

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

**OA-2795/2016
MA-2507/2016**

Reserved on : 07.03.2018.

Pronounced on : 10.04.2018.

Hon'ble Mr. Raj Vir Sharma, Member (J)

Hon'ble Ms. Praveen Mahajan, Member (A)

1. Sh. Ashish Gupta aged about 27 yrs
S/o Sh. Kailash Prasad Gupta,
R/o RZ-76B Street No. 3, Dada
Chatriwala Marg, Raj Nagar-I, Palam
Colony, New Delhi-110045.
2. Sh. Sushil Kumar aged about 33 yrs
S/o Sh. Mohan Lal,
R/o RZB-158 Gali No. 7,
New Janakpuri, Pankha Road,
New Delhi-110059.
3. Sh. Manish Singh aged about 24 yrs
S/o Sh. Vijay Singh,
R/o RZ-533 Street No. 19, Kailash Puri
Extn., Palam Colony, New Delhi-110045.
4. Ms. Babita, aged about 23 yrs
D/o Sh. Jagbir Singh,
R/o RZ-5 Rajiv Vihar, Near New Anaj
Mandi, Najafgarh, New Delhi-110043.
5. Sh. Amit Sehrawat aged about 23 yrs
S/o Sh. Satya Parkash,
R/o H.No. 34, Village Tilangpur Kotla,
Najafgarh Road, New Delhi-110043.
6. Sh. Amit Khatri aged about 23 yrs
S/o Sh. Dharamvir Khatri,
R/o H.No. 29, Village Shahpur Garhi,
Narela, Delhi-110040.
7. Sh. Sumit Sehrawat aged about 23 yrs

S/o Sh. Satya Parkash,
R/o H.No. 34, Village Tilangpur Kotla,
Najafgarh Road, New Delhi-110043.

8. Sh. Akshay Rana aged about 20 years
S/o Sh. Virender Singh,
R/o H.No. 428, V.P.O. Qutabgarh,
Delhi-110039.
9. Sh. Arun Lamba aged about 25 yrs
S/o Sh. Surender Singh,
R/o H.No. 386, Lamba Pana, Near
MCD School, V.P.O Qutabgarh,
Delhi-110039.
10. Sh. Ashok aged about 26 yrs
S/o Sh. Satbir,
R/o H.No. 164, V.P.O. Kair,
Najafgarh, New Delhi-110043.
11. Sh. Bhupender Singh aged about 37 yrs
S/o Sh. P.S. Kanyal,
R/o 1022 A Block, Laxmi Garden, Loni
Ghaziabad, UP-201102.
12. Sh. Amit aged about 22 years
S/o Sh. Vijay Kumar,
R/o H.No. 227, V.P.O. Chhattera
Bahadur Pur, Distt. Sonapat,
Haryana-121103.
13. Sh. Vinay Panwar aged about 20 yrs
S/o Sh. Vinod,
R/o VPO Saidpur, The: Kharkhoda,
Distt. Sonapat, Haryana-131402.

..... Applicants

(through Sh. Ajesh Luthra, Advocate)

Versus

1. Union of India through
The Secretary,
Ministry of Communication and IT,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.

2. The Chief Postmaster General,
Dak-Tar Bhawan,
G.P.O. Parliament Street,
New Delhi-110001.

..... Respondents

(through Sh. Vijay Kumar Sharma, Advocate)

O R D E R

Ms. Praveen Mahajan, Member (A)

The applicants have filed the current O.A. seeking the following relief:-

- “(a) To quash and set-aside the order of cancellation of examination dated 14/10/2015 issued by the respondents.
- (b) To call for the records and to see the real motive behind the cancellation of examination.
- (c) To direct the respondents to appoint the applicants who are declared successful in the examination and to accord seniority to them as per rules and at par with their counter parts who have joined already in various parts of the country.
- (d) Award costs in applicant's favour.
- (e) Any other relief or order in applicant's favour which this Hon'ble Tribunal considers appropriate in applicant's favour, in the facts and circumstances of this case.”

2. Respondents issued advertisement for filling up of posts of PA/SA DR vide File No. A-34012/10/2014-DE online on 21.02.2014 on all India basis denoting the state-wise vacancy position. The applicants applied for the said posts online from 21.02.2014 to 29.03.2014 as per the cut-off dates indicated in the advertisement. On 14.04.2014, the applicants received online call letters and admit cards for the written exam to be held on 27.04.2014. They appeared

in the written test in their respective examination centres on 27.04.2014. On 11.03.2015, the respondents updated on their website that the examination held for the posts of PA/SA DR stands cancelled without intimating any reason for the said action. On 22.03.2015, the applicants appeared in the re-examination as they were intimated by the respondents. On 15.05.2015, the applicants cleared the fresh written exam and were called for appearing in the typing test. The applicants appeared in the typing test from 26.05.2015 to 29.05.2015. On 02.09.2015, the applicant sought information about their result under RTI. On 28.09.2015, they received the reply to the RTI informing them that the "result was under process".

3. The applicants submit that many other similarly placed candidates have been appointed and have joined in Haryana, Kerala, Rajasthan, Gujarat, Uttarakhand and Maharashtra etc. Applicants filed OA-4655/2015 before this Bench of CAT praying for declaration of the result of the examinations. In February, during the pendency of the OA, the applicant came to know that re-examination has been cancelled vide respondents letter dated 14.10.2015. On 23.07.2016, the applicants withdrew OA-4655/2015 with liberty to file a fresh OA.

3. The applicants have submitted that the action of the respondents is illegal and arbitrary. They also submit that their case is covered by the decision of Ahmedabad Bench of CAT in OA Nos. 85/2016, 100/2016 and 478/2016. They have also relied on the following decisions of Apex Court:

- (i) **Union Of India and Ors. vs Joseph P. Cherian**, Appeal (Civil) No. 23/99 dated 26.09.2005.
- (ii) **Maharashtra State Road Transport Corporation & Ors. Vs. Rajendra Bhimrao Mandve**, Appeal (Civil) No. 1492/2000) dated 20.11.2001.
- (iii) **State of Bihar Vs. Secretariat Assistants**, 1994 AIR 736.

4. Respondents without disputing the facts of the case, have stated that based on the result of investigation of complaints of mal practices by some candidates, examination held on 27.04.2014 was cancelled vide order dated 11.06.2014 of the competent authority. It is further submitted that out of 22 circles, examination held in 11 circles was cancelled as a result of investigation on the complaints. Appointments were allowed in 10 circles wherein no vigilance angle was found to have been established in the fair conduct of the PA/SA examination. It is also submitted that the decision of Ahmedabad Bench of CAT relied upon by the applicants has not attained finality. The respondents have cited the decision of Hon'ble Supreme Court in **Civil Appeal No. 10513/2016** (Monu Tomar Vs. UOI & Ors.) dated

13.07.2017 and contended that the applicants do not deserve any relief.

5. We have gone through the facts of the case and considered the rival submissions of both the sides.

6. The respondents have cancelled the re-examination held on 14.10.2015 "as a matter of abundant caution" in 11 circles whereas appointments have been allowed in 10 circles. No specific allegation against the applicants has been mentioned. The competent authority has ordered the cancellation based on complaints of mal practice by some of the candidates.

7. During the course of hearing, both the counsels raised the submissions made in the O.A. and rebutted in the counter. The learned counsel for the applicants, Sh. Ajesh Luthra submitted that the respondents have acted arbitrarily by cancelling the examination dated 14.10.2015 only in respect of 10 circles whereas their counterparts have been allowed to join at other places. He emphasized that the applicants have already been made to appear in the re-examination held on 22.03.2015 and should not be made to bear the stress and undergo the same exam time and again for no fault of theirs. By this action of the respondents, he argued, some of the applicants might even get hit by age bar and they will not be in a position to apply for any other government job if

the Court does not step into consider their prayer urgently. Sh. Luthra stated that the matter is also covered by a recent judgment of CAT, Ahmedabad Bench in OA No. 85/2016, OA-100/2016 and OA-478/2016 where the Tribunal has quashed the order of cancellation of examination by order dated 30.03.2016.

8. The learned counsel for the respondents Sh. Vijay Kumar Sharma strongly repelled these arguments and emphasized that re-examination in some of the circles like Delhi and H.P. were held by the same agency whose role in fair conduct of the exam was now under cloud. The competent authority, as a matter of abundant precaution thus deemed it appropriate to cancel the re-examination itself.

9. On going through the facts of the case, we are not convinced about the reasoning advanced by the respondents for issuing the impugned order. Even the respondents admit that the action is on merely account of "abundant precaution". In our view, cancelling the exam, selectively, only for certain centres gives an (unintended) edge to the candidates of those circles where the exam has not been cancelled and (reportedly), appointment letters have also been issued.

10. The respondents have relied upon the order of the Hon'ble Supreme Court in **Civil Appeal No. 10513/2016**, wherein it has been ordered that:-

".....the entire examination was not necessarily vitiated but some persons who are suspected of having used malpractices in the examination of Postal Assistant/Sorting Assistant in five circles, viz., Uttarakhand, Rajasthan, Chhattisgarh, Haryana and Gujarat have actually been identified. The respondents will proceed against them in accordance with law but since they are quite a few in number, a formal show cause notice is dispensed with. However, they may be personally called and explained the allegations against them and given some reasonable time of about a week or ten days to give their reply to the allegations and then a final decision may be taken.

Those persons who are not suspected of having committed any malpractices and who have undergone the prescribed courses may be reinstated with all consequential benefits and 50% back wages with liberty to the respondents to take action against them in case subsequently it is found in the investigation that they have indulged in some malpractices.

We make it clear that the respondents are at liberty to take action against those persons who have violated the terms of the examination such as having appeared in more than one centre. Such violations will also be treated as malpractice.

We further make it clear that this order will not ensure to the benefit of those persons who have not been given appointment letters. However, we also make it clear that those candidates who have not completed the course but were in the process of completing the course until the impugned action was taken may be permitted to complete the course/training provided they are not suspected of any malpractice.

The appeals and special leave petitions stand disposed of."

These directions of the Apex Court also confirm that the entire examination was not necessarily vitiated. The respondents have been given liberty to take action against those persons where mal practice stands established. In respect of others, directions have been given to proceed as per law.

11. In view of the foregoing and in the absence of specific allegations of mal practice against the applicants, the order dated 14.10.2015, cancelling the examination, in respect of PA/SA DR Examination, 2014, only for some of the Circles is bad in law and not sustainable. The same is, therefore, quashed and set aside. The respondents are directed to process and finalize the selection process of the applicants, in the aforesaid Circles, as per law. This exercise may be completed expeditiously. The O.A. is accordingly allowed. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

/Vinita/