
(2017) 03 JH CK 0002

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3897 of 2015

Ratan Kumar Choubey

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JBCJ 286 : (2017) 2 JCR 706 : (2017) 2 JLJR 592

Hon'ble Judges : Mr. H.C. Mishra and Mr. Dr. S.N. Pathak, JJ.

Bench : Division Bench

Advocate : Mr. Anil Kumar Sinha, Senior Advocate Mr. M.A. Khan, Advocates, for the Petitioner; Mr. Deepak Roshan, Advocate, for the Income Tax Deptt

Final Decision : Dismissed

Judgement

Dr. S.N. Pathak, J.—Heard Mr. Anil Kumar Sinha, Sr. Advocate assisted by Mr. M.A. Khan, learned counsels for the petitioner and Mr. Deepak Roshan, learned counsel appearing for respondents.

2. The petitioner has challenged the order dated 07.07.2015, passed by Central Administrative Tribunal, Circuit Bench at Ranchi in O.A. No. 051/00072/ 15 whereby the learned Tribunal has been pleased to decline to pass direction to grant him promotion on the post of Income Tax Officer. Further prayer has been made for quashing the order dated 24.01.2012 whereby it has been presumed by the respondents that the petitioner has appeared 12th times though he has attempted for 8 times and finally in 2011 he qualified the same but the respondents have declared him as fail. Petitioner has further prayed for a direction to promote the petitioner to the post of Income Tax Officer pursuant to his qualification in the examination of 2011 with all consequential benefits from the date of publication of result and promotion order.

3. The factual exposition as has been delineated in the writ petition is that the petitioner joined the organisation of the respondents on 16.08.1984 as an Upper

Division Clerk. Subsequently, he was promoted as Income Tax Assistant in the year 1993 and further to the post of Income Tax Inspector in the year 2001 and since then he is rendering his service as such with an unblemish career record. Thereafter, to meet the channel of next promotion as Income Tax Officer, the petitioner applied for the departmental examination held for the same in the year 2011. The forms were duly verified and scrutinised by the competent authorities and the petitioner appeared and duly qualified in the examination in the year 2011 itself. However, to utter surprise of the petitioner, he was shown as "fail" in the said examination by awarding "zero" marks on the alleged ground that he had already availed 12 chances in the earlier examinations.

4. Being aggrieved by the aforesaid action, the petitioner filed representation dated 15.02.2012 before the concerned respondents inter alia clarifying the entire scenario and stated that he has actually appeared for eight times in examinations held earlier and it has been wrongly held that he has appeared for 12 times and as such, his case should be reconsidered. However, when no heed was paid to the representation filed by the petitioner, he pleaded for reconsideration of his case for promotion on the basis of his performance in the examination held in the year 2011 as it was his 8th attempt and not 12th. The petitioner's application was also strongly recommended by the authorities. However, when the case of the petitioner was not considered by the respondents authorities, he preferred an application before the Central Administrative Tribunal, Circuit Bench at Ranchi vide O.A. No. 051/00022/2014 which was dismissed on 17.11.2014 with a direction to the respondents to give sympathetic consideration for redressal of grievance of the petitioner.

5. Pursuant to the direction of the Central Administrative Tribunal, the petitioner again filed representation before the authorities for redressal of his grievance. The said representation of the petitioner was however rejected in a mechanical and non-speaking manner vide order dated 16.02.2015. Being aggrieved, the petitioner again moved before the Central Administrative Tribunal, Circuit Bench at Ranchi against the said non-speaking order which was however dismissed vide order dated 07.07.2015 passed in O.A. No. 051/00072/15. Thereafter, the petitioner having no alternative, moved before this Court by filing instant writ petition.

6. Mr. Anil Kumar Sinha, learned Sr. Counsel assisted by Mr. M.A. Khan, by assailing the order dated 07.07.2015, passed by Central Administrative Tribunal, Circuit Bench at Ranchi in O.A. No. 051/00072/15 argued that the order of the Tribunal as also order dated 24.01.2012 and further order dated 16.02.2015 of the respondents authorities are dehorse and contrary to the rules and it cannot be sustained in the eyes of law and is violative of principles of natural justice and as such the same is fit to be quashed and set aside. Learned Sr. Counsel further argued that the main dispute was regarding the attempt in the examination availed by the petitioner. It is case of the petitioner that he has availed the examination for eight times i.e. in the year 1995, 1996, 2001, 2002, 2008, 2009,

2010 and 2011 and the respondents have illegally come to a conclusion that the applicant had availed 12 chances, which is beyond the record. Learned Senior Counsel further argued that attempt in the examination can be counted on actual number of times the petitioner appeared in the examination held by the department. The number of attempts so described by the respondents is contrary to records as the petitioner has actually appeared for eight times in the examination and therefore, he cannot be denied his legitimate right to be considered to have passed the departmental examination within the limit period.

Learned Sr. Counsel drew attention of this Court to the Amended Departmental Examination Rules for Income Tax Officers, 2009 which became applicable for the departmental examination from calendar year 2010 onwards. A copy of the said Rule was also brought on record before the Central Administrative Tribunal. It is relevant to quote Rule-IV of the said Rule:

"RULE-IV: CHANCES PERMISSIBLE AND AGE LIMIT.

(i) For New Pattern Candidates

(a) A maximum of 10 number of chances may be availed of by a candidate;

(b) There shall be no bar on age limit for appearing in the Departmental Examination.

EXPLANATION(s): In calculation of maximum number of ten chances, the chances availed by the candidates prior to the 2009 Examination shall not be taken into account. In the calculation of maximum number of chances actually availed by the candidate, the chances for which he is allowed to appear in the examination shall be taken into account irrespective of the fact whether the candidate takes the examination or not. Once a candidate has been permitted to appear in the examination, withdrawal of candidates shall not be allowed.

(ii) For Old Pattern Candidates

The age and number of chances for these candidates shall be same as laid down by Rule IV of erstwhile Departmental examination Rules for ITOs - 1988 i.e. the age of the candidate on 1st April of the year of examination should not exceed 55 years (in the case of SC/ST candidates, there shall be no age limit) and the maximum number of chances a candidate can avail is ten.

EXPLANATION: For the purpose of counting the number of chances available to a candidate for availing the concession mentioned in 1st Proviso to Rule III above, the number of chances already availed by the candidate under the Old Pattern of examination shall be taken into account. In the calculation of maximum number of chances actually availed by the candidate, the chances for which he is allowed to appear in the Examination shall be taken into account irrespective of the fact whether the candidate takes the examination or not. Once a candidate has been permitted to appear in the examination, withdrawal of candidature shall not be allowed.

The first proviso of Rule III referred to in Rule IV reads as follows:

"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.

This 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)."

Learned Sr. Counsel further argued that the definition in Explanation has to be read in connotation with main part of the Notification. It cannot be read in isolation. The entire explanation has to be taken into consideration not the proviso. To strengthen his arguments, learned Sr. Counsel has placed reliance in a Judgment rendered in the case of "Oblum Electrical Industries Pvt. Ltd., Hyderabad v. Collector of Customs, Bombay reported in (1997) 7 SCC 581. Para-11 of the said Judgment reads as under:-

"11. It is true that in clause (viii) of the Explanation to the notification the expression "materials" has been defined to mean goods which are raw materials, exponents, intermediate products or consumables used in the manufacture of resultant products and their packings or mandatory spares to be exported in the resultant products. But the said definition in the Explanation has to be read in consonance with the main part of the notification. It is a well-settled principle of statutory construction that the Explanation must be read so as to harmonise with and clear up any ambiguity in the main provision. (See *Bihta Coop. Development and Cane Marketing Union Ltd. v. Bank of Bihar*). The definition of "materials" in clause (viii) of the Explanation must, therefore, be so construed as not to eliminate the distinction between the words "materials required for the purpose of manufacture of products" and the words "materials used in the manufacture of the resultant products" in the main part of the definition."

Reliance was also placed in the case of *Bihta Coop. Development and Cane Marketing Union Ltd. v. Bank of Bihar*, reported in AIR 1967 SC 389.

It was further argued that if the Rule subsidises the way of promotion of an employee then this Court has ample power to shut down such arbitrary clause of the Rule. The respondents themselves are not clear whether the total number of appearance shall be counted as eligible number or the actual appearance or attempt shall be counted as eligible number. Learned counsel further submits that the petitioner is the senior most in the list of aspirants and due to non-consideration of his candidature for promotion to the post of Income Tax Officer shall cause prejudice to him. Learned counsel further submitted that at no point of time the candidature of the petitioner was rejected on the ground that his application is against the rule and when after recommendation he appeared in

the examination, "Zero" marks was awarded to him in order to eliminate him from the promotion which is a clear case of arbitrariness at the hands of the respondents.

Learned Sr. Counsel further drew attention of this Court to Annexure-3 i.e. letter of the Additional Director of Income Tax (Inv.), Ranchi dated 24.01.2012 written to the Director of Income Tax (Inv.), Patna recommending therein "calculation of attempts based on filing of examination form is really an injustice to him and will cause irreparable damage to his career. As rightly pointed out, even the prestigious examinations like UPSC, only appearance in the concerned examination is considered as an attempt. Thus, his case is an extremely genuine case and deserves sympathetic consideration in order to ensure that motivation of such personnel should not be adversely effected."

Learned Sr. Counsel emphatically argued that even the Department was aware that injustice has been done to the present petitioner and it was pointed out that even in prestigious examination like UPSC, only appearance in the concerned examination is considered as an attempt and as such action of the respondents authorities in denying legitimate claim of the petitioner is totally dehorse the rule and unconstitutional and violative of Articles 14 and 16 of the Constitution of India. Learned Sr. Counsel assailing the order of the Tribunal argued that even the Tribunal while dismissing O.A. No. 051/00022/2014 had taken a sympathetic view and observed that if the applicant is otherwise qualified in 2011 examination and if within the bounds of rules, any sympathetic consideration may be given to his case.

7. Per contra, Mr. Deepak Raushan, learned counsel appearing for the Income Tax Department vehemently opposed case of the petitioner and further drew attention of this Court in para-11 of the counter affidavit.

"11. That in reply to para 13 to 16 of the writ petition it is humbly stated that rules for department examination are made with the approval of CBDT and it is uniformly applicable to all the candidates. Further, it is clearly stated in the explanations to rule IV (i) & (ii) of the amended departmental examination rules for ITOs 2009 (effective from 2010 examination onwards) that in the calculation of maximum number of chances actually availed by the candidate the chances for which he is allowed to appear in the examination shall be taken in account irrespective of fact whether the candidate actually takes the examination or not once a candidate has been permitted to appear in the examination, withdrawal of candidature shall not be allowed. Thus, the contention of the candidate that the respondents were not able to clarify actual position, is baseless."

Learned counsel for the respondents submits that the order dated 16.02.2015, has been passed by the office of the Principal Chief Commissioner of the Income Tax after taking into consideration all facts and circumstances of the case and justifying the impugned order. Mr. Deepak Roushan, learned counsel for the respondents, submitted that the contention of the petitioner is incorrect as the

Hon"ble Central Administrative Tribunal, after considering all the facts, has passed the reasoned order by dismissing the position of the petition.

8. Considering rival submission of the parties and going through the impugned order, this Court is of the view that order passed by the Central Administrative Tribunal dated 07.07.2015 in O.A. No. 051/00072/15, requires no interference. The legal aspects of the rules and provisions as mentioned in Amended Departmental Examination Rules for Income Tax Officers, 2009 is very clear. Upon going through the rules, it is crystal clear that in the calculation maximum number of chances actually availed by the candidate, the chances for which he is allowed to appear in the examination shall be taken into account irrespective of the fact whether the candidate appears in the examination or not. Thus, there cannot be any dispute on this point as the rule position is very clear. The applicant's contention on this point, therefore, not considered valid. The decisions relied upon by the learned counsel is of no help as the issues involved in that case and the ratio derived at is not so as to deviate the fate of this case and as such, the contention of the learned counsel is rejected. The learned Tribunal has rightly held in para-6 of the order dated 07.07.2015, "that the case of the applicant has been rejected on merit as well as on legal grounds. The Tribunal's observation was not a direction to the respondents. The Tribunal merely expressed "hope" that if any sympathetic consideration can be given within the Rules, the authorities will do so. Since the authorities could find no Rule to support his case they have rightly rejected his case. The Tribunal cannot give any direction contrary to the Rules. Accordingly, the OA is dismissed." In the earlier order of the Tribunal dated 17.11.2014, the Tribunal had observed that, "in his representation, the applicant had admitted that he was fully aware of the fact that filing of application for examination is considered as an attempt for the said examination, whether the candidate appeared or not in the said examination."

9. As a cumulative effect of the rules and guidelines as floated by the Department, the case of the petitioner requires no interference and as such, the writ petition merits dismissal. No order as to costs.