

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 7th day of March, 2002.

Original Application No.1194 of 1999.

CORMA:-

Hon'ble Mr. C.S. Chadha, A.M.

Hon'ble Mr. AK Bhatnagar, J.M.

Anjani Kumar Rai,  
Son of Shri Sita Ram Rai,  
Permanent resident of Aamghat Colony,  
Sekhari Colony, District Ghazipur.

(Sri Shyamal Narain, Advocate)

.....Applicant

Versus

1. The Union of India through the Regional Director (Central Region), Staff Selection Commission (Central Region), Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, 8-A-B, Beli Road, Allahabad.
2. The Accountant General (Audit-I), West Bengal, 4, Brabourne Road, Calcutta-700001.
3. The Accountant General (Audit)-II, West Bengal, 4, Brabourne Road, Calcutta-700001. . . Respondents  
By Advocate Shri Prashant Mathur . . . Respondents

O R D E R (O\_r\_a\_l)

By Hon'ble Mr. C.S. Chadha, A.M.

The case of the applicant is that he appeared in the Staff Selection Commission Examination for Section Officers held in 1997 and was duly selected and appointed in the Audit Department in the Accountant General (Audit-I), West Bengal, Calcutta, respondent no.2. Several months after he had already joined and worked in that capacity, he received a notice from the Staff Selection Commission to appear in their office in relation to certain enquiries. On making himself available for that enquiry he was asked to solve certain questions of English and Arithmetic, which he did. Several months later, he was issued a show cause notice vide Annexure-A-7 dated 27-7-1999 that he had been found guilty of securing impersonation in the examination and he should show cause as to why his

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candidature for the said examination may not be cancelled, why he may not be debarred from Commission's future examinations and further why criminal proceedings may not be initiated against him for securing a Government job by fraud and criminal means. In reply to this show cause notice vide Annexure-A-8 the applicant sought copies of the documents by which the Staff Selection Commission chose to prove charges of fraud against him. It was alleged that the Examiner of Questioned Documents had found a variation in the samples of handwriting of the answer papers in the examination and the one 'supplied by him' to the Staff Selection Commission after being summoned there. Learned counsel for the applicant has brought to our notice that no such sample was given by him knowingly or willingly. In fact, we observe that there is nothing on record to show that the so called sample of second impromptu question paper was sent to the Bureau of Questioned Documents to be compared with the answer books of the applicant. It is also not clear as to which two samples were compared.

*On* ~~It is also not clear as to which two samples were compared.~~ It has been brought to our notice that despite requests made by the applicant, a copy of the report of the Examiner of Questioned Documents was not supplied to the applicant. Learned counsel has also brought to our notice a judgement of the Tribunal in OA No.784 of 1999 passed on 4-2-2002 which also relied upon the judgement of the Apex Court in the case of K. Vijay Laxmi Vs. Union of India & Ors reported in 1998 SCC (L&S) 1124. It is settled law that no person can be held guilty without being given due opportunity to explain his conduct. In this case there is no certainty that two specimens found to be in variance by the Examiner of Questioned Documents were in fact the specimens from the answer books of the applicant and the later specimen taken from him. In

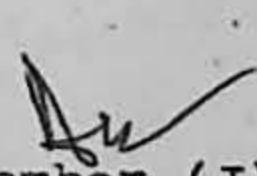
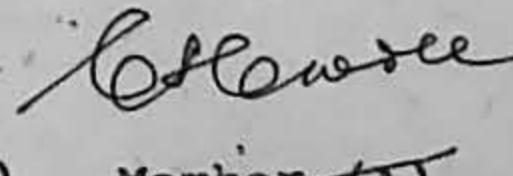
*B.G. Sharma*

absence of any opportunity to cross-examine the said Examiner of Questioned Documents injustice seems to have been done by the respondents.

5. Despite the illegality of the impugned order based on this fact, there is one more important issue which we must bear upon. Learned counsel for the respondents has stated that advertisement issued in the Press by the Staff Selection Commission in its Condition No.9 gives the power to the Staff Selection Commission to cancel the candidature of any applicant found guilty of certain misconducts as outlined in Para 9(i) and 9(xiii). We feel and, therefore, we would like to stress this fact, that these powers could have been enjoyed by the Commission only until the examination results were not announced. However, once the panel of successful candidates was announced, made available to the employers and thereafter appointments were made by the receiving department, the Staff Selection Commission ceased to enjoy any further powers or control over the candidates. Even if the advertisement seeks to have these powers, they cannot be granted to the Commission as they are absolutely in violation of norms of natural justice. Once the applicant became a Government servant, even if he was found *prima facie* guilty of any misconduct or fraud by the Staff Selection Commission, it was open for them to take recourse to either of the two following courses of action. Firstly, they could have filed a criminal case of fraud against the applicant and if they managed to secure conviction, the applicant would have automatically been dismissed from service. Secondly, it could have been brought to the notice of his employer that the Staff Selection Commission had come into possession of certain facts which led them to believe that the applicant had committed fraud in the selection process. On the basis of such information relied upon by the Staff Selection

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Commission, the employer could then have conducted departmental enquiry giving the applicant due opportunity to be heard and thereafter could have taken necessary action under law. In the absence of any such proceedings, we are constrained to come to the conclusion that the order of removal from service or for that matter even the cancellation of the candidature of the applicant and barring him from further appearing in any competitive examination conducted by it, cannot be sustained and hence all the aforesaid orders are quashed. It will, however, be open for the Staff Selection Commission to initiate proceedings as suggested above or inform the department concerned to initiate a departmental enquiry for any alleged fraud committed by the applicant. The applicant, therefore, shall be reinstated pending such enquiry with immediate effect. The entire benefits of salary etc. shall be paid to him as if these orders were not passed, within three months of the receipt of this order. There shall be no order as to costs.

   
Member (J) Member (A)

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