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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application Nos. 650 and 666 of 1994

Cuttack this the 14th day of December, 1994

C O R A M:

THE HONOURABLE MR. JUSTICE D. P. HIREMATH, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

...

IN OA 650/94:

1. S/Shri Bhabani Shankar Chayani
aged 30 years, S/o.Damadar Chayani
at present residing at 2, Bhudha Nagar
Bhubaneswar-751014
Roll No.257639
2. Dilip Routray, aged 28 years,
S/o.Harihar Routray
at present residing at
Banambar Rent Lane, Badambadi
PO/PS/Dist:Cuttack
Roll No.257625
3. Partha Sarathi Mishra
aged 31 years,S/o.Naba Kumar Mishra
residing at present at Mali Sahi
Bajrakabati Road,
PO/PS/Dist:Cuttack
Roll No.257612
4. Miss Manaswini Sahu, aged 27 years,
D/o. Ghanshyam Sahy, Advocate,
Badambadi, PO/PS/Dist:Cuttack
Roll No.257611
5. Aswini Kumar Mishra, aged 30 years,
S/o.K.B.Mishra, at present residing at
Qr.No.C.14, Forest Park,
PO/PS:Bhubaneswar, Dist:Khurda
6. Lalitendu Pradhan, aged 32 years
S/o.Harekrishna Pradhan at present
residing at Samanta Sahi Canal Road
PO/PS/Dist:Cuttack
Roll No.257615
7. Debasis Pattnaik, aged 30 years,
S/o.Srish Ch.Pattnaik,
at present residing at Mahanadi Vihar,
PO/PS/Dist:Cuttack
Roll No.257606
8. Sangramjit Nayak, aged 31 years,
S/o.Jadumani Nayak, residing at present
at Jharpada, Bhubaneswar
PO/PS:Bhubaneswar, Dist:Khurda

9. Smt. Smita Biswal, aged 28 years
 W/o. Sangramjit Nayak, residing at
 present at Jharpada, PO/RS : Bhubaneswar,
 Dist : Khurda

... Applicant.

By the Advocate: M/s. M. Kanungo

P.K. Rath
 L. Kanungo
 S. Nanda

Versus

1. Union of India, New Delhi
 represented by its Secretary
 Union Public Service Commission
 Dholpur House, Sahajahan Road
 New Delhi

2. The Secretary, Department of
 Personnels and Training,
 Fourth Block, Central Secretariat
 New Delhi

... Respondents

By the Advocate: Shri Akhaya Kumar Mishra
 Addl. Standing Counsel (Central)

Ashok Kumar Mishra, 30 years
 S/o. Shri Sashi Bhusan Mishra
 now residing in Commissioner's Staff
 Colony, Sambalpur, Qrs. No. PWD/UD/25
 Permanent Address: Binakhandi,
 Po/Dist: Sambalpur

... Applicant/s

By the Advocate: M/s. A.K. Mishra
 S.B. Jena
 J. Sengupta

Versus

1. Union of India represented through
 the Secretary, Union Public Service
 Commission, Dholpur House
 Sahajahan Road, New Delhi-11

2. The Secretary, Department of Personnel
 and Training, North Block, Central
 Secretariat, New Delhi

... Respondent/s

By the Advocate: Shri Akhaya Kumar Mishra,
 Addl. Standing Counsel (Central)

ORDER

D.P. HIREMATH, VICE-CHAIRMAN: Heard learned counsel for the
 applicants and Shri Akhaya Kumar Mishra, Additional
 Standing Counsel (Central) for the Respondents in

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both the applications separately.

2. In both these applications the applicants pray firstly that they be declared to be eligible to appear in the Civil Services Main Examination for the year 1994 and permit them to appear for the said examination.

3. The brief facts leading to the filing of these applications are that in the year 1992, Preliminary Examination conducted by the Union Public Service Commission for Civil Services (I.A.S. etc.) there was leakage of question papers in Allahabad and sale of question papers in Bihar. Two officers of the U.P. Government had been arrested as being responsible for the leakage of question papers and ultimately the C.B.I. investigated into these allegations. The Joint Action Committee (JAC) of the Organisation of the Students moved the Delhi High Court demanding cancellation of the aforesaid Preliminary Examination 1992 on the sole ground of Allahabad leakage. Ultimately the Delhi High Court dismissed the petition and the matter was taken to Supreme Court. When in the year 1991, there was leakage of question papers, the UPSC came to the conclusion that it was a countrywide fraud and cancelled the examination. The Supreme Court also did not render any finding with regard to the necessity of cancelling the examination or the benefits to be given to the candidates who had already appeared for the examination. The petitioners now claim that the new pattern of Civil Services Examination introduced

from 1993 has somewhat reduced the importance of optional subjects by adding 250 more common marks in the Main Examination. The applicants also expected the UPSC to change the pattern 1992. Since the new pattern is more fair and equitable than the earlier one and since there are precedence of relaxation to the ex-candidates in 1979 and 1990, the applicants deserve a compensatory attempt in the Civil Services Examination 1994 on the ground of changed pattern.

The main ground canvassed is that on the ground that the 1992 Civil Services Preliminary Examination was a disputed one, the applicants are entitled to compensatory attempt in the examination for 1994 as they were also affected indirectly by the leakage of question papers. Rest of the averments are with regard to the marks assigned for the subjects and about arbitrary actions of the UPSC in changing the pattern and relaxing the age whimsically.

4. The Respondents do not admit that this leakage of question papers at Allahabad in the year 1992 was a countrywide phenomenon as in the case of leakage in the year 1991. There was no leakage as such. They notify and conduct the examination strictly as per rules notified by the Government from time to time. The rules published by the Government are statutory in nature. The Principal Bench of the Central Administrative Tribunal at Delhi in the judgment dated 24.4.1992 clearly held

that the framing, reframing, changing and rechanging the rules to meet the needs of the situation lies exclusively in the domain of the Executive and is not open to change unless there is a case of malafide. Therefore, the plea of the petitioners for relaxing the age is not justified. The rest of the averments in the counter are only denial of certain imputations made to the Public Service Commission.

5. Admittedly the petitioners are age barred for appearing for the 1994 examination. They want a direction from this Tribunal for relaxation of age as done in the past and also increase the number of attempts a candidate would be entitled to. This is on the ground that in the past the UPSC had acted so when there was leakage in the year 1991, the leakage 1992 also should be taken as a countrywide phenomenon affecting the very foundation of the Preliminary Examination held in the year 1992, and therefore, they are entitled as a compensatory measure to the concession that they are now pleading for.

6. It is the main contentions of the respondents that in the year 1991, the leakage, if any, was only localised at Allahabad and they have amplified as to how this leakage occurred. After the papers were distributed to the candidates in the Examination Hall, certain photo copying incident came to notice on which two UPSC Officers were prosecuted. Therefore, it is

the UPSC which is possessed with all the facts and which is competent to say whether there was any leakage with a National or countrywide ramification at all. It may be mentioned here that the case of the UPSC was that in the year 1991 there was a countrywide leakage for which the examination was cancelled and UPSC gave one more chance to those who had appeared in that examination and also relaxed their age limit. The petitioners obviously took advantage of that relaxation and also had additional chance to appear in the examination. Presently the petitioners who are now age barred cannot appear for the final examination though on the direction of this Tribunal they could appear for Preliminary Examination.

7. Their main contention is that when the UPSC had relaxed the age limit due to 1991 leakage and when similar leakage came to the light in 1992 as well, the UPSC ought to have taken a similar step of enhancing the age limit. In our view it is not for the Tribunal to say whether the age limit should be enhanced or not because it does not appear on the face, whether the leakage in 1992 is in the same manner as it was in the year 1991. ⁱⁿ In view of the counter filed by the Respondents and also there being no other material to take a different view that the leakage in 1992 was similar to the leakage in 1991. The examinations were held and they were not cancelled. Those who appeared

took the benefit of relaxation and that being so, it is not for us to enhance the age limit and permit the petitioners to appear for the examination. There is no merit in both the applications and they are liable to be dismissed and dismissed. No costs.

RE/- H. RAJENDRA PRASAD

(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

14 Dec 94

RE/- D. P. HIREMATH

(D. P. HIREMATH)
VICE-CHAIRMAN

B.K.Sahoo//