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

M.A. No. 141/2008 in O.A. No. 255/2007 & O.A. No. 255/2007

M.A. No. 143/2008 in O.A. No. 249/2007 & O.A. No. 249/2007

M.A. No. 145/2008 in O.A. No. 248/2007 & O.A. No. 248/2007

Date of order: 24.12. 2008

**HON'BLE MR. D.SANKARANKUTTY, JUDICIAL MEMBER.
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.**

Krishna Murari Jindal, S/o Shri Chandmal Jindal, aged about 56 years, r/o Shahi Complex Sector, 11, Hiranmagari, Udaipur, Official Address working as Income Tax Inspector in the office of Commissioner of Income Tax 15, Mumal Tower, Saheli Marg, Udaipur.

: Applicant in M.A. No.145/08 & O.A. No. 248/2007

1. G. Anandan Pillai, s/o late Shri Gopala Pillai, Resident of Plot No. 278, Hanwant A Sector, BJS Colony, Near Lakshmi Nagar, Jodhpur, Official Address : Income Tax Inspector in the office of CIT (II) Jodhpur.

2. K.C. Mehta, S/o late Shri S.C. Mehta, 10/38, Chopasni Housing Board Jodhpur, Office Address Income Tax Inspector in the office of CIT (i) Jodhpur.

3. A.K. Bhandari, S/c Shri M.M. Bhandari, resident of 78 Sindhi Colony Jodhpur Office Address : - Income Tax Inspector in the Office of CIT (Audit) Jodhpur.

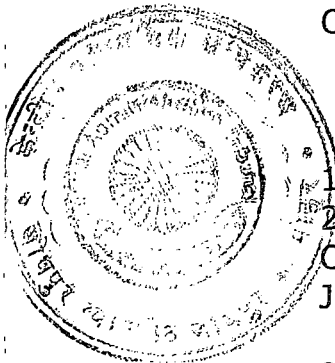
4. Bhera Ram Choudhary S/o Shri Kana Ram Choudhary Resident of Nehru Nagar Behind Railway Police Station Barmer, Office Address: Income Tax Inspector in the office of Joint Commissioner of Income Tax Barmer Range Barmer.

: Applicants in M.A. No. 143/08 & O.A. No. 249/07

Ranjeet Singh Dhillon, S/o Shri Lal Singh Dhillon aged about 58 years, Resident of Pilibanga Ward No. 1 (Lakhowali) District Hanumangarh Office Address: Income Tax Inspector in the office of Income Tax Office, Suratgarh

: Applicant in M.A. No. 141/08 & O.A. No. 255/07

Rep. By Mr. Kamal Dave : Counsel for the applicants.



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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, Connaught Circus, New Delhi. 110 011

Respondents No. 1 to 3 in all the O.As. & MAs .

Commissioner of Income Tax, Udaipur.: Respondent No.4 in M.A. No.145/08 & O.A No. 248/2007

: Respondents.

Rep. By Mr. Varun Gupta : Counsel for the respondents.

ORDER.

Per Mr. D. Sankarankutty, Judicial Member.

M.A. No. 141/2008 in O.A. No. 255/2007, M.A. No. 143/2008 in O.A. No. 249/2007 & M.A. No. 145/2008 in O.A. No. 248/2007, have been filed by the applicants for preponing the date of hearing of the respective O.As.

2. Heard the counsel on both sides. The aforesaid Misc. Applications are allowed. With the consent of the learned counsel for the parties, all the three Original Applications are taken up for final hearing today i.e. 24.12.2008.

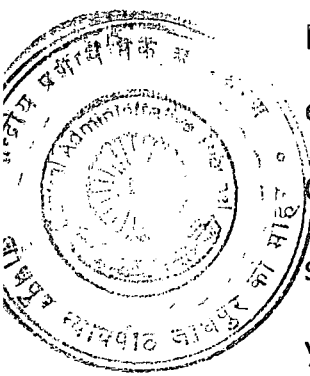
3. Since the issue involved and the reliefs claimed are same, with the consent of counsel on both sides all the applications were heard together and are being disposed of by this common order.



4. Krishna Murari Jindal has filed O.A. No. 248/2007; G. Anandan Pillai and three others have filed O.A. No. 249/2007; Ranjeet Singh Dhillon has filed O.A. NO. 255/2007; under Sec. 19 of the Administrative Tribunals Act, 1985 and have prayed that the impugned order dated 13/18.09.2007, may kindly be quashed and set aside to the extent it denied the applicants their right to appear in the Departmental Examination for the Income Tax Officer (ITO for short) considering them as over aged.

5. The applicants have joined the respondents on various dates as LDCs, Stenographer, UDC. After qualifying in the departmental examination for the post of Income Tax Inspector they were promoted as Income Tax Inspectors on various dates mentioned in the O.As.

6. A scheme of Departmental Examination for the post of Income Tax Officer (ITO for short) is provided under the Departmental Examination for Income Tax Officer rules, 1998 (herein after referred to as Rules of 1998). In the said rules eligibility conditions are provided under Clause III by which Income Tax Inspectors are made eligible to appear in the said Departmental Examination. Under Clause IV a maximum 10 attempts are allowed to a candidate, subject to the condition that his age should not be more than 55 years on the 1st of April when the examination is to be held.



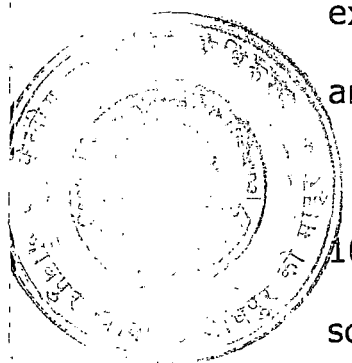
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7. As per the scheme of Rules 1998, departmental examination for ITO are to be conducted by the Directorate of Income Tax (IT) once in a year, during the first quarter of financial year. The department, as per the statutory provisions, has to conduct the examination for ITO regularly. But in the instant cases, due to some administrative problems, the department had failed to conduct the same after 2003 and the examination was held in the year 2006.

8. In the examination conducted in the year 2006, a relaxation clause was incorporated, making the candidates upto the age of 59 is also eligible. The above relaxation seems to have been made, keeping in view the inability of the department to conduct examination every year.

9. As per the prospectus, the applicants were eligible to appear for ITO examination conducted in the year 2006. But the respondent No. 3 vide communication dated 21.07.2006, (Annex. A/2) made a provision regarding the eligibility criteria and informed that the candidates who have already appeared in the departmental examination 2003 and yet to clear some papers would only be eligible and there would be no bar upto 59 years of age.

10. As the department was planning to introduce, entirely a new scheme of examination, candidates who had already appeared under the old examination procedure were allowed last chance to under go the departmental examination. Candidates like the applicants were



deprived of their right to appear in the departmental examination provided under the rules. But the communication dated 21.07.2006 (Annex. A/2) de bar the applicants to appear in the examination **as the applicant was to appear in the examination for the first time and there is no safeguard making such a candidate eligible to appear in the departmental examination.** The action of the respondents is arbitrary, discriminatory and clearly violated the right of the applicants to appear in the examination conducted by the department after three years, which is a clear infringement of the rules.

11. The respondents department in its communication dated 07.09.2006 (Annex. A/3) clarified that the examination of October 2006 will be the last examination under the old syllabus. Thus in view of the above decision of the department, the right of the applicants to appear in the 2006 Departmental examination was denied, although the applicants were within the maximum age prescribed by the department itself.

12. The failure of the department to conduct the examination each year resulted in relaxation with regard to maximum permissible age from 55 to 59 vide notification dated 21.07.2006, but the benefit of such relaxation was denied to the applicants, as a condition was incorporated that candidates who have undergone the examination under the old scheme are only eligible. Hence applying the same principle, the applicants were having a right to get the benefit of age

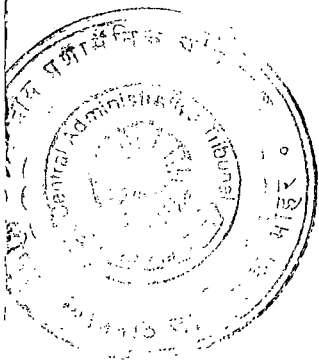


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relaxation of the years during which the department failed to conduct the examination for ITOs i.e. 2004, 2005 and 2006.

13. Aggrieved by the above, the applicants have filed these O.As praying for the relief mentioned in para 4 above.

14. The respondents have filed detailed separate reply to each O.A. inter alia pleading that in terms of rule (IV), of the Rules for Departmental examination for the ITOs (Income Tax Officer) 1998, any candidate could avail at the maximum of 10 chances for such examination with the condition that he/she should be below the age of 55 years as on 1st of April of the year of examination. The respondents have categorically pleaded that the applicants have already availed the maximum number of chances i.e. 10 chances to appear in the examination and they have also crossed the age 55 years as on 01.04.2007 for the examination to be held in the year 2007. The validity of the departmental examination Rule 1998 has been upheld by this Bench of the Tribunal in O.A. No. 250/07 vide its order dated 25.09.2007 in O.A No. G.P. Singhal vs. Union of India and ors. The departmental examination for the year 2007 was duly conducted as per the examination Rules 1998 notified by the CBDT and as such the applicants were rightly held not eligible to appear in terms of Rule IV of the Examination Rules, 1998. It was for this reason the applicants were denied permission to appear in the departmental examination conducted for the year 2007.

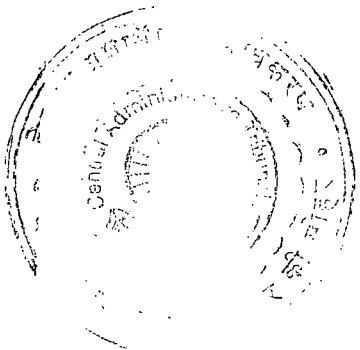


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15. The respondents have prayed that as per Rule IV of the Examination Rules 1998, a candidate could be permitted only for 10 attempts, which the applicants had availed already.

16. Heard learned counsel for both the parties and perused the records of the respective Original Applications. The learned counsel for the respondents has submitted that in compliance of the directions contained in the order passed by this Tribunal dated 25.11.2008, an additional affidavit has been prepared and the same is filed on 23.12.2008. The same had been taken on record.

17. Learned counsel for the respondents has submitted that the reason for relaxation for conducting the examination to certain candidates in the year 2008 was as per the request made by the Employees Union and the same was approved by the CBDT vide order dated 05th November, 2008. In view of this it is observed that the examination for ITO was conducted during the year 2006 and 2008 under relaxed conditions. During the year 2007, an examination was conducted for promotion to the post of ITOs but the applicants were not allowed to appear in the examination by the respondents since they do not fulfil certain prescribed criteria for the said examination. However, the respondents had allowed the applicants in the above three OAs, to appear in examination under the directions of this Court.

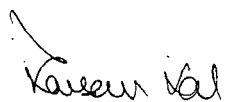


18. The grievance of the applicants in these three O.As. is that some of the applicants who have participated in the examination as per the directions given by this Tribunal have qualified in the examination whereas some of them have failed. The failed candidates admittedly have no claim and the learned counsel for the applicants submitted that their names could be deleted from the array of parties. Thus the O.As, have become infructuous in respect of those candidates who have failed in the examination.

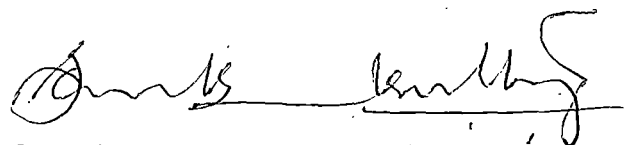
19. However, the respondents are directed to issue appropriate promotion and posting orders in respect of those candidates who were allowed under the directions of this Tribunal to appear in the examination and have come out successful in the examination conducted in the year 2007. The promotion and posting orders as directed above may be issued by the respondents as expeditiously as possible.

20. With these observations and directions, the above three Original Applications are allowed in respect of those candidates who have passed and dismissed as infructuous in respect of those candidates who have failed in the examination

21. Ordered accordingly. The parties are directed to bear their own costs.



(TARSEM LAL)
MEMBER (A)



(D. SANKARANKUTTY)
MEMBER (J)

Rec'd GM
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