

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On: 28th September, 2010
Judgment Delivered On: 21st October, 2010

+ **WP(C) 4998/2008**

ANSHOO PANDEY & ORS. ...Petitioners
Through : Mr.C.K.Chandrasekhar, Mr.Saurav
Aggarwal and Mr.Dinesh Kumar,
Advocates

Versus

UOI & ORS. ...Respondents
Through: Ms.Jyoti Singh, Advocate for R-1
and R-2 with Mr.R.K.Gupta, Director
(AIS) DOPT

Mr.Naresh Kaushik, Advocate with
Ms.Aditi Gupta, Advocate for
UPSC/R-3 & R-4

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MOOL CHAND GARG

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

PRADEEP NANDRAJOG, J.

1. The petitioners herein are the civil services aspirants who successfully cleared Civil Services Examination 2005.
2. In August 2006, Department of Personnel and Training (hereinafter referred to as "DOPT"), Ministry of Personnel, Public Grievances and Pensions, Government of India issued letters containing offer of appointment to the candidates who emerged successful in the Civil Services Examination 2005 which included the petitioners. It is useful to note the contents of the aforesaid letters issued by the Ministry. For the sake of

convenience, we are reproducing relevant portion of the letter issued by the Ministry to the petitioner No.1 for the contents of the letters issued to the other petitioners are more or less identical:-

“Let me take this opportunity to congratulate you on your success in the Civil Services Examination, 2005. You have been allocated to the **Indian Railway Traffic Service, Group ‘A’**. The allocation has been made on the basis of your rank in the merit list, eligibility, preference for services expressed by you, availability of vacancy and medical fitness.

2. The cases of some of the candidate (s) above you in the merit list are yet to be settled and finalized. Depending on the service finally allocated to those candidates, you may be allocated to a service for which you have expressed higher preference. You will be informed about your final allocation to service as soon as it is possible to do so.

3. The formal offer of appointment will be sent to you by the Cadre Controlling Authority of the Service to which you are finally allocated on the basis of Civil Services (Main) Examination, 2005. However, you will be deemed to have joined the service from the date you join the foundation course.

4. The Foundation Course is a part of the probationary training and is common to IAS/IPS and Group ‘A’ Services, recruitment to which has been made on the basis of Civil Services Examination. No exemption from joining the Foundation Course shall be granted. Thus, it is compulsory for you to report to the Director, Lal Bahadur Shastri National Academy of Administration, Mussorie on or a day before 29th August, 2006 without fail for the Foundation Course commencing on 29th August, 2006.....

7. Please read and note the instructions carefully and acknowledge receipt of this letter. Please further note that:

a. Foundation Course is an important component of probationary training and proper attention is required to be given by you.

b. If you do not join the Foundation Course, it will be presumed that you are not interested in joining a service on the basis of CSE-2005 and further action regarding cancelling your offer of appointment will be taken without any further notice....." (Emphasis Supplied)

3. After completion of Foundation Course, DOPT published a final list allocating services to 406 candidates. Relevant would it be to note that services were also allocated to the candidates, 26 in number, who did not join Foundation Course.

4. Thereafter DOPT issued letters to the aforesaid 406 candidates informing them about the services finally allocated to them. The relevant portion of the letter issued by DOPT to the petitioner No.1 reads as under:-

"I am directed to refer on the subject mentioned above and hereby confirm your final allocation to the **Indian Railway Traffic Service, Group 'A'** on the basis of Civil Services Examination, 2005. The service allocation has been made on the basis of your rank in the merit list, eligibility, preference for services expressed by you, availability of vacancy and medical fitness.

2. The formal offer of appointment and further Training Schedule will be sent to you by your Cadre Controlling Authority of the service/post, viz., **Ministry of Railways, (Ms. Mamta Kandwal, Dy. Director, Esstt (GR), Railway Board, Rail Bhawan, New Delhi....." (Emphasis Supplied)**

5. Be it noted here that only 380 candidates out of aforesaid 406 candidates joined the respective services allocated to them.

6. Aggrieved by the act of DOPT of allocating services to the candidates who had not joined foundation course and respective services allocated to them, the petitioners made representations to DOPT stating therein that the selection of such candidates ought to be cancelled and a fresh selection

list be drawn reallocating the services to the remaining candidates. It was further pointed out that on the aforesaid exercise being done by DOPT, the petitioners would get allocated services having better career prospects than the services allocated to them in the final list.

7. In view of the fact that DOPT did not respond to the representations made by the petitioners, the petitioners filed application under Section 19, Administrative Tribunals Act, 1985 before Principal Bench, Central Administrative Tribunal, New Delhi. The case projected by the petitioners before the Tribunal was that DOPT ought to have cancelled the selection of the candidates who did not join Foundation Course and should not have finally allocated services to such candidates or in any case, DOPT ought to have cancelled the selection of the candidates who did not join the respective services allocated to them. It was further pleaded by the petitioners that in both the situations DOPT ought to have drawn a fresh list thereby re-allocating the services to the remaining candidates including the petitioners.

8. In reply, DOPT contended before the Tribunal that: (i) it could not have cancelled the selection of the candidates who did not join Foundation Course for the reason it is a regular practice to grant exemption from joining Foundation Course to such candidates who would be appearing in Civil Services (Main) Examination conducted in respect of next recruitment year as also to some candidates for medical or personal reasons; (ii) it could not have cancelled the selection of the candidates who did not join the respective services allocated to them for the reason the role of DOPT in the recruitment process of civil servants is over once it finally allocates services to the candidates inasmuch as once final allocation of

services is done, DOPT forwards the dossiers of the selected candidates to the respective cadre controlling authorities who then issue letter of appointment to the candidates and make further arrangements regarding training of candidates etc; (iii) it is not feasible to cancel the selection of the candidates who did not join the respective services allocated to them and reallocate services to the remaining candidates as the same would have a cascading effect on the whole recruitment process and cause lot of administrative inconvenience; and (iv) the vacancies which arise in a particular year due to non-joining of services by the candidates do not lapse but are carried forward to the next recruitment year.

9. Vide impugned judgment and order dated 08.02.2008, the Tribunal dismissed the application filed by the petitioners on the ground that it is not feasible to cancel the selection of the candidates who did not join the respective services allocated to them and re-allocate services to the remaining candidates on the said basis as the same would result in administrative inconvenience. It would be most apposite to quote following portion of the aforesaid judgment:-

“11. When the applicants as well as respondents had come out with the factual details, as above, we are sufficiently convinced that reallocation does not appear to be a matter of legal rights of a selectee which requires to be upheld. This is because in matters of allocation, a practical approach always has to be adopted. Of course, for various reasons there may be necessity for prescribing changes, in the allocation. There may be a situation as pointed out by the applicants that because of the non-joining of a number of candidates for the Foundation Course, the final list, contained less numbers. But when it is admitted on behalf of the applicants that exemption from attending Foundation Course is a regular feature within the limited time available, it may not be possible for the second respondent to

call for all the details and re-assess the situation and engaging themselves in exercise whereby the allocations are re-done, repossessing the files from the concerned departments....

13.....But we feel that despite constraints, if the DOPT watches with vigil the attendance marked in the Foundation Course of the concerned year, and are prepared to a process of reallocation, recognizing the rights, rank and options of the selected candidates, it would be in fitness of things. The only pre condition is that it should be dexterous, time bound exercise.

14. In the circumstances, we do not think, there is necessity to intervene or to grant relief to the applicants....However, the disposal of the OA with the above observations are not intended to stand in the way of the concerned respondents to address themselves about the grey areas as have been highlighted by the applicants in the applications. Although there is no infringement of any legal rights, the process followed has some arbitrariness and it as well redress the availability of open merit seats in the long run." (*Emphasis Supplied*)

10. Aggrieved by the dismissal of the application filed by them by the Tribunal, the petitioners have filed the present petition under Articles 226 and 227 of Constitution of India.

11. During the hearing of the present petition, following 4 arguments were advanced by the learned counsel for the petitioner.

A That 21 out of 24 candidates who were granted exemption from joining Foundation Course conducted in respect of Civil Services Examination 2004 had successfully cleared Civil Services Examination 2004 and joined services allocated to them in respect of said examination. In that view of the matter, the grant of exemption to such candidates was an illegality for a person cannot have lien on two services at the same time.

B That the Tribunal failed to appreciate that the cadre controlling authorities of the respective services committed an illegality in granting exemption to the 24 candidates from joining Foundation Course conducted in respect of Civil Services Examination 2005 in view of the letter regarding provisional allocation of services issued to the successful candidates, contents whereof have been noted in para 2 above, which clearly prescribed that the selection of the candidates who would not join Foundation Course will be cancelled.

C That having principally agreed with the petitioners that DOPT ought to have undertaken reallocation of the services the Tribunal committed an illegality in refusing to grant relief to the petitioners on the ground of “administrative inconvenience”.

D That the Tribunal failed to appreciate that by way of some correspondences issued by some of the cadre controlling authorities the petitioners demonstrated that DOPT had taken an incorrect stand before the Tribunal that the vacancies which arise in a particular recruitment year due to non-joining of candidates are carried forward to the next recruitment year.

12. With respect to the first two submissions advanced by the counsel for the petitioners, suffice would it be to state that the petitioners admitted before the Tribunal that it is a regular practice to grant exemption to such candidates who would be appearing in Civil Services (Main) Examination conducted in respect of next recruitment year as also to some candidates for medical or personal reasons from joining Foundation Course. (See para 11 of the impugned judgment passed by the Tribunal, noted in para 9 of the instant judgment). In view of the aforesaid admission made by the petitioners, it is not open

to them to assail the legality of the exemption to some candidates from joining Foundation Course.

13. In addition to the above, it is also worth noticing that a perusal of the application filed by the petitioners before the Tribunal shows that no pleadings were made by them regarding the holding of lien by a candidate on two services at the same time. Having not pleaded the aforesaid argument before the Tribunal, it is not permissible to the petitioners to raise the same before this court.

14. Can the courts refuse to grant relief to a party on the ground of “administrative inconvenience”?

15. Prof. Clive Lewis in his book ‘Judicial Remedies in Public Law’ (1992 Edition, Pages 294-295) stated as under:-

“The courts now recognise that the impact on the administration is relevant in the exercise of their ‘remedial jurisdiction’.... Earlier cases took a robust line that the law has to be observed and the decision invalidated, whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the court’s remedial discretion and may prove decisive.... They may also be influenced to the extent to which the illegality arises from the conduct of the administrative body itself, and their view of that conduct.” (Be it noted here that the said observations have been noted in various decisions of Supreme Court, for instance State of UP v Johri Mal (2004) 4 SCC 714 and Tata Cellular v Union of India (1994) 6 SCC 651)

16. In the decision reported as K. Swarna Kumari v Government of AP (2006) 2 ALT 289 Full Bench of Andhra Pradesh High Court observed as under:-

“....A Court may hold that the Act or the order is invalid but may refuse relief to the applicant for a

variety of reasons such as locus standi, limitation, delay and laches, waiver of the right or even overbearing public injury considerations or grave administrative inconvenience.

Though not normally a criterion for refusal of relief, administrative inconvenience is very rarely but nevertheless a ground for courts refusing relief. In *Simpson v. Att. Gen* (1955) NZLR 271 the challenge to an election was rejected and the warrant issued by the Governor General for holding the general election beyond the date specified by the Statute was upheld. The court held that a contrary decision would have the catastrophic effect of nullifying a number of Acts of Parliament, together with all actions taken under them....”

17. It is an accepted legal principle that grant of relief can be denied on the ground of delay and laches if the delay in approaching the court would result in throwing public administration out of gear. (See the decision of Supreme Court reported as *Ghulam Rasool Lone v State of J & K* 2009 (15) SCC 321).

18. What “administrative inconvenience” would be caused if selection of the candidates who did not join respective services allocated to them is cancelled and fresh list is drawn reallocating the services to the remaining candidates?

19. To find an answer to the above question, we first need to note the recruitment process of the civil services.

20. There are 23 civil services in this country. Every year, Union Public Service Commission (hereinafter referred to as the “UPSC”) conducts Civil Services Examination for the purposes of recruitment to the civil services. The Civil Services Examination comprises of two successive stages, namely; (1) Civil Services Preliminary Examination (Objective Type) for the selection of candidates for appearing in the main examination,

and (2) Civil Services Mains examination (Written and Interview) for the selection of candidates for the various services and posts.

21. After declaration of the results of Civil Services (Mains) Examination by UPSC, DOPT prepares a selection list provisionally allocating services to the candidates based on the (i) rank secured by a candidate in Civil Services (Mains) Examination; (ii) eligibility of a candidate; (iii) preference of service expressed by a candidate; (iv) availability of vacancy and (v) medical fitness. The aforesaid list is provisional only because medical status of some of the candidates is not clear. Except for the medical status of some candidates, the list is final in all other respects.

22. Thereafter the successful candidates are required to join 15 weeks Foundation Course at Lal Bahadur Shastri National Academy of Administration, Mussorie. After the completion of Foundation Course, DOPT publishes final list thereby weeding out candidates who are found to be medically unfit and allocating services to the candidates. Thereafter DOPT forwards the dossiers of the selected candidates to the respective cadre controlling authorities. At this stage, the role of DOPT in the recruitment process ends.

23. The cadre controlling authorities then issue letters containing offer of appointment to the candidates and further make arrangements regarding training of the candidates. When a candidate accepts offer of appointment, he is recruited in the service allocated to him and thereafter joins training course. This, in a nutshell, is the recruitment process of the civil services.

24. When a candidate does not join the service allocated to him, the cancellation of his selection would trigger a chain effect inasmuch as same would affect allocation of services of all the candidates who were below the said candidate in the merit list. At this stage, reallocation of services would require that cadre controlling authorities of the “23 services” should remain in constant touch with each other and keep informing each other about the status of their respective candidates. If the same is accepted, it would completely throw public administration out of gear and the recruitment process would take ages to finish. For better administration of the country, it is incumbent that recruitment to the civil services be completed in the shortest possible time and any process which leads to delay in the recruitment has to be outrightly rejected.

25. Thus, in view of insurmountable administrative inconvenience involved in reallocating the services after the final allocation of services is done by DOPT, we concur with the view expressed by the Tribunal that the petitioners cannot be granted any relief in the present case.

26. In view of aforesaid discussion, we find no merit in the present petition. The same is accordingly dismissed.

27. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MOOL CHAND GARG)
JUDGE

October 21, 2010
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