

(2014) 07 DEL CK 0059

In the Delhi High Court

Case No : W.P.(C) 5106, 5192,6505, 6539, 6571, 6585, 6789, 6792/2013 and 339, 355, 762/2014 and C.M. No. 666, 708, 1528/2014

Union of India

APPELLANT

Vs

Kuldeep Kumar

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 07 DEL CK 0059

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Ashwani Bharadwaj, Ankur Chhibber and Archana Gaur, Advocates, Sachin and J.P. Tiwari, Advocate for the Appellant; Jyoti Singh, Sr. Advocate S.K. Gupta, Tinu Bajwa, Amandeep Joshi, Sahila Lamba, Sameer Sharma, Vikas Mishra, Sachin and J.P. Tiwari, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The Union of India (UOI) is a writ petitioner in these proceedings under Article 226 of the Constitution of India. It is aggrieved by a common order of the Central Administrative Tribunal (CAT) dated 05.04.2013 in O.A. No.4215/2011 and other connected cases.

2. An advertisement was issued on 20.08.2010 for recruitment of Postal Assistants - 320 vacancies were notified in various categories. It is not in dispute that the recruitment process encompassed a written test, an aptitude test and a computer test. While for the aptitude test, 50% weightage was allowable, upto 40% weightage was to be given for the qualifying board/12th standard marks and weightage of 10 marks was to be given for the computer test. The respondent applicants, amongst several others, were declared successful and offered appointment. They apparently accepted the offer and joined the services some time in 2011. After this development, one of the unsuccessful candidates, i.e. Tarkeshwar Prasad submitted queries under the Right to Information Act

(RTI). Along with this, he demanded the answer sheets in respect of the aptitude tests of certain candidates. He thereafter represented to the UOI alleging grave irregularities in the marking of certain candidates' answer sheets in the aptitude test. This led to a review, which involved re-evaluation of the answer sheets of all 1425 candidates who responded to the recruitment process. The answer sheets in the aptitude test, enabling the candidates to secure upto 50% weightage (that can be secured in the recruitment process) were specifically gone into in each case. It was found that in the case of 11 successful candidates who had reported for duty, the marking was inaccurate. Of these, there were grave irregularities in respect of four candidates in that even though the candidates attempted the aptitude test to the extent of something between 25-30 marks, more & shy; nearly double or some times even triple the marks - have been given. In the case of seven others, however, the re-evaluation yielded results which were marginally different, in that the respondents were shown to have obtained 1% or less than what was awarded to them actually. The concerned authorities were able to pin-point the role of certain officials, against whom departmental action was proposed and is said to have been taken.

3. In light of these developments, the UOI issued a revised merit list on 12.03.2012 in which the 11 individuals, who were found to have obtained less marks were not shown as successful candidates. It initiated consequential action to remove the said respondents, which was challenged before the CAT in the proceedings which ultimately culminated in the impugned order. It is not disputed that during the pendency of the proceedings, 6 of the respondents' services were protected through impugned orders, the other 5 stood removed/terminated from employment.

4. Before the CAT, the respondents/applicants' contention was that in the absence of any power to re-evaluate the answer sheets, the employer (UOI) could not have ordered such a course of action. It was also contended that the wholesale action in directing the removal of all candidates regardless of their culpability, was arbitrary. The CAT, in its impugned order, upheld the first contention and held that even if there is no express power enabling the UOI to re-evaluate the answer sheets, nevertheless, it ought to have taken recourse to certain general circulars in the circumstances and that the facts of the case, to justify the re-evaluation of all the 1425 answer sheets. After considering the submissions of the parties, the CAT took a nuanced position in that it did not quash the entire merit list drawn after the re-evaluation. The CAT in this regard held as follows:

"12.....strictly speaking we should also quash the revised merit list prepared on the basis of re-evaluation of answer sheets. However, if we do so we would be depriving many meritorious candidates who have made it to the merit list as a result of revaluation, from gaining employment for no fault of theirs. According to the information supplied by the respondents the number of such candidates is about 14. Further, there are 7 candidates who are in between those

selected on the basis of revised merit list and those reverted. Since we are ordering that reverted candidates be taken back in service, the 7 candidates who are above the reverted candidates in merit list also deserve to be provided employment. Considering these facts and circumstances of the case, we are restraining ourselves from quashing the revised merit list and giving liberty to the respondents to appoint the 14 candidates who have made it to the revised list and the 7 candidates who are in between candidates in the merit list and those reverted, if they so desire.

XXXXXX XXXXXX XXXXXX"

5. The UOI contends that the impugned order is erroneous in that it makes a distinction between those who were involved or culpable some what in that recruitment process, with respect to the award of marks to them and those who were not so culpable. Learned counsel submitted that the CAT fell into error in holding that in the absence of specific powers, the UOI could not have reviewed or re-evaluated the answer sheet. It was highlighted that when serious irregularities such as those which were discovered in the present case are brought to the notice of a public agency or department, it is duty-bound to take remedial action where the rules and regulations or any policies enable it to do so or otherwise. According to him, the absence of any specific rules or circulars in this case did not inhibit the valid exercise of executive powers in such circumstances. It was submitted that both the conclusions with respect to lack of authority for re-evaluation and the further direction to take appropriate action without quashing the revised merit list were unwarranted. Learned counsel for one of the candidates - Deepanshu Saxena, respondent in one of the writ petitions, who was impleaded in the course of proceedings before the CAT also supports the contentions of the UOI. He, however, submits that there is no question of not giving effect to the revised merit list as that would itself amount to violation of Article 14 of the Constitution.

6. Learned counsel for the respondents submitted that the conclusions of the CAT are justified because in the absence of rules or regulations, the postal department could not have re-evaluated the answer sheets in respect of any of the tests which were part of the recruitment process. It was contended next that as regards the operative directions, the CAT's findings are in consonance with several rulings of the Supreme Court, particularly *Vikas Pratap Singh and Others Vs. State of Chhattisgarh and Others*, ; *Vinodan T. and Others Vs. University of Calicut and Others*, ; *Girjesh Shrivastava and Others Vs. State of M.P. and Others*, and *Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others*, .

7. From the above discussion, it is apparent that two issues require consideration by this Court (i) Whether the CAT's conclusions with respect to the legality of re-evaluation, based upon its understanding that absence of any rules or regulations or policy enabling such re-evaluation, inhibit the petitioner/UOI from undertaking such exercise; and, (ii) whether in the given circumstances of the

case, the direction contained in para 12 of the impugned order is justified and valid. As to the first question, this Court is of the opinion that the CAT clearly fell into error in holding that in the absence of any power of re-evaluation of answer sheets, the UOI, as recruiting agency, could not have undertaken such exercise. The provisions for re-evaluation enable the candidates to seek such relief. However, absence of such power, especially in the case of recruitment to posts in the case of public employment would not ipso facto inhibit the concerned agency from seeking such re-evaluation. This power has to be understood as a part of the inherent executive power to review its own decisions, in light of the subsequently discovered or found facts. In the present instance, there is no shadow of dispute that the queries of Tarkeshwar Prasad yielded results that were startling and challenged the legitimacy of the recruitment process. The UOI's decision to have all the answer sheets re-evaluated was part of a non-discriminatory move by it, subjecting everyone to the same standard. This stand stood vindicated when at least in four instances, it was found that the candidates were actually entitled to far lesser marks than what was awarded to them. At the same time, re-evaluation had another consequence in that several candidates who would otherwise have been below the cut-off marks were found to have obtained one percent less than what was awarded to them and at the same time, several others were found to have secured more than one percent; the latter category was 14 in number as is apparent from the reading of the impugned order, especially para 12.

8. The CAT in this case took what, in our opinion, is a nuanced position in that it did not uphold. In such circumstances, the view of the Supreme Court [refer to Vikas Pratap Singh (*supra*)] is that, where the revised list discloses that some candidates were earlier declared successful but did not make it to the grade or fell below the cut-off list in the revised list for no fault of theirs, those candidates should not be penalised. There are, of course, certain limitations to such rule of equity. In the present case, we notice that there were four candidates, who were awarded grossly higher marks which had no correlation to their performance. Their cases stand on an entirely different footing as departmental action was directed against the officer who apparently colluded with them. In such case, there is no question of granting any relief, much less on the basis of their unwarranted inclusion in the graded list and subsequent appointment. Their candidature was originally cancelled/terminated. The UOI is aware as to who these individuals are. They are before this Court the respondents in W.P.(C) 6505/2013 (Sh. Kuldeep Kumar); W.P.(C) 6792/2013 (Sh. Rahul); W.P.(C) 5106/2013 (Ms. Sonia) and W.P.(C) 5192/2013 (Ms. Varsha). If any of these are beneficiaries of the interim orders during pendency of these proceedings, it is made clear that the UOI would be justified in terminating their employment; the impugned order, to that extent, is set-aside in respect of those individuals. Consequently, the original applications preferred by them stand dismissed. As far as the respondents in the other proceedings, i.e. W.P.(C)6539/2013; W.P.(C)6571/2013; W.P.(C)6585/2013; W.P.(C)6789/2013, W.P.(C)339/2014; W.P.

(C)355/2014 and W.P.(C)762/2014 are concerned, we are of the opinion that the directions of the CAT are in the facts and circumstances of the case justified. The review in the form of re-evaluation, at least in this instance, has operated rather harshly. It is nobody's case that these individuals were in any manner involved, which resulted in their inclusion in the select list and their consequential appointment. In the earlier portion of this judgment, the decision in *Vikas Pratap Singh* (supra) was noticed. The Supreme Court took note of other judgments having regard to the facts of the case therein, i.e. the re-evaluation resulting in 26 appellants not figuring in the select list, and proceeded to protect their employment in the following terms:

25. Admittedly, in the instant case the error committed by the Respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the Appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

26. In our considered view, the Appellants have successfully undergone training and are efficiently serving the Respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the Appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the Appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the Appellants nor cause undue prejudice to the candidates selected qua the revised merit list.

27. Accordingly, we direct the Respondent-State to appoint the Appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation."

9. Having regard to the above circumstances, even while upholding para 12 of the impugned order, it is clarified that the UOI shall proceed to pass appropriate orders, giving effect to the revised merit list to the extent that the 7 candidates who secured higher marks should be now offered appointment and at the same time ensuring that the candidates who will be displaced by these seven candidates are protected from termination. Such of them who have in fact been terminated during the pendency of the proceedings shall be offered appointment. Necessary consequential action in treating these appointments as against vacancies which exist as on date or if need be, to adjust them against the future vacancies to the extent necessary, shall be taken. It is made clear that the appointments shall be treated as fresh appointments and such incumbents, i.e. those who secured lower marks in the revised list would not be entitled to claim

seniority for any prior date. The writ petitions and pending applications are allowed to the above extent.