

(Reserved on 15.10.2020)
(Pronounced on 29.10.2020)

Order on interim relief

OA No. 330/0540/2020

Alok Kumar Pandey Vs. Union of India &Ors.

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Vide order dated 01.10.2020, the OA had been listed for consideration of interim relief on 15.10.2020. Accordingly, the OA was heard today for consideration of Interim Relief (IR).

2. The OA has challenged and prayed for quashing of the order dated 26th December, 2019 concerning candidature of the applicant in the Central Police Officers(C.P.O.) Examination-2016 conducted by the Staff Selection Commission by which the applicant has been debarred for a period of 07 years from appearing in the examination conducted/to be conducted by the Staff Selection Commission (hereinafter referred to as 'Commission') with effect from 07th June, 2016 that is the date of written examination, and without prejudice to the rights of the Commission to initiate/seek criminal proceedings against the applicant, on the alleged illegality found to have indulged in by the applicant in the said examination.

3. By way of interim relief, applicant has prayed for staying the operation of the impugned order 26.12.2019 above.

4. Arguments were heard on the IR at length and the records made available in the PDF studied carefully.

5. The applicant's case is that he had applied for selection in the Staff Selection Commission conducted examination vide advertisement in "Employment News dated 09th January, 2016" for the post of Sub-Inspectors in Delhi Police, Central Armed Police Forces and Assistant Sub-Inspectors in CISF Examination, 2016. That the applicant cleared the Paper-I written examination, the Physical Endurance

Test (PET) and Physical Standard Test (PST) at Patna on 15th September, 2016 as also the Paper-II written examination held online on 18th December, 2016 at Lucknow. He also cleared the medical test and was finally declared successful vide results dated 08th September, 2017 with an All India Rank of 107. However, vide the final nomination list dated 26th October, 2017, the name of the applicant was shown with the remark- “**under scrutiny**” meaning thereby that the applicant had not yet been finally selected.

5.1 That, shortly, thereafter, the applicant was issued a Show Cause Notice dated 23.10.2017 (Anexure-A9, Compilation-II) by the Staff Selection Commission (Central Region), Allahabad, wherein it was alleged that on the basis of handwriting specimen, specimen of Left Thumb Impression (LTI) and signature available on application form, Tier-I and Tier-II AC and those taken during PET and DME, it had been detected that there was variation in handwriting, signature and LTI in different stages of the examination from which it was evident that impersonation had been procured in the written exam and/or during PET/DME/RME. Therefore, vide above show-cause notice, the applicant was called upon to submit his written explanation showing reasons as to why his candidature may not be cancelled for the said examination for procuring impersonation, failing which, it would be presumed that he had nothing to say in the matter and his candidature for the said examination would be treated as cancelled, including debarment from future examinations by the Commission for 3 years, without any further correspondence or affording any further opportunity. Further, the applicant was called upon to appear personally, along with his written explanation, Photo ID proof, caste/educational certificates etc. in original on any date between 01.11.2017 and 10.11.2017, and also provide handwriting, signature and LTI specimens, which were to be forwarded to the Central Forensic Science Laboratory (CFSL), along with other documents for further inquiry and

verification. That the applicant submitted his reply to the above Show Cause notice, denying the allegations levelled against him and also presented himself at the Commission's office at Allahabad in November, 2017 for providing the specimens of his signature, handwriting and LTI as required of him.

5.2 That nothing happened for almost 17 months thereafter. Then, a second Show Cause Notice dated 15.04.2019 (Annexure-A-10, Compilation-II) was issued to the applicant, this time informing him that his dossier, along with the specimens of his handwriting and signature had been forwarded to CFSL who after due examination had submitted a report opining that the applicant had procured impersonation in Paper-I to qualify the written examination of CPO-2016 and based upon this report, the applicant was called upon to submit written explanation showing reasons as to why his candidature be not cancelled for the said examination and he not be debarred from all future examinations conducted by the Commission for the next three years. That, thesecond Show-Cause Notice dated 15.04.2019 interalia did not enclose, supply or forward any copy of the said CFSL report and other relied upon documents, thereby making it well-nigh impossible for him to give any meaningful reply to the same. That, while being severely handicapped due to non-supply of the CFSL report and other documents purported to be held against the applicant,he furnished his explanation in all *bona fide* vide a detailed reply dated 29.04.2019 (Annexure No. A-11 to compilation No. II) denying all charges of impersonation and categorically asserting that it was he alone who had appeared at the examination even while demanding copies of the CCTV footage of each stage of the examination, video recording of the Aadhar-based biometric authentication, copy of the CFSL report and other documentation relied upon by the respondents against him, so as to enable him to furnish a proper reply. That, however, no documents were supplied and after a lapse of almost eight months the impugned penalty order dated 26.12.2019 was issued, whereby his

candidature at the CPO Examination-2016 conducted by the Staff Selection Commission was cancelled, and he was further debarred for a period of seven (7) years from appearing in the Examinations conducted/to be conducted by the Commission w.e.f. 07.06.2016, i.e. the date of the written examination without prejudice to criminal proceedings by the Commission.

5.3 It is therefore argued that as the applicant was not supplied any of the documents and reports which reported procurement of impersonation etc, the whole inquiry is vitiated on grounds of lack of adequate opportunity being given to represent the two show cause notices effectively. That this is ablatant violation of the principle of *audi alteram partum* and hence the impugned order dated 26.12.2019 needs to be quashed and by way of IR stayed till the disposal of the OA.

6. *Per Contra*, the Ld. respondent counsel vehemently opposed the main relief as well as the IR. It is argued that (i) the CFSL report is incontrovertible as it is from a disinterested party and also because it is from a government agency namely the CFSL, (ii)that, the action of cancellation of the candidature and debarring of the applicant, is justified as per Para-18 of the notice of the Commission for the exam itself, in which action it is explicitly stated that against would be taken against candidates found guilty of misconduct such as for impersonation etc and in such an event, the candidature will be summarily cancelled at any stage of recruitment, (iii)that in matters of apparent fraud there is no need to give opportunity of hearing and the Commission had acted rightly in issuing the impugned order based on the CFSL report and other documents available with it. That therefore the applicant has no case and his OA should be dismissed and the IR relief be rejected.

7. It is quite clear from a careful reading of the impugned order dt 26.12.2019 that the respondents have proceeded to hold the applicant guilty of impersonation,

solely by placing implicit reliance upon the report of the CFSL and the inconclusive report of the Fingerprint Bureau, Punjab etc. It is also clear that the respondents have admitted in the impugned order dated 26.12.2019 itself that the CFSL report and other relied upon evidence have been asked by the applicant but have not said anything about supplying of the same to the applicant thereby leading to the conclusion that they did not supply the requested documents to the applicant. Thus, the factum of non-supply of documents relied upon for issue of the impugned order is admitted as also the unequivocal reliance on the CFSL etc reports on the grounds of being from a disinterested party **including** also being from a government agency. That based on above, 1d applicant has argued that non-supply of evidence relied upon for issue of the impugned order is a violation of the principle of natural justice as contained in the doctrine of *audi alteram partum*. That it is no longer res *integra*, that a penalty such as the one imposed upon the applicant has to be set aside if it has been imposed without supplying the candidate with copy of the evidences forming the basis of the penalty, thereby shutting out his chances of fair rebuttal.

8. In support, 1d applicant counsel has cited the judgment dated 16.04.2018 rendered by the Allahabad High Court in Writ-A No. 2813 of 2017, Ran Vijay Singh and 34 others versus Union of India and others, wherein it has been held in para-29 that-

29. *Although the report of Government Laboratory and opinion of its experts would be entitled to weight, particularly when no bias or mala fide is alleged, yet, being in the nature of opinion, it cannot conclusively establish impersonation on part of the petitioners. The respondents' action is otherwise not in conformity with the principles of natural justice. In such circumstances, I am of the considered view that action of respondents in cancelling petitioners' provisional selection, and debarring them from appearing in any exam conducted by the Commission for three years, is violative of Article 14 of the*

Constitution of India. Orders impugned dated 27.10.2016 and 14.12.2016, accordingly, stands quashed.

30. It shall, however, be open for the respondents to verify identity of petitioners upon material and evidence admissible in law by following the principles of natural justice. The required exercise be undertaken preferably within a period of four months from the date of presentation of certified copy of this order, as petitioners have already lost sufficient time. Based upon such consideration, the respondents shall take a fresh decision in the matter relating to grant of appointment to the petitioners.

It is further emphasized by the applicant counsel that this judgement has been upheld by Division Bench of Hon'ble High Court of Allahabad (comprising of Hon'ble Mr. Govind Mathur, Chief Justice and Hon'ble Mr. Saurabh Shyam Shamshery) in Special Appeal No. 1045 of 2018 Union of India and 6 Others Vs. Ran Vijay Singh and 6 Others Vs. Ran Vijay Singh and 35 Others, and it has been observed that:-

"At this Juncture, we would also like to state that it is not the case of the appellant-respondents that the process of selection suffers from mass-irregularity, but of unfair practices adopted by certain individuals.

Looking to this background also, we are of considered opinion that while cancelling examination of the respondent-petitioners and further debarring him for three consecutive examinations the appellant should have supplied a copy of the opinion given by the handwriting expert. Non-supply of that is in violation of principles of natural justice.

In view of whatever stated above and also in light of the discussion made by learned Single Bench while accepting the petitions for writ, we do not find any merit in the appeal, hence the same is dismissed."

8.1 It is further emphasised that other similar judgements include (i) the judgment in Writ-A No. 67228 of 2014, Tulasi Ram Prajapati versus Union of India and another, decided by the Allahabad High Court on 20.07.2018, (ii) judgment in Writ-A No. 35333 of 2016, Bhupendra Singh versus Union of India and others, decided on 30.10.2018, and upheld in Special Appeal Defective No. 44 of 2019, Union of India and others versus Bhupendra Singh, vide order dated 17.01.2019, and (iii) judgment in Writ-A No. 46446 of 2015, Satyendra Tomar

versus Union of India and others, dated 30.01.2019. Further that similar view has been held in various orders of the Central Administrative Tribunal such as in OA 213/2013 along with several other OAs – order dated 06.05.2014 – Sunil Kumar and Ors vs UoI as well as Commission as respondents. Other Tribunal orders include CAT PB orders in OA 930/2014 order dated 30.07.2014 and other PB orders.

8.2 Therefore, it is argued that exactly similar conditions exist in the present case and so the applicant has to be given the benefit of these judgements.

8.3 *Prima facie*, we find no anomaly in this line of argument and are inclined to accept the same. This is because firstly it is quite illogical to imagine that each and every stage of the proceeding of the selection exercise in question, involving photo bearing admit card, photo bearing identity proof, biometric authentication devices and CCTV surveillance all failed to detect the impersonation by the applicant in question. Secondly, the unsupplied CFSL report cannot be contested being from an independent third party which in addition is a government agency. Thirdly we note that the Finger Print Bureau, Punjab has given an inconclusive report as admitted by the respondents in their impugned order at para 7 which is abstracted below–

“..The dossier of Shri Alok Kumar Pandey along with verification report received from the Finger Print Bureau, Punjab without any clear opinion (emphasis supplied) and stated that finger print on Commission copy dated 07.06.2016 (Paper-I) and dated 15.09.2016 (PET/PST) both are sufficiently ink smudged and do not permit comparison on their sufficient number of dependable ridge characteristic details. Hence no opinion can therefore be given on them...”

Fourthly, for circumstantial evidence purpose in terms of the possible conduct of the applicant in general before the examination it is also noted that the applicant is

a NET qualified candidate which would in a sense make it rather presumptuous to assume that a candidate with a redoubtable reputation would take recourse to such impersonation and thereby his entire life and career in the event of being caught in the criminal act. Fifthly it is also noted that the candidate has reached the interview stage of the recently concluded UPPSC State Civil Services Examination as well. Sixthly, it is also noted that the applicant has been stated to be finally selected for the post of Assistant Commandant/Exe in CISF through CAPFs (ACs) Examination-2018 conducted by the UPSC, and has been made a provisional offer of appointment under which he is required to report for training w.e.f. 05.10.2020 to the Director, National Industrial Security Academy (NISA), Hyderabad (Appointment dated 07.09.2020 - Annexure No. A-12 to compilation No. II). That as soon as the applicant reports for training, he shall be called upon to give a declaration regarding his debarment status.

8.4 On the basis of above and the citations submitted by the 1st applicant counsel which stand unchallenged with no rebuttal of the equal identical import of the same during the course of arguments from the respondents' side, we are strengthened in our view that *prima facie*, the principle of *audi alteram partum* stands violated. That grant of opportunity to rebut evidence held against a person is a sacrosanct pillar of justice not just in the country but the world over, more so when it is visited upon by severe civil consequences such as those contained in the impugned order. At this juncture we would also like to recall the famous case in the Hon Apex Court in the matter of *Maneka Gandhi vs Union of India* in a judgement delivered on 25th January, 1978 by the five judge bench of Hon Justices Beg, M. Hameedullah, (CJ), Chandrachud YV, Bhagwati PN, Untwalia NL Fazalali, SM and Kailasam PS wherein the principles of *audi alteram partum* have been laid down at length To quote-

“....The **audi alteram partem** rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the **audi alteram partem** rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands.

*It is a wholesome rule designed to- secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True rue it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the **audi alteram partem** should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The **audi alteram partem** rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in *Russel v. Duke of Norfolk*(1) that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated fullfledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The **audi alteram partem** rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may, arise. This circumstantial flexibility of the **audi alteram partem** rule was emphasised by Lord Reid in *Wiseman v. Sorneman* (supra) when he said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules" and Lord Hailsham, L.C., also observed in *Pearl-Berg V. Party*(2) that the courts "have taken in increasingly sophisticated view of what is required in individual cases".*

In the above we would be particularly keen to emphasize the sentence – “That is why Tucker, L.J., emphasised in *Russel v. Duke of Norfolk*(1) that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case".

In the above we would be particularly keen to emphasize the sentence-“That is why Tucker, L.J., emphasised in *Russel v. Duke of Norfolk* (1) that “whatever standard of natural

justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

In particular also, that Lord Reid in *Wiseman v. Sorneman* said that he would be "sorry to see this fundamental general principle degenerate into a series of hard and fast rules".

8.5 We are unable on the other hand, to accept blandly the argument of the 1d respondent counsel that the Hon Apex court has held that in cases of a fraud, no opportunity of hearing is required. While this may be so in some special circumstances of mass copying, grossly faulty procedure being adopted for holding of examinations, etc., fact remains that there is no such mass incident here on one hand and on the other an encyclopaedia full of citations exist on the need to uphold the principle of opportunity of hearing. The citations discussed above have already helped strengthen our view *ex facie* that the applicant's case justifies upholding of the principles of *audi alteram partum* and denial of the same even as per admission in the impugned order dated 26.12.2019 demands interference. That this intervention at an interim stage becomes more crucial given the fact that the impugned order debars the applicant for seven years from any examination to be held by the Commission. The repeated upholding by the courts in similar earlier matters would have one to feel that the Commission is perhaps a habitual offender in such matters. In this case, the debarring action could cost the applicant dear and be a great stumbling block in his career aspirations as typically in all recruitment tests, the applicant is generally called upon to declare whether he has been debarred by any exam-conducting body and needless to say, the said disclosure cannot but seriously jeopardize his prospects of selection.

9. Hence, there is urgency in the matter. It is quite clear, that the facts in the present case are no different from the citations as discussed above and including as per foregoing reasons and analysis, there are strong grounds for grant of IR to the

candidate-applicant, who could suffer irreparably if he is not protected in the interim.

10. Hence, IR is granted. Accordingly, the operation of the impugned order dated 26.12.2019 shall be kept in abeyance. Let a copy of this IR be served by the Registry on the Secretary DoPT-Respondent No.-1 for his/her specific knowledge.

(Devendra Chaudhry)
Member-A

(Justice Vijay Lakshmi)
Member-J

/Shakuntala/