

24

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.795/93

19th day of April, 1994

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (J)

Kumari Neeli S. Chowdhry,
D/O Brigadier (Retd.) S.V.S. Chowdhry,
R/o 410, Sector 29, Arun Vihar,
NOIDA, Distt. Ghaziabad,
Pin:201303 (U.P.)

Applicant

By Advocate Shri A.S. Quereshi with
Shri A.K. Gupta.

Versus

Union Public Service Commission
through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110011.

Respondent

By Advocate Smt. Raj Kumari Chopra.

ORDER

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (J)

The applicant was a candidate in the Civil Services Examination (Mains) 1991 (CSE, 1991). The mark-sheet in respect of that examination was sent to her by the U.P.S.C. (i.e. the respondent) on 21.7.92 (Annex.M) indicating that she had scored 803 marks only and had not qualified in the written examination.

2. Aggrieved by this result, she submitted a representation dated 25.8.1992 (Annex.A) to the Chairman, U.P.S.C. and also met her personally.

.....2...,

It transpires from the representation that she had written the C.S.E. 1989 Examination but did not qualify in the same. Nevertheless, she found her marks (i.e. 760) quite encouraging. She again appeared in the C.S.E. 1990 after much better preparation, but was surprised to find that she scored lesser marks (i.e. 594) than in the previous year. She then wrote to the U.P.S.C. on 16.7.1991, expressing her apprehension that some error, mechanical or otherwise, might have produced this result. She was informed by the U.P.S.C. in a letter dated 28.8.1991 that her answer-books had been checked and no mistake had been found. She further stated in the representation that she had prepared much better for the 1991 C.S.E. and, therefore, she was shocked that she had not qualified again. According to her, the marks awarded were way below her expectations. She expressed her apprehensions in this regard as follows:-

186

"I request you to kindly take a comparative glance at the three consecutive years' Marks Sheets attached herewith. The inconsistency in break-up of marks of 1989, 1990 and 1991, prompts me to feel that my own mental development cannot be so inconsistent as to show such erratic achievements as is indicated by my three Marks Sheets particularly when the subjects offered and their syllabus has remained unchanged in all three attempts. It is difficult also to understand how the Written Total of marks in 1991 could have increased by a mere 40 marks over the Written Total of 1989 particularly when the Maximum marks in this Examination are 1800, and on looking to the fact that already in 1990 in one single paper alone (Sociology Paper I Code No.39) I have improved my Score by 55 marks)."

....3...

26

She requested the Chairman, U.P.S.C. to undertake a thorough scrutiny and redress her grievance.

3. In reply, she was informed by the letter dated 15.2.1992 sent by Dr. A.K. Saxena, Under Secretary, U.P.S.C. (Annex.B) that the "answer-books in General Studies, Sociology, and Public Administration Papers I and II have been rechecked and it has been verified that there is no mistake of anykind in the marks/ result".

4. Disappointed by this reply, the applicant again represented to the Chairman, U.P.S.C. on 9.10.92 (Annex.C). After pointing out that she had appeared in the C.S.Es 1989, 1990 and 1991 and had been given a total of 760, 594 and 803 marks respectively, she made the following allegations:-

"Against the Mark Sheets of 1990 and 1991 examinations I submitted representations alleging in a subservient and respectful language that marks said to have been assigned to me did not belong to me but unfortunately the modest language went unheard. Now as a last resort I have been compelled to challenge in clear and unequivocal language that the marks said to be mine in all the 12 papers of 1990 and 1991 examinations are not based on my performance; and my answer books have evidently been transposed. It seems to be a tall allegation from a candidate yet I humbly submit that unfortunately in my case I am certain this has happened and that marks of some other candidate have been assigned to me and this mischief has left me to suffer grave and lifelong injustice."

She requested that all the answer-books of the 12 papers of 1990 and 1991 Examinations be rechecked

189

in the light of the above allegations. To facilitate this scrutiny, she sent three sheets of her own handwriting for comparison with the answer-books on the basis of which she had been awarded the marks, as mentioned above with a view to ascertaining whether those answer-books were really written by her.

5. A reply to this representation was sent on 3.11.1992 (Annex.D) by an Under Secretary of the U.P.S.C. which reads as follows:-

"No.F.2314/72-CV/3862
UNION PUBLIC SERVICE COMMISSION
DHOLPUR HOUSE, SHAHJAHAN ROAD

New Delhi-110011, the 3.11.92

To

Ms. Neeli S. Chowdhary,
410, Sector-29, Arun Vihar,
Noida (UP) 201303.

Subject:- Your representation dated 9.10.92 for C.S.(M) Examin., 1991.

Madam,

I am directed to refer to your representation dated 9th Oct. 1992 on the subject mentioned above and to say that your answer scripts have been rechecked with reference to all points raised by you in your letter, and it has been verified that there is no mistake of any kind. After rechecking, I am to inform you that you have not qualified in the examination.

Yours faithfully,

Sd/-
Under Secretary
Union Public Service Commission."

important
(The portions of the letter which is in manuscript, has been underlined for reasons to be referred to later).

10/12

....5....

6. Again, she was dissatisfied with this ^{alleged} /stereotyped reply because it did not make any reference to the 1990 Examination and did not clarify as to whether the specimen handwriting sent by her was used for the purpose of rechecking the answer-books. The other doubts that she had in this regard were expressed as follows:-

"(C) Moreover, I am not satisfied with the reply of 3rd Nov. on a few other counts. The name of the person responsible for the letter is not mentioned at the end nor is the signature clear, the letter has been sent by ordinary post bearing stamps totalling Re.1 instead of being sent by registered post, the envelope does not bear the Desk Officer's Stamp and it bears the Seal of Parliament Street H.P.O. New Delhi-110001 instead of the Seal of the usual channel laid down that is of the UPSC P.O. New Delhi 110011. The only inference that can be drawn from these irregularities is that presumably this letter has been sent surreptitiously and that my conviction of my answerbooks having been transposed is absolutely correct. If this belief of mine regarding above mentioned points is incorrect it may kindly be explained for my satisfaction."

7. To this representation, a reply was sent on 15.1.1993 (Annex.F) by Dr. A.K. Saxena, Under Secretary, the same officer who had earlier sent her the reply dated 15.9.1992 (Annex.D). She was informed as follows:-

"With reference to your candidature for the above examination and your letter dated 29.12.1992, I am directed to say that your answer scripts have been re-checked with reference to all the points raised by you in your letter dated 9.10.1992 and it has been verified that there is no mistake of any kind. This

was communicated to you vide this office letters of even number dated 15.9.1992 and 3.11.1992. You were also intimated that you have not qualified in the examination.

You may please note that no more correspondence will be entered into with you on the above mentioned subject."

8. It is in these circumstances that the applicant has filed this O.A., impugning the marks of the C.S.E. 1991 (Annex.M) and the replies sent to her by the Under Secretary, U.P.S.C. on 15.9.1992 (Annex.B), 3.11.1992 (Annex.D) and 15.1.1993 (Annex.F). The applicant has sought the following reliefs:-

- (a) Call for answer-books of the applicant of C.S.E. (Mains) 1991 from the office of Respondent, Commission.
- (b) Ascertain from answer-books of the applicant that impugned Mark Sheet (Annex.M) does not represent her performance.
- (c) Ascertain that answer-books of the applicant have not been transposed with some other answer-books by comparing with her specimen handwriting.

9. These reliefs have been sought on the grounds mentioned in the representations made to the Chairman, U.P.S.C. as also the suspicion entertained by the applicant due to the following circumstances:-

- (i) The replies are vague and mechanical denials;

Handwritten signature/initials

260

/portion is in
manuscript in the
cyclostyled reply.

- (ii) In the Annex.D reply, the Under Secretary has not disclosed his name. One significant/
- (iii) The respondent has not specifically stated that the answer-books were compared with the specimen hand-writing.
- (iv) The U.P.S.C. has also committed mistakes in the past. Question papers had been leaked out. Therefore, possibility of a mistake as alleged by the applicant, cannot be ruled out.
- (v) The applicant's genuine apprehension that the marks awarded to her are not in respect of the answer-books written by her but are in respect of the answer-books belonging to somebody else, should be allayed by a proper examination of the records after directing the respondent to produce them.

10. The respondent has filed a counter-affidavit verified by Dr. A.K. Saxena, Under Secretary, U.P.S.C.

11. In so far as the facts are concerned, they have not been disputed but the respondent has repudiated the allegations and the insinuations contained in the O.A. In reply to the main allegation regarding the marks, it is clarified as follows:-

"In the rules for the conduct of Civil Services Examination, there is no provision for rechecking or re-valuation of answerbooks. However, with a view

152

to safeguarding the interests of the candidates, the commission do entertain requests for re-checking. Therefore, on receipt of the applicant's representation mentioned above, her answer-books in all the papers viz. both compulsory as well as optional were papers for this examination were rechecked to ensure that all the answers had been evaluated and there were no answers remaining unvaud, that the totals were correctly arrived at and the same had been correctly transposed to the marksheet, that all the answer-books pertained to the candidate and these were intact in all respects and that there was no error of any other kind in her results. The result of this checking was intimated to the applicant vide Commission's letter No.CS(M)/91/Roll No.3862/E.XIX, dated 15.9.92, through which the candidate was informed that her answerbooks in General Studies, Sociology and Public Administration Papers I & II had been rechecked and it has been verified that there was no mistake of any kind in the marks secured and as communicated to her."

12. In regard to the applicant's expectation that her performance ought to have been better in the C.S.E. 1991 , the respondent has stated as follows:-

"It may be stated that the performance of the candidates can vary from year to year depending upon the nature of the question paper and the expectations of the examiners about the scope of answers. There are plenty of cases in each year's examination where a candidate's performance in examination is found to be worse than that of the preceding examinations. There are also cases where candidates who qualified for interviews on the results of earlier examinations failed to reach the qualifying standard in subsequent attempts. But all such cases cannot be attribute to any error or irregularity committed on the part of the respondent, UPSC. In view of what has been submitted above, the application has no merit and deserves to be dismissed."

13. The applicant filed a rejoinder, reiterating the allegations made in the O.A. Inter alia, she

OM

- 11 -

of the Tribunal (Principal Bench) in OA-2632 of 1991 - Shyam Prasad Vs. U.P.S.C. & Anorther - the application is liable to be dismissed.

17. The basic question is whether the applicant has made out a case which throws some genuine doubt about the correctness of the result communicated to the applicant at Annex.M, which alone would justify a direction to the respondent to produce the records for our perusal. This Tribunal, undoubtedly, has the right to enforce the production of records. However, that power has to be used sparingly and only in appropriate cases where legitimate and strong doubts have been raised about the results of the Examination. We have also to bear in mind that the respondent is a constitutional authority charged with discharging certain functions in relation to Services in pursuance of which the C.S. Examinations have been conducted under its supervision and the answer-books have been valued and the results communicated to the candidates. It would not be proper to scrutinise the manner in which this power has been exercised by this constitutional authority, unless strong grounds are produced justifying such scrutiny.

18. We notice that the applicant had appeared thrice in the C.S. Examinations she did not qualify to be called for the interview in any one of the examinations. In the two question papers each in General Studies, Sociology, and Public Administration, i.e., six papers in all, she had respectively scored 760, 594 and 803 marks in these three years. Maybe,

has made the following averment:-

".....The applicant cannot produce evidence at this stage to substantiate her allegations about transposition, detachment, etc. as all the relevant material is in the possession and control of the respondent. Only on inspection these allegations can be proved to be correct. The applicant will be able to show after inspection that all pages of the answer books are not genuine and that some or all of them are transposed and/or that all the supplementaries are not intact....."

The rejoinder gives further particulars about what the applicant considers to be glaring irregularities in the letters (Annex.D) and Annex.F which strengthen her suspicion about the respondents conduct. It is urged that on these grounds, the original records should be summoned and perused by the Tribunal for its own satisfaction.

14. We have heard the learned counsel for the parties. The learned counsel for the applicant submits that the persistent refusal of the respondent to clearly state whether the answer-books, on the basis of the valuation of which the applicant was informed that she had scored the marks as mentioned in the Annex.M mark-sheet, have been compared with the sheets of specimen handwriting which she sent with her representation dated 9.10.1992 (Annex.C), raises genuine and well founded suspicion that the respondent has something to hide and that there is something fishy about the results communicated to the applicant. That suspicion is strengthened by the several irregularities noticed in the replies sent to her on 3.11.92

162

(Annex.D) and 15.1.1993 (Annex.F). He, therefore, requests that the records should be summoned from the respondent and the Tribunal should satisfy itself that no injustice has been done to the applicant.

15. We wanted the learned counsel to explain the basis on which the applicant felt, in the first instance that the marks given to her in the C.S.E. 1991 (Annex. M), cannot be attributed to her performance, i.e., there has been an exchange of answerbooks inadvertently or by design. Except for reiterating what has been mentioned earlier, he has not been able to indicate specifically any direct ground on which this suspicion is rested.

16. The learned counsel for the respondent contended that the respondent had clearly stated in the Annex.B letter that the relevant answer-books have been rechecked and it has been verified that there was no mistake of any kind in the marks/results. This was reiterated in the second reply dated 3.11.1992 (Annex.D) clarifying further that the answer-scripts have been rechecked with reference to all the points raised by the applicant in her letter. She, therefore, contends that no prima facie case has been made out and that in the light of the Supreme Court's decision in the case of Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupesh Kumar Sheth, etc. (A.R. 1984 S.C. 1543),

.....11....

that in her own estimation she should have been awarded more marks. That can, at best, give rise to a claim that the answer books be rechecked to see that marks have been awarded to all questions and that the total is correct. What puzzles is how, on this basis alone, the applicant has jumped to the conclusion that there has been a transposition or exchange of her answer books, to confirm which she sent her sample handwriting. For example, if the Annex.M. mark-sheet sent to her mentioned her name but mentioned a roll number which was not her roll number, there could have been a suspicion about the mix-up in the results communicated to her. Alternatively, if a mark-sheet has been sent to another candidate specifying the roll number of the applicant, but mentioning the other candidate's name in col.2 of the mark-sheet and this came to the notice of the applicant also, a case could be set up that there was really a mix-up of the answer books which required investigation by production of documents. That is not the case here. In the absence of any other evidence to substantiate this allegation, one can conclude that this is only a fishing expedition and a gamble, the objection being to somehow or other get the answer papers produced before the Bench.

19. Ordinarily, every candidate entertains a high opinion about his capabilities and performance in such examination. That is no substitute for prima facie grounds to question the result. The situation

could, perhaps, have been different if we had before us a candidate who, let us say, had passed all the examinations in first class and stood first in the University examination of a prestigious University like the Delhi University and yet had been awarded very poor marks in the U.P.S.C. Examination. In such a case, perhaps, one could feel that, probably some mistake has been committed. Such a feeling of doubt may be justified if a C.V. Raman is shown to have failed in Physics or a Ramanujam in Maths. In such a case, one might even be justified in ordering a revaluation by an independent authority to remove all doubts and vindicate the valuation done by the U.P.S.C. Such is not the case before us.

20. The situation would also have been different if, for example, the applicant was communicated a different set of marks in the first instance indicating that she had qualified in the written examination and would be called for the interview, but, subsequently, she was informed by the Annex.M mark-sheet that she has failed in the written examination. That would have raised a legitimate suspicion about the compilation of marks in the Commission and would have warranted our interference. Again, if, in the first instance, a mark-sheet was sent to the applicant showing the marks obtained by her in Physics and Chemistry, which were not at all her optional subjects, a justifiable suspicion could be raised against the

.....14..,

Commission in the matter of ascertaining and compiling the results of the candidate which would have justified a direction to the U.P.S.C. to produce all the records.

21. We, therefore, find that the applicant has not been able to establish any prima ^{to raise doubts} facie case in our minds about the Annex.M results communicated to her.

22. The applicant has no basis whatsoever, to support her suspicion - she has actually made an allegation as if it is a conclusion - that the answer books have been transposed. This is a fishing expedition. Hence, we will not be justified in taking any steps on the basis of this unfounded allegation.

23. We may now turn to the other circumstances which, according to the learned counsel for the applicant, strengthens the suspicion of the applicant that some mischief has been played by the respondent in the valuation of the applicant's answer books. In the representation dated 24.11.1992 (Annex.E), three points have been mentioned. The first is that while in the earlier representations the applicant had raised the question about the marks assigned to her in the previous examination also, i.e., 1990 C.S.E., the replies given do not make any mention about that Examination. Secondly, it is stated that the replies do not clarify whether the samples of hand-writing sent by her were used to verify whether the answer-books in respect of which the marks had

been assigned to her in the Annex.M mark-sheet, were really written by her. In so far as the former issue is concerned, the respondent has stated that the 1990 Examination was a stale matter and, therefore, no specific reference to that Examination was given in the reply. In regard to the second issue, the respondent has stated that the reply given makes it clear that all points raised by her - which include the point regarding transposition also - had been taken into account. We do not see how these circumstances can give rise to any kind of suspicion.

24. There are other grounds which are of a trivial nature - if not frivolous - which do not merit any scrutiny. Examples of such grounds are given in the extracts in para.6. In addition, the applicant has mentioned in the rejoinder that the Annex.D and Annex.F letters received from the Commission do not conform to the procedure laid down in the Manual of Office Procedure prescribed by the Government and many irregularities are noted. The following are mentioned by way of illustration:-

a) In respect of Annex.D letter

- (i) The Despatcher has been kept out of the picture to avoid detection of the false contents of the letter.
- (ii) Red ink has been used in giving the date on the letter (Annex.D).

(iii) The letter is addressed to Ms. Neeli S. Choudhry, although in other communications, the applicant's name is written correctly as Chaudhry Neeli Surendra Veer Singh.

(iv) According to the Manual, the highest denomination of the postage stamp should be used, which in this case was Re.1. Instead, six stamps of 15 paise and 2 stamps of 5 paise have been used to create an impression that it has been sent through the despatcher.

b) In respect of Annex.F letter

- (i) The letter is typed on the letter-head of the U.P.S.C. of a superior quality paper which is not used in replying to candidates.
- (ii) The letter was sent by ordinary post instead of registered post.
- (iii) It is type-written with a number of corrections in ink by the person who signed it.
- (iv) It is dated 15.1.1993 but the post-mark is 21.1.1993.
- (v) Noida's pincode is given as 201301 instead of 201303.

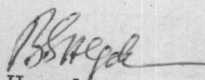
25. We are of the view that neither taken singly nor taken together, these so-called peculiarities ~~do not~~ add up to anything significant. An example may make this clear. In a suspected case of murder the facts that the accused purchased a pistol and bullets a few weeks before the murder and that he proceeded to the town where the murder took place, are suspicious circumstances, which are relevant. In other ~~xx~~ words, there can be circumstances which taken singly, may not amount to anything but taken together, might suggest that some wrong has been committed, provided the circumstances have some kind of a nexus - proximate or remote - with the alleged mischief. We are unable to conclude that any of the circumstances mentioned by the applicant can have any nexus with the alleged mischief stated to be perpetrated in this case. For example, whether the letter is posted in the Parliament Post Office or in the U.P.S.C. Post Office, or whether the letter is typed on superior quality paper or otherwise, can, by no stretch of imagination, have anything to do with the alleged mischief. In so far as the address of the applicant is concerned, we notice that in all her communications to the Chairman, U.P.S.C. i.e., Annex. A, C, and E, she has called herself Km. Neeli S. Chaudhry. That is the name in the Annex.M also. It is surprising that she has taken this circumstance in regard to the Annex.D letter as suspicious merely because in two other letters (Annex.B

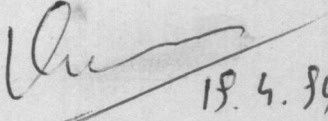
and F), her full name has been mentioned. We have not been able to locate in which document her name is described thus.

26. The learned counsel for the applicant has contended that the decisions cited by the respondents in their reply, i.e., the Supreme Court's decision in A.R. 1984 S.C. 1543, Maharashtra S.B.O.S. and H.S. Education Vs. Paritosh and the decision of the Tribunal in Shyam Prasad's case (Annex.1 to the reply), are distinguishable. It is contended that, unlike the prayers made in those cases, the prayer of the applicant in the present case is confined only to find out whether the answer-books, the marks of which have been attributed to the applicant, really belong to the applicant or not, by comparing them with the specimen handwriting supplied by the applicant in Annex. . It is emphasised in the rejoinder that the challenge in the present case is only to the alleged transposition of the answer-books and not to the valuation of the answer-books as such. He points out that in Brij Kishore Dubey Vs. Union of India, 1989 (7) S.L.R. 47 C.A.T., the Bench was pleased to peruse the question papers and answer-scripts of the applicants which were produced in a sealed cover at the conclusion of the final hearing. He, therefore, requests that the answer scripts of the applicant should be summoned from the respondent.

27. We notice that in none of the above decisions, revaluation or rechecking was directed by the Tribunal. In Shyam Prasad's case, the Tribunal rejected the prayer to call for the records by relying upon the decision of the Supreme Court in the case of Maharashtra S.B.O.S. & H.S. (supra.). The fact that the main prayer in the O.A., ~~namely~~ is that the answer-scripts should be summoned and checked to find out whether they really belong to the applicant and is not for revaluation, does not make any difference to the application of the ratio of the above decisions. The implication of the prayer is that if it is ascertained after verification that the answer-scripts really belong to the applicant, the applicant would accept the marks communicated to her by the Annex.M letter. If this be so, there should be valid grounds for prima facie, suspecting that the answer-scripts do not belong to her. It has already been held by us that no good ground has been assigned to entertain any suspicion that there has been a mix-up of the answer-scripts or a transposition. In the circumstances we are of the view that the reliance by the applicant on the decision in Brij Kishore Dubey's case, is of no avail. We are of the view, that no case has been made out to summon the records for verification.

28. Therefore, we find no merit in this O.A. and, accordingly, it is dismissed.


(B.S. Hegde)
Member(J)


18.4.84.
(N.V. Krishnan)
Vice-Chairman(A)