

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order 19-11-1997

OA No.257/1997

Naula Ram, presently working as Income Tax Inspector,
N.C.R.Building, Statue Circle, Jaipur

.. Applicant

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Versus

1. The Union of India through its Secretary, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Income Tax, Rajasthan, Jaipur.

.. Respondents

OA No.256/1997

Panchu Ram Meena, presently working as Income Tax Inspector,
ITO Office, Alwar (Rajasthan)

.. Applicant

Versus

1. The Union of India through its Secretary, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Income Tax, Rajasthan, Jaipur.

.. Respondents

Mr. Ajay Bastogi, counsel for the applicants

Mr. N.K.Jain, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Patan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

Since the essential facts in both the OAs are

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virtually identical, these are being disposed of by a common order.

2. Applicants S/Shri Naula Ram and Panchu Ram Meena have prayed in their applications filed under Section 19 of the Administrative Tribunals Act, 1985 that the orders dated 10th June, 1997 (Annexures A1, A2 and A3) by which persons other than/junior to the applicants have been promoted to the post of Income Tax Officer, denying the rightful claim of the applicants, may be set-aside to the extent that these relate to non-consideration of the cases of the applicants for promotion. The applicants have sought a direction to the respondents to consider their cases for promotion to the post of Income Tax Officer on the basis of the list of Income Tax Inspectors who have qualified in the departmental examination for Income Tax Officers, which has been published on 7th February, 1997 (Ann.A5) and if it is found that they are suitable for promotion as Income Tax Officers, they may be granted promotion as such w.e.f. the date when their juniors were granted promotions vide orders dated 10th June, 1997, with all consequential benefits. There is a further prayer that any other prejudicial order affecting the rights of the applicants may be taken on record and after examining it, it may be set-aside.

3. The factual position may be stated briefly as follows. Applicant Shri Naula Ram belongs to a Scheduled Caste and applicant Shri Panchu Ram Meena belongs to a Scheduled Tribe. The result of the departmental examination for Income Tax Officers, Group-B, held in July, 1996 was declared vide communication dated 7.2.1997 (Annexure-A5). In this communication, 45 candidates holding the posts of Income Tax Inspector, Head Clerk etc. were declared to have fully qualified the departmental examination for Income Tax

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Officers, Group-B, w.e.f. 30.7.1996. Name of Shri Naula Ram figures at Sl.No.3 and that of Shri Panchu Ram Meena figures at Sl.No.7 in this list. On the basis of their names figuring in the said communication at Sl.Nos. 3 and 7, they expected to be promoted to the post of Income Tax Officer in accordance with their turn. However, the respondents have denied promotion to Shri Naula Ram whereas they have promoted Shri P.Nacrath who is below Shri Naula Ram in the said list. They have also not granted promotion to Shri Panchu Ram Meena as per his turn or number in the seniority list of persons who have qualified the departmental examination vide Ann.A5. The applicants were also entitled to promotion on the basis of the reservations available to the Scheduled Castes and Scheduled Tribes but promotions have been denied to them without taking into account this aspect either. The ground on which promotion has been denied to them is that while the general category candidates have qualified the departmental examination with 60% marks, the applicants who belong to SC and ST communities respectively have qualified the departmental examination with relaxed standards, under which candidates belonging to SC and ST communities are granted relaxation to the extent of 5% marks for passing the examination. The respondents have relied upon the ratio of the judgment of the Hon'ble Supreme Court in S.Vinod Kumar Vs. Union of India, 1996 (6) SLR 466 for denying promotions to the applicants. According to the applicants, the aforesaid judgment is not applicable in the facts of the present case and the matter in dispute in the judgment of the Hon'ble Supreme Court in S.Vinod Kumar's case did not relate to the Income Tax Department. The applicants were, however, granted two advance increments on passing the departmental examination vide orders Ann.A6

passed in the cases of both the applicants.

4. Further according to the applicants, no amendment has been made to the rules relating to holding of the departmental examination and still the applicants have not been considered as qualified candidates for promotion to the post of Income Tax Officer on the basis of the judgment of the Hon'ble Supreme Court referred to above. Promotions in similar circumstances have, however, been granted by the respondents to non-gazetted officials as seen from Ann.A7 annexed to both the OAs. Therefore, the action of the respondents in ignoring the candidature of the applicants for promotion to the post of Income Tax Officer is arbitrary, illegal and violative of provisions of Articles 14 and 16 of the Constitution.

5. The respondents in their replies have stated that although as per rules, relaxation of marks is available to the extent of 5% for securing the minimum qualifying marks in the departmental examination, the Hon'ble Supreme Court in its judgment delivered on 1.10.1996 in the case of S.Vinod Kumar (supra) has laid down that no relaxation can be granted to reserved category candidates in the matter of securing the minimum qualifying marks for acquiring eligibility for consideration for promotion. At the time the result of the departmental examination was declared vide Ann.A5, the aforesaid judgment of the Hon'ble Supreme Court could not be considered and the applicants were wrongly declared successful although they had not acquired the minimum qualifying marks viz. 60%. Therefore, they could not be treated as successful in the departmental examination. When the matter went before the DFC for promotions, a list of eligible candidates was submitted to it by the Department for its consideration. At the time of preparation of the

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list of eligible candidates, the Department was aware of the law laid down by the Hon'ble Supreme Court and, therefore, the applicants were not considered as eligible for promotion because they had not acquired the minimum qualifying marks in the departmental examination. Others who had acquired the minimum qualifying marks were treated as eligible and their names were placed before the DPC. The applicants were, therefore rightly denied promotion. The judgment of the Hon'ble Supreme Court is binding on the respondents under Article 141 of the Constitution of India. Even if the relevant rules have not yet been amended, still the respondents are duty bound to follow the law laid down by the Hon'ble Supreme Court. There are no specific averments in the OA about promotions made in respect of non-gazetted cadres as per Ann.A7 in violation of requirements of securing minimum qualifying marks for candidates of all categories. They have added that in case any bonafide irregularity has been committed, it cannot be allowed to be perpetuated. They have denied that there has been any violation of any Articles of the Constitution in the matter of denial of promotion to the applicants.

6. During the arguments, the learned counsel for the applicants stated that for the purpose of grant of advance increments to the applicants on passing the departmental examination, the respondents had considered the result Ann.A5 as valid but had chosen to ignore it when it came to granting promotions to the applicants on the basis of the same Ann.A5. He added that the judgment of the Hon'ble Supreme Court in S.Vinod Kumar's case did not specifically deal with the cases of Income Tax Department and there was nothing in the judgment from which it could be inferred that the applicants were not entitled to promotions on the basis

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of the result declared as at Ann.A5, once they had passed the examination in accordance with the rules prevailing at the time of passing of the departmental examination. Even now, according to him, the rules relating to passing of the departmental examination, which entitle candidates belonging to the reserved categories, concession to the extent of 5% of marks, have not been amended and, therefore even today the result at Ann.A5 is valid for the purpose of grant of promotions to the applicants. He further stated that vacancies against which promotions were sought were for earlier years and for this reason also the applicants are entitled to promotion regardless of the judgment of the Hon'ble Supreme Court relied upon by the respondents. Also, according to him, the Department has not applied its mind to the judgment and the facts of the case. Instead the Department appears to have mechanically relied upon an OM dated 22.7.1997 issued by the Department of Personnel and Training, Govt. of India, which relying upon the judgment in S.Vinod Kumar's case provides that henceforth there shall be no separate standard of evaluation for SC and ST candidates for promotions. (The said OM dated 22.7.1997 was presented before us during the hearing by the learned counsel for the respondents and a copy thereof has also been given to the learned counsel for the applicants. A copy of this OM has been taken on record and this has formed the basis of the arguments by both the learned counsel for the parties).

7. The learned counsel for the applicants also cited before us the following judgments in support of the case of the applicants.

- i) Dalip Singh and Ors. Vs. Union of India and Ors., 1981 (1) SLJ 470 delivered by the Delhi High Court on 15.10.1980.

In this judgment delivered by a Single Member Bench

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the issue was whether the circulars of the Income Tax Department relaxing standards for passing the departmental examination for promotion, by 5% in favour of the SC and ST candidates are valid. The High Court held that these circulars are valid and relaxation of standard by 5% is not inconsistent with the maintenance of efficiency of administration. According to the learned counsel for the applicants, this judgment holds sway even today as it has not been specifically reversed by a Division Bench of the High Court or by the Hon'ble Supreme Court.

ii) Y.V.Rangaiah and Ors. Vs. J.Sreenivasa Rao and Ors., 1983 SCC (L&S) 382.

In this judgment the Hon'ble Supreme Court ^{had} held that vacancies in the promotional posts occurring prior to the amendments in the rules have to be filled up in accordance with the unamended rules. Therefore, according to the learned counsel for the applicants, the applicants are entitled to promotion on the basis of passing of the departmental examination as per Ann.A5, firstly because the rules relating to promotions in the Income Tax Department have still not been amended and secondly because the vacancies in question are those which had arisen before the hon'ble Supreme Court delivered its judgment.

iii) State of Rajasthan Vs. R.Dayal and Ors., JT 1997 (3) SC 198.

In this judgment also it has been held by the Hon'ble Supreme Court that rules for promotions etc. have to be applied and given effect to as per the law existing on the date the vacancies arose. Accordingly, the applicants are entitled to promotion on the basis of passing of the departmental examination as per Ann.A5, ignoring any subsequent development such as the judgment of the Hon'ble Supreme Court in S.Vinod Kumar's case.

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iv) Charan Ram Vs. State of Rajasthan and Another, 1997 (2) WLC 379 in which, according to the learned counsel for the applicants, it was held by the Rajasthan High Court that the date of availability of vacancies was crucial for determination of applicability of the rules.

8. Summing up, the learned counsel for the applicants argued that there is no justification, whatsoever, for the respondents to ignore the position emerging from Ann.A5, being the result of the departmental examination for Income Tax Officers while granting promotion to the post of Income Tax Officer.

9. The learned counsel for the respondents read out extensively from the judgment of the Hon'ble Supreme Court in S.Vinod Kumar's case and stated that this judgment lays down the law on the question whether any concession in the matter of evaluation of standards for promotion can be granted to the reserved category candidates. Once the law has been laid down in a judgment by the Hon'ble Supreme Court that a provision for lower qualifying marks or lesser level of evaluation is not permissible by virtue of Article 335 of the Constitution, the respondents are bound to follow this judgment which is binding on them under Article 141 of the Constitution. The judgment in S.Vinod Kumar's case is not on the facts of a particular case but lays down the law on the subject and it is applicable to all the Departments of the Government. It was in pursuance of this judgment that the Department of Personnel and Training (DOP&T), Ministry of Personnel, Public Grievances and Pensions, Government of India issued the OM dated 22.7.1997. In this OM, the DOP&T have stated that it has been decided to withdraw their earlier instructions contained in their OMs dated 23.12.1970 and 21.1.1977 insofar as these provide for lower qualifying

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marks for Scheduled Caste and Scheduled Tribe candidates, in the departmental qualifying/competitive examinations for promotion. The judgment of the Hon'ble Supreme Court came to the notice of the Department late but as soon as the OM dated 22.7.1997 was received by the Department, they started acting upon it in a uniform manner. He denied that after the Department became aware of the judgment in S.Vinod Kumar's case, any discrimination was made by granting promotions to officials of non-gazetted categories, as alleged by the applicants with reference to Ann.A7. He further stated that after seeing the judgment of the Hon'ble Supreme Court and the Circulars issued by the DOP&T, the Income Tax Department had no option but to apply the ratio of the judgment in the matter of all promotions to be made thereafter. Therefore, the action of the respondents could not be assailed on the ground that there had been no application of mind. The mere fact that the rules relating to passing of the departmental examinations had not been amended could not come in the way of implementing the judgment of the Hon'ble Supreme Court, regardless of whether the vacancy related to the period prior to the date when the judgment was delivered by the Hon'ble Supreme Court. The ratio of this judgment has to be applied because it is the law of the land now. The learned counsel for the respondents referred to a judgment of the Rajasthan High Court in Dr. Kavita Jain and Ors. Vs. The University of Rajasthan and Ors. delivered on 1st October, 1997, copies of which were made available to us during the hearing. The judgment is in respect of Civil Special Appeals (Writ) Nos. 1282, 1283, 1304 etc. of 1997. This judgment is on the question whether it would be all right not to prescribe any minimum qualifying marks for the reserved category candidates in the examination for admission to the postgraduate courses. The University had fixed 50% marks for all category of

candidates. The High Court has upheld that the action of the University in fixing the minimum qualifying marks for candidates of all categories. The ratio of this judgment, according to him, would be squarely applicable to the facts of the present case.

10. By way of rejoinder to the oral arguments of the learned counsel for the respondents, the learned counsel for the applicants stated that the judgment of the Hon'ble Supreme Court would not alter the position of concession available to the SC and ST employees in all departments throughout India. Since the judgment of the Delhi High Court in Dalip Singh's case has attained finality, the position outlined therein would prevail until the rules are amended by the Income Tax Department withdrawing the concession to SC and ST candidates in the matter of passing the departmental examination for Income Tax Officers. The judgment of Rajasthan High Court in the case of Dr. Kavita Jain and Ors. is entirely on a different issue and has no applicability to the facts of the present case.

11. We have heard the learned counsel for the parties and have perused the material on record as also the judgments cited before us.

12. There is no dispute that the names of the applicants were included in the result at Ann.A5 dated 7.2.97 on the basis of their securing concessional marks in the departmental examination for Income Tax Officers. The main question now to be considered in this case is whether promotion to them can be denied on the post of Income Tax Officer in accordance with their seniority position in Ann.A5 or when their turn comes for promotion on the basis of reservation/roster point, on the ground that they have not passed the qualifying examination by securing the minimum

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qualifying marks applicable to the general category candidates. No doubt, the rules of the Income Tax Department regarding departmental examination have not yet been amended, and in its judgment in Dalip Singh's case, the Delhi High Court has upheld the rule prescribed in the Income Tax Department which provides for relaxation of marks by 5% in favour of candidates belonging to reserved categories for passing the departmental examination and has also held that such relaxation is not inconsistent with maintenance of efficiency of administration. Question, however, is whether in view of the judgment of the Hon'ble Supreme Court in the case of S.Vinod Kumar, grant of concession in favour of reserved category candidates with regard to securing the minimum prescribed marks for eligibility for promotion would be constitutionally invalid. In this judgment the Hon'ble Supreme Court had occasion to deal with the earlier Memorandum issued by the Government of India on 21.1.1977 which provided lower qualifying marks for passing the departmental qualifying/competitive examinations for Scheduled Castes and Scheduled Tribes candidates, for promotion to higher posts. The Hon'ble Supreme Court quoted extensively from its judgment in Indira Sawhney etc. Vs Union of India and Ors., 1992 (6) SLR 321 (30) and held as follows in para 9 thereof:

".....We are, therefore, of the opinion that so far as the provision for lower qualifying marks or lesser level of evaluation in the matter of promotion is concerned, it is not permissible under Article 16(4) in view of the command contained in Article 335 of the Constitution. In other words, even if it is assumed for the sake of argument that reservation is permitted by Article 16(4) in the

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matter of promotions, a provision for lower qualifying marks or lesser level of evaluation is not permissible in the matter of promotions, by virtue of Article 335. If so, there can be no question of such a provision or "concession", as it is called by the Tribunal, being saved by the declaration in para 829 of the said judgment."

13. In our view, the observations of the Hon'ble Supreme Court, as quoted above, prohibit grant of lower marks for passing the departmental examination for promotion. There can be no manner of doubt that what is stated above by the Hon'ble Supreme Court is the law laid down by it and it is binding on all the Courts and Tribunals, under Article 141 of the Constitution. Once the law has been declared as above, it has to be applied uniformly for all Departments of the Government.

14. It is true that Delhi High Court has upheld that action of the Income Tax Department in granting lower qualifying marks for passing the departmental examination but once the law has been laid down by the Hon'ble Supreme Court by its judgment in S.Vinor Kumar's case, an earlier judgment of the Delhi High Court which upholds the rules or law to the contrary can no longer be considered valid once the Hon'ble Supreme Court has delivered its judgment. Although the rule or the circular of the Income Tax Department granting concession in marks in favour of the reserved category candidates has not been specifically struck down and although the judgment itself does not deal with matters relating to the Income Tax Department, yet the rules or the circular of the Income Tax Department on this subject cannot be considered to be operative from the date on which the

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judgment has been delivered.

15. The Department of Personnel and Training has issued an OM dated 22.7.1997 withdrawing its earlier OM dated 21.1.1977 and has now laid down that concessional marks for passing departmental examinations by the reserved category candidates would not be available. The OM dated 21.1.1977 has also been referred to by the Hon'ble Supreme Court in its judgment and by implication it has declared that this circular violates the constitutional position in view of the provisions of Article 335 of the Constitution. The Department of Personnel and Training is a nodal Ministry for all Departments of the Government of India for laying down general instructions in service matters. The Income Tax Department has, therefore, to pay due regard to the instructions contained in this OM. We would, however, add that even if the DOP&T had not issued these instructions, the grant of concessional marks for passing the departmental examination would be invalid in view of the judgment of the Hon'ble Supreme Court in S. Vinod Kumar's case.

16. The judgments cited by the learned counsel for the applicants, as referred to at serial Nos. (ii), (iii) and (iv) of para 7 above, are stated to be ^{to} the effect that the law prior to its amendment has to be applied for filling up vacancies which had arisen prior to its amendment. Without going into detail as to the true import of these judgments and the law on the subject, we may state that this is not an ordinary case of amendment of the law or the rules in the context of which we could assume that vacancies existing prior to the date of amendment in the law or the rules should be filled up on the basis of the pre-amended law or the rules. This is a case where the law has been laid down by the Hon'ble Supreme Court in the light of the

constitutional position and it appears to us that virtually the grant of concession in marks for passing the departmental examination by the reserved category candidates has been declared as unconstitutional. In this view of the matter, the vacancies arising after the judgment delivered by the Hon'ble Supreme Court have to be filled up in accordance with the law laid down in this judgment. Even if Ann.A5 remains as it is, the respondents cannot be faulted for filling up vacancies after ignoring the position of those candidates who have secured place in the list at Ann.A5 on the basis of concessional marks. Ann.A5 does not enjoy a status higher than that of a panel prepared by the DFC. The Hon'ble Supreme Court has held in a catena of judgments that a person securing a place in the panel for promotions does not acquire an indefeasible right for appointment on the basis of the position in the panel. The leading case on the subject is Shankarsan Dash Vs. Union of India, 1991 SCC (L&S) 200 delivered by the Constitutional Bench of the Hon'ble Supreme Court, which has been followed in a number of other cases decided by the Hon'ble Supreme Court. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for the purpose. Of course, the State must act in good faith and must not exercise its powers malafide or in arbitrary manner. In the instant case, the Department has very good reasons for not going by the order of seniority in Ann.A5, while considering cases of candidates for promotion.

17. The respondents have denied the averments of the applicants that persons in non-gazetted positions as mentioned in Ann.A7 have been granted promotions even after the judgment of the Hon'ble Supreme Court, although they had qualified the departmental examination with concessional

marks. Ann.A7 is only a list of candidates promoted to the posts of UDC, LDC and Notice Server issued by the Income Tax Employees Federation, Rajasthan Circle, and it does not contain any other detail nor have such details been given by the applicants in the OAs. However, we agree with the respondents that even if an illegality has been committed in granting promotions, such illegality need not be perpetuated. In B.Rama Rao Vs. Government of AP and Ors. (1995) 29 ATC 106, the Hon'ble Supreme Court has held that any wrong order or a negative benefit given to an employee or non action by the employer to remedy the illegality would not be a ground to extend illegal benefit to a person similarly situated. Even assuming that some benefit has been wrongly granted to some employees, that could not be a ground for extending it to the applicants as well.

18. We accordingly hold that in view of the law laid down by the Hon'ble Supreme Court in S.Vinod Kumar's case, we cannot direct the respondents to grant promotion to the applicants in accordance with their seniority position or in accordance with reservation/roster point, on the basis of Ann.A5.

16. The OAs are dismissed. No order as to costs.

(Ratan Prakash)

Judicial Member

(O.P.Sharma)

Administrative Member