

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 942 of 1994
T.A. No.

DATE OF DECISION 09.06.1994

Shri Jayaram A. & Another Applicant(s)

Versus

U.O.I. & Another Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? 46
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

S.K. DUAON
(S.K. DUAON)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.942 of 1994

NEW DELHI THIS THE 9TH DAY OF JUNE, 1994.

MR. JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR. B.N.DHOUNDIYAL, MEMBER(A)

1. Jayaram A.
S/o Shri P.S.Aravindakshan
R/o 288,S.F.S.Flats
New Delhi.
2. Sunil Roy,
S/o Late Sri Daroga Roy,
R/o 388,Asiad Village
New Delhi.

APPLICANTS

BY ADVOCATE SHRI S.K.PATRI

vs.

1. Union of India through its Secretary, Department of Personnel, Shastri Bhavan New Delhi.
2. U.P.S.C. through Secretary, Shahjahan Road, " New Delhi.

RESPONDENTS

RESPONDENT NO.1 THROUGH SHRI N.S.MEHTA, SENIOR STANDING
COUNSEL

COUNSEL : RESPONDENT NO. 2 THROUGH SHRI P. H. RAMCHANDANI, SENIOR ADVOCATE

ORDER (ORAL)

The applicants, who are the members of Other Backward Classes(OBCs), are intending candidates to the Civil Services(Preliminary) Examination,1994 (the Examination) which is being conducted by the Union Public Service Commission(the Commission). The last date of receipt of the application forms for the Examination was 14.2.1994 and the Examination is scheduled to be held on 26.6.1994. The Civil Services Examination Rules,1994(the Rules) to be conducted by the Commission were notified on 1.1.1994 by the Ministry of Personnel,Public Grievances and Pensions(Department of Personnel and Training) in the Gazette of India (Extraordinary). For the OBCs, the Rules prescribe the age-limit as 21-28 years, the number of permissible attempts as four and the fee payable as a sum of Rs.40/-.

However, the Rules made relaxation in the matter of upper age-limit in favour of the Scheduled Caste and Scheduled Tribe candidates with a corresponding change in the number of attempts and also reduced the sum as to fee.

2. The Commission notified to all concerned that it proposed to hold the Examination. In its notification, it reproduced the rules as relevant. It fixed the last date of receipt of the application forms as 14.2.1994.

3. Applicant No.1(Jayaram A) preferred Writ Petition No.164/1994 before the Hon'ble Supreme Court under Article 32 of the Constitution and on 10.2.1994, the Hon'ble Court/pleased to pass the following the order:

" Taken on board. Dismissed as withdrawn to enable the learned counsel to file a petition, if so advised before the High Court."

4. It appears that applicant No.1 filed Civil Writ No.803/94 in the High Court of Delhi and that Court on 14.2.1994 issued notice to the respondents to show cause as to why rule nisi be not issued for 22.2.1994. On 7.4.1994, the said Writ Petition was dismissed in the following words:

" Counsel for the respondent has raised an objection that the writ petition is not maintainable as even service matter relating to recruitment and matter concerning recruitment fall within Section 14(1)(a) of the Central Administrative Tribunal Act, 1985 and such matters are within the jurisdiction of the Central Administrative Tribunal and the petitioner should be relegated to the said remedy.

Accordingly, we decline to interfere in the writ petition.

Dismissed."

5. This OA was presented in this Tribunal on 27.4.1994 with certain defects. It was refiled on 9.5.1994 after removing the defects. On 11.5.1994, we directed notice to be issued to the respondents, returnable on 27.5.1994.

S

6. A reply has been filed on behalf of the Commission. However, no rejoinder-affidavit has been filed.

7. The following reliefs have been claimed in this OA:

- (i) to relax the upper age-limit for the OBCs in the Examination.
- (ii) to waive the restrictions in regard to the number of attempts for the OBCs.
- (iii) to give some relaxations in regard to the fees to be paid for the said Examination.
- (iv) pass such further orders as this Tribunal may deem fit and proper in the circumstances of the case.

8. The arguments are:

- (1) the eligibility condition in the matter of age as fixed for the OBCs and the Scheduled Caste and Scheduled Tribe candidates offends Articles 14, 15(4) and 16(4) with regard to the OBCs who are similarly situate as Scheduled Castes and Scheduled Tribes.
- (2) putting the OBCs and the general candidates at par in the matter of upper age-limit, number of attempts and fee for Examination makes unequals as equals thereby violating Articles 14 & 16 of the Constitution.

9. We have considered the above submissions with due care and our feeling is that if either of the two submissions is accepted, the applicants will not derive any advantage. If the first submission prevails, at best the relaxation in the matter of age given to Scheduled Caste and Scheduled Tribe candidates will have to be struck down. If the second submission is accepted, the upper age-limit as fixed by the Rules may have to be struck down. This will not only lead to an anomalous situation but will also be against the public policy.

and, in any case, detrimental to the public interest. It is doubtful whether the Rules can be saved after severing the part pertaining to the fixation of the upper age-limit.

10. The question really is whether we have jurisdiction to either relax the upper age-limit for the OBCs or to command the rule making authority to amend the necessary Rules so as to provide for ^a relaxation in the upper age-limit for the OBCs.

11. The controversy relating to the Examination came up before us in OA No.303/94(Sh.Rajesh Pandey & others vs.Union of India and anr.) decided on 14.2.1994. There, the prayer was that the respondents therein may be directed to fix the upper age-limit as 30 years and the attempts to appear at the Examination as 5. We dismissed the OA summarily with a reasoned order. We held:....."The regulations confer a power of relaxation upon the Central Government. The thrust of this application really is that the Central Government should be compelled to exercise the said power for the Examination 1994. It is to be presumed that such a power is exercised on valid and relevant considerations. The applicants cannot succeed unless they demonstrate that the Central Government has failed to exercise its power of relaxation capriciously and arbitrarily. Really it is a matter of policy. In the case of present nature, there can be no interference with the discretion of the Central Government to exercise its power unless we are satisfied that by declining to exercise its power, the conduct of the Central Government amounts to an outrageous defiance of logic. We can interfere only if we are satisfied that the Central Government while refusing to exercise its power has acted irrationally or perversely or arbitrarily....."

12. The controversy raised in this OA came up before the Allahabad Bench of this Tribunal in OA No.166 of 1994 and connected OAs decided on 20.5.1994. The learned Members of the Bench, relying upon our judgement in OA No.303/94, repelled the contentions advanced before it and dismissed the OAs.

13. We propose to supplement our judgement given in OA No.303/94 dated 14.2.1994 as follows:

The Indian Administrative Service(Appointment By Competitive Examination) Regulations,1955(the Regulations) are sustained by Section 3 of the All India Services Act,1951(the Act) and Rule 7(2) of the Indian Administrative Service(Recruitment) Rules,1954(the Recruitment Rules). Regulation 4 speaks of "conditions of eligibility". Regulation 4(b)(ii) posits that a candidate must have attained the age of 21, and not attained the age of 28 years on the first day of August of the year in which the Examination is held. The proviso is relevant and may be extracted:

"Provided that the upper age-limit may be relaxed in respect of such categories of persons as may from time to time, be notified in this behalf by the Central Government, to the extent and subject to the conditions notified in respect of each category."

14. Having regard to the scheme of the Act and the Rules, the Regulations though nomenclatured as such really are/ Rules. In any case, a Regulation has also to be considered to be a piece of delegated legislation.

15. A combined reading of Section 3 of the Act, Rule 7(2) of the Recruitment Rules and the Regulations indicates that the nature of the power exercised under the proviso is really legislative in character. If that be so, there can be no dispute that this Tribunal while exercising jurisdiction/ of the Constitution, in service matters is not competent to issue a writ or order or

direction in the nature of mandamus to an authority to exercise its delegated power of legislation in a particular manner.

16. Even if it be held that the nature of the power as conferred under the proviso is statutory, there will be no practical difference in so far as this case is concerned. We cannot issue any positive direction to the Central Government to exercise its power in a particular manner. We have dealt with this aspect in our judgement in OA No.303/94.

17. The learned counsel for the applicants has urged that Regulations aforementioned and the corresponding Regulations made for the recruitment of the personnel of the Indian Police Service are confined to the recruitment to the Indian Administrative Service and the Indian Police Service and they have no application to the Civil Services as a whole.

18. The point is: no more res integra as in Union of India and another Vs. Sudhir Kumar Jaiswal (JT 1994(3) S.C.547), the Hon'ble Supreme Court has in para 10 of its judgement held that Civil Services Examination Rules, 1992 contain statutory provisions. As a natural corollary it has to be held that the Rules contain statutory provisions.

19. In the counter-affidavit filed on behalf of the Commission, the material averments are these. In response to the notice issued by the Commission on 1.1.94 for admission to the Examination well over 2,50,000 applications have been received before the closing day. The Examination is scheduled to be held on 26.6.1994. The arrangements for conduct of the Examination for such a large number of candidates at more than 600 venues in 41 centres located throughout the country are already at an advanced stage. Given the tight schedule of these

10

operations, any change in the eligibility conditions prescribed for admission to the Examination at this late stage will seriously jeopardise the entire Examination programme and in that case the Commission will not have any choice but to cancel the Examination which will obviously have far reaching implications. Any postponement/cancellation of the Examination will pose problems not only to the Commission but also the vast majority of aspiring candidates. The conduct of Examination has been scheduled in the month of June, 1994 as most of the schools are closed for vacations and can be requisitioned by the Commission for the purpose of being used as Examination centres throughout the country.

20. Having regard to the practical difficulty set out by the Commission in the reply filed by and on its behalf, it would not have been equitable to interfere with the 1994 Examination even if the applicants had made out a case on merits.

21. The remedy of the applicants, if any, is with the Central Government. We have no doubt that keeping in view the declared Reservation Policy for the OBCs, the authority concerned will give a fresh look to the Rules which may be framed for the Civil Services Examination, 1995.

22. This application fails and is dismissed but without any order as to costs.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER(A)
SNS

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)