

(2003) 09 DEL CK 0137
In the Delhi High Court
Case No : CW 1382 of 2003

Mirza Saba Alam Baig

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Citation : (2003) 6 AD 585 : (2003) 107 DLT 331 : (2003) 71 DRJ 88 : (2003) 2 ILR Delhi 237

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Baljit Singh, for the Appellant; Anurag Mathur, for the Respondent

Judgement

Vikramajit SEN, J.—Rule.

2. Mr. Anurag Mathur, learned counsel appearing on behalf of Delhi University has produced the original file, and the matter has been heard in great detail.

3. By consent of parties the Petition is being finally disposed of.

4. In the impugned decision dated 20.8.2002 the Petitioner has been disqualified from passing the examination taken by him and has been further debarred from appearing at any examination of the Delhi University until the annual examination of 2002. He was informed that he would be admitted to the same examination to be held in April, 2003, if otherwise eligible. It has been emphasised by Mr. Mathur, learned counsel for the University that the Petitioner has not appeared in this examination. Learned counsel for the Petitioner has immediately retorted by saying that the assailed decision is wholly illegal and has far-reaching consequences on the Petitioner's future as it affects his moral turpitude and unless challenged, it would leave an indelible blot on his character. It was for this reason that the Petitioner had decided not to sit in the examination but instead to vindicate his innocence.

5. In my opinion, the academic record of the Petitioner cannot be ignored,

keeping the facts of the case in perspective. The Petitioner joined M.A. (Urdu) in the Department of Urdu of the Delhi University and passed the First Year (Ist and IInd semester) securing 515 out of 800 marks. Although he had thus obtained 64 per cent but since he had secured only 53 per cent in Paper- VIII of the IInd semester, he decided to re-appear in this Paper aspiring to improve his percentage. In the IIIRD semester the Petitioner has secured 232 out of 400 marks, i.e. 58 per cent. He is, thus, an outstanding student. The Petitioner appeared for the IVth semester examination in April, 2002. Thereafter, on 7.5.2002, he sat for re-examination in Paper-VIII. On that fateful date he was accused of having cheated through the use of some handwritten slips/papers. The version put forward by the Respondent is that during the examination the Petitioner went to the toilet. On his return to the Examination Hall he was given a fresh Answer Book, on these slips/papers being recovered from his person. Both the Answer Sheets are available. The Expert opinion is that the slips/papers have been used in answering the question.

6.It is not open to this Court in the exercise of its extraordinary Writ jurisdiction otherwise than to accept the Expert's opinion. In fact, this opinion has not been seriously challenged and the Explanation proffered is that since the question pertained to grammar, the answers were almost mathematical in nature and not open to much variation. It has, however, been vehemently contended that the Report of the Expert is palpably incorrect inasmuch as the Petitioner had not answered Question 5, whereas the Report mentions that the slips/papers were "" used"" for answering Questions No.4 and 5. The Proforma dated 7.5.2002 has been perused by me. It states, inter alia, that three pieces of handwritten material had been seized from the Petitioner.

However, these three pieces contain only the signatures of the Invigilator and the Superintendent, and not of the Petitioner, even though the Proforma specifically mentions this requirement Paragraph 11 of the Proforma reads thus:-

""11. Circumstances under which the candidate was detected in possession of the unauthorised material (The invigilator may kindly state how the suspicion arose, the exact place from where the material was recovered, viz. on the person of the candidate, or on or inside--or concealed inside or under the answer book or question paper in examination room or in the lavatory where the candidate had gone and whether when detected whether the candidate was using the same or not"".

Despite the obligations cast in the above paragraph there is only a cryptic note of three words viz.--""caught while copying"" .

7.Mr. Mathur, learned counsel appearing on behalf of the Delhi University has emphasised that although this incident took place on 7.5.2002, the Petitioner did not either remonstrate or file any Representation till 29.7.2002. On that date he had stated in writing, inter alia, that the ""allegation is false framed against him"". Thereafter, the Petitioner was asked to appear before the Examination

Disciplinary Committee on 11.8.2002. The decision was taken on the same date and some of the salient contents read thus:-

""A . CHARGE AGAINST THE CANDIDATE Three hand written papers were found from him.

C. REPORT OF THE EXPERT

The material is relevant and has been used in answering Q.No.4 and 5.

D. REPLY OF THE CANDIATE TO THE SHOW-CAUSE NOTICE

Denied the charge.

E. STATEMENT GIVEN AT THE TIME OF INTERVIEW, IF ANY.

Accepted the charge.

F. OBSERVATIONS OF THE COMMITTEE

We have carefully gone through the relevant material available on record. As per report of the expert on the subject the material is relevant to QP and has been used by the candidate in answering Q.No.4 and 5. The candidate has also accepted the charge before the EDC. We have, Therefore, decided to punish this candidate under part C of the guidelines"".

8.In the Petitioner's letter dated 27.8.2002 addressed to the Vice Chancellor, he had stated that he learnt of the use of unfair means only when the results were not declared and he was told of the accusation. The Review was termed out in the form of the following Memorandum:

"" MEMORANDUM

With reference to his/her application dated 16.9.2002 regarding review of the punishment awarded to him/her in the unfair-means case during the Examination held in 2002 Sh./Kum. Mirza S.A. Baig is hereby informed that on careful consideration of his/her review petition, it is not possible to change the punishment already awarded to him/her.

Shri Mirza Saba Ali Baig,

C-5/91, gali No.2,

Sadatpur Extn.,

Karawal Nagar,

Delhi-110094""

9. By letter dated 16.9.2002 the Petitioner had requested the Vice Chancellor for Reviewing this decision. In this letter he has stated, inter alia, that the Committee did not give him any time but only informed him that he should abide by the results.

10. I have given the matter considerable thought, as it undoubtedly deserves. A balance has to be preserved between the maintenance of high academic standards and the absence of cheating and unfair means on the one hand, and the future of a student on the other. Neither brook of any compromise. In my opinion it is incumbent for the University to ensure that the Enquiry which is conducted assumes almost the same precision enjoined in criminal trials. An overwhelming preponderance of evidence should be available before a student's future is irretrievably and irreversibly affected. The Petitioner in the present case has an enviable and admirable academic record, at least so far as his performance in M.A. is concerned. I cannot lose sight of the fact that in the Paper in which he is accused of having used unfair means was a re-examination, in which he had already passed in the Second Division. This fact cannot be looked askance of. Unfortunately, the cryptic manner in which the decision has been expressed does not indicate that this was duly kept in view. I had enquired of the Petitioner in Court whether the slips allegedly recovered from him are in his handwriting and he has denied it. It had occurred to me during the course of arguments that if slips/papers were in the handwriting of the Petitioner, it would be difficult to accept his version that he had been framed and that these documents had been recovered from his person. Regretfully, the Respondent has not pursued this line of investigation, even though it would have been very easy for this exercise to have been completed, keeping in perspective the fact that the Answer Sheet was available. The signatures of the Petitioner were not taken by the Invigilator and the Superintendent, although they were enjoined and required to do so. Thereafter, the Committee also did not consider it expedient or necessary to obtain the signatures of the Petitioner on his pleading guilty to the charges which have far reaching consequence

It is indeed difficult to accept that all these officials would record an incorrect statement, but keeping the gravity of the situation in view, it is rudimentary that the Petitioner's signatures should have been insisted upon. This procedural error is sufficient to vitiate the decision. The benefit of doubt should be given to the Candidate/Petitioner especially because of the infraction of the established and prescribed procedure. In the circumstances of the case I am constrained to state that the case has not been proved by the Respondent at all.

11. There is another aspect of the case which I would like to touch upon and that is to the quantum of punishment awarded. As has already been mentioned, the Petitioner had decided to repeat Paper-VIII in his endeavor to improve upon the 53 per cent already secured by him. Mr. Mathur, learned counsel for the Delhi University has submitted that once the Committee arrives at the conclusion that the charges against the Petitioner stand proved, it had no scope for latitude in the matter but to pronounce the punishment that it did. In *Neha Jain Vs. University of Delhi and Another*, in the factual matrix similar to that existing in the present case, Hon'ble Mr. Justice Manmohan Sarin had found the punishment and penalty on the Petitioner wholly disproportionate to the alleged misconduct. The decision cancelling the entire examination was quashed, and made

operational only to the subject question Paper. In a situation where the charges are not proved at all, a fortiori, the disproportionate nature of the penalty assumes all pervasive consequences. The decision in *Om Kumar and Others Vs. Union of India*, is also of relevance inasmuch as the impugned Order does not indicate that all relevant factors have weighed in the mind of the decision taker.

12. This Court would not normally interfere in the punishment accorded to the candidate unless it is palpably evident that it is untenable and opposed to reason. In a case such as this one naturally wonders whether it would not have been sufficient to cancel the re-examination in Paper-VIII.

13. In these circumstances the Order dated 20.8.2002 as well as the Memorandum dated 28.11.2002 are quashed and set aside. The Respondent University is directed to declare the result of the Petitioner in M.A. (Final) Examination held in April, 2002.

14. There shall, however, be no order as to costs.