

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 19th day of May, 2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 358/2007

Jagdish Prasad Raiger son of Shri Laxman Ram, aged about 40 years, at present working as Inspector, Income Tax, Office of Income Tax Commissioner-II, Jaipur.

.....Applicant

(By Advocate: Mr. S.S. Ola proxy counsel for Mr. P.V. Calla)

VERSUS

1. Union of India through Secretary Finance, Department of Revenue, North Block, New Delhi.
2. The Chief Commissioner of Income Tax (CCIT) (Cadre Controlling Authority), New Central Revenue Building, Statue Building, Jaipur.
3. The Commissioner, Income Tax, Jaipur -II, Jaipur.

.....Respondents

(By Advocate: Mr. Gaurav Jain)

2. ORIGINAL APPLICATION NO. 359/2007

Ramkesh Meena son of Shri Sarwan Lal Meena, aged about 34 years, at present working as Inspector, Income Tax, Office of ITO, Ward No.1, Sawaimadhopur, resident of C/O Shri Sita Ram Gautam, Raj Nagar, Sawaimadhopur.

.....Applicant

(By Advocate: Mr. S.S. Ola proxy counsel for Mr. P.V. Calla)

VERSUS

1. Union of India through Secretary Finance, Department of Revenue, North Block, New Delhi.
2. The Chief Commissioner of Income Tax (CCIT) (Cadre Controlling Authority), New Central Revenue Building, Statue Building, Jaipur.
3. The Commissioner, Income Tax, Jaipur -II, Jaipur.

4. Shri Namo Narain Meena, Inspector, Income Tax, Office of Additional Commissioner, Range-I, Kota.

.....Respondents

(By Advocate: Mr. Gaurav Jain)

3. ORIGINAL APPLICATION NO. 360/2007

Maliram Khanagwal son of Shri Nathu Lai, aged about 40 years, office Superintendent, Office of CIT (DR), Income Tax, Jaipur. Resident of Plot No. 8, Madrampura, Civil Lines, Jaipur.

.....Applicant

(By Advocate: Mr. S.S. Oia proxy counsel for Mr. P.V. Calla)

VERSUS

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

.....Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

As the common question of law & facts are involved in these aforesaid OA, these are disposed of by a common order. The fact of OA No. 358/2007 has been taken as a lead case.

2. The controversy in the aforesaid OA is with regard to letter No. CC/JPR/Admin./Sen.-List/2007-08/564 dated 27.09.2007 wherein various seniority lists have been revised whereby the position of the applicant in the cadre of Senior Tax Assistant as on 01.01.2004 has been lower down and his name from the seniority list of Inspector issued as on 01.01.2007 has been deleted.

3. The respondents have filed reply to the OA. In their reply, they have submitted that the controversy involved in the present case is fully covered by the judgment rendered by the Principal Bench of the Tribunal in the case of **Dhiraj Negi & Others vs. Union of India & Others** [OA No. 1972/2002 decided on 03.10.2003]. (Annexure R/3).

4. We have thoroughly examined the case of the applicant and after carefully scanning the judgment rendered by the Principal Bench of the Tribunal in OA No. 1972/2002 decided on 03.10.2003, whether the ratio decided by the Principal Bench is applicable to the present OA or not, first of all we have to examine the relief claimed by the applicant in this OA, which is reproduced as under:-

"(i) the revised seniority list of Senior Tax Assistant showing position as on 1.1.2004 (Annexure A/1) may kindly be quashed and set aside qua the applicant. Further respondents may be directed to maintain the name of the applicant in the seniority list of Inspector issued showing position as on 1.1.2007 (i.e. Annexure A/8) may kindly be ordered. Further the respondents may be directed not to pass any order prejudicial to the applicant and even if any order is issued during the pendency of this Original Application, the same may kindly be quashed and set aside.
(ii) the Original Application may kindly be allowed with costs.
(iii) Any other relief to which the applicant is found entitled in the facts and circumstances of the present case, may also be granted in favour of the applicant."

5. Brief facts of the case are that the applicant was promoted on the post of Senior Tax Assistant with the condition that he will be liable to be reverted in case his performance during the next two years period is not found to be satisfactory. A seniority list of Senior Tax Assistant showing position as on 01.01.2006 was issued wherein the



name of the applicant finds place at sr. no. 111. In the said seniority list at sr. nos. 122, 124, 125 and 126, names of S/Shri Hansraj Singhal, Bhaskar Paliwal, NaveenSalvi and Avinash Paliwal are shown. The above officers were directly recruited as UDC but they cleared the departmental examination later to the applicant. This is why the names of the above officers are shown below the name of the applicant in the seniority list of Senior Tax Assistant. The grievance arose when the official respondents revised various seniority lists including the seniority list of Senior Tax Assistants as on 01.01.2004 and seniority list of Inspector as on 01.01.2007. While issuing revised seniority list of Senior Tax Assistant as on 01.01.2004, the name of the applicant has been shown at sr. no. 221 instead of 213. On 27.09.2007, the Department held a Review DPC and while considering the promotion already made has been reviewed and those direct recruitment UDC, who qualified the departmental examination at later stage has been held eligible without passing departmental examination and promoted them with retrospective effect from Senior Tax Assistant and consequently the seniority position of the applicant has either pushed down or deleted.

5. The applicant was not promoted to the post of Senior Tax Assistant but subsequently he was promoted on the post of Inspector. The applicant submitted that he being an Inspector appeared in the examination for promotion to the post of Income Tax Officer and in case at this stage, he is reverted from the post of Inspector, his right of consideration to the post of Income Tax officer will be seriously jeopardized and such reversion order cannot be passed without

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affording opportunity of hearing. Therefore being aggrieved from the action of the respondents, the applicant preferred this OA.

6. Learned counsel for the submitted that as a result of restructuring of the Income Tax Department in the year 2001, a new post of Senior Tax Assistant was created by merging the cadre of Tax Assistant/ Assistant / Head Clerk. The post of Sr. Tax Assistant was created as a result of restructuring only and the posts of Tax Assistant, Head Clerk, UC, Data Entry Operator were abolished.

7. The Central Board of Direct Taxes vide their letter dated 04.06.2001 and 19.07.2001 issued necessary instructions/recruitment rules with regard to filling up the posts of Senior Tax Assistant separately for the recruitment year 2001-2001 and 2001002 vide Annexures R/1 and R/2 respectively.

8. The recruitment rules for the recruitment year 2001-02 are different from the recruitment rules for the recruitment year 2001-02 in as much as one time relaxation was granted regarding the mandatory condition of qualifying of Departmental examination for ministerial staff for promotion to the post of Senior Tax Assistant as per the scheme of Rules, the post of UDC is a feeder post with regard to promotion to the cadre of Sr. Tax Assistant.

9. The DPC which met on 20.06.2001 to consider the cases for promotion to the cadre of Senior Tax Assistant interpreted the aforesaid recruitment rules to mean that pre-restructuring UDCs who had qualified ministerial staff examination with minimum three years

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service in the grade of UDC were to be considered. Accordingly, only those UDCs who had completed three years service in the grade and had also qualified the ministerial staff examination were considered by the DPC and on the recommendation of the DPC they were promoted as Senior Tax Assistant and even further promotion to the cadre of office Superintendent and Inspector had been granted to these officials.

10. As per clarification issued by the Board vide letter dated 07.09.2007, there was no mandatory condition with regard to qualifying the ministerial staff examination for promotion to the cadre of Senior Tax Assistant for the recruitment year 2000-01. The Board also informed that the issue had already been decided by the Hon'ble CAT, Principal Bench, Delhi in OA No. 1972/2002 in the case of Shri Dhiraj Negi & Others vs. Union of India & Others vide judgment dated 03.10.2003. According to the order of the Hon'ble Tribunal, ex-post facto sanction of the President had been accorded vide office Memorandum dated 22.11.2002 to relax the condition for promotion to the cadre of Senior Tax Assistant.

11. In view of the compliance of the Board's clarification and also in compliance of the Hon'ble Tribunal's direction, it was necessary to review the cases of those UDCs who had not qualified the departmental examination and had not been considered for promotion to the post of Sr. Tax Assistant by the original DPC held on 20.06.2001 as they were found fit for promotion to the cadre of Sr. Tax Assistant and their names were inserted at appropriate place according to their seniority in the cadre of UDC.

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12. As a result of review DPC to the cadre of Sr. Tax Assistant, the position of the various persons including the position of the applicant changed. Some of the officials who were now considered by the Review DPC held on 29.07.2007 for promotion to the cadre of Sr. Tax Assistant on account of the correct interpretation of the recruitment rules for the recruitment rules 2000-2001 became senior to the applicant.

13. In the light of the submissions made on behalf of the applicant as well as the respondents, we have perused the order of the CAT Principal Bench in the case of **Dhiraj Negi & Others vs. Union of India & Others** [OA No. 1972/2002 decided on 03.10.2003]. Applicants through this OA have challenged the respondents order dated 19.07.2002 whereby revised eligibility condition in respect of Data Entry Operators have been issued deleting the requirement of passing the departmental ministerial staff examination. Respondents' order dated 31.12.2001 was also assailed. The same challenge is to the requirement of passing the departmental ministerial staff examination as in the present OA. After thoroughly examining the submissions of the respective parties and notification issued on relaxation, this Tribunal observed that the power of relaxation vests with the Government to relax any of the requirement of the Rules. As per rules, passing of departmental examination is a condition which can be relaxed. The decision of the President under proviso to Article 309 of the Constitution of India, the ex-post facto sanction in terms of instructions dated 04.06.2001 and 19.07.2001 had been accorded which has an implication of doing away with the recruitment of passing



ministerial examination. As this is one time for the vacancies of 2000-2001 in absence of any challenge to instructions dated 4.6.2001 shall remain unaltered in notification dated 19.07.2001. The aforesaid ex-post facto sanction as a relaxation would not amount to amendment of the recruitment rules. Having considered the ratio decided by the Hon'ble Supreme Court in the case of **P.U. Joshi & Others vs. The Accountant General, Ahmedabad**, 2003(1) SCSLJ 237, the Principal Bench observed as under:-

"30. In our considered view, in order to achieve the performance and safeguard the rights and benefits and in administrative exigencies within the ambit of provision for relaxation, the private respondents for whom the requirement for being impleaded in the integrated seniority is passing of a departmental examination having been relaxed by a post facto approval by the President is within ambit of the rules and having passed the same under proviso to Article 309 of the Constitution of India, there is no requirement for amending the recruitment rules. Passing of departmental staff examination under the Rules is one of the provisions of the rules which can be relaxed.

31. Moreover, we find that private respondents 4-32 are admittedly senior to the applicants as UDCs. As such their promotions is no manner has prejudiced the rights of the applicants. The relaxation was with reason and for an object sought to be achieved a policy decision of the Government on restructuring when the cadre of UDC does not exist in absence of any malafide or violation of Articles 14 & 16 of the Constitution of India cannot be interfered within a judicial review."

14. Thus, we are of the view that the facts of the present case are similar to the facts of the case before the Principal Bench. As held by the Principal Bench the power of relaxation vests with the Government to relax any of the requirements of the Rules and as per rules, passing of departmental examination is a condition, which can be relaxed. Such relaxation was with the reason for a object to be achieved a



policy decision of the Government of restructuring to the cadre of UDC does not exist in absence of malafide or in violation of Articles 14 & 16 of the Constitution of India cannot be interfered with in a judicial review. Thus we find no merit in these OAs and all these three OAs stand dismissed with no order as to costs being bereft of merit.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)

MEMBER (J)

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