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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.513 OF 1998

Cuttack, this the **18<sup>th</sup>** day of February, 1999

Preetam Kumar Mohanty ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? **Yes .**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? **NO .**

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

**Somnath Som**  
(SOMNATH SOM)  
VICE-CHAIRMAN **18.2.99**

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Preetam Kumar Mohanty,  
son of D.P.Mohanty, resident of Purighat Road,  
PO-Telenga Bazar, PS-Purighat, Dist.Cuttack.....Applicant

Advocates for applicant - M/s D.P.Mohanty  
& P.K.Mohanty

Vrs.

1. Union of India, represented by  
Principal Secretary to Government of India,  
Ministry of Personnel, Public Grievances & Pension  
(Department of Personnel & Training),  
New Delhi.
2. Union Public Service Commission,  
represented by Secretary, Dholpur House,  
Shahjhan Road, New Delhi-110 011 .... Respondents

Advocates for respondents - M/s A.B.Misra  
& B.Dash.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

22 Jan.  
In this application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has  
prayed for a declaration that he is an eligible candidate  
for admission to Civil Services (Main) Examination, 1998.  
He has also prayed to declare rule 4 of the Rules at  
Annexure-3 as ultravires of the Constitution and  
inoperative. The last prayer is for quashing the letter  
dated 16.9.1998 at Annexure-2 intimating the applicant  
that his application for admission to Civil Services  
(Main) Examination, 1998 has been rejected. The facts of  
this case fall within a small compass and can be briefly  
stated.

2. The applicant's date of birth is 5th August 1970. He had appeared in Civil Services Preliminary and Main Examinations from 1992 to 1996 in the following manner:

| <u>Year</u> | <u>Preliminary</u> | <u>Main</u>     |
|-------------|--------------------|-----------------|
| 1992        | Appeared           | Did not qualify |
| 1993        | Appeared           | Appeared        |
| 1995        | Appeared           | Did not qualify |
| 1996        | Appeared           | Appeared        |

In response to the notification dated 29.11.1997 of Department of Personnel & Training (Annexure-3) notifying the Rules for Civil Services Examination to be held by Union Public Service Commission (UPSC) in 1998 the petitioner applied to UPSC disclosing in the prescribed application form that he had already availed of four chances in previous years. The application was received by UPSC and was processed, and the applicant was registered as a candidate for admission to Civil Services (Preliminary) Examination for the year 1998. He appeared at the examination held on 31.5.1998 and was declared qualified for admission to Civil Services (Main) Examination, 1998. This was intimated to him by UPSC in their letter dated 17.8.1998 at Annexure-1. Through this letter a detailed application form and some materials regarding information to candidates on the Civil Services (Main) Examination, 1998 and the gazette notification dated 29.11.1997 (Annexure-3) were sent to the applicant. Apparently, the petitioner sent the detailed application form for admission to Civil Services (Main) Examination, 1998. But UPSC in their letter dated 16.9.1998 (Annexure-2) intimated the applicant that his application for admission to Civil Services (Main) Examination, 1998 has been rejected on the ground that he had already

appeared permissible four times in the Civil Services (Preliminary) Examination prior to Civil Services (Preliminary) Examination, 1998. The applicant's case is that the Rules for competitive examination notified by Department of Personnel & Training at Annexure-3 are not based on any statute or Act of Parliament and therefore, these Rules cannot deprive a candidate of his constitutional right to appointment to public service and post. The second point is that right to work enshrined in Article 41 of the Constitution has been interpreted by superior courts as being at par with fundamental rights and this right cannot be superseded by the rules framed by Department of Personnel & Training and therefore, any impediment to the applicant's right to work is ultravires of the Constitution. Thirdly, it is stated that Civil Services Examination for a particular year covers both Preliminary and Main Examinations and as the applicant has appeared in both Preliminary and Main Examinations only twice in the year 1993 and 1996, it must be held that he had two more chances to avail. As earlier noted, the applicant has challenged in the relief portion of the O.A. rule 4 of the Rules of examination. He has also stated that the notes under Rule 4 are ultravires and the two provisos to Rule 4 under which Scheduled Caste and Scheduled Tribe candidates have been allowed unrestricted number of attempts subject to consideration of age, as applicable to them, and the other one in which candidates belonging to Other Backward Classes have been allowed seven chances are discriminatory and hit by Article 14 of the Constitution. It is further stated that the applicant had disclosed in his application for admission to Civil Services (Preliminary) Examination 1998 that he had already availed of four chances. In spite of that his candidature was registered and he was allowed to appear at the

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Preliminary Examination in which he came out successful. In view of this, it is stated that UPSC is estopped from rejecting his candidature for the Main Examination. It is further averred that rule 4 of the Rules at Annexure-3 is permissive in character and it does not prohibit more than four attempts. Lastly, it is claimed that the impugned letter dated 16.9.1998 at Annexure-2 does not indicate that the candidature of the applicant has been rejected by UPSC consisting of all its Members. Hence the rejection is illegal. In the context of the above facts and on the above grounds, the applicant has come up with the prayers referred to earlier.

3. By way of interim relief, the applicant has claimed that he should be allowed to sit for the Main Examination commencing from 31.10.1998, otherwise he will suffer irreparable injury. At the time of admission of the OA, the prayer for interim relief was heard and in order dated 13.10.1998 the prayer for interim relief was disposed of by issuing a direction to respondent no.2, Secretary, UPSC to allow the petitioner to sit for Civil Services (Main) Examination 1998 subject to the condition that his result should not be declared till the disposal of the O.A. The direction was also made subject to the condition that the applicant had opted for Indian Administrative Services in the Main Examination of 1998.

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4. UPSC, respondent no.2 has filed counter in which it has been pointed out that Civil Services Examination is conducted by UPSC for filling up vacancies in Indian Administrative Service, Indian Foreign Service, Indian Police Service and various other Central Group "A" and Group "B" Services. Rules for this examination are notified by Department of Personnel & Training, and the Examination consists of two stages Civil Services (Preliminary) Examination and Civil Services (Main)

Examination (Written and Interview). The Rules for Civil Services Examination, 1998 were notified by Department of Personnel & Training in the Extraordinary Gazette of India dated 29.11.1997. UPSC by a notice issued on the same day and published in the Employment News and leading newspapers invited applications for Civil Services (Preliminary) Examination. As per rule 4 of the Rules for Civil Services Examination, 1998, every candidate appearing at Civil Services Examination, who is otherwise eligible, shall be permitted four attempts at the Examination. But this restriction on number of attempts is not applicable to candidates belonging to Scheduled Castes and Scheduled Tribes who are otherwise eligible. Permissible number of attempts for otherwise eligible Other Backward Classes candidates is seven. It is further provided under Rule 4 that an attempt at a Preliminary Examination shall be deemed to be an attempt at the examination and if a candidate actually appears in any one paper in the Preliminary Examination, he shall be deemed to have made an attempt at the Examination. Thirdly, it is provided that notwithstanding the disqualification/cancellation of candidature the fact of appearance of the candidate at the Examination will count as an attempt. It is further submitted that the number of candidates for the Civil Services Examination is very large, i.e., more than 2.5 lakh. At the time of admission to Civil Services (Preliminary) Examination, no documentary proof or copies of certificates in support of various claims of the candidates are called for. The information disclosed by the candidates in their applications is provisionally taken to be correct on the basis of certification made by the candidates. Their claims are subject to verification subsequently. The

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candidates who qualify in the Civil Services (Preliminary) Examination are required to apply in a detailed proforma for admission to Civil Services (Main) Examination and along with this application for Civil Services (Main) Examination they are required to submit copies of certificates and documents in support of their claim. At this stage, claims of the candidates are examined with reference to copies of certificates enclosed by the candidates. In the instant case, while scrutinising the detailed application form of the petitioner for admission to Civil Services (Main) Examination, 1998 it was observed that the applicant had admitted to have availed of four chances prior to 1998 in the years 1992, 1993, 1995 and 1996 and therefore, it was held that he was not eligible to appear at Civil Services (Main) Examination, 1998. UPSC have pointed out that the petitioner while applying for Civil Services (Preliminary) Examination, 1998 signed a declaration that he had not exhausted the permissible number of chances. But as he had subsequently admitted to have availed of four chances for Civil Services Examination and as he does not belong to SC, ST or OBC, the applicant is prima facie guilty of giving a false declaration at the time of applying for Civil Services (Preliminary) Examination, 1998. It is stated that candidates belonging to General category are allowed only four attempts. The proviso to Regulation 4(iii) of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 (for short, "1955 Regulations") is not applicable to the petitioner. It is also stated that because of this proviso, the petitioner is not entitled to have five attempts. It is mentioned that the candidates appearing at Civil Services Examination 1992 were permitted five

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attempts as an one time measure and this was clearly mentioned in the rules notified for Civil Services Examination, 1992 which is at Annexure-R-III. Therefore, at present the number of attempts for general category candidates is four even taking into account the proviso to Regulation 4(iia) of the 1955 Regulations which have been issued under Rule 7 Indian Administrative Service (Recruitment) Rules, 1954 which in turn was issued under Section 3 of All India Services Act, 1951. It is further stated that under Article 320 of the Constitution it is the duty of UPSC to conduct examination for the purpose of recruitment to the services of the Union and once the condition of eligibility and other norms of examinations have been prescribed by Government of India and notified in the gazette, the Commission has the constitutional duty to hold the examination strictly within the framework of the notified rules. UPSC have also pointed out that the well settled position of law is that the courts and tribunals do not ordinarily interfere with the statutory provisions of the rules unless they are violative of the provisions of the Constitution. It is further stated that an application which is rejected in accordance with the scrutiny instructions approved by the Commission is taken to be the one which has the approval of the Commission. No showcause notice is also required to be issued to a candidate before his candidature is rejected. UPSC have also referred to a large number of decisions of different Benches of the Tribunal and of the Hon'ble High Court of Delhi and the order of the Hon'ble Supreme Court rejecting the Petition for Special Leave to appeal, which

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have consistently taken the view that the question of fixation of eligibility condition and relaxation to be allowed therein to different categories of candidates is a matter of policy for Government of India to decide and courts cannot interfere in the matter. On the above grounds, UPSC have opposed the prayers of the applicant.

5. The applicant in his rejoinder has pointed out that no counter has been filed by Government of India. It is further stated by the applicant that candidature of applicants is rejected at the time of Preliminary Examination itself. He has given one example and therefore, has claimed that the assertion of UPSC that at the time of admission to Preliminary Examination, the eligibility criteria are not considered is not correct. The petitioner has stated that he had written a letter to UPSC seeking permission to sit at the Preliminary Examination in which he had mentioned that he had appeared at the Preliminary Examinations in 1992, 1993, 1995 and 1996. On that ground, he has contested the assertion of UPSC that he has knowingly furnished a false declaration. It is further stated by the applicant in the rejoinder that as Government of India have not filed any counter, UPSC cannot make averments with regard to policy. On the above grounds, the applicant in his rejoinder has reiterated his prayers in the OA.

6. We have heard Shri P.K.Mohanty, the learned counsel for the petitioner and Shri A.B.Misra, the learned Senior Counsel for UPSC and Shri B.Das, learned Additional Standing Counsel for Union of India, and have also perused the records.

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7. Learned counsel for the petitioner has filed an application for amendment of the OA at the time of hearing in which he has sought to amend the OA by incorporating that Regulation 4(iia) of 1955 Regulations is beyond the scope and mandate of Rule 7(2) of Indian Administrative Service (Recruitment) Rules, 1954 and should be declared ultravires. We have heard the learned counsels of both sides on this question of amendment and we have indicated that orders on the amendment petition would be passed along with the orders on the OA.

8. The various contentions of the learned counsel for the petitioner are discussed below. The first contention of the learned counsel for the petitioner is that the Rules for competitive examination notified by Department of Personnel & Training at Annexure-3 are not based on any statute or Act of Parliament and therefore, these Rules cannot deprive a candidate of his constitutional right for consideration for appointment to public service. As a further limb of this argument, it is stated that right to work enshrined in Article 41 of the Constitution has been interpreted as being at par with fundamental rights and this right cannot be superseded or circumscribed by the Rules. We are concerned here not with the Rules notified at Annexure-3 but only with that part of the Rules which limits the number of chances allowed to general candidates to four. The applicant's contention that this restriction is not based on any statutory rule is obviously not correct because this is based on Regulation 4(iia) of the 1955 Regulations which have been issued under Rule 7 of Indian Administrative Service (Recruitment) Rules, 1954 which in turn has been issued under Section 3(1) of All India Services Act, 1951. The

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learned counsel for the petitioner has stated that under Section 3 of All India Services Act, 1951 as also under Rule 7 of the Indian Administrative Service (Recruitment) Rules, 1954, the examination shall be conducted by the Commission in accordance with such regulations as the Central Government may, from time to time, make in consultation with the Commission and State Governments. It is stated by the learned counsel for the petitioner that the Commission and the State Governments have not been consulted in the instant case. This contention is wholly without any merit because Indian Administrative Service (Recruitment) Rules, 1954 in its preamble specifically lay down that the Recruitment Rules, 1954 have been brought out by the Central Government after consultation with Governments of the States concerned. Similarly, the preamble to the 1955 Regulations specifically mentions that these Regulations have been made by the Central Government in consultation with the State Governments and UPSC. As such, this contention of the learned counsel for the petitioner is held to be without any merit and is rejected. The main contention of the learned counsel for the petitioner that the Rules for competitive examination limiting <sup>the</sup> number of attempts by the general candidates to four are not based on any statutory rule or regulation, is also without any merit because this is based on Regulation 4(iii) of the 1955 Regulations. It is open for Government of India and UPSC to lay down the condition of eligibility and this cannot be challenged on the ground that the applicant has the right for consideration for appointment to public service and therefore he should be allowed unrestricted number of attempts to sit at the Civil Services Examination. If this argument is accepted, then on the same logic the age restriction can also be challenged. This contention which

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supposedly derives strength from Article 41 of the Constitution is also held to be without any merit and is rejected.

9. The next point of the learned counsel for the petitioner is that for SC and ST candidates the number of chances is unrestricted subject to consideration of age and for the candidates belonging to Other Backward Classes the number of attempts is restricted to seven. The applicant's case is that in the context of the above, restriction of four attempts at the examination by general candidates is discriminatory. We are unable to accept this submission because it is always open for the Central Government to provide greater facilities for persons coming under backward <sup>classes</sup> and <sup>^</sup> <sup>✓</sup> <sup>Sam</sup> deprived groups who are not adequately represented in public service and for which there is specific provision for reservation and therefore, the provision of restriction of number of attempts to four for general category candidates cannot be challenged on the ground that for SC and ST candidates there is no such restriction and for OBC candidates seven attempts are allowed. This contention is, therefore, held to be without any merit and is rejected.

10. The third contention of the learned counsel for the petitioner is that Civil Services Examination for a particular year covers both Preliminary and Main Examinations and as the applicant had appeared in both Preliminary and Main Examinations only twice in the year 1993 and 1996, it must be held that he had two more chances to avail. This contention is also without any merit because Explanation to Regulation 4(iiiia) of the 1955 Regulations specifically provide that an attempt at a Preliminary Examination shall be deemed to be an attempt at the examination within the meaning of the

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rule. The applicant has appeared at the Preliminary Examinations four times and therefore, he cannot claim that in terms of the law, it must be taken that he has taken the examination only twice. As a matter of fact, in his OA in paragraph 4.2 he has specifically mentioned that he had already availed of four chances in previous years. This submission is, therefore, obviously an afterthought and does not merit serious consideration.

11. The fourth ground of the learned counsel for the petitioner is that the petitioner in his application for admission to Civil Services (Preliminary) Examination, 1998 had mentioned that he had availed of four chances. Even then he was admitted to the examination. He qualified in the Preliminary Examination and in letter dated 17.8.1998 at Annexure-1 detailed application form with certain documents was sent to him for applying for admission to Civil Services (Main) Examination, 1998. It is argued that in view of this UPSC is estopped from cancelling his candidature at the stage of scrutiny of his application for admission to Civil Services (Main) Examination, 1998. This contention is also without any merit because in Annexure-1 to the OA there is a specific note that mere despatch of the application form does not ipso facto confer any right on the applicant for admission to the Main Examination. Admission certificate will be issued to the applicant in due course if he is found eligible in all respects for admission to the Examination. From this it is clear that at the time of despatching of the application form for admission to the Main Examination, 1998, UPSC has made it clear to the applicant that mere despatching of the application form does not mean that he would be automatically admitted to the Main Examination. In view

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for admission to  
of this, mere despatch of the application form / the  
Civil Services (Main) Examination, 1998 cannot be said to  
have estopped UPSC from cancelling his candidature for  
the Main Examination. In any case, there cannot be  
estoppel against a statutory provision, as in the case  
here. The plea of legitimate expectation is also without  
any merit because the petitioner while applying for the  
Preliminary Examination by his own account had indicated  
by a separate letter that he had already availed of four  
chances. As such he was aware that he is not entitled to  
take the Examination once again. The plea of legitimate  
expectation is also held to be without any merit and is  
rejected.

12. The fifth point raised by the learned  
counsel for the petitioner is that the candidature of the  
applicant has been rejected by the order dated 16.9.1998  
at Annexure-2. This does not indicate that this rejection  
has been done by the Commission. From the letter itself  
it appears that this is a cyclostyled letter and his  
application has been rejected on the ground that he had  
already availed permissible four attempts at the Civil  
Services (Preliminary) Examinations prior to the Civil  
Services (Preliminary) Examination, 1998. The learned  
counsel for the petitioner has relied on two decisions of  
in the case of Hari Mohan Gupta v. State of Rajasthan and  
another, 1976(1) SLR 582, and the case of K.K.Bhatia v.  
The Rajasthan Public Service Commission, 1972 RLW 22, in  
which it has been held that a list prepared by the  
Interview Board did not automatically become  
recommendation of the Commission and in order to assume  
that character it was necessary that the entire  
Commission should have considered the list of selected  
candidates prepared by some Members of the Commission.

Facts of that case are wholly different. It is absurd to propose that the Members of the UPSC would combinedly sit together and examine applications of 2,50,000 candidates who applied for admission to Civil Services (Preliminary) Examination. We have no doubt that number of candidates admitted to the Main Examination is also quite large, must be running into thousands. Moreover, it is open for the Commission to lay down instructions with regard to disposal of business under its authority and it has been averred by UPSC in the counter that the application of the petitioner has been rejected on the basis of scrutiny instructions approved by the Commission. In view of the above, this contention of the learned counsel for the petitioner is also held to be without any merit and is rejected.

13. The last point for consideration raised by the learned counsel for the petitioner is that under the proviso to Regulation 4(iiiia) of the 1955 Regulations, a candidate appearing at the examination to be conducted by the Commission in 1992 shall be permitted five attempts, if otherwise eligible. It has been stated that as the applicant had appeared in 1992, he would be entitled to five attempts. The UPSC have pointed out that the interpretation made by the applicant is incorrect. As a matter of fact, this relaxation was given as an one time measure only for candidates appearing at 1992 examination. In support of their contention, UPSC have enclosed at Annexure-R/III, the relevant instruction issued at the time of Civil Services (Preliminary) Examination 1992. These Rules provided that every candidate appearing at the examination, who is otherwise eligible, shall be permitted five attempts at the examination, irrespective of the number of attempts he has already availed of at the IAS, etc. Examination held



in previous years. It is laid down that the fifth attempt now permitted is available for 1992 examination only. In other words, this proviso means that those candidates who appeared at the Examination in 1992 would be allowed the fifth attempt in 1992 if they had already availed of four chances earlier. It is to be noted that the applicant took the examination in 1992 and thus was aware that this provision of fifth attempt is for 1992 examination only. From this, it is clear that because he had taken the Examination in 1992, he would not be allowed five attempts in the future years to come. The meaning of this proviso is that for those who had taken the examination in 1992, a fifth attempt was allowed for those who had already exhausted four attempts. Therefore, because of this proviso to Regulation 4(iia) of the 1955 Regulations, the petitioner does not get a chance to appear at the 1998 Examination.

14. The learned counsel for the petitioner during the course of hearing has filed an amendment petition challenging the vires of Regulation 4(iia) of 1955 Regulations. He has relied upon the decisions reported in AIR 1960 SC 622 (N.Y.Lakshminarasimhachari v. Sri agastheswaraswamivaru), AIR 1974 Orissa 51 (Dibakar Mohanty v. The Collector, Cuttack and others), and AIR 1961 Punjab 60 (P.S.Kaicker v. Union of India) in support of his submission that the amendment should be allowed. We have already dealt with <sup>and rejected</sup> the contention of the learned counsel for the applicant that Regulation 4(iia) of the 1955 Regulations restricting the number of attempts for general candidates to <sup>four is</sup> / illegal. In view of this, it is not necessary to pass any order on the amendment petition which is disposed of.



15. In support of his contentions, the learned counsel for the petitioner has also relied upon a large number of decisions which are indicated below:

- (i) R.Musallapa Reddy v. The State of Andhra Pradesh and another, 1969 SLR 42;
- (ii) Col.A.S.Sangwan v. Union of India and others, 1980(2) SLR 1;
- (iii) Ramgiri Keshavgiri Goswami v. K.M.Raval, Deputy Conservator of Forests (Extension), 1984 (3) SLR 579;
- (iv) Satish Bhandari (Dr.) v. State of M.P. and others, 1986 (2) SLR 585;
- (v) Mullikarjuna Rao and others v. State of A.P. and others, etc., AIR 1990 SC 1251;
- (vi) Indian Railway Service of Mechanical Engineers Association and others v. Indian Railway Traffic Service Association and another, 1993 (2) SLR 579;
- (vii) Union of India and others v. Hindustan Development Corporation and others, AIR 1994 SC 988;
- (viii) Agricultural Market Committee v. Shalimar Chemical Works Ltd., 1997 (4) SUPREME 575;
- (ix) M.R.Patil and another v. The Member, Industrial Court and another, 1998(1) SLJ 100.

We have gone through these decisions, but we are afraid that none of these decisions advances the case of the petitioner in any way. Reference need only be made to the case of **Ramgiri Keshavgiri Goswami (supra)**, decided by the Hon'ble High Court of Gujarat. There the petitioner while applying for the post of Forest Guard submitted his correct date of birth in his application form. But at the time of passing the test for selection, the petitioner had crossed the age limit by fourteen days and by one year and 15 days on the date of his appointment. Despite his crossing the age limit the petitioner was appointed. It was held by the Hon'ble Gujarat High Court that under the circumstances of the case, the appointing authority shall be deemed to have relaxed the rules and it cannot

be urged that the age limit was inadvertently overlooked. It is clear that the facts of this case are widely different from the present case before us. Just because the petitioner's application was admitted for the Preliminary Examination cannot mean that he would be admitted for the Main Examination irrespective of consideration of his eligibility. Thus, this decision does not go to support the petitioner's case in any way. It is not necessary to go into the facts of **Hindustan Development Corporation's case (supra)** because that case dealt with contracts entered by the Railway Board. It was laid down therein that policy and principles imposing restriction should be reasonable. This decision does not lend any support to the contention of the learned counsel for the petitioner that the restriction of four attempts for general category candidates for the Civil Services Examination is per se unreasonable.

16. In the light of the above discussions, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Original Application is, therefore, held to be without any merit and is rejected but without any order as to costs. The interim order issued by us in order dated 13.10.1998 also stands vacated and it is ordered that in case the applicant has taken the Main Examination, his result should not be evaluated or published.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
18.2.99  
VICE-CHAIRMAN