

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 205/2003

This the 27th day of November, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.R.NAIK, MEMBER (A)

1. Behari Lal
S/o Late Sh. Chet Ram,
R/o H.No.348, A.V&PO
Bijwasan, New Delhi.
2. Smt. Veena Narwal,
D/o Sh. Bhanwar Singh,
R/o A-5, Sita Shree Apptt.
Plot No.10, Sec.14, Rohini, Delhi.
3. Prabhu Dayal
S/o Late Sh. Bhori Lal
R/o 5638 C School
Block, Shakarpur, Delhi.
4. Prabhat Kumar
S/o Late Sh. Hira Lal
R/o A-2572, Netaji Nagar
New Delhi.
5. Kishore Mal
S/o Sh. Chander Lal
R/o 46/3, LTG Flats
Paschim Vihar, New Delhi.
6. Karam Chand
S/o Sh. Kallu Ram,
R/o F-1519, Netaji Nagar,
New Delhi.
7. Ashok Kumar Vishrat
S/o Sh. Hulmi Singh,
273-B, Sant Nagar, East of Kailash,
New Delhi.
8. Bhagat Singh
S/o Sh. Puran Singh
80/5697, Regar Pura, Karol Bagh,
New Delhi.
9. Sangeeta Satsangi
D/o Sh. Babu Lal,
Plot No.228/Plt. A-3, Sec.5, Rohini,
Delhi.
10. Rajeshwar Kumar
S/o Kedar Nath,
R/o Plot No. 228 Plt. A-3, Sector 5,
Rohini, Delhi.

(B; Advocate: Sh. S.P. Bisaria)

Versus

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1. Union of India through
Secretary,
Ministry of Finance,
North Block, New Delhi.
2. Chief Commissioner of Income Tax
C.R. Building,
I.T.O.,
New Delhi.
3. Deptt. of Personnel & Training,
through Secretary,
North Block, New Delhi.
4. Mahender Partap
S/o Late Sh. R.D. Singh,
Inspector,
Office of CIT, Delhi-XII,
11nd Floor, 'D' Block,
Villas Bhawan, New Delhi.
5. R. G. Aggarwal
S/o Late Sh. Dini Dayal Aggarwal,
Inspector,
Office of CIT, Delhi-XII,
11nd Floor, 'D' Block,
Villas Bhawan, New Delhi.
6. Mukund Lal
S/o Late Sh. Khiall Ram
Inspector,
Office of CIT, Delhi-XII,
11nd Floor, 'D' Block,
Villas Bhawan, New Delhi.
7. M.K. Kapoor
S/o Sh. M.R. Kapoor,
Inspector
Office of Addl. CIT Range 39,
C.R. Building, New Delhi.
8. Sh. Virender Singh Yadav
R/o 14 Income Tax Colony,
Pitam Pura, Delhi.
9. Sh. Satyendra Kumar
S/o Sh. M.S. Tomar,
R/o 8, Marmada, Sector 4,
Varshali, Ghaziabad, U.P.
10. Sh. Sunil Rana
S/o Sh. Balwant Singh Rana,
R/o 32, Sai Baba Daulatpur,
Near Rohini Sector 14,
Delhi.
11. Sh. Ajay Sood
S/o Sh. T.C. Sood
R/o B-142, Kidwai Nagar (E),
New Delhi.
12. Sh. Virender Kumar Rathi,
S/o Sh. Kanwal Singh,
R/o 42, Sector 6, Bahadurgarh,
Haryana.

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13. Sh. S.K.Sharma.
S/o Sh. C.R.Sharma.
89-A, Pocket I, Dilshad Garden.
New Delhi.

(By Advocate: Sh. V.P.Uppal for official respondents.
Sh. P.B.S.Rajan for Resp. No 4 to 7
Sh. Sachin Chauhan proxy for
Sh. Sanjay Singh for Resp. No 8 to 13
Sh. A.K.Behera for private respondents)

O R D E R

By Sh. Kuldip Singh, Member (J)

This is a joint application filed by 10 applicants whereby the applicants are seeking directions to the respondents to implement office memorandum dated 11.7.2002 in the cadre of Income Tax Officers w.e.f. 2.7.97 and further a direction to the respondents to hold review DPC after implementing the office memorandum dated 11.7.2002. Applicants are also seeking for grant of consequential benefits. Applicants belong to reserved category of SC and ST community and are working as Income Tax Inspectors since 1993 to 1995. The next higher promotion in the cadre is that of Income Tax Officer as per recruitment rules of which total strength in Delhi Circle is 355.

2. It is further stated that according to the promotion rules for the post of Income Tax Officer, it is necessary that person should be Income Tax Inspector with 3 years regular service in the grade and have passed the departmental examination for Income Tax Officer. It is further submitted that all the applicants have passed the departmental examination and as such are entitled to be considered for promotion to the post of Income Tax Officer.

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3. It is further submitted that the Govt. of India had issued a notification dated 2.7.97 stating that the candidates belonging to reserved category who have been appointed by direct recruitment on their own merits will be adjusted against the unreserved points of reservation roster.

4. It is further submitted that the DOPT. i.e. Resp. No.3, after considering various queries raised by different departments issued a clarification vide office memorandum dated 11.7.2002 wherein they had clarified the position that candidates belonging to SC/ST categories appointed by promotion on their own merit their seniority shall be adjusted against unreserved points and they shall be treated as unreserved candidates and the officers shall be treated on unreserved points and the juniors SC/ST candidates shall be adjusted against the reserved points.

5. It is further submitted that the Income Tax authorities prepared the roster in the cadre of Inspectors under direct quota after implementing the OM dated 11.7.2002 but same have not been implemented in the cadre of Income Tax Officers for the reasons best known to the department. It is further submitted that the respondents after restructuring promoted the Income Tax Inspectors to the post of Income Tax Officers on various dates i.e. from 1997 to 2002 but the SC/ST candidates who were promoted on the unreserved points without getting any relaxation have still been shown promoted against the reserved points. Thus, the roster in the cadre of ITOs is not according to the office memorandum dated 11.7.2002 and in this manner as per the calculation by the applicants 37 officers have been wrongly shown by the respondents against the reserved points while in fact these officers should have been shown against the unreserved points and thus the

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respondents are not following the office memorandum dated 11.7.2002 in its true spirit. Various representations have also been submitted for the same but have not been considered. In this context it is stated that in OA-2554/2001 court was pleased to issue notice and then passed an order in the following manner :

In the above view of the matter the OA succeeds and is accordingly allowed. The respondents are directed to consider the case of the applicants by a review DPC for promotion to the grade of Income Tax Officers, against the vacancies created under the restructuring scheme treating them as having arisen after 30.3.2001 and thus pertaining to 2001-02 and treating the cut off date for determining the eligibility date as 1.1.01 instead of 1.1.2000, from the dates on which their juniors have been promoted as ITOs and if found fit, promote them on the said date with all consequential benefits including seniority, fixation of pay along with arrears of pay and allowances. This shall be done within three months from the date of receipt of a copy of this order. Respondents shall also pay to the five applicants Rs.2000/- (Rupees two thousand only) each towards cost. No further notice to be affected parties. (If any is felt necessary as on 28.9.2001, itself the Tribunal had directed that the promotion ordered on 18.6.2001 was subject to the final disposal in this OA.)

B. It is further stated that till date no review DPC has been held as directed by the Tribunal. It is further submitted that if the respondents hold the review DPC then they can apply the OM dated 11.7.2002 in its full spirit w.e.f. 2.7.97. Thus, it is submitted that since the respondents are not applying the OM dated 11.7.2002 which in turn is just a clarification of OM dated 2.7.97 and respondents are legally bound to follow the same. So the respondents should be directed to apply the OM dated 2.7.97 as clarified by OM dated 11.7.2002.

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7. Notice of this OA was issued to the respondents. Respondents filed their counter affidavit. Respondents pleaded that they have in fact implemented the OM dated 11.7.2002 by adjusting the persons promoted on their own seniority and not owing to reservations against the unreserved points. Respondents also admit that they are duty bound to implement the OM dated 11.7.2002 both in letter as well as in spirit in all cadres including the cadre of Income Tax Officer. However, certain confusion have crept in on the import of phrase "relaxation of qualifications" mentioned in clarification (i) of the OM dated 11.7.2002. The Income Tax Officers (Group B) Recruitment Rules 1999 inter alia provides for qualifying the "Departmental Examination for Income Tax Officers" for being eligible for promotion to the post of Income Tax Officer. The department had prescribed lower qualifying marks/lesser standard of evaluation for SC/ST candidates in the qualifying examinations held for determining the fitness of a candidate for promotion. Accordingly, the SC/ST candidates are declared "qualified" in the Departmental Examination held for determining the fitness of the candidate by relating the prescribed standard.

8. It is further stated that the DPC had also opined that any relaxation in the qualifying standards in the departmental examination held for determining the fitness of a candidate for promotion allowed in pursuance of OM dated 21.1.1977 and availed off by SC/ST candidate would amount to relaxation of qualifications in terms of OM dated 11.7.2002. Respondents has not accepted this recommendation of the DPC and then respondents sought clarification from the higher authorities vide their letter dated 27.5.2003 and after getting the clarification they will implement the OM dated 11.7.2002. It is pleaded that the respondents be given sufficient time to

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implement the OM in consultation with the higher authorities. It appears that while the case was pending clarification had been received that is why the respondents filed a supplementary counter. In supplementary counter respondents submitted that relaxation of the qualifying marks is provided for SC/ST employees as per the rules of departmental examination of Income Tax Officers at Annexure R-3. Therefore it is evident that in order to be declared to have completely passed the departmental examination for ITO, a candidate must secure 60% marks in the aggregate and a minimum of 50% marks in each of the individual papers. The SC/ST employees are declared qualified on securing 55% marks in the aggregate and a minimum of 45% marks in the individual papers. The SC/ST employees are also provided concession in the matter of qualifying examination as well as in the matter of age limit for taking up the examination too.

9. It is further stated that the matter had also been considered in OA 132/2001 in case of Sh. Raghbir Singh and others wherein it was held that persons qualifying the Inspectors examination as per the relaxed standard available to the reserved category candidates cannot be treated as selected on the basis of general merit. The same question as decided in the said OA is again being agitated. Respondents have also mentioned that some of the candidates belonging to SC/ST category at SI No. 12, 17, 23, 30, 32 & 49 who have secured marks enough to have been declared qualified as a general category candidates. Other candidates have passed with relaxed standards as per Annexure R-5. So 6 candidates who have passed securing marks enough to have been declared as qualifying at par with General category candidate will be

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shown in the seniority list as per merit as General candidate. Thus, it is submitted that the OA is devoid of any merits and the same should be dismissed.

10. We have heard the learned counsel for the parties and gone through the record.

11. The short question which is required to be answered in this case is about the interpretation of clarification issued by DOFT with regard to the office memorandum dated 11.7.2002. The relevant extract of the office memorandum dated 11.7.2002 is reproduced herein below for ready reference.

- (i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.
- (ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration of promotion in the feeder grade, such SC/ST candidates cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion alongwith other candidates treating him as if he belongs to general category. In case he is selected he will be appointed to the post and will be adjusted against the unreserved point.
- (iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved point will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any."

12. Learned counsel appearing for the applicant submitted that this departmental test prescribed for the promotion of Income Tax Inspector to the post of Income Tax Officer is an eligibility condition for being considered for promotion. It is in the nature of pre-qualification and is not meant for promotion. So the relaxation provided in the qualifying



departmental test is not towards the grant of promotion but remains confined only to qualify the departmental test like an essential academic qualification.

13. In support of his contention counsel for the applicant referred to recruitment rules also and submitted that the recruitment rules particularly Col 12 which deals with the promotion prescribe that out of Income Tax Inspectors with 3 years regular service in the grade in respective charge and who has passed the departmental examination for Income Tax Officer is eligible to be considered for promotion to the post of Income Tax Officer. Counsel for applicant further submitted that the recruitment rules do not provide any concession to be given to SC/ST for the departmental examination. Though it is different that SC/ST candidates qualify by even obtaining 5% less marks that is just for the purpose of qualifying departmental test but the promotion process take place after qualifying of the departmental examination. So this departmental test is not a part and parcel of the process for promotion to the post of Income Tax Officer. Hence it should not come in the way of reserved category candidates to say that they have availed the relaxed standard for being promoted to the post of Income Tax Officer. Counsel for applicant then also referred to a clarification dated 2.9.2003 with regard to the OM dated 11.7.2002 issued from the office of Chief Commissioner of Income Tax, CR Building, I.P.Estate wherein it was mentioned as under:

"In view of the above it is clarified that w.e.f. 2.7.1997 SC/ST candidates promoted on their own merit, as per the provisions of the Recruitment Rules may be adjusted against the unreserved points irrespective of whether some concessions in passing marks has been availed of by them for qualifying the prescribed Exam or not."



14. Learned counsel for applicant further submitted that when this clarification was being applied and seniority list was being readjusted the department put up the file again to the concerned authorities when a fresh clarification have been issued by department of their own vide their letter dated 6.10.2003 wherein the above portion as contained in para 2 of letter dated 2.9.2003 was deleted. Learned counsel for applicant submitted that this has been so done by vested interest so he had also prayed that the departmental record should be summoned as to how this has been done by Govt. of India of their own without any objection to it from any quarter. Counsel for applicant further submitted that had para 2 not been deleted, then it was crystal clear that reserved category candidates who passed their departmental examination even by obtaining some concession in passing marks were to be treated as unreserved candidates if they do not avail any other concession. Hence they should be allowed the benefit and it should be declared that the candidates have passed the examination on their own merits. Counsel for applicant then also referred to a judgment of R.F. Sabharwal and others vs. State of Punjab and others reported in 1995 (2) SCC 745 where this controversy of reserved category candidates getting promotion on their own merit, had been settled and stated that whenever reserved category candidates are competing with general category candidates and getting appointment/promotion on the merits they are to be treated as general category candidates. So the main stress of the applicant is that applicants should be treated at par with unreserved category candidates.

15. In reply to this Sh. Uppal appearing for the respondents submitted that the deletion of para 2 from the letter dated 2.9.2003 itself goes to show that para 2 is in contradiction



to the DOPT memo dated 11.7.2002 which had clarified this earlier memorandum of 1997. So any clarification issued in contradiction to the DOPT memo had to be withdrawn and the same has been rightly withdrawn.

16 Counsel for respondents further submitted that this departmental examination is not merely a qualifying examination for getting eligibility for the purpose of promotion but it is a part and parcel of promotion scheme. Without qualifying this departmental examination a person cannot be promoted and if he qualifies this examination with relaxed standard as available to the reserved category candidates then this has to be deemed as if the applicant is being promoted on relaxed standard so he has to be treated as candidates who has been promoted on relaxed standards as available to the reserved category candidates. Counsel for respondents then also referred to a judgment of Raghubeer Singh and others vs. Union of India given by this Tribunal in OA-132/2001 wherein this Tribunal has also after discussing R.L. Sabharwal and Indira Sawhney has also decided this very controversy and found that the person qualifying the examination on a relaxed standard is to be treated as a reserved category candidate.

17 We have also considered the rival contentions of the parties. The plea of the applicant is that departmental examination is not a part and parcel of the promotion scheme and is merely an essential qualification to become eligible for being considered for promotion to the post of Income Tax Officer is benefit of any merit because without qualifying the departmental examination one cannot be promoted at all to the post of Income Tax Officer. This is not a departmental competitive examination so that a person even with a lesser



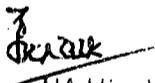
experience can get a promotion over and above his seniors who are to get promotion on seniority basis. But for the purpose of promotion to the post of ITO though qualifying of this departmental examination is a must but the same has to be passed as per the standards laid down for the general category candidates. Even in the judgment of R.K.Sabharwal (supra) it has been made clear that reserved category candidates who gets promotion on appointment on its own merits without availing the relaxed standards can be considered as unreserved category candidate. So the applicants in this case who have qualified the departmental examination for the purpose of promotion with a relaxed standard cannot as a right claim that they are at par with the general candidates who have qualified on merits.

18. Counsel for the applicant during the course of arguments had also pointed out that in the recruitment rules there is no provision for relaxation of qualifying marks for the departmental examination so even if the department had prescribed some relaxed standard for the reserved candidates that cannot be considered moreover the relaxed standards were given as per the general applications of the instructions which were issued in the year 1972 whereas the judgment of R.K. Sabharwal pronounced by the Hon'ble Supreme Court came in the year 1995 so those instructions do not bring the applicant within the ambit of judicial relaxed standards as described in the judgment of Hon'ble Supreme Court in R.N.Sabharwal's case. However in reply to this Sh. Uppal submitted that instructions issued in the year 1997 for prescribing the relaxed standards to the reserved category candidates have been reiterated in the circular in the year 2002 and persons who have qualified test with relaxed standard shall remain a candidate who belongs to reserved category since relaxed standard are applied to reserve category candidates only.

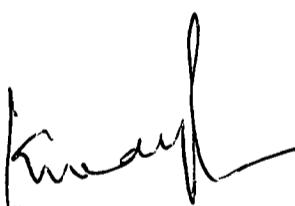
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19. In our view this departmental examination is a part and parcel of the promotion scheme and is not part of essential academic qualification to adjudicate eligibility. So we held that the persons having qualified the examination with relaxed standards cannot as a matter of right claim that they should be considered as having qualified the examination on their own merit at par with general category candidates. It has to be held that they have qualified the examination with relaxed standards.

20. We further held that the OM dated 11.7.2002 has been applied in its true spirits and no interreference is called for OA being without any merit is liable to be dismissed. Accordingly, we dismiss the OA. Before parting with this OA, we may mention that since in the counter affidavit respondents themselves have stated that some of the applicants have qualified the examination at par with general category candidates. Respondents shall ensure that they are treated at par with the general category candidates.


C. S. P. NATH
Member (A)

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KULDIP SINGH
Member (B)