

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

MA 521/18 (In OA 503/18)

MA 525/18 (In OA 499/18)

MA 527/18 (In OA 502/18)

MA 528/18 (In OA 501/18)

New Delhi, this the 15th day of May, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND

HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

.....

MA 521/18 (In OA 503/18)

Vinay Sharma,
Aged 30+ years,
s/o Kailash Sharma,
R/o 4/78, Azad Nagar,
Near Railway Station,
Baraut, Baghpat,
Uttar Pradesh (Applicant in OA No.503/18).....Petitioner

(By Advocate: Mr.Sachin Chauhan)

Vs.

1. Staff Selection Commission,
through the Chairman, SSC,
Block No.12, CGO Complex, Lodhi Road,
New Delhi-3
2. The Regional Director (NR),
Govt. of India, Department of Personnel & Training,
Staff Selection Commission, Block No.12, CGO Complex,
Lodhi Road,
New Delhi-3
3. Union of India,
Through its Secretary,
Govt. of India,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Training,
North Block,
New Delhi (Respondents in OA 503/18)....Opp.Parties.

(By Advocate: Mr. Rajesh Katyal)

MA 525/18 (In OA 499/18)

Jagdeep,
 Aged 29+ years,
 S/o Wazir Singh Malik,
 R/o H.No.1001, Sector 1,
 Rohtak, Haryana 124001 (Applicant in OA No.499/18).....Petitioner

(By Advocate: Mr.Sachin Chauhan)

Vs.

1. Staff Selection Commission,
 through the Chairman, SSC,
 Block No.12, CGO Complex, Lodhi Road,
 New Delhi-3
2. The Regional Director (NR),
 Govt. of India, Department of Personnel & Training,
 Staff Selection Commission, Block No.12, CGO Complex,
 Lodhi Road,
 New Delhi-3
3. Union of India,
 Through its Secretary,
 Govt. of India,
 Ministry of Personnel, Public Grievances & Pension,
 Department of Personnel & Training,
 North Block,
 New Delhi
4. Central Board of Direct Taxes through
 Its Chairman, CBDT,
 North Block, New Delhi (Respondents in OA 499/18)....Opp.Parts.

(By Advocate: Mr. Rajesh Katyal)

MA 527/18 (In OA 502/18)

Deepak Mann,
 Aged 32 + years,
 R/o H.No.473,
 VPO-Pehlad Pur (Banger),
 Delhi 42 (Applicant in OA No.502/18).....Petitioner

(By Advocate: Mr.Sachin Chauhan)

Vs.

1. Staff Selection Commission,
 through the Chairman, SSC,
 Block No.12, CGO Complex, Lodhi Road,

2. New Delhi-3

2. The Regional Director (NR),
Govt. of India, Department of Personnel & Training,
Staff Selection Commission, Block No.12, CGO Complex,
Lodhi Road,
New Delhi-3

3. Union of India,
Through its Secretary,
Govt. of India,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Training,
North Block,
New Delhi

4. Central Board of Direct Taxes through
Its Chairman, CBDT,
North Block, New Delhi (Respondents in OA 502/18)....Opp.Parts.
(By Advocate: Mr. Rajesh Katyal)

MA 528/18 (In OA 501/18)

Anju Punia,
Aged 31+ years,
D/o Jai Prakash Punia,
H.No.547, Village & PO Mukhmehpur,
Delhi 36 (Applicant in OA No.501/18).....Petitioner

(By Advocate: Mr.Sachin Chauhan)

Vs.

1. Staff Selection Commission,
through the Chairman, SSC,
Block No.12, CGO Complex, Lodhi Road,
New Delhi-3

2. The Regional Director (NR),
Govt. of India, Department of Personnel & Training,
Staff Selection Commission, Block No.12, CGO Complex,
Lodhi Road,
New Delhi-3

3. Union of India,
Through its Secretary,
Govt. of India,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Training,
North Block,
New Delhi 1

4. The Comptroller & Auditor General of India,
9, Deen Dayal Upadhyaya Marg,
New Delhi (Respondents in OA 501/18)....Opp.Parts.

(By Advocate: Mr. Rajesh Katyal)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

OA 503/18, OA 499/18, OA 502/18 and OA 501/18 were filed by the respective applicants on 29.1.2018 praying for quashing and setting aside the show-cause notices dated 27.05.2013 and for a direction to the respondents to give them appointments as per the selection process conducted by respondent-Staff Selection Commission (SSC) under Combined Graduate Level Examination, 2012 (CGL-212) with all consequential benefits including seniority and promotion and pay & allowance.

2. MA 521/18 (In OA 503/18), MA 525/18 (In OA 499/18), MA 527/18 (In OA 502/18), and MA 528/18 (In OA 501/18) were filed by the applicants seeking condonation of delay in filing of the said OAs.

3. Mr.Rajesh Katyal, learned counsel, appeared and took notices on behalf of the respondents. Despite repeated opportunities being granted to Mr.Rajesh Katyal, learned counsel, no counter replies either to the M.As. or to the O.As. were filed on behalf of the respondents.

4. We have carefully perused the records and have heard Mr.Sachin Chauhan, learned counsel appearing for the applicants, and Mr.Rajesh Katyal, learned counsel appearing for the respondents, on MA 521/18 (In

OA 503/18), MA 525/18 (In OA 499/18), MA 527/18 (In OA 502/18), and MA 528/18 (In OA 501/18). As the matters involve common questions of fact and of law, we propose to consider and dispose of the M.As. by this common order, although we have separately heard the learned counsel appearing for the parties on each of the M.As.

5. The applicant-petitioners were candidates of CGLE-2012. After having qualified Tier I and Tier II Examination, they appeared in the interview. As per the final result notice published by the respondent-SSC in February 2013, results of the applicants were withheld by the respondent-SSC. The respondent-SSC, vide show-case notices dated 27.5.2013, called upon the applicants to show cause as to why their candidatures should not be cancelled and they should not be debarred for five years from appearing in the Commission's examinations due to their involvement in unfair means in Tier II examination of CGLE-2012. In the said show cause notices it was alleged that during post-examination and analysis of performance of the candidates in the objective type multiple choice question papers, it emerged that the applicants had resorted to copying in the said paper in association with other candidates who also took the same examination. The applicants, vide their replies/representations, denied the allegations levelled against them in the show-cause notices dated 27.5.2013 and requested the respondent-SSC to consider their selection. While so, a large number of Original Applications, filed by similarly placed candidates challenging the

said show cause notices dated 27.5.2013, were allowed and the show-cause notices issued to them were quashed by the Tribunal. However, the Tribunal granted liberty to the respondent-SSC to issue fresh individual show cause notices by giving full details of alleged malpractices/copying, etc., and to pass appropriate speaking and reasoned orders after considering the representations received from those candidates. Accordingly, the respondent-SSC issued fresh show cause notices to those candidates. Before any decision could be taken by the respondent-SSC on the representations made by the candidates to the second show cause notices, those candidates again approached the Tribunal challenging the said fresh show cause notices. The Tribunal allowed a large number of applications, OA No.930 of 2014 and other connected O.As., **Sudesh, etc. vs. Staff Selection Commission and others** (supra) by quashing the second/fresh show cause notices and directed the respondent-SSC to declare the results of those candidates. The respondent-SSC challenged the Tribunal's decision by filing W.P. (C) No. 9055 of 2014 (**Staff Selection Commission & another vs. Sudesh**). The Hon'ble High Court of Delhi, vide judgment dated 19.12.2014, dismissed the said writ petition. Civil Appeal Nos. 2836-2838 of 2017 filed by the respondent-SSC against the Hon'ble High Court's judgment dated 19.12.2014(ibid) were dismissed by the Hon'ble Supreme Court, vide order dated 19.7.2017. Review Application Nos. 2417-19 of 2017 filed by the

respondent-SSC were also dismissed by the Hon'ble Supreme Court, vide order dated 31.10.2017.

6. In the above context, it was submitted by Mr.Sachin Chauhan, learned counsel appearing for the applicants that the respondent-SSC has not yet taken any decision on the applicant's representations/replies to the show-cause notices dated 27.5.2013(ibid) due to pendency of litigations by and between the similarly placed candidates and the respondents. Being similarly placed as applicants in **Sudesh, etc. vs. Staff Selection Commission and others**(supra), the applicants are entitled to the benefit of the order passed by the Tribunal therein, which has attained finality after dismissal of writ petition by the Hon'ble High Court of Delhi and dismissal of Civil Appeals and Review Applications by the Hon'ble Supreme Court. The representations made by the applicants in January 2018 claiming the benefit of the decision of the Tribunal, which was upheld by the Hon'ble High Court and by the Hon'ble Supreme Court, have not yet been also considered and no decision has yet been taken by the respondents. Therefore, the delay in the filing of OAs should be condoned and the OAs considered on merits, otherwise the applicants shall be gravely prejudiced.

7. On the other hand, it was submitted by Mr.Rajesh Katyal, learned counsel appearing for the respondents that the O.As filed by the applicants on 29.1.2018, challenging the show-cause notices dated 27.5.2013, are hopelessly barred by limitation. In support of his submission,

Mr.Rajesh Katyal relied on the decision of the Hon'ble High Court of Delhi in **Union of India vs. Narender Kumar**, W.P.(C) No.12395-99 of 2006, decided on 14.8.2007.

7.1 **In Union of India vs. Narender Kumar** (supra), a show-cause notice dated 28.9.1995 was issued to the respondent to show cause as to why the penalty of dismissal from service might not be imposed upon him. The show-cause notice was also published in the National daily. The respondent, however, failed to respond even to the said show cause notice. Consequently, the Disciplinary Authority passed an order of penalty imposing the penalty of dismissal upon the respondent on 19.10.1995 with immediate effect and further directed that the period of his absence from duty with effect from 11.12.1992 be treated as dies non for all purposes. The respondent, after a gap of nearly six years, preferred a departmental appeal against the order of his dismissal on 15.1.2001. The Appellate Authority refused to entertain the appeal on the ground that the same was barred by limitation, and it did not disclose sufficient cause for not preferring the appeal in time. This order was passed by the Appellate Authority on 17.1.2002. Being aggrieved, he preferred OA No.2711 of 2004 before the Tribunal. Before the Tribunal, the primary ground taken by the respondent to impugn the order of the Disciplinary Authority, as well as the appellate order, was that there was non-compliance of Rule 19(ii) of the CCS (CCA) Rules, 1965, inasmuch as no reasons had been recorded in

writing by the Disciplinary Authority as to why it was not reasonably practicable to hold an inquiry in the manner provided in the Rules and that there was nothing to show that the Disciplinary Authority had applied its mind to the circumstances of the case to conclude that the holding of the formal inquiry under Rule 14 was not reasonably practicable and the same should be dispensed with. On the other hand, the petitioner at the threshold raised the objection that the order of the Disciplinary Authority had merged in the order of the Appellate Authority, and that the Appellate Authority had rejected the appeal on the ground of limitation. The petitioner also denied having received any application for revision, as was claimed to have been submitted by the respondent. The Tribunal recognized the position that the respondent's appeal was beyond the period of limitation. The Tribunal also did not accept the respondent's submission that he had preferred a revision petition. However, the Tribunal, despite the aforesaid finding with regard to the bar of limitation in preferring of the departmental appeal, proceeded to consider the respondent's submission based on Rule 19(1)(ii) of the CCS (CCA) Rules, 1965 and passed the impugned order setting aside the appellate order dated 17.6.2002 on the ground that no reasons had been recorded by the Disciplinary Authority in his order to justify the conclusion that it was not reasonably practicable to hold an inquiry in the manner provided in the Rules. Setting aside the order of the Tribunal and dismissing the O.A. filed by the respondent, the Hon'ble High Court observed and held thus:

“15. Having itself noticed the admitted position that the appeal preferred by the Respondent was beyond limitation, the Tribunal ought not to have interfered with the same by going into the merits of the case. The Tribunal was examining the correctness of the Appellate Order, which only raised the point of limitation. The only question that arose for the consideration of the Tribunal was whether the Appellate Authority was justified in not entertaining the respondent’s appeal on account of the bar of limitation, and whether there was disclosure of sufficient cause by the respondent to justify the highly belated filing of the appeal. Only if the Tribunal had found that the Appellate Order was laconic on this aspect of the matter, could it have set aside and remanded the matter back for reconsideration by the Appellate Authority.

16. It appears that no serious attempt was made by the Respondent either to urge that the Departmental Appeal was preferred within the period of limitation, or that he had disclosed sufficient cause for the delay in preferring of the Departmental Appeal to be condoned. The Tribunal without even dealing with the aforesaid aspect of limitation, and without upsetting the Appellate Order on that score, straightforwardly proceeded to consider the other submission of the Respondent founded upon Rule 19(ii) of the CCS (CCA) Rules 1965, which was, in our view, not permissible.”

8. After having given our thoughtful consideration to the facts and circumstances of the case and to the rival contentions, we are not inclined to accept the plea raised by the respondents.

9. As already noted, the respondents have not filed counter replies to the M.As. Mr.Rajesh Katyal, the learned counsel appearing for the respondents, during the course of hearing on MAs, has also not refuted the statement made by the applicants that their replies/representations to the show cause notices dated 27.5.2013 have not yet been considered and no decision has yet been taken by the respondents in their cases pursuant to the

show cause notices dated 27.5.2013(ibid) due to pendency of litigations before the Tribunal and other higher forums initiated by and between the similarly placed candidates and the respondents. The statement made by the applicants that the representations made by them in January 2018 have not yet been considered and no decision has yet been taken by the respondents has also not been disputed by Mr.Rajesh Katyal. In view of this, and in view of the facts that the decision of the Tribunal in **Sudesh, etc. vs. Staff Selection Commission and others**(supra) has attained finality, consequent to the dismissal of the writ petition by the Hon'ble High Court of Delhi, vide judgment dated 19.12.2014(ibid), and dismissal of the Civil Appeal and Review Application by the Hon'ble Supreme Court, vide judgments/orders dated 19.7.2017 and dated 31.10.2017 respectively, and that the applicants are similarly placed as applicants in **Sudesh, etc. vs. Staff Selection Commission and others**(supra), the O.As. filed by the applicants deserve to be considered by the Tribunal. The decision cited by the respondents, being distinguishable on facts, does not go to support the plea of the respondents.

10. In the light of what has been discussed above, MA 521/18 (In OA 503/18), MA 525/18 (In OA 499/18), MA 527/18 (In OA 502/18), and MA 528/18 (In OA 501/18) are allowed. Counter replies to OA 503/18, OA 499/18, OA 502/18, and OA 501/18 shall be filed by the respondents within one month from today. Rejoinder replies, if any, shall be filed by the

applicants within one month from the date of receipt of counter replies. The O.As. shall be placed before the appropriate Bench as per roster on 18.7.2018 for hearing.

In terms of Rule 113 of the CAT Rules of Practice, 1993, the original of this order shall be kept in OA No.503 of 2018 and certified copies thereof shall be kept in OA 499/18, OA 502/18 and OA 501/18.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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