

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No.76/96

Tuesday, this the 15th day of July, 1997.

C O R A M

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER  
HON'BLE SHRI AM SIVADAS, JUDICIAL MEMBER

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TG Pankajakshan Nair,  
Upper Division Clerk,  
Income Tax Office, Division--II,  
Ernakulam, Cochin--18.

....Applicant

By Advocate Shri N Unnikrishnan.

vs

1. Union of India represented by the  
Secretary, Department of Revenue,  
Ministry of Finance,  
Government of India, New Delhi.
2. The Chairman,  
Central Board of Direct Taxes,  
North Block, New Delhi--110 001.
3. The Chief Commissioner of Income Tax,  
Central Revenue Building,  
IS Press Road, Cochin--18.
4. Jaya Chinnani, Upper Division Clerk,  
Income Tax Office, Aluva.
5. K Krishna Varma, Upper Division Clerk,  
Income Tax Office, Alappuzha.
6. V Vijayamohan, Upper Division Clerk,  
Income Tax Office, Quilon.
7. Smt AP Parvathy, Upper Division Clerk,  
Income Tax Office, Palghat.
8. PT Janardhanan, Upper Division Clerk,  
Income Tax Office, Cannanore.
9. G Surendran Nair, Upper Division Clerk,  
Income Tax Office, Trivandrum.
10. PN Achuthan Nair, Upper Division Clerk,  
Income Tax Office, Kottayam.
11. Smt Annamma Chacko, Upper Division Clerk,  
Office of Commissioner of Income Tax, Cochin.
12. Smt Aleykutty Mathew, Upper Division Clerk,  
Office of Chief Commissioner of Income Tax, Cochin.
13. Smt Girijambal, Upper Division Clerk,  
Office of Deputy Director (Investigation), Cochin.

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14. PV Sivarama Panicker, Upper Division Clerk,  
Income Tax Office, Alleppey.
15. Smt Lalibai Rajasekharan, Upper Division Clerk,  
Income Tax Office, Alleppey.
16. TK Subash, Upper Division Clerk,  
Office of Commissioner of Income Tax, Cochin.
17. NK Parameswaran, Upper Division Clerk,  
Income Tax Office, Mattancherry.
18. KS Malathy, Upper Division Clerk,  
Office of Additional Commissioner of Income Tax Range,  
Ernakulam.

....Respondents

By Shri TR Ramachandran Nair, Addl Central Govt Standing Counsel.

The application having been heard on 15th July, 1997,  
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE SHRI PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant is an Upper Division Clerk (UDC) in the Income Tax Department. By A-3 rules, the post of Tax Assistant (TA) is to be filled by promotion from the cadre of UDCs on a selection basis on the recommendation of duly constituted Departmental Promotion Committee (DPC) and only those UDCs who have rendered a minimum service of three years in that grade in the Department and secured at least 40% marks in four subjects listed therein in the Income Tax Inspectors Departmental Examination are eligible for promotion as TAs. It is also provided that for the purpose of reckoning 40% marks, marks obtained in papers Income Tax Law-I and Income Tax Law-II in the same examination will be considered together. An examination was held in June, 1995 and applicant appeared for the examination. The results were published on 3.1.96 in respect of Kerala charge (List A.4). Applicant was shown in A.4 as qualifying for promotion to the post of TA as on January, 1995 as per the existing rules, and his name figures at serial number 18. Meanwhile, by order A.1 dated

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21.12.95, respondents relaxed the eligibility conditions for promotion to the post of TA and have provided that UDCs who have rendered a minimum regular service of three years in that grade and who have secured at least 40% marks separately in any two of the following papers may be made eligible for promotion as TA. The grievance of the applicant is that by this relaxation, people who were not eligible for promotion in terms of the recruitment rules A.3, were made eligible for promotion and applicant who had qualified in the examination for promotion in terms of the recruitment rules, was denied promotion. In pursuance of the relaxed eligibility conditions A.1, a list of UDCs who were qualified for promotion to the post of Income Tax Assistants was drawn up in A.2 dated 5.1.96. Applicant figures in this list at serial number 36. Applicant submits that promotions were also granted in terms of A.2.

2. Applicant could not get his grievance redressed even after making representation, and so he had filed this application praying that A.1 and A.2 be quashed and that third respondent be directed to consider his claim for promotion to the post of TA in accordance with the eligibility conditions in the recruitment rules A.3.

3. Respondents submit that A.1 relaxation was issued in exercise of the powers conferred on the Government by the Recruitment Rules and, therefore, A.2 has been validly issued implementing the relaxed conditions prescribed in A.1. However, the matter was re-examined and by R.1 order dated 26.2.96, it was ordered that the relaxed eligibility conditions for promotion to the post of TA set out in A.1 would apply only from the date of its issue and that all the vacancies of TAs available prior to 21.12.95 shall first be filled from amongst UDCs who are eligible

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in accordance with the Recruitment Rules. By R.1, it was also ordered that candidates who are qualified in June, 1995 and fulfil the pre-relaxed conditions shall also be considered first against vacancies of TAs available on or before 21.12.95. However, by R.1 (b) dated 12.6.96, respondents withdrew both A.1 and R.1 with immediate effect and directed that the promotion of UDCs to the post of TA be regulated in accordance with the provisions of the Recruitment Rules. By R.1 (a) dated 7.10.96, it was decided that the promotions made on the basis of the relaxed standards between 21.12.95/26.2.96 and 12.6.96 were in accordance with the Recruitment Rules invoking the power to relax the clause and the relaxation has been withdrawn from the date of issue of the withdrawal letter viz., 12.6.96 [R.1(b)]. Respondents also submit that the departmental examination is an annual feature and that the conducting of the examinations in a given year is not relevant for the purpose of issue of executive instructions relaxing or modifying the Recruitment Rules and that the relaxation in A.1 only applies to vacancies which arose after 25.1.95.

4. Respondents seem to have taken relaxation of eligibility conditions of the statutory Recruitment Rules in a very casual manner. The reason given in A.1 for relaxing the standards prescribed in the Recruitment Rules is that there is a lack of adequate number of TAs which would adversely affect the performance of the Department. Factually, this appears to be incorrect, as for 19 vacancies, 30 persons appear to have satisfied the eligibility conditions laid down in the Recruitment Rules. The relaxation of the eligibility conditions has created a situation where persons who do not satisfy the eligibility conditions laid down in the Recruitment Rules are promoted while those like the applicant, who satisfy the eligibility conditions, are denied promotion. This situation cannot be justified on any ground and cannot be permitted.

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Also a relaxation cannot be ordered and subsequently brought under the power to relax. A plain reading of A.1 does not indicate anywhere that it was issued in exercise of the powers to relax. The statutory rules cannot be modified by executive instructions. Executive instructions to relax Recruitment Rules cannot be in derogation of the rules (see P Sadagopan vs FCI Zonal Officer and another, (1997) 4 SCC 301). The fact that the respondents themselves have subsequently withdrawn the relaxation clearly shows that it was not taken after proper consideration of the issues, and that the powers of relaxation have not been exercised after proper application of mind. It is also to be noted that the relaxed eligibility conditions were introduced after the examination was conducted and, therefore, can be valid, if at all, only for subsequent examinations, and cannot be applied to modify the result already published of an examination already held. Though the respondents have set right the matter subsequently by stating that the promotions thereafter would only be in accordance with the Recruitment Rules, the grievance of the applicant does not get redressed thereby because the wrong action taken by the respondents during the period 21.12.95/26.2.96 and 12.6.96 has been protected by R.1 (a) and R.1 (b). Obviously, promotions made irregularly after not following the Recruitment Rules cannot be saved by the said executive instructions. We, therefore, hold:

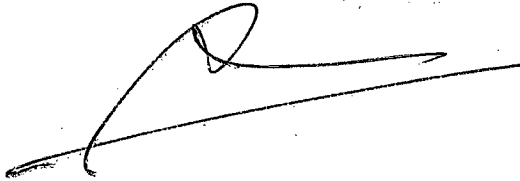
- (a) The Recruitment Rules cannot be relaxed in derogation of the Recruitment Rules by executive instructions A.1 and A.1 has not been issued in exercise of any power of relaxation of the Recruitment Rules.
- (b) As a consequence A.1 is quashed and consequentially the list A.2 of UDCs qualifying for promotion ~~was~~ Tax Assistants having regard to the relaxed rule A.1 is also quashed.

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- (c) All promotions granted during the period 21.12.95 and 12.6.96 in pursuance of the relaxed rules A.1 will accordingly be void.
- (d) The third respondent will consider the case of the applicant in the light of his qualifying in the examination held in June, 1995 in accordance with the Recruitment Rules A.3 and pass appropriate orders on his promotion as Tax Assistant within one month.

The application is allowed as aforesaid. No costs.

Dated the 15th July, 1997.



AM SIVADAS  
JUDICIAL MEMBER



PV VENKATAKRISHNAN  
ADMINISTRATIVE MEMBER

### LIST OF ANNEXURES

1. Annexure A1: True copy of letter F. No.A-12018/99/95-Ad VII dated 21.12.1995 issued by Director (Administration VII), Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.
2. Annexure A2: True copy of letter F. No.11/Estt/CC/94-95 dated 5.1.1996 issued by the 3rd respondent(The Chief Commissioner of Income-tax)
3. Annexure A3: True copy of relevant portion of Office Procedure (Administration) Item No. 12-Tax Assistant-Manual of Office Procedure (Administration), 1982.
4. Annexure A4: True copy of list of UDCs qualified for promotion to the post of tax Assistant as per the existing rules.
5. Annexure R-1: Copy of Clarification F. No.A-12018/22/95-Ad.VII, dated 26.2.1996 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes.
6. Annexure R1(a): True copy of the letter No.F. No.C-30014/74/96-V & L dated 7.10.1996 issued by the Ministry of Finance, Central Board of Direct Taxes, New Delhi.
7. Annexure R1(b): True copy of the letter No.F. NoA-12018/22/95-Ad.VII dated 12.6.1996 issued by the Ministry of Finance, Central Board of Direct Taxes, New Delhi.

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