

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 776/2002
Miscellaneous Application 444/2003

Jabalpur : this the 7th day of August, 2003.

Hon'ble Mr. J.K.Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

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Jaideep Ahlawat S/o Sh.Suraj Prakash,
Aged about 28 years,
R/o Shop Cum Flat No.5,
Sector 16 A Faridabad
Haryana

(By Advocate : Mr. Manoj Sharma) Applicant.

VERSUS

1. Union of India
through the Secretary,
Department of Personnel & Training,
Ministry of Personnel & Public Grievances,
and Pensions, North Block
New Delhi.
2. The Staff Selection Commission,
Department of Personnel & Training,
Ministry of Personnel Public Grievances
and Pensions, Block No. 12,
Mantralaya Karyalaya Parivar,
Lodhi Road, New Delhi through its Chairman.
3. The Secretary,
Staff Selection Commission,
Department of Personnel & Training,
Ministry of Personnel Public Grievances
and Pensions, Block No. 12,
Mantralaya Karyalaya Parivar,
Lodhi Road, New Delhi.
4. The Dy. Director,
Madhya Pradesh Region,
Staff Selection Commission,
Department of Personnel & Training
Ministry of Personnel, Public Grievances
and Pensions,
Nishant Villa, F Jal Vihar Colony,
Raipur 492 001 (Chhattisgarh)

(By Advocate : Mr. B. Da.Silva) Respondents.



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ORDER

BY J.K. KAUSHIK :

This Application has been filed by the applicant mainly praying for the following reliefs :-

- "i) call for entire material record pertaining to the conduct of the examination and special examination of the applicant including the answer sheet, tabulation of the original examination, master keys and other relevant material;
- ii) quash and set aside the impugned orders, dated 14.6.2002 and 17.7.2002 Annexures A/12 and 14;
- iii) direct the independent evaluation of the Master key and that of the answer sheets of the applicant with full benefit of dubious incorrect questions in favour of the applicant and re-computation thereof and consideration of the applicant on the basis of original scheme of examination where after, if the applicant is found eligible as a logical consequence, appropriate direction pertaining to appointment of the applicant be also issued;
- iv) direct an independent enquiry into the entire conduct of the selection process in question, original as well as the special examination for the applicant in a time bound manner and the guilty be dealt with appropriately."

2. Skipping the superfluities, the material facts leading to filing of this O.A. and for resolving the controversy involved, are that applicant applied for appointment as Inspector and Sub Inspector in the Central Bureau of Narcotics in pursuance with Notification No. 2/99 issued by the Staff Selection Commission (SSC), M.P. Region in Employment News 10-16th July, 1999 and his candidature was cancelled due to over age ignoring the age relaxation clause. He along with another candidate, filed OA 737/2000 challenging the order cancellation of their candidature before this Bench which came to be allowed

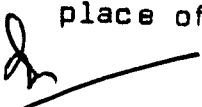
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on 13.3.2001 with a direction that applicants be allowed to appear in the next examination for the post in question with certain benefits of seniority etc. He also approached the High Court of Madhya Pradesh at Jabalpur against the order passed by the Tribunal for a limited relief of fixing up the time bound programme for examination by way of Writ Petition No. 1648/2001. The requisite information was called and it was stated on behalf of respondents that the examination would be held within a period of four months and applicant would be permitted to appear along with other similarly situated persons.

3. Certain modification was also sought by the SSC in the order passed by the Hon'ble High Court. The applicant got a communication made through his counsel to the office of SSC Madhya Pradesh Region on 6.4.2002 with a request that the date of examination be informed well in advance in addition to giving a clear indication regarding the scheme of examination. The admission card was received on 20.5.002 for examinations of Sub Inspector/Inspector scheduled to be held on 2.6.2002 at 10.00 AM and 2.00 PM respectively. Four subjects have been indicated therein inwhich the examinations were to be held. There was hardly any time to enter into any effective communication regarding diametrical difference in the scheme of examination from the one contemplated in the advertisement. In the advertisement there were only two subjects but, the examination was conducted in four different subjects. He pointed-out to the Invigilator but, he told that this is a special examination and applicant may answer the questions as per his desire. It is also submitted that despite this he did very well in all the subjects and performed over 80% ~~in~~ therein.

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4. The further case of the applicant is that he was never in know as to what was the cut off percentage for original examinations. No waiting list has been prepared and it was not clear if the original vacancies are not filled-up, who would be entitled for appointment from the list. As per the scheme after qualifying the examination a candidate is required to face viva voce and physical standard. It is also averred that the questions in the papers were so ambiguously worded and make it difficult to answer. Some of the examples are indicated in Annexure A/11 and such mistakes and ambiguity/dealt with by comparing answer-sheets with the master key of answers. He was informed vide impugned communication dated 14.6.2002 that he has not qualified in the written part of the examination for either of the posts in question. He submitted a representation dated 25.6.2002 to the Chairman requesting for disclosure of his marks and also made further request that his papers be re-checked and he be given an opportunity to see his answersheets. He also personally contacted the SSC at New Delhi but with no ~~circumstances~~ satisfactory reply. He was informed vide letter dated 17.6.2002 that his result has been re-checked and there is no change in the same with further annotation that no further correspondence shall be entertained. The similar was the response in another communication. Certain other details have been given regarding the examination indicating the arbitrariness of the respondents in the matter. However, we refrain from narrating them here for the reason that the same would lead to give rise to plethora and are not considered relevant in view of the order we propose to pass in this case. As regards the grounds, we shall deal with the same at appropriate place of this order.



5. The respondents have vigorously contested the case and have filed a detailed reply to the O.A. The main defence is that applicant was informed the tentative date of examination through telegram and he should have been aware that he was to take part in the selection. It is also averred that the scheme of the examination was exactly the same as that of examination conducted on 2.4.2000. The rule position has been indicated in para 10 stating that in the present case a proficiency test was conducted and not a screening test. Applicant's contention that he has performed 'exemplary well' does not hold good as on evaluation of the answer sheets, it is found that he did not qualify the examination as per the minimum qualifying standard fixed by the SSC for similarly placed candidates in the examination held on 2.4.2000. A waiting list was prepared but it is not operated unless the candidates from main list do not join the department. A candidate, who could not clear written examination will not be subjected to viva voce and physical tests. The allegations casts are without any substance.

The next ground of the respondents is that the question paper is said to have been termed as ambiguous without bringing out any precise ambiguity, nobody else, except the applicant, has questioned the examination. The special examination was conducted strictly as per the orders of the High Court and the marks obtained by the candidates are not disclosed to the candidates. There were three different advertisements for the vacancies of the posts in question for the region of Madhya Pradesh, Central and Northern and it was decided by the SSC to conduct a common examination. A merit list was drawn-up for each region separately and a candidate, who has not applied for a particular region, has

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not been considered for that region. The candidates, were considered for the region for which they have applied. A very detailed rejoinder has been filed refuting the averments made in the reply. Further, certain additional details have been filed in support of the averments made in the O.A.

6. We have heard the elaborate arguments advanced by the learned counsel for the parties and have bestowed our earnest consideration with the submissions made, pleadings and the records of the case.

A Misc. Application 444/2003 was also filed in the matter for summoning the records but, that was ordered to be listed along with main case for due consideration. Respondents have filed certain documents relating to the examination in which applicant has appeared.

7. The learned counsel for the applicant has reiterated the facts and grounds raised in the pleadings submitted on behalf of the applicant. He has consistently and persistently endeavoured to project that applicant has been singled out and subjected to a wrong of a very high order. In his emphatic endeavour he made us to travel through the very advertisement and submitted that the very theme of the examination was changed. He submitted that respondents did not adhere to the scheme provided therein. They did not conduct any preliminary examination and conducted a screening test. In the screening test, they were required to conduct examination only in two papers i.e. General Intelligence and Reasoning & General Awareness. But, applicant was taken at surprise and examinations had been conducted in four subjects i.e. General Intelligence, General Awareness, Arthematic and Reasoning.



The case of the applicant was seriously prejudiced inasmuch as he could not prepare the examinations upto the required standard. He has submitted that he requested the SSC well in advance that he be informed that scheme to be followed in the examination and the probable date thereof so that he is in a position to prepare for the same. Despite a note of caution, respondents moved with adamancy and neither gave sufficient time nor conducted the written test in accordance with the advertisement.

8. The learned counsel for the applicant eloquently contended that the matter did not end-up here. Even the examination papers were full of ambiguities and the possibilities of two answers for one question could not be ruled-out. Despite all this, applicant did very well in the examination but, the result dismayed him and he also strived hard and did represent to the competent authority in the matter but with no fruitful result. The learned counsel for applicant has also tried to persuade us with the possibility of manipulation with the answersheets which also cannot be ruled out and if result is thoroughly checked the manipulation would become evident. He further added that for the reason that there is a great apprehension regarding manipulation with applicant's answer-sheets, therefore, he has requested the Tribunal to call for the relevant records as indicated in MA 444/2003. He also tried to point-out some technicalities which could be used in failing applicant in particular and others in general.

9. On the contrary, learned counsel for respondents with his usual patience and courteousness countered the arguments put forth on behalf of the learned counsel for the applicant.

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He has made a clean breast of facts in a very precise and lucid manner. He reiterated the factual aspect from para 10 of reply and connected with para 3 of advertisement. He has submitted that in the present case, a proficiency test was conducted and not screening test. The proficiency test was conducted strictly as has been indicated in advertisement as well as on similar footings as was done in earlier examination held in the year 2000 in pursuance with the same advertisement. He has also submitted that the examination was only in theoretical subjects having four parts and there is absolutely no difference from the papers contemplated and indicated in the advertisement. Besides this, a discretion is given to the SSC to hold the proficiency test in appropriate subject and that is what the SSC has done. The learned counsel for respondents advanced arguments on ~~numerous~~ another ground of defence that no details of ambiguity in the papers have been pointed out by the learned counsel for the applicant. Not only the applicant but no other candidate had even slightest complaint against the very examination, therefore, there has absolutely been no deviation from the scheme as contemplated in advertisement and as practiced by the respondents.

10. The learned counsel for respondents has made a great emphasis and has submitted that applicant has absolutely no grievance against the examination in question, regarding the question paper or regarding the syllabus till result of the same was declared and he only comes out in one fine morning after he was declared as failed in the written test. There are catena of judgements that once a person has appeared in examination without any protest he cannot complain regarding the same examination after he is declared as failed. In this

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way, the contention of the learned counsel for respondents is that applicant cannot have any complaint in the matter thus, the O.A. cannot be sustained on this very count.

11. Lastly, learned counsel for respondents has submitted that while the respondents have absolutely no reservation for production of the documents asked by the applicant or which may be essential in the interest of justice ~~otherwise~~ but ~~now~~ there is absolutely no reason for resorting to such exercise inasmuch as there is no allegation of mala fide or biasness against any individual or any person who is involved in the process of the selection. The examination being conducted by the SSC is almost perimateria with the functioning of the departmental promotion/appointment committee and the Tribunal or any Court has very limited jurisdiction on the recommendations of such committee. Such Tribunal or the Court of law cannot sit in appeal and examine the matter as is expected from appellate authority. The scope in such matters is very limited and no ground for any review is made out in the present case. Therefore, the O.A. is mis-conceived and the action of the respondents does not call for any interference by this Tribunal.

12. In the rejoinder, learned counsel for applicant has only tried to reiterate his earlier arguments and nothing new was projected.

13. We have considered the rival contentions submitted on behalf of both the parties. At the very out-set, we would first like to deal with the contention of learned counsel for the respondents that once a candidate has appeared



in an examination without any protest, he would have no claim to challenge such examination. As far as the material fact in this regard are concerned that written examination was conducted on 2.6.2003, the result was declared on 14.6.2003 and the representation was made by the applicant on 25.6.2003. We have inquired from both the parties, especially, the learned counsel for applicant, as to whether there was any protest in writing against the examination which was conducted on 2.6.2003 prior to 14.6.2003 when the result of written test was declared, his answer was in negative and only contended that applicant orally informed the Invigilator at the time of examination. He has admitted that it is for the first time he gave in writing on 25.6.2003. We also inquired as to whether any protest was there on behalf of the applicant regarding undertaking the examination, this question also received a negative answer. Thus, it is very clear that applicant has not made any protest in the matter and it is only when he failed in the examination he carried out the after thought exercise. Thus, we fully subscribe with the views of the learned counsel for the respondents that the applicant only protested in the matter after he failed in written test. As regards the position of law on this point, there are unanimity in the decisions up to the Hon'ble Supreme Court that once a candidate has appeared in an examination without any protest and he does not complain about it till he is declared unsuccessful, he has absolutely no right to challenge the same. The issue does not remain ... *res integra*. This proposition of the law is settled by the Hon'ble Supreme Court in Madanlal Vs. State of J&K AIR 1985 SC 1088, Om Prakash Shukla Versus Akhilesh Kumar Shukla AIR 1986 SC 1043, Kapoorbhai Kumarbhai Versus



~~National Capital Region Board and Ors.~~ / and also a judgement of Delhi High Court in R.B. Bhasin and Ors. Vs. D.K. Tyagi and Ors. reported in SLJ 2002 (2) 239. Applying these decisions to the present case, the inescapable conclusion would be that the O.A. cannot be sustained and the same deserves to be dismissed on this ground alone.

14. Now, examining the matter from another angle. Our attention was specifically invited by the learned counsel for the respondents during the arguments towards the representation which is made by the applicant in the matter after he was declared unsuccessful. In the representation, it has been indicated that the applicant prepared for examinations with utmost sincerity and dedication and was expecting more than 80% marks but, it was in utter surprise that he has not qualified in the written subject. It further indicates that details of marks scored by him with cut off percentage were not given and, therefore, he wanted that his paper may be rechecked. From a close analysis of the complaint made by him through the representation it is clearly borne-out that he has absolutely no complaint regarding the procedure followed in conducting the examination or regarding syllabus or anything like following a different scheme than the one contemplated in the advertisement. He had absolutely no grievance against the paper in which he appeared in the examination. He does not allege any mala fide against any-body connected with the examination and simply his grievance was that his answer-sheet may be rechecked and rechecking was done and nothing was found. With this factual aspect we can only reach to one conclusion ~~and~~ that when applicant failed in his own efforts then only he thought of making dead-wood of the history to live and took recourse to



File this O.A. While we could learn a lot regarding this system of conducting the examination by the SSC, the learned counsel for the applicant has not been able to persuade us as to how, the applicant was wrong and in what way the action of the respondents could be termed as arbitrary. In our considered view, the learned counsel for applicant has been trying to build a case on precarious and laudable assertions which could lead one only to a dismal failure. We are not impressed with the submissions made on behalf of the learned counsel for the applicant and are of a firm view that applicant has not been able to make out any case for interference by this Tribunal and the O.A. is totally ground less and as such deserves dismissal.

15. In view of the aforesaid findings, we have abstained from examining the records of the selection which have been very fairly submitted on behalf of respondents and M.A.444/03 for summoning of the records stands rejected.

16. In view of what has been said and discussed above, the O.A. is devoid of any merit and substance and the same stands dismissed with no order as to costs.

Anand Kumar Bhatt
(ANAND KUMAR BHATT)

ADMINISTRATIVE MEMBER

J.K. Kaushik
(J.K. KAUSHIK)
JUDICIAL MEMBER

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JRM

पृष्ठांकन रो/न्या.....जललपुर, दि.....
पत्रिलिपि द्वारा दिला -

- (1) राजित, उच्च न्यायालय, न्यायालय, जललपुर
- (2) अधिकारी न्यायालय, न्यायालय के काउंसल
- (3) व्यापारी न्यायालय, न्यायालय के काउंसल
- (4) व्यापार, न्यायालय, न्यायालय

सूचना एवं आवश्यक नियमों

*Anand Kumar Bhatt
13/8/03*

*Issued
on 13.8.03
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*m. Sharma - Adel
B. dasgupta - Adel*