

**Central Administrative Tribunal
Principal Bench: New Delhi**

OA No.389/2014

Reserved on :13.02.2016
Pronounced on:09.08.2016

**Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)**

Pradeep Kumar, Roll No.2201003746
S/o Shri Ishwer Chand,
R/o C/o Dr. Pardeep Makkar,
H.No.17/10, Gurunanakpura,
Canal Camp, Panipat, Haryana. ...Applicant.

(By Advocate: Shri Nitin Kr.Gupta)

Versus

1. Staff Selection Commission,
Through its Chairman
Block No.12, CGO Complex,
Lodhi Road, New Delhi,
110003.
2. The Secretary-cum-Controller of Examination,
Staff Selection Commission,
Block No.12, CGO Complex,
Lodhi Road, New Delhi,
110003.
3. Regional Director, NR,
Staff Selection Commission,
Block No.12, CGO Complex,
Lodhi Road, New Delhi,
110003. ...Respondents.

(By Advocate: Shri S.M.Arif)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA has approached this Tribunal because he is aggrieved by the action of the respondents in having passed the impugned order dated 24/30.12.2013 (Annexure A-1) cancelling his candidature for the examination of 2011 in which he had appeared, and they have also debarred him for a period of five years from the examinations conducted by the Respondent No.1, Staff Selection Commission (SSC, in short), which order, he has alleged, is unjust, illegal and in violation of principles of natural justice.

2. The facts of the case lie in a very narrow compass. An advertisement was issued by the SSC on 28.05.2011 (Annexure A-2) for conduct of an examination for recruitment to the post of Sub Inspectors in Central Police Organizations, Assistant Sub Inspectors in Central Industrial Security Force and Intelligence Officers in

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National Crime Bureau (NCB, in short) 2011. The published date of the examination was 28.08.2011, and the closing date for receipt of the applications was 24.06.2011. The applicant applied for and appeared at the said examination, and the result was declared by the respondents on 20.09.2011. Since the applicant had secured 115 marks, whereas the cut off marks for the 'UR' category for the post of Intelligence Officers in NCB was 115.50 marks, his name was included in the list of candidates eligible to appear at the Physical Eligibility Test (PET, in short)/Medical Examination. Though he was eligible for appointment to the other posts also, yet he did not appear at the physical test, as he was interested only in the post of Intelligence Officer in NCB. He did not thereafter appear at the interview-cum-personality test also for the other posts for which he had been called for provisionally by the respondents.

3. Later on, the Respondent No.3 issued a Show Cause Notice dated 31.05.2013, in which it was stated that after having undertaken regular post examination scrutiny and

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analysis of performance of the candidates in objective type multiply choice question papers with the help of experts, incontrovertible and reliable evidence had emerged during such scrutiny and analysis that the applicant had resorted to copying in the said papers in association with other candidates, who also took the same examination. In the said Show Cause Notice, the applicant was given 10 days' time to show cause as to why his candidature should not be cancelled, and as to why he may not be debarred for five years from appearing at Commission's examinations due to his indulgence in unfair means in the examination.

4. The applicant replied to the said Show Cause Notice to the Respondent No.3 (Annexure A-5) on 24.06.2013, totally denying having indulged in any unfair means, or having resorted to copying, and submitted that the Show Cause Notice had been issued on the basis of presumptions and assumptions and without any evidence. He further pointed out that even though he had qualified for the post of Intelligence Officer other than in

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NCB, and had been called for physical tests, as he was not interested in other posts, he did not appear in the physical test, and, therefore, the question of calling him to appear in the interview-cum-personality test for those other posts, which is after the physical test, does not arise. He, therefore, prayed that the Show Cause Notice may be withdrawn, and reiterated his stand that he had answered all the questions on his own. The applicant followed it up by another letter addressed to the Respondent No.3 dated 08.08.2013 through Annexure A-6, reiterating his contentions that when he had not appeared at the physical test itself, on account of his not having qualified for the post of IO in NCB, in which he was interested, and since he was not interested in other posts, and he did not appear in the physical test, the question of calling him for the interview-cum-personality test for those other posts does not arise.

5. However, the respondents thereafter issued the impugned order dated 24/30.12.2013. The applicant made personal representations to the respondents on

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02.01.2014 and 24.01.2014, but the respondents did not rectify their alleged errors in the impugned order.

6. In filing this OA, he has taken the ground that the impugned order, including debarment of his candidature, is illegal, arbitrary and unjustified, and violates his rights guaranteed under the Constitution. He has further taken the ground that he has been a meritorious candidate, and he has never been held responsible for any misconduct, and that he was never called for any interview, and not having qualified for the same, therefore, the Show Cause Notice issued to him is bad in law, as it calls upon him to explain the circumstances, which had never occurred. He has further submitted that the respondents have failed to point out any substance or evidence on the basis of which he has been debarred for five years from appearing in the examinations of the respondents, and merely mentioning of term "incontrovertible and reliable evidence" cannot be a substitute for, or satisfy the principles of natural justice, leading to his debarment. He has further submitted that the respondents have

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failed to point out the names of the candidates with whom he has alleged to have indulged to copying, which allegation of copying, is without any basis, and such copying at the time of examination ought to have been noticed by the invigilator or other officers on duty. He has further submitted that had there been any issue regarding the eligibility or conduct of the applicant during the examination, the applicant would have been debarred at the threshold, or would never have been called for the physical test itself. He has taken the ground that first the respondents have considered and selected him, and later on arbitrarily cancelled his candidature, and also debarred him like an offender, but without any basis.

7. In the result, the applicant has prayed for the following reliefs:

- "a. Direct the Respondents to set aside the Order dt. 24.12.2013 issued against the Applicant.
- b. remove the name of Applicant from the list of candidates debarred from the examinations of Respondents for five years and declare the Applicant eligible to

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be appointed in any other examinations pursued as per his merit;

c Pass any such other and further order(s)/directions as this Hon'ble Court may deem fit and proper."

8. He had also prayed for interim relief, which was considered by a Coordinate Bench on 17.04.2014, and the respondents were directed to allow the applicant to participate in their examination going to be held on 27.04.2014 on provisional basis, but further directing that the result will be kept in sealed cover, and the same shall not be declared until further orders of this Tribunal.

9. The respondents filed their counter reply on 09.12.2014. In Paras 'B' and 'C' of the reply, the respondents had stated as follows:

"B That the said 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.

C That the applicant appeared in the written part of the aforesaid Examination and was provisionally called for the PET/Medical Examination. He did not appear for the

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same. He was therefore not called for the interview."

10. They had thereafter defended their action on the basis of Post Examination Scrutiny and Analysis of the performance of the candidates in the question papers of the instant Objective Type Multiple Choice Examination, and thereafter "incontrovertible and reliable" evidence having emerged that the applicant had used unfair means with another candidate Shri Ajit Singh in Paper-II of the relevant examination. It was further submitted that such post examination analysis and scrutiny had been conducted through Professional Recruitment bodies like IBPS, and, therefore, they had cancelled the candidature of candidates who had resorted to unfair means.

11. The respondents thereafter cited a judgment of the Hon'ble Delhi High Court in WP(C) No.3707/2011 vide order dated 06.02.2013 in **Varun Bhardwaj vs. State Bank of India & Others**, in which such post

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examination analysis and scrutiny through specialized institution had been upheld, by stating 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 the respondent no.1 uniformly applies the IBPS test, Courts would prefer not to interfere for any one of the candidate who gives the examination inasmuch as this would mean to quashing of the application of the IBPS test which is used by the 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 the respondent No.1 is not acting arbitrarily there is no reason for the Court to interfere.

6. In view of the above, once it is found that there is no discrimination against the petitioner inasmuch as the IBPS Scientific Test is uniformly applied by the bank, and also the fact that the probability is so negligible of various wrong answers being identical for a pair of persons inasmuch as five options are given in the objective type test, I do not feel in the facts and circumstances of the case that Courts

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should substitute its own opinion for that of an expert body.

7. There is hence no merit in this petition, which is accordingly dismissed, leaving the parties to bear their own costs.”

12. It was further submitted by the respondents that with the advancement of the technology, it has become easier for the candidates to resort to unfair means, and the scrutiny undertaken by them leads to “incontrovertible and reliable” evidence. It was further submitted that since applicant’s reply to the Show Cause Notice was not found to be satisfactory, the respondents had cancelled his candidature, and also debarred him for five years through the impugned order. They had further reiterated the similarity in the answer papers of the applicant, and that of one Shri Ajit Singh, because of which the respondents had arrived at a conclusion of his having indulged in copying in Paper-II.

13. It was submitted that even though the applicant had been found to have indulged in unfair means with another candidate Shri Ajit Singh, he was given a fair

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chance to explain his position. It was further submitted that since the applicant has not been able to explain his position satisfactorily, he is not entitled for any indulgence from this Tribunal. It was, therefore, submitted that since he has no case, the present OA is liable to be rejected with heavy costs.

14. No rejoinder was filed in this case.

15. Heard. During the course of arguments, learned counsel for the applicant relied upon the Coordinate Bench judgment dated 09.5.2013 in OA No.1497/2012 with connected OA No.2573/2012, both of the same individual Rakesh Kumar Yadav, in which the Coordinate Bench had come to the conclusion that there was no record of indulgence in any sort of malpractice, and, therefore, cancelling of his candidature was set aside, as the respondents had failed to show any proof that the applicant had carried Mobile Phone or any other electronic gadget to the examination hall. The matter had been carried before the Delhi High Court in WP(C)

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No.7416/2013, and the Delhi High Court had, after examining the Order of the Coordinate Bench, passed the following orders:

"13. In the absence of any evidence annexed with the reply, the Central Administrative Tribunal called for all relevant record available with the Commission and has noted in the impugned order that there is no evidence whatsoever of the invigilator at the examination hall booking Rakesh Kumar Yadav for possessing a mobile phone or an electronic gadget. The Tribunal has noted that no contemporaneous record whatsoever was prepared pertaining to respondent possessing mobile phone or an electronic gadget.

14 to 18 xxxxx (not reproduced here).

19.....Learned counsel for the petitioner concedes that the respondent did not take with him any mobile phone to the examination hall.

20. Advising the Commission to set its house in order, we dismiss the writ petition noting that the nature of the alleged unfair means used as per the charge in the show cause notice dated May 20, 2012 was never indicated to the respondent. It was not highlighted even before the Central Administrative Tribunal. As regards the show cause notice dated April 09, 2012, learned counsel for the petitioner concedes that the said show cause notice was issued erroneously.

21. These are our reasons to dismiss the writ petition in limine."

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16. On the other hand, learned counsel for the respondents heavily relied upon Paras 5, 6 and 7 of the judgment of the Hon'ble High Court in **Varun Bhardwaj vs. State Bank of India & Others** (supra), which have been reproduced above.

17. We have given our anxious consideration to the facts of the present case, and the judgments relied upon by both the sides. In **Varun Bhardwaj vs. State Bank of India & Others** (supra), the Single Bench of the Delhi High Court had upheld the post examination scrutiny system adopted by the State Bank of India, which was apparently the same test, as adopted by the respondents of the instant case also. At the same time, in the judgment of the Division Bench of the Delhi High Court in **Staff Selection Commission & Others vs. Rakesh Kumar Yadav** (supra), in which in the absence of any alleged unfair means used having been indicated in the Show Cause Notice, it was held by the Hon'ble Delhi High Court that the Show Cause Notice was issued erroneously

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and the Writ Petition had been dismissed *in limine*, as reproduced above.

18. In the instant case, the impugned order dated 24/30.12.2013 has been passed after having considered the reply of the applicant to the Show Cause Notice dated 31.05.2013. Unnumbered paras 1, 2 and 4 of the said Show Cause Notice had stated as follows:

“1. Whereas Mr./Ms.Pradeep Kumar son/daughter of Shri Ishwar Chand residing at the aforesaid address, was a candidate of SI in CAPFs, ASI in CISF & IO in NCB Examination, 2011 notified in the Employment News dated 28.05.2011.

2. Whereas Mr./Ms.Pradeep Kumar was provisionally called for interview cum personality Test of the aforesaid examination.

3. xxx (Not reproduced here).

4. Whereas as informed by SSC (Hqrs) incontrovertible and reliable evidence has emerged during such scrutiny and analysis that Mr./Ms.Pradeep Kumar had resorted to copying in the said papers in association with other candidates, who also took the same examination.”

19. The applicant had in his reply dated 24.06.2013 (Annexure A-5) and further reply dated 08.08.2013

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(Annexure A-6) contended that the contents of the Show Cause Notice were wrong, as when he had never appeared at the physical test, the question of calling him in the interview-cum-personality test did not arise, which is conducted only after the hurdle of physical test is over, and had opposed the statement made in Para-2 of the Show Cause Notice dated 31.05.2013, as reproduced above, that he was provisionally called for interview-cum-personality test while and the respondents have themselves, in Para 'C' of the counter reply, as already reproduced above, stated that since he did not appear for the PET/Medical Examination, he was, therefore, not called for the interview. Therefore, it is clear that the Show Cause Notice dated 31.05.2013 was itself defective.

20. However, in Paras 6 and 7 of the impugned order, the respondents have arrived at the conclusion only by the post-examination analysis and scrutiny in respect of copying, which was also mentioned in Para-4 of Show Cause Notice dated 31.05.2013 (Annexure A-4), and has

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been taken to be the basis for passing the impugned order. The applicant had, in his reply dated 24.06.2013 to the Show Cause Notice, stated as follows:

"The allegations regarding copying with other candidates is vague as neither the Roll Number of such candidates have been given nor the place of sitting in the centre to prove the allegation of indulging in copying has been given. This allegation can be made and substantiated by giving details of candidates with Roll Number and the questions attempted by them. However, no such details have been given in the notice except making vague allegations. In fact, the impugned SCN has been issued for some extraneous reasons and without considering the effect of the same on my career.

I humbly pray to you good-self to withdraw the aforesaid impugned SCN dated 31.05.2013 as the same is not based on correct facts. I have answered all the questions in the written test on my own. How could the candidates coming from different areas and meeting for the first time could copy each other in the presence of invigilator/examiner. It is not clear from the notice on what basis and under which provisions the Commission undertook regular post examination scrutiny and analysis of performance of the candidates and opined for cancellation of candidature. Accordingly, it is again humbly prayed that the SCN may kindly be withdrawn."

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21. It is clear that the respondents in Para 'F' named another candidate Shri Ajit Singh, with whom they have alleged that the applicant had resorted to use of unfair means, but his name and number had not been mentioned in Para-4 of the Show Cause Notice dated 31.05.2013, as reproduced by us above.

22. Therefore, there was an error in Para-4 of the Show Cause Notice dated 31.05.2013 (Annexure A-4) also. However, the applicant has in this OA not laid a challenge to the Show Cause Notice dated 31.05.2013, to which he had already replied twice on 24.06.2013, and on 08.08.2013, and has only challenged the final order dated 24/30.12.2013.

23. In respect of the contention of the respondents in Para-6 of the impugned order, we are bound by the Single Bench judgment of Hon'ble Delhi High Court in **Varun Bhardwaj vs. State Bank of India & Others** (supra), and unable to provide any relief to the applicant, and in terms of the Division Bench judgment of the Delhi

High Court in the case of **Staff Selection Commission & Others vs. Rakesh Kumar Yadav** (supra) which had flowed from entirely an different set of facts, as contained in the Show Cause Notice, which had been admitted to be erroneous by the learned counsel for the petitioner before the Hon'ble Delhi High Court. For the same reason, we are also not bound by the order dated 09.05.2013 passed by the Coordinate Bench of this Tribunal in OA No.1497/2012 with connected OA No.2573/2012, both of the same individual Rakesh Kumar Yadav, in view of difference in the circumstances and facts in the present case from that case.

24. In the result, in terms of the law laid down by the Delhi High Court's judgment dated 06.02.2013 in WP(C) No.3707/2011 (supra), the present OA is rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/

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