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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION No. 84/2011

Date of Order : 20.04.2012

(Reserved on 23.02.2012)

**HON'BLE MR. JUSTICE S.C.SHARMA, ACTING CHAIRMAN
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)**

1. Bhanwar Lal Nirban S/o Late Shri Sona Ram aged about 46 years, r/o Mukharjee Choraha, Rajsamand, Official Address in the Office of Income Tax Officer, Commerce House, Old Collectorate Road, Rajsamand.
2. Jivatram Darangi S/o Shri Dhandas Darangi, aged above 46 years, resident of 730 Eklavya Colony, Dudhiya Ganeshji, Udaipur, Official Address in the Office of Deputy Commissioner of Income Tax, Central Circle, 3rd Floor, 16, Mumal Tower, Udaipur.
3. Nanalal Gameti S/o Late Shri Jetaji Gameti, aged about 52 years, resident of 476, Neemach Mata Scheme, Dewali, Udaipur. Official Address is Income Tax Office, Ward No. 3, Shastrinagar, Bhilwara.
4. Ramlal Meena S/o Late Shri Jomaji, aged about 45 years, resident of Income Tax Colony, Hiranmagri, Sector-11, Udaipur, Official Address is Commissioner of Income Tax, 2nd Floor, 16 Mumal Tower, Udaipur.

.....Applicants.

By Mr. Kamal Dave, Advocate.

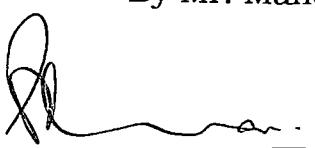
Versus

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, Bhagwandass Road, Statue Circle, Jaipur.
3. Shri Jawan Singh Charan S/o Shri Satyadev Charan aged about 47 years, resident of C/o Income Tax Office, Shivajinagar, Jalore, presently working as Income Tax Inspector and posted at Jalore.
4. Shri Krishna Yadav S/o Shri R.S.Yadav aged about 38 years, resident of M-1, Datanagar, Ajmer, presently working as Income Tax Inspector and posted at Ajmer.

.....Respondents.

By Mr. Varun Gupta, Advocate, for Respondents No. 1 and 2.

By Mr. Manoj Bhandari, Advocate, for Respondents No. 3 and 4.



ORDER

Mr. Sudhir Kumar, Member (A):

The applicants of this O.A. have come before this Tribunal with a common cause of action, and the relief claimed is also the same, and they had prayed for being allowed to file the application jointly, which prayer is allowed.

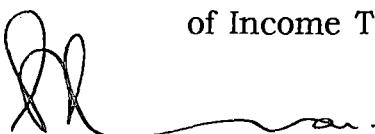
2. The applicants herein are aggrieved with the manner in which promotions to the posts of Income Tax Officers have been granted, and have submitted that the official respondents herein have acted in an arbitrary and discriminatory manner, thereby depriving them of their rights for consideration for promotions to the posts of Income Tax Officers.

3. The applicants are presently holding the posts of Income Tax Inspectors and have submitted that they have impeccable service records, and all of them belong to the Scheduled Tribe category. The applicants had sought promotions to the posts of Income Tax Officers, Group 'B', which are filled by way of promotions from amongst the Income Tax Inspectors in the pay scale of Rs. 6500-10500, with three years' regular service in the grade. The governing rules further provide that when juniors who have completed their qualifying service for eligibility criteria are being considered for promotion, their seniors would also have to be considered, provided they do not fall short of the requisite qualifying or eligible service by more than half of such qualifying or eligible service, and have successfully completed their probation period in the feeder cadre for promotion to the next higher grade along with their

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juniors, who have already completed such qualifying or eligible service. The applicants have submitted that all four of them fulfilled this eligibility criteria.

4. The grievance of the applicants has arisen because allegedly some of the incumbents, who were lower in the seniority position in the seniority list of Income Tax Inspectors ever since their respective dates of entry in the cadre of Income Tax Inspectors, have been granted promotions, denying the same to the applicants. The applicants have alleged that the respondent department has acted in ignorance of the statutory provisions, and has failed to consider their candidature for promotions, without there being any justified reasons for their doing so.

5. The applicant No. 1 had entered the Income Tax Department on 15.04.1997 directly as Income Tax Inspector, and qualified in the Departmental Competitive Examination for the posts of Income Tax Officers in the year 2008. Yet the candidature of the applicant was denied when the D.P.C. met in the year 2009, and it recommended promotions to Income Tax Inspectors junior to the applicant. He ventilated his grievance through the SC/ST Commission also, in response to which the Department had replied that it is likely that the applicant may be promoted, yet his candidature was once again ignored by the D.P.C. held in the year 2011. Applicant no. 2 had entered service with the respondent department on 22.02.1989, and was promoted as Income Tax Inspector on 10.08.1998. He qualified the Departmental Competitive Examination for selection for promotions to the posts of Income Tax Officers in the year 2009, but still his candidature



was also not considered, and his juniors were promoted. The applicant No. 3 had entered service with the respondent department on 19.10.1981, and had been promoted as Income Tax Inspector on 20.12.2001. He qualified the Departmental Competitive Examination for promotions to the posts of Income Tax Officers in the year 2009, but inspite of that, his candidature also was not considered in the DPC held thereafter. Applicant No. 4 had entered service with the respondent department on 05.09.1994, and was promoted as Income Tax Inspector on 07.09.2001. In the same year 2001, he qualified the Departmental Competitive Examination for promotion to the posts of Income Tax Officers, and also later obtained the eligibility for consideration, yet his case was also not considered by the respondent department, who had preferred his juniors for such promotions.

6. It is seen that the DPC for the year 2009 had been held on 04.06.2009 for promoting four Income Tax Inspectors to the posts of Income Tax Officers, and the DPC next met in February 2011, and through orders dated 15.02.2011 the respondent department promoted 24 candidates as Income Tax Officers, among which 5 Inspectors were promoted against the quota of Scheduled Castes, but none against the quota for Scheduled Tribes.

7. The applicants have pointed out that the Department had circulated the seniority list of Income Tax Inspectors as on 01.01.2010 through Annex. A/4, and that the Annex. A/4 and Annex. A/5 are the extracts of the Seniority Lists as on 01.01.2010 and 01.01.2009 respectively, which would show that the applicant

No. 1 was high up in the seniority, and other applicants were also high, and the persons promoted were actually below them in the seniority list.

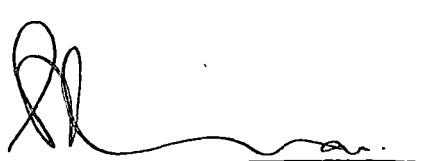
8. Feeling aggrieved by their non-promotion at the DPC held on 04.06.2009, the applicant No. 1 represented through Annex.A/6 dated 17.06.2009, specifically praying for application of the statutory rule which provides for consideration of the cases of the seniors if any junior employee is considered and promoted.

9. It was in response to this representation of the applicant No. 1 that the respondents replied through their communication dated 10.07.2009 (Annex.A/7), enclosing therewith a copy of the Department of Personnel and Training clarification dated 24.07.2007 (Annex.A/8), which the respondents contended dis-entitles the applicant No. 1 from the right of consideration of his case automatically along with the incumbents junior to him, if he had availed any relaxation/concession as a Scheduled Tribe in the Departmental Competitive Examination. The applicant has pointed-out that the rule regarding departmental examinations for Income Tax Officers prescribes in respect of pass percentage as follows :-

“RULE-VI: PASS PERCENTAGE :

(a) A candidate will be declared to have completely passed the Departmental Examination for ITOs if he secures a minimum of 50% (45% in the case of SC/ST candidate) in each of the subjects referred to in Rule 5 above and 50% marks in aggregate (45% in the case of SC/ST candidate).

(b) A candidate who has secured 50% (45% in the case of SC/ST candidate) or more marks in a particular subject or subjects in one examination will be exempted from appearing in that subject or those subjects in the subsequent examination.

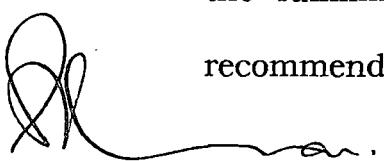


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(c) Marks in any paper being a fraction like $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$ shall be rounded off to the nearest whole number i.e. 39 $\frac{1}{4}$ shall be rounded off to 39; 39 $\frac{1}{2}$ & 39 $\frac{3}{4}$ shall be rounded off to 40;"

10. The applicants have, however, contended that for the sake of eligibility for consideration for promotion as Income Tax Officers, marks obtained in the individual papers of the Departmental Competitive Examination are not important, and the respondent department could have at best insisted for the applicants securing 50% marks in the aggregate, in order to become eligible for parity with general candidates, without there being any relaxation clause applied. It was further pointed-out that if it was done so, since the applicants are having to their credit more than 50% marks in the aggregate in the Departmental Competitive Examination, they would have passed muster, and would have been considered to be eligible for promotion on their "own merit".

11. The applicants have further expressed shock that while considering the cases for promotions for the posts of Income Tax Officers, the respondents have failed to include any employee belonging to the Scheduled Tribe (ST) category, to which the present four applicants belong. It was submitted that the respondent department is under an obligation to convene a D.P.C. for every year after determining the vacancies in the respective years, and they are also burdened with the Constitutional requirement to provide reservation to the employees of the reserved categories. It was submitted that the respondent-department can neither exceed the quota for SC/ST reservations, nor can ignore the fulfillment of the quota, and it was submitted that the recommendations of the DPCs of the years 2009 and 2011



(Annex.A/2 and Annex.A/3) are therefore in total ignorance of the right of the Scheduled Tribe candidates for promotions as per the required percentage of reservation, as none from among the category of Scheduled Tribes has been included in the orders of promotions issued.

12. The applicants have taken the further ground that the respondents have wrongly considered them to have qualified in the competitive examination for the post of Income Tax Officers under relaxed conditions, and then not considered their cases for promotions, while no such condition is actually incorporated in the said rules, and such violation of the statutory rules has resulted in denial of proper consideration of the cases of the applicants. It was submitted that the qualifying percentage fixed for promotions to the posts of Income Tax Officers after the Departmental Competitive Examination is 50% in the aggregate percentage in respect of the collective papers, and the aggregate percentage can be considered only after ignoring the marks in the individual papers, as the rules prescribed only the requirement of passing the Departmental Competitive Examination as such, with a given aggregate percentage, but not a prescribed percentage in each of the individual papers of the Examination. It was therefore submitted that denying the applicants consideration merely on the ground that they had qualified a particular individual paper of the Departmental Competitive Examination under the relaxed conditions for SCs/STs, and thereby dis-entitling them for consideration for appointment against the General Category posts, is arbitrary and discriminatory. It was submitted that even the Department of Personnel and Training clarification dated

24.04.2007 (Annex.A/8) had nowhere laid down the requirement of passing individual papers with a particular percentage of marks, and only the aggregate percentage had been mentioned for passing in the Departmental Competitive Examination.

13. The applicants further tried to find fault with the respondents by stating that even if their interpretation is taken to be correct, the respondents had erred in not implementing the Instructions of the Department of Personnel & Training dated 24.07.2007 in the year 2007, but to suddenly give effect to it in the year 2009, thereby denying the present applicants promotions to the posts of Income Tax Officers. It was further submitted that any such clarification or communication cannot be enforced when the rules are clear in this regard, as executive instructions cannot over-ride the rules laid down.

14. It was further submitted that the respondents are duty bound to provide requisite statutory reservation to the Scheduled Tribe candidates, and the actions of the respondents are clearly in violation of the Constitutional mandate of providing reservation to both Scheduled Castes and Scheduled Tribes. In the result it was prayed as follows :

"8. a) That the respondents may kindly be directed to consider candidature of all the applicants' holding them at par with General Category employees qualified departmental examination of Income Tax Inspector against the vacancies for employee junior to employees were considered and promoted.

(b) That the respondent may kindly be directed to consider the candidate of the applicants' for promotion exclusively on the basis of the statutory rules ignoring any communication having no statutory force.

(c) That it be declared that the term 'qualified the departmental examination means aggregate marks of examination and not of individual paper.

(d) The applicants may further be allowed all consequential benefits from the date person junior to them were allowed promotion and other consequential benefits including financial benefits.

(e) 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.

(f) Costs of the application may kindly be awarded in favour of the applicant.

(g) By an orders or Direction the Applicants may be allowed to file Joint Application".

15. The prayer at 8 (g) above, for the applicants being allowed to file the application jointly, already stands allowed, and to that extent relief 8 (g) has been granted to the applicants.

16. In their short reply written submission on the point of interim relief, the respondents denied any wrong doing on their part. It was pointed-out that the applicants have filed the present O.A. claiming promotions to the posts of Income Tax Officers, by treating them at par with the General Category employees, and not for seeking promotions as Income Tax Officers under the Scheduled Tribe reservation quota. It was submitted that in the year 2009-2010 and 2010-2011, when the sanctioned strength of Income Tax Officers as required, and working, and the difference, were considered, and after taking into account the retirements due during the year the total number of vacancies were enumerated, as below, it was found that the Scheduled Tribe candidates were already working more in number than their sanctioned and required strength of 14, since 23 Scheduled Tribe candidates were already working, and, therefore, no Scheduled Tribe category candidates were considered for promotion. The position of working strength of Income Tax Officers in the year 2009-2010 and 2010-2011 pre-DPC were given as under:-

Category	Required	Working	Difference	Retirement Due	Total vacancies
Sanctioned Strength	182	180	02	21+1*	24
General	141	130	11	15+1*	27
SC	27	27	00	06	06
ST	14	23	(-)09++	00	(-09)++

17. It was therefore submitted that the applicants could have been considered for promotion only as "own merit" cases, and against General Category posts, and not under the reservation category of Scheduled Tribe candidates. It was further submitted that all the four applicants do not fulfill the "own merit" criteria, and hence their cases could not be considered for promotion.

18. The respondents filed another detailed reply to the O.A. on 05.08.2011. In this also, the same point was reiterated, and it was submitted that on the law point involved in the OA, of the applicants being necessarily required to compete "on own merit" criteria alone, such cases have already been decided by the Principal Bench of this Tribunal on 03.01.2011 in the case of "Ram Narayan Verma & Ors. vs. Union of India & Ors." in OA No. 1830/2009 & related cases, and also by the Jaipur Bench of this Tribunal on 12.11.2010 in the case of Deen Dayal Meena. Reiterating the vacancy position as given in the short reply filed earlier, the respondents further gave a comparative chart as Annex.R/1, showing that the applicant No. 1 had secured less than 50% marks and only 45% marks in Law. The applicant No. 2

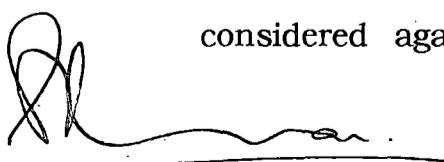
had secured only 46% marks in OT, and had secured only 74 marks out of 150, i.e. 1 less than 75, being 50% in Practicals. The applicant No. 3 had obtained 56 marks in O.P., and had passed with exemption as a Scheduled Tribe candidate, as the pass marks required were 55 for ST category, but for General category the pass marks required in OP were 60%. The applicant No. 4 had obtained only 55 marks in OP and 87 in practical, so he had also availed the benefit of reservation for passing, as he required 60% marks to pass without availing of the exemption. It was also further submitted that even the aggregate pass percentage marks for all the four candidates was below the prescribed percentage in the respective years when they had appeared at the Departmental Competitive Examination. It was submitted that since all the four applicants had not passed without the benefit of exemptions, they could not have been considered to have qualified as "own merit" Scheduled Tribe candidates, in order to compete for the General category posts.

19. On behalf of Private Respondent Nos. 3 and 4, a reply written statement was submitted on 17.10.2011. They had also pleaded that the present OA is not maintainable for the reasons that the applicants have not impleaded the necessary and proper parties to the litigation, and the relief as prayed for could have been granted to the applicants only if all the eligible candidates in the General Category, who were in the zone of consideration, had been impleaded as party respondents to the litigation. They had themselves entered the lis as a party since they had moved an application for being impleaded as parties to the litigation, which application had been allowed, which itself goes to show that if any

relief is granted to the applicants the seniority of a number of other persons similarly situated would also be disturbed, and their rights would also be prejudiced. It was therefore prayed that on this ground alone, this O.A. is liable to be dismissed.

20. It was further submitted by the Private Respondents that since the applicants had taken the benefit of relaxed percentage for passing the Departmental Competitive Examination, therefore, now they cannot be compared to the General Category candidates, after implementation of the post based roster system for reservations introduced by the Department of Personnel and Training. It was submitted that the answering respondents No. R/3 and R/4 had higher qualifying marks, and therefore the selection being on the basis of seniority cum merit, unless and until the applicants show that any of their legal rights have been infringed, they cannot claim promotion as a matter of right.

21. It was further pointed out that the post based roster system for reservations has been implemented in the Department of Income Tax w.e.f. 02.07.1997, and that the chart produced by the official respondents in respect of the posts of Income Tax Officers sanctioned for Rajasthan charge, as reproduced above, would show that since no vacancies in Scheduled Tribe category were available, the applicants who had passed the Departmental Competitive Examinations with the relaxed standards applicable for Scheduled Tribes could not have claimed promotion on their "own merit", and their having passed the Departmental Competitive Examination owing to relaxation of qualifying marks, the applicants can only be considered against the reservation points of the STs in the



reservation roster, as and when such ST reserved vacancies become available. It was, therefore, submitted that the respondent Department has rightly not considered the cases of the applicants while considering the case of the answering respondents No. 3 and 4 for promotion.

22. It was further submitted that the applicants had failed to challenge in time the source order of the post based reservation system introduced and implemented in the Income Tax Department w.e.f. 02.07.1997, and now when that criteria is being applied against them, they are guilty of acquiescence, and are estopped from assailing the validity of the promotions granted to the answering respondents No. 3 and 4. It was further pointed-out that all the concerned selected persons, against whom the applicants are claiming relief on the basis of a plea of discrimination, are not parties, and if any relief is granted by this Tribunal in the present O.A., even those incumbents who have already been promoted earlier in respect of the vacancies of the year 2009-2010 would be affected, and their having not been impleaded as parties to the litigation, this OA is not maintainable.

23. The Private Respondents No. 3 and 4 have produced as Annexure R3-4 /4 the judgment and order of the Principal Bench of this Tribunal in ***Ram Narain Verma and Anr Vs. Union of India and Others.***, in OA No. 1830/2009 with MA No. 1229/2009 with OA No. 1836/2009 with MA No. 1230/2009 and OA No. 1146/Madras/2009, decided by a Full Bench on 03.01.2011, in which it was held and reiterated that the Scheduled Caste and Scheduled Tribe candidates, who qualify the

Departmental Competitive Examination with relaxed standards, would not be eligible for promotion against any unreserved General Category vacancies. They had also filed a copy of the order dt. 22.12.2010 of the Hon'ble High Court of Delhi in Writ Petition (C) 4928/2010 (**Gajender and Ors. Vs. UOI and Ors**), wherein in Paragraph 7, in a similar case of promotions to the posts of Income Tax Officers, it was held by the Hon'ble Delhi High Court that if the petitioners before it desired to be promoted in the unreserved category, they must compete at the same level as other unreserved category candidates compete, and they cannot claim dual benefits. It was held that they cannot claim a right to have passed the Departmental Competitive Examination within their own category with a lower cut off point, and at the same time agitate a right to be promoted in the General Category.

24. It was further submitted that the Chandigarh Bench of this Tribunal had also considered a parallel issue on 29.03.2010 in a Full Bench reference in OA No. 141-CH-2008 (Narinder Kumar Dhanda and Ors. Vs. UOI and Ors.), relying on the Government of India, Department of Personnel & Training, O.M. dated 02.07.1997, which was issued for implementing the Supreme Court judgment in the case of R.K.Sabharwal Vs. State of Punjab [JT 1995 (2) SC 351], as well as in the case of J.C.Mallick Vs. Ministry of Railways, (1978) 1 SLR 844, where it was held by the Hon'ble Supreme Court that the Scheduled Caste and Scheduled Tribe candidates, who had qualified the Departmental Competitive Examination with relaxed standards, would not be eligible for promotion against the unreserved General Category vacancies, and that the reserved category candidates are not entitled to occupy the

unreserved promotional posts if they qualify departmental examination on the basis of concessions and relaxed standards meant for the reserved categories.

25. The answering Private Respondents No. R/3 and R/4 were aggrieved by the Interim order granted initially in favour of the applicants, when on 25.05.2011 it had been ordered that four posts of Income Tax Offices in question may be kept vacant. Since the interests of the answering respondents No. 3 and 4 had been severely affected on account of non filling up of the four vacancies in obedience of the order of this Tribunal dated 25.05.2011, they had prayed that the OA be dismissed with exemplary costs, and the interim order granted be vacated forthwith. It was further submitted that Hon'ble Andhra Pradesh High Court had also in its order in **Writ Petition No. 28634 of 2009 Narendra Kumar Daddha Vs. Union of India and Ors.** up-held the same principle that the reserved candidates are entitled to compete for unreserved vacancies only if they have qualified the prescribed promotional examination without availing any concession or relaxation.

26. The applicants also filed a rejoinder on 21.02.2012, but it was held by the Registry to be defective. However, it is seen that even though it was a defective rejoinder, the applicants had contended in that the policy of benefit of reservation itself depends on the concepts of merit and its relaxation, and if these concepts are ignored, the candidates selected against reserved quota once can never be considered for promotion by applying the "own merit" criteria, which was not the object of the Constitution

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extending the benefit of reservation to the reserved category candidates. It was prayed that the rights of the applicants cannot be denied, and even the fact that the official respondents had found Scheduled Tribe candidates working in excess of the prescribed quota clearly demonstrates that the administration is in the habit of ignoring the statutory provisions regarding determination and fulfillment of vacancies against the SC/ST reservation quota.

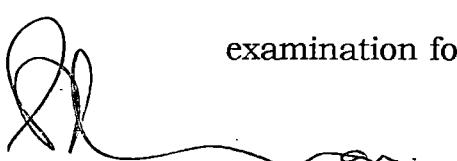
27. The case was argued in detail, and the crux of the matter lies in the issue as to whether the official respondents No. 1 and 2 were correct in holding that the four applicants herein were eligible to be considered for promotion only on the "own merit" criteria, since the Scheduled Tribe quota vacancies were already exhausted, and as to whether they were correct in holding that the Scheduled Tribe quota vacancies had been filled in excess, and, therefore, there were no promotional posts available under the ST reservation quota.

28. From a combined reading of Annex.A/7 dated 10.07.2009 and Annex.A/8 dated 24.07.2007, the point of view of the respondent-department is very clear that in order to determine whether a Scheduled Caste / Scheduled Tribe candidate falling in the zone of consideration can be promoted or not, when there are no SC/ST reservation posts available, the only thing which requires to be seen is as to whether that candidate would have been promoted on his "own merit" if he did not belong to Scheduled Caste / Scheduled Tribe category, and if 'yes', he should get promotion, and otherwise not.



29. We have given our anxious consideration to the facts of the case, and the rules of the Departmental Competitive Examination regarding pass percentage. It is seen that it has been clearly mentioned in the Rule VI as cited in para 9 above that the appropriate prescribed pass percentage should be achieved in each of the subjects separately, as well as in the aggregate also, and the word 'and' clearly joins these two pre-conditions, and that they are not mutually exclusive. Therefore, we are unable to accept the contention of the applicants that it is not required for the pass percentage in the individual papers to be seen, and that only the pass percentage in the aggregate marks in the Departmental Competitive Examination alone would be sufficient for determination of their eligibility. The applicants have also not denied the contents of the chart produced by the respondents at Annex. R/1 giving the details of the marks obtained by the applicants. It is seen from the chart that all the four applicants before us had availed of the relaxation of pass percentage conditions in one paper or the other, in order to be able to pass the Departmental Competitive Examination, and had they been General Category candidates at that point of time, they could not have been held to have passed the Departmental Competitive Examination, and therefore they do not pass muster under the "own merit" criteria.

30. We also find that in the case of Gyanendra Singh Vs. Union of India and Ors. (supra), the Hon'ble High Court of Delhi has further held that nobody can re-appear at any departmental examination for an improvement of his pass percentage. Therefore,



it is clear that the applicants herein do not fall within the "own merit" criteria as prescribed by the Circular dated 02.07.1997 issued by the Department of Personnel & Training (Annex.R3-4/1), and the detailed Circular regarding treatment of Scheduled Caste and Scheduled Tribe candidates who seek promotion on their "own merit" as prescribed through the D.O.P.T. Circular dated 11.07.2002 (Annex.R.-3-4/2). This provision was reiterated by the clarification dated 24.07.2007 issued by the Department of Personnel & Training (Annex.A/8), circulated by the Central Board of Direct Taxes, Department of Revenue through their letter dated 01.08.2007 (Annex. R.3-4/3).

31. Having availed of the relaxation of pass percentage conditions in one paper or the other, in order to be able to pass the Departmental Competitive Examination, and not being eligible to re-appear at any subsequent Departmental Competitive Examination for improvement of their pass percentages, it is apparent that the four applicants of this OA cannot claim for promotions to the posts of Income Tax Officers on their "own merit".

32. Being denied the opportunity of getting appointed under their "own merit", the applicants have to be subjected only to the reservation quota for SC and ST vacancies among the Group-B ITOs in the Department. During the course of the arguments in the case one of the points which was mentioned at the Bar ^{was} that the applicability of SC and ST quota percentages in Rajasthan is slightly off the mark, in the sense that while the Union of India follows the prescribed uniform percentages for SC & ST vacancies

as have been prescribed for all over the country, within the State of Rajasthan, the respective percentage of population of the SCs and STs is not exactly in the same proportion as per the reservation quota prescribed, the STs being much more numerous as compared to their existing entitlement of percentages relating to the posts. However, this point was neither raked up nor raised in any of their pleadings by the applicants, nor does it fall for determination in this case. Therefore, we refrain ourselves from commenting upon this aspect of the implementation of reservation policies for SCs and STs within the State of Rajasthan, as such an exercise would be outside the scope of the issues to be determined by this Tribunal.

33. The issue of making reservations in promotions and to the extent reservation is permissible was examined in detail by a Constitution Bench of the Hon'ble Apex Court in the case of M. Nagaraj and Others v. Union of India and Others (2006) 8 SCC 212. The judgment of the Hon'ble Apex Court had emphasized upon the need for quantifiable data and had held that reservation is for transcending caste and not for perpetuating it, and the States concerned have to identify and collect quantifiable data to show the existence of the backwardness of the class, and inadequacy of representation of that class in public employment, keeping in mind the maintenance of administrative efficiency before making provision for reservation, and if the State concerned fails to identify and measure the same, then the provision for reservation would be invalid. The Hon'ble Apex Court had also laid down the law in regard to the role of the State in defining and measuring merit in respect of public employment. Many other

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issues including the carry forward of reservation quota vacancies and the issue of relaxation in qualifying marks had been examined in that landmark judgment.

34. Thereafter, only very recently, in the case of Suraj Bhan Meena and Another Vs. State of Rajasthan and Others (2011) 1 SCC 467, once again the Hon'ble Apex Court has emphasized upon the need for quantifiable data being provided for considering the adequacy of reservation of posts in promotion. Also, it has been held that the conditions precedent for according such reservations in promotions are an ascertainment of the inadequacy of representation of members of SCs and STs, and ascertainment of necessity of such reservation. The Hon'ble Apex Court has further held that where the State Government had issued notifications providing for promotion of members of SCs and STs with consequential seniority without first acquiring quantifiable data regarding inadequacy of representation of SCs and STs in public services, such notifications have been rightly set aside by the High Court. The Hon'ble Apex Court decided as follows:-

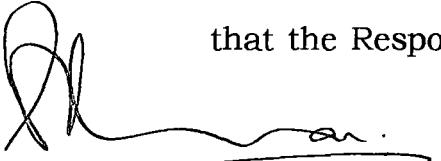
“65. In effect, what has been decided in M. Nagaraj case (supra) is part recognition of the views expressed in Virpal Singh Chauhan's case, but at the same time upholding the validity of the Seventy-seventh, Eighty-first, Eighty second and Eighty-fifth Amendments on the ground that the concepts of "catch-up" rule and "consequential seniority" are judicially evolved concepts and could not be elevated to the status of a constitutional principle so as to place them beyond the amending power of the Parliament. Accordingly, while upholding the validity of the said amendments, the Constitution Bench added that, in any event, the requirement of Articles 16(4-A) and 16(4-B) would have to be maintained and that in order to provide for reservation, if at all, the tests indicated in Article 16(4-A) and 16(4-B) would have to be satisfied, which could only be achieved after an inquiry as to identity.

“66. The position after the decision in M. Nagaraj case is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required.

“67. The view of the High Court is based on the decision in M. Nagaraj case as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Caste and Scheduled Tribe communities in public services. The Rajasthan High Court has rightly quashed the Notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Caste and Scheduled Tribe communities and the same does not call for any interference.

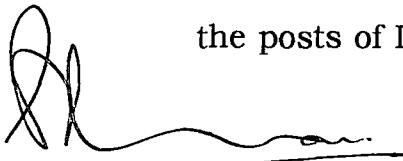
“68. Accordingly, the claim of Petitioners Suraj Bhan Meena and Sriram Choradia in Special Leave Petition (Civil) No.6385 of 2010 will be subject to the conditions laid down in M. Nagaraj case and is disposed of accordingly. Consequently, Special Leave Petition (C) Nos. 7716, 7717, 7826 and 7838 of 2010, filed by the State of Rajasthan, are also dismissed”.

35. In the instant case, it is not the case of the applicants that STs are inadequately represented in the promotional cadre of Income Tax Officers Group 'B'. Rather the applicants have admitted that the respondents have since determined that excess number of Income Tax Inspectors of ST category were promoted to the ITOs Group 'B', on the basis of relaxed conditions for their qualifying the Departmental Competitive Examination. The respondents have thereby explained the absence of ST vacancies in the Notification for the promotional Departmental Competitive Examination only on the basis of having determined that more than adequate reservation for STs had already been provided in the previous years. Therefore, the applicants cannot have a case that the Respondent Department should still continue to consider



✓ further ST candidates from among Income Tax Inspectors for promotions to the posts of ITOs Group 'B' from amongst those who have passed under the relaxed conditions for passing the Departmental Competitive Examination. It is trite law, and the respondents have admitted that the STs can still come on their "own merit", when they would not be subjected to such quantification of ST candidates, which quantification relates to only those ST candidates, who had obtained eligibility for promotion under the relaxed criteria for passing the Departmental Competitive Examination. The applicants have also not alleged that while counting the promotee STs, among the ITOs Group 'B', the respondent Department has wrongly counted along with them some of those ST candidates who had come on their "own merit" criteria, when they have to be counted only against general category candidates, and not against the ST category.

36. Be that as it may, the fact remains that many competent ST candidates among the Income Tax Inspectors had passed the test with the relaxed conditions for passing the Departmental Competitive Examination for obtaining promotions to the posts of Income Tax Officers Group-B, and before the clarification issued through the Departmental of Personnel and Training noting dated 24.07.2007 (Annexure A/8), the gist of which was circulated through Annexure A/7 dated 10.07.2009, and the merit concept was strictly applied, as clarified by the DOP&T, more number of ST candidates than the availability of ST quota vacancies had already been promoted from among the Income Tax Inspectors to the posts of Income Tax Officers Group 'B'. This has given rise to



an anomaly that even in the Notification against which the present applicants had been considered for selection for promotions ^{to} Group 'B' ITOs, no post of ST quota vacancy was available, and it was mentioned in passing by the learned counsel for the applicants that perhaps no ST quota vacancy may become available for the promotion of the applicants even in the coming 2 or 3 years also. Till then, none of the ST Income Tax Inspectors who have passed the Departmental Competitive Examination with relaxed criteria, like the present four applicants before us, would be able to obtain promotions as Group 'B' ITOs, and only those among the ST Inspectors, who are able to pass the Departmental Competitive Examination on their "own merit", without availing the relaxed standards of passing those examinations as allowed for SC & ST candidates, would alone become eligible for promotions by applying the "own merit" criteria.

37. Fortuitous circumstances are a part of life and service career. The four applicants before us are also victims of fortuitous circumstances inasmuch as that they became candidates for promotions to Group 'B' ITOs at a point of time by which time the ST quota vacancies were more than filled up by the promotions given earlier as Group 'B' ITOs to ST Income Tax Inspectors in the previous years. Now, in a notification for general category posts, only those ST Income Tax Inspectors who qualify without such relaxation, on their "own merit" basis, would alone be able to obtain promotion as Group 'B' ITOs.

38. Here, in the instant case, we do not find that the respondents have committed any irregularity, or illegality, in

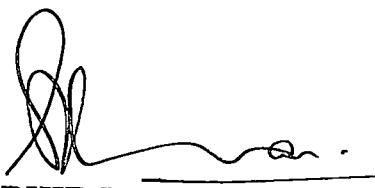
denying the four applicants before us appointments/promotions as Group 'B' ITOs, on their "own merit" basis, because of the basic fact, admitted by the applicants themselves also, that they had passed the concerned Departmental Competitive Examination, in the respective years of their passing, under the relaxed conditions as applicable to SC & ST candidates. The respondents have obviously erred in having allowed in the past promotions to more ST candidates than the number of ST quota vacancies which were actually available, but that illegality or irregularity cannot give rise to any right in favour of the applicants, and the illegality cannot be allowed to be perpetuated, and the respondents cannot be prevented from trying to set right the imbalance brought into the cadre due to such excess ST promotions granted in the previous years. The applicants before us are victims of fortuitous circumstances, since this process of correction and adjustment of excess ST promotions against future ST quota vacancies would deprive them of opportunity to obtain promotions for a couple of years perhaps, but in that we find ourselves unable to come to their rescue.

39. The four applicants herein may perhaps have a right to agitate before the appropriate forum regarding the lopsidedness of the reservation quota as prescribed, which does not match with the percentage of SC & ST population in the State of Rajasthan, but in this Tribunal, we cannot come to the rescue or assistance of the applicants on that aspect.

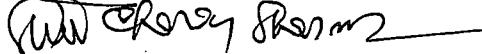
40. In the result, since the applicants are not entitled for promotions as Group 'B' ITOs under the "own merit" criteria, and

the respondents have not committed any illegality or irregularity in following the process of promotions as prescribed by the rules, the OA filed by the present four applicants is liable to be rejected.

41. The OA is, therefore, rejected, with liberty to the applicants to agitate the Constitutional matter of imbalance in the prescribed percentage of reservations for ST candidates in the State of Rajasthan in proportion to the ST population within the State of Rajasthan, before the appropriate forum, separately. There shall be no order as to costs.



(SUDHIR KUMAR)
Member (A)



(JUSTICE S.C. SHARMA)
Acting Chairman

cc.