

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

O.A.No.660/95

Dt.of Judgement:22.08.1995

Between

Gujju S.R.K.R. Vijaya Kumar .. Applicant

and

1. Union of India represented by  
the Secretary,  
Min. of Personnel, P.G. and Pensions  
Dept. of Personnel and Training  
North Block  
New Delhi-110 001.

2. Union Public Service Commission  
represented by its Secretary,  
Dholpur House, Shahjahan Road,  
New Delhi-110 011. .. Respondents

Counsel for the applicant :: Mr J. Sudheer

Counsel for the respondents :: Mr K. Bhaskara Rao,  
CGSC

CORAM:

HON'BLE SHRI JUSTICE V. NEELADRI RAO, VICE-CHAIRMAN

HON'BLE SHRI R. RANGARAJAN, MEMBER (ADMN)

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JUDGEMENT

As per Hon'ble Shri Justice V.Neeladri Rao, Vice-Chairman

Heard Shri J. Sudheer, learned counsel for the applicant and Shri K. Bhaskar Rao, Standing Counsel for the respondents.

2. The applicant herein appeared for the Civil Service Examination for the years 1991, 1992, 1993 & 1994. Both Tentative allocation of service to the applicant for the years 1991 and 1992 were IC & CES whereas the final allocation of service for 1991 and 1992 were IPS and IC & CES respectively. For the year 1993, the tentative as well as final allocation allocation of service for the applicant was IPS.

3. The applicant was permitted to appear for the final examination of the Civil Services Examination for the year 1994, after he was qualified in the preliminary examination. However, by Annexure A-17 to the OA, the applicant was informed that, as he failed to produce documentary evidence in compliance with Rule 4(b) read with Note 4 of Rules of examination for 1994, he was not eligible to apply for Civil Services Preliminary Examination for the year 1994 and hence, the UPSC (R2) had decided to cancel the candidature of the applicant for the Civil Services Examination 1994 under provisions of Rule 4(b). It is stated for the respondents that a copy of the said letter dated 28.4.1995. The same is assailed in this OA which was filed on 24.5.1995. By an interim order of even date i.e. 25.5.1995, R2 was required to interview the applicant if he was qualified in the written examination. It is stated that, accordingly, the applicant was interviewed on 17.06.1995. But the result was not published in view of the directions contained in the interim order.

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4. The second proviso (i.e. 4(b) and Note 4 of the Rule 4 of Civil Services examination, 1994, read as under:

"4. xx xx xx xx  
Providedxx xx xx xx  
~~xx~~ xx xx xx  
Provided further that-  
(a) xx xx xx xx  
xx xx xx  
xx xx xx

(b) a candidate allocated or appointed to the IPS/Group-A service/post on the basis of the Civil Services Examination held in 1992 or earlier years shall not be eligible to apply for Civil Services (Preliminary) Examination to be held in 1994; unless he first gets his allocation cancelled or resigns from the service/post."

Note

1. xx xx xx  
xx xx xx  
2. xx xx xx  
xx xx xx  
3. xx xx xx  
xx xx xx  
4. For purposes of clause (b) of second proviso to this rule merely writing to the competent authority would not suffice. The candidates should produce documentary proof that his/her offer of allocation has actually been cancelled/resignation has been accepted."

It is manifest from Clause (b) to second proviso of Rule 4, that a candidate allocated or appointed to the IPS/Gp.'A' service/post on the basis of the Civil Service

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Examination held in 1992 or earlier years, shall not be eligible to apply for Civil Services (Preliminary) Examination to be held in 1994 unless he/she gets his allocation cancelled or resigns from the service/post. It is not enough for him/her to apply, and the documentary evidence in support of the same also has to be produced. Though it is not indicated as to when the documentary proof had to be produced, by reading clause (b) of second proviso to Rule 4, it is necessary to consider the eligibility for appearing for preliminary examination. It is reasonable to hold that such documentary proof had to be enclosed to the application for appearing for the Civil Services Examination (Preliminary).

5. The applicant was informed on 14.8.1993 about the tentative allocation of service on the basis of his performance in the 1992 examination, while the final allocation of the service i.e. IC & CES was informed to the applicant by proceedings dated 23.2.1994 as per details at annexure A-21 to the OA. Though the said fact was mentioned in para 6(k) at page 21 of the OA, it was not traversed in the reply statement. Hence, it can be taken that the applicant was informed proceedings dated 23.2.1994 about the final allocation of his service on the basis of his performance in the Civil Services Examination, 1992.

6. The notification for Civil Services Examination 1994, stipulates 14.2.1995 as the last date for submission of the applications. The contention for the applicant is that as he was not aware of the final allocation of service for the Civil Services Examination 1992, by the last date stipulated for receipt of the applications for 1994 Civil Services Examination, it

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was not possible for him either to apply for cancellation even if it is necessary, or to get the communication from the concerned in this regard, and thus it is a case where the rules insisted upon compliance which is impossible.

There is force in his contention. It is for the Department of Personnel to communicate the final allocation of service/post. In fact, the applicant was informed by the letter dated 6.12.1993 (annexed at A-8 to the OA) that he will be informed about the final allocation before the second week of 1993 December, 1993. It can be read from the context that the said final allocation is only on the basis of the applicant's performance in the 1992 Civil Services Examination. // The question arises as to whether clause (b) of second proviso to Rule 4 refers to cancellation of the final allocation or allocation. When it is ambiguous, it is possible to interpret in either way. But, it may be noted that the said compliance is by the candidates who are going to appear for (Preliminary) Civil Services/Examination. They will be fresh from the College. They will not, generally, be having experience on the administration side. One will not expect them to seek legal opinion when he will be busy with filling up the columns in the application, and to send it as early as possible, for in case of delay of receipt by the UPSC, the chances of appearing for the said examination will be lost. So, in the circumstances, it is just and proper to interpret the said clause (b) of second proviso to Rule of Civil Services (Preliminary) Examination, Rules, 1994, as the cancellation of allocation after it is finally intimated.

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7. It may be further noted that even if one is going ~~to be informed about~~ the final allocation in the second week of December, 1993 and, if the candidate is going to apply for cancellation of the same, the possibility of the delay on the part of the concerned authorities in accepting such cancellation cannot be ruled out. Thus, even if it is a case where the final allocation of service was intimated <sup>about</sup> few days or even a month before the last date for receipt of applications for the ensuing examination, the impossibility of compliance in regard to the same cannot be ruled out, as by the date they send their applications for cancellation, they may not get the intimation from the Department of Personnel about the acceptance of the cancellation.

8. Hence, in view of the above, we feel that it is unjust to cancel the ~~candidature~~ of the applicant herein for the Civil Services Examination, 1994 merely on the ground of non-compliance of clause (b) of Second proviso to Rule 4, when such compliance is not possible due to the delay in intimating the applicant about his final allocation of service/post on the basis of his performance in the 1993 examination.

9. It may be noted that while in similar clause (b) to second proviso in Rule 4 of Civil Service Examination 1992 rules, the applicant had to inform about the acceptance of resignation of the post/ allocation of service before appearing for the examination. It is stated in the 1994 rule that the applicant had to comply with it even by the date of applying for the examination. Probably the time that is required for applying for

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cancellation of allocation/resignation and acceptance of the same by the concerned authorities, might have been lost sight off in framing the impugned clause (b) of second proviso to Rule 4 of Civil Services (Preliminary) Examination, 1994. Anyhow, it is for the concerned authorities to advert to the same and to consider as to whether clause (b) of the second proviso to Rule 4 prescribed for the 1994 Civil Services (Preliminary) Examination, requires amendment.

10. In the view which we have taken, we are not going to advert to challenge about the validity of clause(b) of second proviso to Rule 4 of Civil Services (Preliminary) Examination Rules, 1994, or in regard to the contention for the applicant as to whether a candidate can be permitted to continue to appear for the examinations for the number of years permitted by abstaining to undergo training on the basis of allocation of service to the earlier year if permission is granted to appear for the examination for the later year. We also do not wish to express any view in regard to the contention for the applicant that Rule 4 prescribed for the Civil Services Examination for each year indicates automatic cancellation of the allocation of service if one is not going to join on the basis of the allocation in the first and second year when he is permitted to appear for the examination in the third year, for it depends upon the question as to whether as per rules, a candidate can be permitted

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~~to abstain~~ only once or whether he can be permitted to appear for all the years of attempts that can be made as per rules.

11. One of the contention which was raised for the applicant during the course of arguments is ~~as~~ with reference to Rule 2 of the Notification issued for Civil Services (Preliminary) Examination for 1994, states that, "No request for revision, alteration or change in the preferences indicated by a candidate in respect of services/posts for which he/she would like to be considered for allotment would be considered unless the request for such alteration, revision or change is received in the office of the Union Public Service Commission within thirty (30) days of the date of publication of the results of the written part of the Main Examination in the 'Employment News'."

The applicant, vide his letter dated 9.6.1995 informed the Union Public Service Commission, <sup>that</sup> ~~that~~ his revised preference as follows:

1. The Indian Administrative Service
2. The Indian Police Service

It may be noted that for the 1994 Civil Services Examination, the applicant applied for IAS only. The applicant was informed vide letter dated 1.8.1995 that as per Rule 2 of the 1994 Civil Service Examination rules, the last date for receipt of such requests was 6.6.1995, and as the applicant's request was received on 12.6.1995, the same was not entertained.

12. It is submitted for the applicant that as his result was withheld, he cannot be ~~expected~~ to submit his choices for the post within thirty days

from the date of publication of the results of Main examination as in the case of others and hence, he should now be given time to exercise that option in case ~~he is selected~~ on the basis of his performance in 1994 Civil Service Examination.

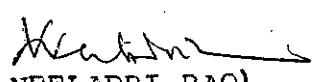
13. While it was urged for the applicant that even if a candidate specifies one or more services in the original application, it is open to him to add some more service by way of alteration and communicate the same within the stipulated time.

14. Shri K.Bhaskara Rao, learned counsel for the respondents submitted that as this point was raised only yesterday, he could not get necessary instructions in regard to the same. If ~~high~~ hither-to R2 is permitting the candidates to <sup>include</sup> add services which ~~are~~ <sup>were</sup> not referred to in the original applications while communicating their revision/change/alteration of service, then the request of the applicant as per his letter dated 9.6.95 also has to be entertained, for the time limit of thirty days in the case of the applicant herein has to be reckoned on the basis of the declaration of his result. It ~~means~~ means that if the UPSC is permitting the candidates to add some more services in the revised preferences, the case of the applicant herein can be considered for IPS also as per his letter dated 9.6.95. If the UPSC is not permitting the candidates to add some more services at the time of revised preference the case of the applicant has to be necessarily considered for IAS only provided the applicant is going to be   
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It is needless to state that this is a case where the respondents have to expedite the matter and the applicant has to be intimated marks, etc., as per extant rules.

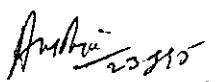
15. OA is ordered accordingly. No costs. //

  
(R. RANGARAJAN)  
Member (Admn)

  
(V. NEELADRI RAO)  
Vice-Chairman

Dated: The 22nd August, 1995

Dictated in the Open Court

  
Deputy Registrar (J) CC

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To

1. The Secretary, Ministry of Personnel, P.G. and Pensions, Dept. of Personnel and Training, North Block, New Delhi-1.
2. The Secretary, U.P.S.C. Dholpur House, Shahjahan Road, New Delhi-11.
3. One copy to Mr. J. Sudheer, Advocate, CAT. Hyd.
4. One copy to Mr. K. Bhaskar Rao, Addl. CGSC. CAT. Hyd.
5. One copy to Library, CAT. Hyd.
6. One spare copy.

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD.

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

A N D

THE HON'BLE MR. R. RANGARAJAN: (M(ADMIN)

DATED -- 24-8- 1995.

ORDER/JUDGMENT:

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

in  
OA. No. 660/95

TA. No. (W.P. )

Admitted and Interim directions  
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No order as to costs.

by speed post to R-2

at the cost of the petitioner

No Spare Copy

Central Administrative Tribunal  
DESPATCH

25 AUG 1995 N.S.

HYDERABAD BENCH.