

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1058/94
T.A. No.

199

(3)

DATE OF DECISION 10.6.1994

Shri Indu Shekhar **Petitioner**
S/Shri B.N.Bhargave and S.K.Gupta **Advocate for the Petitioner(s)**
Versus
Union of India **Respondent**
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman(A)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

~~JUDGEMENT~~

(N.V. Krishnan)
Vice-Chairman(A)

Central Administrative Tribunal
Principal Bench, New Delhi.

No.OA-1058 of 1994

10th day of June, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)

Mrs. Lakshmi Swaminathan, Member(J)

Shri Indu Shekhar,
R/o 1/1, Jiasarai,
Hauz Khas,
Delhi-110016.

Applicant

By Advocate: Shri B.N. Bhargava and Shri S.K. Gupta.

Versus

Union of India through

1. The Secretary,
Ministry of Personnel, Public
Grievances & Pension,
Department of Training,
New Delhi.
2. The Secretary,
U.P.S.C.,
Shahjahan Road,
Dhaulpur House,
New Delhi-110011.

Respondents

O R D E R

Hon'ble Shri N.V. Krishnan, Vice-Chairman(A)

be amended

This application has been filed by a candidate who applied for admission to the Civil Services Examination (C.S.E.), 1984 to be held on 26.6.1994 by the Union Public Service Commission (U.P.S.C.), in response to the advertisement in the 'Employment News' (Annex.13). The advertisement specifies in para.4 the eligibility

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conditions. In regard to age, a minimum of 21 years and a maximum of 28 years of age as on 1.8.1994 is prescribed. In other words, candidates born earlier than 2.8.1966 and later than 1st August, 1973, are not eligible. Admittedly, the applicant was born on 22.1.1966 and is, therefore, over-aged and not eligible for admission to the examination. Accordingly, the second respondent, i.e., Secretary, U.P.S.C. informed the applicant by the impugned Annex.A-1 letter dated 29.4.1994 that his application for admission to the Examination has been rejected as he is not within the prescribed limits.

2. The applicant is aggrieved by this decision in the following circumstances:

2.1 It is stated that, by a notification dated 30.12.89, the upper age limit was fixed as 26 years and the number of permissible attempts was limited to 3 for the 1990 C.S.E. However, by a subsequent notification of the second respondent, the upper age limit was raised to 28 years and the number of attempts was also increased to 4.

2.2 For the 1992 C.S.E., the upper age limit was fixed at 33 years and the number of permissible attempts kept at 5. This was done by the notice issued by the U.P.S.C. in the 'Employment News' dated 28.12.1991 - 3.1.1992 (Annex.A-4).

2.3 However, for the 1993 C.S.E., the upper age limit was reduced to 28 years and the number of permissible attempts was reduced to 4. As no reason was given in the notification for these changes, it is stated

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that some candidates approached the Allahabad Bench of this Tribunal in OA-424/93 - Brijesh Kumar & others v. Union of India. A copy of the order passed on 12.4.1993 by that Bench has been filed as Annex.A-5 which reads as follows:-

"The applicants have challenged the Rules and also age limit notified for C.S. Examination, 1993.

If the application is otherwise in order, the case of the applicant will not be rejected."

On the basis of this order, the applicants in that O.A. have appeared in the C.S.E. It is learnt that the said case is still pending before the Hon'ble Supreme Court for disposal.

2.4 It is in this background that the applicant has claimed the following important reliefs:-

"(i) The Hon'ble Court may be pleased to quash the clause 4 (ii)(a) in which age has been fixed as 28 yrs. and clause 4(iv) in which number of attempts have reduced and fixed at 4 of the Adv. dt. 1.1.94 (A/3).

(ii) The Hon'ble Court may be pleased to quash the impugned letter dt.29.4.94 and to direct the respondents to allow the applicant to appear in the Civil Services Examination, 1994 to be held on 26.6.94."

3. These reliefs are claimed on the following grounds:-

(i) The Annexure A-3 notification relating to the C.S.E., 1994 is arbitrary and discriminatory to the extent that it fixes the upper age limit and the number of permissible

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attempts as 28 years as on 1.8.1994 and 4 chances respectively. These are contrary to the notification for the 1992 C.S.E. This has affected the valuable right of the applicant for appearing in the Examination

(ii) There is a discrimination between persons aged upto 33 years who were permitted to appear in the 1992 C.S.E. and the applicant who has been refused admission, being over-aged.

(iii) The notification does not disclose the nexus between the change of policy reflected in the reduction of upper age limit and the reduction in the number of permissible attempts and the object sought to be achieved.

4. The O.A. was heard on admission. Shri S.K. Gupta, learned counsel for the applicant, contended that the Annex. A-3 notification is discriminatory and is violative of Article 14 of the Constitution. He relies for this proposition on the decision of the Supreme Court in D.S. Nakara Vs. Union of India (A.I.R. 1983, S.C. 130) and the decision in Maneka Gandhi Vs. Union of India (A.I.R. 1978, S.C. 597) referred to in para.10 of that judgement. It is contended that these job seekers who are more than 28 years of age, but less than 33 years, belong to one class and were permitted to appear in the 1992 C.S.E. The same class is being discriminated now, restricting the upper age

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limit to 28 years. Hence, the relief sought is pressed.

By way of interim order, provisional admission to the C.S.E. is sought.

5. We have carefully considered the application and the arguments advanced by the learned counsel for the applicant.

6. Admittedly, the applicant does not question the right of the respondents to determine the upper age limit of candidates for appearing in the C.S.E. and for fixing the maximum number of attempts. The grievance is based on the alleged discrimination between the eligibility conditions for the 1992 C.S.E. and the 1994 C.S.E. in regard to upper age limit and maximum permissible attempts.

7. The application is somewhat sketchy and is lacking in essential details. It does not state, for example, whether the OA-424/93 filed before the Allahabad Bench of the Tribunal, has since been disposed of by a final order and if so, what directions were given. It is also not clear whether the matter pending in the Supreme Court is in respect of the Annexure A-5 interim order of that Bench or whether it is in respect of the final order of that Bench.

8. What is more important is that the applicant seems to be under the impression that the Annexure A-3 notice regarding the CSE, 1994 has been issued by the U.P.S.C. on its own. It is for this reason that the prayer at (i) in para 2.4 supra has been made. This is a misconception. As can be seen from the

first para of the Annexure A-3 notice, notice to hold the preliminary examination has been issued in accordance with the rules published by the Deptt. of Personnel and Training in the Gazette of India Extraordinary dated 1st January, 1994. In other words, the authority for the notice is the aforesaid Rules. They have not been produced with the O.A. However, statutory rules do exist in this regard for recruitment to the All India services, i.e., I.A.S., I.P.S. and I.F.S. to which services also recruitment is to be made as stated in Annexure A-3. In so far as the I.A.S. is concerned, the I.A.S. (Recruitment Rules) 1954 provide in Rule 4 (1)(a) for recruitment by competitive examination. Rule 7(2) provides that such examination shall be conducted by the U.P.S.C. in accordance with such regulations as the Central Govt. may, from time to time, make in consultation with the U.P.S.C. and the State Govts. The I.A.S. (Appointment by competitive Examination) Regulations, 1955 have been made under Rule 7(2) referred to above. Regulation 4 (iii) (a) prescribes the maximum attempts permissible. Regulation 4(ii) relates to specifying 21 years and 28 years as the minimum and maximum age for admission to the examination and the age is to be reckoned on 1st August of the year when the examination is held. Therefore, the applicant ought to have impugned these parent Rules/Regulations while claiming the relief. Nevertheless, we consider the case on merits.

9. The applicant has no case that when the upper age limit was increased to 33 years in respect of the 1992 C.S.E., this was challenged by any group of persons as being arbitrary in nature. Persons within the age group from 21 to 28 years, could possibly have been adversely affected by the resultant intensification

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of the competition and correspondingly, the possible reduction of their chances of selection. Apparently, there was no such challenge. It is also not alleged that this issue was raised in Parliament for any discussion. Therefore, it appears to be clear that, increasing the upper age limit to 33 years as also the number of chances to 5 for the 1992 C.S.E. was done for good and sufficient reasons.

10. For the 1993 C.S.E., the status quo was restored, i.e., the upper age limit was fixed at 28 years and the maximum number of chances at 4. There were no public complaints of arbitrary exercise of power in this regard. For, if candidates who are over 28 years, but less than 33 years of age, have been suddenly disqualified for the 1993 C.S.E. arbitrarily, this would surely have led to an agitation and, perhaps, created a serious law and order situation, as was witnessed when disturbances broke out in the wake of the debate on the implementation of the Mandal Commission's recommendations regarding reservation for backward classes. There was no such agitation. Apparently, this decision was also not questioned in Parliament. Therefore, this action too had been taken for good and valid reasons and the public was not agitated about it. There was, no doubt, the application filed by aggrieved persons before the Allahabad Bench, as stated above.

11. What has been mentioned above in respect of the 1993 C.S.E. applies with equal force to the 1994 C.S.E.

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12. We are of the view that the applicant has not produced any material to hold, prima facie, that the Annex. A-3 notice is arbitrary and discriminatory. Therefore, we do not see the need to issue notice to the respondents.

13. Union of India & Another Vs. Sudhir Kumar Jaiswal (J.T. 1994 (3) S.C. 547) was also a case relating to the Civil Services Examination. The validity of the cut-off date (i.e. 1st August) for reckoning the age of the candidate and to determine his eligibility to appear, was called into question. While dismissing the contention of the respondent therein, the Apex Court observed as follows:-

"xxxx xxxx xxxx xxxx xxxx xxxx

4. Insofar as fixation of cut off date is concerned, the same can be regarded as arbitrary by a Court if the same be one about which it can be said that it has been "picked out from a hat", as was found to be by this Court in D.R. Nim V. C.S. Prasad, AIR 1967 SC 1301, because of which fixation of 19.5.91 as the date for the concerned purpose was held to be invalid.

5. As to when choice of a cut off date can be interfered was stated by Holmes, J. in Louisville Gas & E Co. V. Coleman (1927) 277 US 32 by stating that if the fixation be "very wide of any reasonable mark", the same can be regarded arbitrary. What was stated by Holmes, J. was cited with approval by a Bench of this Court in Union of India V. Parameswaran Match Works, (AIR 1974 SC 2349) in paragraph 10 by also stating that choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice, unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the legislature or its delegate must be accepted, unless it can be said that it is very wide of any reasonable mark."

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14. Reliance on Nakara's case (AIR 1983 S.C. 130) does not help the applicant. An O.M. dated 25.5.1979 was issued by the Ministry of Finance, whereby the formula for computing the pension which was existing till then, was liberalised. This revised formula was made applicable only to Government servants who were in service on 31.3.1979 and who had retired from service on or after that date. The question posed ^{its} by the Supreme Court for consideration was as follows:-

"2. Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 ('1972 Rules' for short) form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14?"

The Apex Court found that the date fixed has no rationale and no reasonable connection with the objective sought to be achieved which was to bring relief to pensioners. It created an artificial distinction between pensioners retiring before the appointed date and after the appointed date, which was an irrelevant consideration. Hence the O.M. was modified.

15. In the present case, the applicant can be said to belong to the class of candidates who aspire for employment. By restricting admission to the examination to persons who fall within the age limits prescribed, a classification had been made. That is reasonable and has not been questioned. The charge of discrimination is based on the consideration that for the 1992 C.S.E., persons who were more than 28 years, but less than 33 years, were also made eligible for

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appearing in the examination. The applicant was less than 28 years then and did not belong to that class. Therefore, question of discrimination does not arise. At present, he belongs to a class which is over-aged for the C.S.E. Within that class there is no discrimination.

16. Maneka Gandhi (AIR 1978 SC 597) holds that mere administrative orders have also to satisfy the test of Article 14. There should be fair play in passing such orders. The question is whether there is a violation of Article 14 in this case. We have shown above that no such violation is shown to have taken place.

17. The other question that remains is whether the upper age limit can be changed now as compared to 1992.

18. The I.A.S. (Appointment by Competitive Examination) Regulations, 1955, published in Part-II of the All India Service Manual (Sixth Edition) - a Govt. of India publication - as corrected upto 31.7.90 shows that regulation 4(ii) has prescribed the lower and upper age limits of 21 years and 28 years. By the second proviso thereto the upper age limit for the 1990 Examination was raised to 31 years. Thus the normal upper age limit is only 28 years. This has been raised for the 1991 and 1992 examinations only as would appear from the above regulation and Annexure A-4. It thus appears that the second proviso to the above regulation has been deleted so that the upper age limit for the 1994 examination is only 28 years. If the regulations had fixed the normal upper age limit at 33 years and this is reduced to 28 years one could, perhaps, feel that, apparently,

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a genuine grievance has arisen. That is not the situation here. The normal upper age limit is only 28 years. The applicant too has no fundamental right to claim that he should be permitted to appear in the C.S.E. irrespective of his age.

19. In this connection it is instructive to refer to the decision of the Apex Court in V. Narayana-murthy vs. State of Andhra Pradesh (1971 SLR 888). That was a case where a Constitution Bench held that the orders of the State Government reducing the age of retirement from 60 to 55 years, cannot be assailed on grounds of discrimination and violation of Article 14 even though the age of retirement was first increased from 55 years to 58 years and then from 58 to 60 years, and but reduced to 55 thereafter. Para 13 of the Supreme Court's judgement reads as follows:-

"13. After a faint attempt to challenge the validity of the Government Order No.2219 dated November 3, 1967, the learned counsel expressly confined his challenge only to the subsequent orders made by the Government. Now if G.O. No.2219 dated November 3, 1967 is valid, then, obviously, the petitioners have to retire at the age of 55 years notwithstanding the fact that after their initial employment, their retirement age was raised by Government orders, first from 55 to 58 years and then to 60 years, because those intermediary orders had been cancelled by G.O. No.2219 before they became operative by actually retaining in service the present petitioners after superannuation under the earlier rule. Merely because of some subsequent orders, the extended date of retirement was accepted in respect of those employees in whose favour these specific orders had been made extending their age of retirement from 55 to 58 years or to 60 years, or who had, after crossing the 55 years age limit, been retained in service pursuant to the modified directions, notwithstanding that those directions were later cancelled, would not by itself entitle the present petitioners to claim similar extension in their age of the retirement on the basis of the equality rule embodied in article 14 and 16 of the Constitution. The other

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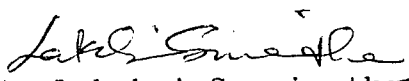
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employees were given benefit of the directions pursuant to the orders of the High Court which have since become final. This clearly provides a valid differentia and the present petitioners cannot claim to be equated with those employees who had been given such benefits."


Therefore, the Central Govt. and the U.P.S.C. were fully competent to fix the upper age limit at 28 years for the 1994 C.S.E.

19. The Constitution has vested in the U.P.S.C. under Article 320 (1) the powers to hold examinations for recruitment to the Services of the Centre. The U.P.S.C. is a constitutional authority. The notices it issues for holding an examination in exercise of this power, are to be presumed to be valid. They may not be interfered with except on evidence laid to show that prima facie, some provisions of the notification are violative of the Constitution. In the present case, the applicant has not produced any reasonable ground to show that the restrictions imposed on upper age limit or the number of attempts are capricious or whimsical. The restrictions are palpably justified and they are not wide off any reasonable mark. There has been no complaint in this regard to either in the public or in Parliament. The absence of such complaints is, prima facie, proof of reasonableness of the restrictions. The impugned notice, therefore, cannot be held to be violative of Article 14 of the Constitution.

20. We, therefore, see no merit in the O.A. and accordingly, it is dismissed. No costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'Sanju'


15/6/94
(N.V. Krishnan)
Vice-Chairman(A)