A MOHAN KUMAR SINGHANIA AND ORS. ETC. ETC.

v.

UNION OF INDIA AND ORS. ETC. ETC

SEPTEMBER 13, 1991

B [S. RATNAVEL PANDIAN, M. FATHIMA BEEVI AND K. JAYACHANDRA REDDY, JJ.]

Civil Services Examination Rules: Rules 4,8 and 17.

C *Rule 4—Second proviso—Nature, scope and constitutional validity of—Held proviso carves out an exception to Rule 4—It does not travel beyond Rule 4—Proviso held not ultra vires to clause (iii-a) of Regulation 4 of I.A.S (Appointment by competitive Examination) Regulations, 1955—There is dynamic and rational nexus between the proviso and the object to be achieved—Proviso held applicable to candidates belonging to* D *Scheduled Castes and Scheduled Tribes.*

Rule 8—Purpose of the Rule—Explained.

Rule 17—Proviso—Validity of— Proviso held valid.

E

Constitution of India, 1950: Articles 14 and 16—Civil Services—Classification of services—Validity of—Held classification is not based on artificial inequalities but is founded on substantial differences—Group 'A' and 'B' Services held distinct and separate—Classification of group 'A' and 'B' F *services held reasonable—Second proviso to Rule 4 of Civil Services Examination Rules held not ultra vires of Article 14 or Article 16.*

Part IV-A Article 51-A (j)—Fundamental duties—Civil Services—Training Programme of selectees—Rationale of—Training programme held in consonance with the Article 51-A (j).

G

Interpretation of Statute : Statute—Principles of construction—Legislative intention—Ascertainment of—Should be ascertained by reading the statute as a whole and in the backdrop of dominant purpose—When the language is clear and plain court should construe it in the ordinary sense H *and give effect to it irrespective of consequences—Consideration of hardship*

and inconvenience should be avoided. A

Section – Rule/proviso to—Nature and scope of—Rule of interpretation of proviso—What is—Proviso is expected to except or qualify the enacting part.

B

Rule 4 of the Civil Services Examination Rules provide that every candidate appearing at the examination, who is otherwise eligible, shall be permitted three attempts at the examination. (The attempts are now increased to four). Under Proviso to the said Rule the restriction on the number of attempts is not applicable in the case of Scheduled Castes and Scheduled Tribes candidates who are otherwise eligible. By a notification C **dated 13.12.1986 the Central Executive Authority inserted second proviso to Rule 4. The said second proviso provided that a candidate who on the basis of the results of the previous Civil Services Examination, had been allocated to the I.P.S. or Central Services, Group 'A' but who expressed his intention to appear in the next Civil Services Main Examination for** D **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 and that the said candidate when allocated to a service on the basis of the next Civil Services (Main) Examination can either join that service or the service to** E **which he has already been allocated on the basis of the previous CSE and that if he fails to join either of the services, his allocation based on one or both the examinations, as the case may be, will stand cancelled. Further, notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a service and is appointed to that service shall not be eligible to appear again in the CSE unless he has first resigned from the service. In** F **other words, a candidate failing within the ambit of this proviso can appear in the CSE for all the permitted attempts subject to his age limit if he intends to appear again in the CSE provided he first resigns from the service which he accepts on allocation and to which he is appointed.**

Rule 8 of the Civil Services Examination Rules precludes the G **candidate who have been appointed to the IAS, or IFS from sitting in the ensuing examination while in service. The said rule provide that a candidate who is appointed to the Indian Administrative Service (IAS) or the Indian Foreign Service (IFS) on the basis of result of an earlier examination before the commencement of the ensuing examination and** H

A continues to be a member of that service will not be eligible to compete at the sub sequent examination, even if he is disillusioned and wants to switch over. Further, this rule states that in case, a candidate has been appointed to the IAS or IFS on the basis of the earlier examination and after the subsequent preliminary examination, but before the main examination, the candidate, if continues to be a member of that service, B shall not be eligible to appear in the ensuing main examination notwithstanding that the said candidate has qualified himself in the preliminary examination. Similarly if a candidate is appointed to the IAS or IFS after the commencement of the Main examination but before the announcement of the result and continues to be a member of that service, C the said candidate shall not be considered for appointment to any service/post on the basis of the result of this examination.

Rule 17 of the Civil Services Examination Rules provide that if a candidate has been approved for appointment to IPS and expresses his intention to appear in the CSE (Main) for higher civil service, the services D for which he is eligible to compete are IAS, IFS and Central Services Group 'A'. Similarly, a candidate who has been approved for appointment to the Central Services Group 'A' and expresses his intention to appear in the next CSE (Main) the services to which he will be eligible to compete are IAS, IFS and IPS. The second proviso to Rule 17 provides that a candidate E who is appointed to a Central Services Group 'B' on the result of an earlier examination will be considered for appointment to IAS, IFS, IPS and Central Services Group 'A'.

The eligibility of a candidate to appear in the Civil Services Examination with regard to nationality, age and qualifications is given F under Regulation 4 of the IAS (Appointment by Competitive Examination) Regulations, 1955. Clause (iii-a) of the said Regulation provides that 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, 1979, who is otherwise G eligible, shall be permitted three 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.

The legality and constitutionality of second proviso to Rule 4 and

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Rule 17 was challenged before the Central Administrative Tribunal. The Tribunal held that the second proviso to Rule 4 and Rule 17 were valid and were not hit by Article 14 and 16 of the Constitution. A

In appeals to this court, it was contended on behalf of the appellants (1) that second proviso to Rule 4 of the CSE Rules was invalid because: (a) it puts embargo restricting the candidates who are seeking to improve their position vis-a-vis their career in government service; (b) it travels beyond the intent of main rule viz. Rule 4; (c) it is *ultra-vires* to clause (iii-a) of regulation 4 of the I.A.S (Appointment by competitive Examination) Regulation, 1955 in as much as the power to notify exceptions do not include the power to make candidates ineligible who are otherwise eligible in terms of clause (i) to (iii) of Regulation 4; (d) it is bad since the authorities have stepped out of the constitutional limits in issuing the notification inserting the impugned proviso and that it has not been placed before the House of Parliament; (e) it is arbitrary and irrational having no nexus with the object of recruitment to the post of civil services; (f) it is violative of Articles 14 and 16 of the Constitution because it discriminates between group 'A' and group 'B' services i.e. it excludes the candidates appointed to group 'A' services from competition while no such embargo is placed restricting the candidates to Group 'B' services; (2) that the second proviso is not applicable to the candidates belonging to SC or ST; (3) Proviso to Rule 17 of the Civil Services Examination is invalid since it places restriction on candidates who are seeking to improve their position vis-a-vis their career. B C D E

Dismissing the appeals, this Court,

HELD: 1. If Rule 4 of Civil Services Examination Rules is examined in juxtaposition of clause (iii-a) of Regulation 4, it is clear that both Rule 4 of CSE Rules and Clause (iii-a) of the Regulation 4 show that every eligible candidate appearing at the Civil Services Examination should be permitted three attempts at the examination which are now increased to four under Rule 4 of the CSE Rules. The eligibility of a candidate to appear in the CSE with regard to nationality, age and educational qualifications is given under clauses (i) to (iii) of Regulation 4 but the Government by exercise of its executive power has imposed certain restrictions under some specified circumstances. A plain and grammatical reading of clause (iii-a) of Regulation 4 shows that if the number of F G H

A attempts are covered by any of the exceptions that may from time to time be notified by the Central Government in this behalf, then the notification will become enforceable and only in the absence of such notification, every candidate normally can appear for all permitted attempts at the examination whether three or four. The impugned second proviso does not restrict or put an embargo on the number of attempts in the normal course. But the restriction is only when the conditions enumerated in the impugned proviso are satisfied. The restriction imposed by the impugned proviso cannot be said to be unjust, unreasonable or arbitrary or change of any policy. Moreover, the spirit of the main rule is not in any way disturbed. [80 B-F, 92 D]

1.1 The restriction or embargo, as the one under consideration is not only placed on the candidates who on the basis of the result of the previous CSE had been allocated and appointed to IPS or Central Services Group 'A' but also on the candidates appointed in the higher echelon of civil service. There is a far more restrictive rule in existence, namely Rule 8 of the CSE Rules which precludes the candidates who have been appointed to the IAS or IFS, from sitting in the ensuing examination while in service. Further, this rule states that in case, a candidate has been appointed to the IAS or IFS on the basis of the earlier examination and after the subsequent preliminary examination, but before the Main examination, that candidate if continues to be a member of that service, shall not be eligible to appear in the ensuing main examination notwithstanding that the said candidate has qualified himself in the preliminary examination. Similarly if a candidate is appointed to the IAS or IFS after the commencement of the main examination but before the announcement of the result and continues to be a member of that service, the said candidate shall not be considered for appointment to any service/post on the basis of the result of this examination. But there is no bar for a candidate who is appointed to the IAS/IFS resigning from that service and sitting in the examination for IPS or any Central Service Group 'A'. [86 B-F, 86 G-H]

Under Rule 4 of CSE Rules notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a service and appointed to that service shall not be eligible to appear again in the CSE unless he first resigns from that service. In other words, a candidate who is allocated and appointed to a service can sit in the ensuing examination provided he first resigns from that service. This restriction, is a reasonable one in order to

achieve the desired result. Thus the second proviso to Rule 4 of the CSE Rules does not travel beyond the intent of the main rule putting any unjustifiable embargo and the proviso is not ultra-vires Regulation 4(iii-a) of Regulations 1955 on the ground that it makes the candidates ineligible who are otherwise eligible in terms of clauses (i) to (iii) of the said Regulation and the proviso to Rule 17 is not invalid. [86H, 87 A-C] A B

2. An enactment is never to be held invalid unless it be, beyond question, plainly and palpably in excess of legislative power or it is ultra-vires or inconsistent with the statutory or constitutional provisions or it does not conform to the statutory or constitutional requirements or is made arbitrarily with bad faith or oblique motives or opposed to public policy. [87 C-D] C

2.1 While interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, the court is bound to construe them in their ordinary sense with reference to other clauses to the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/Rules/Regulations relating to the subject matter. Added to this, in construing a statute, the court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation. [83 F-G] D E

Maxwell on the "*Interpretation of statutes*" 10th Edn. page 7; Craies on *Statute Law*, 5th Edn.; 6th Edn., page 89; referred to. F

King Emperor v. *Benoari Lal Sharma*, AIR 1945 PC 48; *Warburton* v. *Loveland*, [1832] 2 D & CH. (H.L.) 480; *Suffers* v. *Briggs*, [1982] 1 A.C. 1,8; *Commissioner of Income Tax* v. *S. Teja Singh*, [1959] 1 Suppl. SCR 394; *M. Pentiah and Ors.* v. *Muddala Veeramallappa and Ors.*, AIR 1961 SC 1107; *Lt. Col. Prithi Pal Singh Bedi etc.* v. *Union of India & Ors.*, [1983] 1 SCR 393; *A.R. Antulay* v. *R.S. Nayak*, [1984] 2 SCR 914; *Maharashtra State Board of Secondary and Higher Secondary Education and Anr.* v. *Paritosh Bhupesh Kumarsheth etc.*, [1985] 1 S.C.R. 29; *Philips India Ltd.* v. *Labour Court, Madras and Ors.*, [1985] 3 SCC 103; *Balasinor Nagrik Cooperative Bank Ltd.* v. *Babubhai Shankerlal Pandya and Ors.*, [1987] 1 SCC 608; G H

A *Dr. Ajay Pradhan* v. *State of Madhya Pradesh and Ors.*, [1988] 4 SCC 514; *LIC* v. *Escorts*, AIR 1986 SC 1370, referred to.

2.2 A Proviso to a Section/Rule is expected to except or qualify something in the enacting part and presumed to be necessary. When the impugned second proviso to Rule 4 of the CSE Rules is interpreted in its grammatical meaning and cognate expressions and construed harmoniously with the substantive rule, it is pellucid that the said proviso only carves out an exception to Rule 4 of the CSE Rules in given circumstances and under specified conditions and, therefore, the second proviso cannot be read in isolation and interpreted literally. On the other hand the substantive Rule 4 is be read in conjunction with the two provisos appended thereto so as to have a correct interpretation. [83H, 85 E-F]

2.3 In the Proviso, in dispute, there are no positive words or indications which would completely exclude the operation of the substantive rule the spirit of which is reflected in Regulation 4 of the Regulations, 1955. The restriction imposed by the second proviso is only under certain circumstances. Although the notification introducing the impugned proviso, has to be strictly construed, the Court cannot overlook the very aim and object of the proviso thereby either defeating its purpose or rendering it redundant or inane or making it *otiose*. Judged from any angle, it is not possible to hold that there is a violent breach of the provisions of the substantive Rule 4 of CSE Rules and Regulation 4 (iii-a) and it cannot be held that the impugned second proviso either subverts or destroys the basic objectives of Rule 4 and that it is *ultra-vires*. [85F-H, 86 A-B]

Maxwell on *"The Interpretation of statute"*, 11th edn. page 155; *Kent's Commentary on American Law*, 12th Edn. vol. 1 463, referred to.

Att. Gen. v. *Chelsea Waterworks Co.*, [1731] Fitzg. 195; *Piper* v. *Harvey, [1958] 1 Q.B. 439; R.* v. *Leeds Priso (Governor)*, [1964] 2 Q.B. 625; *Ram Narain Sons Ltd. and Ors.* v. *Asstt. Commissioner of Sales Tax and Ors.*, [1955] 2 SCR 483; *Abdul Jabar Butt & Anr.* v. *State of Jammu and Kashmir*, [1957] SCR 51; *Commissioner of Income Tax* v. *S. Teja Singh*, [1959] 1 Suppl. SCR 394; *The Commissioner of Income Tax Mysore Travancore-Cochin and Coorg., Bangalore* v. *The Indo Mercantile Bank Ltd.*, [1959] 2 Suppl. SCR 256; *Madras & Southern Mahratta Railway Co.* v. *Bezwada Municipality*, [1944] L.R. 71 I.A. 113, *Corpn. of the City of Toronto* v. *Attorney-General for Canada*, [1946]A.C. 32; *Mackinnon Mackenzie & Co. Ltd.* v. *Audrey D' Cost and Anr.*, [1987] 2 SCC 469, referred to.

3. The argument that the second proviso is bad since the authorities have stepped out of the constitutional limits in issuing the notification inserting the impugned proviso and that it has not been placed before the Houses of the Parliament, has to be rejected because the proviso has been introduced by the Central Executive Authority under the powers flowing from Article 73(1) (a) of the Constitution, according to which the executive power of the Union subject to the provisions of the Constitution shall extend to the matters with respect to which Parliament has power to make laws, but of course subject to the proviso made thereunder. Needless to point out that whilst by virtue of clause 1 (a) of Article 73, the executive power of the Union which is co-extensive with the legislative power of Parliament can make laws on matters enumerated in List I (Union List) and List II (Concurrent list) to the Seventh Schedule of the Constitution, under Article 162 of the Constitution, the executive power of the State Executive which is coextensive with that of the State legislature can make laws in respect of matters enumerated in List III (State List) and also in respect of matters enumerated in List II (Concurrent List), subject to the provisions of the Constitution. [77 D-G]

3.1 In the instant case, the Central executive authority has not either expressly or impliedly changed the policy of the Government by exercising unreasonable and arbitrary discretion and the present Rule 4 with its newly added second proviso does not repeal the essential features of the pre-existing Rule 4 but only limits the ambit of the operation of the price 4 under a given situation. Hence, there is no substance in the contention that the second proviso is bad and that the central executive authority has transgressed the constitutional limits. [77 H, 78 A]

4. Article 14 declares that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The cherished principle underlying the above Article is that there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is the same. [103 H, 104 A]

4.1 Differential treatment does not *per se* constitute violation of Article 14 and it denies equal protection only when there is no rational or reasonable basis for the differentiation. Thus Article 14 condemns discrimination and forbids class legislation but permits classification

A **founded on intelligible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The Government is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not scientifically be perfect or logically complete. Every classification is likely in some degree to**
B **produce some inequality. [104 B-D]**

R.K. Dalmia v. *Justice Tendolkar,* **[1959] SCR 279;** *Budhan Choudhry* **v.** *State of Bihar,* **[1955] 1 SCR 1045;** *Kumari Chitra Ghosh and Anr.* **v.** *Union of India and Ors.,* **[1969] 2 SCC 228;** *State of Jammu & Kashmir* **v.** *Triloki Nath Khosa & Ors.,* **[1974] 1 SCR 771;** *A.S. Sangwan* **v.** *Union of*
C *India,* **[1980] Suppl. SCC 559;** *Akhil Bhartiya Soshit Karamchari Sangh (Railway)* **v.** *Union of India & Ors.,* **[1981] 1 SCC 246;** *Deepak Sibal* **v.** *Punjab University,* **[1989] 2 SCC 145;** *Chiranjit Lal* **v.** *Union of India* **[1950] 1 SCR 869;** *Ameeroonissa* **v.** *Mahboob,* **[1953] SCR 405;** *Gopi Chand* **v.** *Delhi Administration,* **AIR 1959 SC 609;** *E.P. Royappe* **v.** *State of Tamil*
D *Nadu,* **[1974] 2 SCR 348;** *Maneka Gandhi* **v.** *Union of India* **[1978] 1 SCC 248;** *Ramana* **v.** *International Airport Authority of India,* **AIR [1979] SC 1628;** *Union of India* **v.** *Tulsiram Patel,* **[1985] 3 SCC 398;** *Swadeshi Cotton Mills* **v.** *Union of India,* **[1981] 2 SCR 533;** *Central Inland Water Transport Corporation* **v.** *Brojo Nath,* **AIR 1986 SC 1571;** *Devadasan* **v.** *Union of India,* **[1964] 4 SCR 680;** *Birendra Kumar Nigam and Ors.* **v.** *Union of India,* **W.P.**
E **Nos. 220-222 of 1963 decided on 13.3.64, referred to**

4.2 The selections for IAS, IFS, and IPS Group 'A' services and group 'B' service are made by a combined competitive examination and *viva voce* **test. There cannot be any dispute that each service is a distinct and separate cadre, having its separate field of operation, with different**
F **status, prospects, pay scales, the nature of duties, the responsibilities to the post and conditions of service etc. Each of the services is founded on intelligible differentia which on rational grounds distinguishes persons grouped together from those left out and that the differences are real and substantial having a rational and reasonable nexus to the objects sought**
G **to be achieved. Therefore, once a candidate is selected and appointed to a particular cadre he cannot be allowed to say that he is at par with the others on the ground that all of them appeared and were selected by a combined competitive examination and** *viva voce* **test and that the qualifications prescribed are comparable. The classification of services is**
H **not based on artificial inequalities but is hedged within the salient features**

and truly founded on substantial differences. Judged from this point of view, it is not possible to hold that the classification rests on an unreal and unreasonable basis and that it is arbitrary or absurd. [103C, 106C, 103 D-E] A

4.3 It cannot also be disputed that the candidates allocated to Group 'A' services are more meritorious compared to candidates allocated to Group 'B' services. Consequently, those allocated to Group' B' services get lower position compared to those allocated to Group A' services. The pay scales in Group 'B' services are comparatively less than those meant for IAS, IFS and IPS and Central Services Group 'A'. There is a clear cut separation on the basis of ranking and merit and, therefore, it cannot be said by any stretch of imagination that both Group 'A' and Group 'B' services fall under one and the same category but on the other these services are two distinct and separate categories falling under two different classifications. Therefore, there is no discrimination whatsoever involved on account of the introduction of the second proviso in question and the said proviso is not *ultra-vires* of Article 14 or Article 16 of the Constitution of India. [97 B-C, 106G] B C D

5. In the normal course, a candidate belonging to SC/ST category can enjoy all the benefits under the rules and regulations. But the restriction imposed under the second proviso is only for a specified category of candidates by treating all such candidates at par and without making any exception to the candidates belonging to SC/ST. The submission that the second proviso is an independent one does not merit consideration because the second proviso to Rule 4 begins with the words "*provided further.....*" which expression would mean that a strict compliance of the second proviso is an additional requirement to that of the substantive rule 4 and the first proviso. The expression "*provided further*" spells out that the first proviso cannot be read in isolation or independent of the second proviso but it must be read in conjunction with the second proviso. [89 C-E] E F

5.1 Once the candidates belonging to SC or ST get through one common examination and interview test and are allocated and appointed to a service based on their ranks and performance, and brought under the one and the same stream of category, then they too have to be treated among all other regularly and lawfully selected candidates and there G H

A cannot be any preferential treatment at that stage on the ground that they belong to SC or ST, though they may be entitled for all other statutory benefits such as to the relaxation of age, the reservation etc. The unrestricted number of attempts, subject to the upper age limit, is available to the SC/ST candidates in the normal course but that is
B subject to the second proviso because when once they are allocated and appointed along with other candidates to a category/post, they are treated alike. Therefore, there is no merit in the submission that the second proviso is not applicable to the candidates belonging to SC or ST. [89 E-G,91H, 92 A]

C 5.2 There may be some hard cases, but the hard cases cannot be allowed to make bad law. As long as the second proviso does not suffer from any vice, it has to be construed , uniformly giving effect to all those falling under one category in the absence of any specific provision exempting any particular class or classes of candidates from the operation
D of the impugned proviso and no one can steal march over others falling under the same category. Hence the right of candidates belonging to SC and ST competing further to improve their career opportunities is limited to the extent permissible under the second proviso to Rule 4 read with Rule 17 of the C.S.E. Rules. [91 F-G]

E *C.A. Rajendran* v. *Union of India & Ors.*, [1968] 1 SCR 721; *State of Kerala* v. *N.N. Thomas,* [1976] 2 SCC 310; *Akhil Bhartiya Soshit Karamchari Sangh/Railway)* v. *Union of India & Ors.*, [1981] 1 SCC 246; *M.R. Balaji* v. *State of Mysore,* [1963] Suppl. 1 SCR 439; *Triloki Nath* v. *State of J&K* [1969] 1 SCR 103; *T. Devadasan* v. *Union of India,* [1964] 4 SCR 680; *Comptroller and Auditor-General of India* v. *K.S. Jagannathan*, [1986] 2
F SCC 679; *Janki Prasad* v. *State of J&K,* AIR 1973 SC 930; *General Manager* v. *Rangachari,* AIR [1962] SC. 36, referred to.

6. There is no denying the fact that the civil service being the top most service in the country has got to be kept at height, distinct from other services since these top echelons have to govern a wide variety of
G departments. Therefore, the person joining this higher service should have breadth of interest and ability to acquire new knowledge and skill since those joining the service have to be engaged in multiple and multifarious activities. In order to achieve this object, the selectees of this higher civil services have to undergo training in the National Academy/Training
H institutes wherein they have to undergo careful programme of specialized

training as probationers. The various schemes of training are based on the conviction that splendid active experience is the real training and the selectees are to be trained in the academies in all kinds of work they have to handle afterwards with a band of senior chosen officers. [92 H, 93 A-B]

6.1 The rationale underlying the course at the training centres is that the officers of civil services must acquire an understanding of the constitutional, social, economic and administrative framework within which they have to function and also must have a complete sense of involvement in the training and thereafter in the service to which he is appointed. The initial training is in the nature of providing young probationers an opportunity to counter-act their weak points and at the same time develop their social abilities and as such the aspect of training is the most important of all. [93 C-D]

Hermer Fines, the *Theory and Practice of Modern Government; United Nations Handbook on Civil Service Laws and Practice,* **referred to.**

Lila Dhar **v.** *State of Rajasthan & Ors.,* **[1981] 4 SCC 159, referred to.**

6.2 The effort taken by the Government in giving utmost importance to the training programme of the selectees so that this higher civil service being the top most service of the country is not wasted and does not become fruitless during the training period is in consonance with the provisions of Article 51-A (j) of the Constitution. [77-A]

6.3 There is a dynamic and rational nexus between the impugned second proviso and the object to be achieved. [106-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5439-52 of 1990 etc. etc.

From the Judgments and Orders dated 20.8.1990/4.10.1990/ 15.10.1990 of the Central Administrative Tribunal, Principal Bench, Delhi in O.A. Nos. 1023, 309, 1705, 1058 & 1054 of 1989 and 1072, 1074, 1162, 1161, 1122, 1064, 536, 1230 of 1990 and M.P. No. 1354 of 1990 in O.A. No. 309 of 1989.

P.P. Rao, A.K. Behere, A.K. Sahu, C.N. Sreekumar, Gopal Subramanium, Madhan Panikhar, Mrs. Vimla Sinha, Gopal Singh, Salman Khurshid, Mrs. C.M. Chopra, A.M. Khanwilkar and Mrs. V.D. Khanna for

A the Appellants.

Kapil Sibal, Additional Solicitor General, Ms. Kamini Jaiswal and C.V.S. Rao for the Respondents.

The Judgment of the Court was delivered by

B

S. RATNAVEL PANDIAN, J. The above batch of Civil Appeals in which common questions of law arise, is preferred by special leave under Article 136 of the Constitution of India against the judgments dated 20.8.1990, 4.10.1990 and 5.10.1990 of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as Tribunal) rendered C in various affiliated groups of original applications (O.As) upholding the validity of the second proviso to Rule 4 of the Civil Services Examination Rules (hereinafter referred to as 'C.S.E. Rules') introduced by Notification No. 13016/4/86-AIS(1) dated 13.12.1986 (Published in the Gazette of India Extraordinary, Part I Section 1). Be it noted that similar notification has been/is being issued each year for the general information of the can- D didates setting down the terms and conditions, eligibility etc. to sit for the Civil Service Examination of the concerned year.

While a substantial number of O.As filed before the Tribunal at Delhi were pending, a similar number of analogous O.As filed before the Benches of Administrative Tribunals at Patna, Allahabad, Chandigarh, E Jabalpur, Hyderabad, Jodhpur and Eranakulam were transferred to the Tribunal at Delhi since common questions of law arose for determination in all the O.As.

The Tribunal rendered its main judgment in O.A.No. 206/89 *Alok Kumar* v. *Union of India & Ors.* and 61 other O.As in which the facts F appear to be common. The other judgments were passed on the basis of the conclusions arrived in O.A. No. 206/89 and the connected batch of OAs. Since the Tribunal has set out only the facts in the case of *Alok Kumar* (O.A. No. 206/89) treating it as a main application and illustrative of the questions raised, we would like to briefly indicate the facts of *Alok Kumar's* case so that the impelling circumstances which led to the filing of G these appeals and the common questions of law involved may be understood in the proper perspective in the light of the judgment of the Tribunal.

In this context, it may be noted that though no appeal has been filed against the Order in O.A.No. 206/89, we are given to understand that Alok Kumar who agitated his similar claim along with two others who were all H allocated to Group 'A' Services (I.R.P.S.) in O.A.No. 1071/1990 has

preferred Civil Appeal No. 5469 of 1990 against the judgment in the said O.A. No. 1071 of 1990. A

Shri Alok Kumar filed his application in December 1986 to sit for the preliminary examination in 1987. The preliminary examination was held by the Union Public Service Commission ('UPSC for short') in June 1987 and the result was declared in July 1987. The C.S.E. (Main) Examination was B held by the UPSC in November 1987. The interviews took place in April 1988 and the final results were declared by the UPSC in June, 1988. The applicant, Alok Kumar was selected for appointment to Central Service Group 'A' post. A communication to this effect was sent to him on 30.8.88 in which Alok Kumar's attention was drawn to Rule 4 of the C.S.E. Rules 1987 pointing out that if he intended to appear in the Civil Services (Main) C Examination in 1988 he would not be allowed to join the Probationary Training along with the candidates of 1987 group but would only be allowed to join the Probationary Training along with the candidates who would be appointed on the basis of the CSE 1988. The said letter also indicated that in the matter of seniority, he would be placed below all the candidates who would join training without postponement. Therefore, he D was required to furnish the information about his appearing in the CSE (Main) 1988 to the concerned cadre controlling authorities. He was further informed that only on receipt of the above information, the concerned cadre controlling authority would permit him to abstrain from the Probationary Training. The Joint Director, Estt. G (R), Ministry of Railways (Railway Board) informed Alok Kumar about his selection for appoint- E ment to the Indian Railway Personnel Service and that the training would commence from 6.3.1989 and that he should report for training at the Railway Staff College, Vadodara. Further he was informed that he once joined the Probationary Training along with 1987 batch , he would not be eligible for consideration of appointment on the basis of subsequent CSE conducted by the UPSC. F

The case of Alok Kumar was that he did not intend to appear in the next CSE and he had already appeared for the CSE 1988 even before he received the offer of appointment dated 2.1.1989. He was then intimated that if he had already joined the Probationary Training along with 1987 batch, he would not be eligible for consideration for appointment on G the basis of subsequent CSE conducted by the UPSC. Besides the main reliefs, Alok Kumar had prayed for an interim order to join and complete the current Probationary Training without being compelled to sign the undertaking sought to be obtained from him subject to final orders in the O.A. The Division Bench of the Tribunal issued an interim order, as prayed for by Alok Kumar, allowing him to join the requisite training for H

A the service to which he had been allocated and allowed him to appear in the interview as and when he was called by the UPSC on the basis of 1988 Examination.

The respondents filed their reply explaining the circumstances under which the second proviso was introduced to rule 4 of CSE Rules, its scope and ambit and refuted all the intentions raised by Alok Kumar challenging the legality and constitutionality of the impugned proviso.

The Tribunal by its detailed and considered judgment has rendered its conclusions thus:

"Having considered the matter in the above bunch of cases, we have come to the following conclusions:—

1. The 2nd proviso to Rule 4 of the Civil Services Examination Rules is valid.

2. The provisions of Rule 17 of the above Rules are also valid.

3. The above provisions are not hit by the provisions of Arts. 14 and 16 of the Constitution of India.

4. The restrictions imposed by the 2nd proviso to Rule 4 of the Civil Services Examination Rules are not bad in law.

5. (i) The letter issued by the Ministry of Personnel, Public Grievances and Pensions dated 30th August, 1988 and in particular, paragraph 3 thereof and paragraph 4 of the letter dated 2.1.1989, issued by the Cadre Controlling Authority, Ministry of Railways (Railway Board) are held to be bad in law and unenforceable. Similar letters issued on different dates by other Cadre controlling Authorities are also unenforceable.

(ii) A candidate who has been allocated to the I.P.S. or to a Central Services, Group 'A' may be allowed to sit at the next Civil Services Examination, provided he is within the permissible age limit, without having to resign from the service to which he has been allocated, nor would he lose his original seniority in the service to which he is allocated if he is unable to take training with his own Batch.

6. Those applicants who have been allcoated to the I.P.S. or any Central Services, Group 'A', can have one more attempt in the subsequent Civil Services Examination, for the Services in-

dicated in rule 17 of the C.S.E. Rules. The Cadre Controlling Authorities can grant one opportunity to such candidates. A

7. All those candidates who have been allocated to any of the Central Services, Group 'A', or I.P.S. and who have appeared in Civil Services Main Examination of a subsequent year under the interim orders of the Tribunal for the Civil Services Examinations 1988 or 1989 and have succeeded, are to be given benefit of their success subject to the provisions of Rule 17 of the C.S.E. Rules. But this examination will not be available for any subsequent Civil Services Examination. B

In the result, therefore, the Applications succeed only in part—viz., quashing of the 3rd paragraph of the letter dated 30.8.1988 and 4th paragraph of the letter dated 2nd January, 1989 and similar paragraphs in the letters issued to the applicants by other cadre controlling authorities. Further, a direction is given to the respondents that all those candidates who have been allocated to any of the Central Services, Group 'A' or I.P.S. and who have appeared in Civil Services Main Examination, 1988 or 1989 under the interim orders of the Tribunal and are within the permissible age limit and have succeeded are to be given benefit of their success subject to the provisions of Rule 17 of the C.S.E. Rules. The O.As are dismissed on all other counts." C D

On the basis of the above directions given in paragraphs 5(ii), 6 and 7, we gave some interim directions on 7.12.1990 which are annexed to this judgment as Annexure 'A'. E

Several learned counsel appeared for the respective parties and advanced their submissions interpreting the rules and cited a plethora of decisions in support of their respective cases. Whilst Mr. P.P. Rao, senior counsel assisted by Mr. C.N. Sreekumar and others, Mr. Gopal Subramaniam, Mrs. C.M. Chopra, Mr. Gopal Singh and Mr. A.M. Khanwilkar appeared for the appellants in the various batches of cases, the learned Additional Solicitor General, Mr. Kapil Sibal assisted by Ms Kamini Jaiswal and Mr. CVS Rao appeared on behalf of the respondents/Union of India & Others. F G

The common substantial questions of law, propounded and posed for consideration in all the above appeals are:

(1) Whether the second proviso to Rule 4 of the CSE Rules 1986 is invalid for the reason that it puts an embargo restricting the candidates who are seeking to improve their position vis-a- H

A vis their career in Government service?

(2) Whether the second proviso under challenge travels beyond the intent of the main rule namely, Rule 4 of the CSE Rules?

B (3) Whether the proviso to Rule 17 of the CSE Rules is invalid on the ground that it places restriction on candidates who are seeking to improve their position vis-a-vis their career?

C (4) Whether the said second proviso to Rule 4 of CSE Rules is *ultra-vires* to clause (iii-a) of Regulation 4 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 (for short 'Regulations') inasmuch as the power to notify exceptions does not include the power to make candidates ineligible who are otherwise eligible in terms of clauses (i), (ii) and (iii) of Regulation 4?

D (5) Whether the said proviso which is an administrative instruction introduced by the impugned Notification is arbitrary and irrational having no nexus with the object of recruitment to the post of Civil Services?

E (6) Whether the impugned second proviso is illegal since it makes a discrimination between the successful candidates of Central Service Group 'A' and Group 'B' as no embargo is placed restricting the candidates of Group 'B' service, as in the case of Group 'A' service and whether the reasons given by the Government to justify the introduction of the impugned proviso have any rational nexus to the object of the scheme of F recruitment to the All India Services or/and whether such reasons are arbitrary, unfair and unjust?

(7) Whether the restriction imposed on the number of attempts in pursuance of the impugned proviso, in the case of Scheduled Castes/Scheduled Tribes candidates who were since G then availing any number of attempts subject to the eligibility of age limit is unjustifiable and illegal and amounts to deprivation of the right conferred on them by the Constitution of India?

H (8) Whether the reasons given by the Government to justify the introduction of the impugned proviso have any rational

nexus to the object of the scheme of recruitment to the All India Services or/and whether such reasons are arbitrary, unfair and unjust? A

(9) Whether the impugned second proviso is suffering from the vice of hostile discrimination and as such violative of Articles 14 and 16 of the Constitution of India. B

Recruitment to All India and Central Services – Brief History and Present Position:

Before entering into an extensive investigation and fullfledged discussion on the questions formulated above, we feel that in order to have a more comprehensive study of the development of the civil service in India a brief history of the past system of recruitment to All India and Central Services based on the then existing mode of selection and the development of the present scheme of examination and method of recruitment till the introduction of the impugned proviso to rule 4 of CSE Rules, is necessary so as to have the background of the entire system and to assimilate the compelling necessity warranting the introduction of the new proviso. C D

The Indian Civil Service (ICS) Examination was held only in England by the British Civil Service Commission till 1922 and thereafter in India. Four years later, the newly formed Public Service Commission (India) began to conduct the ICS Examination on behalf of British Civil Service Commission and this position continued until 1937 when the Public Service Commission (India) was replaced by the Federal Public Service Commission under the Government of India Act, 1935. Thereafter, the Indian Civil Service Examination in India was held by the Federal Public Service Commission independent of the British Civil Service Commission. After 1943, recruitments to the Indian Civil Service, Indian Police besides the Indian Audit and Accounts Service and allied services were suspended. In 1947 a combined examination was introduced for recruitment to the Indian Administrative Service, Indian Police Service and non-technical Central Services. Between the years 1947-50 a combined competitive examination was held once a year for recruitment for IAS, IFS, IPS and non-technical Central Services. After independence, new services known as the Indian Administrative Services (IAS) and Indian Police Service (IPS) were established as All India Services. In order to meet the country's requirement for diplomatic personnel another service known as Indian Foreign Service (IFS) was established. The Service Commission was redesignated as the Union Public Service Commission in 1950 when the Constitution came into force. E F G H

A While it was so, the U.P.S.C. appointed a Committee in February 1974 under the chairmanship of Dr. D.S. Kothari to make recommendations for further improvement in the system having regard to the needs of various services and accordingly the said Committee undertook a painstaking research and carried on a comprehensive and analytical study and thorough examination of the various aspects of the problems connected B with the reform in the existing examination and selection by going in great depth and detail and submitted its report on March 20, 1976 after taking into consideration of the fact of frequent receipt of complaints from the training centres and the data collected and made its recommendations in evaluating the scheme of civil services by tracing its birth and breadth of the upper tier of this administrative machinery covering its entire field.

C

On the recommendations of the Kothari Committee the current scheme of Civil Services Examination was introduced from 1979, as per which the Civil Services Examination conducted by the U.P.S.C. has been and is catering to the All India Services viz. IAS, IFS and IPS; and 16 Central Group 'A' Services and 8 Group 'B' Services.

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In order to be eligible to compete at the examination, a candidate must satisfy the conditions of eligibility, namely, nationality, age and requisite qualifications as envisaged under Regulation 4 of the I.A.S. (Appointment by Competitive Examination) Regulation 1955. In addition to the E above qualifications, one more condition of eligibility is added under Regulation 4 (iii-a) substituted vide Department of Personnel and A.R. notification No. 11028/1/78-AIS (I)—A dated 30.12.1978, according to which 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, 1979, who is otherwise F eligible shall be permitted three attempts at the examination. In other words, the number of attempts, a candidate can appear, is also made as one of the conditions of eligibility to sit for the IAS competitive examination. It may be pointed out in this connection that by a subsequent notification dated 23.11.1981, Regulation 4 (iii-a) was further clarified that the G 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. An explanation is added to this, explaining "an attempt at a preliminary examination shall be deemed to be H an attempt at the examination, within the meaning of this rule".

Civil Services Examination – Present Scheme

From the CSE held in 1979, each eligible candidate is permitted three attempts at the examination. This restriction on the number of attempts does not apply to the candidates belonging to SC/ST and other specified categories as may be notified by the Central Government from time to time under Rule 6(b) of the CSE Rules but subject to the relaxation in the upper age limit of those candidates. The scheme of selection of candidates for the Civil Services consists of three sequential stages, each making a significant and specific contribution to the total process. They are:

(1) Preliminary examination serving as a screening test;

(2) The main examination which intended to assess the overall intellectual traits and depth of understanding of candidates; and

(3) The interview (*viva voce* test).

Hermer Finer in his text book under the caption *The Theory and Practice of Modern Government* states:

> "The problem of selection for character is still the *pons asinorum* of recruitment to the public services everywhere. The British Civil Service experiments with the interview."

The purpose of *viva-voce* test for the ICS Examination in 1935 could be best understood from the following extract of the Civil Service Commission's pamphlet:

> "*Viva-voce* – the examination will be in matters of general interest; it is intended to test the candidate's alertness, intelligence and intellectual outlook. The candidate will be accorded an opportunity of furnishing the record of his life and education."

It is apposite, in this connection, to have reference to an excerpt from the United Nations Handbook on Civil Service Laws and Practice, which reads thus:

> ".... the written papers permit an assessment of culture and intellectual competence. This interview permits an assessment of qualities of character which written papers ignore; it attempts to assess the man himself and not his intellectual abilities."

A This Court in *Lila Dhar* v. *State of Rajasthan and Others,* [1981] 4, SCC 159 while expressing its view about the importance and significance of the two tests, namely, the written and interview has observed thus:

> "The written examination assess the man's intellect and the interview test the man himself and 'the twain shall meet' for a
B proper selection".

AGE LIMIT

Coming to the eligibility of age, it was initially fixed at 21 to 26 years and then reduced in 1948 to 21 to 25 years. In the following year, the age
C range was further reduced to 21 to 24 years except for the Indian Railway Traffic Service for which it continued to be 21 to 25 years upto 1955. The lower age limit for IPS was reduced to 20 years in the year 1951 keeping the upper age limit at 24 years. The upper age limit for the Indian Railway Traffic Service was reduced to 24 in 1955. The age limits for all other
D services remained at 21 to 24 years. Thereafter, though the Public Services (Qualification for Recruitment) Committee appointed by the Government of India in 1955 recommended the reduction of the age range from 21-24 to 21-23 years, the Government did not agree with that recommendation and kept the prescribed age limit of 20/21 to 24 years unaltered. The Kothari Committee recommended that a candidate should not be less than 21 years
E of age and not more than 26 years on the 1st July of the year in which the candidate appears at the examination, with the usual relaxation of upper age limit for SC/ST and other categories as may be notified by the Government from time to time. However, the Committee did not recommend lower age limit of 20 years for the IPS, as was permitted. The Government while not completely agreeing with Kothari's Committee recommendations
F in regard to some aspects inclusive of age limit while implementing the recommendations, increased upper age limit to 28 years keeping the lower age limit of 21 years unaltered. Thus, the age limit of 21-28 years was in operation from 1979 to 1987. Then the Government re-considered this issue and reduced the upper age limit to 26 years. During the course of the hearing of these appeals, it has been stated at the bar that the Government
G of India in February/March 1990 amended the CSE Rules and increased the upper age limit from 26 years to 28 and then to 31 years for the CSE to be conducted by the UPSC. Now by notification No. 13018/10/90-AIS (I) dated 5th January 1991, issued by the Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel and Training) published in the Gazette of India in Part I, Sec. I the age eligibility for appearing at the
H examination in 1991 is that the candidate must have attained the age of 21

years and must not have attained 28 years on 1st August 1991 i.e. he must have been born not earlier than 2nd August, 1963 and not later than 1st August, 1970 but subject to the relaxation in the upper age limit to SC/ST and other categories specified under Rule 6(b) of the CSE Rules.

Number of Permissible Attempts

Regarding the number of attempts, a candidate could make, the Public Services (Qualifications for Recruitment) Committee in 1955 recommended that in order to identify the best candidates the number of attempts at the combined examination should be limited to two by reducing the age limit to 21-23 years. The Government accepted the recommendation regarding restriction of the number of attempts to two instead of three, but provided that these were to be counted separately for the following categories of services -

Category I - IAS and IFS

Category II - IPS and Police Service Class II of the Union Territories

Category III - Central Services Class I and Class II

In view of the acceptance of the above recommendations, from 1961 onwards, the IAS etc. examination became in effect three examinations. Since the restriction on the number of chances were related not to the examination as a whole, but individual categories, theoretically a candidate could take as many chances as the age limit would permit. Thereafter in 1972 the age limit was raised to 26 years and the reduction of attempts from three to two was not implemented following the recommendations of the Administrative Reforms Commission. In fact since 1973, candidates were permitted to make three attempts for each of the three categories of services within the permissible age range. It may be stated in this connection that the Kothari Committee had recommended only two attempts for the Civil Services Examination for not only the general candidates but also candidates belonging to the SC/ST but the Government did not agree with these recommendations and permitted three attempts to general candidates and did not impose any restriction on the number of attempts on the candidates belonging to SC/ST but of course, subject to their upper age limit. It will be worthwhile, in this context, to refer to the Report of the Committee to review the Scheme of Civil Services Examination under the

A chairmanship of Dr. Satish Chandra, appointed by the UPSC on 12.9.1988 to review and evaluate the scheme of selection to the higher civil services introduced from 1979 in pursuance of the recommendations of the Committee on Recruitment Policy and Selection under the Chairmanship of Dr. D.S. Kothari and to make recommendations for further improvement of the system and the relevant excerpt of the report touching on this aspect is as follows:—

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> "We, therefore, recommend that for the general candidates the permissible number of attempts for the Civil Services Examination should continue to be three. For the members of the Scheduled Castes and the Scheduled tribes, these should be limited to six."

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We are referring to the report of the committee chaired by Dr. Satish Chandra only for the purpose of showing the views expressed by it regarding the permissible number of attempts for the CSE that a candidate could make though this report was not available at the time of introduction of the impugned proviso. It may be stated that the Government of India has decided to increase the number of attempts from 3 to 4 for the Civil Services Examination 1990. Reference may also be made to the notification dated 5th January, 1991 issued by the Department of Personnel and Training by which Rule 4 was amended to the fact that "every candidate appearing at the examination who is otherwise eligible shall be permitted 4 attempts at the examination."

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Salient Features of the New Scheme:

Thus, the entire framework of the Civil services system have undergone a metamorphosis under the Government of India Acts of 1919 and 1935 and thereafter under our present Constitution of India. Further, pursuant to the recommendations made by various Committees as seen earlier, there has been radical change in the system of recruitment to the CSE in regard to the scheme of examination, mode of selection, the number of attempts and the eligibility of age limit since such a system was introduced.

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It is clear from the discussion that the totality of the above review of the entire system which system is a legacy of and modelled on the British one and a comprehensive survey on the different aspects of the recruitment for the higher civil services manifestly show that this system did not appear suddenly like a *'dues ex machina'* created by the legislative test, but it

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evolved in the direction of political objectivity and underwent a long process of gradual transformation and the role and functions of this higher civil services in India after the advent of independence irrefragably play an important and crucial role not only in providing an element of commonality in administration in our parliamentary democracy but also in accelerating socio-economic development of our country in the context of our constitutional objective of growth with the social justice.

The present time cycle of the CSE is such that it takes almost a year from the date of the preliminary examination to the commencement of the final results in that the preliminary examination is held in the month of June and the result of the preliminary examination is announced by the UPSC at the end of July. The Main examination is held in the first week of November, the result of which is usually announced by the third week of March and the interviews begin in the third week of April to the end of May and the results are announced in the month of June.

The merit list of successful candidates is prepared on the basis of their aggregate marks in the Main Examination and interview test and then the successful candidates are selected and allotted to different services based on their ranks and preference. The top rankers in the merit list join the IAS or IFS and then the IPS. The candidates who get into the merit list with low position are brought and classified either under Group 'A' or Group 'B' as the case may be, but having regard to their ranks in the order of merit and the selection of candidates in Group 'A' or Group 'B' is based within the zone of eligibility.

It may be noted that out of total 27 services/posts, as per notification dated 30.12.1989, the first three, namely, IAS, IFS and IPS are All India Services. Of the rest, from IV to XIX are Central Services Group 'A' and the remaining XX to XXVII are Group 'B' services. For all these services, the recruitment is made by combined competitive CSE.

Since the pleadings in all the appeals are substantially of the same paradigm and the issues of considerable importance raised are homogeneous and as the principal arguments were advanced in the same line except with some slight variation with regard to some particular issues relating to certain appeals and also the reply was commonly made, we propose to dispose of all the appeals by this common judgment.

We may now in the above background of the history of the scheme of the Civil Services, proceed to consider the various contentions advanced by the respective parties on the validity of the impugned second proviso to Rule 4 of the C.S.E. Rules and for that purpose we, in order to have a proper understanding and appreciation of the scope, object, ambit and intent of the impugned proviso, shall re-produce the relevant Rules 4, 8 and 17 and Regulation 4(iii-a) of the I.A.S. (Appointment by Competitive Examination) Regulations, 1955.

CSE RULES

Rule 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 Services Examination, had been allocated to the I.P.S. 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 in attempt of 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: 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.

Rule 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 Col. 2 below on the results of an earlier examination will be considered only for appointment in services mentioned against that service in Col. 3 below on the results of this examination.

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, Group 'A'	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'.

IAS (Appointment by Competitive Examination) Regulations, 1955

Regulation 4:

Conditions of Eligibility:–

In order to be eligible to compete at the examination, a candidate must satisfy the following conditions, namely:–

(i) Nationality.....

(ii) Age.....

(iii) Educational Qualifications .....

(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 1979, who is otherwise eligible, shall be permitted three 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. A

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

Reg. questions 1 to 6:

At the threshold we will take up the main question about the validity of the second proviso to Rule 4 of the C.S.E. Rules of 1986, which proviso is an additional one to the first proviso to Rule No. 4 and which applies only to the I.P.S and Central Services, Group 'A' selectees. This proviso consists of two parts of which the first part enumerates certain conditions on the fulfilment of which alone, an allottee to IPS or Central Services Group 'A' on the basis of the results of the previous CSE will become eligible to re-appear in the next CSE (Main) to improve his prospect with the hope of getting better position next year and joining in one of the more preferred services, namely, IAS, IFS, IPS or Central Services Group 'A' subject to the conditions, enumerated in Rule 17 of CSE Rules. C D

As per the first part of the proviso, the prerequisite conditions which are *sine qua non* are as follows: E

A Candidate who on the basis of the results of the previous CSE;

i) should have been allocated to the IPS or Central Services Group 'A';
ii) The said candidate should have expressed his intention to appear in the next Civil Service Main Examination for competing for IAS, IFS, IPS or Central Services Group 'A' subject to the provisions of Rule 17; F
iii) The said candidate should have been permitted to abstain from the Probationary Training in order to so appear.

The conditions in the second part of the proviso are as follows: G

1) If a candidate (who is permitted to appear in the next CSE (Main) on fulfilment of the conditions, enumerated in the first part of this proviso) is allocated to a service on the basis of the next Civil Service (Main) Examination, he should either join H

A that service or the service to which he has already been allocated on the basis of the previous CSE;

2) If the candidate fails to join either of the services as mentioned in the first condition of this second part then his allocation to the service based on one or both examinations, as the B case may be, shall stand cancelled; and

3) Notwithstanding anything contained in Rule 8, a candidate
a) who accepts allocation to the service and
b) who is appointed to a service shall not be eligible to appear again in CSE *unless he has first resigned from the service.*

C The sum and substance of the above proviso is that a candidate who has already been allocated to the IPS/Central Services Group 'A' and who in order to improve his efficacy of selection to higher civil service, expresses his intention to appear in the next CSE (Main) for competing for IAS, IFS, IPS or Central Services Group 'A' and who has been permitted to D abstain from the Probationary Training in order to do so, will become eligible to appear in the next CSE (Main) but subject to the provisions of Rule 17, and that the said candidate when allocated to a service on the basis of the next Civil Services (Main) Examination can either join that service or the service to which he has already been allocated on the basis of the previous CSE and that if he fails to join either of the services, his E allocation based on one or both the examinations, as the case may be, will stand cancelled. Further, notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a service and is appointed to that service shall not be eligible to appear again in the CSE unless he has first resigned from the service. In other words, a candidate falling within the ambit of this proviso can appear in the CSE for all the permitted attempts F subject to his age limit if he intends to appear again in the CSE provided he first resigns from the service which he accepts on allocation and to which he is appointed. The restriction/embargo contained in Rule 17 is, if a candidate has been approved for appointment to IPS, and expresses his intention to appear in the CSE (Main) for higher civil service, the services for which he is eligible to compete are IAS, IFS and Central Services G Group 'A'. Similarly, a candidate who has been approved for appointment to the Central Services Group 'A' and expresses his intention to appear in the next CSE (Main), the services to which he will be eligible to compete are IAS, IFS and IPS. The second proviso to Rule 17 provides that a candidate who is appointed to a Central Services Group 'B' on the results of an earlier examination will be considered for appointment to IAS, IFS,

H

IPS and Central Services Group 'A'. A

The impugned second proviso to Rule 4, as we have already pointed out, has been introduced by notification No. 13016/4/86-AIS (I) dated 13.12.1986.

The circumstances which necessitated and compelled the introduction of the above second proviso to Rule 4 was due to the receipts of various representations and frequent complaints from the Academies and Training Institutes by the Government informing that the candidates who, taking advantage of the opportunity of mobility from one service to another, were intending to appear in the next CSE (Main) in the hope of getting a better position and in a more preferred service were neglecting their required training programmes whereunder they had to undergo specialised training and acquire the necessary potential to perform their tasks in the service to which they have been allocated and for which training, the Government incurs huge expenditure. Therefore, the Government in order to overcome the problem of indiscipline amongst the probationers undergoing training, requested the kothari committee for making a comprehensive survey on the different aspects of the recruitment scheme and to submit a report with its recommendations on the recruitment policy and selection methods so that the candidates who are selected and allocated to a service and sent for training may not take enmass leave for preparing and appearing in the next CSE by neglecting and pretermitting their training programmes and thereby creating a vacuum in the service for considerable time. The said kothari committee, after deeply examining this serious problem, submitted its report, the relevant part of which is as follows: B C D E F

" 3.59. It may further be observed that the existing system which permits that candidates qualifying for and joining the police or the Central Services, may appear the Civil Services Examination to improve their career opportunities, has come in for serious criticism from the National Academy of Administration and the respective employing departments. They complain that such probationers neglect their training at both the Academy and the Departmental Training Institutions until they exhaust the admissible number of chances. G

3.60. The present practice obviously is not desirable. The H

A number of such cases would be very small with the proposed restriction on the total number of attempts permitted to a candidate. Even so, we think it wrong that the very first thing a young person should do in entering public service is to ignore his obligations to the service concerned, and instead spend his time and energy in preparation for re-appearing at the UPSC
B examination to improve his prospect. This sets a bad example and should be discouraged. We recommend that commencing from the 1977 examination candidates once appointed to the All India or Central Services (Class I) should not be permitted to re-appear at a subsequent examination without resigning from service. (On introduction of Phase II of the Civil Services
C Examination Scheme, candidates joining the Foundation Course will not be permitted to re-appear at the Main Examination.)"

The Thirteenth Report of the Estimates Committee (1985-86) also submitted its report on this aspect of the matter observing:

D "The committee urge upon the Government to review their decision regarding allowing the probationers to reappear in the Civil Services Examination to improve their prospects. If it is still considered necessary to allow this, the Committee suggest that it may be limited to only one chance after a person enters a Civil service."

E The Central Government after considering the recommendations of the above Committees regarding allowing probationers allocated to Civil Services to appear in the next CSE (Main), addressed the UPSC to initiate a review of the new system of CSE in pursuance of the recommendations of the Estimates Committee and thereafter, a meeting of all the cadre con-
F trolling authorities was convened by the Government and based on the consensus arrived at the meeting, Rules 4 and 17 of the Civil Services Examination Rules were amended by inserting the new provisos.

In this regard, it will be worthwhile to refer to Article 51-A in Part IV-A under the caption 'Fundamental Duties' added by the Constitution
G (42nd Amendment) Act, 1976 in accordance with the recommendations of the Swaran Singh Committee. The said Article contains a mandate of the Constitution that it shall be the duty of every citizen of India to do the various things specified in Clauses (a) to (j) of which clause (j) commands that it is the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly
H rises to higher levels of endeavour and achievement."

In our view, the effort taken by the Government in giving utmost importance to the training programme of the selectees so that this higher civil service being the top most service of the country is not wasted and does not become fruitless during the training period is in consonance with the provisions of Article 51-A (j). A

The Constitution of India has laid down some basic principles relating to public services in Part XIV entitled 'Services under the Union and the State' which has two Chapters, namely chapter I on "Services" covering Articles 308 to 314 of which Article 314 is now repealed by the Twenty-eighth Amendment Act, 1972 and Chapter II on "Public Service Commissions" covering Articles 315 to 323. We feel that it is not necessary to deal with the constitutional provisions relating to the executive power of the Union under Article 53 of the Constitution or the extent of the executive power of the Union under Article 73 of the Constitution or recruitment and condition of service of persons serving the Union or the State as contemplated under Article 309 of the Constitution of India since it is not the case of the appellants that either the introduction of the proviso is in violation of any of the provisions of the constitution or the proviso suffers for want of jurisdiction or by improper and irregular exercise of jurisdiction. However, incidentally Mrs. Chopra urged that the second proviso is bad since the authorities have stepped out of the constitutional limits in issuing the notification inserting the impugned proviso and that it has not been placed before the Houses of the Parliament. This argument has to be simply mentioned to be rejected because the proviso has been introduced by the Central Executive Authority under the powers flowing from Article 73 (1) (a) of the Constitution, according to which the executive power of the Union subject to the provisions of the Constitution shall extend to the matters with respect to which Parliament has power to make laws, but of course subject to the proviso made thereunder and further this submission casually made was neither amplified nor pursued. Needless to point out that whilst by virtue of clause 1 (a) of Article 73, the Union executive whose power which is co-extensive with the legislative power of Parliament can make laws on matters enumerated in List I (Union List) and List II (Concurrent List) to the Seventh Schedule of the Constitution, under Article 162 of the Constitution, the executive power of the State executive which is co-extensive with that of the State legislature can make laws in respect of matters enumerated in List III (State List) and also in respect of matters enumerated in List II (Concurrent List), subject to the provisions of the Constitution. In the present case, the central executive authority has not either expressly or impliedly changed the policy of the Government by exercising unreasonable and arbitrary discretion and the present Rule 4 B C D E F G H

with its newly added second proviso does not repeal the essential features of the pre-existing Rule 4 but only limits the ambit of the operation of Rule 4 under a given situation. Hence, there is no substance in contending that the second proviso is bad and that the central executive authority has transgressed the constitutional limits.

However, the validity of second proviso of Rule 4 is challenged on the ground that it is violative of Article 14 of the Constitution about which we will deal at the later part of the judgment.

We feel that it would be appropriate, in this context, to recall the observations of this Court in *L.I.C. of India* v. *Escorts Ltd.*, AIR 1986 SC 1370 at page 1403 = [1986] 1 SCC 264. The observation reads thus:

> "When construing statutes enacted in the national interest, we have necessarily to take the broad factual situations contemplated by the Act and interpret its provisions so as to advance and not to thwart the particular national interest whose advancement is proposed by the legislation."

In the above background, we shall now advert to the arguments advanced on behalf of the appellants.

Mr. P.P. Rao, senior counsel appearing for the appellants forcibly and fervently contended that the second proviso to rule 4 of the impugned notification is *ultra-vires* clause (iii-a) of Regulation 4 of the Regulations, 1955 inasmuch as the power to notify exceptions does not include the power to make ineligible the candidates who are "otherwise eligible" in terms of Clauses (i), (ii) and (iii) of Regulation 4. In other words, all candidates, who satisfy the requirements of nationality, age and educational qualifications prescribed in clauses (i) to (iii) of Regulation 4, are entitled to the maximum number of attempts prescribed in clause (iii-a) which initially was three attempts, since raised to four attempts w.e.f. 1.2.90. He further submits that the expression 'in this behalf' appearing in the said clause (iii-a) refers only to the number of attempts of candidates otherwise eligible in terms of clauses (i) to (iii) of Regulation 4 and that the obvious intention in conferring the power on the Central Government to notify exceptions 'in his behalf' of candidates 'otherwise eligible' was to enable the Government to increase the number of attempts in deserving cases, such as— candidates belonging to Scheduled Castes and Scheduled Tribes and other weaker sections including physically handicapped category and that consequently the Central Government has no power to add more conditions of eligibility to those stipulated in Regulation 4 itself.

According to him, the second part of the impugned proviso to Rule 4 of CSE Rules which insists that a candidate who was permitted to abstain from probationary training in order to appear at the next Civil Services (Main) Examination and who accepted the allocation to a service subsequently and is appointed to the service "shall not be eligible to appear again in the CSE (Main) unless he first resigns from the Service and in other words it declares a candidate, who is otherwise eligible in terms of Regulation 4 as ineligible unless he first resigns from the service. This additional condition of eligibility, according to him, is clearly beyond the scope of the limited power to notify exceptions to the number of attempts prescribed and, therefore *ultra-vires* Regulation 4 (iii-a).

Mr. Kapil Sibal, the Learned Additional Solicitor General presented a plausible argument countering the pleadings of Mr. P.P. Rao and drew our attention to Rule 7 of IAS (Recruitment) Rules of 1954 which deals with the recruitment by competitive examination, and sub-rule (2) which states that an examination, namely, the competitive examination for recruitment to the service shall be conducted by the Commission in accordance with such regulations as the Central Government may from time to time make in consultation with the Commission and State Governments. According to him, the permissible number of attempts that a candidate can avail is also a condition of eligibility because the object is for a dual purpose, namely, 'to get the best and to retain the best', and that Regulation 4 (iii-a) should be read with Rule 4 of CSE as its part. He continues to state that under Article 73 of the Constitution, subject to the provisions of the Constitution, the Central Government in exercise of its executive power can regulate the manner in which the right of a candidate in appearing for the competitive examination is to be exercised and, therefore, the restriction imposed in the second proviso to Rule 4 of CSE Rules is in no way *ultra-vires* clause (iii-a) of Regulation 4 of Regulations, 1955.

The source of power for the Central Government for making rules and regulations for 'Recruitment and the Conditions of Services of Persons appointed to All India Services' in consultations with the Government of States concerned as well making regulation under or in pursuance of any such right is derived from Section 3 of the All India Services Act, 1951.

The Regulations, 1955 were made by Central Government in pursuance of rule 7 of IAS (Recruitment) Rules of 1954 in consultation with the State Governments and the Union Public Service Commission. Clause (iii-a) of Regulation 4 was substituted vide Department of Personnel A & R Notification No. 11028/1/78/AIS dated 13.12.1978 and the latter part of which by another notification dated 23.11.1988. We are concerned only

A with the earlier part of the said clause as per which 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 1979, who is otherwise eligible, shall be permitted three attempts at the examination. If Rule 4 of CSE Rules is examined in juxtaposition of clause (iii-a) of Regulation 4, it is clear that both rule 4 of B CSE Rules and Clause (iii-a) of the Regulation 4 show that every eligible candidate appearing at the CSE should be permitted three attempts at the examination. As we have pointed out in the earlier part of this judgment, the attempts are now increased to 4 under Rule 4 of the CSE Rules.This increase of attempts by the Government is by virtue of its power which flows under Article 73 of the Constitution of India. The eligibility of a C candidate to appear in the CSE with regard to nationality, age and educational qualifications is given under clauses (i) to (iii) of Regulation 4 but the Government by exercise of its executive power has imposed certain restrictions under some specified circumstances. Even today, in the normal course, every eligible candidate can appear in the examination for all the permissible attempts and the restriction of attempts is not applicable in D the case of SC/ST who are otherwise eligible but subject to their upper age limit. A plain and grammatical reading of clause (iii-a) of Regulation 4 shows that if the number of attempts are covered by any of the exceptions that may from time to time be notified by the Central Government in this behalf, then the notification will become enforceable and only in the absence of such notification, every candidate normally can appear for all the E permitted attempts at the examination whether three or four. The impugned second proviso does not restrict or put an embargo on the number of attempts in the normal course. But the restriction is only when the conditions enumerated in the impugned proviso are satisfied. In order to appreciate and understand the restriction imposed, in its proper perspective, we shall refer to certain decisions of this Court cited by both the F parties, firstly with reference to the interpretation of statutes and secondly with regard to the construction of a proviso in relation to the subject matter covered by the section/rule to which the proviso is appended.

Before we cogitate and analyse this bone of contention in some detail, it will be convenient at this stage to pore over some of the well G established rules of construction which would assist us to steer clear of the impasse entertained by the learned counsel, according to whom some complications are created by the impugned notification being *ultra-vires* clause (iii-a) of Regulation 4 of Regulations, 1955.

Maxwell on the "*Interpretation of Statutes*" 10th Edition page 7 says thus:

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"..... if the choice is between two interpretations, the nar-

rower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result." A B

In "*Principles of Statutory Interpretation*" by Justice G.P. Singh, 4th Edition (1988) at page 18, it is stated thus:

"it is a rule now firmly established that the intention of the legislature must be found by reading the statute as a whole". C

It is said in "Craies on *Statute Law,* 5th Edition" as follows:

"Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided." D

In the same text book, 6th Edition at page 89, the following passage is found:

"The argument from inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of constructions." E

Viscount Simon in *King Emperor* v. *Benoari Lal Sharma,* AIR 1945 PC 48 has said thus: F

"In construing enacted words, the Court is not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used."

In *Wardurton* v. *Loveland,* [1832] 2 D & CH. (H.L.)480 at 489, it is observed that: G

"Where the Language of an Act is Clear and explicit, we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature". H

A See also *Suffers* v. *Briggs, [1982] 1 A.C.1,8.*

This Court in *Commissioner of Income Tax* v. *S. Teja Singh,* [1959] 1 Suppl. SCR 394 has expressed that a construction which would defeat the object of legislature must, if that is possible, be avoided.

B See also *M. Pentiah and others* v. *Muddala Veeramallappa and Others,* AIR 1961 SC 1107.

Desai, J speaking for the bench in *Lt. Col. Prithi Pal Singh Bedi etc.* v. *Union of India & Ors.,* [1983] 1 SCR 393 at 404 has pointed out as follows:

> C "The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the Court should adopt literal construction if it does not lead to an absurdity."

D The Constitution Bench of this court in *A.R. Antulay* v. *R.S. Nayak,* [1984] 2 SCR 914 at 936 has observed thus:

> E "It is a well established canon of construction that the Court should read the section as it is and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such manner as to render it to some extent *otiose*."

The Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth etc. etc.,* [1985] 1 SCR 29 ruled that the well established doctrine of interF pretation is "That the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic."

G In *Philips India Ltd.* v. *Labour Court, Madras and Ors.,* [1985] 3 SCC 103, it is observed:

> H "No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is

spoken of as construction *ex visceribus actus.*" A

It has been held by this Court in *Balasinor Nagrik Cooperative Bank Ltd.* v. *Babubhai Shankerlal Pandya and others.*, [1987] 1 SCC at 608 as follows:

> "It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section". B

In *Dr. Ajay Pradhan* v. *State of Madhya Pradesh and Others*, [1988] 4 SCC 514 *at 518*, the Court has registered its view in the matter of construing a statute thus: C

> "If the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense and give them full effect. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the courts, to consider." D

We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various Text Books on the principles of Interpretation of statutes. However, it will suffice to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/Rules/ Regulations relating to the subject matter. Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation. E F G

A proviso to a Section/ Rule is expected to except or qualify something in the enacting part and presumed to be necessary. Coming to the H

A broad general rule of construction of the proviso Maxwell on "*The Interpretation of statute*" in the 11th edition at page 155 has quoted a passage from *Kent's Commentary on American Law*, 12th Edn. Vol. 1, 463n, reading thus:

> "The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause and proviso, taken and construed together is to prevail."

Maxwell in his 12th Edition has quoted a passage from *Att. Gen.* v. *Chelsea Waterworks Co.*, [1731] Fitzg. 195 which reads that if a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that "it speaks that last intention of the makers".

It is pointed out in *Piper* v. *Harvey*, [1958] 1 Q.B. 439 that if, however, the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect.

In *R.*v. *Leeds Prison (Governor)*, Ex p. Stafford [1964] 2 Q.B. 625 it is pointed out thus:

> "The main part of a section must not be construed in such a way as to render a proviso to the section redundant."

A Constitution Bench of this Court in *Ram Narain Sons Ltd. and Ors.* v. *Asstt. Commissioner of Sales tax and Ors.*, [1955] 2 SCR 483 has made the following observations:

> "It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as proviso and to no other."

Another Constitution Bench in *Abdul Jabar Butt & Another* v. *State of Jammu and Kashmir*, [1957] SCR 51 held that it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.

See also *Commissioner of Income Tax* v. *S. Teja Singh*, [1959] 1 Suppl. SCR 394.

Kapur, J speaking for the bench of this Court in *The Commissioner of Income Tax, Mysore, Travancore Cochin and Coorg, Bangalore* v. *The Indo Mercantile Bank Limited*, [1959] 2 Suppl. SCR 256 reiterated the view expressed by Bhagwati, J as he then was in *Ram Narain Sons Ltd.* v. *Assistant Commissioner of Sales Tax*, [1955] 2 SCR 483 at 493 and the observations by Lord Macmillan in *Madras & Southern Mahratta Railway Co.* v. *Bezwada Municipality*, 1944 L.R.71 I. A. 113, 122 and laid down the sphere of a proviso thus:

> "The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also *Corporation of the City of Toronto* v. *Attorney-General for Canada*, [1946] A.C. 32,37."

M/s Mackinnon Mackenzie & Co. Ltd. v. *Audrey D'Cost and Another*, [1987] 2 SCC 469 may also be referred to.

When the impugned second proviso to Rule 4 of the CSE Rules is interpreted in its grammatical meaning and cognate expressions and construed harmoniously with the substantive rule in the light of the above decisions of this Court as well as the views expressed by various authors in their Text Books on this subject, it is pellucid that the said proviso only carves out an exception to Rule 4 of the CSE Rules in given circumstances and under specified conditions and, therefore, the second proviso cannot be read in isolation and interpreted literally. On the other hand the substantive Rule 4 is to be read in conjunction with the two provisos appended thereto so as to have a correct interpretation.

In the proviso, in dispute, there are no positive words or indications which would completely exclude the operation of the substantive rule the spirit of which is reflected in Regulation 4 of the Regulations, 1955. In fact, Rule 4 as stood till 1986, in its normal course, allowed a candidate to appear for three attempts, since increased to 4 for 1990 and 1991 Examinations. But the restriction is imposed by the second proviso only under certain circumstances as repeatedly indicated above. Although the notification of 1986 introducing the impugned proviso, no doubt, has to be strictly construed, the Court cannot overlook the very aim and object of the proviso thereby either defeating its purpose or rendering it redundant or

A inane or making it *otiose*. Judged from any angle, we are not impressed by the contention of Mr. P.P. Rao that there is a violent breach of the provisions of the substantive Rule 4 of CSE Rules and Regulation 4 (iii-a) and we are not able to persuade ourselves to hold that the impugned second proviso either subverts or destroys the basic objectives of Rule 4 and that it is *ultra-vires*.

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In this connection, it may be noted that the restriction or embargo, as the one under consideration is not only placed on the candidates who on the basis of the result of the previous CSE had been allocated and appointed to IPS or Central Service Group 'A' but also on the candidates appointed in the higher echelon of Civil Service, which we will presently C deal with. There is a far more restrictive rule in existence, namely Rule 8 of the CSE Rules according to which a candidate who is appointed to the Indian Administrative Service (IAS) or the Indian Foreign Service (IFS) on the result of an earlier examination before the commencement of the ensuing examination and continues to be a member of that service will not be eligible to compete at the subsequent examination,. even if he/she is D disillusioned and wants to switch over. In other words, this rule precludes the candidates who have been appointed to the IAS or IFS, from sitting in the ensuing examination while in service. Further, this rule states that in case, a candidate has been appointed to the IAS or IFS on the basis of the earlier examination and after the subsequent preliminary examination, but before the Main examination, that candidate, if continues to be E a member of that service, shall not be eligible to appear in the ensuing main examination notwithstanding that the said candidate has qualified himself in the preliminary examination. Similarly if a candidate is appointed to the IAS or IFS after the commencement of the Main Examination but before the announcement of the result and continues to be a member of that service, the said candidate shall not be considered for F appointments to any service/post on the basis of the result of this examination. The purpose for incorporating this uncompromising and stringent provision is that the candidates appointed to the IAS and IFS are required to man the key positions both in the Central and State Services wherein the appointees have to combine their intellectual capacity and the requisite traits of personality and also to exhibit higher intellectual proficiency and leadership. Thus Rule 8 keeps up and maintains the phenomenon of the G upper civil service, run under our constitution with all enduring features and facets of the said service on All India basis. But there is no bar for a candidate who is appointed to the IAS/IFS resigning from that service and sitting in the examination for IPS or any Central Service Group 'A'. Under Rule 4 of CSE Rules notwithstanding anything contained in Rule 8, a candidate who accepts allocation to a service and appointed to that

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service shall not be eligible to appear again in the CSE unless he first resigns from that service. In other words, a candidate who is allocated and appointed to a service can sit in the ensuing examination provided he first resigns from that service. This restriction, in our view, is a reasonable one in order to achieve the desired result in the background of the situation and circumstances about which we have elaborately discussed *albeit*.

In conclusion, we hold that the second proviso to Rule 4 of CSE Rules does not travel beyond the intent of the main rule putting any unjustifiable embargo and that the proviso is not *ultra-vires* Regulation 4 (iii-a) of Regulations 1955 on the ground it makes the candidates ineligible who are otherwise eligible in terms of clauses (i) to (iii) of the said Regulation and that the proviso to Rule 17 is not invalid.

An enactment is never to be held invalid unless it be, beyond question, plainly and palpably in excess of legislative power or it is *ultra-vires* or inconsistent with the statutory or constitutional provisions or it does not conform to the statutory or constitutional requirements or is made arbitrarily with bad faith or oblique motives or opposed to public policy. In our considered opinion, the second proviso to Rule 4 of CSE Rules cannot be held to be invalid on any of the grounds mentioned above.

The next question that has arisen for consideration is, how far the principle of reasonable restriction can be applied in the formulation of the rules, keeping the relevance of the recruitment scheme to the civil service. Neither an omnibus answer or a simplistic solution would carry us far to face the public service reality in the modern state, the governing consideration of which is the context of actual situation, circumstances, resources and the societal goals of the particular State/country.

The further argument advanced in Civil Appeal Nos. 5506-5525 of 1990 (as appears from the written submission made by Mr. C.N. Sreekumar) is that on a correct interpretation of the impugned second proviso, the last clause of which reads "*such* candidate who accepts *the* service shall not be eligible to appear again in the Civil Services Examination unless he first resigns from *the* service" refers to only candidates, who on the basis of the result of the previous CSE had been allocated to the Central Services Group 'A' but who expressed their intention to appear in the next CSE (Main) for competing for IAS, IFS, IPS or Central Services Group 'A' and who are permitted to abstain from the probationary training in order to so appear and who joined Group 'A' service subsequently on allocation either on the basis of the previous examination or the subsequent examination. According to him, in other words, the candidates who did not avail the benefit of abstaining from the probationary training

A with the permission of the Government in order to appear at the next Civil Services (Main) Examination do not fall within the scope of the impugned restriction and they cannot be asked to resign as a condition precedent to their appearing again in the CSE. This tenuous argument does not appeal to us. Firstly the expression "*such* candidate", is not used in the proviso, on the other hand, the words used are "*a* candidate" (vide publication of B Gazette of India dated 13-12-86). Secondly the last part of the proviso, as it stands, reads "*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." Thirdly a correct and proper reading of the last limb of the proviso clearly demonstrates that the expression "*a candidate*" refers only to the candidate, C mentioned in the earlier part of the proviso. Lastly, if such an interpretation is to be given on the wrong reading of the proviso, then the whole object of the proviso will be defeated.

Reg. Question No. 7

D Mrs. C.M. Chopra scathingly attacks the judgment of the Tribunal *inter-alia* contending that the protection guaranteed to the candidates belonging to Scheduled Castes and Scheduled Tribes under the Constitution - more particularly under Article 335 of the Constitution of India— cannot be taken away by an arbitrary executive action by introducing the second proviso, thereby reducing the number of permissible attempts for E appearing in the CSE hitherto enjoyed by such candidates; that the right statutorily and constitutionally vested on the SC/ST candidates, permitting them to make unlimited attempts, of course, subject to the upper age limit cannot be easily whittled down and that the second proviso is an independent proviso, having no relation to the first proviso and *apriori* it cannot control and prevail upon the first proviso which declares "that this restric- F tion on the number of attempts will not apply in the case of Scheduled Castes and Scheduled Tribes who are otherwise eligible." According to her, the reservation policy guaranteed to the SC/ST candidates cannot be obliterated by an unreasonable and arbitrary executive action.

No doubt, it is true that while the substantive Rule 4 of the CSE G Rules permits every candidate to appear for three attempts at the examination— which is now increased to four—the first proviso to this rule states that this restriction on the number of attempts at the examination is not applicable in the case of SC/ST candidates who are otherwise eligible. However, even in the case of SC/ST candidates, there is a specific restriction so far as the upper age limit is concerned as envisaged under Rule 6 H (b) of the CSE Rules. Regulation 7(2) of Regulation, 1955 states that the

candidates belonging to any of the Scheduled Castes or the Scheduled Tribes may, to the extent of the number of vacancies reserved for the Scheduled Castes and Scheduled Tribes cannot be filled on the basis of the standard determined by the Commission under sub-regulation (1) be recommended by the Commission by a relaxed standard to make up the deficiency in the reserved quota, subject to the fitness of these candidates for selection to the Service, irrespective of their ranks in order to merit at the examination. Sub-Regulation (1) of Regulation 7 reads that subject to the provision of Sub-Regulation (2) the Commission (U.P.S.C.) shall forward to the Central Government a list arranged in order of merit of the candidates who have qualified by such standard as the Commission may determine.

In the normal course, a candidate belonging to SC/ST category can enjoy all the benefits under the rules and regulations. But the restriction imposed under the second proviso is only for a specified category of candidates by treating all such candidates at par and without making any exception to the candidates belonging to SC/ST. The submission made by Mrs. Chopra that the second proviso is an independent one does not merit consideration because the second proviso to Rule 4 begins with the words "*provided further....*" which expression would mean that a strict compliance of the second proviso is an additional requirement to that of the substantive rule 4 and the first proviso. The expression "*provided further*" spells out that the first proviso cannot be read in isolation or independent of the second proviso but it must be read in conjunction with the second proviso. To put in other words, once the candidates belonging to SC or ST get through one common examination and interview test and are allocated and appointed to a service based on their ranks and performance and brought under the one and the same stream of category, then they too have to be treated among all other regularly and lawfully selected candidates and there cannot be any preferential treatment at that stage on the ground that they belong to SC or ST, though they may be entitled for all other statutory benefits such as to the relaxation of age, the reservation etc. The unrestricted number of attempts, subject to the upper age limit, is available to the SC/ST candidates in the normal course but that is subject to the second proviso because when once they are allocated and appointed along with other candidates to a category/post, they are treated alike.

Ramaswami, J speaking for the Constitution Bench in *C.A. Rajendran* v. *Union of India & Ors.*, [1968] 1 SCR 721 at page 733 while interpreting Article 16(4) of the Constitution of India observed thus:

A "Our conclusion therefore is that Art. 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the Government to make a reservation for Scheduled Castes and Scheduled Tribes, either at the initial stage of recruitment or at the stage of promotion. In other words, Art.16(4) is an enabling provision and confers a discre-
B tionary power on the state to make a reservation of appointments in favour of backward class of citizens which, in its opinion, is not adequately represented in the Services of the State. We are accordingly of the opinion that the petitioner is unable to make good his submission on this aspect of the case."

C A seven-Judges Bench in *State of Kerala* v. *N.M. Thomas,* [1976] 2 SCC 310 before which some important questions arose with regard to the intent of Article 16 of the Constitution, referred to and relied upon the observation in *Rajendran's* case holding that reservation is not a constitutional compulsion, but is a discretionary one. In that case Krishna Iyer, J agreeing with the majority view expressed his opinion thus:

D "The State has been obligated to promote the economic interests of harijans and like backward classes, Articles 46 and 335 being a testament and Articles 14 to 16 being the tool-kit, if one may put it that way. To blink at this panchsheel is to be unjust to the Constitution."

E Further, the learned Judge held:

"Indeed, Article 335 is more specific and cannot be brushed aside or truncated in the operational ambit vis-a-vis Article 16(1) and (2) without hubristic aberration."

F In *Akhil Bharatiya Soshit Karmachari Sangh (Railway)* v. *Union of India & Others,* [1981]1 SCC 246, Krishna Iyer, J observed that Article 16(4) is not a jarring note but auxiliary to fair fulfilment of Article 16(1) and further said, "Article 16(4) is not in the nature of an exception to Article 16(1). It is a facet of Article 16(1) which fosters and furthers the
G idea of equality of opportunity with special reference to an underprivileged and deprived class of citizens to whom *egalite de droit* (formal or legal equality) is not *egalite de fait* (practical or factual equality).

See also *M.R. Balaji* v. *State of Mysore,* [1963] Supp. 1 SCR 439, *Triloki Nath* v. *State of J&K,* [1969] 1 SCR 103 and *T. Devadasan* v. *Union*
H *of India,* [1964] 4 SCR 680 and *Comptroller and Auditor-General of India* v.

K.S. Jagannathan, [1986] 2 SCC 679 at 684 (para 6). A

The Constitution, no doubt, has laid a special responsibility on the Government to protect the claims of SC/ST in the matter of public appointments under various Constitutional provisions of which we shall presently refer to a few. Article 16(4), as manifested from the various decisions of this court referred to hereinbefore, is an enabling provision B conferring a discretionary power on the State for making any provision or reservation of appointments or posts in favour of any backward class of citizens, which in the opinion of the State, is not adequately represented in the service under the State. The expression 'backward class' obviously takes within its fold people belonging to SC and ST (vide *Janki Prasad* v. *State of J&K,* AIR 1973 S.C. 930). Clause 4 of Article 16 has to be interC preted in the background of Article 335 as ruled by this Court in *General Manager* v. *Rangachari,* AIR 1962 S.C. 36 and in *Rajendran's* case referred to above. Article 335 enjoins that the claims of the members of the SC and ST shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services or posts in connection with the affairs of the Union or of a State. Article D 320(4) makes it clear that the Public Service Commission is not required to be consulted as respects the manner in which any provision referred to in Art. 16(4) may be made or as respects the manner in which effect may be given to Article 335.

The query before us is not in respect of the reservation of backward E classes or in respect of the claims of SC and ST services/posts, but it is whether the candidates belonging to SC and ST are entitled to any exception from the operation of the proviso. The answer to the above query would be in negative as we have aforesaid.

It may be true, as fervently submitted by Mrs. Chopra there may be F some hard cases, but the hard cases cannot be allowed to make bad law. Therefore, in the case on hand, as long as the second proviso does not suffer from any vice, it has to be construed, uniformly giving effect to all those falling under one category in the absence of any specific provision exempting any particular class or classes of candidates from the operation of the impugned proviso and no one can steal march over others falling G under the same category. Hence, the right of candidates belonging to SC and ST competing further to improve their career opportunities is limited to the extent permissible under the second proviso to Rule 4 read with Rule 17 of the C.S.E. Rules.

For the aforementioned reasons, we find no merits in the submission H

A of Mrs. Chopra that the second proviso is not applicable to the candidates belonging to SC or ST.

Mr. Gopal Subramanian appearing on behalf of some of the appellants supplemented by the arguments of other counsel, stating that the very structure of the recruitment policy is itself disturbed to the great disad-
B vantage of the candidates who since then have been enjoying the right to appear for 3 attempts as conferred by the substantive Rule 4 and that one of the present restrictions that the candidates should severe from the service, if intends to appear for the third time, after he has been allocated and appointed to a service is unjust, unreasonable and it seriously transgresses on the main provision and virtually interdicts the candidates from availing
C their statutorily conferred and protected right. Therefore, such a serverance of status from the service is ex-facie wrong, even if one can understand losing of seniority. We have already discussed this interpellation in extenso while dealing with similar contentions and our considered view expressed albeit will clearly answer this contention. Hence, we hold that there is no question of severance of status as we have come to the con-
D clusion that the restriction imposed by the impugned proviso cannot be said to be unjust, unreasonable or arbitrary or change of any policy and moreover, the spirit of the main rule is not in any way disturbed. In the result, we conclude that there is neither any tenable reason nor any logic in the above submission.

E *Reg. Question No. 8*

Then a mordacious criticism was unleashed by all the learned counsel appearing on behalf of the appellants *inter-alia* contending that the second proviso which is an administrative instruction is highly arbitrary and irrational having no nexus to the object of the scheme of recruitment to the
F post of civil services and that there was inadequate attention paid to the nexus between the intent of the proviso and the object to be achieved.

The learned Additional Solicitor General controverted the above argument stating that the working system of the civil service in relation to its logical relationship of recruitment rules on different aspects has been
G exclusively investigated bearing in mind the process of rapid economic development with a democratic framework of Government on Indian scenario and the present proviso is having a dynamic, reasonable and relative nexus with the object to be achieved in the present system of the civil services within its administrative framework.

H No denying the fact that the civil service being the top most service in

the country has got to be kept at height, distinct from other services since these top echelons have to govern a wide variety of departments. Therefore, the persons joining this higher service should have breadth of interest and ability to acquire new knowledge and skill since those joining the service have to be engaged in multiple and multifarious activities as pointed out supra. In order to achieve this object, the selectees of this higher civil services have to undergo training in the National Academy/ Training institutes wherein they have to undergo careful programme of specialized training as probationers. The various schemes of training are based on the conviction that splendid active experience is the real training and the selectees are to be trained in the academies in all kinds of work they have to handle afterwards with a band of senior chosen officers. Training at the academy comprises a foundation course followed by another course of practical training. The rationale underlying the course at the training centres is that the officers of civil services must acquire an understanding of the constitutional, social, economic and administrative framework within which they have to function and also must have a complete sense of involvement in the training and thereafter in the service to which/she is appointed. It is apparent that initial training is in the nature of providing young probationers an opportunity to counter-act their weak points and at the same time develop their social abilities and as such the aspect of training is the most important of all.

It was brought to the notice of the Government that the probationers who have been allocated to the IPS and Group 'A' service were more often than not completely neglecting their training in the academies/Training Institutes and also have gone on enmass leave thereby creating a complete vacuum in the academy and the Training Institutes for the purpose of preparing for the next CSE (Main) in the hope of getting a better position and a more preferred service like IAS, IFS etc. without having a sense of involvement with the service to which they have been allocated and appointed on the basis of the earlier examination. It seems that the Government had been facing this disturbed problem of indiscipline and inattentiveness among the probationers undergoing training who were busy themselves with the preparation for the ensuing CSE. As a result of this, bent on preparation for the CSE the training imparted was not seriously taken and the concentration of the probationers was only in the preparation of the next CSE. Consequently, the standard of officers turned out of the academy on completion of their training declined very much. Therefore, in order to overcome this problem it was suggested and considered that the probationers selected and allocated to a service and sent for training should be debarred from appearing in the ensuing CSE so that they can

A fully devote themselves to the training and take it more seriously. Resultantly, the matter was considered in consultation with the Department of Personnel and Training and it was agreed that the relevant rules should be amended so as to prevent the IPS and Group 'A' probationers from joining training at the academy in case they intend to take another CSE. These measures are taken for making probationers training more effective and
B meaningful.

Hence for the aforementioned reasons, we hold that there is a dynamic nexus between the impugned second proviso and the object to be achieved.

C *Reg. Question No. 9*

We shall now pass on to the real and pivotal point in issue which has been hotly debated and eloquently articulated by all the learned counsel contending that the impugned proviso is discriminatory and violative of Articles 14 and 16 of the Constitution resulting in a disastrous effect.

D

All the learned counsel appearing in all the batches of the appeals amplified the above contention stating thus: –

In all, there are 46 Group 'A' Central Services listed in the CCS Rules of which only for 16 Group 'A' Services, recruitment is made
E through the Civil Services Examination conducted by UPSC annually and it is only in respect of the candidates already allocated and appointed to the IPS or to one or other of these 16 Group 'A' services, the impugned proviso imposes an onerous restriction that they should first resign in order to appear at the next Civil Service Examination whereas there is no such restriction so far as candidates recruited through the same open com-
F petition to the remaining Group 'B' services are concerned despite the fact that the level of responsibility is the same and the qualifications prescribed are comparable. This kind of classification between these two groups has no rational nexus with the object of selection. The reasons attributed for such a classification on the ground of neglect of training, financial loss, unemployment situation, loss to service are all common to all the Central
G Service Group 'A' listed in the CCS Rules, and therefore, the impugned second proviso is held to be discriminatory against the candidates appointed to the IPS and 16 Group 'A' services and as such it is violative of Artricle 14. The impugned proviso makes a further discrimination vis-a-vis candidates appointed to Group 'B' services, in that the said proviso by placing the onerous condition of resignation from service of candidates
H appointed to the IPS and Group 'A' service in substance and effect and it

precludes them from competing for higher civil service with the candidates appointed to Group 'B' service and thereby facilitates the selection of candidates with relatively inferior merit to posts of superior Group 'A' services. In other words, the impugned proviso excludes the candidates appointed to group 'A' services from competition on the one hand and on the other facilitates selection from amongst less meritorious candidates appointed to Group 'B' services to the highest and prestigious All India Services. This defeats the very object of securing the services of most meritorious candidates to the most important All India Services and it is arbitrary for want of rational nexus between the classification of candidates with the proven superior merit and those of inferior merit and consequently the object of recruiting the most meritorious candidates to the top-most All India Services is frustrated.

In addition to the above submission, reliance was placed on the dictum laid down in *R.K. Dalmia* v. *Justice Tendolkar,* [1959] SCR 279 at pages 296-297 holding, "In order to pass the test of permissible classifications two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia with distinguishes persons or things that are grouped together from others left out of the group and, (ii) that that differentia must have a rational relation to the object, sought to be achieved by the statute in question."

According to Mr. P.P. Rao, the recommendations of the Kothari Committee and the Estimates Committee are not enforceable *proprio vigore* and the executive authorities who are expected to act justly and reasonably, cannot usurp the functions of the Parliament and arbitrarily put a restriction through the impugned proviso which restriction is highly tainted with hostility and discrimination subjecting the candidates allocated and appointed to the IPS and Group 'A' services to a harassing and oppressive treatment.

Mr. Gopal Singh appearing for some of the appellants besides stating that he is adopting the submissions made by other learned counsel cited some decisions in support of his arguments that the discrimination now existing consequent upon the introduction of the second proviso offends Article 14 of the Constitution.

At the risk of repetition, it may be stated that under the present system of civil services, all candidates are selected through one common examination—preliminary and main and interview test. A list of selected candidates in the order of merit is published and thereafter the successful candidates are allocated to different services namely IAS, IFS, IPS, Group

A 'A' and Group 'B' services based on their ranks and preferences. Of the candidates, IAS and IFS are top rankers in the merit list.

In the notification dated 13.12.1986 issued by the Ministry of Personnel, there were only 28 services/posts of which the first three were IAS, IFS and IPS and of the remaining (iv) to (xviii) were Group 'A' services and B (xix) to (xxviii) were Group 'B' services. In the list of Group 'A' services, items (xvii) and (xviii) were Grade II and III respectively. In notification dated 19.12.1987, there were in total 27 services/posts of which the first three were the same and the services under (iv) to (xix) were Group 'A' services and (xx) to (xxvii) were Group 'B' services. In the nomenclature of Group 'A' and Group 'B' services, there was slight variation. In the sub-C sequent notification issued on 17.12.1988, besides the first three services being the same, the total number of services in group 'A' was 16 and in Group 'B' the number of services was reduced to 7. In 1989, the first three services remaining the same, there were 16 services under items (iv) to (xix) in Group 'A' services and 8 services/posts in Group 'B' Services under item (xx) to (xxvii). In the notification issued on 5th January 1991, the total D services were reduced from 27 to 26 and items (i) to (iii) remaining the same, there were 16 Group 'A' services (iv to xix) and 7 services in Group 'B' (xx to xxvi). Thus, it is seen that there was inclusion or exclusion of one service or other besides the change of nomenclature in one or two services in the notifications for the CSE every year.

E As envisaged in Rule 17, due consideration is given at the time of making appointments and on the results of the examination to the preferences expressed by a candidate for various services at the time of his application and the said appointments will be governed by the rules/regulations in force as applicable to the respective Services at the time of appointment. As pointed out in detail in the preceding part of this judgment, F under the first proviso to Rule 17, a candidate who has been approved and appointed to IPS or Central Services Group 'A' will be eligible to compete for appointment in services mentioned against that service in column no. 3 of the table given in the said rule. As per the second proviso appended to the said rule, a candidate who is appointed to a Central Service Group 'B' on the results of an earlier examination will be eligible to compete for IAS, G IFS, IPS and Central Services Group 'A' and considered only for those appointments. The intent of the above proviso proceeds on the footing that all Central Services of Group 'A' stand on equal footing and likewise all Group 'B' services also stand on equal footing within their respective group of services/posts and that there is no point in competing for any one of the services by a candidate within the same Group 'A' or Group 'B' services as the

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case may be when he has already been allocated and appointed to one of those services in either of the groups to which he has been selected on his merit.

It cannot be disputed that the candidates allocated to Group 'A' services are more meritorious compared to candidates allocated to Group 'B' services. Consequently, those allocated to Group 'B' services get lower position compared to those allocated to Group 'A' services. The pay scales in Group 'B' services are comparatively less than those meant for IAS, IFS and IPS and Central Services Group 'A'. There is a clear cut separation on the basis of ranking and merit and, therefore, it cannot be said by any stretch of imagination that both Group 'A' and Group 'B' services fall under one and the same category but on the other, these services are two distinct and separate categories falling under two different classifications.

The Additional Solicitor General refuting the arguments of Mr. P.P. Rao that there is a discrimination between Group 'A' and Group 'B' services, in that whilst an Under Secretary, selected in Group 'A' services, is not allowed to sit for examination by availing his third chance, a Section Officer coming under Group 'B' services is permitted to sit for examination availing his chance without resigning from service, emphatically stated that this argument has no merit since in Group 'A' services, there is a vertical movement. The learned ASG further clarified that Group 'A' and Group 'B' services are two separate services, having different status, prospects, conditions of services and pay scales and both the services under the two groups are not similarly situated, besides the candidates in Group 'A' services standing in higher rank and merit.

The Tribunal after deeply considering the similar contention raised before it has concluded as follows:

> "..... We do not see any reasonable basis to urge that Group 'A' and Group 'B' Services should be treated at par. Even their pay scales and conditions of service not the same as in the Group 'A' Services. It is, therefore, not a question of comparing these two Services and placing them at par. In our opinion, there is no discrimination. It will be noticed that the alleged discrimination is not on the basis of religion, race, caste, sex, descent, place of birth, residence or any of them. The discrimination, if any, has a reasonable nexus with the objective for which it has been made. The objective is to create five categories of Services consisting of IAS, IFS, IPS, Central Services Group 'A' and Central Services Group 'B'. We are fur-

A ther of the opinion that the Government having come across certain difficulties and problems in the matter of probationary training and the filling up of the vacancies in various Services made these rules. We do not find the argument of discrimination between Group 'A' and Group 'B' Services to be valid. We, therefore, reject these arguments".

B One other argument advanced on behalf of the appellants was that the candidates who have been allocated in Group 'A' services and whose training is postponed at their request have to loose their seniority whereas the candidates who have been appointed to Group 'B' services do not suffer such kind of disability and that they can even after their training C retain their original seniority which they had at the time of initial selection. This serious setback suffered by a candidate selected in Group 'A' services, according to the counsel for the appellants, indicates that there is an apparent discrimination between the two sets of candidates. This contention of the appellants, according to ASG, cannot be countenanced because the services under Group 'A' and Group 'B' are different services and, there- D fore, the conditions of service of a particular service cannot be compared with other service especially when the services are not at par and more so when the other service, namely, Group 'B' service is less in rank and merit to that of Group 'A' Service.

In passing, all the learned counsel in assailing the validity of the E impugned second proviso drew our attention to various Service Rules, such as Central Secretariat Service Rules, Indian Revenue Service Rules, 1988, Indian Customs and Central Excise Service Group 'A' Rules, 1987, Department of Revenue (Customs Appraiser) Recruitment Rules, 1988, Indian Railway Personnel Service (Recruitment) Rules, 1975 and Delhi F and Andaman and Nicobar Islands Civil Service Rules, 1971 – all made under Article 309 of the Constitution of India – and attempted to show that various provisions of those rules relating to the recruitment and service conditions go in support of their submissions that there is a hostile discrimination between the candidates of Group 'A' services and Group 'B' services. In our considered opinion,. this abortive attempt made by the G learned counsel does not loom large and assume any significance in examining the broad aspect of the main issues involved and in testing the constitutionality of the said proviso.

Now, it necessarily follows whether the classification of these two services, one falling under Group 'A' and another falling under Group 'B' H are based on intelligible differentia.

The Constitution Bench of this Court in *R.K. Dalmia's* case (supra) after reiterating the legal principle enunciated by a Constitution Bench of Seven Judges of this Court in *Budhan Choudhry* v. *State of Bihar,* [1955] 1 SCR 1045, has ruled thus:

> "It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation."

Having regard to the objective in that case, it has been held:

> "In determining whether there is any intelligible differentia on the basis of which the petitioners and their companies have been grouped together it is permissible to look not only at the facts appearing in the notification but also the facts brought to the notice of the Court upon affidavits. The facts in the present case afford sufficient support to the presumption of constitutionality of the notification and the petitions have failed to discharge the onus which was on them to prove that other people or companies similarly situated have been left out and that the petitioners and their companies have been singled out for discriminatory and hostile treatment."

In *Kumari Chitra Ghosh and Another* v. *Union of India and Others,* [1969] 2 SCC 228, the facts were thus:

The appellants filed a Writ Petition in the High Court challenging the authority of the Central Government to select candidates for certain reserved seats on the ground that they having secured 62.5 per cent marks would have got admission but for the reservation of seats which were filled by nominations by the Central Government. The High Court dismissed the Writ Petition as well as the Review Petition. Aggrieved by the judgment of the High Court, the appellants appealed to this Court. Grover, J speaking for the Constitution Bench approved the dictum in *R.K. Dalmia's* case (cited above) laying down the fulfilment of the two conditions as the test of permissible classification and held that the classification in that case was based on intelligible differentia, observing thus:

> "It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to

A decide from what sources the admission will be made. That essentially is a question of policy and depends *inter alia* on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is necessary to provide facilities for medical education. If the sources are properly classified whether on ter-
B ritorial, geographical or other reasonable basis it is not for the Courts to interfere with the manner and method of making the classification."

In the above case, the Court has distinguished the decision in *Rajendran's* case (referred to above).

C

Y.V. Chandrachud, J as he then was speaking for the Constitution Bench in *State of Jammu & Kashmir* v. *Triloki Nath Khosa & Ors.*, [1974] 1 SCR 771 in which it was contended on behalf of the State that is always open to the Government to classify its employees so long as the classification is reasonable and has nexus with the object thereto, stated as follows:

D "Thus, it is no part of the appellants' burden to justify the classification or to establish its constitutionality. Formal education may not always produce excellence but a classification founded on variant educational qualifications is for purposes of promotion to the post of an Executive Engineer, to say the least, not unjust on the fact of it and the onus therefore cannot
E shift from where it originally lay .....

.....

Classification is primarily for the legislature or for the statutory authority charged with the duty of framing the terms and conditions of service, and if, looked at from the standpoint of the
F authority making it, the classification is found to rest on a reasonable basis, it has to be upheld.....

.....

Discrimination is the essence of classification and does violence to the constitutional guarantee of equality only it rests on an unreasonable basis .....

G .....

Equality is for equals. That is to say that those who are similarly circumstanced are entitled to an equal treatment .....

Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis whether it
H bears nexus with the object in view. It cannot extend to em-

barking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object." A

P.N. Bhagwati, J and Krishna Iyer, J have concurred with the view expressed by chandrachud, J though they have added some more concurring observations of their own. B

It will be apposite to recall an observation of this Court in *A.S. Sangwan* v. *Union of India*, [1980] Supp. SCC 559 *at 561* reading as follows:

"A policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions of circumstances and the imperatives of national considerations. We cannot, as Court, give directives as to how the Defence Ministry should function except to State that the obligation not to act arbitrarily and to treat employees equally is binding on the Union of India because if functions under the Constitution and not over it..... C D

.....

It is entirely within the reasonable discretion of the Union of India. It may stick to the earlier policy or give it up. But one imperative of the Constitution implicit in Article 14 is that if it does change its policy, it must do so fairly and should not give the impression that it is acting by any ulterior criteria or arbitrarily." E

See also *Akhil Bharatiya Soshit Karamchari Sangh (Railway)'s* case (already referred to).

In *Deepak Sibal* v. *Punjab University,* [1989] 2 SCC 145 M.M. Dutt, J speaking for the Court has held thus: F

"In order to consider the question as to the reasonableness of the classification, it is necessary to take into account the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable. Surrounding circumstances may be taken into consideration in support of the constitutionality of a law which is otherwise hostile or discriminatory in nature. But the circumstances must be such as to justify the discriminatory treatment or the classification subserving the object sought to be achieved. A classification by the identification of a source must G H

A not be arbitrary, but should be on a reasonable basis having a nexus with the object sought to be achieved by the rules for such admission. A classification need not be made with mathematical precision but, if there be little or no difference between the person or things which have been grouped together and those left out of the group, the classification cannot be said to
B be a reasonable one .....
.....
It is true that a classification need not be made with mathematical precision but, if there be little or no difference between the persons or things which have been grouped together and those left out of the group, in that case, the classification can-
C not be said to be a reasonable one .....
.....
It is submitted that in making the classification the surrounding circumstances may be taken into account .....
..... It follows from the observation that surrounding circumstances
D may be taken into consideration in support of the constitutionality of a law which is otherwise hostile or discriminatory in nature. But the circumstances must be such as to justify the discriminatory treatment or the classification subserving the object sought to be achieved. In the instant case, the circumstances which have been relied on by the respon-
E dents, namely, the possibility of production by them of bogus certificates and insecurity of their services are not, in our opinion, such circumstances as will justify the exclusion of the employees of private establishments from the evening classes."

What falls instantly for determination is whether the differentia on which the classification is sought to be made has a rational relation with the
F object to be achieved. We have already discussed this question in detail when we have separately examined the question as to whether the second proviso is related to the purposes stated therein.

Whereas Mr. Kapil Sibal has urged that it is always open to the Government to classify its employees as long as the classification is
G reasonable and has nexus to the object thereto, the rival contention is that there is no nexus between the classification and the object to be achieved thereby, that in fact the classification defeated that object, that if chances of sitting for examination are denied to a few with equals, there is inherent vice attached to such classification and that in such circumstances, the
H unreasonableness of the classification becomes patent. It is further urged

on behalf of the appellants that this classification foments frustration amongst the selectees of group 'A' services and produces inefficiency by placing men of lower efficiency in a very advantageous position. Mr. P.P. Rao would urge that if there is a vertical movement in group 'A' services as stated by Mr. Kapil Sibal, how can candidates in group 'B' services be permitted to sit for examination of IAS, IFS and IPS by passing the meritorious candidates under group 'A' and therefore the classification is *per se* irrational, unjust and discriminatory and as such *ultra-vires* Article 14.

We shall now bestow out judicious thought over this matter and carefully examine the rival contentions of the rival parties in the light of the guiding principles, lucidly laid down by this Court in a series of decisions, a few of which we have already referred to hereinbefore. The selections for IAS, IFS and IPS group 'A' services and group 'B' service are made by a combined competitive examination and *viva voce* test. There cannot be any dispute that each service is a distinct and separate cadre, having its separate field of operation, with different status, prospects, pay scales, the nature of duties, the responsibilities to the post and conditions of service etc. Therefore, once a candidate is selected and appointed to a particular cadre, he cannot be allowed to say that he is at par with the others on the ground that all of them appeared and were selected by a combined competitive examination and *viva voce* test and that the qualifications prescribed are comparable. In our considered view, the classification of the present case is not based on artificial inequalities but is hedged within the salient features and truly founded on substantial differences. Judged from this point of view, it seems to us impossible to accept the submission that the classification rests on an unreal and unreasonable basis and that it is arbitrary or absurd.

In this connection, it may be noted that in fact the civil services in foreign countries too, such as United States of America, Great Britain, France and Canada grew up by degrees from time to time in tune with the concept of new ideas under the pressure of some necessity or influence of particular theories linked with the changing political ideology and social conditions and with a view to trimming the civil service scheme and this process of development is by way of evolution rather than revolution.

We may again hark-pack to the case of the appellants and examine whether this classification offends Articles 14 and 16 of the Constitution of India.

Article 14 declares that the State shall not deny to any person

A equality before the law or the equal protection of the law within the territory of India. The cherished principle underlying the above Article is that there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is the same. Vide *Chiranjit Lal* v. *Union of India,* [1950] 1 SCR 869 or in other words its action must not be arbitrary, but must be based on some valid principle, B which in itself must not be irrational or discriminatory (Vide *Kasturi* v. *State of J & K (albeit)*. As ruled by this Court in *Ameeroonissa* v. *Mahboob,* [1953] SCR 405 and *Gopi Chand* v. *Delhi Administration,* AIR 1959 SC 609 that differential treatment does not *per se* constitute violation of Article 14 and it denies equal protection only when there is no rational or reasonable basis for the differentiation. Thus Article 14 condemns discrimination and C forbids class legislation but permits classification founded on intelligible differentia having a rational relationship with the object sought to be achieved by the Act/Rule/Regulation in question. The Government is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not D scientifically be perfect or logically complete. As observed by this Court more than once, every classification is likely in some degree to produce some inequality.

The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases but we feel that in the E present case, it is not necessary to go in for any lengthy discussion as to the origin, meaning and the gradual development of the concept of principles and enlargement of the scope and effect of this Article. Suffice to mention a few decisions of this court relating to the issue under consideration, namely– *Chiranjit Lal Chowdhury* v. *The Union of India; Budhan Choudhry and Others* v. *The State of Bihar; R.K. Dalmia* v. *Justice Tendolkar* (all cited above); *E.P. Royappe* v. *State of Tamil Nadu,* [1974] 2 SCR F 348; *Maneka Gandhi* v. *Union of India*, [1978] 1 SCC 248; *Ramana* v. *International Airport Authority of India,* AIR 1979 SC 1928; *Union of India* v. *Tulsiram Patel,* [1985] 3 SCC 398; *Swadeshi Cotton Mills* v. *Union of India,* [1981] 2 SCR 533; and *Central Inland Water Transport Corporation* v. *Brojo Nath,* AIR 1986 SC 1971.

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In *Devadasan* v. *Union of India,* [1964] 4 SCR 680 wherein Subba Rao, J as he then was, has dissented from the majority and pointed out that the expression "equality before the law or the equal protection of the laws" means equality among equals and that Article 14 does not provide for an absolute equality of treatment to all persons in utter disregard in every H conceivable circumstance of the differences.

In *Birendra Kumar Nigam and Others* v. *Union of India*, Writ Petition Nos. 220-222 of 1963 decided on 13.3.1964, three writ petitions were filed under Article 32 of the Constitution raising a common question regarding the constitutional validity of certain rules framed by the Union Ministry of Home Affairs and certain directions issued by it relative to the appearance of Assistants employed in the Central Secretariat Service in the competitive examination held by the Union Public Service Commission for recruitment to certain All India Services. In each of the above three petitions, grounds of challenge was same viz., that the impugned rules and directions were violative of Articles 14 and 16 (1) of the Constitution.

The facts in relation to the three petitions were slightly different. Therefore, by way of illustration we will tersely state the facts in Writ Petition No. 220 of 1963.

The petitioner in that case was appointed to the post of an Assistant in the Central Secretariat Service from 1956 and he joined the same on 29.8.56. But in March of that year, he had already submitted his application to be included as a candidate for competing in the combined examination for the several All India Services– IAS, IFS, IPS and the several categories of the All India Central Services, the Examination for which was held in September 1956 but before that date he received an information from the Home Ministry that he could not appear for that examination because he was still on probation. prior to the date on which he completed his probation and was confirmed as an Assistant, the Ministry of Home Affairs issued the impugned notification on 14.3.1957 pointing out that there was an acute shortage of Grade IV Assistants in the Secretariat Service and that the Assistants would not be permitted to compete at the examination to be held in 1957 and that those who were desirous of competing their candidature would be restricted to an appointment to Grade III of the Central Secretariat alone.

We are not giving the facts of other two writ petitions since the common question decided was the same.

Rajagopala Ayyangar, J while speaking for the Constitution Bench in that case has held:

> "If, as must must be, it is conceded that the existencies, convenience, or necessity or a particular department might justify the imposition of a total ban on the employees in that department, from seeking employment in other departments, a partial ban which permits them to seek only certain posts in the

A same department cannot be characterised as illegal as being discriminatory. The mere fact therefore that under the rules officers in certain other departments are permitted to compete for a Class I post is no ground by itself for considering such a variation as an unreasonable discrimination, violative of Articles 14 and 16 (1) of the Constitution as not based on a classification having a rational and reasonable relation to the object to be attained. Of course, no rule imposes a ban on these employees resigning their posts and competing for posts in the open competition along with 'open market 'candidates."

As we have repeatedly held that each of the civil services, namely IAS, IFS, IPS, Group 'A' Services and Group 'B' Services is a separate and determinate service forming a distinct cadre and that each of the services is founded on intelligible differentia which on rational grounds distinguishes persons grouped together from those left out and that the differences are real and substantial having a rational and reasonable nexus to the objects sought to be achieved and that there is no question of unfairness or arbitrariness in the executive action in adding the second proviso to the substantive rule 4 of CSE Rules. When the submission of the learned counsel for the appellants is carefully examined in the backdrop of the legal principles and the factual position, we are in full agreement with conclusion arrived at by the Tribunal that the impugned second proviso to Rule 4 is not violative of Articles 14 or 16 of the Constitution of India.

In Summation:

The impugned second proviso to Rule 4 of the CSE Rules introduced by Notification No. 13016/4/86- AIS(1) dated 13.12.1986 is legally and constitutionally valid and sustainable in law and the said proviso neither travels beyond the intent of the main rule, namely, Rule 4 of the CSE Rules nor it is *ultra-vires* Regulation 4 (iii-a) of Regulations, 1955 that it is neither arbitrary nor unreasonable and that there is a dynamic and rational nexus between the impugned second proviso and the object to be achieved. There is no discrimination whatsoever involved on account of the introduction of the second proviso in question and the said proviso is not *ultra-vires* Article 14 or Article 16 of the Constitution of India.

Before parting with the judgment, we feel that it has become necessary to give a specific direction to the respondents inclusive of the Union Public Service Commission in pursuance of the earlier directions given in our order dated 7.12.1990 (vide Annexure 'A') which directions were given in pursuance of various interim orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi and thereafter finally in its final

judgments dated 20.8.90, 4.10.90 and 5.10.90. For ready reference and to have a proper perspective, we would like to proliferate the following passage from our earlier order dated 7.12.1990:

> "Hence we permit all those candidates falling under Para Nos. 5 (ii), 6 and 7 to sit for the main examination subject to the condition that each candidate satisfies the Secretary, Union Public Service Commission that he/she falls within these categories and that the concern candidates have passed the preliminary examination of 1990 and have also applied for the main examination within the due date. This permission is only for the ensuing examination. As we are now permitting those who have passed the preliminary examination of 1990 and have applied for the main examination on the basis of the unquestioned and unchallenged directions given under paras 5(ii), 6 and 7 of the judgment of the CAT, Principal Bench, New Delhi, the same benefit is extended to the other appellants also who satisfy those conditions as mentioned under paras 5(ii), 6 and 7."

On the strength of the above order, we direct the respondents inclusive of the Union Public Service Commission that all those candidates who have appeared for the Civil Services (Main) Examination, 1990, pursuant to our permission given in the order dated 7.12.90 and who have come out successfully in the said examination and thereby have qualified themselves for the interview, that if those candidates completely and satisfactorily qualify themselves by getting through the written examinations as well as the interview shall be given proper allocation and appointment on the basis of their rank in the merit list, notwithstanding the restriction imposed by the second proviso and our present judgment upholding the validity of the said proviso since the respondents have not questioned and challenged the directions given by CAT, Principal Bench, Delhi in paragraphs 5(ii), 6 and 7 of its judgment dated 20.8.1990. We would like to make it clear that the unchallenged direction given by the CAT in its judgment as well as directions given by us in our order dated 7.12.90 are not controlled by any rider in the sense that the said directions were subject to the result of the cases and hence those directions would be confined only to those candidates who appeared for CSE, 1990 and no further. The seniority of those successful candidates in CSE, 1990 would depend on the service to which they have qualified. The seniority of the left-out candidates would be maintained in case they have joined the service to which they have been allocated on the result of previous CSE and such candidates will not be subjected to suffer loss of seniority as held by the CAT, Delhi in its judgment.

A In the result for the reasons aforementioned the judgments of the Tribunal are confirmed subject to the above directions and all the appeals are dismissed accordingly. No order as to costs.

ORDER

B We have heard all the learned counsel appearing in their respective appeals and also the learned Additional Solicitor for respondents for a very considerable length of time. The main thrust of the argument advanced on behalf of all the appellants is that the second proviso to Rule 4 of the Civil Services Examination Rules (published in the Gazette of India, Extraordinary, Part-I Section, dated December 17, 1988) is offending Article 14 of the Constitution of India and is contrary to law. As the above C question requires a careful examination with regard to the individual cases listed for consideration and as we are informed that the Central Services Examination Commences on 17.12.1990, we are constrained to give the following directions on the basis of the conclusions arrived at by the Central Administrative Tribunal, Principal Bench, New Delhi in its judgD ment dated 20th August 1990. The relevant conclusions as they appear from the concluding portion of the judgment of the Tribunal are as follows:-

> *5(ii).* A candidate who has been allocated to the I.P.S. or to a Central Services, Group 'A' May be allowed to sit at the E next Civil Service Examination, provided he is within the permissible age limit, without having to resign from the service to which he has been allocated, nor would he lose his original seniority in the service to which he is allocated if he is unable to take training with his own Batch.
>
> F *6.* Those applicants who have been allocated to the I.P.S. or any Central Services, Group 'A', can have one more attempt in the subsequent Civil Services Examination for the services indicated in Rule 17 of the C.S.E. Rules. The Cadre Controlling Authorities can grant one opportunity to such candidates.
>
> *7.* All these candidates who have been allocated to any of the G Central Services, Group 'A', or I.P.S. and who have appeared in Civil Services Main Examination of a subsequent year under the interim orders of the Tribunal for the Civil Services Examination in 1988 or 1989 and have succeeded, are to be given benefit of their success subject to the provisions of Rule 17 of the C.S.E. Rules. But this exemption will not be available for H any subsequent Civil Services Examination.

It is pertinent to note that the respondent has not challenged the above directions given in the concluding part of the judgment. So far as the conclusions under para Nos. 6 and 7 reproduced above, the learned Additional Solicitor General states that the respondent has no objection to have them sustained. So far as the directions under para No. 5 (ii) is concerned, the Tribunal has allowed the candidates who have been allocated to the I.P.S or the Central Services, Group 'A' to sit at the next Civil Service Examination subject to the condition that they must be within the permissible age limit and without having to resign from the service to which they have been allocated nor would they lose their original seniority in the service to which they are allocated if they are unable to take training with their own Batch. The Tribunal has used their expression "may be allowed to sit *at the next Civil Service Examination* but it did not restrict it only with regard to the preliminary examination as now contended by the learned Additional Solicitor, according to whom those candidates are not eligible to sit for the main examination since the Tribunal has upheld the validity of the second proviso to Rule 4 of the CSE Rules.

In order to properly understand and appreciate the conclusions arrived at by the Tribunal under para 5(ii), we shall reproduce some interim orders made by the Tribunal during the hearing of the O.As.

In M.P. No. 1269/90 in OA No. 1074/90 dated 31.5.1990 which has given rise to SLP (Civil) Nos. 13525-38/90, the C.A.T., New Delhi has passed the following order:—

> "We have heard the learned counsel for the parties and considered the matter. In our opinion, a direction should be issued to the respondents to permit the applicants to appear in the preliminary C.S.E. 1990 without pressing for their resignations from the service and respondents may also grant them necessary leave etc. This interim order will be subject to the order in O.A. 206/1989 and connected cases."

Interim order passed on 4.6.1990 in Regn. No. OA/160/90 by CAT, New Delhi which has given rise to Civil Appeal No. 5470/90 reads thus:—

> "The learned counsel for the applicant states that the applicant has applied for the 1990 Civil Services Preliminary Examination well in time and has also received Roll Number from the Union Public Service Commission and that he is not being allowed to appear in the Examination in view of the power conferred by the second proviso to Rule 4 of the Civil Services Examination 1987. The examination is going to be held on 10.6.1990. In view of this, we direct that if it is convenient and administratively possible, the respondents shall allow the ap-

plicant provisionally to appear in the said examination. Respondents may also consider granting him necessary leave etc. for the purpose.

Issue dasti."

In M.P. No. 1251/90 in O.A. No.944/1989 which has given rise to Civil Appeal No. 5471/90, CAT, New Delhi has passed the following order:–

"We have heard learned counsel for the parties and we think it will be in the interest of justice to allow the prayer for interim order to enable the petitioner to sit in the preliminary C.S.E. 1990. Learned counsel for the petitioner states that the petitioner has received the admission card. He is directed to give the Registration No./Roll No. to the Secretary, UPSC by 4.6.1990. We direct the respondents to permit the petitioner to appear in the preliminary C.S.E. 1990 without pressing for his resignation from the service and also grant him necessary leave etc. for appearing in the said examination. This interim order will be subject to the order in OA. 944/1989. The Misc. Petition is accordingly disposed of.

Order *dasti.*"

In OA 913/90 (MP 1133/90) and OA No. 914/90 (MP 1134/90), which have given rise to Civil Appeal Nos. 5506-5525/90 the Tribunal has passed the following order on 17.5.1990:–

"As regards interim relief, the respondents are directed to permit the applicants to appear in the Civil Services Examination 1990 and to provide necessary facilities like leave etc. to enable them to appear in the ensuing Civil Services Examination, 1990 subject to the decisions in the Bunch of cases including O.A.No. 206/89 *Alok Kumar & Ors.* v. *U.O.I.*

List the matter on 29.5.1990.

Orders (Dasti)"

It seems no clarification has been sought for from the Tribunal by the respondents as to whether the expression "next Civil Service Examination" is confined only to the preliminary or whether it includes the main examination also. Though some of the interim orders passed by the Tribunal which we have extracted above show that the said interim orders were passed permitting the candidates to sit for the preliminary Central Service Examination of 1990 subject to the decisions of the O.As, in the final judgment, no restriction is shown. In other words, the conclusion under para 5(ii) is

not limited subject to any contingency; but on the other hand, it is absolute. A

Therefore, that expression in the absence of any specific restriction, has to include both the preliminary as well as the main examinations. Hence in the absence of any challenge to the directions embodied in the impugned judgment, we hold that all those candidates falling under para No. 5(ii) can sit both for the preliminary as well as the main examinations B subject to their eligibility otherwise. The condition incorporated in the later part of the impugned proviso that they should resign from the service to which they have been allocated would not operate against them for the main examination of 1990 lest that direction would be meaningless.

Hence we permit all those candidates falling under Para Nos.5(ii), 6 and 7 to sit for the main examination subject to the condition C that each candidate satisfies the Secretary, Union Public Service Commission that he/she falls within these categories and that the concerned candidates have passed the preliminary examination of 1990 and have also applied for the main examination within the due date. This permission is only for the ensuing examination. As we are now permitting those who have passed the preliminary examination of 1990 and have applied for the D main examination on the basis of the unquestioned and unchallenged directions given under paras 5(ii), 6 and 7 of the judgment of the CAT, Principal Bench, New Delhi, the same benefit is extended to the other appellants also who satisfy those conditions as mentioned under paras 5(ii), 6 and 7.

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The Secretary, Union Public Service Commission will make the necessary arrangements enabling the candidates to sit for the main examination of 1990.

We will give the judgment touching on the constitutionality of the second proviso to Rule 4 of CSE Rules later. We would once again like to F state that the above directions are given only on the basis of the unchallenged conclusions arrived at by the Central Administrative Tribunal, Principal Bench, New Delhi.

T.N.A Appeals dismissed.