

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. No. 1759/96

T.A.No.

Date of decision 14-9-98

Ms. Rekha Yadav

... Petitioner

Shri A.K.Sinha

... Advocate for the
Petitioner(s)

VERSUS

UOI & Ors

... Respondents

Shri V.S.R. Krishna

... Advocate for the Respondents

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

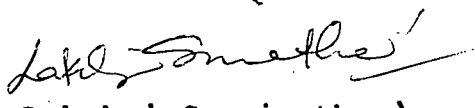
The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or
not?.

Yes

2. Whether it needs to be circulated to
other Benches of the Tribunal?

No.


(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1759/96

New Delhi, this the 14th day of September, 1998

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

In the matter of:

Ms. Rekha Yadav,
d/o Shri M.S. Yadav,
r/o H.No. 871, Laxmi Bai Nagar,
New Delhi.

...Applicant

(By Advocate: Sh. A.K. Sinha)

Vs.

Union of India through

1. Secretary,
Ministry of Personnel, Public Grievances
& Pensions,
Department of Personnel & Training,
North Block, New Delhi.

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

...Respondents

(By Advocate: Shri V.S.R. Krishana)

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant is aggrieved by the action of the respondents in not allotting her a service on the basis of her ranking in the Civil Service Examination (CSE for short), 1995, instead of the service she was allotted as a result of her ranking in the CSE, 1994.

2. The applicant had appeared in the CSE, 1994, obtained merit rank 243 and was tentatively allocated to the Indian Railway Personnel Service (IRPS) Group 'A'. According to her, she had sought exemption from this service, for appearing in CSE, 1995. She got

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158th rank in the CSE, 1995. She has submitted that as per her rank she is not likely to get I.A.S., I.F.S. or I.P.S. but is entitled to a better Group 'A' service according to her preferences in that Group. She has further submitted that in the CSE, 1995 she had given preference in Group 'A' service in the order of (i) Indian Customs & Central Excise Service; (ii) Indian Revenue Service; and (iii) Indian Railway Traffic Service.

3. She has filed this O.A. on the ground that she had been informed by the respondents verbally that she was not eligible for any Service other than IAS, IFS or IPS under Rule 18 of the C.S.E. Rules, 1995 because she had already been allotted Group 'A' service on the basis of CSE, 1994. In the above circumstances the applicant had, inter-alia, sought directions to the respondents to allocate her another service in Group 'A' based on her ranking in CSE, 1995. She had also sought direction to quash proviso to Rule 18 of the CSE, Rules, 1995 in so far as it prohibited the consideration of candidates' allocation to Group 'A' service on improvement of the person's ranking in the subsequent CSE.

4. After hearing the parties and perusing the records, the O.A. was earlier disposed of by the Tribunal's order dated 12.12.1996 with a direction that they found no grounds which warranted judicial interference in the matter. The O.A. was accordingly dismissed.

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5. The applicant had filed S.L.P. No. 6281/97 in the Supreme Court against the Tribunal's order dated 12.12.1996. The Supreme Court by order dated 26.9.1997 observed as follows:

"We are in no doubt that there has been a change in the stance of respondents in this court as compared to the stance taken by them before the Tribunal. It has been stated by Mr. V.R. Reddy, learned Additional Solicitor General, that the respondents do not now rely upon any provision of the CSE Rules other than Rule 18. He submits that, having regard thereto, the appellant would be entitled only to consideration for the IAS, IFS and IPS and not for any other service within Group 'A'. We think that it is appropriate that this stance should be spelt out before the Tribunal in an affidavit to be filed by the respondents, to which the appellant will have an opportunity to reply, and the Tribunal should consider the matter in this light. The Tribunal shall take note of judgements of this Court having a bearing on the matter.

6. In pursuance to the aforesaid directions of the Hon'ble Supreme Court, the respondents have filed an affidavit on 28.4.1998. We have also heard Shri A.K. Sinha, learned senior counsel for applicant and Shri V.S.R. Krishna, learned counsel for respondents, who have also referred to the relevant judgements of the Supreme Court relied upon by them.

7. Rule 18 of the CSE Rules, 1995 reads as under:-

"Due consideration will be given at the time of making appointment on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment of 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 been approved for appointment to Indian Police Service/Central Service. Group 'A' including the posts of Asstt. Security Officer in R.P.F. and Assistant

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Commandant in CISF mentioned in Col. 2 below on the results of an earlier examination will be considered only for appointment to service mentioned against that service in Col. 3 below on the results of this examination.

| Sl.No. | service to which approved for the appointment | Service to which eligible to compete |
|--------|---|---|
| 1. | Indian Police Service | IAS, IFS and Central Services, Group 'A' including RPF and CISF |
| 2. | Central Services, Group 'A' including RPF and CISF. | IAS, IFS and IPS. |

8. The above Rule is similar to Rule 17 of the CSE Rules, 1987 which has been upheld by the Supreme Court in M.K. Singhania & Ors. vs. Union of India & Ors. [1992 (Suppl.) 1 SCC p. 594]. This Rule was again challenged in Arti K. Chhabra vs. Union of India [1994 (26) ATC 360] before the Supreme Court, which Rule was again upheld by the Apex Court. In that case also the attack against the first proviso to Rule 17 of the Civil Services Examination Rules, 1990, was based on two grounds. The first was that the restriction on the horizontal mobility from one service of Group 'A' to another service in the said Group, by itself was unreasonable and arbitrary. Secondly, while it permits those who are selected to IPS to move to any service in Group 'A', those who are selected in any service in Group 'A' are prevented from doing so. Hence, it was urged that there is a discrimination between the candidates selected for IPS and those selected for any of the Group 'A' services. Regarding this, the Supreme Court held that the restriction is eminently justified since all services in Group 'A' stand on par with each other. Hence, there is

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no question of bettering prospects or seeking an upward mobility when a candidate wants to move from one service in Group 'A' to another service in that Group. Further, if those who are appointed to any Group 'A' services which are as many as 45, are allowed the mobility, a large number of posts would remain unfilled at any particular point of time resulting in "chaos in the administration". It was held that the contention that this will be the case even when the candidates appear for the next examination for upward mobility loses sight of the fact that the posts in IAS, IFS and IPS are few. The dislocation on that account is thus marginal, if any. What is more, there is no absolute restriction on a candidate selected to any of the services in Group 'A;' from moving to any other service in the same Group. The only condition is that if he does so, he has to resign from that service before he appears in the next examination. For these reasons, it was held that the restriction placed on the said mobility cannot be said to be either unreasonable or arbitrary.

9. In M.K. Singhania's case (Supra) the Supreme Court has also upheld the second proviso to Rule 4 of CSE Rules as being legally and constitutionally valid and sustainable in law. In this case the Supreme Court, while upholding the validity of the second proviso to Rule 4 has explained the rationale underlying the courses at the training centre. They have also held that from the practical point of view, there is nexus between the second proviso and the object to be achieved and "efforts taken by the Govt. in giving utmost importance to the training programme of the selectees so that this higher civil

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service being the topmost of service is not wasted and does not become fruitless during the training period is in consonance with the provisions of Article 51 A (j)".

10. In another case of Shri Pratap Singh vs. Union of India & Ors. [JT 1996 (10) SC p.601] the same provisions of the CSE Rules 17 and proviso to Rule 4 of the CSE, 1990 were considered by the Supreme Court. Here again, under the proviso to the relevant Rules, namely, Rule 4 and 17, the Supreme Court has held that Rule 4 is the 'Eligibility' Rule and the main part of the Rule permits a candidate to appear at the said examination in all four times. The second proviso to Rule 4 restricts this right of a candidate further. It provides that if a candidate is allocated to a service on the basis of a particular examination and is appointed to a service he cannot thereafter appear again in the CSE unless he first resigns from the service. It also restricts the right of a candidate to avail of four opportunities by providing that a candidate who on the basis of the result of the previous CSE had been allocated to the IPS or Central Service Group 'A' but who expressed his intention to appear in the next CSE (Main) for competing for IAS, IFS, IPS or Central Services Group 'A' and who was permitted to abstain from the probationary training in order to so appear, shall be eligible to do so, subject to the provisions of Rule 17. The Apex Court held as under:

" 17. A candidate who is allocated to the IPS or Central Services Group 'A' on the basis of the result of the previous CSE is permitted to appear in the next CSE with a view to better his chances or to improve his prospects. But he can do so provided he expresses his intention to appear in the next CSE for competing for IAS, IFS, IPS or Central Services Group 'A' and if he is permitted to abstain

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from the probationary training in order to so appear. Even this eligibility is made subject to the provisions of Rule 17. If the permission as contemplated by this proviso is granted to a candidate and if the candidate is allocated to a service on the basis of the next CSE then he has an option either to join that service or the service to which he was allocated on the basis of the previous CSE. If he does not exercise this option his allocation to the service based on one or both the examinations will stand cancelled."

"8. The second proviso to Rule 4 refers to Rule 17 and thus both the rules are inter-connected in the matter of defining eligibility of a candidate..... Whereas the second proviso to Rule 4 specifically makes the eligibility thereunder subject to the provisions of Rule 17 also the provisions to rule 17 do not specifically refer to the first proviso to Rule 4 but the moment a candidate appears at the next examination the restriction contained in the first proviso to Rule 4 becomes applicable to him and, therefore, the provisos to Rule 17 cannot have independent application to a candidate who has appeared at the next examination. Therefore, the provisos to Rule 17 though they appear to have independent application or operation they cannot operate independently in case of a candidate who has been allocated to a particular service on the basis of the result of the earlier examination. Before a candidate is approved for appointment to IPS or Central Services, Group 'A' he has to be allocated to that service and for that reason the first proviso to Rule 4 will start operating earlier than the provisos to Rule 17 can apply. We are, therefore, of the opinion that the provisos to Rule 17 can have no independent application in view of second proviso to Rule 4".

In the facts and circumstances of Pratap Singh's case (Supra), the Supreme Court held that neither the first proviso nor the second proviso to Rule 17 was attracted and, therefore, the action/decision of the Govt. to treat the appellant as ineligible for appointment to IRS on the basis of the 1990 examination was regarded as bad in law. In this case, the appellant was not recommended by the UPSC for any appointment on the basis of the result of the CSE 1989, and on that basis he appeared for CSE, 1990 both in the preliminary and main

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examinations. Thereafter on 14.1.1991 he was informed that his name was recommended through a supplementary list for being considered for appointment to Central Service Group 'A'/Group 'B' but he did not respond to that offer. On the contrary he preferred to be governed by the result of CSE 1990 which was better, and on the basis of his rank he was allocated to IRS out of the Group 'A' Services. The Supreme Court held that the Tribunal was not right in taking the view that he had remained silent and not specifically declined the allocation made in January, 1991 because the conditions precedent to the application of the second proviso to the Rule were not satisfied. The Court held that the appellant was "at no time, allocated much less appointed, to Central Service on the basis of the result of 1989 examination. The Govt. was, therefore, wrong in treating him as ineligible for allocation to IRS on the basis of 1990 examination by resorting to the second proviso to rule 17."

11. Shri A.K. Sinha, learned senior counsel for the applicant has also relied on the judgement of the Supreme Court in A. Subbaih vs. Union of India [1995 (Suppl.) 1 SCC 2110]. In that case, keeping in view the facts and circumstances, specially that the appellant sat in the 1991 examination under the directions of this Court, it was held that he should be given the benefit of the said examination. It was further held that it is not disputed before the Supreme Court that several candidates similarly situated who sat in the Indian Civil Services Examination during the period 1986-90 without resigning their jobs were given the benefit of their selection. In the circumstances it was observed that it would be

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"travesty of justice" if the appellant is denied the fruit of his selection to the Indian Administrative Service. As can be seen from the facts in **Subbaih'** case the judgement in that case is confined to the particular facts and circumstances of the case where other similarly situated candidates were given the benefits of their selection who had not resigned from their jobs. That case cannot, therefore, assist the applicant in the present case.

12. Respondents in their affidavit have submitted that the applicant was allocated to the I.R.P.S. on the basis of CSE 1994. She accepted the allocation and sought extension to join probationary training and to appear in CSE 1995. They have stated that permission was granted in Feb., 1996 and the applicant appeared in CSE 1995 and bettered her ranking and got 158th rank in the merit list whereas she had got ranking 243 in the previous examination. According to them the applicant had appeared in CSE, 1995 while retaining the allocation in IRPS on the basis of CSE, 1994. Therefore, in accordance with Rule 18 of the CSE Rules, 1995, the applicant has already been allotted a Group 'A' Service earlier, and according to her merit position rank of 158, she could not be allocated to IAS, IFS or IPS where the rank was 40, 50, and 134, respectively. They have further submitted that since the Supreme Court has upheld the provisions of Rule 18 in the other similar cases, namely, **M.K. Singhania & Arti K. Chhabra**, (Supra) the applicant's prayer for allocation to another Central Service Group 'A' cannot be allowed and she is not entitled to any of the reliefs prayed for in the O.A.

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13. In the reply to the affidavit filed by the respondents, the applicant has again referred to Rules 4 and 18 of the CSE Rules. She submits that these rules should be read together, in which case she would be entitled to a choice of the services. Having regard to the provisions of Rule 18, she has also made a vague allegation that U.P.S.C. has removed the restriction and a candidate has liberty to choose any of services she had opted, but without any documents to support this contention, we are unable to agree with the contention of the applicant that she can choose any of the Group 'A' services on the basis of CSE examination 1995 without fulfilling the conditions laid down in the proviso. The applicant has failed to place on record any documents to show that she had in fact resigned from the earlier service of I.R.P.S. allocated to her on the basis of CSE, 1994 before appearing in CSE, 1995. Her allegation that the said action of the respondents is malafide is also not borne out from the facts and seems to be made as an afterthought. These pleas are accordingly rejected.

14. In the facts and circumstances of the case, following the judgements of the Supreme Court on this issue which have been referred to in paragraphs 8-10 above, taking into account the observations and directions of the Hon'ble Supreme Court in SLP 6281/97, and having fully considered the submissions made by the learned counsel for the parties afresh we find that the action of the respondents cannot be faulted. Relying on the provisions of Rule 18 of CSE Rules, on the merit of the

case we again do not find that the applicant is entitled to allocation ^{to} another Group 'A' service, on the basis of her ranking in CSE 1995.

15. In the result, the O.A. fails and is accordingly dismissed. There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

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