

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 168

of 1990 and O.A. No. 1161 of 92

T.A. No:

of 199

DATE OF DECISION: 7.5.1993

S.K. Jaiswal & Uday Krishna----- PETITIONER.

----- ADVOCATE FOR THE
PETITIONER

V E R S U S

Union of India & Others----- RESPONDENTS

Sri Ashok Bhatnagar----- ADVOCATES FOR THE
RESPONDENTS

CORAM:-

The Hon'ble Mr. Justice U.C. Srivastava, V.C.

The Hon'ble Mr. K. Obayya, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy ✓
of the judgement?
4. Whether to be circulated to all other Benches?

JAYANTI/

SIGNATURE

H. K. Bhatnagar

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Hogdages
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CENTRAL ADMINISTRATIVE TRIBUNAL A-Allahabad BENCH ALLAHABAD

Original Application No. 168 of 1990

Sudhir Kumar Jaiswal & Udal Krishna Applicants

Versus

Union of India and others Respondents

AND

Original Application No. 1161 of 1992

Sudhir Kumar Jaiswal Applicant

Versus

Union of India and others Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (Administrative)

(By Hon'ble Mr. K. Obayya, Member (A)

These two applications have been filed challenging certain rules of the Civil Services Examination (CSE) 1990. In the first application there are two applicants and their prayer is for declaration that the cut off date of 1.8.1990 for computing age limit for examination is arbitrary discriminatory and violative of Article 16 of the Constitution of India and that the respondents be directed to amend rules of the examination and fix cut off date as on 1.1.1990 for permissible age limit. They have also prayed for a declaration that the applicants are eligible to appear in the C.S.E. examination 1990 and to declare their results. In the second application, there is only one applicant Sudhir Kumar Jaiswal and his prayer is for direction to the respondents to issue appointment letter and to permit him for joining the training.

2. As these cases are inter-related in the nature of cause and consequence and relief in the second application flows from the first case, these cases were heard together at the request of the applicants and are being disposed of by a common judgement.

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3. The applicants appeared for the C.S.E. examinations held during the years 1982, 1983 and 1984 but were not successful thereof. They had availed three permissible chances to appear in the examination. For the examination held in 1990 two changes were made. The upper age limit was extended upto 31 years as on 1.8.1990 and the number of attempts were increased from 3 to 4. The applicants who have not availed 4th attempt submitted their applications. Their dates of birth being 2.6.1959 and 21.5.1959 respectively, they were over aged as they had crossed 31 years as on 1.8.1990 and were thus ineligible to take the examination.

4. The grievance of the applicants, is but for the cut off date they would have been eligible to take the examination as they have not availed the 4th chance. The applicants however appeared at the examination by obtaining an interim order in their favour; it would appear only the 1st applicant (Sudhir Kumar Jaiswal) was successful in the examination, that is why he has filed the second application seeking appointment to a service.

5. It is contended that the cut off date (1.8.90) has been fixed arbitrarily to fall in the middle of the year, and it should have been fixed as the 1st day of the year i.e. 1.1.1990, which is more rational. It is their further contention, the cut off date for many other All India Services like the Engineering, Medical, Forest service etc. precedes the examination while in the case of C.S.E. this principle was not followed, thus there is discrimination. For promotion to I.A.S., I.P.S. etc. eligibility is reckoned as on 1st day of the year resulting in division of Civil Services into two classes, without nexus to the objective to be achieved, and thus the criteria of cut off date for C.S.E. is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution.

6. The respondents have contested the case and in their reply, it is pointed out that till 1978, the examination was held

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under the old Scheme. The committee on Recruitment policy and selection methods set up under the chairmanship of Dr. D.S. Kothari reviewed the system and suggested two tier systems - i.e. preliminary and Main examination. This scheme is being followed with effect from 1979. The preliminary examination is only qualifying or screening examination and marks obtained do not count for merit; but it is the main examination consisting of written papers and viva-voce or personality test; that determines the inter-se merit of the candidates on the basis of which results are announced. U.P.S.C. conducts examinations for different services and there cannot be one cut off date for all examinations. Even since, the Civil Services examinations were introduced, in 1947, the cut off date has been 1st of August, and that remained unchanged, though the Scheme of examinations underwent changes. The date has been fixed in conformity with the orders of Government. Regarding age relaxation it is stated that, in respect of SC's and ST's, rules provide for age relaxation and not for others. It is also pointed out that number of cases filed before the tribunal have been dismissed, upholding the validity of the rules including the cut off date for age eligibility.

7. In the second application it is contended by the applicant that he appeared in the examination on the basis of interim order. He was successful both in the written examination and also interview and his name was recommended through supplementary list by U.P.S.C.; ~~for~~ The applicant also submitted revised preferences of services as desired but thereafter he received no appointment order though others selected alongwith the applicant were sent for training.

8. In their reply the respondents have stated that the applicant was permitted to appear at the examination, because of

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interim order, subject to final order, in the case. Being ineligible age-wise, the applicant was not entitled for any service; The number of chances was increased to 4 and the applicant would have availed the same provided he was within the age. It is also pointed out that cut off date cannot be termed as arbitrary merely because applicant became ineligible to appear at the examination. The name of the applicant has been included in the supplementary list of selected candidates provisionally because the case filed by him regarding cut off date is pending. It is denied that the tribunal or the High Court issued any order for appointment of over aged persons declared successful in the examination. According to the respondents, the controversy about cut off date for age limit has been settled, as the tribunal and also Supreme Court held, that the rules of cut off date is not arbitrary and it is within the competence of the administration and U.P.S.C. to lay down rules and the cut off date prescribing the upper age limit.

9. The applicant and the learned counsel for the respondents Sri Ashok Mohiley were heard. Both sides submitted written arguments to supplement their oral submissions. The applicant's submissions, besides legal pleas, were, that the cut off date for upper-age limit is arbitrary, discriminatory and UPSC has adopted different standards, not adhering to uniform criteria, as such the rules have to be struck down as offending the Constitutional provisions of Articles 14 & 16. He also urged, that the interim order to enable him to appear at the examination was given after considering the facts and the likely hardship that will befall, if no such order was given, and hence it is was a valid permission for to take the examination. He succeeded in the examination,

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thereafter, he cannot be denied of appointment. His case deserves to be considered on humanitarian grounds, even if merit is not on his side. He placed reliance on the decision of Allahabad High Court in Dr. Anil Kumar Agrawal (1987 UPLBEC 547) and also other decisions of the same High Court. The issues in these cases related admissions to educational institution and it was not a service matter. Reliance was also placed by the applicant on the decision of the Supreme Court in N.K. Sin N.K. Singhania and others Vs. Union of India and others (1992 ATC 881). We will refer to this later. Shri Ashok Mohiley counsel for the respondents countered these arguments by saying that the applicant cannot claim benefit of an interim order, as that order was only order of transitory nature, subject to final decision and no right accrues to the applicant to claim appointment, even if he is successful as he was over-aged and ineligible to appear at the examination. The learned counsel urged that the controversy of cut off date laying down upper age limit stands settled, as in number of cases the tribunal and also the Supreme Court upheld the vires of the examination rules, including cut-off date, so in the background of legal position, the rules are not more open to challenge. The further submission of the counsel was that though some of the candidates, who appeared at the examination, because of interim order, and successful ^{time} there on, were appointed as one exception, in all these cases, the candidates were within the age and there was not a single case of over-age candidates. The rules have been upheld as valid rules and action in conformity of these rules cannot be said to be arbitrary or discriminatory.

10. . On the issue on cut-off date laying down upper-age limit for C.S.E., there has been a spate of litigation. Number of cases were filed, which came up for consideration before different benches, including the Principal Bench of the tribunal. The Allahabad Bench in which one of us (Hon'ble K. Obayya, A.M.) was a member, in Kuldev Alias Pradeep Kumar Vs. Union of India (U.A. No. 778 of 1991 decided on 19.9.91, held that the cut off date for determination of Maximum age

limit cannot be held to be arbitrary, merely because the applicant or some others would be ineligible to apply. The application was dismissed on that ground. Similar matters came up in O.A. 747/92 (N.K. Sharma Vs. Union of India) O.A. No. 1297/92 (Arun Kumar Sharma Vs. Union of India) O.A. No. 1243/92 (S.K. Singh Vs. Union of India) and bunch cases before the Principal Bench, the cases were dismissed, holding that there is no infraction of Article 16 or other provisions of the Constitution, and that the framing of rules, and their changes to meet needs of situation is within the exclusive domain of the Executive and is not open to challenge. The Hyderabad bench also dismissed cases on similar issues. Reference may be made to the case of State of Bihar and others Vs. Ramjee Prasad and others (1990(3) SCC 368, wherein the Supreme Court held that choice of a date cannot be dubbed as arbitrary even if no particular reasoning is forthcoming for the same, unless it is shown to be capricious, or whimsical or wide off the reasonable mark. In Mahmood Alam Tariq Vs. State of Rajasthan (1988 SCC (L&S) 757, it was held by Supreme Court that the validity of a provision must be tested with reference to its operation and efficiency in the generality of cases and not by the freaks or exceptions that its application might in some rare cases possibly produce. Reference may be made to the case of K.V. Subbarao Vs. Government of A.P. (AIR 1988 SC 887), in which the Supreme Court held that the State is equally bound by the rules, and that rules should be framed in the matter of recruitment to service.

10. In this background of legal propositions as laid down by Supreme Court and the decisions of the tribunal referred to above, we are of the view that the controversy regarding cut off date for determination of age limit for C.S.E. stands settled. We have no

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reason whatsoever to disagree with the earlier decisions of the tribunal, and hold that the application challenging cut off date and examination Rule regarding age limit is bound to fail, we are unable to issue any directions to the respondents to change the cut off date or amend the examination Rules.

11 . The applicant appeared for the examination under the cover of an interim order. The order was to the effect that the applications for admission to C.S.E. 1990 shall be entertained subject to eligibility in all other respects, irrespective of age limit. As the case was not decided, the interim order continued and the applicant in the meanwhile progressed to selection, being successful in the examination, and his name was also sent by U.P.S.C., though in the supplementary list for appointment to group 'B' services. The applicant placed reliance on the decision of the Supreme Court in M.K. Singhania's Case referred to earlier and prayed that he too should be given the benefit of selection for appointment and thereafter to be sent for training in as was done in cases of similarly placed candidates.

12. The background to the case of M.K. Singhania and others is that vide notification dated 13.12.1986, second proviso to Rule 4 of Central Services Examination Rules 1986, was introduced by which candidates who have joined I.P.S. or Group 'A' services on the basis of earlier selection were required to resign the service, if they intend to appear for subsequent examination (C.S.E.). Alok Kumar and others, challenged the vires of the Rule before the Principal bench of the Tribunal, which upheld the validity of the Rule. The matter was taken up before Supreme Court by M.K. Singhania and others, the Supreme Court also upheld

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the validity of the Rules, while the matter was under consideration before the tribunal interim orders were given to enable the candidates, challenging the rule, to appear at the examination, and those who were successful were directed to be offered appointments in accordance with their merit. The subject matter in M.K. Singhania's case was thus entirely different, and the interim order was a qualified order; and only such of the candidates who were within permissible age limit and satisfy other conditions were permitted to appear for the examination. The benefit of appointment if successful in the examination, flows only to those who had interim order granted by the Principal Bench in Alok Kumar and others in bunch cases, which was subject to their being within the age limit.

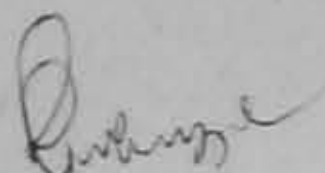
13. This position becomes clearer from the judgement of the Principal Bench and the judgement of the Supreme Court on this issue. The learned counsel for the respondents has brought to our notice, the case of the Arti K. Chhabra and others, who joined the Indian Custom Excise Service on the basis of interim order, but as the case was dismissed by the Supreme Court, and their training was terminated. In other words, there is no finality attached to the interim order and interim order is always be subject to the final order and could be reversed. As noticed by us, the decision of the Supreme Court and also Principal bench related to the application of Rules 4(2) of the examination Rules and in none of these cases any ineligible, who was not within age limit was either given the benefits of interim order or the final order. As the vires of the Rules has been withheld by the Supreme Court; We have nothing further to add in the matter. No direction can be given to the respondents to ignore the rules and give appointment


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to the applicant. It is beyond the jurisdiction of the tribunal to issue such a direction - a direction which is for a particular action ignoring the rules. These matters can be only considered by the executive authority, we are unable to grant the relief as prayed for by the applicant. This application is also liable to be dismissed. Accordingly, these two application, (U.A. No. 168/90 and 1161/92) are dismissed with no order as to costs.


Member(A)


Vice-Chairman

Allahabad Dated: 7.5.1993.

(RKA)