CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.414/1990. Date of decision: October 29, 1990.

Shri Upendra Singh ... Applicant.

Vs.

Union of India & Ors. ... Respondents.

O.A. No.419/1990.

Shri Tarun Vir Chaudhury
and Another ... Applicants.

Vs.

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 .. Shri Ashok Agrwaal, counsel.

For the respondents .. Shri P.H. Ramchandani, Senior counsel.

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

Similar questions of fact and law arise in these two O.As and they were heard together and can be conveniently decided by a common judgment. Shri Upendra Singh is the sole applicant in O.A. No.414/90 filed on 12.3.1990. He has prayed for quashing the second proviso to Rule 4 of the Civil Services Examination Rules 1990 (C.S.E. Rules) as being arbitrary, discriminatory and violative of the fundamental rights of the applicant guaranteed under Articles 14, 16 and 19 of the Constitution. Another prayer is to direct the respondents to permit

the applicant to appear in the 1990 C.S.E. and on that basis be considered for appointment to an appropriate service without any disability as to his current employment. The applicant sat in the 1987 C.S.E. He qualified the same and was selected for the Central Trade Service, a Group 'A' Central Service. He was eligible to appear in the 1988 C.S.E. which he did but could not succeed. In the meantime, the Government of India amended the eligibility condition for appearing in the 1990 C.S.E. as a result of which the applicant claims that he has become eligible to appear in the said examination. He has challenged the conditions imposed in the second proviso to Rule 4 of the C.S.E. Rules in this O.A.

In O.A. No.419/1990, Shri Tarun Vir Chaudhury and Shri V.Murugaiyan appeared in the 1988 C.S.E. and succeeded and were appointed to the Indian P & T Accounts and Finance Service, Group 'A'. By that time they had exhausted all their attempts. However, the Government of India amended the eligibility conditions for appearing in the said examination in December, 1989 and the applicants claimed that they are entitled to sit in the 1990 C.S.E. They also claimed that the second proviso to Rule 4 of the C.S.E. Rules is discriminatory and violative of the fundamental rights of the applicants guaranteed under Articles 14, 16 and 19 of the Constitution. In particular, they say that the impugned proviso is violative of the fundamental rights of the applicants guaranteed under Article 19(1)(g). They have claimed

that the second proviso to Rule 4 of the C.S.E. Rules requires them to resign from their present service before appearing in the next C.S.E. They have filed the present O.A. on 12.3.1990.

In both the O.As, the challenge is to the validity of the second proviso to Rule 4 of the C.S.E. Rules. It may be recalled that the said proviso was introduced for the first time in December, 1986 for the 1987 C.S.E. The validity of the said proviso along with the provisions of Rule 17 of the C.S.E. Rules was challenged and a large number of applicants had filed Applications, 62 of them were decided by a common judgment by this Bench in the case of SHRI ALOK KUMAR Vs. U.O.I. & ORS (OA No.206/1989) on 20.8.1990, wherein it was held that the said provisions were valid. On that ground, these two O.As also merited to be dismissed but the learned counsel for the applicants stated that the challenge is not on the grounds which have been raised in those O.As which have been decided on 20.8.1990 but pertain to an entirely different aspect of the matter viz., the challenge is confined to Article 19(1)(g) of the Constitution. The argument is that it is the fundamental right of the applicants to practise any profession or to carry on any occupation, trade or business. The State or its Executive Officers cannot interfere with the rights of others unless they point out to some specific rule or law which authorises their acts. They have further contended that the second proviso to Rule 4 of the C.S.E. Rules has been held to

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be enacted under the provisions of Article 73 of the Constitution of India but that would not be valid unless the Executive Authority acts on the basis of any legislation. In other words, it was not open to the respondents to make rule restricting the right of appearing in an open competition merely on the basis that the Parliament has the power to legislate in regard to the subject on which the executive order was issued.

Reference was made to the case of STATE OF MADHYA PRADESH Vs. THAKUR BHARAT SINGH (AIR 1967 SC 1170) where it was held:

> "Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority."

Reference was made to the case of M/S. BISHAMBER DAYAL CHANDRA MOHAN Vs. STATE OF U.P. (AIR 1982 SC 33) and to the case of SATWANT SINGH SAWHNEY Vs. DR. RAMARATHNAM, ASSISTANT PASSPORT OFFICER, NEW DELHI (AIR 1967 SC 1836).

Reference was also made to the decision of the Kerala High Court in the case of V. GOPINATHAN Vs. THE STATE OF KERALA (AIR 1964 KERALA 227) where the learned Single Judge observed that by the mere fact that a person has entered Government service does not mean that he is denied the fundamental rights guaranteed to every citizen. The learned Single Judge further held in that case that although the petitioner who was Government servant of Kerala had taken part in political jatha

and canvassed votes for a candidate, the proceedings against him had to be cancelled on the short ground that on the material dates, the Government Servants' Conduct Rules, 1960 were not in force and the Government Servants' Conduct Rules, 1950 which was in force was not 'law' and as such not competent to impose restrictions on fundamental rights.

Another argument of the learned counsel for the applicants was that in service, he cannot be barred from appearing in an examination unless there is a law barring him to do so. Secondly, no such rule could stand if it contravened the provisions of Article 19 of the Constitution.

Shri P.H.Ramchandani appearing for the respondents pointed out that there is no fundamental right to the Government servant to appear in an examination for he is governed by the terms and conditions of service rules applicable to him. Secondly, the second proviso to Rule 4 of the C.S.E. Rules was a law within the meaning of Cl.(3)(a) of Article 13 of the Constitution which defines 'Law'. Thirdly, the said Rule was made under Article 73 of the Constitution and has the force of law and has been held valid by this very Division Bench recently. He contended that once a Division Bench has taken the view that the second proviso to Rule 4 of the C.S.E. Rules had been held valid, it is not open to challenge again on a point which was available but had not been urged

before the Bench hearing the earlier group of cases.

We have heard learned counsel for the parties. A large number of applicants had filed O.As. before this Bench and before other Benches of the Tribunal. They were grouped together and heard at length. They were decided by a common judgment on 20.8.1990 upholding the validity of the second proviso to Rule 4 as well as Rule 17 of the C.S.E. Rules. It was further held that the said Rule had been made in exercise of the executive power of the Union under Article 73 of the Constitution. The Division Bench also held that the applicants would be entitled to one more chance to better their career prospects by appearing in the next C.S.E.

In OA 414/1990 Shri Upendra Singh had availed of the next chance in the C.S.E. 1988 but did not succeed. Consequently, having exhausted all his chances, he was not entitled to appear in any further C.S.E. i.e. 1989 C.S.E. The two applicants in OA 419/1990 had their last chance availed in 1988 and they were not eligible to take the next C.S.E. even in 1989.

It is, therefore, evident that all these three applicants had exhausted their next chance which had been held to be available to a candidate who had been selected and appointed to either IPS or to Central Services, Group 'A'. According to the judgment in the case of ALOK KUMAR (supra), none of these applicants was

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eligible to appear in further C.S.Es.

It is true that the Government of India decided to raise the age limit to 31 years in the 1990 C.S.E. It was open for those who had not appeared in the C.S.Es earlier or had not succeeded in the examination so as to be allocated to a service or had been allocated to a Central Service, Group 'B'. In our opinion, any candidate who has succeeded in the C.S.E. and has been allocated to a service, his optionswere limited. He could appear in the next C.S.E. if he was eligible, including the eligibility on the ground of age. In the present two O.As, the applicants had either taken their chance and not succeeded or had exhausted their age limit so as to become ineligible. It is also evident that none of these three applicants was eligible to appear in the 1989 C.S.E. They now claim that they are eligible to take 1990 C.S.E. for the age limit has been enhanced to 31 years as a one time relaxation. In view of the fact that the second proviso to Rule 4 of the C.S.E. Rules has been held to be valid, we do not see how the applicants can become eligible to appear in the 1990 C.S.E. when they have exhausted all their attempts. The second proviso to Rule 4 of the C.S.E. Rules gives them an entitlement to appear in the next C.S.E. which can only be restricted strictly to the next C.S.E. and no other. In this view of the matter, we are of the opinion that the applicants are not entitled

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to any order directing the respondents to allow them to take the 1990 C.S.E.

The contention of the learned counsel for the applicants that unless there was a legislation, the executive order passed under Art.73 of the Constitution would not take the place of legislation. In the case of ALOK KUMAR (supra), we have extensively dealt with the provisions of Article 73 of the Constitution and it is not necessary to reiterate the same in this order. We have held that the second proviso to Rule 4 of the C.S.E. Rules has been made and will govern the service conditions of all those candidates who are selected and appointed to any of the services governed by the said rules. The applicants are also governed by the said rules and the provisions of the C.S.E. Rules apply to them also.

The further contention of the learned counsel for the applicants that the second proviso to Rule 4 of the C.S.E. Rules restricts the rights of the applicants to appear in the subsequent C.S.E. and infringes the provisions of Art. 19(1)(g) of the Constitution. What is guaranteed by Art. 19(1)(g) is to carry on an occupation of one's choice and not the right to hold a particular post under a contract of employment. Although he may have other remedy under the law, yet an employee cannot complain of the violation of Art. 19(1)(g) merely because he has lost his job owing to closure or retrenchment or abolition of that post; in the case of Government service, although

he may have lost his job, yet he is not prevented to carry on another job of his choice.

In the present case, it is not a loss of service but of having an opportunity to appear in an examination when the person is already holding a post in the service of the Central Government. He would be governed by the service conditions and the Government service conduct rules. Learned counsel contended that the applicants had fundamental right to appear in a competitive examination. This is not tenable. A person who is not in Government service, if eligible, can certainly appear in a competitive examination but once a person enters the Government service, he is governed by the rules of the service. The Government servant cannot be allowed to continue in government service and yet appear for other examinations unless the rule permits or unless he obtained permission to do so. There is no question of the applicants having anyfundamental right in this respect. Even the fundamental right under Art.19(1)(g) is controlled by the provisions of Article 19(6) of the Constitution. Restrictions can be placed, but they have to be reasonable. The State can make laws, rules to impose restrictions which must pass the test of being reasonable. We have already interpreted the Rule 4 and its provisions and we are of the view that

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the contentions raised by the learned counsel have no merits.

In the result, therefore, these two O.As are dismissed. There will be no order as to costs.

29.10.90

(B.C. MATHUR)
VICE-CHAIRMAN (A)
29.10.1990.

(AMITAV BANERJI)
CHAIRMAN
29.10.1990.

SKS