

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 1415 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman
Hon'ble Mr. E.P. Singh, Administrative Member

Annada Kumar Debroy, s/o Late B.B.
Debroy, aged about 58 years, working
as U.D.C. in the office of Commissioner
of Income-tax, W.B. II, Aaykar Bhawan,
P-7, Chowringhee Square, Calcutta-69

..... Applicant

-vs-

1. Union of India, through the Secretary,
Ministry of Finance, New Delhi ;
2. The Director of Income Tax, A.R.A.
Centre, Ground Floor, E-2, Jhendewallan
Extension, New Delhi ;
3. The Chief Commissioner of Income Tax,
WB, P-7, Chowringhee Square, Calcutta-69

..... Respondents

For applicant : Mr. K. Sarkar, counsel

For respondents : Mr. S. K. Dutta, counsel

Heard on : 18.1.99 & 17.3.99 - Order on : 16.04.1999

O R D E R

S.N. Mallick, VC

In this O.A., the petitioner has prayed for the following
reliefs, inter alia :

- (a) To declare that the applicant has been passed the
I.T.I. Examination in the year 1988 ;
- (b) To further declare that he should be given all
consequential benefits as per admissible position
are concerned ;
- (c) To give increments with retrospective effect as
the applicant had passed the examination in the
year 1988.

2. The petitioner's case is as follows :

The petitioner joined the Income-tax Department i.e.
office of the respondent authorities as U.D.C. on 26.12.84

through the Central(Surplus Staff) Cell, New Delhi on being declared surplus from the Dondakaranya Project, Govt. of India at the age of 46 years. At the age of 47 years 6 months, he qualified in the Departmental Examination from U.D.C. for the post of Inspectorship Examination. In the year 1987, the petitioner could not pass the Examination(ITI) and he appeared in the said Inspectorship Examination in 1988 at the age of 48 years 6 months. His result was held up and was not published till this date. He made a representation to the authorities on 9.2.89 as per Annexure A/1. He made another representation on 9.1.96 on the same grievance stating that as per Departmental Rule No.II(2)(b) and as per proviso thereto, the age limit of 48 years as prescribed therein has been relaxed in the case of a person, who could not have three consecutive chances to appear in the said examination for the purpose of getting a promotion in the post of Inspector and that as such the applicant being a late entrant in the service, he should have got two more chances after attaining the age of 48 years. The second representation is Annexure A/2.

3. Thereafter, the respondent authorities by their letter dt.13.11.96 as per Annexure A/3 informed the petitioner that as per Board's letter dt.1.10.92, the petitioner was ineligible to appear in the said I.T.I. Examination of 1988(vide Annexure A/3). The petitioner's contention is that in view of the provision of the order dt.15.9.77 issued by the Directorate of Inspection (Income-tax), New Delhi, he was entitled to get two more chances for appearing in the said examination. The said order is Annexure-A/4.

4. As the petitioner has been allegedly denied his right to get two more chances to appear in the said ITI Examination, the instant O.A. has been filed for the aforesaid reliefs.

5. The application has been contested by the respondent authorities by filing a reply. It is their specific case that the age limit for appearing in I.T.I. Examination was raised from 42 to 48 years in 1977 and that with a view to mitigate the hardship of the candidates, who could not avail of three normal chances at the time of raising of age limit in 1977 due to lower age restriction, special chances up to 1980 were made available through the proviso to Rule II(2)(b) as per Directorate's letter dt.15.9.77. The said relaxation, according to the respondents, is not at all applicable to the petitioner as it was meant for the candidates adversely affected by the raising of age limit from 42 to 48 years and it was applicable to the examination up to 1980 and not for any subsequent examination. The petitioner having failed in his first chance in the examination held in 1987 when he was 47 years 6 months of age, he could not get any other chance after crossing the age of 48 years in 1988 or in any subsequent year. Although he appeared in the examination held in 1988, his result was not declared as by that time he became age-barred.

6. The petitioner has also filed a rejoinder, in which he reiterated his stand taken in the O.A.

7. We have heard Mr. K.Sarkar, Ld.Counsel appearing for the petitioner and Mr. S.K.Dutta, Ld.Counsel appearing for the respondents.

8. We have carefully gone through the clarificatory order issued by the Department dated 15.9.77 as per Annexure A/4. The order is quite clear and for ready reference, it may be quoted below :

* In order to avoid hardship to officials who may cross the prescribed maximum age limit of 48 years without having any or adequate opportunity to qualify the Examination, it has been decided that the maximum age limit of

48 years may be relaxed in cases where a person could not have 3 chances to qualify the Examination before crossing the age limit of 48 years on account of the operation of the prescribed condition of eligibility with regard to age, the extent of relaxation admissible being such as to make available to such a person 3 chances (in all) for qualifying the examination, including the chances, if any, already available to him, whether actually availed or not. To illustrate, Mr. A's age as on 1.7.1978 exceeded 48 years and he had no chance to appear in the Examination on account of age-bar. The age limit of 48 years will be so relaxed in his case as to allow him 3 chances, first in 1978, 2nd in 1979 and 3rd in 1980. Suppose Mr. A had one chance to appear in the Examination before crossing the age limit of 48 years, say in 1974 when his age did not exceed 45 years, the age limit of 48 years will be so relaxed in that case as to allow him 2 more chances - one to be availed of in 1978 and the 2nd in 1979. In other words, the maximum age limit will be relaxed to -

- (i) 51 years in the case of a person who did not have even one chance to avail of before crossing the age limit of 48 years ;
- (ii) 50 years in the case of a person who did not have more than one (1) chance to avail of before crossing the age limit of 48 years; and
- (iii) 49 years in the case of a person who did not have more than two (2) chances to avail of before crossing the age limit of 48 years.

3. Accordingly, the following proviso shall be added below clause (b) of Sub-rule (2) of Rule II :

" Provided that the aforesaid age limit of 48 years will be relaxed in the case of a person who could not have 3 chances to qualify the examination before crossing the age limit of 48 years on account of the operation of the prescribed conditions of eligibility with regard to age, the extent of relaxation admissible being so limited as to make available to such a person 3 consecutive chances (in all) for qualifying the Examination, including the chances, if any, already available to him under this rules, before or after the present amendment, or any earlier Rules, whether actually availed of or not".

9. After going through the above materials on record, we are of the view that the petitioner has no case at all to agitate before this Tribunal. The aforesaid clarificatory order clearly shows that the age limit of 48 years will be relaxed in the case of a person who could not have 3 chances to qualify the examination before crossing the age limit of 48 years on account of the

operation of the prescribed condition of eligibility with regard to age and that the extent of relaxation admissible in this regard is limited so as to make available to such a person 3 consecutive chances for qualifying in the examination including the chances, if any, already enjoyed by him.

10. The petitioner's first representation as per Annexure-A dt.9.2.89 clearly admits that he passed the Departmental Ministerial Examination for UDCs in 1986 at the age of 47 years 6 months and qualified himself for Inspectorship Examination (vide para-(iv) of his representation). So, it is clear that prior to his passing the departmental examination in 1986 for the UDCx, the petitioner had no right to appear in the Inspectorship Examination and he was not eligible to sit for it. He became qualified to sit for the said I.T.I. Examination only at the age of 47 years 6 months and he sat for the examination in 1987. But he admittedly failed in the said examination. There was no question of his having two more chances to appear in the said examination after 1987 when in 1988 he was already age-barred. The proviso to the clarificatory order clearly comprehends a case, where an employee because of the enhancement of age from 42 to 48 years did not get three chances for sitting in the said examination. No such question arises in the case of the petitioner, who became qualified for the said I.T.I. Examination only after his passing the Departmental Examination of U.D.C. in 1986 at the age of 47 years 6 months and reasonably he could get only one chance in 1987 for the purpose of sitting in the I.T.I. Examination. He cannot get further two chances on the basis of the aforesaid proviso *due to enhancement of age from 42 to 48 years.*

11. Mr.Sarkar, Id.Counsel appearing for the petitioner has drawn our attention to para-4 of Annexure-A/4, wherein it is stated that the amendment set out in the preceding paragraph will take effect in relation to the examination to be held in 1978 and

subsequent years. In our view, this clarification is of no help to Mr. Sarkar's client. Whether the said proviso would continue beyond or not, is not the relevant issue in the present case in view of the above undisputed facts on record.

12. Accordingly, we find no substance in this application. The same is, therefore, rejected. No order is made as to costs.

B.P. Singh
(B.P. Singh) 16/4/99
Member(A)

S.N. Mallick
(S.N. Mallick)
Vice-Chairman