

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 488/03

Jabalpur, this the 16th day of December, 2004

CO R A M

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Vinod P. Shyam
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. Commissioner of Income Tax
Central Revenue Bldg.
Hoshangabad Road
Bhopal.
3. Director of Income Tax (Examination)
Jhandewalan Extension, A.R.A. Centre
New Delhi.

Respondents.

(By advocate Shri B. Dasilva)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the apphcant has sought the following reliefs:

- (i) Direct the respondents to declare the applicant as successful in view of OM dated 20.3.01 (Annexure A4).
- (ii) To quash the order dated 19.6.03 (Annexure A9).



- (iii) To hold that the OM dated 3.10.2000 became operative w.e.f. 22.7.97.
- (iv) To hold that the OM dated 20.3.2001 would be operative w.e.f. 22.7.97.

2. The brief facts of the case are that the applicant is working as Income Tax Inspector since 27th October 1990. He belongs to SC category. The applicant appeared in a departmental examination for Income Tax Officer, Group 'B' in 1999. As per rule, a general candidate was required to secure 50% marks in each paper and 60% marks in aggregate. The applicant being SC candidate was required to secure 45% marks in each subject and 55% in aggregate. He got 45% marks in all papers and more than 55% in aggregate. However, he was not declared successful in view of directions issued in para 4 of OM dated 22.7.97 (Annexure A2). Vide OM dated 3.10.2000 (Annexure A3), the Govt. of India restored the relaxations by way of lesser standards of evaluation that existed prior to 22.7.97. In other words, the OM dated 3.10.2000 negated the effect of OM dated 22.7.97 (A-2). The Union of India further directed vide para 2 of OM dated 28.3.01 (Annexure A4) that where the result has been declared, the result may be reviewed. The applicant made representations (Annexure A5 & A6) which are not yet decided. Therefore, he filed OA No.175/03 and vide order dated 28.3.03 the Tribunal directed the respondents to dispose of the claim of the applicant regarding declaration of result by speaking a reasoned order. Accordingly the applicant made a representation to respondent No.5 on 2.4.02 but the respondents by wrongly interpreting departmental rule and circular dated 3.4.2000 summarily rejected the representation. The respondents did not pass any speaking or reasoned order. Hence this OA is filed.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that the applicant had joined as Income Tax Inspector on 27th October 1990. He appeared in the departmental examination in which he secured more than the required marks of 45%. The Union of India reviewed the matter consequent to which proviso to article 335 has been



incorporated in the Constitution by the Constitution 82nd Amendment Act 2000. Consequent to this amendment, the Union of India by OM dated 3.10.2000 restored the relaxations by way of lesser standards of evaluation that existed prior to 22.7.97. In other words, OM dated 3.10.2000 negated the effect of OM dated 22.7.97. Learned counsel for the applicant has drawn our attention to OM dated 3rd Oct.2000 by which restrictions in earlier OM dated 22.7.97 had been withdrawn and also drawn our attention to Annexure A4 in which it is mentioned that it has also been decided that where results have been declared after the issue of the OM dated 3.10.2000, the results may be reviewed. The respondents have ignored the rightful claim of the applicant. Hence their action is legal and justified.

3. In reply, the learned counsel for the respondents argued that prior to 22.7.97, the SC/ST candidates were enjoying the benefit of the relaxations by way of a lesser standards of valuation in the departmental exams. The said benefit was withdrawn vide DoPT's OM dated 22.7.97 Later vide DoPT's OM dated 3.10.2000 the said benefit was restored and further vide CBDT's letter dated 20.3.2001 it was decided to review the results. Both the OM dated 3.10.2000 and the letter dated 20.3.2001 contain some specific clause. The last sentence of Para 3 of the OM dated 3.10.2000 specifies ... "the effect of these instructions would be that the DoPT OM dated 22.7.97 becomes inoperative from the date of issue of this OM", whereas the second Para of the letter dated 20.3.2001 specifies ... "it has been also decided that where results have been declared after the issue of the OM dated 3.10.2000, the results may be reviewed". As such, results declared prior to 3.10.2000 could not be reviewed and the benefit of OM dated 3.10.2000 cannot be given to the applicant in respect of relaxation of marks because in his case the result of ITO(Gr.B) Exam was declared prior to this date. In other words, the benefit of 5% relaxation in marks in respect of SC/ST candidates cannot be given for the examination held in the year 1997, 1998 and 1999. The applicant had failed to secure the requisite 50% marks in the written examination. As the examination



pertained to the year 1999, the gross marks available to reserved category candidates could not be extended in the case of the applicant and therefore, he was found unsuccessful for promotion to ITO Gr.B. Representations of the applicant were duly considered and rejected by the authorities in accordance with law.

4. After hearing the learned counsel for the parties and careful perusal of the records, we find that the applicant appeared in the departmental examination for Income Tax Officer Group 'B' held in the year 1999 and he secured 45% marks while according to the applicant as he belongs to SC category, he was expected to secure 45% marks only and he should have been given the benefit of the OM dated 3.10.2000 (Annexure A3). The earlier OM dated 22.7.97 was withdrawn and subsequently another letter dated 20.3.2001 was issued in which it was mentioned that where the results have been declared after the issue of the OM dated 3.10.2000, the results may be reviewed. We have perused the OM dated 3.10.2000. Paras 3 & 4 of the said OM are reproduced below:

"3. In pursuance of the enabling proviso of Article 335 of the Constitution, it has now been decided to restore, with immediate effect, the relaxations/concessions in matters of promotion for candidates belonging to SCs/STs by way of lower qualifying marks, lesser standards of evaluation that existed prior to 22.7.97 and as contained in the instructions issued by the Department of Personnel and Training from time to time including OM No.8/12/69 Estt(SCT) dated 23.12.1970, No.36021/10/76-Estt.(SCT) dated 21.1.1977 and Para 6.3.2 of the DPC guidelines contained in Department of Personnel and Training's OM No.22011/5/86-Estt.(D) dated 10.4.89. In other words, the effect of these instructions would be that the Department of Personnel and Training's OM No.36012/23/96-Estt.(Res) dated 22nd July, 1997 becomes inoperative from the date of issue of this OM.

4. These orders shall take effect in respect of selections to be made on or after the date of issue of this OM and selections finalized earlier shall not be disturbed."

5. Hence it is clear that the OM dated 3.10.2000 becomes operative from the date of issue and does not have retrospective effect. We have also perused the letter dated 20.3.2001 (Annexure A4) in which it is

clearly mentioned that where the results have been declared after the issue of the OM dated 3.10.2000, the results may be reviewed while the result of the applicant was declared in the year 1999. Hence the applicant is not entitled for the reliefs claimed .

6. Considering all the facts and circumstances of the case, we find that the OA has no merit. Accordingly, the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

aa.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि आग्रे भिल:-

- (1) सचिव, उच्च न्यायालय का : एग्रेसिवेशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/श्री.....के काउंसल
- (3) प्रत्यर्पी श्री/श्रीमती/श्री.....के काउंसल
- (4) वंशपत्त, केप्राडा, जयपुर काउंसिल

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

D.P. Shrivastava Bar. 2008

B.D. Singh Bar. 2008

Issued
On 17.12.04
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