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Central Administrative Tribunal
Principal Bench

OA No.1582/2001

New Delhi this the 8th day of May, 2003

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Dr. Surender Kumar S/O D.D.Verma,
R/O C-468 Yojna Vihar,
Delhi.


... Applicant

(By Shri Arun Bhardwaj through Shri Rani Kant, Advocate)

-versus-

1. UPSC through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi.
 2. Chief Secretary,
Govt. of NCT of Delhi,
Players Building, ITO,
IP Estate, New Delhi.
 3. Secretary (Health),
Govt. of NCT of Delhi,
Delhi Secretariat,
IP Estate, Delhi.
 4. Director/Spl. Secretary,
Directorate of I.S.M.&H.,
Delhi Secretariat,
Players Building,
IP Estate, Delhi.
 5. Dr. Brender Sharma,
64, Punjabi Colony, Dhampur,
Distt. Bijnaur-246761 (UP).
 6. Shri Mata Prasad,
Member, Union Public Service Commission,
President of the Selection Board
Dholpur House, Shahjahan Road,
New Delhi.
 7. Dr. R.N.Dubey (Homoeopathic Advisor)
[To be served through UPSC],
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
 8. Dr. A.N.Mishra (Homoeopathic Advisor)
[To be served through UPSC],
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.
- ... Respondents

(By Shri K.R.Sachdeva and Shri Kumar Parimal, Advocates)



O R D E R (Oral)

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

The Union Public Service Commission (UPSC) initiated process of recruitment to the post of Assistant Director (Homoeopathy) in the Directorate of ISM & Homoeopathy, Health and Family Welfare Department, Government of NCT of Delhi in pursuance of advertisement published in the Employment News dated 14-20.10.2000 (Annexure A-3). Out of 200 candidates who applied for the post, 12 were shortlisted and interviewed on 23.5.2001. Applicant participated in the interview but was not selected. Dr. Brender Sharma, respondent No.5 was selected. Applicant has challenged the selection of respondent No.5 alleging tampering of the result and ignoring of recommendations of the experts by the UPSC.

2. - Admittedly, whereas Shri Mata Prasad Member, UPSC acted as President of the interview board, there were two experts including Shri R.N.Dubey, Principal J.L.N Govt. Homoeopathic Medical College, Lakhanpur, Kanpur. According to applicant ignoring recommendations of these experts favouring applicant, president of the interview board selected respondent No.5. Both these experts protested against the alleged tampering of the result of the interview. The learned counsel stated that Shri R.N. Dubey wrote a letter dated 28.5.2001 to the Chairman, UPSC to the effect that the experts had recommended the applicant for selection. Learned counsel stated that the applicant found a copy of that letter (Annexure A-6) in his letter box. Learned counsel stated



that UPSC did not consider recommendation of the experts and arbitrarily selected respondent No.5.

3. On the other hand, learned counsel of the respondents stated that applicant's reason for coming into possession of letter written by Shri Dubey to Chairman of UPSC is not convincing. The expert involved here though served notice did not appear in the court nor filed any affidavit in proof of the veracity of his letter. Learned counsel also stated that the copy of the expert's letter is not a proven document and that even otherwise its original being a part of official file cannot be taken into consideration. In this regard, he relied on AIR-1994 SC 2737 Puranjit Singh Vs. Union Territory of Chandigarh and others. Learned counsel also stated that applicant had not made any averment in respect of the discovery of photocopy of the letter written by Shri Dubey to Chairman UPSC in the main OA. He further stated that applicant had stated in the OA that no specific remedy was available to the applicant. He did not make any representation to the Chairman, UPSC in regard to his non-selection and claim but approached the Tribunal instead.

4. Learned counsel has also produced copies of correspondence between UPSC and Dr. Dubey relating to violation of guidelines by him which require proceedings of the board to be kept as secret and all interview papers/notes at the end of the interview have to be handed over to the President of the interview board. Dr.

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Dubey retraced his stand and wrote back to the UPSC on 9.8.2001 that he had written his letter only to express his gratitude to the Chairman, UPSC for appointing him as Adviser for the first time for the interview and that he had no intention of violating any guidelines.

5. Learned counsel appearing on behalf of respondent No.5 relied on 2002 (6) SCC 127 Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and others contending that when a candidate appeared in a selection without protest and subsequently failed in the selection, question of entertaining his petition challenging the said selection would not arise.

6. We have also perused the records relating to the selection in question which were produced on behalf of UPSC. We find that the President of the Interview Board had in his own hand assigned marks and merit to all the 12 candidates who appeared in the interview. Respondent No.5 had been allotted the highest marks and was recommended for selection.

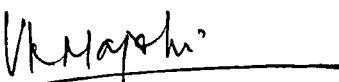
7. We have considered the rival contentions carefully.

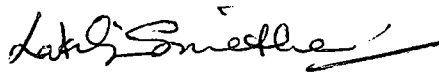
8. The ratio of the case of Chandra Prakash Tiwari and Others (supra) is squarely applicable to the present case. Applicant having participated in the selection, cannot be allowed to challenge the process of selection. We are not convinced about the reason put forward on his behalf for coming into possession of copy.

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of the letter written by Shri Dubey to Chairman of UPSC. Undoubtedly, correspondence between Shri Dubey and the UPSC is an official record. Its production by applicant in the present proceedings does not create a right in his favour. For this, we rely on the case of Puranjit Singh (supra). In any case, Shri Dubey has not appeared before us despite notice to establish the veracity of his letter and to explain how copy of his letter to UPSC reached the applicant. In addition, whereas in the letter the author has tried to give an impression as if the contention made in the letter is the view of both the experts, Shri Dubey in any case has no authority to represent the other expert. In our view, there has been a collusion between the applicant and Shri Dubey to set at naught the selection in question and malign the institution of UPSC. Annexure A-6 cannot be attached any importance. We have seen the records produced by UPSC relating to selection. We are satisfied about correctness of procedure adopted for selection. No evidence, facts and documents have been adduced before us to establish any malafide intention of the President of the Interview Board who has separately filed his affidavit before us.

9. Keeping in view the reasons recorded and discussion made above, we do not find any merit in the OA, which is dismissed accordingly with costs amounting to Rs.5,000/- (Rupees five thousand only) in favour of respondent No.5 to be paid on a 50:50 basis by applicant and Shri R.N.Dubey, respondent No.7 within two months from today.


(V. K. Majotra)
Member (A)
cc.


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)