IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 428/89 & ~~XXXXXX~~ OA-435/89 ~~XXX~~

DATE OF DECISION 31-8-1990

KG Pillai - Applicant in OA-428/89

N Muraleedharan _____ Applicant ~~(s)~~ in OA-435/89

M/s MR Rajendran Nair &
PV Asha _____ Advocate for the Applicant (s) in both the cases

Versus

Director of Incometax(IT), CBDT, New Delhi and 4 others _____ Respondent (s) in OA-428/89

Commissioner of Incometax, Cochin & 2 others } - Respondents in OA-435/89

Mr VV Sidharthan, ACGSC _____ Advocate for the Respondent (s) in both the cases

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

Since common question of law and facts are involved in both these cases, they are being considered and disposed of by this common order.

2. The applicants in both these cases are who selection grade Stenographers are aggrieved by the denial by the respondents of permission for them to appear for the Incometax Officers(Group B) Examination. They have prayed for declaration that they are entitled to take part Incometax Officers(Group B) Examinations for the year 1989 and for the subsequent years, that the refusal to admit them for examination to be held on 18th July, 1989 onwards was illegal and for the consequential reliefs.

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The facts of the two cases can be briefly stated as follows.

OA-428/89

3. The applicant commenced his service as Steno-Typist in the Incometax Department in the year 1965. He became Stenographer selection grade with effect from 1.8.1980 in the scale of pay Rs.425-640 which was revised to Rs.1400-2300 with effect from 1.1.1986. By memo F.No.EG(20)(8)/1984/DIT dated 3.6.1987, it was decided that the erstwhile Stenographers(Selection Grade) in the pre-revised scale Rs.425-640 with revised scale of Rs.1400-2300 also would be permitted to appear in the examination for Income Tax Officers(Group B)to be held in June 1987 pending revision of recruitment rules. The applicant being eligible to appear for I.T.O(Group B) Examination in 1988 appeared for the examination in Income Tax Paper I & II, Other Taxes, Book Keeping Accountancy, Office Procedure, Language Test and Hindi Translation and passed the Language Test with 68% marks. He applied for appearing in the examination of the year 1989. In the memo C.No. 341(1)/Estt/1989 dated 23.6.1989 the list of candidates permitted to appear for the I.T.O.(Group B) Examination along with instructions to candidates ~~xxxxxxxxxx~~, the applicant was allotted Roll No.49 in the examination to be held on 18th, 20th, 21st, 24th and 25th of July 1989. While the applicant was preparing for the examination taking leave, on the morning of 18.7.1989, the date of the examination, he received a telegram from the Commissioner of Income Tax, Cochin informing him that he would not be eligible to appear for the examination as the Director of

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of Income Tax had intimated that Stenographers(OG) drawing pay in the scale of Rs.1200-2300 were not eligible to appear for the I.T.O(Group B) Examination. Though the applicant reported at the examination hall, he was not permitted to appear for the examination. The denial of admission to appear for the examination is arbitrary, illegal and unjustified. Hence the applicant has filed this application praying that he may be declared to be eligible to appear for the Income Tax Officers(Group B) Examination for the year 1989 and for the consequential reliefs.

OA-435/89

4. The applicant has been working as selection grade Stenographer since 1981. He applied for permission to appear for the I.T.O(Group B) Examination and he was allotted Roll No.40 vide letter dated 23.6.1989. The examination was scheduled to be held from 18 to 21st and 24th to 25th July 1989. But on 18.7.1989 he was informed that he would not be allowed to appear for the examination. Aggrieved by the denial of permission to appear for the examination, he has filed this application praying that he may be declared to be entitled to participate in the I.T.O(Group B) Examination for the year 1989, that the refusal to admit him for examination held on 18.7.1989 is illegal and for the consequential reliefs. It has been averred in the application that the denial of permission to him to appear at the examination is unjustifiable, arbitrary and unwarranted from the facts and circumstances.

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5. Both these application is resisted by the respondents. They have in the reply statement raised similar contentions. The applications are resisted mainly on the ground that as per the letter of the Central Board of Direct Taxes dated 20.1.1989, the posts of Stenographer selection grade were abolished in the Department with effect from 13.9.1986 and the Stenographers(Selection Grade) were converted into Stenographers ordinary grade and that therefore as the applicants in these two cases have became Stenographers ordinary grade, by virtue of the abolition of the posts of Selection Grade Stenographers, they are not entitled to appear for the I.T.O.(Group B) Examination and as they did not come within the purview of the instructions contained in the Board's letter dated 3.6.1987.

6. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. That the applicant in OA-435/89 has been working as Selection Grade Stenographer from 1981 and that the applicant in OA-428/89 has been working as Selection Grade Stenographer from 1.8.1980 are facts admitted. As per the letter F.No.EG(20)(8)/1984/DIT dated 3.6.1987 of the Director of Income Tax & Audit, New Delhi it has been made clear that erstwhile Stenographer(Selection Grade) in the pre-revised scale of Rs.425-640, revised scale of Rs.1400-2300 would be eligible to appear for the examination for I.T.O.(Group B) to be held in June 1987 pending revision of the recruitment rules for the post. A copy of this letter is available at Annexure-I in OA-428/89. Pursuant to this letter, the applicant in OA 428/89 appeared for

for a part of the examination held in 1988 and was allotted Roll No.49 in the memo C.No.341(1)/Estt/1989 dated 23.6.1989 containing list of candidates and instructions regarding examination to be held from 18th July, 1989. On the same basis the applicant in OA 435/89 was also allotted Roll No.40 to appear in the same examination. But on the date of the examination, the applicants in both these cases were informed that they were not eligible to appear for the examination and they were denied admission. The denial of admission to appear for the examination is sought to be justified on the ground that on account of the abolition of the post of Selection Grade Stenographers with effect from 13.9.1986, the applicants became ordinary Stenographers and that, therefore, the permission granted to earst while selection grade Stenographers to appear in the examination in the letter F.No.EG(20)(B)/1984/DIT dated 3.6.1987 did no longer apply to them. But Clause(b) of paragraph-3 of the letter of Central Board of Direct Taxes dated 20th January, 1989 reads as follows:

> "Persons appointed as Stenographers(SG) in vacancies arising before 13.9.86 will continue to receive their pay in the Selection Grade (Rs.1400-2300). However, in the light of para 2A(i) of the Department of Expenditure O.M. mentioned above, such pay shall be personal to them and, as and when they vacate their posts, (by way of promotion, retirement or otherwise) the posts will be restored to the cadre of Stenographer(OG) and shall be filled up as Stenographer(OG)".

A reading of this clause would make it clear that despite the abolition of the post of Selection Grade Stenographers with effect from 13.9.1986, persons who were appointed as Stenographers

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Selection Grade in vacancies which arose prior to 13.9.1986 continued to receive their pay in the Selection Grade(Rs.1400-2300). The applicants in both these cases were working as Stenographers long prior to 13.9.1986 and therefore inspite of the abolition of the post of Selection Grade Stenographers with effect from 13.9.1986 by the Board's letter dated 20th January 1989 at Annexure-R1(b) in OA-435/89, they continued to hold the post of Selection Grade Stenographers with the scale of Rs.1400-2300. This means that the instructions contained in the Board's letter dated 3.6.1987 at Annexure-R1(a) in OA-435/89 deciding that the erstwhile selection grade Stenographers in the grade of Rs.1400-2300 would be eligible to appear for the I.T.O.(Group B) Examination still holds good as far as the applicants are concerned. Therefore, we are of the view that the denial of permission to the applicants to appear for the examination was wholly unjustified. Pursuant to the interim order in OA-435/89 dated 12.7.1990 and in OA-428/89 dated 11.7.1990, the applicants in both these cases were allowed to participate in the examination for some papers. But it appears that they were not allowed to appear in all the papers. Since the applicants in both these cases were really entitled to appear in the I.T.O(Group B) Examinations held in July/1989 on their passing the examination held in 1990 or in any succeeding year at the first appearance, they have to be deemed to have passed the examination in the year 1989 since they were unjustifiably denied admission for the examination in that year.

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7. In the conspectus of the facts and circumstances, the applications OA-428/89 and OA-435/89 are allowed. The applicants in both these cases are declared to be entitled to take part in the Income Tax Officers(Group B) Examination for the year 1989 and for the subsequent years and that the refusal to admit them in the examination held in July 1989 was illegal. If the applicants have passed any papers in the examination which they were allowed to write pursuant to the interim order, the result should be published and they should be allowed to appear for the other parts of the examination which they were prevented from writing at the next earliest opportunity and in case they pass the examination at the first sitting, it should be deemed that they have passed the examination in July 1989. There is no order as to costs.

31.8.90.

(AV HARIDASAN)
JUDICIAL MEMBER

31.8.90

(SP MUKERJI)
VICE CHAIRMAN

31-8-1990

trs