

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

O.A No.4282/2012

**Reserved On:10.10.2017
Pronounced on:24.10.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Shri Mukesh Chand
Age about 40 years
S/o Late Shri Om Prakash
R/o Quarter No.405, Road No.3,
Andrews Ganj, New Delhi-110049.Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Comptroller & Audit General of India,
Deen Dayal Upadhyay Marg (New Building),
Delhi-110002.
2. Principal Director of Commercial
Audit & Ex-Officio Member,
Audit Board-I,
3rd Floor, A Wing, Y Shape Building,
I.P. Bhawan, New Delhi-110002.Respondents

(By Advocate: Ms. Ishita Baruah for Shri Gaurang Kanth)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

This Original Application(OA) has been filed by the applicant claiming the following reliefs:-

“(i) Quash and set aside the impugned order dated 08.11.2012 (Annexure A-1) and the respondents be directed to declare the result of the exam held in August, 2012, forthwith and in case, the applicant is found successful he may be awarded all consequential benefits like salary, seniority etc.;

(ii) May also pass any further order(s), direction (s) as be deemed just and proper to meet the ends of justice".

2. The facts, in brief, are that applicant while working on the post of Group 'D' was promoted as Clerk in the year 1997. Thereafter, on 14.10.1998, as per the Recruitment Rules (RRs) departmental exam was held for the post of Auditor. On 8.8.2012, respondent No.2 issued the OM inviting applications for the purposes of selection for the post of Auditor and the applicant applied for the same. On 22.08.2012, the list of 6 candidates was conveyed including that of the applicant and he along with others participated in the exam held on 30.08.2012. However, vide order dated 08.11.2012, the respondent No.2 cancelled the exam arbitrarily. In the impugned order, the reason for cancellation is mentioned as "administrative reasons" but, it is learnt that some complaint was made in respect of a candidate who participated in the exam as he was not having the valid mark sheet which was not approved by UGC and because of him, the office of respondent No.2 cancelled the entire exam. The only reason submitted by the respondents was on account of invalid degree in respect of one of the candidate. Applicant has further submitted that as per the RRs for the post of Auditor for which the exam was conducted, there is 50% quota meant for promotion and out of 50%, the 10% quota is required to be filled up amongst graduates who are Group 'D' officials/graduate clerks with 3 years continuous service. Applicant

is a clerk having graduation degree and also having 3 years continuous service, and participated in the exam which was conducted in pursuance of OM dated 8.8.2012. However, along with applicant 5 other officials appeared but the exam was cancelled by the respondents. Thereafter, applicant submitted a representation dated 06.12.2012 asking why the said exam has been cancelled which was for the year 2012 and moreover, the respondents are in the process of conducting another exam that affecting his career prospects. Hence, he has prayed that the OA be allowed.

3. The respondents have filed their reply and pleaded that the Departmental Examination for Auditors is conducted by the office of the Principal Director of Commercial Audit & Ex-Officio Member, Audit Board-I as per para 9.4.1 of Manual of Standing Orders (Administration) for Auditors. As per para 9.4.1 of the Manual of Standing Orders (Administration) of Indian Audit and Accounts Department, directly recruited Auditors and clerks promoted as Auditors on seniority basis are required to pass a Departmental Examination for confirmation and promotion to the higher scale of Sr. Auditors. The examination will be arranged by Principal Director of Audit once in six months, i.e., February and August of each year. Passing of the examination is a pre-requisite for becoming eligible for confirmation, promotion to the higher scale in Auditor cadre etc. provided their work and conduct are satisfactory. This examination is not for the preparation of promotion panel for a

particular year. The eligible candidates will be given promotion only as per the availability of the vacancy. Further, a candidate will be given 6 chances to clear this examination.

4. They have further submitted that 6 candidates appeared in the examination conducted in the month of August, 2012, i.e., on 28.08.2012 to 30.08.2012. Out of 6 candidates, 2 candidates, i.e., the applicant and one Mr. Rohtas Singh appeared in the examination on the basis of computer generated mark sheets indicating passing of their graduation examination from their respective Universities. The mark sheets of both the candidates were verified/examined at section level, Branch Officer level and Group Officer level. Since both the universities were appearing in the approved list of Universities as on 16.08.2012, their candidature was accepted provisionally subject to submission of original mark sheets by the candidates. However, later these exams were cancelled due to certain administrative reasons which, inter alia, are as under:-

“(i) Paper-II (Govt. Audit-I) of the said exam commenced late by one and a half hour of the scheduled time on 29.08.2012”.

This was due to water logging around the premises on account of torrential rain in the city, heavy traffic jam in the area etc. and some of the candidates as well as the Presiding Officer reached late to the examination hall. Further, the next exam was also held at

11.30 am instead of 10.00 am. However, the necessary permission from the competent authority was not taken for the said rescheduling of the exams. They have further held as under:-

- (ii) There is some tampering on the note sheet of the concerned file.
- (iii) There was allegation of paper leakage in the complaint received in the respondent's office.
- (iv) An anonymous complaint was received by the answering respondents on 28.08.2012 highlighting certain irregularities in the office of the answering respondent such as ignoring eligibility criteria by favouring some candidates and other related issues. The said complaint is still under investigation in consultation with the office of respondent No.1.

5. The respondents further aver that decision to cancel the departmental exam for Auditors held in the month of August, 2012 was a conscious decision and the same was taken in view to avoid all kinds of discrepancies/allegations and confusions in the said departmental exam. Further no prejudice is caused to the candidates as there was no vacancy available for the post of Auditors, during the period between August 2012 and February, 2013. Therefore, no prejudice is caused to the applicant/other candidates. Moreover, applicant has no vested right to appear in the

next exam when held. They have thus prayed that the OA be dismissed.

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

7. The short question involved in this case is that during the pendency of this OA, applicant appeared in the departmental exam held in August, 2013 and was declared successful vide Office Order No.314. He was accordingly promoted to the post of Auditor w.e.f. 11.8.2014. However, he now seeks promotion from August, 2012 on the basis of an examination which was cancelled by the respondents on the basis of a complaint of leakage of papers and irregularities in conducting of the examination. However, on 08.11.2012 the decision of cancellation of the departmental exam was communicated to all the candidates and as well as to the office of the Comptroller and Auditor General of India. With regard to the cancellation of exam we are guided by the judgments of the Apex Court in the cases of ***Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, AIR 2006 SC 2609*** and ***U.O.I. Vs. Tarun K. Singh and Others 2001 AIR (SC) 2196***. In the case of ***Ekta Shakti Foundation*** (supra), it was held that the cancellation of the examination was a policy decision taken by the respondents and was beyond the scope of judicial review. They have also stated that this Tribunal has no jurisdiction to examine the correctness of the

reasons which prompted the Government to take this decision. Hence, respondents were well within their right to cancel the exam.

8. We may also mention that applicant did not enrol for the departmental exam declared for February, 2013 for the reasons best known to him and instead applied for the next exam to be held in August, 2013. Further, there was no vacancy available under the examination quota hence applicant has no claim against the aforesaid vacancy. However, during 2014 one vacancy of Auditor became available under the examination quota. Hence, being the senior-most eligible candidate, having passed the departmental examination held in August, 2013, the applicant was considered for promotion as Auditor after completing the due procedure and as per the recommendations of the DPC.

9. In view of the above, we find no merit in the present OA and the same is dismissed. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh