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(2018) 08 CAT CK 0182

In the Central Administrative Tribunal

Case No : Original Application No. 931 Of 2018, Miscellaneous Application No. 2036 Of 2018

Sidharth Goyal	APPELLANT
Vs	
Union Of India And Ors	RESPONDENT

Date of Decision : 26-08-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Civil Services Examination Rules, 2017 — Rule 10
Indian Revenue Service (Customs And Central Excise) Group 'A' Rules, 2016 — Rule 6(5)
Constitution Of India, 1950 — Article 14

Citation : (2018) 08 CAT CK 0182

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

Bench : Division Bench

Advocate : Ashraf Siddiqui, Rajeev Kumar, Naresh Kaushik

Final Decision : Disposed Of

Judgement

K.N. Shrivastava, Member (A)

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

"a. To hold the letter dated 12.02.2018 of the Respondent No.4 as arbitrary and illegal and consequently quash the letter;

b. To hold and declare the O.M. dated 23.05.2016 to the extent that it allows the Respondent No.3 to impose the undertaking dated 19.12.2016 as unauthorized and illegal and consequently also quash the aforesaid undertaking as illegal;

c. To hold and declare the show-cause dated 30.08.2016, 19.12.2017 and 19.01.2018 as illegal and consequently quash the same;

d. To hold and declare the letter dated 09.10.2017 denying permission to the Applicant to appear in CSE (Main), 2017 as illegal and consequently quash the same;

e. To hold and declare Rule 10 of CSE Rules, 2017 as arbitrary and illegal, if it is read to allow the Respondent No.4 to cancel the candidature of the Applicant on the mere whims and fancies of the government employer regardless of the merits of the decision."

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant appeared in Civil Services Examination (CSE), 2014 and was declared successful. He was allocated to Indian Revenue Service (Customs & Central Excise) (IRS (C&SE), which is a Group "A" Service. An intimation in this regard was sent to him by the Department of Personnel & Training (DoPT) - respondent No.5 vide Annexure A-9 letter dated 27.08.2015.

2.2 The applicant wanted to appear in CSE, 2015, and thus requested respondent No.5 to exempt him from attending 90th Foundation Course commencing on 09.09.2015 in regard to the selectees of Group "A" Service through CSE, 2014. The applicant appeared in CSE, 2015 but could not clear its preliminary examination.

2.3 The Central Board of Excise & Customs (CBEC) - respondent No.2, vide Annexure A-10 letter dated 17.12.2015, appointed the applicant as probationer in IRS (C&SE). This letter indicates that applicant"s probation is for a period of two years and he has to undergo theoretical and practical training in the working of the Customs, Central Excise & Narcotics wings of CBEC in the National Academy of Customs, Excise & Narcotics (NACEN), Faridabad and its Regional Training Institute, Bhandup, Mumbai. The Annexure A-10 letter, inter alia, states as under:-

"2. If you are prepared to accept the offer on the above terms and conditions you should communicate your acceptance immediately in writing to this Department (indicating also whether you have re-appeared/ are re-appearing in the Civil Service (Main) Examination next following the examination through which you have been selected."

2.4 The applicant reported at NACEN on 28.12.2015 and thus joined the 67th batch of IRS (C&CE) probationers. No undertaking was insisted from him then against his appearance in CSE, 2016 nor there was any such mention in the joining instructions for the 67th batch of IRS (C&CE) probationers.

2.5 The applicant applied for extra-ordinary leave (EOL) without pay for appearing in CSE, 2016, which was sanctioned by NACEN, vide Annexure A-12 (colly.) order dated 29.12.2015, whereby he, along with 12 other 67th batch IRS (C&CE) probationers, was sanctioned EOL of one year from 29.12.2015 to 23.12.2016.

2.6 The applicant re-joined NACEN after appearing in the CSE, 2016 on 19.12.2016. On re-joining, he was required to sign an undertaking that he will

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not appear either in CSE or in any other competitive examination for appointment to the Central or State Services during the period of the basic training. According to the applicant, such undertaking has been made mandatory for the probationers of 68th batch onwards. The applicant states that he was left with no option except to sign the undertaking.

2.7 The applicant cleared the CSE (Main), 2016 and was, thus, qualified for interview. However, he could not get selected in CSE, 2016, result of which was announced on 31.03.2017. The applicant met the Director General, NACEN on 12.06.2017 and submitted a letter to him personally that he intended to appear in CSE, 2017. According to him, the letter was not taken on record on the ground that the same was not permissible. Nevertheless, the applicant appeared in CSE (Preliminary), 2017, which he cleared. He, thereafter, applied for CSE (Main), 2017 by submitting his application online on 30.08.2017 (Annexure A-17).

2.8 The applicant received Annexure A-3 show cause notice (SCN) dated 30.08.2017 from Director General, NACEN as to why disciplinary proceedings should not be initiated against him for alleged breach of the undertaking and for alleged violation of Rule 10 of CSE, 2017 Rules (for short "2017 Rules"). The said Rule reads as under:-

"10. All candidates in Government service, whether in a permanent or in temporary capacity or as work charged employee, other than casual or daily rated employees or those serving under Public Enterprises will be required to submit an undertaking that they have informed in writing their Head of Office/ Department that they have applied for the Examination. Candidates should note that in case a communication is received from their employer by the Commission withholding permission to the candidates applying for appearing at the examination, their applications will be liable to be rejected/candidature will be liable to be cancelled."

2.9 The applicant replied to the said SCN vide his letter dated 08.09.2017, to which he replied. He also received an SCN from Union Public Service Commission (UPSC) - respondent No.4 on 15.09.2017 (Annexure A-19) for alleged violation of Rule 10 of 2017 Rules, which, besides, reproducing the contents of Rule 10, also refers to a communication received from National Academy of Customs, Indirect Taxes & Narcotics (NACEN) - respondent No.3. The relevant portion of this SCN of UPSC is reproduced below:-

"4. In view of the Communication received from NACIN withholding the permission under Rule 10, you are directed to explain as to why your candidature for Civil Services (Main) Exam, 2017 should not be cancelled in terms of said Rule 10. Your reply should reach the undersigned by name within 5 days from the date of issue of this letter failing which action would be taken against you as per the Rules of the examination without any further reference being made to you."

2.10 The applicant replied to ibid SCN of UPSC - respondent No.4 vide his

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Annexure A-20 letter dated 19.09.2017. He was issued Annexure A-21 admit card from UPSC permitting him to appear in CSE (Main), 2017, which was to start from 28.10.2017. He appeared in the CSE (Main), 2017 in which he was declared successful, and, thus, qualified for the personality test / interview.

2.10 The applicant received e-summon letter of interview (admit card) on 18.02.2018 from UPSC - respondent No.4 intimating that he has to appear for personality test / interview on 22.03.2018.

2.11 The UPSC, vide its impugned Annexure A-1 letter dated 12.02.2018, informed the applicant that his candidature for CSE, 2017 is cancelled for violation of Rule 10 of 2017 Rules and directed him not to attend the personality test / interview on 22.03.2018. This letter gives reference to the SCN dated 15.09.2017 (Annexure A-19) issued by the UPSC to him. The relevant portion of Annexure A-1 letter of UPSC is extracted below:-

"3. Subsequent to your aforesaid explanation to the Show Cause Notice, the Commission had referred the matter of withholding of permission to you for appearing in the Civil Services Examination, 2017 (as taken up by the NACIN) to the Ministry of Finance for their decision in the matter and confirming to the Commission whether the denial of permission to you to appear at this Examination has the approval of the "employer" as required under the provisions of Rule 10 of the Civil Services Examination Rules, 2017.

4. In response to the Commission"s reference, vide their letter 15th January, 2018, the Department of Revenue, Ministry of Finance have confirmed that approval of the Hon"ble Finance Minister has been obtained for denial of permission to you to appear at the Civil Service Examination, 2017.

5. In view of the above, your candidature for the above Examination becomes a fit case for invoking Rule 10 of this Examination Rules, which were duly communicated to you in the Commission"s Show Cause Notice dated 15.09.2017. Therefore, in accordance with the Rule 10 of the Civil Services Examination Rules, 2017, your candidature for the Civil Services Examination, 2017 is hereby cancelled.

6. Accordingly, you are requested NOT to attend the Personality Test on 22-03-2018 even if you have already downloaded the e- Summon Letter."

Aggrieved by the impugned Annexure A-1 letter of UPSC, the applicant has approached the Tribunal in the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their respective replies.

4. In the common reply filed on behalf of respondent Nos. 1, 2, 3 & 5, the following important averments have been made:-

4.1 The applicant, at the time of joining training at NACEN, Faridabad, had given

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an undertaking dated 19.12.2016, which prohibited him from appearing in any competitive examinations of Central or State Government during the course of his basic training.

4.2 At the time of appearing in CSE, 2016, the said respondents had permitted him to appear in the said examination, which was to be held in April/May, 2016 since at that time, the applicant had not joined the Department.

4.3 The applicant has appeared in CSE, 2017 in violation of the undertaking dated 19.12.2016 as well as in violation of Rule 10 of 2017 Rules, which makes it obligatory for the departmental candidates to seek permission of their competent authority for appearing in the said examination.

4.4 The DoPT O.M. No.13018/8/96-AIS (I) dated 23.04.1997 also mandates that a probationer under training cannot seek exemption from training for appearing in the next CSE.

5. The UPSC - respondent No.4, in its reply, has mainly averred on the following lines:-

5.1 No cause of action has accrued to the applicant to invoke the jurisdiction of this Tribunal, inasmuch as no enforceable rights of the applicant or any rule or binding instruction have been violated or infringed by the action of respondent No.4.

5.2 It is settled law that after participating in the examination, the candidate cannot be allowed to question the rules of examination. Hence, challenge to the vires of Rule 10 of 2017 Rules by the applicant is liable to be dismissed on the ground of estoppel.

5.3 The applicant had appeared for CSE (Preliminary), 2017 on 18.06.2017 and after clearing in it, he was issued Annexure A-21 on 30.10.2017 admit card for CSE (Main), 2017, which he cleared. Thereafter, he was issued e-summon letter (admit card) for personality test / interview on 18.02.2018 from UPSC and was directed to appear on 22.03.2018. In the meanwhile, the Director General (NACEN) - respondent No.3, vide his e-mail dated 08.08.2017, inquired from respondent No.4 - UPSC as to whether any of the 192 IRS (C&CE) officer-trainees listed therein have applied for CSE, 2017. On verification of the records, it was found that 5 IRS (C&CE) officer-trainees had appeared in CSE, 2017 in violation of Rule 10 of 2017 Rules. Accordingly, UPSC, vide its Annexure R-5 letter dated 27.09.2017, informed the Additional Director General, NACEN. This letter would read as under:-

"Sub:- Information regarding appearance in UPSC CSE-2017 in respect of IRS (C&CE) Probationers - Reg.

Sir,

In continuation of the Commission"s letter dated 11th Sept., 2017 on the subject mentioned above, I am directed to say that the Commission issued Show Cause

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Notices to the following five candidates of Civil Services (Pre.) Examination, 2017 seeking their clarification as to why their candidature for Civil Services Examination, 2017 should not be cancelled invoking provisions of Rule 10 of CSE Rules, 2018:

(i) Shri Kapil Prajapati, S/o. Shri Madan Lal - Roll No.0745683

(ii) Shri Sidharth Goyal, S/o. Shri Naresh Goyal - Roll No.0704177

(iii) Shri Chandan Prakash Pandey, S/o. Shri Jai Prakash Pandey - Roll No.0264390

(iv) Ms. Chandandeep Kaur, D/o. Shri DPS Grewal - Roll No.0914127

(v) Shri Anand Poonia, S/o. Shri Raghuveer Singh Poonia - Roll No.0064475

All the five candidates have since submitted their clarifications. A copy each of the show cause notice as well as clarifications submitted by each of the candidate are enclosed for your ready reference.

2. As may be seen, all the five candidates are claiming to have informed the office regarding their application for CSE, 2017. In fact, one among them, namely, Shri Kapil Prajapati has also submitted a copy of his intimation to NACIN duly acknowledged by NACIN on 21-03-2017. They have forwarded a copy of their representation addressed to NACIN.

3. In view of the above, you are requested to consider the veracity of their contention and categorically confirm whether permission to appear at the Civil Service Examination, 2017 has been withheld or otherwise in respect of each of the candidates."

5.4 For violation of the directions contained in Rule 10 of 2017 Rules, the candidature of the applicant for CSE, 2017 has been cancelled by UPSC vide the impugned Annexure A-1 order.

6. The applicant has filed rejoinders to the replies filed on behalf of the respondents, in which, by and large, he has reiterated his pleadings in the O.A.

7. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for parties. Arguments of Mr. Tahir Ashraf Siddiqui, learned counsel for applicant, Mr. Rajeev Kumar, learned counsel for respondent Nos. 1, 2, 3 & 5 and that of Mr. Naresh Kaushik, learned counsel for respondent No.4 were heard.

8. The thrust of the arguments of learned counsel for applicant was that the undertaking dated 19.12.2016 was taken from the applicant by NACEN illegally and under duress and that permission to appear in CSE, 2017 has been denied to him on account of the undertaking. He vehemently argued that the applicant has not violated Rule 10 of 2017 Rules.

9. Placing reliance on the judgment of Hon"ble Apex Court in the case of

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Marathwada University v. Seshrao Balwant Rao Chavan, (1989) 3 SCC 132, learned counsel for applicant submited that denial of promotion to the applicant for appearing in CSE, 2017 has not been ordered by the competent authority and hence it cannot be construed that the applicant has violated Rule 10 of Rules 2017. He further submitted that the applicant did not lose focus of the training at NACEN, Faridabad while preparing for and appearing in CSE, 2017.

10. Mr. Rajeev Kumar, learned counsel for respondent Nos. 1, 2, 3 & 5 submitted that the applicant did not give any intimation to these respondents regarding his appearance in CSE, 2017 and for his unauthorized absence he has been issued an SCN. He further argued that the DoPT O.M. dated 23.04.1997 also prohibits officer-trainees for further appearance in CSEs during the course of their trainings.

11. Drawing our attention to the averments made in paragraph 5 (J) of the reply filed on behalf of respondent Nos. 1, 2, 3 & 5, Mr. Rajiv Kumar submitted that the CBEC - respondent No.2 is the cadre controlling authority, who has issued O.M. dated 23.05.2016 to regulate the terms and conditions of the service. He said that Rule 6 (5) of the IRS (C&CE) Group "A" Rules, 2016 specifically provides that the members of the Service, in the matter of probation, shall be governed by the instructions issued by the Central Government from time to time. The respondent Nos. 1 & 2, vide their letter dated 15.01.2017, had denied permission to the applicant for appearing in CSE, 2017 and had also sought cancellation of his candidature for CSE, 2017 from respondent No.4.

12. Mr. Kumar further stated that the terms of CCS (Leave) Rules cannot be invoked by the applicant as a matter of right. The joining instructions of respondent No.3 issued to all the probationers clearly mentioned that the sanction of leave is strictly regulated and officer-trainees are advised not to request for any leave, except in compelling circumstances, like medical emergencies or on compassionate grounds.

13. Mr. Naresh Kaushik, learned counsel for respondent No.4 (UPSC) submitted that the applicant has violated Rule 10 of 2017 Rules as well as the undertaking that he had given to Director General, NACEN. He has not taken any leave from his department. Mr. Kaushik vehemently argued that private interests are subservient to the public interest. The public policy has to be respected by the Courts unless the rights guaranteed under Article 14 of the Constitution are violated.

14. Mr. Kaushik further argued that the applicant has not approached the Tribunal with the clean hands and has committed violation of the Rules. He stated that the applicant"s candidature has been cancelled by the UPSC by invoking Rule 10 of 2017 Rules and he cannot question the action of UPSC since he has willingly participated in the process of selection.

15. We have considered the arguments of learned counsel for the parties and perused the pleadings.

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16. Indisputably, Rule 10 of 2017 Rules stipulates that the departmental candidates have to take permission of their competent authority for appearing in any competitive examinations. The applicant has obviously not taken approval of his competent authority before he applied for CSE, 2017. It is also an established fact that the applicant has signed the undertaking dated 19.12.2016 to the effect that he would not be appearing in any competitive examination conducted by the Central or State Government during the course of his basic training. His contention that under duress and compulsion the undertaking has been got signed by the respondents cannot be accepted on its face value. Even if that was the case, nothing prevented him from taking legal recourse against such act of Direction General, NACEN. Even the DoPT O.M. 23.04.1997 prohibits the officer-trainees from appearing in the competitive examinations during the course of their professional / basic trainings. Hence, we are of the view that the applicant was fully aware of the legal provisions as well as implications of undertaking that he had given to respondent No.3. He has, thus, transgressed the redline and chose to appear in CSE, 2017 by keeping the respondents under dark. In this view of the matter, we are of the opinion that the cancellation of applicant"s candidature by respondent No.4 is perfectly in order. Needless to say that prolong absence from the training programme during the course of the basic training for appearing in the competitive examinations would neither be in the interest of the officer concerned, nor in the interest of the Department concerned. Hence, the undertaking taken by CBEC / NACEN from its officer-trainees was fully justified. Such an undertaking is also in accordance with the DoPT O.M. dated 23.04.1997.

17. In the conspectus, we uphold the legal validity of Annexure A-1 letter dated 12.02.2018 of UPSC cancelling the candidature of the applicant for CSE, 2017 as well as that of Rule 10 of 2017 Rules. We also deny other prayers of the applicant. The O.A., being bereft of any merit, is accordingly dismissed. No costs.

18. In view of this order, M.A. No.2036/2018 stands disposed of.

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