

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. xxxx
T.A. No. 2/89

198

DATE OF DECISION 22 - 2 - 1991

Suresh Balchand Kanjan & two Ors Petitioner(s)Mr.C.U.Singh

Advocate for the Petitioner(s)

Versus

Union Chairman, Staff Selection
Commission and two others.

Respondent

Mr.P.M.Pradhan

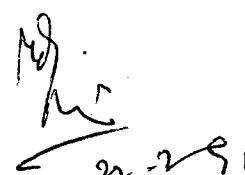
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Appln. No. 2/89

Suresh Balchand Kanjan,
Barrack No.802,
Room No.22,
Telephone Exchange Road,
Near Raju Co-op. Housing Society,
Ulhasnagar - 421 003
Dist. Thane,
Maharashtra.

Jaiprakash Gobindram Shahdadpuri,
Gobind Niwas,
1st Floor,
18A, Sindhu Bagh,
Tilak Road,
Ghatkopar (East),
Bombay - 400 077.

Raibahadur Suryabali Singh
A-107, Topiwala Building,
Dr. Ambedkar Road,
Parel,
Bombay - 400 012.

.. Applicants

vs.

1. Chairman
Staff Selection Commission,
Block No.12, C.G.O. Complex,
Lodhi Road,
New Delhi - 110 003.
2. Chairman,
Central Board of Excise and
Customs,
North Block,
Parliament Street,
New Delhi - 110 002.
3. Principal Collector of Customs
and Central Excise (Western Zone),
Office of New Custom House,
Ballard Estate,
Bombay - 400 038.

.. Respondents

Coram: Hon'ble Vice-Chairman Shri G. Sreedharan Nair
Hon'ble Member (A) Shri M.Y. Priolkar

Appearances:

1. Mr. C.U. Singh
Advocate for the
Applicants.
2. Mr. P.M. Pradhan
Counsel for the
respondents.

JUDGMENT:

(Per M.Y. Priolkar, Member (A))

Date: 22-2-1991

This Writ Petition (No. 1847/86) was originally

filed in the High Court of Bombay by three Inspectors of Central Excise of the Bombay Collectorate and on transfer to this Tribunal under Section 29 of the Central Administrative Tribunals Act, 1985 it has been renumbered as Transferred Application No.2 of 1989.

The petitioners have the grievance that they were entitled to be recommended by the Staff Selection Commission (the Commission, for short) for appointment to the posts of Preventive Officers in the Customs Department on the basis of the results of the combined competitive examination of 1984, but this has not been done.

2. The facts of the case may be, briefly, narrated. The Staff Selection Commission issued an advertisement on 28-4-1984 inviting applications for the posts of Inspectors of Central Excise, Examiners in Customs Department, Preventive Officers in Customs Department and Inspectors of Income Tax. A common written examination was held on 11th November, 1984 at different centres. The petitioners who had applied for the posts of Preventive Officers and Examiners in that order of preference, were also interviewed on 24-4-1985 after they had passed the written examination. The first zone wise and category wise merit list of successful candidates was published on 14-9-1985. According to the petitioners their names did not find a place in this list, presumably because of the short time

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because at that time the Commission wanted to nominate only 21 candidates for the posts of Examiner and 91 candidates for the posts of Preventive Officers as vacancies were available only to this extent at that time in these two categories.

3. The petitioners state that it was mentioned in the Commission's advertisement for this selection, that vacancies in the posts of Inspectors of Central Excise and Income Tax were to be filled up from separate zone wise lists to be drawn up for the 18 zones specified in the advertisement, according to the merit order, and the first preference given by the candidates for the said categories. Thereafter, such vacancies could be filled up on the basis of inter-zonal lists of contiguous zones and, finally, on the basis of devetaling of the zonal lists where appointments are made by a single office for areas included in the different zones. However, appointments to the posts of Preventive Officers and Examiners were to be done on all India basis according to the merit order and the preference given by the candidates for these posts.

4. According to the petitioners, after the publication on 14-9-1985 of the main list of successful candidates, an urgent requisition for over 400 posts of Inspectors of Central Excise for the Western region was placed on the Commission, which in October/November, 1985 forwarded a list of

287 candidates, out of the remaining candidates of 1984 selection, based on merit, preferences given and integration of the various zonal lists, and also forwarded another list of 93 candidates out of the remaining, qualified candidates of the 1983 (previous) selection for appointment against the vacancies in the posts of Inspectors of Central Excise. The petitioners state that candidates like them who had opted for Preventive Officers and Examiners only had been completely omitted while preparing the said list of 287 candidates by the Commission.

5. The petitioners further state that in December, 1985, about 150 vacancies occurred in the category of Preventive Officers in the Bombay Custom House which were also required to be filled in urgently, and, the Bombay Custom House (with the concurrence of the Commission post-facto), appointed candidates from the list of 287 candidates forwarded by the Commission in October/November, 1985 for the posts of Inspectors of Central Excise to the post of Preventive Officers. The petitioners allege that this is wholly illegal and arbitrary since nominations to the posts of Preventive Officers and Examiners in the Customs Department are to be made on all India basis according to the merit order and preferences of the candidates to the said categories. The petitioners submit that for this

supplementary list, the Commission did not follow the same principle which they had followed in all previous selections and also while publishing the main list on 14-9-1985 from the results of 1984 selection, namely, if a candidate has exercised his first preference to the post of Inspector of Central Excise and another candidate's first preference is for Preventive Officer, they have to be nominated by the Commission only to the categories to which the preferences are shown by the candidates. They argue that the posts of Preventive Officers cannot be filled in by a candidate who might be having more marks in the aggregate than another candidate, if the former had exercised his first option or preference to another category than the category of Preventive Officer, and the latter candidate has to be nominated for the post of Preventive Officer if his first preference is to that category.

6. In the written reply dated 16-6-1986 on behalf of Respondent No.1, it has been stated that in the notice for examination of 1984, the Commission had reserved for itself the right to recommend candidates for the posts of Inspectors of Central Excise and Income Tax to any zone irrespective of the centre indicated by the candidate. It is also stated that against 369

vacancies advertised, the number of vacancies in all four categories had increased to about 2264 against which only 1492 candidates had become eligible for appointment on the basis of the minimum qualifying standard fixed by the Commission for the 1984 examination. The Commission prepared a reserve panel of 287 candidates on the basis of the all India ranks obtained by the candidates based on the minimum qualifying standard fixed by the Commission. All left over candidates, i.e. those not included in the list of recommended candidates - who had attained that standard were included in the reserve list, irrespective of their option for different posts. That means, even such eligible candidates who had not opted for the post of Inspector of Central Excise figured in the reserve list. The Commission conveyed their consent to operate the said reserve list of 2857 candidates for filling up vacancies in all the four categories of posts in the Central Excise, Customs and Income Tax Departments. It has also been stated that none of the applicants was eligible for inclusion in the said reserve list as all of them had failed to attain the minimum qualifying standard fixed by the Commission for candidates all over India.

7. The grievance of the petitioners is that their allegedly rightful claim for selection

to the posts of Preventive Officer and Examiner in the Customs Department has been ignored while selecting a large number of candidates with far lower marks in the aggregate. They also allege that their marks both in the written test as well as the personality test(viva) have been arbitrarily and unlawfully reduced by the Respondents under the guise of moderation. The respondents have admitted that the marks in Paper II and Paper III valued by the examiners were moderated on the recommendation of the Head Examiner based on actual revaluation of random scripts originally valued by the two examiners. Marks in Personality Test were moderated as the average of the marks awarded by the Interview Board at five different stations were found to be much higher than the average of marks of the interview Board presided over by the Chairman/Member, Staff Selection Commission. It is seen from the note dated 22.8.1985 of the Secretary of the Commission that he had suggested (for general category candidates) the final aggregate of 40% marks prescribed for the written examination as also the interview. This was approved by the Chairman of the Commission on 26-8-1990. On 30-8-1985 the Commission decided that all left over candidates (general category) who had obtained 60% in the written part of the examination may be included in the

reserve list for posts of Inspectors of Central Excise and this reserve list was later on permitted to be utilised for all the four categories of posts.

8. We have heard the learned counsel for both sides and also perused the relevant record. According to the notice for the 1984 examination, published in newspapers on 28-4-1984, the examination was to consist of two parts, written and personality test with 400 marks for the written and 100 for personality test. The notice prescribed that only such candidates who attained the minimum standard prescribed zonewise in the written paper in general studies will be eligible for assessment of the other two written papers, and that the overall result of the written examination would be taken into account to decide the eligibility of persons to be called for the personality test. The only discretion retained by the Commission was to fix qualifying marks separately for each zone in any or all the written papers. However, no discretion existed to fix separate qualifying marks for different posts. The final order of merit in the entire examination was to be based solely on the aggregate marks awarded to each candidate at the examination, i.e. the aggregate of the written and personality test. The Hand book of Procedures (Vol. I) published by the Commission also

required that once candidates are found eligible and called for personality test, the sole determining factor for selection thereafter is the aggregate marks obtained in the written plus personality test. Letters calling candidates for personality test also stipulated that the candidature of any candidate who failed to attend the personality test would be cancelled.

9. The written examination was conducted on 11-11-1984 and personality test was held in April-June, 1985. On 22-8-1985, the Commission took a decision after assessing all results to fix 40% minimum in aggregate as the cut-off point for all posts including Preventive Officers/Examiners. All candidates with over 40% in the aggregate (200 marks out of 500) were to be arranged in order of merit and given appointment to the extent of vacancies available. On the basis of the vacancies then existing, 1489 candidates were placed on the merit list, out of which 1377 were for zonal posts and 112 for all India posts of Preventive Officers/Examiners.

10. In the meantime, 771 additional vacancies had arisen in the zonal posts of Inspectors of Central Excise. But the Commission fixed 60% in the written test as the minimum eligibility criteria for appointment to these 771 posts. On 12.9.1985, a list of 287 candidates to fill posts of Inspectors of Central Excise against 771 additional

vacancies was communicated by the Commission, based on the minimum of 60% marks in the written test even if the candidates had scored zero in the personality test or had not even attended the personality test.

11. Evidently, this decision of the Commission to fix 60% marks in the written test as the minimum eligibility for appointment to the additional vacancies was contrary to the procedure outlined in the Notice of Examination published in the newspapers as also against the provisions in the Hand book of Procedures referred to earlier and the stipulation in the letters sent to the candidates calling them for personality test. Admittedly, no orders were ever passed by the Commission fixing 60% in the written test as the minimum eligibility for the post of Preventive Officer/Examiner. Though the respondents contended that this was based on past practice and conventions, they could not establish from the earlier years' selections that such convention was prevailing. Further, the standard adopted for placement in the reserve list should not have been anything different from the standard followed in the preparation of the main list published in September, 1985. We have, therefore, to accept the petitioners' contention that the Commission acted arbitrarily and irrationally by laying down a different qualifying standard for preparation of the said reserve panel of 287 candidates

deviating from the terms of the Notice of Examination published in the newspapers.

12. The applicants' counsel also cited the Supreme Court judgment in the case of *Umesh Chandra Shukla v. Union of India and others* (1985(3) SCC 721) in support of his contention that it was not open to the Commission to reduce their marks under the guise of moderation, in the written test as well as the personality test. The above case related to selection for the posts of Subordinate Judges in the Delhi Judicial Service. Out of the candidates who appeared in the written examination, only 27 candidates qualified to be eligible for Viva Voce test. A list of these candidates was also published. When the results of this written examination were placed before the Full Court (Delhi High Court), the Full Court having regard to the fact that a few candidates who had otherwise scored very high marks would have to be kept out of the zone of consideration for final selection by reason of their having secured one or two marks below the aggregate or the qualifying marks prescribed for the particular paper, directed that moderation of two marks in each paper to every candidate be done. The Supreme Court struck down the list prepared by the High Court after adding the moderation marks holding that such moderation would indirectly amount to an amendment of clause(6) of the Appendix to the Delhi Judicial Service Rules, 1970

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which is of mandatory nature. The Supreme Court held that one of these rules, namely, Rule 16 merely laid down that after the written test the High Court shall arrange the names in order of merit and these names shall be sent to the Selection Committee. Further any amendment to these rules could be made under Article 234 only by the Lt.Governor after consulting the High Court in that regard.

13. Unlike in the above case decided by the Supreme Court, there was no specific rule in the rules of the examination conducted in the present case militating against moderation. The respondents have stated that in the interest of uniformity in the standards in awarding marks, it was necessary to resort to moderation since there ~~were~~ were 17 different examiners for each of papers II and III and 8 different Interview Boards. Further, unlike in the case decided by the Supreme Court where the original list of candidates ~~who~~ had passed the written test without any moderation was already published and the decision for moderation was taken subsequently, the results of the written test prior to moderation in the present case had not been announced at any stage. In the circumstances, we do not think that this Supreme Court judgment can be of any assistance to the petitioners. We are of the view that since very ^a

large number of candidates (nearly one lakh) had appeared at this examination requiring the services of a large number of Examiners and Interview Boards, there was nothing unreasonable or arbitrary in the Commission resorting to moderation in order to maintain uniformity of standards in evaluation of answer scripts or awarding of marks for the Personality Test.

14. In the result, the petition is allowed in part. The final aggregate marks awarded to the petitioners Nos. 1, 2 and 3 are 277, 271 and 205 respectively. The petitioners claim that about 90 persons with lower aggregate marks than the petitioners of whom 58 did not even attend the personality test, have been appointed as Preventive Officer/Examiner. It appears that on the basis of aggregate marks secured by the petitioners, petitioner No. 1 should have been placed at Serial No. 115 and the petitioner No. 2 at Serial No. 140 in the reserve list of 287 communicated by the Commission on 12-9-1985. By way of interim relief the High Court of Bombay had ordered on 28-8-1986 that ~~the~~ three posts of Preventive Officers and/or Examiners shall be kept vacant pending the disposal of the petition. We now direct that the appointing authority shall treat the petitioners Nos. 1 and 2 as included in the

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reserve list of 287 communicated by the Commission on 12-9-1985 at Sr.Nos.115 and 140 respectively or at their other due places depending on their aggregate marks, and on this basis appoint them to the appropriate posts of either Preventive Officer or Examiner depending on the preferences given by them, from the dates candidates with the next lower aggregate marks were appointed to these posts. They shall also be entitled to seniority and difference in wages from that date as well as other consequential benefits.

15. This transferred application is disposed of accordingly, with no orders as to costs.

Up to
22-2-1991.

(M.Y.PRIOLKAR)
Member(A)

Dr. S. S. Nair
(G.SREEDHARAN NAIR)
Vice-Chairman