

(2002) 05 DEL CK 0167

In the Delhi High Court

Case No : C.W.P. No's. 127 and 4246 of 1999

Union of India (UOI) and Another

APPELLANT

Vs

Ms. Amita Sood and Others

RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Army Act, 1950 — Section 12, 21, 4, 4(1), 4(3)

Army Rules, 1954 — Rule 16

Constitution of India, 1950 — Article 14, 15, 15(1), 16, 16(1)

Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 — Rule 18

Hindu Minority and Guardianship Act, 1956 — Section 6

Citation : (2002) 05 DEL CK 0167

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

Bench : Division Bench

Advocate : Rekha Palli and Babita Puniya, for the Appellant; K.N.R. Pillai, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—An Order of Central Administrative Tribunal (hereinafter referred to as "the Tribunal") passed against the petitioner herein, who was not a party in the Original Application filed by the petitioner against the Delhi Administration, declaring Rule 16(vii) of the Combined Engineering Services Examination, 1992 as unconstitutional, is the subject matter of the writ petitions.

2. As per the rules published by the respondent No. 2 in Gazette of India dated 15.02.1992, the candidates are allotted to various Ministries/Departments taking into account their rank, preference, category and vacancies. The respondent No. 1, who is a general candidates, had appeared in Civil Engineering stream Exam had given preferences for five services only viz. IRSE, IRSS, CWES, CES, SIS - A out of a total 12 services. The respondent No. 1 had secured 137th rank in 1992 Exam. Since her rank was lower than that of the candidates allotted of the aforesaid five services, she could not be allotted to the Department for which she had give preferences.

3. It is not in dispute that the examinations were held for combined Civil Services. The petitioner ranked 137th in 1992 Exam, and 201 persons had been taken in service. The petitioner had opted for five services and having regard to the rank obtained by her, she could not be accommodated in other services, she could be accommodated only in Border Roads Development Board (hereinafter referred to as "the Board").

4. Having regard to the aforementioned rule, she was denied appointment. Although persons who were below her in the select list had been appointed. Before the learned Tribunal, the petitioner did not implead the Board.

5. The learned Tribunal by an elaborate judgment held negatively by reason of the extension of the provision of Section 12 of the Army Act, 1950 (hereinafter referred to as "the Act").

6. Ms. Rekha Palli, the learned counsel appearing on behalf of the Union of India, contended that the impugned rule most not be held to be ultra vires, the respondents right to equality guaranteed under Article 14 and 16 of the Constitution had been violated.

7. The review application filed by the respondent had been denied. The Board without seeking leave of this Court has filed a writ petition, which was marked as C.W.P. No. 127 of 1999; a writ petition has also been filed by the Union of India through Railway Administration, although at the time of hearing, nobody had appeared to support the same.

8. Ms. Rekha Palli, the learned counsel appearing on behalf of the petitioner, in C.W.P. No. 4246 of 1999 would submit that the rules could not have been ultra vires.

9. In view of the fact that in certain categories of service, ladies can be prohibited in particular Section 12 of the Act had been applied therein.

10. The learned counsel would contend that the services in the Board would come under the Statute Central Civil Services and thus the impugned order could not have been passed.

11. According to the learned counsel, the Tribunal had no jurisdiction to deal with the matter having regard to the provisions of the Administration Tribunals Act, 1985. In any event, the learned counsel in support of the said contention has strongly relied upon a decision of the Apex Court in R. Viswan and Others Vs. Union of India (UOI) and Others, and an unreported decision in SLP (Civil) No. 8096 of 1995 disposed of on 09.01.1998 titled "Union of India v. Smt. Vidyawati".

12. The learned counsel would contend that, in any event, the said question ought to have been decided in absence of the petitioner.

13. Mr. K.N.R. Pillai, the learned counsel appearing on behalf of the respondents, on the other hand, would submit that the Border Road Engineering Services is also a Central Civil Services. According to the learned counsel that the impugned

instruction is not statutory rule and by reason of such instructions, the fundamental right of the respondent could not have been taken away.

14. Our attention has been drawn to the affect that the said examination was conducted by the Railway Authorities in relation to 12 services and the Boarder Road Engineering Services is one of them

15. The learned counsel would contend that the rules are wholly unreasonable and the respondent although passed her examination in the year 1992, she had been denied services for such a long time.

16. The Ministry of Railways through the Railway Board for a Combined Competitive Engineering Services Examination to be held by Union Public Services Commission in 1992 published certain guidelines for general information. The said Combined Competitive Engineering Services Examination were to be held in respect of the following :-

CATEGORY I - CIVIL ENGINEERING

Group A Services/ Posts

- (i) Indian Railway Service of Engineers.
- (ii) Indian Railway Stores Service (Civil Engineering Posts).
- (iii) Central Engineering Service.
- (iv) Military Engineer Service (Building and Roads Cadre).
- (v) Military Engineer Service (Surveyor of Works Cadre).
- (vi) Survey of India Service Group-A (Civil Engineering posts).
- (vii) Central Water Engineering Service (Civil Engineering posts).
- (viii) Assistant Executive Engineer (Civil), (P&T) (Civil Engineering Wing).
- (ix) Indian Ordnance Factories Service (Engineering Branch) Civil Engineering Posts.
- (x) Central Engineering Service (Roads) Group- A.
- (xi) Assistant Executive Engineer (Civil) in Border Roads Engineering Service Group-A.

Group - B Services/Posts

- (xii) Assistant Engineer (Civil) in the Civil Construction Wing, All India Radio.

CATEGORY II - MECHANICAL ENGINEERING

Group A Services / Posts

- (i) Indian Railway Service of Mechanical Engineering.

- (ii) Indian Railway Stores Service (Mechanical Engineering Posts);
- (iii) Central Water Engineering Service (Mechanical Engineering Posts);
- (iv) Central Power Engineering Service (Mechanical Engineering Posts);
- (v) Indian Ordnance Factories Service (Engineering Branch) (Mechanical Engineering Posts);
- (vi) Indian Naval Armaments Service (Mechanical Engineering Posts);
- (vii) Military Engineer Service (Electrical and Mechanical Cadre) (Mechanical Engineering Posts);
- (viii) Central Electrical & Mechanical Engineering Service (Mechanical Engineering Posts);
- (ix) Posts of Assistant Development Officer (Engineering) in the Directorate General of Technical Development (Mechanical Engineering Posts);
- (x) Assistant Executive Engineer (Elect. & Mech.) Mechanical Engineering Posts, Border Roads (Engineering Service, Group - A).
- (xi) Drilling Engineer (Jr.) In G.S.I.
- (xii) Mechanical Engineer (Junior) Group A in G.S.I.
- (xiii) Assistant Manager (Factories) Department of Telecom (Telecom Factories Organisation).

CATEGORY III - ELECTRICAL ENGINEERING

Group A Services/ Posts

- (i) Indian Railway Service of Electrical Engineer;
- (ii) Indian Railway Stores Service (Electrical Engineering Posts);
- (iii) Central Electrical & Mechanical Engineering Service (Electrical Engineering Posts);
- (iv) Indian Ordnance Factories Service (Engineering Branch) (Electrical Engineering Posts);
- (v) Indian Naval Armament Service (Electrical Engineering Posts);
- (vi) Central Power Engineering Service (Electrical Engineering Posts);
- (vii) Assistant Executive Engineer (Electrical) (P & T) (Civil Engineering Wing);
- (viii) Post of Assistant Development Officer (Engineering) in the Directorate General of Technical Development (Electrical Engineering Post);
- (ix) Military Engineer Service (Electrical and Mechanical cadre) (Electrical Engineering Posts);

Group B Service/ Posts

(x) Assistant Engineer (Electrical) in the Civil Construction Wing of All India Radio.

CATEGORY IV - ELECTRONICS AND TELECOMMUNICATION ENGINEERING

Group A Services / Posts

(i) Indian Railway Service of Signal Engineers;

(ii) Indian Railway Stores Service (Telecommunication / Electronics Engineering Posts);

(iii) Indian Telecommunication Service;

(iv) Engineer in Wireless Planning and Co-ordination Wing / Monitoring Organisation; Ministry of Communication (Department of Telecommunication);

(v) Indian Broadcasting (Engineers) Service;

(vi) Indian Ordnance Factories Service (Engineering Branch) (Electronics Engineering Posts);

(vii) Indian Naval Armament Service (Electronics Engineering Posts);

(viii) Central Power Engineering Service (Telecommunication Engineering Posts);

(ix) Post of Assistant Development Officer (Engineering) in the Directorate General of Technical Development (Electronics and Telecommunication Engineering Post);

Appendix 3 of the said rule provides for the brief particular relating to the services/posts to which recruitment was being made on the results of the examination.

17. Rule 16 refers to the Boarder Road Engineering Services. Rule 16 (vii) is in the following term :-

Rule 16 (vii) :-

Ladies are ineligible for appointment in Border Roads Engineering Service Group A in view of the extension of the provisions of Section 12 of the Army Act to this Service.

18. The short question, which arises for consideration is as to whether such a blanker bar could have been imposed having regard to the provisions contained in the provisions of the Act.

Section 12 of the Act reads as under :-

"Section 12. Ineligibility of females for enrolment or employment.

No female shall be eligible for enrolment or employment in the Army, except in such corps, department, branch or other body forming part of, or attached to

any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising maintenance of any service axillary to the regular Army or any branch thereof in which female are eligible for enrolment or employment."

19. A bare perusal of the said Act would clearly show that even where the provision of Section 12 of the Act is applicable has been extended, a blanket bar in respect of employment of the lady candidates does not exist. It was admitted before the Tribunal that Boarder Road Engineering Services consists both of Army Officers and civilian in the engineering field.

20. By reason of a SRO 37 dated 25.01.1985, the Boarder Roads Engineering Service is a Force raised and maintained in India under the authority of the Central Government and the provisions of Section 12 of the Act apply. However, it has not been denied that the said service consists both of Army Officers and civilians.

21. There are also few static units located in New Delhi, Pune, Calcutta, Pathankot, Chandigarh, etc. The contention raised on behalf of the respondent to the effect that the respondent could be placed in at any of the aforementioned places was traversed thereby chances of transfer of the male candidates shall be impaired. It has also not been disputed that ladies are appointed in all the three wings of the Armed Forces.

22. Articles 14, 15 and 16 of the Constitution of India (in short, "the Constitution") read thus :-

"Article 14 Equality before Law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

"Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and place of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in Clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. (Clause (4) was inserted by the Constitution (First Amendment) Act, 1951.

Article 16. Equality of opportunity in matters of public employment.

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory, prior to such employment or appointment. [The italicized words were substituted by the Constitution (7th Amendment) Act, 1956.]

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens, which in the opinion of the State, is not adequately represented in the service under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favor of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the service under the State. (Inserted by the Constitution (77th Amendment) Act, 1995 w.e.f. 17.6.1995.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under Clause (4) and (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of that year. (Inserted by the Constitution (Eighty - First Amendment) Act, 2000.)

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be

a person professing a particular religion or belonging to a particular denomination.

The matter reading to discrimination on the ground of sex had been the subject matter of various decisions of the Apex Court.

23. In *Miss C.B. Muthamma, I.F.S. Vs. Union of India (UOI) and Others*, , Krishna Iyer, J. observed :-

"5. Discrimination against women, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries, the same risk is run by government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the Service are likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member. In these days of nuclear families, inter- continental marriages and unconventional behavior, one fails to understand the naked bias against the gentler of the species. Rule 18 of the Indian Foreign Service (Recruitment Cadre, Seniority and Promotion) Rules, 1961, runs in the same prejudicial strain :

(1)

(2)

(3)

(4) No married woman shall be entitled as of right to be appointed to the service.

6. At the first blush this rule is in defiance of Article 16. If a married man has a right, a married women, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is Justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India's humanity, viz., our women, is a sad reflection on the distance between Constitution in the book and law in action. And if the executive as the surrogate of Parliament, makes rules in the teeth of Part III especially when high political office, even diplomatic assignment has been filled by women, the inference of die-hard allergy to gender parity is inevitable."

24. In *M/s. Mackinnon Mackenzie and Co. Ltd. Vs. Audrey D'costa and another*, , the Apex Court has held that settlement arrived at between the management and employees after negotiations cannot be a valid ground for effecting discrimination in payment of remuneration between male and female employees performing same or similar nature of work having regard to the provisions contained in Equal Remuneration Act, 1976. It was held thus :-

"11. It is not disputed that the male Stenographers came under the category of "Clerical & Subordinate Staff". It is also not disputed that the terms regarding the fitment of lady Stenographers either in the "A" grade or "B" grade, referred

to in the settlement is less favorable to them and the same conditions were allowed to remain in force even after the Act came into force. The very fact that the lady Stenographers are treated differently and as a class different from the clerical and subordinate staff by paying less remuneration even though they have put in the same length of service and they are placed in the same scale of pay smacks of discrimination. The discrimination thus brought about by the terms of settlement only on account of the sex of the employees cannot be allowed to persist in view of Section 4 of the Act. We do not agree that the work of the Confidential Lady Stenographer is a sex based one like the work of air hostesses. There is no customs or rule that only ladies can be Confidential Stenographers. If only women are working as Confidential Stenographers, it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographers nor disqualified on account on sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as Confidential Stenographers such practice cannot be relied on to deny them equal remuneration due to them under the Act. The management is liable to pay the same remuneration to all the Stenographers on the same basis irrespective of their sex. The salary and remuneration payable to the lady Stenographers should be computed in accordance with the terms applicable to all the male Stenographers. When so computed, it is not disputed, that respondent. I would be entitled to higher remuneration as observed by the appellate authority and the learned Single Judge of the High Court. We are of the view that the petitioner cannot derive any benefit from Sub-section (3) of Section 4 of the Act and the proviso thereto because Sub- section (3) would be attracted only where in an establishment or an employment rates of remuneration payable before the commencement of the Act for the men workers and for the women workers for the same work or work of similar nature are different. In the instant case after the settlement was arrived at there was a common pay scale both for men and women as can be seen from the settlement, referred to above. The discrimination was, however, brought about while carrying out the fitment of the lady Stenographer in the said scale of pay. The proviso to Sub-section (3) to Section 4 comes into operation only where Sub-section (3) is applicable. Since there are no different scales of pay in the instant case Sub-section (3) of Section 4 would not be attracted and consequently, the proviso would not be applicable at all. The proviso cannot travel beyond the provision to which it is a proviso. This is a case to which Sub-section (1) to Section 4 of the Act applies because the impugned remuneration payable to lady Stenographers has been reduced on account of the inequitable provision regarding fitment in the common scale of pay which is applicable to both men and women Stenographer. Having stated that there was a common pay scale for both male Stenographers and female Stenographers it is not open to the petitioner to contend that the order of the High Court was contrary to the proviso to Sub-section (3) to Section 4 of the Act. We, Therefore, reject the contention that the order passed by the High Court in contrary to the proviso to Sub-section (3) of Section 4 of the Act."

25. The decision of the Apex Court in *Indra Sawhney etc. etc Vs. Union of India and others, etc. etc.*, , was in a different context. It was held that equality contemplated by Article 14 and other cognate Article including Articles 15(1), 16(1), 29(2) and 38(2) of the Constitution, is secured not only when equals are treated equally but also when unequal are treated unequally. Conversely, when unequal are treated equally, the mandate of equality before law is breached. Inequality, Therefore, is required to be abolished, as it is necessary to adopt positive measure.

26. In *Madhu Kishwar and others Vs. State of Bihar and others*, , the Apex Court referring to its earlier decision in *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , held thus :-

"...The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right of life. An equally important facet of that right is the right to livelihood because, one person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right of livelihood is not regarded as a part of the right of life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right of life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force, which peoples their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. In *Baksey v. Board of Regents*, (1954) 347 MD 442, that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois* (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. The observation was quoted with approval by this Court in *Kharak Singh Vs. The State of U.P. and Others*,

It was further observed that :-

"Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article 41, which is another Directive Principle, provides, inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases of unemployment and of undeserved want. Article 37 provides that the Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country. The principles contained in Article 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21."

27. However, the Court having regard to the fact that rules of succession are assessable of providing differential treatment not necessarily equal and having regard to the customs of tribal inhabitants did not declare the law ultra vires.

The Court referring to CEDAW observed as under :-

"36. ... The Court should, Therefore, endeavor to find out whether the disposition clauses in the instrument will elongate the animation of Section 14 and would permeate the aforesaid constitutional conscience to relieve the Hindu female from the shastric bondage of limited estate. Articles 14, 15 and 16 frown upon discrimination on any ground and enjoin the State to make special provisions in favor of the woman to remedy past injustice and to advance their socio-economic and political status. Economic necessity is not a sanctuary to abuse a woman's person. Section 14, Therefore, gives to every Hindu woman full ownership of the property irrespective of the time when the acquisition was made, namely, whether it was before or after the Act had come into force, provided, she was in possession of the property. Discrimination on the ground of sex in matters of public employment was buried fathoms deep and is now a relic of the past by decisions of this Court. In *C.B. Muthamma v. Union of India*, *Air India v. Nergesh Meerza* and a host of other decisions are in that path. True that Clauses (h) and (j) of para 3 of Schedule 6 of the Constitution give power to district or Regional Councils in North Eastern States to alter law relating to inheritance and customs; they too are bound by the law declared under Article 141 of the Constitution to be consistent with Articles 15(3), 14 and preamble of the Constitution."

28. In *Ms. Githa Hariharan and Another Vs. Reserve Bank of India and Another*, , the Apex Court again referred to CEDAW and Beijing Declaration and interpreted Section 6 of the Hindu Minority and Guardianship Act so as to enable a female to

exercise right of guardianship only if his father is not available and not in a case when he is dead only.

29. We, Therefore, having regard to the fact that there does not exist an absolute bar on the appointment of woman candidate in the Border Road Engineering Services, we are of the opinion that the impugned judgment cannot be faulted.

30. So far as the submission of Ms. Rekha Palli to the effect that the Tribunal had no jurisdiction to entertain the matter cannot be accepted, when it is admitted that the Border Road Engineering Services is a Central Civil Services.

31. The respondents application was mainly centered round to the fact that she although was entitled to an appointment having regard to her right under Article 14 of the Constitution she had been denied the same.

32. Having regard to certain circumstances, each service is a Central Civil Services and in a case of this nature even the writ petitioners could have come out with the suggestion that she may be appointed in any other service. It may be true that having regard to the limited option given by the respondent she could not have been accommodated in other services having regard to the fact that the persons appointed therein got more ranks than her, but in the peculiar facts and circumstances of this case and particularly with a view to uphold the Constitutional right of a candidate, the authorities could have point out the difficulties faced by the candidates and ask her to make further option.

33. Even in a case of this nature, the rule akin to the rule of sliding down also could have been applied.

34. The decision of the Apex Court in R. Viswan & Ors. (Supra) was rendered in a different fact situation.

35. The year 2001 was declared as the year of Empowerment of Women" by the Government of India, with the purpose to initiate and accelerate action to improve access to an control of resources by women so that they can take their rightful place in the mainstream of the nation"s social, political and economic life. A national policy for the empowerment of women for the said purpose had also been adopted.

36. The question, which arose for consideration therein, was that although in GREF, the personnel who are directly recruited were governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965, but for the purpose of discipline, they are governed by certain provisions of the Army Act, 1950 and the Army Rules, 1954 as laid down therein. A question also arose as regards validity of Section 21 of the Act. The Apex Court held that for the purpose of Article 33, the rights of the personnel of GREF can be restricted.

37. The said decision, however, is not an authority for the proposition that even after coming into force of the Administrative Tribunals Act, 1985, those who

appeared at the Combined Engineering Services Examination, 1992 for the purpose of recruitment, would be disentitled from filing such an application when the matter of recruitment was not restricted to recruitment in the Army alone.

38. A contention has been raised by way of defense as to why the respondent was denied recruitment and in that connection only, the question relating to various instruction, Rule 16(vii) had to be decided. The fact that the Tribunal has arrived to decide such question is no longer rest integra having regard to recent pronouncement of the Apex Court in L. Chandra Kumar Vs. Union of India and others, .

39. As noticed hereinbefore, the petitioners herein even in the peculiar facts and circumstances of this case, could have offered the respondent a job in any other service.

40. We, Therefore, are of the opinion that, in the facts and circumstances of this case, it cannot be said that the Original Application before the Tribunal was not maintainable. So far as the question of non-compliance of the principles of natural justice is concerned, in our opinion, the same has no basis.

41. In any event, the questions, which could be raised by the petitioner, had been raised herein. the recruiting agency, namely, Railway Authorities had been heard. They had also filed a writ petition questioning the Order of the learned Tribunal, but as noted hereinbefore, nobody had appeared to support the same.

These writ petitions are accordingly dismissed. However, in the facts and circumstances of the case, no orders us to costs except the aforementioned directions.