16-5-94 Hon. Justice B. C. Saksena - VC
Hon Miss Usha Sen — AM

List This Case on 18-5-94 along with similar nature of Cases.

Usha
A.M

B.C. Saksena
VC

18-5-94 Hon. Mr. Justice B.C. Saksena - VC
Hon. Miss Usha Sen - AM

Shri R.P. Singh learned counsel for the applicant and Shri Satish Chaturvedi learned Counsel for the respondents ~~are present~~ have been heard. Order reserved. to be pronounced on 20/5/94.

Usha
AM

Bcs
V.C.

(15)

20-5-94 Hon Mr Justice B.C. Saksena VC
Hon Miss. Usha Sen AM

Judgment pronounced today. Copy placed on record.

Usha
AM

Bcs
VC

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 166 of 1994

1. V.P. Shukla and another ... Applicants

Versus

Union of India and Ors ...Respondents

alongwith

Original Application No.165 of 1994

2. R.A. Yadav and Ors ... Applicants

Versus

Union of India and Ors ... Respondents

Original Application 184 of 1994

3. H.N. Dubey and Ors .... Applicants

Versus

Union of India and Ors .... Respondents

Original Application 185 of 1994

4. A.K. Singh and Ors .... Applicants

Versus

Union of India and Ors .... Respondents

Original Application No.186 of 1994

5. S.K.Upadhay and Ors .... Applicants

Versus

Union of India and Ors .... Respondents

Original Application No.188 of 1994

6. Km. Babita Sahu and Ors .....Applicants

Versus

Union of India and Ors ..... Respondents

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7. Original Application No. 211 of 1994

V.K. Misra .... Applicants

Versus

Union of India and Ors .... Respondents

8. Original Application No. 212 of 1994

S.K. Khan .... Applicant

Versus

Union of India and Ors .... Respondents

9. Original Application No. 218 of 1994

Shahsha Alam .... Applicant

Versus

Union of India and Ors .... Respondents

10. Original Application No. 231 of 1994

Vipin Sinha .... Applicant

Versus

Union of India and Ors .... Respondents

11. Original Application No. 241 of 1994

S.N. Maurya & Ors .... Applicants

Versus

Union of India and Ors .... Respondents

12. Original Application No. 242 of 1994

Sudhak .... Applicant

Versus

Union of India and Ors .... Respondents

13. Original Application No. 243 of 1994

N.K. Misra and Ors .... Applicants

Versus

Union of India and Ors .... Respondents

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14. O.A. No.249 of 1994

Amrit Lal Vaid .... Applicant

Versus

Union of India and Ors ... Respondents

15. O.A. No. 251 of 1994

Narendra Sharma & Ors ... Applicants

Versus

Union of India and Ors ... Respondents

16. O.A. No. 276 of 1994

Ajai Vikram .... Applicant

Versus

Union of India and Ors .... Respondents

17. O.A. 342 of 1994

Pankaj Dixit and Ors .... Applicants

Versus

Union of India and Ors .... Respondents

18. O.A.385 of 1994

Arvind Kumar and Ors .... Applicants

Versus

Union of India and Ors .... Respondents

19. O.A. No.417 of 1994

Sampurna Narain Mall & Ors .... Applicants

Versus

Union of India and Ors ..... Respondents

20. O.A. No.521 of 1994

Praveen Kumar Srivastava ..... Applicant

Versus

Union of India and Ors ..... Respondents

21. O.A. No. 522 of 1994

B.D. Misra and Ors .....Applicants

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Versus

Union of India and Ors ... Respondents

O.A. No.772 of 1994

22. K.K. Chandka ... Applicant

Versus

Union of India and Ors .... Respondents

O.A. No.788 of 1994

23. Amit Alok and Ors .... Applicants

Versus

Union of India and Ors .... Respondents

O.A. No. 812 of 1994

24. Manojeet Ghoswal & Ors .... Applicants

Versus

Union of India and Ors .... Respondents

HON'BLE MR. JUSTICE B.C. SAKSENA, VICE CHAIRMAN

HON'BLE MISS. USHA SEN, MEMBER(A)

(By Hon. Mr. Justice B.C. Saksena, V.C.)

O.A. Nos. 165 of 1994, 241 of 1994, 242 of 1994, and 249 of 1994 have been filed by the candidates belonging to the O.B.C Category, while all the other remaining O.A.s have been filed by the candidates belonging to the General category. Since all the petitions involved common questions of facts and law, with the consent of the learned counsel for the parties, they

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were taken up for hearing as connected matters and they are being decided by a common order.

2. The facts in brief are that the Union Public Service Commission through an advertisement published in 'Employment News' Special Supplement had notified that a Preliminary Examination of the Civil Services for Recruitment to the Services and Posts mentioned in Para 2 thereof will be held by the Union Public Service Commission at various places including at Allahabad on the 26th June, 1994, in accordance with the Rules published by the Department of Personnel and Training in the Gazette of India Extra ordinary dated 1.1.94. The relevant Provisions in the said Notification for purposes of adjudication of the issues involved in these O.A.s are as follows:

4(ii) Age Limits:

a) A candidate must have attained the age of 21 years and must not have attained the age of 28 years On Ist August, 1994 i.e. he must have been born not earlier than 2nd August 1966 and not later than Ist August, 1973.

b) The Upper age limit prescribed above will be relaxable;

(i) upto a maximum of 5 years if a Candidate belongs to a Scheduled Caste or a Scheduled Tribe

(ii) upto a maximum of three years if a candidate belongs a Scheduled Caste

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or a scheduled Tribe

(ii) upto a maximum of three years if a candidate is bonafide repatriate of Indian origin from Kuwait or Iraq and has migrated to India from any of these countries after 15th May, 1990 but before 22nd November 1991.

(iii) upto a maximum of eight years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe and is also is a bonafide repatriate of Indian origin from Kuwait or Iraq and has migrated to India from any of these countries after 15th May, 1990 but before 22nd November 1991.

(iv) upto a maximum of three years in the case of Defence Services Personnel, disabled in operations during hostilities with any foreign country or a disturbed area and released as a consequence thereof;

(v) upto a maximum of eight years if a candidate belongs to a Scheduled Caste or a Scheduled Tribe and is also a Defence Services Personnel , disabled in operation during hostilities with any foreign country or in a disturbed area and released as a consequence thereof.

(vi) upto a maximum of five years in the case of Ex-serviceman including Commissioned Officers and ECOs/SSCOs who have rendered atleast five years Military Service as on Ist August,1994 and have been released(i) on completion of assignment(including those whose assignment is due to be completed within one year

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from 1st August, 1994) otherwise than by way of dismissal or discharge on account of misconduct or inefficiency, or (ii) on account of physical disability attributable to Military Service or (iii) on invalidment.

(vii) Upto a maximum of ten years in the case of Ex-servicemen including Commissioned Officers and ECOs/SSCOs who belong to the Scheduled Castes or the Scheduled Tribes and who have rendered atleast five years Military Service as on 1st August, 1994 and have been released(i) on completion of assignment (including those whose assignment is due to be completed within one year from 1st August, 1994) otherwise than ~~from~~ by way of dismissal or discharge on account of misconduct or inefficiency, or (ii) on account of physical disability attributable to Military Service or (iii) on invalidment.

(viii) upto a maximum of five years in the case of ECOs/SSCOs who have completed an initial period of assignment of five years Military Service as on 1st August, 1994 and whose assignment has been extended beyond five years and in whose case the Ministry of Defence issues a certificate that they can apply for Civil employment and they will be released on three months notice on selection from the date of receipt of offer of appointment.

(ix) upto a maximum of ten years in the case of candidates belonging to Scheduled Castes or

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Scheduled Tribes who are also ECOs/SSOOs and have completed an initial period of assignment of five years of Military Service as on 1st August, 1994 and whose assignment has been extended beyond five years and in whose case the Ministry of Defence issues a certificate that they can apply for civil employment & that they will be released on three months notice on selection from the date of receipt of offer of appointment.

4(iv) Number of attempts:

Every candidate appearing at the Civil Services Examination, who is otherwise eligible, shall be permitted four attempts at the examination, irrespective of the number of attempts he has 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 Any attempt(S) made at the Civil Services(preliminary) Examination held in 1979 and onwards will count as attempt(s) for this purpose, but irrespective of the number of attempts he has already availed of at the I.A.S etc Examinations had in previous years. The restriction shall be effective from the Civil Services Examination held in 1979. Any attempt(s) made at the Civil Services(Preliminary) Examination held in 1979, and onwards will count as attempt(s) for the purpose

provided that this restriction on the

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number of attempts will not apply in the of Scheduled Caste or Scheduled Tribe candidates who are otherwise eligible

(a) a candidate allocated to the IPS or a Central Service Group 'A' on the results of the Civil Services Examination, 1993 shall be eligible to appear at the examination being held in 1994 only if he has attained permission from Govt. to abstain from probationary training in order to so appeqr if in terms of the provisions contained in Para 4(VO(b) such a candidate is allocated to a Service on the basis of the examination being held in 1994, he shall join either that service or the Service to which he was allocated on the basis of the Civil Services Examination 1993 falling which his allocation to the Service based on one or both the examinations, as the case may be, shall stand cancelled, and

(b) a candidate allocated or appointed to the IPS Group'A' Service/Post on the basis of the Civil Services Examination held in 1992 or earlier years shall not be eligible to apply for Civil Services(Preliminary) Examination to be held in 1994, unless he first gets his allocation cancelled or resigns from the service/post.

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3. The General candidates feel aggrieved by the action of the respondents in curtailing the age limit from 33 years to 28 years in the Civil Services Examination 1994 and further because of the reduction of the number of attempts from 5 to 4. The applicants have challenged the provisions of Rule 7(3)(4) of the Indian Administrative Services Recruitment 1954 and Regulation 4(2)(a) of the 'Indian Administrative Service appointment by Competitive Examination Regulations' 1955.

4. The respondents have filed their written statement to the petitions filed by the General candidates. The learned counsel for the respondents has made his submissions in the O.A.s preferred by the O.B.Cs on the basis of the instructions received by him. Since the matters were urgent it was not considered proper to give any further opportunity to file written statement. Infact, the learned counsel for the respondents did not seek any further time to file written statement in the said cases and on the contrary, insisted that these cases be decided finally expeditiously.

5. We are referring to the proceedings in O.A. 166/94 Almost identical orders have been passed in various other O.As. A preliminary objection was raised at the initial stage that the joint petition with only one set of Court fees in the form of postal order may not be entertained. This question was left to be decided at the later stage. However, at the final hearing of the O.As the said preliminary objection was not raised by the learned counsel for the respondents and therefore we are not called upon

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to decide the validity of the said preliminary objection. By an order passed on 9th Feb. 1994 an interim order in the following terms was passed;

> "Meanwhile it is directed that the respondents U.P.S.C may receive application of the petitioners without passing any order in relation to the petitioners on the ground of eligibility regarding the age and number of attempts till further order, to be passed after hearing the other side on the next date ofthearing. A copy of this order alongwith the copy of the petition to be furnished by the petitioner shall be sent to the respondent U.P.S.C by registered pist by tomorrow. A copy of this order be supplied to the learned counsel for the respondents today."

6. The General candidates have approached this Tribunal with a prayer that the respondents be directed to fix the upper age limit as 30 years of age and the attempts to appear at the said Examination as five in the eligibility criteria fixed by the respondents for the said examination.

7. Section 3 of the All India Services Act 1951(hereinafter referred to as the Act), interalia, provides that the Central Govt. may, after ~~concentration~~ Consultation with the Govts of the States concerned and by notification in the Official Gazette make rules for the Regulation of Recruitment and the conditions of Service of pereons appointed to an All

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Indian Administrative Service(Recruitment) Rules, 1954 provides that the Examination shall be conducted by the Commission in accordance with such Regulations as the Central Government from time to time make in consultation with the Commission and State Governments.

8. In pursuance of the provisions of the aforesaid Rule, 7, the Indian Administrative Service (Appointment by Competitive Examination) Regulations 1955 (herein after referred to as the Regulation) have been framed. Regulation 4, deals with the"conditions of eligibility". Regulation 4(b)(ii) provides that a candidate must have attained the age of 21 and not the age of 28 years on the first day of August of the year in which the examination is held.

9. Thus it would be seen that the provision in the advertisement regarding age limits, number of attempts are in accordance with the provisions of Regulations 4(b)(ii) and Regulations 4(b)(iii-a), the expression " Regulation of Recruitment" was used in Section 3 of the Act has a wide connotation. Apparently, it embraces ~~embarasses~~ the prescription of age limit either minimum or maximum for the purpose of induction into the Civil Services. Rule 7(ii) really falls within the ambit of Section 3 of the Act. The Regulations providing the age limit and

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the number of maximum attempts are covered by Section 3 read with Rule 7. As noted hereinabove, the applicants have challenged the validity of Rule 7(iii)(iv) and Regulations 4(ii) and (ix).

10. The learned counsel for the applicant in O.A. No. 166 of 1994 has challenged these provisions on the following grounds:

He submitted that the Supreme Court in Indra Sahney's case, 1992(3) Suppl. page 215, according to the learned counsel, had provided the reservation to Scheduled Caste and Scheduled Tribe candidates would be permissible to the extent of 50% of the posts. His further submission was that since 12 chances to reserve category candidates will become available, In view of the provisions in the advertisement, he submits that the General category candidates ~~should~~ would be entitled to six chances, being 50% of the chances provided to the Scheduled Caste and Scheduled Tribe candidates. In this context, the learned counsel for the applicant drew our attention to a decision of the apex court reported in 1992(1) SLR pg-77 = 1992 (1) SCC 594. The learned counsel invited our attention to Paragraph 24 of the said judgment where the change in the age limit and the number of chances have been noted. The learned counsel wanted specially to rely on the recommendation made by the Committee on Recruitment policy and selection

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constituted under the Chairman ~~would be~~ship of Dr. J.S. Kothari The said Committee recommeded that for the general candidates the permissible number of attempts for the Civil Services Examination should continue to be 3. For the members of the scheduled caste and scheduled tribe candidates, these number should be limited to six. The submission of the learned counsel is that if for the examination 1994 according to the maximum age limit prescribed for the scheduled caste and Scheduled Tribe candidates the number of attempts would be worked as 12 in the maximum, ~~the~~ he therefore submitted that for the General candidates six chances should have been provided.

11. Thelearned counsel appearing for the other applicants in the remaining four O.As ~~five of~~ filed by the general candidates adopted the submissions noted hereinabove made by Sri Bashist Tewari, learned Counsel for the applicant in O.A. No. 166 of 1994. The submissions of the learned counsel may be examined. We are of the opinion that the power to frame Regulations includes the power to modify or vary the same from time to time according to the exigencies of the situation. On the basis of the averment in the O.As,admittedly the position is that in the year 1979, tne upper age limit had been fixed at 28 years and three attempts were permitted. In the year 1986, the

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age limit was reduced to 26 but a relaxation of three years was given. For the examination 1990, the upper age limit was fixed as 31 years. It needs to be noted, however, while fixing the upper age limit it was ~~fairly~~ clearly he stipulated that the sa same would be applicable only to the examination held in the year 1990 andfrom1991 the upper age limit would be 28 years. A fourth attempt was given to a candidate appearing at the examination of 1990. For the examination 1991, the upper age limit wash brought down to 28 years and the number of attempts remained unchanged i.e. to say four. For the examination 1992 the upper age limit was enhanced to 33 years. While doing so, it was made clear that this upper age limit would be applicable only to the examination to be held in 1992. From 1993 onwards, the upper age limit was prescribed to be 28 years and for that examination the number of attempts /chances were raised to five. It ~~would~~ word be also made clear that the increase in the number of attempts was confined to examination 1992. For the examination of the year 1993, the upper age limit was brought down to 28 years and the number of attempts was reduced to four. For the examination 1994, the upper age limit is maintained at 28 years and the number of attempts are also maintained as four. This is the position with regard to the general candidates. The general candidates as has been noted hereinabove, are claiming that they atleast are entitled to 50% of the

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chances admissible to the Scheduled Caste and Scheduled Tribe candidates calculated on the basis of the age relaxation permitted to them.

12. The submission of the learned counsel that the reservation to the extent of 50% is permissible for Scheduled Caste and Scheduled Tribe candidates, Consequently the general candidates should have been given 50% of the chances made admissible to the Scheduled Caste and Scheduled Tribe candidates is wholly misconceived and untenable. The reservation made in favour of the Scheduled Castes and Scheduled Tribes candidates does not carry ~~weight to~~ with it any concommittant benefit, much less any right, to the General candidates. The claim on behalf of the general candidates has put forward and noted hereinabove is wholly misconceived and is rejected.

13. The submission of Sri Bashist Tewari based on the recommendation made by Dr. D.S. Kothari Committee and has noted in Paragraph 24 of the M.K. Singhania's case(Supra) and the submission built there upon that in the examination 1994 the same ratio of attempts for the members of Scheduled Caste and Scheduled Tribe and general candidates should have been maintained also deserves to be rejected. With regard to The number of attempts and the age limit, almost identical plea came to be considered by a Division Bench of Central Administrative Tribunal, Principal Bench in O.A. No. 303 of 1994. Decision

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in the said O.A. was rendered on the 14th day of February, 1994. We are in respectful agreement with the view taken in the said decision that no doubt the Regulations conferred a power of relaxation upon the Central Government. It is a matter of policy only and interference with the policy decision can only be upon satisfaction that by declining ~~the~~ to exercise ~~of~~ its power the conduct of the Central Govt. amounts to an outrage ~~as defines~~ defiance of logic.

14. In the same context the learned counsel for the applicants submitted that no reasons have been assigned for varying the age limit and the number of attempts in the examinations conducted from time to time. This submission is also misconceived. In the cases at hand, the notification for the examination 1994, specifically its provisions with regards to age limit and number of chances has been questioned. The validity of the relevant rule and Regulations providing for the age limit and the number of attempts has only been ~~assailed~~. No doubt, the challenge is on the basis of the fact about varying age limit and number of chances at the examinations held in the previous years.

15. The allegation and plea of discrimination is being raised on the ground that larger number of chances due to age relaxation made admissible to Scheduled Castes

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and Scheduled Tribe candidates while providing for lesser number of attempts to the general candidates which it is urged , is discriminatory and violative of Article 14 of the Constitution of India. It is fairly well settled that Article 14 would be attracted only when alike persons are denied equal treatment. Scheduled Castes and Scheduled Tribe candidates constitute a different class while the general candidates constitute a separate class. The scheduled caste and scheduled Tribe candidates in the matter of Recruitment Rules to Civil Posts under the Union and the State are entitled to some Constitutional protection and benefit Under Article 16(4) of the Constitution of India. The relevant provisions of the rules and the Regulations ~~have~~ as also the stipulation in the advertisement with regard to the age limit on the number of chances operate alike to the general candidates and there is no discrimination interse them. We, therefore, repell the ~~stipulation~~ submission of breach of Article 14 of the Constitution based on the plea noted hereinabove.

16. It was next urged that Article 16(4) is only an ~~the~~ enabling provision and in a manner confers discriminatory powers. The learned counsel submitted on the basis of certain observations contained in paragraph 11 of a Division Bench decision reported in 1985 U.P. L.B.E.C 835 Dr. Satish

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Agrawal and ors Vs. Principal and Chief Supdt. S.N. Medical College, Agra. It was observed in paragraph 11 of the said decision as follows:

> " even in discriminatory matters or in the grant of privilege or largess the state or a public functionary cannot act arbitrarily or practice discrimination. The question considered in the said decision have also the facts are not in-pari materia with the facts and question under our consideration."

It is fairly well settled that a decision would be an authority for the proposition raised and considered in the said decision. The observations in a given case should not be torn out of context and made applicable to a different set of facts and provisions of law. That being so, reliance on the said decision does not advance the case of the applicant. In some of the O.As the learned counsel for the applicant made a further submission based on the fact that in the previous years different number of attempts and age limit have been provided. It was submitted that not extending the same benefit to the applicants in the matter of age limit and number of attempts was would be discriminatory. This aspect of the matter was

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also dealt with ~~the~~ by the Principal Bench in O.A. No. 303 of 1994 Rajesh Pandey Vs. Union of India and Ors(Supra) The Division Bench had held and with which we are in respectful agreement that this is a matter which falls within the domain of policy. It was observed;

> " the fact that the policy is being subjected to changes from time to time by the Central Govt. in the exercise of power conferred upon it under Regulations does not lead to an irresistable conclusion. That the power is being or has been exercised arbitrarily or on irrelevant and extranous considerations".

17. Lastly it was contended that in view of the interim order filed by this Bench in O.As filed when the 1993 examination was notified an interim order had been granted. Same benefits of interim order be extended to the applicants. As noted hereinabove, in the O.A challenge, the notification for the examination 1994 an interim order was passed. These petitions are being taken up for final hearing. The question of continuing the said interim order would depend on the final outcome and decision in these O.As. The plea of discrimination of the present applicants viz-a-viz,

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the applicants of O.A. filed against the 1993 examination is also misconceived. Similar questions and plea was considered and rejected by the Principal Bench in a decision of Rajesh Kumar Pandey Vs. Union of India and Ors(Supra) The learned counsel for the applicants have not been able to pursuade us to take a different view than the view taken by the Principal Bench on this aspect of the matter. We are in respectful agreement with the view taken by the Principal Bench.

18. It needs however to be mentioned that when the O.As ~~xxxx~~ pertaining to the 1993 examinations were listed in the last week and the order of the apex court passed in civil appeal No. 3820, 3823-25 of 1993 was pointed out to the counsel for the applicants of those O.A.s still he did not choose to argue the said O.As. With the result that the hearing in those O.As have been deferred.

19. In the petitions filed on behalf of the O.B.Cs, almost similar submission has been advanced which have been noted hereinabove. No other point remains to be considered which has been urged.

20. On a conspectuous of the discussion hereinabove, the O.As 21 to 22 lack merit and are accordingly dismissed. The interim order passed in these O.As stands vacated.

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Since the O.As are being dismissed, the position would be that as if the interim order is rendered in-effective from the date the same was passed in these O.As.

21. The O.As shown at Sl. No. 23 & 24 also involves similar question of fact and law and the same submissions as noted hereinabove in respect to the other O.As were raised. In view of the conclusions of the other O.As, These two O.As lack merit and are dismissed summarily and the applications for interim relief are rejected.

22. A copy of the judgment may be placed on each files.

Member (A) Vice Chairman

Dated: May 20 1994

UV/