

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00955/2014

Friday, this the 14th day of September, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

C.V. Antony, aged 65 years, S/o. Late Varuthukutty,
 Income Tax Inspector (Retired), (Office of Joint Director of Income Tax,
 Investigation, Cochin), Residing at Cherukodath House, Karthedom,
 Malipuram PO, Ernakulam District, Pin – 682 511. **Applicant**

(By Advocate : Mr. P.V. Mohanan)

V e r s u s

1. The Chairman, Central Board of Direct Taxes,
 North Block, New Delhi – 110 001.
2. The Chief Commissioner of Income Tax, Central Revenue
 Buildings, IS Press Road, Ernakulam, Cochin, Pin – 682 018.
3. The Commissioner of Income Tax, Central Revenue Buildings,
 IS Press Road, Ernakulam, Cochin, Pin – 682 018.
4. The Director of Income Tax (Income Tax & Audit),
 5th Floor Mayur Bhawan, Connaught Circus,
 New Delhi – 110 001. **Respondents**

(By Advocate : Mr. Sinu G. Nath, ACGSC)

This application having been heard on 07.09.2018 the Tribunal on
 14.09.2018 delivered the following:

ORDER

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member –

OA No. 180/955/2014 is filed by Shri C.V. Antony a retired Income
 Tax Inspector. He had appeared for departmental examination conducted for
 promotion to Income Tax Officers in the years 2000, 2001, 2002 and 2003.

As per Departmental Examination Rules for Income Tax Officers, 1998, apart from 60% marks in designated subjects, 60% score in aggregate was also required for a candidate to pass. The applicant had fallen short of 60% marks and thus was not declared passed. However, the said Rules were revised with the introduction of Departmental Examination Rules, 2007 w.e.f. 26.6.2008 wherein the pass percentage was reduced to 50% in each paper. The applicant who was declared failed by the Rules in force in 2003 now seeks a pass on the ground of the revision made, being antedated to the year 2003.

2. In so far as the details are concerned, the applicant submits that in the examination held in the year 2000 in the subject of Book Keeping he obtained 64 marks, thus procuring an excess of 4 marks, the qualifying marks being 60. In the examination held in 2001 in Office Procedure he obtained 60 marks and in the same year he has also obtained 90 marks out of 150 in Accounts and Language Test, thereby bringing his aggregate to 60%. However, in the year 2002 he had obtained 57 and 56 marks in Income Tax Law-I and Income Tax Law-II whereby there is a shortage of 3 and 4 marks respectively in achieving 60%. In the year 2003 he obtained 66 marks in the subject of Other Taxes thereby accumulating 6 excess marks. He contends that the total shortage of 7 marks in Income Tax-I and Income Tax-II papers can be adjusted against the total excess marks of 10 he secured in Book Keeping and Other Taxes and he can be declared to have passed the examination held in the year 2003. Applicant stood to benefit by two advance increments in the category of Income Tax Inspector and would

have been eligible for promotion to the post of Income Tax Officer. The representation he submitted vide Annexure A5 dated 17.9.2004 was rejected on the ground that as per existing rules the marks are aggregated year-wise and the pass percentage of DE-2002 was 60% which he had not secured.

3. Aggrieved the applicant filed OA No. 287/2005 seeking a declaration that he is deemed to have succeeded in the examination held in 2003 and eligible to be promoted as Income Tax Officer. However, the OA was dismissed vide Annexure A6. A Writ Petition No. 30706/2007 was filed challenging the order at Annexure A6. Writ Petition also was dismissed vide Annexure A7 judgment. Annexure A7 was challenged before Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 6116/2008 which was also dismissed vide order at Annexure A8.

4. The rules relating to the conduct of the departmental examination were amended and revised examination rules called Departmental Examination Rules, 2007 was introduced with effect from 26.6.2008 wherein the pass percentage was reduced to 50% in each paper. The applicant pleads for antedating these rules to cover the examinees in 2003 so that he can get the benefit of the revision. The reliefs sought by the applicant are as follows:

“A. To call for the records leading to Annexure A11 dated 19.8.2014 and set aside the same,

B. To direct the respondents to declare that the applicant has passed the Departmental Examination for Income Tax Officers held in the year 2003 and to grant him two advance increments w.e.f. 17.11.2013 the last date of the Departmental Examination.

C. To direct the respondents to promote the applicant as Income Tax Officers w.e.f. 7.4.2005, the date on which his junior Sri C. Vinod Jayan was promoted and grant him consequential monetary benefits including re-fixation of pension and other terminal benefits.

D. Any other appropriate order or direction this Hon'ble Tribunal deem fit in the interest of justice.

E. To declare that the Modified Rules as evidenced by Annexure A12 for the Departmental Examination for Income Tax Officers is deemed retrospective and the applicant is eligible to be promoted to the category of Income Tax Officer with retrospective effect.

F. To declare that the stipulation of cut-off date as 26.5.2008 for implementation of rule VI of the Modified Rules contained in Annexure A12 is arbitrary, violative of Articles 14 and 16(1) of the Constitution of India and may be declared so.”

5. The respondents have filed a reply statement wherein they have contested the claim of the applicant. The marks secured by the applicant are detailed as follows:

| Subject | Max Marks | Dec 2000 status | Dec 2001 status | Dec 2002 status | Dec 2003 status (9th chance) |
|-------------------------------|------------------|------------------------|------------------------|------------------------|--|
| IT Law-I | 100 | 30 | 60 | 57 | 44 |
| IT Law-II | 100 | 49 | 44 | 56 | 37 |
| Total (Law-I + Law-II) | 200 | 79 | 104 | 113 | 81 |
| Other Taxes | 100 | 49 | 48 | 41 | 66E |
| Book Keeping | 100 | 64E | B/f E of 2000 | B/f of 2000 | B/f of 2000 |
| Office Procedure | 100 | 52 | 60E | B/f of 2001 | B/f E of 2001 |
| Examination of A/c | 150 | 84 | 90E | B/f E of 2001 | B/f of 2001 |
| Overall result | | Fail | Fail | Fail | Fail |

It could be seen that having secured 57 and 56 marks in two subjects in the examination conducted in the year 2002 the applicant had failed as pass percentage required was 60%. In any case the applicant had taken his grievance to this Tribunal and being rejected, had approached the Hon'ble High Court as well as the Hon'ble Supreme Court where he met with the

same fate. Now he seeks to get the benefit accruing from the revised rules declared with effect from 26.6.2008 in order to pass the examination that he appeared for in 2003.

6. Heard Mr. P.V. Mohanan learned counsel appearing for the applicant and Mr. Sinu G. Nath, ACGSC learned counsel appearing for respondents. Documents were perused.

7. As pointed out this is the second round of litigation that the party has undertaken before this Tribunal. On the first occasion he had attempted to obtain a declaration that he could get the benefit of the excess marks obtained in one year's examination to improve his chance in the subsequent year when he appeared again for the examination. The claim was disallowed by this Tribunal and the order was confirmed by the Hon'ble High Court and Hon'ble Supreme Court. Now his attempt is somewhat different in the sense that he is attempting to get the benefits granted by the Departmental Examination Rules, 2007 to be extended to him for the year 2003. This is not a possible course. The results of the departmental examination for a particular year are to be evaluated in the light of the rules governing the same in force during the particular year. Any attempt to pre-date these conditions to candidates who had appeared for an examination with altogether different parameters would only lead to an anarchic situation.

8. Shri Mohanan, learned counsel for the applicant, drew our attention to the order in *Zile Singh v. State of Haryana & Ors.* - (2004) 8 SCC 1 where

it is stated as under:

"16. Where a Statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. The classic illustration is the case of Attorney General v. Pougett ([1816] 2 Price 381, 392). By a [Customs Act](#) of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s. 4d., but the Act omitted to state that it was to be 9s. 4d. per cwt., and to remedy this omission another [Customs Act](#) (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson C.B., in giving judgment for the Attorney-General, said: "The duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act." (p.395)."

9. We are of the view that the decision quoted above is not relevant to the issue at hand. The revised set of guidelines contained in the Departmental Examination Rules, 2007 had not been brought out to supplement an omission or to extend the former Statute. We are unable to see any parallels between the situations dealt with by the apex court and the facts of this case.

10. In the circumstance we are of the view that the OA is devoid of merit and is liable to be dismissed. We proceed to do so. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the rules for Departmental Examination for Income Tax Officers, 1998.
- Annexure A2** – True copy of the representation submitted by the applicant to the 1st respondent dated 17.9.2004.
- Annexure A3** – True copy of the letter dated 7.1.2005 from the Asst. Commissioner of Income Tax (H) to the Director General of Income Tax.
- Annexure A4** – True copy of the representation submitted by the applicant to the 1st respondent dated 1.2.2005.
- Annexure A5** – True copy of the letter dated 11.3.2005 from the Deputy Director of Income Tax (Exam), New Delhi addressed to the Chief Commissioner of Income Tax (in charge of Examination, Cochin).
- Annexure A6** – True copy of the order in OA No. 287/2005 dated 4.6.2007.
- Annexure A7** – True copy of the judgment in WPC No. 30706/2007 dated 17.10.2007.
- Annexure A8** – True copy of the judgment in SLP (Civil) No. 6116/2007 dated 21.10.2013.
- Annexure A9** – True copy of the representation dated 19.7.2014.
- Annexure A10** – True copy of 1st 2 pages of proceedings of the 3rd respondent dated 16.8.2004.
- Annexure A11** – True copy of the proceeding F. No. DE/ITO/02-03/Cochin/SLP-2924 (Supreme Court)/08/DIT/2341 dated 19.8.2014.

RESPONDENTS' ANNEXURES

- Annexure R2(a)** – True copy of the modified rules for the Departmental Examination for Income Tax Officers, 1998 w.e.f. 20.3.2001.
- Annexure R2(b)** – True copy of the Modified Rules for the Departmental Examination for Income Tax Officers 1998 w.e.f. 26.5.2008.

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