh Seth. He joined the Income-tax Department as Inspector of Income-tax, Grade I, in December, 1943. He was promoted as Income-tax Officer, Class II, with effect from November 10, 1945 and in November 1950 he was promoted as Income-tax Officer Class I and thereafter in January, 1952 to Class I, Grade I. From 1954 to 1957, he worked as "Authorised Official" with the Chairman of the Income-tax Investigation Commission on a post which carried special pay. He became Assistant Commissioner in the year 1957, In that capacity he worked at Bombay and as Appellate Assistant Commissioner at Udaipur and Agra. In August 1967, he was posted as Inspecting Assistant Commissioner Bareilly and in September 1968, as Inspecting Assistant Commissioner (Central) New Delhi. In the year 1970 he, like the other petitioners, was appointed as Additional Commissioner of Income-tax on the basis of the recommendations of the Departmental Promotion Committee which had met in April, 1970.

8. Petition No. 1299 was preferred by Shri R.D. Kaushal, Additional Commissioner of Income-tax, Patiala. On the basis of a competitive examination held in the year 1947 by the then Federal Public Service Commission he was appointed on Sept. 4 1948 as Income-tax Officer, Class I. He was promoted as Appellate Assistant Commissioner of Income-tax in the year 1958 and for some time worked as Inspecting Assistant Commissioner at various places. On being selected as Additional Commissioner of Income-tax he assumed charge in that capacity on May 17, 1970.

9. Petition No. 1301 was filed by Shri V.P. Sharma, Additional Commissioner of Income-tax, Kanpur, He joined as Income-tax Officer, Class I, on December 23, 1946, after being selected by the then Federal Public Service Commission as a result of a competitive examination held in the year 1945. For some time he worked as Income-tax Officer, Special Investigation Circle, on a post to which special pay was attached. He was promoted as Assistant Commissioner of Income-tax in August, 1956 and also worked on posts to which special pay was attached but which were manned by Assistant Commissioners. These posts were of Deputy Secretary Ministry of Finance, Senior Authorised Representative Income-tax Appellate Tribunal and Deputy Director of Inspection. On May 20, 1970, he assumed charge of the post of Additional Commissioner after he was selected by the Departmental Promotion Committee.

10. Here it may be mentioned that the Government of India had by its letter C. No. 195-Adm. (I.T)/39 dated September 29, 1944, reconstituted and classified the then existing Income-tax services, Class I and Class II. The services as reconstituted were to consist of Commissioners of Income-tax. Assistant Commissioners of Income-tax and Income-tax Officers Grade I and Income-tax, Officers Grade II. These were all Class I posts. In Class II were the posts of Income-tax Officers Grade III. It was provided that recruitment to the grade of Commissioners of Income-tax will be made by "selection" from amongst the Assistant Commissioners of Income-

tax and by the appointment of officers borne on the Finance and Commerce Departments cadre (pool).

11. Till July, 1964, there were two scales of pay for Commissioners of Income-tax. The lower scale of pay was Rs. 1,600-1,800 and the higher on Rs. 1,800-2,000. From August 1, 1964, the two scales of pay were merged and one unified scale of Rs. 1,800-2,000 was provided, which scale of pay was further revised from June 1, 1965 to Rs. 1,800-2,250.

12. By the Finance Act of 1970 posts of Additional Commissioners of Income-tax were created. In the memorandum published by the Ministry of Finance to explain the provisions of the Finance Bill, 1970 it was stated that the functions of Commissioners of Income-tax had increased enormously both in the technical sphere and on the administrative side, with the result that the strength of Commissioners had become inadequate for the timely performance of their functions, Paragraph 33 of the memorandum, inter alia, was to the following effect:

With a view to ensuring greater attention to the functions of Commissioners of Income-tax, without fragmenting their charges into non-viable units, and enabling them to devote special attention to problem areas, such as accumulation of assessments and arrears of taxes, tax evasion, survey, and the proper and efficient management of their charges, Government have created a new cadre of Additional Commissioners on a lower scale of pay, to take over some of the statutory functions of Commissioners of Income-tax and thereby release senior officers for more important administrative and managerial duties. It is accordingly proposed to include Additional Commissioners among the categories of Income-tax Authorities. These Additional Commissioners will have the same status and functions under the statute as Commissioners of Income-tax. The Income-tax Act already allows distribution and allocation of work among Commissioners of Income-tax on the functional basis....

13. After enactment of the Finance Act, 1970 and to give effect to its provisions 32 temporary posts of Additional Commissioners of Income-tax were created by the Government of India. In letter F. No. 96/44/70-Ad. VII, dated April 14, 1970, issued in that connection, it was mentioned that the posts of Additional Commissioners had been created to give substantial relief to the Commissioners so that the various problems connected with pendency of assessment, arrears of taxes, tax evasion, survey, inspection of offices, etc., receive adequate attention at the higher level of control. By another letter F. No. 21/43/72 Ad(VII) dated August 11, 1972 the Government of India also took a decision that in all matters relating to non-statutory and non-judicial duties and functions the Additional Commissioners of Income-tax shall be administratively subordinate to the respective Commissioners of Income-tax and, therefore, confidential reports on the Additional Commissioners will also be written by the Commissioners.

14. As against the pay scale of Rs. 1,800-100-2,000-125-2,250 sanctioned for the posts of Commissioners of Income-tax, the Additional Commissioners of Income-tax were placed in the grade of Rs. 1,600-100-1,800. The scale of pay for the posts of Assistant Commissioners of Income-tax was Rupees 1,300-60-1,600.

15. Admittedly no statutory rules have so far been framed regarding appointments to the posts of Commissioners of Income-tax and Additional Commissioners of Income-tax. After the Finance

Act, 1970 was enacted draft rules were made. Certain extracts from these draft rules were reproduced in the reply affidavits of Shri P.S. Mehra, Under Secretary to the Government of India, Ministry of Finance.

16. Rule 3(2) of the draft rules, as referred to above, Inter alia provides that the posts of Commissioners of Income-tax are to be in Grade I while the posts of Additional Commissioners of Income-tax are to be Grade II posts. Posts of Assistant Commissioners of Income-tax including posts of Deputy Directors of Inspection and Authorised Representatives to Income-tax Appellate Tribunals have been shown to be posts of Grade III. Further Rule 22 provides that appointments to Grade I are to be made by selection on merit from amongst Grade II officers (Ordinarily with not less than three years service in the grade) on the recommendations of a duly constituted Departmental Promotion Committee. A proviso to the rule, however, provides that for a period of three years Grade II officers who had rendered ordinarily not less than ten years service in Grade II and Grade III combined together can be considered.

17. In June, 1971 the first Departmental Promotion Committee met to select and recommend names [for appointment as Commissioners of Income-tax. A second Departmental Promotion Committee met on September 10, 1971. The third Departmental Promotion Committee met on October 5, 1972.

18. Against the selections made by the first Departmental Promotion Committee the petitioners have no grievance as according to them the persons selected for the posts of Commissioners of Income-tax were all senior to them. The second Departmental Promotion Committee after considering the character rolls of 27 officers assessed them as follows:

Sl. No.	Name	Assessment
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1. Shri G.S. Sampath Very good
2. " J.C. Kalra Very good
3. " V. Ramaswamy Iyer Very good
4. " V.P. Sharma Good
5. " M.W.A. Khan Very good
6. " A.C. Jain Good
7. " M.S. Sivaramakrishna Very good
8. " G.S. Basanti Good
9. " M.L.C. D'Sauza Good
10. " A.M. Rao Very good

11. " K.V. Rao Good
12. " V.P. Gupta Very good
13. " E.K. Lyall Very good
14. " A.C. Mukherjee Very good
15. " G.R. Hegde Very good
16. " S. Bhattacharyya Very good
17. " S.S. Seth Good
18. " B.B. Patekar Very good
19. " B.V. Mundkur Very good
20. " M.S. Datta Good
21. " S.K. Lall Good
22. " D'Sauza Good
23. " R D. Kaushal Good
24. " P.S. Subramanyan Good
25. " S.N. Mathur Good
26. " B.R. Abrol Good
27. " K.G. Nair Good.

19. The names of those officers who were assessed as "very good" were included in the panel for officiating promotion to the grade of Commissioners of Income-tax. On this occasion 10 officers junior to Shri V.P. Sharma were included in the select-panel. Eight officers junior to Shri G.S. Basanti were included in the panel. Two officers junior to Shri Shyam Singh Seth were selected. No officer junior to Sarvshri M.S. Datta, R.D. Kaushal and B.R. Abrol was selected.

20. The third Departmental Promotion Committee did not select any of the petitioners or Shri B.R. Abrol. Out of twenty-four officers whose character-rolls were considered names of eight officers, who were assessed to be very good were brought on a panel or select list for officiating promotion to the grade of Commissioner of Income-tax. The assessments made by the Departmental Promotion Committee were as under: Sl. No. Name Assessment

1. Shri V.P. Sharma Good
2. " A.C. Jain Very good
3. " G.S. Basanti Good
4. " M.L.C. D'Sauza Very good
5. " K.V. Rao Very good
6. " S.S. Seth Good
7. " M.S. Datta Not yet fit
8. " S.K. Lall Very good
9. " A.J. D'Sauza Very good
10. " R.D. Kaushal Good
11. " P.S. Subramanyan Very good
12. " S.N. Mathur Very good 13 " B.R. Abrol Good
14. " K.G. Nair Good
15. " A.K. Dass Gupta Good
16. " C.N. Vaishnav Very good
17. " F.C. Jilani None of these
18. " C. Rajagopalan Nair Officers could
19. " Satya Prakash be assessed as
20. " N. Subba Rao 'Outstanding'.
21. " R.G. Deshpande No specific grading
22. " A. Chaudhuri assigned by the
23. " D.G Pradhan D.P.C.
24. " R.N. Nagwekar

The recommendations of the third Departmental Promotion Committee were approved (by the Finance Minister and thereafter the approval of the Appointments Committee of the Cabinet was accorded. The officers thus I selected have already been promoted to the [grade of Commissioner of Income-tax in an [officiating capacity.

21. In his petition Shri Datta made allegations that Shri R.D. Shah, who succeeded Shri R.N. Muttoo about the end of June, 1971 [as Chairman of the Central Board of Direct I Taxes had been on inimical terms with him from the time when they were colleagues at I Nagpur. It was averred that on account of that enmity Shri Shah intentionally suppressed the special report from the Minister of Foreign Trade relating to the period of I his deputation and due to that report not; being placed before the Departmental Promotion Committee at the time of selections on October 5, 1972 he was not selected. It was mentioned in paragraph 15 of his petition that it was due to the "mala fide" act of present Chairman of the Central Board of Direct Taxes that he was deprived of his chance of promotion "in view of suppression of his special report from the D.P.C.

22. It was stated by Shri Datta that his relations become strained with Shri Shah when both of them were posted at Nagpur; while Shri Shah was Inspecting Assistant Commissioner of Income-tax of the Training College and he was the Appellate Assistant Commissioner of Income-tax. It was mentioned that their relations were so strained that on social functions none of them invited teach other. Further Shri Shah was averred to be responsible for institution of disciplinary proceedings against him in the year 1964. It was also alleged that in the said enquiry a statement was made by Shri Shah, in August, 1966, which contained "wanton lies" and he had, therefore, called Shri Shah to be a liar in the presence of the Com-missioner of Departmental Inquiries.

23. In the petition of Shri Sharma as well some allegations of bias were made against Shri Shah. In paragraph 25 of the petition (No. 1301) it was stated that Shri Shah had been biased in favor of some of the persons and he saw to it that they were recommended by the last two Departmental Promotion Committees. In paragraph 26 it was averred that Shri C.N. Vaishnav (respondent No. 23 in his petition) was a great favorite of Shri Shah and that he had learnt that Shri Shah went to the extent of proposing that Shri Vaishnava's name should be placed at the top of the list of officers recommended by the-Departmental Promotion Committee for promotion.

24. In his affidavits Shri Shah controverted the allegations of bias made against him. In the affidavit filed in petition No. 1231 he stated that he had no personal animosity against Shri Datta and that his relations with that officer "were neither friendly nor unfriendly, during the time the petitioner was posted as A.A.C. and the deponent was posted as I.A.C. at Nagpur." He also affirmed that there was no special report written regarding the work of Shri Datta by the Minister of Foreign Trade and that the annual confidential report for the period ending December, 1971, which was countersigned by the Minister of Foreign Trade on October 5, 1972, was made available to the Departmental Promotion Committee and was considered by it at its meeting along with the other service record of Shri Datta.

25. Copies of the minutes of the three Departmental Promotion Committees held on June 24, 1971, September 10, 1971, and October 5, 1972 were produced. The meeting on October 5, 1972 was held a 3 p.m. in the office of the Union Public Service Commission. Shri R.C.S. Sarkar,

Chairman of the Union Public Service Commission, was Chairman of the Departmental Promotion Committees which made selections for the posts of Commissioners of Income-tax on June 24 and September 10, 1971. The members of the Departmental Promotion Committee on June 24, 1974 were Shri B.D. Pande, Finance Secretary, Shri R.N. Muttoo, Additional Secretary, Ministry of Finance and Shri R.D. Shah, Joint Secretary, Ministry of Finance. In the meeting held on September 10, 1971 Shri R.D. Shah, Chairman, Central Board of Direct Taxes and Shri K.E. Johnson, member Central Board of Direct Taxes, were the members. In the meeting of the Departmental Promotion Committee held on October 5, 1972 Shri Hari Sharma, member Union Public Service Commission, was the Chairman and Shri B.D. Pande Finance Secretary, Shri R.D. Sheth Chairman Central Board of Direct Taxes and Shri K.E. Johnson member Central Board of Direct Taxes were the members.

26. Shri Datta was one of the 27 officers whose cases were considered by the Departmental Promotion Committee held on 10th September, 1971, His assessment by the Departmental Promotion Committee was "good". Thirteen officers whose assessment was "very good" were recommended for the panel for officiating promotion to the grade of Commissioners.

27. Against his non-selection by the Departmental Promotion Committee which met on September 10, 1971 Shri Datta has no grievance. Obviously if Shri Datta had considered Shri Shah to be inimical to him he would have represented against Shri Shah acting as a member of the Departmental Promotion Committee and against his non-selection.

28. The Departmental Promotion Committee which met on October 5, 1972 assessed Shri Datta as "not yet fit". Five officers who were junior to him were, however, assessed as "very good" and were selected for the promotion panel besides three officers who were senior to him.

29. Against his non-selection by the Departmental Promotion Committee on October 5, 1972 Shri Datta made a representation to the Minister for Home Affairs. A copy of that representation was attached by him to his petition as Annexure Pl. The only ground urged was that he believed that his special report from the Ministry of Foreign Trade was issued either late on the night of the 4th October, 1972 or early on the 5th October, 1972 and was not placed before the Departmental Promotion Committee. It was added that he had reason to believe that his special report from the Ministry of Foreign Trade was "outstanding" and in case the Departmental Promotion Committee had considered the special report from the Ministry of Foreign Trade and then not selected him he would have no grudge.

30. The Ministry of Foreign Trade did not make any special report regarding Shri Datta for the period he remained on deputation. The Ministry had of course sent a confidential report regarding the work of Shri Datta for the period ending December, 1971. That report was written by the Managing Director and certain remarks were given on it by the reviewing officer on October 3, 1972. The Minister of Foreign Trade as the counter-signing officer also made his remarks on October 5, 1972.

31. By no stretch of imagination the report of the Ministry of Foreign Trade regarding Shri Datta can be said to be out-standing. At the same time it also cannot be regarded to be in adverse report. The Managing Director had mentioned that the Board of Directors were not satisfied with

the accounts maintained by Shri Datta. The reviewing officer even referred to loss of rupees eight lakhs caused to the Cotton Corporation of India Limited. The remarks of the Minister of Foreign Trade, as the counter-signing authority, were to the following effect:

Shri M.S. Datta has sent detailed representation stating that the Managing Director of the Corporation and the Joint Secretary have ganged up against him and an attempt has been made by them to place the blame regarding some loss suffered by the Cotton Corporation on Shri Datta. This representation is under examination. It would, therefore, be prejudging the issue at this stage and to say that Datta was responsible for the loss. On the whole, however, I have found Shri Datta as an able and mature officer.

Sd/- (L.N. Mishra)

Minister of Foreign Trade,

5-10-1972.

32. Shri B.D. Pande, Cabinet Secretary, who on October 5, 1971 was Secretary to the Government of India in the Ministry of Finance swore an affidavit that Shri Shah did not show either expressly or impliedly any bias, prejudice or enmity towards Shri Datta and that the character roll on the work and conduct of Shri Datta for the period, ending December, 1971 counter-signed by the Minister of Foreign Trade was duly placed and considered by the Departmental promotion Committee.

33. On the record there is also the affidavit of Shri K.E. Johnson, Member Central Board of Direct Taxes. He was one of the Members of the Departmental Promotion Committee on October 5, 1972. He affirmed that Shri Shah did not show either expressly or impliedly any bias or prejudice or enmity towards Shri Datta and that the findings of the Departmental Promotion Committee in respect of each officers were reached after a full and fair examination of his entire confidential character roll and that such examination was confined to an objective assessment of the contents of the confidential character rolls and that neither he nor any other member made any observation or mentioned anything about any of the officers which was not strictly connected with the contents of his confidential character roll. He as well stated that the character roll on the work and conduct of Shri Datta for the period ending December, 1971 was placed before the Departmental Promotion Committee and was duly considered by it.

34. In the statement made by Shri Shah before the Commissioner of Departmental Inquiries he denied the suggestion of his relations being inimical with Shri Datta. It was, however, not denied that on the occasion of sacred thread ceremony of Shri Datta's son, Shri Datta had not invited him. Shri Shah had also stated that after he became Commissioner the work of practical-test examination was assigned by him to another officer and not to Shri Datta and that he had mentioned in a gathering of Income-tax Officers under training that they paid more visits to Shri Datta than to him because Shri Datta was the practical-test Examiner.

35. The Commissioner of Departmental Enquiries, after holding an enquiry against Shri Datta held that the charges had not been proved. Under orders of the President of India, Shri Datta was accordingly exonerated of the charges framed against him.

36. We have carefully gone through the statement which was made by Shri Shah during the departmental proceedings against Shri Datta. From that statement it cannot be said that Sri Shah was prejudiced or had any bias against Shri Datta.

37. Merely because Shri Datta chose to use strong language regarding Shri Shah in his petition it does not mean that in fact Shri Shah had any bias against Shri Datta. It was rather not in good taste for Shri Datta, who is occupying a very responsible position, to use very strong language regarding his superior officer even if he had some grievance against him.

38. Shri Shah was a member of the Departmental Promotion Committee which selected Shri Datta for the post of Additional Commissioner of Income-tax. He was also a member of the Departmental Promotion Committee which met on September 10, 1971 in which the assessment regarding Shri Datta was "good", though he could not be selected because only those officers were taken on the promotion panel whose assessment was "very good." As already stated regarding the proceedings of that Departmental Promotion Committee Shri Datta had no grievance. In his representation made on November 12, 1972 to the Minister for Home Affairs against his non-selection by the Departmental Promotion Committee on October 5, 1972, he did not allege any bias against Shri Shah. What was stated therein was as under:

The Departmental Promotion Committee for promotion to Commissioners of Income-tax (from the Additional Commissioners of Income-tax) met at Delhi on the 5 th October, 1972. My special report from the Ministry of Foreign Trade, I reliably understand, was issued either late on the night of the 4th October, 1972 or early on the 5th of October, 1972 itself, the date of the meeting of the D.P.C. I have, therefore, every reason to believe that my special report was not before the D.P.C. which considered my case for promotion on the 5th of October, 1972.

I have reportedly been suppressed by the D.P.C. If the D.P.C. has considered my special report from the Ministry of Foreign Trade and then superseded me, I have no grudge. But, from all I have stated above, is clear that my special report (which I have reason to believe would be outstanding) was not before the D.P.C when they considered my case.

Significantly in the representation there was no allegation of bias against Shri Shah. From all these facts, in our opinion, it follows that the plea of bias on the part of Shri Shah is an afterthought and in any event it has no real basis. The selections made on October 5, 1972 by the Departmental Promotion Committee cannot, therefore, be challenged by Shri Datta on the ground of malice or bias on the part of Shri Shah.

39. Allegations of bias made by Shri V.P. Sharma against Shri Shah appear to be still more flimsy. Shri Sharma did not give any particulars of alleged bias on the part of Shri Shah in favor of the persons recommended by the Departmental Promotion Committee on September 10, 1971 and October 5, 1972. It was of course averred that Shri Shah went to the extent of proposing that Shri Vaishnav's name should be placed on the top of the list of persons to be recommended by

the Departmental Promotion Committee for promotion. Shri Shah has denied that allegation by stating it to be false.

40. Shri Sharma did not disclose as to how he had come to know that Shri Shah made any effort to have the name of Shri Vaishnav shown at the top of the select panel. The minutes of the Departmental Promotion Committee dated October 5, 1972 show that Shri Vaishnav was assessed as "very good." None of the officers considered for the select list was given a higher assessment than "very good." As all officers who were assessed as "very good" were selected for the panel and their names in the panel had to be mentioned without disturbing their inter se seniority as Additional Commissioners of Income-tax. The Government of India by office Memorandum No. 1/4/55-RPS dated May 16, 1957 has laid down the principles for promotion to selection posts. The said memorandum, inter alia, provides that out of eligible officers those who are considered unfit for promotion should be excluded and the remaining officers should be classified as "outstanding", "very good" and "good" on the basis of merit as determined by their respective records of service and the select list should then be prepared by placing the names in the order of these three categories without disturbing the seniority inter se within each category. As all the officers selected for the panel on October 5, 1972 were classified as "very good", including Shri Vaishnav, so the question of Shri Vaishnav's name being placed at the top of the panel could not arise. The allegations of bias made are, therefore, not only imaginary but without any basis.

41. The other contentions raised on behalf of the petitioners were as under:

(a) Additional Commissioners of Income-tax perform all functions of Commissioners and their selection for the posts of Additional Commissioners was for all practical purposes selection of the posts of Commissioners of Income-tax and they are, therefore, not required to undergo a second selection and posts of Commissioners should have been filled in on the basis of seniority from amongst Additional Commissioners.

(b) Recommendations made by the Departmental Promotion Committee were without any rules or authority of law and as such appointments made on the basis of those selections were illegal.

(c) The draft rules have no sanctity as these were neither published nor circulated and, therefore, could not be made use of even as executive instructions.

(d) Recommendations of the Departmental Promotion Committee were vitiated as these were based on character rolls not signed by reviewing authority.

42. Shri Datta as well urged that he was prejudiced because his character roll for the period from January, 1972 to the end of March, 1972 was not prepared and placed before the Departmental Promotion Committee. It was contended that the Departmental Promotion Committee did not have full record in respect of him. Formation of any opinion on the basis of incomplete record was stated to be illegal. Further on behalf of Shri Seth it was submitted that for proper disposal of the petition filed by him character rolls of all the officers considered at the three meetings of the Departmental Promotion Committee should be produced besides office file of the Central Board of Direct Taxes in connection with the proceedings of the Departmental Promotion

Committees and all correspondence up-to-date in connection with the appointments of Commissioners of Income Tax.

43. There is no substance in the contention raised by Shri Datta that his complete record was not before the Departmental Promotion Committee when it met on the afternoon of October 5, 1972. In respect of his work with the Cotton Corporation of India Limited the character roll was prepared for the period ending December, 1971. The remarks of the Minister of Foreign Trade, who was the counter-signing authority, were made on October 5, 1972 and the said character roll was made available to the Departmental Promotion Committee to be considered along with the earlier record of Shri Datta. Thus the up-to-date existing record was with the Departmental Promotion Committee. It was not necessary to obtain a report regarding the work of Shri Datta for the period between January 1, 1972 to the end of March, 1972 as that period could only be covered at the time of the writing of the next character roll.

44. We are also unable to agree that for disposal of the petition of Shri Seth or the other petitions it is necessary to have the character rolls of all the officers who were considered by the Departmental Promotion Committees or the file of the Central Board of Direct Taxes in connection with the proceedings of the Departmental Promotion Committees and the correspondence relating to appointment of Commissioners of Income-tax. It was for the Departmental Promotion Committee to make assessment regarding the merits of each eligible officer by considering the service record. This Court cannot sit in judgment over the assessments that were made by the Departmental Promotion Committee. It is, therefore, unnecessary to go into the question raised by the learned Counsel for the petitioners that the privilege claimed in respect of that record should not be allowed. So far as the minutes of the Departmental Promotion Committees are concerned those were produced from the other side and the privilege originally claimed in respect thereof was waived.

45. Reliance was sought to be placed on a judgment of this Court in the case of National Agricultural co-operative Marketing Federation Ltd., New Delhi v. Central Board of Direct Taxes (Civil Writ No. 51 of 1971, dated 28-5-1971) reported in 1972 Tax L.R. 68 Delhi. The question raised in that case was with respect to a notice issued by an Additional Commissioner of Income-tax revising an order that had been made by an Income-tax Officer, District VI, in purported exercise of the power under Section 263 of the Income-tax Act, 1961. A Division Bench of this Court held that though under Sections 263 and 264 of the Income-tax Act the revisional powers can be exercised by Commissioners, but as Additional Commissioners have the same power as Commissioners, so in the matter of revising the order of an Income-tax Officer, the Additional Commissioner could exercise the powers of a Commissioner.

46. It was not disputed that the Commissioners of Income-tax and the Additional Commissioners of Income-tax perform same or similar judicial functions under the Income-tax Act. So far as the administrative and non-statutory technical functions are concerned they, however, are not at par. Even before the Government of India took the decision, as communicated by its letter dated August 11, 1972 that in matters relating to non-statutory and non-judicial duties the Additional Commissioners shall be administratively subordinate to the respective Commissioners of Income-tax, the Additional Commissioners did not have the same powers as Commissioners regarding recruitment, promotion and postings. It was stated in the affidavit filed on behalf of the

Union of India and the Central Board of Direct Taxes by Shri Mehra, Under Secretary to the Government of India, as under:

...recruitment, promotion and postings of the various officers is exclusively within the jurisdiction of the Commissioners of Income-tax. The Commissioners of Income-tax are responsible, apart from the management functions of the charge, for the entire assessment work, all work connected with combating tax evasion, survey, and inspection of Income-tax Officers and Inspecting Assistant Commissioner's offices (except of Inspecting Assistant Commissioner's Audit). They are also performing important statutory functions regarding determination of jurisdiction of Inspecting Assistant Commissioners of Income-tax and Income-tax Officers, searches and seizures, reopening of assessments, reduction and waiving of penalty, disclosures of information and prosecution. These important and managerial duties are exercised by the Commissioners of Income-tax. Whenever a Commissioner of a charge proceeds on long leave or a vacancy occurs as a result of his transfer or any other cause, the Commissioner of another charge is appointed to hold the charge of that Commissioner. This charge is not handed over to the local Additional Commissioner of Income-tax. The notification of the Additional Commissioner of Income-tax as Head of the Department is only for the purpose of certain fundamental rules and financial rules and for no other purpose. In fact pursuant to the recommendations made by the Direct Taxes Enquiry Committee (presided over by Mr. Justice Wanchoo) the Government of India have decided that in all matters relating to non-statutory and non-judicial duties and functions of Additional Commissioners of Income-tax, the Additional Commissioner of Income-tax shall be administratively subordinate to the Commissioners of Income-tax.

47. The mere fact that the same statutory powers can be exercised by Additional Commissioners as by the Commissioners under the provisions of Income-tax Act does not mean that administratively the posts of Additional Commissioners and Commissioners are of the same rank. Posts of Additional Commissioners form a separate cadre and are in a lower scale of pay than the posts of Commissioners of Income-tax. It is also not possible to consider the sanctioned scale of pay for the posts of Additional Commissioners as a junior scale of pay for the posts of Commissioners.

48. In the absence of statutory rules recruitment to the Posts of Commissioners could be made on the basis of executive instructions. Draft rules were made but these were not finalised. Assuming that the draft rules could not even be regarded as executive instructions because these were not finally approved, published or circulate still the instruction issued by the Government of India on September 29, 1944, held the field to the extent that the Posts of Commissioners were selection posts. It was not the case of the petitioners that Additional Commissioners were not eligible for appointment as Commissioners. That being so the posts of Commissioners were rightly filled in by selection from amongst Additional Commissioners on the recommendations of the Departmental Promotion Committee. As recruitment was by selection none of the petitioners could claim to have a right for being selected for the Post of Commissioner merely on the basis of his seniority. In making recommendations the Departmental Promotion Committee followed the instructions of the Government of India by classifying eligible officers the basis of merit, as determined by their respective records of service, and then preparing the select-list by placing the names in the recommended category, without disturbing seniority inter se within that category.

In all the three selections no officer was classified as "outstanding". Names of only those officers were placed on the select lists for promotion to the posts of Commissioner of Income-tax who were classified as "very good" and in that category inter se seniority was in no way disturbed. As none of the petitioners was classified as "very good" so they could not be selected. Certain officer junior to them having been classified as "very good" were also selected. Against those selections the petitioners can have no legal grievance.

49. The contention that the selections made by the Departmental Promotion Committee were vitiated is equally devoid of force. It is not necessary that there should be statutory rules before any posts can be filled in by selection. Adopting the method of making selections on merit, consistent with the Government of India's instructions issued on September 29, 1944 was in no way illegal. The posts of Commissioners having been classed as selection posts the selections had to be made on the basis of merit and not seniority.

50. Shri Yogeshwar Prasad who appeared for the petitioners other than Shri Datta as well questioned the legality of the selections made by the Departmental Promotion Committee by submitting that the character rolls of Shri Basanti and Shri Sharma for the years 1966 and 1967 and that of Shri Sharma and Shri Kaushal for the year 1967-68 were not counter-signed. It was further urged that there was delay in counter-signing the character rolls of those officers for the years 1968-69 and 1969-70.

51. The fact that some of the old character rolls were not counter-signed or the character rolls for the years 1968-69 and 1969-70 were counter-signed late did not cause any prejudice to the petitioners as on the basis of those and the earlier character rolls they had already been selected in the year 1970 for the posts of Additional Commissioners.

52. Yet another submission was made on behalf of the petitioners, It was stated that Shri Abrol had withdrawn his petition as after the selections made on October 5, 1972 his character roll had been up-graded and on the basis of the up-graded character roll he was hopeful that his case would be favorably reviewed by the Departmental Promotion Committee. It was contended that there cannot be the view of the case of only one officer and that, therefore, the entire proceedings of 5-10-1972 should be scrapped and the cases of all eligible officers should be reconsidered. Shri Datta strongly supported this contention by stating that the Departmental Promotion Committee's proceedings cannot be held partially legal and partially illegal.

53. At present it is not known what action, if any, is going to be taken by the Departmental Promotion Committee in respect of Shri Abrol. If the decision taken may be such against which any one can legally have a grievance then it will be open to that person to have recourse to the legal remedies that may be open to him. At this stage the proceedings of the Departmental Promotion Committee of October, 5 1972 cannot be considered to have been vitiated because of something that may or may not be done in future.

54. Thus there is no merit in any of the petitions. The posts of Commissioners of Income-tax being selection posts the petitioners had no right to be promoted as Commissioners merely on the basis of their seniority as Additional Commissioners of Income-tax. The selections made by the Departmental Promotion Committee to which objection was taken were in no way invalid or

illegal. The plea of bias against Shri Shah was without any real basis. The petitioners were not selected because on consideration of their records of service they could not be classified as "very good" while officers who got that classification were selected. Unless selected on merit for the posts of Commissioners of Income-tax the petitioners will have no right to be promoted as Commissioners of Income-tax merely because as Additional Commissioners they are performing the same statutory functions as Commissioners or on the basis of their seniority amongst Additional Commissioners. All the writ petitions are, therefore, dismissed, but in the circumstances of the cases we leave the parties to bear their own costs.