

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

18

O.A.No. 2855/1992
XXXXX.

DATE OF DECISION: 17.09.1993

Shri Bhupesh Katyal Applicant(s)

Versus

Union of India & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter ¹⁶ or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

S.K.
(S.K. DHAON)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(19)

Regn.No. OA 2855/1992

Date of decision: 17.09.1993

Shri Bhupesh Katyal

...Petitioner

Versus

Union of India & Others

...Respondents

For the Petitioner

...Shri G.D. Gupta, Counsel

For the Respondents

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

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

JUDGMENT

(of the Bench delivered by Hon'ble Mr.
Justice S.K. Dhaon, Vice-Chairman)

The petitioner appeared in the Civil Services Examination (CSE), 1990 conducted by the Union Public Service Commission (UPSC). That was his 4th and last chance according to the then existing rules. The result of the said examination was announced and published on 02.08.1991, according to which, he qualified in the said examination. He was recommended for appointment to the Department of Personnel & Training. Before an appointment could be offered to him, a notice purported to have been issued by the Commission for the CSE, 1992 was published in the Employment News (Special Supplement), New Delhi, dated 28.12.1991 - 03.01.1992. The notice, inter alia, provided that a candidate must not have attained the age of 33 years on 1.8.1992 and, if otherwise eligible, shall be permitted 5 attempts in all at the examination. The last date for submitting the application forms etc. must have been some date prior to 31.03.1992 as in the notice it is stated that request, if any for the change of centre received after 31.03.92 will not be entertained. On 27.03.1992 a letter under Registered Post with acknowledgement due was sent to him

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by and on behalf of the Director General, Ordnance Factories stating therein that as a result of the examination held by the Commission in 1990, the President of India had been pleased to offer him (the petitioner) an appointment as Assistant Works Manager (Prob)/Admin., a Class-I Gazetted post in the Indian Ordnance Factories Service (IOFS), Ministry of Defence. The terms and conditions of appointment were contained in the said letter. The petitioner was required to report for duty on 14.09.1992. It appears that the petitioner was permitted to appear in the preliminary examination held on 7.6.1992. On 4.8.1992, the petitioner addressed a representation to the Secretary, Department of Personnel & Training, Ministry of Personnel, Government of India, praying therein that he may be permitted to abstain from joining the probationary training on 14.09.1992 for IOFS Group 'A'. On 10.08.1992 he addressed a representation to the Director General, Ordnance Factories praying therein, inter alia, that he may be permitted to abstain from joining the probationary training on 14.09.1992 in order to enable him to appear in the C.S.(Main) Examination 1992. On 22.09.1992 the petitioner addressed a communication to the Secretary, Department of Personnel and Training, inter alia, stating therein that since he had not received any reply to the communication dated 4.8.1992, he presumed that the permission has been accorded to him to abstain from the probationary training.

On the same day, the petitioner sent a similar communication to the Director General, Ordnance Factories. He received no reply from either the Secretary, Department of Personnel & Training or the Director General to any of the aforesaid

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representations. It appears that the Commission took the stand that the petitioner could not be permitted to appear in the C.S.(Main) Examination which was scheduled to be held on some date after 5.11.1992.

2. The petitioner presented this O.A. in this Tribunal on 30.10.92. In it, he has claimed a number of reliefs. In substance, the reliefs claimed are that the act of the respondents in not granting permission to the petitioner from abstaining from joining the training be declared as illegal, void, ultra vires and arbitrary, direct the respondents to accord the petitioner the permission to abstain from joining the training and to keep the offer of appointment dated 27.03.1992 as alive till the result of C.S. Examination, 1992 and allow the petitioner to appear in the C.S. Examination, 1992 without resigning or foregoing, the right accruing to him on account of an offer of appointment on 27.03.1992. There is also the usual prayer that this Tribunal may issue any other appropriate direction or order which is considered fit and proper in the facts and circumstances of the case.

3. On 5.11.1992 this Tribunal passed an interim order that if the main examination was to commence within a period of 14 days from 05.11.1992, the petitioner should be allowed to sit in the examination but his results should not be announced till the disposal of the O.A. It appears that the said interim order is operating even now.

4. On 12.11.1992 MP No.3665/1992 was presented by and on behalf of the petitioner with the prayer that the respondents may be directed to keep the offer of appointment as contained in the communication dated 27.03.1992 alive till the disposal of the Original Application (O.A.) and

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pass such other further order/orders as deemed fit and proper to meet the ends of justice. This Miscellaneous Petition has remained undisposed of and is pending even now.

5. Learned counsel for the petitioner has stated at the Bar that the petitioner has remained unsuccessful in the C.S. (Main) Examination, 1992. He has, therefore, confined his submission to the relief that the respondents may be directed to keep the offer of appointment as contained in the communication dated 27.03.1992 alive. To put it differently, the submission is that the respondents may be directed to offer an appointment to the petitioner as Assistant Works Manager (Prob)/Admin., a Class-I Gazetted post in the IOFS, Ministry of Defence.

6. The arguments at the Bar have centred round the question whether the petitioner is even now entitled to be appointed as an Assistant Works Manager. For reasons given hereinafter, he is so entitled.

7. In the counter-affidavit filed on behalf of the Union of India by Shri V.K. Cherian, an Under Secretary in the Ministry of Personnel, Public Grievances and Pensions, the material averments are these:

The U.P.S.C. conducts the C.S.E. on the basis of the rules notified by the Central Government in the Ministry of Personnel, Public Grievances and Pensions. The examination is conducted every year to the I.A.S., I.F.S., I.P.S. and a number of Central Services, Group 'A' and Group 'B'. The eligibility conditions which a candidate should fulfil for appearing in the examination are laid down in the examination

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rules notified by the Central Government. The petitioner was required to join training along with his batchmates on the basis of the offer issued to him by the Ministry of Defence. He was not eligible to seek permission to abstain from joining training for appearing in the C.S. (Main) Examination, 1992. The entire process of C.S.E. from the date of the publication of the scheme of the examination to the date of final service allocation of successful candidates is split over a period of 2 years. For example, 1990 examination was notified on 31.12.1989 and the final service allocation of successful candidates of this examination was made by the Ministry of Personnel vide O.M. dated 03.12.1991. The C.S.E. is held every year. Before the completion of the process of the particular year's examination, the process for the next year's examination would commence. The actual appointment is made by the Cadre Controlling Authorities concerned. The Cadre Controlling Authorities can make appointment to the service controlled by them on the basis of the C.S.E. only after the Ministry of Personnel finally allocates successful candidates to different services. If the petitioner had joined training for the IOFS, he would not have been eligible candidate for the year 1992 examination.

8. In the rejoinder-affidavited filed, the material averments are these:

The final service allocation of 1990 examination in the O.M. dated 03.12.1991 was not communicated to the petitioner. He was neither communicated any provisional service allocation which is normally issued ^{immediately} after the results of the examination announced for joining the initial

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Foundational Course at Mussorie for all successful candidates, nor any final service allocation was advised by the Department of Personnel & Training. It was only in April, 1992 that the letter dated 27.03.1992 was received from the Director General, Ordnance Factories Board, Calcutta. The Department of Personnel had omitted the name of the petitioner from the list of successful candidates of 1990 Examination and the candidates junior to him (the petitioner) were issued letters of allocation of service and/or for joining initial Foundational Course along with all other successful candidates. The petitioner remained under suspense upto April, 1992 when he received the aforesaid communication dated 27.03.1992.

9. In the Gazette of India Extraordinary dated 28.12.1991 rules were published by the Ministry of Personnel, Public Grievances and Pensions. These Rules were for Competitive Examination - Civil Services Examination - to be held by the Commission in 1992 for the purpose of filling vacancies on a number of services/posts. Rule 4, inter alia, provides that the 5th attempt now permitted is available for 1992 Examination only. The second proviso to Rule 4 is relevant and is being extracted:

"Provided further that:-

(a) a candidate allocated to the IPS or a Central Service, Group 'A' on the results of the Civil Services Examination, 1991 shall be eligible to appear at the examination being held in 1992 only if he has obtained permission from Govt. to abstain from probationary training in order to so appear. If such a candidate is allocated to a Service on the basis of the examination being held in 1992, he shall join either that Service or the Service to which he was allocated on the basis of the Civil Services Examination, 1991 failing which his allocation to the Service based on one or both the examinations as the same may be, shall stand cancelled; and

(b) a candidate allocated and appointed



to the IPS or Group 'A' Service on the basis of the Civil Services Examination held in 1990 or earlier years shall not be eligible to appear at the examination being held in 1992 unless he has first resigned from the Service".

10. Rule 18, *inter alia*, states that on the basis of the performance in the examination preference given by a candidate for various services at the time of his application would be given due consideration at the time of making of appointments. It also states that appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective service at the time of appointment. The enacting part of this Rule, therefore, is confined to the stage of appointment. Obviously that stage will arrive only after an examination has been held and the successful candidate was eligible to appear in that examination. The first proviso has relevance and is, therefore, being extracted:

"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 compete
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1	2	3
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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.

11. Reverting to the second proviso to Rule 4 we find that the contents of (a) thereof have no application to the petitioner's case as they are

confined to the 1991 Examination. Admittedly, the petitioner appeared in the 1990 Examination and was allocated to Central Service, Group 'A'.

12. The contents of (b) to the second proviso to Rule 4 undoubtedly relate to the 1990 Examination. However, a bare reading of the same shows that, in order to attract them, two conditions have to be fulfilled. They are:

- (i) a candidate is allocated to the I.P.S. or Group 'A' Service; and
- (ii) such a candidate is also appointed to either of the aforesaid two Services.

The expression "allocated" and the expression "appointed" are joined by the word "and" which has clearly been used in a conjunctive sense. Therefore, there has to be an allocation followed by an appointment. The intention of the rule making authority is further clarified by the later provision in the rule that the condition precedent for the eligibility of a candidate who had been allocated and appointed on the basis of the C.S. Examination held in 1990 to appear in the 1992 Examination, is that he must resign from the service. The question of a person resigning from a service will not arise unless he has been appointed to that service. Mere allocation to a service and no more requires no resignation. Allocation to a service is the stepping stone to being appointed to a service. The act of appointment has to be performed after the act of allocation. No relationship between the master and the servant or the employer and the employee comes into existence merely by allocating an individual to a particular service. Such relationship comes into existence only upon an appointment of an individual to a particular service. A person

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does not acquire any status as a Government servant merely because he has been allocated to a Government service. At that stage he has merely an inchoate right to acquire a status. That right ripens into status only after a formal appointment has been made. Resignation in the context of the rules surely means the cessation of the relationship of master and servant or the employer and employee or the giving up by an individual his or her status as a Government servant.

13. In (b) to the second proviso care has been taken of the earlier years. Candidates allocated and appointed on the basis of the Examination held in 1990 or earlier years have been made ineligible to appear at the 1992 Examination so long as they are in service. However, Rule 4, as a whole, is completely silent about those candidates who fall neither in (a) nor in (b).

14. While interpreting Rule 4 we have to keep in mind that the 1992 Examination is an extraordinary one. Under the statutory rules for this examination, the maximum age limit is being raised to 33 years and for this examination alone, a 5th chance is being given to a candidate who has either remained completely unsuccessful in the earlier examinations or is dissatisfied with his performance in the earlier examinations. The rules confer a legal right upon those who have not crossed the age of 33 years and who wish to avail of the 5th chance to appear in the C.S. Examination. Rule 4 is clearly a restriction upon the right to make the 5th attempt. It has, therefore, to be strictly construed. If a candidate does not fall under (a) or (b), and is otherwise eligible, he is entitled as of right to appear in the 1992 Examination. To put it

differently, a candidate who appeared in the 1990 Examination or in the Examinations held in the earlier years and has not been allotted and appointed to the I.P.S. or Group 'A' Service, is entitled to appear in the Examination of 1992.

15. The first proviso to Rule 18 clarifies the intention of the rule making authority. We may read the provisions as contained in the proviso again. Here the expression used is "approved for appointment". Therefore, a distinction is being drawn between an appointment and an approval for appointment. Appointment has not come into existence as yet. Approval for appointment is not to the Civil Service but to two specific Services, namely, Indian Police Service/Central Civil Service, Group 'A'. In view of the averments made in the counter-affidavit filed on behalf of the Union of India, there can be no difficulty in taking the view that the approval as envisioned in Rule 18 is really allocation talked of in Rule 4.

Therefore, it is implicit in the proviso to Rule 18 that any candidate who has been merely allocated for appointment to Indian Police Service or Central Civil Service, Group 'A' in the Examination of any year other than 1991 is entitled to appear in the 1992 Examination without obtaining any prior permission etc.

16. In the scheme of proviso to Rule 18, there is a departure from the scheme as contained in (a) and (b) to the second proviso to Rule 4. In the second proviso to Rule 4 there is no restriction on the eligibility to compete in any particular service. If a candidate falls in (a), he is eligible to compete in all the Services of his choice, mentioned in the rules. Likewise, if a candidate falls in (b), he, after resigning from his existing service, is free and

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eligible to compete in all the Services mentioned in the rules. However, those members of the Indian Police Service or Central Civil Services, Group 'A' who wish to take advantage of the proviso to Rule 18 are not eligible to compete for all the Services mentioned in the rules. In the case of Indian Police Service, the eligibility to compete is confined to I.A.S., I.F.S. and Central Civil Service, Group 'A' and in the case of Central Service, Group 'A', the eligibility to compete is confined to I.A.S., I.F.S. and I.P.S. We, therefore, come to the conclusion that the petitioner was entitled to appear in the C.S. Examination of 1992 as of right if he fulfilled all other conditions of eligibility but he was eligible to compete only in the I.A.S., I.F.S. and I.P.S. Service.

17. We may now examine the contents of the letter dated 27.03.1992 of the Director General, Ordnance Factories by which, according to the respondents, an offer of appointment had been given to the petitioner. Sub-paragraph (vi) of paragraph 2 of the letter, as material, states that the petitioner is required to indicate whether he is taking up the C.S. Examination, 1991 and whether he wants to be considered for an appointment to a service on the basis of that Examination in which case he will be required to seek permission to abstain from probationary period and be permitted to join training along with the candidates of next batch. It is also stated that once the petitioner joins the service, he will not be eligible for consideration for appointment on the basis of the subsequent examination.

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18. The contents of sub-para are these:

The petitioner is eligible to appear at the C.S. (Main) Examination, 1991 and if he intends to appear in February, 1992 he should apply to the Department of Personnel & Training for permission to abstain from joining the training as envisaged under the second proviso to Rule 4 of the Rules. If the petitioner intends to appear at the examination, he need not join training "now" and in that event he would be required to join in August-September, 1992. If the petitioner is successful at the 1991 Examination also, he will be eligible to allocation to I.A.S., I.F.S. or I.P.S. only and not to other Service or Group 'A' in terms of second proviso to Rule 17 of C.S.E. Rules. If the petitioner joins service now, he will not be eligible to appear again at the Examination.

19. We come to paragraph 3, the contents of which are crucial. It is stated that if the petitioner accepts the offer on terms and conditions detailed above, he should report for duty on 14.09.1992, but not at a day later to the Director, Ordnance Factory Staff College, Nagpur. "In case you fail to join, no extension of time will be granted and the offer of appointment will be treated as cancelled".

20. The letter of the Director General in the very first paragraph accepts the position that the petitioner appeared in the C.S. Examination held by the Commission in 1990. It should be presumed that the Director General was aware of the fact that the petitioner had taken the 4th and the last chance in the said Examination. It should also be presumed that the Director General

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was aware that the 5th chance had been given under the rules promulgated on 28.12.1991 for the 1992 Examination. Yet, we find that all through the Director General referred to the 1991 Examination and he called upon the petitioner to indicate whether he intended to appear in that Examination and if he did intend to appear in that Examination, he was required to seek permission to abstain from training. It is to be noted that the letter is being written on 27.03.1992 whereas there is a reference in it of the 1991 Examination scheduled to be held in February, 1992. Two views are possible on a reading the letter as a whole. First, it was issued under some misconception. If that was so, it did not contain a valid offer of an appointment. Secondly, the year 1991 was inadvertently used for the year 1992. If that was so, the petitioner before 14.09.1992 and on 04.08.1992 sent a communication to the Secretary, Department of Personnel & Training seeking permission to abstain from joining the probationary training. He also sent a similar request on 10.08.1992 to the Director General himself. However, no reply was given by either of the two officers. The petitioner, therefore, performed his part of the duty as required of him under the letter containing the offer of appointment.

21. The crucial words of paragraph 3, as quoted by us, could be applicable only if the petitioner had not made a request for exemption from training before 14.09.1992.

22. It is contended on behalf of the respondents that in view of a clear notice given to the petitioner that in case he failed to report on duty on 14.09.1992, no extension of time would

be given to him and the offer of appointment will be treated as cancelled and the petitioner having failed to join on 14.09.1992, the offer automatically came to an end and does not survive any longer. The matter is not purely in the realm of contract. The rules as enforced on 28.12.1991 control and regulate the actions and decisions of the respondents. We have already taken the view that the rules conferred upon the petitioner a legal right to appear in the 1992 Examination and he was eligible to compete for the I.A.S., I.F.S. and I.P.S. Service without any let or hinderance. To put it differently, he was not required to take permission from any authority.

23. The letter containing the offer clearly indicated that if the petitioner joined, he would forfeit his right to appear in the 1991 Examination. That reasoning would have also applied to the 1992 Examination. Moreover, if the petitioner had joined in pursuance of the direction given in the offer of appointment, he would have fallen in the clutches of (b) of the second proviso to Rule 4. Therefore, he could not be permitted to appear in the 1992 (Main) Examination unless he had resigned from Group 'A' Service thereby taking a grave risk. In substance, the Director General required the petitioner to give up his legal right. We are, therefore, of the opinion that the Director General, while incorporating the contents of paragraph 4 in the offer of appointment made by him, acted contrary to the statutory rules as enforced on 28.12.1991. The conditions contained in paragraph 4 had no legal effect and were inoperative.

24. All actions of the State are meant for public good and are expected to be fair and just. An arbitrary action of the State even in the contractual field cannot be countenanced. Article 14 of the Constitution has a role to play. At the very threshold or at the time of entry into the field of contract, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers.

This has been so held by the Supreme Court in the case of Ms. Radha Krishnan Vs. State of Bihar and Others (1977) 3 Supreme Court Cases page 457 .

25. An unreasonable term in an offer of contract by the State will not be immune from the attack on the ground of arbitrariness. This is so as the State exercises powers and discharges functions for public good and public interest. Article 14 applies also to Government policy and if the policy or action of the Government, even in contractual matters fails to satisfy the test of reasonableness, it will be unconstitutional.

26. Having considered the matter carefully, we are of the view that the Director General while giving a conditional offer to the petitioner that if he failed to join on 14.09.1992, the offer will stand cancelled not only acted in violation of the Rules of 1991 but also in violation of Article 14 of the Constitution in so far as he imposed an arbitrary and unreasonable term.

27. There is no averment in the counter-affidavit that there is either any legal or administrative or partical impediment in giving a suitable

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appointment to the petitioner on the basis of the Examination held in 1990. There is no averment also that now there are no vacancies in the post of Assistant Works Manager (Class-I Gazetted post) in the IOFS, Ministry of Defence.

28. This petition succeeds and is allowed in part. The respondents are directed not to give effect to the letter dated 27.03.1992 issued by the Director General, Ordnance Factories to the petitioner. They are also directed to appoint the petitioner to the post of Assistant Works Manager (Prob)/Administration, a Class-I Gazetted post in the Indian Ordnance Factories, Ministry of Defence on usual terms and conditions on the basis of the Examination held in 1990 and in accordance with the allocation vide OM dated 3.12.1991 if the petitioner is otherwise fit for being appointed. The authority concerned shall consider the feasibility of deputing the petitioner for training along with the candidates allocated and appointed on the basis of 1992 Examination.

29. There shall be no order as to costs.

B. N. Dhoundiyai
(B.N. DHOUDIYAI)
MEMBER (A)
17.09. 1993

Sky
(S.K. DHAON)
VICE CHAIRMAN
17.09.1993

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