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Central Administrative Tribunal

PRINCIPAL BENCH

Shri... Dr. A. Vedavalli Vice Chairman
Member (J)

Pre - delivery ORDER in

T. A. / O. A. No. 1024 of 1988

is sent herewith for consideration.

With regards,
Anil
(N. SAHO) 1/6
m (A)

sent
Held

I agree.

With regards.

Dr
17/6/98

Hon'ble Shri N. Sahu - M (A)

Central Administrative Tribunal
Principal Bench: New Delhi

OA No...1004...of...1998...decided on ...3...6.1998... (6)

Name of Applicant:..Arun..Kumar..Singh ...

By advocate: ...Shri A.K.Babu...

Versus

Name of Respondents:....Union....of....India....and....

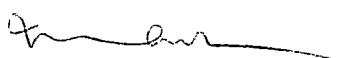
By advocate ...Shri R.V.Sinha...

Corum

Hon'ble Mr. N. Sahu, Member (A)

Hon'ble Dr. A. Vedavalli, Member (J)

1. To be referred to the Reporter or not? Ab
2. Whether to be circulated to other Benches of the Tribunal? Ac


(N. Sahu)
Member (A)

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1004 of 1998

New Delhi, this the 3rd day of June, 1998

(7)

Hon'ble Mr. N. Sahu, Member (Admnv)
Hon'ble Dr. A. Vedavalli, Member (J)

1. Arun Kumar Singh, S/o Shri Ratneshwar Singh, Aged about 30 years, R/o D - 52, Nehru Vihar, Delhi - 110 054.
2. Devdatt Desai, S/o Shri Mahendarrai G. Desai, Aged 34 years, R/o 51, Srinagar, Ghod-dod Road, Opposite Panjrapole, Surat - 395 001.
3. Manoj Kumar, S/o Shri Krishna Prasad Sah, Aged 28 years, R/o P.O. Nonihat, Distt. Dumaka - 814 145.
4. Kailash Mishra, S/o Shri Bandai Lal Mishra, aged 30 years, R/o A / 159 - 160, Nehru Vihar, Delhi - 110 054.
5. Shri R.K. Meena, S/o Shri Har Sahai Meena, Aged 38 years, R/o A-194, Pandara Road, New Delhi.
6. Shri Anil Kumar, S/o Shri H.S. Srivastava, Aged about 29 years, R/o Flat No. 404, Indira Vihar, Delhi - 110 009.
7. Shri Ram Pravesh Kapar, S/o Shri Ram Swarth Kapar, Aged about 35 years, R/o Hanuman Nagar, Post Paktola, Thana Dumara Court (Distt. Sitamarthi).
8. Ravindra Nath Rai, S/o Shri Ram Pukar Rai, Aged about 32 years, R/o D-52, Nehru Vihar, Delhi - 110 054.
9. Hari Mohan Meena, S/o Shri Ramji Lal Meena, Aged about 36 years, R/o 1445, Lodhi Road Complex, New Delhi - 110 003.

- APPLICANTS

(By Advocate Shri A.K. Behra)

Versus

1. Union of India through Secretary, Ministry of Personnel, P.G. & Pensions, North Block, New Delhi - 110 001.

2. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi - 110 011. -RESPONDENTS

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

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The prayer in this Original Application is to direct the respondents to provide one more attempt to the applicants and other similarly situated for availing Civil Services Examination (in short 'CSE') for the year 1998 mainly on the ground of alleged leakage of question papers in the Civil Services (Preliminary) Examination (in short 'CS(P)E'), 1992.

2. Nine applicants in this Original Application were candidates for the CSE, 1992 but could not qualify and get selected. There was an allegation of leakage at Allahabad Centre during the conduct of CS(P)E, 1992. The incident was subjected to detailed judicial scrutiny by the Hon'ble Delhi High Court in C.W.P. No.2398 of 1992 Joint Action Committee through its convener Kumar Ram Krishna Vs. Union of India and others, decided on 7.8.1992 as well as the Hon'ble Supreme Court in S.L.P.(C)No. 10020 of 1992 Joint Action Committee Vs. Union of India and others, decided on 30.4.1993. The High Court found that "there has to be something more or even any question was to the knowledge of all or any of the candidates concerned. As things stand it cannot be said with any certainty that the paper in question really leaked out, the way we understand the term as to what a leak out of the paper means. An examination of such a magnitude cannot be cancelled

on mere presumption and there has to be some positive evidence on record for the purpose". The High Court allowed the Union Public Service Commission (in short 'UPSC') to decide whether to annul or cancel, either wholly or in part the examination, and advised the UPSC to take remedial steps. The Hon'ble Supreme Court by its order dated 30.4.1993 did not find any justification to interfere with the High Court's order. It had noticed the result of the investigations made by the Central Bureau of Investigations (in short CBI) into the malpractices alleged at Allahabad Centre. It had also noticed that the suggestions made on behalf of the petitioners were considered by the UPSC and some of them were found feasible for implementation. Even before the Hon'ble Supreme Court it was mentioned that complaints against persons who were accused of the commission of malpractices were filed. The UPSC did not find it necessary to cancel or annul the examination. The examination process reached to its logical conclusion with the declaration of the final result in June, 1993. Thereafter the UPSC conducted five more examinations from 1993 to 1997.

3. In the present O.A. the applicants claim to be allowed one more attempt on the ground that a prosecution was filed against certain persons who were suspected to be indulging in the malpractices. The learned counsel for the applicants states that this amounted to leakage and because of the leakage certain persons benefited and the applicants did not. They were at a disadvantageous position compared to

others. Our attention was drawn to an order of this Court in O.A. No.182 of 1997 Rajnish Kumar Vs. Union of India & others decided on 27.5.1997, but it is necessary to note that the facts of this O.A. are different. The grievance there was that the applicant became overaged by 8 months because of certain amendments in the rules and certain relaxations were sought. The Court observed that the respondents may consider the applicant's plea for relaxation. This decision has no application to the present case.

4. Shri V.S.R.Krishna, learned counsel for the respondent-Union of India stated that the applicants do not have a proper cause of action and if their grievance is that some of the participants in the examination were unduly benefited by the alleged leakage then the applicants should have asked for cancellation of the examination. There is no justification for asking for an additional chance. It was secondly urged that the application is belated, the cause of action having arisen in 1992. The prosecution launched against certain persons has nothing to do with the claim of the applicants for an additional chance. Obviously, the applicants did not apply for CSE, 1998 published in the Employment News and other papers on 29.11.1997. The last date of receipt was 12.1.1998. Shri Krishna contended that the applicants could have approached the UPSC and sought benefit of another chance by a representation.

If the representation was rejected they could have approached this forum for redressal of their grievances.

5. Shri R.V.Sinha, learned counsel for respondent-UPSC pointed out that as the last date for receipt of applications for the examination has already expired long back and as the examination is scheduled to be held on 31.5.1998, the applicants' request does not merit any consideration at this stage. Any change in the eligibility condition prescribed for admission to this examination will affect similarly situated other candidates who run into lakhs. It is pointed out that relaxation in the upper age limit and the number of attempts in the CSE are strictly governed by the rules. Prescription of eligibility condition and relaxation is a policy matter which lies within the exclusive discretion of the Government and these are considered at the highest level. Under these circumstances it is submitted that there is no merit in this Original Application.

6. We have carefully considered the various submissions made by the rival counsel. In our view there is no merit in this Original Application. The applicants' claim for providing one more attempt has nothing to do with the alleged leakage of question papers in the CS(P)E, 1992. The applicants participated in the said examination and they could not be successful. The alleged leakage was investigated and some persons suspected to be

responsible were prosecuted. The prosecution does not ip-so facto establish that there had occurred a leakage in the way in which the word has been defined and understood by the High Court in the case of Joint Action Committee (supra). Even if there was an admitted leakage it does not mean that a number of candidates have illegally benefited out of the same to the disadvantage of the applicants. No evidence was filed that there had in fact occurred a leakage in the sense that the photostat document had gone into the hands of the participants/examinee before they entered into the examination hall. The UPSC had investigated into all these aspects. While prosecuting certain persons held to be responsible for photostating, the act ip so facto did not make the conduct of the examination bad. The UPSC was satisfied and allowed the examination to continue and the results were declared. The applicants who participated in the examination could not qualify. In our view there is no justification for the applicants to claim an additional chance on that account in 1998. We also agree with the submission made that this claim is belated and there is no cause of action. If at all there were other candidates who illegally benefited out of the alleged leakage and were successful, the applicants should have, after the publication of the results, impugned the examination and the results in an appropriate forum. They had not done that. Five years later, they are moving this Court for an additional chance to them. This is highly belated and instead of impugning the examination as it is there is no justification for

asking for an additional chance. We, therefore, hold that the O.A. does not have an adjudicable cause of action and suffers from laches and even on merits there is no case. The O.A. is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

N. Sahu

(N. Sahu)
Member (Admnv)

rkv.