

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.549 of 2004

Friday, this the 11th March, 2005.

CORAM:

**HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE SHRI H.P.DAS, ADMINISTRATIVE MEMBER**

K.T.Ismail,
Income Tax Inspector(Retd.),
Berkath Manzil,
Poithumkadavu, Azhikode,
Kannur – 670 009. - **Applicant**

(By Advocate Mr K.M.V. Pandalai)

vs.

1. Union of India represented by
Secretary,
Ministry of Finance,
Government of India,
New Delhi.
2. The Central Board of Direct Taxes,
New Delhi,
represented by its Chairman.
3. The Chief Commissioner of Income Tax,
C.R. Buildings,
Ernakulam,
Kochi-682 018.
4. The Commissioner of Income Tax,
C.R. Buildings, I.S.Press Road,
Ernakulam,
Kochi-682 018. - **Respondents**

(By Advocate Mr TPM Ibrahimkhan, SCGSC)

ORDER

HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant while working as Income Tax Inspector, appeared for the departmental examination for Income Tax Officers (ITO) conducted in May 2003. A-1, result of the said examination was announced. However, the applicant's result was withheld. He made A-2 representation to the 2nd respondent followed by reminder A-3 and thereafter 3rd respondent issued a communication A-4 justifying withholding of the result of the applicant on the ground that the action has been ratified by the Board vide letter dated 27.1.2004. Aggrieved by the said inaction, the applicant has filed this O.A. seeking the following relief:

- (i) To call for the records leading to A-1 proceedings issued by the 4th respondent and to quash the same to the extent it withholds the examination result of the applicant; and To call for the records leading to A-4 communication issued by the 3rd respondent and quash the same; and
- (ii) To direct the 2nd and 3rd and 4th respondents to declare the result of the applicant appeared in the Income Tax Officer's Examination conducted in May 2000 and to grant all consequential benefits such as advance increments, arrears of advance increments, consequential retirement benefits etc. Or
- (iii) To declare that the applicant passed the departmental examination for Income Tax Officers held in May 2000 and that he is entitled for all consequential benefits including the retirement benefits and arrears of pay and pension.

2. The respondents have filed a reply statement contending that the applicant who was an Income Tax Inspector appeared in the Departmental



examination for ITOs in May 2000. As per the Examination Rules 1998 prevailing at that time, the upper age limit for appearing in the examination is 55 years(R-1). At the time of submitting the application in May 2000, the applicant had already crossed the upper age limit of 55 years which was known to the applicant. While scrutinising the application for examination, the applicant's ineligibility on account of crossing age limit for appearing in the examination went inadvertently unnoticed and a Roll No. D10078 was allotted to the applicant for appearing the examination. At the time of announcement of the result, the mistake was rectified by withholding the result of the applicant. Allotment of roll number itself was invalid. There was only a technical mistake in allotting roll number and since the roll number had been allotted inadvertently by a mistake, his result has been withheld and therefore the applicant has no case.

3. Shri K.M.V. Pandalai appeared for the applicant and Shri TPM Ibrahimkhan, SCGSC appeared for the respondents. We have heard learned counsel in detail, perused the pleadings and evidence and material placed on record. Learned counsel for the applicant submitted that once the applicant has been permitted to appear for the examination, the respondents are not justified in withholding the result. Learned counsel for the respondents on the other hand strenuously argued that it was a sheer mistake on the part of the respondents and there is no bar for rectifying an error apparent and therefore, the action on the part of the respondent is perfectly in order.

4. We have given our due consideration the arguments advanced by the counsel. The crux of the matter to be decided in this case is whether having permitted the applicant to appear for the examination, the action of the respondents in withholding the result is justified or not. We have made the learned counsel for respondents a specific query as to

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whether the applicant has misled the respondents in any manner by mentioning a wrong date of birth in the application. Counsel in all fairness submitted that there was no misrepresentation in any form submitted by the applicant which led the issuance of the roll number and consequently enabling him to appear for the examination. It was an inadvertent mistake on the part of the respondents. Counsel for the applicant submitted that after detailed scrutiny of the application in the prescribed form, the roll number was allotted, the applicant prepared for the examination and allowed to appear in the examination. He believed that he would pass the examination, whereas the result was withheld. Having permitted him to appear for the examination, the respondents are estopped from taking the plea of ineligibility. The principles of promissory estoppel enunciated is applicable in service cases and will come for the benefit of the applicant and therefore, impugned order is liable to be set aside. The applicant also retired on 1.4.2004 and in the event of granting the relief as prayed for, his juniors or seniors would not be affected. It is also submitted that subsequently when the retirement age of the Central Government employees has been risen to 60 years, the respondents waived the age restriction for such examination.

5. Annexure-R1(1) is the rule for the departmental examination for IT Officers 1998 and for the eligibility criteria, Rule IV reads as follows:

"Chances permissible and age limit:

A Maximum of 10 number of chances may be availed of by a candidate, provided his or her age as on 1st April of the year of Examination does not exceed 55 years."

6. On going through the material placed on record and the arguments advanced, we are convinced that the applicant though not



eligible for making the application, without concealing any material fact, the respondents have permitted the applicant to appear in the examination. In such circumstances, the legal position that governs the field has been brought to our notice through various decisions by the applicant's counsel. The counsel has cited the following decisions:

- i. (1994) 28 ATC 190 Joseph K.T. v. Director General of posts, New Delhi and another.
- ii. (1976) 1 SCC 311 : Sri Krishnan vs. Kurukshetra University.
- iii. (1986) Supp. SC 740: Rajendra Prasad Mathur v. Karnataka University.

The position canvassed by the applicant's counsel is that the principles of promissory estoppel is applicable in the present case.

7. In Sri Krishnan v. Kurukshetra University cited supra, the Hon'ble Supreme Court has further laid down the dictum taking confidence from the decision in Premji Thai Shatteringly v. Vice Chancellor, Ravishment's University, Jaipur's [AIR 1967 MP 194] has held:

"We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore, once the appellant was allowed to appear at the examination in May, 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfillment of a specified condition a provisional admission was given by the university to appear at the examination which could be withdrawn at any moment on the non-



fulfillment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the university authorities in canceling the candidature of the appellant."

8. This was followed by a decision of this Bench of the Tribunal in Joseph K.T. v. Director General of Posts, New Delhi and another cited supra and declared:

"5. What survives for consideration is whether the principles of promissory estoppel would operate. The principle of promissory estoppel making its beginning as a defense, has gradually developed into a cause of action, in realms of equity. Catena of decisions of the Supreme Court support this view. M.P. Sugar Mills v. State of U.P. is a case on the point. As far as examinations are concerned, the Supreme Court has clearly held that a candidate once admitted to an examination cannot be denied the benefits gained by him, even though he was ineligible to take the examination. In Sri Krishna vs. Kurukshetra University the apex court held that after a candidate was permitted to take an examination – rightly or wrongly – he cannot be denied the benefits earned by him. Again in Rajendra Prasad Mathur v. Karnataka University, the apex court found that the students could not be denied the benefits of the examination even through they were ineligible to take the examination. The principle enunciated, is that a candidate should not pay for the mistakes of the University, even though the University was right in its ultimate stand."



9. In regard to the argument made by the applicant that Promissory Estoppel is applicable in this case, it is to state that there is neither a representation nor a promise which has led to any altering of position by the applicant. Though the doctrine of legitimate expectation canvassed by the applicant would be very closer to this case, it cannot be applied in view of the decision rendered in Government of A.P. vs. Nizam VIII of Hyderabad AIR 1993 AP 76, 89. In the said case, it was observed that "the expectation which shall be protected must be 'legitimate' though it may not amount to a right in the conventional sense. But the hope or desire of a person to obtain a favourable order notwithstanding that he had not complied with the necessary requirements may not amount to a legitimate expectation."

10. Since the principles of promissory estoppel strictly would not be applicable in the case on hand what remains to decide is the alleged mistake committed by the respondents. In this case, the applicant appeared many times in the examination earlier. This time also, the applicant applied and the respondents are aware of this fact. We are surprised to note that how the respondents committed this mistake of permitting the applicant to appear in the examination. On the question of age limit, it is the matter which should have been verified by the respondents before admitting the applicant to the examination.

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Admittedly, the age factor should be an important factor to be considered by the respondents before an employee is permitted to take up the examination. Except otherwise the admission made by the respondents in the reply statement, nothing has been brought to our notice to prove that it was a sheer inadvertence committed by them. The respondent department, being a very responsible establishment, we are of the view that it cannot be said to be an innocent mistake on the part of the respondents. If so, what prejudice would be caused to the applicant.

11. On going through the case at hand, we feel that no prejudice would be caused to anyone if we direct the respondents to declare the result of the applicant in respect of Income Tax Officers examination held in May, 2000. Having permitted the applicant to appear in the said examination, we are of the view that the decision not to declare his result is unjustified. The fact that the embargo of the age restriction has been removed after the examination was over and therefore, the applicant's claim cannot be said to be unjustified. While deprecating such acts on the part of the respondents in not scrutinising the eligibility criteria at the appropriate time, we are of the view that the ends of justice would be met if a direction is issued to the respondents to declare the result of the applicant in the said examination.

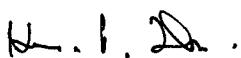
12. In view of discussion made above, we are of the view that the

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respondents are not justified in withholding the result of the applicant. Accordingly, we set aside the impugned order A/1 with a direction to the respondents to publish/declare the result of the applicant forthwith and in case the applicant gets through in the examination, he shall be considered for promotion to the post of Income Tax Officer subject to DPC, if required, and grant him all benefits notionally and without disturbing the seniority of others who had already been promoted and the benefit of fixation of pay may be reckoned for the purpose of pensionary benefits without any actual arrears. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

13. The O.A. is allowed with no order as to costs.

(Dated, the 11th March, 2005)



H.P.DAS
ADM. MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

trs.