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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.115/96

DATE OF ORDER : 25-06-1998.

Between :-

- 1.Ch.Jagannadha Rao
2. S.Vaijanath

... Applicants

And

1. Secretary,
Central Board of Direct Taxes,
North Block, New Delhi.
2. Chief Commissioner of Income tax,
Andhra Pradesh, Hyderabad,
8th Floor, Aayakar Bhavan,
Bashirbagh, Hyd.

... Respondents

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Counsel for the Applicant : Shri G.V.R.S.Varaprasad

Counsel for the Respondents : Shri V.Rajeshwar Rao, Addl.CGSC

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CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (J)

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

(Order per Hon'ble Shri R.Rangarajan, Member (A)).

Heard Sri G.V.R.S.Varaprasad Rao, counsel for the applicants and Sri V.Rajeshwar Rao, standing counsel for the respondents.

2. There are two applicants in this CA. Applicant N.1 joined as LDC in the Income Tax Department on 19-3-83 and promoted as UDC on 16-4-93. He appeared for the Income Tax Inspectors Department Examination in June, 1994 and passed in Income Tax Law-I ^{and Book Keeping} and II papers, by securing more than 40% marks in ~~Direct Taxes and Book Keeping~~. It is stated that ^{he} they have appeared for the examination in June, 1995. He passed in all papers securing more than 60% but failing in language paper.
3. Second applicant joined as LDC on 24-1-83 and promoted as UDC on 19-11-92. He appeared for the Departmental Examination for Income Tax Inspectors in June, 1994 and passed in I.T.Law-I ^{and Book Keeping} and Law-II, and secured more than 40% marks in ~~other direct taxes, and book-keeping~~. Again he appeared for the Departmental Examination for Income Tax Inspectors in June, 1995 and passed in all the papers except Language paper as per the ~~xxx~~ results declared on 8-1-96.
4. It is stated for the applicants that the post of Tax Asst. is ~~an~~ non-selection post and governed by I.T. Department Group-C Recruitment Rules, 1990 published in GSR 173 dt.1-3-90 of the Department of Revenue (Annexure-III to the OA). It is stated that the post of Tax Asst. is to be filled only by promotion amongst UDCs who have rendered regular service of three years and who has secured atleast 40% marks separately in the IT Law-I and Law-II and ~~other~~ Direct Taxes and Office Procedure in the Income Tax Inspectors Departmental Examination. To substantiate the above, the applicant relied on the schedule at page-15 to the OA.

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5. A notice dt.18-1-95 bearing No.429/Estt/DPC/94-95 (Annexure-IV page-16 to the OA) was issued ^{intending} for eligible UDCs for promotion to the cadre of Tax Asst. It is stated that there were more than 85 vacancies of Tax Assistants as on that date to be filled in the AP Circle and Respondent No.2 by his memo dt.12-1-96 (Annexure-II to the OA) circulated the list of 86 candidates for promotion to the cadre of Tax Assistant. In that said notice, the name of the first applicant figured at Sl.No.84 while the second applicant is at Sl.No.80. In the said notice it is stated that the UDCs who have rendered three years minimum service ^{and} who has secured 40% (35% in the case of candidates belonging to SC/ST category) marks separately in any two of the following papers in the Income Tax Inspectors Departmental Examination are eligible for promotion to the post of Tax Assistant. In view of the change of the recruitment rules by the Executive Order dt.12-1-96 the applicants who had qualified in four papers were made to suffer by lowering their seniority in the cadre of Tax Assistant as even those who have passed in two papers were promoted to the post of Tax Assistant and because of their seniority in UDCs cadre they were placed above the applicants. The recruitment rules ^{framed under Article 309 of the Constitution} cannot be amended/changed by an Executive Order. ~~Article 309 of constitution of India states that~~ unless the recruitment rules are amended by the competent authorities there can be no deviation to the recruitment rules. Executive orders cannot supersede recruitment rules. ^{Submit the learned Counsel for the applicant.}

6. This OA is filed praying for a declaration that the action of the respondents in considering UDCs who secured 40% marks (35% in case of SC/ST candidates) separately in any two of the papers I.T.Law-I, I.T.Law-II, other direct taxes and Office Procedure in the Income Tax Inspectors Departmental Examinations for promotion as Tax Assistants is highly illegal arbitrary and contrary to the Recruitment Rules and direct the respondents to effect promotions to the grade of Tax Asst. strictly in accordance with the Income Tax Department Group-C Recruitment Rules, 1990.

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7. A reply has been filed in this OA. The main point brought ^{out} in the reply is that there were number of TAX Assistant vacancies and in order to fill up these vacancies, the relaxation was granted. It was also under consideration at that time that the Recruitment Rules will be ammended in accordance with the Executive Orders shortly. However, in the reply, the said Executive Orders/Instructions were withdrawn by order dt.12-6-96 (Page-7 of the reply). Hence the respondents submit that the selection held in pursuance of the notification dt.12-1-96 is in order.

8. The Recruitment Rules for the post of Tax Asst. is clearly indicated in the schedules to the Recruitment Rule dt.1-3-90 (Annexure-III to the OA). The operative portion for promotion of UDCs to the post of Tax Asst. has been clearly indicated, which is produced below :-

Promotion from amongst upper division clerks who have rendered a minimum regular service of 3 years in the grade and who have secured at least 40% marks separately in Income Tax Law-I and II, other direct taxes and office procedure in the Income Tax Inspectors' Departmental Examination.

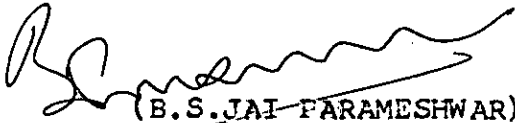
9. No recruitment rule issued under the provisions of Article 309 of the constitution can be amended or altered by ~~the~~ Executive instructions. Hence amendment to the recruitment rules for promotion to the post of Tax Asst. by letter dt.12-1-96 is irregular and hence that order has to be set aside. The respondents themselves realised the mistake and withdrawn that amendment by order dt.12-6-96; but that order ^{is withdrawn} should be treated as having come to force from the date of issue of notification dt.18-1-95. The setting aside of Executive Order ^{in this OA} is only to the extent of giving seniority to the UDCs who had passed Income Tax Inspectors Departmental Examination in four papers and promoted as Tax Asst. above that of UDCs who passed only in two papers and posted as Tax Asst. ^{in pursuance of the said notification}. The above view is taken as the applicants in this OA pray ^{only} for upgrading of their seniority in


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select panel of Tax Asst.

10. Due to setting aside the Executive order amending the recruitment rule for promotion to the post of Tax Asst. to the extent indicated above, the seniority of the applicants have to be fixed suitably above that of the UDCs who were promoted as Tax Asst. on having passed the Income Tax Inspectors Departmental Examination only in two papers.

11. In the result, the seniority of the applicants, if they were promoted, on the basis of the memo dt. 12-1-96 should be fixed as directed above. Time for compliance is three months from the date of receipt of a copy of this order. No costs.


(B.S. JAI PARAMESHWAR)
Member (J)
25.6.98


(R. RANGARAJAN)
Member (A)


6.7.98

Dated: 25th June, 1998.
Dictated in Open Court.

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DA.115/96

Copy to:-

1. The Secretary, Central Board of Direct Taxes, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, Andhra Pradesh, Hyderabad, 8th Floor, Aayakar Bhavan, Bashirbagh, Hyderabad.
3. One copy to Mr. G.V.R.S. Varaprasad, Advocate, CAT., Hyd.
4. One copy to Mr. V. Rajeswar Rao, Addl. CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.

SIR

15/7/98

(6)

II COURT

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED: 25/6/98

~~ORDER~~/JUDGMENT

~~M.A./R.A./C.P.NO.~~

in
C.A.NO. 115/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

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