

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 302 of 2003

Jabalpur, this the 29th day of April, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Ms. Sadhna Srivastava, Judicial Member

Smt. Ritu Mishra,
W/o Dr. Bhaskardeo Sharma
R/o Sr. LIG 19,
Harshvardhan Nagar,
Behind Vishwa Bharati School,
Bhopal.

Applicant

(By Advocate – ~~Smt~~ S. Menon)

V E R S U S

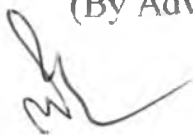
1. Union of India
Through : Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Central Board of Direct Taxes,
Department of Revenue,
Government of India,
New Delhi.

Through : Its Chairman
3. Chief Commissioner of Income Tax(CCA)
Aiyakar Bhawan, Hoshangabad Road,
Bhopal (M.P.)
4. G.K. Bansal Income Tax Officer.
5. A.S. Mehra, Income Tax Officer
6. A.K. Mudaliar Income Tax Officer
7. Arvind Naskar Income Tax Officer

Respondents 4 to 7
Through Chief Commissioner of
Income Tax(CCA), Aiyakar Bhawan
Hoshangabad Road, Bhopal(M.P.)

Respondents

(By Advocate - Shri B.da. Silva)



ORDER

By M.P. Singh, Vice Chairman -

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

I. to set aside the order of promotion dated 8.11.2001(Annexure A-3) whereby the respondents have promoted private respondents 4, 5 & 6 to the post of I.T.O.

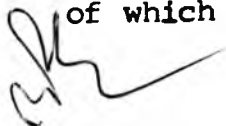
II. to set aside the order of promotion dated 3.2.2003(ANNEX.A-10) promoting the respondent No.7 to the post of I.T.O.

III. To direct the respondents to consider the applicant and grant her notional promotion as Income Tax Officer(I.T.O) with effect from 18.6.2001 in accordance with Rules, together with all other consequential and ancillary benefits."

2. The brief facts of the case are that the applicant joined the Income-tax Department as a direct recruit Inspector of Income-tax on 24.2.1995. She had appeared in the departmental examination for Income-tax Officers (Group-B) in the year 2000, the result of which was declared in March, 2001. As per the Recruitment Rules for promotion to the post of Income-tax Officer three years continuous service in the grade of Income-tax Inspector and qualification of the departmental examination for Income-tax Officers is required. The Chief Commissioner of Income-tax, Madhya Pradesh and Chhatisgarh Region convened a Departmental Promotion Committee (for short 'DPC') on 18.6.2001 to draw a panel of eligible Income-tax Inspectors for promotion to the post of Income-tax Officer. According to the applicant, she was deemed to have qualified the departmental examination for ITO in May, 2000. Hence she was eligible for promotion to the post of Income-tax Officer for the recruitment year 2001-2002. However, the respondents have ignored the claim of the applicant for promotion to the post of Income-tax Officer against the vacancies for the recruitment year 2001-2002

on the ground that she was not eligible. In the meantime three of her juniors, namely, Shri G.K.Bansal, A.S.Mehra and A.K.Mudaliar were promoted as Income-tax Officers. For the recruitment year 2002-2003, 13 posts of Income-tax Officers were available. These vacancies were treated as 10 unreserved and 3 reserved points. A perusal of the seniority list of qualified Inspectors of Income-tax (Annexure-A-6) will show that the name of the applicant figures at serial no.16 in the said list, while being at no.3 in the general/unreserved category. The names of S/Shri G.S.Raghav, D.L.Nandurkar, D.K.Guntiwar and S.S.Puruswar also figured in the said list, although they had qualified the departmental examination 2001 for Income-tax Officers, held in January 2002 and the results of which were declared in July 2002. Thus, as on 1.1.2002 these officers were not eligible for consideration for promotion to the post of Income-tax Officer for recruitment year 2002-2003. According to the applicant, the Central Board of Direct Taxes (herein after referred to as 'the Board') had issued a clarification vide letter dated 12.9.2002 (Annexure-A-7) whereby the cut off date prescribed by the DOPT was relaxed/modified for eligibility for promotion to the post of Income-tax Officer for recruitment year 2002-2003. She had submitted number of representations, and those representations have been rejected. Vide order dated 3.2.2003 the respondents had promoted 13 Inspector of Income-tax, (out of which only 1 was of unreserved category, namely, Shri G.S.Raghav) to the post of Income-tax Officer. Since the applicant was not promoted to the grade of Income-tax Officer, in the year 2002-2003, she has filed this Original Application.

3. The respondents in their reply have stated that the applicant has qualified the departmental examination for Incometax Officer (Group-B) held in the year 2000, the result of which was declared in March 2001. A DPC for promotion to




the cadre of Income-tax Officer (Group-B) in Madhya Pradesh and Chhatisgarh for vacancy year 2000-2001 and 2001-2002 was conducted on 18.6.2001 and a review DFC was held on 10.12.2001 for reviewing the proceedings of the DFC held on 18.6.2001. The applicant was not considered as she was not eligible for promotion to the post of Income-tax Officer. As per the DOPT's OM dated 8.9.1998 for the vacancy year 1999-2000 and subsequent years, 1st January preceding the vacancy year was prescribed as the crucial date for determining eligibility of officials for promotion. Later, Government of India vide OM dated 17.9.1998 reiterated that the crucial date for the purpose of eligibility of the officers would be January 1st preceding the vacancy year irrespective of whether the ACRs are written financial year wise or calendar year wise i.e. for the vacancy year 2000-2001 (1.4.2000 to 31.3.2001) the cut off date was 1.1.2000 and for the vacancy year 2001-2002 (1.4.2001 to 31.3.2002) the cut off date was 1.1.2001. The respondents have further stated that the applicant qualified the Departmental Examination for Income-tax Officer (Group-B) held in the year 2000, the result of which was declared in March, 2001. Since the crucial date for determination of eligibility as on 1.1.2000 and also as on 1.1.2001, she had not qualified the departmental examination for ITOs, she had not become eligible for promotion to the post of Income-tax Officer against the vacancies for the years 2000-2001 and 2001-2002. S/Shri G.K.Bansal, A.S.Mehra and A.K.Mudaliar (private-respondents 4 to 6) though they were junior to the applicant, were promoted pursuant to the recommendations of the DFC which met on 18.6.2001, as they were eligible as on 1.1.2001 having qualified the departmental examination results of which were declared in 1996, 1992 and 1998 respectively. The respondents have further stated that for the vacancy year 2002-2003, the Central Board of Direct Taxes, New Delhi vide their OM dated 12.9.2002 issued a clarification, the operative portion of which

is as follows :-

"Matter has been carefully considered in the Board and it has been decided that the persons who qualified the Departmental Examination, 2001 irrespective of the date of actual conduct of examination may be treated as eligible for promotion during the recruitment year 2002-03".

The DPC is bound to follow the instructions issued by the Board from time to time. Therefore, the above mentioned guidelines issues by the Board were followed while deciding the eligibility of officers for promotion to various cadres for the vacancy year 2002-03.

3.1 The respondents have further stated that in view of the instructions issued by the DOPT vide their OM dated 11.7.2002 regarding "treatment of SC/ST candidates promoted on their own merit, in the reservation roster" it was decided by the DPC that those reserved candidates who have passed the qualifying examination without any relaxation of marks will be eligible for promotion to the post of ITO according to their seniority and they will not be adjusted against the roster points. It means that they will be promoted against the unreserved points in the roster. For the vacancy year 2002-2003, there were total 13 vacancies, out of which 10 were unreserved, and 3 were reserved for SC candidates. As per the recommendations of the DPC dated 21.1.2003 held for the vacancy year 2002-2003, S/Shri G.S.Raghav, N.S.Gajbhiye, R.N.R.Bharti, Ajay Kumar Virah, Rajkishore Garhwal, Rakesh Kumar, John Bosco Minz, D.L.Nandurkar, K.C.Gadoeya, S.K.Ramteke, M.M.Naike, M.K.Patley and Arvind Naskar were promoted. Shri G.S.Raghav (UR) qualified the Departmental Examination, 2001 and accordingly in view of the Board's OM dated 12.9.2002 was eligible for promotion during the recruitment year 2002-2003. Shri G.S.Raghav was senior to the applicant. S/Shri N.S.Gajbhiye, M.K.Patley and Arvind Naskar were promoted against the roster point available for SC candidates. Shri Arvind Naskar, though junior to the applicant was promoted against the SC point available. The remaining

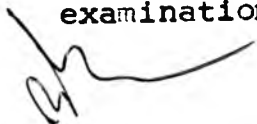


officials belonged to the reserved category SC/ST and were all senior to the applicant, and in view of the instructions issued by the DOPT dated 11.7.2002 they were promoted against the unreserved vacancies as no qualified unreserved official except Shri G.S.Raghav was senior to them.

3.2 The respondents have further submitted that the applicant had submitted a representation on 20.11.2001 against denial of promotion, which was rejected vide order dated 21.1.2002. She had submitted further representations, which were also rejected. In view of the aforesaid submissions the respondents have submitted that the promotions made to the post of ITO(Group-B) for the vacancy years 2000-01, 2001-02 and 2002-03 were legal, proper, justified and based on the relevant rules, instructions and circulars. Therefore, this petition is devoid of merits and deserves to be rejected.

4. Heard the learned counsel of both the parties.

5. The learned counsel for the applicant has submitted that the applicant has appeared in the ^{Departmental} examination held in the year 2000, the result of which was declared in March, 2001. Thus, there was a long delay in declaring the result, for which the applicant is not at fault. Since the applicant had appeared in the examination held in the year 2000, she should have been considered eligible as on 1.1.2001 for the vacancy year 2001-2002. She has also submitted that the respondents are discriminating the applicant. She has submitted that in the case of the applicant the respondents have taken the date of the declaration of the result for the purpose of determining the eligibility of the applicant. Although the applicant had appeared in the examination held in 2000 but she was not considered eligible as on 1.1.2001 because the result of the said examination was declared in March 2001 but in the case of ^{namely, Rajesh Kumar Jha, C.M. Wate and S.C. Gupta} other candidates/ they had appeared in the departmental examination held in November, 2002, the result of which was



declared in July, 2003. Thus, as on 1.1.2003, the crucial date for determining the eligibility of Income-tax Inspectors for promotion to the post of ITO, as per DOPT's OM dated 17.9.98 and 8.9.1998 they had not qualified for the departmental examination for ITOs and thus they could not be eligible for promotion to the post of ITO for the year 2003-2004. They were to be given the similar promotion and interpretation as was extended in the case of the applicant. This having not been done, substantial prejudice and injury has been caused to the applicant.

5.1 The main contention of the learned counsel for the applicant is that the applicant has appeared in the departmental examination for the year 2000, held in May 2000 and the result of which having been declared after/considerable long delay in March, 2001. She was not considered for promotion as ITO as she was not considered eligible as on crucial date of eligibility i.e. 1st January, 2001 in terms of the DOPT's letters dated 17.9.1998 and 8.9.1998. The applicant has submitted a representation dated 20.11.2001 which was rejected by the respondents vide letter dated 21.1.2002. For the recruitment year 2002-2003 the Board vide their letter dated 12.9.2002 dispensed with the cut-off date condition for determining the eligibility of Income-tax Inspectors for promotion to the post of ITO on the ground that there was a delay in conducting the examination. Accordingly, the name of the applicant was placed at serial no.16 in the tentative seniority list of eligible Income-tax Inspectors for promotion to the post of ITO, circulated vide letter dated 23.10.2002. Further, an order of promotion dated 28.11.2003 has been issued which includes the names of S^r Shri Rajesh Jha, C.M. Wate and S.C. Gupta. In their case also they had appeared in the departmental examination held in November, 2002, the result of which was declared in July 2003. Thus, as on 1.1.2003 i.e. the crucial date for determining the eligibility of Income-tax Inspectors for promotion to the post of ITO, as per DOPT's

instructions dated 17.9.1998 and 8.9.1998 they had not qualified the departmental examination for ITOs and thus they were not eligible for promotion against the vacancies for the year 2003-2004. Further, in their case also no relaxation has been issued by the Board. The relaxation issued by the Board vide their letter dated 12.9.2002 was effective for that particular year itself and not to be applied progressively. She has further contended that her case is the same as the case of above mentioned three persons promoted vide order dated 28.11.2003 since she had appeared in the departmental examination for the year 2000 and the result of which was declared in 2001. In their case also the examination was held in the year 2002 and the results were declared in 2003. Thus, in both the cases as on the crucial date the candidates had not qualified the departmental examination. But while promotion was granted to the above mentioned three officials, the applicant was overlooked against all rules of natural justice. Thus, in view of these facts, she has been discriminated against similarly placed Incometax Inspectors.

6. On the other hand, the learned counsel for the respondents has stated that though the name of the applicant was not circulated along with the list of eligible candidates for the vacancy year 2000-2001 and 2001-2002, the then CCIT opined that for the vacancy year 2001-2002 the name of those candidates who were successful in the ITO examination 2000 should also be considered. Therefore, the name of the applicant and 7 others who had qualified in the examination held in 2000, for which the result was declared in March, 2001 were also included in the zone of consideration. However, in view of the decision dated 7.8.2001 of the Hon'ble High Court of Andhra Pradesh in the case of S.A. Fazulillah Vs. CBDT & another, W.P.No. 15705 of 2001, the CCIT reconsidered the matter and it was decided to follow the rules that were in force w.e.f. 1.1.1999. Thus, the proceedings of the DPC dated 18.6.2001 was reviewed



by the DPC which met on 10.12.2001 and the name of the applicant and 7 others who had qualified the ITO examination, 2000 (result declared in March, 2001) was excluded from the panel as they were not eligible for consideration as on 1.1.2001.

6.1 It is further stated by the learned counsel for the respondents that in the DPC held in November, 2003, the Chief Commissioner of Income-tax, Bhopal took into consideration a letter of the Addl. DTTE (Exam) New Delhi dated 18.11.1996, issued before the OM dated 8.9.1998, prescribing the crucial cut off date and was of the view that those who have qualified the examination as on the date of DPC should be considered in the DPC. Accordingly, C.M. Wate, Rajesh Kumar Jha and S.C. Gupta, who were included in the panel, were declared ~~unfit~~ fit and promoted. Shri M.L. Thombre, a similarly placed candidate had submitted a representation regarding his non-consideration on similar grounds in the vacancy year 2001-2002. The representation has been forwarded to the Board vide letter dated 10.11.2004 for clarification and their reply is awaited. A decision on the matter can be taken only on receipt of the clarification. The learned counsel has further contended that from the date of introduction of the crucial cut off date w.e.f. 1.1.1999, it was strictly followed till the vacancy year 2002-2003 when the CBDT as a special case in view of the late conduct of examination granted exemption. The exemption granted for the year 2003-2004 is a matter of dispute. The matter has been referred to the Board and their reply is awaited.

7. We have given very careful consideration to the rival contentions. The undisputed facts of the case are that the applicant had appeared in the departmental examination, 2000 for promotion to the post of ITO which was held in May, 2000 and the result of which was declared in March, 2001. As per the instructions issued by the DOPT vide their OM dated 17.9.1998 the crucial date for the purpose of eligibility of the officers would be January 1st preceding the vacancy year irrespective of whether ACRs are written financial yearwise or calendar year wise i.e. for the vacancy year 2000-2001 (1.4.2000 to 31.3.2001) the cut off date



was 1.1.2000 and for the vacancy year 2001-2002 (1.4.2001 to 31.3.2002) the cut off date was 1.1.2001. Since the applicant qualified the departmental examination held in the year 2000, the result of which was declared in March 2001, she had not become eligible for promotion to the post of ITO for the vacancy year 2000-2001 (the cut off date for eligibility was 1.1.2000) and 2001-2002 (the cut off date for eligibility was 1.1.2001). In fact her name was initially included by the DPC, however, the same was excluded by the review DPC which met on 10.12.2001 in terms of the orders passed by the Hon'ble Andhra Pradesh High Court in the case of S.A.Fazulullah(supra).

7.1 As regards the vacancy year 2002-2003, there were 13 vacancies - 10 for unreserved candidates and 3 for SC candidates. In view of the clarification given by the DOPT dated 11.7.2002, 9 unreserved posts have been filled up by appointment of reserved category candidates as they had passed the departmental examination as a general candidate and they were eligible for consideration in their own seniority for general vacancies. However, we find that in the said selection also certain candidates were selected who had qualified the departmental examination of 2001, the results of which were declared in 2002.

7.2 With regard to the vacancy year 2003-2004, we find that the applicant has been considered in this year and promoted vide order dated 28.11.2003 (Annexure-A-17). However, the respondents have also promoted certain other Income-tax Inspectors who had passed the departmental examination, 2002 and the result of which was declared in 2003. Thus they were not eligible for consideration on the crucial date of eligibility i.e. on 1.1.2003.

7.3 Thus, we find that the department has followed the instructions issued by the DOPT dated 17.9.1998 with regard to the determination of crucial date of eligibility for the vacancy years 2000-2001 and 2001-2002 and thus the name of the applicant could not be considered for the vacancy years

