

## Shri Pratap Singh vs Union Of India & Ors on 21 November, 1996

**Equivalent citations:** AIRONLINE 1996 SC 234, 1997 (1) SCC 541, 1997 SCC (L&S) 173, (1996) 3 SERV LR 786, (1997) 75 FAC LR 205, (1997) 2 SERV LJ 49, (1997) 1 ALL WC 596, (1996) 10 JT 601, (1996) 10 JT 601 (SC)

**Bench:** S.C. Agrawal, G.T. Nanavati

PETITIONER:

SHRI PRATAP SINGH

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 21/11/1996

BENCH:

S.C. AGRAWAL, G.T. NANA VATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T NANA VATI, J.

The order passed by the Central Administrative Tribunal, Principal bench, new Delhi, dismissing his O.A. No. 3114 of 1991, is challenged by the appellant in this appeal.

The appellant appeared at the Civil Services Examination (CSE) held by the Union Public Service Commission (UPSC) in the year 1989. The result of the examination was declared on 31.5.90. He was not recommended by the UPSC for any appointment. he, therefore, appeared at the CSE 1991. Preliminary Examination was held on 9.6.90, and its result was declared on 7.8.90. He was declared qualified to appear in the Main Examination. The written Examination commenced on 17.12.90 and ended on 28.12.90. Before the result of 1990 Examination was declared he received a letter dated 9.1.91 from the UPSC on 14.1.91 informing him that as a result of some candidates not joining or not being available/eligible for appointment or not being found medically fit, his name was

recommended through a supplementary list prepared on the basis of the result of 1989 Examination. he was further informed that he would be considered for appointment to the Central Services Group 'A'/Group 'B' Service on the basis of his rank and preference, if he was otherwise found eligible. He was also given an opportunity to revise the order of preferences indicated by him earlier. By the said letter he was directed to intimate specifically if he was interested in joining the Central Industrial Security Force Group 'A' (CISF) or not. The appellant did not respond to this letter and remained silent. Then by a letter dated 21.6.91, received by him in the first week of July 1991, he was offered an appointment as Assistant Commandant in the CISF. He was also informed that if he desired to accept the offer then he should despatch the agreement and the declaration and complete other formalities. He did nothing. This time also he remained silent and did not inform the authorities that he was not willing to accept it.

Meanwhile, the appellant having passed some other UPSC Examination was appointed on 25.2.91 to the Border Roads Engineering Services. In the first week of June 1991 the result of the CSE 1990 (Main) was declared and on the basis thereof he was called to appear in the interview/personality test. He appeared before the Interview Board of the UPSC on the specified date. On 31.7.91 the final result of the 1990 Examination was declared and he was assigned Rank No. 299 in the merit list. This high ranking in the merit list enabled him to be allocated to a better Group A service, namely, Indian Revenue Service (IRS). On 9.9.91 he received a letter dated 31.8.91 intimating that he was being considered for appointment to the IRS on the basis of the result of 1990 Examination. He was informed that it was only a tentative allocation and might undergo a change on consideration of his rank and expressed preferences. He was further informed that a formal offer of appointment would be sent to him by the concerned Cadre Controlling Authority of the Service after final service allocation was made. He was directed to report to the Director, S.V.P.N.P. Academy, Hyderabad on 15.9.91, if he was willing to be considered for appointment to that Service. As he was selected for the IRS he resigned as an Engineer in the Border Roads Engineering Service and reported at the Academy at Hyderabad for the third foundational course meant for probationers joining IRS. On 20.12.91 he received a letter dated 17.12.91 from the Ministry of Personnel and Training informing him that on the basis of the result of the 1989 Examination he was allocated to CISF and that he should report to the Assistant Director, National Industrial Security Academy at Hyderabad for basic training commencing from 30.12.91 immediately after conclusion of the foundational course which he was undergoing. He was further informed that in view of the provisions contained in the second proviso to Rule 17 of the Civil Services Examination Rules he was not eligible for allocation to Group A service on the basis of the 1990 Examination and was, therefore, not so allocated. Aggrieved by that communication dated 17.12.91 the appellant approached the Central Administrative Tribunal and challenged the action of the authorities as arbitrary and illegal.

Two contentions were raised before the Tribunal. The first contention was that Rule 17 would apply only to those candidates in respect of whom the conditions in the second proviso to Rule 4 are fulfilled. The second contention was that in any case Rule 17 did not apply to the appellant as he was not a candidate who had been approved for appointment to Central Services Group 'A'. The Tribunal rejected both these contentions and held that Rule 4 does not exclude a belated intimation regarding allocation and as such intimation was given to the appellant before the CSE 1990 was over the second proviso to Rule 4 became applicable to the appellant and consequently the provisos to Rule 17

also became applicable to him. The Tribunal also held that Rule 17 can operate independently of Rule 4. It also held that the appellant was 'approved for appointment' as contemplated by Rule 17 and, therefore, also the Government was right in not allocating the appellant to a Group 'A' service on the basis of CSE 1990. Taking this view the Tribunal dismissed the appellant's application. Mr. Srinivasan, learned counsel appearing for the appellant has not only challenged the finding of the Tribunal that the appellant can be said to be 'a candidate who has been approved for appointment' but, has forcefully submitted that the decision of the Tribunal that the first proviso to Rule 17 can operate independently of Rule 4 is clearly wrong. He also submitted that the Tribunal has not correctly interpreted Rule 4 and has erroneously come to the conclusion that the second proviso to the said rule applied to the case of the appellant. On the other hand, the learned counsel appearing for the respondents has supported the order passed by the Tribunal on the same grounds which were urged before it.

Rules a and 17 in so far as they are relevant for the purpose of this appeal read as under:-

"4. Every candidate appearing at the Examination, who is otherwise eligible, shall be permitted four attempts at the Examination, irrespective of the number of attempts he has already availed of at the AS etc. Examination held in previous years. 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 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 appeal 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 C.S.E. failing which his allocation to the service based on one or both examinations, as the case may be, shall stand cancelled and notwithstanding anything in Rule 8, a candidate who accepts allocation to a service and as appointed to a service shall not be eligible to appear again in the Civil Services Examination unless he has first resigned from the service.

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 Service 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.

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Sl. No.	Service to Which approved For appointment	Service for which eligible to compete
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1. Indian Police IAS, IFS and Service Central Services, Group "A"

2. Central Services IAS, IFS and Group "A" IPS

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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 IAS, IFS, IPS and Central Services, Group "A".

Rule 4 is an eligibility rule and the main part of that rule permits a candidate to appear at the said examination n all four times. The second proviso to rule 4 restricts this right of a candidate further. It provides that if a candidate is allocated to a service on the basis of a particular examination and is appointed to a service he cannot thereafter appear again in the CSE unless he first resigns from the service. It also restricts the right of a candidate to avail of four Opportunities by providing that a candidate who on the basis of the result of the previous CSE had been allocated to the IPS or Central Service Group 'A' but who expressed his intention to appear in the next CSE (Main) 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. A Candidate who is allocated to the IPS or Central Services Group 'A' on the basis of the result of the previous CSE is permitted to appear in the next CSE with a view to better his chances or to improve his prospects. But he can do so provided he expresses his intention to appear in the next CSE for competing for IAS, IFS, IPS or Central Services Group 'A' and if he is permitted to abstain from the probationary training in order to so appear. Even this eligibility is made subject to the provision of Rule 17. If the permission as contemplated by this proviso is granted to a candidate and if the candidate is allocated to a service on the basis of the next CSE then he has an option either to join that service or the service to which he was allocated on the basis of the previous CSE. If he does not exercise this option his allocation to the service based on one or both the examinations will stand cancelled.

The said proviso thus carves out an exception to Rule 4 and restricts the right of a candidate to appear for all the permitted attempts at the examination if the conditions specified in the proviso are satisfied. Obviously, such a provision has to be construed strictly and can be applied only when the pre-requisite conditions are satisfied.

The second proviso to Rule 4 refers to Rule 17 and thus both the rules are inter-connected in the matter of defining eligibility of a candidate. Whereas Rule 4 provides for eligibility for appearing at the examination Rule 17 provides for eligibility for appointment to various services on the basis of the result of the examination and the preferences expressed by the candidate. The main part of Rule 17 provides for giving due consideration to the preferences expressed by the candidate for various services at the time of his application, subject to the rules or regulations in that behalf. The first proviso to that rule restricts such consideration by providing that a candidate who has been approved for appointment to India Police Service/Central Civil Services, Group 'A' on the basis of the result of an earlier examination will be considered only for appointment in services mentioned in Col. 3 of that proviso, on the basis of the result of the next examination. It thus puts a further restriction on the choice of the candidate to appear again at the subsequent examinations and compete for a higher or better service if he has been approved for appointment for any of the specified services on the basis of the result of an earlier examination. Like Rule 4 which provides for number of times a candidate is eligible to compete at the CSE, Rule 17 provides for the services for which he is eligible to compete. The first proviso to Rule 4 further restricts eligibility to the extent mentioned therein to compete again at the CSE once he is allocated to the IPS or Central Services, Group 'A' on the basis of the result of the previous CSE. The two provisos to Rule 17 likewise further restrict the eligibility of the candidate to compete for a higher or better service once he is approved for appointment to IPS or Central Services, Group 'A'. The provisos to both these Rules deal with the case of a candidate who after appearing at the earlier examination has again appeared at the next examination to compete for a higher and better service. Thus, the second proviso to Rule 4 and the two provisos to Rule 17 are not only inter-connected but along with other relevant provisions make an integrated scheme as regards the eligibility of such a candidate for allocation and appointment to a service. Whereas the second proviso to Rule 4 specifically makes the eligibility thereunder subject to the provisions of Rule 17 also the provisos to Rule 17 do not specifically refer to the first proviso to Rule 4 but the moment a candidate appears at the next examination the restriction contained in the first proviso to Rule 4 becomes applicable to him and, therefore, the provision to Rule 17 cannot have independent application to a candidate who has appeared at the next examination. Therefore, the provisos to Rule 17 though they appear to have independent application or operation they cannot operate independently in case of a candidate who has been allocated to a particular service on the basis of the result of the earlier examination. Before a candidate is approved for appointment to IPS or Central Services, Group 'A' he has to be allocated to that service and for that reason the first proviso to Rule 4 will start operating earlier than the provisos to Rule 17 can apply. We are, therefore, of the opinion that the provisos to Rule 17 can have no independent application in view of the second proviso to Rule 4. Possibly, it can independently operate only where the restriction imposed by the first proviso to Rule 4 is not attracted. The Tribunal was, therefore, wrong in holding that Rule 17 can operate independently of Rule 4 even in case of a candidate to whom the first proviso to Rule 4 applies.

The next point to be considered is whether the requisite conditions of the second proviso to Rule 4 can be said to have been satisfied in this case. The said proviso contemplates a situation where the candidate, on the basis of the result of the previous CSE, has been allocated to the IPS or Central Services, Group 'A' but who expresses his intention to appear in the next CSE for competing for a higher or better service. Obviously, to bring the case within the purview of the said proviso

allocation has to precede expression of his intention by the candidate to appear in the next CSE. It is also implied that allocation on the basis of the result of the previous CSE has to be before the declaration of holding the next CSE. Otherwise, it would not be possible for a candidate to express his intention to appear in the next CSE. If he appears in the next CSE for competing for IAS, IFS, IPS or Central Services, Group 'A' before he is allocated to the IPS or Central Services, Group 'A' then he will not fall within the purview of the said proviso nor will he be under an obligation to seek permission to abstain from the probationary training in order to appear at the next examination. If a candidate is not allocated or approved for appointment to the IPS or Central Services, Group 'A' then he would be free to appear at the next CSE and in that case not only his result of the earlier examination but the preferences expressed by him will become irrelevant. In such a case neither second proviso to Rule 4 nor the first proviso to Rule 17 will apply to him because there would be no justification to deprive him of his chance to appear at the next CSE and compete for any service that he likes. If a belated allocation or approval for appointment is to be considered valid for attracting the second proviso to Rule 4 and the first proviso to Rule 17 then that would seriously affect the right conferred by the main parts of Rules 4 and 17 on the candidate. Moreover, as the first proviso to Rule 4 lays down an eligibility criteria it would not be open to the Government to waive the consequences following from the non-fulfilment of the conditions mentioned therein as that would affect the prospects of other candidates. The Tribunal was, therefore, no right when it held that a belated allocation or approval does not have the effect of prejudicially affecting the right of a candidate.

So far as the appellant is concerned he was not recommended by the UPSC for any appointment on the basis effect. Moreover, the allocation of the appointment to a Group 'A' Service on the basis of the 1990 examination was earlier than his approval for appointment to the CISF on the basis of the 1989 examination. By the letter dated 31st August, 1991 the appellant was informed that on the basis of the 1990 examination he was considered for appointment to the IRS though it was also stated that the said allocation was tentative and there was a possibility of its undergoing a change on consideration of his rank and expressed preferences. He was directed to join the third foundational course for probationers at the S.V.P.N.P. Academy, Hyderabad. he joined that Academy as a candidate allocated to IRS and took training in the months of october and November 1991. Thereafter in December 1991 he was told that as he was allocated to CISF on the basis of the 1989 examination he should report to the Assistant Director of the National Industrial Security Academy at Hyderabad for basis training commencing from 30.12.91. he was also told by the impugned decision contained in the letter dated 17th December, 1991 that he was not eligible for allocation to Group 'A' Service on the basis of the 1990 examination in view of the provisions contained in the second proviso to Rule 17. It is difficult to appreciate how the second proviso to rule 17 made the appellant ineligible. The second proviso to Rule 17 applies to a candidate who is appointed to a Central Service, Group 'B' on the result of an earlier of the result of the CSE 1989. It was under these circumstances that he appeared for the CSE 1990. He not only appeared in the Preliminary Examination but also in the Main Examination. Only thereafter, that is, on 14.1.91 he was informed that his name was recommended through a supplementary list for being considered for appointment to the Central Services, Group 'A'/Group 'B'. The appellant did not respond to this offer. On the contrary he preferred his fate to be governed by the result of the CSE 1990. Luckily for him, the result of the CSE 1990 was better and on the basis of his rank in the merit list he was allocated to

IRS out of the Group 'A' Services. The appellant was not approved for any appointment on the basis of the result of 1989 examination till the first week of July 1991. The Tribunal has taken the view that by remaining silent and not specifically declining the allocation made in January 1991 and the offer of appointment made in July 1991 he incurred an obligation to be governed by the result of the 1989 examination and forfeited the right to be allocated to a Group 'A' Service on the basis of the 1990 examination, allocation to the IAS, IFS and IPS being out of question because of his low rank. The Tribunal was not right in taking this view because the conditions precedent to the application of the second proviso to Rule 4 were not satisfied and, therefore, the appellant's remaining silent did not have such an examination and desires to be considered for higher service on the basis of result of the next examination. The appellant was, at no time, allotted, much less appointed, to Central Service, Group 'B' on the result of the 1989 examination. The Government was, therefore, wrong in treating him as ineligible for allocation to IRS on the basis of the 1990 examination by resorting to the second proviso to Rule 17. Therefore, neither the first proviso nor the second proviso to Rule 17 was attracted in this case and the impugned action/decision of the Government to treat the appellant as ineligible for appointment to IRS on the basis of the 1990 examination has to be regarded as bad and without any authority of law.

We therefore, allow this appeal, set aside the order passed by the Tribunal and direct the respondents to consider him for final allocation to Central Services, Group 'A' on the basis of the 1990 examination. In view of the facts and circumstances of the case, we pass no order as to costs.