

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 545/2010

Reserved on 24.8.2015

Pronounced on 28-08-2015

Hon'ble Sri Navneet Kumar , Member (J)

Hon'ble Sri O.P.S. Malik, Member (A)

Vivek Kumar aged about 32 years son of Sri Prakash Chandra at present resident of Ketan Vihar Colony, Saripura Pond, Alamnagar behind Alamnagar Siding, Lucknow.

Applicant

By Advocate: Sri Prabhat Kumar

Versus

1. Union of India through Secretary, Department of Personnel and Training, New Delhi.
2. The Director, M/o Personnel, Public Grievances and Pension, Department of Personnel and Training, AIS-I, Section, New Delhi.
3. The Director (Police), Ministry of Home Affairs, New Delhi.

Respondents

By Advocate: Sri H.G. Upadhyaya

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant u/s 19 of the AT Act with the following prayer:-

- i) to quash the impugned order dated 24.5.2007 is being filed herewith as Annexure No. A-1 to this O.A. with all consequential benefits.
- ii) to issue offer of appointment order to the applicant in pursuance of the allocation made in pursuance of the selection in the CSE 2005 and allow joining to the applicant with all consequential benefits.
- iii) to grant fixation of seniority, pay and other ancillary benefits.
- iv) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.
- v) cost of the present case.

2. The applicant applied in pursuance of the notification for filling up the posts through Union Public Service Commission for C...

Services Examination, 2005 and after selection, he was offered appointment on 6.12.2006 through which, he was required to express his willingness for taking up the appointment. In response thereto, the applicant submitted an application dated 20.12.2006 through which applicant requested to convey him any provisions for allowing the applicant to join late and has also requested that if it is not possible to join training with the present batch, he may be allowed to join the training directly at Lal Bahadur Shastri National Academy of Administration starting with the foundation course for the next batch of the Indian Police Service in 2007. Under the bonafide belief, applicant kept on waiting and finally the respondents have passed the impugned order on 24th May, 2007 through which it is indicated that the applicant is not interested to join the Indian Police Service on the basis of his being qualified the Civil Services Examination, 2005 and therefore, the respondents cancelled appointment of the applicant to the IPS cadre which was made to the applicant on the basis of the said examination.

3. Feeling aggrieved by the inaction of the respondents, the applicant preferred the present O.A. Not only this, the learned counsel for the applicant has also indicated that the Civil Services Examination 2005 was challenged before the Madras Bench of the Tribunal in O.A. No. 690/2006 and 775/2006. The said O.A. was decided by the Tribunal on 17th September, 2007. The matter was challenged before the Hon'ble High Court of Madras in Writ Petition No.37196 of 2007 and others. The Hon'ble High Court disposed of the writ petitions through their order dated 20.3.2008 and thereafter, the matter went to the Hon'ble Apex Court in Civil Appeal No. 4310-4311/2010 wherein the Hon'ble Apex Court passed the following orders:-

“In view of the above, the civil appeals are allowed and the judgment of the Madras High Court is set aside.

The writ petitions challenging the validity of Rule 16(2)

are dismissed. The validity of Rule 16(2) of Civil Service Examination Rules 2005 (vide notification dated 4.12.2004) is upheld. There will be no order as to costs."

These orders were passed by the Hon'ble Apex Court on 7th May, 2010.

4. The learned counsel for applicant has also relied upon his earlier two letters dated 7.7.2007 as well as 22.6.2008 and also a request is being made for fresh consideration for the cancellation /recalling of order dated 24.5.2007 submitted on 5.7.2010.
5. Learned counsel for the applicant has also submitted that none of these letters are replied back and in an arbitrary manner and without giving any opportunity of hearing, respondents have passed the impugned order and cancelled the offer of appointment of the applicant to the Indian Police Service on the basis of Civil Services Examination, 2005.
6. Learned counsel for applicant has also indicated that the applicant got selected in the Civil Services Examination, 2006 and has allocated IPS and he has been allotted Bihar cadre and on the basis of said selection, he is still working.
7. On behalf of the respondents, detailed reply is filed and through reply, it is indicated that the applicant has secured 179 rank was allotted to IPS on the basis of his having come out successful in the Civil Services Examination 2005 duly conducted by the Union Public Service Commission. He was offered an offer of appointment to the Indian Police Service by the Ministry of Home Affairs, New Delhi on the basis of his successful performance in the Civil Services Examination 2005 vide letter dated 6.12.2006. The applicant was directed to communicate his acceptance of the offer of appointment within a period of one week from the date of receipt of offer of appointment made to the applicant and he was further directed to

report for Basic Training Course at S.V.P. National Police Academy, Hyderabad. It is also indicated by the respondents that no acceptance was received by the Ministry of Home Affairs, as such it was presumed that the applicant is not interested to join the Indian Police Service on the basis of Civil Services Examination 2005. Accordingly, the offer of appointment given to the applicant stands cancelled.

8. The respondents indicated that after the judgment of the Hon'ble Apex Court dated 7.5.2010, the applicant has prayed for restoration of the aforesaid cancellation of offer of appointment made to him earlier. Apart from this, it is also indicated by the respondents that the offer of appointment made to the applicant on the basis of his success in the Civil Services Examination 2005 had been cancelled as the applicant failed to join the Basic Training Course as directed to him.

9. Apart from this, it is also argued by the learned counsel for the respondents that the Ministry of Home Affairs has not at all received any re-allocation of service in his case, as a result of implementation of the order of the Hon'ble Apex Court from the Department of Personnel and Training and hence the offer of appointment got cancelled by the competent authority and same cannot be revived/ restored as the same is in accordance with rules and accordingly the O.A. is liable to be dismissed.

10. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated and denied the contents of the counter reply. Learned counsel for the applicant categorically indicated that the offer of appointment was given to the applicant but the respondents have not replied to the letter/representation submitted by the applicant dated 20.12.2006 and without affording any opportunity of hearing, the impugned orders were passed cancelling the offer of appointment as such, respondents

have violated the Principle of Natural Justice. As such, the interference of this Tribunal is required and the O.A. is liable to be allowed.

11. Heard the learned counsel for parties and perused the record.

12. The admitted facts are that the applicant got selected in the Civil Services Examination 2005 and has been allocated to Indian Police Service (in short IPS) as per the prevailing Civil Services Examination Rules. In the said examination, the applicant has secured 179 rank. After the said selection took place, the respondents have issued an offer of appointment to the applicant on 6.12.2006 through which the applicant was asked to report for basic/professional training course at Sardar Vallabhbhai Patel National Police Academy, Hyderabad.

13. Along with said offer of appointment, joining instructions were also enclosed. Soon thereafter, the applicant written a letter to the Director (Police), Ministry of Home Affairs, North Block, New Delhi on 20.12.2006 indicating therein that the applicant on account of certain unavoidable circumstances, is unable to join the Sardar Vallabhbhai Patel National Police Academy Hyderabad on the given date as such he requested to convey him any such provision for allowing late joining. It is also indicated by the applicant that if it is not possible to join the training with the present batch, a request was made to kindly allow him to join the training directly at the Lal Bahadur Shastri National Academy of Administration starting with the foundation course for the next batch of Indian Police Service in 2007. The respondents without giving any reply to the same passed the impugned order. As such, it is clear that the same is violative of Principle of Natural Justice.

14. Since the applicant has already selected in the Civil Services Examination 2005 and ranked at 179 in the said examination, he was offered offer of appointment in Indian Police Service on 6.12.2006 but applicant could not report and he submitted a representation on 20.12.2006 indicating that he may be allowed to join training late with the present batch or directly with the next batch starting with the

foundation course. Further, it is also not disputed that the applicant was further selected in Civil Services Examination 2006 and he was allowed to join in IPS 2007.

15. It is also to be indicated that thereafter, the authorities have issued the order dated 24.5.2007 cancelling the offer of appointment to the Indian Police Service on the basis of Civil Services Examination 2005 but without taking care of representations submitted by the applicant dated 20.12.2006 and 7.7.2007 which are undisputedly against the provision of Principle of Natural Justice.

16. The delay has not occurred on the part of the applicant but the circumstances created the delay. His representation were not taken care of by the respondents. Also as earlier, the whole exercise was set at naught when the Channai Bench and Madras High Court issued orders of re-allocation of cadre etc. relating to the same batch but later on Hon'ble Apex Court passed orders and nullified the orders passed by the Channai Bench and Madras High Court. It is also to be indicated that from the date when the Hon'ble Apex Court passed the orders, the applicant could not join and he should have been afforded an opportunity to respond on the offer of appointment and also to submit fresh option which has admittedly not been done by the respondents, which appears to be unjustified.

17. The Hon'ble Apex Court in the case of **The State of West Bengal Vs. Anwar Ali Sarkar** reported in AIR 1952 SC 75, has observed as under:-

"104. It may be that justice would be fully done by following the new procedure. It may even be that it would be more truly done. But it would not be satisfactorily done, satisfactory that is to say not from the point of view of the governments, who prosecute, but satisfactory in the view of the ordinary reasonable man, the man in the street. It is not enough that justice

should be done. Justice must also be seen to be done and a sense of satisfaction and confidence in it engendered."

18. The Hon'ble Apex Court in the case of **State of Orissa Vs. Binapani Dei** reported in AIR 1967 Supreme Court 1269 observed as under:-

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of nature justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. "

19. The Hon'ble Apex Court in the case of **M/s Mahabir Prasad Santosh Kumar Vs. State of U.P. and others** reported in AIR 1970 Supreme Court 1302, has observed as under:-

"There is nothing on the record which shows that the representations made by the appellants was even considered..... The nature of the proceeding requires that State Government must give adequate reasons which disclose that an attempt was made to reach a conclusion according to law and justice."

20. Once again in the case of **Smt. Meneka Gandhi Vs. Union of India** and another reported in AIR 1978 Supreme Court 597, the Hon'ble Apex Court observed as under:-


"Natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely

pervasive rule affecting large areas of administrative action. The enquiry must always be does fairness in action demand that an opportunity to be heard should be given to the person effected."

21. Again in the case of **Davinder Singh and others Vs. State of Punjab and others** reported in (2010) 13 Supreme Court Cases 88, the Hon'ble Apex Court has been pleased to observe as under:-

"29. In our considered view, even in matters of discharge, the authority concerned cannot act arbitrarily while discharging an employee. However, in the instant case, the appellants are being discharged from service for indiscipline. Therefore, as provided in proviso to Rule 27 of the rules, the appellants should have been given a reasonable opportunity of showing cause against the action proposed to be taken against them. Admittedly, no such opportunity was given to them. Therefore, we are of the view that the action of the respondents is contrary to their own statutory rules and in violation of principles of natural justice."

22. The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages, it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power on the State Govt. to be exercised in certain circumstances or eventualities, it would be right to presume that the



legislature intends that the said power be exercised in the manner envisaged by the statute.

23. If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. The rule of natural justice operate as checks on the freedom of administrative action and often prove time consuming but that is the price one has to pay to ensure fairness in administrative action and this fairness can be ensured by adherence to the expanded notion of rule of natural justice.

24. The Rule of natural justice are therefore, devised for ensuring fairness and promoting satisfactory decision making. The principle of natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness.

25. It is well settled that a statutory prescription for following the rules of natural justice is not a condition precedent for the applicability of the principles in given situations. The application of the principles is not confined to judicial or quasi judicial enquiries but even to administrative orders which have civil consequences as observed by the Hon'ble Apex Court in the case of **State of Orissa Vs. Dr. (Miss) Binapani Dei (supra)**.

26. In the case of **Mahinder Singh Gill Vs. Chief Election Commissioner** reported in AIR 1978 SC 851, the Hon'ble Apex Court has been pleased to observe that **"The Civil consequences have been explained as covering infraction not merely of property or personal rights but rights to all civil liberties, material deprivations and non-pecuniary damages as well as adverse effects on reputation."**

27. The essential logic and justification of these principles have been brought out by the Hon'ble Apex Court in the case of **The Chairman, Board of Mining Examination Vs. Ramjee**

reported in AIR 1977 SC 965, has been pleased to observe as under:-

“The concept of situational variation has also been extended to the effects and consequences of non-compliance with the principles of natural justice and it has been pointed out that the result of the non-compliance should not or need not be mechanical invalidation. This flexibility rule is also applicable to departmental enquires.

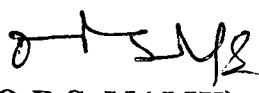
“Natural justice is no unruly horse, no lurking land mine, nor a judicial cure. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. 'Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter.”


28. Admittedly, the respondents in para 25 of their counter reply accepted that they have received copy of the letter dated 20.12.2006 submitted by the applicant but neither in the entire counter reply nor during the course of arguments, it was placed on record that the respondents passed any order and replied to the applicant in respect of his application dated 20.12.2006 and subsequently they have passed an order on 24th May, 2007 rejecting the offer of appointment to the

applicant as such it is a clear cut case of violation of principle of natural justice.

29. Keeping in view of the particular facts and circumstances of the case, the O.A. deserves to be allowed. We quash the order dated 24.5.2007 with the direction that the respondents shall afford an opportunity to the applicant to submit option and he should be given time to report. In case, the applicant submits his option, he shall be accorded all the consequential benefits like seniority and other service benefits and his served period into IPS 2007 be adjusted with IPS 2006, for which if necessary, a supernumerary post may be created by the respondents. It is made clear that the above direction have been issued in the particular facts and circumstances of the case. Therefore, it will not be treated as precedent for others. It is also to be indicated that this decision will not effect the allotment of other candidates of 2005 examination.

30. With the above observations, O.A. is allowed. No order as to costs.


(O.P.S. MALIK)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER (J)

HLS/-