

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Original Application No.330/00401 of 2014

(This the 31st Day of October 2018)

HON'BLE MR. GOKUL CHANDRA PATI, ADMINISTRATIVE MEMBER
HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

Pankaj Kumar, S/o Sri Ompal Singh, Village Post Office Barawar, District Baghpat.

.....Applicant

By Advocate: Shri Prashant Sharma/Shri Nitin Gupta/Shri Amit Saxena.

Versus.

1. Union of India through its Secretary, Ministry of Personnel and Training, New Delhi.
2. Staff Selection Commission, 21-23 Lowder Road, Allahabad through its Regional Director.

.....Respondents

By Advocate: Shri L.P Tiwari

ORDER

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. The present O.A. has been filed by the applicant seeking following reliefs:-
 - "(I) Issue any order or direction commanding the respondent No.2 to offer appointment to the applicant in accordance with his merit as per final select list i.e. applicant in the month of May 2013.
 - (ii) Issue any other order or direction as this Hon'ble Court/Tribunal may deem fit and proper in the circumstances of the case.

(iii) award the cost of the application".

2. The applicant appeared in the Combined Graduate Level Examination 2012. He cleared all the written examinations and interview conducted by the respondents successfully and was above the cut off marks. Respondents declared the result notice in which the applicant's name was declared as withheld candidate. The applicant received a Show Cause Notice dated 4.6.2013 stating that as per post-examination analysis, it was found that he had resorted to copying in the said papers in association with other candidates who also took the same examination. The applicant submitted a detailed reply to the Show Cause Notice refuting all allegations. The respondents vide order dated 23.05.2014 rejected the representation of applicant and debarred him from appearing in the Commission Examination for a period of three years w.e.f. 16.9.2012.

3. It has been argued by the learned counsel for the applicant that the Tribunal in a similar matter in OA 1352/2013 titled Ashok Kumar Vs. SSC and others quashed the Show Cause Notices being in contravention of the principles of natural justice and further granted an opportunity to the respondents to issue fresh Show Cause Notices.

4. Learned counsel for the respondents opposed the prayer of the applicant stating that as per post-examination analysis and scrutiny conducted by the respondents for examination papers in Tier-II, incontrovertible and reliable evidence had emerged against the applicant that he had resorted to copying in the said papers in association with other candidates who also took the same examination. It was contended by the learned counsel for the respondents that the applicant is not at liberty to approach the Tribunal as and when he likes.

5. Reference may be made to the order of the Tribunal in the case of Sudesh (supra) has attained finality as the Writ Petition preferred before the Hon'ble High Court against the Tribunal's order and SLP preferred before the Hon'ble Supreme Court against the High Court's order have since been dismissed. However, there is a major difference of facts in the instant case and the facts of the case in Sudesh (supra). In the instant case, this is the first show cause notice that has been issued whereas in the case of Sudesh (supra), first show cause notice was followed by a second show cause notice as the first show cause notice was quashed by the Tribunal but liberty was granted to the respondents to issue second show cause notice. The second show cause notice was also quashed in case of Sudesh (supra) because it did not contain details of material grounds to which the applicants could respond and as the second show cause notice was deficient in explicitly mentioning the reason and evidence of the misconduct of the applicants and as for want of the same a proper reply to the show cause notice was not feasible, it was held that such show cause notices deserve to be quashed.

6. In the instant case, we have no difficulty in quashing the show cause notice, being the first show cause notice and order dated 23.5.2014, because it is in no way different from show cause notices issued in other OAs which have been quashed. However, the judicial propriety demands that the respondents may be given liberty to issue a second show cause notice for the simple reason that we cannot assume at this stage that the second show cause notice would also be deficient in material grounds adequate to satisfy the basic principle of natural justice. Therefore, we dispose of the instant Original Application in terms of the order passed by this Tribunal in Ashok Kumar's case (supra) and quash the impugned show cause notice. However, liberty is given to the respondents to

issue fresh show cause notice to the individual, if they so desire, within a period of one month from the date of receipt of certified copy of this order.

7. Since we have already seen in the case of Sudesh (supra) that the second show cause notice issued was again almost the repetition of the first show cause notice, therefore, any fresh show cause notice which, by and large, has the same contents as the first show cause notice, will amount to misuse of this liberty. Therefore, the second show cause notice should be issued only if the respondents are in a position to put in the show cause notice substantial evidence in support of their allegations in a manner which can be reasonably rebutted by the applicants. It is made clear that if the fresh show cause notice is not issued within the stipulated time i.e. within one month of the receipt of a certified copy of this order, then the benefit of selection must be given effect to the applicant in terms of the decision in Sudesh Kumar's case (supra), within a period of three months from the date of receipt of certified copy of this order. No costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-