

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-3610/2015

Order Reserved on 30.09.2015
Order Pronounced on: 06.11.2015

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

1. Dr. Ankit Singhal,
S/o Shri Ashok Singhal
Near Small Jain Temple,
Village Kesli, District Sagar-470236

2. Dr. Vikas Kumar,
S/o Shri Rambachan Singh
242/B T.R.D. Railway Colony
Sawal Madhopur 322001
Rajasthan. -Applicants

(By Advocate: Mr. Haripriya Padmanabhan)

Versus

Union Public Service Commission,
Through
The Chairman, UPSC,
Dholpur House,
Shah Jahan Road,
New Delhi-110069. -Respondent

O R D E R

Per Sudhir Kumar, Member (A):

This OA has been filed by two applicants, one resident in Madhya Pradesh and one in Rajasthan, both of whom are not residents within the jurisdiction of this Principal Bench of this Tribunal. However, they have claimed that this Principal Bench has jurisdiction, as the sole Respondent

has its office only at New Delhi, within the jurisdiction of this Principal Bench of the Tribunal.

2. Further, the applicants have not approached this Tribunal against any cause of action having accrued to them by way of any adverse orders having been passed against their interest by the sole Respondent-UPSC.

3. The OA has been filed seeking to challenge the Civil Services' Examination Notification dated 25.05.2015 of the UPSC, to the extent that it compels candidates to answer all papers in only one language, even where the optional subjects (Papers VI and VII) are taught compulsorily in English, and the remaining papers would be best answered by the candidate's familiar medium of instruction in his lower classes. The challenge, therefore, is to the Scheme of Examination, stating that it is discriminatory, and favours those candidates who had studied their higher optional subjects also in the same language as medium of instruction, in which their school and college studies were also conducted. This, the applicants claim to have provided to them a cause of action.

4. With the same prayers, the applicants had earlier filed a Writ Petition (C) No.7765/2015 before the Delhi High Court, which, according to the applicants themselves came to be withdrawn by them on 17.08.2015, through the High Court's order produced at Annexure A-9 of this OA. The counsel for the applicants before the High Court was the same counsel who had earlier issued a Legal Notice to the Respondent-UPSC through Annexure A-7 dated 15.05.2015, without that Legal Notice indicating as to

on which Client's behalf that legal notice had been issued by the counsel, which is a mandatory requirement in the case of legal notices issued on behalf of clients by their counsel.

5. MA No.3260/2015 has been filed praying for joining together in filing this OA, which is allowed.

6. The applicants have submitted that they being students of MBBS had chosen Medical Sciences to be their optional subject for Paper-VI and Paper-VII of the Civil Services Examination, and since the medium of instruction and study material for MBBS are both in English, they have no option but to answer Paper VI and Paper VII only in English, although, in order to get the maximum possible marks, most other candidates prefer to take the optional papers Paper VI and Paper VII of the Civil Services Examination in the subjects in which they have graduated in and prefer to write those Papers in the same language in which they had been taught the subject during graduation, which the applicants apparently do not want to be restricted to do. They have claimed that, for instance, a candidate who had graduated in Law taught in Tamil, would prefer taking Law as optional subject, and write the Optional Papers VI & VII also in Tamil language, since he would then have the most chance of securing higher marks, having done his schooling with Tamil as the medium of instruction and he would, thus, get the advantage of being in the position to take all the 07 papers in the same Tamil language, his medium of instruction from the beginning to the end.

7. The applicants are aggrieved that their medium of instruction before the MBBS graduation course was Hindi, and only for the graduation course of MBBS, their medium of instruction was English, and in such a Scheme, those candidates who have studied in English Medium throughout from the school stage itself have an unfair advantage with the present language Rule, since in this manner they can opt to write all the 7 Papers of their Civil Services examination in the same language in which they have been taught from their childhood. The applicants have cited the case of **Dr. Dinesh Kumar & Ors. vs. Motilal Nehru Medical College (1986) 3 SCC 727**, and the case of **Amisha Nagpaul and Ors. vs. State of Orissa & Ors. AIR 1988 Orissa 190**, to challenge the prescription of the present method, by which those who have graduated in their professional courses only available to them in English are forced to take up other subjects also in English only, while, according to the applicants, such a scheme/prescription cannot be said to have any reasonable nexus with the object sought to be achieved with the holding of the Civil Services examinations by the UPSC.

8. In view of these peculiarities faced by the students who opt for professional subjects such as MBBS or Engineering in their optional VI & VII papers, the applicants have sought an opportunity and need for allowing students to opt for writing such professional papers VI & VII in the Civil Services (Main) Examination in a different language (English), and to be able to write their answers in all other five Papers in the language of

their choice, because, according to them, merit of the candidates should be ascertained on the basis of their knowledge of the subjects they have chosen, and not on the basis of their choice of language medium, and, in the Civil Services Examination, which is very competitive in nature, even a difference of one mark, or a few marks, can make a lot of difference. Therefore, in the result, the applicants have prayed for the following reliefs:-

- “a) Issue appropriate orders directing the respondents to allow the applicants to write papers VI and VII of Medical Sciences in their Civil Services (Main) Examination in English and the rest of the papers in Hindi;
- b) Issue appropriate orders directing the UPSC to quash its notification dated 25.05.2015 read with the FAQs in so far as they compel candidates of the Civil Services (Main) examination to answer all 7 papers in a single language regardless of the nature of the professional (optional) courses;
- c) Issue appropriate orders directing the Respondents to provide a choice to candidates opting for professional or technical subjects as their optional papers to write their papers in English, regardless of the medium they choose to answer their other Civil Services (main) papers;
- d) Issue such other direction(s) or order(s), which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case”.

9. After hearing the OA on the point of admission, we are convinced that the OA is in the nature of a public interest litigation, which this Tribunal is not competent to entertain under Section-19(1) of the Administrative Tribunals Act, 1985. It is also clear that the present OA is also barred by the provision of Section-20 of the Administrative Tribunals Act, 1985, as the only Respondent-UPSC before us, has not yet passed any order on the representation submitted by the counsel who had appeared for the applicants before the Delhi High Court, through Annexure A-7, and no

orders adverse to the interests of the applicants has so far been passed by the Respondent-UPSC, which could make this application a fit case for adjudication or trial by this Tribunal, subject to all just legal exceptions.

10. In any case, the reliefs as sought for in this OA by the present applicants are in the nature of seeking directions upon the Respondent-UPSC in a matter of policy, even which policy is not framed by the UPSC alone, and has to be framed by the Union of India, which has not been made a party. The UPSC only conducts the Civil Services Examination, but does not lay down the requirements of the Scheme of Examination, which is decided by the Union of India. Therefore, this OA does not merit consideration because of non-joinder of necessary parties also.

11. Further, it is not for the Courts and Tribunals to interfere with the mandate given by the Constitution to either the Executive, or to the Legislature, except in the case of compelling reasons, as held by the Supreme Court in **Sompal vs. Vijay Laxmi & Ors. (2008) 11 SCC 413**. We do not find that any compelling reasons for us to trespass into the domain of the Executive or the Legislature in the instant case.

12. In the case of **Divisional Manager, Aravali Golf Club and Another vs. Chander Hass and Anr.** (2008) 1 SCC 683, the Supreme Court has observed that in the wake of separation of powers, the powers of judiciary are limited, and must never be abused or misused, but should be exercised by the judiciary with the utmost humility and self-restraint. Judicial

activism has to be resorted to only in exceptional circumstances, with in-built limitation. We are bound by these parameters.

13. Therefore, this OA is dismissed *in-limine* at the threshold itself, as being not maintainable, without our venturing to express our opinion on any other legal issues.

14. But, there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.