

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM

ORIGINAL APPLICATION NO. 287 OF 2005

DATED THE 4th DAY OF JUNE, 2007

HON'BLE SHRI GEORGE PARACKEN MEMBER (J)

HON'BLE SHRI GAUTAM RAY MEMBER (A)

C.V. Antony,
aged 56 years,
S/o C.N. Vardukutty,
Cherukodath House,
Karthedom, Malipuram P.O.,
Ernakulam District, Cochin-682 511
At present working as
Income-Tax Inspector,
Office of the Joint Director of
Income-Tax (Inv.),
Madaparambil Buildings,
South Railway Station Road,
Ernakulam, Cochin-682016

(By Shri Mr. P.V. Mohanan - Advocate)

v.

1. The Chairman,
Central Board of Direct Taxes,
North Block, New Delhi - 110 001
2. The Chief Commissioner of Income-Tax,
Central Revenue Buildings,
I.S. Press Road,
Ernakulam, Cochin - 682018
3. The Commissioner of Income-Tax,
Central Revenue Buildings,
I.S. Press Road,
Ernakulam,
Cochin - 682018
4. The Director of Income-Tax (Income-Tax)
5th Floor, Mayur Bhawan,
Connaught Circus,
New Delhi - 110 001

(By Ms. Viji for Mr. Sunil Jose, ACGSC)

O R D E R**SHRI GAUTAM RAY, MEMBER (A)**

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, against the following:-

(i) Annexure A.1 :

Order of the 3rd Respondent vide F.NO.CIT/DE/Estatt/4/2004-05 dated 16.8.2004 declaring the results of the Departmental Examination for Income-Tax Officers, 2003;

(ii) Annexure A.5 :

Reply of the 4th Respondent vide F.No. DE/Rep/ITOs/cochin/2003/DIT/ 7340 dated 11.3.2005 to the Annexure A4 letter of the applicant, rejecting the Annexure A2 representation.

2. The case of the applicant in a nut shell is as follows:

(a) The applicant who has been holding the post of Income Tax Inspector from 21.7.1995 in the Office of the Joint Director of Income-Tax (Inv.) at Ernakulam, Cochin seeks promotion to the post of Income Tax Officer governed by the provisions contained in the Departmental Examination Rules for Income Tax Officers, 1998. In the Seniority List of Income Tax Inspectors as on 1-1-2004, the applicant is at Rank No.58. He submits that there are 4 (four) substantive vacancies of Income Tax Officers available and 3 (three) other vacancies of Income Tax Officers would arise in April & May, 2006.



3. The applicant further submits that the applicant appeared for the Departmental Examination for Income Tax Officers in the year 2003. The results of the said examination notified vide Order F.No.CIT/DE/Estt/4/2004-05 dated 16.8.2004 of the 3rd respondent have been enclosed as Annexure A-1 to the O.A. The applicant alleges that the merits of the applicant were not assessed as per Rules. Thus, he was denied eligibility for promotion to the category of Income Tax Officer and also denied 2 advance increments in the category of Income-Tax Inspector. The applicant submitted a representation dated 17.9.2004, a copy of which is enclosed as Annexure A-2 to the O.A. The 3rd respondent conveyed vide his C.No.CIT/DE/Estt/4/2004-05 dated 7.1.2005, to the applicant the reply from the 4th respondent stating that on rechecking the answer books no mistakes in totalling of marks or omission of valuation of any answer or part thereof have been found. A copy of the said letter of the 3rd respondent is enclosed as Annexure A-3 to this O.A. The applicant by letter dated 1-2-2005, copy of which is enclosed as Annexure A-4 to this O.A., submitted that he was not aggrieved by the totalling of marks or by any omission of valuation of any answer or part thereof. The 4th respondent sent a reply F.No. DE/Rep/ITOs/Cochin/2003/DIT/7340 dated 11.3.2005 to Annexure A-4



letter of the applicant rejecting Annexure A2 representation. A copy of the said reply dated 11.3.2005 of the 4th respondent is enclosed as Annexure A-5 to this O.A.

4. The applicant states that the respondents have erred in implementation of the Rules for the Departmental Examination for Income Tax Officers 1998 by which the applicant is governed. The relevant provisions of the said Rules are enclosed as Annexures A-6 to this O.A.

5. The contention of the applicant is that in the Examination held in 2000, the applicant obtained 64 marks in Book Keeping and thus there is excess of 4 marks. In the examination held in 2001 the applicant obtained 60 marks in O.P. (Office Procedure) and also obtained 90 marks out of 150 in L.T. (Language Test), which is 60%. In the Examination held in 2002 he obtained 57 marks in IT (Income Tax) Law-I and 56 marks in IT Law-II. There is thus shortage of 3 and 4 marks respectively for 60%. In the year 2003 the applicant secured 66 marks in OT (Other Taxes) and thus he got excess of 6 marks. According to the applicant, against the shortage of 7 marks in IT Law-I and IT Law-II, he secured an excess of 10 marks in B.K. and OT and if those marks are taken into account, the applicant becomes eligible to be declared to have passed in the examination held in the year 2003 and also deemed to



have been granted 2 advance increments in the category of Income Tax Inspector and eligible to be promoted as Income-Tax Officer against any of the existing 4 (four) vacancies of February and March, 2005 and 3 (three) vacancies that would arise in April and May, 2005.

5. The applicant has, therefore, approached this Tribunal seeking for the following reliefs:-

"8(i) To call for the records leading to Annexure A1 and set aside the same in so far as it does not declare the applicant passed in the Examination.

(ii) To call for the records leading to Annexure A-5 and set aside the same.

(iii) To declare that the applicant is deemed to have been succeeded in the Examination for Income-Tax Officers held in 2003 and eligible to be promoted as Income-Tax Officer in the available vacancy in preference to his juniors, with consequential fixation of pay.

(iv) To direct the Respondents to grant two advance increments to the applicant in the category of Income-tax Inspector w.e.f. 17.11.2003, the last date of Departmental Examination for Income Tax Officers 2003, consequently on the declaration as sought above.

(v) To direct the respondents to promote the Applicant as Income Tax Officer, forthwith.

(vi) Any other appropriate order or direction this Hon'ble Tribunal deem fit in the interest of justice.

6. The respondents have contested the application by filing a counter-reply. They have also filed additional reply to the rejoinder filed by the applicant. They have submitted that the applicant is not entitled to get the reliefs prayed for.



7. We have heard Mr. P.V. Mohanan, learned counsel for the applicant and Ms. Viji, learned counsel for Mr. Sunil Jose, learned Addl. Central Govt. Standing Counsel for the respondents. We have also gone through the pleadings of the either parties and material documents produced before us.

8. It is not disputed that the applicant, who is holding the post of Income Tax Inspector, availed of several chances in the Departmental Examination for Income Tax Officers held during the years 2000 onwards so as to qualify for promotion to the post of Income Tax Officer. The Examination was held as per provisions contained in the Rules for the Departmental Examination for Income Tax Officers, 1998 (in short 'Rule'). It is also not disputed that lastly, the applicant appeared during the year 2003 when he could not get the pass marks in Income Tax Law I & II papers and obtained 44/100 and 37/100 in Income Tax Law-I and II respectively.

9. It is also not the case of the applicant that there has been any mistake in totalling of marks or evaluation of any answer or part thereof. It is the contention of the applicant that as he obtained 64 marks in Book Keeping i.e. 4 marks in excess and 90 marks out of 150 in Language Test (i.e., 60%) and obtained 57 marks in Income Tax Law-I and 56 in Income



Tax Law-II, thus obtained 3 and 4 marks less than 60% and obtained 66 marks in the OT (Other Taxes) i.e., 6 marks in excess in the year 2003, by adding the excess marks obtained as mentioned above, he becomes eligible to be declared to have passed in the Examination in the year 2003, but the respondents, by their wrong interpretation of the Rule, denied to add the marks obtained in excess and rejected the representation.

10. In view of the above, for determination of the issue involved in this case, the relevant Rule is extracted below:-

"Rule VI of the Rule

PASS PERCENTAGE

1. A candidate will be declared to have completely passed the Departmental Examination for ITOs if he secures a minimum of 50% in each of the following subjects;

(i) Income tax Law (2 papers) Combined aggregate of 50% in both papers.

(ii) Other Taxes

(iii) Book keeping

(iv) Office Procedure

(v) Examination of Accounts & Language Test paper and secures 60% marks in the aggregate. For the purpose of aggregation the marks in the subject Examination of Accounts and the Language Test paper will be restricted to 100.

2. A candidate who has secured 60% or more marks in a particular subject or subjects in one examination will be exempted from appearing in that subject or those subjects in the subsequent examinations. For the purpose of reckoning 60% marks in a particular subject, I.T. Law-I and I.T Law-II will be treated as one subject.



3. Where a candidate has secured exemption in one or more subjects, the marks in excess of 60% in each subject will be taken into account in reckoning the overall aggregate of 60% in every subsequent examination. However, the marks in Examination of Accounts & Language Test will be restricted to 10 only.

4. Where a candidate has not secured exemption in a subject, the marks obtained in that subject in the latest chances availed by him will be taken into account for the purpose of determining the aggregate of 60% as the case may be."

A close reading of the above rules would show that where a candidate secures marks in excess of 60% in one or more subject, the excess marks will be taken into account in reckoning the overall aggregate of 60% in every subsequent examination. Thus, such excess marks cannot be added to the marks obtained in a particular subject.

11. Para 4 of the above Rule prescribes that when marks obtained in a subject in earlier examination is less than 60%, no credit can be obtained of such marks in the subject examination once he appears in the subsequent examination. And in such case, marks obtained in the latest chance availed by him will be taken into account.

12. We are, therefore, of the view that in fact, the applicant failed to interpret the above Rule. The respondents' action cannot be said to be faulted. We, therefore, hold that the applicant is not entitled to get the relief prayed for. The Original Application,

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being devoid of merit, is dismissed accordingly with no order as to costs.



(GAUTAM RAY)
MEMBER (A)



(GEORGE PARACKEN)
MEMBER (J)

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