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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2290/98

New Delhi, this the 26th day of April, 1999

HON'BLE SHRI S.R.ADIVE, VICE-CHAIRMAN (A)
HON'BLE SHRI T.N. BHAT, MEMBER (J)

1. Shri Vinod Bisht,
working as LDC in the SIC(III),
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.
2. Shri Harish Nanda,
working as Sr. C.S., in the
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.

.....Applicants

(By Advocate: Shri A.K.Behra)

Versus

Union of India through

1. The Secretary,
Ministry of Personnel, Pension & Public
Grievances, North Block,
New Delhi.
2. The Director,
Central Bureau of Investigation,
CGO Complex, Lodi Road,
New Delhi.
3. The Administrative Officer (E),
Central Bureau of Investigation,
CGO Complex, Lodi Road,
New Delhi.

.....Official respondents

(By Advocate: Shri Rajeev Bansal)

4. Lalit Kumar Kaushik,
working as LDC,
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.
5. Shri Ashok Kumar,
working as LDC,
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.
6. Sh. Yoginder Kumar,
working as LDC,
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.
7. Sh. Ramesh Chand,
working as HC,
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.



8. Shri Sanjay Kumar Khullar,
working as UDC,
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.

9. Shri Rajeshwar Dayal Gupta.
working as Sr.CS,
Central Bureau of Investigation,
CGO Complex, Lodi Road, New Delhi.

Intervenors/newly
added respondents

(By Advocate: Shri K.C.Mittal)

O R D E R

Hon'ble Shri T.N.Bhat, Member (J)

In this O.A. the applicants who appeared as departmental candidates in the Limited Departmental Competitive Test held against 25% quota for promotion to the post of Sub Inspector in the Central Bureau of Investigation, have in this OA assailed the process and the manner in which the Examination/Test was held, mainly on two grounds. It is, firstly, contended that the question papers, both for Paper-II (English language) as well as Paper III (Law), were entirely outside the prescribed syllabus and, secondly, that respondents had with malafide intention rushed through the selection without properly assessing the answer books of the various candidates and that this was done with a view to give undue benefit to some chosen few.

According to the syllabus prescribed for the said examination the English paper was to be according to the higher secondary standard while the four parts of Paper-III (Law) had according to the prescribed syllabus required to be restricted to certain specific provisions of Indian Penal Code, Criminal Procedure Code, Indian Evidence Act, Prevention of Corruption Act, 1988 and the



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Delhi Special Police Establishment Act, 1946. According to the applicants the question papers set for the aforesaid examination were not according to the prescribed syllabus but, on the contrary, most of the questions were outside the syllabus. Copies of the question papers on the subject of Law and English language have also been annexed to the O.A. The examination was held on 14.11.1998 and 15.11.1998 while the viva-voce was scheduled to be held on 16.11.1998. The plea taken by the applicants is that since the written examination concluded in the afternoon of 15.11.1998 and the number of candidates who had appeared was quite large (392 in all) the examiners could not have had adequate time to assess the performance of the candidates in the written examination within such a short period so as to enable the respondents to hold the interview on 16.11.1998 or even on the next date. It is, therefore, contended by the applicants that the respondents have not examined the answer sheets with reasonable care and "judicious application of mind" and that the evaluation of the answer sheets was done in a hasty manner.

3. The applicants have prayed for the following reliefs:

- "a) Call for the records of the Case.
- "b) Quash and set aside the Limited Departmental Competitive Examination (LDCE) held by the respondents from 14th,



15th and 16th November, 1998, for promotion to the rank of Sub. Inspectors in CBI.

- "c) Direct the respondents to give all consequential benefits to the applicants and other similarly situated.
- "d) Direct the respondents to pay the cost of the litigation to the applicants.
- "e) Pass any other order or direction which this Hon'ble Tribunal may think fit and proper in the facts and circumstances of the case."

4. Respondents have contested the claim of the applicants and have stated that the question papers were set strictly according to the prescribed syllabus and that a sufficiently large number of persons were deputed to evaluate the answer sheets and it was only after proper evaluation thereof that the respondents declared the result on 16.11.1998 in the evening. According to the respondents the interview was actually held on 17.11.1998 and not on 16.11.1998 as originally scheduled.

5. Some of the candidates who had also appeared in the examination and who have been declared successful in the written test filed a Miscellaneous Application seeking intervention in this O.A. Their MA, being MA No. 359/99, was allowed and they were impleaded as party-respondents.

6. The applicants have filed rejoinder to the counter filed by the official respondents wherein the applicants have compared the competitive departmental examination for promotion to the grade of Sub Inspector in CBI with a similar competitive departmental examination held for promotion to the grade of Assistant Sub Inspector (one rank junior to Sub Inspector) on 29th August, 1998 and have stated that the syllabus in the said examination was more or less similar to the syllabus for the Sub Inspectors' examination and that even though the number of candidates who had appeared in that examination held on 29th Aug., 1998 was much less than that in the Sub-Inspectors' examination, the results were yet to be declared. It is further contended that in that examination for promotion to the post of Assistant Sub Inspector, there were only 162 candidates and the written examination was held in only two papers. According to the applicants this clearly shows that the Limited Departmental Competitive Examination for the post of Sub Inspector was conducted in undue haste which was clearly indicative of malafides on the part of the respondents.

7. We have heard the learned counsel for the parties at length. Shri K.C. Mittal, counsel for the intervenors/ newly impleaded respondents also argued at length. We have also perused the material on record.

8. We may state at the very outset that the scope of judicial review in matters relating to competitive examinations, more particularly, as regards the questions included in the different papers is limited.



But, at the same time it cannot be disputed that the Court/Tribunal is certainly empowered to go into the question as to whether the manner examination has been held indicates the existence of arbitrariness or malafides. It is not disputed that what is required to be done in such limited departmental competitive examinations is dispassionate and objective selection and not arbitrary or colourable selection.

9. Learned counsel for the respondents have however referred to a judgement of the Apex Court in the case of OSMANIA UNIVERSITY VS. ABDUL RAYEES KHAN AND ANOTHER, reported in (1997) 3 SCC 124 and contended that the courts should be slow to interfere in academic selections made objectively by experts after following the prescribed procedure. The correctness of this proposition cannot be disputed. But on going through the judgement of the Apex Court (supra) we find that the case before the Hon'ble Supreme Court related to an assessment made by expert body while considering University Lecturers for promotion as Readers. In that case no written examination was held, nor was there any dispute relating to the questions included in the various question papers. It was in these circumstances held that since the assessment of competitive merit had been done by an expert body after following the prescribed procedure the scope of judicial review would not extend to examining the correctness of the assessment made. It was further held that awarding of marks in such assessment was not necessary. We have before us a case where there is an averment made that most

of the questions asked in the examination were out of syllabus, and, further, that there was undue haste on the part of the respondents to complete the selection.

10. We have carefully gone through the question papers. As regards the question paper for English (Paper III) we have no doubt in our mind that this question paper can by no stretch of reasoning be held to be outside the syllabus. We do not find ourselves in agreement with the learned counsel for the applicants that the questions are not of the higher secondary standard but are much above that. On the contrary, we find that some of the questions are even of a lower standard. For example the question 5 carrying 20 marks asks the candidates to point out the errors in the sentences. The errors could be easily pointed out by the students of even matriculation standard. Similarly the question relating to Precis is also not above the standard of secondary class students. The other questions also are in our considered view within the prescribed syllabus.

11. However, the same cannot be said about the paper-III (Law). In part-I of this paper which relates to Indian Penal Code, a few questions outside the prescribed syllabus have been asked. Similar is the case with part-II, Part-III and part-IV. However, we do find that most of the questions in Part-I, II & III are according to the syllabus though there are a substantial number of questions which ought to have been excluded from the question papers. For example in part-III we have the first question asking the candidates to define standard of proof? It is true that various judgements of the different

High Courts and the Apex Court have interpreted this term. But so far as the syllabus prescribed for this particular examination is concerned this question could not have been asked. Similar is the case with question no. 3 in Part-II which asks the candidates to answer as to how is the special counsel appointed as per provisions contained in Cr.P.C.? The chapter relating to prosecutors etc. is not included in the syllabus for the paper of Criminal Procedure Code. However, as already indicated, part-I, II & III of paper-III do give the candidates a fair chance to attempt 4 or 5 questions in each part so as to secure qualifying marks. But so far as Part-IV is concerned, we are convinced that most of the questions are outside the prescribed syllabus. Even assuming, though not conceding, that while answering questions relating to the Prevention of Corruption Act, 1988 the candidates are supposed to know as to what changes have been brought ~~out~~^{about} in the aforesaid Act as compared to the earlier Act of 1947, we do not find any reason why the CVC Ordinance of 1998 should have been included as one of the questions in this paper. Similarly, there was no point at all in asking a question relating to SANTHANAM Committee and some of its important recommendations. This was certainly not included in the syllabus. Same is the case with question no. 5 which asks the candidates as to what are the salient features of Annual Programme of Vigilance and Anti Corruption Work? Question no. 6 asks the candidates to name some important features of the "Supreme Court Judgement dated 18.12.1997 in the P.I.L. filed by Sh. Vineet Narayan?" In our considered view atleast 4 questions out of 7 in this Part of Paper III are outside the syllabus. It is true that some of the candidates are

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said to have qualified despite the above fact but it is equally true that the applicants were not given a fair chance in the examination. We are convinced that this is a fit case where the respondents should be directed to hold a fresh examination in Part-IV of Paper-III giving every candidate a chance including those who might have been declared successful if they choose to compete once again.

12. Learned counsel for the applicants relied upon a judgement of the Patna Bench of the Tribunal in Surendra Prasad Sinha vs. Union of India & Ors., reported in (1996) 33 ATC 123. That case related to selection to Indian Administrative Service, by promotion. It was established in that case that one of the persons constituting the Selection Committee was related to one of the candidates, though the candidate to whom the Member of the Selection Committee was related was not eventually included in the panel. The Tribunal held that such a Member should have abstained from participation and that the mere fact that the candidate to whom he was related was not included in the panel would not make any difference. The Tribunal further held that likelihood of inadequate consideration by the Members of the Selection Committee who had examined the CR dossiers of 264 State Civil Service Officers in a single day for their promotion to the IAS could not be entirely excluded and that an inference had to be drawn from the aforesaid fact that the consideration of each case was inadequate. Learned counsel for the applicants argues that since in the instant case the answer sheets of nearly 300 candidates were evaluated within one or two days it must be held that

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the consideration was inadequate and for this reason the assessment was vitiated. In this regard, we find ourselves in agreement with the learned counsel for the respondents that a sufficiently large number of high ranking police officers had been given the task of evaluating the answer sheets and although the interview was scheduled to be held on 16.11.1998 itself, the same was postponed by a day in order to give the persons evaluating the answer sheets some extra time to complete the evaluation. We are convinced that the aforesaid time was sufficient to enable the officers to evaluate the answer sheets. As already mentioned, according to the respondents, the work of evaluation was completed at 6.00 p.m. on 16.11.1998 and soon thereafter the results were declared on the same date and the interviews were held on the next date. We do not find this case to be one where the time for evaluation of the answer sheets could be held to be inadequate.

13. Learned counsel for the respondents have further raised the plea that since the applicants had participated in the examination and had thereby acquiesced they cannot now be heard to say that the examination was vitiated. We are afraid, this contention cannot be accepted in view of the fact that there was no time for the applicants to raise any objection at the time when the examination was held as the results were declared only one day later in which the applicants are shown to have failed. They came to the Tribunal within a few days thereafter and filed this O.A. on 20.11.1998 i.e. only 3

days after the announcement of their results. We are convinced that this is not a case of acquiescence by participation in the examination.

14. In view of what has been held and discussed above we partly allow this OA with a direction to the respondents to hold a fresh examination restricted to Part IV of Paper III (Law) after setting a question paper in accordance with the prescribed syllabus, keeping in view the observations made by us hereinabove, and permit the applicants and other candidates who had applied, if they so wish, to participate. We make it clear that those who have already qualified need not ~~not~~ appear again in the fresh examination in the said Part IV. They shall continue to be on the list of candidates who have qualified. But if any such candidate who has qualified wants to appear, he shall be at liberty to do so. If some more persons qualify after the fresh examination in addition to those who have already qualified he/they shall be interviewed and thereafter a final list/panel of qualified/successful candidates shall be prepared. This process shall be completed within a period of one month from the date of receipt of a copy this judgment.

No costs.


(T. N. BHAT)
Member (J)

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(S. R. ADIGE)
Vice Chairman (A)