

15
17
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 386 OF 1995
Cuttack, this the 23rd day of August, 2000

Shri Debaraj Singh

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

G. NARASIMHAM
(G. NARASIMHAM)
MEMBER (JUDICIAL)

S. Somnath
(SOMNATH SOM
VICE-CHAIRMAN
23.8.2000

16
18
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 386 OF 1995
Cuttack, this the 23rd day of August, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Shri Debaraj Singh, a ged about 40 years, son of late Satrughna Singh, resident of village/post-Malipada, P.S-Jankia, District-Khurda, at present working as Surveyor, Office of the Superintending Surveyor, Lewis Road, Bhubaneswar-2, District-Khurda...Applicant

Advocates for applicant - M/s K.C.Kanungo
S.S.Mohapatra

Vrs.

1. Union of India, represented by Secretary, Ministry/Department of Science & Technology, Technology Bhawan, New Mehruli Road, New Delhi-16.
2. Surveyor General of India, Hatibarkla Estate, Dheradun-248 001, U.P.
3. Director, Survey of India, South Eastern Circle, Nayapali, P.O-Regional Research Laboratory, Bhubaneswar, District-Khurda.
4. Director, Survey of India, Research & Development, Uppal, Hyderabad- 500 039, Andhra Pradesh

Respondents

Advocate for respondents - Mr.Ashok Mohanty
Sr.CGSC

SOMNATH SOM, VICE-CHAIRMAN O R D E R

SJM
In this application the petitioner has prayed for calling for the examination papers (both oral and written), Mark List, Tabulation Register and other connected records, and after perusing the same, a declaration should be made that the applicant has passed the examination in view of the irregular practice and manifest error in the examination procedure relating to the applicant.

2. The applicant's case is that he joined in the post of Surveyor under Director, Survey of India, South Eastern Circle, Nayapali, on 11.10.1975 and is now working as such. His services have been temporarily placed at the disposal of Director, Survey of India, Research & Development, Hyderabad (respondent no.4). Both respondent nos. 3 and 4 are under respondent no.2 Surveyor General of India (respondent no.2). The applicant's grievance is that the Surveyor General of India (respondent no.2) published on 15.1.1995 the merit-cum-select list of candidates who have successfully qualified in the Limited Departmental Examination(LDCE) for selection to Officer Surveyor grade. This select list contained five names out of whom serial no.1 was a general candidate and rest four belong to SC and ST. The name of the applicant did not figure in the select list even though according to him, he had done very well in the examination both written and viva voce. The questions were objective type and he has done well in the written examination and has been able to answer all the questions put to him in the oral test. He also expects that assessment of his CR would also have been good because he has never been communicated with any adverse remark in his CCR. The departmental rules provide that marks obtained by candidates will be communicated to him. In this case written examination was held in December 1993 and oral test was over in March 1994, but the merit-cum-select list was published only on 15.1.1995. Even after publication of results, marks were not communicated to the applicant. He filed representations on 3.4.1995 and 4.5.1995 to get his mark list but this was

S. Sam

not communicated to him. The applicant has stated that subsequently on 7.7.1995 a second list of candidates consisting of 13 names including the names of five candidates who figured in the earlier list dated 15.1.1995 was published. The applicant has pointed out that in the second list published on 7.7.1995 the relative positions of persons whose names were mentioned in the first merit list dated 15.1.1995 underwent change and this, according to the applicant, casts doubt on the correctness of the procedure followed by the respondents in holding the examination and publishing the result. In the context of the above he has come up in this petition with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayer of the applicant. They have stated that for thirteen posts of Officer Surveyor Group-B, LDCE 1993 was held. Written examination was conducted in December 1993 and interview was held on 15.3.1994. Due to pendency of OA No.1378 of 1993 before the Calcutta Bench of the Tribunal, the result of the examination was kept in abeyance till the finalisation of the implementation of the decision of Calcutta bench, dated 10.2.1994 relating to LDCE 1992. The respondents have stated that at the first instance only five candidates had been declared successful in order dated 15.1.1995 at Annexure-1 to the OA. But keeping in view the vacancy position and further consideration by the Board, a list of thirteen successful candidates including those five who had already been declared selected, was announced in the order dated 7.7.1995. The applicant's name did not find place in the select-cum-merit list of the successful candidates. The

S. Jam

break-up of thirteen posts was 9General, 2 SC and 2 ST as per the roster maintained for the purpose. The respondents have further stated that the marks of the applicant were communicated to him by Additional Surveyor General, STI as per the scheme and his representation was also replied to in letter dated 14.7.1995 informing him that he has not found place in the select list of successful candidates. The respondents have stated that for holding the examination and preparing the select list the norms laid down have been strictly followed. The respondents have also enclosed the marksheet of the applicant at Annexure-R/2. In the context of the above facts the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has stated that as the respondents themselves have stated that the examination was held for filling up of 13 posts of Officer Surveyor there was no justification for publishing only 5 names at the first instance on 15.1.1995. The publication of a second list of successful candidates on 7.7.1995 is not in accordance with the rules. It is further stated that the merit list dated 7.7.1995 of 13 candidates contained 8 General, 3 SC and 2 ST candidates whereas the respondents have stated that the break-up of the thirteen posts is 9 General, 2 SC and 2 ST. The applicant has further stated that an incomplete marksheet was communicated to the applicant on 13.9.1995 after nearly eight months of publication of the result on 15.1.1995 and during the pendency of this OA. The marksheet communicated does not contain marks secured by the applicant in the interview and the ACR. These are not qualifying marks, but the marks are to be added to the

J.S.M.

aggregate to determine the applicant's position in the merit list. It is further stated that comparison of the two lists published on 15.1.1995 (Annexure-1) and 7.7.1995 (Annexure-R/1) shows palpable mistake in the sense that one Babu Ram against serial no.11 in the second list dated 7.7.1995 is ranked above P.Rangaila and Sansar Singh at serial nos. 12 and 13, who in the earlier list dated 15.1.1995 were given positions against serial nos. 4 and 5. Having secured positions against serial nos. 4 and 5 in the earlier list dated 15.1.1995, these two persons P.Rangaila and Sansar Singh would not have lost their position in the second list. According to the applicant, this shows gross irregularity in the matter of evaluation of answer papers, tabulation and publication of results. On the above grounds the applicant has reiterated his prayer in the rejoinder.

5. We have heard the learned counsel for both sides and have perused the records.

6. The main grievance of the applicant is with regard to evaluation of answer papers and tabulation of marks. In view of this, in order dated 30.7.1996 the Tribunal directed the respondents to file an additional counter affidavit after verifying the documents stating if all the questions answered by the applicant were properly evaluated and totalled and carry forward was correctly done. The respondents were also asked to submit the answer papers in sealed cover and it was indicated that if necessary the sealed cover will be opened and the answer papers will be looked into. In pursuance of the above order, the respondents filed an affidavit on 23.9.1997 stating that the answer papers of the applicant were verified by the Director, Survey Training Institute,

S. Jam

Hyderabad and it was found that all the answers given by the applicant were evaluated and totalling of marks has been correctly done and total marks awarded have been carried forward correctly. The Director, Survey Training Institute has given a certificate that no questions were left without evaluation. The totalling was correct and the total marks have been carried forward correctly. The applicant has enclosed at Annexure-2 the scheme for the examination which provides that for General English and General Knowledge, each carrying 100 marks, the minimum marks to be obtained are 33 and these two papers are only qualifying papers. In other words, marks obtained in these two papers would not be taken into account for the purpose of arriving at the total marks obtained by the candidate for the purpose of inclusion in the select list. It is also provided under condition no. 5(7) in the scheme of examination. According to the mark list which has been supplied to the applicant and which is at Annexure-R/3 of the counter, it is seen that the applicant has got 57 and 33 marks in General English and General Knowledge, the qualifying papers. The other papers are Pure Mathematics - 150 marks, in which the minimum marks to be obtained are 45. The other paper is Applied Mathematics and Physics or Surveying - 150 marks in which again the qualifying marks are 45. In Pure Mathematics the applicant has got 45 out of 150 and in Applied Mathematics & Physics he has got 60 out of 150. Thus in both these papers he has got more than the qualifying marks. It has been submitted by the learned counsel for the petitioner that according to the marksheet given to the applicant he has got qualifying marks in all the papers. But the marks for interview and Confidential Reports which carry 100 marks in total have

not been communicated to him in Annexure-R/3 and it is submitted that possibly these marks obtained by the applicant in the interview and C.R. have not been added to the aggregate in his case while preparing the select list. As in the instant case the entire thrust of the argument of the applicant is with regard to evaluation of the answer papers, we have opened the sealed cover and gone through the answer papers for General English, General Knowledge & Current Affairs, Pure Mathematics and Applied Mathematics. From this we find that in General Knowledge, the applicant has actually got 27 even though in Annexure-R/3 it has been wrongly mentioned as 33. We have carefully gone through this paper and we find that the applicant has got 30 marks by giving correct answers but in 7 questions he has given wrong answers and on the top of the answer papers it has been clearly mentioned that each question carries 1 mark and wrong/guess answers will fetch negative marks. Because of 7 wrong answers, $3\frac{1}{2}$ marks have been deducted and the applicant's total marks in this paper come to 26.5 which has been rounded off to 27. Thus the applicant has got 27 marks in the paper General Knowledge & Current Affairs as against the minimum qualifying marks of 33. The respondents have wrongly communicated to the applicant that he has got 33 out of 100 marks in this paper. The applicant has thus failed to qualify in this paper. Moreover, it is also seen that in Pure Mathematics where qualifying marks are 45, he has just got 45 and in Applied Mathematics and Physics as against qualifying marks of 45 he has got 60. We have totalled up the marks in these two papers and found that the marking has been correctly done. As a matter of fact

J Jom

in Applied Mathematics he has got 59½ which has been rounded off to 60. Obviously as he has just scraped through the examination in these two papers, obviously he has not come in the merit list and he cannot therefore have any grievance in this regard moreso when in one of the qualifying papers he has got less than the qualifying marks as indicated above but the respondents have wrongly taken him to have got qualifying marks in that paper.

7. The learned counsel for the petitioner has made various other submissions with regard to the so called inconsistencies in the two lists and the fact that the names of two persons have been pushed down in the second list. It is not necessary to refer to these submissions in detail because we have already mentioned this earlier. These submissions have been made by the learned counsel for the petitioner to bring out the point that marking and tabulation have not been done correctly. We have verified the answer papers of the applicant and found that this contention is not correct. The mistake pointed out by us has gone in favour of the applicant. In view of this, the contention of the petitioner that his answer papers have not been evaluated correctly is held to be without any merit and is rejected.

W. J. D. M.

8. The next point made by the learned counsel for the petitioner is that the marks for interview and CR have not been added. We find from the tabulation sheet that these marks have been added in case of the applicant. But even after adding these marks, obviously he cannot come within the select list.

9. The last point urged by the learned counsel for the petitioner is that publication of the second list is not envisaged under the rules and the very fact that in the second list some of the persons who have not been included in the first list, have come up in the second list and some of the persons included in the first list of five persons have gone down shows that there has been manipulation while publishing the second list. We have gone through the tabulation sheet carefully as also the list of thirteen candidates enclosed by the respondents at Annexure-R/1. The first list of 5 candidates has been enclosed by the applicant at Annexure-1 and this has not been denied by the respondents. The respondents have stated that there were thirteen vacancies of which break-up was 9 General, 2 SC and 2 ST. According to the respondents, initially five candidates were declared successful. But keeping in view the vacancy position and further consideration by the Board, thirteen names were published in the list at Annexure-R/1. From the tabulation sheet we have compared the marks of the five candidates whose names were there in the first list and the thirteen candidates whose names are there in the second list at Annexure-R/1. On a careful comparison of these names and the marks obtained by these candidates vis-a-vis the marks given to them in the tabulation sheet, it does appear that while drawing up the ^{1st} list, clear illegalities were committed in so far as several candidates who on the basis of their marks as per the tabulation sheet should have been included amongst the general category candidates were left out. Serial no.2 in the second list is one Sridhar Sahu. He got 182 marks as against Rampal Singh who got 181 marks.

25

Rampal Singh's name was included in the first list, but Sridhar Sahu's name was omitted. But as subsequently his name has been included it can be taken that the mistake committed has been corrected. The respondents have pointed out that out of 13 vacancies 2 were for SC and 2 for ST. In the final list which has come out three SC candidates and two ST candidates have been included. One SC candidate Rampal Singh against Serial no.3 has got higher marks and has been obviously taken against a general vacancy. On the same logic M.Ramachandram who has got 155 marks should have been taken in the select list in the general vacancy because he has got higher marks than the last two general candidates Desh Raj Singh and S.N.Yogendra Nath who have got 152 marks. Had this been done, then in place of the last general candidate another SC candidate would have come in. The applicant has stated about Babu Ram against serial no.11 and who comes above P.Rangaiah Nayak and Sansar Singh. We find that Babu Ram has got less marks than P.Rangaiah Nayak and Sansar Singh. Obviously therefore this list has not been drawn up according to merit nor according to the roster point. In any case, a select list should not be drawn up according to the roster point. At the time of giving appointment to the higher post, roster point has to be maintained. But the point in all this is that the applicant does not succeed in his prayers because of all this. We have already held that his marks have been properly given and tabulated. The mistake, if any, has gone in his favour. The learned counsel for the petitioner has relied on the

J Jm

following decisions:

(i) Subrat Ghosh v. Council of Higher Secondary Education and another,
76(1993) CLT 90;

(ii) Subhransu Mohanty v. Vice-Chancellor, Utkal University, Vani Vihar, Bhubaneswar and another, 82(1996) CLT 331; and

(iii) Manas Ranjan Dash v. Council of Higher Secondary Education, Orissa and another,
1996(II) OLR 592.

These decisions deal with power of Hon'ble High Court for ordering re-valuation even when the rules do not provide for the same. In the instant case, because of our finding that the applicant's marks have been correctly totalled, no case for re-valuation has been made out and therefore these decisions do not go to support the case of the applicant. The other decision relied upon by the learned counsel for the petitioner is Biswa Ranjan Sahoo and others v. Sushanta Kumar Dinda and others, AIR 1996 SC 2552. In this case the Hon'ble Supreme Court have held that where enormity of mal-practices in selection process makes it violative of Articles 14 and 16 of the Constitution, notice to persons affected and whose selection was not in accordance with law, is not required. In the instant case we have found mistakes in assigning relative position in the final merit list at Annexure-R/1 vis-a-vis the tabulation sheet. In view of this, there is no case for quashing the select list as a whole. We direct respondent no.2 to re-publish the select list strictly going by the tabulation sheet (result

JJM

27

-12-

sheet). This should be done within a period of 120 days from the date of receipt of copy of this order.

10. In the result, therefore, the Original Application is disposed of in terms of the observation and direction above. No costs.

←
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
23.8.2000

August 23, 2000/AN/PS