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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.427 of 1988

Inderpal Singh ... Applicant

Vs.

Union Public Service Commission
New Delhi ... Respondent.

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 has prayed that the orders dated 24.2.1988 and 25.2.1988 passed by the respondent be quashed and the respondent be directed to declare the result of the Indian Forest Service Examination, 1987 of the applicant.

2. The material facts of this case are not in dispute. The applicant had appeared in the Civil Service Examinations held by the respondent in the years 1983, 1984, 1985 and 1986 by writing his name differently such as Indrapal Singh, Inderpal Singh and I.P.Singh. In the application form submitted by him for the Civil Service Examination, 1987 in the column meant for noting the number of attempts made in the past, the applicant had wrote 'one' and in other columns in which particulars of previous examinations were to be noted, he had ~~three~~ ^(Main) ^{but} the dashes. The concealment having been detected by the office of the respondent, a notice was issued to the applicant on 25.1.1988 giving the details of applicant's appearing in the previous examinations with the observation that the applicant has knowingly suppressed in his current application

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form the information regarding his previous candidatures in respect of Civil Services (Preliminary) Examinations, 1983, 1984, 1985 and 1986 and had made misstatement in the application form in order to gain unauthorised admission to the Civil Services Examination, 1987. It was also mentioned that the applicant had thus infringed rule 4 of the Competitive Examination-Civil Services Examination, 1987 notified by the Ministry of Personnel, Public Grievances and Pensions in the Extraordinary Gazette (hereinafter referred to as Rules of Examination) of India dated 13.12.1986/ and he was required to show cause as to why action should not be taken against him under rules 4 and 13. The applicant submitted his reply dated 6.2.1988 clarifying that in his High School Certificate his name was written as Indrapal Singh and in his subsequent examinations the name was mentioned as Inderpal Singh and under some genuine and bonafide confusion the mistakes had occurred in mentioning his name by the applicant in the Civil Services Examination. It was further stated that in 1985 examination, the applicant was selected but he did not join and in 1983 he had appeared only in the Preliminary Examination and had not appeared in the Main Examination and he was under the bonafide belief that the examinations of these two years are not to be counted for the purpose of noting the previous attempts and his candidature for the Civil Services Examination, 1987 was not made dishonestly with any malafide intention. The respondent did not find this explanation of the applicant satisfactory and by way of punishment vide its order dated 19.2.1988 had debarr-

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ed the applicant from its all the examinations and selections for a period of 3 years and also cancelled his candidature for the Civil Services (Main) Examination, 1987. The order made to this effect was communicated to the applicant by the Under Secretary of the respondent vide his letter dated 24.2.1988. The same officer vide his another letter dated 25.2.1988 informed the applicant that as he has been debarred for 3 years from all the examinations and selections w.e.f. 19.2.1988, his candidature for the Indian Forest Service Examination, 1987 has also been cancelled.

3. It is also not in dispute that the applicant had appeared in the Indian Forest Service Examination conducted by the respondent in 1987 and he having been qualified in the written examination was called for interview on 2.2.1988. According to the allegations of the applicant his walking test of the said examination was held on 3.2.1988 and the medical examination was held on 4.2.1988 and the selection process was, thus, completed on 4.2.1988 and only its result was awaited at the time the impugned orders were passed.

4. Aggrieved by the impugned orders, this petition was filed by the applicant on 30.3.1988 with the allegations that he had given a satisfactory explanation for the alleged discrepancies pointed out by the Union Public Service Commission (hereinafter referred to as the Commission) in respect of his previous Civil Service Examinations and his explanation was wrongly rejected without passing

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a speaking order. At the most, the respondent could cancel Civil Services (Main) Examination, 1987 of the applicant under rule 13 and no other examination could be cancelled under the law. It is also alleged that no administrative order could be passed with retrospective effect and as the impugned orders were passed w.e.f.19.2.1988, the same are contrary to law.

5. In the reply filed on behalf of the respondent by its Under Secretary, it has been stated that rule 4 of the Rules of Examination provides that every candidate appearing in the examination shall be permitted 3 attempts at the examination and an attempt made at the Civil Services (Preliminary) Examination shall count as an attempt for this purpose. The note ^{appendix to} of this rule further makes it clear that an attempt at a preliminary examination shall be deemed to be an attempt at the examination and 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. The applicant having gained entry in the Civil Services Examination, in 1983, 1984, 1985 and 1986 by writing his name differently as Inderpal Singh Indrapal Singh and I.P. Singh and noting only one attempt in his application form for the Civil Services Examination 1987 without giving the particulars of the previous examinations had done so deliberately with a malafide intention to cheat the Commission in order to gain unauthorised admission to the Civil Services (Main) Examination, 1987 and the explanation furnished by him was thus not suffi-

-cient and it was rightly rejected by the Commission as there was no possibility of any misunderstanding or misinterpretation in this connection on the part of the applicant. The result of the Indian Forest Service Examination, 1987 was announced on 6.4.1988 and the process of examination/selection is not complete until the final selection is made and the result is announced and the names of the successful candidates are recommended to the Govt. Appearing at the examination or an interview is just one of the stages in the process of final selection and the contention of the applicant to the contrary is not correct. The applicant was debarred for 3 years on 19.2.1988 and was informed about this decision on 24.2.1988. The penalty imposed on the applicant as compared to the seriousness of criminal offence committed by him is nothing and the examinations of the applicant were rightly cancelled in accordance with the order of debarment for 3 years after due consideration of the explanation of the applicant and he is not entitled to any relief.

5. A rejoinder was filed on behalf of the applicant by his brother reiterating the facts stated by him in the main petition.

6/ So far as the facts of this case are concerned, it is not in dispute that before submitting his application form for the Civil Services (Main) Examination 1987, the applicant had already availed more than 3 chances in accordance with the provisions of R.4 of the Rules of Examination and he was not eligible to appear in the 1987 examination. It is also not in dispute that the applicant had

used different spellings or names previously and his explanation is that in his High School Certificate his name was mentioned Indrapal Singh in Hindi and in the certificates and degrees of subsequent examinations, his name was mentioned as Inderpal Singh and at the time of filling in the former examination forms, he could not decide as to which spelling should be written by him and as such the discrepancy had crept in regarding spelling of the name in various examinations. His explanation for concealing two previous attempts of 1983 and 1985 is that in 1983 he had not appeared in the main examination and in 1985 he was finally selected but he did not join and as such, these attempts were ignored by him. The applicant on his own showing is a first divisioner throughout. The provisions of R.4 of the Rules of Examination for counting the number of attempts are very clear and leave no room for committing any mistake even by a lay man what to say ~~about~~^{as} a first divisioner like the applicant before us. There may be ~~a~~^{such} difference in spellings ~~as~~^{of} the names of some persons due to some reason or the other but this may hardly give them latitude to write any spelling of their names at any time or at any place according to their choice and convenience. Ultimately, they have to select one of such spellings to be correct for writing their names or making their signatures. The explanation submitted by the applicant was not found satisfactory by the Commission as mention-

ed in its order dated 24.2.1988, copy annexure 2 to the petition.

7. The validity of this action of the Commission has been challenged on behalf of the applicant on the ground that the Commission has not passed a speaking order giving the reasons why his explanation was not found satisfactory and under the law the Commission was under an obligation to state the reasons as it concerned the future prospects of the applicant in respect of an important service. The contentions raised before us have been considered very carefully and we are of the view that it could be better if some reasons could be given by the Commission but in view of the tale-telling facts stated above, the Commission hardly required to record any reason to reject or term the explanation of the applicant unsatisfactory. In view of the peculiar nature of the case of the applicant, we are unable to accept the contention of the applicant and the impugned orders cannot be said to be invalid merely on the ground that detailed reasons have not been given in rejecting the explanation of the applicant.

8. The applicant has further attacked the validity of this order on the ground that he was debarred with retrospective effect from 19.2.1988 by passing an order dated 24.2.1988 which is not permissible in administrative matters. We are of the view that the impugned order, copy annexure 2, is actually not the order of debarment but is a letter communicating the decision of the Commission taken on 19.2.1985 debarring the applicant from its all

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the examinations and selections for 3 years. The Under Secretary Sri Hakim Singh who had addressed this letter to the applicant is not the Commission. As we understand, the Commission means the whole body of the Commission consisting of the Chairman and its Members. Of course, for specific purposes the Commission may also be taken to be a single Member or a Committee or Board of less than the entire strength of its Members and the Chairman as may be permissible under its rules. The power to take the decision, therefore, vests in the Commission and they are implemented through its administrative staff. The decision for debarring the applicant for 3 years thus seems to have been taken by the Commission on 19.2.1988 according to its rules and not by the Under Secretary on 24.2.1988 and the said decision was merely communicated by Sri Hakim Singh to the applicant on that date. If not impossible, it is usually difficult to communicate the decisions of the Commission to the concerned persons the same day and a delay of few days in communicating the decision of 19.2.1988 to the applicant could thus be a normal feature and on this ground the order cannot be said to be bad as having been passed with retrospective effect especially when nothing is shown that it could not be prejudicial to the applicant without making it effective from before 24.2.88.

9. The applicant has further challenged the validity of this order on the ground that the applicant was not only debarred from the selections and examinations of the Commission for 3 years but the candidature of his Civil Services (Main) Examination 1987 was also cancelled by the said order. Thus according to his contention, such order could not be passed in view of the peculiar wordings of R.13 of the Rules of Examination. For the sake of convenience the relevant part of R.13 is extracted below :-

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

(i) to (xii) Omitted.

be liable :-

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(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 specified period -

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

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

....."

The contention advanced before us is that as the candidature of the applicant for the Civil Services (Main) Examination 1987 was cancelled under clause (a) aforesaid the Commission could not take the action under clause (b) thereafter for debarring him for 3 years due to the conjunction 'or' between clauses (a) and (b). The similar question had arisen before this Bench in O.A.No.268 of 1987 Sanjay Mittal Vs. Union Public Service Commission and others decided on 30.9.1988 and it was held that as the action under Clause (b) was taken first, as is the case here as well, the candidature of the applicant for any particular examination during the period of debarment being the natural sequence of such punishment, would automatically follow as a result of debarment despite the conjunction 'or' between clause (a) and clause (b). The learned counsel for the applicant had contended before us that the use of 'or' between two clauses was not noticed in the earlier decision delivered by this Bench. This does not appear to be a fact and we had duly considered the same in our judgement and, therefore, we do not see any reason to arrive at a different conclusion in the instant case.

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10. It may be pointed out that according to annexure 2 after considering the explanation of the applicant the Commission decided on 19.2.1988 to debar the applicant for 3 years from its examination and selection. It was further noted that the candidature of the applicant for Civil Services (Main) Examination 1987 was also cancelled. The Commission, thus, took the action under clause (b) (i) first by debarring the applicant for 3 years and his candidature for Civil Services (Main) Examination 1987 was cancelled after as is evident from the use of 'BHI' (also) in the sentence. ~~as is evident from the use of 'BHI' (also) in the sentence.~~ The powers, thus, having been exercised under clause (b) first, the candidature of the applicant for any examination which was not yet finalised, automatically stood cancelled and the Commission committed no error by passing an order in express wordings to this effect.

11. Regarding relief claimed by the applicant for Indian Forest Service Examination, 1987, we are unable to convince ourselves that as the result was final and nothing else was to be done for its declaration, the same could not be cancelled by the Commission. We are of the view that unless the recommendations are made by the Commission to the Government for appointment on the basis of some competitive examination, the process of selection continues and as the said stage had not arrived in the case of the applicant till he was debarred for 3 years from the selections and examinations of the Commission for 3 years, his candidature for the Indian Forest Service Examination 1987 was rightly cancelled as the natural consequence

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of his debarment for 3 years. The contention to the contrary is not correct.

12. In view of these considerations, the applicant is not entitled to any relief and his petition is dismissed without any order as to costs.

Member (J)
MEMBER (J)

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MEMBER (A)

Dated: 3rd Feb. 1989
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