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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 13TH day of SEPTEMBER 2005.

Original Application No.936 of 2005

Hon'ble Mr. D.R. Tiwari, A.M
Hon'ble Mr. K.B.S. Rajan, J.M.

Ashwani Kumar Singh,
S/o Shri Paras Nath Singh,
At present Posted as Income Tax Inspector,
Office of the Income Tax, Muzaffar Nagar,
R/o 3/2, Income Tax Colony, Muzaffar Nagar.

.....Applicant.
(By Advocate : Sri Satish Mandhyan)

Versus.

1. Union of India through Chairman, C.B.D.T.
North Block, New Delhi.
2. Chief Commissioner of Income Tax, (Cadre Controlling Authority), U.P. (West), Region, Kanpur.

.....Respondents.

(By Advocate : Sri Ramendra Pratap Singh)

ORDER

By Hon'ble Mr. K.B.S. Rajan, J.M.

A system has been so scientifically framed in
that -

- (a) for promotion to the post of Income Tax Officers, from the feeder grade of Income Tax Inspectors, one should have qualified in the departmental examination for the said post
- (b) that for the purpose of holding the examination, a calendar has been scheduled (such exams should be conducted during the first quarter of the calendar year and only in exceptional cases, it could be postponed, but here again, not later than by a quarter and that results of the exam should be declared at the earliest and that the DPC should be held only in the later half of the calendar year,

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i.e. after declaration of the results of the departmental examination;

(C) that all the persons who stand qualified before the date of DPC would be arranged on the basis of seniority in the grade of Income Tax Inspectors;

(d) and it is on the basis of seniority tempered with merit that promotions to the post of Income Tax Officers is made".

2. If the above system is deviated in such a way that the senior is not given an opportunity to qualify in the departmental examination and the DPC is held without holding the exam on annual basis and the juniors who already stood qualified in the previous years' exams alone are considered and promotion effected, whether any of the rights of the senior get hampered is the question that is spinal in this case. The answer being an obvious "yes", the OA was allowed when the case was heard, only the reasons to follow through a separate order and it is this order through which the reasons for the decision are spelt out.

3. Now the facts capsule: In the income tax department, promotion to the post of ITO is made by following the above process. The applicant became income tax inspector in the year 1994 and he had in the past qualified in some of the papers in the departmental examination and was sanguinely hoping to clear the other papers in the subsequent examinations. He belonging to the 1994 batch is comparatively at a senior position in the seniority

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and once he qualified in the departmental exam in respect of the other papers, he would becomes eligible for consideration to the post of I.T.O. However, to the shock and dismay of the applicant the departmental examinations which were to take place in 2003 onwards did not take place but the Respondents have chosen to hold the DPC for promotion to the post of I.T.O. by considering those inspectors who have qualified in the departmental examination, in utter disregard to the fact that their seniors who were awaiting the schedule for departmental examination would be ignored while considering the promotion. It was at this stage that the applicant had moved this OA with a prayer for the following relief(s):-

"(a) to issue a writ, order or direction in the nature of mandamus commanding the respondents to hold the departmental examination for promotion to the post of Income Tax Officer forthwith prior to holding of the D.P.C.

(b) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to convene the D.P.C for which preparatory steps have already been taken seeking clearance of the 54 Income Tax Inspectors as per Annexure-6.

(c)

(d)"

4. The respondents have contested the OA. Their main contention is contained in para 8 and 10 of the counter and the extract of the same is as under:-

"8. ... the department is pursuing the prescribed procedure in right earnestness

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and there is no slackness on its part from any angle. In absence of any constraint the Director of Income Tax has held the departmental examination for consideration of the promotion to the post of I.T.O every year prior to 2004. However, after re-structuring in the department the necessity for promotion new rules was felt and accordingly new rules have been framed which have been given nomenclature of rules for departmental examination, 2004 which would be applicable for the examination for the post of I.T.O to be held in the year 2005 and in subsequent years because of these impending rules no departmental examination could be held in the year 2004.

10. Since restructuring of the Income Tax Department was implemented for the recruitment year 2000-01, hence the revised instruction regarding manner in which the vacancies are to be filled in the cadres of Group B, C and D grade post was to be issued due to restructuring. Since all these entailed massive change it was found necessary to prescribe separate procedure as well as syllabus and all the various departmental examinations, which are required to be conducted, have been made applicable from 2005 and subsequently. Therefore, prior to this no departmental examinations were conducted".

5. The applicant filed his rejoinder and Paragraph 9 and 11 of the rejoinder meet the contentions contained in para 8 and 10 of the counter and the same are reproduced below:-

"9 Even the new Rules formed after restructuring were stalled and the earlier Rules, 1998 were rules to be followed and there was no impediment in not conducting the examination for two consecutive years and there is nothing in the counter affidavit to show that there was any effort to get the examination conducted and above all there is no reason enumerated therein not to be in a position to hold the same or unnecessarily hankering upon five chances granted to the

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applicant forgetting the fact that he is entitled to ten chances and where is the bar of not clearing even in the 10th chance. Therefore, the applicant's prospect of promotion cannot be just put to tender hook on the whims of the respondents.

11. The alleged fresh rules for departmental examination were never made applicable and still the Rules, 1998 hold the sway and the examination is to be conducted perfectly in accordance with those rules and not once tried to be introduced after restructuring. The respondents are trying to introduce lame excuses for not being able to hold the departmental examination which cannot be taken as gospel truth in view of the mandatory provisions of Rules, 1998 where department is required to hold the departmental examination once every financial years".

6. Arguments were heard and the documents perused.

Restructuring in any organization and change in some conditions of service including seniority rearrangement, are inevitable in any organization, where the functional requirements do so warrant and such actions are not violative of equality clause of the Constitution. (Vide *V.T. Khanzode v. Reserve Bank of India*, (1982) 2 SCC 7, where the Apex Court has held as under:-

Whether there should be a combined seniority in different cadres or groups was, according to the Court, a matter of policy which did not attract the applicability of the equality clause. The integration of non-clerical with clerical services which was effectuated by the combined seniority scheme was, in the circumstances, held to be not violative of the guarantee contained in Articles 14 and 16.

7. In the instant case, however, when such restructuring was under preparation, in case the authority had an idea of changing the pattern of holding examination or the like, the affected

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persons should have been informed in advance and at least one chance in the existing pattern should have been afforded to them so that those who wish to clear the examination could have preferred so. The system of holding the exam in precedence to the holding of the DPC, the calendaring of holding such exam, the limited scope for postponement, the requirement of pronouncement of the results of the exam, the holding of the DPC only at the fag end of the calendar year, have all been so framed that the seniors are given adequate chance to qualify in the exam so that they too would be considered for promotion. It has been spelt out in the case of *Bal Kishan v. Delhi Admn.*, 1989 Supp (2) SCC 351, at page 355 :

"In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."

This dictum of the Apex Court gets thoroughly stultified by not holding the exam on the existing pattern but conducting the DPC on the existing pattern. Thus, a valuable right under the provisions of Art. 16 of the Constitution gets infringed by the proposed holding of DPC by the Department without holding the requisite examination. In case they are very much particular about holding a different pattern of exam or change of syllabus, the same too could be possible, by

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prescribing the proposed syllabus but DPC should be postponed till the exams are conducted and results pronounced.

8. The OA thus, succeeds. Respondents are restrained from holding any DPC for the post of Income Tax Officers without conducting necessary departmental examination for promotion to the post of I.T.O. The DPC can be held only after the results of such exams are pronounced and all those who qualify in the exam are also considered for promotion. No cost.


Member-J.
Member-A

Manish/-