

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.309 OF 2014

New Delhi, this the 2nd day of November, 2015

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

.....

Ashuthosh Mani Tiwari,
s/o Sh.Santosh Tiwari,
R/o 1089 IInd Floor,
Mukerji Nagar,
Delhi 110009

í í í

Applicant

(By Advocate: Mr.Rakesh Tiwari)

Vs.

Union Public Service Commission,
through its Secretary,
Shajahan Road,
New Delhi 110001

í í í ..

Respondents

(By Advocate: Mr.Naresh Kaushik)

í í ..

ORDER

RAJ VIR SHARMA, MEMBER(J):

The applicant was a candidate of Civil Services Examination, 2012, conducted by the Union Public Service Commission (hereinafter referred to as "UPSC"). After having qualified in Civil Services

(Preliminary) Examination, he appeared in Civil Services (Main) Examination. As per the result of Civil Services (Main) Examination declared by UPSC, he did not qualify in Civil Services (Main) Examination and was, thus, not called for interview. He scored 75 marks each in Hindi (Indian language) and English papers. Both Hindi (Indian language) and English papers were qualifying papers in Civil Services (Main) Examination. As in the said two papers the applicant could not obtain the minimum qualifying marks fixed by UPSC, his other papers in Civil Services (Main) Examination were not evaluated. Suspecting foul play in the evaluation of his answers in both the language papers, the applicant made an application under the R.T.I.Act to UPSC for providing him copies of answer books in both the said papers, and information as to the cut-off marks fixed by UPSC, and marks obtained by the last qualified candidate in the said language papers. As UPSC refused to provide him copies of the said answer books and information, he filed a first appeal under the R.T.I.Act. His first appeal having been dismissed by the first appellate authority under the R.T.I.Act, the applicant filed the present O.A. seeking the following reliefs:

- õ(a) Pass an order or direction to the respondent to provide/modify the criteria to qualify the compulsory papers (Hindi & English) in Civil Services (Main) Exam.; and/or
- (b) provide the minimum qualify marks in compulsory papers; and/or
- (c) show the answer-sheets of the applicant; and/or
- (d) Pass such further or other order/orders as this Honøble Tribunal may deem fit and proper in the facts and

circumstances of this case and in the interest of natural justice.ö

1.1 It is contended by the applicant that qualifying criterion for the language papers was not specifically mentioned in the notice of examination. UPSC adopted arbitrary formula/procedure about qualifying marks in the language papers. His answers were evaluated in a mechanical manner. UPSC acted illegally and arbitrarily in refusing to disclose the minimum qualifying marks prescribed for the language papers, and the marks obtained by the last candidate qualified for interview.

2. Respondent-UPSC, in its counter reply, has stated that the prayer made by the applicant is baseless. The issue of disclosure of qualifying marks, and furnishing of copies of answer books, is pending adjudication before the Honøble High Court of Delhi in **UPSC v. Sh.Potluri Srikanth Kumar**, W.P. (C) No. 3070 of 2013. The Honøble Apex Court, vide order dated 23.11.2012 passed in SLP No.33761/2012 (**Jt.Director & CPIO v. T.R.Rajesh**), stayed the operation of the direction issued by the Honøble High Court of Kerala to disclose the evaluated answer books. The Honøble High Court of Delhi, vide order dated 21.10.2013 passed in W.P. (C) No. 5280 of 2013 (**Rahul Aggarwal v. UPSC**), upheld the reasoning given by UPSC to deny the disclosure of qualifying marks. Along with its counter reply, the respondent-UPSC has filed copies of the aforesaid orders passed by the Honøble Supreme Court and the Honøble High Court of Delhi.

3. No rejoinder reply has been filed by the applicant.

4. We have perused the records, and have heard Mr. Rakesh Tiwari, learned counsel appearing for the applicant, and Mr. Naresh Kaushik, learned counsel appearing for the respondent-UPSC.

5. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions, we have found no substance in the contentions raised by the applicant.

6. In *Maharashtra Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Seth, etc., etc.*, AIR 1984 SC 1543 = (1984) 4 SCC 27, the Hon^{ble} Supreme Court has categorically held that the principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determine whether there has been a proper and fair evaluation of the answers by the examiners. The Hon^{ble} Apex Court has also held that it is in the public interest that the results of public examination when published should have some finality attached to them, and that if inspection, verification in the presence of candidates, and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc., of the candidates, besides leading to utter confusion on account of enormity of the labour and time involved in the process.

7. In *Rahul Aggarwal's case* (supra), the Honøble High Court of Delhi has observed thus:

õí ..Under sealed cover, signed by the Joint Secretary, UPSC, the qualifying marks standard has been produced before us which would reveal that at the CSE-2012 main examination, pertaining to an Indian Language (Compulsory) Paper, maximum marks whereof was 300, qualifying cutoff marks were more than 84.ö

Thus, it is clear that the applicant, having scored 75 marks as against the qualifying/cut-off marks of 84 in Indian Language (Compulsory) (Hindi) paper in Civil Services (Main) Examination, 2012, cannot be said to have any grievance in that regard.

8. The relevant portion of the examination notice, which has been filed by the applicant as Annexure A/1 to the O.A., is reproduced below:

NOTE (i) The papers on Indian Languages and English will be of Matriculation or equivalent standard and will be of qualifying nature; the marks obtained in these papers will not be counted for ranking.

NOTE (ii) Evaluation of the papers, namely, 'Essay', 'General Studies' and Optional Subjects of all candidates would be done simultaneously along with evaluation of their qualifying papers on 'Indian languages' and English' but the papers on 'Essay', 'General Studies' and 'Optional Subjects' of only such candidates will be taken cognizance of as attain such minimum standard as may be fixed by the Commission at their discretion for the qualifying papers on 'Indian language' and 'English' and, therefore, the marks in 'Essay' 'General studies and Optional subjects' will not be disclosed to those candidates who fail to obtain such minimum qualifying standard in 'Indian language and 'English'.

NOTE (iii) The paper-I on Indian Languages will not, however, be compulsory for candidates hailing from the North-Eastern States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram and Nagaland and also for candidates hailing from the State of Sikkim.

INDIAN LANGUAGES

Note 1: The papers on Indian Languages and English will be matriculation or equivalent standard and will be of qualifying nature only. The marks obtained in these papers will not be counted for ranking.

Note 2: The candidates will have to answer the English and Indian Language papers in English and the respective Indian languages (except where translation is involved).

8.1 From the above, it is clear that the examination notice embodied in it the provision about fixation of cut-off marks in the language papers by UPSC, and that UPSC had the discretion to fix the minimum standard and/or cut-off marks for the qualifying papers on 'Indian Language' and 'English'. The terms and conditions of the examination notice being binding on all the candidates, including the applicant, and UPSC, the applicant cannot be allowed to question the fixation of cut-off marks as made by UPSC for the qualifying papers on 'Indian language (Hindi)' and 'English', or to seek modification of the criterion of prescribing cut-off marks for the said qualifying papers.

9. In *Dhananjay Mallik & others v. State of Uttaranchal and others*, (2008) 4 SCC 171, it has been held by the Hon'ble Supreme Court that having unsuccessfully participated in the selection process without any demur, candidates are estopped from challenging the selection criterion. If

the applicant, in the present case, had any valid objection, he ought to have challenged the examination notice, and the selection criterion, without or before participating in the selection process. Therefore, the applicant is estopped from questioning the authority of UPSC or the modality adopted by UPSC in the matter of fixation of cut-off/qualifying marks in the language papers, and the selection process.

10. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

AN