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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 116 OF 2003

New Delhi, this the 24th day of August, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A. Singh, Member (A)

Amar Nath Shukla
S/o late Sh. Onkar Nath Shukla,
R/o 5/271, Mohalla Sarai,
Shahdara,
Delhi – 110 032.

....Applicant

(By Advocate: Shri Arun Bhardwaj)

-versus-

1. Govt. of N.C.T. of Delhi through
Chief Secretary,
Players Bldg., I.P. Estate,
Delhi – 110 002.
2. Secretary,
Delhi Subordinate Services Selection Board,
IIIrd Floor, UTCS Building,
Behind Karkardooma Court,
Institutional Area, Viswas Nagar,
Shahadara, Delhi – 110 032.
3. Sh. Vikrant
4. Mr. Ashish
5. Mr. Virender Kumar
6. Ms. Sunanda
7. Ms. Hema Rathi
8. Mr. Puran Chand
9. Mr. Pawan
10. Ms. F. Begum
11. Manoj Kumar
12. Mr. Mohinder Singh (Resp 3-12 recruited as to Gr.II posts of DASS
GNCT)
13. Mr. Jogindar Singh (Wrestling)
14. Mr. Naresh Kumar (Rifle Shooting)
15. Mr. Rakesh (Volleyball)
16. Mr. Kuldeep Kumar (Wrestling)
17. Mr. Jaiveer Singh (Wrestling)
18. Mr. Anil (Wrestling)
19. Mr. Sanjeev (Cricket)
20. Mr. Pradeep (Kabaddi)
21. Mr. Pawan Kumar (Judo)

22. Mr. Anil (Wrestling)
23. Mr. Manoj (Swimming)
24. Mr. Alankar (Football)
25. Mr. Om Kanwar (Handball)
26. Mr. Bhupesh (Swimming)
27. Mr. Manoj (Boxing)
28. Mr. Karamveer (Wrestling)
29. Mr. Vijay Kumar (Cricket)
30. Mr. Sonu (Hockey)
31. Mr. Ajay (Handball)
32. Mr. Mukhil (Kho Kho)
33. Mr. Mukesh (Wrestling)
34. Mr. Anil (Wrestling)
35. Mr. Vijendar (Handball)
36. Mr. Rakesh (Swimming)
37. Mr. Mohan Nath (Football)
38. Mr. Ali (Cycling)
39. Mr. Jai Bhagwan (Judo) (Resp 13-39 recruited to Gr.IV of DASS in GNCT)

(Respondents no. 3-39 all through: Chief Secretary, GNCT, Players Building, I.T.O., I.P. Estate, New Delhi) ...Respondents

(By Advocate: Shri Vijay Pandita for R-1 & R-2
Shri M.K. Bhardwaj for R-3, R-4 and R-6 to R-12
Shri R.N. Singh for R-7 and R-23.
None for others.

ORDER

By Mr. Justice V.S. Aggarwal:

Applicant (Amar Nath Shukla) seeks quashing of selection to the post of Grade IV and Grade II of DASS under the Sports Category and to direct the respondents to consider the applicant for appointment to the post of Grade II / Grade IV DASS with consequential benefits.

2. Some of the relevant facts are that in August, 1997 an advertisement appeared. In pursuance thereto, the applicant applied for the post of DASS Grade II / Grade IV under the Sports Quota. The advertisement required Chess players and other sports persons, who desired to opt for the appointment, subject to having qualification of participating in i) National Junior Chess Championship; ii)

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National Sub-Junior Chess Championship and iii) All India Inter University Chess Championship. The applicant had participated in all these events. On 25.9.1998, he was called to appear for the practical test along with his mark sheets and certificates. When the applicant went there, there were protests because the practical test was not fairly conducted. There were horses running in the stadium besides band was being played. There were heavy disturbances. As a result, the trial test was re-scheduled and the candidates were requested to report again after few days. The trial test was conducted on 19/20.11.1998.

3. The trial test was conducted for Grade IV. The applicant was declared first in the game of Chess. It was thereafter conducted for Grade II and the applicant again stood first in the trial test.

4. The grievance of the applicant is that despite securing first position in both the categories, he failed to receive an interview call letter. He made representation. When no reply was received, he filed OA No. 1056 of 1999. This Tribunal had directed that applicant should be interviewed and result should be kept in a sealed cover. In accordance with the direction of the Tribunal, the applicant was interviewed and results were kept in a sealed cover. Later, on the application of the respondents, this Tribunal allowed the respondents to declare the results of all other games except Chess. All the ten vacancies in Grade II and 27 vacancies in Grade IV were filled up.

5. When pleadings were complete, this Tribunal had directed the respondents to produce the record of the selection. It was found that the respondents had used unfair marking policy. The respondents had initially fixed 100 marks for the trial test and had later prepared the final merit list by reducing these 100 marks to 25. In this manner, a person, who had gained a substantial lead over others in trial tests, was pushed down in the merit list. This Tribunal had directed the respondents to produce the entire record relating to selection of the candidates in all the games. The record was kept in a sealed cover. The applicant was permitted to inspect the same.

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6. On inspection, the applicant found grave errors in totalling of marks and had pointed the same to the Tribunal. It had led to wrong selection. This fact was recorded by the Tribunal in the order that had been passed, which reads:

"1. During the course of hearing, we inspected the marksheets containing marks awarded for trial test and we noted that prima facie there appeared to be some discrepancies in the figures while totalling was being carried out."

7. When the applicant's counsel further inspected the record, he found glaring irregularities. At that moment it was noticed that selected persons had not been parties and they were, therefore, directed to be arrayed as parties. However, when the matter came up before this Tribunal on 18.4.2002, the application was disposed of permitting the applicant to proceed in the matter in accordance with law. Thereafter the fresh application has been filed pertaining to grievances of the applicant, which we have already referred to above.

8. The application has been contested. In reply filed by respondent no. 1, it has been pleaded that maximum 60 marks were fixed for past achievement in sports, 25 marks for candidate's present performance in the trial test and 25 marks for the personality test. It is denied that any unfair means had been adopted in this regard.

9. Reply even has been filed by some of the private respondents i.e. one by respondents no. 7 & 23 and another by respondents no. 3, 4 and 6 to 12. It has been asserted that the application is barred by principles of constructive res judicata. It is denied that any unfair means had been adopted in the selection and the said private respondents explained the fact alleged by the applicant that they were not duly qualified pertaining to their date of birth mentioned in the application forms or in the certificates, to which we shall refer to hereinafter.

10. We have heard the parties' counsel and have seen the relevant record.

11. At the outset, on behalf of the respondents, it was pointed that the original application is delayed inordinately. But in this regard, we have given the resume of the facts. It clearly shows that applicant had been prosecuting his rights diligently. He wanted to array the private respondents but this Tribunal had not

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permitted the same. It was made clear that bar of limitation would not come in the way of the applicant if he files a fresh application. Thereafter the applicant had challenged that order of this Tribunal in OA 1056/99 by filing Civil Writ Petition No. 4145/02 and therein the Delhi High Court on 16.09.2002 had permitted the applicant to file fresh OA. Keeping in view these facts, the respondents cannot be heard to state that there is an inordinate delay in this regard. In fact, the applicant had been prosecuting his remedy with due diligence.

12. The plea of the respondents that the petition is barred by the principles of res judicata, in our opinion, has to be stated to be rejected. Principles of res judicata would only come into play if there was any adjudication of the rights. In fact, as is mentioned above, there is no adjudication of the rights and resultantly it cannot be stated, therefore, that principles of res judicata will have any role to play.

13. On behalf of the official respondents, it was contended that the applicant, having appeared in the test, cannot question its validity. In support of his claim, he relied upon the decision of the Hon'ble Supreme Court in the case of ***Om Prakash vs. Akhilesh Kumar***, reported in AIR 1986 SC 1043.

14. We do not dispute the proposition but if there are unfair means or illegality committed in this regard, then the said principle has no role to play. Once it is brought to the notice of the Tribunal that any such act has occurred and it is proved, the Tribunal cannot be a silent spectator and necessarily appropriate remedial measures have to be taken.

15. On behalf of the applicant, it was pointed that selection Board had recommended the names of certain persons. The recommendations were objected to by the Govt. of National Capital Territory of Delhi and in this regard, the

applicant relied upon the following notings pertaining to the candidates:

Sl. No	Name	Page of the inspected record	Notings
1.	Vikrant	134/C	Form No. 1 not signed by Federation; BA pass

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			certificate not attached; mark sheet not showing marks.
2.	Ashish Shokin		Wrong date of birth in certificates and forms; documents neither sealed nor attested.
3.	Virender Kumar		Overage on 31.12.1996.
4.	Surender		Only photocopy; unattested.
5.	Hema Rathi	132/C-	In Form 3 in support of Inter University C/Ship, which is necessary to certify her participation in C.Ship-was 3 rd in National but intentionally said 1 st in Nationals-has been clearly favoured.
6.	Puran Chand		No certificate showing 2 nd position in National Championship or even participation; 3 rd position in Inter Univ. Championship in event of Power Lifting/Wt. Lifting, whereas photocopy of certificate shows 3 rd position in Power Lifting Competition which competition is not in the list of games in Advertisement. Therefore wrong certificates intentionally considered to favour him.
7.	Pawan Tokas		Certificates show only participation, whereas in the application wrongly mentioned 2 nd in National/International clear attempt to favour.
8.	F.Begum		No certificate of 3 rd position in National/International attempt to favour; Seals of Federation missing from forms on which whole fate of merit position of candidates defeated.
9.	Manoj Kumar		No 'No Objection Certificate' from MHRD; certificate contrary to Form 4 regarding representation in National Games; 75 papers sent without highlighting which document was considered & verified by Board-was clearly favoured.
10.	Mohinder Singh		Form 2 not filled to show participation in National Competition; attempt intentional to favour.
11.		129/C	Dossier of all 10 candidates are returned.
12.		128/C-	No one from selected candidates can be given offer of appointment. 1 st line - That despite the above gross irregularities the Board recommended the selection of above candidates for illegal considerations. The GNCT had also given appointment to these candidates even though no clarification was made by the GNCT on their respective Dossiers.

16. During the course of submission, it was explained to us that there is no such illegality e.g. in case of Virender it was explained that he could not be overage because he was already a government servant and in certain cases the certificates were on record. Since we, for the reasons to be recorded hereinafter, are remitting the matter back to the authorities, they may again look into this controversy.

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17. The main argument advanced was that initially 100 marks were fixed for the trial test but when the merit list was prepared they were reduced to 25 and in this manner a person who had gained a substantial lead over others in trial test was pushed down in the merit list. A feeble attempt had been made on behalf of the official respondents to contend otherwise that it was in fact only 25 marks. However, perusal of their counter reply even shows that there is an admission to that effect. The same reads:

"It is reiterated that 100 marks were fixed as maximum marks for trial test for the purpose of evaluation of the performance in the Trial Test only. This was not the total score for drawing up the merit list. As already stated the past achievement of the candidate in Sports was the most important factor to judge the merit of the candidate. The performance at the trial test cannot be the sole determining factor. In that case, the past achievements of the candidates will be excluded from consideration, which is unjust and unreasonable. The interview board therefore, reduced the marks in the trial test to $\frac{1}{4}$, to give overall score of 110 and to give proper weightage to all the 3 factors."

Admissions need no further proof. Once it is admitted that 100 marks were fixed as maximum marks for the trial test, we fail to understand as to how the Interview Board thereafter reduced the marks to $\frac{1}{4}$ to give overall score of 110.

18. Decision in this regard is always to be taken in advance. They cannot be changed subsequently. Our attention has not been drawn to any decision by an appropriate authority to reduce the marks before the test was held. The Interview Board otherwise also was not competent to do so. Decision taken subsequently without any basis or logic cannot be sustained merely because it was felt that it will give overall score of 110 is not a proper explanation. Once 100 marks were fixed for the trial test, necessarily the same had to be adhered to. The result is obvious that a person who might score well in the trial test out of 100 marks and if it is divided by $\frac{1}{4}$ may slide down on the overall merit that will be totally contrary to law. To that extent the contention of the respondents indeed is not at all sustainable.

19. In all fairness to the respondents, we may refer to some of the precedents that they have stated at the Bar in case of **M.P. Public Service Commission vs. Navnit Kumar Potdar**, AIR 1995 SC 77. The Supreme Court held that where

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selection is based on interview, short-listing should be on rational and reasonable basis. We do not dispute the broad proposition but herein the facts are totally different and, therefore, the decision of the Supreme Court has little application.

20. Reliance was further placed on the decision of the Hon'ble Supreme Court in the case of *Union of India and Ors vs. K.P.Tiwari*, 2003 SCC(L&S) 1233. In the cited case, the compassionate appointment had been made under the decision of this Tribunal. The appointee continued for more than 5 years. At that stage, the Supreme Court held that it will not be proper to interfere. We find no reason to dispute the law laid down by the Supreme Court but it has no application in matters where, as noted above, the selection itself is tainted and therefore cannot be approved.

21. In fact, where unfair method has been adopted, the selection process must be set aside. Passage of time will not confer any right. The Full Bench of the Punjab & Haryana High court in the case of *Amarbir Singh and Ors. Vs. State of Punjab and Others*, reported in 2003 (3) PLR 661, in an extreme case where there was massive interference in the marks that were allotted, had set aside all the appointments though they were working for many years.

22. However, at this stage, we must take note of the decision of the Supreme Court in the case of *Union of India and Ors. vs. Rajesh P.U., Puthuvalnikathu and Another*, 2003 SCC (L&S) 1048. The Supreme Court held that where from out of the selectees it was possible to weed out the beneficiaries of the irregularities and illegalities, the entire selection need not be quashed. The findings of the Supreme Court in this regard are:

"In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all-pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or the other irregularities, or illegalities, if any, there was hardly any justification in law to deny appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or the other reasons. Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that

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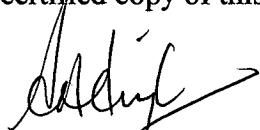
except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation. In short, the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."

23. In the present case, this decision indeed is a guiding factor because we find no reason otherwise to quash the entire result. Selection process but quash the appointments / results declared.

24. For these reasons recorded above, we direct :

- a) The respondent no. 1 will re-examine the entire dossiers of the candidates to enquire that they have filed complete certificates and were within the age limit prescribed etc.;
- b) The marks obtained in the trial test should be calculated as was decided to be 100 marks; a fresh merit list in this regard should be prepared and thereafter the result should be declared as per the merit of the candidates.

25. Subject to aforesaid, the impugned selection is quashed. This exercise should be completed preferably within two months from the date of receipt of the certified copy of this order. No costs.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Vice Chairman

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