

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1036 of 1992

Girish Chandra & ors. Applicants.

Versus

Union of India & ors. Respondents.

WITH

Original Application No: 1115 of 1992

R.S.Pathak Applicant.

Versus

Union of India & ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma , Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

O.A. No. 1115/1992 and O.A. No. 1036/1992 involve common question of law, hence have been disposed of by this common judgement.

2. Both these applications have been filed for issuing a direction in the nature of mandamus directing the respondents to increase the upper age limit from 25 to 33 years and number of chances from 4 to 5 for Indian Forest Service Examination 1992, as has been done in the case of Civil Services Examination, 1992.

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3. The respondents have increased upper age limit to 33 years and number of chances to 5 for Civil Services Examination, 1992 as would appear from notice (Annexure-4) published by the Union Public Service Commission in Employment News dated 3.1.92.

But a corresponding increase in age and number of chances has not been made for Indian Forest Service Examination 1992 as would be evident from Annexure-1 extract of Rule and Annexure-2 Advertisement for Indian Forest Examination, 1990.

4. It has been stated that in the past whenever upper age limit or number of chances were increased for Civil Services, a corresponding increase in the upper age limit and number of chances was made in respect of Indian Forest Service also. This, however, has not been done for the Indian Forest Service Examination, 1992. Denial of the benefit of increase in the upper age limit and maximum number of chances for appointment to Indian Forest Services at par with Civil Services, it is said, is arbitrary/discriminatory and violative of Article 14 and 16 of the Indian constitution.

5. The respondents have contested the claim of the applicants and have contended that Civil Services and Indian Forest Services are two distinct and separate classes and as such nonextension of the increase in the upper age limit and maximum attempts for appointment to Indian Forest Service is neither arbitrary nor discriminatory and as such no provision of the constitution has been violated.

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6. The only question that arises for consideration is whether nonextension of the provision whereby

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upper age limit and number of chances have been increased for Civil Services Examination 1992 to Indian Forest Service Examination amounts to a discrimination which violate the provisions of Article 14 & 16 of the constitution.

7. Before dealing with question in issue, we must record that Shri S.C.Budhwar, learned counsel for the applicant in O.A. No. 1036/1992 has very ably assisted us in deciding the complicated question of law involved in this case by referring to various rules and the decisions of the Supreme Court on the subject. His argument has been so forceful and persuasive that in the first flush we felt what he was arguing was plausible, but on examination of the issue in greater detail we have come to a different conclusion for reasons which we will shortly state.

8. The law on the subject is well settled that Article 16 of the constitution which gaurantees equality of opportunity for appointment is only an incident of the application of the concept of equality enshrined in Article 14 thereof. It gives effect to the doctrine of equality in the matter of appointment.

9. In view of the above, what has to be seen is whether Civil Services and Indian Forest Service constitute a distinct and separate class and/or principle of reasonable classification has been correctly applied in excluding the Indian Forest

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Service from the application of the provision whereby the upper age limit and the number of chances for Civil Services Examination 1992 have been increased.

10. Section 3 of the All India Services Act, 1951 provides that the Central Government may after consultation with the Governments of the States concerned and by notification in official gazette make rules for the regulation and conditions of service of persons appointed to All India Service. In exercise of the power conferred by sub Section 1 of Section 3 of the said Act, the Central Government after consultation with the Governments of the States concerned have framed the Indian Administrative Service Rules 1954. Sub Rule 2 of Rule 7 of the Indian Administrative Service recruitment rules provides that a competitive examination for recruitment to the service shall be held by the commission in accordance with such regulation as the central Government from time to time may make in consultation with the Commission and the State Governments. In pursuance of Rule 7(2) of the Rules, the Indian Administrative Services (appointment by competitive examination) Regulation 1955 (hereinafter referred to as regulations) have been framed. Regulation 4(b) (II) provides that;

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"Age— He must have attained the age of 21 and not attained the age of 28 on the first day of August of the year in which the examination is held;

Provided that the upper age limit may be relaxed in respect of such categories of persons as may from time to time, be notified in this behalf by the Central Government to the extent and subject to the conditions notified in

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respect of each category.

(Provided further that the upper age limit shall be raised to 31 years for the candidates appearing at the examination to be conducted by the commission in 1990.)

Similar provisions are found in the I.P.S. (Recruitment rules) and the I.P.S. (appointment by competitive examination regulations).

11. Indian Forest Service Recruitment Rules have also been framed in exercise of the power conferred under sub Section 1 of Section 3 of the All India Services Act. Similarly, in exercise of the powers conferred under Rule 7 of the Rule Indian Forest Service Recruitment Rules (Appointment by competitive Examination) regulation 1987 have been framed. Regulation 4 of the regulation meant for the I.F.S. lays down the eligibility conditions for appearing at the I.F.S. examination. It is worth mentioning that the minimum age prescribed for appearing at the I.F.S. examination is 20 years as compared to I.A.S. is distinct from other services in respect of the minimum age prescribed for appearing at the relevant examination.

12. In addition to the above as would appear from Regulation 4 (III), the minimum qualification prescribed for appearing at the Civil Service Examination including I.A.S. and I.P.S. is degree in any discipline but as prescribed under Regulation 4(III) of the I.F.S. (appointment by competitive examination) Regulation 1987 for being eligible for appearing at the I.F.S. examination, a candidate has to be a graduate in one of the science subject mentioned therein.

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13. It is also worth mentioning that a explanatory memorandum has been appended to the conditions of eligibility for appearing at the I.F.S. examination. Explanatory memorandum 3(3) inserted by notification No. 11028/2/90-AIS(I) dated 16.3.1990 provides that unless covered by any of the exceptions that may, from time to time, be notified by the Central Government in this behalf, every candidate appearing at the examination after 1.1.1990, who is otherwise eligible, shall be permitted 4 attempts at the examination. No such explanatory note appears to have been appended to the eligibility conditions of any other services. In this view of the matter also the I.F.S. appears to be distinct from the Civil services.

14. The applicants who were desirous of appearing at the I.F.S. examination 1992 have already taken 4 chances and crossed the age of 28 years on the last date fixed for receiving applications for appearing at that examination. It may be mention that in 1979, the upper age limit had been fixed at 28 years and 3 attempts were permitted. In 1986, this limit was reduced to 26, but relaxation of 3 years was given for the examination 1990, the upper age limit was fixed at 31 years. While doing so, it was made clear that the relaxed upper age limit of 31 years will be applicable only to the examination held in the year 1990 and from 1991, the upper age limit would be 28 years. A fifth attempt was given to a candidate appearing at the examination 1990. For

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the examination 1991, upper age limit was brought down to 28 years and the number of attempts was reduced to 4. This increase or decrease in age and number of attempts, it was stated, has been in pari passu, for both the Civil Services Examination and the Indian Forest Service Examination till 1991. It was stated by the learned counsel for the applicants that the Civil Services and the Indian Forest Services have been treated as one class for the purpose of fixing upper age limit and the number of chances from the date, the Indian Forest Service was created till the year 1991 and as such abrupt exclusion of the I.F.S. from the benefit of the impugned provision without any reasonable and good cause suffers from the vice of arbitrariness. We are unable to agree with this contention of the learned counsel. The question of discrimination would have arisen had the applicants, who are not eligible for appearing at the I.F.S. examination by reason of their having already crossed maximum age prescribed and availed maximum number of attempts permitted, denied the opportunity of appearing at the Civil Services Examination 1992 on that ground. The applicants were eligible for appearing at the Indian Civil Services examination 1992 notwithstanding their having become age barred for appearing at the I.F.S. examination. The fact that there had been parity in upper age limit and the number of chances fixed for appearing at Civil Services Examination and the Indian Forest Examination for some time in between would appear to be more of historical coincidence and in our opinion, does not place them on the same footing.

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15. We would also examine this issue assuming that the two, as argued by the learned counsel for the applicants, were similar for the purpose of upper age limit and the maximum number of chances allowed for appearing at the examination, to find whether excluding the I.F.S. from application of impugned provision amounts to discrimination. It was argued that the nature of job I.F.S. Officer is required to perform is very arduous ~~innumerable~~ and requires imparting of extensive training to them. In support of this contention, our attention was drawn to regulation 3 & 4 of the I.F.S.(probation final examination) regulation 1968. Regulation 3 posits that every probationer shall, during and at or about the end of the period of training at the institute, shall/at the final examination comprising;

(i) (i) Written and practical examination;
(ii) Exercises; and
(iii) Qualifying tests

(2) The written and practical examination shall be held as follows:-

(i) First year Examination at or about the end of the first year of training at the institution; and
(ii) Second year examination at or about the end of the second year of training at the institute.

Regulation 4 contains the subjects and syllabus of the written and practical examinations. Various provisions of the regulations pertaining to the probationers' final examination support the

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contention of the learned counsel for the respondents that the officers of the Indian Forest Service are required to receive intensive training during the period of their probation. The purpose of not enhancing the upper age limit and the number of chances for the I.F.S. examination, it was submitted, was to catch the officers young for their efficient performance of duties and obligations of their job which are distinct from those of the Civil servants. We do not find any reason to disagree with this argument of the learned counsel for the respondents. That being so, we are satisfied that the classification adopted for not applying impugned provision to the Indian Forest Service Examination is based on an intelligible differentia and that the same distinguishes the persons grouped together from those left out of the group and that the differentia has nexus to the object sought to be achieved by the impugned provision. We may mention here that it has been enacted and made clear for everyone in 1992 itself that the upper age limit was being raised to 33 years for that examination alone and the 5th attempt was being allowed to candidates for that examination only. The examination conducted each year fall under separate categories. The candidates appearing in the examination of a particular year, constitute a well defined class. The eligibility rules set out for the I.F.S. examination 1992 operate alike for all persons under like circumstances, hence, the applicants cannot complain of denial of equal protection on the ground of there

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being different rules of eligibility, the candidates appearing at the I.F.S. and Civil Services Examination 1992. The learned counsel for the applicants concedes that Article 16 of the constitution does not prevent State from laying down requisite qualification and other eligibility conditions for recruitment to Government services. The implication of the argument of the learned counsel for the applicants is that the Government should be compelled to exercise its power to extend the same benefit to the applicants for appearing at I.F.S. examination 1992. The applicants cannot succeed unless it is demonstrated that the Government has arbitrarily and capriciously refrained from exercising its power in case of the I.F.S. The matter involved in this case is a policy matter, which the Government alone, is competent to decide. Courts generally do not interfere in matters like this unless declining to exercise this power amounts to outrageous defiance of logic. We have already discussed above in detail that Indian Forest Service and the Civil Services are two distinct and separate class and also that the classification for not extending of the impugned provision to I.F.S. examination, 1992 is based on intelligible differentia which has nexus to the object to be achieved by the provision in question.

16. The Supreme Court has in All India Station Masters and Assistant Station Masters Association case reported in A.I.R. 1960 Supreme Court page 384,

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has settled the issue. The Supreme Court, after examining the scope of Article 16 has observed;

"The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment. It is therefore clear that assuming without deciding that matters of promotion are matters relating to employment within the meaning of Article 16(1), such equality of ~~employees~~ opportunity in matters of promotion, must mean equality as between members of the same class of ~~employees and~~ ^{not} ~~employees~~ between members of separate independent classes."

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The above principle has been reiterated by the Supreme Court in Kishori Mohan Bakshi Vs. Union of India reported in AIR 1962 Supreme Court page 1139. In this case, the provision relating to promotion of Income Tax Officers Grade-I to Assistant Commissioner and promotion of Income Tax Officer Grade-II to the post of Income Tax Officer Grade-I was questioned on the ground that the Income Tax Officers Grade-II have been arbitrarily denied the equal opportunity of promotion. The Supreme Court after examining the rival contentions, has observed;

"Thus, if, of the Income-tax Officers of the same grade, some are eligible for promotion to a superior grade, and others are not, the question of contravention of Art. 16(1) may well arise. But no such question can arise at all when the rules make Income-tax Officers of Class I, eligible for appointment as Assistant Commissioners, but make Income-tax Officers of Class II eligible for promotion as Income-tax Officers of Class I but not for promotion to the post of Assistant Commissioners. There is no denial in such a case of equality of opportunity as among citizens holding posts of the same grade. As between citizens holding posts in different grades in Govt. service there can be no question of equality of opportunity. Article 16 does not forbid the creation of different grades in the Government service."

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Scope of Article 14 & 16 of the constitution was again considered by the Supreme Court in Federation of A.I.C. & C.E. Stenographers Vs. Union of India reported in A.I.R. 1988 Supreme Court page 1291. The Supreme Court after examining the series of decisions, has held;

"In this case the differentiation has been sought to be justified in view of the nature and the types of the work done, that is, on intelligible basis. The same amount of physical work may entail different quality of work, some more sensitive, some requiring more tact, some less- it varies from nature and culture of employment. The problem about equal pay cannot always be translated into a mathematical formula. If it has a rational nexus with the object to be sought for, as reiterated before a certain amount of value judgement of the administrative authorities who are charged with fixing the pay scale has to be left with them and it cannot be interfered with by the Court unless it is demonstrated that either it is irrational or based on no basis or arrived at mala fide either in law or in fact. In the light of the averments made and in the facts mentioned before, it is not possible to say that the differentiation is based on no rational nexus with the object sought for to be achieved. In that view of the matter, this application must fail and it is accordingly dismissed without any order as to costs."

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Following the decisions of the Supreme Court referred to above and having regard ^{to} ~~with~~ the fact that the Civil Servants and personnels of the I.F.S. are recruited separately, trained separately and have separate avenues of promotions, we find and hold that they constitute two distinct and separate class as between whom there is no scope ^{for} ~~in~~ predicating equality or ⁱⁿ⁻ ~~in~~ equal opportunities in matters of appointment by reason of nonextention of the impugned provisions. We therefore, find no merit in this application.

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In the result, both these applications
are dismissed. There will be no order as to costs.

J. K. Sharma

Member-J

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Member-A

Allahabad Dated: 9.5.94

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