

Central Administrative Tribunal
Principal Bench, New Delhi.

(9)

OA No. 1470 of 1994

New Delhi, this the 19th December, 1994.

HON'BLE SHRI J.P.SHARMA, MEMBER (J)
HON'BLE SHRI S.R.ADIGE, MEMBER (A)

1. Shri Narayan Dutt s/o
Shri Damodar Prasad,
R/o 1564, Sector V, R.K.Puram,
New Delhi at present Storekeeper,
Safdarjung Hospital,
New Delhi.
2. Shri Lokmanya Singh,
at present Assistant Superintendent (Stores),
Medical Store, Safdarjung Hospital,
New Delhi.
3. Shri Bhim Sen,
Store Keeper,
Medical Store,
Safdarjung Hospital,
New Delhi.

(By advocate Ms Rachna Joshi Issar)

Applicants

Versus

Union of India

1. The Director General of Health Services,
Nirman Bhawan, New Delhi.
2. Medical Superintendent,
Safdarjung Hospital,
New Delhi.
3. Shri V.K.Gupta,
Assistant Superintendent (Stores),
Medical Hall, Safdarjung Hospital,
New Delhi.
4. Shri Mohan Lal Manjhi,
Assistant Superintendent (Stores) Medical Store,
Safdarjung Hospital,
New Delhi.
5. Shri J.N.Sharma,
Assistant Superintendent (Stores),
Safdarjung Hospital,
New Delhi.

(By advocate Shri V.S.R.Krishna & B.T.Kaul)

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JUDGEMENT

HON'BLE SHRI J.P.SHARMA, MEMBER(J)

1. The Chief Administrative Officer, Safdarjung Hospital, New Delhi invited applications from the eligible candidates with bio-data, experience, etc. for filling up some posts of Assistant Superintendent(Stores) in the pay scale of Rs. 1400-2300/- by selection through limited departmental examination which will consist of general financial rules, budget, rules & regulations concerning the stores, general aspects of medical store, purchase and maintenance and stock position of various items of medical stores and general correspondence/drafting and notings. The applicants applied for the said test who are at present working as Storekeeper, Medical Stores, Safdarjung Hospital, New Delhi. By memo dated 2nd November, 1992, the examination was held on 16th November, 1992 at 2.30 p.m. in the Medical Record Department, Lecture Hall.
2. The applicants have filed this application on violation of certain constitutional rights guaranteed under section 14 & 16 of the Constitution of India and prayed for the grant of the relief that the respondents be directed to declare result purely on the basis of the award of marks in the competitive written test held on 16th November, 1992 for the post of Assistant Superintendent(Stores) for the Sajdarjung, Hospital and make appointments accordingly. Another relief prayed for was for setting aside the selection of Assistant

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Superintendent (Stores) and the subsequent orders dated 4.1.1993 by which three persons were declared selected including the applicant No. 2 Lokmanya Singh.

3. On notice the respondents contested this application and filed an affidavit about mode and manner of the conduct of the examination alongwith the papers set in the said examination.

4. We heard the learned counsel of both the parties at length. The contention of the counsel for the applicants is that there were nine questions set in the paper each carrying 10 marks and it was indicated that the balance of 10 marks were reserved to be awarded at the discretion of the examiner and actually this has violated the principle governing fair selection. We find that in this case the questions were written on the board and it was shown that 10 marks are reserved for neatness and legibility in writing. This reservation of 10 marks by the examining body according to the learned counsel gives an unlimited discretion to the examiner to award marks out of 10 to his own liking without any guidelines having been laid down. However, no malafide has been alleged nor averred in the application against the examiner or the selection body. It is not uncommon that where the answer is written and consisting of matters like drafting and correspondence, if the marks are reserved for neatness, it cannot be said to be an arbitrary action on the part of the examiner. The contention of the learned counsel for the applicants

is that this reservation of 10 marks gives unlimited discretion to the examiner cannot be reasonably accepted. If the examiner is not acting fairly then in examining the answer books, he can award marks any of the candidates of his own choice, if he had to favour anybody or does not act in an impartial manner as is required to him. Apprehensions harboured in that manner after the declaration of the result are only after thought when a person does not achieve the required results. Incidentally one of the applicants Lokmanya Singh has also been selected, he cannot have any grievance on that account. Basically we are taking the grounds taken by the applicant in the application and what is stated therein that the result of the written examination only taking maximum marks as 90 should have been adjudged. However, it is not the case of the respondents. The 10 marks which have been reserved are not discretionary but are relevant to the neatness to be observed in writing and the model examination paper while in the affidavit it is mentioned there. Though the applicants did not mention this fact in the applicant but in sub-para (iv) of para 4 it is stated "that the questions set in the examination were of only 90 total marks but it was indicated that balance of 10 marks were reserved to be awarded at the discretion of the examiner.....". It is, therefore, evident that in the paper set in the examination it was clearly disclosed that 10 marks have been reserved for neatness and legibility in writing. This cannot be found fault with and cannot be said to be arbitrary, unjust and unfair. An examining body has to chalk out its own procedure of conducting examination but that should be fair equitable and just. Applicants have not alleged

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any discrimination about the marks given in the answers to the questions set in the examination to any of the candidates. In that event also it cannot be said that the examiner out of 10 marks has been unfair in judging the neatness and legibility of writing.

5. Even otherwise also we find that the candidates who have been selected are Shri V.K.Gupta who got 47 marks in the written examination test out of 90; Shri Lokmanya Singh applicant No. 2 who got 44 marks out of 90; Shri Jaggannath who got 43 marks out of 90 and one ST candidate Shri Mohan Lal Manjhi who got 23 marks out of 90. Now comparing to the marks obtained in the written examination test by the applicants, the applicant No. 1 Shri Narayan Dutt got 42 marks out of 90; applicant No. 2 Shri Lokmanya Singh as stated above got 44 marks out of 90 and applicant No. 3 Shri Bhim Sen got 31 marks out of 90. If we consider the relief prayed for by the applicants that the result of the selection be declared only on the basis of the written test out of 90 marks even then the final result declared by the respondents stand justified. It will because of this fact that for neatness the maximum marks given to each of the candidates is 5 out of 10 and the maximum marks given are 8 out of 10. These maximum marks are given to Shri V.K.Gupta. Applicant No. 1 Shri Narayan Dutt was given 6 marks, applicant No. 2 Lokmanya Singh was given 7 marks and applicant Bhim Sen was given 7 marks. Even selected candidate Shri Jaggannath and Shri Mohan Lal Manjhi got 6 & 7 marks out of 10 respectively. The trend of marking out of 10 marks does not at all change the final result considering the marks obtained out of 90 in the nine questions set in the paper.

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Thus the contention of the applicants' counsel that reservation of 10 marks has led to unfairness in giving marks on the excuse of neatness and legibility in writing is totally unfounded.

6. The next contention of the learned counsel that there were two parts in the paper set and each candidate has to pass in each of the part is totally unacceptable. The paper set was a whole one which carried out nine questions without giving any option to the candidates who have to answer all of the questions. It is not necessary when the paper is divided in two parts then the candidate must pass in each of the part. Infact it is a one paper test.

7. The learned counsel for the applicant also argued referring to the recruitment rules that the respondents should have conducted the examination by supplying the question papers. Though we do not endorse the contention but if it was the grievance of the applicants, the applicants should have made representation immediately after the test or at the time when the test was being held. They cannot take this plea after the result is declared and two of the applicants are unsuccessful.

We therefore, find no merit in this application and the same is therefore, dismissed leaving the parties to bear their own cost.

Arif Ali
(S.R.ADIGE)
MEMBER(A)

J.P.Sharma
(J.P.SHARMA)
MEMBER(J)

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