

(73)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA 131/94, OA 162/94 ✓
OA 570/94, OA 149/94 ✓
OA 146/94, OA 178/94 ✓
OA 569/94, OA 223/94 ✓
OA 625/94, OA 225/94 ✓
OA 227/94, OA 240/94 ✓

Dt. of Decision : 8-9-94.

1. Solomon Carey Wesley Addanki
2. Manne Caleb
3. Kappala Joseph Paul
4. Lingampally Devender
5. Jannu Laxmi Narayana
6. Gundimeda Mohan Koteswara Rao
7. Chodivarapu Purnachandra Rao
8. Bathula Hanoku
9. Inja Sharon
10. R. Narendar Rao
11. Smt. R.Rekha
12. S.Chandra Sekhar
13. U. Rajendra Kumar
14. A. Dinakar Babu

.. Applicants in
OA. 131/94.

1. Masarapu Satish Naidu

.. Applicant in
OA. 569/94.

1. Donthamsetti Srinivas Ganesh
2. Suvvada VijayaBhavani

.. Applicants in
OA. 227/94.

1. Boyini Vinod Kumar

.. Applicant in
OA. 625/94.

- | | |
|----------------------|---------------------|
| 1. K.Satyanarayana | 26. A.Prashanth |
| 2. V.Srisailam | 27. M.Vijay Kumar |
| 3. VS.Nishakarachary | 28. B. Manohar |
| 4. K.Sudhakar | 29. B. Laxmappa |
| 5. M.Rajaram | 30. P.Ram Babu |
| 6. G.Venkateswarlu | 31. K.Venkata Swamy |
| 7. N.Gangadhar | 32. A.Venkatachary |
| 8. S.Panchakshari | 33. S.Eswaraiah |
| 9. E.Venkataadri | 34. S.Nendaiah |
| 10. S.Suresh Kumar | 35. A.Hanumanaiah |
| 11. E. Yadaiah | 36. DSP Sharma |
| 12. M.Srinivas | 37. M. Vijaya Kumar |
| 13. S. Amareswar Rao | 38. SV Arun Dutt |
| 14. S. Balakrishna | 39. L.Vinay Sagar |
| 15. T.Venkatesh | 40. Y.Dasarath |
| 16. V.Venkat Kanna | 41. Y.Ramana |
| 17. S.Pullaiiah | 42. A.Chandram |
| 18. N.Madhusudhan | 43. KPC Sekhar |
| 19. N.Ravinder Raju | 44. S.Vidya Sagar |
| 20. M.Zilani Basha | 45. V.Sudheer Kumar |
| 21. D.Gopala Krishna | 46. B.Raja Sekhar |
| 22. M.Ram Mohan | 47. B.Vijay Kumar |
| 23. B.Srinivas | 48. A.Bhinand Kumar |
| 24. Bhagavanth | 49. R.John Wesley |
| 25. TVD Prasad Rao | |

.. Applicants in
OA. 146/94.

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1. Munorati Janakiram
2. T.Chandra Kaladhar Raju
3. V.Sudheer
4. J.Sudheer
5. CH. Purushotham
6. Chandra Mouli
7. S.David Brynerd
8. KPV Kumar
9. Y.Nagaraju
10. K.Chandra Sekhar
11. T.Padmavathi Devi
12. ASMV WESLEY

.. Applicants in
OA. 149/94.

1. K. Srinivasu
2. G.Koteshwar
3. KV Naidu
4. P.Venkateshwar Rao
5. S.Pradeep Kumar
6. R. Vijaya Raju

.. Applicants in
OA. 162/94.

1. A. Satyanarayana
2. P. Sudhakar Verma
3. PBY Prasad

.. Applicants in
OA. 570/94.

1. Abraham Kaki

.. Applicant in
OA. 223/94.

1. G. Mohammed Iqbal
2. Guduru Yugandhar
3. B.Mohan
4. G.Swarna Gowri

.. Applicants in
OA. 178/94.

Dr. Suvvada Surya Prakasa Rao

.. Applicant in
OA. 225/94.

M. Bharadwaja

.. Applicant in
OA. 240/94.

Vs

1. Union of India represented by
Secretary, Ministry of Personnel
and Training, New Delhi.
2. Union Public Service Commission
represented by its Secretary,
Dholpur House, New Delhi.
3. Union of India represented by
Secretary, Ministry of Welfare,
New Delhi.

.. Respondents in
all the OAs.

.. Respondents in
OAs. 240/94,
225/94, 178/94,
223/94, 570/94,
162/94, 149/94.

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Counsel for the Applicants

: Mr. J. Sudheer
(OAs 162/94, 570/94,
223/94, 178/94,
225/94, 240/94,
146/94, 131/94.)
Mr. K. Venkateswara Rao
(OA 625/94.)
Mr. A.K. Gopal,
(OA 227/94.)
Mr. KK Chakravarthy
(OA) 569/94.)

Counsel for the Respondents

: Mr. N.R. Devaraj, Sr.CGSC.
(OAs. 149/94, m 223/94,
178/94. 240/94,
146/94, 625/94,
227/94, 131/94.)
Mr. V. Bhimanna, Addl.CGSC.
(As. 570/94, 569/94.)
Mr. K. Bhaskara Rao, Addl.CGSC.
in OA. 162/94.
Mr. N.V. Raghava Reddy, Addl.CGSC
in OA. 225/94.

CORAM:

THE HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN
THE HON'BLE SHRI A.B. GORTHY : MEMBER (ADMN.)

OA 131/94/OA 162/94
OA 570/94/OA 149/94
OA 146/94/OA 178/94
OA 569/94/OA 223/94/OA 625/94
OA 569/94/OA 225/94/OA 227/94/OA 240/94

JUDGEMENT

Dt. 8-9-94

IAS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
Heard learned counsels for the applicants V.CX

and also the Standing counsels for the Respondents.

2. As the relief claimed in all these OAs is same, they can be conveniently disposed of ~~by~~ ^{with} a common order. || The applicants in all these OAs claim that they are OBCs for whom 27 per cent of the posts in Government service were reserved. (vide O.M. No. 36012/22/93-Estt.(SCT). In the notification issued by the UPSC for Civil Services Examination, 1994, it is stated that the candidate should not exceed 28 years by 1st August, 1994 for being eligible for appearing for the said examination and age relaxation was given for 5 years in regard to SCs/STs and some other age relaxation was given in regard to some ^{other} categories. But such age relaxation was not given to OBCs. Further, there is no limit in regard to number of chances for SCs/STs who appear for the said examination while maximum number of chances for OCs & OBCs ^{is four times,} ~~were 3 times,~~ to appear for the said Civil Services Examination. All these applicants have crossed 28 years, but within 33 years, by 1st August, 1994. Some of these applicants have already availed 4 chances for appearing for Civil Services Examination. All these applicants even though crossed 28 years by 1-8-1994 and some of them have ^{been} already availed 4 chances submitted applications within time for appearing for Civil Services Examination, 1994. The OAs were filed praying for a direction to the UPSC not to reject their applications merely on the ground that they crossed 28 years by 1-8-94 and ~~or~~ that they had already availed 4 chances for appearing

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for Civil Services Examination. The last date for receipt of the applications for the said examination was 14-2-94. But the ^{last date} ~~same~~ was 21st February, 1994 for the candidates residing in remote regions specified in para 7 of that notice. Some of these OAs were filed even before 14-2-94, and some of them were filed after 14-2-94 even before their applications were rejected, while others were filed after their applications were rejected on the ground that they have crossed 28 years/and ~~or~~ that they had already availed 4 chances. In the OAs which were filed sufficiently well before 26th June, 1994, the date on which the preliminary examination was conducted, Interim orders were passed by this Bench restraining the Respondents from rejecting the applications of the applicants merely on the ground that they crossed 28 years by 1-8-94/and ~~or~~ that they availed 4 chances and UPSC was also directed to issue Hall Tickets to such candidates to enable them to appear for the Civil Services Examination- It is stated that even in cases where no such Interim directions were given by this Bench, the invigilators permitted the OBC candidates to write the preliminary examination when it was stated by them that they submitted the applications in time.

3. The learned standing counsel for the Respondents produced the judgement dated 9-5-94 of the Supreme Court in SLP No. 7999/94 filed against the judgement ^{and} ~~in~~ order dated 7.4.94 ~~of~~ ~~Delhi~~ High Court in Writ petition No. 750/94 on the

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file of High Court of Delhi, to urge that these OAs are liable to be dismissed for the Supreme Court held that the question as to whether any concession in any form had to be extended to the Backward Classes is a matter of policy for the Government to consider and the court cannot go into that question.

4. Shri J. Sudheer, the learned counsel who led the arguments for the applicants submitted that it is a case of dismissal of SLP In limine. The same cannot be treated as law laid down by the Supreme Court as envisaged in Article 141 of the Constitution and hence it is necessary for this Tribunal to hear the OAs on merits. We feel that it is just and proper to refer to this contention in the first instance before referring to the other contentions for the applicants.

5. In order to advert to this contention it is just and convenient to read the order dated 9-5-94 of the Supreme Court in SLP No. 7999/94 and it is as under:-

"Whether any concession in any form are to be extended to the backward classes is a matter of policy for the Government to consider. This Court cannot go into this question. The special leave Petition is dismissed".

It was held in AIR 1986 SC 1780 (Indian Oil Corporation Ltd. Appellant V. State of Bihar and Others Respondents) that "the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted....."

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..... A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot of course be re-opened in a subsequent writ proceeding before the High Court. Similar ^{view} ~~question~~ was taken by the Supreme Court in various other decisions which ~~in fact~~ are cited for the applicants. Thus if SLP was dismissed in limine without indicating the grounds or reasons either expressly or implicitly or even constructively, then the same cannot be treated as law laid down by the Supreme Court for the purpose of article 141 of the Constitution. in 1994 SCC 1000 500 Forum & Others, Vs Union of India & Others) it was held by the Supreme Court that in limine dismissal of a SLP on merits is a binding precedent under articles 136 & 141 of the Constitution of India. In that case, the order of the Supreme Court in dismissing the SLP in limine is as under:

"Special leave petition is dismissed on merits. In the facts and circumstances of the present case, we are not inclined to interfere with the judgment of the High Court except to a limited extent. We modify the direction made by the High Court requiring the petitioners to deposit a sum of Rs. 79,100.50 for payment to Respondent 1, Paramanand Lal alleged to be due towards arrears of his salary. We direct instead that the petitioners shall deposit half the amount for payment to respondent 1 as arrears of his salary within one month from to-day, subject to adjustment."

As it is stated in the above order that the SLP is dismissed on merits (emphasis supplied) it was treated as ^{consequence} ~~accepted~~ by the Supreme Court of the reasons given by the High Court, and it has been treated as a law laid down by the Supreme Court for the purpose of article 141 of the Constitution.

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6. In the order dated 9-5-94 in SLP No. 7999/94 it is categorically stated that any concession in any form has to be extended to the Backward classes or not is a matter of policy for the Government to consider and the court cannot go into that question. It cannot be stated that the said order is a non-speaking order without indicating any reason or ground for the dismissal of SLP. We cannot accept the contentions for the applicant that it is a non-speaking order. Even in AIR 1986 SC 1780, it is made clear that only a non-speaking order without indicating the ground or reason, can be merely considered as a case where the Supreme Court had considered it not a fit case where special leave should be granted and it is not a case of accepting the reasons given by the High Court or the Tribunal as the case may be. It is seen from the observations of the Supreme Court in 1994 SCC L&S 366 (Junior Telecom Officers Forum ~~am~~ Vs. Union of India and others) that even without an elaborate discussion, in-limine order on merits can be a binding precedent under ~~Article 141~~ Article 141. Elaborate discussion may not be necessary, if a case can be disposed of on the basis of established, well settled principle. Hence, the contention that the judgment dated 9.5.1994 in SLP 7999/94 is not on merits, is not tenable.

7. It is next contended for the applicants that in the absence of the copy of the Writ Petition in WP 750/94 of High Court of Delhi, it is

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not known as to whether all the contentions raised in these OAs were raised in the said Writ Petition and hence it cannot be held that the said order was passed by the Supreme Court after considering the contentions raised in these OAs. But when once the judgment is delivered by the Supreme Court by laying down a principle and even in a case where re-consideration is required on the ground that arguments or pleas raised or advanced in the proceedings which had come before the High Court or Tribunal or other courts, were not raised before the Supreme Court, it is for the Supreme Court, and it is not for any other court or Tribunal, to take a view difference from the view taken by it (the Supreme Court) earlier. In the above view, it is not necessary to look into the pleadings in the Writ Petition on the file of High Court of Delhi and hence we have not given any direction to the Respondents to produce copy of the same though it was requested for the applicant.

8. It was argued for the applicants that even assuming that the order dated 9.5.1994 can be held as a binding precedent under Article 141 of the Constitution of India, the same cannot be preferred to the judgment of the Constitutional Bench of the

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Supreme Court referred to in AIR 1993 SC 477 (Indra Sawhney Vs. Union of India and others). It is stated for the applicants that it was held by the Supreme Court in Indra Sawhney's case that Art.16(4) of the Constitution enables the Government to make a provision for reservation and even though it is a policy matter, it is subject to judicial scrutiny and when it is stated therein that such a policy matter is subject to judicial scrutiny, the Division Bench in the order dated 9.5.1994 observed that the court cannot go into the question as to whether any concession in any form had to be extended to Backward Class as it is a matter of policy for the Government to consider and thus it runs contra to the observations of the Supreme Court in Indra Sawhney's case wherein it is stated that the provision in regard to reservations made under Article 16(4) though a policy matter, is subject to judicial scrutiny. In support of the said contention for the applicants, Paras 89, 113 & 121(3) in Indra Sawhney's case are cited. The above three paras do not indicate that whenever a reservation is made, the age relaxation or concession in regard to number of chances have to be given. The said judgment discloses that the concessions or exemptions that can be provided under Article 16(4) of the Constitution can be

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even de hors the reservations. It also shows that the said concessions/exemptions can be of various forms. The questions as to whether reservations with or without concessions, have to be made or mere concessions/exemptions without reservations have to be provided are policy matters and the Government has the power to make provision for providing such reservations or concessions or exemptions in regard to classes referred to in Article 16(4) of the Constitution. But we cannot accede to the contentions for the applicants that whenever reservation is provided for, it is necessarily follows that all the concessions and exemptions which are provided in regard to various categories have to be provided to all categories. The question as to whether mere making provisions for reservations without concessions or exemptions is not meaningful or is not fruitful is different from contending that whenever a reservation is provided under Article 16(4) of the Constitution, necessary concessions/relaxations/exemptions have to be given. Hence, the contention for the applicants that the judgment dated 9.5.1994 when it is stated that, 'it is a matter of policy for the Government to consider as to whether any concession in any form had to be extended to the Backward classes', runs contra to the judgment of the Constitutional Bench reported in AIR 1993 SC 477, (Indra Sawhney's case), cannot be accepted.

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9. Paras 89, 113, 122(3)(f), 300 and 366 in Indra Sawhney's case (AIR 1993 SC 477) were also referred to urge that the policy decision of the Government is subject to judicial review. The question as to whether policy decision is subject to judicial review or not had not come up for consideration in the order dated 9.5.1994. Any positive action taken by the Government by way of policy decision is subject to judicial review or not and it is another thing to say that it is not for the court to decide in regard to the policy matter. What was stated in the order dated 9.5.1994 is only to the effect that the court cannot go into the policy matter while it is held in Indra Sawhney's ^{case} that even policy matters are subject to judicial review. Thus, we do not find any thing to indicate that the order dated 9.5.1994 is against the majority judgment of the Supreme Court reported in Indra Sawhney's case.

10. In the counter filed for the Union Public Service Commission, it is stated that the Central Government had taken a policy decision to the effect that no concession or relaxation in regard to the age or the number of chances which are being given to SC/STs should not be extended to OBCs. It is contended for the applicants that such a policy decision also is subject to judicial review and hence the applicants may be permitted to advance the arguments in regard to the same. It is well established that no

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writ of mandamus or direction can be issued to the Government in regard to the policy matters. Then, can it be stated that such a direction or writ of mandamus can be issued even when it is expressed for the Government that it is not a case where concession or relaxation will not be given. When the Supreme Court already held by the order dated 9.5.1994~~x~~ that the courts cannot go into the policy matter as to whether any concession in any form has to be extended to back-ward classes or not, the contention for the applicants that it is open to the courts to consider it when the Government refused to extend such a concession, cannot be upheld.

11. In the above view, there is no need to advert to the various other contentions raised for these applicants. But, at the same time, we want to refer to them for the purpose of record even though some of them have to be referred to only for stating that they are not tenable.

12. There is discrimination

(i) when concession in regard to the age, number of chances and fee are extended to SCs and STs while they are not extended to OBCs when reservations to both OBCs and SCs/STs were made under the same Article ie., Article 16 (4) ~~of the~~ of the

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Constitution. Results on the basis of the preliminary examination for Civil Services Examination conducted in June 1994 disclose the percentage of passes of SC and STs and OBCs as 18, 9.9 and 12.3 per cent while percentage of reservation for them are 15, 75 and 27 per cent respectively, and the same indicate that while percentage of passes for SCs and STS exceeded the percentage of reservation for them, it fell short ^{and} ~~and was~~ much low than the percentage of reservation of OBCs, and that itself indicates that relaxation in regard to the age etc., have to be given to other backward classes;

(ii) There is also discrimination when such relaxations were not given for OBCs for the jobs under Central Government while such relaxations were given to OBCs for the jobs under various public sector undertakings like, M/s Mazagon Dockyard, Shipping Corporation of India Ltd., and National Backward Classes Financial Development Corporation etc. (copies of the notifications in regard to the jobs under those public sector undertakings are filed)

(iii) The reservation for OBCs were provided as per the OM dated 13.8.1990 and it was given effect to from 7.8.1990. The said OM was stayed by the Supreme Court. While staying operation of the said OM, it was

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observed by the Supreme Court in the order dated 1.10.1990 that "legitimate interest of every backward class shall be appropriately protected. We make it further clear that the order made today is only a clarification of the order made on 21.9.1990 bringing out the real purpose", vide para 11 of page 478 of 1992 SCC L&S (Sup.). Some of these applicants appeared for the Civil Services Examination, 1992 and they were also called for interview and they would have been selected for IAS, if the OM dated 13.8.1990 was not stayed. Hence, when the Supreme Court itself observed while staying operation of the OM dated 13.8.1990 that the legitimate interest of the backward classes will be protected and when ultimately the same OM is made applicable for all OBCs other than the creamy layer in view of the OM dated 8.9.1993, the concession in regard to the age relaxation and the number of chances might have been extended atleast for this year as some of these applicants suffered in view of the stay order granted by the Supreme Court. Whenever such hardship is there, even the Central Government was granting the age relaxation even in cases of OCs, as can be seen from, such age relaxation in regard to those who could not appear in view of the Gulf War, and also when the maximum age limit was reduced from 28 years to 26

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years and again raised to 28 years, and when the question paper for Preliminary Examination leaked in Allahabad. So, in fairness, the Central Govt. should have granted such relaxation in regard to the age/and the number of chances atleast for this year. As all these applicants already appeared for the 1994 Civil Services (Preliminary) Examination and as their answer papers were already evaluated and the final examination is going to be conducted only in December 1994, no complications will arise, even if such concessions are going to be announced now.

13. As we accept the contention for the respondents that these OAs have to be dismissed in view of the judgment dated 9.5.1994 of the Supreme Court in SLP (C) 7999/94, we do not wish to express in regard to the above contentions referred to for the applicants.

14. But, as some of these applicants performed well in 1992-93 examination and as it is also expressed that they may move the Supreme Court in the near future, we feel it proper to give a direction to the Union Public Service Commission not to destroy the answer papers and the result sheets of these applicants in regard to the 1994 Civil Services (Preliminary)

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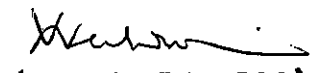
.. 15 ..

Examination till the date of commencement of the
1994 Civil Services Final Examination./

15. In the result, all these OAs are dismissed.

No costs./


(A.B.GORTHY)
MEMBER (ADMN.)


(V.NEELADRI RAO)
VICE CHAIRMAN

DATED: 8th September, 1994.
Open court dictation.


Deputy Registrar(J)CC

vsn

To

1. The Secretary, Union of India, Ministry of Personnel and Training, New Delhi.
2. The Secretary, U.P.S.C. Dholpur House, New Delhi.
3. The Secretary, Ministry of Welfare, Union of India, New Delhi.
4. One copy to Mr. J.Sudheer, Advocate, CAT.Hyd.
5. One copy to Mr.K.Venkateswar Rao, Advocate, CAT.Hyd.
6. One copy to Mr.A.K.Gopal, Advocate, CAT.Hyd.
7. One copy to Mr.K.K.Chakravathy, Advocate, CAT.Hyd.
8. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
9. One copy to Mr. V.Bhimanna, Addl.CGSC. CAT.Hyd.
10. One copy to Mr.K.Bhaskar Rao, Addl.CGSC.CAT.Hyd.
11. One copy to Mr.N.V. Raghava Reddy, Addl.CGSC.CAT.Hyd.
12. One copy to Library, CAT.Hyd.
13. One spare copy.

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TYPED BY

CHECKED BY

COMPALED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

A. B. Gorthi

THE HON'BLE MR. K. RANGARAJAN : M(ADIN)

DATED: 8-9 - 1994

~~ORDER~~/JUDGMENT

M.A.No./R.A/C.A.No.

NO SPARE COPY

in

O.A.No.

131/94 & batch.

(T.A.No..

(W.P.NO

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed *with observations*

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

pvm

