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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi this the 11th day of February, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. OA No. 832/2001

Rajender Singh
S/o Sh. Lal Chand
R/o Village and PO Dulath Ahir
Tehsil and Distt Mahendra garh
Haryana.

... Applicant

(By Shri Bhaskar Bhardwaj, Advocate)

vs.

1. Union of India
Through Commissioner of Police
PHQ, I.P. Estate
New Delhi.

2. Deputy Commissioner of Police
2nd Bn. DAP, (Admn. Block)
New Police Lines
Kingsway Camp
Delhi-9

..... Respondents

(By Shri George Paracken, Advocate)

2. OA No. 885/2001

Puran Singh Negi
S/o Sh. Sabar Singh Negi
R/o D- 66, Avantika
Sec. 1, Rohini
New Delhi-85.

... Applicant

(By Shri Bhaskar Bhardwaj, Advocate)

vs.

1. Union of India
Through Commissioner of Police
PHQ, I.P. Estate
New Delhi.

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2. Deputy Commissioner of Police
2nd Bn. DAP, (Admn. Block)
New Police Lines
Kingsway Camp
Delhi-9 Respondents

(By Shri George Paracken, Advocate)

O R D E R (ORAL)

Justice V.S. Aggarwal:-

The decision in the case of Ridge v. Baldwin, (1963) 2 All England Reporter 66 is a landmark judgement. It was a trendsetter. It was held that violation of principles of natural justice was itself treated as prejudice and no other "de facto" prejudice needed to be proved. The law started taking shape.

2. The Supreme Court had considered the said principle in a large number of precedents. In the decision rendered in the case of Aligarh Muslim University and Others v. Mansoor Ali Khan, 2000 SCC (L&S) 965, the Supreme Court considered further the principle of "useless formality". This was taken as an exception to the well-settled principles of natural justice referred to in the case of Ridge v. Baldwin. It was held that the theory of "useless formality" is an exception. If apart from the class of cases of "admitted or indisputable facts it leads to only one conclusion" and no prejudice is shown to have been caused, a

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departure could be made from the principle that notice to show cause in this regard before passing the order has not been given. The Supreme Court had concluded:-

"24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L.Tripathi v.State Bank of India*, (1984) 1 SCC 43 *Sabyasachi Mukharji, J.* (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting *Wade's Administrative Law* (5th Edn. pp.472-75), as follows: (SCC p.58, para 31)

"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala v. S.K.Sharma*, 1996 SCC (L&S) 717. In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in *Rajendra Singh v. State of M.P.*, (1996) 5 SCC 40.

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has

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been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C.Mehta, (1999) 6 SCC 237 referred to above. This Court surveyed the views expressed in various judgements in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J.etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H.Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

However, a word of caution was further added:-

"34. We may add a word of caution. Care must be taken, wherever the court is justifying a denial of natural justice, that its decision is not described as a "preconceived view" or one in substitution of the view of the authority who would have considered the explanation. That is why we have taken pains to examine in depth whether the case fits into the exception."

These principles are being highlighted with which, we are required to consider the facts of the present cases. Both OA No.832/2001 and OA No.885/2001 can conveniently be disposed of together. But as the controversy is identical, we are taking the facts from the case of Puran Singh Negi in OA No.885/2001.

3. The applicant is an Ex-serviceman and has

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served the Indian Army. In 1998, he applied for the post of Constable (Executive) in Delhi Police in the Ex-serviceman category. He was put through the physical measurement and endurance test. The tests were cleared. The applicant was called for an interview listed for 2.6.2000 and was declared qualified. The applicant was thereupon asked to appear for medical examination. He was not called for medical examination; nor any appointment letter was issued while other persons who were his batch-mates were called for medical examination. The applicant made enquiries and was informed that he had not been selected because of certain errors and omissions in the interview sheets on the ground that he was not entitled to the extra marks that are being given to a Graduate. By virtue of the present application, he is seeking setting aside of the order whereby the extra marks had been refused to the applicant and his representation had been rejected. He seeks appointment as Constable (Executive).

4. In the reply filed, the respondents while contesting the application, contended that a large number of posts of Constable (Executive) had been advertised in 1998. In response to the advertisement, many applications were received and were scrutinised. After the results were declared, it was noticed that there were some errors and

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omissions in the interview sheets. The chairman of the recruitment board decided to re-check all the interview sheets. Accordingly all the interview sheets were re-checked and omissions were rectified. 52 candidates including the applicant who were declared to have qualified in fact were disqualified. The reason for disqualification of the applicant was that he was given five bonus marks on account of Army Education inadvertently. When this mistake was corrected, he did not make the grade. Thus, it was asserted that the applicant is not entitled to the reliefs claimed.

5. The learned counsel for the applicant had contended that the applicant was disqualified but no notice before passing such an order had been issued to the applicant. We have already reproduced the above plea of the respondents, namely that 5 bonus marks were given to certain candidates who were Graduates from a recognised University. It came to the notice of the authorities that there were some errors and omissions in the interview sheets, therefore, the same were re-checked.

6. Once such is the situation, issue of a show cause notice would be an idle formality. The authorities of their own could correct the mistake, if any and consequently, the "useless formality"

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theory must come into play.

7. This is for the reason that no prejudice is shown to have been caused to the applicant as would be noticed hereinafter. The matter as such is being argued and that the pleas that the applicant could or well have raised have been agitated before us. There would be no useful purpose thus that would have been served by raking up this controversy and the principles of natural justice. Taking stock of these facts in the peculiar facts, the said contention of the learned counsel necessarily must be rejected.

8. In that event, another contention that prejudice is caused or in other words, according to the applicant, he was entitled to the 5 bonus marks that were awarded to a Graduate, was pressed. The respondents had addressed a letter to the applicant which reads:-

"You, candidate Puran Singh Negi Roll No.241710 had applied for the post of Constable (Exe.) in Delhi Police-1998 (Phase-II). You were put through physical measurement and endurance test and interview and declared qualified for medical examination on 3.06.2000 for the post. After declaration of the result of interview it came to notice that there were some errors/omissions in the interview sheets. The same were get re-checked by the concerned Interview Board and after rectification of errors/omissions, you have failed to make grade in the merit list and declared disqualified. Hence your

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candidature for the post of Constable
(Exe.) in Delhi Police is hereby cancelled.

Sd/

(A. A. Farooquee)
DY. COMMISSIONER OF POLICE
II BN. DAP, DELHI.

In other words, the applicant was informed that there were some errors and omissions in the interview sheets and the same have since been rectified. The learned counsel contended that in terms that the applicant has a necessary certificate from the Indian Army and, therefore, by virtue of the said certificate, he must be taken to be a Graduate and entitled to the bonus marks. The operative part of the said certificate reads:-

"As per Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) OM No. 15012/8/82/ESTT. (D) dated 12 Feb. 86, Ex-servicemen who are matriculate (which term includes ex-servicemen who have obtained the Indian Army special Certificate of Education or the corresponding certificate in the Navy or the Air Force), and have put in not less than 15 years of service in the Armed Forces of the Union may be considered eligible for appointment to any reserved vacancy in Group 'C' posts for which the essential qualification is graduation and where experience of technical or profession nature is not essential."

9. In the additional affidavit that has been filed, the position has been illucidated. As per the recruitment rules for the post, Matriculation is the minimum requirement. There is a reservation for the Ex-servicemen. The standing order that has been issued in this regard pertains to the 5 bonus

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marks that have been given and the relevant portion of the same reads:

"NOTE:- The graduate candidates from recognised University shall be given 5 bonus marks which will be added after the interview, before announcing the final result."

10. It is one thing to state that the certificate granted by the Indian Army is equivalent to Graduation but another thing to state whether a person is a Graduate from a recognised university. As per the standing order, bonus marks could only be obtained by persons who are Graduates from a recognised University. Recognised University would not be one whose certificate is considered equivalent to Graduation. Once it is so, the only irresistible conclusion would be that the applicant was not a Graduate from a recognised University. He was thus not entitled to the bonus marks and this particular argument so much thought of, therefore, must also be repelled.

11. Our attention has been drawn towards a decision of this Tribunal in the case of Krishan Chander v. Govt. of NCT of Delhi & Anr. in OA No. 228/99 rendered on 23.2.2000. In the cited case, a direction was claimed to treat the applicant in that case to have passed the higher

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secondary examination by securing more than 50% marks and further to treat him as having secured 50% marks in B.A. examination. The application had been allowed holding that grace marks in B.A. examination should be given as per the policy that had been adopted. That is not the controversy before us. We have noticed the facts above that as per the orders that are being adhered to, a person has to be a Graduate from a recognised University which the applicant is not. Therefore, the ratio deci dendi of the decision in the case of Krishan Chander (supra) does not apply to the facts of the present case.

12. Resultantly both the applications, OA No.832/2001 and OA No.885/2001 being without merit must fail and accordingly are dismissed. No costs. Announced.

(Govindan S. Tampi)
Member (A)

/sns/

(V.S. Aggarwal)
Chairman

Attested
Asst. Secy
CO. CF