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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 19.12.2014**

% **W.P.(C) 9055/2014 and C.M. Nos.20669-670/2014**

STAFF SELECTION COMMISSION & ANR. Petitioners

Through: Mr. S.M. Arif, Advocate.

versus

SUDESH

..... Respondent

Through: Ms. Jyoti Singh, Senior Advocate
along with Mr. Sachin Chauhan,
Mr. Sameer Sharma & Mr. Amandeep
Joshi, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The petitioner Staff Selection Commission (SSC) has preferred the present writ petition under Article 226 of the Constitution of India to assail the common order dated 30.07.2014 passed by the Central Administrative Tribunal (CAT/ Tribunal), *inter alia*, in O.A. No.930/2014 titled "***Sudesh Vs. Staff Selection Commission & Others***". By the impugned order, the Tribunal allowed the aforesaid Original Application preferred by the applicant Sudesh and quashed the second show-cause notice dated

28.01.2014 issued by the petitioner to the respondent applicant. The Tribunal directed the petitioner to declare the result of the respondent applicant and other applicants and to allocate them the service for which they are found eligible on the basis of pure merit.

2. The brief background facts are that the applicant appeared in the Combined Graduate Level Examination – 2012 (CGLE-2012) conducted by the SSC for selection to certain posts. The applicant appeared and qualified in the Tier-I examination on merits, and thereafter appeared in the Tier-II examination, in which he qualified. Thereafter, the applicant was subjected to interview, and finally declared selected. The result of the applicant was, however, withheld as notified on the website of SSC.

3. A show-cause notice dated 27.05.2013 was issued to the applicant by the SSC alleging that the applicant had cleared the Tier-II examination by copying, and hence, his selection deserves cancellation. The applicant replied to the show-cause notice and denied the allegation of copying, or cheating in the Tier-II examination. Since the result of the applicant was not declared, he preferred an Original Application before the Tribunal. The applicant's Original Application was disposed of along with several others on 22.11.2013. The operative part of the said order reads as follows:

“24. All these OAs are pertaining to the CGLE-2012. The respondent-SSC has already conducted the CGLE-2013, and they may require to initiate process for the CGLE-2014 also in few months. It is not in any body's interest to linger the selection process undecided, for a longer period. In the peculiar circumstances of the case, and to save valuable time of the candidates, and in the larger interest, we quash all the impugned Show Cause Notices issued for cancellation of the

candidature of the applicants for CGLE-2012, and also for debarment of all Commission's examinations for a period of five years. However, liberty is granted to the respondents to issue fresh individual Show Cause Notices by giving full details of their alleged malpractices/copying and the detailed modus operandi adopted by the respondents in coming to the said conclusion and after considering the representations submitted thereto, and to pass appropriate speaking and reasoned orders in accordance with law. This exercise shall be completed as early as possible, but not later than, 60 (sixty) days from the date of receipt of a certified copy of this order."

4. The applicant was served with another show-cause notice dated 28.01.2014, again alleging that he had resorted to malpractice/ unfair means in the said Tier-II examination. The applicant was required to explain why his candidature be not cancelled and he not be debarred from examinations conducted by the SSC for the next five years. The applicant gave his reply, denying the charge against him. He also preferred the aforesaid Original Application. As noticed above, several other candidates, similarly situated, who were issued simultaneous show-cause notices, also preferred their respective Original Applications on similar grounds.

5. The case of the applicant was that the second show-cause notice issued was vague, since it did not specify the specific method, or modus operandi, allegedly adopted by the applicant to resort to any malpractice, or copying, or cheating. The SSC had merely claimed that some experts had reached the conclusion that the applicant and others had resorted to mass copying/ cheating and adoption of malpractices, without disclosing the basis on which such a conclusion had been reached. The applicant claimed that the second show-cause notice did not comply with the order of the Tribunal

dated 22.11.2013, which obliged the SSC to give “*full details of their alleged malpractices/ copying and the detailed modus operandi adopted by the respondent in coming to the said conclusion*”. The applicant claimed that the second show-cause notice had been issued in breach of the directions of the Tribunal contained in the order dated 22.11.2013 and the same suffers from the very same shortcomings and lacunae as the first show-cause notice, which was quashed by the Tribunal in the first round.

6. From the impugned order, it appears that some of the candidates also preferred contempt petition on the basis that the Tribunal’s directions dated 22.11.2013 had been breached inasmuch, as, the second show-cause notice did not comply with the aforesaid specific directions. The SSC filed their reply before the Tribunal, claiming that second show-cause notice had been issued on the basis of incontrovertible and reliable evidence which emerged during the post-examination scrutiny and analysis by proven experts in the area, which was an outside agency. In paragraph 6 of their counter-affidavit, the SSC stated as follows:

“6. That there is no other proof apart from what has already been communicated to the applicant on the basis of the Post Examination Analysis. It is humbly submitted that the applicant has furnished her reply. However, before any decision is taken by the Commission on the basis of her reply, she had approached this Hon’ble Tribunal by filing the present OA, therefore, it is humbly submitted that the OA is premature and the same is liable to be rejected on this ground alone.”

7. The Tribunal, while allowing the Original Application, took note of its earlier order dated 22.11.2013 and, in particular, paragraphs 22 to 24

thereof. We have already set out paragraph 24 of the order dated 22.11.2013 hereinabove. Paragraphs 22 and 23 of the said order read as follows:

“22. In the present case, the impugned Show Cause Notices do not indicate the details of malpractice committed by the candidate or what was the nature of copying indulged by the candidate. It is only stated that incontrovertible and reliable evidence has been emerged during the regular post examination scrutiny and analysis of performance of the candidate by the experts, who have proven expertise, that the candidates have resorted to copying in association with other candidates who also took the same examination. The respondents, though taken substantial time for filing counters but not chosen to file the same finally. Therefore, there is no occasion to this Tribunal to know what was the method adopted by the respondent-SSC, to come to the aforesaid conclusion on the conduct of the candidates. It is also not on record that a particular candidate committed the alleged malpractice individually or in association with any other candidate and if so, who is the said candidate and in what manner both of them done the mischief. Though the learned counsel for the respondent, vaguely submitted that the answer books of the candidates were compared with the answer books of other candidates by using highly technical and scientific methods and basing on the proportional similarities in the giving right & wrong answers and also in not answering certain question at all, neither he placed the so called specific procedure or method or modus operandi adopted by the Experts nor stated the specific malpractice/copying alleged to have committed by each applicant. In the absence of the same, this Tribunal cannot express any opinion on the validity or otherwise of the said modus operandi, said to have been adopted by the respondent-SSC. For all these reasons, the impugned Show Cause Notices being violative of principles of natural justice are liable to be quashed.

23. Equally, this Tribunal cannot express any opinion on the validity or otherwise of the vague allegations made against the

candidates without giving any details in the impugned Show Cause Notices, for want of necessary pleadings.”

8. The Tribunal held that in the absence of details of the alleged malpractices committed by the candidates, the mere *ipse dixit* of the SSC that there was incontrovertible and reliable evidence which had emerged upon post-examination scrutiny and analysis by outside experts, was not sufficient. The Tribunal also proceeded to compare the two show-cause notices issued to the applicant to highlight that there was no difference when it came to lack of detail, or specifics. Consequently, the second show-cause notice was just as vague as the first one. The Tribunal, *inter alia*, observed as follows:

“23. It is thus evident from the aforementioned that in the absence of the details of malpractice alleged by the SSC to have been committed by the candidate, and having only stated that incontrovertible and reliable evidence had emerged as per regular post examination scrutiny and analysis, there was no occasion for this Tribunal to know as to what was the method adopted by the respondents-SSC to come to the conclusion regarding the conduct of the candidates. Moreover, it was not clear whether the alleged malpractice was committed individually or in association with any other candidate. The Tribunal was, therefore, of the view that the show cause notice was devoid of specific and clear material and evidence regarding the allegation which could not be upheld.

24. We shall now examine as to whether the impugned second show cause notice issued to the applicants in the present OAs provide sufficient material or not, or whether it virtually provided the same material as in the first show cause notice for the applicant to put up their defence. This can be seen from the comparison of the show cause notice. The same is reproduced below:-

<i>1st Show Cause Notice dated 27.05.2013 (A-4)</i>	<i>2nd Show Cause Notice dated 28.01.2014 (A-1)</i>
<i>1. Whereas Mr./Ms. Sudesh Son/daughter of Shri Rampal, residing at the aforesaid address, was a candidate of Combined Graduate Level Examination, 2012 notified in the Employment News dated 24.03.2012 and appeared for Tier II of the said examination on the basis of his/her performance in Tier I of the Examination.</i>	<i>1. Whereas Mrs. Sudesh w/o Sh. Parvinder Kumar R/o H.No.228, Gali No.2, Ambedkar Nagar, Haiderpur, Delhi was a candidate of Combined Graduate Level Examination 2012 which was notified in the Employment News dated 20.04.2012 and appeared with Roll number 2201520498 for the said examination.</i>
<i>2. Whereas Mr./Ms. _____ was provisionally called for interview cum personality Test/CPT/DEST of the aforesaid Examination.</i>	<i>2. Whereas Sh. _____ was provisionally called for Data Entry Skill Test (DEST) of the aforesaid examination and appeared in the said DEST on 01.12.2012. Whereas the Commission, the Competent Authority in the matter, has made a conscious decision with a view to protecting the integrity of the selection process and to prevent candidates who are prima facie found to indulge in unfair means in such examination from entering into government service through such manipulative practices.</i>
<i>3. Whereas the Commission undertakes regular post-examination scrutiny and</i>	<i>3. Whereas the Commission gets regular post-examination scrutiny and analysis of</i>

analysis of performance of the candidates in objective type multiple choice question papers with the help of experts, who have proven expertise in such scrutiny and analysis and had carried out such scrutiny and analysis in the case of written examination papers of Tier II of the aforesaid examination.	performance of the candidates in objective type multiple choice question papers conducted 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.
4. Whereas, as informed by SSC (Hqrs.), incontrovertible and reliable evidence has emerged during such scrutiny and analysis that Mr./Ms. Sudesh had resorted to copying in the said papers in association with other candidates who also took the same examination.	4. Whereas incontrovertible and reliable evidence has emerged during such scrutiny and analysis that Sh. Mannu Malik had resorted to malpractice/unfair means in the said papers in association with other 25 candidate/candidates in Paper II of Tier II.
5. Hence as directed by SSC (Hqrs.) Mr./Mrs. is hereby given an opportunity to show cause, within 10 days of issue of this notice, as to why his/her candidature should not be cancelled and why he/she may not be debarred for five years from appearing Commissions examinations due to his/her indulgence in unfair means in above mentioned examination.	5. Now, therefore, Hon'ble CAT, New Delhi directed vide its order dated 22.11.2013 in OA No. 2364/2013. Sh. Manny Malik son of Sh. Bhopal Singh is hereby informed that he had resorted to malpractice with the candidates as per list (sic) enclosed.
6. In view of the above he is directed to show cause within	6. If he/she fails to respond within prescribed time limit

10 days of issue of this detailed show cause notice as to why his candidature may not be cancelled and he may (sic) not be debarred from the Commissions examination for the next five years.	his/her candidature for above mentioned examination will be cancelled and he/she will be debarred for five years from appearing commissions examinations and thereafter no further correspondence will strictly be entertained.
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(Emphasis provided)

25. First of all, it is noticed from the above that there is hardly any difference between the contents of the second show cause notice and the contents of the first show cause notice. (The underlined portions of the comparative table containing the text of the 1st and 2nd show cause notice makes it clear that even the words used in both the show cause notices are virtually identical). The impugned second show cause notice fails to provide the applicants any specific information and evidence as well as the material available with the SSC to come to the prima facie conclusion that the applicants resorted to malpractice and unfair means in the examination.

26. Coming back to the order of the Tribunal dated 22.11.2013 we are forced to come to the conclusion that the second show cause notice suffers from the same deficiency, as pointed out by the Tribunal in Para-22 of the said judgment. To that extent we do not find any other basis to conclude differently and have, therefore, to take a view that the second show cause notice also does not provide sufficient and reasonable opportunity to the applicants to state their defence, which is an inherent requirement of the principle natural justice.

27. The second aspect, which is noticed is that not only both the show cause notices issued to the applicants are more or less identical but also that the show cause notices on record in the present set of OAs appear to be printed in a standard format, except the name and detail of the applicant and the candidates

in association with whom the applicant is alleged to have indulged in malpractice/unfair means. There is no specific application of mind. The respondents-SSC, therefore, appears to have proceeded in a mechanical manner.”

9. The Tribunal also took note of the judgment of the coordinate bench of the Tribunal at Allahabad in O.A. No.231/2013 delivered on 06.05.2014, and that of the Patna Bench of the Tribunal in O.A. No.424/2013 dated 30.05.2014. The Tribunal also rejected the petitioner’s submission that since the second show-cause notice had been issued and replied to by the candidates, the process should be permitted to be completed and the Tribunal should not interfere at the show-cause notice stage. While doing so, the Tribunal relied upon on the decision of the Supreme Court in **Ashok Kumar Sonkar Vs. Union of India & Others**, (2007) 4 SCC 54, wherein the Supreme Court held that a Court of law should not insist on compliance of a useless formality.

10. The submission of learned counsel for the petitioner is that the second show-cause notice had been issued in compliance of the Tribunal’s earlier direction contained in its order dated 22.11.2013. Learned counsel submits that the second show-cause notice could not be described as vague, since the said show-cause notice had disclosed that the SSC had undertaken scrutiny and analysis of the written examination papers from which inconvertible and reliable evidence had emerged with regard to resorting of malpractices and unfair means by the applicant in solving the question paper in association with other 46 candidates in Paper-I of Tier-II and 44 other candidates in Paper-II of Tier-II.

11. Learned counsel further submits that the respondent, who had resorted

to malpractices in the examination could not be allowed to proceed further and seek employment, since such malpractice/ fraud unravels all.

12. We have heard learned counsel for the petitioner, perused the impugned order and the relevant record and considered the submissions. The first show-cause notice was quashed by the Tribunal, firstly on the ground that it lacked in material particulars inasmuch, as, it did not contain any details of the alleged malpractice/ copying and the modus operandi allegedly adopted by the applicant in coming to the conclusion that the applicant had resorted to any malpractices/ copying in the Tier-II examination. It is, precisely, for this reason that the Tribunal required the furnishing of details, as aforesaid in paragraphs 20 to 24 of its order dated 22.11.2013. The rationale behind the petitioner SSC being required to furnish the details was simply that the applicant and other candidates could not be condemned on the basis of vague and non-specific allegation of a serious nature, which impinge on their candidature and future prospects. If, according to the petitioner, malpractice/ cheating had been resorted to by the applicant and the other candidates, it was essential that such candidates were, at least, informed of the basis on which it had been concluded, or a prima-facie view formed, that such malpractices/ act of cheating had been undertaken. The petitioner should have given the reasons for its said conclusions, by disclosing as to what was the analysis undertaken by the experts/ outside agency; what was the pattern discerned by the outside experts upon analysis of the answer-sheets of all such candidates, and; that the disclosed pattern could lead to a reasonable inference – with a very high probability/ near certainty of cheating/ malpractice. Without such

disclosure, the applicant and other candidates were left in the dark, not knowing how to meet the serious allegations made against them, except by simply denying the same – which they did.

13. A comparison of the two show-cause notices issued gives the impression that the petitioner merely window-dressed the earlier show-cause notice, and served the same upon the applicant again. In fact, there was hardly any difference in the two. The show-cause notice dated 28.01.2014 issued to the respondent-applicant in its entirety reads as follows:

“

SHOW CAUSE NOTICE

1. Whereas Shri Sudesh, Son of Shri Parvinder Kumar R/o H.No.228, Gali No.2, Ambedkar Nagar, Haiderpur, Delhi was a candidate of Combined Graduate Level Examination 2012 which was notified in the Employment News dated 20.04.2012 and appeared with Roll number 2201520498 for the said examination.

2. Whereas Shri Sudesh was provisionally called for Computer Proficiency Test (CPT) and interview cum personality Test of the aforesaid examination and appeared in the said CPT and Interview on 12.11.2012 and 01.01.2013 respectively.

3. Whereas the Commission, the Competent Authority in the matter, has made a conscious decision with a view to protecting the integrity of the selection process and to prevent candidates who are prima facie found to indulge in unfair means in such examination from entering into government service through such manipulative practices.

4. Whereas the Commission gets regular post-examination scrutiny and analysis of performance of the candidates in objective type multiple choice question papers conducted 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.

5. *Whereas incontrovertible and reliable evidence has emerged during such scrutiny and analysis that Shri Sudesh had resorted to malpractice/unfair means in the said papers in association with other 46 candidates/ candidates in Paper I of Tier II and 44 with other candidates/ candidates in Paper II of Tier II.*

6. *Now, therefore, Hon'ble CAT, New Delhi directed vide its order dated 22.11.2013 in OA No. 2404/2013. Sh. Sudesh son of Sh. Parvinder Kumar is hereby informed that he had restored to malpractice with the candidates as per list enclosed.*

7. *In view of the above he is directed to show cause within 10 days of issue of this detailed show cause notice as to why his candidature may not be cancelled and he may not be debarred from the Commission's examination for the next five years."*

14. Though the same makes a mention in paragraph 6 of the list of candidates – in collusion with whom the applicant allegedly resorted to malpractice, once again, the petitioner failed to provide the basis for the allegation of malpractice/ copying.

15. In our view, therefore, the Tribunal was justified in quashing the second show-cause notice which suffered from the same lacunae of being vague and devoid of any relevant particulars, and there was no purpose in permitting the petitioner to deal with the replies and pass any further order on the basis of such a vague show-cause notice. The said show-cause notice did not fulfill the basic requirements of principles of natural justice inasmuch, as, the respondent-applicant could not effectively have met the allegations made against him – except to deny the same (which he did), in view of the show-cause notice itself being completely vague and devoid of

particulars.

16. Consequently, we find no merit in the present petition and dismiss the same.

VIPIN SANGHI, J.

S. RAVINDRA BHAT, J

DECEMBER 19, 2014

B.S. Rohella

