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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1256/90  
~~XXXX~~

198

DATE OF DECISION 17.12.1990.

M. Ramachandran & anr. Applicant (s)

Shri J.K. Bali Advocate for the Applicant (s)

Versus

Union of India & anr. Respondent (s)

Shri N.S. Mehta, Sr. Standing Counsel.  
Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

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

*Amitav*  
(AMITAV BANERJI)  
CHAIRMAN  
17.12.1990.

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.... Applicants.

VERSUS

Union of India & anr.

.... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.  
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicants.

.... Shri J.K. Bali,  
Counsel.

For the Respondents.

.... Shri N.S. Mehta,  
Sr. Standing Counsel.

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

A short question that arises in this Application is what should be the crucial date for application of the upper age limit for the Grade 'C' Stenographers' Examination, 1989. The contention is that they are eligible to appear in the Grade 'C' Stenographers Examination, 1989, being held on 22.7.1990.

The facts in brief are that the two applicants were candidates seeking admission to the Grade 'C' Stenographers Examination (hereinafter referred to as the 'Grade Examination') which is an annual examination conducted on behalf of the first Respondent, Union of India through the Secretary, Department of Personnel & Training, North Block, Central Secretariat, New Delhi for vacancies of Grade 'C' Stenographers in the scale of Rs.1400-2600 arising in the year in various Services/Offices of the Central Government. It is stated that upto the year 1988, the examination was conducted by the Union Public Service Commission (U.P.S.C.). The upper age limit for the examination

conducted by the U.P.S.C. was 25 years and the crucial date was fixed as 1st of January of the year to which the examination is related. The clause regarding age for the Stenographer's Examination, 1988 read as follows:

"6.(A) A candidate for admission to this examination must have attained the age of 18 years and must not have attained the age of 25 years on 1st January, 1988 i.e. he must have been born not earlier than 2nd January, 1963 and not later than 1st January, 1970.

Each candidate could avail of three chances."

The first applicant could not succeed in the 1988 Examination. The second applicant had not appeared in 1988 Examination but was preparing for the 1989 examination. Since their date of birth was in May 1964, both of them claimed that they had one more chance to appear in the examination for the year 1989, which would be their last chance.

The examination for the year 1989 could not be held in that year, instead the notice of the examination for the year 1989 had been issued in April, 1989 announcing that the examination will be held on 22.7.1990. The relevant portion of the notice was marked as Annexure A-1 to the O.A. The applicants state that they were surprised to see that the crucial date for the upper age limit had been changed in the notice issued by the Staff Selection Commission. The new provision was that the upper age limit of 25 years would be with reference to <sup>the</sup> cut-off date 1st August, 1989 instead of earlier practice of having the cut-off date as 1st January of the year to which the examination relates. The relevant portion of the notice read as follows:-

"4. AGE(a) A candidate for this examination must have attained the age of 18 years and must not have attained the age of 25 years as on 1st August, 1989 i.e. he/she must have been born not earlier than 2nd August, 1964 and not later than 1st August, 1971".

Their grievance is that it mentioned that they should not have attained the age of 25 years as on 1st August, 1989 i.e. he must have been born not earlier than 2nd August, 1964. Both the applicants filed representations to the Chairman and indicated therein their date of birth. The first applicant mentioned his date of birth as 25.5.1964. He, therefore, realised that he was beyond the age of 25 years by a couple of months only. On behalf of the second respondent, Staff Selection Commission, a Section Officer replied to the applicant on 3.5.1990 stating that -

"...as per the policy announced by the Government and adopted by this Commission, the crucial date for determining age limit is fixed as on 1st January, for the examinations which are held by the Commission in the first half of the year and as on 1st August for the examinations, which are held in the second half of the year. Since the Grade 'C' Stenographers Examinations, 1989 is scheduled to be held on 22.7.90, the crucial date for attaining age-limit has already been fixed as on 1.8.1989. In view of this, it is regretted that his request for changing the crucial date for determining age-limit for the above mentioned examination cannot be acceded to".

There was a representation to the Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions, New Delhi to give appropriate instructions to Staff Selection Commission to cut-off date of the year to which the examination relates i.e. 1.1.1989.

It was urged both in the Application and by learned counsel that the policy letter relied upon by the Staff Selection Commission for fixing the crucial date for the upper age limit as 1.8.1989 was based on the memorandum of 4.12.1979 of the Department of Personnel and Administrative Reforms. Reference was made to the paragraph 2 of the above office Memorandum dated 4.12.1979 (Annexure A-5). Paragraph 2 reads as under:

"2. The question as to the crucial date that should be prescribed for competitions held for recruitment by the UPSC/SSC etc. has been carefully considered in consultation with the UPSC and it has been decided that the crucial date should be :

- (i) 1st day of January of the year in which the examination is held if the examination is held in the first half of the year; and
- (ii) 1st day of August of the year in which the examination is held, if the examination is held in the later half of the year.

The argument is that the office memorandum does not legislate for a contingency where the examination for a particular year is not held in that year but gets postponed to the next year. Consequently, it was urged that there was no justification for making a departure from this established precedent and seeking to rely on the Department of Personnel Office Memorandum dated 4.12.1979. The applicants further state that the second respondent had rejected the representations and the first respondent had not replied. The O.A. was filed on 25.6.1990. As there was urgency in the matter, it was taken up for hearing.

We have heard learned counsel for the applicants at some length and we are not inclined to interfere in the present case. The challenge in this case is to a policy decision of the Government. In Annexure A-5, it is clearly indicated that the change had been made after consulting the U.P.S.C. but fixed the crucial date as the first day of January of the year in which the examination is held, if the examination is held in the first half of the year and the 1st day of August of the year in which the examination is held, if the examination is held in the later half of the year. This is not a decision taken by the Department of Personnel on its own. The making of the policy preceded consultation with the U.P.S.C. The U.P.S.C. had agreed to the

change. As a matter of fact, the paragraph 2 says-

"The question as to the crucial date that should be prescribed for competitive examinations held for recruitment by the UPSC/SSC etc. has been carefully considered in consultation with the U.P.S.C....."

It was, therefore, evident not only for the SSC but also for the UPSC examination that the change had been made. Normally, policy decisions cannot be challenged. It is well settled that the courts or Tribunal do not interfere with the policy decision of the Government. In a recent decision of the Supreme Court in the case of MALIKARJUNA RAO & ORS. Vs. STATE OF A.P. & ORS. (1990 (3) JT P-34), their Lordships quoted from an earlier Supreme Court's decision and observed that the court sits in judgement on the action of a co-ordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua (Emphasis supplied) any matter which under the Constitution lies within the sphere of legislature or executive'.

There is no dispute that the office memorandum is a policy decision which was within the competence of the executive branch of the Government to lay down. Consequently, it is not open to this Tribunal to direct or advise the executive in matters of policy decision which affects a large number of persons and not merely some individuals. Policy decisions are made from time to time to meet certain situations. It is not open to a Tribunal which is making a judicial review of administrative action to sit and consider the matter as an Appellate Forum.

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We have heard learned counsel for the parties and we have also perused the material on the record. We are not satisfied that the applicants have any case for the relief they have prayed in this O.A. Consequently, this O.A. fails and is dismissed, but there will be no order as to costs.

*I.K. Rasgotra*  
(I.K. RASGOTRA) 27/90  
MEMBER (A)

*Amitav Banerji* 17/12/90  
(AMITAV BANERJI)  
CHAIRMAN

SRD