

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-348/2015
MA-4436/2017**

Reserved on : 31.01.2018.

Pronounced on : 27.03.2018.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Sh. Naveen Kumar, 22 years
S/o Sh. Hukam Singh,
R/o VPO Thana Kalan,
Tehsil Kharkhoda,
Distt. Sonepat,
Haryana-131402.

..... Applicant

(through Sh. Ajesh Luthra, Advocate)

Versus

1. Staff Selection Commission through
Its Chairman,
Block No.12, CGO Complex,
Lodhi Road, New Delhi-3.
2. Commissioner of Police,
PHQ, MSO Building,
I.P. Estate, New Delhi.

..... Respondents

(through Sh. S.M. Arif, Advocate for R-1 and Sh. Amit Anand,
Advocate for R-2)

O R D E R

Ms. Praveen Mahajan, Member (A)

Briefly stated, the facts of the current O.A. are that the respondents published an advertisement in the Employment News/Rozgar Samachar dated 09.06.2012 for recruitment to the post

of Sub-Inspector (Executive) in Delhi Police in the year 2012. The last date of submission of forms was 06.07.2012. It was specified in the advertisement under the heading 'Scheme of Examination' that the examination will consist of a written exam (400 marks), PET/ME which will be of qualifying nature followed by an interview cum personality test (100 marks). The applicant applied in response to the advertisement and participated in the selection process. The applicant obtained 138.50 and 134 marks in first and second phase of the written examination i.e. a total 272.75. The applicant was called for the interview and the result was declared on 01.03.2013. In the said result, it was mentioned qua the applicant that his final result has been withheld. Aggrieved, he filed OA-1298/2013 before this Tribunal.

2. He states that, despite various opportunities, respondents did not file the reply but issued show cause notice dated 27.06.2014 with ulterior motives, proposing to cancel his candidature and debar him for three years on the false premise that he has resorted to malpractice/unfair means in the examination in association with 05 other candidates. It is submitted that same type of show cause notices have been issued by the SSC to other candidates of CGLE, 2012, which have been quashed by this Tribunal vide orders dated 14.07.2014 on the ground of frivolity and directions have been issued for appointment. The applicant submits that a perusal of the show

cause notice dated 27.06.2014 shows that no serious allegations have been made against him. Once he participated in the written exam, was awarded marks and also allowed to participate further based on which a final list was prepared, it is not understood as to how the respondents could resort to their own analysis just to harass him.

2. The applicant avers that the show cause notice is non-specific and move in the nature of a final decision. Still he submitted a reply to the same, explaining that he did not resorted to copying along with other candidates or indulged in any kind of unfair means in the examination. Not having received a positive response, the applicant has filed the current O.A. seeking the following relief:-

- “(a) Quash and set aside the impugned orders/action of the respondents placed at Annexure A/1.
- (b) Direct the respondents to further consider the applicant for appointment to the post of Sub-Inspector (Exe.) and appoint him as such with all consequential benefits including seniority and monetary benefits.
- (c) Award costs of the proceedings and
- (d) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

3. In reply filed on behalf of respondent No.1, it is submitted that Note-III of Para-9 of the Notice provides as under:-

“The Commission will be using a software to detect attempted irregularities in an examination Hall/Sub-Centre/Centre/State. The Candidates are advised to desist from use of any unfair method in the examination hall which will render them ineligible for appointment based on this recruitment and also lead to their debarment from Commission's examination in future.”

The examination was of objective type containing multiple choice questions each of them having four options and the candidates were to select the correct option from them. The applicant cleared the process of recruitment. After completion of the recruitment process, the Commission conducted a post examination scrutiny and analysis of the performance of the candidates with the help of IBPS.

3.2 The respondents state that IBPS is an autonomous body registered as a Public Trust under the Bombay Public Trust Act, 1950 and works as a Scientific and Industrial Research Organization under the Ministry of Science and Technology, Government of India to find out cases where candidates might have used unfair means to qualify in the objective type examination. The Institute is known for assessing the response of the candidates with statistical tools accurately, which is time tested. The IBPS has been following this scientific/statistical method for detecting the use of unfair means/malpractices in objective test by candidates for quite some time. The same method has been used in the instant examination conducted by the Staff Selection Commission. The Hon'ble High Court of Patna in its judgment dated 03.07.2013 in Civil Writ Petition No. 6185/2008 has stated that the methodology/formula developed by IBPS is based on a purely arithmetical calculation and no fault

can be found against the said formula. The experts of IBPS conducted such analysis and scrutiny in written examination papers held on 19.08.2012. By this methodology, it was revealed that the applicant (Naveen Kumar, Roll No. 2201001782) had resorted to copying along with another candidate Sh. Sanjeet Malik (Roll No. 2201028367) in Paper-II of SI (Exe.) in Delhi Police Exam, 2012.

3.3 The respondents further submit that they issued a show cause notice to the applicant on 27.06.2014. In the meanwhile, SSC filed an SLP No. 9019-9021/2015 in the Hon'ble Supreme Court in a similar matter of **Sudesh** challenging the decision of the Tribunal which had been upheld by the Hon'ble High Court. It was decided that suitable action will be taken in all such similar case after disposal of SLP in Hon'ble Supreme Court.

3.4 However, in a similar matter in W.P.(6285/2013)filed by a candidate of the said examination, the Hon'ble High Court issued order dated 22.09.2014, observing that:-

"To satisfy ourselves as to what material was available with the Respondents to take such a decision, they were directed to produce the relevant records.

The relevant records is produced by the Respondents today and on perusal of the same without expressing our view on the rationale and validity of reasons which led to cancellation and debarment of the Petitioner based on the post-examination analysis conducted by the Institute of Banking Personnel Selection, we are of the view that in the absence of any such material reflected in the Show Cause Notices dated 06.05.2013 and 31.05.2013, the said Show Cause Notices and the Order dated 15.01.2013 deserve to be quashed and we accordingly quash the same.

We, however, give an opportunity to the respondents to serve a fresh Show Cause Notice to the Petitioner, if they so desire, and the same should contain the exact reasons, based on which they found that the Petitioner had indulged in any kind of malpractice or unfair means during the examination. In that event, the Petitioner will have the right to file a reply and thereafter, the Respondents shall pass a speaking and reasoned order therein. Should the Petitioner feel aggrieved by the fresh order he will be at liberty to challenge the same."

In compliance of the Hon'ble High Court order the Commission started issuing detailed show cause notices furnishing the exact nature of copying to all similarly placed candidates.

3.5 The respondents have reproduced a copy of the post examination analysis containing the exact nature of copying indulged in by the applicant:-

"Paper-II: Naveen Kumar (Roll No. 2201001782)-Sanjeet Malik (Roll No.2201028367)

	Total Match	Right Right Match	Blank Blan Match	Wrong Wrong Match
E1	50	29	10	11
E2	44	40	3	1
E3	47	38	1	1
E4	45	33	0	12

The respondents further submit that high matching wrong answers and blank answers establishes collusion among the candidates.

3.6 It is averred that IBPS have been regularly conducting post examination analysis and scrutiny cancelling as well as debarring the candidature of candidates who have resorted to unfair means. They have also quoted decision of Hon'ble High Court of Delhi in

Varun Bhardwaj Vs. SBI & Ors., WP(C) No. 3707/2011 dated 06.02.2013 to justify their decision.

3.7 Reply on behalf of respondent No.2 has also been filed on the same lines.

4. During the course of hearing, learned counsel for the applicant Sh. Ajesh Luthra raised the issues already raised in the O.A. He submitted that a plain reading of the show cause notice dated 27.06.2014 shows that it is more in the nature of a final decision without specifying as to how it can be established that the charge of mal practice and unfair means is established against the applicant. He emphasized that there are many judgments where similar issue has been decided in favour of the applicant by the Co-ordinate Benches of the Tribunal.

5. Learned counsel for the respondents Sh. S.M. Arif reiterated the issues raised by the respondents in their counter. He submitted that the IBPS has been regularly conducting post examination analysis and their software has been used by many departments including SSC. He contended that there was no discrimination against the applicant and that his candidature has been rejected only on the basis of the Scientific Analysis conducted by IBPS and uniformly applied by the respondents.

6. We have gone through the facts of the case and considered the issue in entirety. We agree with the contention of the applicant that a *prima facie* reading of the show cause notice dated 27.06.2014 does not provide any clarity as to how the charge of mal practice/coping etc. is made out against the applicant. This issue has been dealt with in OA-3543/2014 (Mandeep Kumar Vs. SSC) on 25.02.2015 with other connected cases. It is relevant to reproduce an excerpt from para-14 of the said O.A. which states that:-

“....it is well nigh impossible to reply to a show cause notice which does not indicate to them the exact evidence of mal practice/unfair means and what the modus operandi of the department has been. This leads us to conclude that no useful purpose would be served in permitting the respondents to consider the reply of the applicants to the show cause notice and to take a view thereon and to pass any order.”

6.1 After the said order, much water has flown under the bridge. The applicant is now armed with the order of the Tribunal in OA-930/2014 (**Sudesh vs. SSC**) dated 30.07.2014, in para-4 of which, the observations of the Tribunal, in another O.A. decided on 22.11.2013 (para-24) are reproduced below:-

“24. All these OAs are pertaining to the CGLE-2012. The respondent-SSC has already conducted the CGLE-2013, and they may require to initiate process for the CGLE-2014 also in few months. It is not in any body's interest to linger the selection process undecided, for a longer period. In the peculiar circumstances of the case, and to save valuable time of the candidates, and in the larger interest, we quash all the impugned Show Cause Notices issued for cancellation of the candidature of the applicants for CGLE-2012, and also for debarment of all Commissions examinations for a period of five years. However, liberty is granted to the respondents to issue fresh individual Show Cause Notices by 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, and to pass appropriate speaking and reasoned orders in accordance with law. This exercise shall be completed as early as possible, but not later than, 60 (sixty) days from the date of receipt of a certified copy of this order."

Against the order of the Tribunal, SSC filed [WP(C) 9055/2014 and C.M. Nos. 20669-670/2014] in the Hon'ble High Court of Delhi, which has been dismissed on 19.12.2014. Against the order dated 19.12.2014 of Hon'ble High Court, SSC filed Civil Appeal Nos. 2836-2838/2017 in Hon'ble Supreme Court, which too has been dismissed on 19.12.2017.

7. In view of the aforementioned, we hold that the impugned show cause notice dated 27.06.2014 is bad in law and not sustainable. Accordingly, the same is quashed and set aside. The applicant, if otherwise found eligible and successful on merit, may be given all the benefits due to him as per law.

8. It is clarified that while doing so the respondents shall take action fully in consonance with the rules and instructions governing the subject. The said action shall be completed within a period of three months from the date of receipt of a copy of this order. The O.A. is accordingly allowed. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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