

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(7)

OA NO.601/1990

DATE OF DECISION: 25.9.1991.

SHRI SANJAY KUMAR PANDA

...APPLICANT

VERSUS

U.P.S.C.

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI A.K. BEHRA, COUNSEL

FOR THE RESPONDENTS

SHRI P.H. RAMCHANDANI, SENIOR.  
COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE  
MR. I.K. RASGOTRA, MEMBER (A))

Shri Sanjay Kumar Panda, the applicant has filed this Original Application on 30.3.1990, under Section 19 of the Administrative Tribunals Act, 1985 against order No.F.1.-11.1989-EI(B), Rule 4 (iv) of the Notification dated 30th December, 1989.

2. Briefly the facts of the case are that the applicant appeared in the Civil Services Examination (CSE for short), held by the Union Public Service Commission (UPSC for short) in the years 1983, 1984 and 1986. He was selected for the Central Services Group 'A' in the competitive examination held in 1986 and joined the Indian Information Service on 24.8.1987. He has thus exhausted all the three chances that were available to the candidates for CSE under the CSE Rules. The applicant, however, became eligible to make the fourth attempt in terms of the Notification for the CSE, 1990. The eligibility conferred on the applicant to make the fourth attempt was subject to other provisions

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of the CSE, 1990 Rules, including Rule 4 introduced vide Notification No.13016/4/85 AIS (I) dated 13.12.1986. The applicant was, therefore, required to resign from service before he could be admitted to the CSE, 1990 and subject to his fulfilling other conditions of eligibility. As the validity of the second proviso to Rule 4 of CSE Rules was under challenge in the case of Alok Kumar v. UOI & Ors. and a batch of similar other Original Applications the applicant approached the Tribunal, seeking an interim order permitting him to appear in CSE, 1990. The matter was heard by the Tribunal and vide interim order dated 6.4.1990 directed the respondents "to provisionally allow the applicant to appear in the Civil Services Examination without insisting on his resigning from service."

In the meantime, the Tribunal vide its judgement delivered on 20.8.1990 in OA-206/89 Alok Kumar vs. UOI & Ors. and 61 other OAs, upholding the validity of Rule 4 and rendered its conclusions as under:-

"Having considered the matter in the above bunch of cases, we have come to the following conclusions:-

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.

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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 Services 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 the 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 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 have appeared in Civil Services Main Examination,

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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 O.As are dismissed on all other counts."

As the validity of Rule-4 CSE, 1990 was upheld by the Tribunal the final relief prayed for by the applicant viz. to quash the requirement that a candidate who accepts allocation to a service and is appointed to service, shall not be eligible to appear again in the Civil Services Examination unless he has first resigned from the service could not become available to the applicant.

However, aggrieved by the judgement of the Tribunal a number of civil appeals were filed by special leave under Article 136 of the Constitution of India against the judgement dated 20.8.1990 in the Hon'ble Supreme Court. The matter was heard by the Hon'ble Supreme Court and their Lordships in their judgement dated 13.9.1991 have held the impugned 2nd proviso to Rule 4 of the CSE Rules, introduced vide Notification No.13016/4/86-AIS (I) dated 13.12.1986 as legally and constitutionally valid and sustainable in law. Normally this would have settled the matter agitated in OA before us and the application would be liable to be dismissed. However, the matter came up for final hearing on 6.9.1991, the judgement of the Hon'ble Supreme Court dated 13.9.1991 was not available to us.

In the course of the hearing the learned counsel for the applicant submitted that the applicant is not covered by the said proviso to Rule-4 as the restrictions imposed vide 2nd proviso to Rule-4 were introduced on 13.12.1986 and that the said proviso to Rule-4 does not have retrospective effect. Accordingly, the applicant does not come

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within the mischief of Rule-4 of CSE Rules. The respondents also admit this position. We are, however, not impressed by this plea, as the applicant in fact had appeared in the CSE, 1990 when 2nd proviso to Rule-4 was in force and its validity had been upheld by the Tribunal in Alok Kumar (supra's) case. The fact that he has accepted appointment on the basis of 1986 examination prior to the introduction of said proviso to Rule-4 does not make him immune from its implication, as the examination in question was held when the said proviso was in operation. In this view of the matter we felt ordinarily there was no case for granting any relief to the applicant. After hearing the matter the judgement was reserved. In the meantime, conclusions of the Tribunal arrived at in its judgement dated 20.8.1990 have since been confirmed by the Hon'ble Supreme Court. However, the Hon'ble Supreme Court has made a special dispensation by giving a specific direction to the respondents inclusive of the UPSC in pursuance of their order dated 7.12.1990 that permitted certain applicants who fall under conclusion 5 (ii) of the Tribunal's judgement dated 20.8.1990. The relevant part of the Hon'ble Supreme Court's order is reproduced below:-

"Before parting with the judgment, we feel that it has become necessary to give a specific direction to the respondents inclusive of the Union Public Service Commission in pursuance of the earlier directions given in our order dated 7.12.1990 (Vide Annexure 'A'), which directions were given in pursuance of various interim orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi and thereafter finally in its final judgments dated 20.8.90, 4.10.90 and 5.10.90. For ready reference and to have a proper perspective, we would like to proliferate the following passage from our earlier order dated 7.12.1990:

'Hence we permit all those candidates falling under

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Para Nos.5(ii), 6 and 7 to sit for the main examination subject to the condition that each candidate satisfies the Secretary, Union Public Service Commission that he/she falls within these categories and that the concerned candidates have passed the preliminary examination of 1990 and have also applied for the main examination within the due date. This permission is only for the ensuing examination. As we are now permitting those who have passed the preliminary examination of 1990 and have applied for the main examination on the basis of the unquestioned and unchallenged directions given under paras 5 (ii), 6 and 7 of the judgment of the CAT, Principal Bench, New Delhi, the same benefit is extended to the other appellants also who satisfy those conditions as mentioned under paras 5 (ii), 6 and 7.'

On the strength of the above order, we direct the respondents inclusive of the Union Public Service Commission that all those candidates who have appeared for the Civil Services (Main) Examination, 1990, pursuant to our permission given in the order dated 7.12.90 and who have come out successfully in the said examination and thereby have qualified themselves for the interview, that if those candidates completely and satisfactorily qualify themselves by getting through the written examinations as well as the interview shall be given proper allocation and appointment on the basis of their rank in the merit list, notwithstanding the restriction imposed by the second proviso and our present judgment upholding the validity of the said proviso since the respondents have not questioned and challenged the directions given by CAT, Principal Bench Delhi in paragraphs 5 (ii), 6 and 7 of its judgment dated 20.8.1990.


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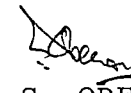
We would like to make it clear that the unchallenged directions given by us in our order dated 7.12.90 are not controlled by any rider in the sense that the said directions were subject to the result of the cases and hence those directions would be confined only to those candidates who appeared for CSE, 1990 and no further. The seniority of those successful candidates in CSE, 1990 would depend on the service to which they have qualified."

The applicant before us, however, did not file an SLP in the Hon'ble Supreme Court for challenging the order of Tribunal in Alok Kumar (supra's) case. The circumstances of his case, however, are on all fours with those who covered by decision of the Hon'ble Supreme Court. Accordingly, we feel that similar benefit should be available to him, as he also falls under conclusion 5 (ii) of the Tribunal's judgement, dated 20.8.1990.

In the special circumstances of the case which are analogous to those, as referred to by their Lordships in their order dated 13.9.1991, we order and direct the respondents to give the applicant proper allocation and appointment on the basis of his rank in the merit list, notwithstanding the restrictions imposed by the second proviso of Rule-4 of CSE Rules. The seniority to be assigned to him would depend on the service for which he has qualified.

The O.A. is disposed of, as above, with no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER(A) 25/9/91

  
(T.S. OBEROI)  
MEMBER(J)

25.9.1991.

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