

UNION OF INDIA AND ORS.

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v.

MUKESH KUMAR MEENA

(Civil Appeal No. 3468 of 2022)

APRIL 28, 2022

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Service Law : Selection/appointment – Departmental exam for Income Tax Inspectors – Grace marks policy – Benefit of – Held: Benefit of grace marks was not to allow the reserved category to switch over to general category – Central Board of Direct Taxes introduced the grace marks policy with the purpose of enabling marginally failing candidates to pass the examination – Once the applicant passed in his own category-reserved category, there was no question of allowing/granting him any further grace marks to switch over to general category – Only in a case where any candidate belonging to any category is marginally failing to pass the examination, he is/was to be allowed the grace marks so as to allow him to obtain the minimum passing marks required and that too by allowing upto five grace marks – High Court did not appreciate the true spirit the object and purpose of grace marks policy – Rules for Departmental Examination for Income Tax Inspector, 1998.

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Allowing the appeal, the Court

HELD: 1.1 The CBDT introduced the grace marks policy with the purpose of enabling marginally failing candidates to pass the examination. As per the Rules for Departmental Examination for Income Tax Inspector, 1998, the minimum marks provided for general category candidate was 45% and in the case of SC/ST category candidate, it was 40%. In the instant case, the respondent secured more than 45% marks in each subject except the subject of “Other Taxes”, wherein, he secured 43% marks. However, the minimum requirement was 40% so far as the respondent is concerned, as he belonged to ST category and so he passed in his own category. However, it is the case on behalf of the respondent that as the minimum marks required for general category candidate was 45% and if he would have been awarded two marks by way of grace in the subject of “Other Taxes”, in

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A that case, he would have secured the minimum 45% marks required for general category candidate and therefore, he would have got the promotion in the general category. The tribunal rightly did not accept the same. The benefit of the grace marks was not to allow the reserved category candidate to switch over to general category. [Para 6][126-D-G]

B Once the respondent-original applicant passed in his own category, there was no question of allowing/granting him any further grace marks. If the contention on behalf of the respondent-original applicant is accepted, in that case, granting the grace marks in the said case would be beyond the object and purpose of granting grace marks and beyond the policy declared by CBDT. Only in a case where any candidate belonging to any category is marginally failing to pass the examination, he is/was to be allowed the grace marks so as to allow him to obtain the minimum passing marks required and that too by allowing upto five grace marks.

C By passing the impugned judgment and order, the High Court has not at all appreciated and/or considered in its true spirit the object and purpose of grace marks policy introduced by CBDT. It was never meant for a person, who has passed in his own category and still to allow him further grace marks to enable him to move to the general category. The impugned judgment and order passed by the Division Bench of the High Court is unsustainable and is quashed and set aside. [Para 6.1, 8] [127-A-D, F]

F *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Ors. (2007) 8 SCC 785 : [2007] 8 SCR 972 – distinguished.*

Case Law Reference

[2007] 8 SCR 972 distinguished Para 7

G CIVIL APPELLATE JURISDICTION : Civil Appeal No.3468 of 2022.

From the Judgment and Order dated 20.02.2015 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No.1542 of 2015.

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Nachiketa Joshi, Ms. Niranjana Singh, Mohd. Akhil, P. V. Yogeswaran, Abhishek Singh, Nring Chamwibo Zeliang, Raj Bahadur Yadav, Advs. for the Appellants. A

Dr. Sumant Bhardwaj, Vedant Bhardwaj, Ms. Mridula Ray Bhardwaj, Vipul Rana, Ms. Ritu Bhardwaj, Advs. for the Respondent.

The Judgment of the Court was delivered by B

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.02.2015 passed by the High Court of Judicature for Rajasthan at Jodhpur in DBCWP No. 1542 of 2015, by which the High Court has allowed the said writ petition preferred by the respondent herein – original writ petitioner and has set aside the judgment and order passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred to as the “Tribunal”) in O.A. No. 155 of 2014 by which the learned Tribunal dismissed the said application preferred by the respondent herein – original applicant (hereinafter referred to as “original applicant”) and has directed to extend the grace marks in the subject of “Other Taxes” by treating him as a person belonging to general category, Union of India and Others have preferred the present appeal. C D

2. That the original applicant belongs to Scheduled Tribes(ST) category. He entered in services of the Department of Income Tax being appointed as Lower Division Clerk (LDC). He was promoted to the posts of Tax Assistant, Sr. Tax Assistant and Office Superintendent. With a view to regulate the departmental examination for Income Tax Inspectors, the competent authority introduced modified rules for Departmental Examination for Income Tax Inspectors – 1998 (hereinafter referred to as the “Rules, 1998”). The said Rules were made applicable for the departmental examination to be held in 1998 and onwards. The departmental examination under the Rules, 1998 consisted of six papers namely viz. Income Tax Law and Assessment, Other Taxes, Book Keeping, Office Procedure, Examination of Accounts and Hindi Test. A candidate securing minimum 45% marks in five subjects except in Hindi was entitled to be declared as pass. For the members of Scheduled Castes and Scheduled Tribes the minimum marks required to qualify the examination was 40% of the maximum marks. E F G

2.1 For the benefit of those candidates, who marginally failed to secure minimum marks/percentage irrespective of their category on H

- A falling short of passing, upto five marks, the Central Board of Direct Taxes introduced policy of awarding grace marks. The original applicant secured the marks in different subjects as under:-

B	a.	Income Tax Law (I & II) Combined aggregate of 45% (40% in the case of SC/ ST candidate)	41 +57=98	49
	b.	Other Taxes	43	43
	c.	Book Keeping	45	45
	d.	Office Procedure	71	71
	e.	Examination of accounts	83	83
C		Total	340	56.67

- 2.2 Thus, the original applicant secured more than 45% marks in each subject except the subject of “Other Taxes”. According to the original applicant, he was entitled for grace marks in the subject of “Other Taxes”, but the same were not given to him as he was treated qualified in the category of Scheduled Tribes. Therefore, it gave cause to him to approach the Central Administrative Tribunal, Jodhpur Bench, Jodhpur by way of filing O.A. No. 155 of 2014.

- 2.3 Before the Tribunal, it was the case on behalf of the original applicant that though he belongs to ST category and he passed in the examination with relaxed standards of marks provided for SCs and STs category, but he actually got 43 marks in one of the subjects and had he been given two grace marks in the “Other Taxes” paper in the departmental examination, he would have been declared passed in 2007 itself on his own merit and would have been eligible to get the benefit of promotion against general vacancies.

- 2.4 The learned Tribunal by a reasoned and detailed judgment and order dismissed the said application by observing that the CBDT circular providing grace marks cannot be interpreted to mean that a person, who has passed in his own category can be given further grace marks to enable him to move in the general category on his own merit. The learned Tribunal also considered the object and purpose of introducing the grace marks policy, namely with the purpose of enabling marginally failing candidates to pass the examination.

- 2.5 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Tribunal dismissing the O.A., the respondent herein

– original applicant preferred the writ petition before the High Court. By the impugned judgment and order, the Division Bench of the High Court relying upon the decision of this Court in the case of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Ors., (2007) 8 SCC 785** has allowed the said writ petition and has quashed and set aside the judgment and order passed by the learned Tribunal and has directed the Department to extend grace marks to him in the subject of “Other Taxes” by treating him as a person belonging to general category.

2.6 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the Union of India and others have preferred the present appeal.

3. Shri Nachiketa Joshi, learned counsel appearing on behalf of the appellants – Union of India and others has vehemently submitted that the impugned judgment and order passed by the High Court is beyond the grace marks policy declared by the Central Board of Direct Taxes.

3.1 It is submitted that while passing the impugned judgment and order, the Hon’ble High Court has not at all appreciated the object and purpose of allowing the grace marks. It is submitted that as rightly observed by the learned Tribunal, the grace marks were to be provided only for the purpose of enabling marginally failing candidates to pass the examination.

3.2 It is submitted that as rightly observed by the learned Tribunal, the grace marks policy was not applicable in favour of a person, who has passed in his own category. It is submitted that it was not meant to give further grace marks to enable a person, who has passed in his own category to move to the general category on his own merit.

3.3 It is further submitted that the Hon’ble High Court has as such erred in applying the decision of this Court in the case of **Rajesh Kumar Daria (supra)**. It is submitted that the said decision shall not be applicable to the facts of the case on hand.

3.4 Making above submissions, it is prayed to allow the present appeal.

4. Present appeal is vehemently opposed by Dr. Sumant Bhardwaj, learned counsel appearing on behalf of the respondent – original applicant.

4.1 It is vehemently submitted that in the facts and circumstances of the case and relying upon the decision of this Court in the case of

- A **Rajesh Kumar Daria (supra)**, the Hon'ble High Court has rightly directed the Department to give grace marks to the original applicant in the subject of "Other Taxes" so that he may switch over to general category and/or get the promotion in the general category. It is submitted that if the grace marks are given to the original applicant, in that case, he may get the promotion in the general category.

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4.2 It is submitted that some other employees belonging to reserved categories were awarded five grace marks despite the fact that they were having the requisite minimum passing marks of 40% meant for SC/ST category.

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4.3 Making above submissions and relying upon the decision of this Court in the case of **Rajesh Kumar Daria (supra)**, it is prayed to dismiss the present appeal.

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5. We have heard the learned counsel for the respective parties at length. We have also considered and gone through the grace marks policy declared by the Central Board of Direct Taxes (CBDT).

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6. The CBDT introduced the grace marks policy with the purpose of enabling marginally failing candidates to pass the examination. At this stage, it is required to be noted that as per the Rules, 1998, the minimum marks provided for general category candidate was 45% and in the case of SC/ST category candidate, it was 40%. In the present case, the respondent – original applicant secured more than 45% marks in each subject except the subject of "Other Taxes". In the subject of "Other Taxes", he secured 43% marks. However, the minimum requirement was 40% so far as the respondent – original applicant is concerned, as he belonged to ST category and so he passed in his own category.

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However, it is the case on behalf of the original applicant that as the minimum marks required for general category candidate was 45% and if he would have been awarded two marks by way of grace in the subject of "Other Taxes", in that case, he would have secured the minimum 45% marks required for general category candidate and therefore, he would have got the promotion in the general category. The aforesaid was rightly not accepted by the learned Tribunal. The benefit of the grace marks was not to allow the reserved category candidate to switch over to general category.

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6.1 At the cost of repetition, it is observed that the CBDT introduced the grace marks policy with the purpose of enabling the marginally failing

candidates to pass in the examination. Once the respondent – original applicant passed in his own category, there was no question of allowing/ granting him any further grace marks. If the contention on behalf of the respondent – original applicant is accepted, in that case, granting the grace marks in the aforesaid case would be beyond the object and purpose of granting grace marks and beyond the policy declared by CBDT. Only in a case where any candidate belonging to any category is marginally failing to pass the examination, he is/was to be allowed the grace marks so as to allow him to obtain the minimum passing marks required and that too by allowing upto five grace marks. By passing the impugned judgment and order, the High Court has not at all appreciated and/or considered in its true spirit the object and purpose of grace marks policy introduced by CBDT. It was never meant for a person, who has passed in his own category and still to allow him further grace marks to enable him to move to the general category. That was not the object and purpose of the grace marks policy.

7. Now, so far as the reliance placed upon the decision of this Court in the case of **Rajesh Kumar Daria (supra)** followed by the High Court is concerned, the said decision is not applicable to the facts of the case on hand. The specific grace marks policy was introduced by the CBDT, which was for marginally failing candidates so as to enable them to pass the examination. Therefore, the said decision relied upon by the respondent herein – original applicant is not applicable at all.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the Division Bench of the High Court is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned Tribunal dismissing the O.A. stands restored.

Present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.