

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1735/90
T.A. No.

199

DATE OF DECISION 21.12.1990.

<u>Shri B.L. Sharma & Others</u>	Petitioner
<u>Shri R.K. Sharma</u>	Advocate for the Petitioner(s)
Versus	
<u>Union Public Service Commission & Another</u>	Respondent
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRABORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGMENT(of the Bench delivered by Hon'ble Mr. P.K. KARTHA,
Vice Chairman(J))

The applicants who had appeared in the Civil Services (Preliminary) Examination, 1990, but failed to qualify in the same, filed this application under Section 19 of the Administrative Tribunals Act, 1935 praying for the following reliefs:-

(i) Direction be issued that the exams conducted by the respondents No.1 of the Civil Services (Preliminary) Examination 1990 held on 10th of June, 1990 for recruitment of IAS, IPS, IFS and other allied services may be declared as null and void, and/or in the alternative the answer sheets of the petitioners should be re-examined.

in presence of the Court Officers and in case the petitioners are declared successful, they may be allowed to appear in the main examination and a minimum of three months time for the preparation of the main examination may also be granted.

2. By way of interim relief, they have prayed as follows:-

"It is respectfully prayed that an interim injunction may kindly be granted in favour of the petitioners, thereby the respondents may be restrained from holding the main Civil Services Examination which are scheduled to be held on 1st of November, 1990, till the disposal of the present petition, in alternative, the petitioner may be allowed to appear in the Civil Service Main Examination and the petitioners may be given minimum of three months time, in view of voluminous nature of the syllabus".

3. The Preliminary Examination was held on 10.6.1990 and the results were declared on 3.8.1990. As against 90,000 candidates who appealed for the said Examination held in 1989, ~~XXXXX~~ as many as 1,58,000 appeared in 1990. About 11,000 candidates have been declared successful at the Preliminary Examination in 1990.

4. As the main Civil Services Examination is scheduled to be held shortly, we felt that the application should be disposed of at the admission stage itself. We proceed to do so..

5. The Preliminary Examination consists of two papers -

Part I- General studies with 150 marks and Part II consisting of one subject to be selected from the list of optional subjects with 300 marks. Candidates who obtain such minimum qualifying marks in the Preliminary Examination as may be fixed by the UPSC in their discretion shall be admitted to the Main Examination. For deciding the minimum qualifying marks, the aggregate marks secured by a candidate in the two papers are taken into consideration. The cut-off mark is applied uniformly to all the candidates on the aggregate marks in the two papers. This procedure has been in vogue since 1979.

6. The Preliminary Examination is of the objective type in which the response of the candidate to the objective type questions are to be marked by himself without the help of any other person. Elaborate instructions in regard to the holding of the Examinations have been issued by the U.P.S.C. to the candidates, the invigilators and others connected with it. These include seating plan, the manner of distribution of Test Booklets, how to fill the Answer Sheet in the Examination Hall etc. The Test Booklets are issued in four series - A,B,C and D with a view to eliminate chances of copying. Seating plan of the candidates has also been arranged accordingly. The candidate is required to write his roll number in the space provided in the Test Booklet and Answer Sheet so that they tally. The valuation of the Answer Sheet is done by means of computer.

7. The applicants have contended that the series of the Booklets provided to them in the morning session and in the afternoon session were different, that in view of such difference, the evaluation of the Answer Sheets has become defective, thereby giving wrong results, that the cut off marks for all the optional subjects have been kept different which is discriminatory, that the procedure seating ~~plan~~ regarding plan was not followed in all the centres and that moderation or differential cut off marks for different subjects is unjustified.

8. The UPSC have denied the aforesaid contentions in their counter-affidavit. According to them, multiple series of Test Booklet was introduced to minimise the chances of copying by the candidates during the examination. They have contended that no candidate has any right or claim for a particular series of Test Booklet, that each candidate's answers are evaluated having regard to the series given to him, that the very idea underlying the introduction of multiple series of Test Booklet is that no two candidates seated side by side either vertically or horizontally get the same series of Test Booklets so that there is no scope for copying at the examination, that the answer sheet is matched and correlated with the correct series of Test Booklet, that all answer sheets are evaluated with reference to the key (solution) of the relevant Test Booklet series and that as long as the candidate indicates correctly the test booklet series in the relevant portion of the answer sheet

xxxxxx there is no scope for the application of a wrong series of solution in evaluating the answer sheets.

9. With regard to the procedure of moderation, the respondents have stated that it ensures that no particular subject gets precedence over any other and is, therefore, fair and equitable to candidates offering different optional subjects. This procedure has been adopted for the examinations since 1979.

10. Some of the applicants had qualified in the Civil Services (Preliminary) Examination on three earlier occasions but they did not qualify in the 1990 examination. Adverting to this, the respondents have stated that the same principles and procedures had been followed earlier also, indicating that there is no illegality or arbitrariness in the system of holding the examination.

11. The respondents have stated that the past achievements of the applicants are not material. The 1990 examination was much more competitive than the examinations held in the past, having regard to the increase in the number of candidates. The number of candidates admitted to the Main Examination on the basis of the results of the Preliminary Examination will be approximately 12 to 13 times the approximate number of vacancies available in each year and this is indicated in the Rules for the examination.

12. The respondents have stated that the Answer Sheets and

the result of the applicants could be shown to us, if so desired. We have refrained from doing so. The applicants had submitted representations to the UPSC who have informed them that their answer scripts have been rechecked and that it has been verified that there is no mistake of any kind.

We would prefer to leave the matter at ^{that} for the reasons indicated below.

13. In 1974, the UPSC had constituted a Committee called 'Committee on Recruitment Policy and Selection Methods' under the Chairmanship of Dr. D.S. Kothari to examine and report about the system of recruitment to All India and Central Services, Class I and Class II followed by the UPSC and to recommend changes in the scheme of examination and the selection method. One of the recommendations of the Committee was the holding of Civil Services Preliminary Examination (Objective Type) for the selection of candidates for the Main Examination. This Tribunal had referred to it, along with the rules of examination, in Brij Kishore Dubey and Others Vs. Union of India & Another, 1988(8) ATC 853 at 864-865.

14. In Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupesh Kumar Sheth, 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."

15. Relying upon the observations of the Supreme Court in *Javid Rasool Bhat Vs. State of Jammu & Kashmir*, a Division Bench of the Gujarat High Court in *Surajit Kumar Dass/Kamlesh Hari Bhai Goradia Vs. Chairman, UPSC*, Union of India delivered its judgment on 14.4.1986 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.

16. The Supreme Court dismissed on 11.3.1987 the SLP filed against the aforesaid judgment of the Gujarat High Court.

17. Under Article 320(3)(a) and (b), it is the duty of the Union Public Service Commission to consider and to get itself satisfied as to which of the candidates has fulfilled the requisite qualifications specified in the advertisement (Vide *M.C. Bindal Vs. R.C. Singh*, 1988(2)

SCALE 1542 at 1545). *Ch*

18. The UPSC is a body of persons constituted under the Constitution to advise the Government with regard to selection of candidates. Their selection is not justiciable unless there is a violation of any statutory rule (Vide Satbir Singh Dahiya Vs. Union of India, 1990(1) SLJ(CAT) 167 at 172).

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19. There is also force in the contention of the respondent that it is not open to the applicants having appeared in the examination and failed, to challenge the validity of the very rules under which the examination was held. In this context, this Tribunal observed in the case of Brij Kishore Dubey and Others as follows:-

" 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 Chattiavar Vs. Corporation of Madras, and of the Supreme Court in M/s Panna Lal Binjraj Vs. Union of India, 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 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".

20. We reiterate the same view.

21. In the conspectus of the facts and circumstances

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of the case, we are of the opinion that the applicants are not entitled to the reliefs sought in the present application and the same is dismissed at the admission stage itself.

There will be no order as to costs.

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(D.K. CHAKRAVORTY)

MEMBER (A) 20/12/1990

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20/12/90

(P.K. KARTIK)
VICE CHAIRMAN (S)