

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3941/2015

Reserved on : 11.01.2017.

Pronounced on : 01.02.2017.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

1. Sh. Puneet Kumar, (90021881) (Appointment)
Aged about 28 years,
S/o Sh. Mehar Singh,
R/o A-197, Gali No. 5, Jagdamba Colony,
Johripur, Delhi.

2. Sh. Ranjeev Shokeen, (90025443) (Appointment)
Aged about 39 years,
S/o Sh. Balwan Singh,
R/o H.No. 6A, Nilothi Village,
Delhi.

3. Sh. Parveen Kumar, (90059004) (Appointment)
Aged about 32 years,
S/o Sh. Mahender Singh,
R/o RZ-24, Block-A, Phase-IV, Prem Nagar,
Najafgarh, New Delhi-110043. Applicants

(through Sh. M.K. Bhardwaj, Advocate)

Versus

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat, IP Estate,
New Delhi.

2. The Principal Secretary (Services),
Govt. of NCT of Delhi,
New Secretariat, IP Estate,
New Delhi.

3. Delhi Subordinate Service Selection Board
Through its Chairman,

FC-18, Institutional Area, Karkardooma,
Delhi. Respondents

(through Ms. Ritika Chawla, Ms. Alka Sharma and Mr. K.M. Singh,
Advocates)

O R D E R

Mr. Shekhar Agarwal, Member (A)

In December, 2009, respondents issued an advertisement for appointment to Grade-II (DASS). The written test for Tier-I was conducted on 29.06.2014. All the applicants herein participated in the same. The result of Tier-I was declared on 21.10.2014. The respondents then called the successful candidates for appearing in written test for Tier-II examination on 29.03.2015. The marks obtained by the candidates in the aforesaid examination were declared on 15.07.2015. The grievance of the applicants is that even after completing the exercise, the respondents did not issue the select list as per the merit of the examination. Repeated representations were made by the applicants but the selection was not finalized. Hence, the applicants filed this O.A. before us seeking the following relief:-

- “(i) To declare the action of respondents in withholding the selection of applicants and as illegal, arbitrary and unjustified.
- (ii) To direct the respondents to finalize the selection process of Grade-II (DASS) post code 90/09 without any further delay.
- (iii) To declare the action of respondents in not issuing the final selection list for appointment to the post of DASS Grade-II as illegal and unjustified and direct the

respondents to finalize the recruitment process without any further delay.

- (iv) To allow the OA with costs.
- (v) Any other orders may also be passed as this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case."

2. During the pendency of the O.A. the respondents passed an order dated 15.03.2016 cancelling the entire examination. The applicants then filed MA-2912/2016 for amending the O.A. to place the aforesaid order on record and also to make necessary changes in the prayer clause as well as in the grounds. This M.A. was allowed by our order dated 22.11.2016. The amended prayer clause now reads as follows:-

- "(i) To declare the action of respondents in withholding the selection of applicants and as illegal, arbitrary and unjustified.
- (ii) To direct the respondents to finalize the selection process of Grade-II (DASS) post code 90/09 without any further delay.
- (iii) To declare the action of respondents in not issuing the final selection list for appointment to the post of DASS Grade-II as illegal and unjustified and direct the respondents to finalize the recruitment process without any further delay.
- (iv) To quash and set aside the Order No. F.1(265)/DSSSB/CC-II/2015/144 dated 15.3.2016.
- (v) To allow the OA with costs.
- (vi) Any other orders may also be passed as this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case."

3. The respondents have filed a short reply on 21.12.2015 and a detailed reply on 10.05.2016. In their reply, they have stated that certain complaints were received by the respondents in which grave irregularities were alleged in the selection process. Therefore, vide order dated 23.12.2015, the respondents decided to scrutinise all the candidates, who were in the zone of consideration to check cases of impersonation before declaration of the result. The respondents DSSSB constituted a Committee comprising of Members from the Board, FSL and Directorate of Vigilance (DOV) to carry out the verification to identify cases of impersonation. The verification process involved:-

- “(i) Document verification.
- (ii) Matching of thumb impression by an expert agency.
- (iii) Handwriting and signature matching by FSL officials.”

2.1 According to the respondents serious irregularities were reported by the Committee. A copy of the report received from the Committee has been annexed by the respondents as Annexure R-2 to their reply. When this report was considered in the Government, it was concluded that the examination process had been seriously vitiated and, therefore, deserves to be cancelled. Accordingly, order dated 15.03.2016 was passed cancelling the selection process.

4. We have heard both sides and have perused the material placed on record. Learned counsel for the applicants Sh. M.K. Bhardwaj stated that there was no need to cancel the examination. Drawing our attention to the report of the Committee Sh. Bhardwaj argued that the Committee has observed as follows:-

- “1. Document verification of the present candidates was completed by the identified DSSSB officials along with the Vigilance Department officials. No irregularity was found in the documents of the 281 present candidates.
2. In regard to 02 Candidates (Sh Dinesh Kumar Roll No- 90003227, Sh Kishan Kumar Roll No- 90057546), all the 6 available thumb impression records with DSSSB were found unfit for match with the live prints captured at the time of verification (Annexure VII).
3. For 01 candidate (Sh Yogesh Kumar Roll No- 90030785) the live print did not match with the Tier-II records but was found matching with Tier-I records and application form (Annexure VIII). In the FSL report, suspicious in writing & signature are observed.
4. During verification it was disclosed by 02 candidates (Sh Deepak Mann Roll No- 90038154 and Sh Amit Khatri Roll No- 90041220) that they had been imprisoned in the past for their involvement in the paper leak/cheating cases in the UPSC exam and SSC exam respectively. Sh. Deepak Mann was employed in Delhi Police till 2010 as Sub Inspector subsequently he resigned. Sh. Amit Khatri is employed in Income Tax Department at Mumbai and is currently under suspension.
5. While examining the records of all the 09 absentee candidates, it was noticed that Shri Subhash Singh (Roll No.90010887) being earlier called for similar process on 14 August 2015, has a handwritten passage on the FSL expert found it doubtful and wish to re-examine the sample in greater details. The thumb impressions were found unfit for match.

6. In the Biometric verification report of Shri Vikas (Roll No. 90056139), it is mentioned that Application form fingerprint does not match with Tier-I and Tier-II fingerprints. Tier-I and Tier-II fingerprint does not match with each other. And the report of another candidate, Shri Subhash Singh (Roll No. 90010887)- No opinion can be given as Tier-I and Tier-II fingerprints are unfit for matching. Only fingerprint on application form is partially matchable but no reference fingerprint is available for matching. Both the candidates were absent for verification.
7. Photograph of a candidate Sh. Praveen Dabas (Roll No- 90020057) was not available in the application form, Attendance sheet of Tier-I and Tier-II.
8. Significant numbers of candidates were found already working in various Govt. departments like Delhi Police, Central Govt. ministries, MCD etc."

4.1 He stated that it is evident from the observations of the Committee that 281 candidates were found to be absolutely free from blame. He also stated that those who were tainted were also identified by the Committee. Thus, it was possible to separate the innocent from the tainted. Hence, the respondents should not have resorted to cancellation of the selection process all together. Instead of doing that they should have offered appointments to the innocent successful candidates. Sh. Bhardwaj also stated that even in the complaints received by the respondents, the allegations made were not of the nature so as to vitiate the entire selection process. Only impersonation by some candidates was alleged. The Committee after going into great details of verification was able to

separate the tainted candidates from the innocent ones. Thus, these candidates should have been offered appointment.

4.2 During the course of arguments, learned counsel for the respondents had stated that on the recommendations of the Committee, investigation by Anti Corruption Bureau (ACB) had also ordered. The same was still going on and, therefore, it was not possible to declare the result of the aforesaid examination. We had, therefore, asked the respondents to apprise us about the status of investigation by ACB. Accordingly, the respondents filed the status report on 16.09.2016, which is available at pages-257 to 259 of the paper-book. A perusal of para-10 of the status report of the investigation being conducted by ACB reveals that ACB was confining itself to further investigate the conduct of those candidates who were found to be suspect by the Committee. Thus, even in the ACB investigation, there is nothing to suspect the conduct of those 281 candidates, who are found to be innocent by the Committee.

4.3 Learned counsel for the respondents, however, argued that the applicants had only been successful in the examination conducted. Neither the final merit list was prepared nor had any appointment been offered to them. Mere success in the examination does not confer on the applicants' indefeasible right to be appointed. In this

regard, the respondents have relied on the judgment of Apex Court in the case of **Shankarsan Dash Vs. UOI**, (1991) 3 SCC 47, in para-7 of which the following is laid down:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decision in **State of Haryana v. Subhash Chander Marwaha, Neelima Shangla v. State of Haryana, or Jatendra Kumar v. State of Punjab.**”

4.4 Further, the respondents stated that one Sh. Manoj Kumar had sought similar relief from Hon'ble High Court of Delhi in Writ Petition (C) No. 1260/2016. However, when it was brought to the notice of Hon'ble High Court that the aforesaid examination had been cancelled, Hon'ble High Court had dismissed the said petition as having become infructuous vide their order dated 05.10.2016. Thus, the respondents argued that the order of cancellation has been upheld by Hon'ble High Court of Delhi and, therefore, the aforesaid O.A. is also liable to be dismissed. However, we are not impressed by this argument. On going through the aforesaid case, we find that

the prayer made before Hon'ble High Court of Delhi was to direct the respondents to declare the result of the said examination. When it was brought to the notice of the Court that that examination had been cancelled, Hon'ble High Court disposed of the Petition as having become infructuous. The merits of the order dated 15.03.2016 by which the examination was cancelled have not been gone into by Hon'ble High Court of Delhi whereas before us the applicants are seeking quashing of that order. Hence, in our opinion, it is not correct to say that this O.A. has become infructuous.

4.5 Respondents have also relied on the judgment of Apex Court in the case of **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, AIR 2006 SC 2609 to state that the cancellation of the examination was a policy decision taken by the respondents and was beyond the scope of judicial review. They stated that this Tribunal has no jurisdiction to examine the correctness of the reasons which prompted the Government to take this decision.

4.6 Further, they have relied on the judgment of Hon'ble Supreme Court in the case of **UOI & Ors. Vs. Tarun K. Singh and Ors.**, 2001 AIR(SC)2196 wherein Hon'ble Supreme Court had cancelled the selection when grave irregularities and illegalities had been noticed in the selection process.

4.7 The applicants, on the other hand, have relied on the judgment of Hon'ble Supreme Court in the case of **Inderpreet Singh Kahlon Vs. State of Punjab & Ors.**, (2006) 11 SCC 356 wherein it has been held that while setting aside a selection process State has to establish that the process was so tainted that the entire selection is liable to be cancelled and that only if it is found to be impossible or highly improbable to separate cases of tainted persons from those of non-tainted ones, can cancellation of entire selection process be ordered. Hon'ble Supreme Court has also held that equal treatment cannot be granted to un-equals and that protection of interest of honest candidates was also necessary.

4.8 Applicants have further relied on the judgment of Hon'ble Supreme Court in the case of **Joginder Pal & Ors. Vs. State of Punjab & Ors.**, (2014) 6 SCC 644 wherein it has been held that once it was accepted that some of the candidates were untainted and entered service by virtue of their merit and not because of any extraneous considerations, such candidates should be segregated from the tainted candidates instead of cancelling the entire process on the ground that the process smacks of mala fides and malpractices.

4.9 Further, the applicants have relied on the judgment of Apex Court in the case of **UOI & Ors. Vs. Rajesh P.U., Puthuvalnikathu And Another**, (2003) 7 SCC 285 wherein it has been observed as follows:-

“6.....Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation.....”

4.10 Applicants have further stated that in the case of **East Coast Railway and Another Vs. Mahadev Appa Rao and Others**, (2010) 7 SCC 678 Hon'ble Supreme Court observed as follows:-

“26. If a test is cancelled just because some complaints against the same have been made howsoever frivolous, it may lead to a situation where no selection process can be finalized as those who fail to qualify can always make a grievance against the test or its fairness. What is important is that once a complaint or representation is received the competent authority applies its mind to the same and records reasons why in its opinion it is necessary to cancel the examination in the interest of purity of the selection process or with a view to preventing injustice or prejudice to those who have appeared in the same. That is precisely what had happened in Dilbagh Singh's case (supra). The examination was cancelled upon an inquiry into the allegations of unjust, arbitrary and dubious selection list prepared by the Selection Board in which the allegations were found to be correct.”

The applicants have also submitted that in the case of **C.P. Kalra Vs. Air India through its Managing Director, Bombay and Ors.**, 1994 SCC(L&S)476 Hon'ble Supreme Court has observed that selection process cannot be interfered with on vague allegations made by unsuccessful candidates.

5. After considering the submissions of both sides and after going through the judgments relied upon by them we are of the opinion that the law laid down by the Supreme Court is that selection process should only be cancelled as a last resort. It should not be cancelled merely on the basis of vague allegations particularly those made by unsuccessful candidates. The nature of alleged mal-practices must be seen to ascertain the extent of vitiation of the selection process. Every effort should be made to separate the meritorious and innocent candidates from the tainted ones. Only when it is found that it is impossible to do so or highly improbable to do so, the selection process be cancelled. Otherwise cancellation of selection process would result in granting equal treatment to unequals, namely, innocent and honest candidates on the one hand and the tainted ones on the other hand. The irregularities noticed must be of such nature so as to vitiate the entire selection making it impossible to segregate the innocent and meritorious candidates from the rest. Without doing this exercise, State action of cancellation of the selection process would be deemed to be arbitrary and unjustified even though successful candidates have no indefeasible right to be appointed. If under such circumstances, Courts interfere and set aside the cancellation of selection by the State, it would be very much within the scope of judicial review.

6. In the instant case, we find that the nature of irregularities alleged was impersonation by some candidates. Leakage of question paper was not alleged making it impossible to decipher who is the beneficiary of such leakage. The respondent DSSSB took effective action to ascertain the extent of irregularities noticed and made an effort to segregate the innocent candidates from the mischief makers by constituting a Committee for this purpose. The Committee went into details each of every candidate likely to figure in the merit list and found that 281 such candidates were free from blame. This is evident from the observations of the Committee annexed with the affidavit of the respondents (page-206 of the paper-book) in which in para-1 itself it has been stated that no irregularity was found in the documents of 281 present candidates.

7. The respondents had also ordered an ACB investigation. We have perused the status report submitted by ACB also, which is available at pages-257 to 259 of the paper-book. A mere reading of the same and in particular paras-10, 11 and 12 would make abundantly clear that ACB investigation although still in progress, is confined to only those candidates, whose conduct was found to be suspect by the Committee constituted by DSSSB. Thus, it can be inferred that the 281 candidates, who were found to be innocent by the Committee are also not part of the ACB investigation.

8. Under these circumstances, it is evident that 281 candidates, who were likely to be selected in case the respondents had taken the selection process to its logical conclusion, were absolutely free from blame. Thus, in terms of the Apex Court judgments relied upon by the applicants the respondents should have segregated these candidates from the tainted candidates and offered appointments to them instead of cancelling the entire selection process. By their action the respondents have failed to distinguish between the innocent and the tainted candidates and have granted equal treatment to all. If such action is condoned, no selection process can ever be finalized.

8.1 We, therefore, come to the conclusion that the action of the respondents in cancelling the entire selection process was arbitrary and unjustified. The respondents should have taken the selection process to its logical conclusion and offered appointment to those candidates, who were found to be meritorious and also free from blame. At the most, as a matter of abundant caution, the respondents could have offered appointments to innocent candidates subject to ongoing investigation.

9. We, therefore, allow this O.A. and quash and set aside the order dated 15.03.2016. We further direct the respondents to finalize the selection process for Grade-II (DASS) post code 90/09 for which

Tier-I and Tier-II have already been held on 29.06.2014 & 29.03.2015. This exercise may be completed within a period of 08 weeks from the date of receipt of a certified copy of this order. There will, however, be no objection to making the appointments offered to successful candidates subject to outcome of the ongoing ACB investigation. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/