

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No./100/2080/2015

New Delhi this the 9th day of December, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)

HON'BLE MR. P.K. BASU, MEMBER (A)

Tushar Kesharao Deshmukh
Aged-39 years,
S/o. Shri Kesharao Deshmukh
R/o. New Khetan Nagar, Kaulkhed,
At Post-Gandhinagar, Akola
Ta-Distt. Akola-444004
Maharashtra. ...Applicant

(Argued by: Shri S.K. Rungta for Shri Prashant Singh,
Advocates)

Versus

1. Union Public Service Commission
Through Secretary,
Dholpur House,
Shahjahan Road,
New Delhi-110 003.
2. Union of India
Through Secretary,
M/o. Personnel, P. G. & Pensions
North Block,
New Delhi.Respondents

(By Advocate: Mr. Ravinder Aggarwal for R-1 (UPSC) and
Mr. Ravinder Kr. Sharma for R-2 (DOP&T))

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The matrix of the facts & material, culminating in commencement, relevant for deciding the core controversy involved in the instant O.A, and expounded from the record, is that, the applicant Shri Tushar Kesharao Deshmukh, had earlier applied and appeared in Civil Services Examinations,

held in the years 2001, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2012 & 2013, but remained unsuccessful. Thereafter, the respondent No.1, Union Public Service Commission (UPSC), advertised and notified 1291 vacancies for Civil Services Examination, 2014, vide impugned advertisement dated 31.05.2014, out of which, 26 vacancies were stated to have been reserved for person with disabilities, as per statutory rules notified by Department of Personnel and Training of Central Government.

2. Sequel, the applicant claiming, himself to be “Hearing Impaired Person” and entitled to the benefit of reservations in terms of Section 33 of ‘The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter to be referred as “the PWD Act”), has also again applied and appeared in Civil Services Examination, 2014, as per Roll No.583684/Admit Card (Annexure-E Colly.).

3. After clearing Civil Services Preliminary Examination, he appeared and was stated to have been qualified as Civil Services Main Examination, 2014. He was an OBC and Ph-III (Deaf and Mute) category candidate. On scrutiny of application, it revealed that applicant had already availed more attempts than permissible to him, but he has kept concealed the fact that he had also appeared in the Civil Services Examination of the years 2009, 2010 and 2012. In fact, he appeared in CS Preliminary Examination 11 times including CS Preliminary Examination, 2014, which was not legally permissible.

4. As a consequence thereof, the UPSC issued the impugned notice (SCN) dated 18.03.2015 (Annexure A) to show cause as to why action should not be taken against him under Rule 14 of the Rules for the Civil Services Examination, 2014 for making incorrect statement in the application form which, in substance, is as under :-

“With reference to your candidature for the above mentioned examination, I am directed to state that in column 24 of the Detailed Application Form (DAF) of the CS (Main) Exam. 2014, you have indicated that you have appeared 8 times in the Civil Services (Preliminary) Examinations including Civil Services (Preliminary) Examinations-2014. In the subsequent column 25 you have indicated the years of your appearance in the Civil Services Examinations 2001, 2004, 2005, 2006, 2007, 2008, 2013 and 2014.

2. It has, however, been verified from the records of this office that besides being a candidate for the above mentioned examinations, you have also appeared in Civil Services (Preliminary) Examinations, you have also appeared in Civil Services (Preliminary) Examinations 2009 (Roll No. 046047), 2010 (Roll No. 340989) and 2012 (Roll No. 119108).

3. You, therefore, appear to have knowingly suppressed information regarding your attempts of Civil Services (Preliminary) Examination 2009, 2010 & 2012 and made incorrect statement in your Detail Application Form of Civil Services (Main) Examinations 2014.

4. You have, thus, clearly infringed Rule 14 (v) of Rules of Civil Services Examination-2014 which appeared in the Gazette of India Extraordinary dated 31.05.2014 (copies of relevant Rule are enclosed).

5. You are, therefore, required to show cause why action should not be taken against you under Rule 14 of the Rules for the Civil Services Examination, 2014 for the said violation.

6. You reply to this letter must reach the Union Public Service Commission (to be addressed to the undersigned by name) latest by 23.03.2015, failing which the Commission shall proceed further in the matter as they deem fit without any further reference being made to you.”

5. In pursuance thereof, the applicant filed reply dated 23.03.2015 and denied the suppression of any information in his application form. Instead of awaiting the decision on SCN by UPSC, the applicant has straightaway jumped to file the present OA.

6. Aggrieved thereby, the applicant has preferred the instant O.A., challenging the part of impugned

Advertisement/Notification dated 31.05.2014 and SCN dated

18.03.2015 (Annexure A/1) (colly.) on the following grounds:-

“a) That the impugned action, show cause notice and part of notification for CSE 2014 are bad both in law as well as in facts.

b) That the impugned action of the respondents of not declaring the result of the applicant for CSE 2014 and also of not calling the applicant for personality test based on the said result for consideration for appointment of the applicant in civil services on the basis of allegations as contained in show cause notice dt. 18.3.15 is illegal in so much as the respondents could not treat the appearance of the applicant in 2009* & 2010 as an attempt as his candidature was rejected on the ground that the applicant being a person with disability belonging to OBC category is not entitled to make attempt for more than 7 times which is permissible to OBC category candidates.

c) That the impugned action of the respondents of not declaring the result of the applicant for CSE 2014 and also of not calling the applicant for personality test based on the said result for consideration for appointment of the applicant in civil services on the basis of allegations as contained in show cause notice dt. 18.3.15 is illegal in so much as the controversy of extra three attempts to persons with disabilities belonging to OBC category candidate has been decided by the Hon'ble High Court of Delhi and Madras High Court declaring that persons with disabilities belonging to OBC category are entitled to three extra attempt in addition to OBC category are entitled to three extra attempt in addition to 7 attempts available to able bodied candidates and therefore the rejection of the candidature of the applicant on this ground for any year cannot be treated as an attempt.

d) That the impugned action of the respondents of not declaring the result of the applicant for CSE 2014 and also of not calling the applicant for personality test based on the said result for consideration for appointment of the applicant in civil services on the basis of allegations as contained in show cause notice dt. 18.3.15 is illegal in so much as the respondents themselves admitted in O.A. No. 930/2013 and W.P. (C) No. 7377/2013 that the applicant had made 8th attempt in CSE 2012 which has been duly noticed and recorded in the judgment dt. 13.10.14 of Hon'ble High Court of Delhi.

e) That the impugned action of the respondents of not declaring the result of the applicant for CSE 2014 and also of not calling the applicant for personality test based on the said result for consideration for appointment of the applicant in civil services for Civil Services on the basis of allegations as contained in show cause notice dt. 18.3.15 is illegal in so much as the Govt. of India has allowed two extra attempts to all category candidates beginning from 2014 and on this ground also the impugned action is violative of Articles 14 & 16 of the Constitution.

f) That the impugned action of the respondents of not declaring the result of the applicant for CSE 2014 and also of not calling the applicant for personality test based on the said result for consideration for appointment of the applicant in civil services of Civil Services on the basis of allegations as contained in show cause notice dt. 18.3.15 is illegal in so much as the same is violative of the said judgments of Hon'ble High Court of Delhi and Madras High Court.

g) That the impugned show cause notice dt. 18.3.15 is bad and illegal in so much as the respondent no. 1 had issued the admit card after receipt of representation dt. 9.11.14 of the applicant alongwith DAF form for CSE (M) 2014 explaining the attempts made so far by the applicant making the allegation of suppression of facts to be incorrect and false.

h) That the impugned show cause notice dt. 18.3.15 is bad and illegal in so much as the respondent had even not considered the effect of judgment dt. 13.10.14 of Hon'ble High Court of Delhi in respect of the applicant for CSE 2012 rejecting the similar allegation of supersession of material facts for the said examination year.

i) That the impugned part of notification of not allowing three extra attempts to persons with disabilities belonging to OBC category in line with similar three extra attempts for persons with disabilities belonging to open category candidates is bad and illegal in so much as the same is contrary to the said judgments of High Court of Delhi and Madras High Court which has declared that persons with disabilities belonging to OBC category are also entitled to three additional attempts as are available to able bodied OBC candidates on par with similar provision for persons with disabilities belonging to general/open category candidates.

(j) That the impugned part of notification of not allowing three extra attempts to persons with disabilities belonging to OBC category in line with similar three extra attempts for persons with disabilities belonging to open category candidates is violative of Articles 14 & 16 of the Constitution of India.

k) That the impugned part of notification which provides that disqualification or rejection of candidature will not preclude the respondent no. 1 from treating it to be an attempt made by the applicant is illegal in so much as when the candidature of the applicant has been rejected on the ground of impermissibility of additional attempts on the ground of disability on par with persons with disabilities belonging to general category, the respondent No. 1 cannot be permitted to count such applicant's candidature as an attempt and deprived the applicant from consideration for CSE 2014 on that ground."

7. On the strength of aforesaid grounds, the applicant seeks to quash the part of the impugned advertisement and SCN (Annexure A-1 Colly) and claimed declaration of his result, in the manner indicated hereinabove.

8. Similarly, the contesting respondents UPSC, has seriously refuted the claim of the applicant and filed the reply/affidavit, wherein it was, inter alia, pleaded as under:-

"6. That it is submitted that the applicant was a candidate of Civil Service Exam 2014. He qualified at the Civil Services (Preliminary) Examination, 2014 and appeared in the civil services (Main) Exam 2014. He was an OBC & PH.III (Deaf and Mute) category candidate. On scrutiny of applications it was noticed that Shri Deshmukh had availed more attempts than permissible to him. In column 24 of his Detailed Application Form for CS (Main) Exam 2014 he had stated the number of times he appeared in CS(Pre) Exam so far, including the current examination as 08 and in column 25 he gave the year of exams viz. 2001, 2004, 2005, 2006, 2007, 2008, 2013 and 2014. The DAF was also signed by Shri Deshmukh on each page and he has also given an undertaking that the entries made in columns 1 to 28 of his application are true, complete and correct to the best of his knowledge and belief etc. However, on verification from the records,

it was found that Shri Deshmukh had appeared in CS (Pre) Exam 11 times including CS (Pre) 2014 and he not mentioned the years 2009, 2010 and 2012.

7. That the Civil Services Exam is conducted by the Commission as per Rules notified by Department of Personnel & Training. According to Rules of CSE, 2014, an OBC-PH category candidate could appear in CSE exams 9 times and an attempt in CS(Pre) Exam is deemed to be an attempt at the Civil Services Examination notwithstanding the disqualification/cancellation of candidature. A copy of the rules of CSE 2014 is annexed at Annexure 'R-1'.

8. That since Shri Deshmukh availed more attempts than permissible to him under CSE Rules, 2014 and suppressed the information in his DAF, a show-cause notice dated 18.3.2014 was issued to him as to why action should not be taken against him for violation of Rule 14 of the Rules of Examination 2014."

9. The case of the respondents further proceeds, that applicant has not qualified CS (Main) Examination, 2014 (Written), irrespective of number of attempts and no disciplinary action was taken against him till date. It was alleged that the impugned part of the notification dated 31.05.2014 does not allow the benefit of 3 additional attempts to persons with disability belonging to OBC category, so applicant is not entitled for any relief. It will not be out of place to mention here, that the respondents have stoutly denied all other allegations and grounds contained in the O.A., and prayed for its dismissal.

10. Controverting the allegations pleaded in the written statement of the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. That is how, we are seized of the matter.

11. Having heard the learned counsel for the parties, having gone through the records with their valuable help and after bestowal of thoughts over the entire matter, we are of the firm view that there is no merit and the instant OA deserves to be

dismissed in the manner and for the reasons mentioned hereinbelow.

12. As is evident from the record, that the applicant has sought two reliefs, as under:-

“(i) to direct the respondents to declare his result and to allow him to appear for personality test for CSE 2014; and

(ii) to quash the part of impugned Notification/Advertisement dated 31.05.2014 and SCN dated 18.03.2015 (Annexure A-Colly)”.

13. In so far as, the first relief is concerned, the UPSC, in pursuance of rejoinder filed by the applicant, has placed on record the Memo bearing No.CMS/583684/2014-E.III dated 14.03.2016 and attached marks sheet of the applicant, of the Civil Services (Main) Examination, 2014, which, in substance is as under:-

“2. The contention of the Applicant in his Rejoinder that he had qualified the CS (Main) Written Examination 2014 and was wrongly deprived of the opportunity to appear in the interview is factually wrong as he had failed to qualify one of the compulsory language (English) papers. As per notified rules for CSE, 2014, “evaluation of the papers, namely, Essay, General Studies and Optional Subject of all the candidates would be done simultaneously along with evaluation of their qualifying papers on ‘Indian Languages’ and ‘English’ but the papers on Essay, General Studies and Optional Subject of only such candidates will be taken cognizance who attain 30% marks in both Indian Language and in English as minimum qualifying standards in these qualifying papers.’ The Applicant had, as a matter of fact, failed in the qualifying English language paper as he obtained only 61 marks out of 300 which comes to 20.3% only. Hence the marks in other subjects, a copy of which the Applicant had obtained by filing an Application under RTI Act, were not taken cognizance of. A copy of mark sheet showing marks obtained by the Applicant in the qualifying language papers of ‘English’ and ‘Dogri’ as well as a copy of relevant CSE-2014 Rules are enclosed”.

Marks Sheet

Code/Subject Name	Max Marks	Marks Obtained
(20) ENGLISH	300	061
(79) DOGRI	300	097
	600	158

14. Meaning thereby, since the UPSC has already declared the result in which the applicant failed to qualify in “Language” paper, so the first relief becomes redundant and infructuous, particular when, in view of this matter, the learned counsel for the applicant fairly has not pressed/urged the first relief.

15. Now adverting to the challenge of part of impugned Advertisement dated 31.05.2014 (Annexure-A) and SCN dated 18.03.2015 (Annexure-A Colly) is concerned.

16. In this regard, ex-facie argument of learned counsel that the impugned Clause, which prohibits the applicant, to avail three extra attempts to persons with disabilities belonging to OBC category, in line with three similar extra attempts for persons with disabilities belonging to open category candidates, so impugned clause of advertisement and SCN are bad, illegal and liable to be struck down, is not only devoid of merit, but misplaced as well and deserves to be ignored for more than one reasons.

17. At the first instance, the applicant has intentionally and wilfully suppressed the material fact in his application form of CS (Main) Examination, 2014, that he has also appeared in Civil Services (Preliminary) Examination, 2009 (Roll

No.046047), 2010 (Roll No.340989) and 2012 (Roll No.119108), exceeding the permissible limits so UPSC has the power to initiate the appropriate proceedings under the rules against the applicant.

18. Secondly, it would be seen that the applicant, has, in fact, appeared 11 times (not permissible) in Civil Services Examination, whereas he has kept concealed the fact of his appearing in the above said three Civil Services Examinations, which is contrary to the relevant statutory rules and DOP&T's instructions. The UPSC has already issued impugned SCN to him in this regard, to which he has already filed the reply. The UPSC has yet to take decision on it.

19. This is not the end of the matter. It is not a matter of dispute that the applicant has applied and appeared in the Civil Services Examination, 2014, in pursuance of the impugned advertisement, without raising any kind of protest or objection. The applicant having accepted the advertisement as such, and in pursuance thereof, he appeared in the Civil Services (Preliminary) & (Main) Examination, 2014, without any sort of protest. In that eventuality, he cannot now be permitted to turn round and contend that the impugned Advertisement was illegal. Hence, he is estopped from challenging the same very impugned Advertisement, after he was unsuccessful in Civil Services (Main) Examination, 2014, particularly when even the selected candidates have already

been appointed on their respective posts and moreso the applicant has not impleaded them as a party. Therefore, applicant is not entitled for any relief in view of the ratio of law laid down by Hon'ble Apex Court in cases ***Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others (2008) 2 SCC (L&S) 9, G.N. Nayak Vs. Goa University and Others (2002) SCC (L&S) 350*** and ***Amlan Jyoti Borooah Vs. State of Assam and Others (2009) 1 SCC (L&S) 627***. Therefore, it is held that the applicant is not entitled even to second relief, as well in the obtaining circumstances of the case.

20. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

21. In the light of the aforesaid reasons, as there is no merit, the instant OA is hereby dismissed, as such. However, the parties are left to bear their own costs.

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)
09.12.2016

Rakesh