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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 1087/2002

Date of Decision 22.10.2002

Sh. Devender Singh

... Applicant

Sh.N.M. Popli

... Advocate for the Applicant

VERSUS

UPSC and Ors

... Respondents

Shri R.N. Singh

... Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri V.K. Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1087/2002

New Delhi this the 22nd day of October, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).

Shri Devender Singh,
S/o Shri Bhopal Singh,
Shankar Nagar, Delhi Road,
Saharnpur-247001 (UP).

... Applicant.

(By Advocate Shri N.M. Popli)

Versus

1. Union Public Service Commission,
through its Chairman,
Dholpur House, Shahjahan Road,
New Delhi.

2. Union of India through
Chairman,
Railway Board,
Rail Bhawan, New Delhi.

3. Railway Board,
through its Chairman,
Rail Bhawan, New Delhi.

... Respondents.

(By Advocate Shri R.N. Singh)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant has challenged the decision of Respondent No. 1 - Union Public Service Commission (UPSC) to debar him for a period of 10 years from 27.12.2001 for appearing in all examinations and selections to be conducted by the UPSC, by the impugned order dated 28.3.2002 as arbitrary and illegal.

2. The brief relevant facts of the case are that the applicant had appeared in the Engineering Service

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Examination, 2000 (hereinafter referred to as 'the Examination') conducted by the UPSC. He had qualified in the written examination and appeared in the interview on 4.4.2001. He had received a letter from the UPSC dated 30.3.2001, alleging that he was involved in copying of Question Nos. 8 (a), 3 (c) of the Civil Engineering Paper-I (Conventional) and he was asked to show cause why disciplinary action should not be taken against him for violation of Instruction No. 7 of the "Special Instructions to Candidates" contained in ^{the} Information Brochure. The applicant had replied to this show cause notice, stating that he had not attempted Question No. 3 (c), Paper-I (Conventional) in the Examination and there was no question No. 8 in that paper. He had also refuted the allegation of copying in the Examination. He had received another letter from Respondent No. 1 dated 30.10.2001 in continuation of the letter dated 30.3.2001 correcting certain words i.e. 'Civil Engineering Paper-I (Conventional)' to be read as 'Civil Engineering Paper-II (Conventional)'. The applicant was again asked to give reply to the same which was also done by him that he did not use any unfair means. According to the applicant, he was called for interview vide letter dated 26.2.2002 on 20.3.2002. Learned counsel for the applicant has submitted that the show cause notice issued to the applicant dated 30.3.2001 is vague. According to him, apart from the mistakes corrected by the respondents later on, after it was pointed out by the applicant that the concerned paper is Civil Engineering Paper-II and not Paper-I (Conventional), the show cause notice does not specifically state whether the applicant had copied from

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other candidates or allowed his answers to be copied by other candidates. He has also submitted that the punishment imposed on the applicant debarring him for a period of 10 years from 27.12.2001 for appearing in all examinations and selections to be conducted by the Commission is harsh and excessive. He has drawn our attention to Paragraph 5 (a) of the Railway Board Rules dated 29.1.2000 which deals with the Examination. It is provided that a candidate for this Examination must have attained the age of 21 years and must not have attained the age of 30 years as on 1.8.2000. He has submitted that if 10 years is the debarment period imposed as penalty, when the candidate can appear only for nine years in this Examination, i.e. from 21 to 30 years, it would effectively mean that this is a debarment for life. He has relied on a number of judgements, namely, Prem Prakash Kalunias Vs. The Punjab University and Ors. (1973(3) SCC 424), Rajesh Kumar and Anr. Vs. Institute of Engineers (India) (1997 (6) SCC 674) and Union Public Service Commission Vs. Jagannath Mishra (Civil Appeal No. 675 of 2000), decided on 9.11.2000. Learned counsel for the applicant has submitted that as seen from the manner in which the inquiry has been conducted in a similar case i.e. in Prem Prakash Kalunia's case (supra), it is also necessary for the UPSC to comply with the principles of natural justice. He has relied on paragraph 8 of this judgement in which the requirement of giving information of the prescribed charge is given. It has been held:

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"...The law on this point is well-settled that an examinee must be adequately informed of the case he has to meet and given a full opportunity of meeting it. As to what the extent and content of that information should or ought to be would depend on the facts of each case. The examinee can ask for

more information or details with regard to the material or evidence which may be sought to be used against him and normally if he makes a request in that behalf, the University authorities in order to inform him adequately of the case he has to meet, would supply him the necessary particulars or details of the evidence. In the very nature of things no hard and fast rule can be laid down and so long as the Court is satisfied that the opportunity which was afforded to the examinee was adequate and sufficient, it will not interfere with any orders prejudicial to him which may have been made by the University authorities".

(Emphasis added)

3. Shri M.M. Popli, learned counsel has submitted that in the present case, no adequate opportunity has been given to the applicant to meet the charges, for example, as to what material has been found against him to show that he has copied or allowed some other candidates to copy from him in the Examination. He has, therefore, contended that ~~these~~^{the} the principles of natural justice have been violated.

4. We have seen the reply filed by the respondents and heard Shri R.N. Singh, learned counsel. According to them, the applicant has misled the court when he has submitted that he has not been afforded reasonable opportunity to explain his case. They have submitted that the position is otherwise and the applicant has been given fair and just opportunity to explain his case. The decision has been taken by the UPSC after considering all the relevant facts, report(s), materials available on record, including explanation of the applicant. They have submitted that at the Examination, the applicant's roll No. was 54813 and the Centre was at F.R Islamia College, Bareilly. On evaluating the answer books of Civil Engineering Paper-II (Conventional) of the candidate, the Additional Examiner had found that the applicant had indulged in copying. So the advice of the Head Examiner

was obtained in the matter, who confirmed the views of the Additional Examiner. Consequently, a detailed report had been submitted by the Head Examiner which has been taken into account by the competent authority and a show cause notice was also issued to the applicant. They have submitted the copies of the answer books and reports to the Tribunal for our perusal. Shri R.N. Singh, learned counsel has also very vehemently submitted that the penalty imposed by the UPSC is neither unreasonable or inconsistent with the practice and rules which have also been upheld by the Delhi High in Subhra Ranjan Mishra Vs. Chairman, UPSC & Anr. (86 (2000) Delhi Law Times 344) and the Hon'ble Supreme Court in Jagan Nath Mishra's case (supra). Learned counsel has, therefore, prayed that the O.A. may be dismissed.

5. We have carefully considered the pleadings, submissions made by the learned counsel for the parties and the relevant documents submitted by the respondents.

6. In the show cause notice issued by the UPSC to the applicant dated 30.3.2001, it has been stated that during the course of evaluation of applicant's answer book of Civil Engineering Paper-I (Conventional) by the Examiners, it has been observed that he was involved in copying of Question Nos. 8 (a) and 3 (c) and he has thus used unfair means in the Examination Hall. Further, it has been stated that the applicant has clearly infringed Instruction No. 7 of the Special "Instructions to Candidates" contained in Part-II (B) of Information Brochure which is reproduced below:

"Do not copy from the papers of any other candidate nor allow your papers to be copied, nor give, attempt to give nor obtain, nor attempt to obtain irregular assistance of any description. It will

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be the responsibility of every candidate to ensure that another candidate does not copy his answers. Failure to do so will invite penalty, as may be awarded by the Commission for adoption of unfair means".

7. In the above show cause notice, neither the applicant's roll number nor the roll numbers of the other candidates who had appeared in the Examination have been mentioned, who were alleged to be involved in the infringement of the aforesaid Instruction No. 7. However, as pointed out by the learned counsel for the applicant, in the affidavit filed by the Chairman of the UPSC dated 30.5.2002, it has been mentioned that the applicant was found to be involved in the use of unfair means in the Examination along with candidates with roll numbers 54810, 54811, 54814, 54902 and 54903, the roll number of the applicant being 54813, who have all been debarred for a period of 10 years. It is, therefore, seen that after filing of this O.A. by the applicant, in the reply affidavit filed by the respondents in May, 2002, they have disclosed the relevant roll numbers of the candidates who had appeared in the Examination who were held to have used unfair means. No reason has been given as to why the relevant roll numbers of the concerned candidates who were alleged to have infringed the above Instruction No. 7 had not been disclosed earlier to the applicant. In the facts and circumstances of the case, we agree with the contention of Shri M.N. Popli, learned counsel that the charge/show cause notice dated 30.3.2001 is vague and relevant and necessary particulars have not been disclosed to the applicant, to enable him to give a detail reply. In Prem Prakash Kalunia's case (supra), the Hon'ble Supreme Court has observed:

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"....in dealing with these cases, the problem faced by such institutions should be appreciated by the High Court and so long as the enquiry held was fair and afforded the candidate an opportunity to defend himself, the matter should not be examined with the same strictness as applicable to criminal charges in the ordinary courts of law. There is hardly any justification for saying in the present case that the finding of the Standing Committee was based on no evidence".

(Emphasis added)

In that case, the Supreme Court has found that the Standing Committee stated in its order all the relevant facts and came to the conclusion that the Head Examiner had thoroughly examined the answer books of both the candidates and had pointed out the common mistakes committed by them. The mistakes were such which could have been committed only if copying had been done from a common source or by the two candidness from each other. Further, with regard to the requirement of giving information of the precise charge, the observations of the Hon'ble Supreme Court in paragraph 8 of the judgement are relevant, portion of which has already been quoted in Paragraph 2 above. The judgement of the Hon'ble Supreme Court was with regard to the requirement of giving information, as contended by the learned counsel for the appellant, that the Standing Committee had come to the conclusion that the appellant as well as the other candidate, Virender Singh, had committed mistakes in the answer books while answering Q.No. 1 (b) and those mistakes were such which could be possibly made only when each had copied from a common source or from each other. As held in Prem Prakash Kalunia's case (supra), to what extent and content that information should or ought to be would depend on the facts of each case. It was held that

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the examinee can ask for more information or details with regard to the material or evidence which may be sought to be used against him and normally if he makes a request in that behalf, the University authorities in order to inform him adequately of the case he has to meet, would supply him the necessary particulars or details of the evidence. In that case, copies of reports of examiners were supplied to the appellant as also the questions which were put to him in the questionnaire and by the Standing Committee when he personally appeared before it fully established that he was informed of the charge against him. One of the questions put by the Standing Committee was as follows:

"Did any common incriminating slip pass between you and Roll No. 11750 to serve as a common source for you and Roll No. 11750 for copying and thus committing common mistakes".

In the facts and circumstances of the case, the Apex Court came to the conclusion that they were unable to see how the finding of the Standing Committee could be regarded as vague or as having been based on no evidence. The Court observed that "Although the matter cannot be examined with the same strictness as applicable to criminal charges in the ordinary courts of law but the inquiry should be held fairly and the candidate afforded an opportunity to defend himself".

8. Looking at the facts of the present case from the yardstick laid down by the Hon'ble Supreme Court in Prem Prakash Kalunia's case (supra), we find that the present case falls very much short of those criteria. In Jagannath Mishra's case (supra) which has been relied upon by both the learned counsel for the parties, the arguments of Shri Parekh, learned counsel for the UPSC have been

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referred to. He has stated that a bare look at the answer papers of the two candidates would be sufficient to come to a conclusion that one has copied from the other and such copying could be possible only because of the assistance and/or connivance of the person from whom the other can be said to have copied and, therefore, the Tribunal and the High Court committed error in interfering with the decision of the UPSC. He had, therefore, contended that when the UPSC on examining the relevant materials had come to the conclusion, the same should not be interfered with by the Court or the Tribunal by appreciation of evidence, unless it is established either that there has been any violation of the principles of natural justice or that the UPSC has taken the decision mala fide. Reference had also been made to the judgement of the Supreme Court in Prem Prakash Kalunia's case (supra). The Supreme Court had also examined the two answer papers in question. They had come to the conclusion that but for the assistance or connivance of the respondent in some way or the other, it would not have been possible for the other candidate to answer his question paper in the manner in which he has answered, who was sitting just behind the respondent. It was held that, therefore, there was no justification to interfere with the conclusion of the UPSC.

9. On perusal of the original records of the answer papers of the concerned candidates, we note that against roll no. 054813 i.e. applicant, it has been recorded by the Examiner that "there appears to be some copying amongst the candidates of script No. 004871, 004872, 004873 and 004874. Particularly so in Question 8 (a)". He has not referred to Question 3 (c). With regard

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to the candidate having roll no. 054810, there is a mention that "There appears to be some degree of copying amongst the candidates of script No. 004871, 004872, 004873 and 004874. Particularly so in Q. No. 8(a). Also in Q. No. 2(b) and 4 (c) of this candidate". It is relevant to note that the Examiner has not come to a definite finding that there is copying but he states that there appears to be some degree of copying amongst the candidates of the aforesaid script ^{18.} ~~names~~. The Learned counsel for applicant had also emphatically submitted that the details have not been disclosed to the applicant when issuing the show cause notice nor the sitting position of the candidates to enable him to defend his case against the allegations. On perusal of the answers given by the applicant and the other candidates referred to above, for example, in Question No. 8 (a), it is not possible for us to come to the conclusion that the answers are the same and have been arrived at due to the assistance and connivance of one of the aforesaid candidates. We are aware that the UPSC is a Constitutional high-powered body which has been conferred with the power to conduct such Examinations but while imposing a penalty as in the present case, it must act in a fair manner and afford the candidate a reasonable opportunity to defend himself. We are not impressed by the argument of Shri N.M. Popli, learned counsel that the applicant is a brilliant student and there was no need for him to copy. It cannot be disputed that even if a brilliant student is found to have indulged in any unfair means in the Examination, he will have to bear the consequences of the same. However, in the particular facts and circumstances of the present case and having regard to the aforesaid judgements of the

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Hon'ble Supreme Court, the evidence against the applicant has not been disclosed to him in the charge/show cause notice to enable him to answer the allegations by the respondents. It is also relevant to note that the Examiner has not referred to Question 3 (c) which is referred to in the impugned letter dated 30.3.2001. It is also relevant and it is not possible to say from the facts what view the Commission has taken in this matter, while imposing the impugned penalty on the applicant. The applicant should have been afforded an opportunity to participate in the inquiry after being confronted with the necessary details, including the roll numbers of the candidates with whom he is alleged to have copied or connived in copying. As this has not been done, there is violation of the principles of natural justice and the enquiry conducted by the UPSC cannot be held to be fair in this case.

10. The relevant portion of the impugned order dated 28.3.2002 rejecting the applicant's reply to the show cause notice reads as follows:

"2. Matter has been examined. After taking into account all the relevant facts of the case including your explanation, the Commission have found that your explanation is not satisfactory and you have violated the Rules for Engineering Services Examination, 2000. The Commission have, therefore, decided to debar you for a period of ten (10) years from 27-12-2001 from appearing in all the examinations and selections to be conducted by the Commission".

The above letter can ~~alone~~ hardly be taken as giving the reasons for the UPSC to come to the conclusion, to impose on the applicant the penalty of debarment on him for a period of 10 years from appearing in all examinations and selections to be conducted by them. In

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the facts and circumstances of the case before imposing such a harsh and drastic penalty on the applicant, the UPSC ought to have given ^{the 18} reasons, on the basis of which they have come to the conclusion that he has cheated or adopted unfair means in the said Examination. In the circumstances of the case, we are of the view that the impugned show cause notice as well as the penalty order are violative of the principles of natural justice and are, therefore, liable to be quashed and set aside.

11. The UPSC has imposed a bar for a period of 10 years on the applicant from appearing in all the examinations and selections to be conducted by them by the impugned order dated 28.3.2002. The applicant had appeared in the Examination in the year 2000. This Examination was open to candidates who are between the age of 21-30 years, who have attained the age of 21 years as on 1.8.2000, as provided in para 5 (a) of the Rules. This shows that altogether a candidate could have appeared totally for 9 years. Therefore, the debarment of the applicant for a period of 10 years from appearing in all the examinations and selections to be conducted by the UPSC goes even beyond this period. In **Subhra Ranjan Mishra's** case (supra), the Hon'ble Delhi High Court has noted that the petitioner is a mature man of over 21 years of age, who was appearing in the Central Services Examination for the premier service of the country for the third time. The respondents have explained that they have consistently followed the practice of imposing the standard penalty of debarring the candidate found using unfair means for a period of 10 years and the same was upheld. The conclusion that no leniency should be shown to a candidate who has appeared in the Examination who is

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over 21 years of age is not at all questioned. However, as in the present case, when the candidate in the Examination can appear only for a period of 9 years as provided in the Rules, whether the consistent practice followed by the UPSC to debar him from appearing for 10 years in any examinations/selections held by them needs to be reconsidered by the Commission is the moot question?. It appears from a perusal of the judgement in **Subhra Ranjan Mishra's** case (supra) that this point had not been urged before the High Court. This is a matter which is essentially for the UPSC to reconsider as to their practice, taking into account the facts of each case. Perhaps the intention of the UPSC was to debar the candidate from appearing in all examinations and selections to be conducted by them during the period of the eligibility, which in the case of the Engineering Service Examination is only for 9 years upto the age of 30 years. The fact that other candidates similarly situated like the applicant have also been debarred for a period of 10 years although they have not challenged their punishment cannot be held against the applicant. We have to observe that in the present case, the respondents have not applied their mind inasmuch as it is not made clear whether the disqualification would be permanent or for a specified period only which would ordinarily expire before the prescribed maximum age limit in any case. We also find that in the circumstances of the case, the punishment is excessive and harsh.

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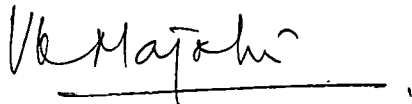
12. In Jagannath Mishra's case (supra), although the Hon'ble Supreme Court allowed the appeal of the UPSC partly, it was held that having regard to the facts and circumstances of the case, the debarment in question will be for a period of 5 years and not 10 years, as earlier imposed by the UPSC. So this judgement has not upheld the uniform practice adopted by the UPSC. Further, this judgement will be relevant on the quantum of punishment to be imposed in each case, which the competent authority should keep in view instead of necessarily following a uniform practice of imposing 10 years debarment in all the cases. In such cases, the settled law is there can be no hard and fast rules and the competent authority should consider the relevant facts and circumstances of each case while imposing the penalty.

13. In the result, for the reasons given above, the O.A. succeeds and is allowed to the following extent:-

The impugned show cause notice dated 30.3.2001 as well as the penalty order dated 28.3.2002 issued by respondent No.1/UPSC are quashed and set aside. However, in the facts and circumstances of the case, liberty is granted to the UPSC to proceed in the matter in accordance with law, after complying with the principles of natural justice by affording the applicant a reasonable opportunity to defend his case and if he so requests, a personal hearing

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be granted and pass a speaking order. They shall also keep in view the aforesaid judgements and observations. Any such action shall be taken by the respondents within four months from the date of receipt of a copy of this order. No order as to costs.



(V.K. Majotra)
Member (A)



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'