

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

+ **Date of Decision: 11th July, 2017**

% **W.P.(C.) No. 9514/2016**

MALEKUN NASEER

..... Petitioner

Through: Mr.Bani Singh, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Abha Malhotra, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J. (ORAL)

1. The Petitioner, who was a candidate of Combined Graduate Level Examination, 2012 (hereinafter referred to as 'CGLE-2012') conducted by the Staff Selection Commission (hereinafter referred to as 'SSC') has vide the present writ petition impugned the order dated 26.11.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby his OA was dismissed.
2. The admitted facts as noticed by the Tribunal are that the SSC issued an advertisement for holding CGLE-2012, wherein the posts were placed in two groups, namely, interview posts and non-interview posts. The non-

interview posts were further divided into two categories, namely, (a) Tax Assistants in CBDT and CBEC for which skill test was prescribed, and (b) Auditors in CAG, CGA and CGDA, Accountant in CAG and UGC, for which no skill test was prescribed. The relevant extract of the examination notice is as follows:-

“STAFF SELECTION COMMISSION

Date of Exam: 01.07.2012 &
08.07.2012

Closing Date : 20.04.2012

NOTICE

COMBINED GRADUATE LEVEL EXAMINATION, 2012

IMPORTANT INSTRUCTIONS TO CANDIDATES

1.	Commission will be holding Combined Graduate Level Examination, 2012 for recruitment to different posts for which Graduation from a recognized University is the minimum Educational Qualification. The Examination will comprise of two Tiers of Written Objective Type examination followed by Computer Proficiency Test/ Interview/Skill test, wherever applicable as per the Scheme of Examination. Posts have been placed in two groups, inter-alia, based on their Grade Pay and papers in Tier II examination/Interview. Preference for Posts, is to be indicated in the application. Candidates are requested to note that preference for Posts once exercised will be final. Request for change of preference will not be considered under any circumstance. For the post of Assistant in CSS, candidate shall have not more than three attempts unless covered by any of the exceptions notified by Government of India.
2.	In view of the huge number of applicants, scrutiny of the eligibility category etc. will not be undertaken at the time of Tier-I and Tier-II examination. Therefore, the application will be accepted provisionally only. The candidates are advised to go through the requirements of educational qualification, age, physical standards etc and satisfy themselves that they are eligible, before applying and before indicating their preference for any particular post. Copies of supporting documents will be sought only from those candidates who appear in Tier-II examination at the time of interview/skill test/document verification. Candidature will be cancelled if any information or claim is not found substantiated when the scrutiny of documents is undertaken by the Commission after Tier-II of the Examination. Commission's decision shall be final in this regard.

3.	CANDIDATES IN THEIR OWN INTEREST ARE ADVISED TO GO THROUGH THE DETAILED INSTRUCTIONS CONTAINED IN THIS NOTICE, WHICH IS ALSO AVAILABLE ON THE WEBSITE OF THE COMMISSION: http://ssc.nic.in, CAREFULLY BEFORE APPLYING.
4.	xxxx
5.	xxxx
6.	xxxx
7.	xxxx
8.	xxxx
9.	xxxx
10.	xxxx
11.	CANDIDATES MAY SUBMIT ON LINE APPLICATIONS AT http://ssconline.nic.in. or http://www.sscregistration.sifyitest.com THEY SHOULD RETAIN REGISTRATION NUMBER ASSIGNED TO THEM ON LINE FOR CORRESPONDENCE WITH THE COMMISSION. THEY ARE NOT REQUIRED TO SUBMIT PRINT OUTS OF THEIR APPLICATION TO THE COMMISSION. THE FACILITY OF ON-LINE APPLICATION WILL BE AVAILABLE UPTO 17.04.2012 (5:00 PM) FOR PART-I REGISTRATION AND FOR PART-II REGISTRATION UPTO 20.04.2012 (5.00 P.M.).
12.	Candidates may contact following Regional Help Lines for clarifications, if any, in respect of filling/submitting applications : (i) SSC(NR), New Delhi - 01164715222, 01165570666 (ii) SSC(CR), Allahabad - 08765214571, 08765214572 (iii) SSC(SR), Chennai - 09445195946, 04428251139 (iv) SSC(WR), Mumbai - 09869730700, 07738422705 (v) SSC(ER), Kolkata - 09477461228, 09477461229 (vi) SSC(MPR) Raipur - 09407921504, 09407921505 (vii) SSC(KKR), Bangalore - 09483862010, 09483862020 (viii) SSC(NWR), Chandigarh - 01722749378, 01722742144 (ix) SSC(NER), Guwahati, - 09864217001, 09435711335

F. No. 3/20/2011–P&P. Staff Selection Commission will hold **Combined Graduate Level (Tier-I) Examination, 2012** on SUNDAYS the **1st July, 2012 & 8th July, 2012** and if necessary, on subsequent Saturdays/Sundays, in different batches, for selecting the candidates for Tier-II examination for filling up different categories of posts in various Ministries/ Departments/ Organisations. Subject to administrative/public exigencies, **Combined Graduate Level (Tier II) Examination, 2012 will be held on SATURDAY**

15th September, 2012 and on SUNDAY, the 16th September, 2012. Final selection through the Combined Graduate Level Examination to specific categories of posts would be subject to receipt of intimation of confirmed number of vacancies from the concerned Indenting Ministries/ Department/Office/Cadres before declaration of results.

2. Names & Codes of Posts, Classification, Pay Band and Grade Pay, Nature of Physical Disabilities permissible for the posts are:

I. xxxxxxx

II. Posts for which Interview cum Personality Test is not prescribed: Pay Band –I Rs.5200-20200

Code	Post	Ministries/Departments/Offices/Cadre	Classification	Grade Pay (GP) Rs.	Nature of Physical Disabilities permissible for the post
xx	xx	xx	xx	xx	xx
R	Auditor	Offices under C&AG	Group C"	2800	One Arm (OA), One Leg (OL)
S	Auditor	Offices under CGDA	Group C"	2800	
T	Auditor	Offices under CGA & Others	Group C"	2800	

THERE WILL BE A SINGLE APPLICATION FORM FOR THE COMBINED GRADUATE LEVEL EXAMINATION. CANDIDATES, DECLARED QUALIFIED BY THE COMMISSION FOR ADMISSION TO THE WRITTEN (TIER-II) EXAMINATION ON THE BASIS OF THE TIER I EXAMINATION, WILL NOT HAVE TO APPLY AGAIN. NO SEPARATE NOTICE/ ADVERTISEMENT WILL BE PUBLISHED FOR THE TIER-II EXAMINATION. THE RESULT OF TIER-I EXAMINATION, INFORMING THE QUALIFIED CANDIDATES ALONG WITH THE DATES OF TIER-II EXAMINATION WILL BE PUBLISHED IN THE EMPLOYMENT NEWS/ROZGAR SAMACHAR AND COMMISSION'S WEBSITE.

9. SCHEME OF THE EXAMINATION FOR COMBINED GRADUATE LEVEL EXAMINATION

The Examination will be conducted in three tiers as indicated below:

Tier -I -- Written Examination (Objective Multiple Choice Type)

Tier -II -- Written Examination (Objective Multiple Choice Type)

Tier -III -- Personality Test /Interview/Computer Proficiency Test or Skill Test (wherever applicable).

Scheme of Examination for different posts will be as follows:

Post	Tier I Examination	Tier II Examination	Interview	Proficiency/Skill Test	Total Mark
Posts for which Interview is prescribed other than Statistical Investigator Grade-II.	A. General Intelligence + Reasoning - 50 marks B. Gen. Awareness-50 marks C. Quantitative Aptitude - 50 marks D. English Comprehension - 50 marks Total Marks – 200 Duration: 02 hours For VH: 2 hours 40 minutes	I. Quantitative Abilities : 200 marks (100 Questions) Duration: 2 hours For VH: 2 hours 40 minutes where eligible. II. English Language & Comprehension: 200 marks. Total Marks : 400 Duration : 2 hours For VH: 2 hours 40 minutes wherever eligible.	100 Marks	Computer Proficiency Test (CPT) for post of Assistant in CSS only	700
Posts for which no Interview is prescribed, other than Compiler.	-do-	-do-	No	Data Entry Skill Test at Speed of 8000 key depression per hour for post of Tax Assistant	600
Statistical Investigator Grade-II	-do-	Paper-I & II as above 400 marks Paper-III Statistics 200 marks	100 marks	--	900
Compiler	-do-	-do-	No	-	800

NOTE: There will be negative marking of 0.25 marks for each wrong answer in Tier-I. In Tier-II, there will be negative marking of 0.25 marks in Paper-II and III and 0.50 marks in Paper-I for each wrong answer.

9(A). Combined Graduate Level (Tier-I) Examination: Tier –I of the Combined Graduate level Examination would be common for all categories of posts.

Date of Exam	Part	Subject	Max.Marks/ Questions	Total Duration/Timing for General candidates	Total Duration/Timing for visually Handicapped candidates
01.07.2012 & 08.07.2012	A.	General Intelligence & Reasoning	50	2 Hours 10.00 A.M. to 12.00 Noon	2 Hours 40 mins 10.00 A.M. to 12.40 PM
	B.	General Awareness	50	OR 2.00 P.M. to 4.00 P.M.	OR 2.00 P.M. to 4.40 P.M.
	C.	Quantitative Aptitude	50		
	D.	English Comprehension	50		

9 (B). Combined Graduate Level (Tier-II) Examination:

Tier-II of the Combined Graduate Level Examination -2012 will be of Objective Type Multiple Choice and will be conducted over a period of two days on 15th September, 2012 & 16th September, 2012.

SCHEME OF TIER-II WRITTEN EXAMINATION (TIER-II)

Date of Exam	Paper No.	Subject/Paper	Max. Marks	Number of Questions	Duration & Timings for General candidates	Duration & Timings for VH candidates
15.09.2012	III	Statistics	200	200	2 Hours 2.00 PM to 4.00 PM	2 Hours and 40 Min. 2.00 PM to 4.40 PM
16.09.2012 FN	I	Quantitative Abilities	200	100	2 Hours 10.00 AM to 12.00 Noon	2 Hours. and 40 Min. 10.00 AM to 12.40

						PM
16.09.2012 AN	II	English Language & Comprehension	200	200	2 Hours 2.00 PM to 4.00 PM	2 Hours. and 40 Min. 2.00 PM to 4.40 PM

3. The Petitioner appeared in the written examination and scored 317.75 marks therein, vide results of Tier I and Tier II of the written examination declared by SSC on 08.08.2012 and 18.10.2012 respectively. The contention of the Petitioner before the Tribunal was that though as per the results of Tier I and Tier II of the written examination, he had qualified for the non-interview posts which included the post of Auditor in CAG, CGA and CGDA, he did not receive any call letter from the SSC to appear for the Tier-III of the selection process on 26.11.2012, which stage entailed only document verification in respect of those posts for which, no Data Entry Skill Test (DEST) was prescribed. The Petitioner had further contended before the Tribunal that upon learning about the receipt of call letters for Tier-III by some candidates, he visited the Office of the Commission i.e. respondent No.2 on 02.12.2012 to find out the fate of the call letter, if any, issued to him by the Commission, when he was advised by Respondent No.2's office to download the call letter from the website and he, accordingly, downloaded the same from the internet on 02.12.2012 itself and on seeing the same, he learnt that as per this call letter, he was supposed to appear for DEST/Document verification on 26.11.2012, which date had, by then, already expired.

4. The Petitioner's further contention before the Tribunal was that as the date for submission and verification of documents was already over by the time he had downloaded the call letter dated 26.10.2012 from the internet, he again visited the office of Respondent No.2 on 04.12.2012 where he met one Shri U.K. Sinha, Under Secretary and explained to him that due to non-receipt of call letter, he had not been able to get his documents verified on the date fixed in the call letter.

5. As per the Petitioner, he was asked by Mr.U.K. Sinha to make an application for condonation of delay and he, accordingly, submitted an application to Mr.U.K. Sinha, on the very same day, who after putting the remarks "we may consider him for document verification only" had put his initials on the same and also kept the photocopies of his documents.

6. The Petitioner was, thereafter, anxiously waiting for the final results as he was aware that he had obtained more marks than the cut off for a number of non-interview posts, including that of Auditor for which, admittedly, neither any interview nor any DEST was required. In spite of this, when the final results was declared by the Respondent No.2 on 08.02.2013, the Petitioner realized that his name had not appeared in the list of selected candidates. Consequently he made a representation dated 13.02.2013 requesting Respondent No.2 to include his name in the list of candidates recommended for appointment to non-interview posts, but to no avail. In supersession of the results dated 08.02.2013, the Respondent No.2 had declared a revised result on 30.05.2013 in which also the Petitioner's name did not figure, even though, he had admittedly obtained the requisite marks for non-interview post.

7. Aggrieved by the failure on the part of the Respondent No.2 to consider him for appointment, the Petitioner filed the present OA before the Tribunal on 24.12.2013 wherein he sought a direction to the Respondents to include his name at the appropriate place in the list of candidates who had been recommended for appointment to the non-interview post in the CGLE-2012.

8. It may be relevant to note that in his OA, the Petitioner not only specifically pleaded that 687 posts in the category of non-interview posts had remained unfilled, but had also annexed a copy of his application dated 04.12.2012 addressed to the Respondent No.2 wherein he had requested the Respondent No.2 for permitting him to undertake the DEST and submit his documents for verification. We may note that in Para 4.7 of his OA, the Petitioner had made a specific averment that on 04.12.2012, he had submitted all his documents to Mr.U.K. Sinha, Under Secretary in the office of Respondent No.2, who had, after verification of his documents, put an endorsement on his application to the effect that he may be considered for document verification only.

9. In the counter affidavit filed by the Respondents before the Tribunal, there was no denial of the averments made by the Petitioner qua availability of 687 unfilled posts in the non-interview category, or qua verification of his documents by Shri U.K. Sinha. The Respondents, however, prayed for dismissal of the OA on the ground of delay and contended that call letters for Tier-III had been issued to all the candidates by speed post, and even if the Petitioner had not received the call letter by post, he should have either downloaded the same from the official website of the Respondent No.2 or

approached the Office of the Respondent No.2 for obtaining a duplicate call letter. The Respondents emphasized on the fact that several candidates who approached them for duplicate call letter were all issued duplicate call letters and, had the Petitioner approached them, he would also have been issued the call letter. The Tribunal, after noticing the contentions raised by the parties, however, dismissed the OA filed by the Petitioner by observing as under:-

“13. In the call letter dated 26.10.2012 (Annexure A/8), which has been reproduced in paragraph 7 above, it was clearly stipulated that the candidates, who did not intend to appear Data Entry Skill Test, should attend on the appointed date for verification of documents, failing which they would not be considered for any post. Having failed to present himself on 26.11.2012 for submission and verification of documents, including attestation forms, and also having failed to establish his pleas that his documents were verified by SSC on 04.12.2012, and that further opportunity was granted by SSC to any other similarly placed candidate, the applicant cannot be allowed to claim selection for non-interview post of Auditor, etc., for which no Data Entry Skill Test was prescribed. Thus, no fault can be found with the respondent-SSC for not considering the applicant's candidature for selection and recruitment to any non-interview post for which no Data Entry Skill Test was prescribed.”

10. After the dismissal of his OA, the Petitioner had also filed a review application before the Tribunal, pointing out that from the counter affidavit it was evident that the Respondents had not denied the averments made in the OA specifically, and instead had opposed the OA on the ground that the applicant - like all other candidates who had qualified for non-interview post, i.e. Tax Assistant, was served with a call letter by speed post for Data Entry Skill Test but the applicant had failed to comply with the said call

letter. The Tribunal, however, dismissed the review application vide its order dated 12.01.2016.

11. Aggrieved by the dismissal of his OA and review application, the petitioner has preferred this writ petition challenging the order passed by the Tribunal. When the present petition came up for preliminary hearing on 19.10.2016, this Court - while directing the Respondents to file its counter affidavit, specifically directed that a copy of advertisement as well as the details or instructions, indicating that the candidates must check the website and download the call letter, in case they do not receive any intimation by speed post/registered post by a particular date, should be filed. The relevant extract from the order dated 19.10.2016 reads as under:-

“The respondent will file counter affidavit stating therein whether the petitioner can be permitted to appear in the test in the next batch. The counter affidavit will also indicate whether the petitioner was called for interview post being eligible as per the merit list, and accordingly whether he can be appointed.

Counter affidavit is required and would be filed within 6 weeks from today. A copy of advertisement as well as the details or instructions indicating that the candidates must check the website and download the call letter, in case they do not receive intimation by speed post/registered post by a particular date will be filed.”

12. In compliance with the order dated 19.10.2016 passed by this Court, the Respondents have filed their counter affidavit dated 19.12.2016, but a perusal of the same would show that they have merely reiterated their pleas taken before the Tribunal, and have failed to answer the specific query raised by this Court, as to whether there was any requirement in the

Category	SC	ST	OBC	EX.S	OH	HH	VH	UR	Total
Tentative Vacancies	1530	832	2765	895	194	125	28	5467	10594
Cut off Marks (Tier-I + Tier-II) (Paper-I+II)	251.00	242.00	281.50	211.00	227.00	123.00	225.00	313.50	
Candidates available	2722	1436	6577	1494	422	230	70	6355	19306

10. Skill Test in Data Entry (DEST) for candidates in the List-I (other than marked for CSS Assistants) and List-IV tentatively commence in the **middle of November, 2012**. Even if such candidates do not intend to appear in DEST, they should attend on the appointed day for documents verification, failing which they will not be considered for any post.

12. The result is available on the Commission's website: <http://ssc.nic.in> and <http://ssc.nic.in> and <http://sscreults.nic.in> . The Regional Offices of the Commission have also been advised to place the results on their respective website.”

15. Having considered the submissions made by learned counsel for the parties and perused all the material on record, we are of the opinion that the main question which needs our consideration is whether the Petitioner should have known, that the result of candidates who have qualified in Tier-II and were, therefore, to appear for DEST/document verification, had been declared. The question is, whether the notice to the candidates or any other communication to the Petitioner, put the onus upon him to keep a track and to find out for himself as to when the result of the Tier-II examination would be declared. Another question which arises is whether the Respondents, at

any time, informed him about the declaration of the result so as to require any action on his part, to request for a duplicate call letter in case he had not received the same by post by any particular date.

16. From a perusal of the pleadings and the documents filed by the Respondents - including the advertisement and the result notice dated 12.10.2012, we are unable to agree with the contention of counsel for the Respondents that the Petitioner was supposed to know as to when the call letters were issued, or as to when the result of Tier-II was declared. There is nothing in the advertisement or any of the documents filed by the Respondents to show that the date of declaration of the result was known to the candidates. On the other hand, a perusal of the advertisement shows that the dates for Tier-I were already fixed and, similarly, the date for Tier-II were also fixed and, made known to the candidates in the advertisement itself. There was no date mentioned or fixed in advance to the information of the Petitioner, for holding of Tier-III process, and for the non-interview posts not requiring DEST, for submission and verification of documents. The Petitioner was not informed in advance that it shall be his obligation to follow up on his own, without waiting for a call letter, to find out the date fixed for submission and verification of documents. The Petitioner, therefore, could legitimately have waited to be informed of the said date by a specific communication. The same was not done, as the speed post communication allegedly sent to him was not received by the Petitioner.

17. Though, it may be correct that the Respondents cannot be faulted for non-receipt of the call letter by the Petitioner in time, the moot question which needs to be decided is whether the Petitioner, who admittedly has

obtained the requisite marks for appointment to a number of non-interview posts, should be deprived of his right to appointment, when there is no denial to the fact that 687 non-interview posts had remained unfilled through the said examination of 2012.

18. We have given our thoughtful consideration to the submissions made by learned counsel for the parties and in the light of the admitted facts, we find merit in the submission of learned counsel for the Petitioner that the Petitioner is entitled to be appointed on any of the available non-interview posts in CGLE-2012, as he cannot be made to suffer for no lapse on his part, particularly when a large number of vacancies still remain unfilled.

19. In our view, the Tribunal has not appreciated the aforesaid facts and has rejected the OA merely because it did not find any fault on the part of the Respondents. The Tribunal has, in our opinion, failed to appreciate that once it was apparent that there was no means for the Petitioner to know that he was expected to go for documents verification on 26.11.2012, he was entitled to be considered for appointment for the post for which he had qualified and vacancies were available.

20. However, our attention has been drawn to the fact that though the final selection list was published on 08.02.2013, but the Petitioner had approached the Tribunal only on 24.12.2013 and he could have approached the Tribunal immediately upon declaration of results, or soon thereafter. In the facts of the case, we are of the view that the interest of justice would be met, if the Respondents are directed to appoint the Petitioner on one of the available non-interview posts for which no DEST is required, after verification of his documents, within four weeks from the date of receipt of

order. It is however, clarified that the seniority of the Petitioner would be counted only from the date of his appointment, and he would not be entitled to any benefits, financial or otherwise, for any earlier period.

21. The writ petition is allowed in the above terms and the impugned order passed by the Tribunal is set aside.

REKHA PALLI, J

VIPIN SANGHI, J.

JULY 11, 2017/gm



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