

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No.168 of 2011

Order Reserved on 9-1-2015
Anil Kumar

Date of Order : 24-06-2015.

Between :

1. Roop Singh, S/o. late Sri Arami Singh,
aged about 42 years, Working as Inspector of Income Tax,
O/o. The Additional Commissioner of Income Tax,
Range - 6, Room No. 317, III Floor, NCRB,
Statue Circle, Jaipur, R/o. C-474, Mahesh Nagar, Jaipur.
2. Ajay Singh Bairwa, S/o. Sri Nathu Lal Bairwa,
aged about 42 years, Working as Inspector of Income Tax,
O/o. The Dy. Commissioner of Income Tax, Circle,
Bhilwara, R/o. R-18, Maha Laxmi Nagar,
Opp. Heerapura Power House, Ajmer Road, Jaipur.
3. Ram Kishan Bairwa, S/o. Sri Gulla Ram Bairwa,
aged about 40 years, Working as Inspector of Income Tax,
O/o. Income Tax Officer, Ward-1, Shastri Nagar,
Bhilwara, Resident of 15-A, Prem Nagar,
Gurjar Ki Thadi, Jaipur - 302019.

...Applicants

And

1. Union of India, through Secretary,
Ministry of Finance, Department of Revenue,
Central Board of Direct Taxes, North Block, New Delhi - 110001.
2. The Chief Commissioner of Income Tax,
(Cadre Controlling Authority),
NCR Building Statue Circle, Jaipur.
3. Secretary, Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
North Block, New Delhi.
4. Shri Shesh Ram Saini, ITO,
C/o. Income Tax Officer, Behind Collectorate, Churu.
5. Smt. Ragini Saxena, ITO, O/o. Assistant Commissioner of
Income Tax, Central Circle, Rani Bazar, Bikaner.
6. Shri Bajrang Lal Gupta, ITO,
O/o. Director General of Income Tax (Inv.),
New Central Revenue Building,
Statue Circle, Jaipur.

...Respondents

Counsel for the Applicants ... Mr. Nand Kishore
Counsel for the Respondents ... Mr. Gaurav Jain, SC for 1 to 3
Mr. Amit Mathur for Respondents 4 to 6.

CORAM:

THE HON'BLE MR.B.VENKATESWARA RAO, MEMBER (JUDL.)
THE HON'BLE MR. ANIL KUMAR, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mr.B.Venkateswara Rao, Member (Judl.) }

The applicants have filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"(i) By an appropriate order, writ or directions the contention mentioned in extract of DoPT's I.D. No. 36027/11/2007 Estt (Rev.) dated 24.7.2007 mentioned in CBDT letter dated 1.8.2007 (Annex. A/3) making it applicable in case of the applicants' promotion by DPC at page 10 of the DPC minutes and debarring the applicants for consideration/promotion which cannot take effect retrospectively because the applicants have been declared as fully qualified before the issue of circular dated 24.7.2007 on the strength of the aforesaid observations (Annex. A/1 & A/3) making the applicants having passed in departmental examination qualified with relaxed standard so far it concerned to the applicants is to be declared bad in law, arbitrary, unconstitutional and against the statutory provisions and set aside being in contravention of recruitment Rules and the results declared by the competent authority which is evident vide Annex. A/4 & A/5 respectively;

(ii) the Respondents may be directed to delete the observation mentioned at page 10 of the minutes of DPC Annexure A/1 taking into consideration of their marks obtained in the qualifying examination with relaxed standards when they have been declared fully qualified as per examination rules at the relevant time and to consider the case of the applicant and they should be promoted in accordance with their eligibility and seniority and reverting the private respondents.

(iii) They may be further directed to fix the payment of the applicants as per rules on the subject..."



2. Facts of the case as per the O.A. are as follows:

The applicants 1 & 2 are working as Inspectors of Income Tax in Pay Band of Rs.9300-34800 Grade Pay of Rs.4600 (Old Scale of Rs.6500-10500) from 29.11.2001 and passed departmental examination for the post of ITO held in October 2006 and they have been declared fully qualified in the said examination and their names are at Sl. Nos. 8 & 18 respectively in the letter of the 2nd respondent dated 13.04.2007 (Annexure A-4). The 3rd applicant is also working as Inspector of Income Tax from 29.11.2001 and he passed the departmental examination for the post of ITO held in May 2000 and he has been declared fully qualified in the examination and his name is at Sl. No. 22 of the letter of the 2nd respondent dated 19.04.2001 (Annexure A-5). The names of the applicants stand at Sl. Nos. 64, 66 & 69 in the seniority list as on 01.01.2010 circulated by the 2nd respondent vide letter dated 30.03.2010, whereas the names of the respondents 4 to 6 are at Sl. Nos. 70, 71 & 74.

3. The applicants submit that as per the Recruitment Rules for the post of Income Tax Officer Group B, Inspector of Income Tax working in the pay scale of Rs.6500-10500 (Revised to Pay Band of Rs.9300-34800 with Grade Pay of Rs.4600/-) with 3 years of regular service in the grade and who have qualified in the department examination for the post of ITO are eligible for consideration and promotion and there is no other condition for eligibility to be considered for the post of Income Tax Officer. There is no distinction in declaring the result of the departmental examination for the post of Income Tax Officer either a Schedule Caste/ Schedule Tribe or General candidate and the said departmental exam is not a competitive one, but it is only qualifying examination. Having qualified for the post of Income Tax Officer, the prospective candidates will have to work as an Income Tax Inspector for 3 years and after their seniority they are entitled to be considered for the post of Income Tax Officer.

The applicants fulfilled all the three conditions as per recruitment rules and denying the consideration/ ultimately promotion for the post of Income Tax Officer is without any foundation.

4. The applicants submit that, the concessions and relaxation placed the candidates at par with the general candidates, it is only thereafter, merit of a candidate is to be determined without any further concession in favour of the reserved candidates. They further submit that in the extract of DoPT dated 24.07.2007 received under respondents letter dated 01.08.2007 (Annexure A/3) it is stated that general candidate is considered to be qualified the departmental examination if he obtains at least 60% marks, the SC/ST candidates who obtain at least 55% marks are to be treated as qualified in the exam. The basic question raised by the Department of Revenue is whether the SC/ST candidates who qualify the departmental examination with lessn than 60% marks would be eligible for promotion against unreserved vacancies. While declaring the results, the authorities have certified that the applicants were fully qualified vide Annexures A/4 & A/5 and there was no condition in the relevant rules when the examination of the applicants was held and therefore, applying the above circular in cases of the applicants is uncalled for, unwarranted, and arbitrary. They submit that the competition starts only when the General as well as SC/ ST candidates are in feeder grade having 3 years of service as Inspector of Income Tax and working in Pay Scale of Rs.6500-10500 (now Pay Band of Rs.9300-34800 + Grade Pay of Rs.4600/-) and passed the departmental examination for the post of Income Tax Officer. That, the applicants have fulfilled the above three conditions as per recruitment rules as if a general candidate. In case of Income Tax Officer relaxation will be as under:



- (i) if the applicants are not in the zone of consideration but under extended zone of consideration;
- (ii) if there is a relaxation of qualifying service lesser than 3 years;
- (iii) if he is not fulfilling the condition of Bench Mark.

They submit that debarring the candidates by the DPC on the basis of marks obtained by the applicants is against the recruitment rules and the DPC cannot supercede the recruitment rules which have been promulgated under Article 309 of the Constitution and have the sanction of the Hon'ble President of India. Therefore, the clarifications dated 24.07.2007 of the DOPT circulated on 01.08.2007 by the Dept of Revenue, Ministry of Finance cannot overrule the recruitment rules and the same are required to be declared null and void and to be set aside.

5. The applicants submit that the DOPT had earlier issued a circular dated 08.02.2002 (Annexure A/7) revising guidelines for the selection for the post of ITO and the relevant para is reproduced as under:

"3.1 Mode of Promotion: In the case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection cum seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The element of selectivity (higher or lower) shall be determined with reference to the relevant bench-mark ("Very Good" or "Good") prescribed for promotion."

6. The applicants submit that, from the above it is clear that selection by merit has been dispensed with, but it is only selection for the post of Income Tax Officer and the DPC will have to decide with reference to Bench Mark. The applicants further submit that as per para 4.2 of the said Circular, the DPC has to grade the prospective candidates as 'fit' or 'unfit' only with reference to the bench-mark of 'good' and only those who are graded as 'fit' shall be included in the select panel prepared by the DPC in order of their

inter-se seniority in the feeder grade and there shall be no supercession in promoting among those who are found 'fit' by the DPC in terms of the benchmark of 'good'. Thus, the DPC have no powers to see any marks obtained in the examination held earlier in accordance with the prevalent examination rules and they cannot be make the applicants non-eligible. They contend that all the applicants are within zone of consideration and debarring them from consideration and ultimately promotion is not within the powers of the DPC when the applicants are fit/ suitable for promotion for the post of Income Tax Officer. The DOPT vide their OM dated 16.02.2005 (Annexure A/8) reiterate the guidelines issued vide their letter dated 08.02.2002 in accordance with the decision of the Government not to permit supercession in promotion and all the Ministries/ Departments were requested to take immediate steps to amend the Service/ Recruitment Rules of various services/ posts/ grades so as to appropriately incorporate the mode of promotion as 'selection' in place of 'selection by merit' and 'selection-cum-seniority', as the case may be, to bring them in conformity with the above decision of the Government and to make promotions accordingly. As the above guidelines issued by the Government of India have not been followed, the DOPT again issued directions vide OM dated 15.09.2005 to follow the guidelines contained in OM dated 08.02.2002. Therefore, the Recruitment Rules have been amended and 'selection by merit' and seniority cum suitability have been replaced only by 'selection' and the DPC cannot supercede the applicants in accordance with Recruitment Rules and the provisions of the OM mentioned in the preceding paras. The applicants submit that the 82nd Amendment Act 2000 has been brought out by the Government of India incorporating a proviso to Article 335 of the Constitution, which reads as under:

"Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards or evaluation, for reservation in matters of promotion to any class or classes of services or posts in

connection with the affairs of the Union or of State."

7. Government of India, DOPT issued orders vide OM dated 03.10.2000 (Annexure A/10) to give effect to the said proviso. Further, pursuant to the 85th Amendment Act, 2001, the Government of India have issued directions vide OM dated 21.01.2002 (Annexure A/11) that SC/ ST Government Servants shall on their promotion by virtue of rule of reservation / roster be entitled to consequential seniority also. The 85th Amendment of the Constitution was assailed by M. Nagaraj and others and the said amendment was upheld by the Hon'ble Supreme Court. Therefore, the applicants are entitled for their seniority based on qualifying examination and they are entitled to be considered for promotion for the post of Income Tax Officer in accordance with their seniority and recruitment rules. That, the Central Board of Direct Taxes vide letter dated 07.12.2006 (Annexure A/12) clarified that the departmental examinations are qualifying and precondition for promotion and they are not like competitive examinations. The DOPT vide OM dated 11.03.2011 directed that the DPC be held within two months before the commencement of the vacancy year.

8. The applicant No.1 represented to the Respondent No.2 on 08.3.2011 for redressal of his grievances, but ^{no final decision} heed has been paid by the respondents. The applicants submit that they had earlier filed O.A. Nos. 130/2011 & 144/2011 and the same were withdrawn with a view to file fresh O.A.

9. The applicants reiterated their contentions in the grounds. They further contended that the circulars relied upon by the DOPT dated 11.07.2002 and 24.07.2007 have no relevancy on the subject and there is no question of own merit in this case, but seniority, eligibility and fitness are only relevant facts which has been stated in circulars

dated 16.02.2005 and 15.09.2005. The extract of DOPT dated 24.07.2007 cannot take effect from retrospective date and made applicable in the cases of the applicants. Hence, the applicants filed this O.A. ventilating their grievance.

10. The respondents 1 to 3 contested the O.A. by filing a reply statement, inter alia, stating that in view of DOPT OM dated 02.07.1997 post based roster system in promotions is being followed and thus, 15% vacancies of total strength are to be filled up by SC category, 7.5% from ST category and rest of the vacancies from General Category. However, after the DOPT OM dated 11.07.2002, SC/ST candidates who have passed the departmental examination with General standards i.e. 50% (earlier 60%) have been treated against the General category. As regards to promotion to the post of Income Tax Officer, it is stated that seniority is the basic criteria for promotion along with the departmental examination in respective categories i.e. General/SC/ST. In the DPC for the recruitment year 2010-11 conducted on 15.02.2011 there were only two vacancies in the SC category, therefore, only two persons of SC category were promoted. Further, in view of the DOPT OM dated 11.07.2002 as decided by the DPC held on 15.02.2011 for the post of Income Tax Officer, in SC category there were 3 Income Tax officers who have qualified the departmental examination with General standards. Therefore, they were considered against General vacancy and as a result, 3 vacancies arise in SC category. Sri Roshan Lal Balai stands at Sl. No. 62 in the seniority list was the last SC category candidate whereas the applicants stand at Sl. Nos. 64, 66 & 69 respectively in the seniority list of Inspectors on 01.01.2010. Therefore, no junior SC category candidate has been promoted as ITO in the SC category from the applicants. The respondents further submitted that Hon'ble Principal Bench of the Tribunal dismissed O.A Nos. 1830/2009, 1836/2009 and 1146/Madras/2009 on 03.01.2010 on the very same issue.

11. The respondents further submitted that the 2nd respondent received several representations from unreserved category candidates regarding implementation of Judgment of the Hon'ble Supreme Court in the case of K. Manorama and Suraj Bhan Meena which relate to own merit and regaining of seniority respectively, and a reference was made to CBDT for specific directions and the CBDT vide its letter dated 18.07.2011 intimated that the matter was under examination before DOPT. Recently, the Board has issued a letter dated 24.08.2011 regarding implementation of DOPTs OM dated 10.08.2010, which is a clarification on OM dated 11.07.2002 regarding implementation of concept of 'own merit' to SC/ST category candidates in promotion i.e. 02.07.1997, and to complete this exercise by 15.10.2011. As a result of the said exercise, if the applicants' names are covered in the review DPC, they will be promoted to the post of Income Tax Officer.

12. The respondents contend that the applicants have misinterpreted the extract of DOPT dated 24.07.2007 as it clearly speaks that if an SC/ST category candidate acquires marks equivalent to unreserved category then only he will be considered as a 'own merit' case, otherwise not. That, there is no violation of the recruitment rules as well as the letters dated 01.08.2007 and 24.07.2007 and since none of the applicants have qualified the Departmental Examination with general standards. That, the DOPT's OM dated 8.02.2002 and 15.09.2005 are followed strictly while conducting DPCs as no supersession was there in promotions in respective categories i.e. Unreserved/ SC/ ST. That, there is adequate representation of SC category of Income Tax Officers. That the representation of the applicant has been rejected vide letter dated 07.09.2011. That, no junior SC Inspectors was promoted to the post of ITO in the DPC held on 15.02.2011 for the recruitment year 2010-11. That, the applicants are not falling within the normal zone of consideration nor they have passed the departmental examination for the post of



ITO in General standrars. The applicants were not debarred by the DPC on the basis of marks only because there were only two vacancies in SC category and in the recruitment year 2010-11 the SC category candidates promoted were seniors to the applicants. The prayed to dismiss the O.A.

13. The respondents 4 to 6 also contested the O.A. by filing a reply stating that the applicants cannot claim parity with them as they belong to the unreserved category and have qualified the examination with general standards and the applicants, who belong to SC category have qualified the examination with relaxed standards. They contend that the applicants have entered in the service and got subsequent promotion after taking relaxation available to them and they cannot compete against the unreserved posts. An employee of general category who has qualified the examination through general standards is competent to get selection against the unreserved post but if an employee belonging to reserve category has qualified the examination through relaxed standards, cannot make any claim for consideration against the unreserved points in the roster. Further, the concept of reservation which has been laid down by the Hon'ble Supreme Court in the case of RK Sabarwal is very clear and the same law has been followed by the Hon'ble Supreme Court in the case of Ajit Singh Vs. State of Punjab & others and the said judgments make it very clear that those persons belonging to reserve category could have qualified the examination through relaxed standards cannot claim parity with the general category candidates who have qualified the examination with general standards. These respondents relied on a judgment of the Principal Bench of the Tribunal dated 03.1.2011 in the case of Ram Narain Verma & Others Vs. UOI & Ors, wherein it is held that "We are of the firm view that the departmental examinations are held just to access the eligibility of promotion by giving any relaxation to the reserved category to compete for unreserved/ general category posts or vacancies by the reserved



category candidates, it would be discriminatory to general candidates who would be in a losing situation from all angles, while giving double benefits to reserved category candidates." They contend that the judgment in case of Jitendra Kumar relied on by the applicants relates to direct recruitment.

14. The respondents 4 to 6 also contend that the circular/ clarification dated 24.07.2008 issued by the DOPT has also been considered by the Larger Bench of the Tribunal in the case of Narendra Kumar Dhanda Vs. UOI and others and the reference was made to the full bench of the Tribunal, Chandigarh which has been answered by the Full Bench vide its order dated 29.03.2010 in O.A. No. 141-CH of 2008 holding that "the SC/ST candidates who qualified the departmental examination with relaxed standards would not be eligible for promotion against unreserved vacancies."

While dealing with the same issue/ controversy, the Hon'ble Delhi High Court in its judgment dated 22.12.2010 in W.P. No. 4928 of 2008 in the case of Gianender & Ors. Vs. UOI & Ors has held at para 7 that "The argument needs to be rejected for the simple reason that the qualifying cut off being 55% was for SC/ST candidates while competing in their own category. If petitioners desire to be promoted in the unreserved category they must compete at the same level as other unreserved category candidates complete. Petitioners cannot claim a dual benefit. They cannot claim a right to be promoted within their own category with a lower cut off point and at the same time predicate a right to be promoted in the general category with the lower cut off point."

15. The private respondents denied the contention of the applicants that the marks obtained while qualifying the examination has no role to play while considering the case of promotion. Nowhere the service Rules as well as reservation policy provide that

the candidate who belongs to reserved category will be entitled for consideration against the unreserved posts on relaxed standards and if it is so then the law laid down by the Hon'ble Supreme Court in the RK Savarwal cases reported in JT 1995 (2) SC Page 351 will be frustrated wherein, at para 6, it was held that -

"The only way to assure equality of opportunity to the backward classes and the general category is to permit the roster to operate till the time the respective appointees/ promotees occupy the posts meant for them in the roster. The operation of the roster and the running account must come to an end thereafter. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster."

16. These respondents contend that the relaxation available to the reserved candidates itself makes it clear that they belong to different class and cannot claim parity in promotion to those candidates who have qualified the examination without getting any relaxation. The applicants are in zone of consideration against the reserved posts and may be entitled for promotion against those posts which belong to the reserved category as per the principle laid down by the Hon'ble Apex Court in RK Sabharwal case. The applicants cannot claim promotion in place of these respondents for the reason that these respondents have qualified the examination with general standards and therefore, they have been considered against the vacancy roster point of unreserved category. The applicants have not been denied seniority in the post of Income Tax Officer, but because they have qualified the examination with relaxed standards, the applicants cannot be promoted against general vacancy in excess of their quota and as such, the applicants cannot claim any relief and the O.A. is liable to be dismissed.

17. The applicants have filed rejoinder to the reply filed by the respondents 4 to 6, inter alia, stating that the law laid down by the Hon'ble Supreme Court in the case of Jitendra Kumar Singh & Anr. Vs. State of UP & Ors is applicable in present case also.

The judgments relied upon by the respondents 4 to 6 are not applicable in the present case. The contentions of the respondents are misleading as the words relax standards or general standards are nowhere mentioned in recruitment rules. Once the applicants fulfill the conditions and are permitted to appear in the examination, they cannot be debarred in participation in the selection, etc. They prayed to allow the O.A.

18. Heard both the counsel and perused the documents and material on record.

19. The issue, ie. whether the SC/ST who qualify departmental examination with relaxed standard of marks would be eligible for promotion against UR/General promotional posts under the relevant rules or instructions issued from time to time, has already dealt with by the Full Bench before the Co-ordinate Bench of CAT Chandigarh and decided the issue in OA No. 141-CH of 2008 vide order dated 29-03-2010 because of conflicting views on the question involved before the Chandigarh Bench and Hyderabad Bench of CAT. While deciding the issue the Full Bench observed as under :

“35. Resultantly, in order to bring about consistency and uniformity in decisions rendered by different Benches of this Tribunal, we agree to the view taken by the Chandigarh Bench in its order dated 11.12.2008 in the case of Harjinder Singh & others (supra) and thereby the conflict/difference of opinion stands resolved in terms of the views expressed therein and the observations made hereinabove. The view taken by the Hyderabad Bench of the Tribunal in OA Nos. 607 and 628 of 2008 (supra), in our view, does not lay down the correct law and, therefore, the same is over-ruled. The question involved stands fully answered as per clarification of DOP&T, Annexure A-1 dated 24.7.2007 which is also an off-shoot of original OM dated 2.7.1997 which needs no further elaboration and is hereby upheld and, accordingly, the questions posed before the Full Bench for reference are answered as under :

(1) All these O.Ms referred hereinabove issued by GOI (DOP&T) are equally applicable for Departmental Examinations held for promotions / direct recruitment to be made in the Department as are applicable for direct recruitment.

(2) The SC/ST candidates who qualify the departmental examination with relaxed standards would not be eligible for promotion against unreserved vacancies.”



“Reserved candidates are not entitled to occupy unreserved promotional posts even if they qualify departmental examination on the basis of concessions meant for the reserved categories.”

36.

37. Consequently, for the reasons deailed as above, this OA is disposed of in terms of the decision in the case of Harjinder Singh & others decided by the Chandigarh Bench on 11.12.2008, however, subject to the decision in Writ Petitions Nos. 22046 of 2009, 22084 of 2009 and 22087 of 2009 pending in the Hon'ble High Court of Andhra Pradesh or any other Court of superior jurisdiction. Reference to Full Bench is answered accordingly.”

Thereafter, the learned Full Bench of Principal Bench of CAT, New Delhi dismissed the OAs. 1830/2009, 1836/2009 and OA-1146/Madras/2009 vide order and judgment dated 03-01-2011 on the same issue as under :

“(2) The Full Bench had discussed the judgments given by Mumbai Bench and Hyderabad Bench and dealt with them in detail. The Full Bench had also noted that the Judgment of Hyderabad Bench in OAs No. 607 and 628 of 2008 was challenged before the Hon'ble High Court of Andhra Pradesh by filing Writ Petitions Nos. 22046 of 2009, 22084 of 2009 and 22087 of 2009 and the Hon'ble High Court of A.P. were pleased to pass the following interim order :

“We are, prima facie, of the opinion that the conclusions arrived at by the Tribunal and the contentions advanced by the learned counsel for the applicants are contrary to various rules and official memos issued from time to time by the Central Government with regard to the entitlement of the reserved candidates for promotion in the general category. The reserved candidates are entitled to compete for unreserved vacancies, if they qualified without availing any concession. That is the plain reading of the O.M. dated 24.7.2007, bu the Tribunal reads it in a different manner. Therefore, we are inclined to suspect the operation of the order of the Tribunal. Accordingly, the order of the Tribunal is suspended, pending further orders.”

meaning thereby that the OM dated 24.7.2007 was already explained by Hon'ble High Court of Andhra Pradesh.

(3)After referring to the rival contentions, the Full Bench narrowed down the controversy raised by the parties by framing 2 questions which read as follows :-

(1)Whether the SC/ST candidates who qualify the departmental examination with relaxed standards of marks would be eligible for promotion against unreserved / general promotional posts under the relevant Rules or Instructions issued from time to time after R.K. Sabharwal's judgment, reported in JT 1995(2) SC 351 ?



(3) Whether the instructions were applicable only for competitive examinations held for direct recruitment and not for promotion as held by Hyderabad Bench of this ?

(4) After noting all the relevant OMs and clarifications and analysing the same, the Full Bench of Chandigarh observed as follows :-

“We are of the view that the Hyderabad Bench has misconstrued these instructions which are self-explanatory. Applying these instructions only for competitive examination or viva voce only for direct recruitment is against the true letter and spirit of the observations made in Sabharwal's case as we should not forget that in fact Sabharwal's case relates to promotees only who had come to the Court for redressal of their grievance.

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OM dated 1.7.1998 supra is also very clear on this aspect, wherein in Para-3 it has been specifically mentioned that the candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. It was further explained that when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc. The SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.

Therefore, we would like to reiterate for the reasons explained above that these OMs are applicable for promotions also and any instructions / clarifications contrary to these OMs issued by CBDT saying that the departmental examinations are purely qualifying in nature and it was nothing to do with merit, cannot override these instructions / OMs issued by the DOP&T in consonance with the mandate of the direction of the judgments rendered by the Hon'ble Supreme Court from time to time as referred to hereinabove and amendment made in the relevant provisions of Constitution of India accordingly.

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Resultantly, in order to bring consistency and uniformity in decisions rendered by different Benches of this Tribunal, we agree to the view taken by the Chandigarh Bench in its order dated 11.12.2008 in the case of Harjinder Singh & Others (supra) and thereby the conflict/ difference of opinion stands resolved in terms of the views expressed therein and the observations made hereinabove. The view taken by the Hyderabad Bench of the Tribunal in O.A. Nos. 607 and 628 of 2008 (supra), in our view, does not lay down the correct law and therefore, the same is overruled. The question involved stands fully answered as per clarification of DOP&T dated 24.7.2007 which is also an off-shoot of original OM dated 2.7.1997 which needs no further elaboration and is hereby upheld and accordingly, the questions posted before the Full Bench for reference as answered as under:-



All these OMs referred hereinabove issued by GOI (DOP&T) are equally applicable for Departmental Examinations.

(2) The SC/ST candidates who qualify the departmental examination with relaxed standards would not be eligible for promotion against unreserved vacancies.”


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13. Since the judgment of Hyderabad Bench has already been overruled and it has already been held that the SC/ST candidates who qualify the departmental examination with relaxed standards would not be eligible for promotion against unreserved vacancies, nothing more remains to be adjudicated upon.

14. We agree with the views expressed by the earlier Full Bench. No other point is involved, it would, therefore, be futile exercise to send the matters back to the Division Benches. Accordingly, OAs are dismissed. No costs.”

In view of the above position and by following the decision rendered by the Full Bench of CAT Principal Bench, New Delhi, we have no alternative except to dismiss the OA. Accordingly, the OA is dismissed with no order as to costs.


(ANIL KUMAR)
MEMBER (A)


(B. VENKATESWARA RAO)
MEMBER (J)

Dated: the 29th day of June, 2015

MD/evr