

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

O.A. No.1446/96

Date of Decision: 18.12.1996

BETWEEN:

S. Jawahar Muneer

.. Applicant

AND

1. Union Public Service Commission  
rep. by its Secretary,  
Dholpur House, Shahjahan Road,  
New Delhi - 110 011.

2. Hyderabad Customer Care Centre,  
O/o Chief Post Master General,  
rep. by its Chief Post Master,  
A.P. Circle, Hyderabad - 500 001.

.. Respondents

Counsel for the applicant: ~~Mr. A. Vijay Saradhi~~ Mr. A. Vijay Saradhi

Counsel for the Respondents: Mr. N. R. Devaraj

CORAM:

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI: VICE-CHAIRMAN (JUDL.) *luk*

THE HON'BLE MR. H. RAJENDRA PRASAD: MEMBER (ADMN.) *18/12/96*

ORDER

(Oral order per Hon'ble Mr. Justice M.G. Chaudhari, Vice-Chairman(J)

Mr. I.V.R.K. Murthy for Mr. A. Vijaya Kumar for the applicant.

Heard at length. In our view this is a totally misconceived application. The facts leading to filing the application are as follows:

The applicant is a Post-Graduate in M.Sc (Physics). In pursuance of an advertisement issued by the Union Public Service Commission notifying preliminary examination of the Civil services examination 1996 for recruitment to the services and posts mentioned in para-2 of the advertisement, the applicant being eligible to apply as per the conditions mentioned in the advertisement sent his application from Gaddiannaram Post-office, Hyderabad, by registered post, addressed to the Union Public Service Commission. The advertisement prescribed the last date for receipt of completed applications in the UPSC as 22nd January, 1996. The applicant, however, was not sent the Hall ticket and had therefore, to miss the opportunity to appear at the said examination. It is the contention of the applicant that the upper age limit for appearing at the said examination being 28 years as on 1st August, 1996 it was very crucial for him to have availed the examination held in 1996 to which he had applied so as to save one more chance to appear again, if he failed in as much as on the date of application he was 27 years old. The grievance of the applicant, therefore, is that even though he was eligible to appear at the 1997 examination that will prove to be the last chance which in fact should have been the last but one chance and he is being deprived of the second

*[Signature]*

chance in 1998 by reason of UPSC not having sent him the hall ticket and afforded him the opportunity to appear in the 1996 examination.

The applicant was informed by the UPSC by letter Dt.23.4.1996 that his application for admission to the examination was rejected as the same was received on 30.1.1996 after the expiry of the last date prescribed for receipt of applications. This is seriously disputed by the applicant. The applicant has produced a copy of the receipt under which the application was sent by registered post as well as a copy of the communication received from the Hyderabad Customer Care Centre, in the office of the CPMG, AP Circle, Hyderabad Dt.9.7.1996 stating that the registered packet addressed to the UPSC was delivered on 16.1.96 to the addressee. That prima facie goes to show that the application was received by the UPSC within the prescribed time and it was a mistake on the part of the UPSC to treat it as having been received beyond time and on that ground to have rejected the application. In that connection Annexure A-5 which is the copy of the receipt under which the applicant had purportedly sent the application also bears a number written as '241940' which, according to the learned counsel for the applicant shows that the applicant's application was received and registered.

The applicant addressed a representation to the UPSC on 8.5.96 stating therein that his application was sent in time and it was rejected on a wrong ground and therefore he should be allowed to appear at the examination. It may be stated that the examination was held in the month of June, 1996. That request was rejected by the U.P.S.C. by letter dated 23.5. 1996.

The applicant has submitted a further representation to the UPSC on 14.8.1996 contending therein that since he could have 4 attempts upto 28 years of age and he having been left with only one more chance to appear for the examination in 1997, the loss of 1 attempt was due to the mis-administration and therefore he may be allowed one more attempt in the year 1998 and he should not be penalised for the fault of the UPSC. The learned counsel for the applicant submits that no reply has so far been received by the applicant and the said representation is pending.

In our opinion since the applicant still has a chance to appear at 1997 examination the question as to whether he would be required to appear once again is a remote question and such a relief cannot be considered at this stage particularly as the representation of the applicant on that point Dt.14.8.1996 is stated to be pending. A contingent relief depending upon an uncertain event likely to arise in future cannot constitute a cause of action for seeking legal ~~legal~~ relief in advance. In seeking this type of relief it is inevitable to assume that the applicant is not sure to get through the examination of 1997 and therefore, he wants to protect his chance for one more attempt. Theoritically, unless the applicant fails at 1997 examination such a question can not arise.

We also do not think it possible to direct a special examination to be held for the sake of the applicant as examination of June 1996. That is also not the request of the applicant. Nor it is advisable to do so in respect of a competitive examination held by the UPSC and more so as the applicant still has a chance to appear at the examination to be held in 1997. Had the 1996 chance been the last chance and no further chance left, different considerations could arise. That however is not the situation.

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We are also not inclined to accept the contention of the applicant that he is entitled to avail 4 chances to appear at the examination as a contention which may be entertained in law. Now, the advertisement that was issued by the UPSC for 1996 examination prescribed as eligibility condition<sup>g</sup> the age limit of attaining the age of 21 years and not having attained the age of 28 years on 1.8.1996. The guidelines provided in appendix-2 to the advertisement for filling up the application form mentioned the eligibility conditions in brief and at Sl.No.III it is mentioned as follows:

" No. of permissible attempts : Four "

The clear implication of the said eligibility condition is that between the age limits of 21 - 28 years as on 1.8.1996, 4 attempts were permissible. That does not create or vest any legal right in a candidate to be compulsarily provided 4 chances. A distinction has to be made between a right acquired from a prescribed condition and an opportunity being made available thereunder, where only an opportunity is made available there is no element of compulsion on the person to avail that opportunity if he does not choose to do so nor can it be legally enforced. It will be misreading of the conditions that 4 chances are made available irrespective of the period of time during which they are to be availed. The provision clearly confines the availment within the age limits of 21-28 years as on 1.8.1996. It will depend upon the candidate whether to take the examination immediately on attaining 21 years or at any year thereafter till he completes 28 years. For instance the applicant himself ~~if~~ has not availed<sup>g</sup> the first two chances for his own reasons. That cannot be converted into a right acquired by him to be availed even after he attained the age of 28 years. The contention, therefore, based on 4 attempts mentioned in the advertisement is misconceived and must be rejected.

As already stated the question as to whether by reason of wrongful denial of one of the 4 opportunities by UPSC could entitle the applicant to seek an additional opportunity even after he attains the age of 28 years is a separate question on which we are not called upon to decide at this stage.

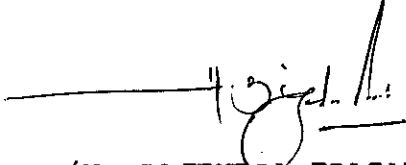
For the afore-said reasons we do not think that we should burden this Tribunal with one more case when the application does not disclose a prima facie case in present and is liable to be summarily rejected.

The applicant having filed a representation to the UPSC on 14.8.1996 he could not ordinarily approach the Tribunal till that representation was finally decided and the bar under Section 20 of A.T. Act would arise. However as we have stated above the question as to whether by reason of a mistake committed by UPSC which prima facie appears to have been committed and if eventually proved and the applicant would be in need of one more opportunity should he fail in the 1997 examination he should be given one more chance may be required to be decided at appropriate stage and since that very question has been raised in the representation Dt.14.8.1996 we leave it open to the UPSC to decide the said representation on merits and convey the decision thereon to the applicant. The mere fact of filing the OA by the applicant in this Tribunal should not be considered by the U.P.S.C. as a bar to consider the said representation on merits. Ultimately it is a question of the career of a young person who legitimately aspires to get into a



service and make a brighter career and that should not as far as possible be scuttled on technical grounds or where mistake has occurred. We have no doubt that the UPSC will examine the representation in all its aspects.

The OA is accordingly disposed of at admission stage.

  
(H. RAJENDRA PRASAD  
MEMBER (ADMN.)

  
(M.G. CHAUDHARI)  
VICE-CHAIRMAN (J)

Date: 18TH DECEMBER 1996  
Dictated in the open court

KSM

OA.1446/96.

Copy to:-

1. Secretary, Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi-110 011.
2. ~~Hyderabad~~ Chief Post Master,  
~~Hyderabad~~ Office of the Chief Post Master  
General, Hyderabad Customer Care Centre,  
A.P.Circle, Hyderabad, 500 001.
3. One copy to Mr.A.Vijay Saradhi, Advocate,  
CAT,Hyd.
4. One copy to Mr.N.R.Devaraj,Sr.CGSC,CAT,Hyd.
5. One copy to Library,CAT,Hyd.
6. One spare copy.

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24/1/97

I COURT

TYPED BY \_\_\_\_\_ CHECKED BY \_\_\_\_\_  
COMPILED BY \_\_\_\_\_ APPROVED BY \_\_\_\_\_

TO THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI  
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD  
MEMBER (ADMN)

Dated: 18.12 - 1996

ORDER / JUDGMENT

M.A./R.A/C.A. NO. \_\_\_\_\_

in \_\_\_\_\_  
O.A. No. 1746/56

T.A. No. \_\_\_\_\_ (W.P. \_\_\_\_\_)

Admitted and Interim Directions  
issued.

Allowed.

Disposed of with directions *By the Admission  
Page.*

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered / Rejected.

No order as to costs.

pvm.

*A/w copy of A to  
a.i.*

केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
दिल्ली  
27 JAN 1997  
हैदराबाद बेंच  
HYDERABAD BENCH