

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PATNA BENCH, PATNA.

Registration No. DA - 419 of 1996

Date of order : 28th April, 1998

Shri Jagannath Mishra, S/o of Shri Shiv Narayan Mishra,
resident of Mohalla- Raghunathpur, P.S.- Sitamarhi,
Sadar, Distt.- Sitamarhi.

..... Applicant.

By Advocate Shri K.K. Thakur.

Versus

1. The Union of Public Service Commission, through its Chairman, Dholpur House, Shahjahan Road, New Delhi.
2. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
3. The Under Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

..... Respondents.

By Advocate Shri Lalit Kishore, Addl. Standing Counsel.

CORAM: Hon'ble Shri L.R.K. Prasad, Member (A)
Hon'ble Shri G. Narasimham, Member (J)

O R D E R

Hon'ble Shri G. Narasimham, Member (J):-

The applicant, Shri Jagannath Mishra a brilliant student passing Matriculation Examination in the 5th rank conducted by Bihar School Examination Board in the year 1989 and passing the Engineering Degree Examination with 76 % marks in the year 1995 from the Indian Institute of

Technology, Kanpur has been debarred from appearing in all future Examinations and selection for a period of 10 years with effect from 26.6.1996, by the Union Public Service Commission on the ground that while appearing in the Engineering Service Examination conducted by the Commission from 20.8.1995 to 30.8.1995 as a candidate allowed another candidate bearing Roll No. 20116 sitting just behind him to copy from his answer book in Civil Engineering-II(Conv.). This impugned order (Annexure-1) has been communicated to the applicant in a letter dated 30.7.1996 by the respondent No. 3.

2. This application has been filed for quashing the impugned order and for a direction to the respondents to publish the result of the applicant in respect of the Engineering Service Examination, 1995. During the pendency of this case, on the prayer of the applicant in MA 234/96 this Tribunal by order dated 16.10.96 directed the respondent to allow him (applicant) to sit in the Main Examination of All India Civil Services ~~in~~ scheduled to be held with effect from 1.11.96 on the condition that the result of the applicant shall be kept in sealed cover and shall not be published till the disposal of this case.

3. It has been asserted by the applicant that he has not deliberately allowed the candidate sitting behind him to copy from his answer book. Simply because of sequence of steps, language and the final answers given by the applicant in the answer book ~~tallied~~ with the

answer book of other candidate sitting behind him, it cannot be presumed that the applicant had deliberately allowed him copying to be done. In MA 234/96 the applicant has assented that the concerned paper is based on numbers and graphs and every correct answer of such question will bear the same steps and answers. It is also the case of the applicant that the Invigilators were continuously moving around the examination hall who could have detected the copying and there was no report whatsoever from them. Moreover, the examination being a competitive one, the applicant could not have allowed anyone to copy from his answer book against his own interest.

4. The respondents in their written statement states that during the course of evaluation of the Civil Engineering paper-II, by the Addl. Examiner, the answer scripts of both candidates being similar were shown to the Head Examiner who categorically confirmed the findings of the Addl. Examiner as to the use of unfairmeans. Because of sequence of steps, language and final answers given since infringed Rule II General, show cause notices were issued to both the candidates. Though the applicant totally denied the allegations, other candidate blamed environment of indiscipline in the Examination Hall. Since copying has not been denied by other candidate, it implicitly lends credence to his indulgence in unfairmeans. On the basis of this material, the respondents passed the

impugned order as at Annexure-1.

5. Thus, there is no dispute that the candidate having Roll No. 20116 was sitting just behind the applicant during the examination of Civil Engineering Paper-II, and the sequence of steps, language and final answers in both the answer books are similar.

5.1. The learned counsel for the applicant contended that these admitted facts would not by themselves establish the case of unfair means indulged in by the applicant and in the absence of any report from the concerned Invigilators, the Addl. Examiner and the Head Examiner could not have come to the conclusion that it was a case of copying and that the applicant was a party to it, specially in paper like Civil Engineering Paper-II. It is not a subjective paper but is based on numbers and graphs, the answer of which normally bears the same steps and sequence. His further contention is that in a competitive examination it is improbable that a candidate against his own interest would deliberately allow another candidate to copy his answers and that when the candidate would be busy in a time bound examination in answering questions. At this stage, it is pertinent to observe that in this application as well as in the show cause submitted to the respondents as mentioned in the written statement, the applicant took these two pleas; Nature of paper of the concerned examination as described in MA has not at all

been controverted by the respondents.

6. The contention advanced on the side of the respondents is that since other candidate in his show cause did not deny to have copied and the sequence of steps, language and the final answers given being identical, there can be no other conclusion but to accept the facts that the applicant was also a party to this unfair means.

7. Having given our anxious thought and consideration to the contentions advanced by both the sides, we have no hesitation to observe that there is no force in the contention advanced on the side of the respondents.

Admittedly, there has been no report from the concerned Invigilator about this unfair means. It is also not improbable that a in paper like this the sequence of answers would be similar. The show cause sent by other candidate to the Commission has not been filed in this case by the respondents to support their case that other candidate had not denied to have copied. Even assuming that he has copied, it cannot necessarily lead to ^{an} inference that the applicant allowed him to copy, especially in a competitive examination where a brilliant student like the applicant would be ~~too~~ busy in answering questions within the ¹⁵⁰ ~~100~~ time schedule.

8. At this stage, it is useful to refer to the latest decision of the Hon'ble Apex Court reported in AIR 1998

SC page 5 (Rajesh Kumar vs. Institute of Engineers) dealing with a case of cancellation of result and debarring candidates for a period of two years on the ground of similarity in answers and thus making out a case of copying and malpractices in the examination conducted by the respondents, in absence of any report from the concerned Invigilator, ~~The Hon'ble Apex Court~~, while quashing the order of cancellation of result and debarring observed as follows;

"The test of a book as the common source for cramming establishes no connection. That per se cannot be evidence of any conspiracy between the c师范ers to adopt unfair means in the examination unless there be material to show that there was copying of the answer books, descended from the answer book of one of the candidates or directly from the book leading to the copying by others".

9. The facts in this application are more or less similar to the facts of the case dealt by the Hon'ble Apex Court. Even we cannot overlook the improbability factor that the applicant, a brilliant student appearing in competitive examination would deliberately allow another candidate to copy his answer against his own interest. This may be probable if the other candidate~~s~~ is his intimate friend or close relation, which of course is not the case of the respondents.

10. In view of our discussion above, we are constrained to hold that the respondents on the basis of the facts

available with them could not have jumped to the conclusion that the applicant had allowed other candidate to copy his answers and could ~~not~~ have marred the career of the applicant by banning him from appearing in any examination for a period of 10 years which by any means is harsh.

11. In the result, we quash the order of respondents contained in letter dated 30.7.1996 issued by the respondent No. 3 (Annexure-1) and direct the respondents to publish the result of the applicant in respect of the Engineering Service Examination, 1995 and also the result of the applicant in respect of All India Civil Service Examination, 1996 appeared by him on the strength of the order dated 16.10.96 of this Tribunal.

12. The OA is allowed, but there is no order as to costs.

28.4.98
(G. NARASIMHAM)
MEMBER (J)

28.4.98
(L.R.K. PRASAD)
MEMBER (A)

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