

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 28 DAY OF AUGUST, 1995

Original Application No.485 of 1995

HON. MR. JUSTICE B.C. SAKSENA,V.C

HON. MR. S. DAS GUPTA, MEMBER(A)

Subhash Chand, S/o Harkhyal Singh Rana
r/o 464/11/4-A South Civil Line, Muzaffar Nagar.

... Applicant

BY ADVOCATE SHRI N. LAL

Versus

1. Union of India through Ministry of Grievances and Pension Department of Personnel&Training New Delhi.
2. Union Public Service Commission, Shahjahan Road Dhawalpur House, New Delhi throughnit Secretary

... Respondents

Order(Reserved)

JUSTICE B.C. SAKSENA, V.C.

This petition came up for orders as regards admission. We have heard the learned counsel for the applicant. The applicant through this OA challenges the order dated 10.3.95 of the Union Public Service Commission whereby the application of the applicant for appearing at the Civil Services Examination(preliminary) 1995 has been rejected. Besides challenging the said order the applicant also challenges the validity of the notification/advertisement dated 24.12.94 inviting applications for appearing at the Civil Services Examination(Pre) 1995. By this notification the age of the eligible candidates has been fixed at 28 years as on 1.8.95 and number of attempts for appearing at the examination have been fixed at 4. The applicant's date of birth is stated to be 30.7.67 and thus by

order dated 10.3.95 passed by the Union Public Service Commission his candidature was rejected on the ground that he was over age. According to the date of birth the applicant was over age by 2 **days**. The applicant alleges that in previous years the eligibility criteria with regard to age in the previous examination has been varied from time to time so also the number of attempts that were permitted. A tabulated chart has been filed as Annexure 5 indicating the maximum permissible number of attempts right from 1979-1993. The learned counsel for the applicant on the basis of the tabulated chart urged that classification made by the advertisement is discriminatory, unreasonable and bad. the discrimination pleaded is on the basis of the relaxation in age limit **to** backward class categories and also disabled class candidates and it is urged that this exemption and relaxation of age limit and attempts to various categories is violative of Art. 16 of the Constitution. This plea has no force. The applicant is a general candidate. No discrimination amongst the general candidates is shown. This plea is not open to the applicant since he does not belong to the backward class or the other class. Relaxation in age or number of attempts granted to them perse will not violate the provisions of Art. 16 of the Constitution of India. Thus **he has no locus** to challenge the relaxation in age and number of attempts made by the said advertisement in favour of candidates belonging to a class other than that of the applicant.

2. Secondly, the change in the age qualification and number of attempts, as was held by the Division Bench of Principal Bench in OA No. 303/94 Sri Rajesh Pandey and Ors Vs. Union of India and Ors is a policy decision and it was made clear in every notification issued for holding examination in the earlier years that it would be for that examination alone. The Division Bench further held, and we are in full agreement with the same, that 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 up for the examination 1992 operated alike for all persons under like circumstances so will be case with the examination 1994, hence the applicant cannot complain of denial of equal protection on the ground that a different set of rules of eligibility were applied to the examination 1992. This OA is directed only against the advertisement and the rules for the Civil Services Examination 1995. We are thus not required to enter into the controversy with regard to the validity or otherwise of the provisions governing the earlier examinations.

3. It may also be stated that a Division Bench of the Allahabad Bench of the CAT of which the V.C was one of the Member, had taken the same view in OA 166 of 1994 V.P. shukla and Ors Vs. Union of India and Ors decided on 20.5.94. The learned counsel for the applicant submitted that under Regulation 3 of the Indian Administrative Services (Examination by Competitive examinations) provide that the examination shall

Regulation does not

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be held for every year. This submission has been made to meet the observations made by the Division Bench in the case of Rajesh Pandey. The learned counsel on this basis has urged that if the examination was not required to be held every year it cannot be said that the decision with regard to number of attempts and the age limit was only a policy decision governing the examination of a particular year. This submission has no force. The Division Bench in Rajesh Pandey's case had held that in pursuance of Rule 7(2) of the Rules, the Indian Administrative Service (Recruitment) Rules, 1954 (the Rules) Regulation 1955 have been framed). Regulation 4 talks of "Conditions of eligibility". Regulation 4(b)(ii) provides that the candidates must have attained the age of 21 and not attained the age of 28 years on the first day of August of the year in which the examination is held. The proviso of the said Regulation ~~is~~, however, empowered relaxation in respect to such categories of persons as may have from time to time be notified in this behalf by the Central Govt to the extent and subject to the conditions notified in respect of each category. We are in respectful agreement with the view taken by the Principal Bench in Rajesh Pandey's case that the power to frame Regulations include the power to modify or vary the same from time to time as exigencies of the situation require

4. The Second **plea** of the learned counsel for the applicant was a legitimate expectation arose when in

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the earlier years a higher age limit and no. of attempts were increased. The applicant had on his own show ~~had availed~~ ^{bel} -ing/the third chance ~~at~~ 1992 examination and 4th chance ~~at~~ 1993 examination and his case is that he was expecting to take the 5th chance in 1994. In the year 1994 the no. of attempts was curtailed to 4 and it is alleged that the applicant has been discriminated. As a matter of fact, the applicant alleges that he was expecting to take the 5th chance in 1994 and his real grievance is that he was discriminated when in the year 1994 examination the no. of attempts were curtailed to 4, thus the applicant does not plead any legitimate expectation/^{of} being permitted to appear ~~in the~~ ^{1995 Exam.} ^{bel}

5. The learned counsel for the applicant cited a few decisions viz AIR 1993 Supreme Court 1601 Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries and AIR 1993 Delhi 252 Thomson-CSF and Others Vs. National Airport Authority of India and Ors. Both the decisions dealt with the scope of legitimate expectation in contractual matters. As noted hereinabove, since the applicant does not plead any legitimate expectation with regard to availing a 5th chance in 1995 Examination, but on the contrary alleges that his 5th chance pertained to the 1994 Examination it would not be necessary to dilate on the ~~concept~~ ^{bel} of legitimate expectation.

6. The learned counsel for the applicant cited a decision of the Hon'ble Supreme reported in AIR 1968 Supreme Court 346 The State of Mysore Vs. S.R. Jayaram

In the said case validity of Rule 9(2) Probationers Rules (1959) came up for consideration and it was held

" that Portion of Rule 9(2) reserving to Government right of appointing to any particular cadre, any candidate whom it considers to be more suitable for such cadre is violative of Articles 14 and 16 of the Constitution.

It was laid down that the principle of recruitment by open competition aims at ensuring equality of opportunity in the matter of employment and obtaining the services of the meritorious candidates.

On an analysis of the relevant Rules ^a part of Rule 9(2) was struck ^{down} on the basis that the Rule does not give the Union Public Service Commission the power to test the suitability of the candidates for a particular cadre or to recommend that he is more suitable for it. Such a situation does not obtain in the present case. Under Rule 7 the power to frame Regulations laying down the age qualification and number of attempts have been given to the Central Government and the provision with regard to age requirement and number of attempts has been notified by the Central Govt in this behalf.

6. No other point has been urged. There is no merit in the OA, it is accordingly liable to be dismissed summarily and so dismissed.

MEMBER (A)

VICE CHAIRMAN

Dated: August 28th, 1995