

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD.

Original Application No. 662 of 2003.

Allahabad this the 28th day of April 2004.  
Quorum:

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

Lav Kush Kumar  
son of late Sri Rajendra Prasad,  
59, Old Sehbatia Bagh,  
Allahabad.

.....Applicant.

(By Advocates : Sri Sudhir Agarwal/  
Sri S.K. Mishra)

Versus.

1. Union of India through its Secretary, Personnel and Training, New Delhi.
2. Staff Selection Commission through its Director 8-A-B, Beli Road, Allahabad.

.....Respondents.

(By Advocate : Sri R Sharma)

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(By Hon'ble Mr. D.R. Tiwari, A.M)

By this O.A., filed under section 19 of the A.T. Act, 1985, the applicant has prayed for the following relief(s) :-

"(i) a writ of certiorari, order or direction in the nature of certiorari be issued calling for the records of the case and quashing the order of cancelling candidature of the petitioner from appearing in the interview scheduled for 19.12.96 for the post of Inspector, Central Excise/Income-tax etc. 1995 on the basis of the letter dated 5.12.96 and order communicated through telegram dated 13.12.96 (Annexure No.3 and 4 to the writ petition);

(ii) a writ of mandamus, order or direction in the nature of mandamus be issued directing the respondents not to give effect to the aforesaid impugned letter dated 5.12.96 and order communicated vide telegram dated 13.12.96 and further restrain the respondents from interfering in any manner with the petitioner's appearing for interview on 19.12.96 for the post of Inspector;

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(iii) such other and further writ, order or direction be issued as the petitioner be found entitled in law in the facts and circumstances of the case."

2. The facts of the case, in brief, are that the applicant, in pursuance of advertisement published in Employment News of June 1995, applied for Inspectors of Central Excise, Income Tax etc. Examination, 1995 (hereinafter called "T.C.E. Examination, 1995"). He was allotted Roll No.2673446 and issued the Admit Card for examination centre at Varanasi (Annexure No.1). He succeeded in written examination and received letter dated 27.11.96 from Staff Selection Commission, Allahabad for being interviewed on 19.12.1996 (Annexure No.2). The applicant had informed the Commission vide his application dated 27.10.1995 that due to inadvertent mistake, he had filled up form from Kanpur centre and he requested that the form for Kanpur centre be treated as cancelled or be returned to him. (RA-1 of Supplementary Rejoinder Affidavit).

3. Meanwhile, by a memorandum dated 5.12.96, the Staff Selection Commission (in short S.S.C.) informed the applicant that his candidature for I.C.E. Exam'95 is purely provisional and is subject to the decision of Commission (Annexure No.3). The memorandum was followed by a telegram dated 13.12.96 by which the applicant was informed that his candidature for I.C.E. Exam 1995 has been cancelled as he has violated the Regulation of Para 20 (Note 3) of the Notice of S.S.C., Allahabad (Annexure-4).

4. Aggrieved by the cancellation of his candidature, the applicant moved the Hon'ble High Court, Allahabad and filed a writ petition No.40843 of 1996. Hon'ble High Court vide their order dated 18.12.96 directed that the petitioner shall be permitted to appear in the interview provisionally scheduled to be held on 19.12.96 for recruitment of Inspectors of Central Excise & Income-Tax, 1995. However,

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the candidature of applicant was provisional and subject to the result of the petition by the High Court and accordingly the applicant was interviewed. Further, the Hon'ble High Court, vide their order dated 6.9.2002, quashed the impugned orders dated 5.12.96 and 13.12.96 by which applicant's candidature has been cancelled and the petition was allowed.

5. The S.S.C. filed a Special Appeal No.1019/2002 against the aforesaid directions of High Court. The Division Bench presided over by the Hon'ble Chief Justice vide their order dated 20.9.2002 partially stayed the operation of order dated 6.9.2002 passed earlier by learned Single Judge. Since the Division Bench did not stay the declaration of the result of the petitioner, the Commission declared the result and the petitioner vide memo No.3.10.2002 was informed of his result in which he was declared qualified for the post of Inspector of Central Excise. However, it was made clear to the petitioner vide aforesaid memo that his candidature in respect of said examination is purely provisional and aforesaid declaration of result is without prejudice to the rights and contentions of the Commission in its Special Appeal No.1019/02 pending in the High Court and subject to the outcome of the Special Appeal.

6. Further, in continuation of its earlier order dated 20.9.2002 and taking up the issue of maintainability, the Division Bench vide their order dated 8.5.2003, set aside the said order of learned Single Judge and transmitted the record of the writ petition to the Hon'ble Tribunal with the direction to decide the petition at an early date preferably within three months by treating it as having been filed under section 19 of A.T. Act, 1985.

7. This is how it has come to this Tribunal. The applicant has taken a variety of grounds mentioned in sub-paras I to X of para 21 of the writ petition which has since been converted into O.A. No.662/03. However, the learned

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counsel for the applicant has raised certain crucial points during the course of argument and we shall be dealing with them in the latter part of this order.

8. The respondents, on the other hand, have opposed the contentions of the applicant by filing counter affidavit along with more than two supplementary counter affidavits. They have argued in their pleadings that the applicant applied for I.C.E. Exam, 1995 from two centres viz. Kanpur and Varanasi. In respect of Kanpur centre he was allotted Roll No.2580029 and in respect of Varanasi centre he was allotted Roll No.2673446. The applicant appeared from Varanasi centre. On the basis of his performance in the written examination, he was declared qualified for appearing in the personality test. They have argued that as per scheme of examination, any candidate, who has submitted more than one application, shall be disqualified from the said examination and accordingly the candidature of the applicant was cancelled before the interview. Vide para 14 of the counter affidavit they have extracted certain portion of the scheme of examination. They have quoted clause 10 which, interalia, consists of single application, how to apply and declaration clause etc. They have strenuously argued that applicant being a graduate is supposed to know the contents of the notice of examination and the violation of the declaration made by the candidate is bound to lead to cancellation of his candidature. The respondents have also questioned as to why he did choose Kanpur and Varanasi as his centre of examination, when he is resident of Allahabad and Allahabad was also one of the centres of the said examination. This act of the applicant cannot be said to be a bonafide mistake.

9. We have heard rival contentions of the parties and perused the pleadings and documents on record.

10. During the course of the arguments, Sri Sudhir Agarwal, learned counsel, appearing the applicant relied on

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the following judgments :-

- i) AIR 1999 SC 2326 Commissioner of Police Delhi Vs Dhawal Singh.
- ii) O.A. No.455 of 1997 (CAT Alld) Sanjay Kumar Vs. Union of India & others

Sri Rajiv Sharma, learned counsel appearing on behalf of the respondents cited the following judgments in support of his contention :

- i) C.W.P.No.5497/97 - Hoshiyar Singh Vs. U.O.I. & others decided by High Court of Delhi on Nov.9,99.
- ii) O.A. No.1682/96 (P.B.) Mahendra Singh & others Vs. U.O.I. & others.
- iii) O.A. No.2419/98 (P.B.) Anil Kumar Sinha Vs. U.O.I. & others.
- iv) O.A. No. 363/97 (CAT Alld) Ajit Kumar Singh Vs. U.O.I.& others.

11. The crucial question which falls for consideration is whether the respondents are justified in denying the appointment to the applicant particularly when, as per the order of High Court, he has been declared successful after the completion of the examination process.

12. Learned counsel for the applicant has laid emphasis on the fact that the applicant promptly informed the S.S.C. that by <sup>in</sup>advertent mistake he has applied from Kanpur Centre and his application for that centre may be treated as cancelled. His intimation dated 27.10.95, much before the date of examination on 3.12.95, is just in time giving sufficient time to respondents to take action. To support his contention the counsel relied on the judgment of the Apex Court in the case of Commissioner of Police, Delhi Supra wherein the question of suppression of material fact of pendency of criminal case against the candidate was involved. In that case, the candidate intimated to the competent authority after filling up the form. The candidate conveyed that information which was not taken note by the competent

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authority. The Apex Court held that the information was conveyed voluntarily and was sufficient to cure the defect in the form. Hence the cancellation of candidature is without application of mind. In the present case also, the applicant had at his own conveyed about the application for Kanpur centre making specific request for cancellation. The respondents took no action on his letter. They just kept quite during the entire proceedings before the Hon'ble High Court. They filed a supplementary counter affidavit when the case was being heard on 8.4.2004 which has been rejected. However, despite the rejection, the court observed that it would be taken into account. Accordingly, we have perused the affidavit which says that the said application has not been received in the Commission. This statement cannot be accepted as the copy of the application has been stamped in token of receipt by the Commission. A bold statement of non-receipt is not justified. Efforts should have been made to trace the same for taking action. In view of this, we find that the mistake by the applicant is bonafide without any taint of malafide. On this count alone, the O.A. succeeds.

13. The counsel for the applicant, next, argues that the telegram dated 13.12.95 mentions the reason for cancellation of candidature of the applicant. It says that it violates the Regulation ~~or~~ Para 20 (Note 3) of the notice of examination. It would be relevant to quote that para :-

अभ्यर्थी को केवल एक ही आवेदन पत्र भेजना चाहिए और इन अनुदेशों के उल्लंघन करने पर आयोग द्वारा दण्डालयक जारीकरण की जावेगी।

His contention is that the respondents in the counter affidavit have pressed into service clause 10 of the Scheme of examination. He has further submitted that whatever defect was there, has been caused by the applicant's

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application requesting the Commission to cancel his application for Kanpur Centre. We are persuaded to agree with the counsel for applicant for different reasons. The Apex Court in the case of Mohinder Singh Gill Vs. Chief Election Commissioner, AIR 1978 SC 851 has held that the reasons for taking action should be clearly stated in the order and can not be supplemented by filing affidavits.

14. The counsel for applicant has vehemently argued that the applicant received only one admit card bearing Roll No. 267446 for Varanasi centre. He has specifically denied having received another admit card in rejoinder affidavit (vide para 6) filed in the High Court as well as the rejoinder affidavit filed in this Tribunal. The respondents have filed supplementary affidavit and have not controverted the fact. They could have at least, filed a copy of the admit card issued for the Kanpur centre. Be that as it may, the fact remains that he appeared at examination at Varanasi centre.

15. The counsel for respondents have cited the judgments of Delhi High Court, Principal Bench and of this Bench of the Tribunal. We have gone through those cases very carefully and the facts in all those cases are different from the facts of the case in hand. In none of the cases, the applicants have informed the Commission about the bonafide mistake. In this case, the prompt action taken by the applicant for cancellation of application is vital and hence the cases cited by the counsel for respondents are distinguished on facts. It may be pertinent to mention here that during the pendency of the O.A., as per the direction of the High Court, the final result has been declared and the applicant has come out successful (para 10 of C.A.). It will be very harsh to cancel his candidature on the technical ground, more so when the prompt action has been taken by the applicant to cure the defect, if any. We get support from

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for our view from the order of this Tribunal in the case of Sanjay Kumar (Supra). In view of this and the reasons mentioned earlier, the O.A. is liable to succeed.

16. Accordingly, the O.A. succeeds on merit and is allowed. The respondents are directed to take further necessary action for appointment of the applicant within a period of two months from the date of receipt of a copy of this order.

No order as to costs.

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