

(RESERVED ON 10.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the **09th** day of **MAY 2018**.

**MISC. DELAY CONDONATION APPLICATION NO.1765 OF 2017
IN
ORIGINAL APPLICATION NO. 1052 OF 2017**

HON'BLE MR. JUSTICE DINESH GUPTA, CHAIRMAN.
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

1. Amit Kumar Bhati, aged about 29 years, son of Sri Ajab Singh, resident of Village, Kunda, Post Gadina, District-Meerut-250401, Roll No. 3011515708 at CGLE-12.

.....Applicant.

VERSUS

1. The Union of India, through the Secretary, Department of Personnel and Training, Government of India, New Delhi.
2. The Staff Selection Commission, through its Chairman, Block No. 12, CGO Complex, Lodhi Rod, New Delhi.
3. The Director, Staff Selection Commission, (Central Region), 21-23, Lowther Road, Allahabad.
4. The Deputy Director, Staff Selection Commission (Central Region), 21-23, Lowther Road, Allahabad.

.....Respondents

Advocate for the Applicant : Shri Shyamal Narain

Advocate for the Respondents : Shri Jitendra Prasad

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- (a) *That this Hon'ble Tribunal be pleased to quash and set aside the impugned order dated 09.05.2014 (Annexure No. A-1 to Compilation No. I), passed by, and under the signature of, the Deputy Director, Staff Selection Commission (Central Region), Allahabad.*

- (b) *That this Hon'ble Tribunal be pleased to direct the respondents to process the candidature of the applicant at CGLE-12, and allocate him to the service for which he had been selected forthwith, or at least, within a reasonable and specified frame of time, along with all consequential benefits."*

2. The facts as stated in the O.A. are that the applicant was a candidate of Combined Graduate Level Examination-2012 (in short C.G.L.E.-12) conducted by the Staff Selection Commission (in short S.S.C.) as per the advertisement dated 24.03.2012. He was declared successful in Tier-I and Tier-II of the C.G.L.E.-12. After the interview, final result was declared where the applicant was selected for the post of Auditor in the C.A.G. Office situated in the State of Jammu and Kashmir. Subsequently, a revised result was published on 30.05.2013 (Annexure No. A-4 to the OA), where the name and roll no of the applicant was not reflected. Thereafter, a show cause notice dated 04.06.2013 (Annexure No. A-6 to the OA) was served to the applicant, wherein the applicant was directed to show cause as to why his candidature should not be cancelled as he had been found indulging in copying on the basis of post-examination analysis and scrutiny with the help of experts. The applicant submitted his reply dated 12.06.2013 (Annexure No. A-7 to the O.A.). Thereafter, the S.S.C. communicated final decision vide order dated 09.05.2014 (Annexure No. A-1 to the OA), cancelling the candidature of the applicant and debarring him from appearing in any examination conducted by the S.S.C. for three years w.e.f., 16.09.2012.

3. It is stated that some of the candidates who also faced similar action agitated the matter before this Tribunal by filing O.A. no. 930/2014 and O.A. No. 2839/2014 which was allowed by this Tribunal on the ground that show cause notices issued by the S.S.C. to the candidates did not contain

any material to substantiate the allegations leveled against the candidates. Against the order passed by this Tribunal, respondents went to Hon'ble High Court where the judgment was given in favour of the candidates therein. The matter was finally decided by the Hon'ble Apex Court, although, with an initial interim order dated 06.04.2015 by Hon'ble Apex Court staying the operation of the judgements passed by the Hon'ble High Court of Delhi and final dismissal of the civil appeals filed by the S.S.C. vide order dated 19.07.2017 (Annexure No. A-12 to the O.A.).

4. It is the case of the applicant that since the matter was under legal dispute, he did not file any application before this Tribunal and when the matter has now been settled finally by the Hon'ble Apex Court vide order dated 19.07.2017, he has approached this Tribunal with the plea that his case being identical, the benefits of the orders passed by the Hon'ble Supreme Court may also be extended to him as well.

5. The applicant has also filed a delay condonation application dated 04.09.2017 for delayed filing of the OA on the following grounds:-

- (i) The subject matter in this O.A. was before the Hon'ble Apex Court and the Hon'ble Apex Court vide interim order dated 06.04.2015 had stayed the operation of the impugned judgements passed by the Hon'ble High Court. The effect of the stay granted was that all cases involving the same facts and question of law as in the pending before Tribunal or any other court, no further proceedings was possible.

- (ii) Since, the entire controversy had become sub-judice before the Hon'ble Apex Court and a stay had also been granted by the Hon'ble Apex Court on the judgement passed by the Delhi High Court, the present applicant was advised not to challenge the order dated 09.05.2014, yet, but await the decision of the Hon'ble Supreme Court in the Appeals filed before it.

For these reasons, the applicant did not challenge the impugned order dated 09.05.2014 until now, and kept waiting for the issue to be decided by the Hon'ble Supreme Court.

6. The respondents were directed to file objections on the delay condonation application, which was filed on 26.03.2018. When the matter was heard on delay condonation application, learned counsel for the applicant argued that since the matter has been legally settled vide order dated 19.07.2017 by the Hon'ble Apex Court and the case of the applicant is similarly covered with that case, hence, this OA be considered in the light of the order of the Hon'ble Apex Court. Thereafter, he submitted that delay in filing the OA be condoned on similar grounds. It was further submitted that as stated in the OA, the applicant had challenged the show cause notice dated 04.06.2013 (Annexure No A-6 to the OA) in OA No. 1118/2013 along with two other applicants. The OA was disposed of with a direction to respondents to take a prompt decision in the matter. Thereafter, the impugned order dated 09.05.2014 was passed which was not challenged by the applicant in view of the pending litigations on the issue which was finally settled by Hon'ble Apex Court vide order dated 17.07.2017, after which the applicant has filed the OA promptly.

7. Learned counsel for the respondents mentioned that this OA has been filed after a long delay of about four years, although the applicant was aware of the impugned order dated 09.05.2014, he did not challenge the same in time. It was also argued that the case of the applicant cannot be treated as similar to others who were given relief by the Court. He also submitted that no acceptable ground has been furnished in the delay condonation application to condone the delay. After a favourable decision was passed by this Tribunal in case of some other employees, even then the applicant remained silent until the dispute was finally settled by the Hon'ble Supreme Court vide order dated 19.07.2017. Learned counsel for the respondents also cited some judgments, copies of which are enclosed at Annexure No. 1 to 8 in the counter affidavit.

8. We have considered the grounds furnished in the delay condonation application filed by the applicant as well as the submission of learned counsels. The question in this case is whether the reasons given in the delay condonation application to justify the applicant's silence over the impugned order dated 09.05.2014 for more than two years after the date by which he should have challenged the said order as per law, is justified or not. The dispute in this case has been finally settled by the judgment dated 19.07.2017 of the Hon'ble Supreme Court in the case of some other candidates who were similarly placed as applicant, after which the applicant came forward and filed this OA. We take note of the fact that the applicant had earlier challenged the show cause notice dated 04.06.2013 in OA No. 1118/2013, but did not challenge the impugned order dated 09.05.2014 till 2017 i.e., after judgement dated 19.07.2017 of Hon'ble Apex Court by which the dispute was finally settled.

9. In this case, it is seen that the applicant has not accepted the impugned order dated 09.05.2014, although he did not raise any dispute over it till the judgment dated 19.07.2017 of Hon'ble Apex Court in a case filed by other identically situated applicants. The applicant in the present case had filed the OA No. 1118/2013 with two other applicants to challenge the show cause notice. Then the applicant had immediately filed this OA immediately after the issue was settled at the level of Hon'ble Apex Court. Moreover, the applicant was selected finally with the department/organization and state to which his name would be sent was notified (Annexure A-2 and A-3).

10. The respondents have raised objection to condonation of delay mainly on the following grounds:-

(i) The applicant approached the Commission in 2017 after a long period from 30.05.2013 when the result of the applicant was withheld.

(ii) In following cases, Hon'ble Apex Court or Hon'ble High Courts, have dismissed the writ petitions/appeals on the ground of delay:-

- (a) W.P. (C) No. 8447 of 2015 and W.P. (C) 8542/2015 order dated 7.9.2015 of Hon'ble High Court, New Delhi.
- (b) Judgement of Hon'ble Apex Court in cases of K.B. Laxmiya Shetty and others Vs. State of Mysore and others (A.I.R. 1967 S.C. 993), Gyan Singh Vs. High Court Punjab & Haryana (A.I.R. 1980 S.C. 1894), Karnataka Power Corporation Ltd V.K. Thangappan (2006 (4) S.C.C. 322).
- (c) Orders dated 05.11.2015, 19.11.2015, 12.07.2013, 20.11.2015, 18.12.2015 and 22.01.2016 passed by Hon'ble Allahabad High Court.

11. In the case of order dated 04.09.2015 of Hon'ble Delhi High Court, the petitioner waited for a similar case which was decided on 14.12.2012, but the writ petition was filed in 2015 and delay was not explained. But in the

present case, the applicant has filed the OA immediately after order dated 19.07.2017 of Hon'ble Apex Court in a similar case, by which the dispute was finally resolved. Hence, the facts of both the cases are different.

12. In order dated 12.07.2013 passed by Hon'ble Allahabad High Court in **Writ Petition No. 37266 of 2013 – Harish Chandra Vs Union of India & 2 Ors**, the petitioner remained silent after final result was declared in 2011 and approached the Court after more than one and half years for which the Writ Petition was rejected on account of delay. In the present OA, the applicant waited for resolution of the legal dispute which was finally settled by the Hon'ble Apex Court vide order dated 19.07.2017. Prior to that he had challenged the show cause notice issued by respondent no. 2. Hence, the OA is factually distinguishable. **The Writ Petition No. 8447/2015 – Sishram Muval & Ors Vs. Union of India & Ors**, was dismissed by the Hon'ble Delhi High Court on account of delay. The facts of the present OA are different from the Writ Petition No.8447 of 2015. Similarly, the other cases cited by the respondents in the counter reply are distinguishable on facts from the present OA.

13. In this OA, the delay condonation application states that identical matter in respect of some other candidates were pending under litigation at Hon'ble High Court as well as Hon'ble Apex Court and the said dispute was finally resolved by the judgement dated 19.07.2017 (Annexure No. A-12 to the OA) of by the Hon'ble Apex Court. Thereafter, the applicant has approached this Tribunal in less than two months from the date of the judgment of Hon'ble Apex Court. The judgments cited by the respondents in objection are factually distinguishable from the present case. In none of the cases cited, the reason for delay in filing the petition was on account of

resolution of the identical dispute in Hon'ble Apex Court. We, therefore, consider the reasons furnished in delay condonation application to be satisfactory taking into account the facts and circumstances of this case and are not able to accept the objections to the delay condonation application submitted by the respondents.

14. In the circumstances of this case as stated above, the delay condonation application is allowed and the delay in filing the OA is condoned.

15. The respondents' counsel is directed to file their counter reply within four weeks time and the applicant to file rejoinder affidavit, if any, within two weeks thereafter.

16. List on 31.07.2018.

(GOKUL CHANDRA PATI)
MEMBER-A

(JUSTICE DINESH GUPTA)
CHAIRMAN

Arun..