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**(2011) 12 P&H CK 0034**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 6535 of 2009 (O and M)**

Satyawan Yadav

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision :** 19-12-2011

**Acts Referred:**

**Citation :** (2011) 12 P&H CK 0034

**Hon'ble Judges :** Mahesh Grover, J

**Bench :** Single Bench

**Advocate :** R.K.Malik, with Mr. Vijay Dahiya, for the Appellant; Harish Rathee, D.A.G. Haryana, for the Respondent

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## Judgement

Mahesh Grover, J.—In this writ petition the petitioner prays that he is entitled to be appointed to the post of Sub Inspector of Police, as he

duly fulfills all the prescribed criteria required for such an appointment. The claim of the petitioner is that he had applied for the post of Sub

Inspector of Police pursuant to the advertisement dated 7.9.2007 against the BC-B category. In the written test conducted by the respondents, the

petitioner was intimated vide Annexure P-4 that he had been awarded 127 marks out of 200 marks in the written examination. The last selected

candidate in this category i.e. BC-B also secured 127 marks. Since both the petitioner and the last selected candidate had secured similar marks,

the grievance of the petitioner is that his claim for appointment has been defeated on the pretext that he had failed to make the goal in the physical

test.

2. The petitioner asserts positively that he had completed all the physical endurance tests efficiently and had been declared passed, but his claim

has been subverted to benefit the selected candidate.

3. He thus, made a serious endeavour to get the recorded version of the videography conducted regarding the physical endurance test, so as to erase any mis-apprehension and also to vindicate his own stand.

4. On the representation made by the petitioner, the State Information Commissioner directed respondent No. 3 to furnish the requisite information to him by supplying him the compact disc of the physical test undertaken by the petitioner. The information was declined and the petitioner then filed an appeal, but during the pendency of the appeal, he was informed vide Annexure P-9 that the requisite record of the videography had been destroyed by the Haryana Staff Selection Commission, thus depriving the petitioner of any valuable information that he could have had to substantiate his claim.

5. The petitioner thus, contends that the respondents have deliberately destroyed the record to conceal their own mis-deeds, as it is evident that the petitioner and the selected candidate had secured 127 marks which included the test for physical examination. According to him, a mischief has been played to defeat the claim of the petitioner, because even if the petitioner had got one solitary mark in the other tests such as interview etc. he would have succeeded in getting the appointment.

6. The respondents contend that there was no reason for the petitioner to view their conduct suspiciously, as no mala fides have been levelled against anyone and further, the Commission was very well within its rights to destroy the record and having done so, the contention of the petitioner cannot be tested to be correct.

7. On due consideration of the matter, the Court finds a peculiar situation emerging from the facts of the case. The petitioner had applied for the information under the Right to Information Act on 1.4.2008 regarding the compact disc of the physical test which had been videographed. The plea was returned on 24.4.2008 and the first appeal was preferred by the petitioner on 6.5.2008, which was prompt enough. He was summoned for personal hearing on 18.7.2008, but was not shown the videograph and the relevant material. He then filed second appeal on 21.8.2008 which was again reasonably prompt to ensure the continuity of the grievance. The appeal was rejected on 18.8.2008 and the petitioner was informed on

10.9.2008 that the entire record had been destroyed and that the Staff Selection had seen the record and had found that the petitioner was unsuccessful in two events i.e. 100 and 800 metres race.

8. It is strange that the respondents resorted to destruction of the record even when the controversy before the competent authority under the Right to Information Act was alive and the petitioner was immersed in his attempt to retrieve the information. In the opinion of the Court, the respondents were not justified in destroying the record when the crucial information was still being attempted to be availed of by the petitioner. At this juncture, when for the reasons best known to the respondents who have destroyed the record, the Court is clearly precluded from testing the veracity of the contentions raised by the petitioner. The haste in which the record has been destroyed, even when the matter was pending to the knowledge of the respondents, is a cause tempting enough for the Court to derive an adverse inference against the respondents, but the petitioner has not levelled any mala fides against the respondents and neither has he made the selected candidate as a respondents to the petition.

9. In this view of the situation, to accept the contentions of the petitioner when there is no record available, would be fraught with an imminent risk of concluding on the basis of a mere inference against the respondents which exercise is further likely to be rendered futile for the simple reason that there has been no indicative material to show that the respondents were in any event, prejudiced against the petitioner, or inclined towards the selected candidate and further, still when the selected candidate has not been impleaded as a respondent, thus resulting in a situation that even if the entire claim of the petitioner is accepted, it would result in the dislodging the selected candidate which obviously cannot be done in his absence before the Court.

10. Reliance has been placed on a judgment of the Hon''ble Supreme Court in Krishan Yadav and another Vs. State of Haryana and others, , wherein the Hon''ble Supreme Court, in the wake of the selecting authorities having destroyed the record, had quashed the selection and had observed that the Court should not have shown helplessness when confronted with the situation that the record had been destroyed.

11. Reliance has also been placed on a judgment of the Hon''ble Supreme Court

in Pritpal Singh and others Vs. State of Haryana and others, ,

wherein the Hon''ble Supreme Court observed that the selection ought to have been quashed when the records were destroyed.

12. In view of the fact that the Court has categorically noticed the undue haste in which the records were destroyed, I am of the opinion that the

only solution lies in directing the respondents to conduct the physical examination test of the petitioner afresh. The entire exercise shall be

videographed and retained by the respondents atleast for a period of six months which period shall however, not be strictly construed, if some

proceedings initiated by the petitioner are in process in any Court. In such an eventuality, it shall be retained till the proceedings are concluded.

Since the petitioner has not impleaded any selected candidate against whom the grievance has been raised, the Court cannot quash the selection

and the consequential appointment in favour of the candidate belonging to BC-B category. In the event of the petitioner successfully completing his

test and in the event of any post lying vacant, the respondents are free to consider the case of the petitioner for appointment. The petition is

disposed of as above.