OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application 709 of 2003
alongwith connected(6) matters

Allahabad this the 11th day of February, 2004

Hon'ble Mr.Justice S.R. Singh, Vice Chairman,
Hon'ble Mr. D.R. Tiwari, Member (A)

O.A. No. 709 of 2003

Vimlesh Sonkar, aged about 30 years, Son of Sri Bachcha Sonkar, Resident of 77/37 Circular Road, Nevada, District Allahabad

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra

O.A.No. 760 of 2003

Sanjeev Kumar Jaiswal, aged about 32 years, Son of Shri Satish Kumar Jaiswal, Resident of 388-A Raja Bara Ka Hata, Mutthiganj, Allahabad.

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra

O.A.NO. 710 of 2003

Ramesh Chandra Prajapati, aged about 30 years, Son of Sri Ram Swarup Prajapati, Resident of 1A/5A Jairampur Partwar Police Station Dhoomanganj, District Allahabad.

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra

O.A. No. 702 of 2003

Ashok Kumar Maurya, aged about 26 years, Son of Late Sukhdev Prasad, Resident of Village Madhesha, P.O. Atrampur, District Allahabad.

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra

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O.A.No. 741 of 2003

Shridhar Mishra, aged about 30 years, Son of Sri Ved Mani Mishra, Resident of 6/-5A Alopi Bagh, District Allahabad.

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra

O.A.No. 708 of 2003

Ravikant Tripathi aged about 27 years, Son of Sri Jai Ram Tripathi, Resident of Village Pirthipur, P.O. Handia, District Allahabad.

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra

O.A. No. 762 of 2003

Yashwant Kumar, aged about 29 years, Son of Sri Sant Lal, Resident of Village and P.O. Hetapatti, District Allahabad.

Applicant

By Advocates Shri Sudhir Agarwal
Shri S.K. Mishra

Versus

1. Union of India through Controller and Auditor General of India, 10-Bahadur Shah Zafar Marg, New Delhi.

2. The Principal Accountant General(Audit)-I, U.P. Allahabad.

3. The Dy.Accountant General(Admn.), Office of the Principal Accountant General(Audit)-I, U.P. Allahabad.

4. The Staff Selection Commission,(Central Region) Government of India 8A/B Beli Road, Allahabad through the Regional Director (CR).

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5. The Regional Director(C.R.) Staff Selection Commission(Central Region), Government of India, 8A/B Beli Road, Allahabad.

6. The Senior Dy.Accountant General(Admn.) In the Office of Accountant General(Audit)-I, U.P. Allahabad.

Respondents

By Advocates Shri Amit Sthalekar
(for respondents no.1, 2, 3, & 6)
Shri G.R. Gupta
(for respondents no.4 & 5)

O R D E R (Oral)

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

This bunch of seven original applications is based on identical facts and the questions that arise for consideration are also identical. Hence, with the consent of the parties' counsel, we proceed to dispose them by a common order.

2. The facts mentioned herein below will have the similar facts stated in O.A. No.709 of 2003.

3. The applicant in each case appeared in the Recruitment of Clerk Examination, 1996 conducted by the Staff Selection Commission, Allahabad. They were declared successful in the written test held on 22.09.96 and also in the typing test held on 25.08.97. Thereafter, final result was declared and the applicants herein were recommended for appointment by the competent authority. The Accounts Audit Officer in the Office of Principal Accountant General, Allahabad issued offer of appointment in favour of individual applicants in 1998 and thereafter appointment letter was issued by Senior Deputy Accountant General(Admn.), Allahabad. The

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appointment letter dated 18.06.98 issued in favour of Vimlesh Sonkar has been annexed as annexure-6 to the O.A. No.709 of 2003. Similar appointment letters were issued in favour of the applicants of other O.As.

4. It appears that thereafter all these applicants were required by the Assistant Audit Officer to contact the Staff Selection Commission where they were asked to give their specimen signatures and handwritings. The applicants, pursuant to the direction given by the A.G. Office contacted the Staff Selection Commission, !Allahabad and gave their specimen signatures and handwritings. Subsequently separate show cause notices were issued to the applicants by the Staff Selection Commission. The notices were meant to be served through Deputy Accountant General(Admn.) except in case of the applicants of O.A.No.741/03 and O.A.No.762/03, in which cases notices were issued as per local addresses mentioned by the individual applicants in their application forms. Notices were, however, not served on the applicants and on the basis of exparte inquiry conducted by the Staff Selection Commission, Allahabad, candidatures of the applicants were cancelled and they were debarred for a period of 3 years w.e.f. 22.09.1996 from appearing in any examination to be conducted by the Staff Selection Commission. The orders of cancellation were, however, not furnished to the applicants until 30.10.2002.

5. In the meantime, show cause notices were issued by the Senior Deputy Accountant General calling upon the applicants to show-cause why their services be not terminated. The applicants submitted their separate

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replies to the show cause notice inter-alia stating therein that they had never received any order of cancellation of their candidatures by the Staff Selection Commission nor had they any information about any such action taken by the Staff Selection Commission. The applicants also demanded copy of orders, if any, passed by the Staff Selection Commission. However, nothing happened and all the applicants were declared to have successfully completed their period of probation and ultimately they were confirmed on different dates w.e.f. the date of completion of probation period of 2 years from the date of initial appointment and in 2001 some of the applicants were promoted to the post of Auditor in the scale of Rs.4000-6000.

6. Separate charge memos containing identical charges were issued to each of the applicants on 02/03-09-~~03~~-02. The applicants submitted their replies to the charge memo denying allegations made against them and since charge memo was not accompanied with the relied upon documents, they requested for copies of the relied upon documents. Relied upon documents including the order passed by the Staff Selection Commission, Allahabad were ultimately supplied to the applicants on 30.10.2002 in the mid of the inquiry. Separate removal order, though identically worded dated ~~27.10.2003~~ 27-1-2003 were passed by the disciplinary authority. The applicants preferred appeal which came to be dismissed on 26.05.2003. The order dated 20.05.99 passed by the Staff Selection Commission, Allahabad cancelling the candidatures of the applicants, the order dated 27.01.2003 and the order dated 26.05.2003 passed by the disciplinary authority and appellate authority respectively are the subject

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matter of the impugnment in these Original Applications.

7. Heard, Shri Sudhir Agarwal, counsel for the applicants, Shri Amit Sthalekar, counsel for the respondents no.1, 2, 3 and 6 and Shri G.R. Gupta, counsel for the respondents no.4 and 5. We have also perused the pleadings.

8. Submissions made by Shri Sudhir Agarwal, learned counsel appearing for the respondents, are two fold: First, that the decision taken by the Staff Selection Commission in cancelling the candidatures of the applicants much after they were appointed and the order passed by the disciplinary authority suffer from breach of principle of natural justice; and second, that the order of removal has been passed by an authority other than the authority by whom the applicants were appointed and this, according to learned counsel, violated the mandatory provisions of Article 311(1) of the Constitution of India.

9. Learned counsel for the respondents refuted the submissions made by Shri Sudhir Agarwal and urged that the principle of natural justice was fully complied with both at the stage of Staff Selection Commission and also at the stage of disciplinary authority, and further that the order of removal has been passed by the competent authority namely the authority who has the power to appoint clerks.

10. We have given our thoughtful considerations to the submissions made by the learned counsel across the bar. In our opinion, the decision taken by the Staff

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Selection Commission, Allahabad cancelling the candidatures of the applicants is unsustainable due to the reason of non compliance of principle of natural justice. Show cause notices issued to the applicants other than the applicants of O.A. No.741 and 762 of 2003 were sent through the Deputy A.G. (Admn.), Allahabad and the Regional Director (CR) of Staff Selection Commission, Allahabad proceeded to pass the impugned order cancelling the candidatures of the applicants on the premises that they failed to submit any reply to the notice within the stipulated period albeit the fact is that the notice was never served. The order dated 20.05.99 passed against the applicant-Vimlesh Sonkar simply states that he was issued a show cause notice vide letter bearing even no. dated 06.04.99 directing him to show cause as to why action under appropriate rules may not be taken against him for using unfair means by impersonation in the examination for recruitment of Clerks Examination, 1996 with intention to secure employment in Central Government through fraud and criminal means, but he failed to reply the said notice within the stipulated period and therefore, the candidature is cancelled under the provision of Para-14 of the Notice of the Examination. As stated herein above, show cause notices to the applicants of O.A. No.741 and 762 of 2003 were issued as per local address given by them in their application form even though they were required to furnish their specimen signatures and hand-writings through their Employer namely Accountant General Office. No effort was made to serve them through their permanent addresses or through their employer namely the Principal Accountant General (Audit), Allahabad. The applicants of the other O.As were also not served with the show cause notices allegedly issued by the Staff Selection Commission. There is no proof that show cause notices were issued

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by the Staff Selection Commission to the applicants by registered post.

11. The inquiry conducted by the disciplinary authority too is vitiated by reason of non compliance with the principle of natural justice. The applicant had moved application for engaging defence assistant from out-side the station, which was allowed by the Deputy Accountant General (Admn.) vide order dated 11.10.2002 and each of the applicants was given time upto to 18.10.2002 to "engage a defence assistant either from outside or from the same station". The applicants nominated the defence assistant by means of representation dated 18.10.2002 but the same was rejected by the Inquiry Officer vide order dated 23.10.2002 on the erroneous ground that the applicants had been provided with "sufficient time for engaging the same." By letter dated 01.11.2002 the Enquiry Officer informed the applicants that since they failed to engage a local defence assistant, therefore, they lost their right to engage a defence assistant from outside. Similarly the request of the applicants for supply of additional documents and list of witnesses was turned down erroneously holding that the request was found irrelevant because the relevant documents cited in the charge-sheet had already been supplied. Moreover, the request for calling the defence witnesses was also erroneously turned down. By means of additional evidence, the applicants want to establish that they had infact appeared in the examination conducted by the Staff Selection Commission and their candidatures were illegally and arbitrarily cancelled. Denial of request to furnish additional evidence and documents, in our opinion, has led to grave prejudice and injustice to the applicants.

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12. Shri Amit Sthalekar relying upon the judgment of Hon'ble Supreme Court in Chandrama Tewari Vs. Union of India AIR 1988 S.C. 117, has, however, submitted that non-supply of documents other than the relied upon documents, will not lead to any prejudice nor will it result in breach of natural justice. The submission can not be accepted. In the decision relied upon by the learned counsel, it was held that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary inquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer as proved, the enquiry would be vitiated for violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross examination. We are of the view that it is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question has to be decided on the facts and circumstances of each case. In the present case, the disciplinary authority has basically relied upon the findings recorded by the Staff Selection Commission in its order cancelling the candidatures of the applicants and since the decision of the Staff Selection Commission was taken behind the back of the applicant and without affording any opportunity of hearing and although the applicants had applied for supply of additional documents to establish that they had in fact appeared in the examination conducted by

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the Staff Selection Commission but their request was turned down. Denial of opportunity to lead such evidence, in our opinion, led to violation of principle of natural justice and is tantamount to denial of reasonable opportunity of defence. Sub- rules (11) and (12) of Rule 14 of C.C.S.(C.C.A) Rules, 1965 stipulate that the Enquiring authority is under obligation to summon witnesses and documents except where the request is denied for the reasons to be recorded in writing. In our opinion, the request made on behalf of the applicants for requisition of defence witnesses and additional documents was arbitrarily rejected by the Enquiry Officer. This, in our opinion, has led to breach of provisions provided in sub-rules (11) and (12) of Rule 14 of C.C.S (C.C.A) Rules, 1965, in which are embodied the principle of natural justice. The Enquiry Officer in his daily order dated 06.11.2002 had recorded his finding that the findings of the Staff Selection Commission were based upon the examination of the handwriting by a reputed and independent Government Examiner of Questioned Documents, Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, Shimla and in his report the Enquiry Officer has placed reliance on the findings recorded by the Staff Selection Commission regarding impersonation by using fradulent and criminal means, allegedly adopted by the applicants during the course of examination. The applicants, in our opinion, had right to lead evidence documentary and oral, and denial of opportunity to lead evidence in defence has resulted in breach of natural justice.

13. Counsel for the respondents has placed reliance on another Supreme Court's decision in Union of India and others Vs. O Chakradhar A.I.R. 2002, S.C. 1119.

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The decision relied on by the learned counsel for the respondents has no application to the facts of the present case for the reason that it was a case of "widespread and all pervasive irregularities" played in the examination and the entire selection was cancelled on C.B.I. report. In the instant case, entire selection has not been cancelled instead of candidature of individual candidates have been cancelled much after their appointments.

14. The next question that arises for consideration is whether the order of removal from service has been passed by an authority other than the authority by whom the applicants were appointed. The term "appointing authority" has been defined in Rule 2 (a) of C.C.S. (C.C.A) Rules, 1965, as follows:-

> "(a) "Appointing Authority" in relation to a Government Servant, means-
>
> (i) the authority empowered to make appointments to the service of which the Government servant is for the time being a member or to the grade of the Service in which the Government Servant is for the time being included, or
>
> (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or
>
> (iii) the authority which appointed the Government servant to such service, grade or post, as the case may be, or.
>
> (iv) where the Government servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,
>
> whichever authority is the highest authority."

Article 311 of the Constitution of India provides

that no person who is a member of a Civil Service of the Union or an All India Service, or a Civil Service of a State or hold a Civil post under the Union or a State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. The post of Senior D.A.G. in the scale of Rs.12,000-16,500 is a promotional post. The post of Deputy Accountant General carrying the scale of Rs.10,000-15,200 is a post of lower rank. The impugned order of punishment has been passed by the Deputy Accountant General who is subordinate in status to Senior D.A.G and the Senior D.A.G. being an authority higher in rank to the Deputy Accountant General, would be the appointing authority within the meaning of Rule 2(a) of C.C.S(C.C.A) Rules, 1965. The view we are taking, finds support from the view taken in O.A. No.1224 of 2001 Mritunjay Tripathi Vs. Union of India and others decided on 31.03.2003, following the Supreme Court decision in Krishna Kumar Vs. Divisional Assistant Electrical Engineer, Central Railways A.I.R 1979 S.C.1912. Mere fact that Deputy Accountant General and Senior Accountant General enjoy same and equal power as far as appointment of Group C is concerned, as stated in the counter-affidavit filed by Shri J.P.N. Singh, Senior D.A.G.(Admn.) Office of A.G.(Audit) I, U.P. Allahabad would not make the Deputy Accountant General the "appointing authority" within the meaning of Rule 2(a) of C.C.S(C.C.A) Rules, 1965. It goes without saying that if the initial order passed by the disciplinary authority is illegal, the appellate order will not validitate it even if the appeal has been decided by a competent authority.

15. For the reasons aforestated, the O.As succeed and is allowed. The impugned orders are quashed. The

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applicants are entitled to get the consequential benefits in accordance with law. Nothing herein shall, however, preclude the appointing authority from proceeding in the matter in accordance with law. No order as to cost.

Member(A) Vice-Chairman.

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