

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 11th Day of September 2018)

Hon'ble Mr. Gokul Chandra Pati. Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/00334 of 2016

(U/S 19, Administrative Tribunal Act, 1985)

Harish Chandra Rai, A/a 60 years, S/o Late S.S. Rai, R/o BHU Bypass
Road, Narainpur Dafi, Varanasi 221005.

..... Applicant

By Advocate: Shri Vikas Budhwar

Versus

1. Union of India through Secretary, Ministry of Finance, North Block, New Delhi.
2. Chairman, Central Board of Direct Taxes, North Avenue, New Delhi.
3. Chief Commissioner of Income Tax (CCA), Ayakar Bhawan, 5th Ashok Marg, Lucknow.

..... Respondents

By Advocate: Shri L.P Tiwari

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. Applicant Harish Chandra Rai seeks the following reliefs:-

"(i) To issue order or direction commanding the respondents considering the claim of the applicant for promotion to the post of Income Tax Officer Grade -B in Pay Band 2 of Rs.9300-34800 with grade pay of Rs.4800 (pre revised pay scale of Rupees 7500-250-12000) with all consequential benefits from the date juniors have been granted".

2. Applicant seeks condonation of delay in filing the present O.A. on the ground that he was seeking relief in O.A. No. 1543/2013 challenging the illegal action of respondents not allowing applicant to clear the departmental examination for promotion. The respondents have granted promotion to his juniors overlooking his seniority.
3. We have heard and considered the arguments of learned Counsels for the parties on the question of condonation of delay in filing the present O.A. Looking to the facts of the case and explanation offered by the applicant, the delay in filing the O.A. is condoned in interest of justice.
4. Applicant's case in short is that he was promoted to the post of Inspector of Income Tax in 2008 and is entitled to be considered for the post of Income Tax Officer. Respondent No. 3 issued order dated 03.06.2014 (Annexure- 3) whereby 63 officers were promoted as Income Tax Officers but that applicant was sidetracked in the promotion as his juniors who are at serial No. 652/654/659 of order dated 03.06.2014 were promoted and therefore the action of respondents in promoting his junior and thereby ignoring his seniority is illegal and therefore, he should be granted promotion. He had represented (annexure-4) dated 08.01.2016 to the respondents for being overlooked in the promotion. The applicant is to superannuate on 03.06.2016. Hence the present O.A. with the prayer to the applicant is to direct the respondents to consider the claim of applicant for promotion with all consequential reliefs from the date his juniors has been promoted.

5. In reply, respondents have taken the plea that the claim of applicant is senior to the three officials named in his O.A. is correct. The requisite eligibility for promotion to the post of Income Tax Officer is passing of departmental Examination for Income Tax Officer conducted on yearly basis. Since the applicant was not successful in the Departmental examination, the question of promotion to the post of Income Tax Officer does not arise.
6. In the supplementary affidavit, it has been averred that the age bar of the old pattern departmental examination has been removed on 01.07.2016 and since the applicant has retired on 30.06.2016, as per, the law laid down by the Hon'ble High Court, Allahabad in Income Tax Appeal No. 315 of 2013 titled Commissioner of Income Tax, Kanpur v/s Allied Exam, applicant is entitled to promotional basis as if he has not retired with all consequential retiral benefits.
7. We have heard and considered the arguments of the Learned Counsels for the parties and gone through their pleadings.
8. The limited dispute is whether the applicant is entitled to promotion to the post of Income Tax Officer. The stand of respondents is that since applicant has not cleared the Departmental Examination to qualify for the promotion, he is not entitled to be promoted to the post of Income Tax Officer.
9. There is no dispute regarding the plea put forth by the respondents. It is incumbent for an officer to pass the Departmental Examination for promotion to the post of Income Tax Officer. The position is not disputed. In these circumstances, the applicant not being able to clear the

Departmental Examination cannot be considered for promotion to the post of Income Tax Officer.

10. Applicant in the supplementary affidavit placed reliance upon Income Tax Appeal No. 315 of 2013 titled Commissioner of Income Tax, Kanpur v/s Allied Exam. However, neither the copy of judgment has been placed on record, nor the citation has been given in the supplementary affidavit, as such, the same cannot be considered as to why it is relevant to the present case and, therefore, it is of no avail to the applicant.
11. In the circumstances of the case, we are of the view that no case is made out by the applicant for accepting the O.A. Accordingly, the O.A. is dismissed. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-