

(2002) 09 DEL CK 0274

In the Delhi High Court

Case No : C.W.P. No's. 3561 and 3562 of 1999 and 867 of 2000

Satya Prakash, Anil Kumar and Pradeep Kumar Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 10-09-2002

Acts Referred:

Civil Services Examination Rules, 1996 — Rule 16, 18, 4
Constitution of India, 1950 — Article 16(4)

Citation : (2002) 99 DLT 749 : (2003) 3 SLJ 349

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Amarendra Saran, Prakash Singh and Amit Anand Tiwari, in C.W.P. Nos. 3561 and 3562 of 1999 and Nemo in C.W.P. No. 867 of 200, for the Appellant; V.S.R. Krishna, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—Interpretation of Rules for Civil Services Examination, 1996 (in short "CSE, 1996") falls for consideration in these writ petitions, which arise out of the judgments and orders dated 03.05.1999, 05.05.1999 and 08.12.1999 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") in Original Application Nos. 294 of 1998, 2624 of 1998 and 318 of 1998 respectively filed by the petitioners herein.

2. The fact of the matter is being noticed from C.W.P. No. 3561 of 1999.

The petitioner belongs to Other Backward Class (OBC). Indisputably, reservation was made for Scheduled Castes, Scheduled Tribes and OBC category candidates in CSE, 1996. The petitioner along with others appeared at the said examination. His name in the select list was at Serial No. 606. It is not in dispute that 737 candidates were recommended by the Union Public Service Commission (in short, "the Commissioner") for appointment against the said vacant posts. Vacancies, however, were subject to revision and appointments, which were to be made subject to the final decision of the Supreme Court/Tribunal on the

Special Leave Petitions and the Original Applications, which were said to be pending at the relevant time.

3. The relevant extracts of CSE, 1996 is in the following terms:-

"On the results of the Civil Services (Mains) Examination held by the Union Public Service Commission in November/December, April/May, 1997. The total number of candidates recommended for appointment is 737 including 212 belonging to the Other Backward Classes, 138 to the Scheduled Castes and 59 to the Scheduled Tribes.

Appointment to the various Services will be made according to the number of vacancies available with due consideration to the provisions contained in Rules 4 and 18 of the Rules for the Examination relating to restrictions on the eligibility of candidates appointed to the Indian Police Service and Police Services Group "B"/Central Services, Group "A" and Group "B" on the results of an earlier examination and subject to final decision of the Supreme Court/CATs on the SLPs/O.A.s pending therein. The number of vacancies expected to be filled is 76 (38 General 20 Other Backward Classes, 12 Scheduled Castes and 6 Scheduled Tribes) for the Indian Administrative Service, 14 (7 General, 3 Other Backward Classes, 3 Scheduled Castes and 1 Scheduled Tribes) for the Indian Foreign Service, 96 (48 General, 25 Other Backward Classes, 15 Scheduled Castes and 8 Scheduled Tribes) for the Indian Police Service, 308 (157 General, 72 Other Backward Classes, 56 Scheduled Castes and 23 Scheduled Tribes) for the Central Services, Group "A" and 245 (133 General, 54 Other Backward Classes, 39 Scheduled Castes and 19 Scheduled Tribes) for Group "B" Services. The vacancies indicated above is subject to revision."

The following chart would show the manner in which different categories of jobs were to be allocated to different categories of candidates:-

Category / Cadre	IAS	IFS	IPS	Gr. A	Gr. B	Total
General	38	07	48	157	133	383
OBC	20	03	25	72	54	174
SC	12	03	15	56	39	125
ST	06	01	08	23	19	57
Total	76	14	96	308	245	739

A bare perusal of the aforesaid chart would clearly show that 174 posts were to be filled up by OBC candidates selected with relaxed standards as per the extant rules.

4. The respondents contended before the Tribunal as also before us that all 174 posts earmarked for OBC candidates have been filled up in the following terms:-

"12. The candidates recommended by the UPSC for appointment against the

vacancies earmarked for OBC have been allocated against all the 174 vacancies for OBC candidates in various services/posts. The list of such candidates is at Annexure III."

However, from the impugned judgments of the learned Tribunal as also the counter affidavit filed by the respondents, it would appear that there had been one to one correspondence between a sanctioned vacant post and the candidate recommended.

It is also not in dispute that although the petitioner was selected as an OBC category candidate and was placed at Serial No. 606, whereas the candidate whose name figured at Serial No. 620 had been offered a job, he was denied the same.

The petitioner filed a representation in this behalf, but the same was rejected by a letter dated 10.10.1997, which is in the following terms:-

"No. 13011/50/97-AIS(I)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

New Delhi, Dated: 10.10.1997

To,

606 OBC WA

SATYA PRAKASH

CA-BLOCK, HOUSE NO. 59-C,

SHALIMAR BAGH,

DELHI-52.

Subject: Civil Services (Main) Examination, 1996 - Allocation of Service reg.

Madam/Sir,

I am directed to say that you have been considered for appointment to a service on the basis of CSE-1996 in accordance with CSE-96 Rules. However, due to non-availability of any vacancy in your turn, you have not been allocated to any service on the basis of said examination.

Yours faithfully,

Sd/-

(Bharat Prasad)

Under Secretary to the Govt. of India

Questioning the aforesaid order, the petitioner filed an Original Application before the Tribunal, which was marked as O.A. No. 294 of 1998.

By reason of the impugned judgment dated 03.05.1999 in O.A. No. 294 of 1998, the said Original Application was dismissed.

5. The learned Tribunal noticed that both the parties raised their rival contentions inter alias relying on or on the basis of the judgment of the Apex Court in Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, . In the said judgment, it has been held:-

"... In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate."

6. The respondents contended that 36 persons, who fell in the OBC quota also competed on merit and as such they were to be adjusted although they were recommended in the general merit list having regard to the decision of the Apex Court in Ritesh R. Sah's case (Supra).

7. The contention of the petitioner, however, on the other hand, is that having regard to the various judgments, which had been referred to in Ritesh R. Sah's case (Supra) including the Constitution Bench decision of the Apex Court in R.K. Sabharwal and others Vs. State of Punjab and others, the Tribunal must be held to have committed an error insofar as it failed to take into consideration that a reserved category candidate is selected in the general merit list may be granted job from the reserved category, but for computing the percentage of reservation he would be deemed to have been allocated a job as a general category candidate, as a result whereof, the chance of other OBC category candidates in the matter of allocation of any other service is not taken away or otherwise affected.

8. The learned Tribunal in its judgment held:-

"10. ... The UPSC its letter dated 4.6.97 communicating their recommendations

along with the Press Note to the first respondent had stated that 54 candidates (39 OBC, 13 SC and 2 ST candidates) had qualified and the results of 2 candidates), one OBC and one general has been withheld. As far as OBC candidates are concerned, the category to which the applicant belongs, against 174 vacancies, the UPSC had recommended 212 candidates. This was due to the fact that 39 OBC candidates had been adjusted against general vacancies under the proviso to Rule 16(ii) as they were recommended without any relaxed standards. This goes to show that so far as the UPSC is concerned, 39 OBC candidates are not reckoned against reserved vacancies with regard to the provisions of proviso to Rule 16(ii), but when the DoPT takes into account the preference of the candidates, they have adjusted 36 OBC candidates who are initially recommended against general vacancies, this number of general candidates have also lost their opportunity because of the time factor and lack of any provision to carry over these general vacancies to the next recruitment year. In short, the procedure adopted by the respondents has resulted in some of the reserved candidates who were recommended for appointment by the UPSC including the applicant as well as a number of general candidates also missing out their chance in that year. In our view, Therefore, before the actual results were published by respondent 2-UPSC, if the respondents had examined the matter in a coordinated manner, taking into account both the proviso to Rules 16(ii) and Rule 18, perhaps the present situation could have been avoided, where the applicant has become a "prisoner of hope" (See observations of the Supreme Court in NBCC v. S. Raghunathan and Ors. (Civil) Appeal No. 4483 of 1998 decided on 28.8.1998 - Supreme Court 3 JJ). The Dy. Secretary, DoPT who was directed to be present on the last day of hearing, conceded fairly to the above and informed that the respondents are also looking into this aspect of the matter for appropriate remedial action in future. However, as held above, we find no element of arbitrariness in the decision of the respondents regarding application of the rules or policy for reservation for OBC candidates, though the applicant himself might have unwillingly become a "prisoner of hope", which justifies any interference in that case."

Thus even the Deputy Secretary of Department of Personnel & Training (in short, "DoPT"), who was personally present before the Tribunal conceded that anomalies existed in the matter and stated that the respondent shall be looking into this aspect of the matter for appropriate remedial action only in future. Such an attitude on the part of the respondents as well as the Tribunal cannot be appreciated. Having regard to the fact that the petitioners by reason of a wrong procedure adopted by the respondents as well as Tribunal should have made an attempt to construe the rules in such manner by which the grievances of the petitioner could have been ameliorated.

Despite the aforementioned finding that an illegality has been committed, the petitioner had been denied that relief only on the ground that there was no arbitrariness on the part of the respondents.

9. Mr. Amrendra Saran, the learned senior counsel appearing on behalf of the petitioner, would submit that the learned Tribunal committed a serious error in arriving at the aforementioned finding insofar as it failed to construe Rule 16 in its proper perspective.

The learned senior counsel would contend that although the respondents had undertaken the selection procedure purported to be on the basis of the decision of the Apex Court in Ritesh R. Sah's case (Supra), the very theme thereof has completely been over-looked.

Mr. Saran would urge that having regard to the Rules and the decision of the Apex Court in Ritesh R. Sah's case (Supra) all the 174 candidates belonging to OBC category ought to have been provided job in one service or the other having regard to the fact that even the Commission had recommended 213 candidates against the vacancies meant to be filled up by 174 OBC candidates.

10. Mr. V.S.R. Krishna, the learned counsel appearing on behalf of the respondents, on the other hand would submit that the allocation to a particular service would depend upon preferences given by the candidates.

Having regard to Rules 2 and 18 of the said Rules, the learned counsel would contend that in the event they cannot be allocated service in terms of the preferences indicated by them, despite obtaining a higher rank, a candidate may be denied a job.

It was contended that 39 candidates who competed on merit were not to be treated as general category candidates having regard to the decision of the Apex Court in Ritesh R. Sah's case (Supra) and they having been allocated their service thereof, the other OBC candidates were denied job in view of the fact that in the event they also are taken in the service, the reservation would exceed 50%.

11. CSE, 1996 was held in terms of the notification dated 14.12.1996 of 28 different categories of services.

Rules 2, 16 and 18 of the Rules, which are relevant for our purpose, read thus:-

"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 invalid 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 is not allotted to any one of the services/posts for which 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 preferences."

16. (i) After interview, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the Main Examination (written examination as well as interview) and in that order so many candidates as are found by the Commission to be qualified at the examination shall be recommended for appointment up to the number of unreserved vacancies decided to be filled on the result of the examination.

(ii) The candidates belonging to any of the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes may to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes be recommended by the Commission by a relaxed standard, subject to the fitness of these candidates for selection to the services.

Provided that the candidates belonging to the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes who have been recommended by the Commission without resorting to the relaxed standard referred to in this sub-rule, shall not be adjusted against the vacancies reserved for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes.

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."

12. The core question, which arises for consideration in these writ petitions, is as to whether those OBC candidates were selected on merit and were placed in the list of open category candidate having regard to the decision of the Apex Court in Ritesh R. Sah's case (Supra) could still for the purpose of placement be considered to be OBC candidate leading to deprivation of the OBC category candidates from allocation of service whatsoever.

The answer to the said question must be rendered in the negative.

13. It is evident that when the Rules for CSE, 1996 by way of notification dated 14.12.1996 were notified, the fall out of the decision of the Apex Court in Ritesh

R. Sah's case (Supra) had not been considered

The respondents as also learned Tribunal proceeded to give effect to Rules 2 and 18 without taking into consideration Rule 16 thereof. They also did not consider the effect of the Note appended to Rule 2 in its proper perspective.

Had the matter of reservation not interdicting, it was permissible for the respondents to contend that having regard to the limited choice, a candidate in the competitive examination may be denied job, but in view of the provisions of Note to Rule 2, such a contention cannot be accepted.

So far as the reserved category candidates are concerned, the recommendations of the Commission have to be considered having regard to the relaxed standard applied in their case, as is evident from Sub-rule (ii) of Rule 16 aforementioned. The proviso appended to Rule 16 in no uncertain terms states that such candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes, who had been recommended by the Commission without resorting to the relaxed standard, i.e., on merit, shall not be adjusted against the vacancies reserved for the respective reserved category candidates.

Thus, in the event the submission of Mr. Krishna is accepted, the same would run contrary to the proviso appended to Rule 16 aforementioned.

14. Let us now consider as to how jobs were allocated for the seats earmarked for OBC category candidates. Three OBC category candidates were included in the general merit list; 39 OBC category candidates competed even with the general category candidates on merit; and out of them, 39 OBC category candidates included in the general merit list issued by the Commission, however, had been granted jobs from the quota reserved/earmarked for the OBC category candidates.

Although 174 vacancies earmarked for the OBC category candidates were available only 138 OBC category candidates were provided with jobs and the rest 36 OBC category candidates had been denied there from.

It is not denied or disputed that a candidate, who was at Serial No. 620 in the merit list had been provided with a job whereas the petitioner, whose rank was 606, has been denied there from.

15. The decision of the Apex Court in Ritesh R. Sah's case (Supra) as also the proviso to Rule 16 clearly prohibit deprivation of the benefit of the reservation only because some reserved category candidates has also been selected on merit inasmuch as they were not to be treated as reserved category candidates except for a limited purpose, namely, for the purpose of allocation of service, but thereby OBC candidates cannot be deprived of their right to obtain allocation of any service.

Furthermore, the decision of the Apex Court in Ritesh R. Sah's case (Supra) cannot be stretched beyond a point. It cannot be contended that both for the

purpose of allocation of job as also for the purpose of computation as regards number of OBC category candidates those OBC candidates selected on merit although were to be treated as general category candidates but for all intent and purport they would still be considered to be the reserved, category candidates.

It is also not in dispute that the earmarked figures of 174 was reached by the respondents by including 36 OBC candidates, who belong to that category, but were selected in the general merit list as per Rule 16(i) of the CSE, 1996 Rules and thereby confining OBC category candidates at 27% of the total vacancies.

16. Note appended to Rule 2 is absolutely clear and unambiguous. If a candidate is not allotted to any one of the services/posts for which 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 service/post in accordance with their preferences.

Keeping in view the fact that 737 candidates were recommended by the Commission against 737 posts, we fail to understand as to what had, happened to the services/posts, which remained after allocation of service all the candidates in terms of their preferences.

17. Rule 18, whereupon strong reliance has been placed, does not take away the constitutional right of a reserved category candidate. It is really a matter of great surprise that the Central Government without framing appropriate guidelines for allocation of services / jobs evolved a procedure as a result whereof the purpose and object of grant of reservation itself had been taken away.

The respondents, thus, have given effect only to a part of the decision of the Apex Court in Ritesh R. Sah's case (Supra) while ignoring the second part thereof.

The Apex Court clearly held that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted as against the quota of the Scheduled Castes or Schedules Tribes or any other reserved category since the same would be against the constitutional mandate of Article 16(4) of the Constitution of India.

18. The Apex Court noticed its earlier decision in Union of India and others etc. Vs. Virpal Singh Chauhan etc., , R.K. Sabharwal's case (Supra), Indra Sawhney v. Union of India, (1992) 6 SCR 321 and various other decisions for the purpose of arriving at the finding that the candidate belonging to the reserved category, but selected on the rule of merit and not by virtue of the rule of reservation would not be counted as a reserved category candidate.

19. The decision of the Apex Court in Ritesh R. Sah's case (Supra) provides for a guidelines only to the effect that these reserved category candidate would not be put to disadvantageous situation despite the fact that they are more meritorious than other OBC candidates and as such they may not be deprived from the benefit of getting jobs in services of their liking, but it never contemplated a

situation that by reason of the process of sliding down, OBC candidates for whose reservation had been made would be deprived of any service at all.

The learned Tribunal, Therefore, committed a manifest error in interpreting Ritesh R. Sah's case (Supra) and, thus, came to an erroneous conclusion.

A decision, as is well known, must be read in its entirety and reasonably. It cannot be read as a statute.

20. In Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the law has been laid down in the following terms:-

"19. Courts should not place reliance on decisions without discussion as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton 1951 AC 737 , Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. 1970 (2) AER 294 Lord Reid said, "Lord Atkin's speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were as Act of Parliament." And, in Herrington v. British Railways Board, (1972) 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

20. The following words of Lord Denning in the matter of applying precedents have become locus classics:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the

entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, Therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

xx x xx "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

21. For the reasons aforementioned, the action on the part of the respondents being contrary to the law laid down by the Apex Court, as also contrary to the Article 16(4) of the Constitution of India cannot be sustained.

These writ petitions are, Therefore, allowed and the impugned judgments of the Tribunal as also the order impugned before it being letter dated 10.10.1997 are set aside and the respondents herein are directed to allot suitable jobs to the petitioners. The petitioners shall also be entitled to costs, Advocates fee is assessed at Rs. 5,000/-.