

(Reserved on 09.01.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/01052/2017

This the **26th** day of **February, 2019**

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Amit Kumar Bhati, aged about 29 years, son of Sri Ajab Singh, resident of village Kunda, Post Gadina, District Meerut – 250401. Roll No. 3011515708 at CGLE - 2012.

.....Applicant

By Advocate: Shri Shyamal Narain

Versus

1. Union of India through the Secretary, Department of Personnel and Training, Government of India, New Delhi.
2. The Staff Selection Commission through its Chairman, Block No. 12, CGO Complex, Lodhi Road, New Delhi.
3. The Director, Staff Selection Commission (Central Region), 21-23, Lowther Road, Allahabad.
4. The Deputy Direction, Staff Selection Commission (Central Region), 21-23, Lowther Road, Allahabad.

.....Respondents

By Advocate : Shri Jitendra Prasad

O R D E R

DELIVERED BY:-

HON'BLE MS. AJANTA DAYALAN, (MEMBER-A)

The present original application has been filed by the applicant feeling aggrieved by the order dated 09.05.2014 cancelling his candidature in the Combined Graduate Level Examination 2012 and further debarring him for a period of three years from the Commission's examinations. The applicant has sought quashing of this order as well as direction to the respondents to process his candidature and allot him service for which he was selected alongwith consequential benefits.

2. The facts of the case, as stated by the applicant, are that the Staff Selection Commission (SSC for short) issued a notice on 24.03.2012 for holding Combined Graduate Level Examination 2012 (exam for short) and invited applications there for. The applicant being eligible submitted his application in OBC category and he was declared successful in Tier-I and Tier-II of the exam. Subsequently, the applicant appeared in Data Entry Skilled Test / Computer Proficiency Test held in November 2012 in which he was also declared successful. Thereafter, he was called for interview and the final result was declared on 08.02.2013 and the applicant was declared successful and selected to the post of Auditor under the Comptroller and Auditor General's office, Jammu & Kashmit. However, later the SSC published revised result on 30.05.2013 showing the roll numbers of candidates in 'withheld list'. 836 candidates were kept in withheld list. The roll number of the applicant was not reflected therein. Thereafter, another list of withheld candidates, whose results were withheld, was published and in this second list, the applicant's roll number was shown at Sl. No. 701. The applicant was served with a show cause notice on 04.06.2013. According to the learned counsel for the applicant, the show cause notice was vague and non-specific as though it was levelling charge of copying against the applicant, it did not contain even the most basic particulars such as date, time and even mode or manner of copying. Further, though the show cause notice pointed to 'incontrovertible and reliable evidence' that had emerged to show that the applicant had resorted to copying in association with other candidates, no such evidence was made available to the applicant at any point of time. Identical and stereo-typed notices were issued to many other candidates. According to the learned counsel for the applicant, though it was not possible to give any meaningful reply to the show cause notice due to its vagueness, the applicant gave

response on 12.06.2013 (Annexure A-7) denying the allegations. Nothing further was heard from the respondents side for a long time. Finally, the applicant alongwith three other similarly placed candidates preferred OA No. 1118 of 2013 – Pradeep Kumar & Ors. Vs. UOI & Ors on 06.09.2013 before this Tribunal. On 21.10.2013, the Tribunal directed the respondents to take decision on the pending replies to the show cause notice submitted by the applicants in that OA. However, no decision was taken by the respondents on the replies given by the present applicant and other co-applicants in that OA.

3. Learned counsel for the applicant stated that through out this period, the respondents kept issuing letters and cleared successive batches of candidates belonging to different regions whose results were withheld on 30.05.2013. Learned counsel for the applicant stated that copies of letters in respect of 393 candidates (out of total list of 836 candidates withheld on 30.05.2013) have been annexed with the OA at Annexure A-8. Learned counsel for the applicant argued that it is not understood how the Commission after ‘careful examining’ considered these cases fit for clearance whereas earlier they were in possession of ‘incontrovertible and reliable evidence’ to show that those candidates had indulged in copying. Learned counsel for the applicant also argued that the impugned order dated 09.05.2014 had been passed mechanically without considering the points taken in reply dated 12.06.2013. He also stated that similar and near-identical orders have been passed in respect of other three co-applicants in OA No. 1118 of 2013 thereby showing complete non-application of mind to the individual cases of different candidates. Learned counsel for the applicant pleaded that the applicant is innocent and had not used unfair means at any stage of three tier examination process and was never warned for any wrong doing.

4. Learned counsel for the applicant stated that the case of the applicant is similar to many others already decided in a bunch of cases in OA No. 231 of 2013 alongwith connected OAs, which was allowed by the Tribunal vide order dated 06.05.2014 as modified later on 20.05.2014. The aforesaid OAs were allowed by the Tribunal as the alleged incriminating material and evidence forming the basis of cancellation of candidature and debarment had not been made available or known to the applicants therein. Learned counsel also stated that in a bunch of OAs connected with OA No. 930 of 2014 pertaining to the same exam, the Principal Bench of this Tribunal vide its order dated 30.07.2014 had allowed those OAs. The Principal Bench also passed similar order allowing OA No. 2839 of 2014 – Devender Yadav & others Vs. Union of India & others on 17.09.2014. In the said OA, clear directions were issued to the respondents to declare the results of the applicants and allot them service on the basis of merit, if found successful. It was further argued by the learned counsel for the applicant that three other co-applicants in OA No. 1118 of 2013 had joined six other similarly placed candidates in OA No. 1049 of 2014 – Ajay Kumar Vs. Union of India & others which was allowed by the Tribunal on 27.11.2014 (Annexure A-10).

5. Learned counsel for the applicant stated that the decision of the Principal Bench dated 30.07.2014 passed in OA No. 930 of 2014 was challenged by the SSC through W.P.(C) 9055 of 2014 before Hon'ble Delhi High Court, which was dismissed on 19.12.2014. SLP against this judgment filed by the SSC was also dismissed on 19.07.2017 (Annexure A-12). In between, interim order passed by the Hon'ble Apex Court in SLP on 06.04.2015 was operative and on account of this stay order, the applicant was advised that it would be futile to approach the Tribunal for any relief till the issue was pending before the Hon'ble Supreme Court. Accordingly, the

applicant decided not to approach the Tribunal during pendency of the case before the Hon'ble Supreme Court and filed this OA immediately after the order dated 19.07.2017. The delay being on this account, learned counsel for the applicant has sought condonation of delay, which has already been condoned by this Tribunal vide order dated 09.05.2018.

6. On the other hand, learned counsel for the respondents stated that the applicant has approached this Tribunal after a gap of 4 and ½ years from the date of cause of action. Further, examinations for the years 2013, 2014, 2015 and 2016 have already been completed and even the exam for 2017 is to be held in February 2018. It is further stated that the applicant's name was clearly kept in withheld list and he was aware of the same but he decided to approach the Commission only in 2017 i.e. after a long period of over four years. Learned counsel for the respondents has also relied on the judgment of Hon'ble Apex Court in the case of K.B. Laxmiya Shetty and others Vs. State of Mysore and others – AIR 1967 SC 993 and Gyan Singh Vs. High Court Punjab & Haryana – AIR 1980 SC 1894 vide which Hon'ble Apex court has held that explanation for inordinate delay and laches cannot be a ground for exercising the extra ordinary jurisdiction under Article 226 of the Constitution of India. The respondents have also relied upon number of other judgments of Hon'ble Supreme Court whereby the courts have viewed adversely in approaching the courts much after original cause of action without any sufficient explanation.

7. Learned counsel for the respondents has further pleaded that the applicant, having approached the Tribunal after almost 4 and ½ years from the date of declaration of the result and three years after cancellation of his candidature, has no right to take plea with reference to candidates who approached the Tribunal within time limit. Instead of challenging the impugned order before any forum of law, the applicant waited till final

decision in SLP. Hence, his case is totally different from the applicants in OA No. 1049 of 2014 and hence, the present applicant is not entitled for any relief. The respondents have also stated that being aware of the impugned order dated 09.05.2014, the applicant had no reason not to approach the courts within timeline and the ground given by him should not be considered adequate. Learned counsel for the respondents accordingly concluded that in view of this, the OA is liable to be dismissed.

8. We have heard Shri Shyamal Narain, learned counsel for the applicant and Shri Jitendra Prasad, learned counsel for the respondents and have gone through the pleadings as well as the written submissions made by the both the counsels for the parties.

9. We observe that the case of the applicant is one of many such cases filed by candidates who were initially declared successful in the examination held by SSC for the year 2012 but were kept later in withheld list. In all, 836 candidates were kept in withheld list. We also observe that the reason given by the SSC is general and states only that they have 'with the help of experts, who have proven expertise in such scrutiny and analysis and had undertaken such scrutiny and analysis in the case of written examination papers of the aforesaid examination' come across 'incontrovertible and reliable evidence' that the applicant resorted to 'malpractice / unfair means' in association with other candidates who took the same examination. It is also true that out of 836 candidates to whom similar letters were issued, names of at least 393 candidates were released at a later date. This fact is not disputed by the respondents. In view of this, we feel inclined to accept the argument of the learned counsel for the applicant that the evidence which was earlier considered 'incontrovertible and reliable' was not in fact so. This is proven by the fact that almost 50% of the candidates earlier kept in the withheld list had to be released by the Commission. We also find that

the argument of the learned counsel for the applicant that the charges being general and vague, it was difficult for the applicant to make any effective defence.

10. We also note that there are number of decisions in bunch of OAs by this Tribunal as well as by the Principal Bench, the latter upheld by the Hon'ble Delhi High Court, in which SSC was directed to declare the result and allot service to the applicants in those OAs. Some of these orders were challenged before the Hon'ble Supreme Court where initially stay order was granted. But later, the Hon'ble Supreme Court dismissed the SLP filed by SSC and also vacated the stay. Though the position of implementation of direction in those OAs is not specifically mentioned in the present pleadings, we believe that the same must have been implemented or would be in the process of implementation specially that there is no denial from the respondents side about their intention to implement these direction. The respondents have not indicated that they are proposing to take any legal recourse against the judgment of the Hon'ble Apex Court.

11. So, the only limited issue that remains to be decided now is whether the applicant is similarly situated as many others in whose cases the OA has been allowed by various benches of this Tribunal and later upheld by the Hon'ble High Court of Delhi and Hon'ble Supreme Court. It is true that the applicant did not approach the Tribunal immediately after passing of the impugned order even though he was aware of the order as well as the implication thereof. Instead, he chose to wait for the outcome of the SLP before the Hon'ble Supreme Court. His plea is that this was done on the basis of legal advice. Though we do not find this plea convincing enough, we note that the delay condonation application has already been admitted and delay in filing OA already stands condoned by the Tribunal vide order dated 09.05.2018.

12. In view of all above facts, we find that there is no ground to deny the applicant similar benefit as has been availed by many other candidates who approached this Tribunal and the Courts and have already been granted similar benefit.

13. Accordingly, the OA is allowed and the impugned order dated 09.05.2014 (Annexure A-1) is quashed. The respondents are directed to release the name of the applicant from the withheld list and allocate him the service for which he had been selected. This may be done within a period of three months from the date of receipt of certified copy of this order. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...