

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET


ORDERS OF THE TRIBUNAL


25.03.2009

OA No. 297/2006

Mr. Amit Mathur, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents nos. 1 & 2.
Mr. P.V. Calla, Counsel for respondents nos. 3 to 5.

Heard learned counsel for the parties. For the reasons dictated separately, the OA is disposed of.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 25th day of March, 2009

ORIGINAL APPLICATION NO. 297/2006

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Hanuman Sahai Yadav son of Late Shri G.R. Yadav, aged about 42 years, resident of 17 IT Colony, South West Block, Alwar. Presently working as Inspector at Alwar.

.....APPLICANT

(By Advocate: Mr. Amit Mahtur)

VERSUS

1. Union of India through the Secretary Finance, Department of Revenue, North Block, New Delhi.
2. The Chief Commissioner of Income Tax (Cadre Controlling Authority), Income Tax Department, Statue Circle, Jaipur.

.....RESPONDENTS

(By Advocate : Mr. Gaurav Jain (Respondents nos. 1 & 2)
Mr. P.V. Calla (Respondents nos. 3 to 5)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (a) The original application preferred by the applicant may kindly be allowed and respondents may be directed to hold the DPC for promotion to the post of Income Tax officer, only after conducting the departmental examination and including the successful candidates in the zone of consideration.
- (b) By way of an appropriate order the respondents may be directed to not to convene the meeting of DPC for promotion on the post of Income Tax Officer without affording the opportunity the applicant to pass out the remaining papers in the departmental examination.
- (c) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

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- (d) Cost of the original application be awarded in favour of the humble applicant."

2. Briefly stated, facts of the case are that vide Annexure A/1, departmental examination for the post of Income Tax Officer was scheduled to be held w.e.f. 11.09.2006 to 25.09.2006. The main grievance of the applicant is that without holding the examination and declaration of the result, it was not legally permissible for the respondents to hold the DPC for the post of Income Tax Officer and he has apprehension that the respondents will soon hold the DPC for the said post(s). The further grievance of the applicant is that as per amended rules, promotion has to be made from the feeder category of Inspector with three years regular service in the grade and who have qualified the Inspector Examination for Income Tax Officer. It was further stated that the department has not conducted any departmental examination for the post of Income Tax officer w.e.f. 2003 onwards.

3. When the matter was listed on 09.08.2006, this Tribunal restrained the respondents to hold the DPC for the post of Income Tax Officer on the basis of the decision rendered by the Allahabad Bench of the Tribunal in OA No. 936/2005 decided on 13.09.2005 whereby the OA was allowed and the respondents were restrained from holding any DPC for the post of Income Tax Officer without conducting necessary departmental examination for promotion to the post of Income Tax Officer. It was further held that DPC can be held after the result of the said examination and those who qualified in that examination are also eligible for promotion. Thereafter, interim stay was continued from time to time. However, the same was vacated by this Tribunal vide order dated 01.12.2006. However, the interest of the applicant was protected by making the following observations:-

".....Thus in order to do justice between the parties, we are of the view that the order dated 09.08.2006 which was made absolute on 28.08.2006 is required to be modified to the extent that official respondents will be at liberty to hold DPC for the post of Income Tax Officer thereby keeping one post vacant for the applicant. It is made clear that the promotion to be made to the post of Income Tax officer shall be subject to the decision of this OA. It is further made clear that in case the applicant qualifies all the remaining five papers pursuant to the examination held in the month of October, 2006, he shall be assigned due seniority as per rules and the fact that he

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has qualified the examination at a later stage shall not come in the way of the applicant in case the present OA is decided in his favour....."

4. Notice of this application was given to the respondents. The respondents have filed their reply thereby opposing the claim of the applicant. The main stand taken by the respondents was that unless the examination is not qualified, the promotion cannot be made. Since the applicant now qualified the examination for the aforesaid post, he has been promoted to the said post.

5. We have heard the learned counsel for the parties and have gone through the material placed on record.

6. Learned counsel for the applicant submits that in view of the changed circumstances, he is not pressing the points which he has taken in the OA and he is confining his arguments on the basis of the order passed by this Tribunal on dated 01.12.2006 whereby the interest of the applicant was protected. In other words, learned counsel for the applicant submits that in the earlier DPC conducted in the month of December, 2006, 33 candidates were promoted and one post was kept vacant for the applicant, as directed by this Tribunal, relevant portion has been reproduced above. Subsequently the applicant has qualified the examination for promotional post, he should be granted notional promotion pursuant to DPC conducted in the month of December, 2006, below 33 candidates against one vacant post.


7. Learned counsel for the official respondents submits that such a relief cannot be granted to the applicant as it will be against the principles of natural justice to give seniority from back date when he was not eligible for promotion. According to the respondents, the examination for the post of Income Tax Officer was held on All India basis, as such he cannot be granted that seniority on the basis of his qualifying the examination subsequently. Learned counsel for the respondents has further argued that even the applicant cannot draw any assistance from the interim order passed by this Tribunal in as much as condition precedent for granting the relief was in case the OA is decided in favour of the applicant. In other


words, the challenge in the OA was regarding holding of DPC in the year 2006, before the conduct and declaration of result of departmental examination scheduled to be held w.e.f. 11.09.2006 to 25.09.2006 which point the applicant is not pressing now. Thus this case has not been decided on merit.

8. Learned counsel for private respondents submits that some of the persons have already retired before conducting the DPC in the month of December, 2006 and as such they could not be given promotion and as such their interest may be protected. Suffice it to say that case of the private respondents cannot be decided in the OA, which has been frilled by the applicant on different grounds. In any case, if private respondents have any grievance, the only remedy for such persons is either to approach the department or to file substantive OA. As such, contention raised by the learned counsel for the respondents is rejected.

9. Since the only issue which survives now is regarding grant of seniority pursuant to interim order passed by this Tribunal whereby the interest of the applicant was protected in the aforesaid term, we are of the view that we do not express any opinion at this stage and we left it open for the official respondents to decide this issue and for that purpose, it will be open for the applicant to make fresh representation. In case such representation is made within a period of one month from today, the respondents will consider the same in accordance with rules.

10. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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