

(2002) 01 AHC CK 0157
In the Allahabad High Court
Case No : C.M.W.P. No. 38277 of 1999

Suyash Kumar Srivastava and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Uttar Pradesh Procedure for Direct Recruitment for Group C Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998 — Rule 4, 5

Citation : (2002) 1 AWC 865 : (2002) 2 UPLBEC 1322

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Daya Shankar, Ashok Kumar Srivastava and K.N. Singh, for the Appellant; S.C. and S.C. Rai, for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition, petitioners have prayed for issuance of a writ in the nature of certiorari quashing the order dated 8.7.1999 (Annexure-7 to the writ petition) passed by respondent No. 1, by which the select list for the post of Gram Vikas Adhikari of Group "C" service was cancelled.

2. An advertisement for direct recruitment for 36 post of Gram Vikash Adhikari of Group "C" service under the District Development Officer Sonbhadra. respondent No. 3 was published in August. 1998. The aforesaid posts were to be filled up in accordance with provisions of U. P. Procedure for Direct Recruitment for Group "C" Posts (Outside the Purview of U. P. Public Service Commission) Rules. 1998. hereinafter referred to as the Rules. It was also notified that a competitive written examination for the said post will be held in each district where the vacancies have been published on one and the same date by an Independent agency appointed by the State Government for this purpose. The candidates who had passed Intermediate Science or Intermediate Agriculture Examination of U. P. Board or equivalent examination were entitled to apply for the said post. A large number of candidates applied in pursuance of the said

advertisement. Rule 5 of the aforesaid Rules provides for giving marks to the candidates on their performance in the light of the written examination, at minimum qualifying examination, i.e., Intermediate Science and Intermediate Agriculture and on interview after passing out written examination. The candidates underwent a physical test and it is thereafter adding 30% marks on the basis of academic qualification a list was prepared for interview. It has been stated in the writ petition that a list of 144 candidates was prepared by the District Magistrate considering 36 vacancies, for being Interviewed by the District Selection Committee. Rule 6 of the aforesaid Rules provides for a Statutory District Selection Committee comprising of five officers details of which have been mentioned in para 15 of the writ petition. The District Magistrate in accordance with Rule 5 (4) (a) of the said Rules sent a list of 144 candidates to the District Development Officer for being interviewed by the Statutory District Selection Committee. It has been stated in paras 17, 18 and 39 of the writ petition that marks as obtained by the candidates in the written examination and the marks of basic academic qualification and their exact merit ranking prepared, prior to interview stage was kept as a top secret by the District Magistrate as the same was neither published nor declared nor it was made known to anyone either to the Chairman or other members of the District Selection Committee unless and until the interview held and marks allotted by each members are totalled and their average marks were calculated and recorded on the interview chart. Due care was taken by the District Magistrate in not disclosing the merit ranking and the marks of the successful candidates when the list was sent for interview to the District Selection Committee. All the 144 candidates were interviewed. In the meanwhile two more posts of Gram Vikas Adhikari fell vacant to be filled in by the Direct recruitment in the district upon which for two more posts the District Magistrate sent names of the candidates and they were also interviewed and thus in respect to all 38 posts a final merit select list categorywise along with a wait list was issued/published by the respondent No. 2 on 30th March, 1999, a copy of which has been annexed as Annexure-6 to the writ petition. Petitioners claim that their names find place in the select list and thus after completion of the selection process petitioners were to get appointment. As the matter was delayed, after repeated representation petitioners came to know that at the behest of some political leaders and high officials on account of their pressure and influence as their choice candidates and wards could not be selected, they got the impugned order dated 8.7.1999 from the Government, cancelling the select list dated 30th March, 1999 with direction for fresh interview to be held at Sonebhadra. It is this decision of the Government by which the select list which finds names of the petitioners was cancelled, made the petitioners aggrieved to come up to this Court.

3. Learned counsel submits that the action on the part of the respondent is clearly arbitrary, *ma/a fide* and has absolutely no basis either in the facts or in law. The exercise as has been undertaken by the respondent No. 1 has absolutely no foundation or any justification and in respect to the impugned action

petitioners did not get any opportunity. Learned counsel submits that ground as has been mentioned in the impugned order that in respect to irregularity at the time of interview, on the complaints made in this respect an enquiry was got conducted by the Joint Development Commissioner, Mirzapur Region, Mirzapur. on the basis of which it was found that there has been cuttings and overwriting on the marks given by the members of the Committee and therefore, the decision is being taken, is not substantiated from the record itself. It has been pointed out that marks as has been received by the candidates in the written examination, on their academic qualifications, before the interview was made top secret. It was neither published nor released in order to make known to either the Chairman or to any member of the Committee to give favourable marks to the candidates in order to get them selected. This specific averment has been made by the petitioner in paras 16, 17 and 39 of the writ petition. In furtherance to this submission, it has been further pointed out that even enquiry report as has been submitted by the Joint Development Commissioner, Vindhyachal Region, Mirzapur, which has been annexed as Annexure-1 to the counter-affidavit do not justify the stand of the respondents, that there has been overwriting and cutting for giving undue advantage to the candidates. The charge of cutting and overwriting in the marks given by the members of the Board, to the advantage of the candidates, according to the learned counsel is not proved by the said enquiry report.

4. Lastly it has been pointed out that District Development Officer who was Chairman of the District Selection Committee was proceeded for aforesaid lapses and Irregularities but in that respect after full fledged enquiry, In the report submitted by the Joint Development Commissioner, dated 15.9.1999 (Annexure-1 to the supplementary rejoinder-affidavit, it has been found that there has been no lapse and no Irregularity and taking of any action against the District Development Officer, Chairman of the District Selection Committee was dropped. These averments are contained in paras 5. 6 and 7 of the supplementary rejoinder-affidavit. On the basis of the aforesaid submission It has been concluded that taking of the impugned decision for cancelling the final select list was clearly arbitrary whimsical and that was for oblique motive.

5. Learned standing counsel in response to the aforesaid submissions, in the light of the facts so stated in the counter-affidavit argues that after enquiry it has been found that at the time of interview, process of giving marks was not fair and there happened to be cutting and overwriting in the marks given at the time of interview by the members and therefore learned counsel submits that respondent No. 1 has rightly cancelled the select list and directed for fresh Interview. Learned standing counsel placed report of the entire selection proceedings before this Court at the time of the hearing, which was already summoned by the order of this Court.

6. In view of the aforesaid submissions and the pleading as has been set forth before this Court and the material as exists, the rival contention of the parties

have been examined.

7. The selection of the post of Gram Vikas Adhikari of Group "C" service was to be made in accordance with the U. P. Procedure for Direct Recruitment for Group "C" Posts (Outside the purview of Public Service Commission) Rules, 1998 (Annexure-8 to the writ petition). The aforesaid Rules provide the constitution of Selection Committee and the procedure for awarding marks. In order to make the selection utmost fair, the Rule has taken care of the situation and therefore, disclosing of the marks secured by the candidates in the written examination, on the basis of their academic qualification has been directed to be kept top secret and no information is to be provided either to the Chairman or the members of the Selection Committee until marks at the time of Interview is given and their average total is made. Rule 4C is hereby quoted :

"Chairman and member of the Selection Committee was, in no case be provided any Information with regard to marks obtained by candidates under Classes (A), (B), (C), (D) and (E) and Sub-rule (3) at the time of interview."

8. It has been specifically stated by the petitioner in paras 16, 17 and 39 of the writ petition that utmost secrecy was maintained by the District Magistrate and the marks secured by the candidates were never made known to either Chairman or members of the Selection Committee before the total on average marks secured by the candidates in interview was totalled. There is no charge or any allegation either in the counter-affidavit or in the enquiry report, contained as Annexure-1 to the counter-affidavit against the District Magistrate that there has been some lapse on his part. Respondents have not chosen to deny the aforesaid averments as the reply to the aforesaid paragraphs is contained in paras 5 and 14 of the counter-affidavit. It has not been stated in the counter-affidavit that District Magistrate has leaked the marks given to the candidates in the written examination and on the basis of academic qualifications. In view of this fact it emerges that when the Chairman and the members of the Selection Committee who were to proceed with the interview, when were not aware about the marks secured by the candidates they cannot be said to be in a position to give higher marks in order to help the candidates of their choice and if they were having an intention of giving higher marks for helping candidates there was no occasion for making any cutting or overwriting as they could have very easily give higher marks in the interview.

9. It appears that while Judging the performance of the candidates while awarding the marks the members of the Selection Committee at some place made some cutting or overwriting but that appears to be natural course as supposing after putting a question, a particular mark was given but thereafter in due course of time during the queries from other members, member felt "for making slight variation it cannot be said that it was unusual. There also appears to be more plausible reason for this conclusion which is apparent from the enquiry report dated 18.5.1999, Annexure-1 to the counter-affidavit and the enquiry report of the Joint Development Commissioner. Varanasi Region,

Varanasi, dated 15.9.1999, Annexure-1 to the supplementary rejoinder-affidavit. The bare analysis of the aforesaid report makes it clear that most of the candidates in respect to whose marks allegations of overwriting and cutting have been levelled are not selected candidates and some of them find their berth in the waiting list only. This is clear from para 5 of the report dated 18.5.1999 (Annexure-1 to the counter-affidavit) and para 4 of the report dated 15.9.1999 (Annexure-1 to the supplementary rejoinder-affidavit).

10. In view of this, there appears to be absolutely no motive on the part of the members of the District Selection Committee in respect to the charges as levelled in respect to foundation as has been made by the respondent No. 1 for passing the Impugned order. It appears that the exercise of passing impugned order proceeded on some complaint by one Ramendra Nath Misra the State President of Educated Unemployed Sangh and one Neeraj Kumar Srivastava, Research student. Admittedly the District Development Officer viz., Laxmi Narayan Chaudhary who was the Chairman of the District Selection Committee was proceeded under disciplinary proceedings and the senior officials of the rank of Joint Development Commissioner, Varanasi Region, Varanasi. have submitted his report on 15.9.1999 in which he was completely exonerated, which have been finally accepted by the Government as has been stated by the petitioner in para 7 of the supplementary rejoinder-affidavit. Admittedly there is no allegation or any charge in respect to any Irregularity in respect to the marks as awarded in the written examination, and on the basis of academic qualification and as in view of the findings as has been given in this judgment top secrecy was maintained by the District Magistrate in respect to the marks acquired by the candidates on the aforesaid two counts and the candidates in respect to whom charge of overwriting and cutting have been levelled have not been finally selected, it is difficult to accept the correctness in the ground as has been taken by the respondent No. 1 for cancelling the select list by order dated 8.7.1999. The record as was placed by the learned standing counsel before this Court also does not indicate any material turn in the light of the charge of cutting and overwriting in the marks received by the candidates at the time of interview. This Court feels that the impugned exercise of the respondent No. 1 was clearly arbitrary and whimsical. There appears to be no other basis for the respondent No. 1 to pass impugned order but the report of the Joint Development Commissioner, Mirzapur Region, Mirzapur (Annexure-1 to the counter-affidavit) and as discussed. In view of the finding as has been recorded in the said report as well as the subsequent detailed findings as have been recorded by the Joint Development Commissioner, Varanasi Region, Varanasi. in its report dated 15.9.1999 excluded the District Development Officer and Chairman District Selection Committee. It appears that the action on the part of the respondents is clearly untenable and is liable to be quashed. As final select list was already published on 30th March, 1999, having been duly approved by the District Magistrate, petitioners are entitled to get themselves appointed. In the similar selection as has been made in other districts of the State after declaration of the

final select list, in March. 1999, itself the selected candidates were issued appointment order and were sent for training and they all are posted and they are drawing their salary as stated in para 44 of the writ petition. In view of this petitioners are also entitled to get themselves appointed on the post on which they have been selected as per select list dated 30th March. 1999.

11. In view of the aforesaid discussion, the writ petition succeeds and is allowed. The impugned order dated 8.7.1999 (Annexure-7 to the writ petition) passed by the respondent No. 1 is hereby quashed. Respondents are commanded to issue appointment letter to the petitioner in accordance with the select list dated 30th March. 1999 (Annexure-6 to the writ petition).

12. Parties are directed to bear their own costs.