

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 220/87

DATED THE FOURTEENTH DAY OF FEBRUARY
NINETEEN HUNDRED AND EIGHTY NINE

PRES E N T

Hon'ble Shri S. P. Mukerji, Vice Chairman

&

Hon'ble Shri G. Sreedharan Nair, Judicial Member

K. Ramadasan

Applicant

Vs.

1. The Commissioner of Incometax,
Cochin and

2. The Central Board of Direct Taxes,
New Delhi

Respondents

Mr. V. Rajendran

Counsel for the
applicant

Mr. P.V.M. Nambiar, SCGSC

Counsel for the
respondents

O R D E R

(Pronounced by Hon'ble Shri G. Sreedharan Nair)

The applicant while working as Stenographer

(Selection Grade) submitttd an application for admission
to the Departmental Examination for Incometax Officers

(Group B) to be held in June/July, 1985. The application
was submitted through proper channel and it was forwarded
to the first respondent, the Commissioner of Income Tax,
Cochin. He published a list of candidates who have been
permitted to appear for the examination wherein the name
of the applicant was also included. The applicant took
the examination and pursuant to the result declared by

the Directorate, the first respondent issued the order dated 4.12.1985 declaring the applicant along with certain others ~~who~~ ^{as} have passed the examination. Stenographers (Selection Grade) on passing the departmental examination for Income Tax Officers are eligible for the grant of two advance increments. When the applicant put forward his claim for the same, the respondent No. 1 issued the memorandum dated 4.6.1986 cancelling the orders contained in the memorandum dated 4.12.1985 declaring the applicant as having passed the examination. This order was passed on the premise that the appearance of the applicant in the examination was against rules, in view of the clarification issued by the Directorate of Inspection (Income Tax and Audit) in their letter dated 7.4.1984 communicated to the first respondent in their letter dated 2.5.1986 stating that the Stenographers (Selection Grade) in the scale of pay of Rs. 425-640 are not eligible to appear for the departmental examination for the Income Tax Officers (Group B). Since the representation submitted by the applicant against the said order was turned down, he has filed the present application. It is prayed that the orders dated 4.6.1986 cancelling the declaration that the applicant has passed the examination and rejecting the request for two advance increments, be quashed.

2. A reply has been filed by the respondents wherein it is stated that ~~as per the~~ ^{when} Departmental Examination (Income Tax Officers Group B) Rules ^{were} promulgated in the

year 1973, there were three grades of Stenographers, viz., Stenographer (Ordinary Grade) in the scale of pay of Rs. 330-560, Stenographer (Sr. Grade) in the scale of pay of Rs. 425-700 and Stenographer (Selection Grade) in the scale of pay of Rs. 550-900 and that according to the rules only the latter two grades were eligible to take the examination. It is pointed out that the post of Stenographer (Selection Grade) in the scale of pay of Rs. 425-640 was introduced only on 1.8.1983, though with retrospective effect from 1.8.1976, to reduce the stagnation of officials in the category of Stenographer (Ordinary Grade). In the clarificatory letter dated 7.4.1984 from the Directorate of Inspection (Income Tax and Audit), it has been specified that Stenographer (Selection Grade) in the pay scale of Rs. 425-640 will not be eligible for appearing in the examination for Income Tax Officers Group B. It is contended that since the applicant was not eligible to appear for the examination, the order has been passed cancelling the declaration that he has passed the examination.

3. It is agreed by both sides that as per the Departmental Examination (Income Tax Officers Group B) Rules, as issued in the year 1973, Stenographer (Selection Grade) is one of the eligible categories for taking the examination. Stenographer (Selection Grade) was on the scale of pay of Rs. 550-900. After

the promulgation of the rules, another category of Stenographer (Selection Grade) was introduced in the year 1983. This category was on a lower scale of pay of Rs. 425-640. It was for the purpose of avoiding stagnation of officials in the category of Stenographer (Ordinary Grade) that such a grade was introduced. The applicant is admittedly a Stenographer (Selection Grade) in the scale of pay of Rs. 425-640. The Directorate of Inspection (Income Tax and Audit) in their letter dated 7.4.1984 had clarified that Stenographers (Selection Grade) in the scale of Rs. 425-640 are not eligible to appear for the departmental examination for Income Tax Officers Group B. It appears that the clarificatory letter was received in the office of the first respondent only in May, 1986, before which date, the applicant was permitted to take the examination. It was only when the applicant claimed the two advance increments as a result of passing the examination that it was found out that the applicant was by mistake permitted to take the examination and that he was not eligible to do so. It was as a consequence that the declaration of pass in the examination was cancelled.

4. It was submitted by the counsel for the applicant that when once the applicant was permitted to take the examination and his result was also declared, the order cancelling the declaration cannot be sustained.

5. It is clear from the records that when the applicant allowed was to take the examination, he was only in the category of Stenographer (Selection Grade) in the scale of pay of Rs. 425-640, and that the said is category not eligible to participate in the examination. Though the rules when they were promulgated, made the Stenographer (Selection Grade) an eligible category for taking the examination, it is to be noted that then there was only one grade of Stenographer (Selection Grade) in the scale of Rs. 550-900. It is only in the year 1983 another grade of Stenographer (Selection Grade) in the scale of pay of Rs. 425-640 was introduced. By the clarificatory letter dated 7.4.1984, it was made clear that the newly created category of Stenographer (Selection Grade) in the pay scale of Rs. 425-640 will not be eligible to take the examination for Income Tax Officers Group B. As such, when the applicant was permitted to take the examination, since he did not belong to the eligible category, it was clearly an error in granting the permission. It was detected when the applicant put forward his claim for advance increments on the basis of passing the examination and thereupon the impugned order was passed cancelling the declaration that the applicant has passed the examination and rejecting his request for the grant of additional increments.


..6

6. The counsel for the applicant submitted that the clarification issued on 7.4.1984 cannot be sustained in law as it is contrary to the Statutory Rules.

There is no force in the submission. The applicant has no case that the Statutory Rules enables a Stenographer (Selection Grade) in the scale of pay of Rs. 425-640 to take the examination. Reference to Stenographer (Selection Grade) in the Rules relates to Stenographer (Selection Grade) in the pay scale of Rs. 550-900, as that was the only category in existence when the Rules were promulgated. Immediately after the introduction of the new grade of Stenographer (Selection Grade) in the pay scale of Rs. 425-640, the clarificatory order has been issued. It cannot be said that it runs counter to the provision in the Statutory Rules. On the other hand, it is only in consonance with the spirit of the Statutory Rules.

7. It is on record that after the report of the Fourth Pay Commission, the scale of pay of Stenographer (Selection Grade) on the scale of pay of 425-640 has been made the same as that of the Stenographer (Sr. Grade) on the scale of pay of Rs. 425-700. Both the categories are at present under the revised scale of pay of Rs. 1400-2300. As Stenographers (Sr. Grade) are eligible to appear in the Income Tax Officers

Group B Examination, the erstwhile Stenographers (Selection Grade) in the pre-revised scale of Rs. 425-640 have also been permitted to appear in the examination for Income Tax Officers Group B to be held in June, 1987 by the order dated 3.6.1987, copy of which has been produced by the Sr. Central Govt. Standing Counsel. As such, we are of the view that though the applicant was erroneously permitted to take the examination for Income Tax Officers Group B held in June/July, 1985, as he has passed the examination, it shall not be necessary for him to take the examination again. The applicant shall be considered as having passed the examination of Income Tax Officers Group B held in the year 1987 and on that basis the two advance increments in accordance with the instructions contained in the letter from the Government of India dated 19.2.1977 (Annexure-III) shall be granted to the applicant. We direct the respondents to do so.

8. The application is allowed as above.


(G. Sreedharan Nair)
Judicial Member
14.2.89


(S. P. Mukerji)
Vice Chairman
14.2.89

knn