

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2338/1997

New Delhi, this 12th day of April, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

(3)

Mandeep Singh Bhatia
G-130, Naraina Vihar
New Delhi .. Applicant

(By Shri Harvir Singh, Advocate)

versus

Union of India, through

1. Secretary
UPSC, Shahjahan Road, New Delhi
2. Secretary
Dept. of Personnel & Training
New Delhi
3. Secretary
Railway Board
New Delhi
4. Dy. Director establishment (GR)
Railway Board, New Delhi .. Respondents

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

ORDER

Hon'ble Shri S.P. Biswas

The applicant is aggrieved by A-1 order dated 26.7.96 by which R-3 has annulled the non-acceptance of the offer of appointment to the post of ASC/RPF for the applicant, which R-3 had already accepted and cancelled on 20.9.97. He is also aggrieved by the respondents' action in rejecting his representation dated 25.7.97. Consequently, he has prayed for reliefs in terms of issuance of directions to the respondents to allocate Indian Railway Traffic Service (IRTS for short) on the basis of Civil Services Examination (CSE for short), 1995 with due regard to his seniority.

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2. Applicant would argue that a candidate who has accepted allocation to a service on the basis of an earlier examination shall be eligible on the basis of that examination to those service/services which were higher in the order of preference of his/her application form. Thus, the action of the respondents in not allocating IRTS constitutes illegality, arbitrariness and is violative of Articles 14 and 16 of the Constitution.

3. That apart, applicant was declared successful in CSE/1995 and was ranked at 170, subsequently improving upon his performance over the earlier examination taken by him. Therefore, applicant would have been allocated to IRTS but the respondents did not even send a tentative or final allocation of IRTS to the applicant on the basis of CSE/1995. Applicant personally visited the office of the respondents and made all efforts to get the allocation letter to IRTS on the basis of CSE/1995 but without any result. Applicant would further contend that he had already declined the offer of appointment to the post of ASC/RPF/1994 on 12.6.96 itself i.e. well before declaration of the results of CSE/1995 on 17.6.96. Applicant would further contend that annulling his resignation letter is illegal and without any authority of law. The impugned letter dated 26.7.96 has been issued without any mention of specific rule which would stipulate that the applicant was required to resign or decline offer of appointment/allocation on the basis of earlier examination he had undertaken in 1994. The plea of the respondents that the action

to decline resignation from 1994 allocation/appointment before declaration of the results of CSE/1995 is baseless and without any authority of law. In any case, applicant had already declined the offer of appointment to the post of ASC/RPF/1994 well before the cut-off date i.e. declaration of results of CSE/1995 on 17.6.96. Rule 4(a) of CSE/1994 as well 4(a) of CSE/1995 permit every candidate to select either of the two allocations made on the basis of two examinations as in the present case (CSE/1994 & CSE/1995). The present situation was such that when the both allocations on the basis of CSE/1994 and CSE/1995 were available before the applicant, he had the choice of selecting either of two services. Based on this consideration, the action of the respondents in denying him allocation as per rules is illegal and arbitrary. Applicant has cited the decision of the apex court in the case of **Pratap Singh Vs. UOI, JT 1996 SCC 601**, in support of his case. That was the case where the apex court held that Rules 17 and 18 cannot be read independently and are to be interpreted with Rule 4(a) of CSE/1994 and 1995 and allowed horizontal movement of the applicant therein from one service to another within Group "A" itself.

4. Respondents have opposed the claims on the grounds that allocation of candidates to various services is governed by the provisions contained in Rule 18 of the Examination Rules, which provides that due consideration would be given at the time of application. According to the provisions

contained in the first proviso below this Rule, a candidate who has been approved for appointment to Central Services Group 'A' on the results of an earlier examination is not eligible for appointment to another central service Group A on the basis of subsequent examination. Rule 18 further provides that:-

"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 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 been approved for appointment to Indian Police Service/Central Services Group A including the posts of ASO/RPF and Asstt. Commandant in CISF 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 the examination".

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

5. The validity of restriction contained in Rule 4 and Rule 18 referred to above was challenged in a number of applications filed before the various Benches of the Tribunal. The Principal Bench of the Tribunal vide its judgements dated 20.8.90 in OA 206/89 (Alok Kumar & Ors. Vs. UOI) upheld the validity of both the rules. The appeal filed in

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the Supreme Court against this judgement was examined and the judgement of the Tribunal was confirmed by the apex court in its order dated 13.9.91 in CA 5439-52/90 (Mohan Kumar Singhania & Ors. Vs. UOI). The relevant portion from that judgement is reproduced below:

"In conclusion we hold that the second proviso to Rule 4 of CSE Rules does not travel beyond the interest of the main rule putting any unjustifiable embargo and the proviso is not ultra vires regulation 4 (iii-a) of Regulations, 1955 on the ground it makes the candidates ineligible who are otherwise eligible in terms of clauses (i) to (iii) of the said regulations and that the proviso to Rule 17 is not invalid"

6. Respondents would further contend that the applicant was allocated to the post of ASC/RPF (Group A) on the basis of CSE/1994 by their communication dated 13.8.95, which he accepted by his letter dated 17.8.95. After this acceptance, he came within the purview of CSE/1995. In terms of Rule 4 of CSE/1995, applicant sought permission to appear in CSE/1995. He was, therefore, eligible only for allocation to the IAS, IFS and IPS. However, as per his rank (170) he could not be allocated to any one of these services. He was therefore treated as not available for allocation in terms of Rule 18 of CSE/1995.

7. We have gone through the pleadings and perused the records made available to us. We find that the case of applicant cannot be compared with that of Pratap Singh (supra) for the following reasons. Pratap Singh was allocated to CISF on supplementary basis. The said list was declared much after the

candidates had appeared in CSE/1990. Pratap Singh did not accept CISF on the basis of CSE/1989. He therefore came within the purview of Rule 18 of CSE Rules. On the contrary, applicant herein was allocated to RPF much before the written examination of CSE/1995. He was ^{-ca-} ~~communitied~~ service allocation on 13.8.95 on the basis of CSE/1994. He accepted the same and sought permission to appear in CSE/1995. Applicant's case is therefore not within the purview of Rule 18 of CSE Rules. Pratap Singh was informed of the results by the UPSC vide letter dated 9.1.91, results of CSE/1991 were declared on 31.7.91, whereas applicant was informed that he has been considered for appointment to RPF on the basis of CSE/1994 on 13.8.95, while the results of CSE/1995 came on 17.6.96. All the necessary communications were received by the applicant well before the declaration of the results on 17.6.96. Pratap Singh's case is therefore not comparable to the facts and circumstances of the present case.

8. In the background of the details aforementioned and the law settled by Supreme Court in Singhania's (supra) case, applicant has no case for consideration.

9. Applicant's case also suffers from yet another infirmity and that is with reference to acceptance of his resignation letter of ASC/RPF by the respondents herein. From the maze of applicant's claims and counterclaims by the respondents, what needs to be determined is whether applicant's

letter of resignation dated 12.6.96 was delivered to the respondents before 17.6.96. Applicant would claim to have "delivered it personally on 14.6.96" as per applicant's statement in the rejoinder dated 12.5.98. Whereas respondents by A-1 communication dated 26.7.96 mentions as under:

"Refer to your letter dated 12.6.96 personally delivered by you in E(GR)-1 Branch on 20.6.96".

10. What is evident is that letter dated 12.6.96 written at Kota Jn. (Rajasthan) could not be normally received by Railway Board by 14.6.96. Applicant has not mentioned to whom it was delivered and, in particular, in which section. If the letter was hand-delivered in the concerned E(GR) Section directly, the position would have been different. The applicant has not cared to clarify this point in any of his subsequent communications. Applicant had also not furnished necessary acknowledgement as regards the person to whom he had hand-delivered the letter. If the letter was personally delivered on 20.6.96, as is being claimed by the respondents, applicant's case falls on the ground. Apparently, it was because of the doubtful endorsement on A-2 letter dated 12.6.96 that the respondents, admittedly, decided to correct the error. The entire issue is shrouded by disputes. In respect of such disputed matters, we have to get guided by observations of Lord Searman in the case of Notting Hom County Council Vs. Secy. of State, 1986 (1) All England Law Reports, 197: It was held therein that:

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"Where the existence or non-existence of a fact is left to the discretion of a public body, and that fact involves a broad spectrum of ranging from the obvious to the debatable or the just conceivable, it is the duty of the Court to leave it to that body, save in cases where it acts perversely".

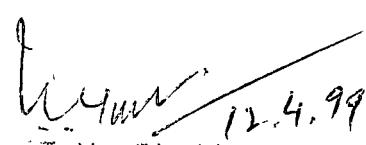
11. On the basis of pleadings advanced by both the parties, applicant has not come out with an unassailable position of having really "hand delivered" the resignation letter to the appropriate authority well before 17.6.96. We find that applicant in several of his subsequent communications dated 31.7.96, 19.8.96 and 30.8.96 did not even mention of his letter dated 12.6.96 having been received by the respondents on 14.6.96. When the speaking order dated 27.6.96 was served on him, he did not represent immediately adverting to the earlier letter delivered on 14.6.1996.

12. It is not the function of the Court to make roving enquiries and enter into a finding in disputed matters. If any authority is required for this proposition, it is available in Hamsaveni Vs. State of Tamil Nadu (1994) SCC (L&S) 1277 and Ram Pal Malik Vs. State of Haryana JT 1994(5) 74.

13. We find no grounds, much less convincing good ground, to interfere with the impugned order. The application is, therefore, dismissed without any order as to costs in the facts and circumstances of the case.


 (S.P. Biswas)
 Member(A)

/gtv/


 (T.N. Bhat)
 Member(J)

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