

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD.

Dated: Allahabad, the 2nd day of May, 2001

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, JM

ORIGINAL APPLICATION NO. 1671 OF 1999

1. Vijai Tripathi,
s/o Dr. Gadadhar Tripathi
r/o 327 Bailai, Qasba and Post
Mau Ranipur, District Jhansi (U.P.).
2. Rajiev Ranjan Rai,
son of Ishta Deo Prasad Rai,
r/o village and post Surajpur,
District Mau (U.P.).
3. Skand Shukla,
s/o Dina Nath Shukla,
r/o 325, Mumfordganj,
Allahabad (U.P.).
4. Manish Kumar,
s/o Dadu Bhai Misra,
r/o village and post Bhaunri,
District Chitrakut (Karvi) UP.
5. Ratnakar Prasad Tewari,
s/o Satya Narain Tewari,
r/o village Bakkhopur,
Post Khalispur, Distt. Jaunpur (U.P.).

.....Applicants

(By Advocate: Sri R.R. Shivahare)

versus

1. Union of India, through Secretary,
Ministry of Personnel, Public Complaints and Pension,
New Delhi.

2. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi, through its Secretary.

..... Respondents
(By Advocate: Sri S. Chaturvedi)

ORDER (ORAL)
(By Hon'ble Mr. S. Dayal, AM)

This application has been filed seeking directions to the respondents to permit the applicants fifth attempt in Civil Services Examination for the year 2001. A further prayer has been made for declaring the Civil Services Examination Rules 1983, 2000 and 2001 and other regulations providing only four attempts to General category candidates as void, invalid and ultra vires of the Constitution, as they are not placed before or approved by the Parliament.

2. The case of the applicant is that they have made 4 attempts in Civil Services Examinations held in previous years. All the applicants barring applicant no.4 are below 30 years of age and eligible for appearing at the Civil Services Examination on that count. The applicant no.1 succeeded in Preliminary Examination in 1997 and 1998. He succeeded in the Main Examination also and he was called for interview. The applicant no.2 appeared in the Main Examination in the years 1994 and 1997 and was called for interview in the years 1996 and 1998. The applicant No.3 appeared in the Main Examination for the year 1994-95 and he was called for interview for the examinations held

for 1997 and 1998. The applicant No.4 appeared in the Main Examination in the year 1995 and was called for interview in the year 1997. In the years 1996 and 1998, he appeared only in Preliminary Examination. The applicant no.5 appeared in the Main Examination of the year 1996 and 1998. The applicants have contended that the policies with regard to the age limit and number of attempts have not been uniform. The maximum age permitted between 1981 to 84 was 28 years; it was reduced to 26 years in the years 1985- 86; raised again to 28 years in the years 1987 to 1989. It was raised to 31 years in the year 1990. It was reduced to 28 years in the year 1991. It was raised to 33 years in the year 1992. It was reduced to 28 years in the years 1993 to 1998 and it was raised to 30 years in the year 1999. The number of attempts permissible from 1981 to 1989 were three, which was raised to four in the years 1990 and 1991 and five in the year 1992 and thereafter from 1993 onwards only four attempts for General candidates are permitted. The rules place no restrictions on the number of attempts to be made at the Civil Services Examinations by the Scheduled Caste and Scheduled Tribe candidates and have given as many as seven attempts to the candidates belonging to the Backward Classes. The number of vacancies has also been subject to change and in the year 1998, 740 vacancies were indicated initially but were reduced to 470 subsequently on account of sudden raising of retirement age of government servants. It is stated that Section 3 of All India Services Act authorises

the Central Government to make rules or regulations for recruitment and conditions of service of persons appointed to All India Service. Sub-Section 2 of Section 3 of the Act provides that every rule or regulation made shall be laid before each House of the Parliament while in Session and they may be approved or modified. Under the All India Services Act, 1951, rules have been made by the Central Government and Rule 7 provides for competitive examinations to be conducted by Union Public Service Commission in accordance with such rules and regulations, as made by Government from time to time. The applicants claimed that to the best of their knowledge, Civil Services Examinations Rules (1983) and other Notifications of Government which provide for qualifications and number of attempts have not been placed before Parliament. It has been stated that the States of Uttar Pradesh, Madhya Pradesh, Rajasthan have done away with restrictions on the number of attempts. In the light of the above facts, relief has been sought by the applicants.

3. We have heard Sri R.R. Shrivahare for the applicants and Sri Pankaj Srivastava, brief holder for Sri Satish Chaturvedi for the respondents.

4. The contention of the learned counsel for the applicants is that the applicants are entitled to 'Equality before Law' and 'Equal Protection of laws' under Article 14 of the Constitution of India. Article 16 of the Constitution of India provides for equality

of opportunity for all citizens. Article 16(2) prohibits any discrimination against or creating ineligibility for any employment or office under the State on the ground only of religion, race, caste, sex, descent, place of birth, residence or any of them. It is contended that concessions granted are based on caste and are, therefore, violative of Article 16 (2) of the Constitution of India. It has also been contended that the reservation policy based on backwardness of citizens, who are not adequately represented in the services under the State, has become arbitrary, unjust and discriminatory. The learned counsel contended that over period of time, the situation has changed and time has arrived to review the provisions granting benefits to Scheduled Castes, Scheduled Tribes and Backward Classes. The learned counsel for the applicants also contended that if the reservation is to be made on the basis of class of poor persons, then caste cannot be a base as no caste has any monopoly of poor persons. It has been contended that the Scheduled Caste and Scheduled Tribes are now entitled to as many as 14 attempts while the General Category candidates can have only four attempts. It is contended that such consideration granted to Scheduled Caste and Scheduled Tribes as well as Backward Classes is disproportionate to the object sought to be achieved and, therefore, is arbitrary and discriminatory.

5. We have carefully considered the contention of the learned counsel for the applicants. The learned counsel for the respondents has placed before us

a number of orders of Division Bench of the Central Administrative Tribunal in which the issues raised by learned counsel for the applicants before us have been considered and the reliefs to the applicants was disallowed.

6. The catena of judgments of the Principal Bench as well as Allahabad Bench of Central Administrative Tribunal placed by learned counsel for the respondents is as follows:-

- (i) Order of the Principal Bench in OA No.747 of 1992 dated 24.4.92,
- (ii) Order of Principal Bench in OA No.303 of 1994 dated 14.2.94,
- (iii) Order of Allahabad Bench of Central Administrative Tribunal in OA No.256 of 1993 connected with OA 424 of 1993, 561 of 1993, 296 of 1993, 687 of 1993 and 236 of 1993,
- (iv) Order of Allahabad Bench in OA No.476 of 1995 dated 17.7.95.

7. The issues raised by the applicants before us were raised in the said OAs with regard to the changes in maximum age limit as well as number of chances for the respective years, which were challenged on similar grounds and the said challenge was not found to be valid and the OAs of the applicants were dismissed. It has been held that the rules for Civil Services Examinations are statutory in nature and not open to challenge unless they are

irrational or arbitrary. The framing, re-framing, changing and re-changing the rules to meet the needs of the situation lies exclusively in the domain of the executive and is not open to challenge unless there is a proven case of mala fides. Administrative action is subject to control by judicial review under three heads.

- (i) Illegality, where the decision making authority has been guilty of an error of law, for example, by purporting to exercise power it does not possess;
- (ii) Irrationality, where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision;
- (iii) Procedural impropriety, where the decision making authority has failed in its duty to act fairly.

In similar situation, it was found that the procedural changes made were equally applicable to all equally placed persons and that concessions given to Scheduled Caste, Scheduled Tribes, Backward Classes and others were held to be permissible, as they were meant to advance a larger social objective.

8. It has also been held that the candidates appearing in the examination of a particular year constitutes a well defined class. The eligibility rules set for this examination operated alike for all

similarly situated persons under like circumstances. Hence, the applicants cannot complain of denial of equal protection on the ground that a different set of rules of eligibility were applied in a different year. The only ground on which the applicants could have succeeded is that the Central Government exercised its powers capriciously and arbitrarily, which is not the case here.

9. The learned counsel for the applicants has urged that the reservation for appointments on posts was for sections of public not adequately represented under Article 16 (4) of the Constitution of India and that a situation has arisen where this provision should be given a re-look as to whether the Scheduled Castes, Scheduled Tribes and Backward Classes have come to be adequately represented. A related issue was that sub-clause (iv) of Article 16 was applicable only to Backward Classes and not to "Castes". The contention of the learned counsel for the applicants was that the distinction between the General category candidates and Scheduled Caste and Scheduled Tribe candidates was mainly caste based and was violative of provisions of sub-clause (iv) of Article 16. In this connection, we find that in a number of judgments of Constitution Bench of Apex Court in which reservation for Scheduled Castes, Scheduled Tribes and Backward Classes has been upheld. We find that a review of provision for reservation is built into the Constitution on a decadal basis and is entrusted to the Parliament, which has considered

the issue of reservation from time to time and granted extensions after considering various aspects. It does not, in our opinion, require judicial review.

10. The proportionality and disproportionality of number of chances given to various classes, namely, Scheduled Caste, Scheduled Tribe, Backward Classes and General candidates is also a similar issue and is subject to executive discretion based on situation from year to year provided it is not arbitrary or unreasonable. No such arbitrariness or unreasonability has been established. What has been established is only that the number of chances have varied with changes in the maximum age limit for eligibility to appear at Civil Services Examinations.

11. The learned counsel for the applicants has stated that the Civil Services Examination Rules and other Notifications of Government which provided for qualifications and the number of attempts have not been placed before the Parliament to the best of the knowledge of the applicants. The respondents have stated that the Indian Administrative Services (Appointment by Competition) Regulation, 1955 were framed with the approval of the Parliament. The said regulations provide that examination should be conducted by the Union Public Service Commission in the manner notified by the Central Government from time to time. This makes only notification in the official gazette necessary and other formalities are not required.

10.

In any case, the applicants have merely expressed a doubt as to whether formalities have been observed or not without establishing that formalities have not been observed. Therefore, we find no validity in this contention also.

12. In effect, we find no merit in the application and do not consider the application for the relief sought in the O.A. The O.A. is, therefore, dismissed. No order as to costs.

Rafiq Uddin *Dayal*
(RAFIQ UDDIN) (S. DAYAL)
JUDICIAL MEMBER MEMBER (A)

Nath/