

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.289/99.

DT. Of Decision : 14-10-99.

K.S.Devasahayam

.. Applicant.

Vs

1. The Commissioner of Income Tax.
Andhra Pradesh-I. Hyderabad.
2. The Chief Commissioner of Income Tax.
Aayakar Bhavan, AP, Hyderabad.
3. The Union of India, rep. by the Secretary to
The Ministry of Finance, North Block.
Central Secretariat, New Delhi.

.. Respondents.

Counsel for the applicant : Mr.K.Venkateswara Rao

Counsel for the respondents : Mr.B.N.Sharma. Sr. CGSC.

CORAM:-

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

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

ORDER

ORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMIN.))

Heard Mr.K.Venkateswara Rao, learned counsel for the applicant and Mr.B.N.Sharma, learned counsel for the respondents.

2. The applicant in this OA was appointed as Inspector of Income Tax by the order No.DIT/ESTT/15/90 Dated 22-05-90 (Annexure-II to the OA). The conditions stipulated in that order is at page-10 to the OA. As per that condition the applicant has to pass the departmental examination for Inspector of Income Tax within a period of two years. The applicant has not fulfilled that condition. In the mean time the probation of the applicant was also declared with effect from 1-6-92 by the memorandum dated 8-9-92 (Annexure-III to the OA). As the applicant has not fulfilled the condition of passing the

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departmental examination of Inspector of Income Tax his services were terminated by the impugned order No.39/Estt.98 dated 1-2-99 (Annexure-I to the OA).

3. This OA is filed to set aside the impugned order No.39/Estt.98 dated 1-2-99 and for a consequential declaration that the applicant is entitled to continue in service as Inspector of Income Tax by duly treating the period from the date of termination to the date of resumption *as duty* for all purposes.

4. A reply has been filed in this OA. The statement *as facts* in the reply is more or less on the same lines as enumerated above.

5. The case was examined. The letter of appointment at the time of appointment no doubt indicates that the applicant should pass the departmental examination for the post of Inspector of Income Tax within a period of two years. However, it does not stipulate that if he did not pass that examination his services will be terminated. When we questioned as to how he was terminated when such a condition is not available along with the appointment order, the learned counsel for the respondents brought to our notice the note under Para-17 of the notification No.3/3/95-P&P of Staff Selection Commission. That notification has been enclosed at Annexure R-1 to the reply.

The said note reads as below:-

"The candidates who are selected and nominated for the posts of Inspector of Income Tax to the Central Board of Direct Taxes will have to pass the Departmental Examination in three chances, the same being a pre-requisite for confirmation in the grade and further promotion to higher grade and for successful completion of probation. Those, who fail to qualify the Departmental Examination will be liable to be discharged without assigning any reason."

From the note it is evident that even for declaration of the probation he should pass the examination. When such a condition exists it is not understood why the respondents declared his probation. If passing of the examination is a pre-condition for declaration of the probation they could have waited for him to pass the examination or at least could have given him a letter that even though his probation is declared the same will be reviewed and the declaration will be withdrawn if he does not pass the said examination within the said stipulated period. That action was also not taken. Normally when an employee has not fulfilled certain condition stipulated in the appointment order the respondents may have to

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give him some notice periodically so that the employee will be reminded of the situation. Such a reminder is not produced before us.

6. It appears that the impugned termination order was issued treating him^{as} a temporary Government servant. The services of the temporary Government servant can be terminated under Temporary Service Rule-5. But even under such circumstances he has to be given a notice. Even that it is not stated so in the impugned order by which the applicant was terminated. If that clause is not resorted to then the normal disciplinary^{and} appeal rule should have been followed. Even that too was not followed. Hence, we feel that the issue of the impugned termination order dated 1-2-99 cannot be treated as a valid termination order in the eye of law. Hence that has to be set aside. But the applicant cannot be allowed to continue without passing the examination. He being a public servant has to fulfil the condition so as to serve the public effectively. For serving public effectively only, the department has stipulated condition of passing the departmental examination. Hence, the applicant should pass the departmental examination.

7. It is stated that the applicant had applied for appearing for the examination in the year 1991 itself. But it is informed that he did not appear for that examination. Subsequently it is stated that he did not apply for the examination. The learned counsel for the applicant submits that he had applied for appearing for the examination in the year 1998. As the examination had already been held in May, 1999 as his services were terminated earlier to that date he did not appear for the examination.

8. In view of the facts and circumstances of the case a direction has to be given to the applicant to sit for the examination and pass the examination in the next two examination to be conducted after the issue of this order. If the applicant fails to pass the examination then the respondents are at liberty to terminate the services of the applicant by issuing notice to adhere to the principle of natural justice.

9. In the result the following direction is given:-

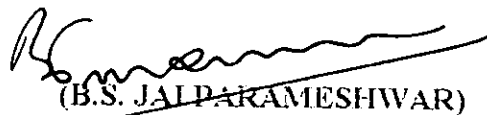
The impugned termination order No.39 Estt/98 dated 1-2-99 (Annexure-I) is hereby set aside. The applicant should be reinstated into service^{forthwith}. But the period from 1-2-99 till he joins duty should be treated as leave due to him.


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The applicant if so advised should pass the examination within two attempts in any one of the two examinations to be held immediately after the issue of this order. In case the applicant fails to qualify in any of those examinations the respondents are at liberty to terminate the services of the applicant ^{after} giving him a notice.


10. The OA is ordered accordingly. No costs.


(B.S. JALPAREMESHWAR)
MEMBER(JUDL.)
14.10.99


(R. RANGARAJAN)
MEMBER(ADMN.)

Dated : The 14th October, 1999.
(Dictated in the Open Court)

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