

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 217 OF 2011

Monday, this the 19th day of March, 2012

CORAM:

**HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Kumaran T.D
Inspector of Income Tax
Office of the Commissioner of Income Tax
Thrissur
Residing at Thermadathil House
PO.MG Road, Peramangalam
Thrissur - 680 545

... Applicant

(By Advocate Mr.C.K.Sreejith)

versus

1. Union of India represented by Secretary
Ministry of Finance
New Delhi - 110 001

2. The Chief Commissioner of Income Tax
C.R.Building, IS Press Road
Cochin - 682 018

... Respondents

(By Advocate Mr.S.Jamal, ACGSC)

The application having been heard on 19.03.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant is an Income Tax Inspector belonging to Scheduled Caste category. He has passed the departmental test on relaxed standards. He is aspiring for promotion to the post of Income Tax Officer. Admittedly, there is no SC reserved vacancy for the post of Income Tax Officer for consideration of the applicant's case since he has passed the test with only relaxed standards. In the merit quota, however,



since he did not pass normal examination as in the case of others, he cannot be granted promotion against merit quota. Annexure A-1 is the tentative cadre wise seniority list of officials getting promotion during the financial year . As per seniority list, Annexure A-1, applicant is at Sl.No.4, SC. He was not given promotion only for the reason that he has passed the test on relaxed standards and he cannot be considered for promotion against merit quota.

2. In the reply statement filed by the respondents it has been pointed out that the applicant has no legal right to agitate his case which dates back to 2006 and as such it is barred by limitation. The applicant had ^{been} given the opportunity to attend the Departmental Examination for Income Tax Officers in 2007, 2008, 2009 and also for betterment in 2010. The applicant cleared the Departmental Examination for ITOs in the year 2009 under the relaxed standards. Therefore, he is eligible to be considered for promotion to the post ITO with effect from 01.01.2010 against the SC category vacancy under promotion quota. It is stated that the applicant had passed the Departmental Examination in 2009 with 45% marks on each paper. Therefore, he cannot claim a right to be promoted within his own category with a lower cut off point and at the same time predicate a right to be promoted in the general category with the lower cut off point. He did not avail the betterment chance as specified in the clarification dated 23.09.2010 issued by the Directorate of Income Tax, Central Board of Direct Taxes, New Delhi. Reliance is placed on the decision of Hon'ble High Court of Delhi in W.P(C) No.4928/2010 in the case of **Shri Gianendr & Ors vs. Union of India & Ors**, a copy of which is produced as Annexure R-1. The W.P(C) was dismissed with the following observation:



" The argument needs to be rejected for the simple reason the qualifying cut off being 55% was for SC/ST candidates while competing in their own category. If petitioners desire to be promoted in the unreserved category they must compete at the same level as other unreserved category candidates compete. Petitioners cannot claim a dual benefit. They cannot claim a right to be promoted within their own category with a lower cut off point and at the same time predicate a right to be promoted in the general category with the lower cut off point.

To put it differently all those who compete as unreserved candidates must qualify on the same cut off point and not that SC/ST candidates would get the dual benefit of a lower cut off point and eligibility within their quota and additionally retaining the benefit of the lower eligibility claim a right to be promoted in the unreserved category."

3. A similar view was taken by the Central Administrative Tribunal, Principal Bench in OA 1830/2009 in **Ram Narain Varma & anr. vs. Union of India & Ors** and agreed with the view that the SC/ST candidate who qualify the departmental examination with relaxed standards would not be eligible for promotion against unreserved vacancies. The considered order passed by the Tribunal is produced as Annexure R-2

4. In the light of facts as stated above and on the basis of legal position as emerged by the decisions of the Hon'ble Delhi High Court and also the Principal Bench of CAT, there cannot be any doubt that a person who passed the test with relaxed standards can seek promotion only in the reserved vacancy and not in the general vacancy. So long as the applicant did not pass the examination by securing cut off as in the case of merit candidates, he cannot claim any promotion to the vacancy earmarked for unreserved quota.



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5. In the circumstances we find no merit in the OA and the same is **dismissed. No costs.**

Dated, the 19th March, 2012.



**K GEORGE JOSEPH
ADMINISTRATIVE MEMBER**



**JUSTICE P.R.RAMAN
JUDICIAL MEMBER**

VS