

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No.4569 of 2008**

Judgment reserved on: November 04, 2008

% Judgment delivered on: December 16, 2008

Shri Praveen Sharma
S/o Shri H.L. Sharma
R/o Z-45, Sarojini Nagar
New Delhi -110023

.... Petitioner

Through Mr. R.K. Saini, Adv.

Versus

1. The Secretary
Union Public Service Commission
Through its Chairman
Dholpur House
Shahjahan Road
New Delhi -110011.

2. The Secretary
Ministry of Personal
Public Grievances & Pensions
Department of Personal & Training
Government of India, North Block
New Delhi -110001

.... Respondents

Through Mr. Naresh Kaushik with Ms. Amita
Kalkal, Advs. for UPSC.
Mr. R.V. Sinha, Adv. for Respondent
No.2.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SURESH KAIT

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The question for consideration is what constitutes an “attempt” at taking an examination? Does it mean taking all the papers in the examination (as contended by learned counsel for the Petitioner) or does it include taking some of the papers only? In our opinion, for the purposes of the Civil Services Examination (the CSE), which is what we are concerned with, an “attempt” in the examination includes taking some of the papers only.

2. The Petitioner was a candidate for the CSE conducted by the Union Public Service Commission (UPSC) in the year 2006. In the CSE, a candidate is entitled to only four attempts at passing the examination.

3. The Petitioner appeared in the CSE in 2001, 2003 and 2004 but did not qualify the examination. The Petitioner then appeared in the CSE in 2005. Admittedly, this was his 4th and last attempt at clearing the CSE. Unfortunately, between the examination dates, the Petitioner met with a rather serious accident and so he could not appear in the

remaining papers. According to the Petitioner, his fourth appearance in the CSE should be treated as an “aborted attempt” and not an “attempt” at taking the CSE.

4. The Petitioner was then desirous of appearing in the CSE 2006 (the 5th “attempt”) but anticipating a rejection of his application form by the UPSC, he filed a writ petition in this Court being WP(C) No.498/2006 in which an interim prayer was made to the effect that his application for participating in the CSE 2006 be not rejected on the ground that he had already undertaken four attempts in the CSE.

5. By an order dated 13th January, 2006 a learned Single Judge directed that the Petitioner’s application for sitting in the CSE 2006 be not rejected on the ground that he had already exhausted four attempts.

6. On the basis of the interim order passed by this Court, the Petitioner was permitted to participate in the CSE 2006 and it appears that he not only qualified in the preliminary and main examinations but also qualified in the interview and, therefore, became entitled to recruitment as a civil servant.

7. However, when WP(C) No.498/2006 was taken up for final hearing, an objection was raised about the maintainability of the writ petition in view of the provisions of the Administrative Tribunals Act,

1985. The objection was upheld by a learned Single Judge and the writ petition was disposed of with liberty to the Petitioner to approach the Central Administrative Tribunal for an appropriate relief.

8. The Petitioner then approached the Tribunal by filing O.A. No.1109/2006. The Original Application was heard by two learned Members of the Tribunal who expressed conflicting views on the eligibility of the Petitioner. The learned Judicial Member was of the opinion that since the Petitioner could not appear in the remaining papers in CSE 2005 for reasons beyond his control, his participation in the examination could not be treated as an “attempt” to sit in the examination. The learned Administrative Member was of the view that the Petitioner had already undertaken four attempts in the CSE in the years 2001, 2003, 2004 and 2005 and, therefore, he could not be allowed a 5th attempt for which he had no entitlement

9. In view of the difference of opinion, the matter was referred to a third learned Member of the Tribunal [the Vice Chairman (Judicial)], who then heard the matter and expressed his opinion on 3rd June, 2008 agreeing with the views of the learned Administrative Member. Consequently, the original application of the Petitioner was directed to be dismissed.

10. It is against this dismissal of his original application that the Petitioner has preferred the present writ petition.

11. At this stage it is necessary to note that Rule 7 of the Indian Administrative Service (Recruitment) Rules, 1954 concerns itself with recruitment by a competitive examination. In terms of Rule 7(2) thereof, the examination shall be conducted by the UPSC in accordance with such regulations as the Central Government may from time to time make in consultation with the UPSC and the State Governments.

12. The relevant regulations are the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955. Regulation 3 deals with the conduct of the examination by the UPSC in the manner notified by the Central Government. Regulation 4 deals with the conditions of eligibility that a candidate must satisfy in order to be eligible to compete at the examination. The condition of eligibility includes the nationality of a candidate (he must be a citizen of India), his age and educational qualifications. Regulation 4 (iii-a) was introduced in the Regulations on 1st February, 1990 and this reads as follows:-

“(iii-a) Attempts at the examination:- Unless covered by any of the exceptions that may from time to time be notified by the Central Government in this behalf, every candidate appearing for the examination after 1st January 1990 who is otherwise eligible, shall be permitted four attempts at the examination; and the appearance of a candidate at the

examination will be deemed to be an attempt at the examination irrespective of his disqualification or cancellation, as the case may be, of his candidature.

Explanation – An attempt at a preliminary examination shall be deemed to be an attempt at the examination, within the meaning of this rule.”

13. A reading of Regulation 4(iii-a) of the Regulations makes it absolutely clear that a candidate shall be permitted only four attempts at the examination and the appearance of a candidate at the examination will be deemed to be an attempt irrespective of his disqualification or cancellation of his candidature. The Explanation makes it clear that an attempt at a preliminary examination shall be deemed to be an attempt at the examination.

14. The word “examination” has been defined in Regulation 2(c) which reads as follows:-

“(c) ‘examination’ means a combined competitive examination consisting of a preliminary examination and a main examination for recruitment to the Service held under sub-rule (1) of rule 7 of the Recruitment Rules and includes a combined competitive examination for recruitment to the Service and such other Service or Services as may be specified by the Central Government from time to time”

15. A perusal of the definition of the word “examination” shows that it consists of two parts, a preliminary examination and a main examination. Therefore, if one reads this definition along with

Regulation 4(iii-a) of the Regulations, it is clear that for an appearance at the examination to be described as an attempt, it is not necessary that a candidate should have cleared the preliminary examination. In other words, appearance at the preliminary examination is as good as an attempt at the examination (including the main examination) for all purposes. Therefore, each appearance at the examination, preliminary or main, will count as an attempt at taking the examination.

16. Faced with this scheme of arrangement, learned counsel for the Petitioner contended that there is no dispute that his client suffered a serious accident which made it impossible for him to continue to appear in the main examination. This was an act of God and his client cannot be made to suffer for this. On these facts, he submitted that even though his client was ready and willing to appear in the remaining papers in CSE 2005 (that being his 4th and last attempt) he could not do so for reasons beyond his control. As such, his appearing in the examination should be treated as an aborted attempt and not an attempt making him ineligible to appear in the CSE 2006.

17. We are unable to accept the contention of learned counsel for the Petitioner on a plain and clear reading of the rules and regulations referred to above. Any appearance in the examination whether

preliminary or main would constitute an attempt in the examination. The reason why a candidate cannot successfully complete the examination and be selected is of no consequence at all. There can be myriad reasons for which a candidate may not be able to complete his preliminary or main examinations – it could be illness, accident or any other reason beyond the control of a candidate. It is quite possible that in every attempt that a candidate makes, if he makes an assessment that he is not likely to succeed, he can always feign an illness and request the UPSC not to treat the appearance as an attempt. If such non-genuine requests are accepted by the UPSC, a candidate may get a large number of attempts at the examination until he reaches the age of disqualification.

18. In the present case, there is no doubt that the Petitioner actually met with an accident and could not complete his CSE main examination for reasons beyond his control. While the reason in the case of Petitioner is genuine, but that by itself cannot entitle him to a waiver of the rules and regulations governing such examinations, particularly since there is no such power of relaxation available with the UPSC. Theoretically, it is possible for an unfortunate and unlucky candidate to meet with an accident every year during the course of the

CSE and then request that that attempt be treated as an aborted attempt and go on appearing in the CSE until he qualifies or reaches the maximum age limit. This is clearly not the scheme of the recruitment process.

19. Under the circumstances, we do not find any merit in the writ petition and we, therefore, uphold the view taken by the Tribunal that the Petitioner was in fact taking a 5th attempt in the CSE and was not entitled to do so.

20. Learned counsel for the Petitioner contended that his case is one of undue hardship which is defined in the Government of India, Ministry of Home Affairs letter No.30/1/73-AIS (II) dated 1st January, 1966 as follows:-

- (a) `undue hardship signifies unforeseen or unmerited hardship to an extent not contemplated when the rule was framed and does not cover any ordinary hardship or inconvenience which normally arises;
- (b) the relaxation should enable the case to be dealt with in a just and equitable manner and not on grounds of compassion, however, justified; and
- (c) the benefit to be conferred in relaxation of any rule or rules must be of a nature already provided for in the rules: Government are not empowered by this rule to confer benefits which are not contemplated in the rules.”

21. There is no doubt that undue hardship has been caused to the

Petitioner due to an accident and circumstances beyond his control, but that by itself does not mean that the rules which are applicable to all candidates should be waived insofar as the Petitioner is concerned. As already brought out hereinabove, this would result in a chaotic situation and even the UPSC may not be able to handle it.

22. The writ petition is dismissed.

MADAN B. LOKUR, J

December 16, 2008

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SURESH KAIT, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.