

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 825 of 2012
Cuttack, this the 23rd day of November, 2015

Bikash Das Applicant
Versus
Union of India & Anr. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 825 OF 2012

Cuttack, this the 23rd day of November, 2015

CORAM

**HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)**

.....

Bikash Das,
aged about 27 years,
S/o Madhabananda Das of
Village/PO- Sabarang, Dist- Bhadrak.

...Applicant

(Advocates: M/s. P.K.Khuntia, K.K.Mohanty.

VERSUS

1. Director,
Staff Selection Commission,
Eastern Regional Office, Nizam Palace,
Ist. M.S.O. Building (8th Floor),
234/4, Acharya Jagadish Chandra Bose Road,
Kolkata-700020.

2. Union of India Represented through
The Secretary,
Ministry of Personnel Public Grievances & Pension,
North Block, New Delhi.

..... Respondents

Advocate(s) : Mr. U.B.Mohapatra.

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O R D E R

A.K.PATNAIK, MEMBER (JUDL.):

The brief history of the case is that a notice was published by the Respondents in the Employment News/Rozgar Samachar dated 19th/25th. March, 2011 inviting applications for recruitment to various posts through Combined Graduate Level Examination 2011. The examination comprised two tiers Written Objective type followed by Computer Proficiency

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4) Test/Interview/Skill Test wherever applicable as per the scheme of examination as indicated in the said notice. The applicant, Shri Bikash Das, was one of the aspirant candidates in the said examination and he was assigned the Roll No. 4604000477 and seat/Ticket No. 4000728. He qualified in Tier I & II examinations and appeared at the interview held on 14.11.2011. The above facts are not in dispute.

2. However, according to the Respondents on the basis of the post examination analysis carried out by the Commission, it was established that the applicant resorted to mal practices in the aforesaid examination. Hence, he was directed to show cause as to why his candidature for the aforesaid examination should not be cancelled and why he should not be debarred from appearing at the examination conducted or to be conducted by the Commission for a period of five years vide Memorandum dated 24.2.2012. The applicant in his reply denied the aforesaid allegation of the Commission. Thereafter, the Commission issued the impugned Memorandum dated 29.06.2012 which reads as under:

“With reference to his/her candidature for the above mentioned examination Shri Bikash Das Roll No. 4604000477 is hereby informed that prima-facie there were reasons to believe, on the basis of post-examination analysis carried out by the Commission that he had resorted to malpractices in the said examination. He was therefore directed to show cause latest by 05.03.2012 as to why his candidature for the above mentioned examination should not be cancelled and he should not be debarred from examinations conducted/to be conducted by the Commission for a period of 5 years, failing which his candidature would be cancelled and he would be debarred for a period of 5 years without any further reference to him. Although he has denied in his reply to the said memorandum, his involvement in resorting to unfair means in Tier-II of Combined Graduate Level Examination, 2011, the Commission is in possession of prima facie evidence of his resorting to unfair means in Tier-II of the examination. Candidature of Shri Bikash Das for the said examination is therefore

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cancelled. Further, he is debarred for a period of 5 years from appearing in any examination conducted/to be conducted by the Commission. This is without prejudice to initiation of any criminal proceedings against him on the basis of *prima facie* evidence of his resorting to unfair means in the examination.”

3. Being aggrieved by the aforesaid communication dated 29.06.2012, the applicant has filed the instant OA praying *inter alia* as under:

“(i) The Hon’ble Tribunal may graciously be pleased to quash the Memorandum of the respondent dtd. 29.06.2012 under Annexure-6.

(ii) The respondent be directed to declare the final result of the applicant in combined Graduate Level Examination, 2011.

(iii) Any other appropriate order.....”

4. According to the counter filed by the Respondents, there was no injustice caused to the applicant. As *prima facie* evidence of involvement in malpractice by the applicant in Tier II examination was found, as per the terms and conditions stipulated in the notice, after considering the reply and other materials such a decision was taken and communicated to the applicant which cannot be faulted in any manner. In order to strengthen the action taken in the matter warranting no interference by this Tribunal, the Respondents have drawn the attention to the unreported decisions of the Hyderabad Bench of this Tribunal passed in OA No. 311 of 2009 (Mr. Seethayya Chukkala Vrs Union of India represented by Staff Selection Commission (Southern Region)), Patna Bench of this Tribunal in OA No. 216 of 2006 (Jyotish Kumar Rajak Vs Union of India and others) and Calcutta Bench of this Tribunal dated 03.08.2012 in OA No. 99 of 2012 to OA No. 104 of 2012 (Goutam Sarkar, Biswajit Bala Suman Biswas, Sudipto Biswas, Suman Das and Sujit Das Vs Union of India and others). Accordingly, they have prayed for dismissal of this OA.

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5. The Applicant has also filed his rejoinder in which besides countering some of the points taken by the respondents in their reply, he has more or less reiterated the stand taken in the OA.

6. The stand point of the learned counsel for the applicant is that the decision taken by the Commission in communication dated 29.6.2012 (Annesure-A/6) is not sustainable because in the show cause notice under Annexure-A/4 it has been alleged that the applicant was resorted to malpractices in the examination whereas in the memorandum dated 29.6.2012 (Annesure-A/6) it has been stated that the commission is in possession of prima facie evidence of resorting to unfair means in Tier II examination. The said prima facie evidence has not seen the light of the day till date. The respondents have neither explained what is the prima facie evidence which has forced them to take such a decision nor have they produced the same for perusal of this Tribunal. It has been stated that the applicant had not taken any such recourse i.e Malpractice in any of the examination. He has a brilliant career and only to keep him out of the zone of consideration, such a decision was taken by the commission which is not sustainable in the eyes of law and unless the impugned memorandum is quashed, the future of the applicant will be dark and is likely to be ruined. Hence, he has reiterated the relief claimed in this OA.

7. On the other hand, placing reliance on the averments made in the counter and the materials placed in support thereof, the learned counsel for the respondents submitted that as on thorough scrutiny, prima facie evidence of adoption of unfair means by the applicant in Tier II examination, in question, came to the notice, therefore as per the conditions stipulated in the notice, the commission has rightly taken the decision which does not warrant any interference by this Tribunal. Further, it has been submitted that



as the evidence of adoption of unfair means in the Tier II examination in question has come to the notice, the Commission has cancelled his candidature besides debarring him from appearing in any examination to be conducted by the Commission for a period of five years vide Office Memorandum dated 29.06.2012 without initiating any criminal action against him on the basis of such evidence of his resorting to unfair means in the examination. Hence there being no injustice caused in the decision making process of the matter this OA is liable to be dismissed.

8. We have considered the rival contentions of the respective parties and perused the records.

9. Before proceeding to deal with the arguments advanced by the parties, we would like to quote the impugned memorandum dated 29.6.2012 which reads as under:

“With reference to his/her candidature for the above mentioned examination Shri Bikash Das Roll No. 4604000477 is hereby informed that **prima facie** there were **reasons to believe on the basis of post examination analysis carried out by the Commission** that he had resorted to mal practices in the said examination. He was therefore, directed to show cause latest by 05.03.2012 as to why his candidature for the above mentioned examination should not be canalled and he should not be debarred from examinations conducted/to be conducted by the Commission for a period of 5 years, failing which his candidature would be canceled and he would be debarred for a period of 5 years without any further reference to him. **Although he has denied** in his reply to the said memorandum, his involvement in resorting to unfair means in Tier II of Combined Graduate Level Examination, 2011 the commission is in possession of **prima facie evidence** of his resorting to unfair means in Tier II of the examination. Candidature of Shri Bikash Das for the said examination is therefore cancelled. Further he is debarred for a period of 5 years from appearing in any examination conducted/to be conducted by the Commission. This is without prejudice to initiation of any criminal proceedings against him on the basis of



prima facie evidence of his resorting to unfair means in the examination". (Emphasis supplied).

The Annexure 4 dated 24.2.2012 is the show cause notice issued to the applicant which reads as under:

"With reference to his/her candidature for the above mentioned examination, Shri/Sm.Bikash Das Roll No. 4604000477 is hereby informed that prima facie there are reasons to believe on the basis of post examination analysis carried out by the Commission that he/she has resorted to malpractices in the said examination. He/She is therefore directed to show cause latest by 05.03.2012 as to why his/her candidature for the above mentioned examination should not be cancelled and he/she should not be debarred from examinations conducted/to be conducted by the Commission for a period of 5 years, failing which his/her candidature will be cancelled and he/she will be debarred for a period of 5 years without any further reference to him/her."

10. Law is a living organism and its utility depends on its vitality and ability to serve as a sustaining pillar of the society. Justice to the individual is one of the highest interests of the democratic state. The best advantage of one person could be the worst disadvantage to another. Law steps into iron out such crease and ensures protection of life and liberty of individuals as well as group liberties.

11. The Constitution declares that India is a sovereign democratic republic. The requirement of such democratic republic is that every action of the state is to be informed with reason. State is not a hierarchy of regressively genuflecting coterie of bureaucracy.

12. It is trite position of law that however suspicion grave may be that cannot be proved in a domestic enquiry. In this connection it would suffice to place reliance on the decision of the Hon'ble Apex Court rendered in the case of Union of India vrs H.C.Goel reported in AIR 1964 SC 364.

13. Similarly, adherence of principle of natural justice is the prime test in all action, be it administrative, quasi judicial or judicial. A long line of

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decisions has settled that even if the statutes are silent or there are no positive words requiring observance of natural justice, yet it would apply unless the statutes specifically provides its exclusion. In this connection, it would suffice to place reliance on the decision of the Hon'ble Apex Court rendered in the case of **Gorkha Security Services Vrs Govt. (NCT of Delhi and Others)** reported in (2014) 9 SCC 105.

14. Furthermore, it is the well settled law that the charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities as in a civil action but proof beyond reasonable doubt; more so when in the instant case the applicant has been visited with perpetual punishment of debarring him to appear any examination for a period of five years which has cascading effect on his career.

15. We completely agree with the stand taken by the Respondents in their counter that as per para 17 of the Employment notice that the decision of the commission in all matters relating to eligibility, acceptance or rejection of the applications, penalty for false information, mode of selection, conduct of examination and interviews, allotment of examination centers, selection and allotment of posts/organizations to the selected candidates would be final and binding on the candidates. But the instant case is as against the decision of the commission in canceling his candidature and debarring him from appearing in any examination to be conducted by the commission for a period of five years. We find that in the impugned memorandum dated 129.06.2012, the said decision was taken by the commission on the ground that there were reasons to believe on the basis of post examination analysis carried out, that the applicant had resorted to malpractices in the said examination whereas, in the counter at page 5 it has

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been stated that malpractices committed by the applicant in tier II of the examination have been clearly brought out by the post examination analysis carried out by the commission. The applicant in his reply stoutly denied to have adopted any such unfair means. Neither in the show cause notice at Annexure-4, nor in the impugned memorandum under Annexure-6 or even in the counter it has been stated by the respondents as to what are those matters based on which the commission was compelled to take such a decision. Be that as it may, since the decision has a definite cascading effect on the career of the applicant and has direct nexus with the provisions enshrined in Article 21 of the Constitution of India i.e. right to life and right to earn livelihood is a fundamental right yet the said decision was taken by the Commission *ex parte* without giving the applicant any opportunity to controvert, in compliance with the principles of natural. The decisions relied on by the respondents in their counter are all unreported decisions. Copies of those decisions have neither been furnished along with the counter nor despite opportunity, the same were produced at the time of hearing. Therefore, we do not have the opportunity to go through the said decisions so as to examine as to how far the facts of those cases are similar to the present case. Be that as it may, since the entire decision of the commission was an *ex parte* decision based on *ipsi dixit*, without affording reasonable opportunity to the applicant, the impugned order dated 29.06.2012 (Annexure-6) is quashed and the matter is remitted back to the Commission to decide and proceed with the selection, in question, in so far as the applicant is concerned. In the event the decision is ^{to be} ~~negatived~~, then further action must be after holding necessary enquiry by way of granting him full opportunity to participate and after giving him a personal hearing in the

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matter. In any event, the entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

16. In the result, this OA is allowed to the extent stated above. There shall be no order as to costs.


(R.C.Misra)
Administrative Member


(A.K.Patnaik)
Judicial Member

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