

'SELECTION OF MEMBERS OF INCOME TAX APPELLATE TRIBUNAL: SOME SUGGESTIONS

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Imagine a scenario where a professional is to be selected for a highly responsible position, one that offers a substantial salary and demands critical decision-making for an entire industrial group. What would the selection process look like? It would likely involve multiple stages and rigorous interviews. Directors would meticulously prepare questions considering the candidate's areas of specialisation, experience, and educational qualifications and conduct thorough background checks before making a final selection. This process could span a month or two, as every sensible business group aims to choose the best-suited individual for such a crucial role.

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How are Members of the Income Tax Appellate Tribunal (ITAT) and other similar Tribunals selected in India?

Before discussing the selection process, it may also be apposite to discuss the selection criteria for appointments of tax judges in the UK, US, and Canada who have a similar role, position, and status as the members of the Income Tax Appellate Tribunal (ITAT) in India.

United Kingdom

In the United Kingdom, a forum like the ITAT is called the Upper Tribunal. The candidates must be either solicitors or barristers in England and Wales, having significant legal experience of at least seven years post-qualification in areas relevant to the tribunal's

work, such as tax law, chancery law, or administrative law. Candidates with previous judicial experience as first-tier tribunal judges are highly valued.

The Judicial Appointments Commission oversees the entire selection process. There is an initial review by a selection panel that includes senior judges and independent members. Based on this initial review, a shortlist of candidates is drawn up to participate in the next round, including a situational judgment test—a written test to assess their ability to handle situations they may encounter. Thereafter, role-playing exercises simulate real tribunal scenarios to assess candidates' practical skills and decision-making abilities.

This is followed by an interview of the shortlisted candidates by the selection panel, which focuses on their legal knowledge, judicial temperament, and suitability for the role. The references provided by the candidates are then contacted to verify their experience, competence, and character, and comprehensive background checks are conducted to ensure the integrity and stability of the candidates. A final selection round involves panel deliberation that reviews all assessment results, references, and background checks. Thereafter, the panel makes recommendations to the Lord Chancellor, who is responsible for the final appointment.

United States of America

In the United States, our tribunal would be similar to a US tax court, and candidates with extensive tax law experience, either through private practice, government service, or academia, are selected. Membership in the bar of the relevant state or district is mandatory.

The President of the United States selects a nominee, often based on recommendations from senators, members of Congress, the legal community, etc. Comprehensive background checks include reviewing nominees' legal qualifications and professional

conduct. Thereafter, the Senate Judiciary Committee reviews the nominee by having them complete an extensive questionnaire detailing their professional background, legal philosophy, and previous rulings, if applicable.

There is a public hearing where senators question the nominee about their qualifications, experience, and views on tax laws and judicial responsibilities. After this, a committee vote provides its recommendation to the full Senate. The full Senate then debates the nomination; a majority vote is required to confirm the nominee. Upon confirmation, the nominee is officially commissioned and sworn in as a judge of the US tax court. Such is the rigorous procedure for selecting tax court judges in the tribunal.

Canada

The Canadian tax court has eligibility criteria for candidates who must have been members of Canada's provincial or territorial bar for at least 10 years. The application process includes a comprehensive questionnaire about qualifications, experience, and other relevant information, which the Office of the Commissioner for Federal Judicial Affairs reviews.

After the review, there is an assessment by the Judicial Advisory Committee, which is independent and composed of representatives from the judiciary, the legal profession, and the general public. They evaluate candidates based on professional competence, personal characteristics, and contributions to the legal profession. The Judicial Advisory Committee then classifies the candidates as recommended or highly recommended for appointment, and the list is forwarded to the Minister of Justice. The Minister of Justice consults with key stakeholders, including judiciary and legal community members, to gather additional input on the recommended candidates.

Based on this input, the Minister of Justice selects the list of candidates for appointment, which is then presented to the Federal Cabinet for approval. Once the Cabinet approves, the Governor General of Canada formally appoints the selected candidates as judges of the Tax Court of Canada on the advice of the Prime Minister and the Federal Cabinet.

India

The ITAT in India holds significant importance as the final fact-finding authority, with most tax matters being largely settled at this level. Only matters involving substantial questions of law travel to the High Court. A tribunal member is paid as an ex-officio secretary to the Government of India and enjoys all the associated benefits. This salary is among the highest for a bureaucrat, surpassed only by the Cabinet Secretary, the High Court and Supreme Court judges.

In India, the process begins with the candidate filling in routine data such as professional experience, start date of practice, and income level in the application form. On a given day, four officials—the Judge of the Supreme Court, the Revenue Secretary, the President of the Tribunal, and a High Court Judge—interview each candidate and send a list of two candidates for each post who they believe is best suited for the Institution. The Government of India decides which of the two candidates will be appointed. The basis for selecting one of the two candidates recommended by the government selection panel is unknown to the public.

The first question is whether selecting a candidate for such a responsible position is feasible based on a mere 15-20-minute discussion with the selection panel. Even if it is possible, is it fair? The field of law is vast, and even the best professionals only possess a fraction of its knowledge. A highly balanced, knowledgeable, and well-read candidate might be unfairly eliminated if the 15-minute interview focuses on one question the

interviewee hasn't encountered. Meanwhile, another candidate who happens to answer correctly may be selected despite having other subpar credentials.

One is compelled to think that this seemingly hasty selection process stems from the fact that it involves taxpayer money, and accountability in such matters is often lacking. If the selected candidates perform poorly, there is no mechanism to question the decision.

Without casting aspersions, it is fair to say that the likelihood of selecting the best candidate from a brief interview is significantly lower than if the process involved multiple levels of selection.

Why shouldn't the same seriousness in selection be accorded as done by the private sector while selecting a top man for the job or by the United States for selecting a judge to the tax court, or by the United Kingdom while appointing a judge to the upper tribunal or by Canada while selecting a tax judge to the Canadian tax court? After all, huge tax revenues are at stake, and at the same time, taxpayers deserve judges who are impartial, well-read, and have a lot of experience.

Some Suggestions

A written test featuring multiple-choice questions could be implemented to assess candidates' overall knowledge. This test could include scenarios requiring responses that reveal the candidates' approach to various situations, their overall attitude towards life, their thought process in delivering justice, and their degree of positivity in decision-making. Additionally, presenting a tax issue to the candidates could evaluate their understanding and ability to articulate their reasoning.

After the written test, a preliminary interview could be conducted by a collegium comprising the President and Vice Presidents of the tribunal, where inter-alia more technical questions, not necessarily relating to direct taxes, can be posed. The entire

process could be recorded for review by a higher collegium, including the Revenue Secretary, the Law Secretary, the President of the Tribunal, a High Court Judge, the President of the Bar Council, the President of the Institute of Chartered Accountants of India (ICAI) and a Supreme Court Judge. A suitable representative from the Bar Council and the ICAI is imperative because lawyers and chartered accountants are also eligible and constitute a bulk of the appointments made for the tribunal. Therefore, representation of the heads of these institutions is a must, especially when the revenue secretary who heads the revenue department is also present in the collegium. This collegium could then shortlist candidates based on the written test and the preliminary interview and invite them for a final interview. Such a process would increase the chances of selecting the most suitable candidate for this critical role. Needless to add, a comprehensive background check before final selection, which should include views of the Bar Association where the candidate practices, the judges before whom he or she appears, is a must. Where the candidate is from the judiciary or the tax department, his appellate orders as a judge must be perused, and his character rolls particularly when he handled appellate work must be carefully gone through.

It is often argued that experienced professionals do not apply, so the choice for selecting suitable candidates is very restricted. The answer to this question lies in the present selection procedure, which has serious flaws, such as an appointment for a four-year period only for which no good professional will give up his legal career and join the institution.

However, it is better not to fill vacancies and wait for candidates who meet the curriculum and selection process for this crucial position.

The Government must take the initiative to make the selection process more rigorous, as the selectors have a moral responsibility to the public to select the best candidates.