

(2008) 07 DEL CK 0267

In the Delhi High Court

Case No : Writ Petition (C) No. 5129 of 1999

Pemba T. Bhutia

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4(1)
Civil Services Examination Rules, 1982 — Rule 4
Civil Services Examination Rules, 1986 — Rule 4
Civil Services Examination Rules, 1995 — Rule 2, 4
Civil Services Examination Rules, 1996 — Rule 18, 2
Constitution of India, 1950 — Article 14, 16, 16(1), 226
Punjab University Regulations — Regulation 25
University Grants Commission Act, 1956 — Section 2, 3

Citation : (2008) 152 DLT 500

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : M. Datta, for the Appellant; Monika Garg, for the Respondent

Final Decision : Allowed

Judgement

Vipin Sanghi, J.—The validity of Rule 18 of the Civil Services Examination Rules, 1996 (CSER, 1996) as notified vide Department of Personnel & Training (DOPT), Ministry of Personnel, Public Grievances and Pensions, Govt. of India vide notification dated 14.12.1996 bearing No. 13018/8/96-AIS(I), applicable for the Civil Services (Main) Examination held in 1997 (CSE 1997) is in question in the present petition filed under Article 226 of the Constitution of India.

2. Each year the Union Public Service Commission holds Civil Services Examinations to select candidates to fill up vacancies/posts for various Central Governments services such as IAS, IFS, IPS and a number of Group `A" and Group `B" services/posts. The Rules for the conduct of the examinations which are statutory in nature are notified each year. The present scheme of examination, known as Civil Services Examination, (CSE in short) was introduced

in 1979. The Civil Services Examination is conducted in two successive stages as indicated below.

(i) Civil Service (Preliminary) Examination (objective type) for selection of candidates for the Main Examination.

(ii) Civil Services (Main) Examination (written and interview test) for selection of candidates for appointment to various services.

3. The petitioner who belongs to the Schedule Tribe category, appeared in the Central Services Examination, 1996 (hereinafter referred to as CSE 1996, though we may add that the Tribunal has nomenclatured it as CSE 1995). CSE 1996 was held on the basis of the Civil Services Examination Rules, 1995 (CSER 1995) notified by the DOPT vide notification dated 9.12.1995 bearing No. 13018/11/95/-AIS(I). He secured 638th rank in the overall final grading. The petitioner had in terms of Rule 2 of the CSER 1995 given his option for 12 services in order of his preference against 27 services/posts including Group 'A' and Group 'B' services which were on offer. Rule 2 of CSER, 1995 reads as follows:

2. A candidate shall be required to indicate in his/her form for the Main Examination his/her order of preferences for various services posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by Union Public Service Commission.

A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application if he/she would like to be considered for allotment to the State to which he/she belongs in case he/she is appointed to the IAS/IPS.

No request for revision, alteration or change in the preferences indicated by a candidate in respect of services/posts for which he/she would be 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'. No communication either from the Commission or from the Govt. of India would be sent to the candidates asking them to indicate their revised preference if any for the various services after they have submitted their applications.

Note.- The candidate is advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference for any service/post, or does not include certain services/posts in the application form, it will be assumed that he/she has no specific preference for those services/posts, and in that event he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all candidates who have expressed preference for all the services/posts, according to their rank.

4. As would be seen from the aforesaid Rule, it was permissible for the candidates

to change their preferences within 30 days of the declaration of the results of the Main Examination.

The options given by the petitioner were as follows:

1. I.A.S 7. CAS 2. I.P.S 8. POND(CIVIL) 3. IC & CES 9. CBI (GR.B) 4. I.R.S 10. C.S.S. 5. DANICS 11. A.F.M.Q.> 6. DANICS(P) 12. R.B.S.S.

According to his rank in CSE 1996 he was allocated to the Central Secretariat Services (CSS), Group `B" service, which was his 10th preference.

5. Rule 4 of CSER 1995 prescribed number of attempts that a candidate could make at the Civil Services Examinations. While four attempts were permitted to general category candidates, for the Scheduled Caste and Scheduled Tribe candidates there was no restriction on the number of attempts that they could make, provided they were otherwise eligible. Vide letter dated 11.2.1997 the petitioner was given an offer of appointment. The petitioner was informed that in case he proposed to appear in the Civil Services Examination, 1997, (CSE 1997) while retaining his allocation to CSS Group`B" service he should apply for permission to appear in the said examination.

6. The petitioner sought, and was granted permission to again appear in CSE 1997 to try and improve his rank. He availed of this opportunity. In the CSE 1997, the petitioner secured 564th rank. Consequently he improved his rank by 74 points. CSE 1997 was conducted on the basis of CSER 1996.

7. Rule 2 of CSER 1996 required the candidates to indicate their preference for various services/posts for which they would like to be considered for appointment. Rule 2 of CSER 1996 reads as follows:

2. A candidate shall be required to indicate in his/her application form for the Main Examination his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by Union Public Service Commission.

A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application if he/she would like to be considered for allotment to the State to which he/she belongs in case he/she is appointed to the IAS/IPS.

NOTE.- The candidate is advised to be very careful while indicating preferences for various services/posts. In this connection attention is also invited to Rule 18 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference for any services/posts, it will be assumed that he/she has no specific preference for those services. If he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference.

8. The options/preferences given by the petitioner while appearing in CSE, 1997

were the following:

1. IAS 9. ITS 17. IDAS 2. IPS 10. IRTS 18. IIS 3. IFS 11. IAAS 19. I. POSTAL
4. IC & CES 12. IRAS 20. IOFS 5. IRS 13. CBI (Dy. Supdt.) 21. RPF 6. DANICS
@ 14. IRPS 22. CISF 7. DANICS (P) 15. IP & TFAS 23. PONDICHERRY(A) 8. CAS
16. ICAS 24. PONDICHERRY (P) 25. IDES

9. It appears that even though the allocation of service in respect of the petitioner had not been finalised on the basis of his result in CSE 1997, the petitioner filed OA No. 1423 of 1998 before the Central Administrative Tribunal, Principal Bench, New Delhi (The Tribunal), as he apprehended that he would not be allocated the services for which he was entitled as per his rank and as per his preferences given at the time of taking CSE 1997, and that he would be bound down to the preferences given by him while taking CSE, 1996. The apprehension of the petitioner was based upon a reading of the impugned Rule 18 of CSER 1996, which reads as follows:

18. Due consideration will be given at the time of making allocation, on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective Services at the time of appointment.

Provided that a candidate who has accepted the allocation to a service on the basis of an earlier examination shall be eligible on the basis of this examination to be allocated only to those service(s)/post(s) which were higher in the order of preference in his/her application form for the examination on the basis of which he/she had been last allocated to a service.

10. This apprehension of the petitioner came true , when the respondent in their counter affidavit filed before the Tribunal disclosed that in terms of Rule 18 of CSER 1996 he had been allocated to a Group `B" service viz. Pondicherry Police Service. The grievance of the petitioner was that despite a quantum jump in his rank as aforesaid, he was not given any benefit of the said improvement. By applying Rule 18 of CSER 1996 to his case, the right given to him under the Rule 18 of CSER 1995, which was applicable when he initially appeared in CSE 1996, and which gave him the right to give fresh options on each occasion that he took the CSE for improving his rank was curtailed and he was bound down to the preference list initially submitted by him when he took CSE 1996. It is argued that if the petitioner is allocated a service on the basis of his improved rank and the choice of services submitted again by him prior to taking the CSE 1997, he would be entitled to a Group `A" service.

11. The submission of the petitioner before the Tribunal, as well as before us is that the effect of the impugned Rule 18 of the CSER 1996 was that; (a) he could be considered only qua his choices of services as mentioned by him in the form filled by him for CSE 1996; (b) even though on the basis of his rank in the CSE 1997 he could qualify for the various services given in his preferences while

filling the form for CSE 1996, since there were no reserved vacancies for those services, he could not be allocated to those services. The said services were:

I. DANICS

II. DANIPS

III. CAS

IV. PONDICHERRY (CS)

V. CBI (Group A);

(c) even though the petitioner was eligible for Group 'A' services on the basis of his rank in CSE 1997, he is confined to a service which is virtually at the bottom of the list of preferences.

12. The petitioner also argued that impugned Rule 18 is antithetic to the objectives of the Civil Services Examination and the purpose it seeks to serve. The concept of improvement in his ranking by a candidate, by making successive attempts is inherently recognised within the Civil Services Rules and any Rule that prevents improvement on the basis of merit, performance and labour is ultra vires the provisions of the Civil Services Rules and thus liable to be struck down.

13. The petitioner further submitted that Rule 18 of CSER 1996 virtually deprives a successful candidate of a previous examination from opting for a fresh service/post that has been included in the list of services on offer in the subsequent examination, or for opting for a service which has been subsequently elevated from a lower to a higher group. For instance, the petitioner submitted that he was deprived of opting for Pondicherry Police Services which did not figure in the list of preferences submitted in respect of CSE 1996, since the service was not included by then as a Central Service, or the post of Deputy Superintendent of Police CBI which had been subsequently elevated from Group 'B' to Group 'A' services. He argued that a candidate may, while giving his preferences for a particular CSE, be swayed by various considerations, such as the grouping of a service, its popularity at a given time, the future prospects in the particular service etc. These are imponderables which keep fluctuating and which govern the preferences that any candidate may give for a particular CSE.

14. Further, it is argued that by enforcing Rule 18 of CSER 1996 in respect of the petitioner, the respondent is depriving the petitioner of his "vested right" i.e. the right to give a fresh list of preferences/choices of services/posts at the time of applying for taking the examination for improvement, which was available to the petitioner under Rule 18 of CSER 1995. This tantamounts to giving retrospective effect to Rule 18 of CSER 1996, which could not be done. In support of this submission, the petitioner relied on a few Supreme Court decisions, to which reference would be made a little later. It is further averred that the petitioner cannot be made liable for the effect of the amended Rule 18 as it is highly inconceivable that the petitioner could have foreseen the amendment in Rule 18

from CSE 1997 onwards and its effect, and thus would have filled up all the available services/posts in his preference list, which he filled up in 1996 for CSE 1996. The petitioner filled up the preference list in respect of CSE 1996 keeping in view the circumstances prevailing at that time. The unamended Rule 18 permitted all the candidates to furnish a fresh preference list every time the candidate makes a fresh attempt to improve his rank while retaining the allocation made in the earlier CSE. Accordingly, the petitioner filled up the posts that he was most likely to get by keeping in view his preparation for the CSE 1996, and the then prevailing Rule 18, which banned mobility within the groups. If the said amended Rule 18 is applied to the petitioner, it would result in arbitrariness and discrimination, inasmuch as, 15 S.T. candidates having lower rank than that of petitioner in CSE 1997 have been allocated higher services/posts than the petitioner. It was, therefore, argued that the impugned Rule 18 of CSER 1996 was discriminatory, arbitrary and violative of the petitioner's fundamental rights under Articles 14 and 16 of the Constitution of India and thus liable to be struck down. The petitioner also submitted that he had the legitimate expectation, in view of the then prevailing Rule 18 of CSER 1995, that he would be entitled to submit his fresh preferences in case the need for him to take the CSE once again arose for improving his ranking while retaining the allocation made on the basis of CSE 1996, and that the subsequent preference list would be the one taken into consideration while making allocation to a service/post based on the ranking of the petitioner in CSE 1997. This had been the consistent practice when the unamended Rule 18 held sway for many years. Therefore, it was not considered necessary to indicate all the posts/services in the list of preferences when the petitioner give the list before taking the CSE 1996.

15. Before the Tribunal the respondents disclosed that the petitioner had been allocated to a Group 'B' service viz. Pondicherry Police Services in accordance with his rank and the preferences as listed by him for CSE 1997. This service was at Sl. No. 24 of the Preference List submitted by petitioner before taking CSE 1997. The submission of the respondent before the Tribunal was, and before us as well as is that Rule 18 of the Civil Services Examination Rules had been amended vide CSER 1996 for the Civil Services Examination held in 1997. Rule 18 as it existed upto CSER 1995, applicable to CSE 1996 read as follows:

18. Due consideration will be given at the time of making appointments on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective Services at the time of appointment.

Provided that a candidate who has been approved for appointment to Indian Police Service/Central Services, Group 'A' including the posts of Asstt. Security officer in R.P.F and Asstt. Commandant in C.I.S.F mentioned in Col.2 below on the results of an earlier examination will be considered only for appointment to services mentioned against that service in Col.3 below on the results of this

examination.

Sl.

No. Service to which Service to which approved for appointment eligible to compete

1. Indian Police Service I.A.S., I.F.S and Central Services, Group `A" including R.P.F and C.I.S.F,
2. Central Services, I.A.S., I.F.S and I.P.S. Group `A" including R.P.F and C.I.S.F.

Provided further that a candidate who is appointed to a Central Service, Group "B" including posts of Deputy Superintendent of Police in C.B.I on the results of an earlier examination will be considered only for appointment to IAS, IFS, IPS and Central Services, Group `A" including R.P.F and C.I.S.F.

16. The respondent submitted that the amended Rule 18 as contained in CSER 1996 was an improvement of the earlier Rule 18 which barred intra Group movement within Group `A" and Group `B" services/posts. Earlier a candidate who had been allocated for appointment to a Group `A" service/post on the result of an earlier examination was not allowed to compete for any other Group `A" services/posts and he could be considered only for IAS, IFS and IPS. Similarly, a candidate who had been allocated for appointment to a Group `B" service/post as a result of an earlier examination was not allowed to compete for any of the Group `B" services or posts, and he could be considered only for IAS, IFS and IPS and Group `A" services or posts. But with the amendment of Rule 18 coming into operation with CSER 1996, this restriction had been lifted and another restriction put that a candidate who has accepted the allocation to a service on the basis of an earlier examination shall be eligible to be allocated only to those services/posts, which are higher in the order of preferences in his application for the examination on the basis of which he had been allocated to a service. The respondents further argued that Rule 2 of CSER 1996 cautioned the candidate to be careful while filing the list of preferences/choices of posts. The petitioner should have been careful and should have filled all the posts in his list of preferences, and now he cannot blame the respondents for his omissions. Further it is argued that while making allocation of services on the basis of CSE 1997, all the eventualities as indicated by the petitioner were taken care of. The candidates were considered for allocation to those services also which were either earlier enjoying lower status and were subsequently upgraded, or were not at all figuring in the list of services for which the examination was being held. An instant example is that of the petitioner himself. The respondent conceded that the Pondicherry Police Service did not figure in the list of services for which CSE 1996 was held. But it was one of the services included in CSE 1997 for which also the petitioner was a candidate. He had been considered and allocated to this service on the basis of CSE 1997 because he had included it in his list of preferences when applying for CSE 1997.

17. As regards the petitioners contention that the Rule 18 of the CSER 1996 cannot work retrospectively, it is submitted that the said Rules were notified in the Gazette Notification No. 13018-8-96 dated 14th December 1996 prior to the commencement of CSE 1997, and the petitioner had enough time to go through the examination rules. The petitioner was free to either retain the CSS allotted to him on the basis of CSE 1996 and compete for the limited number of services in CSE 1997 as restricted by Rule 18 of CSER 1996, or to resign from CSS and compete for all services as an open market candidate in CSE 1997. It was also argued that the impugned Rule 18 of CSE 1996 was not given retrospective effect since it applied to candidates taking CSE 1997. The respondent placed reliance on Punjab University Vs. Subash Chander and Another, in support of this submission.

18. The respondent relied upon the decision of the Supreme Court in Birendra Kumar Nigam and Ors. v. UOI WP No. 220 to 222 of 1963 decided on 13.3.1964 to urge that the Central Government had the power to impose restrictions on its employees to compete for other services. It was also argued that vires of Rule 18 as it existed in CSER 1995, which imposes a total ban of movement from one Group 'A' service to another Group 'A' service, and from one Group 'B' service to another Group 'B' service had been upheld by the High Court of Allahabad in CMWP No. 11743 of 1982 Ravindra Prasad Singh v. UOI. It was argued that candidates like the petitioner, who had earlier appeared in the CSE and had been made an allocation of a service/post, and while retaining that allocation in the earlier examination process had again participated in a subsequent CSE to improve their ranking, formed a different class from the open market candidates who were appearing in the examination without any prior allocation. It was argued that the Government was entitled to put restrictions on the class to which the petitioner belongs, for example, by allowing them to compete only for limited number of service/posts and that such a classification is based on reasonable grounds. The respondent also relies on the decision in the case Mohan Kumar Singhania v. Union of India : AIR1992SC1 .

19. The Tribunal in its impugned order held that the petitioner cannot be treated at par with the outside/open market candidates. The two formed different classes and could be treated differently. Thus, it held that the amended Rule 18 cannot be said to be arbitrary and contrary to Article 14 and 16(1) of the constitution. The Tribunal also placed reliance on Birendra Kumar Nigam (supra) and held that the government can make the rules to meet the exigencies and the same cannot be put to question. The relevant extract from the impugned order reads as under:

10. The applicant having been allotted to CSS Group "B" on the basis of CSE 1995 cannot also be considered on par with other candidates from the open market who are appearing in the CSE for the first time in 1997 as they are separate and distinguishable categories. However, since both these examinations have been held for the purpose of filling vacancies in Central Services, the Rules have to be read together. To this extent Rule 18 of CSE 1997 takes into account

the results of the candidates who had appeared in the previous examination held in 1995 which they were well aware of before they sat in the examination. Therefore Rule 18, as amended, by Notification of 14.12.96 is not invalid as affecting any vested rights retrospectively as contended by Shri Mehra, learned Counsel. The applicant had the option to choose whether he retained his allocation to the CSS as per the CSE 1995 or wanted to appear as a fresh candidate for CSE 1997. He chose the former course and he cannot, therefore, complain if respondents take further action in terms of Rule 18 as amended. The fact that he has already been appointed to CSS on the basis of CSE 1995 cannot be ignored nor can he be considered as a fresh candidate for CSE, 1997 as these Rules have to be read together harmoniously. Accordingly, we do not find any legal infirmity in Rule 18 as amended which lays down the method for allotment of a service to the candidates who have already accepted the previous allocation of services/posts through an earlier examination as in the case of the applicant. Therefore, the contention of the learned Counsel for the applicant that Rule 18 as amended is unconstitutional and discriminatory is without any basis and is accordingly rejected.

20. The Tribunal also held that the appointment of the petitioner to Pondicherry Police Services was incorrect as the said service was not mentioned in the list of preferences given by the petitioner at the time of taking CSE 1996 and thus the petitioner cannot be appointed at the said post. The Tribunal directed the respondents to appoint the petitioner in accordance with the suitability of the petitioner by taking the first preference list into account and communicate the allocation to the petitioner. Accordingly, the respondents, in compliance of the impugned order issued an order dated 13.07.1999 withdrawing the allocation of the petitioner to Pondicherry Police Service.

21. A perusal of CSER 1995 shows that the said Rules do not by themselves contain any provision which could be said to vest the candidates who have appeared in CSE 1996 like the petitioner, with the right to retain the allocation of service/post made to them on the basis of CSE 1996, and to take the subsequent examination, namely, CSE 1997 for the purpose of improving their ranking. Rule 4 of CSER 1995 which talks about the number of attempts that a candidate can make at the Civil Services Examination in the third proviso state: "Provided further that:- (a) A candidate allocated to the IPS or a Central Service, Group 'A' on the results of the Civil Services Examination, 1995 shall be eligible to appear at the examination being held in 1996 only if he has obtained permission from Govt. to abstain from probationary training in order to so appear. If in terms of the provisions contained in Rule 18, such a candidate is allocated to a Service on the basis of the examination being held in 1996, he shall join either that service or the Service to which he was allocated on the basis of the Civil Services Examination, 1995 failing which his allocation to the Service based on one or both the examinations as the case may be, shall stand cancelled; and (b) A candidate allocated or appointed to the IPS Group 'A' service/post on the basis of the Civil Services Examination held in 1994 or earlier years shall not be

eligible to apply for admission to the Civil Services (Main) Examination to be held in 1996; unless he first gets his allocation cancelled or resigns from the service/post." It appears that the said Rule does not create, by itself, any right in a candidate appearing as an open market candidate in CSE, 1996 (such as the petitioner), to appear in the subsequent examination i.e. CSE 1997 for the purpose of improving his rank while retaining the allocation made on the basis of CSE 1996. The petitioner was not a candidate who had been allocated to the IPS or a Central Service Group 'A' on the results of the Civil Services Examination, 1995. Therefore, there was no "vested right" created by CSER 1995 in the petitioner to retain his allocation made to CSS on the basis of CSE 1996 and to take CSE 1997 with that allocation. Rule 18 of CSER 1995 also uses the expression "Provided that a candidate who has been approved for appointment...on the results of an earlier examination will be considered only for appointment to services..., on the results of this examination". This clearly shows that Rule 18 of CSER 1995 by itself did not vest any right in the petitioner to seek improvement at a subsequent CSE while retaining the allocation of service/post made on the basis of CSE 1996, since the said Rule was meant for application to those candidates who had appeared in the previous examination, and had been allocated to a service and were appearing in CSE 1996 while retaining that allocation. We, therefore, do not accept the contention of the petitioner that the petitioner had any vested right either by virtue of Rule 4 or Rule 18 of CSER 1995, to retain the allocation made on the basis of CSER 1996 and to appear in CSE 1997, or to seek a fresh allocation in accordance with Rule 18 of CSER 1995.

22. We are also not impressed by the argument of the petitioner that the Rule 18 of CSER 1996 operates retrospectively. The said Rule operated in respect of candidates who applied for appearing in CSE 1997. The scheme of examination i.e. CSE, which has been adopted by the Government since 1979 appears to be that for the CSE to be conducted each year, a set of rules is notified by the Government each year in advance, and the candidates take the CSE each year in accordance with the notified Rules for that particular examination. These Rules prescribe the conditions applicable to the particular CSE only, and do not prescribe conditions applicable to similar examinations to be held in future. Therefore, though the past performance and attempts of a candidate have a bearing on the particular CSE that he appears in or aspires to appear in, the Rules do not provide for any protection of rights that may accrue on the basis of an earlier CSE result in favour of a candidate. The right/opportunity given to the petitioner to reappear in CSE 1997, while preserving his allocation to CSS on the basis of his result in CSE 1996 cannot be traced to CSER 1995. In fact that right emanates from the offer made by the respondent vide their letter dated 11.2.1997, which was accepted by the petitioner. We are also reaffirmed in our view on the basis of the decision of the Supreme Court in Punjab University (supra). In this case, the respondent had joined the M.B.B.S. Course in the year 1965. Regulation 25 of Punjab University prescribed the minimum pass

percentage as 50%. Rule 7.1 relating to M.B.B.S. Course permitted grant of grace marks upto 1% of the total aggregate marks in one or more papers in certain situations to enable the student to pass the examination. This Rule was, however, amended vide an exception to Rule 21 to the disadvantage of the students by limiting its applicability. The respondent appeared in the final M.B.B.S. examination in 1974. He failed despite being granted grace marks as per Exception to Rule 2.1 A. However, if the earlier Rule 7.1 were to be made applicable to his case, he would have passed. He, therefore, sought application of the original Rule 7.1 to his case and urged that the amended Rule could not be given retrospective effect. The Supreme Court rejected the contention of the respondent that the amended Rule had retrospective effect. The Court held:

We do not agree with the learned Judges of the Full Bench of the High Court that there is any element of retrospectivity in the change brought about by the addition of the exception to Rule 2.1 of the Calendar for the year 1970. "Retrospective" according to the Shorter Oxford English Dictionary, Third Edition, in relation to Statutes etc. means "Operative with regard to past time". The change brought about by the addition of the exception to Rule 2.1 does not say that it shall be operative with effect from any earlier date. It is obviously prospective. It is not possible to hold that it is retrospective in operation merely because though introduced in 1970 it was applied to Subash Chander, respondent 1, who appeared for the final examination in 1974, after he had joined the course earlier in 1965. No promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating there to which were in force at the time of his admission would continue to be applied to him until he finished his whole course. In the Calendar for 1979 we find the following at page 1:

Notwithstanding the integrated nature of a course spread over more than one academic year, the regulations in force at the time a student joins a course shall hold good only for the examinations held during or at the end of the academic year. Nothing in these regulations shall be deemed to debar the University from amending the regulations subsequently and the amended regulations, if any, shall apply to all students whether old or new.

23. Therefore, we reject the submissions of the petitioner that by virtue of CSER 1995 he had any vested right to reappear in CSE 1997, while preserving his allocation of CSS on the basis of CSE 1996; he had the right to give a fresh preference list of services/posts in respect of CSE 1997; he had the right to be considered in the matter of allocation of service/post on the basis of the preference list submitted while taking the CSE 1997, and; that Rule 18 of CSER 1996 had retrospective application.

24. The decisions of the Supreme Court relied upon by the petitioner in support of his argument founded upon the so called retrospective operation of Rule 18 of

CSER 1996, viz Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, , K. Narayanan and others Vs. State of Karnataka and others, , R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal representatives), , and, Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, have no application in the facts of the present case, since all of them except R. Rajagopal Reddy (supra) deal with service rules which were expressly given retrospective effect. In the present case, since no retrospective effect has been given to Rule 18 of CSER 1996 these decision have no bearing in the present case. So far as R. Rajagopal Reddy (supra) is concerned, it is a decision under the Benami Transactions (Prohibition) Act, 1968. The Supreme Court in this decision held that the bar created by Section 4(1) of the said Act was prospective i.e. it did not apply to pending suits. The Court held that the legislature had not expressly given retrospective effect to Section 4(1). To construe to said section as having retrospective effect would run counter to the legislative intent. This decision also, does not advance the submission of the petitioner.

25. The decision of the Supreme Court in Chandraprakash Madhavrao Dadwa and Others Vs. Union of India and Others, relied upon by the petitioner also has no relevance to the facts of the present case. In Chandraprakash Madhav Rao Dadwa (supra) the Data Processing Assistants appointed in 1978, whose promotional post was Data Processing Supervisors, were sought to be redesignated as Data Entry Operators Grade B. (1350-2200). They challenged the same and demanded that they be designated as Data Processing Assistants "A" (1600-2660). The Government justified the said redesignation and fixation of the pay scale on the ground that in pursuance of the Sheshagiri Committees Report, there was a change in the essential qualifications for appointment as Data Processing Assistants "A", and additional functions were now required to be performed by Data Processing Assistants `A" (1600-2660).

26. The Supreme Court did not accept the stand of the Government and held that the change in the essential qualifications or the additional functions now required to be performed by the appellants could not retrospectively affect the initial recruitment of the appellants as Data Process Assistants, no effect their Confirmation as Data Processing Assistants done in 1989. Recruitment qualifications could not be altered or applied with retrospective effect. The changes in the qualifications for recruitment could be made effective for future recruitment processes, but could not affect those who were already recruited. To apply the changed recruitment qualifications retrospectively would be arbitrary and violative of Articles 14 and 16 of the Constitution. Once again, we do not appreciate how this decision has any applicability in the facts of the present case. The petitioners, as aforesaid, under the CSER 1995 did not get any vested right to be granted permission to reappear in CSE 1997 while retaining the allocation made on the basis of CSE 1996. CSER 1996 did not have any retrospective operation either. We, therefore, reject this submission of the petitioner.

27. However, the argument of the petitioner that the petitioner had a legitimate expectation that he would be entitled to give a fresh list of preferences while taking the subsequent CSE, in our view, needs closer examination. Admittedly, year after year, CSE has been conducted with more or less the same set of Rules. When the petitioner applied for taking CSE 1996, admittedly Rule 18, as it was contained in CSER 1995 had been substantially and consistently applied since the past, though its location and numbering in the CSER may have changed from time to time. Therefore, though CSER 1995 did not by itself vest any right in a candidate applying to take CSE 1996 to retake the CSE in the following years while retaining his/her allocation on the basis of CSE 1996, it is argued that the candidates did have a legitimate expectation that they would be given the opportunity to improve their ranking in the following CSE, while retaining their allocation made on the basis of their result in the earlier CSE. This expectation also come true when the petitioner was given the option by the respondent vide their letter dated 11.2.1997.

28. At this stage it would be worthwhile to state what is the scope and meaning of the principle of legitimate expectation and in what situations it can be invoked in a given case. The Supreme Court has considered the scope and meaning of this principle in various decisions. In *Ram Pravesh Singh and Others Vs. State of Bihar and Others*, , the Supreme Court discussed this principle by referring to its earlier decisions in the following words:

What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant : (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, courts may grant a direction requiring the Authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bonafide reason given by the decision-

maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.

29. The Supreme Court referred to its earlier decision in *Union of India and others Vs. Hindustan Development Corpn. and others*, , wherein the Court has, inter alia, held:

It is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision then decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken, has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors.

30. The Supreme Court also took notice of its decision in (1994) 1 MLJ 12 (SC) , wherein the Court had held:

The principle of "legitimate expectation" is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, Page 4186 predictability and certainty in the Governments dealings with the public. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. However, the more important aspect is whether the decision maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change. In sum, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy. The choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

31. We now proceed to examine the present case in the light of the above extracted legal principles.

32. Prior to CSE 1996 coming into force, the candidates were governed by Rule 18 as contained in CSER 1995. This Rule permitted the candidates to make improvement in their earlier allocation from a Group `B" post to a Group `A" post or to IAS, IFS or IPS, and those who had been allocated to a Group `A" in the earlier CSE, to improve their allocation to IAS, IFS or IPS depending on "the preferences expressed by a candidate for various services at the time of his application". This past practice had been in vogue for a number of years and it can be said that the expectation of the petitioner, that he too would be permitted to improve his rank in the subsequent CSE while retaining his allocation made on the basis of his result in CSE 1996; that he too would be entitled to give his preferences afresh before taking the following CSE, and; that he would be considered for allocation of a service/post on the basis of his result in CSE 1997 by taking into account his preferences given at the time of taking CSE, was based upon an established practice. Conversely, there was no suggestion or indication that even for the subsequent CSE, they would be bound by the list of preferences that they may submit in the first instance in terms of Rule 2. There was no prior notice or warning given to the petitioner in this regard. The aforesaid expectation cannot be termed or being based on sporadic or casual or random acts of the respondent, or as an unreasonable or illogical or invalid expectation. This expectation can be said to have arisen in the mind of the petitioner in the normal course, in view of the consistent past practice of the respondents, as reflected in Rules 2 & 18 of the CSER 1995. In our view this expectation was legitimately entertained by the petitioner. But this legitimate

expectation of the petitioner is pitted against the "Public Interest", if any, in the change of policy as reflected in the amended Rule 18 as contained in CSER 1996. It is for the decision maker to justify its decision to change Rule 18 in the manner it did, by showing overriding public interest. It is also for the decision maker to meet the attack to the amended Rule 18 of CSER 1996 on the ground of it being irrational, arbitrary and discriminatory.

33. The justification given by the respondent for the amendment to Rule 18 is that the same has been made more flexible and candidate friendly, inasmuch as, whereas Rule 18 did not permit intra group mobility, the amended rule permitted even intra group mobility. To this extent, we have no difficulty in accepting that the amendment to Rule 18 is in the larger public interest and appears to be reasonable. It is only reasonable that a candidate who improves his ranking in the subsequent CSE should be entitled to be allocated a service which he is more interested in joining. If he is not so permitted on the basis of a technicality, while others who may have ranked below him in merit are allowed to be allocated and to join the service of their choice, whether it is in the same group or in a different group, it is bound to lead to some amount of heart burning and dissatisfaction which would in turn adversely affect the morale and efficiency of the more meritorious candidates. Therefore, we have no difficulty in concluding that the main part of the amended Rule 18 seeks to serve a purpose which would help in achieving better efficiency amongst public servants. However, by applying the same logic, we are unable to appreciate as to what is the purpose sought to be achieved by the proviso to the amended Rule 18 which unduly restricts the rights of the candidates who have accepted allocation to a service on the basis of an earlier CSE, to be allocated only to those services/posts which were higher in the order of preference as indicated in their application form for the examination on the basis of which the candidate had last been allocated to a service. As aforesaid, a candidate for a variety of reasons may give a particular preference list while appearing at the CSE as an open market candidate. Having tested the waters once, and with an allocation with a service in his pocket he may aspire to take the examination in the following year to improve his ranking and seek allocation to a service which may interest him more. It is not uncommon, and it is very normal for any one as he progresses in life to understand his likes and dislikes better and also to appreciate as to what is best suited for him, considering his inclination, aptitude, interests, temperament etc. It is also well known that in this fast changing world, the perspective of the people in relation to one or the other kind of services keeps changing, and these changes could come about very fast.

It is also possible that after having appeared in a CSE as an open market candidate and after being allocated to a service, the candidate may realise his real potential and may have a better assessment of what he is capable of achieving and may realise that he had either over estimated or under estimated his capabilities in competition with others while taking the CSE in which he has been allocated to a service. He may, therefore, justifiably want to revise his

preferences while taken a second shot at the subsequent CSE.

34. The aforesaid are aspects which justify permitting candidates like the petitioner to be entitled to submit a fresh preference list of services/posts for which they may be considered for allocation on the basis of the subsequent CSE. There can be no doubt that candidates like the petitioner who appeared at a CSE while having in their pocket the allocation to a service/post made on the basis of an earlier CSE form a separate and distinct class when compared to open market candidates who do not enjoy such comfort. However, the matter does not end there. A mere reasonable classification by itself is not enough to test whether the differentiation violates Article 14 and 16(1) of the Constitution. It is also necessary that the classification bears a reasonable nexus to the object sought to be achieved by the classification. In *Raojibhai Jivabhai Patel and Others Vs. State of Gujarat and Others*, , the Supreme Court noticed test of reasonableness of classification in the following words:

12. It is obvious that a valid classification of persons and things for purposes of imposing any obligation on them would not be violative of Article 14 provided the classification is a reasonable one. It is well settled that a classification to be valid has to satisfy two conditions:

(1) that there is an intelligible differentia between those who are included in the class which is affected by any law or rule and those who are placed outside the said rule; and

(2) that there is a reasonable nexus between the classification and the object to be achieved by the rule or law in question.

35. In *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, the Supreme court observed that "By the process of classification, the State has the power to determine who should be regarded as a class for the purposes of legislation and in relation to a law enacted on a particular subject. The classification to be valid, however, must not be arbitrary but must be rational. It must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable nexus or relation to the object of the legislation." In *Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others*, , the Supreme Court observed as follow:

20. "To overdo classification is to undo equality." The idea of similarity or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, by themselves be rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus to objects sought to be achieved by the law imposing the classification.

36. It is, therefore, necessary to examine as to what is the object which is sought to be achieved by providing that candidates belonging to a class to which the petitioner belongs i.e. those who hold an earlier allocation while appearing for the CSE, would be considered for allocation only to services/posts which are higher in the preference list submitted for taking the examination at which they were made the allocation i.e. they would be bound down to the list of preferences given by them in the first instance at the time of taking the CSE which resulted in the earlier allocation, for the purpose of making the fresh allocation on the basis of the results of the subsequent CSE. Rule 18 as it stood upto CSER 1995 did not permit intra group movement, i.e., movement within Group 'B' or Group 'A'. It permitted a candidate to jump from Group 'B' to Group 'A' or to IAS, IFS or IPS Services/posts, and those who had been allocated to Group 'A' service/post as a result of the earlier CSE, were allowed to jump to IAS, IFS and IPS Services/posts. The rationale behind the unamended Rule 18, it appears, was that the candidate should make a substantial improvement to be able to move on to a different level of services/posts and a slight improvement in the ranking which may only lead to movement within the same group of services/posts (and which enjoy more or less the same level of salary, perks and carry responsibilities of similar levels) was not considered as justifying the administrative effort that the Government would have to make in accommodating such candidates. In this regard reference may be made to the observations of the Supreme Court in paragraph 109 and 110 of its decision in Mohan Kumar Singhania (supra). Reference may also be made to the decision of the Supreme Court in Arti K. Chhabra and others Vs. Union of India and others, .

37. Even according to the respondents, the amended Rule 18 does away with the said restrictions on intra group mobility. Therefore, it is now possible after the enforcement of the amended Rule 18, for the candidates to move even within the same group of services/posts on the basis of the preference given by them and the availability of service/post for allocation to them according to their ranking. In our view there is absolutely no nexus between the purpose of classification and the object sought to be achieved by and the embargo contained in by the proviso to the amended Rule 18. Pertinently the respondents have not disclosed, either before the Tribunal, or even before us as to what is the justification for restricting the list of preferences in the case of candidates like the petitioner to the earlier list submitted by them, even for the subsequent CSE. The proviso to the amended Rule 18 contains a restriction on candidates like the petitioner. The restriction seeks to treat such candidates differentially from the open market candidates. But why they are being treated differently, and what is the purpose of this differential treatment, and how it is reasonable is not disclosed. We also agree with the submission of the petitioner that the proviso to amended Rule 18 is antithetic to the objectives of the civil service examination and the purpose it seeks to serve. The concept of improving his ranking by a candidate by making successive attempts is recognized by CSER. The CSE is conducted as a competitive examination wherein selections are based on merit. The proviso to

amend Rule 18 seeks to artificially curb the preferences of services/posts of the more meritorious candidates by providing that the candidates covered by the said proviso would be considered for allocation of service/post which are higher in the list of preferences given for the examination in which the allocation is earlier made. In our view, therefore, though the change in policy contained in substantive part of Rule 18 as amended by CSER 1996 is reasonable, the restriction introduced by proviso to the amended Rule 18 is unreasonable and irrational. The same is arbitrary and also discriminatory as it offend Articles 14 and 16(1) of the Constitution of India.

38. We may refer to the decision of the Supreme Court in *University Grants Commission Vs. Sadhana Chaudhary and Others*, , wherein the Supreme Court justified the action of the UGC in respect of a class of teachers based on the principle of legitimate expectation.

39. The UGC made the University Grants Commission (Qualifications Required of a Person to be Appointed to the Teaching Staff of a University and Institutions Affiliated to it) Regulations, 1982 (hereinafter referred to as "the 1982 Regulations") whereby qualifications were prescribed for appointment to a teaching post in the University or in any of the institutions including constituent or affiliated colleges recognised under Clause (f) of Section 2 of the UGC Act or in an institution deemed to be a University u/s 3 of the UGC Act. Under the 1982 Regulations the minimum qualifications prescribed for appointment to the post of University lecturers were (i) a Doctorate's Degree or Research work of equally high standard; and (ii) a good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University, For college lecturers the minimum qualifications prescribed were (i) an M.Phil degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work; and (ii) good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign university.

40. The UGC made the 1991 Regulations which were notified vide notification dated 19-9-1991. The 1991 Regulations superseded the 1982 Regulations and prescribed the following minimum qualifications for the post of lecturers in universities and colleges:

Good academic record with at least 55% marks or an equivalent grade at Master's level in the relevant subject from an India University or an equivalent degree from a foreign University. Candidates besides fulfilling the above qualifications should have cleared the eligibility test for lecturers conducted by UGC, CSIR or similar test accredited by the UGC.

41. By Circular dated 10-2-1993, the UGC granted exemption from appearing in the eligibility test to following categories:

1. All candidates who have passed UGC/CSIR J.R.F. Examination.
 2. All candidates who have already been awarded Ph.D degree.
 3. All candidates who have already been awarded M.Phil degree upto 31-3-1991.
 4. All candidates who will submit their Ph.D thesis upto 31-12-1993.
42. By circular dated 15-6-1993, in respect of candidates falling in category (3) exemption from appearing in the eligibility test was extended to candidates who had been awarded M.Phil degree upto 31-12-1992. By a notification dated 21-6-1995 the 1991 Regulations had been amended and the following proviso added below the requirement regarding clearing the eligibility test for appointment on the post of Lecturer:
- Provided that candidates who have submitted Ph.D thesis or passed the M. Phil examination by 31-12-1993 are exempted from the eligibility test for lecturers conduct by UGC, CSIR or similar test accredited by the UGC.
43. On 23-1-1995, the Haryana Public Service Commission issued an advertisement inviting applications for 200 temporary posts of Lecturers (College cadre) in various subjects in Haryana Educational Service (Group "B). In the said advertisement it was prescribed that candidates besides fulfilling the essential qualifications mentioned therein in the respective subjects should have cleared the eligibility test for lectureship conducted by the UGC, CSIR or similar test accredited by the UGC. The said condition was, however, not applicable to candidates falling in various categories, including those who had been awarded M.Phil degree upto 31-12-1992 and candidates who had submitted their Ph.D thesis upto 31-12-1993.
44. Sadhana Chaudhary and Aarti Ahluwalia, (respondents before he Supreme Court) had joined M. Phil course of Punjab University for the session 1991-92. Sadhana Chaudhary submitted her thesis on 25-1-1993, the viva voice test was held some time in November, 1993 and the M. Phil degree was awarded to her on 14-12- 1993. Aarti Ahluwalia submitted her thesis on 7-10-1992, the viva voice test was held in December, 1993 and she was awarded M.Phil degree on 14-12-1993. Since they had been awarded the M.Phil degree after 31-12-1992, they were not given exemption from clearing the eligibility test as per the requirement of the advertisement. They approached the High Court of Punjab and Haryana by filing a writ petition (Civil Writ Petition No. 2252 of 1995) wherein they assailed the cut off dated, i.e., 31-12-1992, as fixed in paragraph 5(b) of the advertisement regarding exemption given to candidates who have been awarded M.Phil degrees from the eligibility test.
45. The grievance of the writ petitioners/respondents in the case of Sadhna Chaudhary was that for the purpose of giving exemption from eligibility test for candidates who had obtained M.Phil degrees, the cut off date, i.e., 31-12-1992, has been fixed arbitrarily and that there is no rational basis in confining the exemption to candidates who had been awarded M.Phil degrees upto 31-12-1992

in an advertisement issued in January 1995 because between 31-12-1992 to December 1994 many candidates might have obtained M.Phil degrees.

46. The exemption for clearing the eligibility test under Clauses (a) to (d) of paragraph 5 of the advertisement was based on the Circulars of the UGC dated 10-2-1993 and 15-6-1993 referred to earlier. The High Court, by its judgment dated 21-3-1995, allowed the writ petition of respondents Nos. 1 and 2 on the view that cut off dates prescribed in paragraph 5(b) and (c) of the advertisement in respect of candidates who had acquired M.Phil degree or submitted the Ph.D thesis are totally unjust and based on no rationale, inasmuch as, it amounts to creation of an artificial class amongst the eligible candidates though similarly situated, i.e., having obtained M.Phil degree after 31-12-1992, or having submitted Ph.D thesis after 31-12-1993 respectively and that cut off dates, i.e., 31-12-1992 for M.Phil degree and 31-12-1993 in case of submission of Ph.D thesis, are far earlier to the date of the advertisement dated 23-1-1995.

47. The Supreme Court allowed the appeal preferred by the U.G.C. The Supreme Court invoked the principle of legitimate expectation to uphold the exemption granted to a class of teachers from clearing the eligibility test. Relevant extract of para 22 of the said decision reads as follows:- "Prior to the making of the 1991 Regulations there was no statutory requirement regarding clearing the eligibility test for the purpose of appointment on the post of Lecturer. Such a requirement was introduced for the first time by the 1991 Regulations. At the time when the 1991 Regulations were made the provisions contained in the 1982 Regulations had given rise to a legitimate expectation that a person having a Ph.D or M.Phil degree and having good academic record as prescribed under the 1982 Regulations would be eligible for appointment on the post of Lecturer without anything more. While introducing the requirement of clearing the eligibility test in the 1991 Regulations, the UGC did not intend to deprive the persons who had obtained M.Phil degree or Ph.D degree prior to the making of the 1991 Regulations of their legitimate expectation in the matter of appointment on the post of Lecturer in universities or colleges. It was also felt that the said requirement in the 1991 Regulations should not operate to the prejudice of persons who, having regard to the qualifications prescribed in the 1982 Regulations, had registered for the Ph.D degree or had joined study for M.Phil degree course prior to making of the 1991 Regulations and, therefore, provision was made for granting exemption to such candidates with the condition that they should have passed M.Phil examination or should have submitted Ph.D thesis by a particular date. In so far as the date of submission of Ph.D thesis is concerned, the said date, i.e., 31-12-1993, has remained unchanged in the Circulars dated 10-2-1993 and 15-6-1993 and the notification dated 21-6-1995. For M.Phil degree the date was, however, changed from 31-3-1991 to 31-12-1992 by Circular dated 15-6-1993 and from 31-12-1992 to 31-12-1993 by notification dated 21-6-1995. The amendment in the 1991 Regulations that has been made by the notification dated 21-6-1995, in substance, postpones the date of applicability of the requirement regarding clearing the eligibility test in the 1991

Regulations till 31-12-1993 in respect of candidates who had joined the M.Phil course or registered for Ph.D degree. Such candidates constitute a distinct class who could be treated separately in so far as the requirement of clearing the eligibility test was concerned. Such a classification of the candidates for the purpose of applicability of the requirement of clearing the eligibility test has a rational basis which has a reasonable nexus with the object sought to be achieved by the 1991 Regulations. We are, therefore, unable to hold that the exemption that has been granted by the amendment introduced in the 1991 regulations by notification dated 21-6- 1995 is violative of the right to equality guaranteed under Article 14 of the Constitution."

48. We are of the view that the respondents ought to have similarly dealt with the petitioner. He, and candidates like him ought to have been put to notice prior to introduction of the proviso to the amended Rule 18 as contained in CSER 1996. this omission has put the petitioner to an avoidable disadvantage.

49. We do not agree with the submission of the respondents that the petitioner is suffering on account of his own failure to include all the services in his list of preferences submitted before taking CSE 1996. The preference list submitted by the petitioner before taking the CSE 1996, when it was submitted, was meant only for allocation of service/post on the basis of the petitioner's result in CSE 1996. The petitioner was not put to notice at that stage that he would be bound down to the preference given by him before taking CSE 1996 for all subsequent attempts made while retaining his allocation made on the basis of his result in CSE 1996. Whatever disadvantage the petitioner had to suffer on account of his not submitting a more exhaustive list of his preferences, had been suffered when allocations of service/post was made on the basis of CSE 1996. In our view, it could not be carried forward to the subsequent examination taken by him i.e. CSE 1997. We also do not find any merit in the submission founded upon the "Note" to Rule 2 of CSER 1996, that the said note advised the candidates to be very careful while indicating preferences for various services/posts. Firstly, this "Note" did not exist at the time the petitioner gave his preference list of CSE 1996. Secondly, even if the respondents were to rely upon the "Note" to Rule 2 of CSER 1995, that "Note" did not tell the petitioner that he would be bound by the preferences that he may give for taking CSE 1996, even for the subsequent year in the eventuality of his taking CSE 1997 while retaining the allocation of service/post that may be made on the basis of his result in CSE 1996.

50. We also do not agree with the respondents that if the petitioner desired to be considered on the basis of this preference list submitted with his form for CSE 1997, he should have resigned from the service/post allocated on the basis of CSE 1996 before taking the CSE 1997, since Rule 18 of CSER 1996 was published in December 1996 i.e. before he took the said examination. Firstly, if the said Rule, or any part of it is arbitrary and discriminatory and violative of the constitutional scheme, the same can be challenged at any stage. Secondly, the petitioner was entitled to wait to receive his results in respect of CSE 1997 and

to see how it impacts him before challenging the validity of the Rule or any part thereof. If he had challenged the amended Rule 18 even prior to taking the CSE 1997, the respondents could well have argued that the challenge is premature.

51. There is also merit in the submission of the petitioner that the amended Rule 18 contained in CSER 1996 does not take into account situations such as the inclusion of a Central service within the ambit of CSE after a candidate had taken the CSE in an earlier attempt and where he had been made an allocation of service/post. Before the holding of the subsequent CSE, where a fresh service has been included within the ambit of CSE or the grouping/grading of a service had been changed in the interregnum i.e. after taking the first, but before taking the second CSE, if candidates like the petitioner are bound down by the options furnished by them while taking the earlier CSE they would certainly be deprived of the opportunity to give their preference in respect of the service/post which may have been included or the grouping/grading whereof has been changed in the meantime after his taking the first CSE and before he takes the subsequent CSE, while retaining the allocation made in the first CSE. The petitioner has himself given two such instances. The first being with regard to inclusion of Pondicherry Police Service, Group 'B', within the ambit of CSE after he had taken CSE 1996 but before he appeared in CSE 1997. The second being the upgradation of the post of DSP, CBI from a Group 'B' to Group 'A' post. This upgradation had also taken place after the petitioner had given his preference list for CSE 1996 but before he appeared for CSE 1997. In fact, the position stands conceded by the respondent as well that the petitioner was deprived of giving his preference for the aforesaid service/post and the concession of the respondent is evident from the fact that the respondent themselves allocated the petitioner to Pondicherry Police Services on the basis of his result in CSE 1997, even though that service did not find mention in his preference list submitted at the time of taking CSE 1996. The view of the Tribunal that on a plain reading of the amended Rule 18 the petitioner could not be allocated to the Pondicherry Police Services, since that service did not figure in the list of preferences given by the petitioner while appearing for CSE 1996 also shows that the respondent was conscious of these lacuna in the amended Rule 18 and the respondent, therefore, did not strictly adhere to Rule 18 as amended by CSER 1996 and diluted it in its application to the petitioner.

52. Coming to the defence of the respondent before the Tribunal as also before us, we are of the view that there is no merit in the same, particularly, in the facts of this case. The first submission of the respondent was founded upon the decisions of the Supreme Court in *Birender Kumar Nigam* (supra). This decision was relied upon in support of the argument that candidates like the petitioner, who were appearing in CSE while retaining the allocation of service/post made on the basis of an earlier CSE form a different class, when compared to open market candidates, and that it is open to a particular department to impose restrictions on its employee who are seeking employment in other departments and consequently a partial ban which permits them to seek appointment to only

certain posts in the same department cannot be characterised as illegal as being discriminatory. Based on the decision of Allahabad High Court in Ravindra Prasad Singh (supra), it is argued that equality of opportunity in a matter of employment can be predicated only between persons who are either seeking the same employment, or have obtained the same employment. Variation in provisions as between different class of employees either under the Union or the State are frowned upon by Article 16.

53. Reliance placed on Birender Kumar Nigam (supra) appears to be misplaced in the facts of this case. This is because the respondents had themselves given the option to the petitioner vide their communication dated 11.2.1987 to seek the approval of the Government, in case the petitioner desired to retain his allocation of service/post while seeking to appear in the subsequent CSE for improving his ranking and allocation of service/post. At that stage the respondents did not seek to restrict the options of the petitioner.

54. Mohan Kumar Singhania (supra) relied upon by the respondent is a case wherein Supreme Court was examining the validity of the second proviso to Rule 4 of CSER, 1986. The second proviso to Rule 4 of CSER 1986 provided that a candidate who had already been allocated to IPS/Central Services Group 'A' and who in order to improve his efficacy of selection to higher services expresses his intention to appear in the next CSE (Main) for competing for IAS, IFS, IPS or Central Services Group 'A' and who has been permitted to abstain from probationary training in order to do so, will become eligible to appear in the next CSE (Main) subject to the provisions of Rule 17 (similar to Rule 18 of CSER 1995) and that the said candidate when allocated to a service on the basis of next CSE can either join that service or the service to which he had already been allocated on the basis of the previous CSE and that if he fails to join either of the services his allocation based on one or both the examinations, as the case may be, will stand cancelled. It further provided that candidate who accepts allocation to a service and is appointed to that service shall not be eligible to appear again in the CSE unless he has first resigned from that service. The Supreme Court upheld the second proviso to Rule 4 since it found that the probationer allocated to IAS and Group 'A' services were completely neglecting their training and also going on leave en masse for preparing for the coming CSE thereby creating a complete vacuum in the training institutions without having a sense of involvement with the service with to which they had been allocated. For this reason the probationers sent for training were debarred from appearing in ensuing CSE so that they could fully devote themselves for the training and take it more seriously. The Court held that there was nexus with the second proviso to Rule 4 of CSER 1982 and the object sought to be achieved. This decision does not, in our opinion advance the case of the respondents.

55. In the result this petition is allowed and the judgment/order dated 21.5.1999 passed by the Tribunal in OA No. 1423/1998 is also set aside. The proviso to Rule 18 of the CSER 1996 being arbitrary, irrational and discriminatory is quashed.

However, the proviso to Rule 18 of CSER 1996 is severable and the substantive provision contained in Rule 18 of CSER 1996 is reasonable and seeks to achieve the purpose of introducing greater flexibility for candidates including those like the petitioner, who appeared in CSE 1997 while having an allocation of service/post on the basis of CSE 1996. It seeks to promote greater efficiency in the services and reward merit. The same is, therefore, saved and upheld. We further direct that the petitioner, who is a S.T. Candidate be appointed to a service/post on the basis of his ranking in CSE 1997 by taking into account the list of preferences submitted by him before taking CSE 1997, and not the list of preferences submitted by him before taking CSE 1996. The petitioner would also be entitled to seniority in the service/post to which he is allocated from the same date on which he has been given seniority in his current service/posting. His ACRs in his existing service/post shall be deemed to be his grading/ACRs in his new service/post for all purposes. In his new service/posting if his contemporaries/batchmates have earned promotions etc. on the basis of their proficiency tested in a departmental test/examination, the petitioner shall be provisionally promoted and thereafter given reasonable opportunity to appear at, and clear such tests/examinations. However, we are not inclined to grant arrears of pay to the petitioner on account of the fact that he has not rendered service in any other post to which he may have entitled. With these directions this petition stands disposed of leaving the parties to bear their respective costs.