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

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Judgment Dated: 26th July, 2016

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W.P.(C) 6225/2016

SEEMA SINGH AND ORS

..... Petitioners

Through : Mr. Manish Kumar Saran, Advocate

versus

UNION OF INDIA AND ANR

..... Respondents

Through : Mr. Manish Mohan, CGSC with Mr. Srikant Misra, GP, Mr. Shivam Chanana, Ms. Manisha Saroha & Ms. Priyansha Sinha, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 13.07.2016 passed by the Central Administrative Tribunal (hereinafter referred to for short as 'the Tribunal') by which the OA filed by the petitioners herein stand dismissed.
2. Necessary facts to be noticed for disposal of this writ petition are that the petitioners are all aspirants to the Civil Services Examination (for short 'CSE'). The petitioners have made a number of attempts and have appeared in various years, detailed as under:

Sl.No.	Name	Year	Category
1.	Seema Singh	2005, 2006, 2007, 2008, 2009, 2010, 2012, 2014	OBC
2.	Md. I Raiyza Ali	2005, 2006, 2007, 2008, 2009, 2010	OBC

3.	Narendra Pal	2004, 2005, 2006, 2007, 2008, 2009, 2012, 2014	OBC
4.	Namee Chand	2004, 2005, 2006, 2007, 2008, 2010, 2012, 2014	OBC
5.	Arvind Kumar Singh	2005, 2008, 2010, 2012, 2014	General
6.	Suresh Kumar Shukla	2004, 2005, 2006, 2008, 2014	General
7.	Dudhat Rushikesh Ramchandra	2004, 2005, 2006, 2007, 2008, 2009, 2012, 2014	OBC
8.	Sanjay Kumar Pandey	2008, 2009, 2010, 2012, 2014	General

3. We may note that a candidate under the un-reserved category is entitled to appear 06 times, age limit is upto 32 years. Persons of OBC category are entitled to appear 09 times, age limit is upto 35 years and SC and ST category are entitled to appear unlimited times and the age limit is upto 37 years. The petitioners being primarily aggrieved by the change in the pattern of the CSE which was introduced in the year 2011 and the order dated 02.12.2015 passed by the DoPT, approached the Tribunal seeking the following reliefs:

“(a) Issue writ in the nature of certiorari as any other appropriate writ/writs, direction/directions, order/orders quashing the order as passed by Respondent No.1/DoPT dated 02.12.2015 under the signature of Respondent No.2 whereby any whereunder it has held that the candidate who had taken subsequent examination viz, CSE 2012, 2013 and 2014 had considerable time to be acquainted with the changed pattern/scheme of Examination, do not deserve to be given additional chance to appear in CSE.

(b) Declare and hold that the Applicants are also entitled for additional attempt at CSE - 2015 as they also were either eligible for CSE -2011 or appeared at CSE -212 (sic. 2012) or CSE-2013 or CSE-2014.

(c) Direct the Respondent UPSC to declare the CSE 2015 (PT) result of the Applicants and in event they are found to have

qualified the said Examination, permit them to appear in the Written CSE(Main) Examination 2015 commencing from 18th Dec 2015.

(d) pass any other order that is deemed fit and proper under facts and circumstances of the case.”

4. The prayer made by the petitioner for interim relief was declined by the Tribunal on 17.12.2015.
5. It is also worthwhile to note that the Department of Personnel and Training(in short DoPT) in the year 2015 was conscious of the sudden change in the examination pattern in the year 2011 for candidates who participated in the CSE 2011 and realised that they were at a disadvantageous position. Therefore, as a onetime relaxation allowed the candidates to apply for 2015 examination irrespective of their having exhausted the maximum number of attempts and crossing the maximum age limit. Necessary rules were incorporated vide CSE Rules, 2015 published in May, 2015. The present petitioners were eligible to participate in the CSE 2011 examination, but did not participate due to various reasons. Resultantly they became over-age.
6. An OA.2615/2015 was filed questioning the CSE Rules, 2015. A direction was also sought to be given an extra chance as they were also eligible to participate and, in fact, had participate in the CSE - 2012 to 2014. OA.2615/2015 was disposed of. The following directions were issued:

“10. When the DOP&T had formed an opinion that those who had taken the 2011 exam with changed plan need to be given an extra chance, they also need to apply their mind to the claim of those who had taken 2012 or 2013 or 2014 examination with changed pattern of the exam in 2011. During the course of arguments, Sh. Ravinder Aggarwal, counsel for respondents himself submitted that the UPSC had constituted a Committee to look into the grievance of the candidates including the grievance

pertaining to the eligibility. Generally the Executive is expected to act in accordance with the rules and regulations in vogue at the relevant point of time. Nevertheless, when it compensates certain class, it is for them to take the correct decision in their wisdom. As has been ruled by Hon'ble Supreme Court time and again that the Courts or Tribunals should not interfere in such decisions or make an attempt to legislate, we expect the DOP&T and UPSC to look into the issues raised on behalf of the applicants (ibid).

11. In the totality of the facts and circumstances, the OAs are disposed of with direction to DOP&T to examine whether even such candidates who were eligible to take CSE 2011 or had taken 2012 or 2013 or 2014 examination should also be given another chance to take Civil Services Exam with changed pattern in 2015 when the CSAT is made qualifying examination. Such decision may be taken by DOP&T within four weeks from the date of receipt of a copy of this order. No costs."

7. Based on the orders of the Tribunal after considering the claims of the applicants and others, the DoPT passed an order dated 02.12.2015, the operative portion of which reads as under:

"NOW THEREFORE, in view of the aforesaid, in – depth examination of the issue in compliance of the directions given by the Hon'ble CAT, DoP&T is of the considered view that the candidates who were eligible to take CSE 2011 but did not avail the same, thus not having lost any chance and the candidates who had taken subsequent examination viz CSE 2012, 2013 & 2014 had considerable time to be acquainted with the changed pattern/scheme of the Examination, do not deserve to be given an additional chance to appear in CSE. It is decided accordingly.

Ordered accordingly."

8. Aggrieved by the order of the DoPT dated 02.12.2015, the present OA was filed which stands dismissed and has led to the filing of the present writ petition.
9. Learned counsel for the petitioners submits that all the petitioners have number of chances available to them, but they have become over-age.

The learned counsel has strenuously urged before this Court that the order of the DoPT is arbitrary and the DoPT has failed to take into consideration the hardship faced by the petitioners and such persons who are similarly placed who did not appear for the CSE 2011 examination. It is the case of the petitioners that on account of sudden change in the examination pattern and in view of the clarification issued by the DoPT, by its order dated 02.12.2015, the petitioners now become ineligible to appear in the CSE examination. It is submitted that categorization by the DoPT is not based on any rational and the DoPT has failed to address the issue of the present petitioners by means of the order of the DoPT dated 02.12.2015.

10. Counsel further submits that in fact the learned Tribunal failed to appreciate that all those who appeared at CSE 2011(PT) and qualified the same cannot be said to have lost any chance or suffered because of introduction of new pattern of recruitment examination w.e.f. CSE – 2011(PT) but DoPT still decided to grant them the benefit of an additional chance in CSE - 2015 by incorporating the Rule 4(ii) and Rule 6(c) in CSE Rules 2015, as such the finding of the Tribunal that all those who undertook CSE - 2011 formed a separate class is unsustainable. Counsel submits that the learned Tribunal completely failed to appreciate that the reason for granting additional chance to those who appeared at CSE – 2011 is two-fold as per the impugned order passed by the DoPT dated 02.12.2015, i.e., representation against introduction of CSAT in CSE – 2011 and that they did not get enough time to get acquainted with the new format. He submits that as far as first reason is concerned, the same applies to the present petitioners also and the issue in respect of not getting adequate time is concerned, the DoPT has totally failed to explain that as to why additional attempt is

also granted to those who appeared CSE – 2011 but also appeared in subsequent CSE – 2012, CSE -2013 or CSE – 2014. It is submitted that there are large number of candidates who appeared in CSE – 2012, 2013 and 2014 but still got additional attempt at CSE – 2015 only because they appeared in CSE – 2011, though otherwise they are ineligible for same except for relaxation in the Rule. Counsel submits that the learned Tribunal committed an error in failing to appreciate that the decision of DoPT in the impugned order dated 02.12.2015 is itself unsustainable. He submits that the Tribunal failed to consider that the DoPT by incorporating Rule 4(ii) and 6(c) in CSE Rules, 2015 has given additional chance in CSE – 2015 to even those who appeared in CSE - 2012, 2013 or 2014, only on the ground that they had also appeared in CSE – 2011. The Counsel submits that CSE – 2011(PT) examination is only a qualifying test and the marks obtained at the PT are not included for preparation of final merit list, as such all those who appeared at CSE – 2011(PT) and qualified the same, therefore, there is no basis to say that they were also in a disadvantageous position with introduction of CSAT w.e.f. CSE – 2011.

11. Mr. Manish Mohan, learned counsel for the respondent submits that there is no infirmity in the order passed by the Tribunal. He submits that the order dated 02.12.2015 passed by the DoPT is well-reasoned. He submits the DoPT took into consideration the hardship faced by those candidates who had participated in the 2011 examination, but on account of DoPT having suddenly changed the pattern of examination in the year 2011 allowed those candidates who had participated in the CSE - 2011 by which those candidates who were legible to take the CSE - 2011 but did not avail of the same and those candidates having appeared in the examination in the subsequent years, i.e., 2012, 2013 and 2014 had

considerable time to get acquainted with the changed pattern did not deserve to be given an additional chance to appear.

12. We have heard learned counsel for the parties.
13. There is no dispute that in the year 2011, there was a sudden change in the examination pattern and the candidates who had participated in the CSE - 2011 were put to a disadvantageous position. Realising the plight of those candidates who participated in the 2011 examination, a onetime relaxation was given permitting candidates to apply for the 2015 examination irrespective of the fact whether they exhausted the maximum number of attempts allowed or have crossed the maximum age limit.
14. As we have noted in paragraph 6 foregoing, an OA. 2615/2015 was filed wherein a direction was sought that an extra chance be also given to those candidates who were eligible to take CSE – 2011 examination or had taken 2012, 2013 or 2014 examinations should be given another chance to take the CSE with changed pattern in the year 2015. The Tribunal issued a direction to the DoPT. After considering the direction, the DoPT passed an order on 02.12.2015, which then became the subject matter of challenge before the Tribunal. For the sake of convenience, we again reproduce the operative part of the order dated 02.12.2015 passed by the DoPT:

“NOW THEREFORE, in view of the aforesaid, in – depth examination of the issue in compliance of the directions given by the Hon’ble CAT, DoP&T is of the considered view that the candidates who were eligible to take CSE 2011 but did not avail the same, thus not having lost any chance and the candidates who had taken subsequent examination viz CSE 2012, 2013 & 2014 had considerable time to be acquainted with the changed

pattern/scheme of the Examination, do not deserve to be given an additional chance to appear in CSE. It is decided accordingly.
Ordered accordingly.”

(underlines added)

15. The case of the petitioners is that the order of the DoPT is arbitrary and whimsical as the DoPT failed to take into account that merely because the petitioners and such like candidates did not appear in 2011 cannot be discriminated against in comparison to those candidates who had appeared in the 2011 examination. It has also been argued before us that Article 14 of the Constitution guarantees equality before law and forbids the classification as has emerged on account of the order passed by the DoPT.
16. Before the submission of the learned counsel for the petitioners can be considered, we deem it appropriate to refer to the decision rendered in the case of ***State of Bihar and Others v. Bihar State ‘Plus-2’ Lecturers Associations and Others***, reported at (2008) 7 SCC 231, more particularly paragraphs 11 to 16, which read as under:

“11. Now, it is well settled and cannot be disputed that Article 14 of the Constitution guarantees equality before the law and confers equal protection of laws. It prohibits the State from denying persons or class of persons equal treatment; provided they are equals and are similarly situated. It, however, does not forbid classification. In other words, what Article 14 prohibits is discrimination and not classification if otherwise such classification is legal, valid and reasonable.

12. Before more than half a century, a Constitution Bench of this Court was called upon to consider ambit and scope of Article 14 of the Constitution in a celebrated decision in *State of W.B. v. Anwar Ali Sarkar* [AIR 1952 SC 75 : 1952 SCR 284] . There, constitutional validity of certain provisions of the West Bengal Special Courts Act, 1950 was challenged on the ground that they were discriminatory and violative of Article 14 of the Constitution.

13. Dealing with the contention, S.R. Das, J. (as His Lordship then was) made the following instructive observations which were cited with approval in several subsequent cases: (*Anwar Ali Sarkar case* [AIR 1952 SC 75 : 1952 SCR 284] , AIR p. 93, para 54)

“54. ...It is now well established that while Article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an ‘abstract symmetry’ in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like. Mere classification, however, is not enough to get over the inhibition of the article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. *In short, while the article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained.*”

(emphasis supplied)

14. Recently, in *Confederation of Ex-Servicemen Assns. v. Union of India* [(2006) 8 SCC 399 : 2006 SCC (L&S) 2002] it was contended by the petitioners that the classification between in-service and retired employees was invalid, illegal and unreasonable. Likewise, differentiation between defence personnel and civil personnel was arbitrary and irrational. The contention was, however, rejected by this Court holding that they form different class and Article 14 of the Constitution could not be said to have been violated.

15. Again, in *Arun Kumar v. Union of India* [(2007) 1 SCC 732] it was argued that classification between government employees and employees of companies, corporations and other public sector undertakings which can be said to be “State” within the meaning of Article 12 of the Constitution would be arbitrary, fanciful and capricious. But argument was negated by this Court observing that distinction between employees of the Central Government and the State Governments (civil servants) on the one hand and other employees i.e. employees of companies, corporations or other public sector undertakings on the other hand, is well founded and well defined.

16. In *Confederation of Ex-Servicemen* [(2006) 8 SCC 399 : 2006 SCC (L&S) 2002] after considering leading cases on equal protection clause enshrined in Article 14 of the Constitution, speaking for a five-Judge Bench, one of us (C.K. Thakker, J.) stated: (SCC p. 415, para 30)

“30. In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfil the twin test, namely,

(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and

(ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question.”

17. The short question which arises for consideration is as to whether the petitioners had been singled out from other similarly situated persons and whether the order passed by the DoPT dated 02.12.2015 is arbitrary, fanciful and unreasonable and discriminatory.

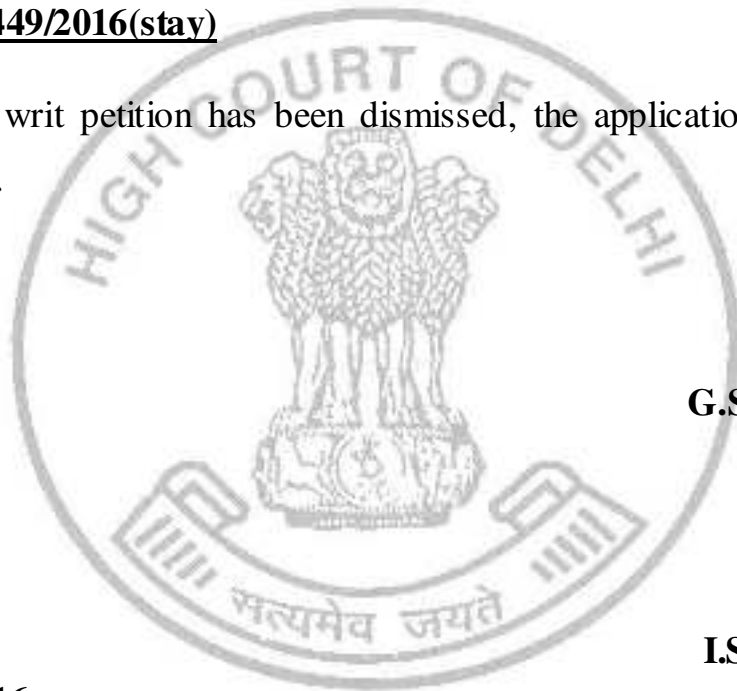
18. The DoPT in its order dated 02.12.2015, relevant portion of which has been extracted in para 7 foregoing has given a cogent explanation for rejecting the claim of the petitioners and similarly situated persons. The rationale, in our view, is justifiable for the reason that the candidates who appeared in the 2011 examination, are the ones who actually suffered on account of change in pattern of the examination as they may have been taken by surprise and did not get enough time to prepare. The petitioners did not appear in the 2011 examination and thus, they cannot complain that they suffered on account of change in the pattern of examination. A candidate can only suffer on account of sudden change of pattern being introduced only if he is a first time participant. Another reason why a candidate would suffer for the 2011 examination is for the reason that as the Preliminary Examinations are held at the end of June in a particular year, results are declared in early August and the Main Examination is held at the end of November or early December of each year, result whereof is declared in the third week of March. Thereafter, they are interviewed and the final result is declared at the end of May or early June. A successful candidate would get a very limited time to prepare for the main exam on account of change of pattern in the year 2011. The petitioners would not have suffered as they had not appeared in the year 2011 examination and thus, it cannot be said that they had limited time to prepare for the 2011 examination. For any Court to interfere in the order dated 02.12.2015 of the DoPT, the Court must be satisfied that the order is either arbitrary or illegal or suffers from any bias. We are unable to convince ourselves of any of the above factors which would call for interference in the order passed by the Tribunal or in the order of the DoPT. In today's world of competition, what used to be taught in Kindergarten is now being taught in a Play School. The

standard of education is being raised year after year. The petitioners, in our view, have no grounds to complain. The chart we have extracted in paragraph 2 foregoing would show that as to how many number of attempts they have made to clear the CSE examination. Being not successful may only show that they are probably suited in a different place of work and they should not consider themselves to be failures.

19. We find no grounds to interfere with the impugned judgment. The petition is dismissed accordingly.

CM.APPL 25449/2016(stay)

20. Since the writ petition has been dismissed, the application also stands dismissed.



G.S.SISTANI, J

I.S. MEHTA, J

JULY 26, 2016

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