

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(V)

REGN. NO. O.A. 183/91

DATE OF DECISION: 26.1.1991

Shri Rajeev Jain

.... Applicant.

Versus

Union of India.

.... Respondents.

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

For the Applicant.

... Shri A.K. Behra,
Counsel.

For the Respondents.

... Shri P.H. Ramchandani,
Sr. Counsel.

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

This Original Application has been filed by
Shri Rajeev Jain, the applicant. He is aggrieved that he
has not been permitted to join the training course for the
Indian Customs and Central Excise Service for the batch
of successful candidates of the Civil Service (Main) Exam-
ination 1989. He has sought a direction that he may be
permitted to join the said training, which is in progress
at present. The relevant facts are as follows:

The applicant appeared in the 1989 Civil Service
Examination. It was his first attempt. He was declared
successful in the said examination by the U.P.C.C. and was
assigned the rank 252 in the merit list. By a letter dated
3.8.1990, the applicant was allocated to Indian Customs and
Central Excise Service, which is a Central Service Group 'A'.
This letter indicated 'this is a tentative allocation'

and may undergo a change within your preferences. After the final allocation is made the formal offer of appointment will be sent to you by the concerned cadre controlling authority of the services to which you are finally allotted in the month of the November/December, 1990. The offer of appointment will indicate the terms and conditions of your appointment to the service to which you are finally allotted'. The above letter also directed him to report to the Director General, National Academy of Direct Taxes, Nagpur on 19th August, 1990 without fail. Further, it also provided that in view of the provisions of Rule 4 of the Civil Services Examination, 1990 Rules, if he proposed to appear in the CS(Main) Examination 1990, he would be allowed to join probationary training along with the candidates who qualified in the C.S.E. 1990. It was further indicated that the candidate had qualified in the CS(Preliminary) Examination, 1990 held on 10th June, 1990 and intended to appear in the main examination to be held later in the same year and the candidate accepted the proposed allocation of the service, he should not proceed to join the Foundational Course but intimated this fact by telegram immediately. In other words, it was intimated that in case he had appeared in the CS(Preliminary) Examination and intended to appear in the CS(Main) Examination, 1990, he should not go for the foundational course. This point was made further clear by the letter dated 19th September, 1990 (Annexure A-2), which is as follows:

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"Sir,

I am directed to refer to your telegram/letter dated and to say that since you intend to take the Civil Services(Main) Examination, 1990, you have been permitted to abstain from probationary training in terms of rule 4 of the Civil Service Examination Rules. As already intimated to you, you will be sent for training along with the candidates who qualify on the basis of the Civil Services Examination, 1990.

Yours faithfully,

Sd/- x x x x x
(V.K. Chelian)
Under Secretary to the Govt. of India

He stated that he was all along prepared to join the Foundational Course and the probationary training as well as to appear in the CSE, 1990 simultaneously. The applicant thereafter appeared in the written part of the CS(Main) Examination, 1990. The applicant's case is that some of the similarly situated candidates had approached the Hon'ble Supreme Court challenging the second proviso to Rule 4 of the CSE Rules. The Supreme Court granted the special leave to appeal and passed an order on 7.12.1990 allowing similarly situated candidates to appear in the CSE 1990, without insisting an abstention from the probationary training. Reference was made to the order dated 7.12.1990 that all those candidates who had been allocated either to IPS or a Central Service Group 'A' on the basis of CSE, 1987 and CSE, 1988 and who were otherwise ineligible to by virtue of the second proviso to Rule 4 of the CSE Rules had been allowed to appear in the CSE, 1990 without insisting upon them either to resign from the service or to abstain from the probationary training. The

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applicant had contacted Shri V.K. Cherian, Under Secretary in the Government, who had informed that he could join the probationary training with immediate effect only if the applicant was not a candidate for CSE, 1990. The applicant cited the case of one Shri Dush Raj Singh, who had secured 194th rank in the CSE, 1989, had been allowed to join the probationary training of Indian Police Service. Thereafter, the applicant had received an offer of appointment issued by the Ministry of Finance on 26th December, 1990. Paragraph (xi) of the letter dated 26th December, 1990 states that 'if you are a candidate for the Civil Service (Main) Examination, 1990, you will be required to join training in August, 1991 details of which will be intimated to you in due course'. On these bases he claims that he was not allowed to join the training. It was stated that joining the training now than would give him a longer period of service/if he has to wait till August/September, 1991.

We have heard Shri P.H. Ramchandani, Sr. Counsel for the respondents who stated that the points now raised could or should have been raised before the Supreme Court where the matter challenging the validity of the second proviso to Rule 4 of C.S.E. Rules was pending. An interim relief was given by the Supreme Court vide its order dated 7.12.1990 permitting some candidates to sit in the CS(Main) Examination, 1990. There was no direction anywhere in that order regarding that the probationary training etc. He urged if the candidate needed such an order, he should approach the Hon'ble Supreme Court rather than approaching this Tribunal.

Shri A.K. Behra, learned counsel for the applicant, however, referred to paragraph 5(ii) of the conclusions of the Tribunal in the case of ALOK KUMAR & ORS. VS. UNION OF INDIA & ORS. and also to the following observation made by the Supreme Court:

"In other words, the conclusion under para 5(ii) is not limited subject to any contingency; but on the other hand, it is absolute".

We have considered the matter and we are of the opinion that this is not a fit case for admission or granting any relief by the Tribunal. The applicant was a candidate for the CS(Main) Examination, 1990. He had earlier succeeded in the CS(Main) Examination, 1989 and allocated the Indian Customs and Central Excise Service. He was asked to join the Foundational Course training but was cautioned that in case he proposed to sit in the CS(Main) Examination, 1990, he would not be allowed to do so and may take his turn for the training along with the successful candidates of the CS(Main) Examination, 1990. This was conveyed to him on 3.8.1990. He did not join the foundational course and submitted to the above order dated 3.8.1990. He sat in the Civil Service(Main) Examination in departmental December, 1990. The/ training course was delayed and started from 10.1.1991 and it appears has proceeded for 18 days now and this Application has been filed to enable him to join the service at this stage. This cannot be permitted. Firstly, departmental and the/ training has already begun /is on for the last 18 days; secondly, he has submitted to the order dated 3.8.1990 and did not challenge it; thirdly, he could have asked for this



relief, if he was aggrieved by the order dated 3.8.1990 and challenge it before the Supreme Court along with the other candidates. He did not challenge it and prayed for joining the training at this late stage. It is too late in the day to challenge the above order when the foundational course is already over and the departmental training has started on 10.1.1991. Further, the matter is still pending before the Supreme Court and the judgement is awaited.

In the circumstances, we do not think this is a fit case for grant of any relief by this Tribunal.

In view of the above, we are of the view that no case is made out for interference by the Tribunal. The O.A. is dismissed at the admission stage.

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(I.K. RASGOTRA)
MEMBER (A)
28.1.1991.

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(AMITAV BANERJI)
CHAIRMAN
28.1.1991.

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