CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(8)

DATE OF DECISION: 29.10.1990.

O.A. 1112/90

Shri Anil Kumar Gupta. .... Applicant.

Versus

Union of India & Ors. .... Respondents.

and

O.A. 1114/90

Shri A. Venu Prasad & Ors. .... Applicants.

Versus

Union of India & Ors. .... Respondents.

O.A. 1126/90

Shri Anupam Gupta. .... Applicant.

Versus

Union of India & Ors. .... Respondents.

O.A. 1687/90

Shri Suneel Kumar Pandey. .... Applicant.

Versus

Union of India & Ors. .... Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.

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

For the Applicants. .... Sarvashri A.K. Sikri and Ramji Srinivasan Counsel.

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

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

All these four Original Applications (O.As) raise similar questions of fact and law and can be decided by a common order. We have also heard these cases together.

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There are six applicants in these four Applications (O.As). All of them qualified for the Indian Forest Service in the 1988 examination. They were subsequently asked to take the foundational course training in Indira Gandhi National Forest Academy, Dehradun. Since the applicants were also candidates for the Civil Services Examination (for short 'C.S.E.'), they sought permission to appear in the said examination in the year 1989. They were permitted to abstain from the probationary training. They, however, did not succeed in the examination. Later, they joined training in the year 1990. Subsequently, they intended to appear in the 1990 C.S.E, but found a bar to do so contained in a letter dated 13.3.1989 (Annexure A1 to the OA) which reads as follows:-

> " In case you, then, elect to join the Indian Forest Service, no further opportunity will be allowed, to take the Civil Services Examination".

Aggrieved by the directions contained in the aforementioned letter which amount to a complete prohibition to appear in the Civil Services Examination, the applicants filed the present O.A. before the Principal Bench of the Tribunal. They also obtained an interim order permitting them to sit in the Preliminary Examination to be held on 10.6.1990. The Bench said -

> "In a number of applications which came before us for admission late, we had passed the interim order to the effect that the applicants in those cases may be allowed to appear in examination

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if the same was feasible. In view of this we direct that in case it is not inconvenient for the respondents holding the examination in allowing the applicant to appear in the Civil Services Preliminary Examination which is scheduled to be held on 10.6.90, the applicant may be provisionally allowed to appear in the said Examination without insisting on any pre-condition. His request for grant of necessary leave etc. for the purpose may also be considered".

The applicants sat in the preliminary examination and Sarvashri A.K. Sikri and Ramji Srinivasan, learned counsel for the applicants, stated that all of them had qualified in the preliminary examination and they now have to appear in Main Civil Services Examination, which is going to be held from 1.12.1990.

Objection is taken by the respondents to the above prayer of the applicants. A reply has been filed to the O.A. and Shri P.H. Ramchandani, Sr. Counsel for the respondents has appeared and argued the case.

One more fact needs to be stated here before we advert to the merits of the present bunch of O.As. A large number of candidates who had appeared in the Civil Services Examinations 1987, 1988 and 1989 had filed the Original Applications (O.As) before the Principal Bench of the Tribunal. The leading case was of Shri Alok Kumar Vs. Union of India & Ors. (O.A. 206/89). The judgement in the above case was pronounced on 20.8.1990. The Division Bench held -

"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 Service 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 1988 or 1989 and have succeeded, are to be given benefit of their success subject to 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 controlling authorities. Further, a direction is given to the respondents that all those candidates who have been allocated to any of the Central Services, Group'A' or I.P.S. and who appeared in Civil Services Main Examination, 1988 or 1989 under the interim orders of the Tribunal and are within the permissible age limit and have succeeded are to be given benefit of their success subject to the provisions of Rule 17 of the C.S.E. Rules. The C.A.s are dismissed on all other counts. Costs on parties".

It is also to be borne in mind that a separate competitive examination is held for recruitment to the Indian Forest Service each year. It is one of the services under the All India Services Act, 1951. It is not one of those services for which the combined Civil Services Examination is held every year. Consequently, the provisions of the Civil Services Examination Rules are not applicable to the candidates who are selected in the Indian Forest Service.

We have heard learned counsel for the parties at some length and perused the pleadings in the present case.

In the present case, the principal question is whether the applicants can be disallowed from taking the 1990 Civil Services Examination. Can they be barred from appearing in the said examination which is to be held from 1.12.1990?

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As already noticed, the provisions of the Civil Services Examination Rules are not made applicable to the Indian Forest Service. The only paper on which reliance is placed by both the parties is a letter (Annexure A1 to the O.A.) dated 13.3.1989. This letter was issued by Shri Nand Lal, Deputy Secretary, Ministry of Environment & Forests, New Delhi. Paragraphs 4 and 5 of this letter which are relevant are produced below:-

"4. While the above information covers the normal cases, kindly note that in case you are a candidate in the Civil Services Examination 1989 and intend appearing in the ensuing Preliminary Examinations, you will not be permitted to join the Indian Forest Service, this year. In such case, you would have to wait to join the Indian Forest Service till the session commencing in the year 1990 when, depending on the result of your performance in the Civil Services Examination, you would have the option to join either the Civil Services, or the Indian Forest Service. In case you, then, elect to join the Indian Forest Service, no further opportunity will be allowed, to take the Civil Services Examination.

5. Action is, in the meanwhile, being taken on various counts in the matter of determination of your suitability for appointment to the Indian Forest Service. In the meanwhile, it is requested that you may please inform us immediately as to whether you are a candidate in the ensuing Civil Services Examination, 1989."

The contentions of the applicant's learned counsel were that the contents of the above paragraphs of the aforesaid letter contain certain directions and embargos which were not on the basis of any Rules made for the

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recruitment or in the service condition of the officers in the Indian Forest Service. No such rule exists prohibiting the successful candidates to the Indian Forest Service from taking the Civil Services Examination. The contents of the above letter restrict the applicants from taking the Civil Services Examination in case the applicants join the Indian Forest Service. Learned counsel contended that this places unreasonable restrictions on the applicants for bettering their career prospects as it prohibits the applicants from taking the Civil Services Examination, in 1990. It was further argued that the letter dated 2.1.1989 (Annexure 2 to the O.A. in the case of Alok Kumar Vs. Union of India & Ors., O.A. No. 206/89) issued by the Cadre Controlling Authority, Ministry of Railways(Railway Board) there was also an embargo that if a candidate wants to join probationary training along with 1987 batch, he shall not be eligible for consideration for appointment on the basis of subsequent C.S.E. The above paragraph of the letter dated 2.1.1989 was struck down by the Division Bench in the case of Alok Kumar. It was held by the Division Bench that the condition placed by the letter dated 2.1.1989 was a new condition which was not indicated in the 2nd proviso to Rule 4 of the Civil Services Examination Rules. It was held there -

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"It will thus be seen that the letter dated 2.1.89 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".

The condition which has been placed against the applicants in the O.A. No. 206/89, by the 2nd proviso to Rule 4 of the C.S.E. Rules was made under Article 73 of the Constitution of India. In other words, there was in existence a Rule on the basis of which certain embargos or conditions were imposed on those who succeeded in the examination and were allocated to one of the Services. However, what was beyond the ambit of the 2nd proviso to Rule 4 of the C.S.E. Rules was struck down.

Learned counsel urged that the prohibition contained in the letter dated 13.3.1989 is that in case the applicants in the present O.As joint the Indian Forest Service, they would not be granted an opportunity to take the Civil Services Examination. The new condition was imposed on the applicants for the first time after they had succeeded in the Indian Forest Service Examination. Learned counsel further urged that the condition now being placed as a bar against the applicants in paragraph 4 of the letter dated 13.3.1989 was not on the basis of any Rule in existence in the service conditions of the Indian Forest Service and was thus beyond the competence of the

Cadre Controlling Authority from imposing new terms and conditions on the applicants. He, therefore, prayed that the embargo viz., "in case you, then, elect to join the Indian Forest Service, no further opportunity will be allowed to take the Civil Services Examination" was bad in law and liable to be struck down.

Shri Ramchandani appearing for the respondents contended that the aforementioned condition contained in paragraph 4 of the letter dated 13.3.1989 was a condition of service and the respondents were competent to impose any condition before a person joined the Indian Forest Service. The Cadre Controlling Authority could certainly impose conditions of service on successful candidates and it was open to such candidates either to accept or decline the appointment in the Indian Forest Service. He further contended that the Rule contained in paragraph 4 of the above letter was more or less on the same lines as 2nd proviso to Rule 4 in the C.S.E. Rules. Since the 2nd proviso to Rule 4 has been held valid, the above rule contained in the 4th paragraph of the letter dated 13.3.1989 should also be held to be valid and binding on successful candidates who joined the Indian Forest Service. Learned counsel further contended that the conditions which were mentioned in the letter dated 13.3.1989 were known to the candidates and they had accepted it by joining the service. They were, thus, bound by the same and it was not open for them to challenge the same.

The last sentence of the paragraph 4 of the letter dated 13.3.1989 is said to be a Rule pertaining to service condition who joined the Indian Forest Service. Whether it is a rule or not is open to a great doubt. In any event it is a non- statutory order. It is not a Rule made under Article 309 of the Constitution of India. It is only contained

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in a letter of appointment. A question arises whether such conditions can be laid down for the first time after a candidate is selected to a service. Is he not entitled to know the terms and conditions of the service before he appears in the Indian Forest Service Examination? Should he not know what the terms and conditions are including restrictions? The condition of service does not anywhere indicate any rule of the nature as is contained in paragraph 4 of the letter dated 13.3.1989. The terms and conditions of the service should be known to all concerned. The restrictions cannot be imposed at any time. Conditions imposed at the time of appointment cannot spell out new conditions which are not contained in the service rule. It is necessary that the existing service Rules are suitably amended and the restrictive clauses clearly spelt out.

This has further to be considered in the background on the fact that the Indian Forest Service is not one of those services for which the Civil Services Examination is held. It has been noticed in the judgment of ALOK KUMAR that the second proviso to Rule 4 of the C.S.E. Rules has no application whatsoever to unsuccessful candidates in the examination and even to those who have succeeded in Group 'B' of Civil Service. The Indian Forest Service is not shown as one of the Services in Group 'A' or Group 'B' of Civil Services.

The restrictions contained in Civil Services

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Examination Rules will have no application on those candidates who are selected in the Indian Forest Service. That is entirely a separate service and it has to be governed by its own Rules. Since there are no rules in respect of what is contained in the last sentence of paragraph 4 of the letter dated 13.3.1989, that condition cannot be imposed on those who joined the Indian Forest Service as officers.

If it is thought that there should be some restrictions, it is open for the respondents to make suitable rules which would be applicable in future examinations for the recruitment to the Indian Forest Service.

We are further of the view that the above sentence in the paragraph 4 of the letter cannot be held to be a law made under Article 73 of the Constitution.

For the reasons given above we are of the view that the applicants have been able to make out a case for interference. The applicants have become eligible to sit in the 1990 Civil Services Examination as the maximum age limit has been enhanced as a one time relaxation for this year. They are not affected by the restrictions contained in the 2nd proviso to Rule 4 of the Civil Services Examination Rules. Consequently, they will be held eligible to sit in the 1990 Civil Service Examination. Since the applicants have already succeeded in the prelims, there will be no bar

for the applicants from sitting in the 1990 Civil Services (Main) Examination in December, 1990.

In the result all the four Original Applications (O.As) are allowed and the last sentence of paragraph 4 of the letter dated 13.3.1989 is held to be ineffective as far as for the applicants in those O.As are concerned. However, we leave the parties to bear their own costs.

A copy of this judgement shall be placed on the other connected files.

(B.C. MATHUR)
VICE-CHAIRMAN (A)

(AMITAV BANERJI)
CHAIRMAN

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Dt.....

Section Officer
Central Administrative Tribunal
Principal Bench, New Delhi

Central Administrative Tribunal
New Delhi