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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O. A No.1423/1998

New Delhi, this the 21st day of May, 1999

Hon'ble Mr. S.R.Adige, Vice Chairman (A)
Hon'ble Mrs Lakshmi Swaminathan, Member(J)

Pemba T.Bhutia,
Son of Shri G.T.Bhutia,
C/o Samden Dukpa,
153, Jubilee Hall Hostel,
University of Delhi,
Delhi-110007.

- Applicant

(By Advocate Shri Rajeev Mehra)

Versus

1. Union of India
through its Secretary,
Ministry of Personnel,
Public Grievance and Pensions,
Department of Personnel and
Training,
North Block, New Delhi

2. Union Public Service Commission,
(through its Chairman)
Dholpur House, Shahjahan Road,
New Delhi.

- Respondents

(By Advocate Shri V.S.R.Krishna)

O R D E R

By Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

This application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging the validity of Rule 18 of the Ministry of Personnel, Department of Personnel & Training Notification dated 14.12.1996. According to him this Rule is arbitrary, discriminatory and unconstitutional as it has been given retrospective effect with regard to rights secured by him on the basis of allocation to a Service, based on his merit position and preference given in the Civil Services (Main) Examination, 1997.

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2. The applicant who belongs to the Scheduled Tribe category had appeared initially in the Civil Services Examination held in 1995 (hereinafter referred to CSE, 1995). In that Examination, he had given option for 12 Services in order of his preference against 27 Services/Posts in Group 'A' and Group 'B' Services. He had secured 638th rank and on the basis of CSE, 1995 he was allocated to the Central Secretariate Service (CSS), Group B. The letter of appointment to this Service was sent to him by letter dated 11.2.1997 and he had been asked to intimate the acceptance by 7.5.1997. In the same letter, he was also informed that if he was interested in appearing in the subsequent examination i.e. CSE, 1997, he should seek permission or report for the Fundamental Training Course starting on 7th July 1997 if he accepted the offer. The applicant availed of this opportunity and reappeared for the CSE 1997 and gave 25 services in his preferences, which again included Group 'A' & 'B' services. In the Group 'B' service, he has mentioned Pondicherry (C) and Pondicherry (P). In the 1997 CSE, he secured 564th rank. According to the Respondents, since he has accepted the CSS and had sought extension of time to join that service in order to appear in the CSE, 1997, he was only eligible for allocation to a service in terms of Rule 18 of the CSE, 1997 Rules, and not based only on his merit position in the later examination. The respondents have, therefore, submitted that the applicant has been rightly allocated to Pondicherry Police Service Group 'B' on the basis of CSE, 1997, which the applicant has challenged as being ultra vires his fundamental and vested rights and Constitutional provisions.

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3. Shri Rajeev Mehra, learned counsel for the applicant has submitted that the applicant has made a phenomenal improvement in his rank from 638 in the CSE 1995, to 564 in CSE 1997, whereby he should be eligible for allotment to a Group 'A' service on the basis of his rank and reservation for ST community. On the other hand, he has been offered a much lower service i.e. the Pondichery Police Service. The learned counsel has submitted that the applicant has to be considered for allotment in the services of his choice as mentioned by him in the CSE, 1997, list of preferences and hence he is entitled to be allocated to a Group 'A' service. He has submitted that Rule 18 as amended by the DOPT's Notification dated 14.12.1996 is ultra vires and arbitrary as the applicant has been denied equality in appointment as compared to persons with lower ranks who are being allotted better services. He has also vehemently submitted that Rule 18 as amended has in fact restricted the applicant's allotment to a service with retrospective effect and is not based on his improved performance which again is arbitrary and unreasonable. He has, contended that since the Examination itself allowed candidates to make several attempts with a view to improve their performances each time, the amended Rule 18 was actually detrimental to the candidates. He has submitted that in any case, Rule 18 cannot be given retrospective effect, as under the CSE, 1995, the Pondichery Police Service did not figure in the list of services, or post of Deputy Superintendent of Police, CBI which has been elevated from Group 'B' to Group 'A'

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service. The learned counsel has submitted that retrospective implementation of the Rule tantamounts to deprivation of the applicant's "vested right" to be allotted to a Group 'A' service based on his improved rank of 564 and reservation as a ST candidate in CSE, 1997. He has, therefore, submitted that as the applicant has legitimate expectation that he would get a better service based on his improved rank, he cannot be confined to a Group 'B' Service i.e., CSS or the Pondicherry Police Service Group 'B' but should be given a Group 'A' service. He has forcefully contended that under Rule 18 as amended by the 1996 Notification, even if the applicant has accepted the allocation to the CSS on the basis of the CSE, 1995 he has to be allotted to a higher preference given by him to the CSS and he cannot in any case be allotted to the Pondicherry Police Service which now the respondents have done on the basis of CSE, 1997. Learned Counsel has prayed for striking down Rule 18 of the notification dated 14.12.1996 or alternatively for a direction to the respondents to grant applicant a service based on his rank in CSE, 1997 and his list of preferences given for that examination. Shri Rajeev Mehra, learned counsel has also given his written submissions as well as a list of cases he relies upon (copies placed on record).

4. The respondents have taken a preliminary objection that the applicant has filed this OA without waiting for the allocation of services to the successful candidates on the basis of CSE, 1997. On the other hand, they have also contended that if the applicant had any grievance, then he ought to have filed the OA immediately

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after the issuance of the DOPT Notification dated 14.12.96, i.e., before filling up the application form for CSE, 1997 and cannot do so after he has appeared in the examination. In the facts and circumstances we are of the view that the applicant is not precluded from challenging the allotment of ^{as} Service, which, according to him is contrary to the Rules and illegal, as mentioned above, and the O.A. is maintainable.

5. Shri V.S.R. Krishna, learned counsel has submitted that the applicant cannot be considered on par with a fresh candidate as he has already appeared and been allocated the CSS on his ^{rank and} preference in CSE, 1995. He has submitted that as he has taken a chance to appear again in CSE, 1997, it has to be taken as a continuing process and he is bound by the Rules as amended. In the circumstances, he has submitted that the respondents have acted in accordance with the CSE Rules and the O.A. may be dismissed.

6. We have carefully considered the submissions made by the learned counsel for the parties and the record.

7. Rule 18 of the DOP&T Notification dated 9.12.1995, for CSE, 1995, reads as follows :-

"18. Due consideration will be given at the time of making appointments on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to the various services will also be governed by the Rules, Regulations in force as applicable to the respective Services at the time of appointment.

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Provided that a candidate who has been approved for appointment to Indian Police Service Central Services, Group 'A' including the posts of Asstt. Security Officer in R.P.F. and Asstt. Commandant in C.I.S.F. mentioned in Col.2 below on the results of an earlier examination will be considered only for appointment to services mentioned against that service in Col.3 below on the results of this examination.

Sl.No.	Service to which approved for appointment	Service to which eligible to compete
1.	Indian Police Service	I.A.S, I.F.S. and Central Services, Group 'A' including R.P.F and C.I.S.F.
2.	Central Services, Group 'A' including R.P.F. and CISF	IAS, IFS and I.P.S.

Provided further that a candidate who is appointed to a Central Service, Group 'B' including posts of Deputy Superintendent of Police in C.B.I. on the results of an earlier examination will be considered only for appointment to IAS, IFS, IPS and Central Services Group 'A' including RPF and CISF.

The above Rule has been modified in the CSE held in 1997 by DOP&T Notification dated 14.12.1996 in which among other things, the examination was to be held for an additional service/post namely, the Pondichery Police Service Group 'B'. This service was added in Clause xxviii of this Notification and CSS Group 'B' continues in Clause xx as in the Notification of CSE, 1995. Rule 18 of CSE, 1997 reads as follows:

"18. Due consideration will be given at the time of making allocation on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective Services at the time of appointment.

Provided that a candidate who has accepted the allocation to a service on the basis of an earlier examination

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shall be eligible on the basis of this examination to be allocated only to those service(s)/post(s) which were higher in the order of preference in his/her application form for the examination on the basis of which he/she had been last allocated to a service."

8. In this case the applicant had been originally allocated to CSS on the basis of his rank/merit and preferences given by him in the CSE, 1995. Admittedly, under the CSE, 1995 Notification dated 9.12.95 there were only xxvii Services which were offered to the candidates and more particularly the Pondicherry Police Service, Group 'B' was not one of these Services/Posts. This Service has been added as clause xxviii of the Notification dated 14.12.96 as an optional Service. Therefore, we are unable to see how the respondents can allocate this service to the applicant on the basis of Rule 18 of CSE, 1997. The proviso to Rule 18 provides that in making allocation of a service/post, the respondents have to take into account the services/posts which are higher in the order of preference in the application form in the examination on the basis of which he was last allocated to a service, i.e., the CSS to the applicant. When the Pondicherry Police Service itself was not available as an option to the applicant as per the CSE, 1995 and he could not have offered it as one of his preferences, the allocation of the applicant to the Pondicherry Police Service Group 'B' is not in accordance with Rule 18 as amended. It is seen from the details of the service which the applicant had opted for CSE, 1995, as given by the respondents themselves, that he had

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given nine other services above CSS, including Pondicherry (CS) at serial No.6 and CBI Group 'B' at serial No.9. However, as mentioned above, since the Pondicherry Police Service could not have been an option given by him under the CSE, 1995, although he is stated to have given this as one of his preferences at serial No.24 in the CSE, 1997, this service could not have been allotted to him. Therefore, the action of the respondents in allotting the Pondicherry Police Service to the applicant on the basis of the CSE, 1997 appears contrary to the proviso to Rule 18 as amended. In other words, we agree with the contention of the applicant that in applying Rule 18, as amended by 1996 Notification, he is eligible for allotment to a service/post which is higher than CSS in terms of the preferences he has given for CSE, 1995.

9. The contention of the applicant that the respondents cannot amend the CSE Rules has been correctly controverted by the respondents as the power of Central Government to amend these Rules, after taking into account the relevant factors is not open to question. (See the observations of the Hon'ble Supreme Court in Virender Kumar Nigam and Ors. vs. Union of India (W.P. No.220 to 222 of 1993) decided on 13.3.1994, Annexure R.1). Therefore, Rule 18, as amended by the 1996 Notification on the basis of which the applicant has taken the CSE, 1997 is valid.

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10. The applicant having been allotted to CSS Group 'B' on the basis of CSE, 1995 cannot also be considered on par with other candidates from the open market who are appearing in the CSE for the first time in 1997 as they are separate and distinguishable categories. However, since both these examinations have been held for the purpose of filling vacancies in Central Services, the Rules have to be read together. To this extent Rule 18 of CSE, 1997 takes into account the results of the candidates who had appeared in the previous examination held in 1995 which they were well aware of before they sat in the examination. Therefore, Rule 18, as amended, by Notification of 14.12.96¹⁸ ~~1996~~ is not invalid as affecting any vested rights retrospectively, as contended by Shri Mehra, learned counsel. The applicant had the option to choose whether he retained his allocation to the CSS as per the CSE, 1995 or wanted to appear as a fresh candidate for CSE, 1997. He chose the former course and he cannot, therefore, complain if respondents take further action in terms of Rule 18 as amended. The fact that he has already been appointed to CSS on the basis of CSE, 1995, cannot be ignored nor can he be considered as a fresh candidate for CSE, 1997, as these Rules have to be read together harmoniously. Accordingly, we do not find any legal infirmity in Rule 18 as amended, which lays down the

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method for allotment of a service to the candidates who have already accepted the previous allocation of services/posts through an earlier examination, as in the case of the applicant. Therefore, the contention of the learned counsel for the applicant that Rule 18, as amended, is unconstitutional and discriminatory is without any basis and is, accordingly, rejected.

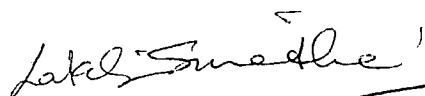
11. However, in the facts and circumstances of the case, as mentioned in paragraph 8 above, we find that the action of the respondents in allocating the applicant to the Pondicherry Police Service Group 'B' is contrary to Rule 18 as amended and this allocation is liable to be struck down. We have also considered the other contentions made by the learned counsel for the applicant that a direction should be given to the respondents that applicant should be allotted a Group 'A' service on the basis of his improved rank in CSE, 1997. We are unable to agree with this also, as allotment to a service/post can only be done in terms of the CSE, 1997 read with CSE, 1995.

12. Accordingly, this application partly succeeds to the extent that the allocation of the applicant by letter dated 9.3.99 for appointment to the Pondicherry Police Service Group 'B' is quashed and set aside. The respondents shall take

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appropriate action for allocation of a service/post to the applicant strictly in accordance with the proviso to Rule 18 of the CSE, 1997 and intimate the same to the applicant within one month from the date of receipt of a copy of this order. No order as to costs.



(Smt. Lakshmi Swaminathan)
Member (J)



(S.R. Adige)
Vice-Chairman(A)

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