

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 2926/2015

New Delhi, this the 28th day of October, 2016.

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. P.K. BASU, MEMBER (A)

Vipul Tomar,
Age-28+ years,
S/o Shri Harbir Singh,
R/o VPO-Mahavatpur Baoli,
Distt-Baghat, Uttar Pradesh,
Pin-250621.

.. Petitioner

(By Advocate: Shri Sachin Chauhan)

Versus

1. Ministry of Railway,
Govt. of India through
The Chairman,
Railway Board, Rail Bhawan,
1, Rafi Marg, New Delhi-110001.
2. Staff Selection Commission,
Through the Chairman,
S.S.C.,
Block No.12, CGO Complex,
Lodhi Road, New Delhi-3.
3. The Regional Director (NR),
Govt. of India,
Department of Personnel and Training,
Staff Selection Commission,
Block No.12, CGO Complex,
Lodhi Road, New Delhi-3.
4. Union of India through
The Secretary,
Department of Revenue,
Ministry of Finance,
Govt. of India,

North Block, New Delhi-1.

5. Sr. Audit Officer/Audit Officer Const-I,
Northern Railway, Kashmere Gate,
Delhi-110006.

.. Respondents

(By Advocate : Shri Gyanendra Singh for R-2 & 3)

O R D E R (ORAL)

By Mr. P.K. Basu, Member (A)

The applicant was a candidate of Combined Graduate Level Examination 2011 conducted by Staff Selection Commission (SSC). He cleared the Tier-I and Tier-II Examination and was offered an appointment to the post of Auditor vide order dated 10.12.2012. He successfully completed his probation period and was confirmed vide order dated 05.05.2015 in the cadre of Auditors w.e.f. 30.12.2014.

2. In the year 2013, the applicant was called by the SSC to obtain the sample of his writing in English and Hindi as well as his thumb impression. In 2014, he was called by the Ministry of Railways to again provide the same.

3. The applicant was served with an order dated 09.07.2015 issued by the SSC whereby it was informed that the applicant is debarred for a period of three years from the Commission's examinations, without prejudice to the rights of the Commission to initiate/seek criminal proceedings against the applicant.

4. The applicant made a representation dated 27.07.2015 against this order dated 09.07.2015, but the respondents did not respond to the representation nor withdrew the order dated 09.07.2015. The applicant's service is terminated vide order dated 09.10.2015 (annexed to CP No.719/2015).

5. This O.A. has been filed challenging the order dated 09.07.2015 primarily on the following grounds:

(i) The order issued by the SSC dated 09.07.2015 is totally non-est in the eyes of law, as the role of SSC was over once the dossier of the selected candidate was forwarded to the user department.

(ii) The applicant was holding a confirmed post in the Railways after his appointment and, therefore, his services could not be terminated as he is protected under Article 311(2) of the Constitution of India. In this regard, the learned counsel for the applicant relies on judgment of the Hon'ble Apex Court in **Kamal Jayan Mishra vs. State of M.P. and ors.** (2010) 2 SCC 169, whereby the Hon'ble Supreme Court viewed that "though the services of a probationer can be terminated without issuance of any show cause notice, but the services of a person who held a civil post cannot be terminated for his conduct of not disclosing the material particulars correctly in the application form, in disregard to provisions of Article 311 (2) of the Constitution of India".

(iii) That the respondents have passed the said order dated 09.07.2015 without following the principles of natural justice and procedure laid down under CCS (CCA) Rules.

(iv) The order dated 09.07.2015 is absolutely vague and full of surmises as it does not specify what type of malpractices and unfair means the applicant has indulged in.

(v) The order dated 09.07.2015 is in pursuance of a report of some forensic expert but no such report has been provided to the applicant nor is it included in the order dated 09.07.2015. In this regard, the applicant relies on judgment of the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No.24380 of 2012 in case of **UOI & ors. vs. Sahadev Hooda and anr.**

6. The applicant has, therefore, sought the following relief:

“(i) To quash and set aside the order dated 09.07.2015 with all consequential benefits.

Or/and

(ii) Any other relief which this Hon'ble court deems fit and proper may also be awarded to the applicant.”

7. The respondents in their reply have stated that a complaint was received from one Shri Arun Kumar that the applicant, Shri Vipul Tomar, had procured impersonation in the examination and his elder brother, Shri Vinay Tomar, had appeared in the examination in his place. Accordingly, the said user department

requested the SSC to verify the sanctity of the candidature of Shri Vipul Tomar. The Commission, thereafter, obtained sample of the applicant's thumb impression, handwriting etc. and referred the matter to CFSL, Chandigarh for obtaining their expert opinion and relevant comments. Vide letter dated 16.01.2015, CFSL forwarded their opinion that samples of the handwriting and thumb impression supplied to them were not matching with the signatures and handwritings marked on the applications and other documents.

8. It is stated that based on the examination report provided by the CFSL, the respondents have cancelled the candidature of Shri Vipul Tomar for the said examination and was also debarred for a period of three years from appearing in examination conducted by the SSC.

9. Heard the learned counsel for both sides and perused the pleadings/judgments.

10. Admittedly, the applicant joined the services of the respondents – Railways as an Auditor and was confirmed as such after successful completion of probation period. Thus, he was a regular employee.

11. An identical question recently came to be decided by the Hon'ble Apex Court in case **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Others**

JT 2015 (9) 363, wherein having considered the previous judgments of Hon'ble Supreme Court, it was ruled that if the termination order is stigmatic and based or founded upon misconduct, would be a punitive order and court can lift the veil and declare that in the garb of termination simpliciter, the employer has punished an employee, for an act of misconduct. It was also held that if a probationer is discharged on the ground of misconduct or inefficiency or for similar reason, without a proper enquiry and without his getting a reasonable opportunity of showing cause against the termination, it may amount to removal from service within the meaning of Article 311 (2). Hence, a show cause notice was required to be issued and opportunity of being heard has to be provided to such employees in departmental enquiry before passing any adverse order. In the absence of which, the termination order would be inoperative and non-est in the eyes of law.

12. Thus, seen from any angle, indeed impugned orders are sketchy, non-speaking, arbitrary, discriminatory, against the statutory rules & principles of natural justice, smeared with stigma, punitive, deserve to be set aside and cannot legally be sustained in the obtaining circumstances of the case.

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

14. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of regular DE, the OA is hereby partly accepted. The impugned order dated 09.07.2015 and termination order dated 09.10.2015 (Annexure CP-2 in CP 719/2015) cannot survive and are, therefore, quashed and set aside. The applicant is ordered to be reinstated in service forthwith with 50% of back wages, in view of judgment of Hon'ble Apex Court in **Ratnesh Kumar Choudhary's case** (supra). However, it is made clear that nothing observed hereinabove, would reflect on merits, in regular DE as the same has been so recorded for a limited purpose of deciding the pointed limited controversy involved in the OA. The parties are left to bear their own costs.

15. Needless to mention, the respondents would be at liberty to initiate and conduct regular departmental enquiry against the applicant for his alleged indicated misconduct, in accordance with law, before imposing any punishment on the applicant.

(P.K. BASU)
Member (A)

(JUSTICE M.S. SULLAR)
Member (J)
28.10.2016

/Jyoti/