

**Central Administrative Tribunal
Principal Bench**

OA No. 2615/2015
With
OA No. 2266/2015 MA No.2021/2015
OA No. 2788/2015 MA No.3475/2015
OA No. 2806/2015 MA No.2485/2015
OA No. 3701/2015
OA No. 3473/2015
OA No. 3474/2015
OA No. 3475/2015
OA No. 3703/2015
OA No. 3704/2015

This the 27th day of October, 2015

Hon'ble Mr. A.K.Bhardwaj , Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

OA No. 2615/2015

1. Tanu Sharma @ Tanu Singh
Aged about 32 yrs, W/o Abhishek
Singh Yadav, D/o O.P.Sharma
Resident of 270/B, Naharpur, Rohini,
Sector-7, New Delhi-110085.

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Personnel Public Grievances and Pension,
Government of India,
North Block, Central Secretariat,
New Delhi.
2. Union Public Service Commission,
Through its Secretary,

Dholpur House,
Shahjahan Road, New Delhi-110001.

- Respondents

OA No.2266/2015

1. Vishwanath Pratap Singh Chauha
S/o Raj Pal Singh Chauha,
Aged about 31 years
R/o V&P Mandpur, Dist – Aligarh (U.P.)

2. Amal Kumar Tiwari
Aged about 32 years
Permanent Address Vill – Bauwanpur
Post – Thekmar Dist-Azamgarh (U.P.)

3. Vidyanidhi Mishra
S/o Sri Vivekanand Mishra,
Aged about 32 years
R/o Village – Malkaunja P.O. + P.S.
Pachpakvi Distt. East Champaran
Bihar.

4. Md. Raiyaz Ali
S/o Md. Imteyaz Ali,
Aged about 36 years
Manihar Mohalla Bhawara
Madhubani, Bihar.
All the applicants are unemployed
All the applicants are presently
Residing at 525, Dr. Mukarjee Nagar,
Delhi-110009.

- Applicants

Versus

1. Union of India,
Through Secretary, Ministry of
Personnel Public Grievances and Pension,
Government of India,
North Block, Central Secretariat,
New Delhi.

2. Union Public Service Commission,
Through its Secretary,
Dholpur House,
Shahjahan Road, New Delhi-110001.

- Respondents

OA No.2788/2015

Smt. Seema Singh, (Aged about 35 years)
W/o Sh. Gyanendra Kumar
R/o 2/140, Rashmi Khand,
Sharda Nagar, Old Jail Road,
Dilkhusha, Lucknow (U.P.)-226002
(Presently Veterinary Medical Officer, Govt. of U.P.)
(Local Address: House No.234-235,
IInd Floor, Gandhi Vihar, Block-D,
Mukherjee Nagar, New Delhi].

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Personnel Public Grievances and Pension,
Government of India,
North Block, Central Secretariat,
New Delhi.
2. The Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.

- Respondents

OA No.2806/2015

1. Narendra Pal
Son of Shri Somapal
Aged about 35 years
Resident of C-9/54, Shastri Nagar,
Chhavai Asharaj Khan, Bav,
Tehsil Bareilly,
District Bareilly U.P. at present
c/o Sh. Bharat Bhushan N-41, 2nd floor,
Dr. Mukherjee Nagar, Delhi-110009.
2. Nemee Chand
Son of Sh. Punit Ram Sahu aged about 35 years
Resident of VPO Machandur District Durg,
Chhattisgarh.

- Applicant

Versus

1. Union Public Service Commission,
Dholpur House,
New Delhi.
2. Department of Personnel and Training Ministry,
Government of India,
New Delhi.

- Respondents

OA-3701/2015

Gaurav Tripathi
Son of Sh. S.C.Tripathi,
Resident of 881, Aashirvaad,
Sector-3, Eldeco 2, Raibareli Road,
Opposite BBA University,

Lucknow.

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Personnel Public Grievances and Pension,
New Delhi.
2. Union Public Service Commission,
Through its Chairperson,
Dholpur House, Shahjahan Road,
New Delhi-110069.

- Respondents

OA No.3473/2015

Suresh Kumar Shukla
Son of Sh. Amrit Lal Shukla
Resident of Village Chipiya,
Post Laxmigang,
District Raebareli, U.P.

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Personnel Public Grievances and Pension,
New Delhi.
2. Union Public Service Commission,
Through its Chairperson, Dholpur House,
Shahjahan Road, New Delhi-110069.

- Respondents

OA No.3474/2015

Suresh Kumar Soni
Son of Sh. Tirath Prasad Soni,
Resident of C/o Sh. Shivmohan Dwivedi,
Sanjay Nagar,
Gandhi Talab, Allahabad Road,
Atarra, District Banda.

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Personnel Public Grievances and Pension,

New Delhi.

2. Union Public Service Commission,
Through its Chairperson, Dholpur House,
Shahjahan Road, New Delhi-110069.

- Respondents

OA No.3475/2015

Arvind Kumar Singh
Son of Sh. Kailash Chandra Singh,
Resident of C-83/1, Govindpuram,
Ghaziabad.

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Personnel Public Grievances and Pension,
New Delhi.
2. Union Public Service Commission,
Through its Chairperson, Dholpur House,
Shahjahan Road, New Delhi-110069.

- Respondents

OA No.3703/2015

Avanish Kumar Singh
S/o Panful Devi
R/o Village Bhagwanpur Bhelendri
Post Bhagwanpur, Tehsil Sahjanwa,
Police Station Khajni, District Gorakhpur.

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Human Resource Department,
(Personnel and Training),
New Delhi.
2. Union Public Service Commission,
Through its Chairperson, Dholpur House,
Shahjahan Road,
New Delhi-110069.

- Respondents

OA No.3704/2015

Shyam Narayan
Son of Sh. Tursan Pal Singh,
Resident of 50, Krishna Bagh,
Dayal Bagh, Agra.

- Applicant

Versus

1. Union of India,
Through Secretary, Ministry of
Human Resource Department,
(Personnel and Training), New Delhi.
 2. Union Public Service Commission,
Through its Chairperson, Dholpur House,
Shahjahan Road, New Delhi-110069.
- Respondents

Present: Sh. Manish Kumar Saran,
Sh. A.K.Ojha with Sh. B.Sen Gupta,
Sh. Inderjeet Yadav with Sh. Akshat Shrivastava, counsel
for applicants.

Sh. Ravinder Aggarwal,
Sh. Hanu Bhaskar,
Sh. R.K.Jain and
Sh. Rajiv R.Rai, counsel for respondents.

ORDER (ORAL)

Hon'ble Shri A.K.Bhardwaj, Member (J)

As the issue involved in all these cases is identical, we dispose
of the same by a common order.

2. Vide advertisement no. 05/2011-CSP dated 19.02.2011
published in Employment News dated 19th to 25th February, 2011,
the Union Public Service Commission invited applications for Civil
Services (Preliminary) Examination for recruitment to the services

and posts mentioned in the notification. In the said notification, the plan of examination was mentioned. There was substantial change in the plan of examination for the previous years and the year 2011. Certain candidates had participated in 2011 examination with changed plan. Since the DOP&T felt that the change in examination pattern could put the candidates, who participated in the said examination, in disadvantageous position, as one time relaxation, they allowed them to apply for 2015 examination. Provisions in this regard were incorporated in CSE Rules, 2015 published in May 2015. Rules read thus:

“Rule 4 (ii)

Notwithstanding the provisions mentioned above, all such candidates who appeared in Civil Services Examination in 2011 but are otherwise ineligible for Civil Services Examination, 2015 due to exhaustion of number of attempts available for their category in Civil Services Examination, be given an additional attempt in the Civil Services Examination, 2015.”

“Rule 6 (c)

Notwithstanding the provisions mentioned above, all such candidates who appeared in Civil Services Examination in 2011 but are otherwise ineligible for Civil Services Examination, 2015 due to attainment of maximum age limit prescribed for their category on the crucial date for Civil Services Examination, be given an additional attempt in the Civil Services Examination, 2015.”

3. With such provisions in the rules, the applicants herein before us espoused two fold claims:-

- (i) Rules are bad.
- (ii) They should also be given an extra chance as they were also eligible to participate in 2011 examination and had participated in the CSE 2012 to 2014.

4. Learned counsels for the applicants espoused that objection behind incorporation of rules in CSE exam is that introduction of CSAT system in 2011 for the first time had put such candidates, who were not from Maths and Engineering streams, in disadvantageous position, thus, when the pattern of exam has been changed to the extent that CSAT exam is taken out from the scheme of the competitive exam and is made only qualifying exam, they are given extra chance. According to him, if the candidates who had taken 2011 exam were put to disadvantageous position, other candidates who had taken any of their four chances with changed exam scheme were equally put to loss, thus, the act of respondents in not considering all those who were eligible to take 2011 Civil Services exam for benefit of Rule 4 (ii) and Rule 6 (iii) of CSE Rules, 2015 and confining the benefit only to those who had taken 2011 exam is violative of Article 14 and 16 of the Constitution of India.

5. On the other hand, Sh. Hanu Bhaskar, learned counsel for respondents, appeared for DOP&T, espoused that candidates who have taken 2011 exam were given extra chance only for the reason that the plan for preliminary exam was changed for the first time during the said year and they had very less time to prepare for the exam. According to him, those who had not taken the exam were either conscious enough to prepare for the exam next year or had lost their interest in the services itself. It is also his submission that the policy decision could be taken for identified category and not for

those who cannot be identified and who may not be even concerned with the benefit of the policy decision.

6. Sh. Ravinder Aggarwal, learned counsel for UPSC submitted that incorporation of the rules in question is policy decision taken by the Government and it is not open for this Tribunal either to interfere with the same or to legislate for the benefit of the applicants herein. To buttress his plea, he relied on the judgment of Supreme Court in **Census Commissioner and others vs. R.Krishnamurthy**, (2015) 2 SCC 796. Para 25 to 32 of the judgment read thus:

“25. Interference with the policy decision and issue of a mandamus to frame a policy in a particular manner are absolutely different. The Act has conferred power on the Central Government to issue Notification regarding the manner in which the census has to be carried out and the Central Government has issued Notifications, and the competent authority has issued directions. It is not within the domain of the Court to legislate. The courts do interpret the law and in such interpretation certain creative process is involved. The courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The court may also fill up the gaps in certain spheres applying the doctrine of constitutional silence or abeyance. But, the courts are not to plunge into policy making by adding something to the policy by way of issuing a writ of mandamus. There the judicial restraint is called for remembering what we have stated in the beginning. The courts are required to understand the policy decisions framed by the Executive. If a policy decision or a Notification is arbitrary, it may invite the frown of Article 14 of the Constitution. But when the Notification was not under assail and the same is in consonance with the Act, it is really unfathomable how the High Court could issue directions as to the manner in which a census would be carried out by adding certain aspects. It is, in fact, issuance of a direction for framing a policy in a specific manner.

26. In this context, we may refer to a three-Judge Bench decision in *Suresh Seth V. Commr., Indore Municipal Corporation*[(2005) 13 SCC 287] wherein a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person

may be debarred from simultaneously holding two elected offices, namely, that of a Member of the Legislative Assembly and also of a Mayor of a Municipal Corporation. Repelling the said submission, the Court held:

“5....In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In *Supreme Court Employees' Welfare Assn. v. Union of India*[(1989) 4 SCC 187] (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority. This view has been reiterated in *State of J & K v A.R. Zakki*[1992 Supp (1) SCC 548]. In *A.K. Roy v. Union of India*[(1982) 1 SCC 271] it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature.”

27. At this juncture, we may refer to certain authorities about the justification in interference with the policy framed by the Government. It needs no special emphasis to state that interference with the policy, though is permissible in law, yet the policy has to be scrutinized with ample circumspection. In *N.D. Jayal and Anr. V. Union of India & Ors.*[(2004) 9 SCC 362], the Court has observed that in the matters of policy, when the Government takes a decision bearing in mind several aspects, the Court should not interfere with the same.

28. In *Narmada Bachao Andolan V. Union of India*[(2000) 10 SCC 664], it has been held thus:

“229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.”

29. In this context, it is fruitful to refer to the authority in *Rusom Cavasiee Cooper V. Union of India*[(1970) 1 SCC 248], wherein it has been expressed thus:

“63.....It is again not for this Court to consider the relative merits of the different political theories or economic policies... This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of Parliament in enacting a law”.

30. In *Premium Granites V. State of Tamil Nadu*[(1994) 2 SCC 691], while dealing with the power of the courts in interfering with the policy decision, the Court has ruled that:

“54. it is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy could be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right.”

31. In *M.P. Oil Extraction and Anr. V. State of M.P. & Ors.*[(1997) 7 SCC 592], a two-Judge Bench opined that:

“41..... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State.”

32. In *State of M.P. V. Narmada Bachao Andolan & Anr.*[(2011) 7 SCC 639], after referring to the *State of Punjab V. Ram Lubhaya Bagga*[(1998) 4 SCC 117], the Court ruled thus:

“36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the

policies are ordinarily not amenable to judicial review unless the policies [pic]are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Singh Vijay Pal Singh v. State of U.P. [(2007) 6 SCC 44], Villianur Iyarkkai Padukappu Maiyam v. Union of India [(2009) 7 SCC 561] and State of Kerala v. Peoples Union for Civil Liberties [(2009) 8 SCC 46].) ”

7. Sh. R.K.Jain, learned counsel who also represented DOP&T submitted that in some of the applications the only prayer made by the applicants is to allow them to participate in the exam and issue a direction to the respondents to declare their result.

8. We heard the learned counsel for the parties and perused the record. There is merit in the submission put forth by Sh. Ravinder Aggarwal that it is not open to the Tribunal either to interfere with the policy or to legislate. Nevertheless, we find from the counter reply filed by the DOP&T in most of the OAs that one of the object of incorporating Rule 4 (iii) and 6 (ii) of Rules was that many students who appeared in CSE 2011 represented that the change in the pattern/plan of the examination had adverse effect on their chances for success in the examination and the PMO had approved the recommendation of MOS (PP) for giving two additional attempts to all categories of candidates. In para (E) of the reply the DOP&T has also taken a stand that those who appeared in CSE 2011 as first, second or third chance and were otherwise eligible to participate in CSE 2015 did not need any relaxation in CSE 2015. Para 2 (B) to (E) of the reply reads thus:

“B. However, since there was a change in the format, many students appearing for CSE 2011 represented that they did not have the adequate time to study and prepare for CSE 2011 as per the new format and also represented against the introduction of Aptitude Test in the CSE 2011. The issue was also raised in the Parliament. The PMO vide ID No.600-50/C/1/2012-ES.2 (Vol.2) dated 07.02.2014 approved the recommendation of MoS (PP) for giving two additional attempts to all categories of candidates w.e.f. Civil Services Examination, 2014, with consequential age relaxation of maximum age for all categories of candidates, if required. Subsequently, the Government issued a clarification on 04.03.2014 regarding the changes as approved in number of attempts & age-limits consequent to providing two additional attempts as under:-

	Categories			
	Unreserved	SC/ST	OBC	P.H.
	04	Unlimited	07	07 for General/OBC Unlimited for SC/ST
Existing No. of attempts				
Existing max. age-limits	30 years	35 years	33 years	40 years
Consequential changes in No. of attempts	06 (4+2)	Unlimited	09 (7+2)	09 for General/OBC Unlimited for SC/ST
Consequential changes in age-limits	32 years (30+2)	37 years (35+2)	35 years (33+2)	12 additional years in each category (30+12 for General, 35+12 for SC/ST & 33+12 years for OBC)

Further, with a view to address the concerns of the candidates who appeared in CSE 2011, the Hon'ble Minister of State (PP) gave an assurance in the Parliament on 04.08.2014 regarding as additional attempts to such candidates in CSE 2015. It is a policy decision taken by the Central Government to mitigate the grievances of candidates appeared in Civil Services Examination, 2011.

C. Accordingly, the following provisions were made in the CSE 2015 Rules published in June 2015:-

“Rule 4 (ii)

Notwithstanding the provisions mentioned above, all such candidates who appeared in Civil Services Examination in 2011 but are otherwise ineligible for Civil Services Examination, 2015 due to exhaustion of number of

attempts available for their category in Civil Services Examination, be given an additional attempt in the Civil Services Examination, 2015.”

“Rule 6 (c)

Notwithstanding the provisions mentioned above, all such candidates who appeared in Civil Services Examination in 2011 but are otherwise ineligible for Civil Services Examination, 2015 due to attainment of maximum age limit prescribed for their category on the crucial date for Civil Services Examination, be given an additional attempt in the Civil Services Examination, 2015.”

D. That in pursuance to the directions of this Hon'ble Tribunal as passed on 04.08.2015, it is relevant to state that the Central Government increased the number of attempts and also relaxed age criterion for Civil Services Examination 2014 onwards. These changes have been enumerated in para B of this affidavit. Accordingly, candidates who appeared and exhausted attempts in Civil Services Examination 2012 could get the benefits of relaxation provided in terms of number of attempts & age in Civil Services Examination 2014. Besides, candidates who appeared and exhausted attempts in Civil Services Examination 2013 could get the benefits of relaxation provided in terms of number of attempts & age in Civil Services Examination 2014 and Civil Services Examination 2015. However, candidates who appeared for CSE 2011 and have exhausted their chances (age/number of attempts) could not get the benefit of said relaxed criteria. Hence the provision of additional attempts in Civil Services Examination 2015 is primarily to benefit such candidates of Civil Services Examination 2011. It is also submitted that candidates who appeared in Civil Services Examination 2011 and candidates who did not appear in Civil Services Examination 2011 form two different classes and hence, cannot be treated on similar footing.

E. It is relevant to reiterate that the additional attempt in CSE 2015 has been provided to only those candidates who appeared in CSE 2011 but are otherwise ineligible to appear in CSE 2015. Hence, those candidates who appeared in CSE 2011 as first, second, or third chance and are already eligible for CSE 2015 do not require any relaxation in CSE 2015. Hence, it is the other class of candidates i.e. those who appeared and exhausted attempts in CSE 2011 and are otherwise ineligible in CSE 2015 who have been given benefit of additional benefit.”

9. From the reply of the DOP&T, a view could be taken that the candidates, who were good in General Studies Paper-I, were put to disadvantage by introduction of Paper II (Aptitude Test). Relevant excerpt of the report in this regard reads thus:

“Suggestions on Civil Service (Pre) Exam

- CSAT is rightly introduced, efforts should be made to make the examination less coaching dependent.
- The present preliminary exam of CSAT has been a good move by UPSC to even out advantages of any held by the optional previously. There can be an increase in the number of questions in the paper II of the CSAT where more diverse questions can be asked to test the candidate's aptitude. It helps to assess the candidate's aptitude. It helps to assess the candidate's broad based aptitude if the questions are more diverse. Too many questions were asked on Comprehension which can be slightly reduced in favour of other type of question.
- CSAT would be more beneficial to the urban background English medium aspirants so English comprehension portion should be removed from it.
- English questions from CSAT should be reduced.
- C-SAT structure is not proper because humanities stream students cannot perform better in this system. Only one cluster of science stream enters for Mains exam in the structure.
- Recently introduced changes in terms of introduction of CSAT paper at preliminary level have raised doubts about the competence of non-math background and non-English background candidate in taking this exam successfully. As the contents of CSAT paper is not a part of general curriculum it has given edge to science background candidate.

- In CSAT, the question paper of paper-I (General studies) is difficult compared to paper-II (Aptitude test). The candidates who are good in general studies, are at disadvantage, as they can't get any edge with general studies. On the other side, candidates good in paper-II (Aptitude) gets advantage & they can make though the exam even without much study of general studies.
- The CSAT pattern is a little bit advantageous to urban candidates. It will be better to reduce the English part in CSAT. In mains the common English paper can be made a little tough to test English knowledge.”

10. When the DOP&T had formed an opinion that those who had taken the 2011 exam with changed plan need to be given an extra chance, they also need to apply their mind to the claim of those who had taken 2012 or 2013 or 2014 examination with changed pattern of the exam in 2011. During the course of arguments, Sh. Ravinder Aggarwal, counsel for respondents himself submitted that the UPSC had constituted a Committee to look into the grievance of the candidates including the grievance pertaining to the eligibility. Generally the Executive is expected to act in accordance with the rules and regulations in vogue at the relevant point of time. Nevertheless, when it compensate certain class, it is for them to take the correct decision in their wisdom. As has been ruled by Hon'ble Supreme Court time and again that the Courts or Tribunals should not interfere in such decisions or make an attempt to legislate, we expect the DOP&T and UPSC to look into the issues raised on behalf of the applicants (ibid).

11. In the totality of the facts and circumstances, the OAs are disposed of with direction to DOP&T to examine whether even such candidates who were eligible to take CSE 2011 or had taken 2012 or 2013 or 2014 examination should also be given another chance to take Civil Services Exam with changed pattern in 2015 when the CSAT is made qualifying examination. Such decision may be taken by DOP&T within four weeks from the date of receipt of a copy of this Order. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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