

AS

10

Reserved

Central Administrative Tribunal, Allahabad,
Registration No. Q.A.77 of 1986.

Vinay Prakash Applicant
Vs.
Union of India and
others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

In this application under section 19 of the Administrative Tribunals Act XIII of 1985, the applicant, who is posted as permanent Auditor in the office of the Local Audit Officer (Air Force) 'B', Kanpur - respondent no.4, was permitted by the respondents to appear in the Subordinate Accounts Service (in short S.A.S) examination going to be held in July 1985 but his permission was rescinded by the Controller General of Defence Accounts (CGDA) New Delhi- respondent no.2. The applicant by way of this application wants a direction to the respondents to conduct the SAS part II examination corresponding to the year 1985 for him and in case the applicant qualifies in the same, for granting him all benefits arising therefrom including enhancement in salary, promotional avenues, seniority etc. In the alternative, he wants a declaration that he should be deemed to have qualified the SAS part II examination with all consequential benefits and in the alternative, for granting the benefits of higher pay, promotion, seniority etc., to which he would have been found entitled after passing the SAS part II examination.

2. In a very lengthy drafted application

AB
2

11

.2.

running into about 40 pages, the applicant devoted about 21 pages to his strained relations with his immediate officer- Local Audit Officer (Airforce)- respondent no.4 and stated that the respondent no.2 wanted personal favours from the applicant to which he was not prepared. As a result of which, the respondent no.4 started harassing the applicant and the applicant had moved applications to the Controller of Defence Accounts, Dehradun- respondent no.3 for his transfer within or outside the Command to save his career. The respondent no.3, however, did not listen to his requests and ultimately, the applicant was served by the respondent no.4 with letter dated 22.7.1985, 3 days before the commencement of the SAS examination, ^{informing} ~~him~~ that his candidature for SAS has been rescinded and the roll number allotted to him was to be treated as blank. Despite correspondence, the applicant was not informed of the reasons for this step against him, and he has thus been deprived of his right to appear in the SAS examination and the consequent prospects in the service. His case is that all this was done on account of malafide intention and personal prejudices of the respondent no.4 against the applicant and unless a special arrangement for conducting the SAS examination is made, he will suffer an irreparable loss.

3. The application was contested on behalf of the respondents and in the counter affidavit filed on their behalf, it was stated that the various reasons stated by the applicant regarding his strained relations with the respondent no.4 have been concocted by him

(A3
B)

(12)

.3.

and the respondent no.4 never wanted any favour from him. The applicant remained on unauthorised leave and during the period of his absence, his work-book could not be traced and when the applicant returned from leave on 25.5.1985 and was asked to trace the work book, he did not take the matter seriously and ^{being} ~~is~~ on his taking to the office of respondent no.4 by the Section Officer, he became furious and aggressive and snatched the letter sought to be served on him and tore it into pieces and also uttered abusive words for the respondent no.4. On account of his unwarranted misconduct, he was served with a charge sheet and on account of the departmental action pending against him, the applicant's candidature was rescinded by the competent authority and the respondent no.4 had no role to play in this connection and the applicant is not entitled to any relief.

4. The applicant denied the allegations made by the respondents in their counter affidavit and filed the affidavits of 3 officials of his office stating that no such incident had taken place in the office of the LAO on 25.5.1985 and only with a view to harass him, the incident of 25.5.1985 was concocted and he was served with a wrong charge sheet in order to deprive him of his right to appear in the SAS examination. The respondents thereafter filed supplementary counter affidavit with the leave of the Tribunal and filed therewith the confidential orders ^{and 16.5.85} dated 14.12.1984 of the respondent no.2 laying down the principles on which the permission for appearing in the SAS examination was to be allowed or rescinded

A.3
u

(B)

.4.

and it was further stated that the candidature of the applicant was rescinded in accordance with this confidential letter (Annexure SCA 2) when the facts of his misconduct and departmental action came to the notice of the authorities and the applicant has no right to appear in the examination under the law. The applicant again filed a rejoinder and filed therewith Annexures SRA 1 and 2 to show that the applicant was on medical leave from 13.5.1985 to 24.5.1985 and on 10.5.1985, he had submitted his work book to the Section Officer and the order dated 25.2.1986 regarding punishment of censure awarded to another Auditor, namely, Sri O.P.Jaiswal in a departmental proceeding. The case of the applicant is that the candidature of the said O.P.Jaiswal was not rescinded on account of departmental proceedings pending against him.

5. We have heard the learned counsel for the parties and have also perused the material placed before us in this case. The application appears to have been filed by the applicant solely under ~~the~~ the belief that his candidature was rescinded by respondent no.4 by ~~his~~ manipulations on account of his unfavourable attitude and prejudices against him since long and this could not be done under the law and rules. However, when the respondents filed the copy of the relevant confidential letter dated 14.12.1984 of the respondent no.2 regarding the SAS examination part II and copy of another confidential letter dated 16.5.1985 (Annexure SCA 2), it became clear that the notification of the candidature of the individuals, who have come to adverse notice after approval of their candidature, by their

AB
5

16

.5.

office, ^{could }} ~~may~~ be withheld and the cases reported immediately ^{quadibla} with brief self explanatory details together with their CR files for final instructions. The applicant has taken the stand that the departmental action initiated against him was due to the malafides of the respondent no.4 and in fact, no such incident had taken place and it was not necessary for the respondents to rescind the candidature of the applicant on this ground.

6. The confidential letter dated 14.12.1984 (Annexure SCA 1) lays down the scheme of the SAS examination part II to be held in July 1985 and clearly provides that the case of each intending candidate will be carefully screened and the candidature shall be recommended on the basis of his confidential reports for the previous two years. This has to be recommended and allowed only if the reports are free from any remarks regarding his amenability to discipline, integrity and maintenance of cordial relations with fellow employees etc. It further provides that the candidature of the individuals against whom disciplinary cases are pending or contemplated should be considered with reference to the nature of the lapse on their part and full facts of the disciplinary case should be furnished. It ^{has} ~~been~~ not a matter of right for every official to appear in the SAS examination and the permission for the same has to be granted by the competent authority on seeing his service record for the last two years and in case any disciplinary action is pending after examining the nature of the lapse on his part, he may not be given permission to appear in the examination. The other letter dated 16.5.1985 (Annexure SCA2) issued only about 2 months before the commencement of the examination further provided in paragraph 3 that the notification of

AB
6

(15)

.6.

candidature of individuals, who have come to adverse notice after approval of their candidature, may be withheld and the cases reported with brief self-explanatory details together with the CR files for final instructions. This letter was issued by the respondent no.2 to all the Controllers of Accounts. It was, thus, not an instruction issued for the purpose of any individual and the applicant is bound by the instructions and conditions contained in these two letters of the respondent no.2.

7. On the own showing of the applicant, he was served with a charge sheet dated 17.6.1985 on 4.7.1985 in respect of his alleged misconduct as stated above. The charge against the applicant was ^{of} his unbecoming behaviour with his superior officer, the tearing of official documents and hurling of abuses on him. The fact whether any such incident had actually taken place or not is not to be decided in this case and for the purpose of the present application it is sufficient to say that in view of this charge sheet regarding the misconduct of the applicant, his candidature for appearing in the SAS part II examination could be cancelled or rescinded according to the circular letter dated 16.5.1985 (Annexure SCA 2). It further appears from Annexure XII filed by the applicant that this rescission of his candidature was made by the respondent no.2 himself and not by respondent no.4, who is alleged to be harbouring ill-will against him. The applicant has, therefore, no case and he cannot be granted the reliefs claimed in his application.

8. The applicant has alleged in paragraph I at page 34 of his application that the circular issued by the respondent no.2 providing rejection of the candidature of the candidates against whom disciplinary proceedings were

.7.

(16)

(AB)
(2)

pending for SAS examination, has been ~~set aside~~ ^{quashed &} by the Rajasthan High Court in the case of Basant Kumar Vs. Union of India and others (1984 L.I.C.- N.C.C.-17). The respondents have stated in their counter affidavit that the Union of India has filed an appeal against this order which is still pending. The book containing this report has not been supplied or produced before us and the same is not available in our library. As such, we are unable to appreciate the principle enunciated by the Rajasthan High Court in the said case. The applicant further placed his reliance on Gurdial Singh Fiji Vs. State of Punjab and others (1979 LIC-1186) in which it was held that if the selection committee does not take into consideration the representation filed by a Government servant against an adverse remark, the report of the selection committee cannot be upheld. In our view, this ruling has no application to the case of the applicant. The inquiry in connection with which the candidature of the applicant was rescinded is still pending and we do not want to make any comment about it in this case. In case the charges levelled against the applicant are not proved and it is found that they were concocted merely to deprive the applicant of his right to appear in the SAS examination, the applicant may take such action against the persons responsible for the same as ~~he~~ ² ^{or open to him.} may be advised. We are unable to extend any assistance to him in this connection in the present application.

9. The application is accordingly dismissed but we direct the parties to bear their own costs.

Member (A)

Subarayya
10/10/86
Member (J)

Dated: Oct. 10, 1986.
kkb

1P

Res

AB
1

Reseved

Central Administrative Tribunal, Allahabad.

Registration Review Application No. 31 of 1986

Vinay Prakash

...

Applicant

Vs.

Union of India and others

Respondents.

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

The applicant in Registration O.A.No. 77 of 1986 has moved this application for review of our final order dated 8.10.1986 passed in the said case dismissing his application. The main ground alleged in this review petition is that the applicant had placed his reliance on a decision of the Rajasthan High Court but we ignored the said decision on the ground that the book containing the decision was not supplied to us. It has been alleged that the book was left by the learned counsel for the applicant but for some reason the same could not be made available to us by our own office. The contention of the applicant is that the decision of the Rajasthan High Court is binding on this Tribunal and we should reconsider our judgement.

2. A copy of the decision in BASANT KUMAR Vs. UNION OF INDIA Punjab (1986 LIC (NOC) 17) has been filed by the applicant with the review petition. This is a judgment of a Single Bench which had held that para 3 of the circular dated 21.5.1981 issued by C.G.D.A. for adjudging the fitness and suitability of the members of Clerical service for promotion to the post of Section Officer (Accounts) in Subordinate Accounts Service is illegal. In the reply filed by the respondents against the review petition, they have filed the copies of two orders of ^a the Division Bench