

(A2) 7
Reserved

Central Administrative Tribunal, Allahabad.
Registration O.A.No.268 of 1987

Sanjay Mittal

....

Applicant

Vs.

Union Public Service Commission
and 2 others

....

Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

In this petition u/s.19 of the Administrative Tribunals Act XIII of 1985, the applicant had initially prayed that the order dated 6.2.1987 passed by the Union Public Service Commission (hereinafter referred to as the Commission)- respondent no.1 debarring the applicant from his examinations and selections for a period of 3 years and cancelling his candidature for the Civil Services (Main) Examination, 1986 be quashed and the respondent nos. 1 and 2 be directed not to cancel the Indian Forest Service Examination, 1986 of the applicant. After impleading the Govt. of India as respondent no.3 the applicant sought one more relief by way of amendment for a direction to the respondent no.3 to appoint him in the Indian Forest Service, 1986

2. Shortly stated, the relevant facts of this case are that after passing the B.Sc examination, the applicant appeared in the Indian Administrative Service etc., examinations now known as Civil Services Examinations conducted by the Commission in the years 1984, 1985 and 1986. The applicant had passed the Civil Services (Preliminary) Examination for the year 1986 and on being qualified for the main examination, appeared therein in 1986. Its result was not declared by the time the

A3
2 8

.2.

present petition was filed on 2.4.1987. The applicant was served with notice dated 9.1.1987 issued by the Commission asking him to show cause against the proposed action under Rules 4 and 14 of the Civil Services Examination Rules, 1982 for his concealing the material fact about his appearing in the Civil Services (Preliminary) Examination, 1983. After considering the reply submitted by the applicant, the Commission passed the impugned order (copy annexure 3) on 6.2.1987 stating that the explanation furnished by the applicant was not found satisfactory and the Commission had decided to debar the applicant from ~~the~~ examinations and selections for a period of 3 years w.e.f. 5.2.1987 and his candidature for the Civil Services (Main) Examination, 1986 was also cancelled. The applicant had also appeared in the Indian Forest Service Examination conducted by the Commission on 27.7.1986 and was interviewed by the Commission on 27.1.1987. His physical and medical tests were held on 28.1.1987 and 29.1.1987 respectively. The result of this examination was also not declared by the time the present petition was filed.

3. Aggrieved by the order dated 6.2.1987 and apprehending that on account of his debarment his result of the Indian Forest Service Examination was likely to be withheld, the present petition was filed with the allegations that the applicant had not appeared in the Civil Services (Preliminary) Examination 1983 and had simply submitted his application form and as he had not furnished any incorrect information and had also not suppressed or concealed any material information, the order of his debarment passed by the Commission was illegal, arbitrary and violative of Articles 14 and 16 of the Constitution. It is also

AB
3 9

.3.

alleged that the impugned order is non-speaking and the rules framed by the Commission are subordinate legislations and cannot be applied with retrospective effect and the order dated 6.2.1987 should, therefore, not affect the result of the examinations already completed before that date and in any case, the punishment imposed by the respondents is too severe.

4. The petition has been contested on behalf of the respondents and in the reply and supplementary reply filed on their behalf by the ~~Asstt.~~ Under Secretary of the Commission- respondent no.1 it has been stated that the applicant had appeared in the Civil Services (Preliminary) Examination, 1983 with roll 38975 and according to rule 4 of the notification no.13018/3/82-AIS(1) dated 18.12.1982 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms contraining the rules of Civil Services Examinations the applicant could not appear in the Civil Services Examination held in 1986 on his having exhausted 3 chances in 1983, 1984 and 1985. He had thus suppressed material facts regarding previous chances availed by him in his application form while applying for 1986 examination and as the explanation furnished by him was not found satisfactory, he was debarred for a period of 3 years from the examinations and selections of the Commission. The applicant ^{has} stated incorrect facts even before this Tribunal by stating that he did not appear in the preliminary examination in 1983. The attendance sheet, photostat copy R-1, is the proof of applicant's appearance in the Preliminary Examination of 1983 and his allegation to the contrary is incorrect. As the applicant has been debarred for 3 years from 5.2.1987, he cannot be considered for any selection including Indian Forest Service Examination, 1986 and his candidature for the

.4.

same stood cancelled. The process of an examination is not complete till the result of the examination is finalised and the recommendations are made by the Commission to the Government and the contention of the applicant to the contrary that his Indian Forest Service Examination 1986 was already concluded before passing of the impugned order, is not correct.

5. It has been further stated that in the explanation to the show cause notice, the applicant had submitted that he had changed his residence thrice since 1983 and he could not lay his hands on old papers from which he could verify about his past attempts. He also wanted to withdraw his candidature but there is no provision for the same under the rules. The applicant appeared in the Preliminary and Main Examination of 1986 from Delhi and he had also given his Delhi address in his application and as the office of the Commission is also situated at Delhi, the Bench of the Tribunal at Allahabad has no jurisdiction to hear this case and the petition filed by the applicant deserves to be dismissed with a note of warning to the applicant for the misstatement made by him.

6. In his rejoinder and supplementary rejoinder the applicant indirectly admitted that he had appeared in the Civil Services (Preliminary) Examination 1983 and explained that he was under the impression that appearance in the examination means appearance in the main examination and the applicant had not carefully read the whole rule{4}. The mistake committed by the applicant in not disclosing the fact about

his appearance in the 1983 Preliminary Examination was bonafide omission on his part. He further stated that the appearance in the Preliminary Examination should not be treated as an attempt to appear in the Indian Civil Services Examination. The applicant permanently belongs to ~~the~~ Mathura district which falls under the jurisdiction of this Tribunal and his petition is legally triable by this Bench. The applicant had no intention to make any misstatement. The result of the Indian Forest Service Examination 1986 was declared on 14.4.1987 and the respondents cannot cancel the result of his examination on the basis of their order dated 28.4.1987. Some candidates who appeared more than 3 times in the Civil Services Examination were discharged by the Commission after giving a mere warning and the respondents have made step motherly treatment with the applicant and the punishment awarded to the applicant is harsh and his result of the Indian Forest Service Examination, 1986 is not liable to be cancelled.

7. At the time of hearing of this petition, it was not disputed on behalf of the applicant that the applicant had appeared in the Civil Services (Preliminary) Examination, 1983 and the main stress laid on his behalf was that the action taken by the Commission under Rule 13 framed under the Notification dated 18.12.1982 is in excess of the power conferred on it under this rule and the Commission could cancel only the candidature of the applicant for the Civil Services (Main) Examination, 1986 and could not debar the applicant from examinations and selections for a period of 3 years in view of the conjunction "or" between the clauses (a) and (b).

.6.

8. In view of the undisputed facts of this case, only the legal interpretation of rules 4 and 13 of the Civil Services Examination is ^{now} involved in this case. For the sake of convenience, we will like to reproduce below the relevant parts of the said rules :-

"4. Every candidate appearing at the examination who is otherwise eligible, shall be permitted three attempts at the examination, irrespective of the number of attempts he has already availed of at the I.A.S. etc. Examination held in previous years. The restriction shall be effective from the Civil Services Examination held in 1979.
....

NOTES:

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

...

13. A candidate who is or has been declared by the Commission to be guilty of-

(i) to (iv)

(v) making statements which are incorrect or false or suppressing material information; or

...

may, in addition to rendering himself liable to criminal prosecution, be liable-

(a) to be disqualified by the Commission from the examination for which he is a candidate; or

(b) to be debarred either permanently or for a specific period-

(i) by the Commission, from any examination or selection held by them;

~~xxxxxx by the Commission, from any examination~~

(ii) by the Central Govt. from any employment under them; and

(c) if he is already in service under Government to disciplinary action under the appropriate rules :

.7.

Provided that no penalty under this rule shall be imposed except after-

(i) giving the candidate an opportunity of making such representation in writing as he may wish to make in that behalf ; and

(ii) taking the representation, if any, submitted by the candidate, within the period allowed to him, into consideration."

9. Annexure R-1 to the main reply filed on behalf of the respondent no.1 is the attendance sheet of the applicant which shows that he had appeared in the Civil Services (Preliminary) Examination 1983 on 12.6.1983. This bears the photograph of the applicant. Annexure 1 to the petition is the letter dated 9.1.1987 issued by respondent no.1 to the applicant asking him to show cause for infringing rules 4 and 13 of the Civil Services Examination Rules giving the full details of his appearing in the Civil Services Examinations in 1983, 1984, 1985 and 1986. In reply to this, the applicant had submitted his explanation, copy annexure R-2 to the reply, stating that as far as he remembered, he did apply for the Civil Services Examination 1983 but did not appear in the test and due to the change of his residence thrice since 1983, he could not verify about his past attempts for want of connected old papers. He further stated that in case he had appeared in any of the papers in the Civil Services (Preliminary) Examination, 1983, it must have been an inadvertent omission which he could not mention in the application forms. In para 4 of his

explanation it was stated by him that he regretted for the omission which was unintentional and he would request to treat his candidature for the Civil Services Examination as withdrawn. This explanation contains merely an evasive denial about his appearing in the Civil Services (Preliminary) Examination 1983 and at the same time, he regretted for his unintentional omission about his not mentioning in the application form in respect of his appearing in the Preliminary Examination in 1983 and he unconditionally requested for treating his candidature for the 1986 examination as withdrawn. However, at the time of hearing, as already stated above, the learned counsel for the applicant had argued the case with the assumption that the applicant had appeared in the preliminary examination in 1983 and he had thereafter appeared in 3 more Civil Services Examinations.

10. According to rule 4 aforesaid a candidate can have only 3 attempts at the Civil Services Examination and an attempt at a Preliminary Examination though made even for one paper is taken to be an attempt at the examination. The applicant thus having made 3 attempts in 1983, 84 and 85 was not eligible to appear in the Civil Services Examination held in 1986, but, he did appear in that examination on account of his active concealment about his appearing in the Preliminary Examination in 1983. The proforma of the application form for the Civil Services Examination is not before us, ~~but~~ However, it appears from the allegations made in para 9 of the reply filed on behalf of the respondent no.1 as well as from the show cause notice annexure 1 to the petition that in column 27(a) of the application form, a candidate is required to state the number of times he had appeared at the Civil Services (Preliminary) Examination and in column 27(b),

13/15

he has to write the years of the examinations. In column 28 he is further required to furnish particulars of the recruitments by selection applied for/appeared but the required information was not furnished by the applicant in this column too. The applicant is, thus, prima-facie guilty of making statements which were incorrect or false or in any case for suppressing material information about his previous attempts necessary for considering his eligibility for the 1986 Civil Services Examination. The applicant was, thus, rightly found guilty of committing the breach of clause (v) of Rule 13 of the Rules aforesaid.

11. Now comes the main question regarding the penalty for committing the breach of clause (v). To be more explicit, we will like to reproduce below the relevant part of the impugned order dated 6.2.1987, copy annexure 3 :-

"...The Union Public Service Commission have, therefore, decided to debar you from their examinations and selections for a period of 3 years w.e.f. 5.2.1987. Your candidature for the Civil Services (Main) Examination, 1986 has also been cancelled."

12. The learned counsel for the applicant had contended before us that due to the use of the conjunction "or" between clauses (a) and (b)* of rule 13 quoted above, only under one of the two clauses the action can be taken and if the action is taken under clause (a), no action can be taken under clause (b). Without commenting on the poor drafting of clauses (a) and (b) aforesaid at this stage, even if we accept the contention advanced on behalf of the applicant, it may not be of any help to him. No doubt, prima-facie under the impugned order, the action against the applicant seems to have been taken under clause (a) and sub-clause (i) of clause (b) of rule 13 by the Commission but, in fact, it is not so. The impugned order shows that the Commission decided to debar the applicant from their examinations and selections for a period of 3 years under sub-clause (i) of

.10.

clause (b) of rule 13 and as a result of his debarment his candidature for Civil Services Examination 1986 was cancelled. In case, we separate the two punishments and for the sake of argument assume that the second punishment regarding the cancellation of the candidature of the applicant for 1986 examination was an independent punishment made under clause (a), we are of the view that the Commission ^{had actually} awarded the punishment under sub-clause (i) of clause (b) of rule 13 and that being done no action under clause (a) could thereafter be taken. At the most, the second punishment about cancellation of the candidature of the applicant for the Civil Services Examination 1986 can be set aside by this Tribunal and not the first part of the punishment though awarded under clause (b) which occurs after clause (a) in rule 13.

13. As already pointed out above, after realising the correct position, the applicant himself requested to withdraw his candidature for the Civil Services Examination, 1986 in his reply, annexure R-2. The applicant has not ^{specifically} claimed any relief regarding his Civil Services (Main) Examination, 1986 in this petition and as such even if we set aside the punishment regarding the cancellation of his candidature for this examination treating it as a second and independent punishment, it is not going to help the applicant at all and the Commission having decided to act under clause (b) sub-clause (i) of rule 13, the punishment awarded to the applicant debaring him for a period of 3 years was thus well within the ambit of rule 13(b) and the action taken by the Commission cannot be said to be illegal for want of competence or jurisdiction.

13/17

14. ^{Service &} Regarding the Indian Forest Examination, 1986 in which the applicant had appeared, the stand of the Commission is that in view of the debarment of the applicant for 3 years from the examinations and selections of the Commission, the applicant could not be declared selected. The further stand of the Commission is that a selection remains pending till the final result is prepared and recommendations are made by the Commission on the basis of the written examination and interview to the Government for appointment. We fully agree with the same and as even the final result of the Indian Forest ^{Service &} Examination, 1986 was not declared by 6.2.1987, the applicant cannot claim his selection in the said examination during the pendency of the punishment of his debarment for 3 years.

15. The applicant himself has filed with his rejoinder the copy of order no.F11/2/87-E.II dated 28.4.1987 of the Commission as annexure 1 which states that the Commission have decided that if a candidate is debarred by them from their examinations/selections for a certain period of time, his candidature for all the examinations/selections for which he is a candidate and results of which have not been announced prior to the date of debarment order, will stand automatically cancelled from the date of the debarment order. This order is by way of a clarification to determine the consequences of the order of debarment and we are of the view that the cancellation of the candidature of the applicant for the Civil Services (Main) Examination 1986 contained in the impugned order, annexure 3, as well as the cancellation of his selection for the Indian Forest Service Examination, 1986 shall be deemed under

A3
12/18

.12.

this order and in view of the impugned order, annexure 3, which in our opinion was validly passed, the applicant is not entitled to any relief in this petition.

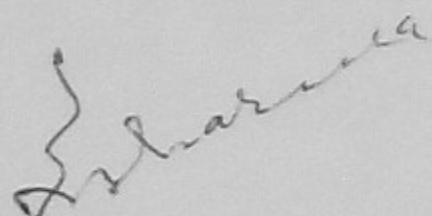
16. No other point was pressed ^{or arises} for determination.

17. Before parting with the case, we will, however, like to observe that clause (a) and (b) of rule 13 of the rules for holding Civil Services Examination and contained in Notification No.13018/3/82-AIS (I) dated 18th Dec.1982 issued by the Department of Personnel and Administrative Reforms, Govt. of India, are not happily worded and to some extent they also suffer from vagueness. Under clause (a) of this rule, the action is to be taken exclusively by the Union Public Service Commission. There are two sub-clauses under clause (b) and under sub-clause (i), the action is to be taken again by the Commission and ^{under} sub-clause (ii) the action is to be taken by the Central Govt. It is not clear that if the Commission and the Govt. both decide to take the action in any particular case, how and by whom the action has to be initiated first.

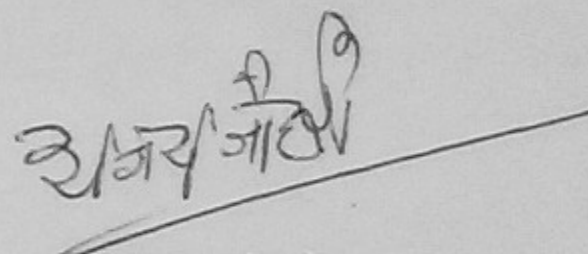
On the other hand, in case due to some mistake or in ignorance of the material facts or information the action is taken by the Commission under clause (a), no action can thereafter be taken under sub-clause (ii) of clause (b) by the Central Govt. ^{Even in a case when} ~~Even if~~ the Commission takes the action under clause (a) ^{just} it may thereafter be difficult for it to take the action under sub-clause (i) of clause (b) due to the conjunction "or" between the two clauses. It could be better to have two clauses instead of its existing three clauses of rule 13 and the subject matter of sub-clause

(i) of clause (b) pertaining to the Commission could be placed under clause (a) with the conjunction 'and' and the subject matter of sub-clause (ii) of clause (b) and that of clause (c) could be placed under clause (b) with the conjunction 'and' as at present. It is not a matter in respect of which a direction is to be issued by the Tribunal and it is for the Govt. of India to re-examine this rule in the light of the observations made above and take such action as may be deemed necessary.

18. The petition is accordingly dismissed without any order as to costs. A copy of this judgment be sent to the Secretary, Ministry of Personnel and Training, Administrative Reforms, Public Grievances and Pension, Department of Personnel and Training, Govt. of India, New Delhi for information.



MEMBER(J)



MEMBER(A)

Dated: 30th Sept. 1988
kkb