

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1220/2001

This the 6th day of March, 2003

HON'BLE SH. V.K. MAJOTRA, MEMBER (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Sunil Makhija
11/29A, Tilak Nagar,
New Delhi-110 018.
(By Advocate: Ms. Anshu Mahajan

Applicant

Versus

1. Union of India
Through The Secretary
Department of Personnel & Training,
Ministry of Personnel, Public Grievances and Pensions,
North Block
New Delhi-110 001
2. Central Bureau of Investigation
Through The Director,
Block No. 3, CGO Complex,
Lodhi Road, New Delhi.
3. Shri K.P. Vinok Kumar,
Senior Clerk Stenographer,
Central Bureau of Investigation
4. Shri Hanuman Sahai,
Constable,
Central Bureau of Investigation
5. Shri V. Srinivasa Rao,
Constable
Central Bureau of Investigation
6. Shri R.K. Tewari,
Lower Division Clerk
Central Bureau of Investigation
7. Shri Anil Bisht,
Senior Clerk Stenographer
Central Bureau of Investigation
8. Shri Anupam Mathur,
Lower Divisional Clerk
Central Bureau of Investigation
9. Shri N.M. Srikrishnan
Senior Clerk Stenographer
Central Bureau of Investigation
10. Shri L.K. Mishra,
Senior Clerk Stenographer
Central Bureau of Investigation
11. Shri Amitava Ghosh
Lower Divisional Clerk
Central Bureau of Investigation

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12. Shri Arvind Kumar
Constable,
Central Bureau of Investigation

(Respondents 3 to 12 - Through Respondent No. 2)

(By Advocate: Sh. M.M.Sudan)

ORDER

By Sh. Kuldeep Singh, Member (J)

Applicant has filed this OA seeking quashing and setting aside the entire recruitment process started with issuance of advertisement by Circular dated 20.6.2000 and all proceedings thereafter culminating in the issuance of impugned order dated 20.2.2001. Consequently a further direction is sought that the respondents should consider all eligible candidates for the post of Sub-Inspector against 25% LDCE quota without fixing any minimum qualifying marks for the interview, if holding of such interview is found to be at all sustainable in law and further to direct the respondents to re-verify the applicant's height from a registered medical practitioner or a recognised medical board.

2. Facts in brief are that the applicant, who is working with the respondents being eligible to appear in the LDCE for the post of Sub-Inspector, applied for the same. He qualified the written examination. He was also called for interview. However, the applicant's height was measured by Sh. O.P.Galhotra, DIG, who is alleged to be not medically qualified, as his height measured at that time was 164.5 cm and thereafter applicant was interviewed. Applicant thereafter made a representation also for his height being re-measured through a Medical Board. However, on 20.2.2001 when the result of the select panel for SI was notified, applicant's name did not appear and on being enquired he was

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informed unofficially that he stood second in the written examination but he has been disqualified on account of his height but his result has been circulated/notified.

3. It is also submitted that as per the Scheme the examination was to consist of three parts; written examination, interview and evaluation of CRs where 400 marks were fixed for written examination, 100 marks for interview and 50 marks for evaluation of CRs. A candidate was required to secure a minimum of 45% in written examination and 50% in interview and evaluation of CRs. Applicant further submitted that the Recruitment Rules did not provide for holding an interview, so the holding of interview itself was against the recruitment rules, the same is not sustainable in law.

4. Besides that 100 marks fixed for interview disproportionately large when compared with 400 marks fixed for written examination. It is further stated that in the regular examinations when the candidates are selected through SSC, there are 800 marks for written examination and 100 marks for interview whereas in the departmental examination 100 marks were fixed for interview as against 400 marks for written examination. Thus, this disparity violates Article 14 & 16 of the Constitution of India. It is further submitted that fixing of minimum qualifying marks for interview is illegal as it clothes the selecting authority with arbitrary and uncanalised power to throw out a candidate even if he has obtained the maximum of 400 marks in the written examination, so on these grounds, the applicant has challenged the holding of the examination as well as the result declared in the examination by which applicant now has been excluded from the list of successful candidates.



5. The OA is being contested by the respondents. Respondents in their reply pleaded that the examination was conducted under provision of recruitment rules. Selection Board consists of Joint Director/CBI (Chairman), DIG/CBI (Member) and Supdt. of Police/CBI (Member) was constituted by Director/CBI to conduct the LDCE 2000 for appointment of Sub-Inspector in CBI.

6. It is further submitted that out of 57 eligible candidates, only 309 appeared in the examination and 57 candidates (56 General & 1 SC) qualified in the written examination. Thereafter personality test and assessment of service records of all qualified candidates was conducted.

7. Applicant also appeared in the examination as per the Scheme. Applicant had also qualified the written examination. However, when his height was measured by an expert, it was found to be 164.5 cm but still the applicant was allowed to appear before the Interview Board in normal course and his services rendered was also assessed as per the Scheme of examination. After completion of the whole process, i.e., written test, interview and assessment of service records, a merit list of qualifying candidates was prepared and out of that a select panel of 10 candidates (all of General category) was prepared and no SC candidate could qualify in the exam. Therefore, one post of SC was kept vacant. The name of the applicant figured at Sl. No. 43 in the merit list and that too he was physically unfit, his name was not included in the select panel, so his appointment for Sub-Inspector did not arise at all.

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8. We have heard the learned counsel for the parties and gone through the record. We may also mention that applicant has made an MA seeking production of the record and as per the application of the applicant seeking the production of records respondents were directed to produce the record including the answer-sheets of the applicant. We had compared the record. The record was also shown to the counsel for the applicant. We found that applicant was at a much lower stage than those candidates whose name had been shown as successful candidates and who have been selected for the said post.

✓ 9. Counsel for applicant also submitted that after his representation, his marks were increased by 10 marks and marks of another candidates was improved by 3 marks. He wanted to know as to how the marks of said candidate who was declared unsuccessful was increased. Counsel for respondents clarified that on his representation though no remarking of the paper was done only the re-totalling was done and it was found that there was a difference of 10 marks in the total of applicant, so those 10 marks were given to the applicant. Besides that though with the increase by 10 marks applicant had improved his position in the list, but still he was far below than those candidates who have been selected and from 43 he reached at the stage of 37 but still he was unable to reach within first 10.

10. Counsel for applicant also submitted that the interview marks as per scheme of the examination are arbitrary. Since 100 marks was kept for interview, then total marks for the written examination are 400 are quite on the higher side which leaves a room for discrimination and arbitrariness cannot be allowed to stand. To support his

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contention, counsel for applicant has referred to a judgment in case of Ashok Kumar Yadav and others vs. State of Haryana where the marks for interview was at a very higher percentage such as 33.3% in case of ex-service officers and 22.2% for other candidates for the viva voce test was found to be excessive. Hon'ble Apex Court has suggested that viva voce test shall not exceed 12.2% of the total marks taken out for selection. The total marks between written examination and oral examination has to be maintained. The Court suggested the Haryana Govt. to adopt this percentage and the practice followed by the Union Public Service Commission should be taken as a guide for State Public Service Commissions also. But while suggesting, Court has also found that examination of Haryana Civil Service was of similar nature in the State as the IAS examination conducted by UPSC. But in this case, we do not find first of all the allegations as in the case of Haryana Civil Service as reported in the judgment nor the marks allotted to the viva voce examination in the scheme appeared to be quite excessive or arbitrary which may call for quashing the entire examination.

11. Counsel for applicant has also contended that as per the recruitment rules even for LDCE under the Head of Promotion for which the DPC consist of Dy. Director (Administration)/Deputy Inspector General of Police, CBI - Chairman, Under Secretary (Vigilance), DOP&T - Member and Superintendent of Police/Assistant Director/Superintendent of Police (Headquarter)/CBI - Member. In this case, since no Vigilance man was in the Selection Board as a Member so the examination has also not been held as per recruitment rules. However, the persual of the recruitment rules would go to show that as far regular promotion is concerned the constitution of




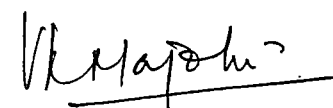
DPC is mentioned in the recruitment rules but for LDCE though it is also mentioned under the head of promotion but no constitution of the committee for holding the examination or even the DPC is mentioned. Under para 13, it is simply stated that what is the constitution of departmental promotion committee for Group 'C' Examination (i.e. LDCE) is mentioned under para 12. It does not mention how the Selection Committee is to be constituted. The department in its own wisdom has constituted the Constitution Committee with all senior officers and the applicant after having availed the opportunity to be selected by the examination committee cannot find fault with the selection committee.

12. The applicant also argued that since his height was measured before the interview so the Members of the Interview Board had become biased against him and for this reason he has not been given lesser marks and had not been selected. However, the record as produced before the Court shows that applicant was much lower to the candidates who had been empanelled even in the writer papers. The allegation of bias is also not substantiated from any other record. As such this contention also has no force.

13. No other contention was raised before us.

14. In view of the discussion above, the OA has no merits and the same is dismissed.


(KULDIP SINGH)
Member (J)


(V.K. MAJOTRA)
Member (A)