
(2018) 07 CAT CK 0087

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 4317 Of 2017, 1033 Of 2018, Original Application No. 4103 Of 2017

Harsh Khepar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Citation : (2018) 07 CAT CK 0087

Hon'ble Judges : K.N. Shrivastava, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Ajesh Luthra, Harvinder Oberoi

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Regarding jurisdiction, heard the learned counsel for both the parties. The counsel for the respondents submitted that the applicants have applied through Regional Offices of Staff Selection Commissions in three different Regions and that as per para 20 of the examination notification any dispute arising out of the recruitment has to be agitated before the bench of this Tribunal situated in the concerned Region. As such they should have filed their respective OAs before the jurisdictional bench of the Tribunal of their respective Regions, namely Allahabad, Kolkata and Delhi. However, having dealt with the matter on merits and also in view of the fact that one of the applicants had appeared in Northern Region of the Staff Selection Commission, New Delhi which comes within the jurisdiction of this bench and the other applicants who fall under two different Regions have joined him, directing the other applicants, at this stage, approach their jurisdictional benches of the Tribunal is not considered prudent and practical. In the circumstances, this application is dealt with on merits by this Bench, as a special case.

2. Heard Shri Ajesh Luthra, counsel for applicants and Mrs. Harvinder Oberoi,

counsel for respondents, and perused the pleadings and all the documents produced by both the parties.

3. There was a separate paper of 'Letter-Writing' in the written examinations. As per the instructions of SSC to the candidates, they were refrained from writing their names in the letters that they were to write lest their identities get disclosed. However, these applicants have written their names and hence their candidatures have been cancelled by the SSC. The crucial question is that for such a mistake, whether the SSC was legally justified to cancel their candidature.

4. The relevant facts of this case are that the applicants applied for Combined Higher Secondary Level (10+2) Examination, 2016. They were selected in the objective type of examination. They appeared in the descriptive paper (Tier-II) examination. As a part of the examination, they were required to write a letter. At the fag end of the letter they wrote their personal names instead of somebody else's name or pseudo name. As per the instructions clearly written in the examination booklet, the candidates were advised not to write any personal identity, including the name, roll number, mobile number, address etc inside the answer booklet. The applicants violated the said instruction. As per the counter affidavit filed by the respondents, 2.19% of the candidates had violated the said instructions and all of them were rejected by recording a remark "Unfair Means".

5. The counsel for the applicants vehemently and strenuously contended that it is not a case of 'unfair means'. That the said writing of their personal name was out of anxiety and stress on the part of the applicants and it was not at all intentional for getting any undue favour, as such it cannot be treated as 'unfair means'. In support his submission, learned counsel for the applicants, referred to many judgments of various High Courts. He specifically referred to the judgment of Hon'ble High Court of Delhi in the case of Union of India and Ors Vs. Sumit Kumar arising out of OA No. 215/2017.

6. Mrs. Harvinder Oberoi, learned counsel for the respondents, per contra, submitted that the judgment in the case of Sumit Kumar (supra) is not applicable to the present case. The candidates involved in Sumit Kumar (supra) were only school pass-outs. They had not indicated their choice of "Medium" for the examination. In the instant case, however, the appointments have been denied to due to usage of "unfair means". She relied upon the following judgments of Ho'ble Apex Court and High Courts:

1. Karnataka Public Service Commission and others Vs. B.M.Vijaya Shankar and others. (1992 AIR 952)
2. Badanga Talukdar Vs. Saifudaullah Khan (2011) 12 SCC 85)
3. K.Manjusree Vs. State of Andhra Pradesh and Another (2008) 3 SCC 512)
4. T.N.Public Service Commission Vs. A.B.Natarajan (2014) 14 SCC 95)
5. Punjab High Court in Dr.M.Vennila Vs. Tamil Nadu Public Service Commission

(2006 LAB 1.C. 2875)

6. P&H High Court in Indu Gupta Vs. Director, Sports Punjab, Chandigarh (AIR 1999 P&H 319 (FB)

7. Mrs. Oberoi argued that in these judgments, it has been clearly held that any provision laid down by the examining authority to infuse discipline in competitive examination, should be strictly followed in the larger public interest; that the principles of natural justice of hearing the affected candidate before rejecting their candidature on such violation of instruction does not arise; that there cannot be any relaxation in the said disciplinary provision unless the power is specifically reserved for relaxation and that such provision should be treated as mandatory.

8. In view of the law laid down in the judgments referred to by the counsel for the respondents, we hold that the rejection of the candidature of the applicants for violating the instructions as mentioned in the examination booklet is justified and it does not call for any judicial intervention. The counsel for the applicants had argued that the use of word "unfair means", was stigmatic. We agree that better words could have been used by the respondents. However, in view of the fact that the applicants are not debarred from appearing in future examinations, in our opinion, there is no stigma against the applicants. They have only been declined consideration in the instant recruitment process.

9. Accordingly OA is dismissed and so also the MA No. 1033/2018. No order as to costs.