

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

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ORIGINAL APPLICATION No. 44/92 and

(2) Original Application No. 477/93

Anoop Kumar, and

(2) Amitabh Bhatnagar Petitioners

versus

Union of India & others Respondents.

CORAM:

HON. MR. JUSTICE R.K. VARMA, V.C.

HON. MR. V.K.SETH, ADMN. Member

(By Hon. Mr. Justice R.K. Varma, V.C.)

By the petition O.A. No. 44/92 filed under section 19 of the Administrative Tribunals Act, 1985, the petitioners have prayed for the following reliefs:

(i) To declare the mid year ^{date} fixed for calculation of age on 1.8.92 in Civil Services Examination, 1992, as arbitrary, discriminatory and violative of Art. 16 of the Constitution.

(ii) To issue a mandamus directing the respondents to fix the first day of Calendar Year 1992 for calculation of age limit, which will not only be before the day of announcement of age limit of 33 years but also before the last date of filling up the form and also before the date of commencement of Civil Services Examination, 1992, as is in the case with the Recruitment by promotion to I.A.S., I.P.S. and in selection to other All India Services.

(iii) to issue a mandamus directing the respondents

to declare the applicant eligible to appear in Civil Services Examination 1992 and to allow him to appear therein ^{or and or} also to declare the results.

2. The petitioners also prayed for an interim order to direct the respondents to accept the application form of the petitioners treating them within the field of eligibility (irrespective of the upper age limit) and permit them to appear in the Civil Services Examination, 1992 and to give all consequential benefits subject to the result of the petition. An interim order was passed by this Tribunal on 31.1.92 directing that the applications filed by the petitioners shall be entertained without prejudice and shall not be refused on the ground that they have exceeded the age of 33 years on 1.8.92 and the petitioners shall be allowed to appear in the U.P.S.C. Preliminary Examination as they have not exceeded the age of 33 years on 1.1.92 and the forms shall also not be refused on the basis of 'Cut Off' date.

3. Pursuant to the aforesaid interim order, the applications of the petitioners to be candidates for appearing in the Civil Services Examination, 1992 were entertained and petitioners were allowed to appear at the Preliminary Examination held on 7th June, 1992.

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This petition has been pursued till its conclusion only by the petitioner No. 2 Amitabh Bhatnagar. The petitioner no. 1 Anoop Kumar appears to have lost interest in the matter presumably because of his failure at some stage of the examination. We shall therefore, hereafter proceed to deal with the case of Amitabh Bhatnagar only and describe him as petitioner hereinafter.

The petitioner Amitabh Bhatnagar appeared at the Preliminary Examination held on 7th June, 1992 and upon his being ^{or found} successful at that examination

the petitioner was allowed to appear at the main Examination held in November, 1992 and having been found successful in the main Examination, the petitioner was called for interview and he appeared for interview on 26.5.93. The final result of the Civil Services Examination 1992 was declared on 2.6.93 but the result of the petitioner was withheld by the U.P.S.C. The petitioner then moved O.A. No. 477/93 praying for direction to the U.P.S.C., Respondent No. 2 to declare the result of the petitioner for Civil Services Examination 1992 and to direct the Respondents to provide the petitioner, if found successful, all consequential benefits subject to final decision of this Tribunal. The petitioner also moved an application for interim order (M.P. 860/93) on 15.9.93.

4. After hearing the parties on M.P. 860/93 this Tribunal by order dated 16.9.93 directed that the petitioner's result shall be published by Respondent No. 2, U.P.S.C. forthwith and in case the petitioner is found successful the Respondent No. 1 shall give provisional allotment of service to the petitioner and send him for requisite training provisionally pending decision of this case. It was also directed that the benefit given to the petitioner in pursuance of this order shall be subject to the decision of the petition.

5. Against the aforesaid interim order dated 16.9.93, the Respondents filed an S.L.P.(C) No. 16509/93 in the Supreme Court of India. Another S.L.P. 16510/93 was also filed against a similar order passed by order dated 14.9.93 in another similar case (Sudhir Kumar Jaiswal vs. Union of India,

and another)by the Allahabad Bench of the C.A.T. The Supreme Court by a common order dated 11.10.93 disposing both these S.L.Ps, modified the Tribunal's order dated 16.9.93 and observed that while the direction of the Tribunal to the U.P.S.C. to announce the results of the respondents is left undisturbed, further direction that the respondents in the event of their being successful, they should be granted provisional allotment of Service and sent for training, is set aside and directed the Tribunal to dispose of the main matters most expeditiously and that the announcement of the results will be subject to final result of the matters.

5. This case as well as the other similar case of 'Sudhir Kumar Jaiswal vs. Union of India and another has since been heard for final disposal and the case of Sudhir Kumar Jaiswal has been decided on 25.11.93.

7. Apparently, the sole controversy for decision in this case is whether the petitioner should be regarded eligible on the score of age to compete at the Civil Services Examination of 1992 at which he appeared and has been declared successful in pursuance of the interim orders of this Tribunal.

8. In order to appreciate the contention relating to age eligibility of the petitioner it will be of no relevance to advert to the Statutory Regulations of 1955 and the Govt. Rules pertaining to the Civil Services Examination of the relevant year 1992.

9. The All India Services Act, 1951 (hereinafter referred to as 'the Act') was enacted, to regulate the recruitment and the conditions of service of persons appointed to the All India Services common to the Union and the States. Section 3 of the Act

empowered the Central Govt. to make Rules for regulation of recruitment, and the conditions of service of persons appointed to an All India Service. In exercise of the powers under section 3 of the Act, the Central Govt. made the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter called the Rules). Rule 4 of the Rules provided for recruitment to the service by a competitive examination as a method of Recruitment to the Service. Rule 7 of the Rules provided for Recruitment by Competitive Examination as follows:

7. Recruitment by Competitive Examination.

- (1) A competitive examination for Recruitment to the service shall be held at such intervals as the Central Govt. may in consultation with the Commission, from time to time, determine
- (2) The examination shall be conducted by the Commission in accordance with such regulations as the Central Govt. may from time to time make in consultation with the Commission and State Govts.

10. In pursuance of the Rule 7 of the Rules the Central Government in consultation with the State Govt. and the U.P.S.C. made the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 (hereinafter called the 'Regulations').

11. Regulation 3 of the Regulations, pertains to holding of examination and provides as under:

"3. Holding of Examination:

1. The examination shall be conducted by the Commission in the manner notified by the Central Govt. from time to time.
2. The dates on which and the places at which the examination shall be held shall be fixed by the Commission."

12. Regulation 4 of the Regulations, pertains to conditions of eligibility as regards Nationality, age and educational qualifications. The eligibility condition of age is provided as under:

4. Conditions of eligibility-

In order to be eligible to compete at the examination, a candidate must satisfy the following conditions, namely:-

(i) Nationality.....

(ii) Age-He 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:

Provided that the upper age limit may be relaxed in respect of such categories of persons as may 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.

In the aforesaid regulation laying down the conditions of eligibility ^{the} of minimum age limit of 21 years is fixed and is not relaxable. But as regards the upper age limit, it is kept relaxable by Notification in that behalf by the Central Govt. as provided in the Proviso to Clause(ii) of Regulation 4.

13. It has been submitted that the Combined Competitive Examination of I.A.S. and other Services used to be held in October and November each year from the very beginning after the Independence in 1947 and a person otherwise qualified, could appear at the examination if he had attained the age limit of 21 years on 1st August of the year in which the examination is held.

14. The rationale behind fixing 1st August of the year as crucial date for the purpose of reckoning the age of a candidate for appearing at the I.A.S. and Allied Services Examination to be held later in October and November in that year obviously was that the candidate must have attained the age of 21 years before appearing at the examination.

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15. The Combined Competitive Examination of I.A.S. and Allied Services comprised of a written examination and interview. Those who qualified in the written examination were called for interview and such of the candidates as were declared successful after interview were recommended for appointment to different Services in accordance with the merit list. The minimum age limit required to be attained by a candidate on 1st August of the year of examination used to be 21 years and the examination used to be fixed in the month of October or November of that year. This position continued till 30.12.78 when a change came to be introduced in the scheme of examination and a consequent Amendment in the Regulation of 1955 in as much as the written examination since the year 1979 comprises of a Preliminary examination and a main examination and as such the position that has continued after 30.12.78 is that those candidates who qualify in the Preliminary examination are allowed to appear at the main examination and from among them those who qualify at the main examination are called for interview and such of the candidates as are declared successful after the interview are recommended for appointment to different services in accordance with the merit list.

16. The word 'Examination' came to be defined by the amendment dated 30.12.78 in the Regulations of 1955 as under:

" Examination-means a Combined Competitive examination consisting of a Preliminary examination and a main examination for recruitment to the service held under Sub-rule (1) of Rule 7 of the Recruitment Rules and includes a Combined Competitive Examination for recruitment to the Service and such other service or services as may be specified by the Central Govt. from time to time."

17. Another amendment dated 30.12.78 made in the Regulations of 1955 was by introducing clause (iii-a) in Regulation 4 which is as follows:

4(iii-a) Attempts at the examination:-

unless covered by any of the exceptions that may from time to time be notified by the Central Govt. in this behalf, every candidate appearing for the examination after 1st January, 1979, who is otherwise eligible, shall be permitted three attempts at the examination;

"and the appearance of a candidate at the examination will be deemed to be an attempt at the examination irrespective of his disqualification or cancellation, as the case may be, of his candidature."

The above mentioned clause is followed by an 'explanation' introduced in pursuance of GSR 613(E) dated 23.11.1981 in force from 23.11.1981, Gaz.. of India dated 23.11.1981 and is as under:

~~Explanation~~ - an attempt at a Preliminary Examination shall be deemed to be an attempt at the examination, within the meaning of this rule.

18. However, as regards Regulation 4(ii) of the Regulations of 1955 which provided 1st August as the crucial date for determining the age of a candidate for assessing his age eligibility, no amendment was made.

19. In the succeeding years after the introduction of the Preliminary examination as a composite part of the Combined Competitive Examination by amendment made in the Regulations of 1955 on 30.12.78, the Examination has been held annually in accordance with the amended regulations and the Examination each year commences with a Preliminary Examination which is held in the month of June and is followed by the main examination which is held in October or

November of that year. The result is that a candidate whose date of birth falls in the period after the date of the Preliminary Examination and who attains the age of 21 on 1st day of August of the year in which the Examination is held, can appear at the Examination even before attaining the age of 21 years, since the Examination by its definition in the Regulations means a Combined Competitive Examination consisting of a Preliminary Examination and main Examination for recruitment to the service.

20. The anomaly of treating eligible the candidates who had not attained the age of 21 years before appearing at the examination by reason of reckoning the age with reference to 1st August which was a date subsequent to the commencement of examination in June, must have been noticed when the new scheme of examination under the amended regulation was first held in 1979 and it seems to have attracted the attention of the Govt. of India and the Govt. of India (Ministry of Home Affairs), Department of Personnel and Administrative Reforms, New Delhi, issued a memo No. 42013/1/79-Estt(D) dated 4th December, 1979 to all Ministries/Departments including Cabinet Secretariat, P.M's office, C.V.C., C.&A.G., U.P.S.C. and S.S.C. on the subject of crucial date for determining the age limit etc. for Competitive Examination held by the U.P.S.C./S.S.C. (vide Annexure -1 TO M.P. No. 622/93 with Supplementary Affidavit dated 5.7.93 filed by the petitioner). The relevant portion of the said memo which deserves to be noticed is contained in paragraphs 2 and 3 thereof which are reproduced hereunder:

2. The question as to the crucial date that should be prescribed for Competitive Examinations held for recruitment by the U.P.S.C./S.S.C. etc. has been carefully considered in consultation with the U.P.S.C. and it has been decided that the crucial date should be:

- (i) 1st day of January of the year in which the examination is held in the first half of the year; and
 - (ii) 1st day of August of the year in which the examination is held, if the examination is held in the later half of the year.
3. All Ministries are requested to take action to amend the relevant Recruitment Rules of Regulations, in consultation with the U.P.S.C. wherever necessary."

21. The current scheme of Civil Services Examination conducted by the U.P.S.C. was introduced from 1979 when a Preliminary Examination also became a part and parcel of the Combined ^{or competitive} Examination for Recruitment to the All India Services. The Civil Services Examination commenced each year with the holding of the Preliminary Examination in the month of June. It was incumbent on the concerned Ministry and the U.P.S.C. to take note of the request made in the Office Memorandum dated 4.12.1979 issued by the Govt. of India (Ministry of Home Affairs), Department of Personnel and Administrative Reforms (Annexure 1) requesting for amendment of the Regulations for effecting a change in the crucial date for the purpose of determining age eligibility of the candidates for the Civil Services Examination which commenced with the holding of Preliminary Examination in the month of June. But it appears that the said memo which in effect called for prescribing the crucial date of 1st January in

respect of Civil Services Examination, was ignored through sheer inaction, otherwise it was not conceivable that the request for amendment which was so significant and rational could be ignored, particularly in view of the circumstances that the Civil Services Examination came to be commenced in the month of June from 1979 instead of October/November as was the uniform practice in the earlier years. The old crucial date of 1st August in the year of Examination was relevant and justified only till the examination of 1978 under old scheme of Combined Competitive Examination which used to be commenced later in October/November every year.

22 In view of the fact that although the Civil Services Examination from 1979 onwards has been held or commenced in the month of June (and not October/Nov.) every year and the prescribed minimum age limit of 21 years for age eligibility of a candidate for appearing at the examination has been determined with reference to the unchanged crucial date of 1st August, it appears that doubts have been expressed about the reasonableness of continuing 1st August as a crucial date for determining the age eligibility of the candidates for appearing at the Civil Services Examination being held in June every year. The Govt. of India issued an Office Memorandum dated 14.7.1988 in this behalf which has been filed by the petitioner as Annexure II to M.P. No. 622/93. This document merely tries to give some sort of ~~unconvincing~~ justification for the old crucial date of 1st August which has somehow continued unchanged in spite of the decision taken and request made by the Govt. of India by memo dated 4.12.79 (Annexure 1 to ~~the~~ M.P. No. 622/93) for amendment of the crucial date which required implementation in view of the

Civil Services Examination being held in the month of June instead of October-November after the introduction of Preliminary Examination as part and parcel of the Competitive Examination since 1979.

23. The respondents have filed no contemporaneous document to show whether there was any decision taken by application of mind for not amending the crucial date or taking any action pursuant to the request of the Govt. of India made in 1979 for taking action to amend the regulation as regards the crucial date in respect of the Civil Services Examination. It is therefore, apparent that the said request was not implemented through sheer inaction.

24. The crucial date of 1st August which was relevant upto the year 1978 till when according to the Scheme of Examination, the Combined Competitive Examination used to be held in the month of Oct./Nov. had lost its relevance and justification for its continuance after the Civil Services Examination came to be held or commenced in the month of June every year since the year 1979. The rationale behind the sequence of crucial date "1st August" preceding the date of commencement of the examination in Oct./Nov. in the years from 1947 to 1978 apparently was that all the candidates should have attained the minimum age of 21 years for appearing at the examination before commencement of the Examination.

25. From 1979 onwards a Preliminary Examination came to be held in the month of June as ^a part and parcel of the Civil Services Examination, but the crucial date for determination of age eligibility of the candidates for the Examination remained

unchanged as 1st August with the result that the sequence was reversed and the crucial date of 1st August was preceded by the date of commencement of examination (held in June) and so the due observance of the rationale that all candidates should have attained the minimum age of 21 years for appearing at the examination before commencement of the examination, was no more possible. As such, the crucial date of 1st August was rendered irrational, unreasonable, arbitrary and as such invalid since 1979 when the Civil Services Examination commenced with the holding of Preliminary Examination on a date in the month of June i.e. preceding 1st August.

26. As per Govt. of India's Office Memo dated 4.12.79 (Annexure 1 to M.P. No. 622/93) issued on the subject of crucial date for determining age limits etc. for Competitive Examinations held by the U.P.S.C./SSC, the Govt. of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms had carefully considered in consultation with the U.P.S.C. the question as to the crucial date that should be prescribed for Competitive Examinations held for Recruitment by the U.P.S.C./SSC etc. and it had been decided that the crucial date should be 1st day of January of the year in which the examination is held if the examination is held in the first half of the year. Accordingly, by the said memo all the Ministries were requested to take action and amend the relevant Recruitment Rules or Regulations.

27. Had the Regulation 4(ii) been amended in accordance with the decision and request made in this behalf by the aforesaid memo of the Govt. of India (Ministry of Home), it would have cured the irrationality of the crucial date on account of its

continuance even after preponing of the date of examination prior to the crucial date since 1979. But that was not done.

28. The petitioner has next submitted that almost in all other All India Services Examinations the date fixed for calculation of age is earlier to the date of commencement of the Examination and it is the first day of the Calendar year as would be apparent from the Chart stated in the petition as under:

S.No.	Service	Date of commencement of exam.	Age
1.	Combined Medical	25.2.90	Below 30 yrs. on 1.1.90
2.	Geological Exam. 1990	29.3.90 29.3.90 R/W	21 to 30 yrs.
3.	Indian Economic Service Exam, 90	26.6.90	21 to 25 yrs as on 1.1.90
4.	Special Class Railway Apprentice Exam. 1990	18.7.90	16 to 21 yrs. as on 1.1.90
5.	Indian Forest Service	5.8.90	21 to 26 yrs. as on 1.7.90
6.	Indian Engineering Service Exam 1990	26.8.1990	21 to 28 yrs as on 1.8.90

29. It has also been submitted on behalf of the petitioner that maintaining two different patterns with regard to age limit, one with regard to Indian Medical Forest and Engineering Services which are also All India Services notified under the All India Services Act and the other with regard to the Services falling within Civil Services Examination is wholly illogical, arbitrary and discriminatory and the two different standards being maintained

for the various services under same employment i.e. Central Government are violative of Art 16 of the Constitution.

30. It has also been submitted that crucial date for reckoning age eligibility is liable to be fixed either before the date of notification of the examination in a particular year, or prior to the last date prescribed for the filling up of forms by the candidates or prior to commencement of the Examination so that it ensures that every candidate appearing at the Civil Services Examination has attained the minimum age of 21 years prior to taking the Examination, but if crucial date happens to be a date subsequent to the commencement of examination, many candidates would be taking the examination even without completing the minimum age of 21 years and as such it is rendered irrational unreasonable and invalid, and such is the situation obtaining because of maintaining the crucial date of 1st August unchanged even after introduction of Preliminary Examination as a part and parcel of the Civil Services Examination which is held in the month of June since 1979. It has been submitted that since for Civil Services Examination of 1992, the Govt. of India by notification of the Rules for Examination of 1992 relaxed the upper age limit for eligibility of a candidate as 33 years instead of 28 years, it would have been just and reasonable to fix a date anterior to the date of notification as the crucial date for determining the age of the candidates so that the benefit of relaxation of upper age limit could be available to the maximum number of candidates. But that has not been done. The Civil Services Examination of 1992 was commenced by holding the Preliminary Examination

for the various Services under same employment i.e. Central Government are violative of Art 16 of the Constitution.

30. It has also been submitted that crucial date for reckoning ^{the age} ~~the~~ eligibility is liable to be fixed either before the date of notification of the examination in a particular year, or prior to the last date prescribed for the filling up of forms by the candidates or prior to commencement of the Examination so that it ensures that every candidate appearing at the Civil Services Examination has attained the minimum age of 21 years prior to taking the Examination ^{even} without completing the minimum age of 21 years and as such it is rendered irrational, unreasonable and invalid, and such is the situation obtaining because of maintaining the crucial date of 1st August unchanged even after introduction of a Preliminary Examination as a part and parcel of the Civil Services Examination which is held in the month of June since 1979. It has been submitted that since for Civil Services Examination of 1992, the Govt. of India by notification of the Rules for Examination of 1992 relaxed the upper age limit for eligibility of a candidate as ³³ ~~30~~ yrs. instead of 28 years, it would have been just and reasonable to fix a date anterior to the date of notification as the crucial date for determining the age of the candidates so that the benefit of relaxation of upper age limit could be available to the maximum number of candidates. But that has not been done. The Civil Services Examination of 1992 was commenced by holding the Preliminary Examination

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/but if the crucial date happens to be a date subsequent to the commencement of examination, many candidates would be taking the examination

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on 7th June and the age eligibility was determined by reckoning the age of candidate by reference to 1st August as the crucial date.

31. The petitionr appeared at the Civil Services examination held by the U.P.S.C. in 1992 for the purpose of filling vacancies in the I.A.S, I.P.S., I.F.S. and 16 Central Services Group 'A' and 'B' ^{Ans.} Central Services Group 'B'. The Rules for the Competitive Examination-Civil Services Examination of 1992 (hereinafter referred to as Rules of 1992 Exam.) were published in Gazette of India Extra Ordinary ^{dated} 28.12.81 by the Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training).

32. Rule 4 of the said Rules of 1992 Exam provides that every candidate appearing at the Examination who is otherwise eligible shall be permitted 5 attempts ^{at the Examination} irrespective of the number of attempts he had already availed of at the I.A.S. Examination held in previous years and that the fifth attempt now permitted is available for the 1992 Examination only. It also provides that any attempts made at the Preliminary Exam., held in 1979 and onwards will count as attempts for this purpose.

33. The Note under Rule 4 of 1992 Examination Provides that:

- (1) An attempt at a Preliminary Examination shall be deemed to be an attempt at the Examination.
- (2) 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.

(3) Notwithstanding the dis-qualification/cancellation of candidature ~~of~~ the fact of appearance of the candidate at the Examination will count as an attempt.

34. It is not disputed that the petitioner's attempt for 1992 Examination was the 5th attempt as was permissible under Rule 4 of the Rules of 1992 Examination.

35. Rule 6(a) of the aforesaid Rules published for the Civil Services Examination of 1992 provides that a candidate must have attained the age of 21 yrs. and must not have attained the age of 33 years on 1st August 1992 i.e. he must have been born not earlier than 2nd August 1959 and not later than 1st August, 1971. A note under Rule 6(a) provides that it may be noted that the upper age limit of 33 years is ~~only~~ applicable only to the Civil Services examination to be held in 1992. From 1993 onwards the upper age limit would be 28 years.

36. The relaxation of age in Rule 6(a) is apparently made by virtue of proviso to Regulation 4(ii) of the Regulations of 1955. The petitioner had attained the age of 33 years on 1st August 1992, which was the crucial date fixed for reckoning age eligibility as per Rule 6(a) of the Rules for Civil Services Examination of 1992. But the petitioner had not exceeded the age of 33 years on 1.1.92 which ought to have been fixed as the crucial date by amendment of the Regulations in accordance with the reasonable and rational decision taken and the request for amendment of the crucial date made by the Govt. of India as per their aforesaid memo dated 4.12.1979 subsequent to shifting of the date of commencement of the Civil Services Examination from

the month of October/November to the month of June since the year 1979 on account of introduction of a Preliminary Examination held in the month of June as part and parcel of the Civil Services Examination.

37. As stated earlier the petitioner's application as a candidate for the Civil Services Examination 1992 was entertained in pursuance of an interim order made by this Tribunal on 31.1.92 directing that the application filed by the applicant shall be entertained without prejudice and shall not be refused on the grounds that he had crossed the age of 33 years on 1.1.92 as he has not exceeded the age of 33 years on 1.1.92 ^{for} appearing in the U.P.S.C. Preliminary Examination and the form shall not be refused on the basis of 'Cut off date'. The petitioner was within 33 years of age on 1.1.92 and ^{now} to appear in the Civil Services Examination 1992 and he has ^{now} been accordingly allowed ~~to come out successful in the written examination 1992 and he has~~ come out successful in the written examination and in the interview and has been finally selected by the U.P.S.C. and further action in the matter of allocation of appointment in service is pending and is dependant upon the result of this petition.

38. It has been submitted that the crucial date for determining the age of candidate for the purpose of his eligibility of age to appear at the Central Service Examination must rationally be such that the candidate ^{at} attains the minimum age of 21 years when he actually appears at the examination i.e. he should be 21 years of age before commencement of the Examination. The minimum age of eligibility for

appearing at the Civil Services Examination which is 21 years is not relaxable unlike the upper age limit as per the Regulations of 1955. During years from 1947 to 1978 when the Combined Competitive Examination for All India Services were being held year after year, the examination used to be held or commenced in October/November each year and the crucial date for determining the age was fixed as 1st August and the result was that the candidate who had attained the minimum age of 21 years on 1st August was considered eligible for appearing in the Examination to be held later in October/November in that year. But since 1979 the Civil Services Examination has been held in the month of June and not October/November each year but there has been no consequential change in fixing of the crucial date which continued to be 1st August. The result is that many candidates whose date of birth falls between the date of commencement of examination in June and the unchanged crucial date of 1st August have appeared at the Examination even before attaining the minimum age limit of 21 years before commencement of the Examination. The rationale underlying the recommendation dated 4.12.79 made by the Govt. of India to amend the regulation pertaining to crucial date as 1st January in view of the commencement of the Competitive Examination in the month of June which falls within the 1st half of the year was apparently to avoid the aforesaid anomalous situation in which many candidates without having completed the minimum age limit of 21 years before commencement of Examination were allowed to appear at the Examination.

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It has been submitted that the rationale of having a crucial date anterior to the commencement of the Examination was being observed from 1947 to 1978 and it was also required to be adhered to by reason of the recommendation dated 4.12.79 made by the Govt. of India for the purpose of shifting the crucial date from 1st August to 1st January in view of the shifting of the commencement of the Combined Competitive Examination from Oct./Nov. to a date in the month of June of the year. But having not been shifted, consistent with the said rationale ~~is~~ implicit, the recommendation, the unchanged crucial date of 1st August was ^{rendered} ~~indeed~~ irrational, unreasonable, arbitrary and invalid and as such a candidate can not be held to be ineligible on the ground of age-eligibility if the same is determined with reference to such invalid crucial date.

39. The petitioner has lastly submitted that this Tribunal is also a Court of equity and his petition could be decided purely on equity which may not be subject to the outcome of the controversy relating to the crucial date. In this connection the petitioner has placed reliance on two decisions of the Supreme Court namely 'Mohan Kumar Singhania and ors. vs. Union of India and ors (1992) 19 A.T.C. 881 and 'Madhukar Sinha vs. Union of India and ors. (1992) 19 AT.C. 879.

40. The petitioner was allowed to appear in the Preliminary Examination of the Civil Services Examination of 1992 notwithstanding the restriction of upper age limit of 33 years ^{on 1.8.92} provided the petitioner had not exceeded the age of 33 yrs. ^{on 1.1.92}

On 1.1.92 and the petitioner had not so exceeded 33 yrs. ^{on 1.1.92}

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~~years~~. After the petitioner was found successful in the Preliminary Examination the U.P.S.C allowed him to appear in the Main Examination and also in the interview. The petitioner has come out successful as per the results declared.

41. In the case of Mohan Kumar Singhania (Supra), candidates, who were appellants therein challenged the validity of the condition placing restriction on them against competing in the Civil Services Examination as provided in the Rule unless they resign from their existing service. During pendency of the litigation the appellants were allowed to appear in the examination without fulfilling the condition under the interim order passed by the Tribunal. The interim orders were ^{the not the} challenged. The restriction was ultimately upheld as valid but the candidates coming out successful on the basis of opportunity availed by them under interim orders were allowed to retain the benefit. It has been submitted by the petitioner that the circumstances of the instant case are analogous inasmuch as the petitioner here has challenged the validity of the condition of age eligibility as contained in Regulation 4(ii) of the Regulations and the petitioner was allowed to appear in the Examination under an interim order without fulfilling the condition. After the petitioner appeared in the preliminary Examination and was found successful he was allowed to appear in the main Examination by the U.P.S.C. and after he was found successful therein he was also allowed to appear in the interview by the U.P.S.C and he has come out successful on the basis of opportunity.

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availed by him under the interim order which was not challenged till completion of the examination. In the circumstances, it is the submission of the petitioner that the principle of equity adopted by the Supreme Court in allowing the candidate to retain the benefit derived by him on the basis of opportunity availed by him under an interim order squarely applies to the petitioner as well irrespective of the result of this petition on merits.

42. The argument of the petitioner has substance. In our opinion, on the basis of principle laid down by the Supreme Court the benefit derived by the petitioner should be allowed to remain intact notwithstanding the result of this petition on merits and accordingly the petitioner should be given the benefit of his success as per the merit list of Civil Services Examination, 1992.

43. The respondents have sought to justify continuation of 1st August of the year of examination as crucial date for determining the age eligibility of a candidate for the Civil Services Examination by contending that the Civil Services Preliminary Examination is only a screening test and that the Civil Services Main Examination is material for the purpose of recruitment to the services, which is conducted by the U.P.S.C. in the month of November of the year, of examination and that in this context the already prescribed crucial date of 1st August of the year of examination was retained even in the new scheme of Civil Services Examination. This contention, in our opinion, has no merit. As already stated earlier, after the introduction of a Preliminary Examination in the new scheme of Civil Services Examination since 1978 the word 'Examination' came to be defined by amendment dated 30.12.78 in the regulations of 1955 to mean a Combined Competitive Examination consisting of a Preliminary Examination and a Main Examination for

availed by him under ^{the} ~~an~~ interim order ^{squarely} applies to the petitioner as well ^r irrespective of the result of this petition on merits.

42. The argument of the petitioner has substance. In our opinion, on ~~the~~ basis of principle laid down by the Supreme Court the benefit derived by the petitioner should be ^{be allowed} ~~allowed~~ to remain intact notwithstanding the result of this petition on merits and accordingly the petitioner ^{he} should be given the benefit of his success as per the merit list of Civil Services Examination, 1992.

43. The respondents have sought to justify continuation of 1st August of the year of examination as crucial date for determining the age eligibility of a candidate for the Civil Services Examination by contending that the Civil Services Preliminary Examination is only a screening test and that the Civil Services Main Examination is material for the purpose of recruitment to the services, which is conducted BY ^{in the} ~~THE~~ U.P.S.C. in ^{the} ~~the~~ month of November of the year ^{of} examination and that in this context the already prescribed crucial date of 1st August of the year of examination was retained even in the ^{new} ~~new~~ scheme of Civil Services Examination. This contention, in our opinion, has no merit. As already stated earlier, after the introduction of a Preliminary Examination in the new scheme of Civil Services Examination since 1978 the word 'Examination' came to be ^e ~~d~~efined by amendment dated 30.12.78 in the regulations of 1955 to mean a Combined Competitive Examination consisting of a Preliminary Examination and a Main Examination for

which was not challenged till completion of the examination. In the circumstances, it is the submission of the petitioner that the principle of equity adopted by the Supreme Court in allowing the candidate to retain the benefit derived by him on the basis of opportunity availed by him under an interim order

recruitment to the services held under sub-Rule(17) of Rule 7 of the Recruitment Rules. The Preliminary Examination and the Main Examination ^{are} ~~and~~ only composite parts of the Civil Services Examination, as such it would not be right to characterize a preliminary examination as a screening test and the main examination to be the material test for making a plea in favour of retaining 1st August of the year of examination as a crucial date.

44. In fact the Preliminary Examination, the Main Examination and the interview held in the scheme of Civil Services Examination are all screening tests in the sense that unsuccessful candidates are screened out ~~or~~ eliminated from the field of competition ^{at} ~~of~~ each of the three stages of the examination.

45. The Preliminary Examination is as material as to the main examination since in order to succeed in the examination for being selected it is necessary to succeed in either of the competitive examinations successively. The examination commences with the holding of Preliminary Examination and as such for the purpose of counting the number of permissible attempts at the Civil Services Examination the Explanation under Regulation 4(iii-a) provides that an attempt at a preliminary examination shall be deemed to be an attempt at the examination.

46. The petitioner has placed reliance on O.M. no. 42013/1/79-Estt.(D) issued by the Govt. of India on 4.12.79 in support of his submission that the first day of January of the year in which the examination is held should be regarded as the crucial date. If the examination is held in the first half of the

year. He has also placed reliance on a decision of C.A.T. Principal Bench, New Delhi in 'Hardeep Singh vs. Union of India & ors. (1987) 3A.T.C. 922, wherein the petitioner prayed that the respondents should be directed to treat the crucial date of 1.6.78 for age eligibility as null and void and declare the results of the examination by taking the date of closing of receipt of application on 27.11.78 or a date prior to the commencement of the examination on 14.1.79 as a crucial date for age criterion. The relevant observations on which reliance was placed are as follows:

" In the 17 recruitment examinations cited by him, (Petitioner) in no examination the crucial date is subsequent to the date of commencement of the examination. As a matter of fact, it should not be subsequent to the holding of the examination. Just as in regard to the minimum qualifications prescribed, the candidate must hold the minimum qualifications at the time of submitting the application and ~~the candidate must hold the minimum qualifications at the time of submitting the application and~~ a candidate cannot be admitted on the plea that he is likely to get the educational qualification on a date subsequent to the date of holding of the examination, the crucial date for reckoning age cannot be a date subsequent to the date of applying or the date of commencement of the recruitment examination. We are happy to know that the respondents have realised the fallacy in fixing a subsequent date for reckoning the age and have issued O.M. No. 42013/1/79-Estt(D) on ~~4.11.79~~ para 2 which is quoted below:

" The question as to the crucial date that should be prescribed for Competitive Examination held for recruitment by the UPSC/SSC etc. has been carefully considered in consultation with the UPSC and it has been decided that the crucial date should be:

- (i) 1st day of January of the year in which the examination is held if the examination is held in the first half of the year; and
- (ii) 1st day of August of the year in which the examination is held, if the examination is held in the latter half of the year."

47. The petitioner has cited a decision of the

Supreme Court in A.P. Public Service Commission Hyderabad and another vs. B. Sharat Chandra and ors(1990) 13 A.T.C. 708, wherein validity of fixation of the crucial date (July 1) as per A.P. Police Service Rules, 1966, Rule 5, was in question. According to the relevant Rule 5(A)(i) no person was eligible for appointment as Deputy Supdt. of Police by Direct recruitment unless he has completed the age of 21 years on the 1st day of July of the year in which the selection is made. The Supreme Court held that the fixation of a date 'July 1' anterior to the date of preparation of Select List was valid.

48. The petitioner has submitted that the choice of 'Cut Off' date whenever made by an authority by any Rule or Regulation, is open to scrutiny of the court and must be supported on the touch-stone of Art. 14 of the Constitution, and has in support of his submission cited a decision of the Supreme Court in All India Reserve Bank Retd. Officers Association and ors. vs. Union of India and ors.(AIR 1992 S.C. 767).

49. It has been submitted that there should be valid basis shown for fixation of 'Cut off' date and where there is ^{no}~~the~~ valid basis for choosing a particular date as 'Cut off' date the fixation of the cut off date would be arbitrary and irrational. The decisions cited in support of ^{this} submissions are 'R.K.Ojha vs. Land Development Officer, New Delhi and another(1988) 6 A.T.C. 601, S.Nanjunda Swamy and ors. vs. Union of India and ors.(1989) 9 ATC 458, and J.N. Misra vs. Union of India and ors.(1987) 2 A.T.C.908.

50. It has been submitted on behalf of the respondents that the crucial date of 1st August prescribed for determining age eligibility of the candidate was the 'Cut off' date which cannot be challenged. Reliance was placed on a decision of the Supreme Court in the case of 'State of Bihar and ors. vs. Ramji Prasad and ors. (AIR 1990 S.C. 1300). In that case the last date for receipt of the application was fixed at 31st January 1988 (Cut off date) and the respondents who did not complete the requisite experience criterion of three years by that 'Cut off' date, had contended that the said 'Cut off' date was arbitrarily fixed and was therefore, violative of Art. 14 of the Constitution. In the background of these facts, the Supreme Court made the following observations on which the respondents have placed reliance:

" The choice of date cannot be dubbed as arbitrary even if no particular reason is forthcoming for the same unless it is shown to be capricious or whimsical or wide off the reasonable mark. The choice of the date for advertising the posts had to depend on several factors, e.g., the number of vacancies in different disciplines, the need to fill up the posts, the availability of candidates etc. It is not the case of any one that experienced candidates were not available in sufficient numbers on the Cut off date. Merely because the respondents and some other would qualify for appointment if the last date for receipt of applications is shifted from 31st January, 1988 to 30th June, 1988 is no reason for dubbing the earlier date as arbitrary or irrational."

51. The respondents have cited two decisions of this Tribunal dismissing the petitions in which the crucial date 1.8.91 for determining the age eligibility of the candidate for Civil Services Examination 1991 was challenged as arbitrary and violative of Art. 16 of the Constitution. These petitions were dismissed at the admission stage

relying on the aforesaid observations of the Supreme Court in the case 'State of Bihar and ors. vs. Ramji Prasad and ors. (Supra). These two cases are 'Kuldev alias Pradeep Kumar vs. Union of India(O.A. No. 778/^{Rev.}
of 1991) C.A.T Allahabad dated 19.9.91 and Asha Singh vs. Union of India and others.(O.A. No. 881/91
C.A.T Allahabad dated 19.9.91 respectively.

52. Another case cited is Sudhir Kumar Jaiswal vs. Union of India and Others(O.A. Nos. 168/90 and O.A. No. 1161/92) C.A.T Allahabad decided on 7.5.93. The decision in this case pertains to the Civil Services Examination of 1990. ~~The petitioner in this case was allowed to take the examination of 1990.~~^{Rev.} The petitioner in this case was allowed to take the examination of that year and was declared successful, but his petition was dismissed relying on the observations of the Supreme Court as aforesaid and as such he did not get the benefit of success at that examination.

^{Rev.} 53. The above mentioned three cases were dismissed ^{Rev.} by this Bench by applying ^{Rev.} the observations of the Supreme Court as regards the last date fixed for receiving applications from the candidates. But the said observations in our opinion are not properly applicable to a case where the validity of the crucial date for determining age eligibility of the candidate is required to be judged by the test that no candidate who is below the minimum age of 21 years should be able to appear at the examination by reckoning his age with reference to the crucial date in question.

54. The minimum age prescribed in the Regulations

for appearing at the Civil Services Examination is 21 years and the same is not relaxable. It follows logically that a candidate can appear at the Civil Services Examination of a particular year only when he has completed the age of 21 years before the commencement of the Examination. This is possible only when the crucial date for reckoning the minimum age eligibility of the candidate is anterior to the date of commencement of the examination. During the period 1947 to 1978, the Combined Competitive Examination for All India Services used to be held or commenced in the month of Oct/Nov. each year and the crucial date prescribed for reckoning age eligibility was 1st August of the year of Examination i.e. prior to commencement of the examination of that year. As such the sequence of crucial date being prior to the commencement of the Examination ensured that no candidate who has not completed the age of 21 years could take the examination. But when in 1979, there was a change made in the scheme of Civil Services Examination by introducing a Preliminary Examination to be held in the month of June as a part and parcel of the ^{Competitive} Examination, ~~held in~~ ^{the date of} ~~the~~ ^{Commencement of the examination fell in} June i.e. anterior to the crucial date of 1st August of the year of Examination. As such, many of the candidates who had not completed 21 years of age at the time of commencement of the examination in June could take the examination and thereafter completed the age of 21 years on the subsequent date of 1st August. This anomaly rendered the continuance of the crucial date (1st August), irrational and invalid because the rationale of attaining minimum age of 21 years before appearing at the Examination was

violated. The crucial date for determining age eligibility therefore, required a change by adopting a date anterior to the date of commencement of the Examination (i.e. Preliminary Examination, held in June). The Govt. of India by O.M. dated 4.12.79 advised for prescribing crucial date as 1st January of the year of the examination if the examination is held in the first half of the year.

55. Accordingly, in order to restore the sequence of crucial date being prior to the commencement of the examination so as to remove the anomaly and the invalidity of the continued crucial date of 1st August, action to amend the Regulations for changing the crucial date from '1st August' to 1st January was expected. But no action to amend the crucial date was taken pursuant to the advise of the Govt. of India contained in O.M. dated ⁴8.12.79. The anomaly of sequence and the invalidity of the crucial date *because of continuance of 1st August as the crucial date* even after shifting of the commencement of the Examination from Oct/Nov to June of the year of Examination have come to stay. In the circumstances, the impugned crucial date of 1st August must be held under the new scheme of the Examination adopted since 1979, to be irrational, arbitrary, invalid and liable to be struck down. It must be held that the determination of the age of the petitioner for judging eligibility of age cannot be made with reference to an invalid crucial date of 1st August and as such it cannot be said that he had crossed the prescribed upper age limit or had become ineligible on the ground of age.

56. The respondents have contended that because of

the earlier order/judgment dismissing the petitioner's petition, O.A. No. 168/90 dated 7.5.93 in respect of the Civil Services Examination 1990 by taking a contrary view as regards the validity of the crucial date as 1st August, this case requires a reference to a larger bench. It is true that the difference of opinion between the Benches of Tribunal ordinarily requires reference to a larger Bench. But the petitioner has submitted that in the instant case the matter is being considered afresh in the light of additional document namely Govt. of India's O.M. dated 4.12.79 which was not available for being considered on the earlier occasion and which has a decisive role in support of the petitioner's contention on the question that the continued crucial date has been rendered irrational and invalid and as such a reference to Larger bench is not necessary. A decision in E. Gopal & ors. vs. Union of India (1992) 22 A.T.C. 309 has been cited in support of his submission.

57. The petitioner has further submitted that if there is difference of opinion on a particular aspect but the case can be decided on other aspects, reference to larger Bench is not necessary. He has cited in this connection a case of 'Ramji Lal Dhuriram vs. Union of India (1987) 5A.T.C. 846. The petitioner has submitted that his petition could be decided purely on equity which may not be subject to the outcome of the controversy relating to the crucial date and as the petitioner was allowed to appear in the Preliminary Examination ^{Rev. Of Civil Services Examination} 1992 under an

interim order passed by this Tribunal notwithstanding the restriction of upper age limit of ^{now} 33 years on 1.8.92 ^{and the petitioner had not exceeded the age of 33 years on 1.1.92} and was found successful in the Preliminary Examination and the U.P.S.C. had allowed him to appear in the Main Examination and also in the interview and he has come out successful as per the results declared, his case can be disposed of on the basis of the principles laid down in 'Mohan Kumar Singhania and ors. vs. Union of India and ors, by allowing him to retain the benefit derived by him on the basis of opportunity ^bavailed by him under the interim order which was not challenged till completion of the Examination. In view of the fact that the petitioner's case can be decided on the aspect of equity and he can be given relief, reference to a Larger Bench is not necessary. For this reason also in the light of the submissions made, we do not think it necessary to refer this case to a Larger Bench. The respondents' contention in this regard is rejected.

58. In view of the discussion aforesaid, this petition succeeds and is allowed. The crucial date of 1st August for determining age eligibility as contained in the Regulation 4(ii) of the Regulations 1955 in the new scheme of Examination held in June and the crucial date as prescribed in the Rule 6 (a) of the Civil Services Examination Rules, 1992 are held irrational, unreasonable and arbitrary and are declared invalid and unconstitutional being violative of Articles 14 and 16 of the Constitution. Consequently, the petitioner is held not ineligible on the basis of the upper age limit of 33 years with

reference to the invalid crucial date of 1st August. The petitioner is also held entitled to succeed on the ground of equity in view of the principles laid down in 'Mohan Kumar Singhania's case (supra), which are applicable to the petitioner in the facts and circumstances of this case as discussed hereinabove. Accordingly, we direct that the respondents to give the petitioner the benefit of his success in the Civil Services Examination 1992 without any prejudice and treating him as an eligible candidate who has come out successful in the Civil Services Examination 1992. The respondents shall allot the service to which the petitioner is found entitled on the basis of his position in the merit list and the respondent No. 1, Union of India shall arrange to send him for requisite training without delay and without any prejudice to the interest of the petitioner.

59. In the circumstances of the case, there shall, however, be no order as to costs.


MEMBER(A)


VICE CHAIRMAN.

LUCKNOW: Dated: 3rd Dec., 1993.