

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

M.A. No.2684/2017
M.A. No.2685/2017
O.A. No.663/2014

Wednesday, this the 12th day of September, 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Dinesh Chand & others

..Applicants

(Mrs. Priyanka Bhardwaj, Advocate)

Versus

University Grants Commission & others

..Respondents

(Mr. Girish Pande, Advocate for Mr. Ravinder Aggarwal, Advocate for respondent No.1 (UGC), Mr. A K Behera, Advocate for respondent Nos. 4 & 6 and *nemo* for other respondents)

O R D E R (ORAL)

Mr. K.N. Shrivastava:

M.A. No.2684/2017 (COD)

The applicants in this M.A. were private respondent Nos. 4 & 6 in O.A. No.663/2014 *titled Dinesh Chand & others v. University Grants Commission & others*. The said O.A. was disposed of vide order dated 27.02.2017. The applicants in this M.A. have also filed M.A. No.2685/2017 seeking recall of the *ibid* order of the Tribunal for the reasons stated therein.

2. Through the medium of this M.A., the applicants have prayed for condonation of delay of 70 days in filing M.A. No.2685/2017.

3. Heard learned counsel for the parties briefly.
4. Considering the nature of controversy involved in M.A. No.2685/2017 and also taking into account the fact that there has been a delay of just 70 days in filing the said M.A., prayer of the applicants is allowed. Accordingly, this M.A. stands disposed of.

M.A. No.2685/2017

5. Through the medium of this M.A., the applicants, who were private respondent Nos. 4 & 6 in the O.A. No.663/2014, have prayed for recall of the order dated 27.02.2017, whereby the O.A. No.663/2014 has been disposed of.
6. The facts of the case in O.A. No.663/2014 are that the University Grants Commission (UGC) – respondent No.1 in the O.A. had advertised 17 (later increased to 19) posts of Education Officers on 16-17.02.2013 for its office and its various Regional College Bureaus. The applicants and so also the private respondents therein had participated in the selection process. The selection comprised of written examination and interview. It was alleged by the applicants therein that no weightage was given to the written examination and interviews were conducted in a perfunctory manner with a view to achieve pre-determined result. The Tribunal, vide its order dated 27.02.2017, quashed the selection and directed the respondents to prepare a fresh merit list by combining the marks secured by the short-listed candidates in the written test and interview. The operative part of the *ibid* order reads as under:-

“23. In view of the preceding discussion, and considering the law and the judgments cited by both the parties, we have come to a conclusion that the respondent UGC had conducted the final selection in violation of the conditions mentioned in the procedure notified on 08.06.2013 and their decision to base final selection only on the interview marks after the written tests had been conducted, has vitiated the process of selection. The impugned merit list of candidates selected for appointment to the post of Education Officer in UGC (Annexure-A/1) and the appointments made on the basis of that merit list are, therefore, quashed. The respondents are directed to prepare a fresh merit list by combining the marks secured by the shortlisted candidates in the written test and interview, and appointment candidates according to this merit list keeping view other eligibility conditions of the Recruitment Rules and the number of vacancies in different categories. The O.A. is allowed.”

7. The private respondents in the said O.A. were some of the selected candidates; two of them are applicants in this M.A. (private respondent Nos. 4 & 6). Their grievance is that even though they were arrayed as private respondents in the O.A. but they were never put to notice. In this connection, it is stated that from the memo of parties of the O.A., it could be seen that the private respondents were to be served notices through UGC or through its Regional College Bureaus.

8. The applicants in the M.A. have also placed on record a reply received from UGC under Right to Information Act, 2005 vide Annexure MA-2 letter dated 22.03.2017, in which it is mentioned as under:-

S. No.	Information Sought	UGC Reply
1.	Whether any of the notice served, through UGC, individually to 07 Education Officers who were made private respondents in CAT O.A. 663/2014 & M.A. 747/2014? If yes, please provide the certified copy of the receiving given by the concerned Education Officers.	No information available on records under the control of CPIO in this matter.

9. Accordingly, the applicants have contended that the order dated 27.02.2017 in O.A. No.633/2014 has been passed by the Tribunal without putting these applicants to notice, and hence Tribunal's order is in violation of the principles of natural justice. It is further stated that the observations of the Tribunal in paragraph 2 of the order that despite a large number of opportunities the private respondents did not file any reply, is not borne out from the facts. Accordingly, the applicants have prayed for the following reliefs in this M.A.:

“i) recall/set aside the judgment/order dated 22/02/2017 in O.A. No.663/2014.

ii) Pass any other order or directions which this Hon'ble Tribunal deems fit and proper in the light of the facts and circumstances of the present case.”

10. It is noticed that against the order of the Tribunal, these applicants had approached the Hon'ble Delhi High Court in W.P. (C) No.8641/2017, in which the Hon'ble High Court has passed an order dated 27.09.2017, which reads as under:-

“Issue notice. Counsel for respondent no.1, 2, 4 and 6 accepts notice. Let notice issue to the other respondents returnable on 17.01.2018.

Learned counsel for the respondent no.1 states that a recall application has been moved in the O.A., wherein the impugned order has been passed, by some of the private respondents on the ground that they had not been served in the O.A. It is also informed that another O.A. i.e. O.A. No.1520/2017 has been preferred by some of the selected persons. The said application is also pending, wherein an order of status quo has been passed.

List on 17.01.2018. The tribunal may proceed with the proceedings pending before it without it any manner being influenced by the fact that the present petition is pending.”

11. Mr. Behera drew our attention to the provisions of Rule 16 (2) of CAT (Procedure) Rules, 1987, which reads as under:-

(2) Where an application has been heard ex parte against a respondent or respondents such respondent or respondents may apply within 30 days from the date of the order to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when application was called for hearing the Tribunal may make an order setting aside the ex-parte order as against him or them upon such terms as it thinks fit, and shall appoint a day for proceeding with the application:

Provided that where the ex parte order of the application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also:

Provided further that in cases covered by sub-rule (8) of rule 11, the Tribunal shall not set aside ex-parte order of an application merely on the ground that it was not served upon a respondent or respondents.”

12. Heard the arguments of Mr. A K Behera, learned counsel for applicants and Mrs. Priyanka Bhardwaj, learned counsel for respondents in the M.A.

13. From the records, it is quite clear that these two applicants, together with seven others, were arrayed as private respondents in O.A. They were to be served the notice in the *ibid* O.A. through UGC and its entities. The RTI reply furnished by the UGC to these applicants leaves no room for any doubt that the private respondents in the O.A. were never served the notices. This appears to be the reason for their non-participation. The Tribunal also perhaps erred in not verifying as to whether the private respondents in the O.A. had been individually served by the UGC or not and

whether any proof of service had been filed by UGC or not before proceeding with the adjudication of the O.A.

14. Indisputably, the order dated 27.02.2017 passed in O.A. No.663/2014 has been passed without putting the private respondents to notice. In our opinion, the *ibid* order is illegal and violative of the principles of natural justice.

15. In the conspectus, this M.A. is allowed. The order dated 27.02.2017 passed in O.A. No.663/2014 is recalled. Let fresh notices be sent to all the private respondents, other than respondent Nos. 4 & 6, who are represented by Mr. A.K. Behera, learned counsel today. Reply on behalf of respondent Nos. 4 & 6 be filed within four weeks.

16. List O.A. No.663/2014 on 25.10.2017 together with O.A. No.1520/2017.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

September 12, 2018
/sunil/