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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.249 OF 2006

Thursday DAY, THIS THE 22nd DAY OF March 2007

**HON'BLE DR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. M. JAYARAMAN, MEMBER-A**

Brijesh Chandra Srivastava, S/o late M.P. Srivastava, R/o House no. 337/1 Rajrooppur, Allahabad, at present working as Income Tax Inspector in office of Additional Director of Income Tax(Inv.), Allahabad.

.....Applicant

(By Advocate Shri A.K. Dave)

V E R S U S

1. Chairman, C.B.D.T., North Block, New Delhi.
2. Chief Commissioner of Income Tax (Cadre Controlling Authority), U.P., Lucknow.
3. Union of India through Secretary, Revenue, Ministry of Finance, New Delhi.

.....Respondents

(By Advocate: Sri S. Singh.)

ORDER

BY M. JAYARAMAN, MEMBER-A.

We have heard Sri A.K. Dave, learned counsel for the applicant and Sri S. Singh, learned counsel for respondents.

2. The applicant has filed the present O.A. praying for issue of direction to the respondents for holding Departmental Examination for promotion



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to the post of Income Tax Officer forthwith, with a prayer to hold DPC thereafter and also for direction restraining the respondents from holding any DPC without conducting the necessary Departmental Examination.

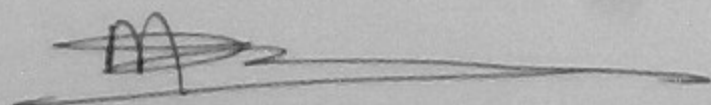
3. Briefly, the facts of the case are that the applicant is working in the Income Tax Department since February, 1972. Initially, he was appointed as Stenographer (O.G.) and subsequently he was promoted to the post of Income Tax Inspector in June, 1993. As per the procedure prescribed for promotion to the post of Income Tax Officer, the Income Tax Inspectors with 3 years service are eligible to appear for the Departmental Examination, and thus they are considered for promotions in the DPC held thereafter. The averment of the applicant is that Income Tax Officers' Departmental Examination Rules 2004 governs the procedure etc. for holding Departmental Examination for promotion to the post of Income Tax Officers. Accordingly, every year the department would conduct the Departmental Examination and then hold DPC to fill up the vacancies of Income Tax Officers by promotion. However, after 2003, 2004, 2005 no Departmental Examination was conducted. The applicant had appeared in the earlier Examination and passed four papers out of total six papers obtaining 60% of total marks, the minimum requirement for eligibility for promotion.



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4. The applicant has also stated that in a similar case bearing O.A. no. 936 of 2005, the Tribunal had issued directions restraining the department from holding any DPC for the post of Income Tax officers without conducting the necessary Departmental Examination for promotion to the post of Income Tax Officer and that DPC should be held only after the result of such examinations are pronounced and all those who qualified are also considered for promotion. He has, therefore, pleaded for similar relief as passed in the above mentioned O.A vide order dated 13.9.2005, to be extended in the present case as well. The applicant has also stated that one Sri R.D. Shukla was originally at Sl. No. 70 and the applicant was at Sl. No. 68 and thus, the applicant was senior to Sri Shukla. However, Sri Shukla has now been placed at Sl. No. 9 in the revised list and so it is adverse affecting his chance for promotion. Since the department did not conduct the examination for two years, but are now seeking to hold only the DPC, the applicant fears that he would miss-out on the promotion, whereas his juniors might get promotion, hence this O.A.

5. The respondents have countered the above O.A. and stated that as per rule 1 of the Rules of Departmental Examination for Income Tax Officer (Group 'B'), the Director of Income Tax may change the date of Examination or the frequency of the



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Examination. It is also stated that the applicant has passed only two papers till the examination of 2003 and not four as mentioned in paragraph no. 4.11 of the O.A. It is also submitted that holding of Examination every year on a fixed date is not mandatory and so holding of Examination before DPC is not mandatory. The respondents have also disputed the statement of the applicant that he was fully eligible for promotion to the post of Income Tax Officer (Group 'B') since he has not passed the Departmental Examination for Income Tax Officers (Group 'B') and so the case of the applicant is not comparable to the facts in O.A. no. 936 of 2005. With reference to the averments of the applicant regarding Sri Shukla (in para 4.20 of the O.A.), the respondents have stated that Sri R.D. Shukla whose name appeared at sl. No. 70 of the Gradation list was eligible to be promoted as Income Tax Officer (Group 'B') since he has already passed in full the Examination for Income Tax Officers, whereas the applicant who was at sl. No. 68 of the original list has not passed the Departmental Examination and thus not eligible. Thus, holding of the DPC would not in any way affect the applicant. It is also stated that as the promotion to the post of Income Tax Officers (Group 'B') is done not merely on seniority basis, but subject to the persons passing all the papers of the Departmental Examination, (apart from rendering three years of service), many persons senior to the applicant, who have not passed the Departmental



Examination (just like the applicant) will also not be considered for promotion to the post of Income Tax Officer (Group 'B').

6. The respondents have further given Written Submission wherein it has been pointed out that the operation of departmental examination for Income Tax Officers, 2004 has been held in abeyance by the Central Board of Direct Taxes vide letter dated 09.06.2006, marked as annexure WA-1. This has been further reiterated in the subsequent letter dated 30.06.2006. Accordingly, the Board had directed that the Director of Income Tax (Examination) would hold one examination in 2006 on the basis of old syllabus and erstwhile eligibility criteria. The respondents have also pointed out that the applicant has already availed 9 attempts out of possible maximum 10 attempts to a candidate and has cleared only two papers, out of 6 papers (in five subjects). The respondents have further pointed out that the applicant has endorsed in the application form filed by him on 03.08.2006, (a photocopy of which is attached as annexure WA-3) to the effect that he has accepted the conditions mentioned therein namely that the examination was being conducted under the Departmental Examination Rules, 1998 only. The respondents have also pointed out that the cited decision dated 13.09.2005 in O.A. No. 936 of 2005 in the case of Ashwani Kumar Singh is clearly distinguishable from the present case for the above



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reasons and the department has already filed a Writ Petition in the High Court against the above Judgment dated 13.09.2005, which is pending.

7. We do not find force in the arguments given by the applicant. On the other hand, we find that the averments of respondents appear to be correct, as above. The admitted facts here are that a candidate can avail of maximum 10 attempts for clearing 6 papers (in five subjects), which are:

1. Law I & Law II
2. Book Keeping
3. Other Taxes
4. Office Procedure
5. Examination of Accounts.

8. As stated by the respondents (which has not been denied by the applicant), the applicant has already exhausted 9 attempts out of 10 available attempts but has cleared only two papers namely "Other taxes" and "Examination of Accounts". As per rules in force, Income Tax Officers with 3 years experience and who have cleared all the six papers obtaining 60% of total marks, alone are eligible to be considered for D.P.C. for the Income Tax Officer. As the applicant does not fulfill this eligibility criteria, he cannot complain. Since Rule I under the Departmental examination of Income Tax Officers, 2004 has been kept in abeyance, the department was



not obliged to conduct the examination every year in the first quarter of financial year, as contended by the applicant. In the above circumstances, it is not correct to say that the chances of the applicant for being considered in the D.P.C. for Income Tax Officer to be held have been affected by not holding of the examination; more so since the D.P.C. was intended for only those who have cleared all the six papers with 60% marks aggregate and have completed minimum 3 years of service. We therefore do not see any warrant to interfere in the matter.

9. The applicant has also relied upon the decision of this Tribunal rendered on 13.09.2005 in O.A. No. 936 of 2005 in the case of Ashwani Kumar Singh. As pointed out by the respondents, since the operation of the departmental examination for Income Tax Officer, 2004 has been kept in abeyance by the Central Board of Direct Taxes, there was no requirement for holding of the examination every year in the first quarter of that year. The facts in the cited case are thus, clearly distinguishable from the facts of the present case. Therefore, the cited case is of no help to the applicant.

10. One more contention of the applicant is that Shri R.D. Shukla (Lucknow) who was at serial no.70 i.e. below the applicant, at serial no. 68, is now placed at serial no.9 of the revised list of Inspectors and that he being junior is going to be



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considered by the D.P.C. for the post of Income Tax Officer. This argument of the applicant also falls to the ground for the simple reason that the promotion to the post of Income Tax Officer is made not merely on the basis of seniority of Officer as Income Tax Inspector. The main pre-requisite is that eligible Income Tax Officers (i.e. minimum 3 years service) should have passed all the six papers with aggregate 60% marks. The respondents have pointed out that Shri R.D. Shukla has already cleared all the six papers whereas the applicant has cleared only 2 papers. (in nine out of 10 possible attempts) Therefore, we cannot compare the two unequals in this regard. Shri Shukla obviously having cleared these papers is eligible to be considered by the D.P.C. whereas the applicant not having cleared all the six papers is not eligible to be considered. It is quite another matter that whether the applicant would be clearing all the remaining four papers in his final attempt or not assuming that the examination is held now.

11. As pointed out by the respondents, there could be any number of Income Tax Inspectors who are senior to the applicant but who are not being considered for the D.P.C. for the simple reason that they have not cleared all the six papers. Similarly there could be any number of Income Tax Inspector who are juniors to the applicant, but they are being considered for promotion in the D.P.C. because they

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have cleared all the six papers. In other words, simple test to be applied here is whether a particular officer has cleared all the six papers (apart from having 3 years service) on the relevant date when the D.P.C. is being held or not. If he has cleared all the six papers, his name would be included, whether junior or senior. If he has not cleared all the six papers, his name will not find place in the list for promotion whether he is senior or junior. Thus, it is clear that the applicant is not being singled out or being discriminated against in the scheme of things.

12. With regard to the applicant's plea that Shri R.D. Shukla, who was junior to him, is now rated senior, it is clear from the averments of the respondents that there is no mandatory requirement that every D.P.C. should necessarily be preceded by the examination. Assuming that the said examination is held by the Income Tax department now i.e. before holding the D.P.C. and further assuming that the applicant passes all the four remaining papers in the above examination, he cannot go over the name of Shri R.D. Shukla for the simple reason that Shri R.D. Shukla has already passed the six papers and eligible and qualified for the D.P.C. whereas the applicant at the relevant time was not even eligible for being considered by the D.P.C. In other words, the applicant may have to reconcile himself that he



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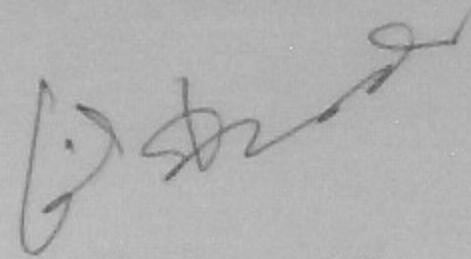
will remain junior to Shri R.D. Shukla, as things stand now.

13. For the reasons stated above, the O.A. fails and there is no warrant to interfere in the matter. Accordingly, the O.A. is dismissed with no order as to costs.



Member (A)

{Girish/M.M.}



Member (J)