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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 250/2007

Date of order: 25.09.2007

G.P. Singhal S/o Shri D.P. Singhal, aged about 57 years, r/o 96 Staff Quarters, Vidhya Bhawan, Saheli Marg, Udaipur, Official address: Working as Income Tax Inspector in the office of Assistant Commissioner of Income Tax (Central), Udaipur 15 Mumal Tower Saheli Marg, Udaipur.

...Applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Dass Road, Jaipur.
3. Directorate of Income Tax (Income Tax) 5th Floor Mayur Bhawan Cannaught Circus, New Delhi.

...Respondents.

Counsel For Applicant/s: Mr. Kamal Dave.

CORAM:

HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER.
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER.

ORDER

(Per Hon'ble Mr. R.R. Bhandari, Administrative Member)

Shri G.P. Singhal, the applicant, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and has sought the following reliefs:

"a) That the clarification of rule IV of Rules of 1998 may be declared inconsistent with the main rule and 10 attempts as provided under main rule IV may be declared to be attempts in which candidates actually appeared and not for which either application is made or permission is granted by the department.

b) That the impugned order dated 13/ 18-9-2007, may

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kindly be quashed and set-aside to the extent, it denied Applicants right to appear in the Departmental Examination for ITO considering them over aged and on count of completion of 10 attempts ignoring the right to appear in the said examination.

c) Any other appropriate order or direction which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.

d) Costs of the application may kindly be awarded in favour of the applicant."

2. The applicant has submitted the Rules of the Departmental Examination for Income Tax Officer, 1998 at Annexure A/4.

This is Hindi version and photocopy, having been taken from some Circular without mentioning the details of the circular viz. date of issue, authority of issuing etc. However, we consider it authentic. The applicant in relief (a) has sought "that the clarification of rule IV of Rules of 1998 may be declared inconsistent with the main rule". A perusal of the rule IV, as provided in Annexure A/4, brings out that the rule IV deals with a number of attempts permissible and the age limit. There is a clarification given in the Hindi Translation of Circular for rule IV and the applicant has mentioned that it is inconsistent with the main rule IV.

3. The applicant in his relief (b) has sought to quash and set aside the impugned order at Annexure A/1. Annexure A/1 is a letter from Additional Commissioner of Income Tax (Coord.) for Chief Commissioner of Income Tax, Jaipur addressed to other Commissioners of Income Tax at various places in Rajasthan. The subject matter in this letter is

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"Departmental Examinations 2007 for Ministerial Staff/Income Tax Inspectors/Income Tax Officers/Applications of In-eligible candidates". It mentions names of 23 persons who were considered ineligible and gives remarks against every individual mentioning reasons for ineligibility. The applicant's name figures in Section (III) of the list and the remarks are as below: -

"Age Over. As per Exam Rules 1998, age should not exceed 55 years as on 1st April of the Exam year.

Chances exhausted. Availed maximum admissible chances of 10 upto the Exam of 2006."

4. The applicant in his relief sought and wanted that the impugned order should be quashed and set aside as it denied applicant's right to appear in the Departmental Examination for Income Tax Officers (ITO) considering him over aged and on account of completion of 10 attempts ignoring the right to appear in the said examination.

5. The brief matrix of the case is as follows: -

(i) The applicant joined as UDC on 04.08.1975. He was promoted as Income Tax Inspector on 25.06.2001. The applicant appeared a number of times in the Departmental Promotion Examinations for Income Tax Officers including that in the year 2006 and that his grievance arose on account of passing of the impugned order of 13/18.09.2007 (Annexure A/1). The aforesaid examinations are being conducted from 26.09.2007 all over the country and this is the reason of pressing this Original Application

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for early decision on the relief.

(ii) The applicant also submitted an additional affidavit on 25.09.2007 wherein he brought out that the Department had allowed mercy attempts to a number of employees beyond 10 attempts. He referred the names of Shri D.K. Shukhla, Shri Hanuman Singh and Shri GL. Bairwa. The names have been taken out from the impugned order itself. In the additional affidavit, the applicant mentioned that to the best of applicant's knowledge the mercy chance is allowed by the department on its own and not on the basis of any application preferred by the concerned employee praying for allowing mercy chance. Hence it is not possible to place on record any application preferred for grant of mercy chance.

(iii) This additional affidavit was submitted after part-hearing on 24.09.2007.

6. Learned advocate for the applicant pressed for his claims specially on the following points:-

(a). That the clarification is unreasonable having no nexus with the object sought to be achieved as the purpose for enactment of Rule IV is to allow a candidate opportunity to appear in the examination. The term opportunity means actual opportunity to undergo the process of examination but the same cannot include hypothetical opportunity or opportunity which has not been availed by the candidate. The clarification, further

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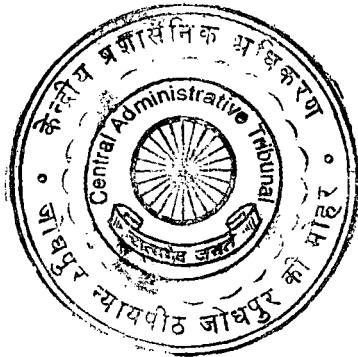


explains that the permission once granted can never be allowed to be withdrawn, all these factors mentioned in the clarification are clearly in-consistent with the main Rule which allow opportunity to undergo 10 attempts for the Departmental Examination. Hence the clarification being not in consonance with the object of the Rule deserves to be quashed and set-aside.

(b) That the provision for grant of 10 chances is to provide the candidate opportunity, in respect of the Departmental Examination. Once the opportunity as per the Rule is given for 10 in numbers the same cannot be, by another means reduced by way of the clarification. The clarification has an impact of reducing chances contrary to main rule, hence, deserves to be quashed and set-aside.

(c) That the clarification failed to consider the compelling circumstances which a normal human being undergo, like illness, domestic compelling circumstances, etc. which make impossible to appear in the examination, despite applying for the same. Availing of the opportunity to appear does not include availing the opportunity to apply. Making an application and appeared and failed are entirely distinct thing which cannot be clubbed together in view of above the clarification of Rule IV deserves to be quashed and set-aside.

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7. We have gone through the various circulars issued by the Department from time to time. The relevant points of the circulars (from Hindi-translation by us) are detailed below: -

Annexure A/2 - Rules for Departmental Examination for Income Tax Officers, 1998; (i)

Income Tax Directorate will organise Departmental Examination once in a year in the first quarter of the financial year, (ii) applications will be invited from all eligible candidates on prescribed proforma.

Rule III - Eligibility (i) Income Tax Inspectors who have passed departmental examination for Inspectors (ii) Head Clerks, Supervisor grade-II, Income Tax Assistant, Stenographers grade-I and II who have passed the departmental examination for Inspectors whether they have been promoted or otherwise.

Rule IV - Permissible attempts and age-limit. Any candidate can avail a maximum of 10 chances for such examinations provided he is below 55 years of age on 1st April of the year of Examination. There is no limit for age for S.C./S.T. candidates.

There is a clarification to this rule which says that while counting 10 attempts, it would include the number of attempts in which a person has appeared in the Examination upto 1993 and afterwards number of times a

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candidate has been permitted to appear in the Examination. After 1994, even if a candidate has not appeared in the Examination, it will be considered as an attempt once such permission has been granted, withdrawal of such permission will not be allowed.

8. Most of the arguments by learned advocate for the applicant were only on this clarification to the Rule IV.

9. We are not going into the merits or the rationale for fixing a maximum limit of 10 attempts. We are also not going into the merits or the rationale of passing the papers on a cumulative basis. We are confining ourselves to whatever has been mentioned in the rules/circular in 1998. Rule IV and its clarification is clear in its meaning. We do not find any arbitrariness in this rule or its clarification. The applicant has been provided with 10 attempts. An attempt is considered when permission to appear in the examination has been sought by any candidate and such permission has been granted. Rule IV of 1998 circulars makes it clear that once the permission to appear in such examination has been granted, it cannot be withdrawn and will be considered as an attempt even if the candidate do not appear in the examination. Since the applicant has been given such permission 10 times, we do not find any force in the arguments that "the term opportunity means actual opportunity to undergo the process of examination but the

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same cannot include hypothetically any opportunity which has not been availed by the candidate."

10. We feel that the clarification to Rule IV of the circular issued in 1998 in no way is inconsistent with the main rule.

11. The second argument put forth by the learned counsel for the applicant was that in few cases, the department has permitted one mercy chance. He mentioned three such names in the additional affidavit. While going through annexure A/1, it is clear that three persons whose names have been mentioned by the applicant in the additional affidavit were permitted an additional mercy chance. These three candidates (Shri D.K. Shukla at Sl. No. 5/II, Shri Hanuman Singh at Sl. No. 6/II and Shri G.L. Bairwa at Sl. No. 4/III) have not been considered for the departmental examination, 2007 and the reason clearly brings out that they have "availed maximum admissible chances of 10 plus one mercy chance upto the Exam. of 2006". From this it is clear that mercy chance was given once and that too for the examination of 2006 only. The reasons for granting such mercy chance by the competent authority was not brought out and therefore cannot be commented upon.

12. Perusal of Annexure A/5, a letter from Directorate of Income Tax dated 20.07.2007, - para 2 brings out that "since the Examination 2007 is to be held under

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Departmental Examination Rules – 1998 and no relaxation has been provided by CBDT, New Delhi as communicated vide Directorate's Notification No. EG(20)(8)/2007/DIT/Pt.II/1354 to 1388 dated 05.07.2007, the age limit and number of chances shall be as prescribed in Rule 1998. (Unlike the Examination 2006 where relaxations were allowed by CBDT since the examination was held after a gap of three years)." It brings out that in the examination of 2006, the relaxations were allowed by CBDT on account of examination being held after a gap of three years. It could be possible that the competent authority decided to give mercy chance at that point of time to some of the candidates. Shri G.P. Singhal's case is not similar to what has been mentioned in the additional affidavit and therefore hold no weight.



13. The candidate has crossed the maximum age limit of 55 years for appearing in such examination. This issue was not pressed upon in the arguments as well as in the relief sought and hence not commented upon.

14. Moreover, Applicant cannot challenge validity of 'Rule' without pleading basic-requisite facts. The applicant has been applying for the departmental examination for many years. He was granted permission as and when asked for. He was appearing in the examinations as per these very rules for last couple of years. He never objected to the rules

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Ms. 204 to 206
Dt. 10-10-32

Recd by
Kuebler
10-10-32

Part II and III destroyed
in my presence on 10-6-32
under the supervision of
Section Officer as per
order dated 10-6-32-32

Section Officer (Record)