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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 941/2016**

Date of decision: 13th January, 2017

UNION OF INDIA & ORS. ..... Petitioners

Through Ms. Mrinalini Sen and Ms. Kritika Gupta, Advocates

versus

SAVITRI HANS ..... Respondent

Through Mr. M. K. Bhardwaj, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The Union of India and its functionaries in this writ petition impugn order dated 28th April, 2015 passed by the Principal Bench of the Central Administrative Tribunal whereby OA No. 1624/2014 filed by Savitri Hans, respondent before us, has been allowed.

2. Savitri Hans, an Inspector in the Income Tax Department, for promotion as an Income Tax Officer, is required to pass the Departmental Examination. Prior to 2009, the Departmental Examination had six papers, namely; Income Tax Law I [Paper I], Income Tax Law II [Paper II), Book Keeping [Paper III], Other Taxes [Paper IV], Office Procedure (Paper V] and Examination of Accounts and Language Test (Paper VI]. The respondent had appeared and cleared Book Keeping [Paper III], Office

Procedure (Paper V) and Examination of Accounts and Language Test (Paper VI) in the year 2007.

3. In 2009, the examination pattern was changed and the candidates were required to clear four papers, namely: Paper 1- Income Tax Law and Computation (without books),Paper 2-Advanced Accountancy (without books), Paper 3-Allied Laws (without books) and Paper 4- Income Tax & Accountancy (combined practical) (with I.T Act & Rules).

4. Partially qualified candidates, who had two or less papers to clear under the old pattern, had the option to either appear and clear the equivalent uncleared papers under the new pattern, or appear as a normal candidate and clear all the papers under the new pattern. Income Tax Law I [Paper I] and Income Tax Law II [Paper II] under the old pattern were treated as one paper. However, such partially qualified candidates were required to clear the equivalent papers, namely; Paper 1, Income Tax Law and Computation (without books) and Paper 4, Income Tax & Accountancy (combined practical) in one examination.

5. As noticed above, the respondent was a partially qualified candidate as she was yet to clear Income Tax Law I [Paper I], Income Tax Law II [Paper II] and Other Taxes [Paper IV] under the old pattern. The respondent had appeared and cleared Paper III i.e. Allied Law in 2010. Allied Law paper was treated as equivalent to Other Taxes [Paper IV] under the old pattern. Thereafter, the respondent had appeared and cleared Paper I, Income Tax Law and Computation in 2012. She cleared Paper IV, Income Tax & Accountancy in the year 2013. These two papers were treated as equivalent to Income Tax Law I [Paper I] and Income Tax Law II [Paper II] under the old pattern.

6. The respondent having not cleared Paper 1, Income Tax Law and Computation and Paper 4, Income Tax & Accountancy in one examination was not granted promotion as Income Tax Officer.

7. Aggrieved, the respondent filed the aforesaid OA No.1624/2014, which as noticed above has been allowed vide impugned order dated 28th April, 2015. The reasoning given by the Tribunal to allow the said OA reads as under:-

> "11. The facts are as follows. Each candidate has 10 chances to clear all papers (6 in old pattern, 4 in new). Partially qualified candidates are those who are yet to qualify two or less papers of the Old Pattern examination. Thus the applicant squarely falls within that category. She was allowed by the respondents to appear for Paper 1 & 2 (now 1 & 4) in 2012 and 2013. They did not point out in 2013 that she would not take just Paper 2 as now Paper 1 & 4 goes together and clearing Paper 1 in 2012 will be ignored. This is clearly the respondents fault. The candidate cannot be made to suffer for that. The judgment of the Hon ble High Court in Sh. Rakesh Beniwal (supra) comes to the rescue of the applicant in this regard. Secondly, we feel the woods are being lost for the trees by the respondents in this case. Each candidate gets 10 chances. The applicant has cleared all papers in 4 chances. As per examination Rules of 2009, she should have cleared both Paper 1 and Paper 4 (old Paper 2) together. But the department, with open eyes, let her appear for Paper 2 in 2013. For this clerical error by someone in the respondent office she is being denied her promotion, despite proving to the department that she has merit. If, for instance, the 2009 Rules had not come into force, she would be fully qualified she cleared all Papers in 4 chances instead of 10! We feel balance of convenience lies in the applicant s favour."
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> 12. Learned counsel for the respondents also stated that the applicant cannot assail letter/ order dated 7.02.2014

> without making others as party. However, we do not accept this contention as the applicant has raised an issue against the government and, therefore, there is no need to implead all as parties [A. Janardhana Vs. Union of India and others, AIR 1983 SC 769]."

8. We have examined the aforesaid reasoning, but have to observe that the same ignores and obliterates the rule position, which was not under challenge. The amended Examination Rules, 2009 had defined a partially qualified candidate to mean a candidate who was yet to qualify two or less paper of old pattern. The explanation to Rule I had stipulated that Income Tax Law I and Income Tax Law II of the old pattern would be considered as one paper. As Income Tax Law I [Paper I] and Income Tax Law II [Paper II] under the old pattern was treated as one paper, there was also a stipulation that the candidates must clear the equivalent papers under the new pattern i.e. Paper 1, Income Tax Law and Computation (without books) and Paper 4, Income Tax & Accountancy (combined practical), in one examination.

9. The reasoning given in paragraph 11 quoted above, wrongly assumes that the respondent was not allowed to sit and appear for Paper1, Income Tax Law and Computation in 2013 examination. This is factually incorrect. There is no basis or ground for the said inference. The respondent voluntarily did not sit and appear in Paper 1, Income Tax and Computation in 2013 examination.

10. The contention of the respondent is that she had appearing as an old pattern candidate in the 2013 examination but was wrongly treated as candidate under the new pattern is inconsequential and irrelevant, for as a normal candidate the respondent could have appeared in all papers. This

alleged mistake, which is denied by the petitioners, would not make even a slightest difference and would not establish that the respondent wanted to appear in Paper1, Income Tax Law and Computation in the 2013 examination.

11. We also take on record the stand of the Petitioners that the respondent had appeared as a new pattern candidate in the 2013 examination. They rely on the application form filled by the respondent. In the absence of any written communication or protest by the respondent there appears to be merit in the submission that it should not be assumed that the on-line form or application was defective and had prevented the respondent from correctly exercising her option. No such plea or complaint was apparently made by any other applicant.

12. We would also reject the contention of the respondent that the rule position requiring the old pattern candidates to simultaneously appear and clear Paper I Income Tax Law and Computation and Paper IV Income Tax and Accountancy was vague and ambiguous. The rule position and the stipulation was clear. The respondent in 2012 had appeared and given Paper I, Income Tax Law and Computation and Paper IV, Income Tax & Accountancy. She, however, could only qualify Paper I, Income Tax Law and Computation. She had secured 40 marks in Paper IV, Income Tax & Accountancy in 2012. She had written a letter, which was received by the petitioner on 27th May, 2013, claiming that she was entitled to one grace mark. The relevant portion of the said letter reads as under:-

> "**Sub:- Revaluation of Marks of Paper-I of Income-tax, ITO Exams-2012 (Roll No.07275)-Regarding-**
>
> Kindly refer to the revised result of ITO Exams-2012

> declared on 21.05.2013 in which, I have been shown secured 52 marks in Paper-I and 40 marks in Paper-II. In this regard, I humbly wish to submit that:
>
> 1. I had opted to old pattern, copy of form (PQ) is enclosed the representations requesting for allowing Exam in old pattern, already sent through proper channel are enclosed for ready reference. However, my result has been declared under the new pattern of exam, it is requested to consider me for old pattern. The result declared in 2010 was taken correctly in old pattern.
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> 2. I had obtained 47 marks in Paper-I as per result declared in December, 2012. After allowing 5 marks, I have got 52 marks, however, due to addition of 5 marks, 1 negative mark should also have been added, and as in the original result 1 negative mark should have been deducted against 5 wrong answers (which have been taken as correct). Therefore, I should be added 6 marks (5marks of 5 questions and 1 mark of negative marking) instead of 5 marks. If, I am allowed 6 marks my total marks in Paper-I will be 53. Since in old pattern marks of Paper-I and Paper-II are combined, the total marks in Paper-I and Paper-II will become 93 (53+40) and after allowing 7 grace marks, I will be declared pass, because I have not taken 7 grace marks till now."

Subsequently, by another communication dated 25th June, 2013, the respondent withdrew her earlier request made vide communication received on 27th May, 2013.

13. We have quoted the letter written by the respondent received by the petitioner on 27th May, 2013 for the reason that the respondent had pleaded in the said letter that she had opted and appeared as an old pattern candidate in 2012 and that she was required to clear both Paper I, Income Tax Law and Computation and Paper IV Income Tax and Accounts in a single or one

examination. As the respondent had not cleared Paper IV, Income Tax & Accountancy in 2012, her clearing and passing Paper I, Income Tax Law and Computation was of no consequences.

14. We have also examined the averments in the Original Application filed by the respondent under 19 of the Administrative Tribunals Act, 1985. In this OA, the respondent has referred to the representation, which was received by the petitioner on 27th May, 2013, but she had concealed the fact that she had withdrawn the said representation. Her case was that she had cleared Income Tax & Accountancy, Paper IV in 2013 and, therefore, having cleared all the papers, she was eligible for promotion as Income Tax Officer. Another grievance raised was that the petitioners had wrongly treated the respondent as a normal candidate in the 2012 and 2013 examinations whereas she had appeared as a partially qualified candidate.

15. Even if we assume and accept that the respondent had always appeared under the old pattern, she had not cleared Paper I, Income Tax Law and Computation and Paper IV, Income Tax and Accountancy in one examination. The specific requirement and the Rule position being that old pattern candidates have to clear Paper I and Paper IV together, this stipulation is certainly not satisfied. Thus, the respondent would not qualify. The respondent would have appeared and was never stopped from appearing in Paper I, Income Tax Law and Computation in the 2013 examination, a paper which he cleared in 2012. The respondent did not appear in the said paper in 2013. Thus, there is no reason or cause for confusion.

16. Learned counsel for the respondent had relied upon paragraph 11 of the decision of the Supreme Court in ***Council of Scientific and Industrial Research and Anr. Vs. K.G.S. Bhatt and Anr.***, (1989) 4 SCC 635. This

decision holds that Administrative Tribunals as final arbiter of controversies relating to conditions of service of officials should decide service matters without being tied down to strict rule of evidence and they are not bound by the procedure laid down in the Code of Civil Procedure, 1908. This decision would not help the respondent. The Rules in question are not under challenge and are binding. They cannot be overlooked and ignored. Rules ensure uniformity and fairness in the selection process. We do not find any reason to accept the contention of the respondent that she had cleared Paper I, Income Tax Law and Computation in 2012 and Paper IV, Income Tax and Accountancy in 2013 and, therefore, she should be treated as qualified notwithstanding the rule position that if an candidate appears as an old pattern candidate, he or she should clear the two papers together i.e. in one examination. In fact, if we accept the prayer of the respondent, there will be several others, who will join and ask for similar and identical orders.

17. It was urged that the respondent has suffered as she did not appear in the Income Tax Officer Examination held in 2014, 2015 and 2016. OA No.1624/2014 was filed in February, 2014 and the impugned order passed by the Tribunal is dated 28th April, 2015. Thereafter, this writ petition was filed and stay was granted vide order dated 15th February, 2016. The respondent, we perceive and believe, was aware and would be conscious of the fact that pending litigation or dispute could go against her. Her non-appearance in the examinations conducted in 2014, 2015 and 2016 would not justify dismissal of the writ petition. Nothing prevented the respondent to appear in the examinations conducted in 2014, 2015 and 2016. This contention, therefore, has to be rejected.

18. In view of the aforesaid discussion, we allow the present writ petition

and set aside the impugned order dated 28th April, 2015. OA No.1624/2014 filed by the respondent will be treated as dismissed. We would, however, clarify that it is for the respondent to decide as to whether she wants to appear as a partially qualified candidate or a normal candidate. In whichever category she chooses to apply, she would have to comply and abide by the rules, which are mandatory. There would be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 13, 2017
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