

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3611/2017
With
O.A.No.3628/2017
M.A. No.3844/2017

Order reserved on 14th May 2018

Order pronounced on 17th May 2018

**Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

O.A. No.3611/2017

Krishan Kumar Gautam
s/o Shri Ramesh Chand
r/o Vill. Keeratpura, PO Nimod
Dist. Sawai Madhapur
Rajasthan – 322030

Presently at:

r/o Flat No.141-D
Block AG-I, Vikas Puri
New Delhi

O.A. No.3628/2017

1. Kuldeep Kumar
s/o Vijay Shank Tiwari
r/o Mukhya Krishi Prangan
Near ITI More, Post Jhodhadih More
Chas, Bokaro
Jharkhand – 827013

Presently at:

r/o 156 Gali No.4, Neb Sarai
IGNOU Road, Saket
New Delhi – 110 068

2. Sparsh Pratik s/o S P Verma
r/o Flat No.102 B
Girija Garden Apartments
Near SBI Rajvanshi
New Punaichak Patna
Bihar 800023

Presently at:

R/o Flat No.141-D
Block AG-1, Vikas Puri
New Delhi

..Applicants

(Mr. Vishwendra Verma, Advocate)

Versus

1. Union Public Service Commission
Dholpur house, Shahjahan Road
New Delhi – 110 069
Through Secretary
2. Union of India
Ministry of Personnel & Training
Department of Personnel & Training
North Block, Central Secretariat
New Delhi - 110 001
Through Secretary

..Respondents

(Mr. R V Sinha, Advocate for respondent No.1 –
Nemo for respondent No.2)

O R D E R

Mr. K N Shrivastava:

Since common issues of facts and laws are involved, it was decided to dispose of these two O.As. by this common order.

2. M.A. No.3844/2017 in O.A. No.3628/2017 seeking joining together in a single petition is allowed.
3. These O.As. have been filed under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main relief:

“i) to set aside the notification of exam qua the cut off date and to direct the Respondents to take the cut off date as 01.01.2018 instead of 01.08.2017.”

4. The factual matrix of the case, as noticed from the records, is as under:-

4.1 The Union Public Service Commission (UPSC) – respondent No.1, vide its Annexure A-1 Examination Notice dated 27.09.2017, invited applications for Engineering Services Examination (ESE), 2018. The Notice, *inter alia*, has stated that the ESE, 2018 will be in two parts, namely, preliminary examination and the main examination. The preliminary examination will be held on 07.01.2018 and the main examination will be held on 01.07.2018. The Notice further informs that the preliminary examination will be held on in accordance with the Rules published by Ministry of Railways in the Gazette of India Extraordinary dated 27.09.2017. The Annexure A-1 Examination Notice of UPSC, in regard to age limits, has stipulated as under:-

“(II) Age Limits:

(a) A candidate for this examination must have attained the age of 21 years and must not have attained the age of 30 years on the 1st August, 2018 i.e., he/she must have been born not earlier than 2nd August, 1988 and not later than 1st August, 1997.

(b) The upper age-limit of 30 years will be relaxable upto 35 years in the case of Government servants of the following categories, if they are employed in a Department/Office under the control of any of the authorities mentioned in column 1 below and apply for admission to the examination for all or any of the Service(s)/Post(s) mentioned in column 2, for which they are otherwise eligible.”

4.2 The Ministry of Railways notified ESE Rules, 2018, vide Notification dated 27.09.2017. Regarding the age limits, it has stipulated as under:-

“5. (a) A candidate for this examination must have attained the age of 21 years and must not have attained the age of 30 years on the 1st August, 2018 i.e., he/she must have been born out earlier than 2nd August, 1987 and not later than 1st August, 1996.”

4.3 The Ministry of Railways noticed that there is a contradiction between age limits prescribed in the Annexure A-1 Examination Notice of UPSC and the ESE Rules, 2018 notified by Ministry of Railways vide Notification dated 27.09.2017. The Ministry of Railways, who has been declared as nodal Ministry for the conduct of ESE, brought out a Corrigendum dated 20.10.2017 (Annexure R-1/1), whereby it amended to its Notification dated 27.09.2017 and incorporated the same age limits, as have been notified by the UPSC in its Annexure A-1 Examination Notice. The relevant portion of this Corrigendum is reproduced below:-

“Rule 5 (a) at page 71

Following

5. (a) A candidate for this examination must have attained the age of 21 years and must not have attained the age of 30 years on the 1st August, 2018 i.e., he/she must have been born out earlier than 2nd August, 1987 and not later than 1st August, 1996.

is substituted with

5. (a) A candidate for this examination must have attained the age of 21 years and must not have attained the age of 30 years on the 1st August, 2018 i.e., he/she must have been born out earlier than 2nd August, 1988 and not later than 1st August, 1997.”

4.4 The applicants are aggrieved of the Corrigendum. The date of birth of Krishan Kumar Gautam (applicant in O.A. No.3611/2017) is 15.03.1988, whereas that of Kuldeep Kumar and Sparsh Pratik (applicants in O.A. No.3628/2017) are 15.01.1988 and 11.02.1988 respectively. In terms of Annexure R-1/1 Corrigendum and the Annexure A-1 Examination Notice of UPSC, the applicants in these O.As. are rendered over-aged and thus not eligible for applying for ESE, 2018.

4.5 In both these O.As., vide the interim order dated 23.10.2017, the Tribunal has issued the following directions:-

“We have further heard the learned counsel for the parties. During the course of discussion, it transpires that there is some discrepancy in the dates for determining the age of eligibility of the candidates as per Rules for Combined Competitive Engineering Services Examination, Rules 2018, notified vide Notification dated 27.09.2017. Rule 5(a) of the said rules is reproduced hereunder:-

"5(a) A candidate for this examination must have attained the age of 21 years and must not have attained the age of 30 years on the 1st August, 2018 i.e., he/she must have been born not earlier than 2nd August, 1987 and not later than 1st August, 1996."

On the one hand, the age of the candidates is to be determined as on 01.08.2018 but the candidates should not be born earlier than 02.08.1987 and not later than 01.08.1996. The applicants in all the cases were born between January to March, 1988 and thus they are eligible under Rule 5(a).

In this view of the matter, we permit the applicants to apply on-line and offline i.e. by submitting a hard copy of the application as well. The respondent No.1-UPSC will accept the off-line copies of the application forms and permit the applicants to participate in the examination provisionally by issuing the admit cards to them. However, the result of the applicants shall not be declared without the leave of this Tribunal.”

4.6 The respondents, who are common in both the O.As., filed M.A. No.39/2018 in O.A. No.3628/2017 and M.A. No.40/2018 in O.A. No.3611/2017 seeking vacation of the interim directions, but the same was declined by the Tribunal vide order dated 19.04.2018, which reads as under:-

“By virtue of our interim order dated 23.10.2017, the applicant was provisionally allowed to participate in the preliminary examination, which was to be conducted by the Union Public Service Commission (UPSC) - respondent No.1, for the Combined Competitive Engineering Services Examination, 2018. The applicant has participated in the preliminary examination on the basis of the

ibid order. The UPSC - respondent No.1, through the medium of this M.A., has prayed for the following relief:-

"In view of the facts and submissions made hereinabove, it is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to vacate the interim order dated 23.10.2017 and dismiss the O.A. with cost against the Respondent Nos.1&2 herein/Applicants in O.A. and in favour of the Applicant herein/Respondent No.1 in O.A."

As could be seen, the prayer in the M.A. is in two parts; (i) to vacate the interim order dated 23.10.2017 and (ii) to dismiss the O.A. Since the applicant has already participated in the preliminary examination, the question of vacation of interim order dated 23.10.2017, on the strength of which the applicant has participated in the said examination, does not arise, and as such this part of the prayer is infructuous. As regards second part, where it is prayed for dismissal of the O.A., needless to say that unless the parties are heard in the O.A., no effective order in the O.A. can be passed.

Considering the nature of the reliefs claimed in the O.A., we would like to accord early hearing to the O.A. Since the pleadings are complete, let the O.A. be listed for final disposal on 04.05.2018 at 2.30 PM.

M.A. stands disposed of."

5. Pursuant to the notices issued, the respondents have filed their separate replies in both the O.As.

6. On completion of pleadings, the O.As. were taken up for hearing the arguments of learned counsel for the parties on 14.05.2018. Arguments of Mr. Vishwendra Verma, learned counsel for applicants and that of Mr. R V Sinha, learned counsel for respondent No.1 were heard.

7. Mr. Vishwendra Verma, learned counsel for applicants broadly submitted as under:-

7.1 The Ministry of Railways had correctly indicated the age limits and cut-off dates in its Notification dated 27.09.2017, which has been

subsequently altered by issuing the Annexure R-1/1 Corrigendum dated 20.10.2017.

7.2 All the candidates, including the present applicants, have applied for ESE, 2018 keeping in view the Rules of the ESE, 2018 notified by the Ministry of Railways vide Notification dated 27.09.2017. The Corrigendum dated 20.10.2017 was issued just 2 days before the last date of submission of applications by the candidates, which never came to the notice of the candidates.

7.3 For the ESE, 2017, the Examination Notice dated 28.09.2016 (Annexure A-3) issued by the UPSC had also prescribed the identical age limits and cut-off dates as prescribed in the Ministry of Railways Notification dated 27.09.2017. Hence, changing the age limits and cut-off dates for ESE, 2018 by the respondents is beyond comprehension of anybody in view of the fact that the nature of ESE has not changed.

7.4 The Department of Personnel & Training (DoPT) – respondent No.2 has issued Annexure A-4 O.M. dated 14.07.1988 wherein it is stated as under:-

“2. Some doubts have been expressed as to what should be the crucial date for determining the age limits in respect of examinations which are held in two parts on two different dates of the year. For instance, the Preliminary examination of the Civil Services Examination is normally held in the first half of the year and the Main examination is held in the second half of the year. In this case the position has been clearly indicated in the rules for this examination that the later of the two dates would be the crucial date. If, however, both parts of an examination fall in the first half of the year, the crucial date for determining the age limits will normally be the 1st of January. Similarly, if both parts of an examination fall in the second half of the year, the crucial date for determining the age limits would be the 1st of August.

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“3. It may sometimes so happen that due to exigencies of circumstances an examination, which is normally held during the first half of the year, is shifted to the second half. In such a case, the date for determining the age limits would still be the 1st of January. The exact position should be clearly indicated in the rules for the respective examinations, which are notified for the purpose.”

7.5 Concluding his arguments, Mr. Verma submitted that the age limits prescribed in the Annexure A-1 Examination Notice of UPSC and Annexure R-1/1 Corrigendum dated 20.10.2017 issued by the Ministry of Railways are not proper and they are violative of the instructions contained in Annexure A-4 DoPT O.M. dated 14.07.1988, and hence the age limits, as mentioned in the Notification dated 27.09.2017, should be adhered to since the candidates, including the applicants, have applied for ESE, 2018 keeping in view this Notification.

8. *Per contra*, Mr. R V Sinha, learned counsel for respondent No.1 submitted that Annexure A-1 Examination Notice of UPSC had clearly indicated the age limits and the cut-off dates. The candidates were required to apply for ESE, 2018, *inter alia*, keeping in view the age limits mentioned in Annexure A-1 Notice. He further submitted that there was some discrepancy detected in the Notification dated 27.09.2017 of the Ministry of Railways, and hence it was decided to bring out a Corrigendum (Annexure R-1/1). Accordingly a Corrigendum was brought out and notified reconfirming the age limits and the cut-off dates as mentioned in the Annexure A-1 Notice of UPSC.

9. Mr. Sinha further submitted that the respondents have complete authority to issue executive instructions and frame statutory rules and to amend existing statutory rules. The Courts / Tribunals are not expected to interfere in such matters as per ratio of law laid down by Hon'ble Supreme Court in **Mallikarjuna Rao & others v. State of Andhra Pradesh & others**, (1990) 2 SCC 707. Mr. Sinha particularly drew our attention to the following portion of the said judgment:-

“13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India.”

Concluding his arguments, Mr. Sinha prayed for dismissal of these O.As.

10. We have considered the rival arguments of the parties and perused the materials placed on record.

12. Annexure A-1 Examination Notice of UPSC, with reference to which these applicants as well as other candidates applied for ESE, 2018, had clearly indicated the age limits and the related cut-off dates. Hence, the applicants were fully conscious of the age limits and in spite of that they preferred to apply. As explained by the respondent No.1 (UPSC), after it was noticed by the Ministry of Railways, who was the coordinating agency

for ESE, 2018, that there was some discrepancy in its Notification dated 27.09.2017 in regard to age limits, vis-à-vis, the age limits indicated by the UPSC in its Annexure A-1 Notice, the Ministry of Railways issued the necessary Annexure R-1/1 Corrigendum dated 20.10.2017. We do not find anything amiss, misleading or illegal in such action.

13. Learned counsel for applicants has contended that the last date of submission of applications was 22.10.2017 and the Corrigendum was issued just 2 days prior to that, as such a Corrigendum was prejudicial to the interests of the candidates applying for ESE, 2018. We fail to understand as to how the Corrigendum has prejudiced the interests of the candidates. Even at the cost of repetition, we would like to mention that the age limits and the cut-off dates have been clearly indicated in Annexure A-1 Notice of UPSC and all the candidates applying for ESE, 2018 were fully aware of them. The age limits and cut-off dates have not been altered, on the other hand, the Corrigendum has only reinforced them.

14. Learned counsel for applicants has strenuously argued that the age limits prescribed in Annexure A-1 Notice of UPSC as well as in Annexure R-1/1 Corrigendum of Ministry of Railways are contrary to the DoPT Annexure A-4 O.M. dated 14.07.1988. As could be seen from paragraphs 2 & 3 of this O.M., extracted in paragraph 7.4 above, if preliminary examination is held in the 1st half of the year and the main is held in the 2nd half of the year, the later of the two dates would be the crucial dates for determination of the age limits. In the instant case, the preliminary examination was scheduled to be held on 07.01.2018 and the main examination on 01.07.2018. Therefore, the later of these two dates, i.e.,

01.07.2018 is to be taken as the cut-off date. The respondents have accordingly prescribed the cut-off date.

15. Annexure A-4 O.M. also deals with a situation wherein due to exigencies of circumstances if an examination, which is normally held during the 1st half of the year, is scheduled to the 2nd half, in that situation, the cut-off date for determining the age limits would be 1st January. In the instant case, there has not been any such exigencies of circumstances, nor has there been any change in the dates for holding the preliminary and main examinations. Hence, we are of the view that Annexure A-1 Notification dated 27.09.2017 of UPSC and the Corrigendum dated 20.10.2017 issued by the Ministry of Railways are perfectly in sync with Annexure A-4 O.M. of DoPT.

16. Learned counsel for applicants pointed out that the UPSC has altered the cut-off date in its Annexure A-1 Examination Notice dated 27.09.2017 for ESE, 2018 in comparison to the cut-off date indicated in its Annexure A-3 Examination Notice dated 28.09.2016 for ESE, 2017. We find that in the Annexure A-3 Examination Notice, the cut-off date is indicated as 1st January 2017, whereas in Annexure A-1 Examination Notice, it is indicated as 1st August 2018. The stipulation of a cut-off date in an Examination Notice is purely an executive action and no judicial intervention in such matters could be invoked. The respondents conscientiously had decided to prescribe 1st August 2018 as the cut-off date for ESE, 2018 and such a decision cannot be faulted upon. The ratio of law laid down by the Hon'ble Supreme Court in **Mallikarjuna Rao & others v. State of Andhra Pradesh & others** (supra) also supports this view.

17. In the conspectus of discussions in the foregoing paragraphs, we do not find any merit in these O.As. They are accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

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