

OA No. 291/00489/2014 with
MA No. 291/00063/2015 &
OA No. 291/00457/2014

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00489/2014
WITH
MISC. APPLICATION NO. 291/00063/2015
AND
ORIGINAL APPLICATION NO. 291/00457/2014

DATE OF ORDER: 08.05.2015

CORAM

**HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

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Manoj Kumar Meena S/o Shri Birbal Meena, aged about 43 years, at present working on the post of Office Superintendent in the Income Tax Office, Dausa (Rajasthan), R/o B-152, Shiksha Vihar, Near RAS Colony, Jagatpura, Jaipur – 17.

...Applicant
Mr. S.S. Hasan, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Central Board of Direct Taxes through its Chairman, North Block, New Delhi.
3. Principal Chief Commissioner of Income Tax, NCR Building Statue Circle, Jaipur.
4. Director of Income Tax (Exam), Directorate of Income Tax, 5th Floor, Mayur Bhawan, Cannaught Circus, New Delhi.
5. Smt. Alka Singh W/o Shri Jitendra Kumar, OS, CIT, Jaipur-III, Jaipur.
6. Shri Asutosh Gupta, Inspector, Office of the Commissioner Income Tax, Kota.

...Respondents

Mr. Gaurav Jain, counsel for respondent nos. 1 to 4.

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Hariram Meena S/o Shri Devi Sahay, aged about 41 years, R/o Quarter No. 105/III, I.T. Residence Colony, Kelgri Road, Malviya Nagar, Jaipur, presently working as Office Superintendent, ITAT, Rajasthan, Chamber Bhawan, Jaipur.

...Applicant

Mr. S.S. Hasan, counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Central Board of Direct Taxes through its Chairman, North Block, New Delhi.
3. Principal Chief Commissioner of Income Tax, NCR Building Statue Circle, Jaipur.
4. Director of Income Tax (Exam), Directorate of Income Tax, 5th Floor, Mayur Bhawan, Cannaught Circus, New Delhi.
5. Shri Giriraj Prasad Sharma, Income Tax Inspector, Office of Commissioner of Income Tax, Kota.
6. Shri Rajnish Vinayak, Office Superintendent, at present Inspector, Office of Commissioner of Income Tax, Jaipur-II, Jaipur.
7. Shri Ashutosh Gupta, Inspector, Office of Commissioner, Income Tax, Kota.

...Respondents

Mr. Gaurav Jain, counsel for respondent nos. 1 to 4.

ORDER
(MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER)

The issue involved in both the Original Application No. 291/00489/2014 (Manoj Kumar Meena vs. UOI & Ors.) and Original Application No. 291/00457/2014 (Hariram Meena vs. UOI & Ors.) are similar in nature, therefore, with the consent of learned counsel for the parties, both the Original Applications were heard together and are being decided by

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this common order. For the sake of convenience, the facts of OA No. 291/00489/2014 are discussed in details.

2. The applicant in OA No. 291/00489/2014 seeks quashing and setting aside the Annexure A/1 and Annexure A/2 orders dated 07.06.2014 and 19.08.2014, respectively, for a direction to the respondents to award 03 grace marks to the applicant in Book Keeping Paper of the Examination-2009 and to treat him having passed without relaxation i.e. General Standard as per his own merit and to allow promotion to the post of Income Tax Inspector as per the seniority against unreserved vacancies as per rules by placing the name of the applicant in the order dated 07.06.2014 at Sl. No. 47 or at an appropriate place with all consequential benefits including arrears of pay and allowances with due seniority, for further direction to give similar treatment to the applicant as allowed to the other officials in connection with declaration of examination as passed of General Standard taking into consideration the result of 2009 with all consequential benefits including pay and allowances and seniority and to give promotion to the applicant as has been given to the juniors to the applicant in promotion order dated 07.06.2014.

3. The applicant is aggrieved by the Annexure A/1 order dated 07th June, 2014 and Annexure A/2 order dated 19.08.2014 by which the junior officials to the applicant

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including the respondent nos. 5 & 6 have been promoted from the cadre of Office Superintendent as well as Senior Tax Assistant to the cadre of Income Tax Inspector ignoring the claim of the applicant.

4. The applicant entered the services of the department of income tax being appointed as LDC in the year 1994-95. He earned promotions to the post of Tax Assistant in the year 2001, Senior Tax Assistant in the year 2005 and finally promoted to the post of Office Superintendent in the year 2010. The competent authority with a view to regulate departmental examination for Income Tax Inspectors introduced modified rules for Departmental Examination for Income Tax Inspectors-1998. The Rules were made applicable for the departmental examination to be held in 1998 and onwards. The examination consists of six papers and one have to secure minimum 45% (40% in case of SC/ST candidate) in five subjects for passing the same subject to aggregate of 50% (45% in case of SC/ST candidate) for the purpose of aggregation the marks in the examination of Accounts will be restricted to 55. Annexure A/5 is the copy of the Rules for Departmental Examination in Income Tax Inspectors-1998.

5. The applicant's case is that his juniors who appeared in the above said examination from time to time and were declared pass after allowing the grace marks which clearly

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shows from the statement of marks. The applicant also passed the departmental examination for Income Tax Inspector held in the year 2009 and he was declared pass in the said departmental examination by securing 50% marks. But in Book Keeping Paper, the applicant secured 47 marks out of 100 and he was entitled for the grace marks as per the general standard and he should have been exempted from appearing in the said paper. Annexure A/6 is the copy of the marks obtained by the applicant in the Departmental Examination held in the year 2009.

6. According to the applicant, though he qualified the departmental examination, 2009 by securing 50% marks, the respondents did not allow grace marks to the applicant for which he required 03 grace marks for securing 50 marks against 47 marks in Book Keeping Paper. It is contended that in the light of the marks he secured, the respondents should have declared the applicant being pass as per general standard but the respondents have not allowed 03 grace marks to the applicant in Book Keeping Paper, the same has been given to the candidates of general category.

7. The applicant submitted a representation to the respondents on 13.06.2014 (Annexure A/8) stating therein that he has secured marks as per general standard and is entitled for promotion as per the general standard and 50% marks he secured, therefore, promotion be given as per his

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seniority. It is also submitted that as per seniority list of Office Superintendent as on 01.01.2012 (Annexure A/4), the name of the applicant appeared at Sl. No. 88 and he was shown to be passed the departmental examination in the year 2009. It is further stated that the person junior to the applicant namely Smt. Alka Singh who was placed at Sl. No. 94 in the seniority list of Office Superintendent has been given promotion on the post of Inspector and that similarly other general candidates who are junior to the applicant in the cadre of Office Superintendent have been given promotion and they passed the departmental examination in the later years.

8. According to the applicant, he is a candidate who had secured the requisite marks meant for general unreserved candidates and passes examination as per his merit, his right to enjoy the benefits of the same cannot be taken away. It is pointed out that the rules are clear on the point that if a reserved candidate passed as per general standard, he should not be counted / adjusted against reserve post. It is contended that due benefits as admissible to a general candidate also shall have to be given to him and thus he could not have been denied grace marks, which were admissible to all the candidates. It is also stated that had he been belonging to general category, he should have

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been declared as pass without any relaxation but for the reasons of reserved category he is being differentiated.

9. On behalf of official respondent nos. 1 to 4 in OA No. 291/00489/2014, a detailed written reply has been filed. According to the official respondents, as per grace marks policy, a maximum of 5 marks can be awarded to any candidate general as well as reserve category in the Inspector Examination-2009. The applicant scored 47 marks in the Book Keeping paper in Departmental Examination 2008 and was thereby declared qualified in DE-2009 in the reserved category with prescribed pass percentage of minimum of 40% in each paper and aggregate of 45%. The respondents also contended that the idea behind the grace marks had always been to enable a candidate, who scores marks marginally below the passing criterion, to pass the examination which he/she would have otherwise failed. The grace marks policy cannot be a mechanism to enable a candidate, who already has passed the examination, to change to a different category (from SC/ST to General). In other words, enabling the reserved category candidates to pass the examination in general standard, with grace marks, is certainly not the espoused philosophy behind the grace marks policy.

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10. It is also submitted that had the applicant been from the General category, he would never have been given exemption in the said paper in DE-2008 because as per grace marks policy, a maximum of 2 grace marks can be allowed to secure exemption in a particular subject and the candidate had secured one marks less than the requisite marks i.e. 48. The applicant has received the benefit of being from the reserve category.

11. It is also contended that the applicant has been availing all the benefits provided to his category as and when available since 1996 and the same benefit has been given to him in qualifying the examination at the score of 45% in the year 2009 and there is no violation of any law / rule by the official respondents.

12. As regards the case of Smt. Alka Singh, it is stated on behalf of the official respondents that though she belongs to reserve category but she has qualified the departmental examination with general standards, therefore, she has rightly been promoted as Inspector in the DPC conducted for Recruitment Year 2013-14 on 07.06.2014 against the general vacancies despite the facts that she is junior to the applicant.

13. The applicant in OA No. 291/00457/2014 seeks direction to the respondents to award 03 grace marks to

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the applicant in Book Keeping Paper of the Examination of 2003 and treat him having passed without relaxation i.e. general standard as per his own merit and to allow promotion to the post of Income Tax Inspector as per the seniority against unreserved vacancies as per rules by placing the name of the applicant in the order dated 07.06.2014 at Sl. No. 18 or at an appropriate place with all consequential benefits including arrears of pay and allowances with due, for direction to give similar treatment to the applicant as allowed to the other official in connection with declaration of examination passed as General Standard taking into consideration the result of 2003 and for direction to give promotion to the applicant as has been given to the juniors to the applicant in the promotion order dated 07.06.2014 and for other consequential reliefs.

14. The grievance of the applicant in OA No. 291/00457/2014 is against the order dated 07.06.2014 (Annexure A/1) by which the junior officials to the applicant including respondent nos. 5, 6 & 7 have been promoted from the cadre of Office Superintendent as well as Senior Tax Assistant to the cadre of Income Tax Inspector ignoring the claim of the applicant. According to him, the applicant qualified in the cadre of Income Tax Inspector in the year 2003 without taking into consideration that the applicant was declared pass in general standard in all other papers

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and the applicant is entitled to similar benefits as allowed to the other general class candidates and those allowed promotion against unreserved post treating them pass without relaxation. The applicant represented before the official respondents vide representations dated 13.06.2014, 26.06.2014, 11.07.2014 and 30.07.2014. The applicant submits that he belongs to S.T. category and is entitled for grace marks and to declare pass as per general standard. The representations of the applicant has been rejected vide letter dated 24.07.2014 (Annexure A/2) and letter dated 05.08.2014 (Annexure A/3).

15: The said applicant was initially appointed as Upper Divisional Clerk in the year 1998. Subsequently, he was promoted as Tax Assistant, Senior Tax Assistant and Office Superintendent. According to him, as per revised seniority list as on 01.01.2012, the name of the applicant is at Sl. No. 39 in the seniority list of Office Superintendent.

16: On behalf of official respondent nos. 1 to 4 in OA No. 291/00457/2014, a detailed written reply has been filed. The contentions in this O.A. are similar to that contentions urged by the official respondents in connected O.A. bearing No. 291/00489/2014.

17. It is inter alia stated that the applicant scored 47 marks in the Book Keeping paper in Departmental

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Examination 2003 and was thereby declared qualified in the reserved category with prescribed pass percentage of minimum of 40% in each paper and aggregate of 45%. It is also contended that the candidates mentioned in para 4.5 of OA belongs to general category and have been awarded grace marks upto 5 as permitted by the grace marks policy and declared qualified. According to the official respondents, a general candidate had to secure a minimum of 45% (40% for SC/ST) in each subject and a general category candidate had to secure 50% (45% for SC/ST) for getting exemption in one or more subjects.

18. It is stated that the applicant had fully qualified the Inspectors Examination in DE-2003 but secured exemption in Book Keeping paper with 47 marks in DE-2002. It is also submitted that had he been from the general category, he would never have been given exemption in the said paper in DE-2002 because as per grace marks policy, a maximum of 2 grade marks can be allowed to secure exemption in a particular subject and the candidate had secured one mark less than the requisite marks i.e. 48. It is submitted on behalf of the official respondents that the applicant has received the benefit of being from the reserve category. According to the official respondents, the Original Application is liable to be dismissed and that the applicant is not entitled to get any reliefs.

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19. We have heard the learned counsel for the parties, perused the documents available on record and the case law relied upon by the learned counsel for the applicants.

20. During the course of hearing, learned counsel for the applicants placed reliance upon the order dated 20th February, 2015 passed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur Bench in the case of **Mukesh Kumar Meena vs. Union of India & Ors.** (D.B. Civil Writ Petition No. 1542/2015). According to the learned counsel for the applicants, the present applicants are entitled to similar treatment in view of the order dated 20th February, 2015 in the case of **Mukesh Kumar Meena vs. Union of India & Ors.** as the Hon'ble High Court of Judicature for Rajasthan at Jodhpur considered the similar issue by considering the judgments of the Hon'ble Supreme Court in the case(s) of **Rajesh Kumar Daria vs. Rajasthan Public Service Commission & Ors.**, reported in (2007) 8 SCC 785, **Indra Sawhney, R.K. Sabharwal vs. State of Punjab, Union of India vs. Virpal Singh Chauhan, Ritesh R. Sah vs. Dr. Y.L. Yamul and Union Public Service Commission vs. A. Cletus & Ors.**

21. The Hon'ble High Court of Judicature for Rajasthan at Jodhpur Bench in the case of **Mukesh Kumar Meena vs. Union of India & Ors.** (supra) vide order dated 20th

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February, 2015 considering the matter on the factual and legal grounds held as follows: -

"From the law laid down by the Hon'ble Supreme Court in the cases referred above, it is settled that the "general category" means the category of the candidates who acquires position in order to their merit, irrespective of their belonging to any reserved category, as such a person belonging to any social reserved category is first required to be considered in the "general category" as per his merit. Such a person cannot be excluded from the "general category" on the count that a relaxation/reservation is available to him vertically.

In view of the legal position discussed above, we are of the considered opinion that the respondents at the first instance should have considered candidature of the petitioner by treating him a person to whom relaxation is not applicable and while considering his case grace marks should have been extended to him in the subject of 'Other Taxes'. He would have been considered in the category of Scheduled Tribes only on arriving at a conclusion that even by extending grace marks as applicable to the general candidates he failed to qualify the examination without availing relaxation.

Accordingly, this petition for writ succeeds. The judgment impinged dated 30.1.2015 passed by learned Central Administrative Tribunal, Jodhpur Bench is set aside. The original application preferred by the petitioner is allowed. The respondents are directed to extend grace marks to the petitioner in the subject of 'Other Taxes' by treating him a person belonging to general category. He shall also be entitled for all consequential benefits."

22. In view of the legal position discussed by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur Bench vide order dated 20th February, 2015 in the case of **Mukesh Kumar Meena vs. Union of India & Ors.** (D.B. Civil Writ Petition No. 1542/2015) (supra), we direct the respondent nos. 2 to 4 in both the Original Applications to consider the issue afresh and pass a reasoned and speaking order keeping in view the principles laid down by the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in

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the aforesaid case of **Mukesh Kumar Meena vs. Union of India & Ors.** The decision shall be taken by the official respondents within a period of three months from the date of receipt of a copy of this order.

23. The applicants in both the Original Application are directed to serve a copy of this order to the respondent nos. 2 to 4 along with a copy of their respective Original Application within a period of three weeks from today.

24. With these observations and directions, both the Original Applications are disposed of. There shall be no order as to costs.

25. In view of the order passed in the Original Application, no further order is required to be passed in the Misc. Application No. 291/00063/2015 (OA No. 291/00489/2014) filed on behalf of the applicant praying for interim relief. The Misc. Application is disposed of accordingly.

(ANIL KUMAR)	(JUSTICE HARUN-U-RASHID)
ADMINISTRATIVE MEMBER	JUDICIAL MEMBER

Kumawat

Copy Given to Mr. S.S. Hassan Civil
 for App and S. Mr. Gaurav Jain.
 Sent to Respondent dated 5/1/2015
 2015 Dated 8/5/15

PSYD
 2015-15