

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

**OA-2906/2016
MA-1259/2017
MA-2589/2016
With
OA-1080/2017
MA-1663/2017**

Reserved on : 02.06.2017.

Pronounced on :06.07.2017.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

OA-2906/2016, MA-1259/2017,MA-2589/2016

1. Ms. Nirmala Gupta,
Aged about 42 years
W/o Sh. Shambhu Nath Jaiswal,
R/o H.No.1/C, Block-35,
Sector-2, DIZ Area, Gole Market,
New Delhi.
(Working as Sr. Accountant)
2. Sh. Atul Kumar,
Aged about 43 years,
S/o late Sh. Rajpal Singh,
R/o 102, New Customs Colony,
E Block, Ranjeet Avenue, Amritsar.
(Working as Sr. Accountant)
3. Sh. K.S. Venkatasubramanian,
Aged about 47 years,
S/o Sh. K.S. Subramanian,
R/o New No. 68/Old No.26,
Ramachandrpuram Street,
Kallidaikurichi, Tirunelveli,
Tamilnadu.
(Working as Sr. Accountant)
4. Sh. Rohit Raj Jain,
Aged about 30 years,
S/o Sh. Jinesh Jain,

R/o WZ-1391/10, Nangal Raya,
Delhi Cantt., New Delhi.
(Working as Sr. Accountant)

5. Sh. Vinod Kumar,
Aged about 39 years,
S/o Sh. Krishan,
R/o A-17, Mansa Ram Park,
New Delhi.
(Working as Sr. Accountant)
6. Ms. Sarika Chauhan,
Aged about 36 years,
W/o Sh. Dinesh Chauhan,
R/o 15-A, Indian Moon City,
Ahinsa Khand-2, Indirapuram,
Ghaziabad(UP).
(Working as Sr. Accountant)
7. Sh. Yogesh Kumar,
Aged about 42 years,
S/o Late Sh. Asu Lal,
R/o B-2/89, Paschim Vihar,
New Delhi.
(Working as Sr. Accountant)
8. Sh. J.S. Pranesha,
Aged about 46 years,
S/o Sh. J. Shrinivasamurthy,
R/o Type-IV/109, Ground Floor,
CPWD Quarters, Jyothi Nagar,
Mysore.
(Working as Sr. Accountant)
9. Sh. Kalyan Singh,
Aged about 43 years
S/o Sh. Azad Singh,
R/o H.No. 1467, 5, R.K. Puram,
New Delhi.
(Working as Sr. Accountant)
10. Sh. Madhur Bain,
Aged about 40 years,
S/o Sh. Brij Bhusan,
R/o A6/521, Amar Colony,
East Gokalpur, Delhi.

(Working as Sr. Accountant)

11. Sh. Anil Kumar,
Aged about 41 years,
S/o Late Sh. Ganga Prasad Mahto,
R/o Q. No. 178, Type-1,
Govt. Press Colony,
Mayapuri, New Delhi.
(Working as Sr. Accountant)

12. Sh. Ajit Kumar Gupta,
Aged about 47 years,
S/o Sh. Onkar Prasad,
D-120, 1st Floor, Gandhi Vihar,
New Delhi.
(Working as Sr. Accountant)

13. Sh. Sanjeev Kumar Mishra,
Aged about 31 years,
S/o Sh. Guna Nand Mishra,
R/o H.No. 635, Sector-3,
Jagriti Vihar, Meerut.
(Working as Sr. Accountant)

14. Sh. Surender Singh,
Aged about 49 years,
S/o Sh. Ram Kala,
R/o G-237, Gali No. 13,
Sitapur, New Delhi.
(Working as Sr. Accountant)

15. Sh. Mrityunjay Kumar Singh,
Aged about 43 years,
S/o Sh. Jai Narayan Singh,
R/o H.No. 6500/A, Sector-3,
Faridabad.
(Working as Sr. Accountant)

16. Sh. Pawan Kumar,
Aged about 42 years,
S/o Sh. Devendra Prasad,
R/o Q.No. 177, Type-II,
NH-IV, Faridabad.
(Working as Sr. Accountant)

17. Sh. Krishna Singh,
 Aged about 47 years,
 S/o Sh. Sita Ram Singh,
 R/o O-54, Chankya Place,
 Part-2, Pankha Road,
 New Delhi.
 (Working as Sr. Accountant)Applicants

Versus
 Union of India through

1. Secretary,
 Ministry of Finance,
 Department of Expenditure,
 North Block, New Delhi.

2. Controller General of Accounts,
 Department of Expenditure,
 Ministry of Finance,
 4th Floor, Lok Nayak Bhawan,
 Khan Market, New Delhi.Respondents

OA-1080/2017, MA-1663/2017

1. Sh. Pratichhan Kumar,
 Aged about 44 years,
 S/o Late Sh. Sidheshwar,
 R/o 1585, Sector-7,
 Pushp Vohar, New Delhi.
 (Working as Accountant)

2. Sh. Vinod Kumar Singh,
 Aged about 50 years,
 S/o Late Sh. Joginder Singh,
 R/o Qtr. No. 1670, Sector-3,
 Pushp Vihar, New Delhi.
 (Working as Accountant)

3. Sh. Bir Singh,
 Aged about 50 years,
 S/o Late Sh. Prabhu Singh,
 R/o 127, Madangir Village,
 New Delh.
 (Working as Accountant)

4. Sh. Mukesh Kumar,
Aged about 43 years,
S/o Late Sh. Dhan Ram,
R/o Qtr No. 838, Sector-5,
Pushp Vihar, New Delhi.
(Working as Accountant)

5. Sh. Sheo Shankar Singh,
Aged about 45 years,
S/o Sh. Biseshwar Singh,
R/o 84B, Sector-IV,
Pushp Vihar, New Delhi.
(Working as Accountant)

6. Sh. Suresh Kumar S,
Aged about 49 years,
S/o Sh. Sukumara Pillai,
R/o Qtr No. 75K, Sector-4,
Pushp Vihar, New Delhi.
(Working as Accountant)

7. Sh. Devendra Singh,
Aged about 41 years,
S/o Late Sh. Jitender Singh,
R/o H.No. 1595, Sector-7,
Pushp Vihar, New Delhi.
(Working as Accountant)

8. Sh. Surender Kumar,
Aged about 49 years,
S/o Late Sh. Bhagat Ram,
R/o VPO Kalwan,
Tehsil Anandpur Sahib,
Distt. Ropar (PB).
(Working as Accountant)

9. Sh. Bablu Barman,
Aged about 44 years,
S/o Sh. Sabindra Barman,
R/o Village 209,
Patchhara Bura Buri,
PO Jamat Daha,
Distt. Coochhehar (WB).
(Working as Accountant)

10. Sh. Ramnath Meena,
Aged about 45 years,
S/o Sh. Jagan Lal Meena,
R/o Qtr. No. 1340, Sector-7,
Pushp Vihar, New Delhi.
(Working as Accountant)

11. Sh. Banwari lal,
Aged about 53 years,
S/o Sh. Phool Singh,
R/o Qtr No. 778, Sector-5,
Pushp Vihar, New Delhi.
(Working as Accountant)

....Applicants

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Expenditure,
North Block, New Delhi.

2. Controller General of Accounts,
Department of Expenditure,
Ministry of Finance,
4th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi.

.... Respondents.

Present : Sh. S.K. Gupta, counsel for applicants.

Sh. Rajesh Katyal, Sh. D.S. Mahendru and Sh. R.K. Jain,
counsel for respondents.

O R D E R

Mr. Shekhar Agarwal, Member (A)

Both these OAs are inter-connected and are, therefore, being disposed of by this common order.

2. The applicants of OA-2906/2016 were working as Senior Accountants. They had participated in the departmental examination conducted by the respondents for promotion to the post of Asstt. Accounts Officer. However, despite being declared successful, they were not being promoted. Hence, they first approached this Tribunal seeking directions to the respondents to grant them promotion on the basis of departmental exam successfully cleared by them. However, during pendency of the OA, the respondents passed order dated 22.03.2017 by which the examination was cancelled. Consequently, the applicants filed Misc. Application No. 1071/2017 for placing on record the order dated 22.03.2017 and amendment in the OA to challenge this order. This MA was allowed by us vide order dated 28.04.2017.

2.1 Applicants of OA-1080/2017 were LDCs, who had also participated in the same departmental examination conducted by the respondents in October, 2014. By virtue of having passed 04 or more paper they were appointed as Accountants in June, 2015 and were continuing as such. When the respondents passed order dated 22.03.2017 cancelling the examination on the basis of which they had been appointed as Accountants, they approached this Tribunal challenging the aforesaid order and also seeking stay of reversion in the meanwhile. While issuing notice in this OA on 30.03.2017, as an interim measure, we had directed that the

applicants shall not be reverted till the next date of hearing. The interim relief was thereafter continued.

3. Relevant facts of the case are that as per the existing Recruitment Rules (Annexure A-3) of OA-1080/2017, the post of Accountant is required to be filled by direct recruitment to the extent of 70%, by promotion based on seniority to the extent of 25% and by promotion on the basis of Limited Departmental Competitive Examination (LDCE) upto 5%. For the purpose of appearing in the LDCE against the 05% quota, LDCs belonging to the service with 03 years experience were eligible to appear in the examination as per Rule-5(3). Further, for filling up the post of Junior Accounts Officer in terms of Notification dated 02.01.2001 read with Notification dated 21.08.2009 (Annexure A-4) passing of written examination conducted by the Controller General of Accounts was required.

3.1 Controller General of Accounts vide Notification dated 24.03.2014 invited application for conducting the aforesaid examination. All the applicants being eligible applied for the same. Thereafter, examination was conducted. It is noteworthy that out of 08 papers, candidates were permitted to use books in as many as 06 of them. The aforesaid examination was conducted in October, 2014 and the result was declared on 31.03.2015. The applicants of OA-1080/2017 were declared successful in 04 or more papers.

Consequently, they were promoted as Accountants in terms of Office Order dated 03.06.2015 and 19.06.2015 and were placed in the grade pay of Rs.2800/- in PB-I. Rules also provided that those candidates, who qualify all the 08 papers, were required to be promoted as AAO.

3.2 The applicants of OA-1080/2017 have submitted that they were promoted as Accountants and have been working as such. However, vide impugned order dated 22.03.2017, the respondents have cancelled the exam on the basis of which they were so promoted. The Controller General of Accounts has further directed vide the impugned order that all Controller of Accounts review the benefits granted to the officials on the basis of the aforesaid examination. Thus, it was evident that the respondents were proposing to revert them leaving them with no option but to approach this Tribunal.

3.3 The respondents of OA-2906/2016 are also aggrieved by the order dated 22.03.2017 cancelling the departmental examination conducted in October, 2014. These applicants had cleared all the 08 papers and were eligible to be promoted as AAO in terms of Recruitment Rules. However, when the respondents passed the impugned order dated 22.03.2017, they have approached this Tribunal seeking cancellation of the same.

3.4 It is also noteworthy that after passing orders for cancellation of the aforesaid examination, the respondents have gone ahead and notified re-examination to be conducted on 06.07.2017. The applicants had filed MA-1259/2017 seeking stay of the fresh examination ordered by the respondents. However, when this MA was considered by us on 28.04.2017, the date of the re-examination was not known. We had, therefore, kept decision in this MA pending to be decided along with the OA.

4. Learned counsel Sh. Rajesh Katyal, Sh. D.S. Mahendru and Sh. R.K. Jain have appeared in this case for the respondents. In almost identical replies filed by the respondents in both the OAs they have stated that the departmental exam was conducted in October, 2014 and the result of the same was declared on 31.03.2015. However, after declaration of the result several complaints were received by the Department of Expenditure from PMO. These complaints were forwarded by the Department of Expenditure to Controller General of Accounts and a response thereon was sought. Certain complaints were separately received by the Secretary, Expenditure seeking cancellation of the aforesaid examination. Since these complaints were under examination, the applicants of OA-2906/206, who were to be promoted as AAO on the basis of this examination, were not promoted as the matter was under investigation. Since then, with the approval of Department of

Expenditure, the investigation of the aforesaid case has been handed over to CBI.

4.1 The respondents have further stated that the aforesaid examination consisted of 08 papers and one computer practical paper. All the LDCs, Accountants, Sr. Accountants, Stenographers and Data Entry Operators of the respondent organization were eligible to appear for the aforesaid exam. Those holding the post of LDC were eligible to be promoted as Accountants if they qualify in 04 or more papers. The applicants of OA-1080/2017, who were working as LDCs under the jurisdiction of Controller General of Accounts were successful and were, therefore, so promoted. However, as mentioned above, several complaints alleging irregularities in the conduct of examination were received from PMO and other sources. These complaints were examined and it was found that the aforesaid examination was vitiated due to large scale irregularities making it difficult to make fair selection of meritorious candidates. Consequently, the respondents decided to hand over the investigation of the case to CBI. Further, it was decided that since large number of irregularities had come to notice, notwithstanding, the CBI enquiry, the aforesaid examination be cancelled. Accordingly, orders dated 22.03.2017 were passed with the approval of competent authority cancelling the aforesaid examination.

4.2 In order to ensure that a fair opportunity is not denied to the candidates, who had participated in the aforesaid exam, a notification dated 28.03.2017 was issued for conducting re-examination for only those officers, who had appeared in the examination conducted in October, 2014. The respondents have further submitted that many applicants herein have given their willingness to appear in the re-examination.

4.3 Further, the respondents have submitted that since the examination of October, 2014 has been cancelled, any benefits extended to the applicants based on the aforesaid examination also need to be reviewed.

5. We have heard both sides and have perused the material placed on record.

5.1 Arguing for the applicants Sh. Gupta submitted that applicants of OA-1080/2017 had already been promoted by the respondents as Accountants. Since this was promotion from one Group-C post to another, in terms of Government of India Instructions, no probation period was prescribed. Thus, these applicants were regular Accountants, who had a right to hold the post on which they had been promoted. Consequently, they could not have been terminated without issue of show cause notice. The respondents had even prepared the seniority list of those promoted. By not issuing

show cause and notice denying opportunity to the applicants to represent against their reversion, the respondents have acted in gross violation of the principles of natural justice.

5.2 Sh. Gupta further argued that even on merits the cancellation of the examination was not justified. He submitted that the reasons for cancellation were contained in the official notings of the department, which were available at page-17 of the rejoinder affidavit filed by the applicants in OA-2906/2016. The irregularities that had come to the notice of the respondents on the basis of the preliminary enquiry conducted by the office of Controller General of Accounts were as follows:-

(i) Several candidates were able to clear all the 08 papers in first attempt. The pass percentage was abnormally high despite the fact that many of those, who were successful, had no previous accounting background.

(ii) CGA using his powers had given 10 grace marks in 03 of the papers as a consequence of which 128 more candidates were able to pass all the 08 papers. This was contrary to the practice followed in previous years when only 2/3 grace marks were given in one subject.

(iii) In the case of 22 candidates, it was found that marks were altered/increased by cutting/overwriting in such a manner that

they were able to pass the papers by getting the exact passing marks or thereabouts in 2013 examination.

(iv) It was also noticed that answers given by certain candidates were copies of the model answers.

(v) It was also noticed that many of the successful candidates belonging to BSF and CRPF had taken GPF withdrawal before passing the examination giving rise to the suspicion that this withdrawal was done to give illegal gratification for passing in the departmental examination.

(vi) Specific complaint was also received against 04 persons belonging to the office of Principal CCA, CBEC, New Delhi that all of them took the examination from Patna Centre. Their answers were found to be identical in most of the papers. 03 of them qualified all the 08 papers in first attempt. One person cleared 07 papers in first attempt and also cleared the 8th paper after being granted 10 grace marks.

5.3 Sh. Gupta argued that several of these reasons stated above are based on conjectures and surmises. Merely on the basis of suspicion that irregularities occurred in the examination, examination could not have been cancelled. He further argued that the action of the respondents was contrary to the law laid down by Hon'ble Supreme Court in various judgments, many of which have been

noticed by this Tribunal in its judgment in **OA-3941/2015** (Puneet Kumar & Ors. Vs. GNCTD & Ors.) pronounced on 01.02.2017. According to Sh. Gupta the respondents did not make sufficient effort to separate the innocent candidates from the tainted ones and took the easy route of cancelling the examination as a whole, which was contrary to the law laid down by the Apex Court as well as this Tribunal in the above mentioned OA.

5.4 It was not disputed by the respondents that the reasons for cancellation were contained in the above referred official noting of the department. Sh. Rajesh Katyal, however, argued that Apex Court in the case of **Secretary, DSSSB Vs. Neeraj Kumar & Ors.**, 2006(130)DLT 100 had clearly laid down that it was open to the authorities to cancel the entire examination if it was felt by them that fairness and transparency of the selection process had been compromised even if there was no clinching evidence for the same. Thus, even if there were sufficient reasons to suspect that unfair means had been used, it would be sufficient for cancellation of the whole examination. Moreover, in such cases, no opportunity of hearing needs to be given to individuals. While delivering this judgment the Apex Court has taken note of judgments given in the cases of **UOI Vs. Tarun K. Singh**, 2003(11)SCC 768 and **Samsuddin Rahman Vs. Bihari Das**, JT 1996(6)SC 511.

5.5 We have considered the submissions of both sides. The first limb of the arguments of the applicants was based on denial of opportunity to them as no show cause notice was issued to them before cancellation of the examination. In this regard, we find the arguments of the respondents convincing that in terms of the judgment of the Apex Court in the case of **Neeraj Kumar** (supra) if there was reasonable apprehension of unfair means being used in the examination, then there was no requirement of giving notices to individual candidates. Nothing that they could have said in reply to such show cause notices could have altered the position that had come to the notice of the respondents and as such issue of show cause notice to them would have remained an empty formality and an exercise in futility.

5.6 We are, however, not convinced that cancellation of the exam was justified on the basis of material available to the respondents. In this regard, the law laid down by Hon'ble Supreme Court in the case of **Inderpreet Singh Kahlon Vs. State of Punjab & Ors.**, (2006) 11 SCC 356 is that examination can only be cancelled when it comes to the notice of the authorities that the process was so tainted as to make it impossible or highly improbable to separate cases of tainted person from those of non-tainted persons. Apex Court has ruled that the interest of honest candidates needs to be protected. Further, in the

case of **Joginder Pal & Ors. Vs. State of Punjab & Ors.**, 2014 (6) SCC 644 Apex Court had laid down that the untainted and meritorious candidates should be segregated from the tainted candidates instead of cancelling the entire selection process. The same view has also been taken by the Apex Court in the case of **UOI & Ors. Vs. Rajesh P.U., Puthuvalnikathu and Anr.**, (2003) 7 SCC 285. Further, in the case of **East Coast Railway and Anr. Vs. Mahadev Appa Rao & Ors.**, (2010) 7 SCC 678 Apex Court had observed that if a test is cancelled on the basis of complaints of frivolous nature, particularly, made by those who had failed in the selection process, then no selection process can ever be finalized. Examination should be cancelled only when integrity of the exam is compromised. This view has also been taken in the case of **C.P. Kalra Vs. Air India through its Managing Director, Bombay and Ors.**, 1994 SCC(L&S) 476.

5.7 After considering all the above citations of the Apex Court, this very Bench of the Tribunal in OA-3941/2015 in its judgment delivered on 01.02.2017 had come to the following conclusion:-

“5. After considering the submissions of both sides and after going through the judgments relied upon by them we are of the opinion that the law laid down by the Supreme Court is that selection process should only be cancelled as a last resort. It should not be cancelled merely on the basis of vague allegations particularly those made by unsuccessful candidates. The nature of alleged mal-practices must be seen to ascertain the extent of vitiation of the selection process. Every effort should be made to separate the meritorious and innocent candidates from the tainted ones. Only when it is

found that it is impossible to do so or highly improbable to do so, the selection process be cancelled. Otherwise cancellation of selection process would result in granting equal treatment to un-equals, namely, innocent and honest candidates on the one hand and the tainted ones on the other hand. The irregularities noticed must be of such nature so as to vitiate the entire selection making it impossible to segregate the innocent and meritorious candidates from the rest. Without doing this exercise, State action of cancellation of the selection process would be deemed to be arbitrary and unjustified even though successful candidates have no indefeasible right to be appointed. If under such circumstances, Courts interfere and set aside the cancellation of selection by the State, it would be very much within the scope of judicial review."

5.8 In the instant case, we find that even if all the complaints received by the respondents were taken into consideration, it was possible for them to separate those candidates, whose conduct was suspicious from the remaining successful candidates. Merely because a larger number of candidates had cleared the examination as compared to previous years, conclusion cannot be drawn that unfair means had been used in the examination. Further, awarding of grace marks by the CGA to the candidates also cannot be deemed to be an irregularity committed by the candidates. If the authorities thought that CGA had been too liberal in awarding grace marks they could have resorted to re-evaluation of the answer sheets without awarding grace marks. This by itself was not a sufficient reason to cancel the exam. Again linking withdrawal of GPF with certain candidates to their passing the examination by illegal gratification was purely based on conjectures

and surmises. In absence of any evidence as to who received this illegal gratification and how he could influence the examination, conclusion drawn that unfair means have been used in the examination appears to be far fetched and figment of imagination. They could have been reason to suspect conduct of the employees of the office of Principal CCA, CBEC, New Delhi, whose answers were found to be identical. However, these candidates could have been easily separated from the rest instead of cancelling the examination.

5.9 Learned counsel for the respondents argued that in terms of the judgment in the case of **Neeraj Kumar** (supra) relied upon by the respondents, it was not necessary for the respondents to have clinching evidence for cancelling the examination or even to wait for completion of CBI investigation. While we agree with the respondents that there was no necessity to wait for CBI investigation or for having clinching evidence of irregularities, yet it was necessary that respondents had reasonable grounds to suspect that unfair means were used in the examination to such an extent that the integrity of the entire selection process had been compromised.

5.10 In the instant case, we find that complaints were received against some of the candidates and there was no reason to suspect

that large scale irregularities had taken place. Thus, sufficient material was not available with the respondents to cancel the exam.

5.11 Next learned counsel for the respondents relying on the judgment of a Co-ordinate Bench of this Tribunal in OA-1072/2017 (**Dinesh Kumar Sharma Vs. UOI & Ors.**) dated 30.03.2017 stated that the Tribunal had already upheld the cancellation of the examination.

5.12 We have gone through this judgment and find that this was a case of in limine dismissal. The Tribunal after noticing that the impugned order stated that large scale irregularities had been committed, had upheld the cancellation of the examination. This was done without noticing any of the judgments of the Apex Court on the subject and without examining the facts and circumstances of the case in the light of those judgments. Thus, the aforesaid judgment is per incuriam of the law laid down by the Apex Court in this regard and cannot be binding on this Bench of the Tribunal.

6. On the basis of what is mentioned above, we are of the opinion that the impugned order dated 22.03.2017 of the respondents cancelling the examination conducted in October, 2014 is not sustainable on the basis of material that was available on record before the respondents. We, therefore, allow these OAs and set aside the impugned order. The applicants of OA-1080/2017, who

are working as Accountants, shall be allowed to continue as such. The candidature of applicants of OA-2906/2016, who were successful in the examination for appointment as AAO shall be processed further and they be so appointed in accordance with the Rules, if otherwise eligible. They shall, however, be entitled to salary and seniority of the post of AAO only from the date of appointment as AAO.

7. We are aware that CBI investigation is under way in the above cases. In case further evidence comes to the notice of the respondents, this order shall not preclude them from cancelling examination based on the observations made above. The respondents, if so advised, may make the appointments offered to successful candidates as AAO subject to the outcome of CBI investigation. No costs.

8. **MA-1259/2017 in OA-2906/2016** has been filed seeking stay of re-examination ordered by the respondents. In view of our orders in OAs above, re-examination would not be required. Hence, this MA has become infructuous and is disposed of as such.

9. A copy of this order be placed in both the case files.

(Raj Vir Sharma)
Member (J)

/Vinita/

(Shekhar Agarwal)
Member (A)