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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 937/95

New Delhi, this the 24th day of May 1995.

Hon'ble Shri A.V.Haridasan, Vice Chairman(J)
Hon'ble Shri K.Muthukumar, Member(A)

In the matter of :

Shri A.Gupta,
S/o Shri M.C.Gupta,
R/o Flat No.1, N.D.M.C. Flats,
Elec. Sub-Stn., Kidwai Nagar(West),
New Delhi.

....Applicant

(By advocate Shri A.K.Bhera)

Versus

1. Union of India through:

The Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
Dept. of Personnel & Training,
North Block,
New Delhi.

2. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

....Respondents

Hon'ble Shri A.V.Haridasan, VC(J)

ORDER (ORAL)

Shri A.Gupta, the applicant has filed this application praying that the orders dated 26.4.95 cancelling his candidature for Civil Services Examination, 1994 (C.S.E., 1994 in short), and 16.5.95 rejecting his representation against the cancellation, issued by the second respondent may be set aside and it may be declared that the applicant was eligible to appear in C.S.E., 1994 finding that the Rule 4(B) of C.S.E., 1994 Rules is either not attracted in his case or is unsustenable in Law.

The facts in brief are as follows :

The Civil Services Examination are held by Union Public Service Commission every year. The examination has two parts. One preliminary examination which contains only a written examination and two the C.S.E.(Main) examination

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which comprises of written examination and interview. The advertisement for the C.S.E., 1994 appeared in the Employment News dated 1-7 January, 1994. The advertisement made it clear that the indenting candidates should get themselves acquainted with the Rules regarding the examination.

The second proviso to Rule 4 of the C.S.E., 1994 Rules contained the following clauses.

- (a) "A candidate allocated to the IPS or a Central Service, Group 'A' on the results of the Civil Services Examination, 1993 shall be eligible to appear at the examination being held in 1994 only if he has obtained permission from Govt. to abstain from probationary training in order to so appear. If in terms of the provisions contained in para 4(v)(b) such a candidate allocated to a Service on the basis of the examination being held in 1994, he shall either join that service or the Service to which he was allocated on the basis of the Civil Services Examination, 1993 failing which his allocation to the Service based on one or both the examinations, as the case may be, shall stand cancelled, and
- (b) A candidate allocated or appointed to the IPS Group 'A' Service/post on the basis of the Civil Services Examination held in 1992 or earlier years shall not be eligible to apply for Civil Services (Preliminary) Examination to be held in 1994, unless he first get his allocation cancelled or resigns from the Service/post."

The applicant had appeared in C.S.E., 1992 and had been tentatively allocated to Indian Railway Accounts Service (IRAS for short) as a result of that examination by Govt. order dated 14.8.93. He had appeared in the C.S.E., 1993 obtaining permission from the Government to join foundation training later. Pursuant to C.S.E., 1993, the applicant was tentatively allocated to Indian Civil Accounts Service (ICAS for short). He appeared for C.S.E., 1994 after obtaining permission from the Government to defer the joining of the foundational Course. When the applicant applied for admission to C.S.E., 1994, he had not got his allocation to IRAS pursuant to C.S.E., 1992 cancelled. The letter finally allocating the applicant to IRAS pursuant to C.S.E., 1992 was received by the applicant in June, 1994 and he declined the offer on 10.6.1994. This was accepted and the allocation

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was cancelled by Ministry of Railways letter dated 30.6.94 and the fact was mentioned by the applicant in his application for C.S.E.(Main),1994. The applicant was permitted to appear for the C.S.E. Preliminary as well as Main,1994, but one day prior^{to} the publication of the result of C.S.E.,1994, the applicant was informed by the impugned order dated 26.4.95 cancelling his candidature for the reason that he had not got the allocation cancelled before applying for admission to C.S.E.,1994. On receipt of this order the applicant made a representation in which he had stated that at the time when he applied for C.S.E.(Preliminary), his allocation to C.S.E. was only tentative, that when final allocation order was received he got the same cancelled and intimated the same to U.P.S.C. that, he had not suppressed any material information and therefore his candidature may be revived. This request was turned down by the order dated 16.5.95. It is under this circumstance that this application has been filed. It is alleged in this application that as the allocation pursuant to C.S.E.,1992 to IRAS by order dated 14.8.93 being only a tentative allocation which was likely to undergo a change, it cannot be held that there was any allocation at all for him to get cancelled before he applied for C.S.E.,1994.

We have perused the application and all the annexures. We have also heard Shri A.K.Behera, learned Counsel for Applicant. The clause (b) of second proviso to Rule 4 of C.S.E.,1994 specifies that a candidate allocated or appointed to IPS or Group 'A' Service/post on the basis of CSE,1992 shall not be eligible to apply for CSE(Preliminary) examination to be held in 1994. The applicant had been though tentatively allocated to IRAS on the basis of CSE,1992 and he offered for CSE 1993 after obtaining permission to defer joining of the foundation course. Though the allocation by the order dated 14.8.93 was tentative and likely^{to} undergo change, allocation to a group 'A' Service/post was assured. Therefore, if the applicant wanted to appear for CSE,1994, he should^{first} have got

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the allocation cancelled as per the clause (b) to second proviso to CSE Rules, 1994. It had also been made clear in the note below the Rule 4 that, documentary proof of having the allocation cancelled should be produced while applying for CSE, 1994 (Preliminary). In this case, the applicant admittedly did not even decline the allocation before applying for the Preliminary of 1994 CSE. Therefore the decision taken by the second respondent to cancel the candidature of the applicant cannot be faulted at all. Learned counsel for applicant argued that, since the second respondent had allowed the applicant to appear for CSE, 1994 Preliminary as well as Main, after being notified of the fact that the applicant had been tentatively allocated to IRAS on the basis of the CSE, 1992 ~~not~~ is estopped from saying that the applicant was not entitled to appear for 1994 CSE. In this connection he referred us to a ruling of the Supreme Court - *Shri Krishnan V. Kurukshetra University*, AIR 1976 p.376 wherein a candidate with deficiency in required number of attendance was allowed to appear in the examination and later his appearance in the examination was cancelled. It was held that the Competent Authority having allowed the candidate to appear in the examination should be deemed to have condoned the lapse and therefore cancellation of his candidature was not justified. The facts and circumstances are totally different. Here there is a rule which requires a candidate for CSE, 1994 to get his allocation on the basis of 1992 CSE cancelled before applying for CSE, 1994. Since that requirement of rule was not complied with, the applicant was not entitled to apply for CSE, 1994 Preliminary examination. The fact that the U.P.S.C. permitted the applicant to appear for the examination will not estop the UPSC from cancelling the candidature because this cannot be an estoppel against a rule. Shri Behera argues that CSE rules are not Statutory Rules and therefore the principle that there could be no estoppel against a Statute will not apply. As far as the holding of CSEs ~~are~~ concerned

the Rules have got force of a Statute and therefore the principle well applies and therefore the decision of the UPSC to cancel the candidature of the applicant is not questionable.

Learned counsel has argued that in the case of some other candidates the UPSC has not adopted the same criteria and therefore if the impugned orders are allowed to stand that would be violation of article 14 and 16 of the Constitution. We are not sure whether the UPSC has not followed a uniform policy and we cannot presume that they would have violated the CSE Rules. Even if it is ~~affirmed~~ ^{assumed} that the UPSC has acted against the rules in the case of any candidate, the provisions of Article 14 and 16 of the Constitution do not clothe the applicant with a right to seek a direction that in his case also the rules should be violated.

Though the applicant has in the relief portion of the application sought for a declaration that the proviso 2 to Rule 4 of CSE Rules is unsustainable, no averment has been made to show that the Rule is not sustainable. Further there is no allegation that the rule is unconstitutional. Therefore even *prima facie* there is nothing against the validity of the Rules.

On a careful scrutiny of the application and connected papers and on hearing the learned Counsel for the applicant, we find that there is nothing even *prima facie* to make out that there is a case to be gone into. Therefore, the application does not merit admission. In the result, we reject the application under Section 19(3) of the Administrative Tribuna Act, 1985.


(K. MUTHUKUMAR)
MEMBER(A)


(A.V. HARIDASAN)
VICE-CHAIRMAN