

(2016) 07 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 889 of 2016

Union of India

APPELLANT

Vs

Abhijit Prakash

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Citation : (2016) 4 PLJR 254

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Sanjay Kumar, (ASG), for the Petitioners; Mr. Chandra Bhushan Singh, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J.— Heard learned counsel for the parties.

2. The present writ application has been filed by the petitioners being aggrieved by the order dated 30.05.2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the "Tribunal"), by which O.A. No. 424 of 2013 filed by the respondent has been allowed and his termination order has been quashed.

3. The petitioner appeared in the examination held for appointment to the post of Intelligence Officer in the Narcotics Control Bureau (NCB) held by the Staff Selection Commission (SSC) pursuant to advertisement dated 28.05.2011. He appeared in the examination held on 28.08.2011 followed by an interview held on 13.01.2012. After final selection by SSC, offer of appointment was issued by the NCB to the successful candidates, including the respondent, under letters dated 26.04.2012, 04.04.2012 and 28.05.2012, asking them to join in NCB Headquarters on 28.05.2012 and 18.06.2012. However, in the meantime, the SSC intimated to the NCB Headquarters under letter dated 21.05.2012 that it had decided to carry out a detailed Post Examination Analysis for the exam in question as there were reports that some candidates have used unfair means/

malpractice. It also suggested that if there was urgency of appointment, candidates may be appointed with the condition that their services were liable to be terminated if there is prima facie proof of them having indulged in any malpractice. That the SSC again wrote to the NCB under letter dated 25.07.2012, that Post Examination Analysis of 76 candidates, including the respondent, was underway and with a request that further action regarding appointment be taken up in normal course and that specific recommendations regarding the concerned 76 candidates would be made after completion of detailed analysis by the SSC. Finally, after the Post Examination Analysis, out of the 9 candidates who had joined the NCB, only one candidate cleared the test whereas 8 candidates, including the respondent, failed. The Director, SSC intimated to the NCB Headquarters under letter dated 20.12.2012 that dossier of those candidates who had not cleared the Post Examination Analysis test may be returned to the concerned regional offices as the SSC had decided the cancellation of candidature and debarment of their appointment. Finally, the NCB, after advice from the Ministry of Home Affairs (MHA) dated 10.05.2013, terminated the service, vide order dated 12.06.2013, of all 8 candidates who were working as Intelligence Officers in the NCB. The respondent being aggrieved by the same moved the Tribunal in O.A. No. 424 of 2013 and by order dated 30.05.2014 the Tribunal quashed his termination order with a direction to reinstate him in service. The petitioners being aggrieved by the same have preferred the present writ application.

4. Learned counsel for the petitioners submitted that the order of the Tribunal is based only on surmises and conjectures despite there being proof and a very high probability to indicate that the respondent had committed malpractice. It is submitted that the comparison of answer-sheet of paper - I of the appellant with one Jai Prakash Sah leaves no doubt that such high probability of matching of right answers, wrong answers and blank answers, cannot be a mere coincidence, moreso, when both appeared at the same venue and were seated in the same room on adjacent seats and though having different test forms, the questions in the two test forms were same in shuffled sequence, which would be apparent from the attendance sheet of the examination. It was submitted that due to the issue of malpractice having been brought to the notice of the SSC, the exercise of carrying out a detailed Post Examination Analysis for the written examination was a bona fide measure and the Scientific Analysis indicating the irregularity committed by the respondent was enough not to recommend/select/recruit him.

5. Learned counsel for the petitioners has also referred to the order of the Delhi High Court in W.P.(C) NO. 3707 of 2011 dated 6th February, 2013 in the case of Varun Bhardwaj v. State Bank of India & Ors. where the Institute of Banking Personnel Selection (IBPS) had taken a similar exercise to detect use of unfair means/malpractice in objective test by the candidates and the same has been approved and accepted by the Court. He had also referred to an order of the Chandigarh Bench of the Tribunal dated 17.10.2014 in Original O.As No. 060/00228 of 2014 and 060/00229 of 2014, by which a similar exercise of

holding Post Examination Analysis by the SSC in the Combined Graduate Level Examination held on 19/26.6.2011 has been approved.

6. Learned counsel for the respondent submitted that the Post Analysis Text conducted by the SSC cannot be relied upon for the reason that in an examination of the present kind, similarities of right and wrong questions always exist and such similarities cannot be taken to establish the connivance/collusion/malpractice by the respondent. It was submitted that the respondent was not given details of such Post Examination Analysis test so as to explain his innocence and, thus, the decision to terminate his services by the NCB is unsustainable. Learned counsel submitted that the Tribunal has rightly come to the conclusion that the documents produced before the Tribunal did not inspire any confidence to hold that the respondent had copied from a failed candidate and guilty of malpractice and the termination order was quashed due to lack of sufficient proof. It was further submitted that 6 similarly situated Intelligence Officers pursuant to the order from the Principal Bench of the Central Administrative Tribunal, have been allowed to join whereas the petitioner has been discriminated against by not being allowed to join.

7. Learned counsel relied upon a decision of the Hon''ble Supreme Court in the case of State (NCT of Delhi) v. Shiv Kumar Yadav reported as (2016) 2 SCC 402, for the proposition that an accused is entitled to be provided all relevant documents and to lead evidence in his defence.

8. Having considered the rival contentions, we find merit in the present writ application. The advertisement dated 28.05.2011 itself contained the following provision as :

"Note-1 : Success in the examination confers no right of appointment unless Government are satisfied after such enquiry as may be considered necessary that the candidate is suitable in all respects of appointment to the service/post."

9. This clearly indicates that after such enquiry as may be considered necessary for verifying that the candidate is suitable in all respect for appointment to the service/post, success in the examination alone would not confer right of appointment. Thus, the exercise of conducting Post Examination Analysis cannot be said to be arbitrary or unreasonable as the sanctity of the examination for selection/recruitment to a public post has to be maintained with utmost strictness so that merit does not become a casualty at the alter of malpractice. Further, from the records, it transpires that the paper no. 1 of multiple choice objective questions was divided into four parts namely T1, T2, T3 and T4, and the details of overall matching between the respondent and Shri Jai Prakash Sah was as follows :-

Test

Total Match

Right Right match

Wrong Wrong match

Blank Blank match

T1

40

34

4

2

T2

43

28

15

0

T3

45

34

4

7

T4

48

39

9

0

10. In light of the above, the probability of the match with regard to right answer, wrong answer and blank answer is such which clearly indicates that the same cannot be a mere coincidence, as has been explained by the petitioners in paragraphs no. 15 and 16 of the writ petition which reads as under :

"15. That in the multiple choice objective type test, there were 4 choices/ alternative answers for each question out of which only one is the right answer and the other three are wrong answers. As far as possible all choices were made plausible enough, therefore, if the candidate did not happen to know the correct answer he would select one of the three wrong answers by chance. Thus, the probability of picking a particular wrong answer is 1 out of 3 or $1/3$ 0.33. Similarly, if the other candidate of the pair also does not happen to know the

right answer to the same question, he would also happen to select one of the 3 wrong answers by pair of candidates will be $1/9 = (1/3)^2 = (0.33)^2$. Similarly, the probability of a pair of candidates having 2 question with identical wrong answers would be $(0.33)^2 * (0.33)^4$. The probability of the pair making 7 wrong answers will be $(0.33)^{14}$ i.e. 0.0000018. If it is continued in the same way, the probability of the pair making wrong answers to 12 question will be $(0.33)^{24}$ i.e. 0.00000000000027. It means that one can be certain that such an event just cannot occur by chance. In case such a matching has taken place it clearly indicates collusion amongst the candidates.

16. That detailed note clearly showed abnormally high matching of answer responses Sh. Abhijit Prakash with another candidate, namely, Shri Jai Prakash Sah (Roll No. 3206009534). Both of them appeared from the same venue and were seated in the same room on adjacent seats. Sh. Abhijit Prakash was given "Test Form No. 987QJ6". Sh. Jai Prakash Sah was given "Test Form No. 766PJ5". Though the Test Forms were different, the questions in the two Test Forms were same, in shuffles sequence."

11. In view of the aforesaid, in our considered opinion, the Courts ought not to sit as an expert body to overrule or hold to be unreliable the standard adopted in the Post Examination Analysis conducted by the SSC for finding out as to whether there has been use of unfair means/malpractice in any examination. The rationality of the exercise which has been explained by the petitioners as also the fact that the procedure has been applied with regard to 76 candidates and not the respondent alone also does not give rise to any indication of bias or discrimination. The respondent has also not denied the categorical stand of the petitioners taken in the writ petition as well as before the Tribunal to the effect that he and Jay Prakash Sah appeared from the same venue and were sitting on the same room on adjacent seats and that the questions in the two Test Forms were the same, in shuffled sequence. The plea of discrimination that 6 similarly persons have been allowed to join and the respondent has been singled out for different treatment also does not come to the aid of the respondent as the law stands settled that illegality cannot be perpetuated. In this context we may refer to the judgement of the Hon'ble Supreme Court in the case of Kulwinder Pal Singh v. State of Punjab reported as AIR 2016 SC 2281, in which at paragraph - 17 it has been held as under :

"17. Learned counsel for the appellants contended that when the other candidates were appointed in the post against de-reserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In State of U.P. and Ors. v. Rajkumar Sharma and Ors. (2006) 3 SCC 330 : (2006 AIR SCW 1985) it was held as under :-

"15. Even if in some cases appointments have been made by mistake or wrongly that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it

cannot be forced to perpetuate the same mistake. (See *Sneh Prabha v. State of U.P.* (1996)7 SCC 426 : (AIR 1996 SC 540) ; *Secy., Jaipur Development Authority v. Daulat Mal Jain* (1997) 1 SCC 35 ; *State of Haryana v. Ram Kumar Mann* (1997)3 SCC 321 : (1997 AIR SCW 1574) ; *Faridabad C.T. Scan Centre v. D.G. Health Services* (1997)7 SCC 752 : (AIR 1997 SC 3801) ; *Jalandhar Improvement Trust v. Sampuran Singh* (1999) 3 SCC 494 : (AIR 1999 SC 1347) ; *State of Punjab v. Dr. Rajeev Sarwal* (1999)9 SCC 240 ; *Yogesh Kumar v. Govt. of NCT, Delhi* (2003)3 SCC 548 : (AIR 2003 SC 1241) ; *Union of India v. International Trading Co.* (2003) 5 SCC 437 : (AIR 2003 SC 3983) and *Kastha Niwarak Grihnirman Sahakari Sanstha Maryadit v. President, Indore Development Authority* (2006) 2 SCC 604) : (AIR 2006 SC 1142))"

Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality."

12. As far as in the case of *Shiv Kumar Yadav* (supra) is concerned, we do not find the same to be relevant in the present case for the simple reason that the case before the Hon"ble Supreme Court related to a criminal trial and in that context it has been held that the accused is entitled to be represented by the counsel of his choice, to be provided all relevant documents, to cross examine prosecution witnesses and to lead evidence in his defence. Such analogy cannot be drawn to the facts and circumstances of the instant case.

13. In view of the discussions made herein above, we find that the order of the Tribunal cannot be sustained and, accordingly, the same is set aside while allowing the appeal. Thus, the O.A. No. 424 of 2013 stands dismissed.

Hemant Gupta, J. - I agree.