

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 79/1989

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~~XXXXX~~DATE OF DECISION 15.2.91

<u>Shri Anil Kumar</u>	Petitioner
<u>Shri J.P. Verghese</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Smt. Avinashi Ahlawat</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.C. Jain, Administrative Member

The Hon'ble Mr. J.P. Shama, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *js*
2. To be referred to the Reporter or not? *js*
3. ~~Whether their Kardships wish to see the fair copy of the Judgement?~~
4. ~~Whether it needs to be circulated to other Benches of the Tribunal?~~

JUDGEMENT(DELIVERED BY HON'BLE MR. J.P. SHARMA, MEMBER (J))

The applicant, a Constable under Delhi Administration, filed an application under Section 19 of the Administrative Tribunals Act, 1985 aggrieved by the order dated 21.7.1988 and 26.4.1988 by which the applicant was not declared successful for enlistment in the panel of list A (Executive). The applicant has claimed the following reliefs :-

- (i) The name of the applicant be included in promotion list 'A' (Executive) by directing the respondents.
- (ii) The respondents be further directed to depute the applicant for undergoing training in the Lower School Course in the next batch.
- (iii) That the applicant be granted seniority from the date the names of his juniors were brought on the promotion list 'A' (Executive) and they were deputed for training in the lower school course.

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2. The facts of the case are :

The applicant has been serving as Constable in Delhi Police since 30th April, 1987. The applicant appeared in the written test in 1987 for promotion in enlistment in list 'A' (Executive) as per the provisions of Rule 12 of the Delhi Police (Promotion and Confirmation) Rules, 1980. His roll no. was 3915. The contention of the applicant is that he did excellently well and was hopeful of his name being brought on promotion in list 'A'. However, the name of the applicant did not appear in the list of successful candidates. The applicant made a representation to Additional Commissioner at Delhi and in reply to the said representation, the applicant was informed on 21.7.1988 that after revaluation and rechecking by the D.P.C., the applicant did not make the final grade. The applicant has filed the panel of promotion list 'A' (Annexure 'F') in which the roll number and the name of the applicant is not entered though the list contains as many as 1479 Constables. Thus the grievance of the applicant is that he solved the written papers in an excellent manner and was expecting about 65 marks, even then he was not selected and further he was not given any notice nor even heard before declaring him unsuccessful in the said examination.

3 . The respondents contested the application and filed the reply stating that a written test was held on 28.6.1987 for promotion to list 'A' and the result was announced on 13.11.1987. A D.P.C. was constituted with Deputy Commissioner of Police, Crime Prevention as Chairman and two members- Shri Rajesh Kumar, D.C.P. and Shri Vijay Pal Singh, A.C.P. After evaluation of the answer sheet, the marksheets so prepared were handed over to the Chairman of the Departmental Promotion Committee (D.P.C.). The other marks in

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respect of out-door tests and service records were also handed over later on to the Chairman of the D.P.C. for compilation of the result. The answersheets bearing roll no. 3900 to 4000 which included the answersheet bearing roll no. 3915 of Constable Anil Kumar, was evaluated by Shri S.K. Jain, the then Additional Deputy Commissioner of Police, who put his initials on all the answer sheets. He also prepared the result sheet.

4. It is further stated by the respondents that the D.P.C. while compiling the written test, out-door tests and service record marks detected that the result sheet of Constable Anil Kumar No. 127/Crime (Roll No. 3915) had been tampered with. The D.P.C. immediately compared the answer sheet of Constable Anil Kumar with other answer sheets i.e. Roll No. 3914 and 3916. The D.P.C. also examined the style of writing, system of checking, marking, initial of the checking officer and cutting/over-writing on the result sheet prepared by the evaluation officer and all the marks were found to be different. It was found that the answersheet of Constable Anil Kumar had been replaced later on and marks in the mark sheet have been changed. Keeping in view the above facts into consideration, the D.P.C. did not recommend the name of the Constable Anil Kumar for bringing on promotion list 'A' and the D.P.C. disqualified him in the written test. The answer sheet of Constable Anil Kumar was shown to Shri S.K. Jain who evaluated it earlier and Shri Jain, D.C.P. has denied having checked the answer sheet in question. He has given a certificate that he checked the answer sheet of Constable Anil Kumar, but the answer sheet of Constable Anil Kumar shown to him now does not bear his initial and was not checked by him. Shri Jain has further stated to the

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respondents that the style of marking is also different. Shri Jain also informed the respondents that the initials on the answer sheets and mark sheets are not his. In view of the above circumstances, the applicant was disqualified and he could not be brought on promotion list 'A'. The applicant made a representation and he was informed accordingly. The respondents have also filed the affidavit of Shri S.K. Jain who has deposed the same facts as given out in the reply by the respondents.

5. In the rejoinder, applicant stated that when he applied for revaluation, then he was given an erroneous reply. It is further stated that the answer sheet of the applicant was not replaced in any manner and the same remained in the custody of the respondents from the time these were deposited after the test and no one could have access to the answer sheets in possession of the respondents. He further averred that he was never told that he was disqualified in the written test by the B.P.C. Had he been so disqualified, he would have been informed about it and an explanation sought and in the absence of an explanation, he could not have been disqualified.

6. We have heard the learned counsel of the parties at length and have gone through the record of the case. The respondents were also directed to produce certain records before the Tribunal and the answer sheets of the applicant bearing roll no.3915, the broad sheets, the tabulation sheets and the out-door tests evaluation sheet showing marks obtained by the applicant on the basis of service records as well as any other connected matter ~~be~~ was also brought before the Tribunal. All these documents

were also shown to the learned counsel for the applicant in the court. The only point involved in this case is whether the answer sheet of the applicant was got forged and replaced in the place of the original answer sheet, is correct as stated by the respondents in their reply and forcefully argued on the basis of records by the learned counsel of the respondents in the court. The Answer sheets of roll no.3915 were seen and so also the answer sheets from roll no.3900 to 4000. The marks given to the applicant in this answer sheet now before the Tribunal appear to have been given by red pencil, while in other answer sheets, the marking has been done by red ink. We have also seen the style and the manner of marking. It is not disputed that the checking was done by Shri S.K. Jain, the then ^{Additional} D.C.P. and in every answer sheet he has initialled, but the initials in the answer sheet of roll no.3915 are not in his hand writing and he also filed an affidavit denying the initials on this answer sheet of roll no. 3915. This answer sheet shows that the applicant has scored 72 marks, but in the tabulation sheet and the broad sheet prepared, the marks earlier shown to the credit of the applicant(Roll No.3915) were 42 in the written test and the digit 4 of 42 appears to have been substituted by over writing by the digit 7 so as to read 72. Actually this over-writing in the broad sheet made the D.P.C. suspicious about the marking in the answer sheet of the applicant roll no.3915. When the answer-sheet was seen by the D.P.C., then on the basis of certain difference in marking etc. from the other answer sheets bearing roll no.3914 and 3916 and also that there was a use of red pencil in the case of 3915 while in other cases it was red ink, so the D.P.C. disqualified the applicant in the written test. The learned counsel

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for the respondents has argued that an inquiry was also held, but it could not be found out as to who is the person who has done this mischief. It is also stated by the learned counsel for the respondents that the file was also sent to the hand-writing expert who gave the opinion against the applicant, but that factor is not so much relevant in this case. The learned counsel for the respondents, however, produced before the Tribunal also the report of the hand-writing expert. As such the applicant was rightly excluded from the list 'A' which was notified on 13.11.1987. Against this, the learned counsel for the applicant argued that he is in no way responsible for the change of the answer sheets as the same remained in the custody of the respondents. The learned counsel also pointed out that the correction made against the name of the applicant in the marks obtained in the written test shows initial over over-writing which is not present in other cases where some of the other candidates were disqualified. Further it is pointed out that there are six other cases where candidates were disqualified, but it was only the applicant who represented and when the applicant represented, he was not informed that his answer sheet was got replaced and he was disqualified in the written test. The learned counsel for the applicant referred to the Memo dated 26.4.1986 (Annexure 'C') where the applicant was informed that the written papers, P.T., parade and service record marks have been rechecked/ revaluated by the D.P.C. and the applicant did not make final grade. So his name was not brought on promotion list 'A'. The applicant, of course, made a representation on 6th May, 1988 in which he has stated that he was sure to have obtained 65 marks in the written test, yet his name has not been included in the promotion list 'A'. However, the proceedings of both the D.P.C., i.e. one which

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originally conducted the examination and the second one which revaluated the answer sheets of the question papers and other service records have been seen by us. Though over-writing is present in both broad sheet and the tabulation sheet against the name and roll no. of the applicant, the second D.P.C. did not specifically say about the applicant, but the proceedings go to show that some error and omissions were detected by the second D.P.C. and the benefit was given to those persons in whose case the errors were found. The learned counsel for the applicant argued that the second D.P.C. did not say anything specific in their report. So all this appears to be an after-thought.// We have given a careful consideration having gone through the record of the case as well as the departmental records of the examination. There cannot be two opinions that the answer sheet of the applicant was actually got replaced and it cannot be said who has done it. It is also evident that there is over-writing over the written marks obtained by the applicant in the broad sheet as well as tabulation sheet and 72 marks is the highest marks obtained in the whole of the examination which naturally is likely to cause some suspicion when there is over writing in the broad sheet. Reasonably it can be accepted that on a suspicion, the D.P.C. has called for the original answer sheet of the applicant and discovered this forgery and cheat. Be whatever may, the D.P.C. has disqualified the applicant in the examination and the same has been rechecked by another D.P.C. So the Tribunal would not like to differ in any way with the opinion of the D.P.C. in that regard.

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7. The learned counsel for the applicant has pointed out that the applicant should have been given a show-cause notice or a seal cover method should have been adopted and in this case the applicant has referred to 1962 SCR Supplement-III p-36, Board of High School and Intermediate Education, Allahabad Vs. Ghanshyam Das Gupta. The learned counsel for the applicant has also referred to the authority Board of High School Vs. Baleshwar Prasad reported in 1963 (3) SCR and also to the authority of Rajesh Koshi George Vs. State University of Kerala 1969(1) SCR p-317. In all these cases there was a regular inquiry instituted to find out as to why the examination of the petitioners was not declared in their favour. While in the present case no such inquiry to the knowledge of the applicant has taken place. The present case, however, is totally different. In the present case, the applicant appeared in departmental examination and the D.P.C. conducted the examination. No malafide has been alleged against the D.P.C. or any of its members. The record of the departmental examination shows over-writing in the broad sheet and tabulation sheet against the roll no. of the applicant. The officer who checked the answer sheet of the applicant has filed the affidavit before the Tribunal that the answersheet which is now on record is not the one which he originally checked or evaluated and the same does not bear his initials. No right has accrued to the applicant at all, so there was no necessity to issue a show-cause notice and enter into a regular inquiry. The opinion of D.P.C. was final in that regard unless some malafide was alleged against its members. In Sanjeev Kumar Aggarwal Vs. Union of India reported ^{A.T.R.} in 1987(2) 566, the Principal Bench considered ^{almost} a similar case though that was under Rule 5 of C.C.S. (Temporary) Service Rules, 1965. In that authority, the

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appointments were obtained by fraud on the basis of fake nominations. The applicants neither qualified at the examination nor the Staff Selection Commission intended to nominate them. It has been held that where an appointment is terminated because it was obtained by deceit or fraudulent means, no question of estoppel would arise and it can be validly terminated by an order simpliciter. If it is discovered that persons who were not qualified to be appointed and were never intended to be appointed got the appointment, they cannot be retained in service. That would be a case where neither the offer nor its acceptance is valid. Any agreement which never fructified into a valid contract, cannot give rise to a status which is required to be protected. Granting any relief to the applicant would amount to allowing him to abuse the process of the courts. The learned counsel for the applicant placed greater reliance on the information communicated to the applicant by letter dated 26.4.1988 in which there is no mention that the applicant has been disqualified in the written test. In fact it is common knowledge that in revaluation, the candidates are informed where any change is possible by the rechecking and if that is not possible, then they are generally informed in a general manner that rechecking did not alter the position. The same is the crux of the Memo dated 26.4.1988. The affidavit of Shri S.K. Jain cannot be rightly discarded simply on the hypothetical argument of the learned counsel for the applicant that subsequently over-writing has been done to harm the interest of the applicant. In order to accept this argument, this has to be presumed that there was someone interested in harming the applicant and had access to the answer sheets/kept sealed with which were

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the examining body and to our mind no such presumption can be drawn unless it is proved as a positive fact.

8. Though it is out of the record, but still the learned counsel for the respondents argued that afterwards also the applicant took the same written examination, but he did not qualify. While in the examination of 1987, the applicant is said to have obtained the maximum marks in the written test and the only answer by the learned counsel for the applicant is that examination is only a matter of chance. However, it is not so in the case of the written examination, particularly of the standard required for Constable for promotion to higher grade.

9. The learned counsel for the applicant also argued that on the principles of natural justice, the applicant could not be condemned without any inquiry in which he could have at least represented his case to the satisfaction of the authorities. However, in the present case where the applicant was not found suitable to be empanelled, then in our opinion when no malafide has been alleged also against the members of the D.P.C., no inquiry after issuing notice to the applicant was at all necessary. The records have been shown to the learned counsel for the applicant in court. The answersheet of the applicant is being totally isolated in marking from the other answersheets from roll no.3900 to 4000 which were evaluated by one and the same examiner who evaluated the marksheet of the applicant and the answer sheet of the applicant does not bear the initials leaving no room for any doubt that

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the same has been replaced. In view of this fact also, it is not a case where the applicant should have been issued a show cause notice for an inquiry on the principles of natural justice.

10. We are, therefore, of the opinion that the application is devoid of ^{merit and is} dismissed leaving the parties to bear their own costs.

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

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P. C. Jain
(P.C. JAIN)
MEMBER (A)