

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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C.A./T.A. No. 2733 of 1992 Decided on: 21.1.97

H.K.Sahu & Ors.

(By Shri A.K. Behera

..... APPLICANT(S)

Advocate)

VERSUS

U.O.I. & Ors.

(By Shri P.H.Ramchandani

..... RESPONDENTS


Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~SHRI~~ ~~SHRI~~ / DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal ? No


(S.R. ADIGE)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2733 of 1992

New Delhi, dated the 21st January, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE DR. A. VE DAVALLI, MEMBER (J)

1. Shri H.K.Sahu (IRAS),
C/o Padmalochan Sahu,
At/P.O. Baliapal,
Distt. Balasore,
Orissa-756026.
2. Shri Ajit Kumar (IRAS),
S/o Shri Ramsis Singh,
406, Renral Flat,
Conquer Bag Colony,
Patna-800020.
3. Shri Audimlapu Suresh (IRAS),
S/o Shri A.S.George,
House No.40-145C, Bangarpet,
Karnool-518004.
4. Shri S.Krishnamurthy (IRAS),
S/o Shri S. Sinnanna Ccunder,
2/12-3 Chandhaipet,
P.O. Kolhapur,
Distt. Salem,
Tamilnadu-636303
5. Shri P.K.Aggarwal (IRAS),
S/o Shri Pramod Pras Aggarwal,
C/o Indian Trading Oil Company,
Park Road, Golghar,
Gorakhpur.
6. Shri G. Sreenivas Rao (IRAS),
S/o Shri G. Keera Raju,
C/o Shri S.V. Prasad,
"Modern Plans",
Governorpet,
Vijayawada-52002.
7. Shri G. Sreenivasa Reddy (IRPS),
S/o Shri G.V. Subba Reddy,
10-30, Maruthi Nagar,
Tirupathi-517502.
8. Shri Hari Krishnan (IRPS),
S/o Shri P.N.Krishna Nair,
Srisachnam,
P.O. Thodupuzha,
Kerala-685584.
9. Shri R.K.Sinha (IRTS),
B-4/2, Aditi Apartment,
Block D-1, Janakpuri,
New Delhi-110058.
10. Dr. Vivek Sharma (IRTS),
S/o Dr. S.K.Sharma,
D-702, Saraswati Vihar,
Delhi.

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11. Shri Vivek Srivastava (IRTS),
S/o Shri K.K.Srivastava,
C/o Shri S.K.Yogeshwar,
329, Munford Ganj,
Allahabad-211002.
12. Shri Jitendra Srivastava (IRTS),
S/o Shri K.K.Srivastava,
2-A, Malviya Road,
George Town,
Allahabad-211002.
13. Shri Y. Nagendra Babu (IRTS),
S/o Shri Y. Rama Mohan Rao,
NB-270, Behind Govt. Junior College,
KothaGUDAM Collieries,
Distt. Khammam,
Andhra Pradesh-507101
14. Shri Vasudeva Rao Alam (IRTS)
S/o Shri Alam Srirama Murthy,
49-35-16, Brindavanam,
Akkayya Palam,
Vizakhapatnam-530016.
15. Shri Sharad Mitra (IRTS),
S/o Shri Jagdish Mitra,
B-43, Sector-A, Mohannagar,
Lucknow-226006.
16. Shri Soumitra Mazumdar (IRTS),
S/o Prof. B.P. Mazumdar,
Dariyapur Gola,
Patna-800004.
17. Shri Bhanushali Sachin Surendra (IRTS),
S/o Shri Bhanusati Surendra Gopal,
50, Mahalaksmi Nagar, Kolhapur,
Maharashtra-416012.
18. Shri Devendra Kumar (IRTS),
2-2-23/1/4, Bagh - Ambarpet,
Hyderabad,
Andhra Pradesh-500013.
19. Shri Raviresh Kumar (IRTS),
S/o Justice D.P. Sinha,
21, Bailey Road,
Patna-800001.
20. Shri G.C.Meena (IRTS),
S/o Shri H.L.Meena,
Village Basoda,
Teh. Aklera,
Dist. Jhalawar (Rajasthan),
Pin. 326033.
21. Shri S.C. Parhi (FPF),
LHM Office,
P.O. Alipurduar Jr.,
N.F. Railway,
Dist. Jalpaiguri (West Bengal)

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22. Shri Amit Vardan (IRTS),
S/o Dr. A.K.Pandey,
Navalaya, Buddha Colony,
Patna-800001.
23. Shri Upendra Chandra Joshi,
S/o Shri A.D. Joshi,
Amba Niwas,
Malli Biwari,
P.O. Bhatia Parare,
Haldwani, Distt. Nainital,
U.P. 263139. APPLICANTS

(By Advocate: Shri A.K.Behera)

VERSUS

1. U.O.I. through
the Secretary,
Railway Board,
Rail Bhawan,
New Delhi.
2. Principal,
Railway Staff College,
Vadodara,
3. Secretary,
U.P.S.C.,
Dholpur House,
Shahjahan Road,
New Delhi. RESPONDENTS

(By Advocate: Shri P.H. Ramchandani)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this O.A. Shri H.K. Sahu and 22 others had sought for a direction to the respondents to allow them to appear in the Civil Services (Main) Exam. (CSE), 1992 without requiring them to resign from their respective services and to grant them all consequential benefits.

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2. By interim order dated 22.10.92 the respondents were directed to allow these applicants to appear in CSE (Main), 1992 provisionally without requiring them to resign from their respective services. Accordingly these applicants did appear in CSE (Main) 1992, of whom two, namely Shri Amit Vardan (IRTS) Serial No.22 and Shri Upendra Chandra Joshi Sl. no.23 were successful, one securing the IPS and the IAS. While admittedly the others were not able to improve their position. The O.A. therefore survives in respect of only these two applicants who now seek a direction to respondents to appoint them to those services on the basis of these results.

3. Admittedly the two applicants were appointed to IRTS (a Group A Service) on the basis of CSE held between 1987 and 1990. The scheme of the CSE comprises a CSE (Preliminary) which works as a screening test, the CSE (Main) followed by interview. Those who qualify on the CSE (Preliminary) of a particular year are allowed to appear at the Main Exam. of that year after detailed scrutiny of the applications only if they are eligible on the basis of the CSE Rules, 1992 which have statutory force.

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4. The second proviso to Rule 4 CSE Rules, 1992 lays down inter alia that a candidate allocated and appointed to the IPS or a Group A Service on the basis of the Civil Service Exam. held in 1990 or earlier years shall not be eligible to appear in the exam. being held in 1992 unless he has first resigned from the service. As upon detailed scrutiny of their application forms after CSE (Prel.) Exam., 1992 it was noticed that the two applicants had not resigned from IPS, Respondents declared them ineligible to appear in CSE (Main), 1992 in terms of the aforesaid rule.

5. Admittedly the validity of this rule was challenged in a number of applications filed before the C.A.T., who in its judgment dated 20.8.90 in OA-206/89 Alok Kumar & 61 Ors. Vs. UOI & Ors. upheld the constitutional validity of rule 4. The appeals filed in Hon'ble Supreme Court by M.K. Singhania & Ors. were dismissed and the CAT's judgment was confirmed (1992 Suppl. (1) SCC 594).

6. Applicant's counsel Shri Bekera has however invited our attention to the Hon'ble Supreme Court's order dated 10.9.93 in Civil Appeal No. 5013 of 1993 A. Subbiah Vs. UOI & Ors. and avers that the ratio of that order applies squarely to the facts of the present case. Shri Subbiah, a member of S.T. community, was appointed to the Indian Revenue

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Service on the basis of CSE, 1986. Without resigning from that service he appeared in CSE 1991 under the interim direction of CAT as well as of Hon'ble Supreme Court, and secured 29th position in the merit list and thus qualified for IAS. As he was not allowed to join the IAS in view of the restriction imposed by Rule 4, he approached the CAT who dismissed his application, against which he filed SLP No. 10648/93 renumbered as C.A. No. 5013/93. In their order dated 10.9.93 (Supra) the Hon'ble Supreme Court noticed the restriction imposed by Rule 4 and observed that the vires of that rule had been upheld by them in M.K.Singhania's case (Supra), and under the circumstances respondents could not technically be faulted for not permitting Shri Subbiah to join the IAS to which he had been selected, he having not resigned from IRS before taking CSE, 1991. Their Lordships went^{on} to add

" We are, however, of the view that keeping in view the facts and circumstances of this case, specially that the appellant sat in 1991 exam. under the directions of this Court, he should be given the benefit of the said exam. It is not disputed before us that several candidates similarly situated who sat in the Indian Civil Services Examinations during the period 1986-90 without resigning their jobs were given the benefit of their selection. It would be travesty of justice if the appellant is denied the fruit of his selection to the I.A.S.

We set aside the impugned judgment of the C.A.T. and direct the respondents to declare the result and consequent merit of the appellant in respect of the Indian Civil Services Exam., 1991. He shall be entitled to the appointment to the Indian Administrative Service in the year 1991 batch as a result of the above said exam. The appeal is allowed in the above terms. No costs."

7. Review Petition No. 3294/93 filed by Union of India in respect of that order was dismissed by Hon'ble Supreme Court on 14.12.93 and Shri Subbiah was accordingly directed by DP&T's order dated 25.11.94 (Ann. MA-2) to report to the Director, L.B.S.N.A.A., Mussoorie on 18.12.94 as a member of IAS, 1992 batch (CSE, 1991).

8. The question we are required to determine is whether the two applicants before us can get the benefit of the judgment in Subbiah's case (Supra) or not.

9. In this connection Shri Ramchandani has invited our attention to the addl. affidavit dated 7.10.96 filed by the respondents and has emphasised that the constitutional validity of the restriction contained in Rule 4 having been upheld by the Hon'ble Supreme Court in Singhania's case (Supra), the Tribunal was bound absolutely by the law declared by the Hon'ble Supreme Court under Art. 141 of the Constitution, and any orders passed by them that may be contrary to

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the law laid down, for avoiding hardship and in order to give complete justice, could not be relied upon to grant relief in a manner contrary to the settled position of law laid down by them. He emphasised that under Article 142, the Hon'ble Supreme Court was empowered to make any order necessary for doing complete justice in any case or matter before it which power was not vested in the Tribunal, which was bound by the law laid down by the Hon'ble Supreme Court.

10. We see considerable force in these submissions ^{regarding Article 142} and notice that there are several features in the Hon'ble Supreme Court's judgment in Subbiah's case which distinguish it from the case before us. Firstly we notice that the Hon'ble Supreme Court has granted the relief to Shri Subbiah keeping in view the facts and circumstances of that case (emphasis supplied). Secondly we notice that one of these facts and circumstances which distinguish that case from the present one is that Shri Subbiah was allowed to appear in the 1991 C.S. Exam. not only on the interim direction of the CAT but upon that of the Hon'ble Supreme Court itself. In the present case before us the applicants appeared upon the interim directions of the Tribunal alone,

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and not of the Hon'ble Supreme Court. Thirdly we notice that the Hon'ble Supreme Court granted relief to Shri Subbiah on the basis of the fact that several candidates similarly situated who sat in CSE held between 1986-90 without resigning their jobs were given the benefit of their selection. The CSE in which the applicants before us sat relates not to the period 1986-90 but the year 1992.

11. In this connection Shri Ramchandani has also invited our attention to the Hon'ble Supreme Court's judgment dated 7.12.93 in Jammu & Kashmir Public Service Commission & 1994(27)ATC 56. vs. Dr. Narinder Mohan & Crs. In that case some persons were appointed on ad hoc basis in violation of statutory rules and were later regularised in service by purportedly relaxing the rules. Such action was held as ultra vires the rules and were ordered to be replaced by persons regularly recruited in accordance with the rules. While disposing of that case, the Hon'ble Supreme Court had observed (para 11)

" This Court in Dr. A.K.Jain Vs. UOI (1992) 19 ATC 503 gave directions under Art. 142 to regularise the services of the ad hoc doctors appointed on or before 1.10.84. It is a direction under Art. 142 on the peculiar facts and circumstances therein. Therefore the High Court is not right in placing reliance on the judgment as a ratio to give the directions to the PSC to consider the cases of the Respondents. Art. 142 power is confined only to this Court.....".

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12. Shri Behera has urged that the applicant's case is on all fours with Subbiah's case, and denial of the same relief to the applicants as was granted to Subbiah would in effect be "whittling down by making fine and subtle distinctions" in the Hon'ble Supreme Court's judgment in Subbiah's case, which is expressly forbidden vide Bombay High Court's judgment in K.M.Ghatate Vs. UOI AIR 1975 Bombay 324. He has emphasised that as in Subbiah's case, so in the present one, the applicants were allowed to appear provisionally in the CSE without resigning their previous service, and the two applicants having succeeded cannot be deprived of the fruits of their efforts in view of the Hon'ble Supreme Court's judgment in Subbiah's case holding that to do so would be a "travesty of justice" and the Hon'ble Supreme Court by their judgment in Subbiah's case, despite upholding the validity of Rule 4, having quashed the Tribunal's judgment and granting relief to Shri Subbiah. Shri Behera has also contended that very recently the respondents have deleted Rule 4 from the CSE Rules, which is another reason why the relief should be granted to the applicants.

13. As stated above, the vires of Rule 4 has been upheld by the Hon'ble Supreme Court, and the law having been declared by them, we are bound absolutely by the same. Even if Rule 4 has been deleted from CSE Rules recently as contended by Shri Behera, that does not change the legal position that at the relevant time it was good law as declared by the Hon'ble Supreme Court. In view of the features which

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distinguish the present case from Subbiah's case as noted in paragraph 10 above and having regard to the Hon'ble Supreme Court's judgment in Dr. Narinder Mohan's case (Supra), we hold that notwithstanding the relief granted by Hon'ble Supreme Court to Shri Subbiah, having regard to the law declared by the Hon'ble Supreme Court themselves, we are precluded from granting the relief prayed for by the applicants on the lines granted by the Hon'ble Supreme Court to Shri Subbiah.

14. We place on record the fact that we have arrived at this conclusion after the most careful consideration of the entire matter. Apart from Subbiah's case (Supra) cited by applicants counsel, no other case has been brought to our notice, after the Hon'ble Supreme Court's judgment in M.K. Singhania's case, where despite the vires of Rule 4 being upheld the candidates were allowed to improve their service without resigning from the service to which they had been appointed. As recently as 14.10.96, the Tribunal in O.A. No.2059/95 A.K. Gupta Vs. Secretary, UPSC and others after noting the judgment of the Hon'ble Supreme Court's judgment in Singhania's case (Supra) holding Rule 4 in its entirety as intravires, has repelled the challenge to Rule 4(b) Civil Services Exam. Rules, 1994 observing inter alia

"Those already in service cannot be approximated to those, who are outside the service. A classification between members of a service and those who are not members of a service, appears to be eminently reasonable to us. An understandable reason behind this can be gleaned. If those in the service who have been trained by the Govt. at considerable cost and who have acquired necessary expertise to run the service, are allowed to go out leaving

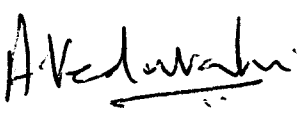
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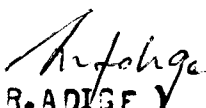
the Govt. high and dry, solely to advance their career prospects, public administration will be handicapped. The clock will be set back to an extent. The foremost object in having a Civil Service, is to run public administration efficiently and with continuity. Career advancement, is subject to this paramount consideration."

15. It is true that the said judgment has not noticed the Hon'ble Supreme Court's judgment in Subbiah's case(Supra), but we have already noted that the Hon'ble Supreme Court has granted Shri Subbiah the relief in the facts and circumstances of that case(emphasis supplied) and we have also noticed some features which distinguish the facts and circumstances of his case from the one before us. Under the circumstance we find ourselves in agreement with Shri Ramchandani that the Hon'ble Supreme Court granted relief to Shri Subbiah in exercise of the powers specifically vested in them under Article 142 of the Constitution, which is not available to us, in view of Narendra Mohan's case (Supra). No rulings or provisions of law contrary to the above position have been brought to ourselves.

16. We are bound absolutely by the law laid down by the Hon'ble Supreme Court themselves whereby the vires of Rule 4 has been upheld, and under the circumstance, we find ourselves unable to grant the relief prayed for.

17. The OA is dismissed. No costs.


(DR.A.VEDAVALLI)
MEMBER(J)


(S.R.ADIGE)
MEMBER(A).

/ug/