

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 13 DAY OF 4, 2010)

Hon'ble Mr. A.K. Gaur, Member (J)

Hon'ble Mrs. Manjulika Gautam Member (A)

Original Application No.1507 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Bachchhraj S/o Shri Budhoo R/o Village Mamrejpur, Post Rewari District-
Fatehpur (U.P)

..... Applicant

By Advocates : *Shri Pankaj Srivastava*
Shri A.K. Dave

Versus

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

..... Respondents

By Advocate : *Shri Ajay Singh*
Shri R.D. Tiwari

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

By this Original Application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the order /Memorandum dated 25.02.2002 (Annexure A-I of O.A) and the order dated 18.09.1995 coupled with prayer for a direction to the respondents to clear his candidature for the post of the Divisional Accountant/Auditors/UDC Examination, 1993 and other consequential relief/s.

2. Facts of the case in brief are that the applicant who is Scheduled Caste, had applied for the post of Divisional Accountant/Auditors/U.D.C.


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Examination, 1993 along with requisite documents in pursuance of the notification issued by the Staff Selection Commission, and was allotted Roll No.2421385 for appearing in the said examination. When the applicant received Admit Card, he came to know about the mistake regarding wrong mentioning his category as 'Scheduled Tribe' and immediately thereafter, he preferred an application dated 22.03.1994 to the Respondent No.2 for change of category. According to the applicant, he had already enclosed his caste certificate of 'Scheduled Caste' along with Application Form. However, the respondents permitted the applicant to appear in the examination in which, he was declared successful in the 'Schedule Tribe Category'. The Assistant Director vide letter dated 30.05.1995 (Annexure A-8 of O.A) asked the applicant to attend the office on any working day during office hours along with all testimonials and tow passport size photographs for certain enquiry and in response to which the applicant appeared along with his originals testimonial. The respondent No.2 canceled the candidature of the applicant vide order dated 18.09.1995 on the ground of wrong information regarding his category. Aggrieved the applicant filed Original Application No.1241 of 1995 (Bachchhraj Vs. Union of India & Ors) , which was allowed by this Tribunal vide judgment and order dated 06.06.2001 (Annexure A-X of O.A) with a direction to the respondents to assess the merit of the applicant along with 'Scheduled Caste Category' candidates and if he is found successful, he should be adjusted against any existing or future vacancy with a further direction that the applicant will not be entitled for any seniority or the appointment from the back date.

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3. Learned counsel for the applicant submitted that instead of complying with the judgment and order dated 06.06.2001, the respondents issued a Memorandum dated 10.01.2002 (Annexure A-II of O.A) to the applicant to show cause, in response to which the applicant vide application dated 28.01.2002 (Annexure A-IV of O.A) requested to the respondents for copies of the relied upon documents, which were also not provided to the applicant. Learned counsel for the applicant further submitted that the applicant has been served with Government Examiner's Report dated 27.12.2001 (Annexure A-XIII of O.A) only when the respondents moved an application 05.08.2002 under Section 27 read with rules-24 of the Act. Learned counsel further submitted that after coming to know about the Government Examiner Report dated 27.12.2001, the applicant preferred a representation dated 29.10.2003 (Annexure A-XV of O.A) for reviewing the decision taken by the Commission 25.02.2002.

4. Learned counsel for the applicant would contend that the impugned order dated 25.02.2002 (Annexure A-I of O.A) is totally arbitrary, illegal and violative of principle of natural justice as no opportunity whatsoever has been given by the respondents to show cause against the memorandum dated 10.01.2002 and 07.02.2002. It has further been argued that the Government experts report is also a cryptic report as it does not contain any formidable reasons in support of it.



5. On notice, the respondents have filed Counter Affidavit. Learned counsel for the respondents submitted that in application form the applicant had mentioned himself to be of 'Scheduled Tribe' and as such his result was declared in 'Scheduled Tribe' category, but at the time of verification of testimonials, he was unable to produce the 'Scheduled Tribe' Caste Certificate and then only he revealed that he is a member of 'Scheduled Caste Community'. Learned counsel for the respondents further submitted that under the provisions of the recruitment Rules, the candidature of the applicant was cancelled on the ground of furnishing false information regarding his 'Caste'. Aggrieved by Cancellation of his candidature applicant filed O.A. No. 1241 of 95. This Tribunal vide order dated 6.6.01 directed the respondents to reasons the merit of the applicant along with S.C. candidate, and if the applicant is found successful, he should be adjusted against only future vacancies. In compliance of the judgment and order dated 06.06.2001 passed by this Tribunal, merit of the applicant was reassessed as a 'Scheduled Caste' candidate and for which he was found successful during the course of scrutiny of the record, it was noticed that the signatures of the applicant (as available on the photo bearing attendance sheet of written examination) did not tally with signature on his application form and the specimen signatures furnished by him. Therefore, the applicant was suspected to have procured impersonation in written examination and as such, all relevant papers relating to him in original were referred to Government Examiner of Questioned Document, Bureau of Police Research & Development, Ministry of Home Affairs, Government of India, Shimla, who found the applicant guilty of

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impersonation in selection of Divisional Account/Auditors/Upper Division Clerk etc, 1993. Learned counsel for the respondents also submitted that the applicant did not reply the Show Cause Notice dated 10.01.2002 and 07.02.2002.

6. Applicant has filed Rejoinder in which nothing new has been added except in paragraph 11 of the Rejoinder it has been stated that the findings of the Expert Opinion is not a 'sacrosanct document' unless it is corroborated with the other circumstantial evidences.

7. Respondents have filed Supplementary Counter Affidavit. Learned counsel for the respondents placed reliance on the decision rendered by Hon'ble Supreme Court in Criminal Appeal No. 202/2001 decided on 12.11.2002 – Alamgir Vs. State (NCT) Delhi (Annexure SCA-2) and Murari Lal Vs. State of M.P. reported in AIR 1980 (SC) . Learned counsel for the respondents argued that in the case of Murari Lal (Supra), the Apex Court has observed that the science of identification of handwriting is not so perfect and the risk is therefore, higher. In the Criminal Appeal No. 202/2001 (referred to above), Hon'ble Apex has held as under:-

“needless to record that the science of identification of handwriting have attained more or less a state of perfection and the risk of an incorrect opinion is practically non-existent.”

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8. We have heard learned counsel for either sides and perused the pleading as well.

9. For better appraisal of the controversy involved in the instant case, we may refer to the decision rendered by Hon'ble Supreme Court reported in AIR 1992 Supreme Court 952 – Karnataka Public Service Commission & Ors. Vs. B.M. Vijaya Shankar and Others. In the aforesaid case, Hon'ble Apex Court has held as under : -

“2. Power and authority of the Commission to hold examinations, regulate its working and functioning, take action against erring candidates guilty of misconduct are all provided for by the rules and instructions issued in exercise of power conferred by the statutes. The claim of the candidates that they did not vest any right in the commission to take such action was negated by the tribunal. But it faulted in inferring that no penalty was provided for breach of instructions requiring a candidate not to write his roll number inside the answer book. Relevant clause (1) of the Instructions to Candidates is extracted below: -

“Before commencing your answer please write your register number and other particulars in the space provided above. Do not write your name or register number or sign anywhere in the answer book or on any loose sheets, such as précis sheets, maps, graph papers etc.”

It is not disputed and it was found, even, by the Tribunal that it was printed on the first page of every answer book. Its observance was mandatory and its disregard was punishable is clear from instructions (xii) and (xiii) of General Instructions to the candidates which are extracted below: -

(xii) The candidates must abide by such instructions as may be specified on the cover of the answer book or

any further instructions which may be given by the Supervisor/Invigilator of the Examination.

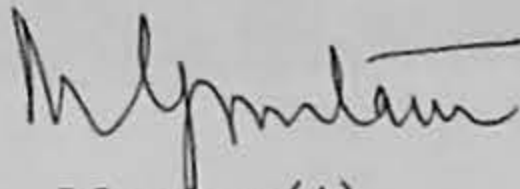
- (xiii) If the candidates failed to do so or indulge in disorderly or improper conduct, they will render themselves liable to expulsion from examination and/or such other punishment as the Commission may deem fit to impose.”.


Is the expression, ‘such other punishment as the commission may deem fit to impose’ vague and thus arbitray? We do not think so. Read with Cl (xii) it presents no difficulty . It provides action for breach of that which is, clearly, specified. It cannot be characterized as vague. And then any capricious exercise of power can always be assailed. More important than this is that provisions attempting to infuse indiscipline in competitive examination to be conducted by the Commission cannot be construed with same yardstick as a provision in penal statutes. Moreover the Commission did not impose any penalty on the candidates. Their examination was not cancelled nor they were debarred from taking any examination conducted by the Commission for that year or any year, in future. Their marks in papers, other than those in which they were found to have acted in disregard of instructions were declared. *The only action taken was that those answer books in which roll numbers had been written inside were not subjected to evaluation.* In our opinion, there was nothing basically wrong in it. The Commission did not treat it as misconduct. The action could not be termed as arbitrary. Nor it was abuse of power which could be corrected by judicial review.”.

10. In the instant case, although the earlier O.A of the applicant was allowed by the Tribunal vide judgment and order dated 06.06.2001, but when the direction contained in the said judgment was not complied

with within stipulated period of time, the applicant ought to have filed Contempt Petition, which he did not. We may further observe that the applicant has utterly failed to follow the instructions issued by the Examining body and as such we hardly find any justification for interference in the matter. Accordingly the Original Application is dismissed as having without any merits.

11. Parties are directed to bear their own costs.


Member (A)


Member (J)

/Anand/