

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

38

OA No.3114/91

New Delhi this the 8th Day of July, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

Pratap Singh, S/o Sh. Negal Singh,
R/o Vill.-Jarailiya, P.O. Hetalpur
Distt. Aligarh-202137 (U.P.).

...Applicant

(By Advocate Sh. A.K. Behera)

Versus

1. Union of India through the
Secretary, Ministry of
Personnel, Public Grievances
and Pensions, North Block,
New Delhi.
2. Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
3. Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
4. Director,
National Academy of Direct Taxes,
Chhindwara Road,
Nagpur-440 029.

...Respondents

(By Advocate Sh. P.H. Ramchandani)

1. Whether reporters of local papers may be allowed to
see the judgement ? ✓
2. To be referred to the reporters or not ? ✓
3. Whether your lordship wish to see the fair copy of
the judgement ? ✓
4. Whether it needs to be circulated to the outlying
Benches ? x

(C.J. ROY)
Member (J)

(N.V. KRISHNAN)
Vice Chairman

(39)

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ORDER

Hon'ble Mr. N.V. Krishnan, Vice-Chairman :-

The dispute in this OA is to which Group 'A' Central Service the applicant should be allocated on the basis of the results of the Civil Services Examination (CSE), 1989 and the C.S.E. 1990. The applicant's contention is that he is entitled to be allocated to the Indian Revenue Service on the basis of the results of the CSE, 1990 and that he cannot be compelled by the respondents to accept allocation to the Group 'A' of the Central Industrial Security Force (CISF), on the basis of the results of the CSE, 1989.

(40)

2. There is no dispute about the facts. It will be more convenient if the relevant dates in regard to the 1989 Examination and 1990 Examination are given in a tabular form to understand the position on each date with reference to each of the two examinations. The relevant dates taken out from the pleadings and a table given by respondents' counsel are tabulated below:-

Sl. No.	Date	CSE, 1989	CSE, 1990
1.	31.5.90	Result declared. Applicant not selected.	-
2.	9.6.90	-	Preliminary Exam. held. Applicant appeared.
3.	15.6.90	Mark-sheet sent to applicant by UPSC (Annexure A.8) (Remarks Not recommended)	-
4.	7.8.90		Result of Preliminary Exam. declared. Applicant passed.
5.	17.12.90 28.12.90	-	Written Exam. held. Applicant wrote exam.
6.	9.1.91	Applicant informed by UPSC (Annex. A.1) that his name was being recommended in a supplementary list for Gr. A or Group B service. Opportunity to exercise revised preferences for services given. Also informed that in Group A, vacancies are available only in C.I.S.F. He was asked to intimate specifically if he was interested in joining CISF (Group A). Applicant did not reply.	
7.	29/30.5.91	Deptt of Personnel informs CISF about list of candidates allocated on the basis of the 1989 Exam. (As per table given by respondents counsel)	

12

(41)

S1. No.	Date	CSE, 1989	CSE, 1990
8.	June 1st Week, 1991		Written Exam. results de- clared. Appli- cant qualified for interview.
9.	21.6.91	Offer to applicant from CISF (Annex.A.2) for appointment as Asstt. Commandant Sought telegraphic intimation whether he was appearing in 1990 Exam. Applicant did not file reply.	Applicant interviewed.
10.	31.7.91	-	Results declared. Applicant selected.
11.	31.8.91	-	DOP informs the applicant about tentative allocation to IRS (Ann.A-3) and to report for found- ational course on 16.9.91.
12.	9.9.91	Letter of CISF to the applicant to join Foundational Course starting from 16.9.91 (Ann.R.4)	
13.	13.9.91	-	Applicant resigns from the post of Asstt. Ex. Eng. (Civil) in the Ministry of Surface Transport (Ann.A4) to join the IRS.
14.	16.9.91	Foundational Course started. Applicant does not join.	Foundational Course started. Applicant joined.
15.	9.12.91	Reminder to applicant from CISF to join training (Annex.R4)	-
16.	17.12.91	Allocation to IRS cancelled (Annex.A6). Applicant advised to report to National Industrial Security Academy for CISF Foundational Course.	Allocation to Group A Service (ICIRS) cancelled (Annex.A6). Applicant advised to report to National Industrial Security Academy for CISF Foundational Course.

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62

3. From the dates given above, the following facts emerge:-

- i) The applicant was first informed that he had failed in the CSE-1989.
- ii) He then appeared in the CSE 1990 and wrote the written examination which ended on 28.12.90.
- iii) He was first informed of his being considered for appointment to Group A on the basis of the CSE-1989-through a supplementary list by the UPSC on 9.1.91 - i.e. after the written examination CSE, 1990 was over.
- iv) On 21.6.91 he was called for the interview of the CSE-1990. On the same day, the CISF sent him its offer of appointment as Asstt. Commandant Group 'A' based on C.S.E.-1989. The applicant did not give any reply to this offer.
- v) The applicant finally passed the CSE, 1990 and was offered appointment in the I.R.S. on 31.8.91. He accepted it and joined the Foundational Course on 16.9.91.

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It was thereafter that he received the impugned letter dated 17.12.91 (Annexure A-6) from the first respondent - Ministry of Personnel - which reads as follows:-

"Subject: C.S.E. 1990 - Allotment of Service regarding -

Sir,

I am directed to say that on the basis of the C.S.E. 1989 you have been allotted to C.I.S.F., a Central Civil Service Group "A". The Ministry of Home Affairs (CISF Hqrs) had instructed you to join foundational course commenced on 16.09.1991 vide their letter No. E-32015(4)/1/91-Pers.I/1420 dated 09.09.1991. By a subsequent letter dt. 09.12.1991 they have advised to report Asstt. Director National Industrial Security Academy, Hakimpet Hyderabad for basic training commencing from 30.12.1991. A copy of letter dt. 09.12.1991 is enclosed for your information. You are, therefore, advised to report to National Industrial Security Academy on conclusion of the foundational course. Though this Department had informed you about your tentative allocation to a Group "A" Service on the basis of the C.S.E. 1990, in view of the provisions contained in the second proviso to Rule 17 of C.S.E. Rules, the Constitutional validity of which has been upheld by the Supreme Court in CAS 5439-52/90 - Mohan Kumar Singhania* and others v/s UOI and others vide judgement dated 13.09.1991, you are not eligible for such allocation. Hence you have not been allocated to a Group "A" Service on the basis of 1990 examination. Due to your low rank you are not eligible for allocation to the I.A.S., I.F.S. and I.P.S."

4. In these circumstances the learned counsel for the applicant contended that Rule 17 C.S.E. Rules

*Since reported in JT 1991 (6) SC 261 - Mohan Kumar Singhania & Others vs. Union of India & Others.

(Rules for short) cannot be invoked against the applicant for two reasons. Firstly, it is his contention that the applicant has not been "approved for appointment" to Group "A" service on the basis of the C.S.E. 1989. Secondly, Rule 17 will come into play only in regard to candidates in respect of whom the conditions in the second proviso to Rule 4 are fulfilled.

4A. The respondents have filed their reply contesting the claims made by the applicant. It is pointed out that the decision taken by them in the Annexure A6 letter is fully in keeping with the provisions of Rule 17 of the Civil Services Examination rules, 1990. The validity of these rules has been upheld by the Supreme Court. The applicant was directed by the C.I.S.F. vide their letter dated 09.09.1991 to attend a Foundational Course of the C.I.S.F. from 16.09.1991 at the National Academy of Direct Taxes, Kanpur (Annexure R.4). A reminder was sent to him on 09.12.1991 (also Annexure R-4) and he was advised to join the basic training commencing from 30.12.1991 at the National Industrial Security Academy, Hyderabad. He had been selected for Group "A" Service on the basis of the 1989 Examination and allocated to the CISF. Therefore, he was not eligible to change over to another Group "A" Service on the basis of the 1990 C.S.E. because under Rule 17, he could only change-over to the I.A.S., I.F.S. or I.P.S. As he has not qualified for any of these

65

Services, he was eligible to be appointed only to the CISF Group "A" on the basis of the 1989 C.S.E. and not to the I.R.S. on the basis of the 1990 C.S.E.

5. The learned counsel for the respondents contends that the applicant was approved for appointment to a Group "A" post on the basis of the C.S.E. 1989. Para 2 of the Annexure A2 letter dated 21.6.91 sent by the CISF reads as follows :-

"If you are a candidate for the Civil Service Examination 1990, you will be required to obtain permission from the DP & Trg to abstain from probationary training envisaged under 2nd proviso to Rule 4 of the Civil Service Examination Rules. Hence please let us know telegraphically whether you are appearing at the 1990 examination. If you are not a candidate for the 1990 examination, you will be required to join by 13th July, 1991 at NISA CISF, Hyderabad. If you are a candidate for the 1990 examination, you will be required to join training in August, 1991 details of which will be intimated to you in due course. It may also be clearly pointed out that once a candidate joins the service he shall not be eligible for consideration for appointment on the basis of subsequent examinations."
(emphasis added)

Despite this, the applicant kept mum and did not give any reply. He could, no doubt, appear in the CSE 1990 but only for IAS, IFS, IPS. He did not qualify for these services. He qualified only for another Group "A" service i.e. IRS and therefore, he cannot be allocated to IRS. He has necessarily to join the CISF only. This is the effect of Rule 17.

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(16)

6. Therefore, the question is whether the applicant is entitled to be allocated to IRS as claimed by him or he has no such right and he can be allocated to the CISF only as contended by the respondents.

7. It is clear from the arguments of the counsel that the question raised in the OA involves an interpretation of Rule 4 and rule 17 of the Civil Services Examination, 1989 and 1990, which are conceded to be in the same terms. Rule 4 and Rule 17 are reproduced below :-

"Rule 4. Every candidate appearing at the Examination, who is otherwise eligible, shall be permitted four attempts at the Examination, irrespective of the number of attempts he has already availed of at the IAS etc. Examination held in previous years. The restriction shall be effective from the Civil Services Examination held in 1979. Any attempts made at the Civil Services (Preliminary) Examination held in 1979 and onwards will count as attempts for this purpose:

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes Candidates who are otherwise eligible:

Provided further that a candidate who on the basis of the results of the previous Civil Services Examination, had been allocated to the I.P.S. or Central Services, Group "A" but who expressed his intention to appear in the next Civil Services (Main) Examination for competing for IAS, IFS, IPS or Central Services, Group "A" and who was permitted to abstain from the probationary training in order to so appear, shall be eligible to do so, subject to the provisions of Rule 17. If the candidate is allocated to a service on the basis of the next Civil Services Main Examination he shall join either that service or the service to which he was allocated on the basis of the previous C.S.E. failing which his allocation to the service based on one or both examinations, as the case may be, shall stand cancelled and notwithstanding anything contained in

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rule 8, a candidate who accepts allocation to a service and is appointed to a service shall not be eligible to appear again in the Civil Services Examination unless he has first resigned from the service.

NOTE :

1. An attempt at a preliminary Examination shall be deemed to be an attempt to the Examination.

2. If a candidate actually appears in any one paper in the preliminary Examination he shall be deemed to have made an attempt at the Examination.

3. Notwithstanding the disqualification / cancellation of candidature the fact of appearance of the candidate at the Examination will count as an attempt.

Rule 17. Due consideration will be given at the time of making appointments on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective Service at the time appointment.

Provided that a candidate who has been approved for appointment to Indian Police Service Central Service, Group "A" mentioned in Col.2 below on the results of an earlier examination will be considered only for appointment in services mentioned against that service in Col.3 below on the results of this examination.

Sl. No.	Service to which approved for appointment	Service for which eligible to complete
1.	Indian Police Service	I.A.S., I.F.S. and Central Services, Group "A"
2.	Central Services Group "A"	I.A.S., I.F.S. and I.P.S.

Provided further that a candidate who is appointed to a Central Service, Group "B" on the results of an earlier examination will be considered only for appointment to I.A.S., I.F.S., I.P.S. and Central Services, Group 'A'."

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68

8.. We have heard the learned counsel for the parties. The validity of these two rules has been upheld in Mohan Kumar Singhania's case (JT 1991 (6) SC 261) and in Artik Chabra vs. Union of India (1993 (1) SLR 4 SC). We, therefore, find it useful to take the issues raised by the parties seriatim and consider their arguments in detail.

9. The learned counsel for the applicant contends that the first proviso to Rule 17 - which is implicitly invoked in the impugned Annexure A-6 letter - does not apply to the applicant. That proviso applies only to a candidate "who has been approved for appointment" to the Central Services Group 'A'. He contends that the applicant had not been approved for appointment on the basis of the CSE, 1989 because he did not comply with the directions in the offer. The CISF offered an appointment to the applicant (Annexure A-2) as Assistant Commandant in the CISF, Group 'A' on the basis of the results of the CSE, 1989 on the terms mentioned in para-1 thereof. The terms not complied with by the applicant are the following:-

(i) The applicant should take an oath of allegiance to the Constitution of India (para 1.1).

(ii) The applicant should execute an agreement to refund the money spent by the Govt. of India in certain circumstances (para 1.xi).

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(iii) The applicant should furnish a declaration about his marital status and particularly, if he has more than one wife living (para 1.xii).

Para 3 of this letter indicates what should be done by him and reads as follows:-

"3. You should despatch the agreement and the Declaration referred to in sub-paragraph (xi) and (xii) of paragraph 1 duly filled in to the Director General, CISF, Block No.13, CGOs Complex, Lodhi Road, New Delhi-110 003. The oath/affirmation of allegiance referred to in sub-paragraph (i) of paragraph 1 is to be handed over by you at the CISF HQrs."

He has been asked to do several things such as, take an oath of allegiance to the Constitution of India, sign an agreement - undertaking to refund certain moneys to the Govt. of India under certain circumstances and to give a declaration about his marital status. In addition, the applicant was also required to sign an attestation form, - enclosed to Annexure A-2 letter - in which the last page is to be filled up by the office, indicating the post for which the candidate who has filled up the attestation form, "is being considered". The applicant did not take any action at all in this regard. The learned counsel contended that unless all this information was furnished by the applicant the competent authority could not have "approved" the applicant for appointment. Hence, the first proviso to Rule 17 does not apply.

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10. We have carefully considered this contention. Rule 17 is one of the rules relating to the Civil Services Examination. Therefore, when the first proviso of that rule refers to "a candidate who has been approved for appointment", the reference is, obviously, to an approval on the basis of the results of the examination only. It is after such approval is first accorded that the concerned Ministry or Department makes an "offer of appointment". Such an offer has been given to the applicant at Annexure A2. That offer, no doubt, enumerates a number of terms and conditions in para 1 thereof to be fulfilled before appointment, but those terms and conditions as well as the fulfilment thereof, are irrelevant for considering the question whether, for the purpose of the first proviso to Rule 17 the applicant "has been approved for appointment". In our view, the moment an offer of appointment is issued to a candidate by any Department for appointment on the basis of a CSE, it has necessarily to be assumed that he has been approved for appointment to that Service on the basis of that CSE, for the purpose of the first proviso to Rule 17. Therefore, when the Annexure A-2 letter was issued - ^{may} ~~may~~, when the Annexure A-1 letter was issued - he stood approved for appointment on the basis of the CSE, 1989.

11. It was next contended that Rule 17 may be invoked only if the conditions stipulated in the second proviso to Rule 4 are first satisfied. These conditions are as follows:-

51

- (i) The candidate should have been allocated to the I.P.S. or Central Services Group 'A' on the results of the previous C.S.E.
- (ii) He should, on such allocation, have expressed his intention to appear in the next C.S.E. (Main).
- (iii) He should then have been permitted to abstain from the probationary training to appear in such examination; and
- (iv) He should then have appeared in the next C.S.E. (Main) Examination.

12. It is pointed out by the learned counsel for the applicant that, as would be clear from the tabular statement of dates in para 2 supra, even the first intimation about his selection on the basis of the supplementary list of the C.S.E. 1989 was sent to him by the UPSC on 9.1.91 (Annexure A-1), i.e., after the conclusion of the written examination of the 1990 C.S.E. The offer of appointment dated 21.6.91 from the CISF (Annexure A-2) was also received after the applicant had appeared in the interview of the 1990 CSE. The learned counsel, therefore, contends that the requirements of the second proviso to Rule 4 are definitely not satisfied and, therefore, there was no question of the applicant's appearance in the 1990 C.S.E. being made subject to the provisions of Rule

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17. In other words, Rule 17 can come into play only in cases where the conditions mentioned in the second proviso to Rule 4 are fulfilled.

13. The learned counsel for the respondents did not dispute the facts on the basis of which the above submissions were made. He contended that notwithstanding the slight delay in intimating the applicant about his allocation to the CISF on the basis of the 1989 CSE, it is clear that such intimation was given well before the 1990 C.S.E. concluded. The applicant was informed as early as on 9.1.91 by the UPSC - i.e., long before the results of the written examination of the 1990 C.S.E. were published, about such allocation. He further contends that, in any case, Rule 17 stands independently of Rule 4. The applicant was already approved for appointment to a Group 'A' Service (CISF) on the basis of the earlier examination, i.e., 1989 C.S.E. Therefore, in terms of the first proviso to Rule 17, he could be considered only for IAS, IFS and IPS on the basis of the results of the 1990 CSE. No doubt, the applicant was informed by the Annexure A-3 letter dated 31.8.1991 of the Ist Respondent about his tentative allocation to the IRS. But this was done without verification. A subsequent verification revealed that the applicant had already been offered an appointment to the Group 'A' CISF on the basis of the 1989 CSE, which he had not declined. Hence, the applicant did not have any right to be allocated to any other Group

'A' Service. That, in essence, is the purport of the impugned Annexure A-6 letter dated 17.12.91 to the applicant from the 1st respondent.

14. We have carefully considered the rival contentions. The second proviso to Rule 4, no doubt, implies that an intimation to a candidate about his allocation to any service on the basis of the results of the previous C.S.E., should be sent to him before the commencement of the Main Examination of the next C.S.E. From the table in para 2, it is clear that this intimation should have been sent before 17.12.90 in the present case, when the CSE, 1990 written examination started. That was not done. The question is whether this delay liberates the applicant from the consequences that would otherwise have rightly followed under Rule 4 read with Rule 17.

15. We would like to first consider whether such delayed communications - i.e. belated intimation about selection on the basis of the previous CSE - are justified, irrespective of the consequences. In the present case, the applicant was informed that his name was not recommended on the basis of CSE 1989 vide marksheet dated 15.6.90 (Annexure A-8). Nevertheless, vacancies arose thereafter, because some candidates who were selected and recommended either did not join or they were found ineligible for appointment for one or the other reason and these had to be filled up. This is clear from the UPSC's letter to the applicant at Annexure A-1. Therefore, administrative exigencies required that such belated offer be made.

(54)

16. That apart, there is another circumstance to be noted. It may be that there are some candidates who cannot appear in any later CSE, either because they would have become overaged or they would have exhausted all permissible attempts to appear in the CSE. If any of them gets qualified in a supplementary list, it is only fair that they be considered for appointment, if it is acceptable to them. For such candidates, this should come as a boon as, thereafter, entry into the service is closed to them permanently. However, such persons - i.e., for whom there is no more chance - cannot be offered appointment in preference to others who may have some more chances to appear but who have also qualified, as that would be discriminatory. Therefore, the latter too have to be offered such appointment.

17. Therefore, we do not, per se, find fault with the practice of making belated offers of appointment because exigencies require the issue of belated offers of appointment.

18. The question then is whether it affects a candidate adversely in any respect. That depends on what options are available to him. In our view, he has three options before him. Firstly, he can unconditionally accept the offer and join the service allocated to him. In that case, he consciously decides to finally join the service offered, and sacrifices willingly prospects of further improvement. Secondly, he can decline the offer. In that event,

53

Rule 17 will not apply to him, whenever he appears in any CSE examination subsequently and the limitation imposed by the first proviso to Rule 17 will not apply. Thirdly, he can accept the offer and seek permission to abstain from training to enable him to appear in the next CSE, in which case the second proviso to Rule 4 and the first proviso to Rule 17 will apply. That is, unless he has been able to improve his service prospects by qualifying in the next CSE for the services specified in column 3 of the table to the first proviso to Rule 17, he has to accept the service offered to him on the basis of the earlier CSE. If all these options are available when a belated offer is made, we do not see how any candidate can be adversely affected. We notice from the Annexure A-2 letter to the applicant that all such options were available to him in respect of the Annexure A-2 offer of appointment made to him after the written examination of the CSE, 1990 was over.

19. If only the applicant had intimated the CISF in response to their letter dated 21.6.91 (Annexure A2) that he was not interested in the offer of appointment to the Central Industrial Security Force on the basis of the CSE, 1989, the applicant would, as a matter of right, be entitled to appointment to the I.R.S. on the basis of the results of the 1990 C.S.E. We, therefore, reject the contention that the intimation of having been selected on the basis of the CSE, 1989 should have been sent before the written examination of the CSE, 1990 started.

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20. Lastly, the learned counsel for the applicant contends, that his silence in regard to the Annexure A-1 and A-2 letters should not result in his being deprived of the allocation to I.R.S. For, the very fact that he neither sent the information required of him by the Annexure A-2 letter nor did he join the Foundational Course which commenced on 13.7.91, was indicative of his having declined the appointment offered to him in the CISF.

21. We are unable to accept this contention. If the applicant, indeed, was not keen to accept the allocation to the CISF and the offer of appointment thereto, nothing prevented him from conveying this decision to the appropriate authorities, particularly, when specifically asked to do so. His silence in this regard seems to be deliberate and perhaps, he wanted to keep all options open, notwithstanding the provisions of the Rules. May be, he was not even aware of the implications of the Rules. He was, perhaps, taking a chance that if he failed in the 1990 CSE or if he did not get a better offer of appointment on the basis of the results of the 1990 examination, he could still fall back upon the offer of appointment given to him in the CISF by the Annexure-2 letter. This is not an improbable conjecture. He deliberately avoided any decision on this offer. He has tried to circumvent the rules and instructions, so as to enable him to claim - as he has done now - that as the conditions of the second proviso to Rule 4 are not satisfied, Rule 17 cannot be invoked in his case. In our view, not having responded in any manner to the

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Annexure A-1 or A-2 letters, the applicant cannot be deemed to have declined the offer of appointment by his silence and the necessary consequences have to follow.

22. The learned counsel for the applicant *l* next pleaded that a candidate who has failed in the examination, has all his options open and he is not restrained by the provisions of Rule 17. As against this, a candidate who has passed an earlier examination, is unnecessarily restrained by the first proviso to Rule 17 and is, therefore, placed at a disadvantage. This argument which, at first sight looks attractive, lacks substance. The candidate who passed in an earlier examination, should not compare himself with a candidate who has failed in that examination. As mentioned above, a candidate who has passed the earlier examination, can get out of the purview of the first proviso to Rule 17 if he declines the offer of appointment on the basis of the earlier examination. This, admittedly, would require a lot of courage on the ^upart of a successful candidate. Thus, the successful candidate earns an exemption from the proviso to Rule 17 by taking such a courageous decision. It would be discriminatory to confer the same advantage on another candidate who lacks such courage and who, like the applicant, deliberately decides to keep matters in suspense by not indicating his mind and keeping his options open.

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23. We are, therefore, of the view that the applicant ought to have submitted himself to the discipline of the CSE, which is enshrined not only in the rules of the examination but the instructions and directions issued by the competent authorities when allocation to a Service is made, or an offer of appointment is given. We hold that the applicant had not declined the offer of appointment to CISF based on the CSE 1989 and, therefore, the second proviso to sub rule (4) and the first proviso to Rule 17 will apply to him.

24. That apart, we are of the view that, even otherwise, Rule 17 will be applicable in all its vigour to the applicant for the same reason as mentioned above, viz. that he did not decline the offer of appointment in positive terms. In our view, Rule 17 is the dominant provision and it can exist independently of Rule 4. If a candidate has been informed about his allocation to a Service in time and he has not declined the offer, the first proviso to Rule 17 will apply. That is the situation in the present case. Accordingly, the applicant cannot get the benefit of the allocation to I.R.S. on the basis of the 1990 Examination.

25. Another line of argument pursued by the learned counsel for the applicant is that, in any case, "the next Civil Services (Main) Examination" for competing for I.A.S., I.F.S., I.P.S. or Central Services Group 'A'" referred to in the second proviso to Rule 4 refers, in this case, to the C.S.E., 1991

and not to the C.S.E. 1990. He relies on a judgement of the Patna Bench of the Tribunal in Sanjay Prakash v. Union of India 1991 (2) SLJ CAT 506.

26. We have seen the judgement of the Patna Bench of the Tribunal referred to above. That was delivered in the special circumstances of that case. The only similarity between the two cases is that, in both cases, the applicants were initially informed that they were not recommended on the basis of the earlier examination, but subsequently, they were informed that their names had been recommended on the basis of the supplementary list. In the case before us, the applicant appeared in the immediate next examination, i.e., 1990. On the contrary, the applicant before the Patna Bench, who was belatedly recommended on the basis of the 1988 examination on 3.1.90, had not appeared in the 1989 examination but he wanted to appear for the 1990 examination, which was yet to commence. The applicant sought time to join the Foundational course on the basis of 1988 examination, which was refused, because the respondents felt that the applicant could abstain from training and for appearing in the 'next' i.e. 1989 CSE and not for the 1990 examination. Therefore, he was asked to give an undertaking that he was not willing to join the course on the basis of the CSE, 1988. This was challenged. The Tribunal held that every selected candidate has a right to appear in one more examination to improve his performance. In the circumstances of that case, the 'next' examination of that applicant was held to be the CSE, 1990. As

(60)

against this, in this OA, the applicant had already availed himself of the second opportunity by appearing in the 1990 examination. In the circumstance, we are unable to accept the argument of the counsel that the restriction should be made applicable only for the 1991 examination.

27. Finally, the learned counsel for the applicant contends that Rule 17 can be enforced only against those candidates for whom a post has been kept reserved in a Group A service on the basis of the results of the earlier CSE, at their request. This argument is made because it is stated that, it is because of a submission made on these lines, that the Supreme Court upheld the validity of Rule 4 in Mohan Singhania's case *supra*. Admittedly, the applicant did not make any such request (i.e. seeking permission to abstain from training) when the Annexure 2 offer of appointment to the CISF Group A was made to him on the basis of the CSE 1989. Hence, Rule 17 should not be invoked and he should be permitted to continue in the IRS on the basis of the C.S.E. 1990.

28. No doubt, it was pointed out to the Supreme Court that Rule 17 was not unreasonably harsh and the need for that provision arose because probationers neglected their training and concentrated more on improving their career by appearing at the next examination and it was felt necessary to curb and regulate this practice. That does not advance the case of the applicant. The rules were made in the hope that the candidates would invariably abide by

61

them. The applicant did not deliberately abide by the Rules and he tried to circumvent them. This is evident from the fact that he did not send a reply to para 2 of the Annexure A-2 letter - reproduced in para-5 above-which required him to intimate whether he was a candidate for the 1990 examination. What is more, even the Annexure 3 letter allocating him tentatively to IRS on the basis of the CSE¹⁹⁹⁰ required him to intimate the respondents about it. Para 4 of that letter reads as follows:-

"4. If you have been allotted a Service on the basis of the Civil Services Examination, 1989 and obtained permission to abstain from training to appear at the Civil Services Examination, 1990 in terms of Rule 4 of the Civil Services Examination Rules, you will be receiving or would have received a communication from the Ministry concerned directing you to join training commencing on 16th Sept., 1991. In that event you have an option to decide whether to accept Service proposed to be allotted to you on the basis of the 1990 examination or the Service already allotted to you on the basis of 1989 examination. Please inform this Department as to whether you will be accepting the Service on the basis of the 1989 examination or 1990 examination by suitably modifying the enclosed specimen telegram. In the absence of this, it will be presumed that you have decided to join training on the basis of 1989 examination and not interested to join a Service on the basis of the 1990 Examination and accordingly you will not be considered for allotment of a Service at the time of final service allocation."
(emphasis ours)

The applicant appears to have evaded giving information about the 1989 CSE and the offer of appointment to CISF Group 'A', in reply to this para of the Annexure A-3 letter. That seems to be clear from paras 4.22 and 4.23 of the OA.

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(62)

29. Therefore, he cannot claim any benefit from the mere circumstance that he did not seek any reservation of a post on the basis of the 1989 CSE, by seeking permission to abstain from training. He had tried to evade the Rules and keep all options open and sit on the fence till the last moment. As a matter of fact, by conducting himself in this manner, the applicant not only rendered himself liable to the enforcement of the first proviso to Rule 17 in respect of the results of the CSE, 1990, but also, he, perhaps, became liable to forfeiture of his claim to be appointed to the CISF Group A on the basis of the CSE, 1989. We do not wish to decide this point in this case, as it has not been raised as an issue because, by the impugned Annexure A-6 letter, the respondents did not intend to deny him appointment to the CISF on the basis of the CSE, 1989.

30. In the circumstance, we are of the view that Rule 17 will apply to those cases also, where candidates have attempted to circumvent the second proviso to Rule 4, whenever it is discovered that the candidate had appeared in a previous CSE and was approved for some service.

31. In the light of the foregoing discussion, we are of the view that this application has no merit and it deserves to be dismissed. We do so. When the application was taken up for admission on 30.12.1991, an interim direction was issued to the respondents to allow the applicant to join the training of the I.R.S.

(63)

scheduled to be held at the National Academy of Direct Taxes, Kanpur. This interim direction is still continuing. That interim order is now vacated. As the respondents have offered the applicant appointment to Group 'A' of the CISF, it is open to him to accept that offer, within 2 weeks from the date of receipt of this order, by writing to respondent No.1, with copies to other respondents. If he accepts the appointment, the third respondent shall issue directions regarding his posting. In that event, it should be deemed ^{as if} ~~as~~ the applicant had sought permission to abstain from the probationary training of the CISF in time, as mentioned in para 2 of the Annexure A2 letter and all other consequences shall follow on that basis.

32. The O.A. is disposed of, as above. No costs.

[Signature]
(C.J. Roy)
Member (J) 8/7/94

'Sanju'

[Signature]
8/7/94
(N.V. Krishnan)
Vice-Chairman