

Arti K. Chhabra and Others

Vs

Union of India and Others

Civil Appeal No. 5300 of 1992

(M.N. Venkatachaliah, P.B. Sawant, N.P. Singh JJ)

11.12.1992

JUDGEMENT

SAWANT, J.:-

1. Special leave granted. The appellants challenge the validity of the proviso to Rule 17 of the Civil Services Examination Rules, 1990 ('1990 Rules') for competitive examination held by the Union Public Service Commission in 1990 for the purpose of filling up the vacancies in various Central Civil Services. Rule 17 reads as follows:

"17. 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 Service, Group 'A' mentioned in column 2 below on the results of an earlier examination will be considered only for appointment in services mentioned against that service in column 3 below on the results of this examination.

(see table below)

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

1 2 3

1. Indian Police Service I.A.S., I.F.S., and Central Services, Group 'A'

2. Central Services I.A.S., I.F.S., and I.P.S.

Provided further that a candidate who is appointed to a Central Service, Group 'B' on the results of an earlier examination will be considered only for appointment to I.A.S., I.F.S., I.P.S. and Central Services Group 'A'.

2. The Central Services Group 'A' consists of as many as 45 services including Indian Revenue Service which comprises among others, Customs Branch (Indian Customs Service, Group 'A') and Central Excise Branch (Central Excise Service, Group 'A'). Similarly, Group 'B' Services consist of a number of services. But with them, we are not concerned in this appeal. The result of the aforesaid

rule is that a candidate who has been approved for appointment to Indian Police Service can for bettering his prospects, appear in the next examination and on the basis of his performance can be considered for appointment either in I.A.S. or I.F.S. or to any of the Central Services Group 'A'. Similarly, if he has been approved for appointment to any of the Group 'A' Services, he can for bettering his prospects appear in the next examination and on the basis of his performance in that examination, can be considered for appointment in I.A.S. or I.F.S. or I.P.S. but not for appointment in any other Group 'A' Services. There is a similar restriction on the horizontal movement in Group 'B' Services.

The I.A.S., I.F.S. and I.P.S. form three distinct Services. There was a time when among the three, I.F.S. was considered the most prized service, I.A.S. being the next favoured service. It appears that during recent years, the scales have changed in favour of I.A.S. which is given priority by most of the candidates. The I.P.S. stands by itself, and though may not be considered as covetous as I.A.S. and I.F.S., is prized for itself and has little in common with other Services. This rule, therefore, virtually provided an upward mobility for those appointed to I.P.S. and Central Services Group 'A', I.P.S. being considered in many respects next only to I. A. S. and I. F. S. However, in one respect, the rule permitted either downward or horizontal movement inasmuch as those selected for appointment to I.P.S. could also move to Group 'A' Services by qualifying themselves in the next examination. However, the horizontal movement among the Group 'A' Services was not permitted and the candidate who was approved for appointment to any of the Group 'A' Services could not on the basis of the results of the next examination opt for any other service in that Group. If he wanted to do so he could do it only by resigning from the Group 'A' Service for which he was approved on the basis of his earlier examination and then take the next examination for competing for the other services in that Group. This was on account of the second proviso to Rule 4 of the said Rules which read as under:

"4. Every candidate appearing at the examination, who is otherwise eligible, shall be permitted three attempts at the examination, irrespective of the number of attempts he has already availed of at the IAS etc. Examination held in previous year. The restriction shall be effective from the Civil Services Examination held in 1979. Any attempts made at the Civil Services (Preliminary) Examination held in 1979 and onwards will count as attempts for this purpose:

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 a candidate who on the basis of the results of the previous Civil Examination, had been allocated to the IPS or Central Services, Group 'A' but who expressed his intention to appear in the next Civil Services (Main) Examination for competing for IAS, IFS, IPS or Central Services, Group 'A' and who was permitted to abstain from the probationary training in order to so appear, shall be eligible to do so, subject to the provisions of Rule 17. If the candidate is allocated to a service on the basis of the next Civil Services (Main) Examination he shall join either that Service or the Service to which he was allocated on the basis of the previous Civil Services Examination failing which his allocation to the service based on one or both examination, as the case may be, shall stand cancelled and notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a Service and is appointed to a service shall not be eligible to appear again in the Civil Services Examination unless he has first resigned from the Service.

Note: (1) An attempt at a preliminary examination shall be deemed to be an attempt at the examination.

(2) If a candidate actually appears in any one paper in the preliminary examination he shall be deemed to have made an attempt at the examination.

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

Rule 8 of the Rules read as follows :-

"8. A candidate who is appointed to the Indian Administrative Service or the Indian Foreign Service on results of an earlier examination before the commencement of this examination and continues to be a member of that service will not be eligible to compete at this examination.

In case a candidate has been appointed to the IAS / IFS after the preliminary examination of this examination but before the main examination of this examination and he/she shall also not be eligible to appear in the main examination of this examination notwithstanding that he/she has qualified in the preliminary examination.

Also provided that if a candidate is appointed to IAS / IFS after the commencement of the main examination but before the result thereof and continues to be a member of that Service, he/she shall not be considered for appointment to any service/ post on the basis of the results of this examination."

3. The appellants were allocated to Indian Ordnance Factory Services, Indian Defence Accounts Services, and Indian Postal Services respectively (which are Group 'A' Services) on the basis of Civil Services Examination, 1989. However, they did not join the foundation course and probationary training of the said Services and with due permission abstained from training thereafter, to improve their position by appearing in the Civil Services (Main) Examination, 1990. It is their grievance that although they improved their position in 1990 Examination, they have been denied their allocation and appointment to Indian Customs/Central Excise Services in Group 'A' by making wrong application of the first proviso to Rule 17 of the 1990 Rules. Their contention is that notwithstanding the fact that the first proviso does not in terms permit mobility from one Central Service in Group 'A' to another Central Service in that Group, such mobility must be read into the same. It is urged that unless such mobility is read in the rule, the proviso becomes unreasonable and arbitrary and offends Article 14 of the Constitution. In this connection, they particularly point out the anomaly that whereas a candidate who on the basis of his previous examination is selected to I.P.S., can move to I.A.S. and I.F.S. and any of the Central Services in Group 'A', those who have been selected for any of the services in Group 'A' like the appellants cannot move to any other service in the same Group but can only move to I.A.S., I.F.S. and I.P.S. According to the appellants, this restriction on the mobility of those who are selected to the services in Group 'A' as against those who are selected for I.P.S., is discriminatory, and on that count also the rule is bad in law.

4. This contention is resisted on behalf of the respondents. It is pointed out on their behalf that in the first instance there is no absolute bar on those who are selected for any of the Group 'A' Services on the basis of their previous examination, from moving to other service in the said Group. The only

condition is that if they choose to do so, they have first to resign from the service. The restriction is applicable only if the candidate concerned wants to retain the advantage of opting for a service so allocated, in case he fails in the next examination. It is contended on their behalf that ever since 1947, when for the first time the examination for I.A.S. was held, a candidate, allocated to a service in Group 'A' was never given the option of allocation to another service within the said Group on the basis of the succeeding examination. This practice continued till the framing of the rules in the year 1964, the present Group 'A' Services being then known as Class I Services. However, Rule 3 of the I.A.S. Examination Rules for 1964 specifically provided that "a candidate who has already been appointed to a permanent post in a Class-I Service on the results of earlier Indian Administrative Service Examination will not be considered for allotment to another Class-I Service on the selection in a later examination". To the same effect were the rules framed in the year 1987. Rule 17 of the 1987 Rules provided for movement or mobility from one service to another as provided in the present impugned Rule 17 of the 1990 Rules. The Kothari Committee had in fact recommended that it was not desirable to permit a candidate who has been appointed to a service to appear once again for the examination while undergoing training or even thereafter, without resigning from the service to which he is already allocated. The 1987 Rules, therefore, provided that if a person is to appear for an examination without resigning from the Service, he could do so by having his training suspended by expressing his intention to appear in the next examination soon after the allocation to the Service. Except the said change made in 1987, the consistent position under the examination rules has been that a candidate allocated to a Service in Group 'A' (earlier Class I) was never permitted to seek allotment to another Service within the said Group on the basis of his performance in the next examination. It is further pointed out by them that the second proviso to Rule 17 enables a candidate appointed to Group 'B' Services on the basis of the earlier examination to get appointment only in I.A.S., I.F.S. and I.P.S. and Group 'A' Services thus permitting only the vertical movement and not horizontal movement in the same Group, i. e., Group 'B'. The rule is made on the assumption that all Central Services in Groups 'A' and 'B' stand on equal footing and there is no point in permitting changes from one service to another within the same Group. According to the respondents, one of the important considerations in imposing the restriction on horizontal movement in the same Group is to prevent the chaotic condition that may otherwise prevail in various services. The merit list published by the UPSC on the basis of a particular year's examination will ordinarily contain a large number of candidates allotted to different services on the basis of the examination. Out of them only a few candidates would be eligible for I.A.S, I.F.S. and I.P.S. whereas all the rest comprising majority would have been allocated to the different services in Group 'A'. If movement from one Group 'A' Service to another Group 'A' Service is allowed, vacancies in a large number of services will remain unfilled. If this situation persists, the cadre management in those services will become difficult. Further, if this is experienced from year to year, there would also arise a problem of fixing seniority between the promotees and direct recruits. Those appointed by promotion will be in a higher age-group, and by the time they reach the middle level, they will get eliminated. Thus, there will be a shortage of suitable officers at the higher level adversely affecting the efficiency of administration.

5. The respondents also defend the favoured treatment given to I.P.S. in this behalf, by pointing out that the movement of candidates from I.P.S. to Group 'A' Services and vice versa has been permitted from the inception of the Examination Scheme. They are two entirely different categories of Services and hence allowing the mobility is justified.

6. In support of the validity of Rule 17 of the 1990 Rules, the respondents depend upon a decision of this Court in *Mohan Kumar Singhania v. Union of India*, 1992 Supp (1) SCC 594: (AIR 1992 SC 1), where the challenge was to the restriction imposed on candidates appointed to Group 'A'

Services from moving to another service in the same Group. The challenge in this case was to the second proviso to Rule 4 which requires that if the candidate is allocated to a service on the basis of the next examination, he has to join either that service or the service to which he is allocated on the basis of his earlier examination failing which his allocation to the service based on one or both examinations would stand cancelled. The proviso also states that a candidate who accepts allocation to a service and is appointed to the service shall not be eligible to appear again in the Civil Services Examination unless he first resigns from the same notwithstanding anything contained in Rule 8 of the said Rules.

7. The attack against the second proviso to Rule 17 of the 1990 Rules is based, as we have pointed out above, on two grounds. The first is that the restriction on the horizontal mobility from one service of Group 'A' to another service in the said Group, by itself is unreasonable and arbitrary. Secondly, while it permits those who are selected for I.P.S. to move to any Service in Group 'A', those who are selected in any Service in Group 'A' are prevented from doing so. Hence, there is a discrimination between the candidates selected for I.P.S. and those selected for any of the Group 'A' Services.

8. We are not impressed by either of the, said contentions. As regards the first contention, the restriction is eminently justified since, as has been pointed out on behalf of the respondents, all Services in Group 'A' stand at par with each other. Hence, there is no question of bettering prospects or seeking an upward mobility when a candidate wants to move from one service in Group 'A' to another service in that Group. Further, if those who are appointed to any of the Group 'A' Services which are as many as 45, are allowed the mobility, a large number of posts would remain unfilled at any particular point of time resulting in a chaos in the administration. The contention that this will be the case even when the candidates appear for the next examination for upward mobility loses sight of the fact that the posts in I.A.S., I.F.S. and I.P.S. are limited in number compared to those in Group 'A' Services and those selected for the I.A.S., I.F.S. and I.P.S. are few. The dislocation on that account is thus marginal if any., What is more, there is no absolute restriction on a candidate selected to any of the services in Group 'A' from moving to any other service in the same Group. The only condition is that if he does so, he has to resign from that Service before he appears in the next examination. For these reasons, we are of the view that the restriction placed on the said mobility cannot be said to be either unreasonable or arbitrary.

9. As regards the discrimination between the candidates appointed to I.P.S. and those appointed to any of the Group 'A' Services, it must be remembered that from the very inception the Services were classified into following three categories:

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| Category I | - | I.A.S. and I.F.S. |
| Category II | - | I.P.S. and Class II Police Services |
| Category III | - | Central Civil Services, Class I and Class II (now Groups 'A' & 'B') |

According to the Examination Scheme in force prior to 1979, a candidate who opted for I. A. S. / I. F. S. was required to appear in two additional optional subjects of Master's Degree standard in addition to three optional subjects and the compulsory subjects of General English, Essay and General Knowledge. The candidates opting for Central Services (Category III above) were not required to appear in the additional optional subjects; they were required to appear only in the three

optional subjects in addition to the compulsory subjects. The candidates competing for the I.P.S. were required to appear in two optional subjects only in addition to the compulsory subjects. Apart from the two additional subjects, higher marks were prescribed in the viva-voce examination for candidates competing for I.A.S. and I.F.S. The maximum marks prescribed for candidates competing for I.A.S. and I.F.S. were 400 whereas the maximum marks for viva voce in the case of candidates competing for other services were only 300. There was a single unified examination for recruitment to different services. In the case of candidates allocated to the I.P.S., they were and are allotted to particular States and they have to spend their entire career in the State to which they are allotted except when they are on deputation to the Government of India. As far as other Services are concerned including Industrial Security Force and Railway Protection Force, being Central Services, the candidates appointed to them get transferred/posted anywhere in the country. It is, therefore, felt necessary to give an option to those who are selected for I.P.S. to consider the conditions in the State to which they are allocated, and not only to move upward but also to any Service in Group 'A' and have an opportunity to be a member of a Central Service, if so desired. It is also possible that the I.P.S. candidate may not like the State cadre which is allotted to him in which case, unless he is provided with the mobility as is done by the proviso to the impugned Rule 17, he would remain vegetating. That would affect the efficiency of administration. Further, the I.P.S. has very little in common with the other services and they stand on different footing. It is for this reason that he is not only given upward mobility but also mobility towards the less favoured services when he can opt for the Category III Service which compared to I.A.S., I.F.S. and I.P.S. is certainly less prized.

We are, therefore, of the view that in the facts and circumstances of the case, it cannot be said that there is any discrimination in favour of the candidates who are selected to I.P.S. cadre. The classification made has a rational nexus with the object sought to be achieved, viz., the efficiency of administration.

10. The appeal, therefore, fails and is dismissed. There will be no order as to costs. Appeal dismissed.

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