

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 158/2003

THURSDAY THE 13th DAY OF OCTOBER, 2005.

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

V.A. Rajamma
Inspector of Income Taxes
O/o the Additional Commissioner of
Income Tax, Aluva Range
Aluva.

Applicant

By Advocate Mr. R. Amritharaj

Vs.

- 1 Union of India represented by
 its Secretary, Ministry of Finance
 Department of Revenue,
 New Delhi.
- 2 The Commissioner of Income Taxes
 CR Buildings, IS Press Road
 Cochin-682 018.

Respondents.

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant was originally recruited under the reserved category in the Income Tax Department as Lower Division Clerk and is at present working in the cadre of Inspector of Income Tax since 1994. As per the rules in promotions in the Department relaxation of concessions has been given to the extent of five marks for each subject for passing the Departmental Examination for Income Tax Officers. Various instructions of the Government providing for lower qualifying marks/lesser standards of valuation in matters of promotion for candidates belonging to SC/ST were however withdrawn as per the Department

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of Personnel and Training OM No. 36012/23/96-Estt.(Res) dated 22.7.1997 on the basis of the judgment of the Hon'ble Supreme Court in the case of S. Vinodkumar Vs. Union of India (JT 1996 SC 6431). The concessions were however decided to be restored after the 82nd Amendment of the Constitution communicated as per OM dated 3.10.2000. The case of the applicant is that she appeared for the Departmental Examination for Income Tax Officer and secured 110 marks in the language paper in the year 1995, 55 marks each for IT-Law I and IT Law-II papers in 1999 and again obtained 33, 39, 48, 50, 70 in IT-Laws-I, IT-Law-II, Other Taxes, Book Keeping and Office Procedures respectively in 2000, but the second respondent has not extended the benefits restored as per the OM dated 3.10.2000 (Annexure A3) and hence she has been constrained to approach this Tribunal. The applicant seeks a declaration as having passed the Departmental Examination in the year 2000 after taking into account the marks obtained by the applicant in IT-Law-I in the 1999 Examination by extending the benefit of relaxation and concession to the SCs/STs.

2. The respondents have contested the Application stating that Annexure A3 OM referred to by the applicant dated 3.10.2000 is operative from the date of issue of the OM and as such relaxation and concessions will be available only for the Departmental Examinations conducted in the year 2000 onwards. The results of 1999 Examination were announced on 31.12.1999 much earlier to the issue of the OM dated 3.10.2000. The copy of the order declaring results of the Examination 1999 has been produced (Annexure R-2). The applicant's case falls during the period 22.7.1997 to 3.10.2000 when the benefit of relaxation was not available and hence the contention that she should have been declared to have passed the Examination in 2000 is not tenable and the OA is liable to be dismissed.

3. The respondents have also submitted the rule provision in respect of the Departmental Examination which is as follows:

The Departmental Examination for Income Tax Officers will be held every year in the following subjects as per syllabus:

<u>Subject</u>	<u>Maximum marks</u>
1. Income Tax Law Part-I (100)	200
2. Income Tax Law Part-II (100)	
3. Other Taxes	100
4. Book Keeping	100
5. Office Procedure	100
6. Examination of Accounts & Language Test	150

5. As per the Departmental Examination Rules, which existed till 22.7.1997, a candidate will be declared to have completely passed the Departmental Examination for Income Tax Officers, if he/she secures a minimum of 50% (45% in the case of SC/ST) in each of the following subjects:

1. Income Tax Law (2 papers) combined aggregate of 50% in both papers (45% in the case of SC/ST candidates)
2. Book Keeping
3. Office Procedures
4. Examination of Accounts and Language Test.

and he/she secures 60% (55% in the case of SC/ST) marks in the aggregate. For the purpose of aggregation, the marks in the subject Examination of Accounts & Language Test will be restricted to 100 (92 in the case of SC/ST candidates).

The marks obtained by the applicant in the various tests held are also tabulated as below in the reply statement:

<u>Year</u>	<u>IT Law-II</u>	<u>IT Law-II</u>	<u>Other Taxes</u>	<u>Book Keeping</u>	<u>OP</u>	<u>Languages</u>
1995	22	0	Absent	Absent	50	110
1999	55	55	36	36	21	Exempt
2000	33	39	48	50	70	Exempt


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4. The short question thus before us is only whether the applicant was eligible for the concession/relaxation available to SC/ST candidates with regard to the marks obtained in the Departmental Examination in the years in which she had appeared for the test. From the table reproduced above it is seen that the applicant has appeared for the tests in the years 1995, 1999 and 2000. In 1995, she had passed only in the Office Procedure and Language papers. Even though the concession was applicable in the year, the applicant did not clear the IT-Law-1 and II papers. After concessions were withdrawn she had appeared for the IT Law papers in 1999 and secured 55% marks when according to the rules she should have obtained 60%. She has repeated all the tests in the year 2000 but has obtained the minimum pass marks only in Office Procedure. It is the prayer of the applicant that the Department should have taken into account the marks she had obtained in IT-Law papers in 1999 even though she did not fulfill the minimum marks prescribed in that year by extending the concession of 50% available for SC/ST. The request made by the applicant prima facie appears to be outside the ambit of the rule as stated by the respondents in para 8 of their reply which provides that when a candidate has not secured exemption in a subject, the marks in that subject in the latest chance availed by him will be taken into account for the purpose of determining the aggregate of 60% or 55% as the case may be. The applicant has taken the last chance in the year 2000 when she appeared for the IT Law papers also. It appears from the above provision of the rules that only the marks obtained in the year 2000 could be taken into account and on this count alone the request was liable for rejection.

5. Apart from the above, the learned counsel of the applicant chose to argue the case on legal ground and submitted that concession withdrawn

on the basis of the judgment in S. Vinodkumar Vs. Union of India (JT 1996 SC 6431) in 1997 were restored following the constitutional amendment on 3.10.2000 and hence the concession should be taken as restored from the earlier date itself. He drew our attention to para 4 of the above OM dated 3.10.2000 which stipulates that the order will take effect in respect of selection to be made on or after the date of issue of the OM and the selections finalised earlier shall not be disturbed. The contention of the counsel was that these provisions were applicable only to selections whereas in this case no selection had taken place and only the results of the examination had been announced. The respondents' Counsel contended in this regard that in pursuance of the OM dated 3.10.2000, the Central Board of Direct Taxes had in their letter dated 20.3.2001 clarified that the provisions of the Department of Personnel OM dated 3.10.2000 would be applicable to the examinations where the results are yet to be announced and where the results have been declared after issue of the OM dated 3.10.2000, the results may be reviewed and that the respondents have acted under the above instructions.


6. We have heard the learned counsel appearing for both sides and perused the orders and judgments referred to. As regards the legal issue raised the position is quite clear that after the pronouncement of the law by the Hon'ble Supreme Court in S. Vinod kumar's case that it would not be permissible to prescribe lower qualifying marks or lesser standards of evaluation for members of the reserved category, such concessions available in the various rules and regulations were withdrawn by the Department of Personnel vide OM dated 22.7.97 (Annexure A2). The amendment of Article 335 of the Constitution was introduced by the 82nd Amendment Act in 2000 in order to get over the above situation and in pursuance of the enabling proviso of Article 335, the Department of Personnel and Training decided again to



restore the relaxation vide the OM dated 3.10.2000. Therefore the constitutional and legal position for the period between both these dates namely 22.7.1997 to 3.10.2000 is that such relaxations could not have been enforced. Para 3 of the DOPT OM dated 3.10.2000 also makes it very clear that the effect of the earlier OM dated 22.7.1997 becomes inoperative only from the date of issue of the OM dated 3.10.2000. Therefore we are unable to agree with the contention of the learned counsel for the applicant that with the issue of OM dated 3.10.2000 the concessions which was available to SC(ST) got restored with retrospective effect.

7. In the result we hold that the applicant would be eligible for the relaxation and concessions only for the Examination held in the year 2000 and her request for taking into consideration the marks obtained in the earlier examination held in the year 1999 after taking into account the concessions and relaxations is not tenable in law. The respondents have acted within the framework of rules. The Application lacks merit it is therefore dismissed. No costs.

Dated the 13th October, 2005.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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