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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 1795 OF 2016

Date of order: 10th January 2018Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Soubhik Naskar,
Son of Subrata Kumar Naskar,
Aged about 30 years,
Unemployed youth,
Residing Srijan Abasan,
48/B/9, Dr. S.P. Mukherjee Road,
Dum Dum Cantonment,
Kolkata - 700 028.

.. Applicants

Vs.

1. Union of India through the
Secretary to the Govt. Of India,
Department of Personnel & Training,
Sansad Marg,
North Block,
New Delhi - 110 001
2. The Regional Director,
Staff Selection Commission (Eastern Region),
Nizam Palace, 1st MSO Building (8th Floor),
234/4, AJC Bose Road,
Kolkata - 700 020.
3. The Principal Chief Commissioner of
Income Tax, West Bengal & Sikkim,
Aayakar Bhawan, P-7, Chowringhee Square,
Kolkata - 700 069.

.. Respondents

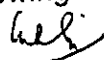
For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. S. Paul, Counsel

ORDERPer Dr. Nandita Chatterjee, Administrative Member:

Heard Ld. Counsel for both sides and examined the documents
available on record.

II. This Original Application has been filed under Section 19 of the
Administrative Tribunal, 1985 seeking the following reliefs:-



"a. An order quashing and/or setting aside the impugned order dated 10th May, 2016 holding the same as arbitrary, illegal and against the principles of equity and justice or as to this Hon'ble Tribunal may seem fit and proper.

b. An order quashing and/or setting aside the impugned communication dated 7.12.2012 which should be 7.12.2016 and the impugned notice dated 7.12.2016.

c. An order directing the respondents to grant all consequential benefits to the applicant.

d. An order directing the respondents to produce/cause production of all relevant records.

e. Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

III. The case of the applicant, as submitted by his Ld. Counsel, is that the applicant, an unemployed youth belonging to SC Community, had appeared in the Combined Graduate Level Examination (CGLE), 2012 and after having qualified in Tier I and Tier II examinations, was included in the list of successful candidates.

Subsequently, however, to the utter shock and surprise of the applicant, a list of withheld candidates with their Roll Nos. including the Roll No. of the applicant, was published in the website of respondent No.2 on 30.3.2013.

That, the applicant made attempts to obtain the reasons for such withholding of result through RTI but that the reply given was vague.

That, the applicant was served with a memorandum dated 4.6.2013 in which certain allegations were made against the applicant of resorting to copying in the examination in association with other candidates.

That, the other candidates, whose results have been withheld, had also been served with similar show-cause notice/memoranda.

That, the applicant replied on 17.6.2013 to the show-cause notice dated 4.6.2013. Not having received any communication subsequent to his reply to the show-cause notice, the applicant approached the Tribunal by filing

Ans.

O.A. No. 350/00801/2014. Prior to admission of the said O.A., the applicant was served with copy of the order dated 29.7.2014 whereby his candidature in CGLE-2012 was cancelled and he was debarred for a period of three years from the Commission's Examination w.e.f. 16.9.2012.

That, thereafter the applicant prayed to withdraw the earlier original application bearing No. 801/2014 while praying for liberty to file a fresh application challenging the respondents order dated 29.7.2014; the prayer was subsequently allowed by the Tribunal.

That, in the show-cause notice, no particulars of evidence had been furnished as to the malpractice/unfair means allegedly adopted by the applicant and as the candidate in collusion with whom he was alleged to have resorted in the malpractice was sitting away from him, such malpractice was not based on any evidence. In the meanwhile, the applicant had also appeared in CGLE-2013, hence his debarment for three years w.e.f. 16.9.2012 was bad in law given the fact that the same has been given retrospective effect. Hence, the applicant once again approached the Tribunal with O.A. No. 350/01129/2014 which was disposed of by the Tribunal by order dated 3.9.2014 by passing the following order:-

"5. Considering that, impugned order dated 29.7.2014 stands set aside and quashed. However, quashing of the impugned order will not debar the Staff Selection Commission to issue a fresh show-cause notice mentioning the details particulars of the name and other particulars of Shri G. Mondal as mentioned in the order impugned. So that the applicant may file appropriate reply to the show-cause notice. It is made clear that we have not gone into the merits of the case. All points are kept open for adjudication by the concerned respondents. The respondents are at liberty to issue a show-cause notice afresh giving the particulars of allegation within a period of 2 weeks and in the event of service of show-cause notice the applicant will file a reply to the show cause notice within a period of two weeks and in the event of service of show-cause notice the applicant will file a reply to the show cause notice within a period of two weeks thereafter and the respondents shall consider the same and a reasoned decision to be communicated to the applicant within two weeks from the date of taking such decision.

6. The O.A. is disposed of accordingly. No order as to costs."

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Thereafter, in compliance with the order of the Tribunal, the applicant immediately preferred a representation asking for certain documents on 20.10.2014 from the respondent authorities.

That, the applicant received a communication dated 6.1.2015 whereby some theoretical method of determination of use of unfair means was supplied to the applicant and that such method was totally vague, baseless as well as arbitrary.

That, the applicant thereafter preferred a representation dated 6.2.2015 in response to the communication of respondents dated 6.1.2015.

That, in the meantime, the applicant has received an appointment order in the Bank of Baroda but for the purpose of taking up appointment in Income Tax Department on the basis of an offer of appointment issued subsequent to CGLE-2013, the applicant approached the bank authorities for an NOC. Upon accepting of his resignation by the bank authorities, the applicant joined the Income Tax Department on 9.3.2016.

That, the applicant was thereafter served with an order dated 10.5.2016 of the respondent authorities whereby not only his candidature of CGLE-2012 was cancelled but he had also been retrospectively debarred from appearing in the Commission's Examination for a period of three years from 16.9.2012 which meant that he would be also losing his job in the Income Tax Department consequent to CGLE, 2013.

That, the respondent authorities also issued a communication dated 24.10.2016 proposing to cancel his appointment and asking for his explanation forthwith.

The applicant further approached the Tribunal by filing O.A. No. 1657 of 2016. As the Tribunal did not grant him any interim order to stay the communication dated 24.10.2016, the applicant approached the Hon'ble

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High Court at Calcutta by filing a Writ Petition. The Hon'ble High Court quashed the termination notice dated 24.10.2016, directed the applicant to make a representation against the said communication dated 24.10.2016 and the respondent authorities to decide on the same. That, the applicant filed a representation dated 1.12.2016 but the Respondents send him a termination order dated 7.12.2012/7.12.2016 (A-26 to the O.A.).

The applicant thereafter withdrew O.A. No. 1657 of 2016 on 21.12.2016 with liberty to file fresh O.A. challenging the communication dated 24.10.2016 (A-24) as well as termination notice dated 7.12.2016 (Annexure A-26 to the O.A.); hence the present application.

IV. The Respondents per contra, have argued that the applicant was issued a fresh show cause notice dated 8.10.2014 (Annexure R-II to reply) in accordance with Tribunal's order dated 3.9.2014. Thereafter, in response to the said Show Cause Notice, the applicant sought some documents vide his representation dated 20.10.2014 (Annexure R-III to reply) which was also furnished to him, as available with the Commission vide their office letter No. 5/11/2013-Nom. Dated 6.1.2015 (Annexure R-IV to reply) and disposed of his representation dated 6.2.2015 (Annexure R-V to reply) that prayed for dropping the proceedings against him in the matter. That the representation dated 6.2.2015 made by the applicant praying for dropping the proceedings against him in the matter had been carefully considered by the Commission, and the Commission found that the method of Post-Examination Scrutiny and Analysis conduct by IBPS, in order to determine the use of unfair means, are based on the conclusion arrived at by the high level of matching of answer responses in the OMR answer sheets which are improbable, thereby indicating resort to unfair means. Matching of answers of the applicant in paper-1 of Tier-II of Combined

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Graduate Level Examination, 2012 with the other candidates Shri Gopal Mondal have been recorded by the Respondents as under:-

Tier II (Paper-I)	Total Match	Right Right match	Wrong Wrong match	Blank Blank Match
Test - I	34	12	02	20
Test - II	48	26	10	12

The Commission, in view of the high level of matching of answers/ responses discovered by Post-Examination Analysis between the applicant and Shri Gopal Mondal in Paper I of Tier II of Combined Graduate Level Examination, 2012, decided to proceed with cancellation of candidature of the applicant for Combined Graduate Level Examination - 2012 and also re-imposed debarment on him from appearing the Commission's examination for a period of three years, with effect from 16.9.2012 i.e. the date of Examination of Tier II Paper I and issued a Speaking Order bearing No. C-18012/70/2014-Admin. Dated 10.5.2016. The applicant filed O.A. No. 909 of 2016 against the said speaking order dated 10.5.2016 issued by the Commission. In view of the reasoned order dated 10.5.2016 issued by the Commission debarring the applicant for a period of three years with effect from 16.9.2012 to 15.9.2015, the applicant was not eligible for appearing in the the CGL Examination, 2013 as the date of examination, of CGL Examination, 2013 was within the stated debarment period. Hence, his dossier was sought back from the Department of Income Tax with a request to withdraw his appointment order, if already issued vide this office letter No. 03/06/2015-Exam.II dated 16.6.2016 (Annexure R-VI to reply). Pursuant to the reasoned order dated 10.5.2016 issued by the Commission, Department of Income Tax issued letter F. No. 5E/9/Apptt. Of TA/2007-08/Part-X/15182 dated 24th October, 2016 to him calling for his explanation as to why his appointment as Tax Assistant in the Income Tax

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Department should not be cancelled in view of the order dated 10.5.2016 issued by the Staff Selection Commission. Subsequently Notice of termination bearing S. No. 5E/9/Apptt. Of TA/2007-2008 Part-X/15541 dated 24th October, 2016 was issued by the Income Tax Department to the applicant. Thereafter the applicant withdrew O.A. No. 00909/2016 upon being so permitted by the Tribunal. The applicant further, filed O.A. No. 1657/2016 challenging both the orders of debarment issued by the Commission as well as the termination Notice issued by the Income Tax Department. As he failed to obtain any interim relief from the Central Administrative Tribunal in O.A. No. 1657/2016, he approached the Hon'ble High Court, Calcutta vide AST No. 321 of 2016, praying, inter alia, for interim stay of the order dated 10.5.2016 issued by the Commission as well as the Termination Notice of the Income Tax Department dated 26.10.2016. The Hon'ble High Court vide its order dated 25.11.2016 (Annexure R-VII) directed the respondents which reads as under:-

" In these circumstances, the order dated 26th October, 2016 which is notice of termination of service, issued under Rule 5(1) of the said Rules, is set aside. The petitioner will submit his reply to the show-cause notice, dated 24th October, 2016 within one week from today. The respondent authorities will act on the reply to the show-cause notice within one week after it is submitted to them. The authorities will communicate to the petitioner any order which they may pass after the submission of his reply. However, they will not act upon the order, if it has an adverse effect on the Petitioner, for two weeks after it is communicated to the Petitioner. The other issues raised in this petition may be raised before the Tribunal in the pending original application."

In compliance with the order dated 25.11.2016 passed by the Hon'ble High Court, Calcutta, Income Tax Department issued Notice of Termination of service vide F. No. 5E/9/Apptt., of TA/2007-2008/Part-X/18604 dated 7th December, 2016. Subsequently the applicant withdrew the O.A. 1657 of 2016 and filed the instant O.A. No. 1795 of 2016 afresh against the order dated 10.5.2016 of the Commission and the Termination Notice dated

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7.12.2016 issued by the Income Tax Department.

V. The singular issue that is required to be decided upon in the context of the instant application is, as to whether, the order dated 10.5.2016 of the respondent authorities (Annexure "A-23" to the O.A.) can be held to be arbitrary, illegal and against the principles of equity and justice and whether the consequent order dated 7.12.2016 (issuance incorrectly dated as 7.12.2012) deserves to be quashed on said grounds.

VI. This instant matter has been taken up in various judicial fora including applications made before the Tribunal in O.A. No. 1129 of 2014, withdrawn O.A. 909/2016, withdrawn O.A. No. 1657 of 2016 and thereafter filing of O.A. No. 1795 of 2016 which is the subject matter of adjudication before us.

The Ld. Counsel for the applicant has argued that, given the appointment order dated 28.9.2015 (Annexure A-20 to the O.A.) the respondents, while debarring him vide their order dated 10.5.2016 (Annexure A-23 to the O.A.) from appearing in the Commission's examination for a period of three years w.e.f. 16.9.2012 and subsequent order of the respondent authorities dated 7.12.2012/7.12.2016 in consonance to the Hon'ble High Court's order dated 25.11.2016 cannot be legally upheld as because he was permitted to appear at the CGLE of 2013 by the respondent authorities and hence the respondent authorities cannot cancel his appointment based on an examination which has not been called into question.



Accordingly we refer to the appointment order dated 28.9.2015, which is reproduced below:-

GOVERNMENT OF INDIA

OFFICE OF THE PRINCIPAL CHIEF COMMISSION OF
INCOME TAX, WEST BENGAL & SIKKIM, AAYAKAR
BHAWAN, P-7, CHOWRINGHEE SQUARE,
KOLKATA - 700 069

Se/9/aPPTT. OF ta/2007-08/pTVIII/10125 Kolkata, the 28th Sept.2015

MEMORANDUM

Soubhik Naskar (SC) (D.O.B 13.3.1986), S/o. Subrata Kumar Naskar, Srijan Abasan, 18/B/9, Dr. S.P. Mukherjee Road, Dum Dum Cantonment, Kolkata - 700 028, a candidate sponsored by the SSC (Eastern Region) on the basis of Combined Graduate Level Examination, 2013, is hereby informed that he/she has been selected for appointment to the post of Tax Assistant in Pay Band-I (Rs. 5,200-20,200) + Grade Pay of Rs. 2,400) plus usual allowances as may be sanctioned by the Government of India from time to time. The terms and conditions for the appointment are detailed below:-

If he/she accepts the offer on those terms and conditions, he/she should report himself / herself for duty to the Addl. Joint Commission of Income Tax, Headquarters (Pers. & Estt.), Kolkata, 1st Floor (Room No. 14), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata - 700 069 on or before 30th October, 2015 failing which this offer of appointment shall be considered as cancelled.

No travelling or other allowances will be paid to the appointee for obtaining the medical or other certificates mentioned below or for joining the post.

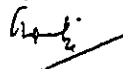
TERMS AND CONDITIONS OF THE SERVICE

1. The appointment is purely provisional and is subject to the satisfactory verification Caste, the character and antecedents report by the respective administrative authorities. In case of any negative verification, the services would be terminated without assigning any reason or notice.

2. FORM A & FORM A-I :- The appointment subject to the production of Medical Certificate of fitness in the prescribed FORM 'A' along with statement in FORM A-I (COPIES ENCLOSED) from any of the following authorities:-

(I) In the case of male candidate:- A Civil Surgeon or a District Medical Officer or a Medical Officer of equivalent rank.

(II) In the case of female candidate:- A Registered female medical practitioner possessing a medical qualification included in one of the schedules to the Indian Medical Council Act, 1956 (102 of 1956), Indian Medical Central Act, 1970 and Homoeopathy Central Council Act, 1973.



3. FORM B:-

(A) Two certificates of good character in the (enclosed) prescribed form (Form B) from two Gazetted Officers of the Central or State Government or one such certificate from a Stipendiary Magistrate, not related with the appointee by birth or marriage.

(B) Original certificates in proof of academic and other qualification, date of birth and caste certificate, certificate of PH in case of PH category, pension papers in case of Ex-serviceman and Registration card of Employment Exchange (in original) should be produced at the time of joining. Attest copies thereof should also be submitted.

4. FORM C:- The appointee must furnish a statement in the prescribed form (Form C) (enclosed) giving full particulars of his previous employment if any for the last three years under the Government of India or under any State Government.

5. FORM G:- Before joining the appointee must give a declaration in the prescribed form (enclosed) to the effect that he/she does not have more than one wife/husband living.

6. FORM H:- A certificate in the enclosed prescribed form will have to be produced by an appointee in support of the claim, if any, for being treated as a member Scheduled Castes/ Scheduled Tribes & OBC Community.

7. The appointee should not furnish incorrect information on any point, which may consider him/her liable to disciplinary action.

8. It must be noted that the Head of Office has full right to withhold any application from the appointee for employment in Private Business and Industrial Firms and shall have also full discretion to forward or to withhold any application for appointment in other Government offices.

9. The appointee will be liable to be transferred anywhere in West Bengal which includes Andaman & Nicobar Island and Sikkim and has to abide by the Rules governing the Central Govt. Employees and amendments thereof from time to time.

10. The services of the appointee are also liable to be terminated on one month's notice on either side or without notice

11. If the appointee is a subject of Nepal or a resident of Union Territories of Pondicherry, Daman and Diu or a resident of Andaman & Nicobar Islands or of India origin repatriated from Ceylon/Burma and migrated to India or of Indian Origin migrated from Kenya, Uganda and the United Republic of Tanzania, a certificate to that effect must be produced at the time of joining.

12. The appointee will have to take an Oath of Allegiance to the Indian Republic and its Constitution at the time of appointment.

(DEBASHIS MAJUMDAR)
JOINT COMMISSIONER OF INCOME TAX, HQRS.
(PERS. & ESTT.), KOLKATA

**FOR PRINCIPAL CHIEF COMMISSIONER OF
INCOME TAX, (WEST BENGAL & SIKKIM) "**

The following are highlighted therefrom:

" The appointment is purely provisional and is subject to the satisfactory verification Caste, the character and antecedents report by the respective administrative authorities. In case of any negative verification, the services would be terminated without assigning any reason or notice."

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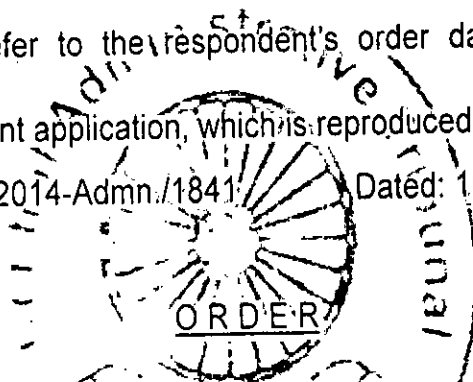
"The services of the appointee are also liable to be terminated on one month's notice on either side or without notice."

It is seen that the applicant has accepted the said terms and conditions.

Having done so he is, at a later stage, estopped from challenging the said terms and conditions at any forum.

VII. Next, we refer to the ^{Administrative} respondent's order dated 10.5.2016 so impugned in the instant application, which is reproduced below:-

"No. C-18012/70/2014-Admn./1841 Dated: 10th May, 2016



WHEREAS, Shri Soubhik Naskar, son of Shri Subrata Kumar Naskar, residing at Srijan Abasan, 48/B/9, Dr. S.P. Mukherjee Road, Dum Dum Cantonment, Kolkata, West Bengal - 700 028, who was a candidate (with Roll No. 4410509595) of Combined Graduate Level Examination, 2012, was issued a fresh Show-Cause Notice dated 8.10.2014 in compliance with the ORDER(ORAL) dated 3.9.2014 of Hon'ble Central Administrative Tribunal, Calcutta Bench in O.A. No. 350/01129/2014 furnishing therewith particulars of allegation and directing him to show cause as to why his candidature for the aforesaid examination should not be cancelled and he should not be debarred for a period for three years with effect from 16.9.2012 from appearing in examinations conducted by the Commission on the grounds of his indulgence in unfair means in association with other candidate Shri Gopal Mondal (roll No. 4410549295), son of Shri Ajit Kumar Mondal, Vill-ghola PO- Joynagar, P.S. - Ghatal, Paschim Medinipur, West Bengal-721 212 of the same examination, latest by 22.10.2014 vide this office Memorandum No. 5/1/2013-Nom. Dated 08.10.2014;

2. AND WHEREAS, Shri Soubhik Naskar in response to aforesaid Memorandum dated 8.10.2014 sought documents concerning sitting arrangement, inspection report, evidence and report of expert and report of post-examination scrutiny and analysis vide his representation dated 20.10.2014 addressed to Regional Director, Staff Selection Commission, Eastern Region, Kolkata.

3. AND WHEREAS, Shri Soubhik Naskar was furnished vide SSC

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office letter No. 5/1/2013-Nom. Dated 6.1.2015 the explanation/analysis of the Commission contained in its letter No. 13/88/2014-C.I(I) dated 17.12.2014 as reproduced below by way of disposal of his aforesaid representation dated 20/10/2014:

In the Multiple Choice Objective Type Test used by SSC in Tier II of Combined Graduate Level Examination, 2012, there are 4 choices/alternative answers in each question out of which only one is right answer in each question and the other three are wrong answers. As far as possible all choices are made plausible enough such that in the event that the candidate does not happen to know the correct answer he would select one of three wrong answers by chance. Thus, the probability of picking a particular wrong answer is 1 out of 3 or $1/3$ or 0.33 . Similarly, if the other candidate of the pair also does not happen to know the right answers to the same question, he would also happen to select one of the 3 wrong answers. Therefore, the occurrence of one question with identical wrong answers by a pair of candidates will be $1/9 = (1/3)^2 = (0.33)^2$. Similarly the probability of a pair of candidates having 2 questions with identical wrong answers would be $(0.33)^2$ multiplied by $(0.33)^2 = (0.33)^4$. If it is continued in the same way, the probability of the pair making wrong answers to 6 questions will be $(0.33)^{12}$ i.e. 0.00000017. the probability of making wrong answers to 12 questions will be $(0.33)^{24}$ i.e. 0.0000000000027. It means that one can be certain that such an event cannot occur just by chance.

4. AND WHEREAS, the Commission finds that in case of the malpractices indulged in by the candidates through Bluetooth technology, such candidates normally receive answers through hidden wireless devices on their body which are very difficult to detected by invigilation staff and the Commission also find that candidates have advance arrangement with organized gangs who get the question paper solved through experts in various subjects and transmit the right answers to various candidates who have arranged in advance to receive such answers.

5. AND WHEREAS, the Commission also finds from many other cases that some candidates even come to take examination with chits having right answers procured by them a few minutes before the close of gates of examination venue and that such modus operandi has been repeatedly documented by investigating agencies in which cases such candidates have been caught many a times and FIR registered against such delinquent candidate.

6. AND WHEREAS, the Commission also finds from experience that it is very difficult to detect such small electronic devices and consequently difficult to collect concrete evidence to back the charges, having been left with the only possible method to detect indulgence in organized cheating through post examination analysis which is essential to ensure that cheaters and fraudsters are not able to enter Government service.

7. AND WHEREAS, further representation dated 6.2.2015 made by Shri Soubhik Naskar praying to drop the proceedings against him in the matter, has been carefully considered by the Commission, and the Commission finds that the method of post-examination scrutiny and analysis applied in the instant case, in order to determine the use of unfair means, are based on the conclusion arrived at by the high level of matching of answer responses in the OMR answer sheet which are improbable, thereby indicating use of unfair means. Matching of

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answers of Shri Soubhik Naskar in Paper I of Tier II of Combined Graduate Level Examination, 2012 with the other candidate Shri Gopal Mondal are as under:-

Tier II (Paper -I)	Total Match	Right Right match	Wrong Wrong match	Blank Blank match
Test I	34	12	02	20
Test II	48	26	10	12

8. AND WHEREAS, the Commission, in view of the high level of matching of answer responses discovered by post-examination analysis between Shri Soubhik Naskar and Shri Gopal Mondal in paper I of Tier II of Combined Graduate Level Examination, 2012, has decided to proceed with cancellation of candidature of Sri Soubhik Naskar for Combined Graduate Level Examination 2012 and to debar him from the Commission's examination for a period of three years, with effect from 16.9.2012 i.e the date of examination of Tier II of Paper I;

9. NOW, THEREFORE, in compliance with the Order (Oral) dated 3.9.2014 of Hon'ble Central Administrative Tribunal, Calcutta Bench in O.A. No. 350/01129/2014, Shri Soubhik Naskar, son of Sri Subrata Kumar Naskar, is hereby informed that his candidature for Combined Graduate Level Examination 2012 has been cancelled and he has been debarred from appearing in the Commission's examinations for a period of three years with effect from 16.9.2012 which is the date of holding of Tier II of the said examination.

(B. Bandyopadhyay)
Regional Director, SSC(ER), Kolkata"

A fresh show-cause notice had been issued on 8.10.2014 in compliance with the order dated 3.9.2014 of the Tribunal in O.A. No. 1129 of 2014. The applicant had sought for certain documents vide his representation dated 20.10.2014 to which the respondent authorities, on 6.1.2015, inter alia, provided the analysis of the method of determination of means of unfair means and copy of attendance sheet to him. The applicant made a further representation dated 6.2.2015 by which he sought for more information with special focus on the siting plan but did not at any stage refute objectively the principle of the statistical method adopted to determine the incidence of adopting unfair means in CGLE, 2012.

The respondents in their reply, have referred to the validity of the

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scientific /statistical method while establishing the case of unfair means has been tested in the following judicial forums:-

" The Hon'ble High Court of Patna in its judgment dated 3.4.2012 in Civil Writ Petition No. 6185/2008 stated that the methodology/formula developed by IBPS is based on purely arithmetical calculation and no fault can be found against the said formula.

The fact that this manner of indulging in malpractices is rampant has been accepted by the Hon'ble Supreme Court in its recent judgment dated 15.6.2015 in Tanvi Sarwal v. CBSE Writ Petition (Civil) No. 298/2015 while annulling the All India Medical and Pre-Dental Examination, 2015, conducted by the Central Board of Secondary Examination.

In the malpractices such as this, which happen through Bluetooth and latest technological gadgets, it is not necessary for candidates to be sitting next to each other or in one room or within one venue or even in one city. The candidate indulging in such malpractices may be sitting in different cities in different venues and receiving answers through Bluetooth devices.

In LPA 155/2013 in the case of Varun Bhardwaj v. State Bank of India and others in similar case of Post Examination Analysis conducted by IBPS for detecting adoption of unfair means by candidates during examination, the Hon'ble High Court of Delhi decided on 24.11.2015 as follows:

"In the present case, the pattern which emerged showed that the appellant's results in respect of wrong answers matched with some other candidates who also appeared in the New Delhi centre. On further scrutiny, the reasonableness of the suspicion was strengthened by the manner of his attempting the answers. These, in the opinion of the Court, were sufficient basis for SBI to conclude that unfair means had been employed and withhold his result. The direction sought are, therefore, unavailable in exercise of judicial review discretion under Article 226 of the Constitution. As a result, this Court finds that the impugned judgment and order of the learned Single Judge does not call for interference. The appeal is, therefore, dismissed with any order as to cost."

As the applicant or his Ld. Counsel has not cited before us any decision of the Hon'ble Apex Court to the contrary and which may serve as ratio decidendi in this matter, we would be guided by the decision of the Hon'ble High Court at Delhi that the "direction sought are unavailable in exercise of judicial review discretion under Article 226 of the Constitution."

VIII. The applicant had also raised the issue of jurisdiction when he had

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claimed that his case of termination should not be made under CCS (Temporary Service) Rules, 1965 but that it can be effected only after following the procedure enumerated in CCS (CCA) Rules, 1965 as he has been appointed against a permanent post. It is evident from his appointment letter, however, that his appointment was purely provisional. His service as provisional appointee was liable to be terminated on one month's notice or without any notice and that his appointment was subject to verification of the character and antecedent report of the respective administrative authorities. Hence, the service of the applicant is governed by CCS (Temporary Service) Rules, 1965, his appointment being purely of a provisional nature.

IX. It has been alleged that the principles of justice were denied to the applicant. The administrative authorities, namely, the revenue authorities, were guided by the SSC, which is the authorised body to conduct the examination and to make recommendations to the revenue authorities which is the requiring body in this regard. Once the SSC had debarred him consequent to a process that had emanated as early as on 4.6.2013, it is nobody's case that the applicant was ignorant of the fact that he was under a cloud.

Though the Tribunal had quashed the notice on 4.6.2013, the respondent authorities were given liberty to issue a fresh show-cause notice which they did on 8.10.2014. The applicant was perfectly aware that the process against his resort to unfair means was alive during the period that followed 8.10.2014 as because he had himself responded to their notices at various points of time thereafter.

Hence, the applicant was never denied the principles of natural justice; the applicant himself had accepted the terms and conditions of his

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appointment stating that such appointment was provisional and subject to verification of antecedents and he furnished no objective and scientific grounds to question the results of the statistical analysis or the scientific principle adopted. Regarding his insistent request for the sitting plan in the examination hall, it is noted in deference to the findings of the Hon'ble Courts that in the malpractices such as this, which happen through Bluetooth and latest technological gadgets, it is not necessary for candidates to be sitting next to each other or in one room or within one venue or even in one city.

The applicant has nowhere responded to the contents of the show-cause notice; the entire delay hence cannot be attributed to respondents, who were awaiting receipt of the reasoned reply which was never submitted by the applicant.

The applicant, having been aware of the entire ongoing process against his candidature in CGLE, 2012 resorted to a calculated risk when he left his Officer's job in a Nationalised Bank to repeatedly seek appointments as an Income Tax Assistant.

In our considered view, the respondent authorities have carried out the instructions of all the judicial fora; the analysis of unfair means is based on a scientific principle which has withstood judicial scrutiny; the applicant has been given opportunity at every stage to defend his case and the applicant had accepted voluntarily, the terms and conditions of an appointment order which was purely provisional, which was liable to be terminated at short notice and which actually called for verification of antecedents. It is nobody's case that the applicant was not aware of these proceedings against him. Hence, as natural justice has been meted out to him on all occasions and the respondent have ensured fair and proper administration *hal*

of their Rules, the allegation of the impugned order being against the principles of justice does not hold water.

X. It is also seen from the reply of the respondents that show-cause notice of 4.6.2013 was served on all the three candidates including the applicant to explain why candidature should not be cancelled and why debarment should not be issued on ground of adopting unfair means. This has been admitted by the applicant in para 4(i) of the application. As equal treatment have been meted out to all candidates with fairness and impartiality and the applicant or his Counsel has not been able to produce before us a single order or judicial pronouncement whereby the said debarment was struck down by any other judicial forum, the conduct of the respondents and their decisions cannot be held guilty of being against the principles of equity that demands principles constituting what is fair and right.

Upon a reasoned analysis of the submissions made, documents placed, pleadings rendered and records annexed, we conclude as follows:-

- 1) The Respondents have acted within their framework of extant Rules and hence their actions cannot be held as illegal.
- 2) The actions of the respondents, having adhered to Rules and being in compliance of all judicial decisions cannot be alleged to be arbitrary.
- 3) At all stages, natural justice was accorded to the applicant to respond. The applicant was totally aware of the proceedings and possible implications.
- 4) All candidates who have resorted to unfair means have been treated similarly hence the principles of equity has not been violated in this case.
- 5) The scientific principle behind the statistical analysis have withstood judicial scrutiny and has support in judicial pronouncement of the Hon'ble

Heel.

Apex Court.

XII. The applicant, therefore, has not been able to prove illegality, arbitrariness and violation of principles of natural justice and equity; hence, the O.A. fails to succeed and is dismissed on merit. Parties will bear their respective costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

SP

