

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 12th day of April, 2001.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

ORIGINAL APPLICATION No.269 OF 2000

Amitabh Singh,
son of Sri P.K. Singh,
aged about 27 years,
r/o 11/10 Alopibagh,
Punjabi Colony, Allahabad.

.Applicant

(By Advocate: Sri Shishir Kumar)

Versus

1. Union of India, through Secretary
Staff Selection Commission,
Block No.12, C.G.O. Complex,
Lodhi Road, New Delhi.
2. Staff Selection Commission,
Central Region through its Regional Director,
8 A-B Beli Road, Allahabad.

. Respondents

(By Advocate: Sri P. Mathur)

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(RESERVED)

(By Hon'ble Mr. S. Dayal, AM)

This application under Section 19 of
Administrative (Tribunals) Act, 1985, has been
filed with prayer for (i) setting aside show-cause
notice dated 7.1.2000.

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(ii) A direction to the respondents to issue appointment letter in favour of the applicant and the applicant should be treated to be in service from the date of appointment of junior with all consequential benefits.

(iii) A direction to the respondents to keep one post vacant for the applicant.

(iv) Setting aside of order dated 6.3.2000.

2. The case of the applicant is that he applied to Staff Selection Commission for the post of Routine Grade Clerk advertised in news-papers and appeared in the written examination for selection to the post held on 22.9.1996. He was issued Admit-Card No.2421700 for written examination as well as Typing Test. The admit-card is in two folds and photograph was to be affixed on it by the candidate and he also has to affix his signature in appropriate column of the Admit-card. He succeeded in written examination and was called for Typing Test on 25.8.97. The result of those successful in the examination was published in Employment News dated 31.3.98 and the roll no. of the applicant was included in the result published. He received letter dated 28.4.92 from Staff Selection Commission asking the applicant to submit certain documents. The applicant received a letter dated 4.9.98 from the Commission, asking him to show-cause why handwriting in his application form and specimen writing provided by him did not tally with the photo bearing attendance-sheet of the written examination. It was mentioned that the case was

referred to the Government Examiner for questioned documents. The reply of the applicant to the show-cause was sought in fifteen days. The applicant replied that he had appeared in written examination and Typing Test and one fold of the Admit-card was taken from him after verifying his signature and photograph by the Invigilator in the examination hall. The applicant received a letter dated 16.10.98 stating therein that the candidature of the applicant had been cancelled and the applicant was debarred from appearing in the future examination for three years. The applicant challenged it in O.A. 1240 of 1998 and the order passed in the O.A. was for setting aside the show-cause notice leaving it open to the respondents to issue first show-cause notice. The applicant was issued another show-cause notice dated 7.1.2000, which was in essence the same and the notice also referred to the recommendation of Government Examiner of Questioned Documents. The applicant asked for certain documents, the report of the Government Examiner and sought certain other information which, he alleges, was not furnished. The respondents passed order dated 6.3.2000 repeating cancellation of candidature and debarring of the candidate for 3 years.

3. The arguments of Shri Shishir Kumar for the applicant and Shri Prashant Mathur for the respondents have been heard. The pleadings on record of the case have been considered. The original documents submitted by learned counsel for the respondents have been perused.

The documents consisted of answer-sheet of written examination in original called Q-1, two pages of Typewriting Examination in original marked Q-2, Q2/, and Q3, the two folds of Admit-cards for two examinations- written and Typewriting with photograph marked Q4 and Q5 and three sample documents in original marked S 1, S 2 and S 3. The recommendations of Government Examiner in original are also submitted. These documents were examined by us.

4. The learned counsel for the applicant has submitted that the respondents were estopped from questioning the identity of the applicant, when they had declared his result and completed all pre-appointment formalities. He mentioned that it was a case of mala fides and of no evidence against the applicant. He also contended that documents and information was not supplied and letter asking for those was taken as a reply. Thus, there was violation of principles of natural justice in proceeding against the applicant. He also submitted that sending the documents again was illegal as lacuna, which had occurred could not be filled up subsequently. It has also been contended that the document regarding type test was not before the Government Examiner and, therefore, allegation that he secured impersonation in the type-test was contradictory and without basis. The learned counsel for applicant has relied upon the judgment of the Apex Court in Kashinath Dikshita Vs. Union of India and others, AIR 1986 SC 2118 to contend that in a case of dismissal, in which copies of statements of

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witnesses and copies of documents were not supplied and the respondents failed to show that no prejudice resulted therefrom, the order of dismissal was violative of Article 311 (2). The learned counsel for the applicant relied upon the judgment of the Supreme Court in a case of dismissal between Committee of Management, Kisan Degree College and Lallu Saran Pandey (1995) 1 UPLBEC 217 has reiterated the same proposition of law. The learned counsel for the applicant has relied upon an order of a Division Bench of this Tribunal in Sanjay Kumar Sonkar Vs. Union of India & others in OA No.710 of 1992 decided on 4.9.95 to contend that an order without supply of a copy of Deputy Government Examiner of Questioned Documents is bad in law. The learned counsel for the applicant has also cited the judgment of the Apex Court in K. Vijayalakshmi Vs. Union of India, JT 1998 (14), SC, 476 to contend that an order passed without supply of copy of Forensic report was bad in law. The first two judgments of the Apex Court relied upon by the learned counsel for the applicant relate to rights of an employee under Article 311 (2) of the Constitution. The applicant, who can be taken as an empanelled candidate is not entitled to the same protection, which is a natural corollary of ratio of the case of Sankarsan Das Vs. Union of India and others U.O.I. 1991 SC 1612. The ratio of last two judgments would be applicable to the case of the applicant and the case would have to be examined in that light.

5. The learned counsel for the respondents submitted that in the first round of litigation, the order was given only because of a defect in notice and non-availability of required form. A fresh notice has been given and the case of impersonation has been established and, therefore, the applicant is not entitled to any relief. The learned counsel for respondents relied upon an order of a Division Bench of this Tribunal in Sanjay Kumar Sonkar Vs. Union of India and others in OA 832 of 1997 passed on 16.4.98 to contend that where the opinion of handwriting expert is not challenged or rebutted, the applicant would not be entitled to any relief.

6. We have considered the facts of this case. We find that the categorical opinion of the Government Examiner of Questioned Documents was that the signatures on answer-sheet of written examination and on photo bearing attendance sheet of written examinations (Q 1 and Q 4) did not tally with signatures on other documents as well as with specimen signatures obtained from the applicant by the Commission.

7. As regards the law laid down by a Division Bench of this Tribunal in O.A. 710 of 1992 in the case of Sanjay Kumar Sonkar Vs. Union of India and others (Supra) and by the Apex Court in K. Vijayalakshmi Vs. Union of India (Supra), the applicant was supplied a copy of the report of the Government Examiner of Questioned Documents as Annexure-1 to the C.A. in the previous OA No.1240 of 1998 filed by him. He was

thus aware of the contents of the report at the time of making a reply to the second show-cause notice dated 7.1.2000, which clearly showed that a different person[✓] appeared in the written examination ^{from one} and in the Typing Examination. The applicant in his representation dated 17.1.2000 asked for a copy of the reference made to Govt. Examiner and documents sent to the Government Examiner along with some other documents which were rightly not supplied to him, as the opinion of the Govt. Examiner was quite categorical and clearly warranted cancellation of the applicant's candidature. The requirements of the law laid down in the two judgments cited by the learned counsel for the applicant regarding supply of the report of Govt. Examiner have been met in the case of the applicant.

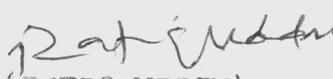
8. The learned counsel for the applicant has in his arguments before us claimed the same rigours in proceedings against a candidate as are required from the employers in proceeding against their employees in case of major penalties. In our opinion, such a claim is unfounded because in case of major punishment imposed by the employer on his employees, a right vested in the employee is sought to be taken away, while in case of the applicant whose state at best was that of an empanelled candidate no such right existed. Such a candidate was entitled to reason for any action, which may be taken against him and the respondents have supplied the applicant with the reason and a copy of the report also became available

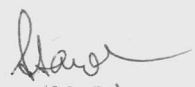
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to the applicant along with the Counter Affidavit in his first application against his cancellation of candidature and debarring.

9. We, therefore, dismiss the application as lacking in merits.

10. There shall be no order as to costs.


(RAFIQ UDDIN)
JUDICIAL MEMBER


(S. DAYAL)
MEMBER (A)

Nath/