

(20)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.64/92

DATE OF JUDGEMENT

4th

FEBRUARY, 1992

BETWEEN

Dr. A. Nagendra

.. Applicant

AND

1. Secretary to Govt.,
Ministry of Home Affairs,
Department of Personnel
New Delhi

2. Union Public Service Commission
represented by its Secretary
Dholpur House, Shahjahan Raod,
New Delhi-110011

.. Respondents

Counsel for the Applicant : Sri N. Rammohan Rao

Counsel for the Respondents : Sri N. Bhaskara Rao, Addl. m
CGSC

CORAM:

THE HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN)

THE HON'BLE SHRI C.J. ROY, MEMBER (JUDICIAL)

..2..

JUDGEMENT OF THE DIVISION BENCH DELIVERED BY THE
HON'BLE SHRI R.BALASUBRAMANIAN, MEMBER(ADMN).

This application filed by Dr. A.Nagendra, against the Home Secretary & Union Public Service Commission, came up for admission hearing on 29.1.1992. The prayer in this application is:

- (1) To declare the action of the respondents in permitting only candidates born on or after 1.8.1959 for the Civil Service Examination (C.S.E. for short) 1992 while not permitting those born before 1.8.1959 and adversely affected by an earlier decision to lower the upper age limit from 28 years to 26 years as illegal.
- (2) To direct the respondents to permit the applicant to submit his application for C.S.E. 1992, thus giving him a 4th chance.

2. According to the C.S.E. Rules, a maximum of three attempts is permitted. The applicant had already availed of two attempts for the year 1982 and 1984 examinations. Initially, the upper age limit for this examination was 28 years. Hence, in the normal course, the applicant had the opportunity to plan and phase the three attempts available to him in a manner that suited him. While so, the respondents intimated along with the notice for the year 1984 examination that for the 1985 examination onwards the upper age limit would be reduced from 28 years to 26 years. Hence, in order not to miss the third chance by crossing the age of 26 years, the applicant hurriedly availed of the third attempt in the 1985 examination itself. It is stated that the respondents however did not effect the reduction in the upper age limit during 1985 and 1986 also. It was from the year 1987 that they reduced the upper age limit. For 1987, 1988 and 1989 examinations, the upper age limit stood reduced at 26 years

.. 3 ..

When the 1990 examination was announced, the upper age limit was raised to 31 years and it is stated that the number of attempts were also made 4. Later still, for the 1992 examination, the upper age limit is now raised to 33 years and the number of attempts have also been raised to 5. The contention of the applicant is that, when the respondents raised the upper age limit to 31 years and also the number of attempts to 4 for the 1990 examination, their intention was to mitigate the hardship caused to those who were born before 1.8.1959 and who had to exhaust their third attempt in a hurry without proper planning because of the proposed lowering of the upper age limit from 28 years to 26 years. The 1992 examination notification also does not help them. Hence, aggrieved, the applicant has filed this application.

3. In the application, the applicant has stated that in a similar case O.A.No.204/90, the applicant therein was permitted by an interim order to appear for the 1990 examination for a fourth time. On the same lines, the applicant now wants to avail an extra chance in the 1992 examination.

4. We have heard both sides and also gone through the counter in O.A.No.204/90 on which the applicant relies. In the counter in O.A.No.204/90 the respondents had contended that when they raised the upper age limit to 31 years for the 1990 examination, it was not at all their intention to give an extra chance to those who had hurriedly availed of their third chance. Their intention was only to compensate those candidates who could not take the examinations for the years 1987, 1988 and 1989. due to the reduction in the upper age limit from 28 years to 26 years. It was, therefore, decided to fix the upper age limit to 31 years for the 1990 examination only.

It is also contended by Shri N.Bhaskara Rao, appearing for the respondents that the age limit is fixed to recruit persons in the proper age group and not simply to give extra attempts to candidates.

5. On an examination, we find that the applicant in this O.A., placed similarly to the applicant in O.A. No.204/90, did not approach the Tribunal at that time for a fourth chance. The notification of 1992 examination however aroused his hopes and he wants ^{the} 4th chance in the 1992 examination where the number of attempts have been increased to 5. He is aggrieved that the age limits laid down come in the way.

6. The main question to be examined is whether there is any illegality in the respondents laying down the age requirements for candidates appearing in the 1990 examination. In the course of the admission hearing Shri N.Bhaskara Rao even raised the question of limitation and he pointed out that the cause of action actually arose at the time of the notification for the 1984 examination. It was stated in that notification itself that from the 1985 examination onwards the upper age limit would be reduced from 28 years to 26 years. We overrule this objection because by their action and contention the respondents themselves have in an attempt to mitigate the hardship to people affected by this decision by raising the upper age limit in the 1990 examination to 31 years and have further gone ahead and raised it to 33 years in the 1992 examination.

7. A judgement of the Allahabad Bench of this Tribunal in O.A.No.210/90 before them (Ashok Kumar Dwivedi Vs. Union of India & others) was placed before us. The judgement is dated 28.5.90 and covers a case similar to the one before us. Based on some other cases already

disposed of by them, the Allahabad Bench held that the emphasis on age requirement was much more important than the number of attempts. The Allahabad Bench held that the recruitment to the Central Services should naturally be made from candidates who are young enough and that the age limits cannot be extended to an undefined limit only to enable a few to have four chances at the examination. We agree with the findings of the Allahabad Bench. We would further add that the basic intention of the Government is not to give more chances to candidates. After all what is stated is the maximum number of attempts over a certain age ~~panel~~ ^{85pm} and there is no compulsion on the candidates that they should avail of the maximum chances. It is only an opportunity given to the candidates which they have to avail over a prescribed age ~~panel~~ ^{8pm}.

8. The Hon'ble Supreme Court has observed as follows in the case of Mallikarjuna Rao & others Vs. State of A.P. I II(1990) ATLT (SC) 338 I.

"10. ----- It is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory-sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the constitution. Imagine the executive advising the judiciary in respect of its power of judicial review under the constitution. We are bound to react scowlingly to any such advice.

"11. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive."

[Extracted from the judgment in the case of Asif Hameed & others Vs. State of Jammu & Kashmir & others I 1989 Supp.(2) SCC 364 I]

.....

RJ

150

9. The respondents have been, no doubt, altering the age limits from time to time. What we have to see is whether this is in exercise of the powers vested in them and whether such alterations will serve the interests of the Administration. We find that it is in exercise of the powers vested in them and ~~then~~ the age groups from which they want to recruit hands had been fixed to serve the interests of the Administration. On the other hand, if, to provide extra chances to the candidates, the age limits are raised that might go against the interests of the Government. These are matters of policy and viewed in the light of the judgment of the Hon'ble Supreme Court cited supra, there is no scope for us to interfere. We find that the applicant has already availed of three chances which is the limit prescribed in the C.S.E. Rules and he cannot have a grievance ~~that~~ that figure has been altered to his disadvantage. Under these circumstances, we find that the case is not fit for adjudication and hence we reject the case at the admission stage itself.

R.Balasubramanian
(R.Balasubramanian)

Member(A).

W.S.R.
(C.J.Roy)
Member(J).

Dated 4th February, 1992.

Dy. Registrar (Judl.)

STY/2/92

Copy to:-

1. Secretary to Govt., Ministry of Home Affairs,
Department of Personnel, New Delhi.
2. Secretary, U.P.S.C., Dholpur House, Shajahan road,
New Delhi-110011.
3. One copy to Shri. N.Rammohan Rao, advocate, CAT, Hyd.
4. One copy to Shri. N.Bhaskar Rao, Addl. CGSC, CAT, Hyd.
5. One ~~copy~~ copy. D.R. Jdl, CAT, Hyderabad.
6. Copy to all Reporters as per the Standard List of C.A.T. Hyderabad Branch.
Rsm/-
7. 1. Spare Copy.

14/02

O.A. 64/92

TYPED BY
CHECKED BY

ASR
COMARED BY
12/2/92
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C.

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR.C.J.ROY : MEMBER(JUDL)

DATED:

1/21/92

ORDER/JUDGMENT:

R.A/C.A/M.A.N.

in

O.A.N.

64/92

T.A.No.

(W.P.No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions.

Dismissed *at admission stage itself*

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

