

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1000/2018
MA 1122/2018

Reserved on: 15.03.2018
Pronounced on:

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)

Mamta Kumari, (Appointment) Group `C'
Roll No. 2201012904
Aged about 29 years,
D/o Shri Amir Singh,
R/o VPO Ishapur Kheri,
Tehsil Gohana, Distt. Sonapat-131301
Haryana

... Applicant

(Through Ms. Priyanka Bhardwaj for Shri M.K. Bhardwaj,
Advocate)

Versus

1. Union of India
Through Secretary
Department of Personnel & Training,
North Block, New Delhi
2. Staff Selection Commission
Through its Chairman,
Block No.12, CGO Complex,
Lodhi Road, New Delhi
3. The Regional Director,
Staff Selection Commission,
Block No.12, CGO Complex,
Lodhi Road, New Delhi

... Respondents

(Through Shri Gyanendra Singh, Advocate)

ORDER

Mrs. Jasmine Ahmed, Member (J)

MA 1122/2018

For reasons stated in MA, we hold that there is no delay in filing the instant OA. MA 1122/2018 is thus allowed.

OA 1000/2018

The applicant appeared in the Combined Graduate Level Examination 2012. After completion of written test, interview etc., the respondents declared the final result on 8.02.2013 and the applicant was declared selected on the basis of her merit. However, all of a sudden, the respondents issued Show Cause Notice dated 27.05.2013 to the applicant stating therein that she had resorted to copying with other candidates. The applicant submitted her reply to the said Notice on 10.06.2013. She filed OA No.2046/2013, which was allowed by this Tribunal on 22.11.2013 along with other connected cases by setting aside the said Show Cause Notices with liberty to issue fresh notices. Thereafter, the respondents issued another Show Cause Notice dated 16.01.2014 to the applicant along with other candidates, repeating the same contents. The applicant submitted her reply thereto on 4.02.2014 with the request to withdraw the same being contemptuous. The respondents, however, did not pass any order on the said Notice on the ground that this

Tribunal had already set aside the same Show Cause Notices issued to other similarly placed candidates along with the applicant and the said order of the Tribunal dated 30.07.2014 in OA 930/2014 with connected cases was challenged before the Hon'ble High Court of Delhi in Writ Petition No.9055/2014. The said Writ Petition was dismissed by the Hon'ble High Court vide judgment dated 19.12.2014. Even after dismissal of the said Writ Petition, the respondents did not finalize the claim of the applicant on the ground that the said judgment was challenged before the Hon'ble Apex Court. The Hon'ble Apex Court granted interim stay in the SLP preferred against the judgment of the Hon'ble High Court dated 19.12.2014. In view of the stay granted by the Hon'ble Apex Court, all similar cases filed before the Tribunal and pending consideration before SSC were directed to be kept pending till disposal of the aforementioned case by the Hon'ble Apex Court. Finally, the Hon'ble Apex Court dismissed the Civil Appeal No.2836-2838/2017 filed against the judgment of the Hon'ble High Court of Delhi dated 19.12.2014 vide its order dated 19.07.2017. The respondents thereafter filed Review Petition before the Hon'ble Apex Court and in view of pendency of said Review Petition, the claim of the applicant as well as other similarly placed candidates was not considered. The said Review Petition was also dismissed by the Hon'ble Apex Court vide order dated 31.10.2017. After dismissal of Review Petition, the respondents made statement

before this Tribunal in the case of similarly placed persons that they would finalize the claim of selected candidates who were issued Show Cause Notice for cancellation of candidature as per the order passed by the Tribunal on 30.07.2014. Thereafter, the respondents cancelled the Show Cause Notices of all the candidates who were party in connected OAs and declared their final result on 15.01.2018. However, neither the Show Cause Notice of applicant was treated as invalid as done in case of other similarly placed persons nor her name was included in the said list because she was not party in any of the OAs decided by this Tribunal. While doing so, the respondents ignored the representations submitted by the applicant in 2015 as well. Aggrieved, the applicant submitted representation to the respondents on 8.02.2018 for declaring her result. However, the respondents have not considered the said representation till date. Hence this OA.

2. It is stated by the learned counsel for the applicant that the action of the respondents in not declaring the result of the applicant along with other similarly placed persons who were also issued Show Cause Notice along with the applicant in January 2014 is discriminatory and violative of the order of this Tribunal dated 30.07.2017 as upheld by the Hon'ble High Court and recently by the Hon'ble Apex Court on 19.07.2017. It is further stated that when the respondents have declared the result of all the candidates who were issued Show Cause

Notice in 2014 along with the applicant, it is not open to them to discriminate with the applicant merely because she was not a party in OA 930/2014 and other connected OAs. Reliance was also placed on the judgment of the Hon'ble High Court of Delhi in W.P. (C) No.9649/2015, **Vivek Kumar Vs. Staff Selection Commission & ors.** Candidature of the petitioner in the said case also was cancelled on the allegation of being found indulged in unfair means in the said examination. Relying on its own judgment in **Staff Selection Commission & anr. Vs. Sudesh**, 2014 SCC OnLine Del 7354, further affirmed by the Hon'ble Apex Court in Civil Appeal No(s).2836-2838/2017, titled **Staff Selection Commission, Thr. Its Chairman & anr. Vs. Sudesh**, the Hon'ble High Court of Delhi disposed of W.P. (C) No.9649/2015 (supra) with direction to the respondents to reconsider the impugned order and to convey its outcome to the petitioner therein.

3. Shri Gyanendra Singh, learned counsel for the respondents vehemently opposed the contentions of the learned counsel for the applicant and stated that the applicant had resorted to malpractice/unfair means in association with 25 candidates in Paper-I of Tier-II and with other 26 candidates in Paper II of Tier II. Based on such evidence, the SSC cancelled her candidature and debarred her for a period of five years.

4. It was also contended by the learned counsel for the respondents that the applicant is not at liberty to approach the Tribunal as and when she likes. In this regard, he relied upon the judgments of the Hon'ble Apex Court in **State of Uttaranchal and another Vs. Shiv Charan Singh Bhandari and others**, (2013) 12 SCC 179 and **U.P. Jal Nigam and another Vs. Jaswant Singh and another**, (2006) 11 SCC 464 and stated that in these two judgments, the Hon'ble Apex Court has held that delay and laches have to be examined first by the Court before taking cognizance of the main issue.

5. We have gone through the judgment in the case of **State of Uttaranchal** (supra). It is seen that the respondents therein had approached the Court for grant of notional promotion from the day their juniors were promoted, after two decades. Hence, the Hon'ble Apex Court held that it was a stale claim and the claim for notional promotion was denied. In the case of **U.P. Jal Nigam** (supra), the Hon'ble Apex Court has categorically made out a distinction between persons vigilant and non-vigilant and held that when a person is not vigilant of his rights, he cannot be heard after a long delay on the ground that same relief should be granted as was granted to the persons similarly situated, who were vigilant of their rights. Thus both the cases are distinguishable from the case in hand as the case in hand pertains to fresh appointment and the issue was sub judice before the Hon'ble High Court and thereafter before the Hon'ble Apex Court

which has been finally decided only on 19.07.2017. It is also not the case here that the applicant was not vigilant about her rights as she immediately after receipt of Show Cause Notice filed her reply. It is the respondents who did not take any action on the reply filed by her. Accordingly, both the cases cited by the respondents are distinguishable in character qua the case in hand.

6. We have heard the learned counsel for the parties and perused the pleadings available on record.

7. We are in agreement with the learned counsel for the applicant that the case in hand is squarely covered by the judgment of this Tribunal dated 30.07.2014 in OA 930/2014, further upheld by the Hon'ble Delhi High Court and the Hon'ble Apex Court in Civil Appeal No(s).2836-2838/2017. Thus, the Show Cause Notice issued to the applicant herein dated 16.01.2014 necessarily has to be quashed.

8. Accordingly, the OA is allowed and the Show Cause Notice issued to the applicant dated 16.01.2014 is quashed and set aside. The respondents are directed to declare the result of the applicant and if she was successful then allocate to the applicant service for which she has been found eligible. We clarify that while doing so the respondents shall take action fully in consonance with the rules and instructions governing the subject. The afore-noted action shall be

completed within a period of three months from the date of receipt of a copy of this order. No costs.

(Praveen Mahajan)
Member (A)

(Jasmine Ahmed)
Member (J)

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