

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

....

Original Application No. 134 of 2003

Jabalpur, this the 15<sup>th</sup> day of June, 2004

HON'BLE SHRI M.P. SINGH, VICE CHAIRMAN  
HON'BLE SHRI MADAN MOHAN, MEMBER (J)

Vinod P. Sayam  
S/o Shri Pratap Singh Sayam  
R/o 72, Rachna Nagar,  
Bhopal.

...Applicant

(By Advocate: Shri A.P. Shrivastava)

-versus-

1. Union of India through  
Secretary,  
Ministry of Finance, North Block,  
New Delhi.
2. Chairman,  
Central Board of Direct Taxes,  
North Block, New Delhi.
3. Chief Commissioner of Income Tax,  
Central Revenue Building,  
Hoshangabad Road, Bhopal (MP).
4. Commissioner of Income Tax,  
Central Revenue Building,  
Hoshangabad Road, Bhopal (MP).
5. D.L. Nandurkar,  
Income Tax Officer, Raipur (CG)
6. K.C. Gadoeya,  
Income Tax Officer, Indore (MP).
7. S.K. Ramteke,  
Income Tax Officer, Bhopal (MP).
8. M.M. Naik,  
Income Tax Officer, Indore (MP).      ...Respondents

(By Advocate: Shri B.Da.Silva for official respondents  
None for private respondents).

ORDER

By Madan Mohan, Member (Judicial) -

By filing the present Original Application, the  
applicant has sought the following main reliefs:

"That the respondent may be directed to promote the  
applicant as Income Tax Officer (Group 'B') with  
retrospective effect with consequential benefits."

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2. The brief facts of the case are that the applicant is working as Income Tax Inspector since 27th October, 1990. He belongs to Scheduled Tribe category. The Chief Commissioner of Income Tax, Bhopal (respondent no. 3) circulated seniority list of Inspector of Income Tax eligible for promotion to Income Tax Officer (Group 'B'). The applicant's name appears at sl. no. 3 (A/2). This list was circulated on 5.12.2002. The Chief Commissioner of Income Tax, Bhopal vide order dated 3.2.2003 prompted 13 inspector of income tax (Group 'C') as Income Tax Officer Group 'B'. Income Tax Inspector upto sl. no. 19 have been considered. The applicant whose name appears at sl. no. 3 has not been considered. Thus more than 12 income tax inspectors junior to him have superseded him. The applicant submitted his representation to the respondent no. 3 on 13.11.2002 (A/3) and the same was rejected.

2.1. The appointment to the post of Income Tax Officer (Group 'B') is on the basis of promotion from Inspector of Income Tax. There is not appointment to the post of Income Tax Officer (Group 'B') by direct recruitment. Thus 100% posts of Income Tax Officer (Group 'B') are filled by promotion. The applicant has completed more than three years as on the date of promotion. He passed departmental examination of Income Tax Officer in the year 2001. He was thus qualified as on the date of promotion. The applicant belongs to scheduled tribe category and the Govt. of India on 8th Feb. 2002 explained the procedure to be observed by departmental promotion committees. The Govt. directed that there should be no supersession in promotion. The respondents wrongly rejected the representation of the applicant by holding that the applicant qualified the I.T.O. examination by availing a qualifying mark lower than that prescribed for general candidates thereby availing concession. According to the examination rule a candidate will be declared to have completely passed the departmental examination for ITOs if he secures 60% marks in the aggregate. A candidate will be



declared to have completely passed the departmental examination for ITOs if he secures a minimum of 50% (45% in the case of SC/ST) in each subject. The applicant submits that he received 397 marks out of 650 marks, therefore, he has secured 60% marks and did not avail any concession. According to the applicant, when suitable candidates of reserved category are not available, the post is de-recognised and allotted to general category. On the same analogy the senior most ST candidates should have been promoted even if seat belongs to general category or SC category. Thus the applicant was ignored for promotion without any basis even though the applicant satisfies all the conditions necessary for promotion. Hence, this D.A. has been filed for seeking the aforesaid relief.

3. Heard the learned counsel for the applicant and the learned counsel appearing on behalf of the official respondents. None is present on behalf of private respondents.

4. Learned counsel for the official respondents has produced one letter dated 22.01.2004 issued by the Govt. of India, Ministry of Finance, Deptt. of Revenue, Central Board of Direct Taxes addressed to the Chief Commissioner of Income Tax, Bhopal under the subject "OA No. 134/2003 - Vinod P. Sayam Vs. UOI & Ors. - clarification - regarding" in which it is clearly mentioned that Shri Vinod P. Sayam (applicant) fulfills the required two conditions i.e. (i) three years regular service in the grade of Inspector and (ii) passing of the Departmental Exam for I.T.O., for promotion to the grade of Income Tax Officer. No relaxation in qualification is involved as per the Recruitment Rules. Therefore, there appears no point in ignoring him for promotion even if there exists no reserve point because he falls at sl. no. 2 of the zone of consideration for promotion against 13 vacancies subject to the assessment of his performance and having found fit for promotion. The intention of DOP&T instructions under reference do not appear to put SC/ST candidates in the

disadvantageous position in the matter of promotion." The aforesaid clarification fully supports the claim of the applicant. In the aforesaid letter it is further mentioned that "however, in case you still feel that the O.A. should be contested further and the decision of the Hon'ble CAT in the matter should be awaited, you may do the needful at your level in consultation with the Govt. counsel."

5. We have perused the aforesaid order issued by the Govt. of India, Ministry of Finance addressed to respondent no. 3 by which claim of the applicant is accepted. In this view of the matter, we are of the considered view that this O.A. deserves to be allowed and the same is accordingly allowed. The respondents are directed to promote the applicant as Income Tax Officer (Group 'B') with retrospective effect i.e. from the date from which other 12 Inspector of Income Tax were promoted as Income Tax Officer (Group 'B') with all consequential benefits flowing from the said promotion. The above exercise will be done by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

  
(Madan Mohan)  
Member (Judicial)

  
(M.P. Singh)  
Vice Chairman

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