

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.1543 of 2013

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

Harish Chandra Rai, A/a 58 years, S/o Late S.S. Rai, R/o BHU Bypass Road, Narainpur Dafi, Varanasi 221005.

..... Applicant

By Advocate: Shri Vikas Budhwar/Shri Akhilesh Kr. Pandey

Versus

1. Union of India through Chairman, Central Board of Direct Taxes, North Avenue, New Delhi.
2. Member (Personnel), Central Board of Direct Taxes, North Avenue, New Delhi.
3. Director General of Income Tax, 5th Floor Mayur Bhawan, Connaught Circus, New Delhi-1.
4. Director of Examination of Income Tax, 5th Floor, Mayur Bhawan, Connaught Circus, New Delhi-1.
5. Chief Commissioner of Income Tax, Income Tax Building, Hazratganj, Lucknow.

..... Respondents

By Advocate: Shri L.P Tiwari

O R D E R

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

1. In the present O.A, the applicant prays for the following reliefs:-

"(i) to quash impugned order dated 22.7.2013 along with communication letter dated 06.08.2013 which are collectively enclosed herewith as Annexure A-1.

(ii) to declare the explanation attached to Rule (iv) of Amended Department Examination Rules for Income

Tax Officer 2009 Rules violative of Article 14 & 16 of the Constitution of India in so far as it does not calculate maximum number of ten chances availed by candidates prior to 2009 examination.

- (iii) *to issue order or direction commands the respondents to calculate the chances availed prior to 2009 Examination while apply new pattern as provided under Amended Department Examination Rules for Income Tax Officer 2009.*
- (iv) *to issue order or direction to the respondents to declare the result of the applicant's ITO Departmental Examination 2012 and promote him to the post of Income Tax Officer.*
- (v) *to pass order or direction commanding the respondents to declare the representation of the applicant dated 02.11.2013 is accordance with law within a stipulated period of time.*
- (iv) *to pass such other order or direction as may be deemed fit proper and expedient in view of the facts and circumstances of the present case as well as in the interest of justice.*
- (iv) *to award cost of the original application to the applicant".*

2. Applicant Harish Chandra Rai was promoted in the year 2008 to the post of Inspector of Tax and in the year 2009 appeared in the Departmental examination for promotion to the post of Income Tax Officer in which he was declared qualified in the subject Advance Accountancy. Applicant's further case is in the year 2012, he appeared on old pattern/partly qualified category (PQ category) but the respondents withheld his result on the ground that he had crossed the upper age limit of 55 years and so promotion has been denied to the applicant in an arbitrary manner and without any legal basis. As per impugned order dated 22.7.2013, the applicant have informed him that his result for DE- 2012 has been withheld for having crossed the age bar of 55 years under PQ category. The applicant on 7.12.2012 had submitted his application

online being application NO. 9912 for appearing in the departmental exam. By letter dated 24.7.2012 addressed to CIT Varanasi, the respondents (examination authority) sought to inform the applicant to clarify his status of PQ or normal category in respect of departmental examination and thereby contact the Directorate of Examination telephonically. In response to the letter, applicant informed the departmental authority vide letter dated 3.8.2012 that he be treated as ITO PQ category and the same was informed telephonically as well as through fax. Accordingly, applicant was issued admit card and applicant appeared in the departmental examination ITO-2012 held in October 2012 wherein he qualified and became eligible for the promotion to the post of Income Tax Officer.

3. It is a further case of applicant that both in normal and PQ category, the departmental candidates give four papers bearing the same questions and thus there is no difference in the quality and standard of the papers between normal and PQ category. That the PQ category candidates are arbitrarily barred at the age of 55 years from appearing in the examination which age bar rule is arbitrary and without any legal basis. Applicant case is that had he not appeared in the examination under PQ category and appeared as a normal candidate, he would have been declared successful in the examination and promoted as Income Tax Officer. Had he been informed of being over-age and thereby disqualified to appear in the examination, he would have appeared in the examination as a normal candidate and not under PQ category. He had no knowledge about upper age limit fixed by the examination authority as 55 years under PQ category. That he opted for PQ category whereupon the examination authority permitted him to sit in the examination under PQ category. He again sat for the departmental

examination 2013 for promotion to the post of ITO under normal pattern category and received the admit card and has been indicated to appear in the examination in the Advance Accountancy paper only and exempted in other three papers as he had been declared successful in these papers in the earlier examination 2012.

4. Applicant's further case is that it came to his knowledge that five similarly candidates have been given relaxation of age by the Chairman but applicant was arbitrarily denied the same. He filed a representation dated 28.1.2013 to which no satisfactory reply was given by the respondents and by way of impugned order dated 22.7.2013, the respondents (examination authority) have denied to declare the result of the applicant under normal category and also refused to relax the age of the candidate. Subsequently the Rules i.e. Departmental Examination Rules for Income Tax Officer 2009 (Annexure A-9) was notified whereby new pattern was introduced under amended rule iv and the examination in the said rules provides that in calculation of maximum number of 10 chances, the chances availed by the candidate prior to 2009 examination shall not be taken on account which is violative of Article 14 and 16 of Constitution of India. The explanation carries out two categories which is without any basis or nexus to be achieved and that no cut-off date can be provided which completely wiped out the benefits already conferred on the rules stand amended. In application filed by Om Prakash Rai under R.T.I Act it was disclosed that one Anita Salman was granted relief (Annexure A-11).
5. Applicant has challenged the impugned order that had he not appeared in the examination under PQ category and appeared as a normal candidates he would have been declared successful in the examination and promoted as

Income Tax Officer and that 4 similarly placed candidates have been given age relaxation which has been denied to the applicant.

6. In the counter affidavit, it has been averred by the respondents that a new pattern examination with new rules was introduced in 2010. However, to enable the candidates to carry forward the benefits of papers qualified in old pattern, the category of 'partially qualified candidates of old candidates' was created but at the same time they were also subjected to the rules applicable to them regarding age and number of chances in the old pattern examination. As per the Amended Rules for Departmental Examination for ITOs, 2009 for old pattern candidates, the age and number of attempts of such candidates was same as laid down in Rule IV of the old Departmental Examination Rules, 1998 i.e. age of candidates on 1st April of the year of examination should not exceed 55 years. Therefore the Rule regarding the age bar is not discriminatory or violative of Article 14 and 16 of the Constitution of India.
7. It is further averred in the counter affidavit that the rules of Departmental examination are in public domain and therefore, the applicant would be having knowledge of the said service rules and his being allowed to appear in the examination cannot be ground to violate the rule of age bar. The contention of applicant of 5 similar situate persons have been given the age relaxation by the Chairman has been denied.
8. We have heard and considered the arguments of learned counsel for the parties and gone through the material on record.

9. The first contention of applicant regarding the age bar of 55 years being violative of Articles 14 and 16 of Constitution of India has no basis. It is a reasonable classification and therefore, there is no ground to declare it to be violative of the said Articles. In so far as factual position is concerned, the Examination Rules are in public domain and it cannot be said or assumed that applicant had no knowledge of the age bar. If this plea is allowed, it would result in chaos for everyone aggrieved by Rules would come with the plea that he has no knowledge of the Rules. Therefore, no ground has been made out by the applicant for quashing order dated 22.07.2013 and 06.08.2013 whereby his case of age relaxation has been denied and he has been declared to fail in the Departmental Examination 2012. The applicant's plea that one person was granted age relaxation and therefore he should be granted similar benefit is devoid of force and cannot be accepted. As per the information under the RTI Act, one Anita Salman was granted mercy chance for appearing in Income Tax Exam (Old pattern). However, no rule has been brought to our notice that the Chairman has the power to condone the age bar. Therefore, the applicant cannot be given the benefit of a wrongful benefit conferred on another person.
10. The prayer of applicant to declare the explanation attached to Rule (iv) of Amended Department Examination Rules for Income Tax Officer Rules violates Article 14 and 16 of Constitution of India in so far as it does not calculate maximum number of 10 chances availed by candidates prior to 2009 examination.
11. Applicant has been unable to show as how this explanation is violative of Article 14 and 16 of Constitution of India. The Explanation to Rule iv of Amended Department Examination Rules 2009 lays down that " In calculation of maximum of ten

chances, the chances availed by the candidates prior to the 2009 examination shall not be taken into account" Therefore, all this Explanation lays down that maximum chances of 10 availed in 2009 prior examination shall not be taken into account while availing the ten chances in the New Examination Pattern. Applicant has been unable to put forth any reason for acceptance of his prayer that direction be issued to respondents to calculate the chances availed prior to 2009 examination while applying new pattern as provided under the Amended Department Examination Rules for Income Tax Officer 2009. The result of examination 2012 has been communicated to applicant, therefore, prayer 8.2 becomes infructuous.

12. Rule III : Eligibility of the Amended Departmental Examination Rules reads as under:

"Eligibility of the candidates to appear in the Amended Departmental Examination for Income Tax Officers shall be determined by the DIT (IT) from time to time after approval from the Chairman, CBDT.

Provided that the partially qualified candidates of the Old Pattern Examination shall also be eligible to appear, for the unqualified papers/paper only, in the New Pattern Examination 2010 and subsequent years as per paper matching schedule given in Rule V (B) below subject to the age limit and ceiling of number of chances stipulated in Rule IV (ii) below.

The eligibility is for the limited purpose of allowing the Old Pattern candidates, the concession of passing the unqualified paper(s) of the Old Pattern and shall lapse as soon as they reach the age limit/chance ceiling stipulated below in Rule IV(ii).

Provided that the SC/ST candidates, who have qualified the examination in the past with relaxed standards in the New Pattern Examination or the Old Pattern Examination shall also be eligible to take the examination for betterment of their results subject to the ceiling of number of chances stipulated in Rule IV (A) below".

13. The Rules have been made so that there is a orderly transition from the Old Examination Pattern to the New Examination Pattern and taking care of the officers who had given exam under the Old pattern. The Rules are clear and do not in any manner whatsoever violate Article 14 and 16 of the Constitution of India and neither are they discriminatory in nature.
14. Applicant relied upon Tamil Nadu Electricity Board v/s Status Spinning Mills Limited, (2008) 7 SCC 353. The facts in that case are dissimilar to the facts of the present case. The case dealt with the policy of concessionary rates for supply of electricity and principle of promissory estoppel.
15. Before parting, we may refer to two principles of law :
 - 1.Ignorantia juris non excusat (Ignorance of Law is not an excuse] applies rigorously to the learned than to the lay. In the present case, applicant is an officer and is expected to be well conversant with Rules more so, Service rules, therefore, his contention he had no knowledge of age limit bar cannot be accepted. Further, the rules did not make him ineligible since if he is overage for P.Q category, he could have opted as a normal candidate to clear all the papers as per the new pattern to qualify for promotion.
 - 2.Framing of Service Rules is a policy matter which falls within the realm of the Executive/Department/Expert Bodies and no

one can challenge it by saying that the same is not beneficial. Further, there is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service. This question has been dealt in detail by the Hon'ble Supreme Court in P.U. Joshi & Others Vs. Accountant General 2003 (2) SCC 632 and the relevant para 10 reads as under:

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State

by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service".

Thus, applicant is not entitled to any relief in view of the judgment of the Apex Court in P.U. Joshi's case (supra).

16. In view of the circumstances of the case, we are of the view that the O.A. being meritless is dismissed. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-