

\$~16.

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

+ W.P.(C) 11538/2018 & CM APPL. 44664-44665/2018

SIDHARTH GOYAL

..... Petitioner

Through: Mr. Sachin Chauhan, Adv.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. TP Singh, Adv for
Respondent Nos.1,2,3&5
Mr. Naresh Kaushik, Mr. Omung
Gupta, Mr. Rahul Sharma and MR.
Lakshay Juneja, Adv for R-4

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

26.10.2018

%

1. The petitioner has preferred the present writ petition to assail the order dated 13.07.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 931/2018. The tribunal has rejected the said O.A. preferred by the petitioner and upheld the validity of the letter dated 12.02.2018 issued by UPSC cancelling his candidature for CSE 2017. The tribunal has also upheld the validity of Rule 10 of the CSE 2017 Rules.

2. The petitioner had initially appeared in the CSE 2014. He was

selected in the said examination and allocated to the Indian Revenue Service. He again appeared in CSE 2015 with a view to improve his rank and service after getting exemption from attending the 90th Foundation Course. However, he did not succeed in that year. Then, he applied for extraordinary leave for one year to prepare for and appear in the examination CSE 2016. He was granted the said leave on 29.12.2015 and he appeared in the said examination. Unfortunately for the petitioner, once again he did not succeed.

3. The petitioner rejoined the service after appearing in CSE 2016 on 19.12.2016 to undertake the basic training along with the successful candidates for probationers of the 68th Batch. On rejoining, he was mandatorily required to sign an undertaking that he will not appear either in the CSE or in any other competitive examination for appointment to the Central or State services during the period of the basic training. The petitioner gave the said undertaking. The petitioner thereafter, without any prior notice, much less permission, on his own appeared in CSE 2017.

4. On this occasion i.e. in CSE 2017, the petitioner cleared the preliminary examination and the main examination. Since the petitioner did not take the prior permission of the competent Authority to appear in CSE 2017, he was show caused by the UPSC for cancellation of his candidature. This was followed by the order dated 12.02.2018 cancelling the petitioners candidature. The UPSC placed reliance on Rule 10 of CSE 2017, which reads as under:

“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". (Emphasis supplied)

5. The submission of the petitioner is that the undertaking obtained from him is contrary to the service rules applicable to the petitioner i.e. the Indian Revenue Service (Customs and Central Excise) Group 'A' Rules, 2012. He specifically places reliance on Rule 6 which deals with probation and confirmation and reads as follows:

"6. Probation and confirmation.- (1) Every officer on appointment to the Service, either by direct recruitment or by promotion in Junior Scale shall be on probation for a period of two years:

Provided that the Controlling Authority may extend the period of probation in accordance with the instructions issued by the Central Government from time to time:

Provided further that an officer shall be given an opportunity of being heard before his period of probation is proposed to be extended before three months of the expiry of the period.

(2) On completion of the period of probation, or any extension thereof, officers shall, if considered fit for permanent appointment, be retained in their posts on regular basis and be confirmed.

(3) If, during the period of probation, or any extension

thereof, as the case may be, the Controlling Authority is of the opinion that an officer is not fit for permanent appointment, it may discharge or revert the officer to the post held by him prior to his appointment in the service, as the case may be.

(4) During the period of probation, or any extension thereof, an officer may be required by the Controlling Authority to undergo such course of training and instructions and to pass examinations, and tests (including examination in Hindi) as it may deem fit, as a condition to satisfactory completion of the probation.

(5) As regards other matters relating to probation, the members of the Service shall be governed by the instructions issued by the Central Government in this regard from time to time”.

6. The submission of the petitioner is that he was governed by the rules applicable to the 67th batch, which do not impose any such embargo against the candidates. He submits that the rules applicable to the 68th batch could not have governed him, and he had merely joined the training with the 68th batch on account of his extraordinary leave for a year. Otherwise, he did not belong to the 68th Batch of recruits. He claims that he gave an application on 12.06.2017 to the Director General NACIN for seeking permission to appear in the CSE 2017 personally, but it was not accepted by him.

7. We do not find any merit in the submissions of the petitioner. . We may, firstly, observe that there is no record of the said application having been made and secondly, even if such an application were sought to be tendered by the petitioner and not accepted, it tantamounted to the application not being granted.

8. Thus, there is nothing to show that the petitioner made any

application to seek permission to appear in CSE 2017. Only in response to the show cause notice issued to him, he claimed that he had made an application, but the Director General NACIN had not accepted the same. Without prior permission, the petitioner, in any event, could not have appeared in CSE 2017 in terms of Rule 10 quoted above. Since the petitioner was desirous of participating in CSE 2017, he was obliged to comply with the requirement prescribed for participating in the said examination. Moreover, if he was aggrieved by the undertaking called for from him, he should have assailed the same at the relevant point of time. He could not have surreptitiously appeared in CSE 2017 and only because he succeeded in the preliminary and main examinations, sought to renege from the undertaking.

9. For the aforesaid, we do not find any merit in this petition. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 26, 2018

sr