
(2009) 03 AHC CK 0035
In the Allahabad High Court

Dharmendra Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Citation : (2009) 3 AWC 2454 : (2009) 2 UPLBEC 1826

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—Heard Shri K. Ajit, learned Counsel for the appellants and the learned standing counsel for the respondents.

2. These intra court appeals arise from the judgment dated 22.12.2006 of the Hon"ble single Judge whereby Civil Misc. Writ Petition No. 33147 of 2001 of the petitioners has been dismissed.

3. The facts, in brief, giving rise to the present dispute are that respondent No. 2, i.e., District Magistrate, Kanpur Dehat got an advertisement published in February, 1999 inviting applications for recruitment to the post of Lekhpal (pay scale 350-590). The petitioners-appellants (hereinafter referred to as "the petitioners") appeared in the written examination held on 5.11.2000, the result whereof was declared on 5.10.2001. The petitioners result was withheld for using unfairmeans. They filed Civil Misc. Writ Petition No. 33147 of 2001 wherein an interim order was passed on 6.12.2001 directing the respondents to interview the petitioners provisionally, if they were successful in written test but their result shall not be declared. The respondents were also permitted to pass a fresh order after giving opportunity. The petitioners were interviewed but no appointment letter was issued though they were declared successful after interview. Further, pursuant to the interim order dated 12.6.2001 the District Magistrate, Kanpur Dehat issued show cause notice dated 18.12.2005, which was replied by the petitioners on 21.10.2005. Thereafter, an order was passed by the

District Magistrate cancelling the candidature of the petitioners on 28.10.2005 on the ground of unfairmeans. It may also be mentioned that they were also sent for training but due to pendency of the writ petition appointment was not made. The writ petition has been dismissed by the Hon''ble Single Judge considering in great detail the scheme of examination followed by the respondents, which, as per the view taken by the Hon''ble Single Judge, does not admit scope of doubt that the petitioners were guilty of unfairmeans.

4. Learned Counsel for the petitioners contended that he is not doubting the correctness of the guidelines of the respondents for determining as to when it can be said that the candidates are guilty of unfairmeans. He, however, submits that the guidelines or scheme would only be an indicator to show that there is a strong suspicion against the candidates of having indulged in unfairmeans if they fall within the mischief described in the guidelines. However, before punishing the candidates on the ground of unfairmeans it has to be seen that there is no other view possible except that the candidate must have indulged in unfairmeans. In the case in hand, from the order of the District Magistrate it is evident that no person of ordinary prudence on the basis of material available can say that the petitioner had indulged in unfairmeans. There were two grounds mentioned in the show cause notice to find out that whether petitioners are guilty of unfairmeans in the matter (1) twelve and more questions were answered wrongly giving similar wrong answers (2) the different answers are less than five.

5. It is said that there was suspicion of their indulgence in unfairmeans in General Hindi and General Knowledge papers. The learned Counsel submitted that though show cause notice was issued to the petitioners by the District Magistrate but he himself had not seen any thing to infer that the petitioners are guilty of unfairmeans. He had mechanically followed the report of the private agency, which was authorized to conduct the examination. He also pointed out that there is an incoherence in the various documents of the respondents. In the counter-affidavit Annexure CA-2 shows that the petitioner-Dharmendra had attempted 49 questions in General Hindi and 46 questions in General Knowledge papers whereas Annexure CA-1 shows that the said petitioner had attempted 42 questions in General Hindi and 49 questions in General Knowledge papers. He further pointed out that two petitioners are alleged to have committed unfairmeans and inference has been drawn by comparing answer sheets of the two petitioners though it does not borne out from the record.

6. To show inconsistency in drawing the aforesaid inference, as evident from the documents filed alongwith counter-affidavit, it would be useful to mention his submission and demonstrate the facts as under:

5. ...as per the allegations of use of unfair means by the petitioner with another candidate Gyanesh Kumar, these two candidates had attempted 42 questions out of 50 and of which 24 were correct so obviously matching and 18 were incorrect and out of which only one was mismatching (vide Appendix III to C.A. 1). Thus, as per Appendix III to C.A. 1 and analysis by I.B.P.S. These two candidates had

given 41 matching answers (24 correct and 17 incorrect), whereas only one answer was mismatching. However, perusal of the answer sheets Appendix I to II to C.A. 1, gives a totally different picture. According to the answer sheet of General Hindi from question No. 1 to 50 (Appendix 1 to C.A. 1), the petitioner-appellant and Gyanesh Kumar had opted option No. 1 to 5 in the following numbers:

----- Petitioner- Gyanesh Appellant Kumar
Option No. 1 = Option No. 1 6 times = 8 times Option No. 2 = Option No. 2 10 times = 11 times Option No. 3 = Option No. 3 9 times = 8 times Option No. 4 = Option No. 4 6 times = 8 times Option No. 5 = Option No. 5 11 times = 7 times

From the perusal of above it is clear that total number of mismatching answers between the two candidates comes to 10. If 24 answers are correct then they are matching and the allegations are that out of 18 incorrect answers of the above two candidates 17 are matching incorrect answers and this cannot be possible in the present case because mismatching answers are 10 in numbers and they are obviously incorrect answers. So the very allegations and the calculations become baseless because if 10 answers are mismatching out of 18 incorrect answers then only 8 incorrect answers are found to be matching....

6. ...in the subject of the General Knowledge there were 17 matching wrong answers were given by the petitioner-appellant and Gyanesh Kumar is absolutely incorrect. Here again the 3 documents referred to in the presiding paragraphs give different picture. From the perusal of answer sheet it is clear that the petitioner-appellant had attempted 49 questions and not 48 as referred to as Appendix II to C.A. 1. Even on the basis of Appendix III, if it is taken that out of 48 questions where only 40 questions were correct then it means all the 40 questions were matching and only 8 questions were incorrect. The allegations are that out of 8 incorrect questions 7 questions were matching and 2 questions were mismatching. This cannot be because as per Appendix II to C.A. 2, 46 questions were attempted and as per Appendix III to C.A. 1, 40 questions were correct answers and so there could be only 6 incorrect answers and so the calculations of 9 incorrect answers in Appendix II to C.A. 2 is absolutely baseless. Even going by answer sheet, i.e., Appendix 1 to C.A. 1 and Appendix III to C.A. 1, the petitioner-appellant had attempted 49 questions out of which 40 questions were correctly answered. So the total number of incorrect answers comes to 9 but the mismatching answers are more than 2 as the number of options attempted by the petitioner-appellant and Gyanesh Kumar is in the following order in the Subject of General knowledge:

----- Petitioner- Gyanesh Appellant Kumar
Option No. 1 = Option No. 1 12 times = 13 times Option No. 2 = Option No. 2 13 times = 10 times Option No. 3 = Option No. 3 11 times = 11 times Option No. 4 = Option No. 4 5 times = 7 times Option No. 5 = Option No. 5 8 times = 8 times

From the perusal of the above it is clear that total number of mismatching answers between the two candidates come to 6. If 40 answers are correct then they are matching and the allegations are that out of 9 incorrect answers of the above two candidates 7 are matching incorrect answers and this cannot be possible in the present case because mismatching answers are 6 in numbers....

7. Learned standing counsel when confronted with the aforesaid aspect of the matter, evident from record, and when he was required to explain the above since the order of the District Magistrate has not dealt with the above aspect, he sought adjournment on 13.10.2008 whereupon the following order was passed by this Court.

Sri Y.K. Yadav, learned Standing Counsel required that he wants some time to seek instructions from the competent authority as to in what manner, the petitioners were found guilty of unfair means inasmuch as from the show cause and the order, it appears that the case of the authorities was that out of 17 incorrect answers, 16 were identical, but from the document filed alongwith the counter-affidavit, the said finding is not being substantiated and, therefore, he needs clarification from the authorities concerned as to in what manner, they came to the aforesaid conclusion.

As prayed put up on 17.10.2008 for further arguments.

8. Thereafter, on various dates this matter was listed and even the District Magistrate, Kanpur Dehat was personally summoned but instead of explaining the above discrepancy, the respondents filed affidavit stating that the entire record of the examination including answer sheets have been weeded out in 2001 itself and, therefore, it is difficult for them to assist the Court in the matter any more except of what has already been stated in the order of the District Magistrate cancelling the candidature of the petitioners. He submitted that the Institute of Banking Personal Selection was authorized to conduct the examination and when they were required to produce the original answer sheets of the petitioners it has been informed by them vide letter dated 9.3.2007 that as per the practice of the institute they destroyed examination related material after the period of one year from the date of despatch of result and only data of the answer sheet in electronic form is preserved, which has been supplied by them and copy whereof was filed as Annexure CA-1.

9. Shri Satish Chaturvedi, learned Additional Advocate General, appearing for the respondent fairly stated that in the absence of answer sheets of the petitioners, which admittedly, were weeded out in 2001 itself, he is not in a position to explain the inconsistency in the three charts appended and filed as Annexure CA-1, as pointed out above by the learned Counsel for the petitioner in his paragraphs 4, 5 and 6 of the rejoinder affidavit.

10. In these circumstances, though we are not expressing any opinion on the scientific accuracy of the method adopted by the respondents in taking the above examination but we are constraint to observe that before a candidate is held

guilty of unfairmeans and his candidature is rejected, there has to be something more than mere suspicion showing that the candidate is guilty of unfairmeans. Suspicion howsoever strong may be cannot partake the place of proof. It is no doubt true that like a criminal case the allegation need not to be proved beyond doubt, but still it is also settled that in such case atleast sufficient material must be available before the competent authority to come to the conclusion that the incumbent can be held guilty of unfairmeans by a person of ordinary prudence. If the authority has simply and mechanically followed the report of a private agency, who has conducted the examination, without looking to the material itself and there appears some inconsistency or variation apparently from the record, then the authority has to show and explain those inconsistency failing which his decision is liable to be set aside.

11. From enclosure 3 of Annexure CA-1 it is evident that in respect to General Knowledge paper both the petitioners are stated to have attempted 48 questions each and 40 answers are correct. Correct answer obviously would tally and, therefore, this by itself would not yield anything either in favour or against the candidates. Now eight answers of both the petitioners remained to be seen to find out the case of unfairmeans. Having said so in enclosure 4 to CA-1 it is mentioned in respect of General Knowledge paper that seven answers are wrong out of which only two are mismatched and total match in General Knowledge is 46. The District Magistrate in his impugned order dated 28.10.2005 has also said that in the paper of General Knowledge the answers of 46 questions are same out of which seven are wrong answers in similar fashion, only two answers are mismatch. If we take what has been said in the order dated 28.10.2005 to be correct, then out of 46, seven are wrong answers, so only 39 questions are correctly answered. Annexure III to CA-1 shows that 40 answers in General Knowledge paper were found right and both attempted 48 questions. These facts figures do not tally at all. Similarly, in respect of General Hindi the order of the District Magistrate shows that out of 50, 49 questions were answered by both the candidates each but Annexure III to CA-1 shows that in General Hindi both the candidates attempted only 42 questions each out of which 24 were found correct. However, in respect of General Hindi total questions are said to be 49 out of which wrong matching are 17 and matching are 7, there exist in the record of the respondent, a clear but serious inconsistency in the facts and figures, which leaves us to believe that in the data feeding, the Examination Conducting Agency must have committed some serious error, which has not been attempted to explain before this Court by the respondents in any manner and even the original record has not been shown to find out the truth. The petitioners in these circumstances cannot be penalized for the reason that neither we have been shown any material demonstrating that they are guilty nor the respondents have relied upon the material, which is beyond doubt nor the apparent inconsistency has been sought to explain by the respondents. On the contrary they have tried to take the advantage of the fact that they have destroyed all the original record of the examination. In such a case and that too for the fault of the respondents,

in our view, the petitioners cannot be penalized. The allegations of unfairmeans against the petitioner having not been proved in a reasonably legal and permissible manner. The inference has been drawn on mere suspicion and that too on the basis of inconsistent and inaccurate information, which leaves no other option for us but to allow this appeal and set aside the orders impugned in the writ petition.

12. In the result, both the aforesaid appeals are allowed. The impugned judgment of the Hon"ble single Judge is hereby set aside. The order dated 18.12.2005 of the District Magistrate, Kanpur Dehat cancelling the candidature of the petitioners is also hereby set aside. The petitioners having already completed their training for the post of Lekhpal are entitled to be considered for appointment on the post of Lekhpal from the date, persons lower in merit were appointed. The respondents are directed accordingly. We also make it clear that the petitioners shall be entitled for the benefit of service from the date, persons lower in merit were appointed, for the purposes, of pay fixation, seniority etc. but arrears of salary shall not be paid to them for the period they have not rendered any work and the same shall be admissible to them from the date they join the service. The process of appointment of the petitioners pursuant to this judgment shall be completed by the respondents within one month from the date of production of copy of this order before the authority concerned. The petitioners shall be entitled for cost, which is quantified to Rs. 10,000. It is also made clear that in case, in the meantime the persons appointed on the post of Lekhpal pursuant to the selection in question have also been promoted in higher post, which included any person lower in merit to the petitioners, these petitioners shall also be entitled to be considered for promotion from the due date with all other consequential benefits except arrears of salary, which shall be payable from the date the petitioners actually undertake shouldering of responsibility of such higher post.