

23
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK
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ORIGINAL APPLICATION NUMBER: 445 OF 1988.

Date of decision: 27.6.91
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SUNIL KUMAR BANSAL

:Applicant

- V e r s u s -

Union of India and others

: Respondents.

For the applicant

: Mr. B.B.Ratho, Advocate

For the Respondents

: Mr.A.K.Misra, Senior
Standing Counsel (CAT)

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C O R A M:

THE HONOURABLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)
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1. Whether reportes of local papers permitted to see the judgment?Yes.
2. To be referred to the reporters or not?Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment?Yes.

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JUDGMENT

B.R. PATEL, VICE CHAIRMAN: The applicant who appeared at the Civil Services(Main) Examination, 1987 with Roll No. 21207 secured 108 marks out of 300 in Commerce and Accountancy Paper-1. As the number of marks secured was far below his expectation he wrote to the Union Public Service Commission(UPSC for short) who conducted the examination in his letter addressed to the Secretary, UPSC, requesting him to get the answer sheet re-evaluated/retotaled under intimation to him vide Annexure-2. The UPSC vide its letter dated 28.7.1988 under the signature of its Under Secretary informed the applicant that his answer book in Commerce and Accountancy Paper-1 has been rechecked and it had been verified that there was no mistake of any kind of marks and further that it was not the practice of the Commission to make arrangement for revaluation of answer books(Annexure-III). Not being satisfied with the aforesaid reply of the UPSC, the applicant has moved the Tribunal to quash the UPSC reply

B. R. Patel

24
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dated 21.7.1988 (Annexure-III), to get the answer book of Commerce and Accountancy Paper-1 produced before the Tribunal; to do the retotalling, to reevaluate the unchecked and unevaluated sheets and to get the marks obtained after the retotalling, rechecking and evaluating added to the total marks in other papers.

2. We have seen the applicant's answer book in Commerce and Accountancy Paper-I. We are satisfied that all the answers have been marked and the marks have been correctly totalled and that the entire answer book including the supplementary answer book was intact. Mr. A.K.Misra the learned Senior Standing Counsel (CAT) for the Respondents has averred that with the rechecking and retotalling of the marks by the Tribunal itself, the reliefs sought by the applicant have been granted and there is no question of setting aside the UPSC letter dated 21.7.1988 (Annexure-III). Mr. B.B.Ratho, the learned Counsel for the applicant, on the other hand, has contended that the main reliefs sought by the applicant is re-evaluation of the answers in

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28

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Commerce and Accountancy Paper-I, as the applicant vide letter at Annexure-II had specifically asked the UPSC to get the answer sheets re-evaluated/and the answers of the UPSC's was that it was not their practice to make arrangement for revaluation of answer books. In otherwards, Mr. Ratho has averred that the applicant has sought reliefs from the Tribunal in the matter of reevaluation as the UPSC has declined to make any arrangement for it. He has therefore, placed before us the Miscellaneous Application No.105 of 1990 in which he has requested the Tribunal to summon an expert on the subject at the cost of the applicant and get the answer evaluated afresh. Mr. Misra countered this plea on the ground that to appoint experts for setting questions and evaluation of answers is the duty of the UPSC and this duty has been cast upon the Commission by the Constitution of India. He has further averred that over the last several years the UPSC has been conducting examinations as required by the Constitution for selection of candidates for

B. M. Misra

26

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various services and have acquired considerable experience and experties over all aspects of such examinations including setting questions and evaluating answers. We agree with Mr. Misra that to appoint experts is also an experts job, and we do not have the experties to appoint one and that to select and appoint experts is the responsibilities of the UPSC which they have to shoulder in discharging their constitutional obligation in conducting examinations for recruitment to various Civil Services and Posts. Mr. Ratho thereupon has made strenuous effort ^{to} ~~to~~ convincing ^{us} ~~us~~ that the answers have not been properly evaluated. He has taken us through each question with the help of several books which according to him are the authorities on the subject. The authorities stated by Mr. Ratho for model answers are:

1. Introduction to financial Management by Lawrence D. Schall and Charles W. Haley.

Mr. Misra

27

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2. Cost and Management Accounting problems by P.V.Rathnam 1983 Edition.
3. Management Accounting by Dr.M.M.Verma and R.K.Agarwal.
4. Banking Theory-Law and Practice by S.N.Maheshwari, First Edition.
5. A I R Manual Vol.26.
6. Banking Law and practice by K.C. Bagadia.
7. Negotiable Instruments Act M.S. Parthasarathy(16th Edition).
8. Advanced Accountancy Vol-II by S.N.Maheshwari.
9. Practical Auditing by B.N.Tandan, 1990 Edition.
10. Advanced Accountancy by S.P.Jain and K.L.Narang, 7th Edition.

We do not have the expertises to appreciate the various authorities quoted by Mr. Ratho and we do not have the training to appreciate how far these authorities provide the model answers to be adopted by the experts the world over. There is also no information before us to come to a conclusion that

R. Ratho

28

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the experts appointed by the UPSC have not in fact followed these authorities in evaluating the answers given by the applicant. Mr. Ratho has also not enlightened us as to whether there are other authorities equally authoritative or renowned as the authorities he has cited before us. At any rate we are unable to appreciate the contention of Mr. Ratho, this is clearly the job of experts. Mr. Ratho has also cited the following judgments of Honourable Supreme Court and some High Courts in order to persuade us in the matter of redressing the legitimate grievances of the applicant.

A.I.R. 1986(SC)-210, Para-7 at page 215:

Justice may be blind but it is not to be deaf.

AIR 1959(SC)-308, para 30 at page 327:

Justice should not only be done but should manifestly and undoubtedly be seen to be done.

AIR 1981 SC 1957, Para-8, at page 1959:

If any authority exercised any power conferred on him by law in bad faith or for collateral purpose, it is an abuse of power and a fraud on the statute.

Asst. Secy

29
//8//

AIR 1987 SC 2257, Para-15 at page 2264:

There is no presumption that the Government always acts in a manner which is just and fair.

AIR 1987 SC 294, Para-36 at page 306:

It was the duty of the Court to the Public that the truth and the validity of the allegations made be enquired into.

AIR 1987 SC 294, para-37 at page 306:

It is true that allegation of malafides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times.

AIR 1956(SC)-531(Para-3 at page 534)6

What has got to be proved is want of bona fides as well as the non application of mind.

AIR 1968(Punj-Har.)-324, Para-6 at page 327:

Authority making the order without applying its own mind is malafide.

AIR 1966(Orissa)-173, para 35 at page 183:

Non application of mind is mala fide.

AIR 1984 SC 1406 , para-8 at page 1409:

Arbitrariness and mala fides destroy the validity

Arbitrariness

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and efficacy of all orders passed by public authority.

AIR 1984 SC 1361:

Arbitrariness is the arch-enemy of equality.

The principles enunciated in the aforesaid judgments are unexceptionable and we are bound by them . Mr.

Ratho has not, however, enlightened us as to how the UPSC has violated them and as such we are not in a

position to find fault with the method of evaluation

adopted by the UPSC. He has, however, placed before

us the judgment of the Honourable Supreme Court

reported in AIR 1984(SC) 1543. He has particularly

drawn our attention to paragraph 26 of the judgment.

This judgment was delivered on Civil Appeals Nos.

1653 to 1691 of 1980 (Maharashtra State Board of

Secondary and Higher Secondary Education and another

Appellates Vs. Paritosh Bhupesh Kumar Sheth etc.etc.

Respondents). The Honourable Supreme Court in this

judgment examined the Maharashtra Secondary and

Higher Secondary Education Boards Regulations (41

of 1965, S.36). Para-26 of their judgment reads as

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follows:

"We are unable to agree with the further reason stated by the High Court that 'since every student has a right to receive fair play in examination and get appropriate marks matching his performance' it will be a denial of the right to such fair play if there is to be a prohibition on the right to demand revaluation and unless a right to revaluation is recognised and permitted there is an infringement of rules of fair play. What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and crosschecks at different stages and that measures for detection of malpractice etc. have also been effectively adopted, in such cases it will not be

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32

//11//

correct on the part of the Courts to strike down the provision prohibiting revaluation on the ground that it violates the rules of fair play".

It is not the case of the applicant that his answers has been tampered with and that no proper arrangement had been made by the UPSC to keep the answers books in safe custody. We have seen the answer books as stated above, and have not found any sign of any answer having been tampered with. It is also not the case of the applicant that no uniform standard had been adopted in evaluating the answers of different candidates. We have also noticed that the marks originally awarded by the examiner stood at :85 which has been moderated by the Head Examiner to :108 which has been accepted by the Commission. Mr. Misra has informed us that in Commerce and Accountancy Paper-1 there were about 400 candidates and there was one examiner in addition to the Head Examiner who also was the Paper setter. The Head Examiner co-ordinated the standard of marking of the additional examiner and carried out moderation.

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33
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We are therefore, satisfied that the system devised by the U.P.S.C. provides for check and re-check in order to make it as satisfactory as possible. The Commission has stated in their counter affidavit that over the years they have evolved procedures for conduct of examinations and finalised their results. It is ensured that the results declared are free from errors and further that "Under Article 320 of the Constitution of India, the Commission is charged with responsibility of conduct of examinations for appointment to the services of the Union". The Commission is aware of its responsibility and has devised its procedures regarding the conduct of the examination and finalisation of marks/results to ensure that in a competitive examination no injustice is done to a candidate or a group of candidates due to evaluation of answer books. (emphasis added). The results are issued after proper scrutiny and verification.

3. The Respondents also have placed reliance on the same judgment of the Hon'ble Supreme Court

Ambedkar

34
//13//

reported in A.I.R. 1984 SC 1543, para-2 which has been cited by Mr. Ratho and have drawn our attention particularly to the following observation of the Hon'ble Supreme Court:

"The principle of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performance or to verify correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners". Para-12.

"Further it is in the public interest that the results of public examination when published should have some finality attached to them. If inspection, verification in the presence of candidates and revaluation are to be allowed as of right it may lead to gross and indefinite uncertainty particularly in regard to relative ranking etc., of the candidates besides leading to utter confusion

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on account of the enormity of the labour and time involved in the process" (Para-27).

We are bound by the decision of the Honourable Supreme Court that the results of public examination when published should have some finality and that it may lead to gross and indefinite uncertainty particularly in regard to relative ranking etc. of the candidates besides leading to utter confusion if re-evaluation are to be allowed as ^{of} ~~to~~ right. We are of the view that in the examinations conducted by the UPSC for recruitment to the Civil Services and posts relative ranking is of paramount importance in view of the limited number of vacancy and the large number of aspirants.

4. Mr. Mishra has placed before us a copy of the judgment of the Patna High Court in CWIC No. 1330 of 1989 which was delivered on 7.8.1989. The relevant portion of this judgment quoted by Mr. Misra reads:

"The learned Counsel for the petitioner, however, could not point out any law or rule or provision in any regulation, order or notification which enables

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a candidate who has taken the aforesaid competitive examination to get his marks retotalled or his answer book re-evaluated".

In the case before the Patna High Court, the Petitioner has also appeared in the Main Civil Service Examination held in the year 1988 and like the applicant before us, claimed that he had performed very well. He also placed before us the judgment of the C.A.T, New Delhi in Original Application No.1690 of 1989. In that case the Tribunal have held that "It is not for us to re-evaluate the marks as we are not competent to do so" and further when an answer paper is evaluated under the auspices of a body like the UPSC and the Commission states that the evaluation and the total marks have been given properly, there is no reason to doubt it." We agree with New Delhi Bench of the Central Administrative Tribunal. Similar question also came up before the Calcutta Bench of the Central Administrative Tribunal, in Transferred Application No. 3 of 1986 decision on which was given on 12th February, 1986. In that

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37
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judgment it has been held by the Calcutta Bench that "If every candidate who is unsuccessful or who secures marks below his expectation is allowed to plead unfair evaluation on the part of the UPSC and compel the Commission to revalue his papers the whole system of examination by the UPSC will come to a halt". Mr. Misra has also filed the order of the Hon'ble Supreme Court rejecting the Special Leave Petition No.15251 of 1986. The facts of that case as stated by Mr. Misra were that a candidate for the Civil Services (Main) examination 1984 had filed Special Civil Application No. 4547 of 1985 before the Honourable High Court of Gujarat Challenging the moderation done in his answer books for various subjects. The case was heard on 25th September, 1985 and the Hon'ble Judge who heard the case dismissed the petition. The petitioner thereupon went on appeal to the Division Bench of the High Court of Gujarat which dismissed the appeal. The petitioner then filed the Special Leave Petition before the Honourable Supreme Court of India which dismissed the petition with the following observations

Ambedkar

38

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"We are in agreement with the view expressed by a Division Bench of the High Court that the system of moderation of marks adopted and followed by the UPSC in evaluating the performance of the candidates appearing for the Civil Services Examination cannot be said to be vitiated by the arbitrariness or illegality of any kind. Special Leave petition is accordingly dismissed".

In our opinion the Hon'ble Supreme Court judgment which is most aptly applicable to the case before us is the one in Civil Appeal No.1362 of 1990 (arising out of SLP (Civil) No. 12248 of 1989) ^{in the case of} Council of Higher Secondary Education, Orissa and others Vs. Jashodhara Padhi. In the aforesaid order the Hon'ble Supreme Court have dealt with two matters namely appointment of an expert by the Court and revaluation to be done by the expert so appointed which have been agitated before us in this case. The facts of the case before the Hon'ble Supreme Court was that one Joshodhara Padhi appeared in the Plus Two Science Examination held by the Council of Higher Secondary

B. K. Mishra

//18//

37

Education, Orissa, Bhubaneswar in March, 1989 not being satisfied with the marks awarded in the two English Papers, she moved the Hon'ble High Court of Orissa in a writ petition under Article 226 of the Constitution of India for the issue of a direction to the Council of Higher Secondary Education, Orissa, for verification and re-valuation of her answer books. The High Court appointed over telephone an expert, Professor Mrs. P.N.Das, a retired Professor and Head of Department of English, Utkal University, Bhubaneswar to revalue the answers given by the Respondent in English Paper-I and Paper-II. Pursuant to the High Court's direction Professor Das revaluated the answers and the High Court by its order dated 27.9.1989 directed the Council of High Secondary Education Orissa to modify the marks earlier allotted to her. The Council appealed to the Hon'ble Supreme Court against the order of the High Court. We would like to quote here the Hon'ble Supreme Court's order allowing the appeal and setting aside the order of the High Court.

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"The question which falls for consideration is whether the High Court was justified in getting respondent's answer books revaluated by Professor Mrs. Das. Under the rules regulating the conduct of examinations an examinee is entitled to apply for verification and addition of marks only, as the rules do not provide for revaluation of the answers given by the candidate. The respondent made application for verification and addition of marks which was carried out and thereupon it was found that there was some mistake in addition of marks awarded to her in Mathematics Paper II which was corrected. There is no rule permitting revaluation of answers given by a candidate, in the absence of any such rule, no examinee has right to insist for the revaluation of his answer books. The Council of Higher Education appoints examiners for examining answers given by the examinees and they are authorised to award marks in accordance to their judgment and discretion. Since the rules do not provide any revaluation of the answers, the marks awarded by the examiners appointed by the Council acquire finality and no other

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41
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authority has power to reassess the same for the purpose of awarding marks. In such a case the court should not direct for the revaluation of the answer books of an examinee unless there are compelling reasons for the same. If there are allegations of malafide which are founded on good grounds, or if it is found that the answer books of an examinee could not be assessed by the examiner, the court may direct for the revaluation of the answers. However, this should be done only in rare cases where a very strong ground is made out for adopting such a course. But even if the court finds it necessary to get the answer books revaluated it must be carried out by the examiners approved and appointed by the examining authority and not by an outside agency.

In the instant case there was no allegation of malafide and the respondent had failed to make out any case for revaluation of answers. The only ground made out by the respondent was that according to her own assessment she deserved higher marks in English Paper-I & II having regard to the quality of her answers. The High Court appears to have

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42
//21//

accepted her own assessment in adopting unusual course of getting respondent's answers revaluated by an outside authority. Respondent's assessment about her own answers could not be a valid ground for directing revaluation as a candidate appearing in an examination is hardly a fit person for assessing the quality and value of his answers. If an examinee's own assessment is taken into consideration in directing the revaluation of answer books there will be chaos and no examination would attain finality. The High Court was persuaded to direct the re-valuation of answers on the ground that examiners who had initially examined respondent's answers were teachers of private Schools instead of teachers of Government Schools. In our opinion that was hardly a relevant ground for re-valuation. There was no allegation of malafide against the examiners. In the absence of allegations of malafide, or any other compelling reasons, the High Court should have respected the rules which did not provide for revaluation of answers. Professor Mrs. P.N.Das may be an eminent Professor but she was not on the panel of the examiners approved by the appellant-Council, therefore she was not

B. N. Das

43
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authorised under the rules to evaluate answers given by the examinees appearing at the Plus Two Science Examinations. The High Court, in our opinion, adopted procedure which was contrary to rules".

5. In view of the clear verdict of the Hon'ble Supreme Court we have no reason to find fault with the system of evaluation adopted by the UPSC in the case of the applicant. It is not the case of the applicant that in the matter of evaluation of his answer books he has been discriminated against. The additional examiner evaluated not only the answers of the applicant but also the answers of other candidates and we have no reason to hold that the examiner singled out the applicant for harsher treatment in the matter of evaluation. Moderation is an accepted way of evaluation and we do not agree with Mr. Ratho, learned Counsel for the applicant that it has vitiated the evaluation done by the examiner. On the other hand we hold that it

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44

is a further check to ensure proper evaluation in a competitive examination. The applicant has further said in his application that on the previous two occasions in 1985 and 1986 when he took the examination he had secured more marks, and that he was a first Divisioner in B.Com and also a Chartered Accountant with specialisation in the subject of Commerce and Accountancy and as such he is expected to score more mark in this paper. We agree with Mr. Misra that the applicant is not in a position to judge his own performance objectively and correctly as in a competitive examination his papers is to be assessed in relation to many other candidates who also appeared in the same examination and whose performance the applicant does know. The U.P.S.C. have also said in their counter that a candidate's performance can differ from year to year and that there is nothing unusual in the phenomenon of a candidate doing well in one examination and faring badly in the subsequent examination. According to the Commission there are plenty of cases of this kind in each examination. In view of the clear categorical

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11/24//

statement of the Union Public Service Commission who have the information on the results of all the candidates appearing in more than one examination, we are unable to accept that a candidate who has done well in one examination must do equally well though not better in subsequent examinations.

6. For the reasons mentioned above we do not find any merit in this application which stands dismissed. We make no order as to costs.

M. S. Eup

MEMBER (JUDICIAL) 27.6.81

B. S. Mohanty 27.6.81

VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, : C u t t a c k .
K. Mohanty.

