

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

19.7.2007

Mr. Vinod Boyal, Lawyer Counsel for
Mr. Virendra Lohia, Counsel for applicant
Mr. S.S. Hasan, Counsel for respondents

Heard the learned Counsel for
the parties.

Order Reserved.

(J.P. Shukla)

M(J)

(M.L. Chauhan)

M(A)

25/9/07

order pronounced
today in the open court
by the aforesaid Bench

25/9/07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of September, 2007

ORIGINAL APPLICATION No.565/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Radhey Shyam Kashyap,
S/o Shri Chhote Lalji,
r/o Plot No.D-838, Salt colony,
Malviya Nagar, Jaipur,
Posted as Assistant Salt Commissioner
In the office of Salt Commissioner,
Jaipur

.. Applicant

(By Advocate: Mr. Vinod Goyal, proxy counsel to
Mr. Virendra Lodha)

Versus

1. Union of India
Through Secretary,
Ministry of Commerce and Industry,
Department of Industrial Policy and Promotion,
Udyog Bhawan,
New Delhi

2. Salt Commissioner,
2-A Lavan Bhawan,
Lavan Marg,
Jhalana Doongri,
Jaipur.

.. Respondents

(By Advocate: Mr. S.S.Hasan)

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O R D E R

Per M.L.Chauhan, Member (J)

The applicant has filed this OA thereby praying for the following reliefs:-

- "i) by an appropriate order or direction the Hon'ble Tribunal may kindly call for the entire record and after examination the same be pleased to declare the impugned chargesheet dt. 29.10.1999 (Annx.A/1) read with impugned order dt. 31.7.2003 (Annx. A/2) read with impugned order or rejection of review petition dated 3.11.2003 (Anx.A3) null and void and be quashed and set aside.
- ii) By an appropriate order or direction, the respondents be directed to release one annual grade increment to the applicant which was due on 1.10.2003 and to give all other consequential benefits thereto;
- iii) By further appropriate order or direction, if any order prejudicial/detrimental to the interest of the applicant during the pendency of this O.A. is passed by the respondents, the same may kindly be taken on record and be quashed and set aside.
- iv) Any other order or direction which the Hon'ble Tribunal may deem fit and proper, the same may kindly be passed in favour of the applicant.
- v) Cost of the O.A. may kindly be granted."

3. Briefly stated, facts of the case are that while working as Assistant Salt Commissioner, the applicant was served a Memorandum dated 29th October, 1999 (Ann.A1). The statement of article of charge framed against the applicant are as follows:-

"That Shri Radhey Shyam Kashyap, while working as Supdt. Of Salt, Jodhpur member of the Interview board (Conducted at Jodhpur) during 1992-93 failed to perform his duties sincerely in as much as, he showed lack of integrity, exhibited lack of devotion

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to duty and behaved in a manner unbecoming of a public servant by selecting and appointing three unauthorized candidates and depriving enrolled candidate of the jobs by not only flouting the procedure but also indulging in connivance.

By the above act, Shri Radhey Shyam Kashyap Exhibited lack of integrity and devotion to duty and acted in a manner unbecoming of a public servcant as contemplated in rule 3(i)(ii)&(iii) of CCS (Conduct) Rules, 1965."

Statement of imputation of misconduct (Annexure-II) was also enclosed with the aforesaid memorandum, which is reproduced as under:-

"That Shri Radhey Shyam Kashyap while working as Supdt. of Salt, Jodhpur during 1992-93, in the office of Asstt. Salt Commissioner, Jodhpur failed to perform his duties sincerely in as much as:

(1) During the interview registration cards of all three selected candidates were not seen/checkered by him.

(2) Separate sheets of given marks are not available as per statement of Shri C.P.Bhatiya (Member of the interview board) which was prepared by him during interview.

Extra ordinary/Exorbitant marks were given to all three selected candidates on the request of their relatives.

The aforesaid acts of Shri Radhey Shyam Kashyap the then Supdt. of Salt. Jodhpur were unbecoming of him as public servant."

After receipt of the Memorandum the applicant made request dated 16.11.1999 and 2.12.1999 for demanding copies of relevant documents which formed the basis of framing of chargesheet, but request of the applicant was not exceeded to and on the other hand the authorities concerned were pressing hard upon

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the applicant to submit reply to the aforesaid Memorandum so that they can further proceed in the matter. In these circumstances, the applicant filed reply to the chargesheet denying all the allegations.

It is further stated that Inquiry Officer was appointed and the Inquiry Officer inquired into the charges. The Inquiry Officer in his report has held the charges as not proved. Thereafter the Central Vigilance Commission was consulted and the Commission did not agree with the report given by the Inquiry Officer and held that the article of charge in full and statement of imputation except No.2 can be held as proved and advised imposition of a suitable major penalty on the applicant. Copy of the Inquiry Report alongwith copy of the advice of the CVC and the reasons of the Disciplinary Authority for disagreement with the report of Inquiry Officer was sent to the applicant and the applicant submitted his representation dated 16th August, 2002 on the report of the inquiry. Thereafter the Union Public Service Commission (UPSC) was also consulted and the UPSC advised imposition of penalty of reduction of pay by one stage in the time scale of pay for the period of one year with cumulative effect on the applicant. Accordingly, a penalty of reduction of pay by one stage in the time scale for a period of one year with

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cumulative effect was imposed on the applicant vide order dated 31st July, 2002 (Ann.A2).

Aggrieved by the aforesaid order, the applicant preferred a Review Petition dated 24th September, 2003 (Ann.A13) and the aforesaid Review Petition was dismissed vide order dated 3rd November, 2003 (Ann.A3).

Regarding first imputation of charge viz. registration cards of three selected candidates were not checked, the applicant has pleaded that the entire list which includes names of all candidates including the so called 7 fake candidates was prepared at the Head Office, Jaipur which was brought by the Assistant Salt Commissioner (Admn.) Jaipur to Jodhpur and on the basis of the aforesaid list prepared at Head Office, the interview committee comprising of Chairman and another Member, Assistant Director, SISI and the applicant interviewed the candidates and the applicant has no role whatsoever either in preparation of the aforesaid list or in insertion/deletion of any name in the aforesaid list and limited role of the applicant was to interview those candidates whose names find figure in the aforesaid list. Regarding second imputation of charge on which show-cause notice, regarding note of dis-agreement with inquiry report, was issued viz. allotment of extraordinary/exorbitant marks to the selected candidates, it is stated that the applicant only participated in the capacity of one

of the Members of Interview Board, which was presided/chaired by the Chairman of the Interview Board and he had written the marks as per the consensus arrived at by all the 3 members of the Interview Board and in these circumstances by no stretch of imagination the applicant could have been leveled the aforesaid allegations. The statement prepared by the Head Office, Jaipur which was brought and was given to the Members of the Interview Board is annexed at Ann.A12.

In the grounds, the applicant has stated that impugned chargesheet dated 29.10.1999, order of the disciplinary authority dated 31.7.2003 and the order dated 3.11.2003 are not legally sustainable in the eyes of law because the applicant while posted as Superintendent of Salt, Jodhpur was one of the members of the Interview Board consisting of three members namely, Assistant Salt Commissioner (Admn.) Jaipur who was Chairman of the Interview Board, the Assistant Director, SISI Department Jodhpur who was second member and the applicant was third member of the Board. The Chairman of the Selection committee recommended the result of the Interview Board to the office of appointing authority i.e. Dy. Salt Commissioner (Hqrs), Jaipur who after going through the entire proceedings and examining the entire record issued appointing order in favour of the selected

candidates and therefore, the applicant could not have been inflicted with the charge of dereliction of duty and unbecoming of Government servant. It is further stated that the candidates who were interviewed, their documents including certificates, Employment Exchange Card etc. were all processed in the head office at Jaipur and Chairman of the Interview Board brought the entire record of the candidates to Jodhpur and role of the applicant was only to the extent of a Member of the Interview Board. It is further stated that the Disciplinary Authority while imposing the penalty has placed reliance upon the so called deposition dated 2.11.1998 made by the applicant before the CBI although the aforesaid deposition was never exhibited during the enquiry nor it was placed reliance upon even by the Inquiry Officer. It is also stated that the Disciplinary Authority and the Reviewing Authority has completely overlooked the aspect that so far as original documents i.e. list sent by Employment Exchange, Churu to the officer of Salt Commissioner had in fact 40 names while the list which was sent from the office of Salt Commissioner to the Interview Board, although contain 40 names but certain names were deleted and certain another names were inserted, as a result of which those incumbents who were neither registered with the Employment Exchange, Churu nor their names find figure in the original list sent by the Employment Exchange, Churu to Salt Commissioner,

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Jaipur find figure in the subsequent list and in these circumstances, the applicant could not have been held responsible being a member of the Interview Board and the basis on which the charge sheet has been framed is totally illusory, based on mere surmises and conjectures. As such, the charge itself should be dropped, however, no heed was paid by the respondents upon the reply submitted by the applicant and without going through the reply, the Disciplinary Authority proceeded to appoint Commissioner of Departmental Inquiry (CVC) to enquire into the charges levelled against the applicant. It is further stated that after recommendations were made by the Interview Board, the Head Office at Jaipur did not send the names of the selected candidates to the Employment Exchange for the purpose of their names being scrolled out from the Employment Exchange.

It is on the basis of the aforesaid facts, the applicant has filed this OA praying for the aforesaid reliefs.

4. The respondents are contesting the OA by filing reply. In the reply the respondents have stated that a letter was issued by the Assistant Salt Commissioner (Admn.), Jaipur to Assistant Employment Officer, Churu requesting for sponsoring suitable candidates for the post of Sepoy. An LDC incharge of the Employment Exchange office, Churu, prepared two lists of

sponsored candidates. The office copy was prepared as per records and first copy which was sent to the office of Salt Commisioner, Jaipur was forged by the Clerk of the Employment Exchange. Both the lists contained names of 40 persons. The registration number given to seven persons were never enrolled in the record of the Employment Exchange and no registration cards were issued. It is further stated that the applicant was one of the member of the Interview Board. Investigation was carried out and it revealed that three selected candidates were given extra marks. The CBI recommended prosecution against the three candidates and other concerned. The CBI also recommended regular departmental action for minor penalty proceedings against Shri Jagdish Tripathi who was Chairman and the applicant, Member of the Selection Board. The matter was referred to the CVC for their first stage advice and the CVC advised that this is a fit case in which major departmental proceedings are to be initiated against the applicant and Shri Jagdish Tripathi, Chairman of the Selection Board. Accordingly a chargesheet was issued to the applicant. The applicant requested for submission of memorandum upto 20.12.99 and also supply of copy for the documents mentioned in Ann.III. It is further stated that all the documents were in the possession of CBI who have investigated the case, therefore, the department informed the applicant and granted

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extension of time. Thereafter the applicant submitted his written statement of defence. The CVO of CVC was appointed as Inquiry Officer and the Inquiry Officer held the charge as not proved. The case was further referred to the CVC for their second advice. The CVC disagreed with the findings of the Inquiry Officer and advised to imposition of suitable major penalty on the applicant. Thereafter the applicant was given opportunity to submit representation. The applicant vide letter dated 16.8.2000 only reiterated and reaffirmed the stand taken by him during the course of regular inquiry and after examination of the matter, it was felt that there was no merit in the representation submitted by the applicant.

It is also stated that as per procedure, the case as referred to UPSC and the UPSC observed that the selection of ineligible candidates led to non-selection of the enrolled candidates and thus deprived the enrolled candidates of the job opportunities. The UPSC opined that the ends of justice would be met if the pay of the applicant is reduced by one stage with cumulative effect for a period of one year. As such penalty of reduction in the pay by one stage with cumulative effect for a period of one year was imposed on the applicant. The applicant thereafter submitted a Review Petition. The said review petition was considered and it was found that no new material, evidence facts or grounds has been raised by him in

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the Review Application and accordingly the review petition was rejected.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. From the material placed on record, it is evident that selection was conducted for the purpose of employing three Sepoys in the office of Assistant Salt Commissioner. The Selection Committee comprised of three persons namely Shri Jagdish Tripathi, Assistant Salt Commissioner (Admn.), Jaipur and other two members were Assistant Director, SISI and the applicant, who at that time was working as Superintendent of Salt, Jodhpur. From the material placed on record, it is also evident that requisition was sent to the Employment Exchange, Churu and the District Employment Officer enclosed a list of 40 candidates. It is further born out from the record that another list was prepared which is containing particulars of 40 candidates who were interviewed by the Selection Committee. In this list, names of 7 persons were incorporated by deleting certain persons, whose names were not recommended by the Employment Exchange. It is on the basis of this statement/documents the Selection Committee interviewed the candidates and selected 3 persons namely Shri Mohan Lal Raigar, Shri Rajendra Kumar and

Shri Shambhu Dayal, whose names were not sponsored by the Employment Exchange. It has also come on record that these 3 candidates were given extra-ordinary/exorbitant marks by the Selection Committee, being the relatives of employees who were serving in the department. The charge was sought to be proved on the basis of the statement made by one Shri Chunni Lal, SW-5 who at the relevant time was Assistant in the office of Salt Commissioner at Jaipur and who was assigned the work of checking the registration cards of the candidates. As per the statement given by Shri Chunni Lal, SW-5, he checked the employment registration cards of all the candidates except two candidates namely, Shri Rejandra Kumar and Shri Shambhu Dayal who were not possessing registration cards. According to his version, this fact was brought to the notice of the Selection Committee. After inquiry, the Inquiry Officer held the charges as not proved, but the CVC on the basis of document Exhibit-S6 and statement of SW-5 came to the conclusion that charge against the applicant stands proved on the basis of probability as it was the responsibility to check the registration cards of all the candidates and that extra-ordinary marks were given to these 3 persons. Thereafter the disciplinary authority on the basis of the opinion given by the CVC, issued a show-cause to the applicant thereby giving him opportunity to put forth his case on the basis of note of dis-

agreement. The applicant gave his reply and the matter was referred to the Union Public Service Commission (referred to as the Commission). The Commission however did not agree with the findings given by the CVC regarding the fact that the applicant has failed to perform his duty sincerely by selecting unauthorized candidates and not checking the registration cards of the candidates which was the duty of the Selection Committee. The Commission held that checking of registration cards had been dealt with by the dealing hand namely SW-5 but it was the duty of the Committee to ensure that only eligible candidates appear before them. No doubt, it was the duty of the applicant, but the applicant had no role in calling of list from the Employment Exchange and also he could not have been in the know to what was happening between the officials of the Employment Exchange and the staff member of the Salt Commissioner office. We agree to this part of the observation made by the Commission, more particularly, when the so called forged documents/statement of candidates was prepared at Jaipur and this list was brought to Jodhpur by the Chairman of the Selection Committee as well as SW-5. The applicant, only a co-member, was asked to participate in the Selection Committee meeting and the applicant has no role in calling the list from the Employment Exchange and did not know of what was happening between the staff member in the

Salt Commissioner office at Jaipur and the officials of the Employment Exchange, where the said list was prepared. However, the Commission found the applicant guilty on the charge that the applicant connived with 3 unauthorised candidates in place of 3 enrolled candidates and thus recommended that in the totality of facts and circumstances of the case, it would be in the interest of justice, if the pay of the applicant is reduced by one stage with cumulative effect for a period of one year. Accordingly, the advice of the Commission was accepted and the Disciplinary Authority held the applicant liable for this part of the charge and awarded penalty as recommended by the Commission. This order of the Disciplinary Authority was further confirmed in review by the Reviewing Authority.

7. The question which requires our consideration is whether the observation made by the Commission regarding the fact that 3 candidates selected were given abnormal marks and thus the applicant is guilty of misconduct, it will be useful to quote para 3.5 of the Commission's report which thus reads:-

"3.5 With regard to component No.(v) the Commission observe that the CO in his deposition dated 02.11.1998 made before the CBI has, inter alia, stated that the panel of candidates was drawn up on the basis of performance of the candidates and some relaxation was also given by the Selection Committee to the selected candidates as they were relatives of officials in the office of the Salt Commissioner and the final list was made by them after full discussion with the Chairman and the other Members of the

Selection Committee. This statement of the CO cannot be ignored even though he did not opt for general examination before the IO as per rule 14(18) of CCS (CCA) Rules, 1965. The Commission also observe that it is also a matter of record that the three candidates finally selected were given abnormally high marks for "general awareness" whereas the remaining candidates had been given abnormally low marks for "general awareness". It is thus established that three unauthorized candidates for whom lobbying had been done by some officials of the office of Salt Commissioner were given abnormally high marks and were selected finally by the committee to which the CO was member."

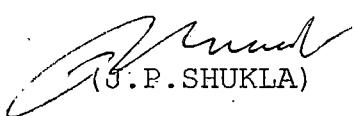
We have given due consideration to the findings recorded by the Commission, on which penalty has been imposed by the Disciplinary Authority and which findings were maintained by the Reviewing Authority. We are of the view that such a finding is legally untenable for more than one reason. From para 3.5, as quoted above, it is evident that for the purpose of arriving at the aforesaid finding the Commission has relied upon the statement made by the Charge Official/applicant before the CBI on 2.11.1998. Admittedly, this statement was not a part of the chargesheet/listed documents, as such, this could not have been made basis for holding the applicant guilty of the charge. That apart, this being a incriminating material relied by the Commission, it was incumbent upon the authorities to put all the incriminating material including this part of version of the applicant for the purpose of examination before the Inquiry Officer as per Rule 14(18) of CCS (CCA) Rules, 1965 and the matter could have been remitted back to

the Inquiry Officer for that purpose. This having not done, serious prejudice has been caused to the applicant and no incriminate material could be relied against a person so long he is not examined in terms of the aforesaid rule.

8. It may also be stated here that Shri Jagdish Tripathi, who was Chairman of the Selection Committee and was supervising the whole selection process and in whose office list of candidates as sponsored by the Employment Exchange was received and scrutinized and who was awarded a penalty of reduction of pay by two stages in the time scale of pay for a period of two years, a penalty higher than the penalty awarded to the applicant, filed OA No.268/2006 before the Central Administrative Tribunal, Amhedabad Bench and the said OA was allowed by holding that document S-6 was placed before the Selection Committee by the administration section of the Salt Commissioner through Shri Chunni Lal (SW-5) and there is no procedure for checking the registration cards by the Selection Board. It was further held that there is a conflict between the CVC and UPSC advice on the testimony of Shri Chunni Lal SW-5, and nothing is said either in the order or in the written statement as to why the CVC advice is accepted and the UPSC advice is dis-regarded. It was further held that disciplinary authority relied upon the document which was not

proved to be part of the chargesheet. The judgment rendered by the Admedabad Bench has attained finality and the Department has also implemented the said judgment vide order No.7/4/06-Vigilance dated June 26, 2007, which is taken on record. The applicant is not only similarly situated to that of Shri Jagdish Tripathi, Chairman of the Selection Committee, whose role/involvement in the selection process was admittedly higher as compared to the applicant, but stand on better footing as per the material placed on record, the OA is also liable to be succeeded on this ground also.

9. Thus, for the foregoing reasons, we are of the view that the applicant had made a case for our interference. Accordingly, the impugned order dated 31.7.2003 (Ann.A2) and the order dated 3.11.2003 (Ann.A3) are quashed and set-aside. The applicant will be entitled to all consequential benefits on account of quashing of the said orders including arrears of salary etc. This order shall be implemented within a period of 3 months from the date of receipt of a copy of this order. No costs.



(J.P. SHUKLA)

Administrative Member

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(M.L. CHAUHAN)

Judicial Member