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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.576 OF 1998
Cuttack this the 27th day of February/2001

Dambarudhar Jena & another ... Applicants

-VERSUS-

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHIEF JUDGE
27/2/2001

27.2.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO. 576 OF 1998
Cuttack this the 27th day of February/2001**

CORAM:

**THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)**

1. Dambaru Dhar Jena, aged about 53 years,
Inspector of Income Tax, Office of Additional
Commissioner, Income Tax, Bhubaneswar Range,
Bhubaneswar, Dist - Khurda
2. Gajendra Nath Mohanty, aged about 47 years,
Inspector of Income Tax, Office of the Assistant
Commissioner, Income Tax, Circle-I, Bhubaneswar,
Dist- Khurda

By the Advocates

Applicants

M/s.B.S.Tripathy-I
J.Sahoo,
H.S.Sahoo

-VERSUS-

1. Union of India represented through the Chairman,
Central Board of Direct Taxes, North Block, New Delhi-110001
2. Chief Commissioner(Admn.), of Income Tax, C.R.Building,
Birchandi Patel Marg, Patna-800001
3. Commissioner of Income Tax, Bhubaneswar Charge, Orissa,15,
Forest Park, Bhubaneswar-751012
4. D.P.Besra, Income Tax Officer, At/PO:Uditnagar, Rourkela-12
5. Sahdev Behera, Tax Recovery Officer, Arunoday Market Building,
Cuttack-753012
6. R.K.Dalai, Chief Auditor, Income Tax Department, 4th Floor,
Central Revenue Building, Vani Vihar, Bhubaneswar-751005
7. G.C.Bhoi, Income Tax Officer, At/PO/Dist-Bargarh
8. D.K.Padhan, Income Tax Officer, At/PO-Uditnagar, Rourkela-12
9. L.M.Majhi, Income Tax Officer, O/o Commissioner of Income Tax
15, Forest Park, Bhubaneswar
10. J.Ananda Rao, Income Tax Officer, At/PO/Dist-Phulbani
11. Michel Kulu, Income Tax Officer(CIB), Motijharen,
At/PO/Dist-Sambalpur
12. M.K.Sethi, Income Tax Officer, Bhutapara, At/PO/Dist-Sambalpur
13. S.C.Sethi, Income Tax Officer(CIB), 209, Sahid Nagar
Bhubaneswar-751007
14. P.C.Sethi, Income Tax Officer, At/PO/Dist-Rayagada
15. B.C.Bhoi, Inspector of Income Tax, Income Tax Office,
At/PO/Dist-Puri

VS

16. N.Oram, O/o. Tax Recovery Officer, Sakhipara, At/PO/Dist-Sambalpur
17. M.S.Jena, Inspector of Income Tax, Office of Additional Commissioner, Income Tax, Bhubaneswar Range, Vani Vihar, Bhubaneswar-75004
18. Bhagirathi Behera, Inspector of Income Tax, Income Tax Office, Hill Patna, At/PO-Berhampur, Dist-Ganjam
19. S.K.Behera, O/o. Deputy Commissioner of Income Tax, Sambalpur Range, Sakhi Para, At/PO/Dist-Sambalpur
20. Trinath Karjee, Inspector of Income Tax, O/o. Assistant Director of Income Tax, At/PO-Berhampur, Dist-Ganjam
21. A.N.Rao, Income Tax Officer, At/PO-Baripada, Dist - Mayurbhanj
22. R.Gaya, Inspector of Income Tax, O/o. Assistant Director of Income Tax, At/PO-Berhampur, Dist-Ganjam

...

Respondents

By the Advocates

Mr.A.K.Bose
 Sr.Standing Counsel
 (Central) (Res.1 to 3)

M/s.B.S.Tripathy,
 J.Sahoo, S.K.Mohanty
 M.K.Rath (Res.13, 21, & 5)

M/s.L.Das, D.N.Jena
 S.Mohanty (Res.14 & 15)

M/s.Gopinath Padhi
 (Res.4, 22, 7, 8, 16
 and 19)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): The two applicants are Inspectors of Income Tax under Bhubaneswar Range. As per the departmental rules, Inspectors of Income Tax, after attaining some eligibility and experience can appear in the departmental test conducted as per rules, and thereafter can be promoted to the cadre of Income Tax Officers. Upto the year 1997 in these departmental tests, Inspectors belonging to reserved community, viz. SC/ST ^{can} be declared to have passed the examination by securing lesser percentage of marks than the candidates belonging to other communities. The departmental examination consisted of five papers, a minimum percentage of

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pass mark in each paper is 50 in respect of candidates belonging to General Category and 45 in respect of SC/ST. At the same time a general candidate shall have to secure 60% of marks in aggregate whereas the aggregate mark prescribed for SC/ST is 50%. Similarly ~~disparities~~ of minimum percentage of mark between general, ^{and} reserved community candidates is maintained ^{in subsequent examinations} in regard to exemption from appearing in papers, because, a candidate ^{after} ~~applying~~ would be eligible to pass the departmental examination finally in not more than 10 chances.

Out of Private Respondents 4 to 22(19 in number) belonging to SC/ST, Respondent Nos. 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 19 were already promoted to the cadre of Income Tax Officers. The remaining 8 respondents, though declared to have been passed in the departmental tests are yet to get two promotions from the level of Inspector of Income Tax.

2. According to applicants, all these private Respondents were declared to have been passed the departmental examination even though they secured the lesser percentage of marks prescribed in respect of general candidates. The results of these departmental tests were declared under Annexures-3 dated 7.1.1992, 3/1 dated 4.3.1992, 3/2 dated 10.4.1994, 3/3 dated 15.2.1995, 3/4 dated 12.2.1996, 3/5 dated 18.2.1997 and Annexure-8 dated 20.1.1998. Out of 11 private respondents getting promotion, excepting Res.4, whose promotion date is not known, the others were promoted by Annexures-4, dated 25.1.1993, 4/1 dated 14/15.7.1993, 4/2 dated 6.7.1994 and 4/3 dated 16.6.1995, 4/4 dated 25.1.1996, 4/5 dated 17.4.1996.

The applicants pray for quashing the results of these departmental tests in respect of private respondents and

the promotions of 11 of them. In other words, they pray for quashing of Annexures-3 series, ~~and~~ 4 series and 8.

In support of their prayer, they plead that a Larger Bench of the Apex Court in Indra Sawhney's case reported in (1992) ATC 385, judgment of which was delivered on 16.11.1992, held that Article 16(4) of the Constitution does not permit provision for reservations in the matter of promotion. Though the Apex Court observed that this rule should have only prospective operation and should not affect the promotions already made, and though such reservations made/continued in operation for a period of five years from the date of judgment, held that it would not be permissible to extend concession and relaxation in the matter of promotion in respect of reserved categories by providing lesser qualifying marks and lesser standard of evaluation. In S.Vinod Kumar's case reported in 1996 SCC(D&S) 1480 (disposed of on 1.10.1996) the Apex Court clarified that the directions made by them in Indra Sawhney case as to the protection for reservation in promotion for five years generally, save the provision for lower qualifying marks/lesser standard of evaluation, for the employees belonging to reserved communities while considering their cases in the departmental tests for promotions.

After the pronouncement of judgment in Vinod Kumar Case(Supra), the C & A.C. of India had issued Circular No.6/96 dated 4.12.1996 (Annexure-6) to all concerned instructing that in view of the judgment in Vinod Kumar case, it would not be permissible to prescribe lower qualifying marks/lesser standard of evaluation for the members of reserved communities in the matter of promotion and that in view of this judgment there

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would be no concession in the qualifying marks for SC/ST in the Section Officer Grade Examination to be held in December/1996. Thereafter Respondent No.1, viz., Chairman, Central Board of Direct Taxes in Office Memorandum dated 22.7.1997 had withdrawn the previous instructions^{in o. n. u' 20-11-70 & 21-1-77} to the extent of providing lower qualifying marks for SC/ST candidates in the departmental qualifying/competitive examinations with immediate effect (Annexure-7).

In letter dated 1.5.1998 (Annexure-9), Respondent No.3, viz., Commissioner of Income Tax, Bhubaneswar ~~Range~~, intimated to all the Heads of Offices, enclosing a copy of Rules, i.e., Departmental Examination Rules for Income Tax Officers, 1998 (Annexure-9/1). In these rules it has been provided that these would be applicable to the Departmental Examination to be held in 1998 onwards and would not have any retrospective application, and that all the Departmental Examinations for I.T.Os held upto 1997 and results declared thereon would continue to be governed by the rules for Departmental Examinations for I.T.Os, issued in letter dated 18/26.11.1993, as amended from time to time.

According to applicants these Rules of 1998 cannot be legally sustained to this extent of conducting the Departmental Examination upto 1997 and declaring the results of SCs/STs on the basis of lesser percentage of qualifying marks, as earlier prescribed.

Thus the applicants pray for quashing Annexures-3 series and 8 declaring the results of the Departmental Examination in respect of private respondents on the basis of their lesser percentage and qualifying marks as earlier

prescribed, and also promotions of 10 private respondents, as mentioned under Annexures-4 series and also Annexures-9 and 9/1 revising and regulating the Departmental Examination 1998. There is also prayer for issue of direction to departmental Respondents 1 to 3 to reconsider the case of the applicants for promotion to the post of I.T.Os with retrospective effect with all consequential service and financial benefits.

3. The departmental respondents (Res. 1 to 3) filed a joint counter.

All the Private Respondents have been duly noticed, yet, only S/Shrit K.K.Sethi and B.C.Bhoi (Res. 12 & 15 respectively) have filed separate counters. Separate letters purported to have been sent and signed by S/Shri R.K.Dalai, M.S.Jena, N.K. Sethi and R.Gaya (Respondents 6, 17, 12 and 22 respectively) have been received opposing the Original Application. Since these letters are without verification and signatures, as required under Rule-12 of C.A.T.(Procedure) Rules, 1987, contents therein have not been taken note of.

4. The departmental respondents in their counter have not denied the facts mentioned in the Original Application, except to the effect that the applicants made a mention of Rules of Departmental Examination for Income Tax Officers, 1991, whereas such Rules are of the year 1994. In fact Annexure-2 of those Rules correspond to Annexure-R/1 of the counter. While opposing the prayer of the applicants the general plea of the Department is that provision of lesser qualifying marks in case of SC/ST had been withdrawn in Office Memorandum dated 22.7.1997 pursuant to the judgment delivered by the Apex Court in Vinod Kumar case and this circular will not have any retrospective

effect in respect of departmental examination conducted prior to that. The result of 1997 Departmental Examination was declared on 31.12.1997 and no benefit of concession to SC/ST was given. The departmental respondents also plead that this Original Application is barred by limitation.

5. Respondent No.15 in his counter pleaded that he is in no way concerned with the Departmental Rules of 1998. He is governed by the Departmental Examination Rules of 1994. He passed the qualifying examination held in June/95, the result of which was published in February/96, i.e., long prior to judgment in Vinod Kumar's case. Further, in Indra Sawheny's case (Supra) itself the Apex Court made it clear that rulings in that case would have prospective operation and concessions to SC/ST community in the matter of promotion could be allowed for five more years. Hence no illegality has been committed by the departmental respondents in declaring him pass in the Departmental Examination on the basis of lesser percentage of qualifying marks, as per the earlier rules. This apart, by 77th amendment to the Constitution of India was further amended on 17.6.1995 by providing a new Article 16(4-A), enabling the Government for making provisions for reserved communities in the matters of promotion to any Classes of posts in the Services under the State, which communities in the opinion of the are not adequately represented in the services under the State. In other words, this amendment introduced within three years of pronouncement of judgment in Indra Sawheny's case nullifies the rulings of the Apex Court made therein in respect of promotions of SC/ST community.

6. Respondent No.12 in his counter, while supporting

plea of Respondent No.15, took the stand that aggregate mark obtained by him in the Departmental Examination is 62.34%, which is much above the qualifying marks, as required for promotion to the post of I.T.Os by the Inspectors of other community/general community.

6. In the rejoinder, the applicants, while supporting their case in an argumentative form placed reliance on Article 335 of the Constitution.

7. Heard Shri B.S.Tripathy-I, the learned counsel for the applicants, Shri J.B.Sahoo, learned counsel appearing for private Respondent No.21 and Shri A.K.Bose, learned Senior Standing Counsel appearing for the departmental respondents. Also perused the records.

8. Facts in general are not in dispute. The only factual controversy is with regard to percentage of marks in aggregate secured by private Respondent 21(A.N.Rao) in the Departmental Examination held in June/97, result of which was published under Annexure-8 dated 21.1.1998. The entire case is based on the interpretation of the decisions of the Apex Court in Indra Sawheny's case and Vinod Kumar's case. While interpreting these decisions, the import of Article 335 of the Constitution and 77th Amendment introducing Article 16(4-A) in June/95 has to be borne in mind. A Larger Bench of the Apex Court disposed of Indra Sawheny's case on 16.11.1992. The majority judgment while declaring Article 16(4) of the Constitution does not contemplate or permit reservation in the matter of promotion, declared that reservations already made shall continue for a period of five years from the date of that judgment (Vide Para-829). Again in Para-831, the majority judgment made the



following observations.

"We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to Members of reserved categories in the matter of promotion without compromising the efficiency of the administration ... We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs/SCs/STs - consistent with the efficiency of administration and the nature of duties attaching to the office concerned - in the matter of Direct Recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded therein above".

At this stage it is worthwhile to refer to Government Memorandum dated 21.1.1997 (not part of the pleadings, but finds mention in Para-5 of S.V. Case reported in (1996) SCC (L&S) 1480). This Memorandum provides that where the promotions are made on the basis of seniority subject to fitness and where a qualifying examination is held to determine the fitness of the candidates for such promotions, suitable relaxation in the qualifying standard in such examination should be made for SC/ST to the extent of the relaxation to be decided on each occasion, whenever such examination was held, taking into account all relevant factors, including the number of vacancies reserved for the purpose of SC/ST candidates vis-a-vis general candidates in that examination and so on. Pursuant to the said Memorandum, the Controller & Auditor General of India has been issuing orders from time to time providing lesser qualifying marks for passing the qualifying examination prescribed for promotion in the case of SC/ST.

q. Question now comes up for consideration is whether the majority judgment in Indra Sawhney's case, while saving the departmental promotions of SC/ST already made, further saved the concessions of prescribing lesser qualifying marks

to SC/ST for a further period of five years when they say reservations in promotions would continue for five more years. At this stage it is worthwhile to refer to Article 335 of the Constitution of India, which lays down as follows.

"The claims of the Members of SCs and STs shall be considered taking into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State".

In other words, reservation policy in favour of SC/ST has to be based on factors which are consistent with the maintenance of efficiency of administration, in making of appointments to services and various posts in connection with the affairs of the Union or of a State, and policy should not be based on factors which results in the deficiency of the administration. In Para 549 of the judgment in Indra Sawhney's case, factors, which do not result in the inefficiency of the administration have been dealt which read as under.

"However, as pointed out earlier, the exclusive quota is not the only form of reservation and where the resort to it such as the promotions, results in the inefficiency of the administration, it is illegal. But that is not the end of the road nor is a backward class employee helpless on account of its absence. Once he gets an equal opportunity to show his talent by coming into the mainstream, all he needs is the facility to achieve equal results. The facilities can be and must be given to him in the form of concessions, exemptions etc. such as relaxation of age, extra attempts for passing the examinations, extra training period etc. along with the machinery for impartial assessment as stated above. Such facilities when given are also a part of the reservation programme and do not fall foul of the requirement of the efficiency of the administration. Such facilities, however, are imperative if, not only the equality of opportunity but also the equality of results is to be achieved which is the true meaning of the right to equality".

In other words, according to aforesaid observation

of the Apex Court, concession in regard to age limit, extra attempt for passing the examination, extra training period etc. along with the machinery for impartial assessment would not result in the inefficiency of the administration. While mentioning such concession there is no mention of concession in regard to lesser qualifying marks or evaluation for reserved communities. On the other hand in earlier Para-831 of the said judgment, the Apex Court held, prescribing lesser qualifying marks for evaluation for the OBCs/SCs/STs in the matter of promotion is not permissible. This observation of the Apex Court read with Article 335 of the Constitution of India would make it clear that saving promotions for reserved communities for five more years from the date of their judgment in Indra Sawhney's case would not save concession of prescribing lesser qualifying marks or evaluation for those communities in the matter of promotions, further. This has been further clarified by the Apex Court in Vinod Kumar's case disposed of on 1.10.1996.

10. Question then arises whether 77th Constitutional Amendment introducing a new Article 16(4) A on 17.6.1995 takes away the effect of the rulings of the Apex Court in regard to lesser qualifying marks and lesser standard of evaluation in respect of reserved communities in the matter of promotions. The amendment is as follows.

"(4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State".

This new amended Article read with Article 335 of

the Constitution would mean that the State can make provisions for reservation in the matters of promotion, which would not hamper maintenance of efficiency of the administration. The Apex Court, as earlier discussed, held prescribing lesser qualifying marks or evaluation in respect of reserved communities in the matters of promotion would tell upon the efficiency of the administration. Viewed from this angle, this amended Article-16(4A) had not written off the ruling of the Apex Court in this regard. Thus the instruction that the O.M. dated 22.7.97 will not have retrospective operation is not legally tenable.

ii. Having held that from the date of judgment in Indra Sawheny's case, i.e. from 16.11.1992, departmental rules providing lesser qualifying marks and evaluation in the matter of promotions of reserved communities would not hold good, it is then to be considered whether results of the departmental tests in respect of private respondents as declared under Annexure-3 series and Annexure-8 and further promotions under Annexure-4 series in respect of 10 private respondents, as mentioned therein, need to be quashed.

Annexure-3 is dated 7.1.1992. Shri D.P.Basra (Res. 4) Sahadev Behera (Res.5) and R.K.Dalai (Res.6) were declared to have been passed the departmental examination held in July/91. Since examinations were held and results declared much prior to the judgment in Indra Sawheny case, this Annexure-A/3 need not be quashed. In the pleadings there is no mention when Shri D.P. Basra (Respondent No.4) was promoted to the cadre of I.T.C. Since it is not the case of the applicants that Res.4's promotion order was issued after the judgment in Indra Sawheny case, it is presumed that he was promoted prior to the pronouncement of that judgment. In fact there is no ^{specific} prayer for quashing of

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his promotion. However, Res. 6, R.K.Dalai and Res.5, Sahadev Behera, whose results were declared under Annexure-3 dated 7.1.1992, prior to pronouncement of judgment in Indra Sawheny case were promoted under Annexures-A/4 dated 25.1.1993 and 4/1 dated 14.7.1993 respectively, i.e., several months after the pronouncement of that judgment. As the discussion held above would reveal that the Apex Court in Indra Sawheny case did not intend further promotions of reserved communities on the basis of lesser qualifying marks and lesser standard of evaluation in the departmental examinations, promotions of these two respondents are contrary to law, as laid down by the Apex Court. Annexures-3/1 to 3/5 and Annexure-8 relate to declaration of the results of the departmental examination, and these results were declared much after the pronouncement of the judgment in Indra Sawheny case and thus, some of the promotions under these declarations vide Annexures-4/1 to 4/5 are also contrary to law as laid down by the Apex Court.

12. Question then arises whether these declarations under Annexures-3 series and Annexure-8 and promotions made under Annexures-4 series can be set aside in this Original Application filed on 2.11.1998. It is, therefore, necessary to note the dates of declaration of these results and promotions thereon, as under.

<u>Sl.No.</u>	<u>Annexures with date</u>	<u>Name & No. of Res.</u>
1.	Annexure-3/1 4.3.1993	G.C.Bhoi (Res. 7)
2.	Annexure-3/2 10.2.1994	M.Kulu - Res.11 M.K.Sethi-Res-12 S.C.Sethi Res-13 P.C.Sethi Res-14
3.	Annexure-3/3 15.2.1995	D.K.Pradhan Res.8
4.	Annexure-3/4 12.2.1996	B.C.Bhoi, Res-15 L.M.Majhi Res-9 N.Oram Res-16 J.Anand Rao, Rs.10 R.Gaya, Res. 22

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5.	Annexure-3/5	18.2.1997	M.S.Jena, Res.17 Bhagirathi Behera(Rs.18) S.K.Behera, (Res. 19)
6.	Annexure - 8	21.1.1998	Trinath Karji (Res.20) A.N.Rao, (Res 21)

ANNEXURES REGARDING APPOINTMENTS

1.	Annexure-4	25.1.1993	R.K.Dalai (Res.6)
2.	Annexure-4/1	24.7.1993	Sahadev Behera(Res.5) G.C.Bhoi (Res.7)
3.	Annexure-4/2	6.7.1994	N.K.Sethi (Res. 12) S.C.Sethi (Res. 13)
4.	Annexure-4/3	16.6.1995	D.K.PRadhan (Res.8) P.C.Sethi (Res. 14)
5.	Annexure-4/4	23.1.1996	M.Kuly (Res. 11)
6.	Annexure-4/5	17.4.1996	S.Anand Rao (Res.10) L.M.Majhi (Res.9)

At this stage it is desirable to mention that Annexure-A/8 by itself does not contain any date. But the applicants in Para-10 of the Original Application specifically pleaded that this result under Annexure-A/8 was published on 21.1.1998 and this has not been denied in the counter filed by the departmental respondents. Hence, we presume Annexure-A/8 is dated 21.1.1998.

As earlier stated the Department in their counter take the positive stand that this Original Application filed on 2.11.1998 is barred by limitation. Section 21 of the A.T.Act, 1985 prescribes the period of limitation only in respect of orders for which there is provision under the departmental rules/instructions or under general law enabling a party aggrieved to prefer appeal/representation to the higher authority. This is clear from the reading of Sections 20 and 21 of the A.T.Act. Even the Constitution Bench of the Apex Court in S.S.Rathore's case reported in AIR 1990 SC 10(Para-22) make this point clear. Pleadings are completely silent that any such appeal/representa-

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tion having been made. When we specifically brought these provisions of Section 20 and 21 of the Act to the notice of Shri Tripathy, the learned counsel for the applicants, the latter replied, under the relevant departmental rules/instructions, there is no such provision for preferring appeal/representation against the orders passed under Annexures-3 series, 4 series and Annexure-8. The learned Sr. Standing Counsel for the Department also did not dispute this submission of the learned counsel for the applicants. Had there been any such provision for filing appeal/representation against such orders, the Department would have taken a plea with regard to maintainability of this Application because of not availing alternate remedy as prescribed under Section 20 of the A.T. Act by preferring appeal/representation. We, therefore, presume that submission of Shri Tripathy made in this regard is correct.

It is true that there is no other provision under the A.T. Act, barring Section 21 providing the period of limitation. This does not necessarily mean that a person aggrieved can file an application under Section 19 of the Act at his sweetwill and pleasure, even after passage of several years. In view of Section 29 of the Indian Limitation Act and its Article 137, together with the observation of the Apex Court in the case of Town Municipal Council, Athani vs. Presiding Officer, Labour Court, Hubli reported in 1970 1 SCR 51, as quoted in Para-6 of the Apex Court decision in the case of Ajaib Singh vs. The Sirhind Cooperative Marketing cum Processing Service Society Ltd., reported in 1993 (3) SLJ 219, the period of limitation prescribed under Article 137 of the Indian Limitation Act would be applicable to such orders. It will be also clear

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from the decision of the Apex Court in Jayadev Gupta vs. State of Himachal Pradesh reported in 1998 SC (L&S) 1587. In that case the appellant approached the Central Administrative Tribunal in May, 1989, claiming difference in salary from the year 1971. The Tribunal allowed the difference of pay to be paid from 1988 only on the ground of one year period, as prescribed under Section 21 of the A.T. Act. The Apex Court, however, held that the Tribunal was not right in invoking Section 21 of the Act for restricting the difference in backwages by one year and ultimately held that the appellant was entitled to get the difference of backwages from 1986, apparently under Article 137 of the Indian Limitation Act, which prescribes the period of limitation of three years in respect of applications, for which no period of limitation is prescribed. Hence on the basis of the limitation prescribed under Article 137, prayers in respect of orders passed prior to 2.11.1995 cannot be agitated in this Original Application filed on 2.11.1998. In other words, orders passed under Annexures-3/1, 3/2, 3/3 and Annexures-4 to 4/3 cannot be interfered in this Original Application. There is no whisper either in the Original Application or in the rejoinder in regard to delay beyond the period of three years in respect of orders covered in these Annexures. There is also no application praying for condonation of delay, supported by an affidavit, as required under Rule-8(4) of the C.A.T. (Procedure) Rules, 1987. This being the position orders under Annexures-3/1, 3/2, 3/3 and Annexures-4 to 4/3, even though contrary to law, as per our earlier discussion cannot be set aside in this Original Application, even if the two applicants can come under the

expression 'person aggrieved', under Section 19 of the A.T. Act.

13. Annexure-8 dated 21.1.1988 relates to departmental examination held in June/97. Through this Annexure results of Trinath Karji (Res.20) and A.N.Rao (Res.21) were declared by taking into account the less qualifying marks already availed in previous examinations. Since this result dated 21.1.1998 has been challenged within the period of limitation and in respect of examination held in June/97, much after the pronouncement of judgment in Vinod Kumar case on 1.10.1996, ^{may} the same needs interference. Of course in the averment of A.N.Rao (Res.21) it is seen that he secured more than 61.61% marks in aggregate, i.e., beyond the required percentage of aggregate prescribed for general category candidates to pass the departmental examination.

As per the Departmental Examination Rules, 1994, (Annexures-2 and R/1) for passing the Departmental Examination for promotion to the post of Income Tax Officer, a candidate can avail 10 number of chances in maximum, provided that candidates who had already exhausted 10 chances when these Rules came into force can be given three extra chances for the years 1994, 1995 and 1996. The Examination consists of five subjects, one of which is Income Tax Law, consisting of two papers. A candidate, as per these Rules would be declared to have successfully passed the examination if he secures a minimum of 50% (45% in case of SC/ST) in each of the five subjects and 60% (55% in case of SC/ST) in aggregate. Xerox copy of a chart (mark sheet) has been annexed as Annexure-8 and the correctness of these particulars have not been denied

by the departmental respondents in their counter. As per this chart Shri A.N.Rao (Res.21) had appeared the Departmental Examination in the years 1995, 1996 and 1997. These marks would reveal that though he secured more than 60% of marks in Income Tax Law, Other Taxes, Book-keeping and more than 50% in the Special Office Procedures, he secured only 75 in the Language Test in the Examination held in June/97, which means 50% of the marks for that subject. So far as aggregate is concerned, he secured 62.3%. Thus it is clear that he was declared pass on the basis of qualifying percentage of marks prescribed for the candidates belonging to general category and not on the basis of lesser qualifying marks as prescribed for the reserved communities. Hence, we do not see any legal infirmity in declaring Shri Rao to have passed the Departmental Examination under Annexure-8. So far as private Res.20 (Trinath Karjee) is concerned, the chart reveals that he appeared at the Examination conducted in the years 1995, 1996 and 1997. Excepting the Special Language Test where he secured more than 60% marks, in other papers he had secured more than 50% and less than 60% of marks. The average aggregate in his case comes to 57.1%. He was declared to have passed apparently taking into consideration the less aggregate percentage of marks of 55%, as prescribed for the reserved communities under the Rules of 1994. As we have already held, this result under Annexure-8 having been published much after the pronouncement of the judgment in Vinod Kumar case, lesser percentage of marks in aggregate than the average 60%, as prescribed for general community could not be taken into consideration in declaring this private respondent Trinath Karjee to have passed the Departmental Examination.

14. There is further prayer for quashing that portion of the Departmental Examination Rules for Income Tax Officers vide Annexures-A/9 and A/9.1, wherein it is provided that those Rules will not have any retrospective application, i.e., in respect of Departmental Examinations for I.T.Os held upto 1997. In view of the discussions held above prescribing lesser qualifying marks and lesser standard of evaluation in the Departmental Examination for promotion of reserved communities being contrary to law after the pronouncement of judgment in Indra Sawheny case in November, 1992, and more so, after pronouncement of judgment in Vinod Kumar's case in October, 1996, the portion of provision of the Departmental Examination Rules, 1998, providing not to have retrospective application in respect of Departmental Examinations for I.T.Os upto 1997, so far as lesser qualifying marks and lesser standard of evaluation in respect of SCs/STs are concerned is contrary to law.

15. Though not agitated at the Bar, an important point that cannot be overlooked from consideration is whether these two applicants come under the expression 'persons aggrieved', as mentioned under Section 19 of the A.T. Act to prefer this O.A. under that Section. Applicants, Inspector of Income Tax working under Res.3, i.e. Orissa Circle have no doubt prayed for issue of direction to Department to consider their cases for promotion to the post of I.T.Os with retrospective effect with consequential benefits. The application under Section 19 and the rejoinder are conspicuously silent as to how these two Inspectors are aggrieved by the orders, which are sought to be quashed. It is not their case that they had passed the departmental examination for promotion to the cadre of ITOs

and that promotions were given to private respondents ignoring their cases even though they are eligible to be considered for such promotions. There is also not a whisper in the pleading that the applicants had even appeared in any of the departmental tests. We have also carefully perused the results of the departmental tests, published under Annexure-3 series from 1993 onwards containing not only the names of passing the test but also the candidates appearing the test. We have not come across the names of these two applicants in any of these Annexures. Of course under Annexure-3/5, the list of the departmental test held in July, 1996, there is mention of name one D.Jena under Roll No.050086, a candidate belonging to general community and not passing the test. Even this D.Jena is assumed to be applicant No.1(Dambarudhar Jena, which of course is not the case in the pleadings) it cannot be said that he is in any aggrieved, because he had not passed the test. Simply because the applicants will have a chance to get promotion in the long run, they cannot be treated as persons aggrieved. The expression 'person aggrieved' has been the subject matter of interpretation by the Apex Court in the case of Gopabandhu Biswal vs. Krushna Chandra Mohanty, reported in 1998 (3) ASLJ 102. It is profitable to quote the observation of the Apex Court in Para-13 of the judgment as hereunder.

"13. It is difficult to include the applicants in the review applications in the category of 'persons -aggrieved'. The main applicant i.e. the present appellant-Biswal had joined as party respondents all those persons who had superseded him for selection to the Indian Police Service since they would be persons affected in case he succeeded in his application. The Tribunal has directed that Biswal be considered for promotion between 1977 and 1980 and not thereafter. During this period, the two applicants in review application No.16 of 1993 were nowhere within the zone of consideration for promo-

tion to I.P.S. One of the applicants joined the police service only in 1974 and was not eligible for further promotion till 1982. The other applicant though eligible for promotion, was on account of his rank in the seniority list, not within the zone of consideration at any time prior to 5.11.1980. As a matter of fact the two applicants in review application No.16 of 1993 were selected for promotion to I.P.S. only in 1993 when they were included in the select list of 1993. Therefore, they could not have been made parties in T.A. No.1 of 1989. At that point of time, these applicants had only a chance of promotion in future. This does not confer an legal right on these applicants and they cannot be considered as parties aggrieved by the impugned judgment. However, leniently one may construe the term 'party aggrieved', a person not directly affected cannot be so considered. Otherwise for years to come, every person who becomes eligible for promotion will be considered a 'party aggrieved' when the Tribunal interprets any Service Rules such as in the present case. Only persons who are directly and immediately affected by the impugned order can be considered as 'parties aggrieved' under Section 22(3)(f) read with Order 47 Rule 1".

Thus it is clear by the ruling of the Apex Court that only persons who are directly and immediately affected by the order alleged to be impugned can be considered as 'person aggrieved' to be able to file an application under Section 19 of the A.T.Act. Viewed from this angle, these two applicants, by no stretch of imagination can come under the expression 'persons aggrieved' under Section 19 of the A.T.Act. Since they are not persons aggrieved, this application is merely in the nature of a Public Interest Litigation. As has been held by the Apex Court in Dr.Duryodhan Sahoo vs. Jitendra Kr.Mishra reported in 1998 (3) A.T.J. 365, the Administrative Tribunals cannot entertain an application which is in the nature of a Public Interest Litigation.

16 / We are aware that the applicants in their pleadings through Annexures referred to judgment dated 15.4.1997 of C.A.T., Chandigarh Bench in the case of Balbir Singh, the full text of which finds mention in 1997(2) ATC AISLJ 584

and judgment dated 28.1.1998 of C.A.T., Mumbai Bench in the case of R.K.Durole vs. Union of India, published in Swamy's News of July/98 at Page-72. But these two decisions do not deal with the issue as to the maintainability in regard to person aggrieved under Section 19 of the A.T.Act. Hence, there is no necessity to deal with those two decisions.

17. For the reasons discussed above, we are of the view that this Original Application under Section 19 of the A.T.Act, at the instance of the two applicants, who are not persons aggrieved under that Section is not maintainable. The Original Application is accordingly dismissed, but without any order as to costs.

Somnath Som.
(SEMNATH SOM)
VICE-CHAIRMAN
7.2.2001

27.2.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//