Central Administrative Tribunal
Principal Bench, New Delhi

Nos. 1. OA- 816/87
2. OA- 879/87
3. OA-1010/87
4. OA- 538/87
5. OA- 539/87 &
6. OA- 621/87

Date: 22.8.1988

1. Shri Brij Kishore Dubey
2. Shri Sanjay Kumar Jain
3. Shri Arvind Barsaul
4. Shri Vijay Kant Pandey
5. Shri Shyam Sunder Sharma
6. Shri Radhey Shyam Jangid

Applicants

Versus

Union of India and Another .... Respondents

For the Applicants .... Shri Shyam Moorjani, Advocate

For the Respondents .... Shri N.S.Mehta,P.P.Khurana& Shri G. Venkatesh Rao, Advocate with Shri G. Ramaswamy, Addl. Solicitor Genl. of India.

CORAM: Shri P.K. Kartha, Hon'ble Vice-Chairman(Judicial)
Shri S.P. Mukerji, Hon'ble Administrative Member.

(Judgement of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice-Chairman)

In this batch of applications filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who appeared for the Civil Services (Mains) Examination, 1986, the results of which were declared on 1.4.1987, were not declared successful by the U.P.S.C. S/Shri Dubey, Jain, Pandey, Sharma and Jangid were not called for the interview while Shri Barsaul had passed the written examination and appeared for the interview but was not declared successful. As common questions of law have been raised in these applications, it was decided to consider these applications together in a common judgement.

2. The facts of these cases in brief are as follows. All the applicants have very good academic records. Shri Dubey

...2...,

has obtained first division in B.Sc. and M.Sc.. He has also been awarded the C.S.I.R. scholarship. He is presently doing his Ph.D. in Botany. The medium of study in B.Sc., M.Sc. and Ph.D. had all along been English.

3. Shri Jain has obtained first position in B.A. from Punjab University. He has obtained first division throughout his educational career.

4. Shri Barsaul also has obtained first division throughout. He is a medical doctor by profession.

5. Shri Jangid has throughout been a first divisioner. He has been awarded the National Scholarship by the University Grants Commission. He has done his B.A.(Hons.) and M.A. in Geography.

6. Shri Sharma is doing D. Phil.(Botany) from Allahabad University. He is also being granted scholarship by the University Grants Commission since March, 1986.

7. Shri Pandey has also been a first divisioner throughout. He was awarded Gold Medal by Allahabad University in his B.Sc. Course. He has been awarded scholarship by the University Grants Commission and C.S.I.R.

8. The Department of Personnel & Training in the Ministry of Personnel & Training, Administrative Reforms and Public Grievances and Pension has been impleaded as the first respondent. The Union Public Service Commission (hereinafter referred to as the 'UPSC') is the second respondent.

...3...

9. The Department of Personnel & Training is administratively concerned with the recruitment to the various All India Services and Services of the Union and other civil posts under the Union. For this purpose, rules are notified by them from time to time. Formerly, this examination was called 'the Indian Administrative Service, etc.'. The various Services, recruitment to which was made through this examination, were divided into three categories, viz., Category I : Indian Administrative Service and Indian Foreign Service, Category II : Indian Police Service and Union Territory Police Services, and Category III : Central Service/ Union Territory Civil Services Group 'A' and Group 'B'. The examinations were being conducted annually by the UPSC.

10. In 1974, the UPSC constituted a Committee called, 'Committee on Recruitment Policy and Selection Methods' under the chairmanship of Dr. D.S. Kothari (commonly known as 'Kothari Committee') to examine and report about the system of recruitment to the All India and Central Services Class I and Class II followed by the UPSC and to recommend such changes in the scheme of examination and the selection method as would give adequate emphasis to knowledge, skills and qualities appropriate to the role and functions of the Services in the context of tasks of national development and reconstruction. The Committee recommended, inter alia, the unified scheme of the examination for recruitment to all the Services having equal number of papers and the same marks for interview tests. According to the recommendations of

...4..,

12

the Committee, the scheme was to consist of the following three stages:-

One - Civil Services Preliminary Examination (Objective Type) for the selection of candidates for the Main Examination;

Two - Civil Services Main Examination (Written and Interview) to select candidates for entry to the Academy; and

Three - Civil Services Post Training Test to be conducted by the Union Public Service Commission, on completion of the Foundation Course at the Academy, to assess personal qualities and attributes relevant to the civil services.

11. According to the recommendations of the Committee, the written part of the Main examinations was to consist of the following papers:-

Paper I	- Any one of the languages of the candidate's choice from the list of languages included in the Eighth Schedule to the Constitution.	....300 marks
Paper II	- English	-do-
Paper III	- Essay	-do-
Paper IV & V	- General Studies	... 300 marks for each paper.
Papers VI, VII, VIII & IX	Candidates will offer two subjects out of the list of optional subjects. There will be two papers for each subject.	... -do-

12. As regards the Indian language and English paper, the relevant paragraphs of the recommendations of the Committee are as follows:-

"3.22 We are convinced that every candidate desiring to join the All India and Central Service should have sound knowledge of at least one of the Indian languages included in the Eighth Schedule to the Constitution. A young person who lacks proficiency even in one of our languages suffers from a major lacuna and is ill-fitted for public service. Indeed, for the development of a well-rounded personality, it is necessary that our young people should have some interest in the languages and the related literatures of our country. We strongly recommend that there should be a compulsory paper for an Indian language, (to be selected by the candidates out of the languages listed in the Eighth Schedule) for both the Preliminary Examination and the Main Examination.

3.23 We have been given careful thought to the role of English in our scheme of examinations. English has an important place in the life of our country. It is an important link language for purposes of administration, specially at the All India level. In many of our universities English continues to be the medium of education, particularly at the postgraduate level. Knowledge of English is essential for keeping in touch with new developments, particularly in science and technology. English is, perhaps, the most used medium for international communication. We recommend that there should be a compulsory paper to test the adequacy of knowledge and proficiency in the use of English."

13. In Appendix IX, the Committee recommended the syllabi of English and Indian languages. The relevant portion is as follows:-

"(The syllabus of Eighth Schedule languages and English would be common).

The aim of the paper is to test the candidate's ability to read and understand serious discursive prose, and to express his ideas clearly and correctly, in English/Indian language concerned.

The paper would be in three parts to test:-

(i) Comprehension of given passages,

(ii) Usage and vocabulary, and

(iii) Ability to critically discuss given Statements."

...6...,

14. The Central Government examined the recommendations of the Committee along with the recommendations of the U.P.S.C. on these recommendations and decided that the paper in English and the paper in the Indian language should be of qualifying nature in the Civil Service (Main) Examination only and the marks obtained in these papers should not be included in the competitive ranking of the candidates but it would be necessary for the candidates to get qualifying marks in these subjects. It was also decided that unnecessary high standard should not be set in these papers as this might pose a handicap for candidates from the rural communities and weaker sections of the society.

15. The papers on the Indian language and English will be of matriculation and equivalent standard and will be of qualifying nature. The marks obtained in these papers will not be counted for ranking.

16. In the counter-affidavit filed by the Union of India in Dubey's case, it has been stated that the above provisions in the examination rules have been made in the larger public interest for valid, good and cogent reasons and are applicable to all candidates.

17. The salient provisions of the Rules governing the holding of competitive examination by the U.P.S.C. (Civil Services Examination) notified by the Department of Personnel & Training, may be mentioned in brief.

... 8/-

18. Rule 1 provides that the examination will be conducted by the U.P.S.C. in the manner prescribed in Appendix I to the Rules. The dates on which and the place at which the Preliminary and the Main Examinations will be held, shall be fixed by the U.P.S.C. Rule 4 provides that every candidate appearing at the examination, who is otherwise eligible, shall be permitted three attempts at the examination. Rule 5 provides that for the Indian Administrative Service and the Indian Police Service, a candidate must be a citizen of India. For other Services, a candidate may be either a citizen of India or a subject of Nepal, or of Bhutan or a Tibetan refugee who came over to India before 1st January, 1962 with the intention of permanently settling in India or a person of Indian origin who has migrated from some specified countries with the intention of permanently settling in India. Rule 14 provides that candidates who obtained such minimum qualifying marks in the Preliminary Examination as may be fixed by the Commission at their discretion, shall be admitted to the Main Examination; and candidates who obtained such minimum qualifying marks in the Main Examination (Written) as may be fixed by the Commission at their discretion, shall be summoned by them for an interview for personality test. The proviso under this rule deals with provision for relaxed standards in the case of candidates belonging to Scheduled Castes or Scheduled Tribes. Rule 15 deals with the preparation of a list of successful candidates by the U.P.S.C. in the order of merit. Rule 21 provides that the candidates are informed that some knowledge of Hindi prior to entry into Service would be of advantage in passing departmental

...8...,

examinations which candidates have to take after entry into Service. Appendix II to the Rules sets out the brief particulars relating to the Services to which recruitment is made while Appendix III deals with the regulations relating to the physical examination of the candidates. Thus, the rules are comprehensive and self-contained.

19. Appendix I to the Rules deals with the manner of conducting the examinations. The competitive examination comprises two successive stages:-

(i) Civil Services Preliminary Examination (Objective Type) for the selection of candidates for Main Examination; and

(ii) Civil Services (Main) Examination (Written and Interview) for the selection of candidates for the various Services and posts.

20. Only those candidates who are declared by the Commission to have qualified in the Preliminary Examination will be eligible for admission to the Main Examination. The Main Examination is a written examination consisting of the following papers:-

Paper I	- One of the Indian languages to be selected by the candidate from the languages included in the Eighth Schedule to the Constitution	300 marks
Part II	- English	300 marks
Papers III and IV	- General Studies	300 marks for each paper
Papers V, VI, VII and VIII	- Any two subjects to be selected from the list of the optional subjects set out in para 2 below. Each subject will have two papers	300 marks for each paper.

...9...,

21. The interview test will carry 250 marks. The following note also occurs in Appendix I under Para I : -

"Note (i) The papers on Indian Languages and English will be of Matriculation or equivalent standard and will be of qualifying nature; the marks obtained in these papers will not be counted for ranking.

(ii) The papers on General Studies and Optional subjects of only such candidates will be evaluated as attain such minimum standard as may be fixed by the Commission in their discretion for the qualifying papers on Indian Language and English."

22. It has further been stipulated in Appendix I that the Commission have discretion to fix qualifying marks in any or all the subjects of the examinations.

23. All the applicants claim that they did exceedingly well at the examinations. All of them have referred to some instances illustrating the unsatisfactory manner of the conduct of the examination and the unsympathetic attitude adopted by the U.P.S.C. The respective versions of both parties may be summed up as follows: -

(a) In the recent past, a number of instances have come to light indicating serious irregularities in the conduct of the examinations. In the 1985 examinations, the results of the Preliminary Examination were declared. No candidates from Patna

....11/-

and Bhopal centres was found to have qualified. They lodged a protest against the results. The matter was also taken up by the Press, whereupon the U.P.S.C. scrutinised the matter and found that one of the computer tapes used was inaccurate and it affected a bloc of 2,058 candidates. As a result, the U.P.S.C. issued further letters to 232 candidates declaring them to have qualified for Civil Services (Main) Examination.

In the counter-affidavit filed by the U.P.S.C., it has been submitted that in respect of the 1985 examination, a snag in the working of one of the tapes was detected after the declaration of the results. A thorough investigation was made and on verification, it was found that one tape had gone wrong. The whole result was rechecked and it was found that 232 additional candidates had qualified for admission to the Main Examination. These candidates were then declared qualified for the Main Examination. However, it has been contended that the citing of this incident is not relevant to the case of the applicant. One of the candidates, Shri Rajesh Khanna, had also challenged the results of the Examination on this very basis in the Delhi High Court (CWP No.283/85), but the same was dismissed by the High Court.

(b) In Delhi for the same examination held in 1985, the U.P.S.C. had issued two different roll numbers to a few candidates. Their attendance sheets in the Examination Hall were not theirs but of some other persons. All such candidates failed because the

...11..,

computer did not get the correct image of the roll numbers and as such, rejected their answer-sheets.

The U.P.S.C. has denied this allegation in their counter-affidavit. It has been stated that there was a clerical mistake in the issue of some roll numbers which was duly corrected as soon as it came to their notice. There was no question of any candidate not qualifying on this score.

(c) In the 1985 Examinations, when the result was declared, it was found that none from Bhopal Centre was selected for interview. The candidates from that Centre made representations to the U.P.S.C. When the Press took up the matter, the U.P.S.C. conducted inquiries and it was found that the answer-sheets of General Studies-II of all 95/97 candidates of that Centre were lost and were untraceable. As such, fresh examination was held for these candidates as a result of which, 25 of them were called for interview. Out of these 25, 22 were finally declared successful.

The U.P.S.C. has submitted that due to loss of one of the registered parcels in postal transit containing answer-books of General Studies-II, the Commission had to hold re-examination in this paper in respect of 94 candidates whose answer-books were lost. The loss was entirely beyond the control of the Commission. However, in order to give equal opportunity to all the candidates, the

...12..,

Commission held a re-examination. This decision was taken by the Commission on its own as soon as the loss of the parcel came to their notice and not on the basis of any representation from any candidate.

(d) In 1985, the C.B.I. registered a case under Sections 420, 464, 471 and 120-B of the I.P.C. as also under the Prevention of Corruption Act against one, Ratipal Saroj and four employees of U.P.S.C. Shri Saroj was selected in Civil Services Examinations, 1985 and was declared as No.3 in the merit list. A letter was written by certain candidates of Allahabad Centre to the Prime Minister declaring their suspicion and requested him to look into the matter. The C.B.I. inquiries revealed that Shri Saroj joined the U.P.S.C. as Section Officer and then was promoted to the post of Deputy Secretary. He was well-known to a number of officers in U.P.S.C. to whom he had been supplying various articles from time to time. It was alleged that he replaced his answer-sheets with the new ones in the U.P.S.C. in collusion with the officers. In this manner, he got very good marks and stood third in the examination.

The U.P.S.C. has contended that Shri Saroj, an Under Secretary in the Office of the U.P.S.C., who was a candidate for the 1985 Examination, allegedly substituted some of his answer-books with the connivance of

...13..,

certain officials of the Confidential Branch. He was arrested by the C.B.I. for the alleged offence and was suspended from service. Similarly, certain other officials, including two Section Officers of the Confidential Branch who were also arrested for their alleged involvement in substituting some of the answer-books of Shri Saroj, were also placed under suspension and all of them continue to remain under suspension. The case is still under investigation by the C.B.I. This case is, however, of no relevance insofar as the applicant's performance in the examination is concerned.

(e) In 1985, the C.B.I. filed another case under Sections 420 and 120-B of the I.P.C. against Sanjay Bhatia and others. The accusation against him was that he produced false Caste Certificate showing himself to be a Scheduled Caste and he got himself selected for I.P.S.

As against this, the U.P.S.C. has contended that they verified the SC/ST claims of candidates on the basis of original SC/ST certificates submitted by them at the time of interview. The claim of the candidate to belong to Scheduled Caste was taken up on an earlier occasion by them with the concerned Administration, who after verifying the records, informed the U.P.S.C. that the claim of the candidate to belong to Scheduled Caste was in order. Therefore, the Commission accepted the claim of the candidate to belong to Scheduled Caste. However, while recommending the names of candidates for final appointment to the Government, full facts were

...14..,

reported to the Government requesting them to satisfy themselves regarding the genuineness of the claim before offering him the appointment.

(f) There are general allegations against many officers of the U.P.S.C. that they got the question paper out in order to get their wards or relatives qualified for the Civil Services examinations. There are other allegations causing suspicion on account of the fact that the wards of I.A.S. officers are invariably selected in these examinations. The other allegations are that in Rau's Cirle (Rau Study Circle) for 1985 Examinations, a guess paper was given to the students with 11 questions out of which 8 questions appeared in the actual question paper. Further, during the investigations by the C.B.I. into the matters of Saroj and Sanjay Bhatia, two other candidates, namely, Mridula Sinha and Suresh Chandra were also found to be involved. It has also been reported in the Press that with the manipulation of the U.P.S.C. officials, answer-sheets had been substituted in some other cases.

The U.P.S.C. has stated that these are malicious and baseless allegations. They have no information about the C.B.I. having registered any case against Mridula Sinha and Suresh Chandra. They have submitted that according to the established procedure, whenever an officer or relative of an officer of the Commission is

...16..,

a candidate for an examination, he is required to report the same to the Office and he is dissociated from all confidential and sensitive activities of that examination. This has been scrupulously followed by all officers of the Commission.

(g) It has been alleged that the U.P.S.C. has been employing its policy of moderation of marks in their discretion to suit vested interests and not to achieve fairness.

As against the above, the U.P.S.C. has contended that the system of moderation of marks followed by them is not arbitrary or discriminatory but is well-established and has stood the test of time and judicial scrutiny. They have submitted that a candidate for the 1984 Examination filed a Special Civil Application No.4547/85 in the Gujarat High Court challenging the moderation done in his answer-books for various subjects. The Gujarat High Court dismissed the petition. Special Leave Petition No.15251/86 filed in the Supreme Court was also dismissed with the following observation:-

> "We are in agreement with the view expressed by a Division Bench of the High Court that the system of moderation of marks adopted by the U.P.S.C. in evaluating the performance of the candidates appearing in the Civil Services Examination cannot be said to be vitiated by arbitrariness or illegality of any kind. SLP is accordingly dismissed."

(h) The applicants have given other instances of irregularities. In 1981 Main Examination, the same question was repeated twice in General Studies papers. In 1983, Preliminary Examination, a good number of answers to multiple choice questions of Economics Paper were out of the syllabus and were also incorrect. In 1984 Main Examination, modera-

tion had to be carried out because the candidates with Economics had scored very low marks.

The U.P.S.C. has stated that according to the existing practice, all representations from candidates about a question paper are considered, if necessary, in consultation with academic experts. Corrective action is taken whenever called for to ensure that no candidate suffers because of any mistake in any paper which is set by senior Professors of academic institutions. The Commission follows a well-established system of moderation.

(i) The results of the 1985 (Main) Examination were challenged in a writ petition before the Allahabad High Court, Lucknow Bench, and the candidates were granted another chance to take the examination.

The U.P.S.C. had pointed out that some of the candidates who appeared at the 1985 Examination, had filed a writ petition, as alleged. The High Court directed that the petitioners who had not crossed 28 years and in the case of Scheduled Caste candidates, 33 years, would be allowed to take Civil Services (Preliminary) Examination, 1987 provisionally provided none of them had availed three chances. The Commission had not been able to file a reply or make any submissions before the above orders were passed. The case is still pending before the High Court.

23. The applicants have contended that the respondents at no stage either admitted to look into the grievances of the candidates at the first instance until the

matter was repeatedly taken by the Press and a lot of pressure put on the respondents or the matters were taken to the courts. They have further submitted that there may be other instances of irregularities which have not surfaced because the candidates have not protested. The actions and activities of the respondents have resulted in loss of faith in the fair conduct of examinations.

24. As against the above, the U.P.S.C. has stated in their counter-affidavit that these are wild and unsubstantiated allegations against the Commission by unsuccessful candidates. The U.P.S.C. is a responsible constitutional functionary enjoying the highest reputation.

25. We may now consider the facts relevant to the individual cases.

26. In Shri Dubey's case, the result of the Civil Services (Main) Examination of 1986 were declared by the respondents on 1.4.1987. The roll number of the applicant did not appear in the said result. His enquiries revealed that none out of 50 candidates with optional subject combination of Botany and Zoology from Allahabad Centre, was called for interview. Being aggrieved by the results, he made representations to the respondents. He has not received any marks-sheet so far. The U.P.S.C. informed him vide their letter dated 28.5.87 that he had failed to obtain qualifying marks fixed by them in the compulsory qualifying papers in English and, therefore, his scripts in General Studies and optional subjects were not valued. His contention is that he had

...18...,

done his English paper for 1986 Examination much better than his previous examinations in 1984 and 1985 when he had qualified in the English paper. In this context, he has pointed out that in 1985, when the respondents had decreased the age-limit for the examination from 28 years to 26 years, many candidates were affected. An agitation was organised by several students at the Gate of the Office of the U.P.S.C. The applicant led the group of affected Allahabad candidates in this agitation. After great pursuasion and intensive agitation by the applicant and others, the respondents were force to relax the age and increase the same from 26 to 28 years. During this agitation, the applicant, along with others, was in direct confrontation with the respondents and he had also made several representation on their behalf. He has submitted that the action of the U.P.S.C. is mala fide, vindictive, arbitrary and illegal. According to him, the respondents should have declared the minimum standard for the qualifying subjects. He has, therefore, prayed that the results of the examination of 1986 should be quashed. He has further prayed that the rules of the examination, insofar as they confer unfettered discretion upon the U.P.S.C. to fix the minimum standard for qualifying in the compulsory subjects be quashed as being arbitrary and ultra vires the Constitution of India. He, has also sought a declaration that the rules for examination so far as the same do not provide for revaluation, are discriminatory and violative of the democratic and fundamental right of the applicant under the Constitution

....19/-

of India. The other reliefs sought are:-

(i) For directing the respondents to disclose the minimum standard to be attained in the qualifying compulsory subjects and also to disclose the same in the examination rules henceforth;

(ii) To call for and re-examine/re-evaluate/re-assess the answer-sheets/scripts of the applicant for English paper in the 1986 Examination in comparison with the scripts/answer-sheets of the applicant for the 1984-85 Examinations and declare the applicant to have qualified for the same;

(iii) Direct the respondents to declare the results of the applicant in other General Studies and optionals; and

(iv) Direct the respondents to allow the applicants to appear for the interview. An alternative prayer has been made to the effect that the respondents should be directed to grant another chance to the applicant to appear for the Civil Services (Main) Examination.

27. The respondents have contended in their counter-affidavit that no relief of any kind as prayed for should granted as the evaluation of the applicant's performance in the paper on English has been done in a fair manner and the same standards were applied to him as were applied to other candidates for the examinations. The candidates are admitted to an examination in accordance with the eligibility conditions prescribed in the rules and if the

applicant satisfies these conditions, he is free to make an application. However, his prayer for granting him another chance to appear at the examination simply because he failed in the examination held in 1986, does not deserve any consideration. It has also been submitted that the powers conferred by the rules for fixation of qualifying marks have been exercised reasonably and judiciously.

28. In Shri Jain's case, the applicant was declared to have qualified in the Preliminary Examination and was admitted to write the Main Examination. His optional subjects were History and Sociology. His roll number did not appear in the results declared on 1.4.1987. The applicant received his mark-sheet on 8.5.1987 which indicated very low marks in Sociology papers. Being aggrieved by the results, he submitted a representation to the U.P.S.C. on 11.5.1987 for re-evaluation. This request was turned down on the ground that there was no provision for the same in the rules. The applicant has made similar prayers as contained in Shri Dubey's case.

29. In the case of Shri Barsaul, the mark-sheet issued by the U.P.S.C. indicated that he had obtained very low marks in his General Studies Paper-II, History papers I and II and Zoology papers I and II. He had obtained around 64 per cent marks at the interview (160 out of 250). Being aggrieved by the results, he represented to the U.P.S.C. requesting for re-evaluation of his answer-sheets. He has also prayed for other reliefs similar to those contained in Shri Dubey's case.

30. Shri Pandey, who appeared at the examination from the Allahabad Centre, had chosen Botany and Zoology

...21..,

as his optional subjects. His roll number did not appear in the results. He has prayed that the respondents should be directed to check, recheck/re-evaluate his answer-books.

31. Shri Sharma had opted for Botany and Agriculture as the optional papers. His roll number also did not appear in the results. He has also prayed for similar reliefs as in Shri Pandey's application.

32. In the case of Shri Jangid, his roll number also did not figure in the results. His apprehension is that as he had written all his papers in Hindi, he has become a victim of language bias. He has also prayed for the same reliefs as in Shri Pandey's case.

33. We have carefully gone through the records of these cases and have heard the learned counsel of both the parties. The first question arising for consideration is whether the rules of the examination insofar as they confer unfettered discretion upon the U.P.S.C. to fix the minimum standard for qualifying in the compulsory subjects and not to provide for re-evaluation, is arbitrary and violative of the fundamental right of the applicants guaranteed under Article 14 of the Constitution.

34. The legal position in regard to the validity of a piece of legislation or a rule is well settled. There is always a presumption in favour of the constitutionality of an enactment or a rule made thereunder. The burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. There is also a presumption that laws are directed to problems made manifest by experience and that discriminations

...22...,

by the Legislature are based on adequate grounds. When a matter is challenged before a Court, it may take into account, in order to sustain the presumption of constitutionality, matters of common knowledge, matters of common report, the history of the times and like considerations (vide Ram Krishna Dalmia Vs. Justice S.R. Tendulkar, A.I.R. 1958 S.C. 538 and Kerala Education Bill In re, A.I.R. 1958 S.C. 956). In the instant case, we may consider the rationale for fixing the minimum standard for qualifying in the compulsory subjects and the non-provision for re-evaluation in the Rules.

35. The Kothari Committee has observed in its report that a young person who lacks proficiency even in one of the Indian languages listed in the Eighth Schedule to the Constitution, suffers from a major lacuna and is ill-fitted for public service. English has an important place in the life of our country, being an important language for purposes of administration, specially at the All-India level.

36. Thus, an Expert Committee has highlighted the importance of a candidate possessing adequate knowledge of one of the Indian languages as well as English.

37. The Kothari Committee, however, did not suggest qualifying marks for English or Indian languages. According to the Committee, the aim of the papers in English and the Indian languages is to test the candidate's ability to read and understand serious discursive prose and to express one's ideas clearly and correctly in the language concerned. The Government decided that the papers on these compulsory subjects would be of matriculation and

...23..,

equivalent standard and will be of qualifying nature. The marks obtained in these papers will not be counted for ranking.

38. At the time of the hearing, the learned Additional Solicitor General contended that the rules have conferred discretion on the U.P.S.C. to fix the minimum qualifying marks for the compulsory subjects for the sake of flexibility. The Commission has the discretion to fix the minimum qualifying marks so as to regulate the number of candidates for the purpose of calling them for interview. As the minimum qualifying marks could be variable from examination to examination, it is not disclosed to the candidates and has been kept as a secret. However, he disclosed the secret to us at the time of the hearing. According to him, the minimum marks for the qualifying subjects have all along been only 20 per cent.

39. The statistics of the candidates who have failed in these subjects for the last three years were indicated to us during the hearing. The percentage of candidates who failed in these subjects is around 4 to 5 per cent of the candidates who qualify for admission to the Main Examination. The statistics of the candidates who failed in the Indian language/English in the examinations of 1985, 1986 and 1987 are as under:-

Year	No. of candidates failed in Indian language	No. of candidates failed in English
1985	41	327
1986	29	252
1987	73	662.

...24..,

40. It appears that the Government have decided on policy considerations not to include the marks in the compulsory papers in the competitive component. The rules were amended in 1986 to provide that Indian language will not be compulsory for candidates hailing from North-Eastern States/ Union Territories, or Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim. No such exemption is given in the case of English.

41. As regards re-valuation of answer-scripts of the candidates, the rules of the examination neither permit it nor do they prohibit it. The reason why re-valuation is not being allowed appears to be that it would cast a heavy burden on the U.P.S.C. if requests for re-valuation are received from a large number of candidates.

41A. A similar prayer for revaluation was considered by the Calcutta Bench of the Tribunal in its judgement dated on 12.2.86 in Sunjay Das Gupta Vs. Union of India. In that case, the applicant had appeared for Civil Services (Main) Examinations held by the U.P.S.C. thrice (between 1978 and 1983). In none of these examinations, the result was upto his expectations. On the first two occasions, he was offered appointment in Group 'B' Services, which he rejected. On the third occasion, he was offered an appointment in a Group 'A' Service and he accepted it. He could not get into the I.A.S. Service or some other Service of his choice as his position was low down in the merit list. He contended that his answer-papers have not been fairly and properly examined and he requested the U.P.S.C. for re-examination of his answer-papers. This was not agreed to by the U.P.S.C. Dismissing the application, this Tribunal observed that the judicial process does not exist for supporting anybody's whims or his own exaggerated self-assessment. If every

...25/-

candidate, who is unsuccessful, or who secures marks below his expectations, is allowed to plead unfair evaluation on the part of the U.P.S.C. and compel the Commission to re-evaluate the papers, the whole system of examinations by the U.P.S.C. will come to a halt.

41B. We are inclined to agree with the views expressed by the Calcutta Bench of the Tribunal.

42. In our opinion, the prescription of qualifying marks in compulsory subjects cannot be considered to be unconstitutional. The present system which has been embodied in the rules is based on the experience of holding examinations over the years and the policy and wisdom of the Government. Merely because there can be a different view of the matter, we are not inclined to strike down the rules embodying the existing system.

43. In Maharashtra State Board of Secondary Education and Others Vs. Paritosh Bhupes Kumar Sheth, A.I.R.1984 SC 1543, the Supreme Court observed as under: -

> "The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions and the department controlling them."

44. Relying upon the observations of the Supreme Court in Javid Rasul Bhatt Vs. Jammu & Kashmir, A.I.R. 1984 S.C. 873, a Division Bench of the Gujarat High Court in L.P.A. No.331/85 (Surajit Kumar Dass/Kamlesh Hari Bhai Goradia Vs.

Chairman, U.P.S.C., Union of India & Another) delivered its judgement on 14th April, 1986 wherein it has been observed thus:-

> "It is no doubt true that in academic matters the jurisdiction of the court under Article 226 of the Constitution is peripheral inasmuch as the Court does not sit in the matter as a Court of Appeal nor does it interfere unless the system of examination including that of moderation is unreasonable and arbitrary or where mala fides are alleged. It cannot be gainsaid that if in the selection of the method of examination including that of moderation two alternative courses are reasonably possible, the Court would not insist that a particular method be adopted since it would be in the ultimate analysis the agency conducting the examination which would be the best Judge as to which method should be preferred and adopted having regard to the peculiar situation before us. By and large, it would not be proper for the Courts to venture into such "inclusive thickets" like selection procedure, method of examination including that of moderation etc. when such matters are left to the expertise of the agency to which the assignment of selection is made since it is assumed that the members of such agency are men of experience and more knowledge in that behalf except where the method and/or the procedure so adopted becomes unreasonable or arbitrary or amounts to denial of equal opportunity."

45. The Supreme Court dismissed on 11.3.1987 the SLP filed against the aforesaid judgement of the Gujarat High Court.

46. In view of the above, we are not inclined to accept the contention of the applicants that the rules of the examination insofar as they confer unfettered discretion upon the U.P.S.C. to fix the minimum standard for qualifying in the compulsory subjects and insofar as they do not provide for re-evaluation, are discriminatory and violative of their fundamental rights under Article 14 of the Constitution.

47. Another relief claimed by the applicants is that the respondents should disclose the minimum standard to

...27..,

be attained in the qualifying compulsory subjects and also disclose the same in the examination rules henceforth. They have also prayed that the respondents should declare their results in General Studies and Optionals and that the same cannot be withheld on the ground that they have failed to secure the minimum qualifying marks for the compulsory subjects.

48. With regard to the above contentions, it may be stated that the rules of the examination specifically provided that the papers of General Studies and Optionals of only such candidates will be evaluated as attained such minimum standard as may be fixed by the Commission in their discretion for the qualifying papers on Indian language and English. It is not open to the applicant having appeared in the examination and failed to challenge the validity of the very rules under which the examination was held. In this context, reference may be made to the decision of the Madras High Court in O.A.O.K. Lakshmanan Chattiyar Vs. Corporation of Madras, A.I.R. 1927, Madras 130 and of the Supreme Court in M/s.Panna Lal Binjraj Vs. Union of India, A.I.R. 1957 S.C. 397 at 412, in support of the view that having taken up the examination, the candidate cannot challenge the very examination. In the Madras case, the High Court observed that where a party had submitted himself to a jurisdiction, he cannot afterwards be allowed to repudiate it. In Panna Lal Binjraj's case, the Supreme Court held that having acquiesced in the jurisdiction of the Income Tax Commissioners to whom the cases of the petitioners had been transferred, they were not entitled to invoke the jurisdiction of the Supreme Court under Article 32. The Supreme Court followed the decision in the Madras case mentioned above.

...28/-

49. In view of the aforesaid decisions, we are of the opinion that there is no infirmity in the rules of the examination and that the contention of the applicants that the respondents should disclose the minimum standard to be attained in the qualifying compulsory subjects and that they should declare their results in General Studies and Optionals, is untenable.

50. The applicants have also made a prayer that they should be allowed to appear for the interview, or alternatively, the respondents should be directed to grant them another chance to appear for the Civil Services (Main) Examination.

51. With regard to the above contention, it may be stated that the number of chances which could be availed of by a candidate has been specified in the rules of the examination. We do not see any substance in the contention that the applicants should be given one more chance to appear for interview or for the Main Examination.

52. The learned Counsel for the applicants relied upon the decision in Ashok Kumar Yadav Vs. State of Haryana, 1985(4) S.C.C. 417 at 422, in support of his contention that the candidates should be given a chance to appear for the interview. In this case, the Supreme Court considered the validity of certain selections made by the Haryana Public Service Commission to the Haryana Civil Services (Executive) and other Allied Services. While upholding the validity of the selections made, the Supreme Court observed as follows: -

> "But in view of the fact that an unduly large number of candidates were called for interview and the marks allocated in the viva voce test were exceedingly high, it is possible that some of the candidates who might have otherwise come in the Select List were left out of it, perhaps unjustifiably. We would, therefore, direct that all the candidates who had secured a minimum of 45 per cent marks in the written

...29/-

examination but who could not find entry in the Select List, should be given one more opportunity of appearing in the competitive examination which would now have to be held in accordance with the principles laid down in this judgement and this opportunity should be given to them, even though they may have passed age prescribed by the Rules for recruitment to the Haryana Civil Services (Executive Branch) and other Allied Services."

53. The decision of the Supreme Court in Ashok Kumar Yadav's case does not support the case of the applicants before us. In that case the Supreme Court came to the conclusion that 33.3% marks allocated for the viva voce test for candidates belonging to the general category was on the high side. The court held that in the future selections, the marks allocated for the viva voce test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in the case of ex-service Officers. The Supreme Court suggested the above per centage of 12.2% as it has been adopted by the U.P.S.C. for Civil Services Examinations. The Supreme Court gave directions to give one more chance to the candidates who had secured a minimum of 45% marks in the written examination in the peculiar facts and circumstances of the case before it. The Court was of the opinion that a the number of candidates to be called for interview should not exceed twice or thrice the number of vacancies to be filled. The Court referred to the same practice followed by the U.P.S.C. in this regard. However, the Haryana Public Service Commission had called 1300 candidates for interview for 119 vacancies (which represented more than 20 times the number of vacancies). This had brought about certain distortions in the process of selection. Without setting aside the selections already made, the Supreme Court gave the directions to the respondents that candidates who had secured a minimum of 45% marks in the written examination should be given one more opportunity in the future selections. Thus, the facts and circumstances of

...30/-

the case of Ashok Kumar Yadav are not on all fours with that of the applicants.

54. The learned Counsel for the applicants contended during the arguments that the Rules of the Examination in question have not been made under the proviso to Article 309 of the Constitution. It is true that the Rules notified in the Gazette of India Extraordinary dated 7th December, 1985 by the Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension do not indicate that they were so made. To our mind, this contention is hardly relevant in the present context. The petitioners have alleged infringement of their fundamental rights guaranteed under Article 14 of the Constitution. Article 14 could be invoked even if the Rules in question are in the nature of administrative instructions issued by the Government. As we have already pointed out, the applicants have not succeeded in substantiating the challenge grounded on Article 14 of the Constitution.

55. In the facts and circumstances of these cases, we are of the opinion that the applicants are not entitled to any relief prayed for by them, as in our view, the discretion conferred upon the U.P.S.C. in the matter of fixing the minimum standard for qualifying in the compulsory subjects is not arbitrary but reasonable. The absence of any provision in the rules for re- valuation cannot also be considered to be discriminatory and violative of the fundamental rights guaranteed by Article 14 of the Constitution.

56. The learned Additional Solicitor General submitted that on the receipt of the representations, the U.P.S.C. have rechecked the answer-books of the applicants and have satisfied themselves that no errors have crept in. In order to satisfy ourselves, we have also gone through the question

...31/-

papers and answer scripts of the applicants which were produced in a sealed cover before us at the conclusion of the hearing. On a comparison of the hand-writing in these answer-scripts with the hand-writing of the applicants, we are satisfied that these pertain to them. We have also satisfied ourselves that there are no errors in respect of the answer-sheets of the applicants.

57. In the result these applications are dismissed with no order as to costs. A copy of this order should be placed in each of the above mentioned six case files.

(S.P. Mukerji)
Administrative Member

(P.K. Kartha)
Vice-Chairman (Judicial)

True Copy
23/7/91

(PURAN CHAND)
Court Officer
Central Administrative Tribunal
Principal Bench Faridkot House
Copernicus Marg, New Delhi