

Central Administrative Tribunal

Principal Bench, New Delhi



O.A. No. 78/2020
M.A. No. 110/2020

Monday, this the 10th day of February 2020

Hon'ble Sri Justice L. Narasimha Reddy, Chairman
Hon'ble Sri A. K. Bishnoi, Member (A)

1. Dr. Amitesh Khare, Group A, Civil Services
DOB 18.06.1988
s/o Mr. B N Khare
r/o B-40 B,
Ambay Bharti Apartment, Sector Pie I
Greater Noida, UP 201306
2. Mr. Avnish Gaurav, Group A, Civil Services
DOB 20.07.1988
s/o Sh. Shambhu Prasad Singh
r/o D 459-460 (Ground Floor)
Nehru Vihar, New Delhi – 110 054
3. Mr. Abhishek Kumar, Group A, Civil Services
DOB 13.03.1985
s/o Sh. Amrendra Kumar
r/o Chhoti Badalpura, Thana Road
Khagaul, Patna, Bihar 801105
4. Mr. Shibin
Group A, Civil Services
DOB 29.07.1985
s/o Sh. Satyanandan
r/o 2319 1st Cross
HAL 3rd Stage, BDA Layout
Jeevan Bhima Nagar
Bangalore – 560017
5. Mr. Neeraj Kumar, Group A, Civil Services
DOB 02.07.1983
s/o Sh. Vishnu Ram
r/o Plot No.3, Brajnagar
Bharatpur, Rajasthan 321001



6. Mr. Manish Yadav, Group A, Civil Services
DOB 25.04.1988
s/o Sh. S.R. Yadav
r/o GA 74, NTPC Anandam
P6 Greater Noida
Uttar Pradesh 201308
7. Ms. Ravneet Johal, Group A, Civil Services
DOB 10.06.1988
d/o Mr. Nishan Singh
r/o U Block 25/23, 3rd Floor
Pink Town House, DLF City Phase 3
Gurugram 122002
8. Mr. Rahul Saklani, Group A, Civil Services
DOB 06.05.1988
s/o Sh. P C Saklani
r/o House No.25, P Sector 10
Ambala City, Haryana 134003

..Applicants

(Ms. Kuruna Nundy and Ms. Ragini Nagpal, Advocates)

Versus

1. Union of India through
Through the Secretary
Ministry of Home Affairs
Central Secretariat, New Delhi – 110 001
2. Union of India through its Secretary
Department of Personnel & Training
Ministry of Personnel, Public Grievances &
Pensions, North Block, Central Secretariat
New Delhi – 110 001
3. Union Public Service Commission
Through the Secretary
Dholpur House, Shahjahan Road
New Delhi – 110 069

...Respondents

(Sri R K Jain, Advocate for respondent Nos. 1 & 2,
Sri R V Sinha and Sri Amit Sinha, Advocate for
respondent No.3)

O R D E R (ORAL)



Justice L. Narasimha Reddy:

The applicants are aspiring to appear in the Civil Services Examination, 2020. While for some of them, it is a repetition of the same examination; for others, it would be a maiden attempt.

2. The grievance of the applicants is that the Union Public Service Commission (UPSC), the 3rd respondent herein, issues Notifications by stipulating the 1st August of the concerned year, as relevant for reckoning the age limit, and in the process, the applicants are likely to lose a chance. They contend that the stipulation of 1st January of the concerned year as well as any other date, including 1st August of the year, would be beneficial and helpful to all the candidates, and that this will not cause inconvenience to anyone. Reliance is placed upon the Office Memorandum dated 04.12.1979, issued by the Ministry of Home Affairs. The applicants made an effort to demonstrate as to how, the stipulation of 1st August of the year, would lead to disadvantage to them, and the adoption of the dates, mentioned in the O.M. dated



04.12.1979, would advance the purpose of conducting examination. Various other grounds are also raised.

3. The O.A. was listed for admission on 10.01.2020. Having regard to the urgency involved in the matter, we directed the learned standing counsel for UPSC to obtain instructions or to file counter affidavit. The UPSC has filed a short reply raising some preliminary objections as to the very maintainability of the O.A.

4. Today, we heard Ms. Karuna Nundy, learned counsel for applicants, Mr. R K Jain, learned counsel for respondent Nos. 1 & 2 and Mr. R V Sinha, learned counsel for respondent No.3, at length. We also perused the record and gone through the precedents cited by the respective parties.

5. The O.A. is filed by eight applicants. To be precise, the prayer in the O.A. reads:-

“a) Direct that:

i. clause 2 (i) of the Office Memorandum No. 42013/1/79 – Estt. (D) dated 04.12.1979 be read down so as to retain only 01st January as the crucial date for the UPSC Civil Services competitive examinations irrespective of which half of the year the examination is held; and



ii. clause 2 (ii) of the Office Memorandum No. 42013/1/79-Estt. (D) dated 04.12.1979 be set aside as being contrary to Article 14 and Article 16 of the Constitution of India;

b) Set aside the Office Memorandum No. AB 14017/70/87-Estt. (RR) dated 14.07.1988 laying down crucial dates for competitive examinations held in two parts and on two different dates of the year, such that only 01st January be followed as the uniform crucial date for determination of age for UPSC Civil Services Competitive Examinations;

c) In the alternative, to quash the Office Memorandum No.42013/1/79 – Estt. (D) dated 04.12.1979 in toto and to direct the Respondent No.3 to publish 01st January, 2020 as the crucial date for determination of age, in the Civil Services Examination Notice for the year 2020, to be published on 12.02.2020;

d) In the alternative, to direct the Respondents to change the crucial date for determination of age from 01st August to the opening/closing date of applications as the crucial date for determination of age;

e) In the alternative, to direct the Respondents to change the crucial date for determination of age from 01st August to the 01st day of the month in which the applications for the examination open;

f) In the alternative, to direct the Respondents to change the crucial date for determination of age from 01st August to the 01st July of the year of the Examination, such that the crucial date for determination of age coincides with the two equal halves of the year;

g) In the alternative to allow the Applicants herein to appear for the Civil Services Examinations to be held in the year 2020.”



6. In a way, the O.A. is filed well in anticipation of the issuance of Advertisement and Notifications by the UPSC. In a way, the applicants wanted to be sure about their rights before the Advertisement and Notifications are published. It is also stated that earlier, the applicants filed a writ petition before the Hon'ble Supreme Court and in view of the observations made therein, the present O.A. is filed.

7. Extensive arguments are advanced to convince us that the respondents ought to have strictly and meticulously followed the dates and other events mentioned in O.M. dated 04.12.1979. They further contend that the so-called clarification issued through O.M. dated 14.07.1988 is arbitrary and contrary to law, and made a prayer for setting aside of that.

8. We would have certainly gone into the matter in detail, but for the fact that this very issue was dealt with by the Allahabad Bench of this Tribunal and thereafter by the Hon'ble Supreme Court. In O.A. No.778/1991 and O.A. No.881/1991 filed before the Allahabad Bench, this issue was raised. Through its order dated 19.09.1991, the Tribunal dismissed the O.As. and upheld the stipulation



of 1st August, as the cut-off date, irrespective of the date on which preliminary examination or main examination are held. However, in O.A. No.168/1990 and O.A. No.1161/1992 in which the same issue was raised, came to be heard in the year 1993. Through order dated 07.05.1993, a totally different view was taken by the Allahabad Bench. The Union of India filed Civil Appeal No.2347/1994 (**Union of India & another v. Sudhir Kumar Jaiswal**) in the Hon'ble Supreme Court. In paragraphs 9 & 10 of the judgment in that case, their Lordships observed as under:-

“9. Let it now be seen as to why the Bench in the impugned judgment despite the earlier decisions referred earlier, has accepted the case of the respondent. A perusal of the judgment shows that the Bench relied on an office memorandum issued by the Government of India on 4-9-1979 to come to its decision. It is enough to observe that what is stated in this memorandum, which is apparently executive in nature, cannot override the statutory provisions finding place either in Regulation 4(ii) of IAS (Appointment by Competitive Examination) Regulations, 1955 or Rule 6(a) of Civil Services Examination Rules, 1992. According to us, this is so elementary a point that an adjudicatory body like the CAT could not have, in any case was not expected to have, made the mistake of relying on the same as it runs counter to the aforesaid statutory provisions. This is not all. The aforesaid office memorandum came to be explained or modified by another office memorandum of 14-7-1988, which has made it clear that insofar as civil service examinations are concerned, it is the later date



which is crucial in between two dates, namely, 1st January and 1st August. So, no reliance could have been, in any case, placed on what had been stated in this regard in the office memorandum of 4-9- 1979.

10. Shri Jain, learned counsel for the respondent, being conscious of the weakness of the legal stand taken by the Tribunal, urged that equity should come to the respondents' assistance because of the view taken by this Court in Mohan Kumar Singhania case¹⁰ to which the Tribunal has also referred in its judgment. We have applied our mind to this aspect. We are not persuaded to agree with Shri Jain, because what happened in Singhania case¹⁰ was different. We have taken this view also because the impugned judgment has left room to think it was inspired by some oblique motive. Though in putting this on record, we have not felt happy but we have felt called upon to do so because the Allahabad Bench itself of the CAT had rejected the self same contention of the respondent himself in the two OAs referred earlier. In view of this, the present Bench was not justified in refusing to make a reference to a larger Bench to decide the point to which effect a prayer had been made by the appellants. The Bench ought to have referred the matter to a larger Bench also because of two decisions of that Bench itself taking different view, more so, as it was deciding a point relating to conduct of examination by an important body like Union Public Service Commission, and that also for examinations conducted for selecting IAS and IFS Officers. The reference to larger Bench was eminently called because the earlier decisions of the Tribunal were based on the judgments of this Court in Ramjee Prasad case in which the reasonableness of cut-off date examined related to filling up posts, as in the case at hand.”

The Civil Appeal was allowed, through judgment dated 04.05.1994, and the order of the Tribunal was set aside by imposing costs of Rs.10,000/-.



9. Once the Hon'ble Supreme Court has reversed the judgment rendered by the Allahabad Bench of this Tribunal, which took the view that the stipulation of 1st August as a date for determining the age limit is arbitrary, we cannot entertain the O.A. on the same issue. Following the judgment of Hon'ble Supreme Court, we dismiss the O.A.

There shall be no order as to costs.

Order **dasti.**

February 10, 2020
/sunil/