CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

J U D G M E N T
I N

O.A. No.206/1989 Shri Alok Kumar

Vs.

Union of India & Ors

and

Sixty one other O. As.

....

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

Judgment pronounced in Court on
20th August, 1990
by
Hon'ble Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.206/1989. Date of decision: August 20,1990.

Shri Alok Kumar ... Applicant.

Vs.

Union of India & Ors. ... Respondents.

And

O.A. 62/1989.

Shri Atul Gupta Vs. U.O.I. & Ors.

O.A. 1047/89.

Shri Manoj K.Akhouri Vs. U.O.I. & Ors.

O.A. 1331/89.

Sh.R.Kishore Babu Vs. U.O.I. & Ors.

O.A. 1325/89.

Sh.A.Venkat Reddy Vs. U.O.I. & Ors.

O.A. 1733/89.

Sh.Deepak Mathu Vs. U.O.I. & Ors.

O.A. 973/89

Dr. N.Nagambika Vs. U.O.I & Ors.

O.A. 366/89.

Sh.Vivek Ranjan Vs. U.O.I. & Ors.

OA 1058/89.

Sh.Jai Raj Kajla & Ors Vs. U.O. I & Ors.

OA 1054/89.

Sh.Sanjay Kumar & Ors. Vs. U.O.I. & Ors.

O.A. 1055/89.

Sh.Prabodh Saxena Vs. U.O.I. & Ors.

O.A. 1023/89.

Sh.M.K.Singhania Vs. U.O.I. & Ors.

O.A. 1022/89.

Sh.Rajesh Kundan Vs. U.O.I. & Ors.

O.A. 426/89.

Shri Arun Kumar Gupta Vs. U.O.I. & Ors.

OA 802/89.

Sh.Alok Johri & Another Vs. U.O.I. & Ors.

OA 2452/89.

Shri Prag Jain Vs. U.O.I. & Ors.

O.A. 1056/89.

Sh.Sunil Mathur & Ors Vs. U.O.I. & Ors.

OA 1706/89.

Sh.Sanjeev Kumar & Sh. Meera Ranjan Vs. U.O.I. & Ors.

OA 1771/89.

Sh.Seeny John Vs. U.O.I. & Ors.

OA 2434/89.

Ku. Sapna Srivastava Vs. U.O.I. & Ors.

OA 1900/89.

Sh.Rajat Bhargava Vs. U.O.I. & Ors.

O.A. 266/89.

Sh.Ravi Shankar Prasad Vs. U.O.I. & Ors.

OA 267/89.

Sh.Alam Md. Mohsin Vs. U.O.I. & Ors.

OA 528/89.

Sh.Satyendra Prakash Vs. U.O.I. & Ors.

OA 1712/89.

Sh.Chhering Angrup Bodh Vs. U.O.I. & Ors.

OA 1057/89.

Sh.Sanjeev Kumar Kalra & Ors Vs. U.O.I. & Ors.

OA 1705/89.

Sh.Salil Gupta & Ors Vs. U.O.I. & Ors.

OA 865/89.

Sh.Ved Prakash Vs. U.O.I. & Ors.

OA 944/89

Sh.Anil Kant Vs. U.O.I. & Ors.

OA 1076/89.

Sh.Keshave Saxena Vs. U.O.I. & Ors.

OA 452/89.

Sh.Jyoti Kalash Vs. U.O.I. & Ors.

OA 576/89.

Sh.Sanjay Kumar Jha Vs. U.O.I. & Ors.

OA 1710/89

Sh. Shashank Priya Vs. U.O.I. & Ors.

OA 698/89.

Miss. Ila Singh Vs. U.O.I. & Ors.

OA 575/89.

Sh.Amit Kumar Singh Vs. U.O.I. & Ors.

OA 736/89.
Sh.R.B.Naik Vs. U.O.I. & Ors.

OA 1812/89
Miss B.G.Bhooma Vs. U.O.I. & Ors.

OA 1391/89.
Sh.Subrat Tripathy Vs. U.O.I. & Ors.

OA 378/89.
Sh.K.Sanjay Murthy Vs. U.O.I. & Ors.

OA 344/89.
Miss. Smriti Dwivedi Vs. U.O.I. & Ors.

OA 309/89
Sh.Ravi Jain Vs. U.O.I. & Ors.

OA 1967/89
Smt. Aradhana Shukla Vs. U.O.I. & Ors.

OA 387/89.
Sh.Pavan Jeet Singh Sandhu Vs. U.O.I. & Ors.

OA 1168/89.
Sh.Rajiv Kishore Vs. U.O.I. & Ors.

OA 1214/89.
Sh.Manoranjan Panigrahy Vs. U.O.I. & Ors.

OA 265/89.
Sh.Pawan Kumar Sinhan & Ors Vs. U.O.I. & Ors.

OA 1708/89.
Ku. Vasundhara Sinha Vs. U.O.I. & Ors.

OA 239/90 (OA 57/89-Patna Bench)
Sh.Sanjay Kamar Vs. U.O.I. & Ors.

OA 205/90(OA 111/89 Ernakulam Bench).
Sh.C.J.Mathew Vs. U.O.I. & Ors.

OA 234/90 (OA 46/89 Patna Bench).
Sh.Bharat Tripathi Vs. U.O.I. & Ors.

OA 235/90 (OA 67/89- Patna Bench).
Sh.Anand Kumar Vs. U.O.I. & Ors.

OA 236/90 (OA 66/89 Patna Bench).
Sh.Alok Raj Vs. U.O.I. & Ors.

OA 237/90 (OA 51/89 Patna Bench).
Ku. Smita Srivastava Vs. U.O.I. & Ors.

OA 238/90 (OA 53/89-Patna Bench).
Sh.Madhukar Sinha Vs. U.O.I. & Ors.

OA 140/90 (39/89 Guwahati Bench).
Sh.Chandrajit Saikia Vs. U.O.I. & Ors.

OA 304/90 (OA 91/89-Allahabad Bench)
Sh.Sangam Narain Srivastava Vs. U.O.I. & Ors.

OA 305/90 (OA 422/89 Allahabad Bench)
Sh. Rameshwar Singh Vs. U.O.I. & Ors.

OA 79/90.

Sh.S.B.Naithani Vs. U.O.I. & Ors.

OA 208/90 (OA 163/90-Jodhpur Bench).

Sh.H.R.Srinivasan Vs. U.O.I. & Ors.

OA 263/90(OA 255/89- Jabalpur Bench).

Ku. Aparna Maheshwari Vs. U.O.I. & Ors.

OA 259/90 (OA 346/89- Hyderabad Bench).

Sh. Vennelakanti Kalyana Rama Vs. U.O.I. & Ors.

OA 207/90. (OA 104/HR/89-Chandigarh Bench).

Sh.Mehar Singh Chalia Vs. U.O.I. & Ors.

CORAM

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicants ... Shri M. Chandrasekharan, Advocate with Shri Madhav Panikkar, Advocate.

Shri A.K.Sikri, Advocate with Shri Ramjisrinivasan, Advocate.

Shri S.S. Tewari, Advocate.
Shri B.K.Sinha, Advocate.
Shri Sunil Malhotra & Shri Ravi Kazi, Advocates.

Shri A.K.Behera, Advocate.

Shri Hemant Kumar, Advocate.

Shri Jog Singh, Advocate.

Mrs. C.M.Chopra, Advocate.
Shri Ashok Aggarwal & Ms. Nitya Ramakrishna, Advocates.
Shri A.K.Sahu, Advocate.
Shri Sanat Kumar, Advocate.
Shri Nanda Kumar, Advocate.

For the respondents .. Shri P.H. Ramchandani, Sr.Counsel.

(Judgment of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman)

The second proviso to Rule 4 of the Civil Services Examination (published in the Gazette of India, Extraordinary, Part I Section, dated December 17, 1988) is challenged in these 62 Original Applications (O.A.).

The principal question raised in these O.As

is that the proviso placed restrictions on the applicants to better their chances through subsequent Civil Services Examination (C.S.E.) and requires them to resign from service, if they had succeeded in any previous examination and allotted any service or were undergoing training. The applicants have taken the stand that the above restrictions are hit by the provisions of Article 14 of the Constitution and are contrary to law. Another plea raised is that the number of attempts permitted to SC/ST candidate has also been restricted which was not there earlier. The validity of the second proviso to Rule 4 has also beenchallenged on the ground that it is ultravires of the provision of Article 312 of the Constitution of India and has not been made after complying with the requirements of the said provision. In other words, the applicants' main grievance is that undue restrictions have been placed on their improving their career prospects by appearing and qualifying in future examinations.

The common prayer to be found in almost all the 62 O.As is for declaring the second proviso to Rule 4 of the C.S.E. as illegal and void and violative of Articles 14 and 16 of the Constitution of India. The second prayer seeks a declaration that the insistence by the respondents that the applicants should forego any rights to higher/better employment which they may secure pursuant to the results of the C.S.E. 1988, is illegal. The third prayer seeks a declaration that the applicants should be permitted to join the probationary training forthwith. The last prayer sought was to permit the applicants to sit in the

ensuing examination.

All these 62 O.As have been filed in 1989. 43 O.As have been filed before the Principal Bench. Rest of them have come on transfer from the Patna, Allahabad, Chandigarh, Jabalpur, Hyderabad, Jodhpur, Ernakulam and Guwahati Benches of the Tribunal. The applicants appeared in the 1987 C.S.E and were successful and have been allotted Central Services in Group 'A'. Almost all of them took the Preliminary Examination for the year 1988 C.S.E. and some had also taken final examination of 1988. They were awaiting a call for joining training when they received a communication dated 30th August, 1988 by the Government of India seeking some information and placing certain conditions before they were admitted to the training. They were directed either to obtain permission to abstain from training and join the training with the next batch and lose seniority in their own batch and, secondly, they could undertake the next C.S.E. of 1989 after resigning from the service to which they had already been allocated as per C.S.E. 1987. It was at this stage that the applicants approached the Benches of the Tribunal at various places and sought reliefs mentioned above and also asked for interim orders so that their position may be safeguarded and also permitted to join the training besides appearing in the 1989 Main Examination and the interview.

We have heard a number of learned counsel appearing for the parties at length. They include Shri M.Chandersekharan, Shri Madhav Panikkar, Shri A.K.Sikri, Shri Ramji Srinivasan, Mrs. C.M. Chopra, Shri Salman Khurshid, Shri A.K.Behera, Shri

D.K. Sinha, Shri S.S. Tewari, Shri Jog Singh . They appeared for the applicants. On behalf of the respondents, Shri P.H. Ramchandani, Sr. Counsel appeared.

We have treated the case of SHRI ALOK KUMAR Vs. UNION OF INDIA & ORS. (O.A. No.206/89) as the leading case. This judgment will govern all these sixty-two cases.

We now set out briefly the relevant facts in the case of SHRI ALOK KUMAR Vs. U.O.I. & ORS. Shri Alok Kumar filed application forms for Preliminary Examination, 1987 in December, 1986. Preliminary Examination was held by the Union Public Service Commission (UPSC) in June,1987. The result was declared in July, 1987. The C.S.E.(Main) was held by the UPSC in November,1987. Interviews took place in April, 1988 and final results declared by the UPSC in June, 1988. The applicant was selected for appointment to a Central Services Group 'A' post. A communication to this effect was sent to the applicant on behalf of the Govt. of India on 30.8.1988 (Annexure 1 to the O.A.). In this letter, the applicant's attention was drawn to Rule 4 of the Rules for the C.S.E., 1987. It was pointed out that if he intended to appear in the Civil Services (Main) Examination, 1988, then in that event, he would not be allowed to join the Probationary Training along with other candidates of 1987 examination. He would only be allowed to join the Probationary Training along with the candidates who would be appointed on the basis of the C.S.E., 1988. The letter also indicated that in the

matter of seniority, he would be placed below all the candidates who join training without postponement. He was, therefore, required to furnish information about his appearing in the C.S.E. 1988 to the concerned cadre controlling authorities. He was informed that only on receipt of the above information, the concerned cadre controlling authority will permit him to abstain from the Probationary Training. By letter dated 2.1.1989 (Annexure 2 to the O.A.), the Joint Director, Estt. G (R), Ministry of Railways (Railway Board) informed the applicant of his selection for appointment to the Indian Railway Personnel Service. He was also informed that the training will commence from 6.3.1989 and the applicant should report for training at Railway Staff College, Vadodara on 6.3.1989. He was also informed that once he joined Probationary Training along with 1987 batch, he would not be eligible for consideration for appointment on the basis of subsequent C.S.E. conducted by the UPSC.

Shri Alok Kumar's case further was that he did not intend to appear in the next C.S.E. but he had already appeared for the C.S.E. 1988 even before he received the offer of appointment dated 2.1.1989. He was intimated that if he joins the Probationary Training along with 1987 batch, the applicant would not be eligible for consideration for appointment on the basis of subsequent C.S.E. conducted by the UPSC.

Apart from the grounds taken and the reliefs prayed, the applicant had prayed for an interim order to join and complete the current Probationary Training without being compelled to sign the undertaking sought to be obtained from him subject to final orders on this O.A. on the validity of the

aforesaid second proviso to Rule 4 of the C.S.E. Rules.

A Division Bench issued an interim order allowing the applicant to join the requisite training for the service to which he has been allocated and allowed the applicant to appear in the interview as and when he is called by the U.P.S.C. on the basis of 1988 Examination.

In the reply by the respondents, it was mentioned that the C.S.E. is held annually by the UPSC in accordance with the Rules for the C.S.E. framed by the Government for making recruitment to the I.A.S., I.F.S., I.P.S. and Central Services Group 'A' and Group 'B'. The allocation of the candidates, qualifying in the examination to the various Services is made by the Department of Personnel & Training strictly in accordance with the ranks obtained by them and the preference for the Services indicated by them. Among the various services to which recruitment is made through this examination, only the I.A.S. and the Central Secretariat Services, Group 'B' are controlled by this Department. The cadre controlling authorities for the remaining services are other Ministries/Departments of the Govt. of India. The rules for the Civil Services Examination provide that a candidate appointed to the IAS or the IFS cannot appear in the examination again. A candidate approved for appointment to the I.P.S. could only be considered for I.A.S., I.F.S. and Central Services Group 'A' in the next C.S.E. Likewise all those candidates approved for appointment to any Central Services, Group 'A' would be considered for I.A.S., I.F.S. and I.P.S. only. It was noticed that the probationers were neglecting their training in the training institutions. They were devoting time and attention to the preparation of the next C.S.E. and not to the training. If such a candidate did not succeed in the next C.S.E., he would

not be properly equipped for the service to which he was appointed as he had neglected the training. Even when he qualified, he would leave the service in which he was a probationer and go to another service. It would be a loss to the service for which he had received training initially. The Government of India spent substantial amount for training.

Group 'A' Services are the highest paid services in the country. When the candidates who qualify for appointment to Group 'A' Services are permitted to improve their prospects further by allowing them to take one more chance in the examination, the vacancies earmarked for them in the examination in which they qualify go abegging. It was stated that a poor country like India, faced with acute unemployment problem, could ill afford such a state of affairs. It was, therefore, thought that any reasonable restriction which the Government imposes in their case and which is in the larger public interest would be justified. The National Police Academy, Hyderabad had reported to the Ministry of Home Affairs that candidates appointed to the Indian Police Service who were desirous of taking the next C.S.E. did not give any attention to the training imparted to them. The Estimates Committee of the Parliament (1985-86) in their Thirteenth Report had also recommended that "The Committee would like to point out that the Kothari Committee in para 3.60 of their report pointed out: "We think it wrong that the very first thing a young person should do in entering public services is to ignore his obligation to the service concerned, and instead spend his time and energy in preparation for reappearing at the UPSC examination to improve his prospects. This sets a bad

example and should be discourged." The Committee suggested that this may be limited to only one chance after a person enters a Civil Service. Consequently, after considering this matter, a meeting of all the cadre controlling authorities was convened by the respondent and after a consensus, it was decided that all those candidates who were desirous of taking the subsequent C.S.E. shall be permitted to abstain from the Probationary Training and the Rule 4 of the Rules for the C.S.Es 1987 and 1988 was amended. This Rule gave the candidate a chance to join the service to which he is allocated on the basis of the previous examination or the service to which he is allocated, on the basis of the next examination. The question of his joining the service arises only after the results of the next examination are announced. Thus, after the second examination, he would be able to join the training along with candidates of the latter batch. In the impugned letter, the applicants were informed of the services to which they were tentatively allocated. They were also informed that the offer of appointment would be issued by the cadre controlling authorities of the services to which they are finally allotted. Attention of the candidates was also invited to Rule 4 of the C.S.E. Rules, 1988. The candidates were informed that in terms of this Rule, if they intend to appear in the Civil Services (Main) Examination, 1988, they would not be allowed to join probationary training along with other candidates who have qualified in the examination held in 1987. The cadre controlling authorities were also requested to clearly point out to the candidates that once a

candidate joins the service, he shall not be eligible for consideration for appointment on the basis of subsequent examinations.

After the above reply of the respondents, various arguments raised by the applicants are also being dealt with but we do not consider it necessary at this stage to refer to the same.

A rejoinder to the reply of the respondents was also filed.

Before we proceed to the contentions raised by the learned counsel for the applicants in these O.As, it will be necessary for proper appreciation to quote the provisions of relevant rules issued under Notification dated 13.12.1986:-

" MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS (Department of Personnel & Training)
New Delhi, the 13th December, 1986.

NOTIFICATION

No.13016/4/86-AIS (I)- The Rules for a Competitive examination-Civil Services Examination- to be held by the Union public Service Commission in 1987 for the purpose of filling vacancies in the following Services/posts are, with the concurrence of the Ministries concerned and the Comptroller and Auditor General of India in respect of the Indian Audit and Accounts Service, published for general information:-

(i) to (xxviii). xxxxxxxxxxx .

Rule 4. Every candidate appearing at the examination, who is otherwise eligible, shall be permitted three attempts at the examination, irrespective of the number of attempts he has already availed of at the IAS etc. Examination held in previous years. The restriction shall be effective from the Civil Services Examination held in 1979. Any attempts made at the Civil Services (Preliminary) Examination held in 1979 and onwards will count as attempts for this purpose:

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible:

Provided further that a candidate who on the basis of the result of the previous Civil Services Examination, had been allocated to the I.P.S. or Central Services, Group 'A' but who expressed his intention to appear in the next

Civil Services Main Examination for competing for I.A.S., I.F.S., I.P.S. 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. If the candidate is allocated to service on the basis of the next Civil Services Main Examination he shall join either that Service or the Service to which he was allocated on the basis of the previous Civil Services Examinations failing which his allocation to the service based on one or both examinations, as the case may be, shall stand cancelled and, notwithstanding any thing contained in Rule 8, such candidate who accepts allocation to a Service and is appointed to the service shall not be eligible to appear again in the Civil Services Examination unless he first resign from the Service.

NOTE:-

1. An attempt at a preliminary examination shall be deemed to be an attempt at the Examination.

2. If a candidate actually appears in any one paper in the preliminary Examination he shall be deemed to have made an attempt at the examination.

3. Notwithstanding the disqualification/ cancellation of candidature, the fact of appearance of the candidate at the examination will count as an attempt.

Rule 6 (a). A candidate must have attained the age of 21 years and must not have attained the age of 26 years on the Ist August, 1987, i.e. he must have been born not earlier than 2nd August, 1961 and not later than Ist August, 1966.

Rule 6 (b). The upper age limit prescribed above will be relaxable:-

(i) upto a maximum of five years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe.

(ii) to (xii). Omitted.

Rule 8. A candidate who is appointed to the Indian Administrative Service or the Indian Foreign Service on the results of an earlier Examination before the commencement of this examination and continues to be a member of that service will not be eligible to compete at this examination.

In case a candidate has been appointed to the IAS/IFS after the Preliminary Examination of this examination, but before the Main Examination of this examination and he/she continues to be a member of that service, he/she shall also not be eligible to appear in the Main examination of this examination notwithstanding that he/she has qualified in the Preliminary Examination.

Also provided that if a candidate is appointed to IAS/IFS after the commencement of the Main Examination but before the result thereof and continues to be a member of that service, he/she shall not be considered for appointment to any service/post on the basis of the results of this examination.

Rule 11. The decision of the Commission as to the eligibility or otherwise of a candidate for admission to the examination shall be final.

Rule 17. Due consideration will be given at the time of making appointments 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 Service, Group 'A' mentioned in Col.2 below on the results of an earlier examination will be considered only for appointment in services mentioned against that service in col.3 below on the results of this examination.

Sl. No.	Service to which approved for appointment.	Service for which eligible to compete.
1.	Indian Police Service	I.A.S., I.F.S., and Central Services, Group 'A'.
2.	Central Services Group 'A'	I.A.S., I.F.S. and I.P.S.

Provided further that a candidate who is appointed to a Central Service, Group 'B' on the results of an earlier examination will be considered only for appointment to I.A.S., I.F.S./I.P.S. and Central Services, Group 'A'."

One more item needs to be clearly understood before we proceed further. The expression "1987 batch" means the batch of candidates who were successful in the result declared in 1987. The candidates, who in pursuance to the advertisement, made application in December, 1985 to appear in the Preliminary in June, 1986, the Main Examination in November, 1986 and the interview in April 1987 and whose results were declared by the UPSC in June, 1987, are the successful candidates of 1987 batch. Similarly, the 1988 batch would be of those whose

results were declared by the UPSC in 1988. Their prelims were held in June, 1987 and the Main Examination held in November, 1987 and the interviews took place in April, 1988 and the results were declared in June, 1988. Likewise for 1989 and 1990 Batches.

We have heard learned counsel for the applicants, who have raised various arguments in support of their cases. We have formulated the following points for consideration and decision in these cases:

1. A. Whether the 2nd proviso to Rule 4 of the C.S.E. Rules, 1986 (published in the Gazette of India dated 13.12.1986) is invalid :-

(i) as it puts an unnecessary embargo restricting the candidates who were seeking to improve their position vis-a-vis their career in Government service, and

(ii) as the said proviso travels beyond the provision to which it is a proviso.

1. B Whether the proviso to C.S.E. Rule 17 is invalid as it places unwarranted restrictions on candidates, who were seeking to improve their position vis-a-vis their career as those allocated to Central Services, Group 'A' are not entitled to get allocation to any other Service in Group 'A' ?

2. Whether the second proviso to Rule 4 empowers the respondents to issue the letter Annexure 1 dated 30.8.1988 restraining the candidate of the 1987 Batch allocated to a particular service from joining training with his batchmates who do not intend to sit in the ensuing C.S.E.?

3. Whether the 2nd proviso to Rule 4, empowers the respondents to issue the impugned letter Annexure 2 dated 2.1.1989 restraining the selected candidate from being considered eligible for appointment on the basis of subsequent C.S.E. if once he joined probationary training along with his 1987 Batchmates?

4. Whether the provisions of Art. 14 and 16 of the Constitution are violated by depriving the 1987 Batch candidates from seeking further opportunity to better their career which provides for 3 attempts to each candidate to better their chances in their service career?

5. Whether there is an invidious distinction between the successful candidates of Group 'A' Service and Group 'B' Service, since the latter are not placed under any embargo like the successful candidates in Group 'A' Service?

6. Whether there is any hostile discrimination between General candidates and the candidates belonging to Scheduled Castes & Scheduled Tribes (SC & ST in brief) in the number of opportunities to be availed by candidates belonging to Group 'A' services?

7. Whether the rights given to S.C. & S.T. candidates under Rule 4 has been taken away by the 2nd proviso to Rule 4, and is it permissible in law?

8. Whether the C.S.E. Rules were required to be made under Art. 312 of the Constitution? If so, whether the C.S.E. Rules are made in accordance with the scheme envisaged in Art. 312? What is the effect?

9. Whether the C.S.E. Rules, 1986 are made in exercise of Executive powers of the Union under Art. 73 of the Constitution? If so, its effect ?

A number of cases were cited, some relevant, some not relevant, and some distinguishable. We will refer to them wherever necessary.

Points 1 A (i) 1 B.

We now take up the main question about the validity of the 2nd proviso to C.S.E. Rules, 1986. The validity of the 2nd proviso to Rule 4 of the C.S.E. Rules, 1986 is challenged mainly on the ground that it puts an unnecessary embargo restricting the candidates who were seeking to improve their position vis-a-vis their career in the Government service, and in particular, those who have succeeded in a previous Examination and have been allocated to Group 'A' service. The other facet of the argument is that there is an infringement of the provisions of Art. 14 and 16 of the Constitution of India inasmuch as those who have been selected and allocated in Group 'B' Service are under no such impediment and can sit in the subsequent examinations to better their prospects. The restriction casts upon those who have been successful in the C.S.E. of the previous year and have been allocated to Group 'A' Service. They have also claimed that

Rule 4 clearly stipulates granting of three chances to each candidate to appear in the C.S.E. and the restriction now put by the 2nd proviso takes away that right. It has also been urged that the S.C./S.T. candidates do not suffer from any such embargo in view of Ist proviso to Rule 4. On behalf of the S.C./S.T. candidates it was urged that the 2nd proviso takes away what has been granted by the Ist proviso, and they are also restricted from appearing in future C.S.Es if they have qualified and allocated to a Group 'A' service.

Apart from this, another line of argument has been raised that is it possible for a candidate to seek leave to abstain from probationary training in order to appear in the next C.S.E. He shall be eligible to do so subject to provisions of Rule 17. 2nd proviso lays down that if the candidate is allocated to service on the basis of the next Civil Services Main Examination he shall join either that Service or the Service to which he was allocated on the basis of the previous Civil Services Examinations failing which his allocation to the service based on one or both examinations, as the case may be, shall stand cancelled. Another embargo is that such candidate who accepts allocation to a Service and is appointed to the service shall not be eligible to appear again in the C.S.E. unless he first resigns from that service.

It is necessary to have a clear idea of what is meant by Group 'A' and Group 'B' Service. A combined

C.S.E. is held every year for the purpose of filling up vacancies in 29 Services. Apart from the Indian Administrative Service, the Indian Foreign Service, The Indian Police Service, the 16 other Services are classified in Group 'A', viz.;

(iv) The Indian P&T Accounts and Finance Service;

(v) The Indian Audit and Accounts Service;

(vi) The Indian Customs and Central Excise Service;

(vii) The Indian Defence Accounts Service;

(viii) The Indian Revenue Service;

(ix) The Indian Ordance Factories Service, (Asstt. Manager-Non-Technical).

(x) The Indian Postal Service;

(xi) The Indian Civil Accounts Service;

(xii) The Indian Railway Traffic Service;

(xiii) The Indian Railway Accounts Service;

(xiv) The Indian Railway Personnel Service;

(xv) Posts of Assistant Security Officer, in Railway Protection service;

(xvi) The Indian Defence Estates Service;

(xvii) The Indian Information Service, Junior Grade;

(xviii) The Central Trade Service (Grade III);

(xix) The posts of Assistant Commandant in the Central Industrial Security Force;

In Group 'B' Service, there were 10 Services in Notification dated 13.12.1986 viz.

(i) The Central Secretariat Service (Section Officers' Grade).;

(ii) The Railways Board Secretariat Service (Section Officer's Grade);

(iii) The Armed Forces Headquarters Civil Service (Assistance Civilian Staff Officer's Grade);

(iv) The Customs' Appraisers Service;

(v) The Delhi and Andaman and Nicobar Islands Civil Service,;

(vi) The Goa, Daman and Diu Civil Service;

(vii) The Delhi and Andaman and Nicobar Islands Police Service;

(viii) The Pondicherry Police Service;

(ix) The Goa, Daman and Diu Police Service;

(x) Posts of Assistant Commandant in the Central Industrial Security Force.

In the subsequent Notification issued on 17.12.1988, the total number of Services in Group 'A' have been increased to 16 apart from the I.A.S., the I.F.S. and the I.P.S. There is change in Group 'B' Service from the initial 10 services now reduced to 7 .The Goa, Daman and Diu Civil Service, The Goa Daman and Diu Police Service and the Pondicherry Police Service have been deleted. The post of Assistant Commandant Group 'B' in the Central Industrial Security Force has now been put in Group 'A' Service.

A perusal of Rule 17 is necessary at this stage. Rule 17 places an embargo inasmuch as any one who has been approved for appointment in the Indian Police Service, Group 'A' on the result of an earlier examination will only be considered eligible to compete in the I.A.S., I.F.S. and Central Services, Group 'A' on the result of the ensuing examination. Similarly, any candidate who has been approved for appointment in the Central Services Group 'A' service will only be eligible to compete in I.A.S I.F.S. and I.P.S. The second proviso to Rule 17 provides that a candidate who is appointed to a Central Service , Group 'B' on the results of an earlier examination will be considered only for appointment to I.A.S., I.F.S., I.P.S. and Central Services, Group 'A'.

It will thus be seen that if a candidate has been as a result of the earlier examination allocated to Indian Police Service, he can be appointed to the IAS, IFS and Central Services, Group 'A', if he succeeds in the ensuing examination. Similarly, those who have been selected and allocated to one of the Central Services Group 'A' cannot seek appointment to any other service except I.A.S., I.F.S. and I.P.S. In other words, if a candidate who has been selected, say, in the Indian Postal Service, he cannot join the Indian Audit and Accounts Service or the Indian Customs and Central Excise Service etc. if according to the result he is selected for the latter service. To put it differently, it would mean that a person who has succeeded in the previous examination and allocated to Central Services, Group 'A', he cannot seek an appointment in a service which belong to Group 'A'. If he qualifies and is selected to I.A.S., I.F.S. and IPS, he would be eligible to join that.

The argument at the Bar was that the service conditions in all these services are not exactly the same. There are differences. One would any day prefer the Indian Audit and Accounts Service, Indian Customs and Central Excise Service, Indian Defence Accounts Service or the Indian Revenue Service in prference to Indian Defence Estates Service or to the post of Assistant Commandant in the Central Industrial Security Force, etc.

We have heard learned counsel on these aspects and would like to point out that Rule 4 provides that every candidate appearing at the examination, who is otherwise eligible, shall be permitted three attempts at the examination subject to two conditions, firstly, he will be permitted irrespective of the number of attempts a candidate has already availed of in the C.S.E. held in previous years; secondly, the restriction shall be effective from the Civil Services Examination held in 1979 and any attempts made at the Civil Services (Preliminary) Examination held in 1979 and onwards will count as attempts for this purpose. This Rule prohibits to grant every candidate three attempts at the C.S.E. This is effective from the C.S.E. held in 1979. It has been made clear that any one who has sat in the Preliminary held in 1979 and onwards thus will be counted as attempts for the purpose of computing the three chances.

The first proviso makes it clear that the above restriction will not apply in the case of S.C./S.T. candidates who are otherwise eligible. Rule 6 deals with the age restriction of a candidate. At that time in 1986, when the Notification was issued, the age limit for a candidate was that he must have attained the age of 21 years and must not have attained the age of 26 years on the Ist August, 1987 i.e., he must have been born not earlier than 2nd August, 1961 and not later than Ist August, 1966. Rule 6(b), however, prescribes

a different particular age limit for the candidate if he belongs to S.C./S.T. category. The upper age limit in their case could be raised upto a maximum period of five years. Therefore, a S.C./S.T. candidate can appear in the C.S.E. till he completes the age of 31 years and for him there is no restriction as to the number of attempts he makes in the C.S.E.

The second proviso, however, deals with an entirely different aspect of the matter viz., it deals with the number of attempts a successful candidate can make in the C.S.E. The Ist proviso, we have seen, places no restriction on the candidates of S.C./S.T. The second proviso is entirely devoted to a specific situation. When a candidate succeeds in the Main Examination and is allocated to a particular service, there are certain restrictions placed on him to appear in the future C.S.Es. The restrictions have been placed because the Government was of the view that the candidates who have been allocated to a particular Service were neglecting their probationary training in order to appear in the ensuing C.S.E. Consequently the Government put three different restrictions. These restrictions are:

Firstly, that a candidate who on the basis of the result of the previous C.S.E. was allocated to the I.P.S. or Central Services, Group 'A' but who expressed his intention to appear in the next C.S. Main Examination for competing for I.A.S., I.F.S., I.P.S. or Central Services, Group 'A' and who had been permitted to abstain from probationary training

27

in order to appear, shall be eligible to do so subject to the provisions of Rule 17. Secondly, if the candidate is allocated to a service on the basis of the next CS. Main Examination, he shall join either that Service or the Service to which he was allocated on the basis of the previous C.S.E. and in case, he fails to do so, his allocation to the Service based on one or both Examinations, as the case may be, shall stand cancelled. Thirdly, where a candidate who accepts allocation to a Service and is appointed to a Service shall not be eligible to appear again in the C.S.E. unless he has first resigned from the Service.

In effect, a candidate who has already been allocated to a Service and is directed to join the probationary training but intends to appear in the next C.S.E., he may seek exemption from the probationary training and if allowed to do so, he would be permitted to appear in the next C.S.E. subject to the provisions of Rule 17, i.e., one who has been approved for appointment to the I.P.S., he would be eligible to compete for I.A.S., I.F.S. and Central Services, Group 'A' and who has qualified in one of the Central Services, Group 'A', he will only be eligible to compete for I.A.S., I.F.S. and I.P.S. We feel that this restriction does not appear to be so severe as to infringe his rights . Afterall it proceeds on the basis that all Central Services, Group 'A' stand on equal footing and there is no point in competing for any one of those Services when he has already been selected in one of those Services. It will be open for him to compete for I.A.S., I.F.S., I.P.S. and that certainly allows him to better his prospects in his career.

The second restriction applies to a case where a candidate has already been selected for a Service on the basis of previous C.S.E. and appears in the next C.S.E. and he is again successful and allocated to another Service but he does not join, then the allocation to the two Services shall stand cancelled. We do not see any impairment of rights in this. Since he has been successful in two C.S.Es and appointed in two services and does not join, cancellation of the allocation cannot be said to be unjustified. The proviso certainly puts a restraint on the number of attempts a candidate can make when he succeeds and is allocated to a service. The proviso does not intend that a candidate should have 3 attempts in all notwithstanding that he has succeeded in being allocated a Group 'A' Service or in the I.P.S. The restriction really is that where he has succeeded in the earlier two Examinations and intends to make a third attempt and keep in abeyance the allocations already made on the basis of two previous C.S.Es, the previous allocations are to be cancelled. It has its own consequences. Afterall when a candidate succeeds and is allocated to a Service, he has to undergo probationary training of that service. Where he does not join the same and intends to sit in the next C.S.E., he actually keeps a place vacant in the training and in that service. This may be repeated next year again when he again does not join the probationary training in the next Service allocated to him. Thereafter he wishes to take a further chance of availing the third attempt. A question may

arise that if he does not succeed on the third occasion, he would necessarily fall back on the allocation made in first C.S.E. or the second C.S.E. and claim his seniority accordingly. We think that the restriction placed on him in this regard is reasonable. It may be noticed at once that these restrictions pertain to a candidate who has succeeded either in the I.P.S. or in a Central Service, Group 'A', it does not relate to a candidate who has succeeded in a Central Service , Group 'B'. The reason is that the second proviso to Rule 17 is silent on this point. There is no restriction for a candidate in Group 'B' appearing Service for either in I.A.S., I.F.S., I.P.S. or any Central Services, Group 'A'.

The third restriction is undoubtedly one with a severe embargo. It says that a candidate who accepts allocation to a Service and is appointed to the same, he shall not be eligible to appear again in the C.S.E. unless he has first resigned from the Service. This restriction, assuming for a moment, that a candidate in his very first attempt has succeeded in the Examination and has been allocated to one of the Central Services, Group 'A', he is appointed to the Service. He seeks thereafter to improve his career by appearing in the next C.S.E. but is restrained from doing so unless he first resigns from the Service. It will, therefore, be seen that he can still appear in the next C.S.E. But if he has been appointed to a Service, he cannot do so unless he resigns from the Service first. It can be said that by this, the candidate's

chance for improving his service career is restrained as he is not allowed to avail of a further chance since he has been appointed to a Service. But it must also be noticed at the same time that a person who has been appointed to a Service fills up one of the vacancies available in that Service. The Cadre Controlling Authorities of Central Services Group 'A' and I.P.S. inform the U.P.S.C. of the number of vacancies that are likely to arise for which appointments may be made. Assuming that 50 candidates have been allocated and appointed to the Indian Police Service in one year and all of them seek to better their chances in the next C.S.E., then a question arises as to what will happen to the existing vacancies? All of them will remain unfilled. The same may be repeated after the next C.S.E. Those who have been appointed to the Service will continue to hold it until the result of the next C.S.E. is announced. If they succeed in their effort and are allocated to I.A.S., I.F.S. or any Central Services, Group 'A', then a large number of vacancies in the I.P.S. will be created and vacancies will remain unfilled and create problems. Originally, when the vacancies are filled up in the I.P.S. after the probationary training is over, they are allocated to different States on the basis of the vacancies available. Assuming that all the 50 I.P.S. candidates succeed in the next C.S.E. and allocated either to I.A.S., I.F.S. or Central Services, Group 'A', then the Police Service will go without filling up vacancies in the I.P.S. and the training imparted to them would be a total loss.

In this context, our attention was drawn to the

a/

fact that the Government was getting reports that the candidates who were intending to appear in the next C.S.E. were neglecting their training programme and were more keen for preparing and appearing in the next C.S.Es. The Government appointed a Committee to go into the matter. The Kothari Committee in Para 3.60 of their report pointed out:

> "We think it wrong that the very first thing a young person should do in entering public services is to ignore his obligation to the service concerned, and instead spend his time and energy in preparation for reappearing at the UPSC examination to improve his prospects. This sets a bad example and should be discouraged."

The Thirteenth Report of the Estimates Committee (1985-86) observed as follows on the above:

> "The Committee urge upon the Government to review their decision regarding allowing the probationers to reappear in the Civil Services Examinations to improve their prospects. If it is still considered necessary to allow this, the Committee suggest that it may be limited to only one chance after a person enters a Civil Service."

The Government gave the following reply:

> "The Central Government have considered the recommendation of the Committee regarding allowing probationers appointed to a Civil Service to reappear in the Civil Service Examination. The Govt. have addressed the U.P.S.C. to initiate a review of the new system of Civil Service Examination in pursuance of recommendation No.7 of the Estimates Committee. As a decision regarding allowing a candidate appointed to a Civil Service to reappear in the examination is also linked with other matters concerning the Civil Service Examination, the Government have decided to refer this recommendation also to be specifically considered as part of the review of the

scheme of the Civil Service Examination. The Govt. have addressed the Union Public Service Commission in the matter, and after the recommendations of the UPSC are available, the Government will bring about such changes in the matter as may be necessary and desirable."

It is apparent from the above that the amendment to Rule 4 of the C.S.E. Rules was introduced as a result of the recommendations made by the Kothari Committee and the Estimates Committee of the Parliament. The Government's reply showed that the Government was contemplating bringing about a change after consulting the U.P.S.C.

We have also noticed in the above that the Estimates Committee of the Parliament recommended grant of only one chance after a person enters a Civil Service. This, in our opinion, is fair and justified.

Shri A.K.Bahera, learned counsel for some of the applicants stated that it was not a fact that the candidates were not taking interest in the probationary training, for there was a report to show that they had done well. An overall picture in regard to the probationary training had to be taken and it is supported by the Report of the Kothari Committee appointed for looking into the training aspects of candidates of the Central Services.

This will be in consonance with the provisions of Article 51-A (j) of the Constitution which reads as follows:-

"Fundamental duties.- It shall be the duty of every citizen of India-

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."

Apart from the above, there is another aspect of the matter. One chance after he is allocated to a Service would probably not cause as much problem as granting a candidate three attempts when he succeeds in the Examination. It is quite in order to grant three chances to every candidate to appear in the C.S.E. when he does not succeed in the Examination or is allocated to a Central Service, Group 'B'. But once he succeeds in the Examination and is allocated to the I.P.S. or to a Group 'A' Service, then he may be granted only one chance to better his career. It is not a fact that the restriction is placed on candidates who have succeeded and allocated to the I.P.S. or to Central Service, Group 'A' only but far more restrictive rule is already in existence as regards to those candidates who have succeeded to be placed in I.A.S. or I.F.S. Rule 8 of the C.S.E. Rules precludes those candidates who have been placed in I.A.S. or I.F.S. from sitting in future C.S.Es. However, there is no bar in their resigning from that service and sitting for either I.P.S. or any Central Service, Group 'A'. It is possible that some may not like to be posted in foreign countries or some may not like posting in I.A.S. or I.P.S. cadre or may like some desk job and prefer to be placed in one of the Central Services, Group 'A'. But the point is that the restriction now placed on the candidates who have been allocated to I.P.S. or Central Services, Group 'A' is of a limited nature and in consonance with the changes in circumstances and problems arising in the matter of probationary training.

However, it appears to us that the third restriction in the 2nd proviso to Rule of the C.S.E. Rules is rather severe in this context for it requires a candidate to resign. However, the candidate can avoid this situation by informing the authorities that he intends to sit in the ensuing C.S.E. and he may be exempted from the probationary training and may not be appointed to that Service.

The question : whether the three attempts granted in Rule 4 of the C.S.E. Rules can be whittled down or restricted altogether? The answer is in the proper interpretation of Rule 4 of the C.S.E. Rules. The entire Rule has to be read together and the intention ascertained. It must be borne in mind that the Rule and the provisos have been made in the national interest. In the case of L.I.C. OF INDIA Vs. ESCORTS LTD. (AIR 1986 SC 1370 at page 1403) it was laid down:

> "When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation."

In our opinion, public interest and the interest of the country must prevail over individual interest. Having considered the matter, we answer Point 1-A(i)& 1-B in the negative.

Point No.1 A (ii).

An argument was raised in regard to the validity of the 2nd proviso to Rule 4 of the C.S.E. Rules on the ground that "the proviso cannot travel beyond the provision to which it is a proviso." The above sentence finds a place in the decision of the Supreme Court in M/S. MACKINNON MACKENZIE AND CO. LTD. Vs. AUDREY D'COSTA AND ANOTHER (AIR 1987 SC 1281 in para 11 and at page 1289 of the report). That was a case where the dispute was that lady stenographers doing the same type of work as male stenographers were not being paid similar remuneration by the Company on the ground that there was a settlement by the Union in this respect. It was argued that there was a discrimination. The Supreme Court observed:

> "The discrimination was, however, brought about while carrying out the fitment of the lady stenographers in the said scale of pay. The proviso to sub-section (3) to Section 4 comes into operation only where sub-section (3) is applicable. Since there are no different scales of pay in the instant case, sub-section (3) of Section 4 of the Act would not be attracted and consequently, the proviso would not be applicable at all."

The next sentence is one that has been quoted above, viz.:

"The proviso cannot travel beyond the provision to which it is a proviso."

The facts and circumstances in the case of M/S.MACKINNON MACKENZIE & CO. LTD (supra) are different and have no application in the present case. The second proviso to Rule 4 of the C.S.E. Rules only restricts the number of attempts to a candidate who has been allocated to a service. Those who have not succeeded in C.S.E. still have their quota of chances and the SC & ST candidates have their full quota of chances upto the age to which they are eligible. The number of attempts has not been whittled down if they continue to be unsuccessful in the C.S.E. but in case they have succeeded and allocated to a service or appointed to a service, the restrictions have been put on the attempts. The facts in the present case are different and the view expressed by the Supreme Court in the case of M/S. MACKINNON MACKENZIE & CO. LTD (supra) will not be attracted in the present case.

Reference may be made to the case of SATYA NARAYAN PRASAD SHRIVASTAVA Vs. THE STATE OF BIHAR AND OTHERS, a decision of the Patna High Court (reported in 1978 (1)SLR 351 at page 355) to the following passage.

"It is well settled principle of construction that different sections or different rules should

> not be interpreted in a manner which may result in one of the sections or the rules being held to be redundant, and in such a situation Courts have also construed such sections and rules in a harmonious manner so as to give justification for their existence.".

In our opinion, the observation made by the High Court lays down the broad principles of interpretation to which no exception can be taken.

In regard to interpretation of Statutes, it is well settled that a rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense and give them full effect. In the case of DR. AJAY PRADHAN Vs. STATE OF MADHYA PRADESH AND OTHERS (AIR 1988 SC 1875), the Supreme Court observed:

> "The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction."

In KING EMPEROR Vs. BENORI LAL SARMA (AIR 1945 PC 48 at p.53), it was held:

> "Where the language of an Act is clear and explicit, we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature."

This rule will also be applicable in the present case.

Another rule of interpretation is that construction of a section is to be made of all parts together. In the case of THE BALASINOR NAGRIK CO-OP. BANK LTD. Vs. BABUBHAI SHANKERLAL PANDYA AND OTHERS (AIR 1987 SC 849), it was laid down:

> "It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts

of the same section."

Keeping that in view, we have noted that the 2nd proviso to Rule 4 of the C.S.E. Rules places certain restrictions in the number of attempts to be made by a successful candidate who has been allocated either to I.P.S. or to any Central Service, Group 'A'. The second proviso to Rule 4 cannot be read in isolation. Rule 4 has to be read along with the two provisos to interpret it correctly.

Maxwell in its Twelfth Edition on 'The Interpretation of Statutes' has this to say on the question of interpretation of a proviso :

> "If, however, the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect."
>
> / PIPER Vs. HARVEY (1958) 1 Q.B. 439 /

There is another Rule which quoted in the same book.

> "If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that "it speaks the last intention of the makers." "
>
> / ATT.GEN. Vs. CHELSEA WATERWORKS CO. (1731) Fitzg.195 /

We are, therefore, satisfied that the intention of the proviso was to place certain restrictions on the number of attempts that a candidate who has come in the I.P.S. or in a Central Service, Group 'A'.

Another argument was that the 2nd proviso to Rule 4 of the C.S.E. Rules seeks to introduce something which

is not in consonance with Rule 4 or is foreign to the purport of Rule 4 of the C.S.E. Rules, 1986. In other words, it was argued that the second proviso takes away mushc of what has been provided in Rule 4. It is well settled that the proviso enacted in a rule or to a particular provision of an Act may not only extend but also restrict the application of the said provision. It all depends on what the legislative intent is. Normally, whenever it becomes necessary to clarify, modify or to make it conditional or subject to other provisions, it is always open to introduce the same by way of a proviso. It then becomes a part of the section or Rule itself. If it is made into a separate section or rule, it may not have the same effect. The same is the position with non-obstante clause found in various enactments. It is a common practice in legislative drafting to restrict the full application of the section by using the words "subject to" or starting a sub-section with the word "notwithstanding".

It appears to us that these modifications were made because of the exigencies of circumstances and situations as mentioned earlier. It is a common practice to add a proviso to limit the operation of the main rule in one way or the other. This is a common practice in legislative drafting. Consequently, we are of the view that the 2nd proviso to C.S.E. Rule 4 is not bad in law.

Points 2 and 3.

Having expressed our views on these Rules, we now proceed to consider the two letters that have been issued by the cadre controlling authorities of the various Services. The first letter is of 30.8.1988 (Annexure 1 to the O.A.) addressed to the applicant, Shri Alok Kumar by Shri P.N.Anantharaman, Under Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi. Paragraphs 3 and 4 of this letter are relevant which read as under:

> "3. Your attention is also invited to Rule 4 of the Rules for the Civil Services Examination, 1987, whereby, if you intend to appear in the Civil Services (Main) Examination, 1988, you will not be allowed to join the Probationary Training along with other candidates of this examination. You will be allowed to join the Probationary Trining only along with the candidates who will be appointed on the basis of the Civil Services Examination, 1988. Further, in the matter of seniority, you will be placed below all the candidates who join training without postponement. In view of this, on receipt of the offer of appointment, you have to furnish the information about your appearing in the Civil Services Examination, 1988 to the concerned cadre controlling authorities. <u>Only on receipt of this information from you, the concerned cadre controlling authority will permit you to abstain from the Probationary Training</u>.
>
> 4. Now, you are required to intimate this Department in the enclosed specimen form about your willingness or otherwise to join the service to which you are tentatively allocated."

Another letter dated 2.1.1989 (Annexure-2 to the O.A.) issued by the Joint Director, Estt. G(R), Ministry of Railways (Railway Board) informed the applicant in paragraph 4 that:

> " In case you are taking the Civil Services Examination 1988 and want to be considered for appointment to a service on the basis of Civil Services Examination 1988, in accordance with the provisions of Rule 17 of the Examination Rules, you cannot be allowed to join the Probationary Training along with 1987 batch. You will, therefore, be permitted to report for probationary training along with 1988 batch on the basis of your success in 1987 Examination. This may also be noted that once you join Probationary Training along with 1987 batch, you shall not be eligible for consideration for appointment on the basis of subsequent Civil Services Examination conducted by the Union Public Service Commission. This may be confirmed to the undersigned within 15 days from the date of issue of this letter."

In the first letter dated 30.8.1988, the applicant was informed that if he intended to appear in Civil Services (Main) Examination 1988, he will not be allowed to join the probationary training along with other candidates of this examination and will be allowed to join the probationary training only along with the candidates who will be appointed on the basis of C.S.E. 1988. It was further indicated that in the matter of seniority, he will be placed below all the candidates who join training without postponment and he was required to inform the cadre controlling authority and only thereafter the latter would permit the applicant to abstain from the probationary training.

There were four embargoes. Firstly, he would not be

allowed to join the probationary training along with 1987 batch if he intended to appear in the C.S.E. 1988, secondly, he would not be allowed to join the training with 1987 batch and will have to take his training along with 1988 batch; thirdly, he would be placed below to all such candidates who join the training without postponment. The fourth embargo is that only upon his informing the cadre controlling authority, he would be permitted to abstain from the probationary training.

A perusal of the 2nd proviso to Rule 4 of the C.S.E. Rules, 1986 would show that if the applicant expressed his intention to appear in the next Civil Services (Main) Examination for competing for I.A.S., I.F.S., I.P.S. or Central Services, Group 'A' and was permitted to abstain from the probationary training in order to so appear, he shall be eligible to do so subject to the provisions of Rule 17. If the applicant was allocated to Indian Railway Personnel Service which is a Group 'A' Service, he would only be entitled to compete for I.A.S., I.F.S. and I.P.S. There is nothing in the said proviso about the loss of seniority which is indicated in the letter dated 30.8.1988. The proviso only speaks about giving him a chance to appear in the ensuing or subsequent C.S.E. and if he succeeded therein, he had to join one or other service to which he had been allocated. He has to join the service allocated to him in the previous year or after the 1988 C.S.E. and if he joins one, the other would be cancelled and if he fails to join in both the examinations, his appointment will be cancelled. This means that if the

candidate wants to take third attempt having succeeded in the two C.S.Es., he cannot have a lien for in case of not succeeding in his third attempt, he would fall back upon the one of the two previous allocations. A question arises:whether the Government was entitled to put conditions, as in paragraph 3 of the letter dated 30.8.1988 (quoted above) in respect of seniority when this was nowhere indicated in the 2nd proviso to Rule 4 ? Similarly, the fourth paragraph of the letter dated 2.1.1989 speaks of two specific embargoes. Firstly, if the applicant was taking the C.S.E. 1988 and wantsto be considered for appointment to a service on the basis of Civil Services Examination 1988, he cannot be allowed to join the probationary training along with 1987 batch and he could only be permitted to report for probationary training along with 1988 batch on the basis of his success in 1987 Examination. The second embargo is that if he wants to join probationary training along with 1987 batch, he will not be eligible to be considered for appointment on the basis of subsequent C.S.E. This letter does not speak about any resignation. But it is clear that in the 2nd proviso to Rule 4, there is a condition that if a candidate who accepts allocation to a service and is so appointed to a service he shall not be eligible to appear again in the C.S.E. unless he first resigns from the service. The letter dated 2.1.1989 makes it plain that in such a condition, he will not be eligible for consideration for appointment in the subsequent C.S.E. This came about presumably because by the time these letters were sent, the applicant and many others like him

had appeared in the prelims of 1988 Examination and had also appeared in the Main Examination of C.S.E. 1988.

As a matter of fact, in the case of Shri Alok Kumar, he sat in the Preliminary Examination in June, 1988. In August, 1988 he was informed that he was being tentatively considered for appointment to IRPS. He sat for the Civil Services(Main) Examination held in October/November, 1988 and he received the offer of appointment from IRPS on 2.1.1989. Thereafter, on 19.1.1989, he was informed that he was selected in IRPS and that foundation course will be started on 6.3.1989. The interviews are held by the UPSC in April, 1989 for the C.S.E. 1988 . In his case, he was informed that he was selected in IRPS vide letter dated 19.1.1989 whereas he had taken the preliminary and the C.S (Main) Examination both. According to the 2nd proviso to Rule 4, he was not eligible to appear in C.S.E. 1988 unless he first resigned from the service. That situation did not emanate for he had already sat in the examination. The question would only arise when he had been allocated and appointed to a service. It appears, to get over this difficulty, letter dated 2.1.1989 indicated that he would not be considered eligible to sit in the examination. Under the 2nd proviso to Rule 4, he had to resign only if he had been allocated and appointed to a service. This, as seen above, did not apply to the applicant, for he had not been allocated or appointed to a service before he sat in the prelims. The letter, that he would not be considered as eligible for the 1988 examination, came after he had done the prelims and appeared in the Main examination. Further, his

allocation to IRPS only came by letter dated 2.1.1989. This would mean that a new condition was being imposed by this letter dated 2.1.1989 which was not indicated in the 2nd proviso to Rule 4.

It will thus be seen that the letter dated 2.1.1989 imposed two new conditions; firstly, that he would have to take his training with the subsequent batch, i.e., 1988 batch in the service; secondly, he would not be considered eligible for appointment by virtue of 1988 C.S.E. None of these conditions find a place in the 2nd proviso to Rule 4. The letter dated 2.1.1989 is, therefore, beyond the scope and ambit of the second proviso to Rule 4.

Similarly, the first letter dated 30.8.1988 speaks about his loss of seniority even in his own batch; which is not indicated or proposed in the second proviso to Rule 4. The applicant has been told that in case he takes the 1988 C.S.E. after obtaining an order for abstaining from probationary training, he would be taking his training with 1988 batch in his service and he would be placed at the bottom of the 1987 batch. As a matter of fact, this is also not spelt out in the 2nd proviso to Rule 4. We are of the view that this letter also travels beyond what is provided for in the 2nd proviso to Rule 4 of the C.S.E. Rules, 1986. Both these letters imposed on the applicant conditions which were not indicated before he sat in the 1988 C.S.E. In our opinion, these two letters propose to lay down further rule than what was propounded in the second proviso to Rule 4. A question arises; whether

such conditions can be imposed on the applicant, and the like of him, after they had appeared in the subsequent C.S.E? Further, even if the second proviso to Rule 4 has been enacted in exercise of the executive power of the Union, whether such restrictions can be enacted by sending letters to individuals by different cadre controlling authorities? We are of the view that the conditions to which we have referred above contained in the letters dated 30.8.1988 and 2.1.1989 are beyond the Rule making powers of the cadre controlling authorities and in our opinion, they cannot be enforced. They have to be struck down.

Point Nos.4 & 5

We now look at the question of discrimination. Those candidates who did not succeed in Group 'A' Services in C.S.E. and being allocated to Group 'B' Services were asked to join service in June/July,1989. Such candidates even though they started probationary training were not precluded to sit for the Civil Services (Main) Examination held in October/ November, 1989. Candidates in Group 'B' Services were permitted to sit in the next C.S.E. whereas candidates in Group 'A' Services were restrained from appearing in the next C.S.E., and were threatened with loss of seniority, precluded from being considered for the 1988 C.S.E. The Group 'B' candidates suffered no restrictions at all. After all they were also candidates who took the 1987 C.S.E. and the 1988 C.S.E simultaneously with the applicant, and his like. As luck would have it, some of those who did not find a place in Group 'A' Servics were allocated to Group 'B' service and they do not suffer at all any restriction. They could make three attempts in the

C.S.E., they could take the next C.S.E. without having resigned or lost their seniority. As regards the candidates who have been selected in Group 'A' services and whose training is postponed at their request, they lose their seniority while candidates who have been appointed to Group 'B' Service do not suffer this disability. Even after their training, they would retain their original seniority which they had at the time of their initial selection. It was argued that this clearly indicates that there is an apparent discrimination between the two sets of candidates appearing in Group 'A' and Group 'B' Services. The second proviso to Rule 4 is made applicable to Group 'A' candidates whereas it is not made applicable to Group 'B' candidates. It is urged that the 2nd proviso to Rule 4 of the C.S.E. Rules was discriminatory and violative of Art. 16 (1) & (2) of the Constitution.

We have considered the matter and carefully perused Art. 16 of the Constitution. Article 16(1) & (2) read as under:

> "16. Equality of opportunity in matters of public employment.- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
>
> (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

The discrimination alleged in the present case is between those candidates who have been successful in being allocated

to a Service in Group 'A' and those who have been allocated to a Service in Group 'B'. The 2nd proviso to Rule 4 places certain restrictions on those candidates who have been placed in Group 'A' Service but not against those who have been placed in Group 'B' Service. The C.S.E. is a common examination for both. The results of candidates are declared together. It is only when their position/ranking according to the examination result is known and their preference for allocation to States is considered with several other factors that the Central Government allocates them to various Services. Undoubtedly, those who get lower position are allocated to Group 'B' Services. It is also not disputed that the pay scales in Group 'B' Services are comparatively less than those meant for I.A.S., I.F.S., I.P.S. and Central Services, Group 'A'. In view of the provisions of Rule 17 of the C.S.E. Rules, there is no question of anyone who has succeeded for a Group 'A' Service to compete again for another Group 'A' Service. There are certain restrictions for other successful candidates also. Those who have been allocated to I.A.S., I.F.S., they are not allowed any further chance to improve their position because these two Services stand at the apex of the Central Services. Those who have been allocated to the Indian Police Service, they can sit again and compete for I.A.S., I.F.S. and other Central Services, Group 'A'. But those who have come in Group 'A' Service can only compete for I.A.S., I.F.S. and I.P.S. These restrictions are continuing for a long time and were there in 1966 and are accepted.

There have never been such restrictions for those who have come in Group 'B' Services. Those who have been placed in Group 'B' Services which are not at par with Group 'A' Services have been provided with opportunity to improve their career chances by sitting in the ensuing or the next C.S.Es. Consequently, no restrictions were placed on them. There is no guarantee that all those who have come in Group 'B' Service would succeed in the subsequent examination to get a position in Group 'A' Service or in I.A.S., I.F.S. and I.P.S. The position of those who have succeeded in Group 'A' Service is very limited in view of the provisions of Rule 17 of the C.S.E. Rules. We do not see any reasonable basis to urge that Group 'A' and Group 'B' Services should be treated at par. Even their pay scales and conditions of service are not the same as in the Group 'A' Services. It is, therefore, not a question of comparing these two Services and placing them at par. In our opinion, there is no discrimination. It will be noticed that the alleged discrimination is not on the basis of religion, race, caste, sex, descent, place of birth, residence or any of them. The discrimination, if any, has a reasonable nexus with the objective for which it has been made. The objective is to create five categories of Services consisting of I.A.S., I.F.S., I.P.S., Central Services, Group 'A' and Central Services, Group 'B'. We are further of the opinion that the Government having

come across certain difficulties and problems in the matter of probationary training and the filling up of the vacancies in various Services made these rules. We do not find the argument of discrimination between Group 'A' and Group 'B' Services to be valid. We, therefore, reject these arguments.

The concept of equality is enshrined in Art. 14 of the Constitution. It states:

> "The State shall not deny to any person equality before the law or the equal protection of the law within the territory of India."

The Supreme Court has dealt with this question in several judgments of which one may be referred to:

AJAY HASIA Vs. KHALID MUJIB (AIR 1980 SC 487). According to earlier view the concept of equality under Art. 14 was equated with the doctrine of classification. Art. 14 protected a person against unreasonable and arbitrary classification, whether by legislation or executive action. Subsequently, the Supreme Court made a new approach emphasising the role of equality in striking down arbitrariness in State action and ensuring fairness and equality of treatment. The Supreme Court held that the State action must be based on some rational and relevant principle which is non-discriminatory.

In the case of RAMANNA Vs. INTERNATIONAL AIRPORT AUTHORITY OF INDIA AND OTHERS (AIR 1979 SC 1628), the Supreme Court held:

> "every State action, whether it is under authority of law or in exercise of executive

power without making of law, must be reasonable and fair."

In a subsequent development of law, the Supreme Court has laid down that the doctrine of natural justice is now treated to be a part of Article 14 having application in executive as well as legislative fields. This has been stated in:

U.O.I. Vs. TULSI RAM PATEL
(AIR 1985 SC 1416 at page 1460)

CENTRAL INLAND WATER TRANSPORT CORPORATION LTD. Vs. BROJO NATH GANGULY. (AIR 1986 SC 1571).

The law on the point of classification has been succintly stated in the case of G.ELANCHEZHIYAN & ORS. Vs. UNION OF INDIA & ORS (1990(2)CAT AISLJ 236) by the Madras Bench of the Tribunal:

> "Every classification is likely in some degree to produce some inequality. The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not scientifically perfect or logically complete. In applying the wide language of Arts. 14 and 16 to concrete cases doctrinaire approach should be avoided and the matter considered in a practical way, of course, without whittling down the equality clauses. The classification in order to be outside the vice of inequality must, however, be founded on intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences which warrant a classification must be real and substantial and must bear a just and reasonable relation to the object sought to be achieved. If this test is satisfied, then the classification cannot be hit by the vice of inequality. Reference is invited in this connection to GANGA RAM & ORS. Vs. U.O.I. & ORS.(1970(1)SCC 377) ."

We are in respectful agreement with the view expressed above. The classification made between the

candidates of Group 'A' and Group 'B' Services is founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. The differences are real and substantial and bear a just and reasonable relation to the objects sought to be achieved.

We have looked into the facts, the circumstances and the Rules in the present bunch of cases and in our opinion, there is no unfairness in the State action nor there is any arbitrariness in its action.

We realise that enormous loss of time, energy and funds are caused if the successful candidates do not take to the probationary training. This also causes tremendous amount of uncertainty in filling up the vacancies. Similarly, those candidates who because of the lower marks were placed in Group 'B' Services lose their chance to be placed in Group 'A' services, if the vacancy was left unfilled. In reality, the vacancy is neither filled up nor declared available for filling up. It is left vacant for a candidate in Group 'A' Service who may or may not join after the next C.S.E. There is thus not only uncertainty but also raises problems for Cadre Controlling Authorities. Similarly, if a candidate in Group 'A' Service is given a third chance to appear, it will mean that for three years, none of the services would have its full complement of officers because the successful candidates would opt for another chance in the C.S.E. This is likely to disrupt not only the training programme but create administrative problems. Every year there is a requirement of a thousand or more candidates in Group 'A' Services and there would be uncertainty in filling up quite a large number of the vacancies.

We are, therefore, of the view that 2nd proviso to Rule 4 is not violative of Arts. 14 and 16 of the Constitution. The above points are accordingly decided.

Points 8 and 9.

We now deal with the question that has been

raised by Shri D.K.Sinha, learned counsel appearing for some of the applicants in these cases. His contention was that C.S.E. Rules of which Rule 4 and the controversial second proviso is a part are not valid in law inasmuch as any rule concerning an All India Service can only be made under Article 312 of the Constitution and in accordance with the provisions of the All India Services Act, 1951. His further contention was that the Rule making power lay with the Parliament not only for the creation of one or more All India Services common to the Union and the States but also for the regulation of recruitment and the conditions of service of persons appointed, to any such service. He referred to All India Services Act, 1951 and contended that it was incumbent on the Government before making any rule for any All India Service, there should be compliance with the provisions of Section 3(1), (1 A), (2) of the said Act. The said sub-sections require the Central Government to consult the Governments of all States, regarding rules for regulation of recruitment, and all such Rules are to be placed before each House of Parliament for a specific period. Section 3 (1-A) of the said Act provided that no retrospective effect be given to any Rule so as to prejudicially affect the interests of persons to whom such Rules may be applicable. He urged that elaborate consultation was necessary in the sense the word 'consult' was explained by Hon'ble Subba Rao, J. in K.PUSHPAM Vs. STATE OF MADRAS (AIR 1953 Mad.392) and the word 'consultation' in S.P. GUPTA & ORS. VS. PRESIDENT OF INDIA & ORS. (AIR 1982 SC 149) and the U.O.I. Vs. SANKALCHAND HIMATLAL SHETH & ANOTHER (AIR 1977 SC 2328).

He further urged that if the C.S.E.Rules or amendments

have been made under Art.73 in exercise of the executive power of the Union, even this could not be done considering the recruitment rules of various services. He, however, conceded that changes could be brought about in the C.S.E. Rules but not in the manners it has been done. Changes must be done in accordance with Rules and laws. Lastly, he urged that if a Rule is contrary to any Constitutional provision, it must be struck down. Reliance was placed in the case of RAM KRISHNA DALMIA Vs. JUSTICE TENDOLKAR (AIR 1958 SC 538).

Shri P.H. Ramchandani, who appeared for the respondents urged that the provisions of Art.312 of the Constitution of India were not attracted in the present case. He stated that the rules which have governed the recruitment and examination have been made under the executive power of the Union under Art.73 of the Constitution of India. He referred to Art. 320(1) of the Consitution which lays down that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the States respectively. Art. 320(3)stipulates that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted - (a) on all matters relating to methods of recruitment to civil services and for civil posts. He urged that this had been done. He further contended that Rules which were published in December, 1986 are not statutory Rules. He referred to item No.70 of the Union List,

seventh Schedule of the Constitution and urged that these Rules could be made in exercise of the executive power of the Union under Art. 73 of the Constitution in consultation with the U.P.S.C. He further contended that C.S.Es were being held even under the Federal public Service Commission. The examination for recruitment to various services has been kept together in one examination.

He stated that the C.S.E. Rules had been made in exercise of the executive power under Art. 73 of the Constitution. He then argued that the use of the word "may" in section 3 of the All India Services Act, 1951 was directory and not mandatory. Lastly, he urged that whatever has been done to amend the C.S.E. Rules did not require any consultation with the States, Union Public Service Commission nor require to be laid before the Houses of the Parliament.

Having heard learned counsel for the parties, we are of the view that the Rules which are in vogue for conducting C.S.E. were made in exercise of the executive power of the Union. The same rules were followed and from time to time, rules were amended but they remained more or less in the same form and a major change was introduced by the 1986 amendment adding the second proviso to Rule 4 and amending Rule 17 of the C.S.E. Rules.

First of all, we take up the question of application of Art. 312 of the Constitution. This Article pertains to

All India Services. A reading of Art. 312 (1) makes it clear that whenever a resolution has been passed by the Parliament by not less than two-thirds of the members present and voting, the Parliament may by law provide for the creation of one or more all-India Services and in that context may also regulate the recruitment and the conditions of service of persons appointed, to any such service.

This is not a case of the creation of one or more all-India Services (including an all-India judicial service) common to the Union and the States, and, subject to the other provisions of Part XIV-Chapter 1. Art.312 gives further power to make laws in respect of regulating the recruitment and the conditions of service of persons appointed, to any such service. (emphasis supplied).

This, in our opinion, has nothing to do with the amendment of the C.S.E. Rules. It is not a case of creation of new All India Service. The Services are already there. There are rules for taking or regulating examination already in existence. They are all made under the executive power of the Union and they are sought to be amended. Undoubtedly, the Parliament has power to make laws or even to amend the existing rules but where it does not exercise its power, the executive power of the Union can be exercised. In our opinion, Art. 312 of the Constitution has no application whatsoever to the facts and circumstances of the present group of cases before us.

An argument was raised that the Central Government had no power to make amendments in C.S.E. Rule 4 by addition of the 2nd proviso to put unwarranted restrictions on the candidates seeking to improve their career in All India and Central Government Services. Reference was made to the All India Services Act, 1951 and to the provisions of Section 3 thereof. It was urged that the C.S.E. Rules could only be amended in the manner laid down in Section 3 (3) of the said Act. Since it has not been done, the 2nd proviso was invalid. It was also argued that where the Statute lays down that a rule be made following a particular procedure, it cannot be done in any other manner.

The All India Services Act, 1951 (hereinafter referred to '1951 Act') grant power to the Central Government to make rules for the regulation of recruitment and the conditions of service of persons appointed to the All India Services by a notification in the Official Gazette after consultation with the Governments of the States concerned. The Central Government acting in pursuance of the above provisions made the Indian Administrative Service (Recruitment) Rules, 1954 after consultation with the Governments of the States. Thereafter the Central Government made the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955, after consultation with the State Governments and the Union public Service Commission.

Rule 4(1) of the I.A.S. (Recruitment) Rules, 1954 says that the recruitment to the service after commencement of these rules, shall be by the following methods, namely:-

(a) by a competitive examination;

(aa) by selection of persons from among the Emergency Commissioned Officers and Short-Service Commissioned Officers of the Armed Forces of the Union "who were commissioned on or after the 1st November, 1962 but before the 10th January, 1968, or who had joined any pre-commission training before the later date, but who were commissioned on or after that date".

(b) by promotion of member of a State Civil Service;

(c) by selection, in special cases from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service."

Rule 7 pertains to Recruitment by competitive examination. Sub-rule (1) of Rule 7 provides a competitive examination for recruitment to the Service shall be held at such intervals as the Central Government may, in consultation with the Commission, from time to time, determine. Sub-rule (2) to Rule 7 says that the examination shall be conducted by the Commission in accordance with such regulations as the Central Government may from time to time make in consultation with the Commission and State Governments. But these rules do not lay down anything in regard to the method of holding the competitive examination.

The Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 (Regulations, 1955 for brief) provide for competitive examination consisting of a preliminary examination and the main examination. It provides for conditions of eligibility, e.g., nationality,

age, educational qualifications as well as the number of attempts permissible at the examination. This is provided in Regulation 4(iii-a) which is significant and reads as follows:-

> "Attempts at the examination.- Unless covered by any of the exceptions that may from time to time be notified by the Central Government in this behalf, every candidate appearing for the examination after 1st January, 1979, who is otherwise eligible, shall be permitted three attempts at the examination; and the appearance of a candidate at the examination will be deemed to be an attempt at the examination irrespective of his disqualification or cancellation, as the case may be, of his candidature."

This is very relevant, for it gives power to the Central Government to notify any exception to the above rule. What is to be noticed is that the Central Government is empowered to notify the exceptions, which in effect means modifications, amendments, additions in respect of the attempts at the examination and this power has been given to the Central Government in the Regulations, 1955 itself for recruitment to I.A.S.

A notification is issued each year for general information of the candidates setting down the terms and conditions, eligibility etc. to sit in the C.S.E. One such notification was issued on December 13,1986 and it noticed certain exceptions in regard to the attempts at the examination. This power was exercised by the Central Government in 1986 and continued in subsequent years also. The contention on behalf of the respondents was that the Central Government made the amendments in exercise of its executive power under Art.73 of the Constitution.

It is necessary to notice that the recruitment rules for other services for which the Civil Services Examination is held each year specify that no candidate who does not belong to a Scheduled Caste or a Schedule Tribe or who is not covered by any of the specified exceptions notified by the Government of India in the Department of Personnel and Training, from time to time, shall be permitted to compete more than three times at the Examination.

If it becomes necessary for the Central Government to amend the above Rule in the exigency of the situation or for some good reason, it can take recourse to power under Art. 73 of the Constitution of India. In that case the order may be challenged on such grounds as are available under law. We will refer to the same a little later.

We are of the view that there is no force in the argument of the learned counsel for the applicants that the amendment made in 1986 C.S.E. Rules regarding the number of attempts available to a candidate who was allocated to the I.P.S. or in a Central Service, Group 'A', was invalid or beyond the power of the Central Government.

We will now consider the provisions of Article 73 of the Consitution. The executive power of the Union is contained in Art.73(1) of the Constitution and it reads as follows:-

> "73(1). Extent of executive power of the Union. Subject to the provisions of this Constitution, the executive power of the Union shall extend-
>
> (a) to the matter with respect to which Parliament has power to make laws; and
>
> (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:
>
> Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

The executive power of the Union was extended to matters with respect to which Parliament has power to make laws. A perusal of item 70 of the Union List, Seventh Schedule of the Constitution would show that the Parliament has power to enact laws in respect of:

> "Union Public Services; all-India Services; Union Public Service Commission."

The C.S.E. Rules pertain to Union Public Services; all-India Services and Union Public Service Commission. In all these matters, the executive power of the Union can be exercised.

Article 73 of the Constitution empowers the

Union and the State with certain amount of legislative power of the Union and the State, as the case may be. Although the Executive cannot act against the provisions of a law, it does not debar the Executive from functioning in relation to a particular subject where there is no law in existence. Once a law is passed, the power can be exercised only in accordance with such law and the Government is debarred from exercising its executive power. However, where there is no law in existence, Article 73 empowers the Union to legislate.

It is indeed true that the executive powers of the Union under Art.73 of the Constitution apart from co-extensive with the legislative powers of the Parliament are of a fairly wide amplitude and are wider than the prerogative of the Crown. It is also true that the Government can regulate its executive functions even without making a law. See P.C. SETHI & OTHERS Vs. UNION OF INDIA AND OTHERS ((1975) 4 SCC 67). It was held in the above case that it is open to the Government in exercise of its executive power to issue administrative instructions with regard to constitution and reorganisation of the Central Secretariat Service as long as there is no violation of Articles 14 and 16 of the Constitution.

In the case of UNION OF INDIA & OTHERS Vs. MAJJI JANGAMAYA AND OTHERS ((1977) 1 SCC 606), it was held that the executive orders or administrative instructions can be issued in the absence of statutory rules and the

same can also be changed. There is no manner of doubt that executive instructions can be issued to occupy the field not occupied by a parliamentary law or statutory rules. It is well settled that the Central Government can also change the administrative/executive instructions. This power is not unfettered and unbridled and it is also open to judicial review. It is also well settled that executive instructions cannot be sustained, if the same are violative of Articles 14 and 16 of the Constitution. See RAMANA DAYARAM SHETTY Vs. INTERNATIONAL AIRPORTS AUTHORITY OF INDIA & OTHERS ((1979) 3 SCC 489). It may also be stated here that executive instructions issued in exercise of executive powers which are in breach of the statutory rule or are inconsistent can be assailed on that account. It is obvious from the above that the executive act or the executive instructions are open to judicial scrutiny/review if the same violate the provisions of Articles 14 and 16(1) of the Constitution.

Shri Durga Das Basu in the Tenth Edition of his SHORTER CONSTITUTION OF INDIA refers to Art.73 of the Constitution says as under:

> "Where the Constitution does not require an action to be taken only by legislation or there is no existing law to fetter the executive power of the Union (or a State, as the case may be), the Government would be not only free to take such action by an executive order or to lay down a policy for the making of such executive orders as occasion arises, but also to change such orders or the policy itself as often as the Government so requires, subject to the following conditions:
>
> (a) Such change must be made in the exercise of a reasonable discretion and not arbitrarily.
>
> (b) The making or changing of such order is made known to those concerned.
>
> (c) It complies with Art.14, so that persons equally circumstanced are not treated unequally.
>
> (d) It would be subject to judicial review."

This succinctly puts down the power of the Union in respect of enacting laws under the executive power of the Union. It is no doubt true that it is open to the Parliament to enact a law on the same subject or to amend, modify or rescind the rule made under the Executive power of the Union.

In the case of A.S. SANGWAN Vs. UNION OF INDIA (AIR 1981 SC 1545), the conditions (a), (b) and (c) quoted above were laid down. The Supreme Court observed:

> "The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. ....
> A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and imperatives of national considerations. .....
> It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Art. 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily....
> So, whatever policy is made should be done fairly and made known to those concerned."

As far as the exercise of a reasonable discretion and the amendment introduced in the second proviso to Rule 4 of the C.S.E. Rules, 1986 is concerned, the same was not arbitrary. We have examined the circumstances in which the second proviso to Rule 4 was made, the exigency of the situation, the uncertainty in the matter of filling up of vacancies, and the adverse reports in the matter of probationary training were the reasons for introducing the change. We have dealt with these matters earlier and we do not think that this was an arbitrary exercise of the power. Nor do we think

that this was as a result of exercise of unreasonable discretion.

As far as the second clause, it is clear that the amendment was made known to those concerned even before they sat in the C.S.E. 1987. The amendment was made through a notification published in the Gazette of India on 13.12.1986. There is a presumption of knowledge in regard to publication in the Official Gazette. Those who sat in the prelims in the month of June 1987 would be presumed to be aware of this. The requirement under this clause will be deemed to have been fulfilled.

The third clause pertains to Art.14 of the Constitution and for treating persons similarly placed equally. We have examined this matter also earlier in this judgment and we have held that there is no question of differentiation or discrimination between those who succeeded in a Group 'B' Service and those who succeeded in Group 'A' Service in the C.S.E. Since it is a combined examination for various Services, candidates appear for one or more services. But their placement in a particular service is based on the result of the examination, preference indicated by them, the vacancies available and some other factors. Consequently, if a candidate has received low marks and is allocated to a Central Service, Group 'B', he cannot be equated with a candidate allocated to a Group 'A' Service. There is clear distinction between the service conditions, scales of pay in Central Services, Group 'A' and Group 'B'. The latter are not placed on an equal footing and are in lower rung than those allocated to Group 'A' Services. The distinction between Group 'A' or Group 'B' Services does not, in our opinion, violate the provisions of Art. 14 & 16(1) of the Constitution. The State action in this regard cannot be said to be bad in law.

Further, it will be noticed that those who have qualified for I.A.S. or I.F.S., they are precluded from sitting or competing for any other service including Group 'A' Service. A restriction is already there for years together because the I.A.S. and I.F.S. are at the apex and highest paid services in the country. Certain restrictions are placed because of the existing situation on the allocatees of Group 'A' Service, particularly, considering the point that there is a great uncertainty about filling up of vacancies and the probationary training when a candidate intends to sit in the next C.S.E. It is open to the Government to exercise its executive power under Article 73 of the Constitution to make rules to face a particular situation. Exercise of such power is permissible. We do not find that there is any infringment of Art. 14 of the Consitution in exercising the power under Art. 73 of the Constitution.

As far as the last clause is that such an order would be subject to judicial review. There is no denial of this fact that the amendment to Rule 4 has been challenged before the Tribunal in these Applications.

Reference may be made to the decision of the Allahabad High Court in the case of RAVINDRA PRSAD SINGH Vs. U.O.I. CMWP No.11743 of 1982 decided on 2.8.1985 by a Division Bench. In a matter pertaining to recruitment to the Central Service, Group 'A' under the C.S.E., the applicant Shri Ravindra Prsad Singh was selected for appointment in the Defence Lands and Cantonment Service

66

Group 'A' and he claimed that he had given his option for the I.A.S., I.F.S., Indian Police Service, Indian Income Tax Service (Group A), Indian Customs and Central Exercise Service (Group A), the Indian Railway Traffic Service (Group A) and the Indian Audit and Accounts Service (Group A). A reference was made to the C.S.E. Rules which underwent a change in the year 1979 and a reference was also made to Rule 17. The Division Bench observed:

> "Article 73 provides that subject to the provisions of the Constitution, the executive power of the Union extends to the matters with respect to which Parliament has power to make laws. To put it differently, the power of the executive of the Union is co-extensive with the legislative power of the Union. Of course, the executive direction issued under Article 73 is subject to any law either in praesenti or in future passed by Parliament."

The Division Bench referred to the decision in the case of B.N. NAGARAJAN AND OTHERS Vs. STATE OF MYSORE AND OTHERS (AIR 1966 S.C. 1942 para 5) and quoted:

> "We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an Act on the matter, the executive must abide by that Act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that Rule or Act."

The Division Bench observed:

> We, therefore, feel no difficulty in taking the view that Rule 17 has its source in Article 73 of the Constitution. Once this is held, the submission made on behalf of the petitioner that the Rules have no statutory force is negatived."

It will thus be seen that the Central Services, Group 'B' are distinct and separate from the Services enumerated in Group 'A' as well as different from IAS and IFS. It has been noticed that the I.A.S. and I.F.S. on the one hand and the IPS on the other come in different categories and, therefore, constitute different classes. Thus, these Services are different from Central Services, Group 'A' and Group 'B'.

An argument about discrimination was raised in these cases. Unless the classification is unjust on the face of it, the onus lies upon the applicant attacking the classification. It has to be shown by cogent evidence that the aforesaid classification is unreasonable and violative of Art. 14 of the Constitution. We have already held that the classification made in Rule 17 of the C.S.E. Rules is perfectly valid and justifiable.

In the case of BIRENDRA KUMAR NIGAM AND ORS. VS. THE UNION OF INDIA (Writ Petitions No.220 to 222 of 1963 decided on 13.3.1964) the Supreme Court observed:

> "If, as must be, it is conceded that the exigencies, convenience or necessity of a particular department might justify the imposition of a total ban on the employees in that department, from seeking employment in other departments, a partial ban which permits them to seek only certain posts in the same department cannot be characterised as illegal as being discriminatory. The mere fact therefore that under rules officers in certain other departments are permitted to compete for a class I post is no ground by itself for considering such a variation as as an unreasonable discrimination, violative of Articles 14 and 16(1) of the Constitution as not based on a classification having rational and reasonable relation to the object to be attained. Of course, no rule imposes a ban on these employees resigning their posts and competing for posts in the open competition along with 'open market' candidates."

We are of the view that the law laid down by the Supreme Court above will also be applicable to the facts of the present case. Putting restrictions on certain candidates who have already qualified in the examination as in the present case from sitting in a future C.S.E. cannot be termed to be discriminatory or infringing the provisions of Art. 14 of the Constitution. More so, when it is necessary to readjust the rules according to the compulsions of circumstances and imperatives of national considerations.

An argument was raised that the C.S.E. Rules before its amendment in December, 1986 was a beneficial legislation and it could not be abrogated. Reference was made to the decision of the Supreme Court in the case of ALL INDIA REPORTER KARMACHARI SANGH AND OTHERS Vs. ALL INDIA REPORTER LTD. AND OTHERS (AIR 1988 SC 1325). Their Lordships were dealing with the case of Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and observed:

> "19. The Act in question is a beneficial legislation which is enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments and hence even if it is possible to have two opinions on the construction of the provisions of the Act the one which advances the object of the Act and is in favour of the employees for whose benefit the Act is passed has to be accepted."

The concept of beneficial legislation in respect of

rules governing the conduct of competitive examination cannot be on the same plane as legislation which is enacted for the purpose of improving the conditions of service of the employees of the newspaper establishments.

The principle laid down in the case of A.S. SANGWAN (supra) entitles the Union Government to make, abridge, alter and amend the rules in exercise of executive power of the Union. In a matter of competitive examination to choose candidates for Central Services, the concept of beneficial legislation will be an enigma . We have seen that there is an extensive power in the Union not only to make law in exercise of its [illegible] power under Article 73 of the Constitution but it can always amend the rules or make new rules in the exigencies of the situation and according to the compulsions of circumstances. The concept of beneficial legislation, in our opinion, is not attracted in such a case.

070

Points No.6 and 7.

An argument was raised that there is hostile discrimination between General candidates and the candidates belonging to SC & S.T. in the number of opportunities to be availed by candidates belonging to Group 'A' Services.

If we exclude for consideration the existence of the second proviso to Rule 4 of the C.S.E. Rules and consider Rule 4 and the Ist proviso, only we find that General candidates can make three attempts in C.S.E. whereas a S.C. /S.T. candidate can have as many chances so long he is eligible. Age limit for the general candidates was 26 years while for the S.C./S.T. candidates the age limit was 31 years. Hence a S.C./S.T. candidate was entitled to five more chances than a general candidate. In other words, a S.C./S.T. candidate could sit in the examination until he crosses the age of 31 years. The constitutional provision in respect of S.C./S.T. is provided in Article 46 of the Constitution. It reads:

> "46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

As a matter of fact, the special protection given for safeguarding the interest of S.C./S.T. candidates is there from a long time and it has not been challenged. This does not ensure an automatic service for the S.C./S.T. candidate as

he has also to compete and secure a position which will make him eligible for being inducted into a Central Service.

The position has altered. After the induction of the second proviso to Rule 4 of the C.S.E. Rules, this brings about a change inasmuch as it places restrictions only on those candidates who have been allocated to a particular Central Service. There is no distinction between a general candidate or a S.C./S.T. candidate once he has been allocated to a Central Service after appearing in a C.S.E. In our opinion, the restriction which has been placed by the second proviso to Rule 4 is in respect of those candidates who have either been allocated to a service or appointed to a Central Service. Consequently, these candidates competing further to improve their career opportunities is limited to the extent permissible under the said proviso read with Rule 17 of the C.S.E. Rules. Reference may be made to Rule 8 of the C.S.E. Rules which restricts those candidates who have been allocated to I.A.S., I.F.S. from competing again for any other service. That restriction is there for a long time. That has not been challenged. Similarly, the changes that have been introduced by the second provisos to Rules 4 and 17 of the C.S.E. Rules have come because of the exigency of the situation and circumstances. We, therefore, find no merits in the contention of the applicants that there is hostile discrimination between general candidates and the S.C./S.T. candidates.

We will take next point whether the rights given

to S.C./S.T. candidates under Rule 4 have been taken away by the 2nd proviso to Rule 4. Those S.C./S.T. candidates who have not been succeeded in any C.S.E. nor allocated to any service can continue to appear in the C.S.E. so long as they are eligible to do so and that includes agewise also. Hence, there is no interference with that right of the S.C./S.T. candidates.

However, the position alters, once they are allocated or appointed to a particular Central Service, then they are on the same plane as any other candidate . They are also subject to the same restrictions as any other candidate under the second proviso to Rule 4. In other words, a candidate who has come in Group 'A' Service will be eligible to appear again for I.A.S., I.F.S. and I.P.S. as provided in Rule 17. But those who have qualified for I.P.S. will be entitled to sit for I.A.S., I.F.S. and Central Services, Group 'A'. One restriction has certainly come in and that is, if he has been appointed to a service, then there is a bigger restriction on him. Appointment to a service comes after the allocation is final. He has to join the service and take probationary training.

A question is: while going through all this, he sits in a subsequent C.S.E. and gets selected to another service and wishes to change his service. Should he be permitted to do so on the basis that Rule 4 of the C.S.E. Rules gives him 3 attempts to sit in C.S.E. ? The respondents

ag

stand is that the General Government can impose restrictions in this regard as there is considerable uncertainty in filling up of vacancies, interruption with training, enormous wastage of funds, time and even loss in gaining experience. Besides the candidate also stands to lose seniority if he leaves one service and joins another service.

We are of the view that the provision of second proviso to Rule 4 is applicable in the case of S.C./S.T. candidates who have been allocated to a service or appointed to I.P.S. or to Central Services, Group 'A' under the Union. We are of the view that there is no infringment in the rights of the S.C./S.T. candidates if after being allocated to a service they are treated in the same manner as any other general candidates. Otherwise, it would be extremely difficult to fill up the existing vacancies meant for S.C./S.T. candidates for in some cases, nothing would ever be final until a candidate completes the age of 31 years. Serious problems of seniority would arise. It would be wholly inequitable to give seniority to such a candidate from the first occasion when he was selected for a Central Service. It would mean holding a post in that service, vacant for him till he signifies his assent or completes the age of 31 years. It will also be inequitable in that case to give him seniority of the batch to which he was allocated although during this period, he may not have worked for a single day. Very many questions would be raised in each case and recruitment and selection to fill up the S.C. & S.T. quota will be left uncertain and unfilled.

We are of the view that giving a large number of chances to a S.C./S.T. candidate until he succeeded in C.S.E. and allocated to that service is justified. But the moment he is allocated or appointed to I.P.S. or to a Central Service, Group 'A', he should be treated on the same lines as any other general candidate. That would not only be equitable but also fair. That would be in the interest of S.C./S.T. candidates as well as in the interest of the administration as well as in national interest. We decide the point accordingly.

SENIORITY

We must now consider the question of seniority. Having held that the instructions regarding seniority laid down in the two letters, referred to above, are unenforceable, we have to consider whether any relief be given to the successful candidates allocated to one or other service in the I.P.S. or Group 'A', if they have not joined the training or abstained with permission or under orders of the Tribunal. Since we have held the above instructions to be unenforceable, the applicants must not suffer loss of seniority. Their seniority would be maintained in case they join the service to which they were allocated. In case, they have succeeded in a subsequent Civil Service Examination (i.e. of 1988 or 1989), their seniority would depend on the service they join.

CONCLUSIONS:

Having considered the matter in the above bunch of cases, we have come to the following conclusions:-

1. The 2nd proviso to Rule 4 of the Civil Services Examination Rules is valid.

2. The provisions of Rule 17 of the above Rules are also valid.

3. The above provisions are not hit by the provisions of Arts. 14 and 16 of the Constitution of India.

4. The restrictions imposed by the 2nd proviso to

Rule 4 of the Civil Services Examination Rules are not bad in law.

5. (i) The letter issued by the Ministry of Personnel, Public Grievances and Pensions dated 30th August, 1988 and in particular, paragraph 3 thereof and paragraph 4 of the letter dated 2.1.1989, issued by the Cadre Controlling Authority, Ministry of Railways (Railway Board) are held to be bad in law and unenforceable. Similar letters issued on different dates by other Cadre Controlling Authorities are also unenforceable.

(ii) A candidate who has been allocated to the I.P.S. or to a Central Services, Group 'A' may be allowed to sit at the next Civil Services Examination, provided he is within the permissible age limit, without having to resign from the service to which he has been allocated, nor would he lose his original seniority in the service to which he is allocated if he is unable to take training with his own Batch.

6. Those applicants who have been allocated to the I.P.S. or any Central Services, Group 'A', can have one more attempt in the subsequent Civil Services Examination, for the Services indicated in Rule 17 of the C.S.E. Rules. The Cadre Controlling Authorities can grant one opportunity to such candidates.

7. All those candidates who have been allocated to any of the Central Services, Group 'A', or I.P.S. and who have appeared in Civil Services Main Examination of a subsequent year under the interim orders of the Tribunal for the Civil Services Examinations [illegible] 1988 or 1989 and have succeeded, are to be given benefit of their success subject to the provisions of Rule 17 of the C.S.E. Rules. But this exemption will not be available for any subsequent Civil Services Examination.

In the result, therefore, the Applications succeed only in part - viz., quashing of the 3rd paragraph of the letter dated 30.8.1988 and 4th paragraph of the letter dated 2nd January, 1989 and similar paragraphs in the letters issued to the applicants by other cadre