

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

13

O.A. No. 1532/97  
T.A. No.

198

DATE OF DECISION 2-12-97

Ms. Vandana Yadav Applicant (s)

Shri A.K. Behre Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri VSR Krishna Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Dr. Jose P. Verghese, VC (D)

The Hon'ble Mr. N. Sahu  
Shri ~~VSR Krishna~~ Krishna (CA)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

(Dr. Jose P. Verghese)  
VC (D)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH- NEW DELHI

O.A. No. 1532/97

New Delhi, this the 2nd day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Shri N Sahu, Member (A)

Ms. Vandana Yadav.  
D/o Shri O.P. Yadav,  
R/o 20/62 Lodi Colony,  
New Delhi-110 003  
Petitioner

(By Advocate: Shri A.K. Bohra)

-Versis-

1. Union of India  
Through the Secretary,  
Ministry of Personnel, Public Grievances  
and Pensions,  
North Block,  
New Delhi-110 001

2. Secretary,  
Ministry of Information & Broadcasting,  
Shastri Bhawan,  
New Delhi.  
Respondents

(By Advocate: Shri VSR Krishna)

ORDER

Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner was a candidate in the Central Civil Services Examination of 1993 and since she became successful, she was allocated the Indian Information Services (IIS) but the allocation order was passed and communicated to the applicant only on 30.5.1995. In the meantime the petitioner had applied for Civil Services Exam. 1995; the last date for filing the examination was 12.2.1995 and for all practical purposes the vice of the rule contained in clause (b) Rule 4 of the CCS exam 1995 did not apply to the applicant.

2 The case of the applicant therefore is that it was not necessary for the petitioner to resign or decline the allocation given to her after the last date for

applying for the said exam. It was stated that the petitioner under rules could apply for the subsequent exam in case the allocation is still not forthcoming before the last date for applying for the concerned Civil Services Exam and the counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court given in Pratap Singh's case vide 1997 1 SCC 541. Para 9 of the said case is relevant and the same is reproduced herebelow:

"The next point to be considered is whether the requisite conditions of the second proviso to Rule 4 can be said to have been satisfied in this case. The said proviso contemplates a situation where the candidate, on the basis of the result of the previous CSE, has been allocated to the IPS or Central Services, Group 'A' but who expresses his intention to appear in the next CSE for competing for a higher or better service. Obviously, to bring the case within the purview of the said proviso allocation has to precede expression of the intention by the candidate to appear in the next CSE. It is also implied that allocation on the basis of the result of the previous CSE has to be before the declaration of holding the next CSE. Otherwise, it would not be possible for a candidate to express his intention to appear in the next CSE. If he appears in the next CSE for competing for IAS, IFS, IPS or Central Services, Group 'A' before he is allocated to the IPS or Central Services, Group 'A' then he will not fall within the purview of the said proviso nor will he be under an obligation to seek permission to abstain from the probationary training in order to appear at the next examination. If a candidate is not allocated or approved for appointment to the IPS or Central Services, Group 'A' then he would be free to appear at the next CSE and in that case not only his result of the earlier examination but the preferences expressed by him will become irrelevant. In such a case neither second proviso to Rule 4 nor the first proviso to Rule 17 will apply to him because there would be no justification to deprive him of his chance to appear at the next CSE and compete for any service that he likes. If a belated allocation or proviso to Rule 4 and the first proviso to Rule 17 then that would seriously

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affect the right conferred by the main parts of Rules 4 and 17 on the candidate. Moreover, as the first proviso to Rule 4 lays down an eligibility criterion it would not be open to the Government to waive the consequences that would affect the prospects of other candidates. The Tribunal was, therefore, not right when it held that a belated allocation or approval does not have the effect of prejudicially affecting the right of a candidate".

4. It was also stated by the counsel for the applicant that as per the decision of the Hon'ble Supreme Court in Rajiv Yadav's case 1991 1 SCC 408, the petitioner is entitled to another chance to improve her grade in case the application is made in time before the allocation of the previous exam was communicated to the petitioner

5. After notice by way of reply the respondents on the other hand stated that the petitioner was given permission to appear in 1995 exam on the basis that the petitioner has resigned/declined allocation made to her to the IIS and once the said allocation is declined and on the basis of which the petitioner had appeared in the next exam, and thereafter she could not claim her original allocation back since she had declined the allocation on her own.

6. To this the submission of the counsel for the petitioner was that since the assumed resignation in the circumstances of the case, is not the requirement of the Rules in any manner, and that cannot be a reason for the respondents to cancel the allocation already made in favour of the petitioner. On 8.4.1995 the petitioner had written to the respondents stating that "I will only accept the IIS in case I am allowed to appear in the

4

(17)

Civil Services Exam. 1995 failing which I will decline the allocation." The petitioner submitted that since under the rules it was not necessary to resign or decline the allocation and resignation in this case was only conditional and in the circumstances that the respondents rightly have not taken any action nor passed any order cancelling the allocation made to the petitioner till todate and the relief sought to the petitioner may be granted.

7. The Respondents have only assumed that the allocation was deemed to have been cancelled when the petitioner appeared in the subsequent examination. We have heard the arguments from both the sides and considered the case in every angle in the light of the decisions cited and we find that after the decision of the Hon'ble Supreme Court in Pratap Singh's case, the petitioner was not legally required to decline the offer of allocation before appearing in the next exam. namely that of 1995. The learned counsel for the respondents made an attempt to state that the decision of the Hon'ble Supreme Court in Pratap Singh's case vide para 9 stated above is given in the year 1996 and as such the said decision has only a prospective application. We are unable to accept this contention for the reason that the Hon'ble Supreme Court in the said case is only interpreting the rule contained in clause (b) of Rule 4 of the All India Services 1995 and as such the rule thus interpreted will have an effect from the date when the rule came to be operative and not from the date of interpretation. Thus, the decision of the Hon'ble Supreme Court in the case of Pratap Singh is squarely


applicable to the petitioner to the extent that the petitioner was not required to decline the allocation granted to her and in the facts and circumstances of the case the petitioner had only conditionally declined the allocation and the respondents have not passed any order of cancellation on the basis of the said conditional resignation and as such the petitioner is entitled to reliefs as sought.

8.. It is also a fact that the petitioner did not appear in the subsequent examination after being permitted by the respondents on the basis of any order passed in this behalf nor on the basis of her alleged letter of resignation. The orders passed by the respondents on the basis of the said letter of resignation was only an after thought, and it happen to be passed only on 16.2.1996 while the said exam. was over in June 1995. Thus the claim of the respondents that the respondents have permitted the petitioner to appear in the exam. after passing an appropriate order on the basis of resignation submitted by the petitioner is not correct with reference to the facts of the case. Perhaps it can be gain-said that the respondents had tolerated the petitioner to appear in the said exam, and that cannot be construed to be an estoppel against the petitioner as attempted to be submitted by the respondents. Rather the considered view in this case is no estoppel can be pleaded against the petitioner at all.

9.. A perusal of the order passed by the respondents on 16.2.1996 as referred to hereinabove, would show that the said order has been passed strictly

in accordance with the provisions contained in clause (b) of second proviso to rule 4 of Civil Services exam 1995. It was stated in the said order "It is seen at this stage if the spirit of the said provision has been complied with by the candidate by resigning from service which she was allocated on the basis of Civil Services Rules 1995...." The respondents cannot fail to see that by this time the Hon'ble Supreme Court had interpreted the clause (b) of second proviso to rule 4 that it is no longer within the spirit of the rule being relied upon by the respondents that the belated cancellation order is being passed.

10. In view of this the OA deserves to be allowed. The order of cancellation of allocation is set aside. The respondents are directed to give effect to the allocation given to the petitioner in IJS Group A service by their order dated 30.3.1995. The petitioner will be entitled to all consequential reliefs in accordance with rules. No order as to costs.

  
 (N. Sahu)  
 Member (A)

  
 (Dr. Jose P. Verghese)  
 Vice Chairman (J)

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