for OA-060/00024/14

10

**CENTRAL ADMINISTRATIVE TRIBUNAL,**
**CHANDIGARH BENCH,**
**CHANDIGARH.**

Date of Decision: 01.04.2014

CORAM: **HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER**
**HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

(I) **O.A.No.1640/HR/2013 &**
**M.A.No.060/00332/2014**

Surinder Singh son of Birbal Singh, resident of Kundu Niwas, S-9, Saket Extensino, Azad Nagar, Hisar, District Hisar.

.....Applicant

By Advocate : Mr. Sanjeev Kodan

Versus

1. Union of India, through Secretary to Govt. of India, Staff Selection Commission, Department of Personnel and Training, New Delhi.

2. Staff Selection Commission, Department of Personnel and Training, North Western Regional Office, Block-C, Kendriya Sadan, Sector 9-A, Ground Floor, Chandigarh through its Deputy Regional Director.

3. Deputy Regional Director, Staff Selection Commission, Department of Personnel and Training, North Western Regional Office, Kendriya Sadan, Sector 9-A, Ground Floor, Chandigarh.

.....Respondents

By Advocate Mr. Deepak Agnihotri for respdt.No.1.
Mr. D.R. Sharma for respdts. No. 2 & 3.

(II) **O.A.No.060/00024/2014 &**
**M.A.No.060/00330/2014**

Balvinder son of Ram Kishan, resident of village and P.O. Bamlall, Near Water Works, Tehsil and District Bhiwani.

.....Applicant

By Advocate : Mr. Jasbir Mor

Versus

1. Union of India, through Secretary to Govt. of India, Staff Selection Commission, Department of Personnel and Training, New Delhi.

2. Staff Selection Commission, Department of Personnel and Training, North Western Regional Office, Block-C, Kendriya Sadan, Sector 9-A, Ground Floor, Chandigarh through its Deputy Regional Director.

3. Deputy Regional Director, Staff Selection Commission, Department of Personnel and Training, North Western Regional Office, Kendriya Sadan, Sector 9-A, Ground Floor, Chandigarh.

.....Respondents

By Advocate : Mr. Deepak Agnihotri for respdt.No.1.
Mr. D.R. Sharma for respdts. No. 2 & 3.

**(III) O.A.No.060/00027/2014 & M.A.No.060/00331/2014**

Naveen son of Sh. Chand Ram, resident of village and P.O. Bhambhewa, Tehsil Saffidon and District Jind.

.....Applicant

By Advocate : Mr. Jasbir Mor

Versus

1. Union of India, through Secretary to Govt. of India, Staff Selection Commission, Department of Personnel and Training, New Delhi.

2. Staff Selection Commission, Department of Personnel and Training, North Western Regional Office, Block-C, Kendriya Sadan, Sector 9-A, Ground Floor, Chandigarh through its Deputy Regional Director.

3. Deputy Regional Director, Staff Selection Commission, Department of Personnel and Training, North Western Regional Office, Kendriya Sadan, Sector 9-A, Ground Floor, Chandigarh.

.....Respondents

By Advocate : Mr. Deepak Agnihotri for respdt.No.1.
Mr. D.R. Sharma for respdts. No. 2 & 3.

**O R D E R (Oral)**

**BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

1. All these OAs have been filed under Section 19 of the Administrative Tribunals Act, 1985, and are decided by way of a common order. The facts are taken from OA No.1640/HR/2013 wherein the following relief has been sought:-

> "8 (ii) That Tribunal may be pleased to quash the impugned order dated 07.11.2013 passed by the respondents being illegal, arbitrary, unjust, unfair whereby the candidature of the applicant has been cancelled for Combined Graduate Level Examination, 2012 and he was debarred for a period of three years w.e.f. 16.09.2012 from appearing in Commission's Examination without appreciating the facts and circumstances of the case;
>
> (iii) This Tribunal may be pleased to direct the respondents to include the name of the applicant in the list of successful candidates for Combined Graduate Level Examination, 2012 and call him for the interview of the post in question alongwith the successful candidates;

2. Averment has been made in the OA that the respondents issued an advertisement/notice for Combined Graduate Level Examination (CGLE) 2012 for filling different posts in the service of the Govt. of India, which was notified on 24.03.2012 in the Employment News. The applicant filed his application in response to the advertisement and was issued Roll No.1601028010 by the respondents and appeared in the Tier I Examination, 2012 on 01.07.2012. The applicant cleared Tier I and was issued call letter for the Tier II Examination vide Annexure A-2. As per the result of the Tier II Examination, the applicant cleared the same and his name figured at Sl.No.20 of the list of successful candidates and his candidature was recommended for interview. Subsequently, the respondents issued a fresh list of the successful candidates in which the name of the applicant was not included and he received a show cause notice dated 04.06.2013 (Annexure A-3) as to why his candidature for Combined Graduate Level Examination, 2012 should not be cancelled and he be not debarred for five years from appearing in the examination conducted by the SSC as he had indulged in unfair means. The applicant submitted his detailed reply but the respondents passed the impugned order dated 07.11.2013 (Annexure A-5) canceling his candidature for the CGLE, 2012 and debarring him from the Staff Selection Commission Examinations for a period of three years w.e.f. 16.09.2012.

3. In the grounds for relief, it has been stated as follows:-

i) Although, it was stated in the show cause notice (Annexure A-3) as well as in the impugned order dated 07.11.2013 (Annexure A-5) that the Commission had incontrovertible and reliable evidence that the applicant had resorted to unfair means in the Examination, but no substantial material has been produced to show that the applicant had resorted to unfair means.

ii) The applicant was meritorious as he had cleared FCI-2010 & FCI-2011 (Tier-I) twice and had cleared the Combined Defence Services-I Examination, 2010 (UPSC) and had also passed the National Council of Hotel Management Examination (Objective Entrance Examination), after 12th Class.

iii) The respondents had reached wrong conclusion that since some answers of the applicant matched with the answers of one Salwshish & one Amit Kumar, therefore the applicant had resorted to malpractice.

iv) Initially the show cause notice referred to malpractices but in the final order the reason for debarment was mentioned as "impersonation" while this had not been proved although the same could be verified from the thumb impression and signature of the petitioner and the answer sheet, attendance sheet and also from the videography in the Examination Hall.

v) Although the respondents had initially withheld the Examination result of 836 candidates on the same grounds as those applied to the respondent the result of some of these candidates was declared later while the applicant had been discriminated against by non-declaration of his result and debarment from future examinations.

4. MA No.060/00332/2014 was subsequently filed under Section 151 CPC for directing the respondent Commission to allow the applicant to appear in the Combined Graduate Level (Tier-I) Examination, 2014 to be provisionally held on 27.04.2014 and 04.05.2014.

5. In the written statement filed on behalf of respondents no.2 & 3, it has been stated that the Staff Selection Commission, which makes recruitment to various sensitive and important Ministries / Departments of the Govt. of India, is expected to recruit candidates whose integrity is beyond doubt and who possess a high degree of honesty. The Commission is therefore entitled to take whatever action it deems fit, to maintain fairness and credibility in making recruitments. The Commission carried out post-examination scrutiny and analysis in respect of the CGLE 2012 with the help of a third party agency having expertise based on scientific/theoretical methods in post examination analysis, to detect attempted unfair means/malpractices in the objective type written examination across the Examination Hall/Sub-centre/State. The expert body, with the help of which post examination analysis was conducted, has proven expertise in such scrutiny and analysis. The expert Body carried out such scrutiny and analysis for all candidates of the written examination uniformly. During the detailed post examination analysis conducted by experts based on scientific and theoretical methodology, which is time tested, incontrovertible and reliable evidence had emerged that the applicant had resorted to malpractice / unfair means in the examination in association with two other candidates namely Salwashish & Amit Kumar in paper I of Tier II. Based on this evidence the result of the applicant was

withheld and he was served a show cause notice on 04.06.2013 and an opportunity was given to him for personal hearing to explain his case. During the hearing, the matter was explained. The Commission after considering the submission made by the applicant decided to cancel his candidature and debar him for a period of three years from its examinations.

6. In the written statement decision of the High Court of Delhi in WPC No.3707/2011 Varun Bhardwaj and State Bank of India has been cited where the Hon'ble High Court observed as follows:-

> "5. In my opinion, Courts cannot sit as an expert body to decide the rational test which has been applied by institutions to find out use of unfair means, and this is because unfair means are on many occasions never found to have been caught red handed. Of course, it is possible that there may be the greatest possibility of a co-incidence of the petitioner not having used unfair means, however, once respondent no.1 uniformly applies the IBPS test, Courts would prefer not to interfere for any once of the candidate who gives the examination in as much as this would mean to quashing of the application of the IBPS test which is used by respondent no.1 bank which deals with public moneys. No doubt the petitioner's argument that he was not sitting at the same centre with the other two candidates with whom the petitioner had same answers, and they were sitting at different centres in Delhi, but, in these days of technology and communications, some things do happen and therefore as long as respondent no.1 is not acting arbitrarily there is no reason for the Court to interfere."

7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant reiterated the points and

issues taken in the OA and referred to decision rendered by Principal Bench in OA No.3051/2013, on 14.11.2013, , where liberty was granted to the respondents to issue fresh individual Show Cause Notices to the applicants giving full details of their alleged malpractices / copying and the detailed modus operandi adopted by the respondents in coming to the said conclusion and after considering the representations submitted thereto, to pass appropriate speaking and reasoned orders in accordance with law.

8. Mr. D.R.Sharma, learned counsel for the Staff Selection Commission, stated that he would have no objection if these OAs were disposed of by giving directions to the Staff Selection Commission to consider the cases of the applicants as observed in OA No.3051 of 2013.

9. In view of the submissions made by the learned counsel for the parties, these OAs are allowed and the impugned orders dated 07.11.2013 are set aside with direction to the Staff Selection Commission to give fresh show cause notice to the applicants giving full details of the alleged malpractices and the detailed modus operandi adopted by the respondents in coming to this conclusion and after considering the representations submitted the final orders may be passed in the case.

10. Since the Combined Graduate Level Examination 2014 is scheduled for 24.04.2014, the whole process of issue of the fresh show cause notice, submission of replies by the applicants in the present OAs

and decision on their representations may be completed before the commencement of the examination. In case, the Staff Selection Commission is not able to pass final orders in these cases before the commencement of CGLE 2014, the applicants may be allowed to appear provisionally in the CGLE, 2014. MAs as well as OAs are disposed of with these directions.

11. A copy of this order may be placed in the other connected files also.

12. **Dasti**.

**(RAJWANT SANDHU)**
**MEMBER(A).**

**(DR. BRAHM A. AGRAWAL)**
**MEMBER(J)**

Place: Chandigarh
Dated: 01.04.2014

sv: