

(2007) 06 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (C) No. 498 of 2006

Praveen Sharma

APPELLANT

Vs

U.P.S.C.

RESPONDENT

Date of Decision : 20-06-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1), 28, 5(6)

Civil Services Examination Rules, 2005 — Rule 4

Constitution of India, 1950 — Article 14, 16, 21, 226, 227

Citation : (2009) 3 ILR Delhi 288

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : J.P. Sengh, for the Appellant; Jyoti Singh, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The petitioner is aggrieved by the decision of the Union Public Service Commission (UPSC) communicated to

him by the letter dated 19.12.2005, whereby the petitioner was informed that his request contained in his letter dated 21.11.2005 addressed to the

Chairman, UPSC for granting another chance to appear in the Civil Services Examination, could not be acceded to because the rules of the

examination did not permit it. In the letter dated 21.11.2005, addressed by the petitioner to the Chairman, UPSC, a request, as aforesaid, had

been made for another opportunity/chance to appear in the Civil Services Examination. This request was made in view of the special circumstances

of the case.

2. It was stated in the said letter dated 21.11.2005 that on 21.10.2005, when the petitioner was returning after appearing in the General Studies

Paper-I and II of the Civil Services (Main) Examination, 2005 from the

examination centre at St. Lawrence Convent School, Geeta Colony, Delhi, while crossing the road, he was hit from behind by a scooter. His right leg had been fractured. He was admitted to a nearby hospital (Hedgewar Arogya Sansthan) at Karkardooma, Delhi. The petitioner was suffering from acute pain due to the severe injury and was consequently operated upon at Orthonova Hospital, New Delhi on 26.10.2005. On account of the said injury, the petitioner could not appear in the remaining papers, which were held on 22.10.2005, 23.10.2005, 30.10.2005 and 06.11.2005.

3. It is further stated in the letter dated 21.11.2005 that the petitioner was fully confident and determined to succeed and to get a higher position/rank in that examination. However, the accident prevented him from completing the examination. Since that was his last (fourth) chance to clear the examination, the accident, which was entirely beyond his control had according to the petitioner, snatched away an opportunity for no fault on his part. It is on account of these circumstances that the petitioner made the following request in the said letter:

Keeping in view of the reasons as stated above and for equity and justice, I humbly request you to consider sympathetically my prayer and give me another opportunity/chance to appear in the Civil Services Examination next year. I undertake to submit fresh application for appearing in the examination within the prescribed time and would sit in the examination next year, if permitted. This request was denied by the letter dated 19.12.2005, as indicated above.

4. The bone of contention in this petition is Rule 4 of the Civil Services Examination for 2005 which was conducted by the UPSC for the purpose of filling vacancies in, inter alia, The Indian Administrative Service, The Indian Foreign Service and The Indian Police Service. The said rules are herein after referred to as the CSE Rules 2005". Rule 4 of the CSE Rules 2005 reads asunder:

4. Every candidate appearing at the examination who is otherwise eligible, shall be permitted four attempts at the examination:

Provided that this restriction on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible:

Provided further that the number of attempts permissible to candidates

belonging to Other Backward Classes, who are otherwise eligible, shall be seven. The relaxation will be available to the candidates who are eligible to avail of reservation applicable to such candidates.

Note:

(I) An attempt at a Preliminary Examination shall be deemed to be an attempt at the Examination.

(II) If a candidate actually appears in any one paper in the preliminary Examination, he/she shall be deemed to have made an attempt at the Examination.

(III) Notwithstanding the disqualification/cancellation of candidature, the fact of appearance of the candidate at the examination will count as an attempt.

5. The CSE Rules 2005 were notified by virtue of a notification dated 04.12.2004 In the petition, as filed, it is prayed that Rule 4 of this

notification (CSE Rules 2005), which has been issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, New Delhi be declared to be unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India.

It was also prayed that a writ be issued directing the respondent to permit the petitioner another chance for sitting in the Civil Services Examination.

However, during the course of arguments, Mr J. P. Sengh, the learned Counsel for the petitioner, submitted that the challenge in the petition be

modified to the extent that instead of requiring the same to be declared unconstitutional, it be read down so as to exclude the examination of 2005

as an attempt" insofar as the petitioner was concerned within the meaning ascribed to the word in the said Rule. He submits that if that is done, then

the petitioner can sit for another examination, which he has done by virtue of Court orders.

6. Before the arguments and counter-arguments are taken up for consideration, it would be appropriate to notice certain essential facts. It is an

admitted position that prior to the 2005 examination, the petitioner had exhausted three attempts. It is also an admitted position that the petitioner

was prevented from completing his examination in 2005 because of the accident on 21.10.2005. After the petitioner was prevented from

completing his examination, he sent the said letter dated 21.11.2005 indicating

clearly that the examination of 2005 was his last chance. While his request for giving him another opportunity was pending, on 11.12.2005 the petitioner filled in the application form for the Civil Services Examination to be conducted in 2006. However, as pointed out by Ms Jyoti Singh, who appeared on behalf of the respondent UPSC this application form was not correctly "filled in by the petitioner. With regard to the number of attempts already made, the petitioner filled in 03", meaning thereby that the petitioner did not include the attempt of 2005 because the petitioner, admittedly, had appeared in the examinations of 2001, 2003, 2004 in which he was unsuccessful. He had also appeared in the 2005 examinations but the same was aborted because of the accident. It must also be noted that, as submitted by Ms Jyoti Singh, had the petitioner indicated four attempts by filling in "04" instead of "03", the petitioner's application would have been rejected at the threshold because the computer was programmed not to accept any application in which four attempts had already been made.

7. It must be remembered that the said application was made during the pendency of the petitioner's request of 21.11.2005. It is only after the application was submitted that the respondent issued the letter dated 19.12.2005 communicating to the petitioner that his request could not be acceded to as the same was not permissible under the examination rules. And, being aggrieved by this letter, the petitioner filed the present writ petition on 12.01.2006. The writ petition came up for admission on the very next day (i.e., 13.01.2006) when, my learned predecessor passed an order which, inter alia, read as under:

The case of the Petitioner is that he met with an accident after appearing in the Main Paper of the Civil Services Examination. He suffered multiple fractures and, Therefore, was not in a position to appear in the remaining papers. The respondent however, has treated it as his last attempt. There is sufficient evidence on the record to show that the Petitioner did suffer multiple fractures. Prima facie keeping the circumstances in view the

Respondents ought not to treat this case as an attempt

Issue notice to Respondents to show cause as to why rule nisi be not issued, returnable on 4th April, 2006.

I am informed that the Petitioner has already applied. If that is so, his application

shall not be rejected on the ground that he has exhausted four attempts.

Pursuant to the said interim order passed by this Court, the petitioner was issued the admit card in March and again in May, 2006. He sat in the preliminary examination and cleared the same. He applied for the main examinations on 21.08.2006 and cleared the same. He was also called for an interview, which was held on 03.04.2007. The results have been tabulated but as the learned Counsel for the respondent was under some reservation as to whether it ought to be declared without this writ petition being decided, the same has been placed in a sealed cover with this Court. That sealed cover has not been opened.

8. The case for the petitioner is simply this that his appearance in the examinations of 2005, till he met with the said accident on 21.10.2005, should not be construed as an attempt at all. The reason for making this submission is that the accident was completely beyond the control of the petitioner. According to Mr J. P. Singh, an attempt, as contemplated under Rule 4 of the CSE Rules 2005 has to be construed in the backdrop of voluntary action or voluntary in action and would not bring in within its sweep such acts which are completely beyond the control of a candidate. He submitted that such an interpretation would be particularly necessary where the attempt would qualify as the final chance because thereafter the candidate would be barred from appearing in the examinations for all times. It was submitted that if a strict interpretation of the rules were to be adopted as contemplated by the UPSC, the same would be visited with extreme harshness and would amount to be unreasonable and arbitrary.

9. Mr Singh further contended that the intention of the rules was to prevent a candidate from taking repeated attempts at the examination adinfinitum. But, the intention of the rules cannot be to include instances where candidates having qualified in the preliminary examination, are prevented from completing their main examinations due to circumstances beyond their control.

10. On behalf of the respondent UPSC, three-fold submissions were made by Ms Jyoti Singh. Firstly, she submitted that the petition was not maintainable before this Court. Her second submission was that the petitioner was seeking equity and it is well known that a person who seeks

equity must come to Court with clean hands. She submitted that the conduct of the petitioner dis-entitled him to any equitable relief. Thirdly, she

submitted that on merits, on a plain reading of Rule 4 of the CSE Rules 2005, four attempts had been made by the petitioner and that the UPSC

had no power to violate the same or to deviate from the same.

11. With regard to the issue of maintainability, she submitted that essentially the examinations are a part of the recruitment process and would

Therefore qualify as a service matter. She referred to the decision of a learned Single Judge of this Court in the case of *Pranay Kumar Soni v. The*

Chairman, UPSC and Anr. CWP No. 5259/2002 decided on 21.03.2003. In that petition re-assessment/re-valuation of the answer-sheet in the

Civil Services Main Examination, 2001 had been sought. The question which arose for consideration before the learned Single Judge was whether

or not the subject matter was covered in the category of service matters. This question was considered in the context of the Administrative Tribunal

Act, 1985 and in particular Section 14 thereof. The learned Single Judge took note of a full Bench decision of the Andhra Pradesh High Court in

the case of *K. Naga Raja and Others Vs. The Superintending Engineer, Irrigation Department, Irrigation Circle, Chittoor and Another*, . After

considering the provisions of the said Act and several other decisions of Courts, the learned Single Judge concluded that the question before it (viz.

re-assessment/re-valuation of the answer-sheet of the Civil Services Main Examination, 2001) was covered under the category of Service

Matters". The Court concluded that the same could only be entertained by the Administrative Tribunal.

12. Ms Jyoti Singh also referred to the decision of another learned Single Judge of this Court in the case of *Neeraj Kansal and Ors. v. Union*

Public Service Commission: WP (C) Nos. 7824-32/2006 decided on 05.10.2006. In that case the petitioners had claimed production of the

answer books and for re-evaluation of the same. The answer books pertained to the Civil Services (Main) Examination, 2005. The learned Single

Judge, after referring to the decision in *Pranay Kumar Soni (supra)* and other decisions, concluded that no cogent reasons had been given by the

petitioner to differ with the ratio of the said judgments. It was, Therefore, concluded that there were no grounds to hold that the Central

Administrative Tribunal did not have jurisdiction to try and adjudicate disputes raised by the petitioners. The writ petition was accordingly dismissed.

13. With regard to the objection that the petitioner did not approach his Court with clean hands, it was contended that in the application form, as mentioned above, the number of attempts indicated were "03" and not "04". It was also indicated in the application for the main examination that the petitioner had appeared in the examinations of 2001, 2003 and 2004. The petitioner had not disclosed that he had also appeared in 2005.

According to the learned Counsel for the respondent these were conscious efforts on the part of the petitioner at deception. Therefore, this Court ought not to entertain this petition on this ground alone.

14. The learned Counsel for the respondent also made submissions with regard to the merits of the matter and stated that the UPSC had no power to deviate from Rule 4, which was clear and categorical. She also referred to the Supreme Court decisions reported in *K. Channegowda and Others Vs. Karnataka Public Service Commission and Others*, .

15. Taking up the objection raised by Ms Jyoti Singh that the petitioner did not approach this Court with clean hands, it would be pertinent to note the circumstances under which the present petition was filed. As indicated above the petitioner met with an accident on 21.10.2005. He was operated upon on 26.10.2005. As a direct consequence of the accident and the operation, the petitioner could not appear in the remaining papers held on 22.10.2005, 23.10.2005, 30.10.2005 and 06.11.2005. The petitioner knowing that it was his fourth attempt, which had been aborted due to reasons beyond his control, wrote the letter dated 21.11.2005 requesting the Chairman, UPSC that he be given an other opportunity to appear in the Civil Services Examination to be held the next year (i.e. in 2006). In the letter of 21.11.2005, the petitioner had disclosed that he had appeared on three prior occasions and that his appearance in the 2005 examinations was his fourth and last chance. But he could not complete the examinations because of the accident, which was entirely beyond his control. In the said letter he had also undertaken to submit a fresh application for appearing in the examination within the prescribed time and that he would sit in the examination next year, if permitted. During the pendency of

his request, the time for filling in the application had arrived and being left with no alternative he filled in the application on 11.12.2005. He was aware that in case he filled in four attempts, the application would be rejected. Hopeful of the fact that his appearance in the 2005 examinations would not be construed as an attempt, the petitioner, instead of filling in "04", filled in "03" in answer to the query with regard to number of attempts. By the impugned letter dated 19.12.2005, after the petitioner had filled in the application form, the UPSC informed the petitioner that his request of 21.11.2005 could not be entertained because the rules did not permit such a request. Thereafter, the petitioner approached this Court by way of this writ petition and, as indicated above, he was permitted to appear in the preliminary examination as well as the main examination pursuant to permission granted by this Court. Therefore, I do not think that it would be right to hold that the petitioner did not approach this Court with clean hands. The petitioner had disclosed all facts before this Court as well as to the respondent UPSC in his letter dated 21.11.2005. Consequently, I do not agree with the submission of Ms Jyoti Singh that the petition is liable to be dismissed on this ground.

16. I now come to the objection raised by Ms Jyoti Singh that the present writ petition is not maintainable before this Court and that if the petitioner has any grievance, he should agitate the same before the Central Administrative Tribunal in view of the provisions of Sections 14 and 28 of the Administrative Tribunals Act, 1985. In *L. Chandra Kumar Vs. Union of India and others*, , a seven judge Bench of the Supreme Court held as under:

99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals

may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under

Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and

rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the

concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they

have been constituted. It will not, Therefore, be open for litigants to directly approach the High Courts even in cases where they question the virus

of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the

concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

17. It is apparent that the Supreme Court, while keeping the powers conferred on the High Courts under Article 226/227 intact inasmuch as it was

part of the inviolable basic structure of the Constitution, observed that the Tribunals may perform a supplemental role in discharging the powers

conferred by the aforesaid Articles. The Supreme Court also observed that the decisions of such Tribunals would, however, be subject to scrutiny

before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals would, nevertheless, continue to

act like Courts of first instance in respect of the areas of law for which they have been constituted and that it would not be open for litigants to

directly approach the High Courts even in cases where they question the virus of statutory legislations (except where the legislation which creates

the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. In this context it becomes necessary to examine the

provisions of Section 14 of the Administrative Tribunals Act, 1985 which indicates the areas of law for which the Tribunal has been constituted.

The relevant portion of Section 14 of the Administrative Tribunals Act, 1985 reads as under:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the

jurisdiction powers and authority exercisable immediately before that day by all courts(except the Supreme Court * * *) in relation to -

(a) recruitment and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to

a post connected with defense services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any civil service of the Union or any

civil post under the Union ; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any defense services or a post

connected with defense and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State

or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society]

owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred

to in Sub-clause (ii) or Sub-clause (iii) or Clause (b), being a person-whose services have been placed by a State Government or any local or

other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

Explanation : For the removal of doubts, it is hereby declared that references to ""Union"" in this sub-section shall be construed as including

references also to a Union territory.

(2) xxxxxxxx

(3) xxxxxxxx

The expression that is relevant in the present case is "recruitment, and matters concerning recruitment". In S. Tripathi v. Union of India and Anr.

1988 (2) SLR 688 a Division Bench of the Allahabad High Court (Luck now Bench) held that the examination conducted by the UPSC for the

purposes of the All India Services including the Indian Administrative Service,

was part of the recruitment process. The Court held as under:

7. It is not disputed that holding of competitive examination is a condition precedent for appointment to an All India Service for which the petitioner

had applied and appeared and was ultimately declared not to have succeeded. It is also not disputed that appointment to All India Services, at

least, to the Indian Administrative Service as indicated in the petition, is made on the basis of the result of the competitive examination held by the

Union Public Service Commission. The examination, Therefore, is a part of the process of recruitment.

8. In view of the provisions contained in Section 14, since the dispute raised in the present petition directly concerns the recruitment to All India

Service, we are of the opinion that the petition can be entertained only by the Administrative Tribunal.

This finding of the Allahabad High Court has been approved by successive learned Single Judges of this Court in Pranay Kumar Soni (supra) and

Neeraj Kansal (supra). It is, Therefore, clear that the UPSC examination is part of the recruitment process.

18. The question that arises in the present case is whether the issues involved herein can be regarded as relating to the examination conducted by

the UPSC. This question emerges in the context that there is no challenge to the examination conducted in 2006. Insofar as the 2005 examinations

are concerned, that is over. And, the petitioner does not stake any claim in respect thereof because he could not complete that examination as a

result of circumstances beyond his control. By way of this petition, the petitioner is seeking a direction from this Court declaring his appearance in

the 2005 examination to be disregarded as an attempt. The issue here is not so much with regard to the conduct of the examinations but with

regard to the petitioner's eligibility to sit in the examination. Had it been a matter where the examination itself was in question, it would clearly fall

within the ratio of the decisions in Pranay Kumar Soni (supra) and Neeraj Kansal (supra), which in turn followed Section Tripathi (supra). Here the

issue is with regard to eligibility. In my view, the expression used in Section 14 of the Administrative Tribunals Act, 1985 is not just "recruitment"

but "recruitment, and matters concerning recruitment". Had the expression only been "recruitment", there could have been some debate as to

whether a condition of eligibility was a part of recruitment. But the expression used in Section 14 is of much wider amplitude inasmuch as it also refers to "matters concerning recruitment". An eligibility condition would definitely, in my view, fall within the scope of this expression. The question in the present writ petition is whether the petitioner was eligible or not to sit for the 2006 examinations. That is certainly a matter concerning recruitment. Accordingly, the Central Administrative Tribunal would, in view of the Supreme Court decision in L. Chandra Kumar (*supra*), have to function like the court of the first instance with regard to the question of eligibility raised in the present case because this is the precise area of law for which the Tribunal has been constituted, as indicated by Section 14(1)(a) of the Administrative Tribunals Act, 1985. It would, Therefore, not be open to the petitioner to directly approach this Court and, Therefore, it would be appropriate if the petitioner is directed to first approach the Central Administrative Tribunal which, indeed, has jurisdiction to adjudicate upon the issue of eligibility raised by the petitioner herein.

19. This petition is, Therefore, disposed of with the direction that it would be open to the petitioner to approach the Central Administrative Tribunal for a determination of his grievance on merits. The precise question being as to whether his appearance in the examinations in 2005 could be regarded as an attempt or not within the meaning of Rule 4 of the CSE Rules, 2005. Since the petitioner has appeared in the Civil Services Examinations held in 2006 and the results have been tabulated but have been placed in a sealed cover with this Court, it would be appropriate to direct that the results, which include the results of other examinees, be declared. In case the petitioner has failed to qualify in the examinations, then the matters ends there. However, if the petitioner has qualified, assuming that he was eligible, his result shall be operative only and shall be subject to the final decision taken by the Central Administrative Tribunal, in case the petitioner approaches the said Tribunal. With these directions, this writ petition is disposed of. No costs.