

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 973 of 1998

this the 28th day of April 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. S.C. CHAUBE, MEMBER (A)

Suresh Chandra Awasthi, S/o Sri Shiv Kumar Awasthi, R/o 104-A/32, Ram Bagh, Kanpur at present working as Office Supdt., Income Tax Office Circle II, Kanpur.

Applicant.

By Advocate : Sri V. Bahadur.

versus.

1. Union of India through the Chief Commissioner of Income Tax, Kanpur.
2. Commissioner of Income Tax (Incharge Examination), Kanpur.
3. Dy. Director of Income Tax (Exam.), Directorate of Income Tax (IT&A), ARA Centre, Ground Floor, E-2 Jhandewalan Extension, New Delhi.

Respondents.

By Advocate : Sri Amit Sthalekar.

O R D E R

PER S.C. CHAUBE, MEMBER (A)

Through this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought declaration of the result of Income Tax Inspectors Examination held on 16.6.1997 in which the applicant had also appeared.

2. Briefly, the facts of the case are that the applicant was initially appointed as Upper Division Clerk w.e.f. 5.12.1973 under the control of the Commissioner of Income Tax. Vide notification No. CIT/KNP/Exam/97-98 dated 3.3.1997, the Assistant Income Tax Commissioner, Kanpur,

S. Chauhan

invited applications for special permission to appear in Income Tax Inspector Examination to be held in the month of June, same year. It was also mentioned in the notification that the list of candidates requiring Directorate's special permission for all Departmental Examinations may be sent to him separately for each examination. However, the name of the applicant was not mentioned in the list of eligible candidates, which was circulated on 29.5.1997. Consequently, on the request made by the applicant for exemption, he was permitted by the department to appear in the said examination.

Accordingly, the applicant appeared in the examination, which was held on 16.6.1997. on 12.1.1998 the result of the examination was declared and list of successful candidates was circulated alongwith the chart of marks obtained by the candidates. The chart of marks even contained the marks of those candidates who had failed in the said examination. (However, the name of the applicant did not figure in the list of successful candidates, ~~nor~~ the marks obtained by him were ~~not~~ reflected on the chart of marks even though the applicant bonafide believed that he was successful in the said examination) Aggrieved by non-declaration of the result of the applicant, he submitted a representation dated 20.1.1998 to the Commissioner, Income Tax, Kanpur, requesting him to communicate the result of Income Tax Inspectors Examination 1997 alongwith the marks obtained by the applicant. He also represented that the applicant had appeard in the said examination on the basis of valid permission accorded to him by the department. As the applicant did not hear anything on the said representation, he submitted another representation on 20.2.1998 to the Chief Commissioner of Income Tax, Kanpur, which according to the applicant, is still pending. On 31.3.1998, the applicant submitted another representation for



early decision on the original representation of the applicant.

3. The aforesaid representations are still pending. Neither the result of the applicant has been declared, nor the representation of the applicant has been decided. The result of the applicant, according to him, has been illegally withheld and, therefore, he was forced to file the present O.A. He also pleaded that non-declaration of the result by the department is absolutely illegal, arbitrary and in violation of his constitutional rights under Articles 14,16 & 311 of the Constitution of India.

4. The respondents, on the other hand, have stated that the applicant had already availed of more than the requisite number of chances before he applied for the Departmental Examination for Income Tax Inspectors, 1997. He was, therefore, not allowed to appear initially. However, the applicant applied to the Additional Director (Exams.), New Delhi, for permission to appear in the Examination. ^{applicant} The H asserted that he had not taken more than the requisite number of chances and submitted an undertaking dated 27.3.1997 before the Commissioner of Income Tax, Kanpur, to this effect. On the basis of the said undertaking the applicant was tentatively and provisionally allowed by the Commissioner of Income Tax, Kanpur to appear in the said Examination. According to the respondents, undertaking given by the applicant turned out to be false and, therefore, the petitioner's result was rightly not declared. The respondents have further submitted that the representations of the applicant were forwarded to the higher authorities and they were rejected by the Directorate of Income Tax (IT & A), New Delhi, vide letter dated 4.8.1998, the controlling authority for such departmental Examinations and this was communicated to the applicant by the office of the Commissioner of

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Income Tax, Kanpur through his controlling officer. The respondents have further submitted that it is absolutely incorrect to say that the respondents are trying to penalise the petitioner. Infact, the petitioner himself with fraudulent intentions, gave a false undertaking that he had not taken more than the requisite number of chances and was, therefore, allowed tentatively and provisionally ~~allowed~~ to appear in the Departmental Examination for Income Tax Inspectors, 1997, by the Commissioner of Income Tax, Kanpur. However, when it was detected that the petitioner had played a fraud with the department and that he had already exhausted the requisite number of chances, his result was rightly not declared. The respondents have further pleaded that the action taken by the department is perfectly legal and valid and there has been no violation of Articles 14, 16 or 311 of the Constitution of India.

5. We have heard both the counsel and perused the pleadings on record.

6. The contention of the applicant that his representations were still pending, is not borne-out by Annexure RA-1, which is a letter dated 19.8.1998 from Asstt. Commissioner of Income Tax, Headquarters for Commissioner of Income Tax, Kanpur to the Dy. Commissioner of Income Tax, Range-2, Kanpur. It has clearly been stated that the Directorate of Income Tax has informed that the result of the applicant cannot be declared. Accordingly, representation of the applicant was rejected.

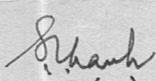
7. The other point for consideration is whether on the date of examination i.e. 16.6.1997, the applicant had exhausted all the ten chances as provided in the rules of or not.

Exams/ The plain reading of letter dated 2.3.1994 of Dy.

Secretary, Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes (Annexure CA-3)

makes it amply clear that a maximum of ten number of chances may be availed of by a candidate, provided his or her age as on 1st April of the year of Examination does not exceed 55 years/in the case of SC/ST candidate, no age limit was prescribed. It has further been clarified by the Note to the above mentioned rules that in the calculation of maximum number of ten chances, the chances actually availed of by the candidates till 1993 Examinations and the chances for which they are permitted to appear in the Examination in future shall be taken into account, irrespective of whether a candidate sat in the examination or not. Further, a close reading of Annexure CA-1 specifically mentions that the maximum number of chances availed of by the applicant for departmental Examination of Income Tax Inspectors. It is amply clear that the applicant was not eligible to appear for departmental examination of Income Tax Inspectors held in June' 97 as he had already availed 13 chances, which were more than the requisite number of chances under departmental examination for Income Tax Inspectors. Similarly, rule 4 of the Rules of this Departmental examination stipulates that a maximum of ten chances may be availed of by a candidate. Further, there is no provision for any special permission to be granted to any candidate, who has already exhausted the stipulated 10 chances. Therefore, the assertion of the applicant that he was eligible to appear in the examination of 1997 is not justified, and on the other hand, the department is fully justified in not declaring the result of the applicant for departmental examination taken by him in June' 97.

8. For the reasons mentioned above, the O.A. does not succeed and is, therefore, ~~rejected~~ ^{dismissed}. No order as to costs.


MEMBER (A)


MEMBER (J)

GIRISH/-