SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Mukesh Vs. Union of India and ors

Mukesh Vs. Union of India and ors

SooperKanoon Citation : sooperkanoon.com/1171820

Court : Delhi

Decided On : Nov-03-2014

Judge : Hima Kohli

Appellant : Mukesh

Respondent : Union of India and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 7552/2014 Decided on 03.11.2014 IN THE MATTER OF : MUKESH ..... Petitioner Through: Mr. U. Srivastava, Advocate versus UNION OF INDIA AND ORS ..... Respondents Through: Mr. Arun Bhardwaj, CGSC CORAM HON'BLE MS.JUSTICE HIMA KOHLI HIMA KOHLI, J.

(Oral) 1. The present petition has been filed by the petitioner praying inter alia for quashing and setting aside the show cause notice dated 10.06.2013 and the order dated 27.01.2014 issued by the respondent No.3/Regional Director (NR) of the Staff Selection Commission (in short SSC), whereunder he was informed that his candidature in the Combined Recruitment for Assistant Grade III in General, Depot, Technical and Accounts Cadre and Hindi Posts (AGII) in the Examination, 2012 held for respondent No.4/FCI was cancelled and he was debarred for a period of three years from the Commissions examinations.

2. With the consent of the parties, the matter is taken up at the stage of admission for final disposal.

3. Briefly stated, the facts of the case are that on 29.10.2011, a Combined Recruitment for Assistant Grade-III in the General Depot, Technical and Accounts Cadres and Hindi Posts (AG-II) in the Examination, 2012 to be held for the respondent No.4/FCI, was notified by the respondents No.1 to 3/SSC in the Employment News. As per the petitioner, he fulfilled the educational qualifications stipulated in the advertisement and had submitted an application for participating in the examination. Though no specific averment has been made in the writ petition as to the different stages of the examination, learned counsel for the petitioner informs the Court that the examination was to be held in three parts, the first stage was of the written examination, then the candidates were to participate in the Computer Proficiency Test (CPT) and finally, the shortlisted candidates were to appear for the personal interview.

4. It is the case of the petitioner that he had qualified in the written examination and was provisionally called by the respondents No.1 to 3/SSC to appear in the CPT that was scheduled for 21.06.2012. The petitioner had duly participated in the said test and was awaiting the results. However, on 10.06.2013, the respondent No.3 issued a notice to show cause to the petitioner stating inter alia that experts had been engaged to scrutinize and analyze the performance of the candidates in the objective type multiple choice question papers and in the course of the said analysis undertaken in respect of the written examination papers in Paper-II/Paper III, incontrovertible and reliable evidence had emerged to the effect that he had resorted to unfair means by indulging in copying in association with the other candidates who had sat for the examination. The petitioner was called upon to reply to the show cause notice within ten days explaining inter alia as to why his candidature should not be cancelled and why should he not be debarred for five years from appearing in the Commissions examinations on account of having indulged in unfair means in the aforesaid examination.

5. Upon receipt of the aforesaid notice to show cause, the petitioner had submitted a reply on 19.06.2013, wherein he submitted amongst others, that in the absence

of any documentation and evidence to substantiate the allegations levelled against him, he was unable to respond thereto effectively.

6. In the impugned order dated 27.01.2014, the respondents No.1 to 3/SSC took note of the submissions made by the petitioner and proceeded to cancel his candidature in the said examinations by observing that there was uncontrovertible and reliable evidence discovered against him during the post examination scrutiny and analysis. Further, it was decided to debar the petitioner for a period of three years from participating in the examinations conducted by the respondent No.1/Commission.

7. Aggrieved by the aforesaid decision taken by the respondents No.1-3/SSC, the petitioner had approached the Central Administrative Tribunal, Principal Bench, New Delhi, by filing OA No.2226/2014. However, since the respondent No.4/FCI does not fall in the jurisdiction of the Tribunal, vide order dated 21.07.2014, the petitioner was permitted to withdraw the aforesaid petition and he has thereafter filed the present petition on 14.10.2014.

8. The main plank of the arguments advanced by learned counsel for the petitioner to assail the impugned notice to show cause dated 10.06.2013 and the order dated 27.01.2014 passed by the respondents No.1 to 3/SSC is that neither the notice to show cause, nor the impugned order mentions the nature of the evidence described as incontrovertible and reliable that had purportedly emerged during the scrutiny and analysis of the written examination, to enable the petitioner to offer a worthwhile explanation or offer a valid defence. Learned counsel contends that in the absence of any material particulars supplied to him by the respondents, the petitioner was not in a position to file a proper reply to the notice to show cause and though the said fact was duly pointed out by him in his reply, the same was conveniently ignored by the respondents.

9. Learned counsel for the petitioner informs the court that the issue raised in the present petition came up for consideration before the Division Bench in W.P.(C) 7416/2013 entitled SSC and Ors. vs.Rakesh Kumar Yadav. In the said case, the court had the occasion to examine two notices to show cause issued by the SSC to the respondent therein in respect of a Combined Graduate Level (Tier-II)

Examination, 2011. The said notices to show cause had alleged inter alia that malpractices were indulged in by the candidates including the respondent therein. The respondent had filed a reply to the two notices issued by the SSC, wherein he stated that it was not disclosed as to what was the nature of the unfair means alleged to have been adopted by him while participating in the said examination without responding to the objections taken by the respondent. Vide order dated 19.06.2012, the SSC had proceeded to cancel his candidature and had debarred him from participating in any examination conducted by the Commission for a period of four years.

10. Aggrieved by the said decision taken by the SSC, the aforesaid respondent had approached the Central Administrative Tribunal for appropriate relief by filing a petition, which was duly allowed. W.P.(C) 7552/2014 petitioner/SSC in the aforecited petition had then filed an appeal against the decision of the Tribunal that came up before the Division Bench of this Court and was dismissed vide order dated 26.11.2013, with an observation that as per the charges leveled against him in the show cause notice, the alleged unfair means used by the respondent therein were never revealed to him and in the absence of the said information, he was not in a position to effectively reply to the notice to show cause.

11. A copy of the aforesaid order dated 26.11.2013, passed by the Division Bench in W.P.(C) 7416/2013 is handed over by learned counsel for the respondent who states that the said order has attained finality. The facts of the present case are identical to those decided by the Division Bench in the aforecited case to the extent that in both the case, the notices to show cause are bereft of any material particulars as to the nature of unfair means allegedly adopted by the candidates.

12. A perusal of the impugned notice to show cause dated 10.06.2013 bears out the submission made by learned counsel for the petitioner that the same does not disclose the manner in which the petitioner had allegedly resorted to unfair means when sitting in the subject examination. W.P.(C) 7552/2014 respondents No.1 to 3/SCC to specify the material available with it, the petitioner would not have been in a position to give a reply in a proper manner and defend himself effectively. The said fact was also highlighted by the petitioner in his representation dated

18.06.2013, submitted in response to the notice to show cause, but the same was give a go by the respondent No.3, who proceeded to pass the impugned order dated 27.01.2014, cancelling the petitioners candidature in the subject examination, 2012 and debarring him for a period of three years from participating in the Commissions examinations.

13. When the petitioner was never confronted with the relevant material available with the respondents No.1 to 3/SSC to substantiate its stand that it had incontrovertible and reliable evidence against him in its possession, which it had gathered on the basis of the analysis and scrutiny of the written examination purportedly conducted with the help of experts, it is not understood as to how did the respondents expect the petitioner to have furnished a satisfactorily reply to the notice to show cause issued by the Commission. It was incumbent for the respondent No.1/Commission to have first disclosed the material available with it to substantiate the charges leveled against the petitioner and only thereafter, could the petitioner have been in a position to submit a reply to the show cause notice by taking all the defences that may have been available to him.

14. A perusal of the impugned notice to show cause reveals that no mention has been made therein as to the nature and details of the material that the SSC had come upon for initiating any action against the petitioner for allegedly resorting to malpractices during the examination. When the petitioner was not even confronted with the details of the case made out against him, how could he be expected to respond effectively?. Having failed to furnish the explicit material in the power and possession of the respondents for arriving at a conclusion that there was sufficient evidence to indict the petitioner, it has to be held that the principles of natural justice have been grossly violated by the respondents and the entire procedure of affording an adequate opportunity of hearing to him, has been reduced to a farce.

15. For the aforesaid reasons, this Court is of the opinion that the impugned notice to show cause dated 10.06.2013 and the order dated 27.01.2014 passed by the respondent No.1 to 3/SSC are not sustainable and the same are accordingly quashed and set aside. If the respondents do have sufficient material available against the petitioner to establish that he had resorted to unfair means in the

Examination in question, then they shall be at liberty to issue a fresh notice to him along with all the relevant information available with them, to substantiate their allegations and the petitioner shall be entitled to file a reply thereto. The said reply shall be considered and decided by the respondents in accordance with law under written intimation to the petitioner.

16. The petition is allowed and disposed of. NOVEMBER3 2014 rkb/sk/mk W.P.(C) 7552/2014 (HIMA KOHLI)

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com