

(2006) 01 AHC CK 0194
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 57282, 67230, 69291 and 72076 of 2005

Mahesh Kumar

APPELLANT

Vs

State of U.P. and Deputy Excise Commissioner (Karmik/
Adhasthan)

RESPONDENT

Date of Decision : 23-01-2006

Acts Referred:

Citation : (2006) 5 AWC 5065

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : A.K. Gupta, for the Appellant; K.S. Kushwaha and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—All these four writ petitions have been filed by the persons, who had applied for appointment on the post of Junior Clerk-cum-Typist in the Excise Department of the State of UP. in pursuance to the advertisement, which was published on 5.8.1997, and included 24 post (21 post of Clerk-cum-Typist reserved for Scheduled Castes and three post of Clerk-cum-Typist reserved for Scheduled Tribes). Out of total number of the applicants, who fulfilled the requisite qualification, a type test was held by the Excise Department. In the type test so held as many as 304 candidates, including the petitioners qualified. For completing the process of selection, interview was scheduled to be held between 3rd November, 1997 to 29th November, 1997 by the Excise Commissioner, who was the Chairman of the Selection Committee. In respect of the interview test, a Selection Committee, comprising of four officers of the Excise Department, was constituted, which included the Excise Commissioner as the Chairman. Between 3rd November, 1997 to 5th November, 1997 50 candidates, including the petitioners, were invited for interview. Petitioners participated in the said process of interview. However, on 4th November, 1997

itself a Government Order was issued whereby the process of selection was stayed. Since the knowledge of the Government Order could be obtained by the office of the Excise Commissioner only on 5th November, 1997, the process of selection was stopped at that stage.

2. Without completing the process of selection so initiated, the Excise Department published a fresh advertisement inviting applications for 15 posts of Junior Clerk-cum-Typist vide advertisement dated 7/10.8.1998. The said advertisement was challenged by means of Writ Petition No. 3098 of 1998. the writ petition was finally decided vide judgment and order dated 11.8.2000 and the respondents were directed to declare the result of the selection held in 1987.

3. Against the said order of the Hon"ble Single Judge, Excise Department filed Special Appeal No. 563 of 2000, which was dismissed on 9.4.2002. Against the judgment of the Division Bench, the State preferred SLP No. 16942 of 2002, which was also dismissed by the Hon"ble Supreme Court.

4. After dismissal of the SLP so filed, directions were sought for from the State Government. The State Government vide letter dated 27.2.2004 directed the Excise Commissioner to hold interview of the remaining candidates. During this period Contempt Petition No. 1694 of 2004 was filed before this Court for non-compliance of the judgment of this Court dated 11.1.2000.

5. According to the directions issued by the State Government, referred to above, the process of interview, which was closed half way on 5th November, 1997 was re-started. It was noticed that there has been no allocation of marks towards personality test/interview by the then Selection Committee in respect of the any of the candidates, who had been interviewed between 3rd November 1997 to 5th November, 1997. The position in that regard was therefore clarified by the Excise Commissioner vide letter dated 25.5.2005 and further directions were sought for from the State Government.

6. The State Government in turn vide letter dated 22nd June, 2004 clarified the position by providing that there is no occasion for re-interview of the candidates already interviewed between 3rd November, 1997 and 5th November, 1997. If there is some difficulty with regards to marks being awarded, the Selection Committee, which had held the interview, may be re-assembled and asked to remove the difficulties, which was their responsibility.

7. On receipt of the said letter, the then Excise Commissioner, who was Chairman of the Selection Committee of 1997 and subsequently posted as Special Secretary, Science and Technology UP. Government, vide letter dated 9th July, 2004 informed that State Government that since no marks were awarded to the candidates, who had been interviewed between 3rd November, 1997 to 5th November, 1997, it is not possible to prepare a comparative merit of such candidates. It was further pointed out that no other record in respect of the said selection is available. Accordingly it was suggested that a new Selection Committee may be constituted for holding interview of all the candidates (304 in

number), including those who had already been interviewed. On receipt of the said letter, the State Government forwarded a letter to the Excise Commissioner for taking either of the following actions:

(a) The Hon'ble High Court may be informed that the order dated 11.1.2002 be modified and permission may be granted to interview the candidates who have already been interviewed.

(b) The Contempt Court may be informed that in the peculiar facts it is not possible to comply with the order dated 11.1.2002 and therefore same may be modified.

8. On behalf of the State respondents, it is stated that an attempt was made to get the orders of this Court modified but the application of modification was rejected. In such set of circumstances, the then Excise Commissioner, having left with no alternative, convened a meeting of the then Selection Committee, which had held the interview on 3rd November, 1997 to 5th November, 1997 of 50 candidates. The said Committee re-assembled on 11.7.2005 and thereafter proceeded to allocate marks of interview/personality test to the candidates who were interviewed in 1997. It is stated that although the matter was nearly 8 years old but on the basis of the memory of the members of the Selection Committee and after discussion with reference to remarks made at the time of interview as well as educational qualification marks obtained in the type A test; 3 candidates were selected. It is also on record that the remaining 254 candidates were invited for interview by the subsequent Selection Committee and marks on individual basis were awarded for personality test determined their merits. The combined merit list prepared thereafter was notified as the final select list on 11.7.2005. The declaration of result by the Selection Committee dated 11.7.2005 as well as the order dated 28.7.2005 whereby the Excise Commissioner has published the list of successful candidates entitled for appointment have been challenged by means of the present writ petition.

9. On behalf of the petitioners it is contended that the entire procedure adopted by the respondents is patently illegal and contrary to the statutory rules namely "The Uttar Pradesh Selection Procedure for Direct Recruitment for Group "C" Posts (Out side the purview of the U.P. Public Service Commission) Rules, 2002, which prescribes the procedure for selection. (The respondents have admitted that the maximum interview marks were fixed as 20 and the emphasis was on the personality of the candidate) It is, therefore, submitted that marks ought to be awarded to the candidates individually immediately after the interview was over. The respondents cannot differ the awarding of said marks to any later point of time. Even otherwise it is stated that awarding of marks after 8 years of the interview to the candidates, as has been done in respect of 50 candidates interviewed between 3rd November, 1997 to 5th November, 1997, is only a camouflage to somehow or other prepare the merit list in alleged compliance of the judgment of this Court passed earlier.

10. Counsel for the petitioners submits that the entire selection process is a farce and a manifest arbitrary exercise of power by the authority vested in the respondents (Higher Officers of the State). The then Excise Commissioner has filed his personal affidavit and amongst other he has specifically stated that vide letter dated 9th July, 2004 he had informed the State Government that it was practically impossible after 8 years to prepare the merit list of the candidates who were interviewed between 3rd November, 1997 to 5th November, 1997. Therefore, he had suggested that fresh interview in respect of all the candidates, including the candidates, who had been interviewed in the months of November, 1997, may be done. The State Government had not accepted the said proposal and had insisted that select list be declared. In such circumstances, on the basis of memory and certain remarks made in the interview sheets of the year, 1997, marks have been awarded to the candidates interviewed in 1997. On the basis whereof the select list have been notified.

11. Standing Counsel has fairly conceded that according to the procedure known to law in respect of awarding of marks after interview has not been followed. However, the department had no other option but to comply with the order passed by this Court and somehow or other declare the result of the selection which necessarily included the result of the 50 candidates, who had already been interviewed in the month of November, 1997. The State respondent submits that only way possible in the facts of the present case, has been adopted and entire action taken by the respondents is for compliance of the order of this Court, which has since been affirmed by the Hon"ble Supreme Court of India.

12. Having regard to the seriousness of the issue, this Court called for the original records pertaining to the entire selection specifically those qua interview, which had taken place in the month of November, 1997. From the original records so produced it is apparent that the Selection Committee, which was constituted in the year, 1997 had not awarded marks to any of the candidates who had faced the interview between 3rd November, 1997 and 5th November, 1997. In respect of certain candidates word "Selected", "can be considered", "Labour", "Marginal Case", "Marginal to be considered", "Marginal Course" and other such type of remarks have been made. The Chairman of the Selection Committee Sri P.L. Loi was asked to appear before the Court for explaining the aforesaid remarks. It may be recorded that Sri P.L. Loi, the then Excise Commissioner, failed to give any plausible explanation or reasonable basis for the remarks so made at the time of interview in respect of the candidates who were interviewed in the month of November, 1997. Sri P.L. Loi, as a matter of fact, relied upon his own letter dated 9th July 2004 and fairly conceded that it was practically impossible to award marks (out of 20 maximum marks fixed) for interview in respect of the candidates individually, who had been interviewed in the month of November, 1997. It is worthwhile to reproduce the relevant paragraphs of the letter dated 9th July, 2004, which read as follows:

vH;fFk;ksa dh la[k 304 gksus ds dkj.k rFkk dqy 25 inksa ij p;u izfdz;k dks /;ku

esa j[krs gq, p;u lfeFr us ;g mfpr ik;k fd mRd`"V vH;fFkZ;ksa ds p;u gsrq rgyukRed ewY;kadu izkjEHk esa gh u cukdj p;u izfdz;k ds var esa rS;kj fd;k tk; rkfd mRd`"V vH;FkhZ gh p;u esa vk ldsaA lk{kkRdkj dh izfdz;k 03 uoEcj] 1997 dks izkjEHk dh x;h Fkh ysfdu "kklu ds }kjk 05 uoEcj] 1997 dks jksd yxk nh x;h] vr% viw.kkZ lk{kkRdkj ds vk/kkj ij rgyukRed ewY;kadu rS;kj fd;k tkuk IEHko u gks ldk A

lwfr djuk gS fd bl p;u ls lacaf/kr esjs ikl dksbZ vfHkys[k miyC/k ugha gS rFkk tks vfHkys[k esjs }kjk ns[ks x;s gS buds vfrfjDr dksbZ vkSj vfHkys[k rS;kj ugha fd;s x;s gS A izdj.k dh xEHkhjrk dks ns[krs gq, esjk lq>ko gS fd U;kf;d n`f"Vdks.k ls ;g mfpr gksxk fd lHkh vH;fFkZ;k dk lk{kkRdkj uoxfBr lfeFr ds }kjk fy;k tk; ,oa mfpr ewY;kadu ds vk/kkj ij mRd`"V vH;fFkZ;ksa dk p;u lEIuU fd;k tk; A?

Hkonh;] g0 vLi"V ?ih0 ,y0 yksbZ? izeq[k lfpo] foKku ,oa izkS|ksfxdh foHkkx] m0iz0 "kklu A

13. In view of the said stand taken by the Chairman of the Selection Committee, the issues which arise for consideration are:

(a) Whether it was fair, proper and justified for the Selection Committee, of which a senior IAS. Officer was the Chairman, to have not awarded marks individually to the candidates immediately after their interview was over.

(b) Whether in the facts and circumstances of the case, the Selection Committee was justified in awarding marks after 8 years of the interview to the candidates and thereby declare three of the candidates, who had participated in the interview held in the month of November, 1997, as selected.

(c) Whether overall result of the selection held, pursuant to the advertisement in the year, 1997, as per the order of Excise Commissioner dated 28th July, 2005 are vitiated in their entirety.

14. So far as the first and second issues are concerned, fixation of maximum marks for interview is not disputed. Awarding of marks in personality test is for avoiding arbitrary selection of candidates and further on a challenge being made by an unsuccessful candidate, after the declaration of the result Court of Law can ascertain as to whether results are as per the merit disclosed by individual candidates and with reference to their performance in the interview or not.

15. The aforesaid objectives of the rules for granting marks for personality test has been frustrated by the acts of the members of the Selection Committee. Indifferent attitude shown by such Selection Committee is further aggravated by the stand taken by the Chairman of the Selection Committee, that it was decided to award the interview marks after the entire interview (of all candidates) was over.

16. In the opinion of the Court such a decision would normally lead to an inference where the members of the interview board will be in a position to

manipulate the marks of the candidate after the interview is over. Such a practice necessarily leads a situation where the members of the Selection Committee as well as other persons concerned can dilute the ultimate result of the interview, which finally determine the merit of the selected candidates. This Court has no hesitation to record its strongest disapproval to the practice adopted by the then Selection Committee of which the then Excise Commissioner was the Chairman.

17. However, brilliant members of Selection Board may be, they cannot be expected to memorize the performance of individual candidates and to award marks after the interview is over specifically where the number of candidate, to be interviewed, is more than 300. No reasonable man with a sense of fairness can ever adopt such a procedure.

18. Fairness, which is expected in the selections to be held for the post under the State, has been given a go by. The procedure adopted has to be deprecated in strongest word, so that in future no officer of the State, however high he may be, has the courage to adopt the same procedure again.

19. This Court, therefore, records that whenever maximum marks are fixed for interview, Selection Committee/Board, constituted for conducting the interview, must award marks to the candidates individually immediately thereafter the interview of the candidate is over and if there are more than one member in the Selection Committee/Board, they must award their individual marks to the candidates. The average of the marks so awarded can be calculated for working out the marks, which the candidates can be said to have achieved in the process of interview. This is the only way in which arbitrariness and favoritism can be avoided in the process of interview, which is based on a subjective appreciation of the performance of the candidates by the members of the Interview Board.

20. Accordingly, the State Government is directed to issue appropriate orders for ensuring aforesaid directions in all selections wherein interview is to be held for appointment on the government post and records of such interview must be maintained so that, if a challenge is made, competent Court may call for all the records and examine the fairness of the selection.

21. From the facts, which have been noticed herein above as well as borne out from the records, it is no more in doubt that the marks, which have now been awarded after 8 years by the Selection Board in respect of 50 candidates (including the petitioners), who were interviewed in the month of November, 1997, are based on mere presumption and an exercise carried out by the respondents for paper work only. Such awarding of marks cannot be said to be the assessment of the performance of the candidates in interview nor it can be the basis for determining their merit. The individual marks on merit of the candidates, so far as the interview is concerned, has not been recorded faithfully and therefore the recording of marks, now is a nullity in the eyes of law, liable to be ignored.

22. Since 50 candidates, including the petitioners, who had participated in the

process of selection out of 304, have been deprived of their right of being considered on the basis of their performance in the interview, the select list, which had been notified by the Excise Commissioner (including three candidates who were interviewed in the year 1997), is per se arbitrary and has to be quashed. This decides the last issue.

23. This Court is aware that rights of the candidates other than 50 candidates, who were interviewed in the year, 1997 shall also be jeopardized because of this order of the Court. However, since respondents have made a statement that till date no appointment letters have been issued in pursuance of the impugned select list, it is fair and just that the respondents may be directed to constitute afresh Selection Board (of Officers other than then, who were member of the Interview Board, which had held selection in the month of November, 1997) for interview of all the 304 candidates afresh. The Selection Board shall award marks to individual candidates immediately after their interview is over. The merit list shall, thereafter, be prepared in accordance with law and shall be notified for the purposes of appointment. The aforesaid exercise must be completed within three months from the date a certified copy of this order is filed before the Excise Commissioner, who shall advertise the date for fresh interview in the newspaper and shall also forward interview call letters to the candidates individually by registered post within one month.

24. In view of the aforesaid the select list published by the Excise Commissioner dated 28th July, 2005 is hereby quashed, Writ petitions are allowed subject to the directions issued herein above.

25. Original records may be returned to Standing Counsel.