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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

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C.A.613/96.

Dt. of Decision : 19-08-98.

S.A.Fazulullah

.. Applicant.

Vs

1. The Central Board of Direct Taxes  
Rep. by its Secretary, North Block,  
New Delhi.
2. The Chief Commissioner of Income Tax,  
A.P., Ayakar Bhavan, Basheerbagh,  
Hyderabad.

.. Respondents.

Counsel for the applicant : Mr.P.Naveen Rao

Counsel for the respondents : Mr.V.Rajeswara Rao, Addl.CGSC.

CORAM:-

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

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

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ORDER

AL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

Heard Mr.P.Naveen Rao, learned counsel for the applicant and Mr.V.Rajeswara Rao, learned counsel for the respondents.

2. The applicant in this OA while working as Income Tax Inspector wrote the departmental examination for considering his candidature for the post of Income Tax Officer. After he wrote the departmental examination in June, 1994 a DPC was held in August, 1994 for promotion to the post of Income Tax Officer. As on <sup>the</sup> date when the DPC met as the applicant had not passed the departmental examination his name was not considered for promotion to the post of Income Tax Officer. The applicant passed the departmental examination in February, 1995. Immediately thereafter, the applicant filed a representation dated 3-4-95 (Annexure-III) to consider him also for promotion to the post of Income Tax Officer in the DPC held in June, 1994. That representation was rejected by the impugned order No.419/DPC/Estt/94-95 dated 17-4-95 (Annexure-II).

3. This OA is filed to set aside the impugned order No.419/DPC/Estt/94-95 dated 17-4-95 (Annexure-II) issued by the 2nd respondent and for a consequential direction to the respondent to review the case of the applicant for his suitability for promotion to the post of Income Tax Officer due to the subsequent declaration of results of Departmental examination held on 13/15-2-95, declaring the applicant to have passed the examination w.e.f., 13-6-94 and confer the benefit of promotion to the post of Income Tax Officer on that basis by reviewing the DPC proceedings held in August, 1994.

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4. The main contention of the applicant is that in a similar case in OA.494/91 which was disposed of on 14-2-94 an observation was made by this Tribunal in regard to the method to be followed when a DPC is held for promotion to the Income Tax Officer in between the date of conducting the departmental examination and publication of the results of the departmental examination. The para-4 of that judgement is relevant. The observation made in para-4 by this Tribunal in the said OA is reproduced below:-

"From the above it would be seen that the DPC was being held after the conclusion of the examination but before the results were declared. A more appropriate method to be adopted by the department would be to hold the DPC only and immediately after the results were declared."

However, that OA was dismissed on the ground that no discrimination has been made in the case of the applicant therein and also the applicant having been considered by <sup>the</sup> DPC along with those who qualified in the examination held in July, 1989.

5. The only point for consideration in this OA is whether the proceedings of the DPC held in August, 1994 is appropriate as the applicant had written the departmental examination earlier to August, 1994 and qualified in the departmental examination in February, 1995. The contention of the applicant is that the results should <sup>be</sup> deemed to have been published w.e.f., the date of examination and on that basis he is eligible for consideration by the DPC which met on August, 1994.

6. The observation of this Tribunal extracted above is <sup>valid</sup> no doubt a observation. When a healthy practise suggested it is for the department to adhere to the suggestion. If it is not possible

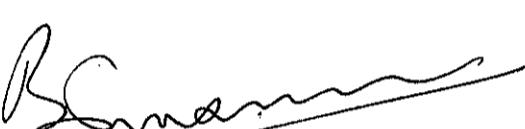
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to adhere to the suggestion then a proper reason should have been indicated for not accepting that suggestion. It is not obligatory on the part of the respondents to adhere to all the suggestions and observations in an order but the respondents have to consider those suggestions and observations given by a judicial forum.

7. Be that as it may, the judgement on which the applicant is basing his contention was issued in February, 1994 and the applicant wrote the examination in June, 1994 after the issue of the judgement. Thus, he must be aware of the judgement in that OA. When the DPC was convened in August, 1994 he could have objected to the convening of the DPC in view of the observation made in the above referred OA. But the applicant kept quiet. It may be possible that the applicant may not be sure of his passing the departmental examination. But we are not informed of the reasons for his keeping quiet. Having failed to do that, the applicant submitted a representation after the results of the departmental examination were published in February, 1995. That was disposed of by the impugned order No. 419/DPC/Estt/94-95 dated 17-4-95 (Annexure-II). Thus, the applicant unnecessarily waited for filing this OA for two years after he wrote the examination in June, 1994. Hence, at this late juncture, to grant him the relief is not possible as the earlier DPC proceedings held in August, 1994 had to be reviewed and that will cause some dis-advantage to those who had already promoted on the basis of these proceedings. It is also seen that even those who are likely to be affected by such a review which the applicant must be aware, are not impleaded as party in this OA. Hence, it has to

held that the OA has been filed without ~~joiner~~ of the proper and necessary parties. In any case the previous OA, inspite of the suggestions given, was not allowed but dismissed. Hence, we also feel that the applicant cannot get the relief as prayed for in this OA. However, we suggest to the respondents to keep the observations made in OA. 494/91 in mind for future DPC <sup>table</sup> constituted for promotion to the post of Income Tax Officer.

8. In the result, the OA is dismissed with the observation made in para 7 supra. No costs.

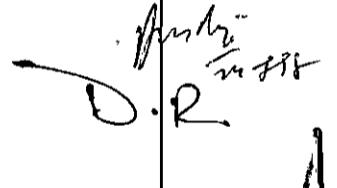


(B.S.JAI PARAMESHWAR)  
MEMBER (JUDL.)

19.8.98



(R. RANGARAJAN)  
MEMBER (ADMN.)

  
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Dated : The 19th August, 1998.  
(Dictated in the Open Court)

DA.613/96

Copy to:-

1. The Secretary, The Central Board of Direct Taxes, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, A.B., Ayakar Bhavan, Basheerbagh, Hyderabad.
3. One copy to Mr. P.Naveen Rao, Advocate, CAT., Hyd.
4. One copy to Mr. V.Rajeswara Rao, Addl.CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.

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II COURT

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COMPARED 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 PARAMESWAR :  
M(J)

DATED: 19/8/98

ORDER/JUDGMENT

M.A/R.A/C.P.N.C.

in  
C.A.NO. 613/98

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

DISPENSED AS WITHDRAWN DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

