

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 290/00155/2014
With MA No.290/00192/2014

Reserved on 19-01-2015

Jodhpur, this the th 30 day of January, 2015

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Mukesh Kumar Meena s/o Shri Dev Karan Meena, aged about 36 years, resident of III/26, Income Tax Colony, Hiran Magri, Sector-11, Udaipur-313001, at present employed on the post of Office Superintendent in the office of the Asst. Commissioner of Income Tax, Circle-2, Udaipur.

.....Applicant

By Advocate: Mr. J.K.Mishra

Versus

1. The Union of India through Secretary to Govt. of India, Ministry of Finance, Department of Revenue, North block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), C.R. Building, Statute Circle, B.D. Road, Jaipur.
3. The Director of Income Tax (Exam), Directorate of Income Tax, 5th Floor Mayur Bhawan, Connaught Circus, New Delhi-110 001.

.....Respondents

By Advocate : Mr. Sunil Bhandari

ORDER

Per Hon'ble Ms. Meenakshi Hooja

The applicant has filed a Misc. Application No.290/00192/2014

seeking condonation of delay in filing the present OA. After



considering the Misc. Application, in the interest of justice, the same is allowed.

2. By way of this OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- (i) That impugned order dated 1.11.2013 (Annexure A-1) (*Ann.A/2 actually*) may be declared illegal and the same may be quashed. The respondents may be directed to award two grace marks to the applicant in ITI Departmental Exam 2007 and treat him as having passed without relaxation i.e. as per Own Merit and allow all consequential benefits including consideration of promotion to the post of ITI as per own merit against unreserved vacancies as per rules. The impugned order 7.5.2008 (A/1) may be ordered to be modified, accordingly.
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded.

3. Short facts of the case, as averred by the applicant, are that the applicant was initially appointed in the respondent department to the post of LDC on 11.8.1997. He earned his further promotions to the post of Tax Assistant, Sr. Tax Assistant and lastly as Office Superintendent. The applicant belongs to ST category. The modified rules for Departmental Examination for Income Tax Inspector, 1998 were issued and given effect to from 20.3.2001. The examination consisted of six papers and one had to secure minimum 45% (40% in case of SC/ST candidate) in five subjects for passing the same subject to aggregate of

50% (45% in case of SC/ST candidate). For the purpose of aggregation, the marks in the examination of Accounts will be restricted to 55. The applicant has further stated that he got an opportunity to undertake the Departmental Examination for Income Tax Inspector for the year 2007. He qualified in the same vide letter dated 7.5.2008 and his name was placed at Sl.No.11 (Ann.A/6). The 2nd respondent issued details of marks obtained by each candidate vide letter dated 7.5.2008 (Ann.A/1). The applicant (at Sl.No.30) has obtained the marks in all the papers as well in aggregate and overall percentage as meant for a general category candidate except in one paper (b) Other Taxes where he has got only 43 instead of 45 and thus was short of two marks. This has resulted in declaring and treating him passed under the relaxed standard by applying the norms for SC/ST reserved candidates. Had he passed under own merit, he would have been considered having passed the same as per his own merit status and entitled for consideration for promotion to the post of Inspector of Income Tax against the general/unreserved category posts/vacancies. The departmental rules for promotion to the post of Income Tax Inspector came to be revised wherein it was provided that a person who had passed the said examination under relaxed standard may avail betterment chances in the particular paper and come in the general merit. The applicant availed the same and was declared as fully qualified vide letter dated 24.02.2014 (Ann.A/7). The applicant came to know vide communication under RTI that grace marks were granted to

the extent of five marks to a candidate who was short of five marks in any one paper and also in the Departmental Examination held under Rules of 1998 and copy of the result of such examinations pertaining to the year 2001 and 2002 has been filed as Ann.A/9. The applicant was not given any grace marks and had he been given grace of two marks only in Other Taxes in which he obtained 43 marks, he would have got the own merit status i.e. passed without relaxation, but such course of action was not found expedient in the case of the applicant, therefore, he filed representation dated 22.10.2012 and reminded the matter vide representation dated 6.9.2013, but the same were turned down vide letter dated 1.11.2013 (Ann.A/2). According to the applicant, the reservation is meant to give extra relaxation for upliftment of reserved category candidates and if one is able to get the requisite marks meant for general/unreserved candidates and passed the examination as per his own merit, his right to enjoy the benefit of the same cannot be taken away and in the garb of reserved category, he cannot be deprived of his right to compete as a general candidate. Recently a restructuring of cadre scheme has been introduced in the Income Tax Department and numerous promotions are going to be released but the applicant would not get the same for want of reserved category vacancies. He would also not be considered on the basis of passing of the betterment examination since he has passed the same in September, 2013 and cut off date of eligibility would be 1.1.2013. Therefore, aggrieved of the

action of the respondents, the applicant has filed this OA praying for the reliefs as extracted in para-1 above.

4. In the reply, the respondents have submitted that the applicant had not passed the Departmental Examination, 2007 on his own merit but under the ST category as is evident from the result dated 7.5.2008. For passing in General category i.e. on own merit a candidate was required to secure 45% marks in each of the 5 subjects and 50% marks in aggregate, whereas the applicant secured only 43 marks out of 100 in the subject of Other Taxes i.e. 43 % marks. Thus, having failed to secure 45% marks in subject of Other Taxes, there was no occasion for the applicant to have passed the Departmental Examination (DE), 2007 on own merit and thus the contention of the applicant is wholly baseless, untenable and bereft of any sum and substance. It has been further submitted that qualifying in the subject of Other Taxes under the amended Departmental Examination Rules in the year 2013 under the betterment New Pattern, 2013 shall not mean the applicant passing retrospectively on his own merit as General category candidate for the DE, 2007. The applicant shall only mean to have attained the pass marks prescribed for General category candidates in the year 2013 and not prior to that much less in the year 2007. Thus, passing the subject of Other Taxes under the amended Departmental Examination Rules in the year 2013 shall not alter the category of the applicant retrospectively. The respondents have further submitted that the CBDT

has adopted the policy of awarding grace marks to those candidates who marginally fail to secure the minimum passing marks/percentage irrespective of their category and those candidates falling short of passing marks by upto 5 marks in either the aggregate or in the minimum percentage of marks in one or more papers were/are allowed grace marks so that they can secure the qualifying marks for passing the DE. The grace marks are never awarded so as to facilitate change or improvement of category from SC/ST to General, otherwise, it shall defeat or defy the very purpose of awarding grace marks and every reserved category candidate falling short in own merit would be contending for awarding grace marks to improve his category for being qualified as a own merit candidate. None of the candidates as alleged by the applicant have been awarded grace marks to change or improve their category from SC/ST to General on own merit, rather all these candidates (either general or reserved category) were falling short by 1 to 4 number to secure the minimum qualifying marks for passing the Departmental Examination or falling marginally short to secure exemption in a particular subject when they had not qualified the examination in full. So far filing of representation, the respondents have submitted that the representations filed by the applicant being sans of merit deserved rejection and were rightly rejected by the respondents and the contentions raised by the applicant in the OA deserve rejection.

5. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA.

6. Heard counsels for both the parties. Counsel for the applicant submitted that as may be seen from para 4.4 of the OA, the applicant got 43% marks in the examination paper on Other Taxes and had he been given two grace marks his score would have been 45 and he would have got the minimum marks of 45 % which is required for a General category candidate. Counsel for the applicant emphasised that though the applicant belongs to ST category, he cannot be deprived the benefit extended to the General category because per-se there is no reservation for General category and reservation is made for SC/ST categories only (in promotion) and by not giving him the grace marks, the respondents have deprived him of being considered for promotion on own merit against unreserved vacancies. In this context, he referred to para 5 and 6 of the reply of the respondents where it has been stated that *it is most humbly and respectfully submitted that the Central Board of Direct Taxes had adopted the policy of awarding grace marks to those candidates who marginally fail to secure the minimum passing marks/percentage irrespective of their category whether it be General, SC, ST etc. and those candidate falling short of the passing marks by upto 5 marks in either the aggregate or in minimum percentage of marks in one or more papers were/are to be allowed grace marks so that they can secure the qualifying marks for passing the Departmental Examination.*

He further referred to Ann.A/8 wherein the respondents have themselves said that for DE for ITI, 2007, five marks were approved by the CBDT which were available to every candidate irrespective of their category as per rule applicable without discrimination. Had the respondents followed their own policy, the applicant who was declared passed in ST category, had been given grace marks to which he was entitled, he would have passed in General category on his own merit and would have been eligible for consideration for promotion to the post of Inspector of Income Tax against General category/unreserved vacancies. He referred to para 4-8 of his rejoinder where he has referred to certain other persons of SC/ST category who have been given grace marks and passed in General category in the examination of 1999 and during the course of arguments, counsel for the applicant submitted communication under RTI dated 20.1.2014 addressed to another employee of the Income Tax Department enclosing the results of the 1999 examination. Counsel for the applicant also referred to the directions of the Parliamentary Committee at para 2.19 (Ann.A/13) where the CBDT was censured for denial of promotion to the SC and ST officials who were senior than General candidates in the zone of consideration for promotion and were otherwise eligible for promotion in the roster point meant for General category due to the reason that they had qualified the departmental examination by getting 5% grace marks in the qualifying examination. He further drew attention to results of the previous examinations at Ann.A/9 where in the

examination for the year 2001 and 2002 even General category persons have been given grace marks and he being ST candidate, is being deprived of passing on his own merit by not awarding the required grace marks and prayed for granting of reliefs sought for in the OA.

7. Per contra, counsel for the respondents emphatically contended that the applicant being ST category candidate has passed the examination in the ST category and there is absolutely no provision in the rules that if a person has passed in his own category then he should further be given grace marks to be made eligible for another category i.e. General category on own merit and the rules and provisions referred to by the counsel for the applicant have been wrongly interpreted. In this regard during the course of arguments, he placed before us a clarification of the Ministry of Finance, Department of Revenue dated 13.12.2012 where it has been specifically clarified that enabling reserved category candidates to pass the examination in General category by grace marks policy was not the espoused philosophy behind the policy and till 2010 grace marks were given only to pass the examination but not to obtain own merit status by the candidates of the reserved category. With reference to A/9 (results of Departmental Examination of 2001 and 2002), Ann.A/12 (result of Examination of 2006) and communication dated 02.01.2014 (enclosing result of 1999 Exam,) submitted by the counsel for the applicant,

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counsel for respondents contended that grace marks were given as per the policy to enable candidates to pass as per the standards fixed for their own category, but it has never been the case that persons who had passed in their own reserved category were given grace marks to enable them to qualify in the open merit/General category. He further submitted that the applicant has already been promoted vide letter dated 24.02.2014 (Ann.A/7) as he later passed in the betterment chances examination held in 2013. Therefore, he is not legally entitled to any relief.

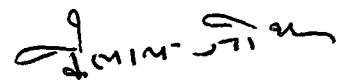
8. Considered the rival contention of the parties and perused the record. It has been the main contention of the counsel for the applicant that though the applicant is ST category and he passed in the examination with relaxed standards of marks provided for ST and SC categories, but he actually got 43 marks and had he been given two grace marks in the Other Taxes paper in the departmental examination, he would have been declared passed in 2007 itself on own merit and would have been eligible and got the benefit of promotion against general vacancies of which he has been deprived in violation of the own circulars and policy of the respondent department. This contention of the counsel for the applicant cannot be accepted because the observations made in Ann.A/8 that "for DE for ITI, 2007 Five grace marks were approved by the CBDT which were available to every candidate irrespective of their category, as per rule applicable, without

discrimination" cannot be interpreted to mean that a person who has passed in his own category can be given further grace marks to enable him to move in the General category on own merit. The only interpretation that can be drawn from this provision is that the respondents cannot discriminate between one category and the other by providing grace marks only to some categories and not to other. Further, the clarification dated 13.12.2012 submitted by the counsel for the respondents also clarifies that "the grace marks policy was introduced with the purpose of enabling marginally failing candidates to pass the examination. Enabling reserved category candidates to pass the examination in general category by the grace marks policy was not the espoused philosophy behind the policy." Reference of results of various examinations as at Ann.A/9 and A/12 and those submitted under RTI letter dated 2.11.2014 for the year 1999 do not establish that grace marks were awarded to any category of person to move from one category to another or for reserved category candidates to pass on own merit in General/unreserved category. These results merely show that grace marks have been provided to candidates of different categories as per the policy and do not support the view of the counsel for the applicant that grace marks can be given to a person who has passed in his own category to enable him to further get own merit status in General/unreserved category. Thus, arguments and contentions advanced by the counsel for the applicant are not supported by circulars and policies of the respondent department or by

the results of the previous examinations cited by him and no case is made out for giving further grace marks to the applicant, who has already passed the examination in his own ST category, to get own merit status in General/unreserved category.

9. Accordingly, the applicant is not entitled to any relief as prayed for and the OA, lacking in merit, is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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R/c
Tom Bar
3/21/15

Reed,
Barry
3/21/15