

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No.1304 of 2003**

Allahabad this the 07<sup>th</sup> day of July, 2005

**Hon'ble Mr. Justice S.R. Singh, V.C.  
Hon'ble Mr.S.C. Chaube, Member (A)**

Adesh Kumar Shukla, Son of Shri Brahma Prakash Shukla,  
107 Salori, Teliarganj, Allahabad-211004.

**Applicant**

**By Advocates S/Shri Sudhir Agarwal/A.K. Dave**

**Versus**

1. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, Govt. of India, New Delhi.
2. Regional Director, Staff Selection Commissioner, Central Region, 8-A-B, Beli Road, Allahabad-211002.

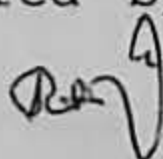
**Respondents**

**By Advocate Shri P.D. Tripathi**

**O R D E R ( Oral )**

**By Hon'ble Mr. Justice S.R. Singh, V.C.**

The applicant, it is not disputed, appeared in the examination notified for recruitment of Divisional Accountant/Auditors/U.D.C. Examination, 1994, which was held in March, 1995. The result of the examination was declared in November 1995. On 07.03.1996 the respondents issued a memorandum to the applicant calling upon him to appear and show cause as to why his candidature be not cancelled. The applicant appeared before the Commission and gave his specimen signatures and handwriting, as required by the Commission. The



respondents issued an order dated 09.09.1996 whereby cancelled the candidature of the applicant. The applicant then preferred an O.A.No.512 of 1998, which came to be allowed, setting aside the order dated 09.09.1996 vide Judgment and Order dated 18.09.2002. Thereafter, Commission was directed to supply the relied upon documents. Thereupon by means of show cause notice dated 15.11.2002 the applicant was advised to show cause as to why his candidature be not cancelled as his signature and photograph as available in his admission certificate of the written examination did not tally with the photographs and signature as they appeared on the application form. Alongwith the show cause notice dated 15.11.2002, the applicant was furnished with copies of admission certificate of written examination and application form(2 pages). The said show-cause notice dated 15.11.2002 was received by the applicant on 23.11.2002 in response to which he submitted his reply on 30.11.2002 by registered post. Neither the undelivered cover nor the acknowledgement due was received by the applicant, therefore, reply would be deemed to have been received by the Commission. By the impugned order contained in Memorandum dated February 10<sup>th</sup>, 2003, the candidature of the applicant has been cancelled. It has been held that the applicant had neither replied to the show cause notice nor appeared in person before the Commission and, therefore, it appeared that he had nothing to offer in the matter.

2. Shri Sudhir Agarwal, learned Senior Advocate has invited our attention to paragraph no.36 of the counter-affidavit, which reads as under:-

"36. That the contents of paragraph no.4.31 and 4.32 of the petition are denied. The action of the respondents in canceling the candidature of the petitioner is legal and there is not illegality or violation of Articles 14, 16 and 17 of the Constitution of India. It is totally wrong to say that the principles of natural justice has been violated before passing the impugned order.

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The petitioner was given show cause notice to which he had submitted his reply therefore, there is no violation of principles of Natural Justice. In view the facts mentioned above the present petition is liable to be rejected."

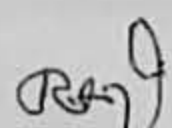
In paragraph no.24 of the counter affidavit, it has albeit been stated that the representation dated 30.12.2002 "was not received in the Commission" but in the facts and circumstances of the case particularly in view of the statement in paragraph no.36 of the Counter Affidavit, the statement in paragraph no.24 of the counter affidavit cannot be accepted. It may be pertinently stated that in paragraph no.24 of the counter affidavit, the date of representation submitted by the applicant has been mentioned as '30.12.2002' whereas in fact representation was dated '30.11.2002', and sent by registered post on the same date. Copy of the representation submitted by the applicant, has been annexed as annexure-7 to this O.A. We are, therefore, of the considered view that representation submitted by the applicant in response to the show cause notice dated 15.11.2002 has not been taken into consideration and the order impugned herein, has been passed arbitrarily without taking into consideration the representation submitted by the applicant. It may be observed that alongwith his representation in response to the show cause notice, the applicant had submitted opinion of handwriting expert but, the respondents have tried to justify the order on the premises that documents annexed by the applicant were not the documents, which were supplied to applicant by the Commission. Alongwith counter affidavit, the respondents have filed application form in 3 pages whereas in the show cause notice, application form that was sent to the applicant was stated to be of 2 pages. These are, however, the matters which have to be considered by the Regional Director(C.R.) after taking into reckoning the representation filed by the applicant. Since the order impugned herein has passed on the presumption that the applicant has not submitted

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his representation, same is liable to be set aside. The legal position is well settled that validity of the order must be judged by the reasons given therein and not on the basis of the reasons supplied or conveyed. We find support in this view of ours from the decision reported in A.I.R. 1978 S.C. 851 (Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others). In the circumstances, therefore, impugned order cannot be sustained.

3. In view of the facts and circumstances mentioned above, the O.A. succeeds and is allowed. The order dated 10.02.2003 is set aside. The matter is remitted back to the Regional Director (C.R.), Staff Selection Commission, Beli Road, Allahabad with a direction to take appropriate decision in the matter after taking into reckoning the representation filed by the applicant within a period of 3 months from the date of receipt of a copy of this order. No order as to cost.

  
Member (A)

  
Vice Chairman

/M.M. /