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DATED 27th JULY, 1963 AND AMENDMENT THEREOF

Government of India
Ministry of Law and Justice
Department of Legal Affairs

New Delhi, 27th July 1963

NOTIFICATION

G.S.R. No.1265: In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and of all other powers enabling him in that behalf, the President hereby makes the following rules regulating the recruitment and conditions of service of persons appointed as members of the Income-tax Appellate Tribunal, namely:-

1. Short title and commencement:-

- (1) These rules may be called the Income-tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963;
- (2) Rule 4 shall come into force at once, rule 3 shall be deemed to have come into force on 1st day of April, 1962 and the remaining rules shall be deemed to have come into force on the 1st day of September, 1960.

2. Definitions:- In these rules, unless the context otherwise requires,

- (a) an 'accountant member' means an accountant member of the Tribunal;
- (b) a 'judicial member' means a judicial member of the Tribunal;
- (c) a 'member' means a member of the Tribunal but except for the purposes of rules 3 (3), 3 (4), 8, [12 and 13 does not include the President; Senior Vice-President and Vice-President]¹;
- (d) the 'President' means the President of the Tribunal;
- (dd)² 'Vice-President' means Vice-President of the Tribunal;
- (f) the 'Tribunal' means the Appellate Tribunal constituted under section 252 of the Income Tax Act, 1961 (43 of 1961).

¹ Substituted vide GSR No.753 (E) dated 29th December 2005

² Inserted vide G.S.R. No. 4 dated 6th January 1973

3. Qualifications for Recruitment:-

- (1)³ A person shall not be qualified for appointment as a judicial member unless:-
- (i) he has for at least ten years held a judicial office in the territory of India;
or
 - (ii) ⁴[he has been a member of the Indian Legal Service and has held a post in grade II of the Service or any equivalent or higher post for at least three years; or]
 - (iii) he has been an advocate for at least ten years;

Explanation:- For the purposes of this sub-rule:-

- (i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post under the Union or a State, requiring special knowledge of law;
- (ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2)⁵ A person shall not be qualified for appointment as an accountant member unless:-

- (i) he has for at least ten years been in the practice of accountancy
 - (a) as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949); or
 - (b) as a registered accountant under any law formerly in force; or
 - (c) partly as such registered accountant and partly as a chartered accountant; or
- (ii) ⁶[he has been a member of the Indian Income Tax Service Group 'A' and has held the post of Additional Commissioner of Income Tax or any equivalent or higher post for at least three years].

(3) A person shall not be qualified for appointment as a member if:-

- (i) he is less than thirty-five years of age; or
- (ii) he is more than fifty years of age; provided that the upper age limit may be relaxed:

³ Inserted vide G.S.R. No. 576 dated 20th June 1981 (Deemed to have come into force on and from the 1st April, 1981).

⁴ Substituted vide G.S.R. No. 454 (E) dated 24th June 1999.

⁵ Inserted vide G.S.R. No. 576 dated 20th June 1981 (Deemed to have come into force on and from the 1st April, 1981).

⁶ Substituted vide G.S.R. No. 454 (E) dated 24th June 1999.

- (a) ⁷[in the case of Government servants up-to five years in accordance with the instructions or orders issued by the Central Government;] and
 - (b) in case of a person belonging to a Scheduled Caste or a Scheduled Tribe or to any special category specified by the Central Government, to such extent as may be specified in the general orders made by the Central govt. relating to recruitment of such persons to Government service.
- (4) No person:-
- (a) who has entered into or contracted a marriage with a person having a spouse living; or
 - (b) who, having a spouse living, has entered into or contracted a marriage with any person shall be eligible for appointment as member;

Provided that the Central Government may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and there are other grounds for so doing, exempt any person from the operation of this rule.

4. Method of Recruitment:-

- (1) There shall be a Selection Board consisting of:-
 - (i) a nominee of the Minister of Law;
 - (ii) the Secretary to the Govt. of India, Ministry of Law (Department of Legal Affairs);
 - (iii) the President ⁸[or the Senior Vice-President] of the Tribunal, and
 - (iv) such other person, if any, not exceeding two, as the Minister of Law may appoint.
- (2) The nominee of the Minister of Law and Justice shall be the Chairman of the Selection Board.
- (3) The Selection Board shall recommend persons for appointment as members from amongst the persons on the list of candidates prepared by the Ministry of Law after inviting applications therefor by advertisement or on the recommendations of the appropriate authorities.
- (4) The Central Govt. shall after taking into consideration the recommendations of the Selection Board make a list of persons selected for appointment as member;

⁷ Substituted vide G.S.R. No. 214 dated 12th January 1984.

⁸ Inserted vide G.S.R. No. 1003 (E) dated 4th August 1986.

4A⁹. Procedure of selection:-

The Selection Board shall evolve its own procedure:

Provided that where the suitability of the candidate is judged from his or her *viva voce*, each member shall evaluate the performance and award marks out of the maximum marks fixed by the Board.

[Provided further that where the Selection Board is of the opinion that it shall not be practicable to call all the candidates for the *viva voce*, it shall short list the candidates for this purpose by adopting such criteria which shall not be less than the following criteria:-

- (i) for accountant member
 - (a) a member of the Indian Income-tax Service Group 'A' and has held the post of Commissioner of Income-tax or any equivalent or higher post for at least three years; or
 - (b) a person who has for at least twenty years been in the practice of accountancy as a Chartered Accountant under the Chartered Accountants Act, 1949 (38 of 1949) or partly as such registered accountant and partly as a Chartered Accountant and has net Taxable income of not less than Rs.1,40,000/- (after allowable exemptions or deductions).
- (ii) for judicial member
 - (a) a member of judicial service who has held a post of District and Sessions Judge or Additional District and Sessions Judge for not less than seven years; or
 - (b) a person who has been practicing as an Advocate for at least twenty years and who has net taxable income of not less than Rs.1,40,000/- (after allowable exemptions or deductions); or
 - (c) a member of the Indian Legal Service who has held a post a Grade-I of that service or any equivalent or higher post for at least three years; or
 - (d) a person who has held judicial office or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge of law after he became an Advocate or judicial officer, having a combined experience of twenty years;

Provided also that in case of candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes Categories, the Selection Board may adopt such criteria as it may deem fit, but which shall not be less than the eligibility criteria prescribed under Sub-sections (2) and (2A) of Section 252 of the Income-tax Act, 1961 (43 of 1961) and rule 3]¹⁰.

⁹ Inserted vide G.S.R. No. 283(E) dated 26th April 2004.

¹⁰ Inserted vide GSR No.742 (E) dated 23rd December 2005.

5. Medical Fitness:-

No person shall be appointed as a member unless he is included in the list made under sub-rule (4) of rule 4 and unless he is declared medically fit by a Medical Board to be constituted by the Central Government for the purpose, unless he has already been declared fit by an equivalent authority.

6. Probation:-

- (1) Every person appointed as member shall be on probation for a period of two years.
- (2) The Central Govt. may in the case of any person extend or reduce the period of his probation.
- (3) At any time during the period of probation and without any reasons being assigned, such person may be discharged from service as a member.

7¹¹ Selection Committee to select President, etc.:-

The Selection Committee consisting of a sitting Supreme Court Judge, to be nominated by the Chief Justice of India, the President and the Secretary, Ministry of Law and Justice (Department of Legal Affairs), based on merit, shall recommend persons for appointment as President, Senior Vice-President and Vice-Presidents.

8. Classification: A member shall be a member of the General Central Service, Class I (Now Group A), Gazetted unless he is a member of any other Central Govt. Civil Service.

¹¹ Rule 7 C renumbered as Rule 7, and rules 7, 7 A and 7 B, omitted vide G.S.R. No. 174 (E) dated 10th March, 2014. Prior to omission, Rule 7, published as Principal Rule in Gazette of India, vide G.S. R. No. 1265 dated 19.07.1963 and sub-rule 7 (1) substituted vide G.S. R. No. 283 (E) dated 26th April, 2004, read as under:-

“Rule 7- (1) The Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof. (2) The appointment of the President may be in an officiating or substantive capacity”.

Prior to omission, Rule 7A, as inserted vide G.S. R. No. 4 dated 6th January, 1973, read as under:-

“ Rule 7 A- The Central Government may appoint from among the Members one or more persons as Vice-President or, as the case may be Vice-Presidents of the Tribunal to assist the President in the discharge of his functions”.

Prior to omission, Rule 7 B, as inserted vide G.S.R. No. 765 dated 24th May, 1984, read as under:-

“Rule 7 B-The Senior Vice-President: The Central Govt. may appoint one of the Vice-Presidents of the Appellate Tribunal appointed under rule 7A, to be the Senior Vice-President thereof”.

9. Pay and Allowances¹²:-

- (1) (a) the President shall be in the Apex Scale of Rs. 80,000/- per month (fixed);
- (b) the Senior Vice President shall be in the Apex Scale of Rs. 80,000/- per month (fixed);
- (c) the Vice-President shall be in the Higher Administrative Grade plus Scale of Rs. 75,500/- (annual increment @ 3%)-Rs. 80,000/- per month; and
- (d) Member shall be in the Higher Administrative Grade plus Scale of Rs. 75,500/- (annual increment @ 3%) - Rs. 80,000/- per month.

(2) In addition to the pay scale specified in sub-rule (1), the President, the Senior Vice-President, the Vice-President and the member shall be entitled to such allowances and other benefits as are admissible to the Central Government officers of the appropriate category and subject to the conditions laid down in rules and orders of the Central Government governing the grant of such allowances and benefits in force from time to time.

(3) Where a serving judge of a High Court is appointed as the President, he shall be entitled to a monthly salary at the same rate as is admissible to a judge of the High Court:

Provided that where a retired judge of the High Court is appointed as the President, his monthly salary shall be reduced by the gross amount of pension or employer's contribution to the Contributory Provident Fund or any other form of retirement benefit, if any, drawn or to be drawn by him.

(4) A sitting or retired judge of the High Court appointed as the President shall be entitled to such allowances and other benefits as are admissible to a sitting judge of the High Court of Bombay.

10. Seniority:-

- (1) Seniority of a member shall be determined in accordance with the date of the list of persons selected for appointment as members made under sub-rule (4) of rule 4.
- (2) If two or more members are selected by the same list seniority of such members inter se shall be determined in accordance with their ranking in that list.

11¹³. Retirement – The date of Retirement of, -

- (a) the President shall be the date on which he attains the age of sixty-five years;
- (b) the Senior Vice-President, Vice-President and Member shall be the date on which they attain the age of sixty-two years;

and not the last date of the month as in the case of other Government servants.

¹² Substituted vide G.S.R. No. 174 (E) dated 10th March, 2014.

¹³ Substituted vide GSR No.753 (E) dated 29th December 2005

12. Retirement benefit:-

- (1) A member who, at the time of his appointment as member was holding a pensionable post under a Govt. in a permanent capacity shall be eligible for pension in accordance with the rules for pension applicable to him at the time of his retirement;
- (2) A member to whom sub-rule (1) does not apply shall be entitled to Contributory Provident Fund benefits in accordance with the Contributory Provident Fund Rules (India), 1962.

Provided that:-

- (i) A member appointed in a substantive capacity prior to the commencement of this rule and serving as a member at such commencement and a member appointed in a substantive capacity after the commencement of this rule but before the commencement of rule 4 may, if he was a subscriber to the Contributory Provident Fund at the time of his appointment in a substantive capacity, elect, within three months from the date of publication of these rules in the Official Gazette, for pensionary benefits; and
 - (ii) A member appointed in a substantive capacity after the commencement of rule 4 may elect for pensionary benefits within three months of his appointment in a substantive capacity.
- (3) A member shall communicate his election under Clause (i) or (ii) to the proviso to sub-rule (2), to the Accounts Officer concerned with a copy to the Secretary, Ministry of Law, Department of Legal Affairs, within the period specified therefor, and if no communication is received in the office of the Accounts Officer concerned within that period, the member shall be deemed to have exercised his election to continue to subscribe to the Contributory Provident Fund, in which case he shall not be entitled to any pension.
 - (4) Election once made under the proviso to sub-rule (2) shall be final.
 - (5)¹⁴ A Member recruited directly from the profession (Legal Profession or accountants profession) after the age of thirty-five years shall be eligible to add to his service qualifying for superannuation pension (but not for any other class pension) the actual period not exceeding one-fourth of the length of service or the actual period by which the age at the time of recruitment exceeded twenty-five years, or a period of five years, whichever is less, provided that this concession shall not be admissible to a member unless the actual qualifying service at the time he quits Government Service is not less than ten years

¹⁴ Inserted vide G.S.R. No. 576 dated 20th June, 1981 (Deemed to have come into force on and from the 1st April, 1981).

13. Other Conditions of Service:-

The conditions of service of a member in respect of matters for which no provision is made in these rules shall be the same as may for the time being be applicable to other employees of the Govt. of India of a corresponding status.

13A^{15***} Omitted.

13B^{15***} Omitted.

13C^{15***} Omitted.

13D^{15***} Omitted.

13E¹⁶. The President, the Senior Vice-President, the Vice-President and the Member of the Tribunal shall not practice before the Tribunal after retirement from the service of the Tribunal.

13F¹⁷. The President, the Senior Vice-President, the Vice-President and the Member of the Tribunal shall not undertake any arbitration work while functioning in these capacities in the Tribunal.

14. Interpretation:-

If any question arises relating to the interpretation of these rules the decision of the Central Govt. thereon shall be final.

¹⁵. Omitted vide G.S.R. No. 389 (E) dated 3rd June, 2009. Prior to omission, Rule 13 A, 13 B, 13 C and Rule 13 D, as inserted vide G.S.R No. 926(E) dated 5th December, 2003, read as under:-

“Rule 13 A- Appointment of the temporary members:- (1) Notwithstanding anything contained in these rules, the Central Government may, in consultation with the President of the Tribunal, appoint as many temporary judicial members and temporary accountant members as it may think fit under sub-section (1) section 252 of the Income-tax Act, 1961 (43 of 1961) (2). The appointment of the temporary judicial and temporary accountant members may be made on deputation or on such terms and conditions as may be specified in the contract of employment for a period not exceeding two years which may be extended for a further period not exceeding one year: Provided that no person shall be appointed as temporary judicial and temporary accountant member unless he is qualified to be appointed as judicial member or accountant member under sub-sections 2 or (2 A) of section 252 of Income-tax Act, 1961. Provided further that a person- (a) who has retired as a judicial member or Accountant Member of tribunal; or (b) who has retired and held a post carrying a scale of pay of Rs. 14,300-400-18,300/- or higher scale of pay under the Central Government or a State Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a corporation or body corporate established under any Central, State or Provincial Act, shall be eligible for appointment as a temporary member only on contract basis if such person is eligible to be appointed as judicial member or accountant member under sub-sections 2 or (2A) of section 252 of the Income-tax Act, 1961”.

“Rule 13 B- Pay of a temporary member: - The pay of the temporary judicial and temporary accountant member shall be Rs. 22,400/- per month (fixed)”.

“Rule 13 C- Other conditions of service of temporary judicial and temporary accountant members:- The other conditions of service including payment of allowances shall be the same as are applicable to a regular member of the Tribunal: Provided that if a temporary member is drawing pension, the amount of his pension shall be deductible from his pay”.

“Rule 13 D- Removal of temporary judicial and temporary accountant member: - A temporary member may be discharged from his office at any time and without any reasons being assigned.

Explanation: - For the purposes of rules 13 B to 13 D, temporary judicial and temporary accountant member means a Member appointed under rule 13A.

¹⁶ Inserted vide G.S.R. No. 389 (E) dated 3rd June, 2009.

¹⁷ Inserted vide G.S.R. No. 389 (E) dated 3rd June, 2009.

15. Power to relax:-

Where the Central Govt. is of the opinion that it is necessary or expedient so to do, it may, by order for reasons to be recorded in writing relax any of the provisions of these rules with respect to any class or category of persons.

16¹⁸. Saving:-

¹⁴Nothing in these rules shall effect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Ex-Servicemen and other special categories of persons, in accordance with the orders issued by the Central Govt. from time to time in this regard.

(F.13 (4)/61-ITAT)

Sd/-
(G.A. Shah)
Joint Secretary & Legal Adviser

To
The Manager,
Govt. of India Press,
New Delhi.

Note:- The Principal rules were notified vide G.S.R. No. 1265 dated 19.7.63 and subsequently amended vide:-

1. G.S.R. 1864 dated the 16th December, 1965
2. G.S.R. 4 dated the 26th December, 1972
3. G.S.R. 576 dated the 23rd May, 1981
4. G.S.R. 905 dated the 16th September, 1981
5. G.S.R. 214 dated the 12th January, 1984
6. G.S.R. 765 dated the 24th May, 1984
7. G.S.R. 36 dated the 29th November, 1985
8. G.S.R. 1265 dated the 6th February, 1986
9. G.S.R. 1003(E) dated the 4th August, 1986
10. G.S.R. 1338(E) dated the 29th December, 1986
11. G.S.R. 912(E) dated the 8th September, 1988
12. G.S.R. 454(E) dated the 24th June, 1999
13. G.S.R. 786(E) dated the 26th November, 1999
14. G.S.R. 926(E) dated the 5th December, 2003
15. G.S.R. 283(E) dated the 26th April, 2004
16. G.S.R. 742(E) dated the 23rd December, 2005
17. G.S.R. 753(E) dated the 29th December, 2005
18. G.S.R. 576 dated the 20th June, 1981
19. G.S.R. 389(E) dated the 3rd June, 2009
20. G.S.R. 176 (E) 10th March, 2014

¹⁸ Substituted vide G.S.R. No. 36 dated 29.11.1985.