

S.P.Singh Vs. Union of India

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Court : Madhya Pradesh

Decided On : Oct-01-2013

Appellant : S.P.Singh

Respondent : Union of India

Advocate for Def. : Shri. Atul Choudhary

Judgement :

1 HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR W.P. No.11565/2007 (s) S. P. Singh & two others Vs. Union of India and others Present: Honble Shri Rajendra Menon, J.

& Hon'ble Mrs. Vimla Jain, J.

Smt. Shobha Menon, learned Senior Counsel with Ms. Surbhi Ahirkar, for the petitioners. Shri Atul Choudhary, learned counsel for the respondents.

ORDER

(1102013) Per : Shri Rajendra Menon, J.

Challenging the order dated 20th August, 2007 passed by the Central Administrative Tribunal, Bench Jabalpur, in O.A. No.167/2007 and O.A. No.175/2007 Annexure P/1, this writ petition has been filed by the petitioners.

2. Petitioners herein are working in the establishment of West Central Railway and are posted in various places as are indicated in the cause title. They were candidates who had participated in a Departmental Examination conducted by the 2 Railway Administration on 11.6.2005. The examination was conducted for effecting promotions to the post of Assistant Engineer (Group D). The results of the examination were declared on 15.10.2005 and as the petitioners were not found eligible for promotion and as some of their answer sheets were not evaluated, the matter went to the Central Administrative Tribunal as indicated herein above and the claim of the petitioners having been dismissed, they are before this Court.

3. Even though in the original applications filed before the Central Administrative Tribunal, there were more than 13 applicants whose claims have been dismissed but as far as this writ petition is concerned, only three persons have filed this writ petition. It is the case of the petitioners that they have been declared unsuccessful in the examination on improper consideration and as the action taken is unsustainable, they seek indulgence into the matter.

4. The question involved in this writ petition which warrants consideration by this Court lies in a very narrow compass.

5. As far as petitioner No.1 S. P. Singh is concerned, it is seen that out of the two papers which he undertook in the examination, he is said to have put a religious mark "Om" in top of the first page of both the answer sheets pertaining to paper No.1 and II. As a result, his answer sheets have not been evaluated. As far as petitioner No.2 Shri Brijendra Kumar Mishra is concerned, it is said that he had written his Roll Number on the top of the first page of supplementary answer sheet of paper II, as a result this paper had not been 3 evaluated. As far as petitioner No.3 Shri Chandra Gupta is concerned, he is said to have written his Roll Number on the top of the first page of supplementary answer sheet of Paper No.2, as a result this answer sheet has not been evaluated. In all the cases, it is held that as per the instructions contained in the answer sheet candidates were clearly directed only to indicate the roll number in the appropriate place. There was specific instructions to the candidates that name or other signs or identification should not

appear in the answer sheets other than the specified place else candidates were noticed that their answer sheets would not be evaluated. It is the case of the Railway Administration that as all the three petitioners have either indicated some sign or Roll Number in the answer sheet in an unspecified space and as they have violated the instructions circulated and clearly mentioned in the answer book, it is said that their answer sheets have not been evaluated.

6. Smt. Shobha Menon, learned Senior Counsel took us through the findings recorded by the Tribunal in the impugned order, the answer sheets received from the petitioners under the Right to Information Act and also the provisions of Clause 9 of the guide lines for evaluation of answer sheets as contained in Annexure P/2 and the requirement of Clause 208.1 of the Indian Railway Establishment Manual to say that the answer sheets of petitioners No.2 and 3 namely, the supplementary answer sheets did not carry the flying leaf as a result by way of abundant caution the petitioners have mentioned the Roll Number in a particular page and as it was not the deliberate error or omission, it is said that action taken is unsustainable. She has also taken us through the various answer sheets and submitted that the valuers have evaluated some of the papers, they had not objected to any of the marks made and as the indications made by the petitioners does not amount to disclosing their identity and as the act of the petitioners did not in any manner whatsoever disclose their identity, it is said that the action of the respondents is unsustainable. Referring to the findings recorded by the Tribunal from para 8 onwards and placing reliance on a judgment of the Supreme Court in the case of Karnataka Public Service Commission & Others Vs. B. M. Vijaya Shankar and others - (1992)2 SCC Page 207, learned Senior Counsel tried to distinguish the present case and emphasize that valuer was in no way influenced by the marks made and as there was no fly leaf to the supplementary answer sheets given to petitioners No.2 and 3, their action does not call for any adverse order to be passed in the matter and taking a decision for not evaluating the answer book. Placing reliance on a judgment rendered by the Division Bench of the Punjab and Haryana High Court in the case of Mukul Kumar Vs. State of Haryana - AIR2000 Punjab and Haryana 22 and an unreported judgment of the Central Administrative Tribunal, Bench Bombay, in Original Application No.341/2008 - Mrs. Swati Satish Chitnis & another Vs. Union of India and others, learned Senior Counsel sought for

interference into the matter.

7. We have heard learned counsel for the parties and perused the record. The only question which warrants consideration in this writ petition is as to whether the act of 5 the petitioners as are indicated hereinabove entitles the Railway Administration not to evaluate the answer sheets of the petitioners?. Before advertng to consider the aforesaid question, it may be appropriate to take note of the answer sheets and the instructions as are contained in the answer sheets. The answer sheets for the paper in question and the model answer sheets are available as Annexure P/4, P/6 and P/7. In Annexure P/4 vide important instructions to the candidates at Srl. No.1 it is clearly indicated that name and other sign/indication should not appear in the answer sheet other than the specified place. It is indicated in this note that otherwise the answer sheet shall not be evaluated. In the question paper pertaining to General Knowledge and Civil Engineering vide Srl. No.7 and 8 candidates were warned that they should not make any identification mark or writing name in the answer book is strictly prohibited. It was also indicated that candidate not observing the instructions would be disqualified. That apart, candidates were directed to write their Roll Numbers in words only. Similar instructions are contained in both the question papers. As far as the present petitioners are concerned, their answer sheets are available on record and as indicated herein above, petitioner No.1 S.P.Singh in paper No.2 had put a religious mark namely "Om" on top of the first page of the answer book. Similarly, petitioners No.2 and 3 have written their Roll Number in top of a page in the supplementary answer sheets. The petitioners have filed the answer sheets and supplementary answer sheets received by them under the Right to Information Act i.e. I.A. No.9240/2007 and we find that the answer sheets do bear the 6 identification marks as are indicated in the order passed by the Tribunal. As far as petitioner S.P. Singh is concerned, he has indicated in his answer sheets at certain places the religious sign "Om" in Punjabi. Similarly, the other two petitioners have indicated their Roll Number in certain place where it should not be normally indicated. Even though during the course of hearing, learned counsel tried to emphasize that as no fly leaf was given along with the supplementary answer sheets and therefore, the candidates entered their roll number in the said place by way of abundant caution, it is seen that for both these

candidates after the main answer sheets were given, supplementary answer copy was given to them which is available at page 67 in the case of Brijendra Kumar Mishra and at page No.117 in the case of petitioner Chandra Gupta. Both these supplementary copy contained the fly leaf for mentioning the particulars including the Roll Number. In spite thereof, it is seen that when some additional copies were given to them, even though there was no place for mentioning any roll number or any identification mark, they have put their roll number in a place where it was not permissible. That being so, it is a case where the petitioners have violated the instructions given in the answer book and in not evaluating the answer book on the aforesaid ground, we are of the considered view that the Railway Administration has not committed any error. In the case of Karnataka Public Service Commission (supra) in para 3 Hon'ble Supreme Court has held that instructions with regard to writing of roll number or name etc. in an answer book are issued to ensure fairness in examination. It is being so observed by the Supreme Court in 7 the said case in para 3 :- "3. Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a bonafide mistake. But that is not material. What was attempted to be achieved by the instruction was to minimise any possibility or chance of any abuse. Larger public interest demands of observance of instruction rather than its breach ."

(Emphasis supplied) 7. It has been held by the Supreme Court in the aforesaid case that even if the candidate has committed a bonafide mistake that is not material. The instructions having been violated, similar action taken has been upheld by the Supreme Court. The Learned Tribunal has based its finding on these principle only and we see no error in the findings recorded by the Tribunal having done so. Even in the case of Mukul Kumar (supra) relied upon by the learned Senior 8 Counsel, that was a case where the facts were entirely different and the same will not help the petitioners. Similarly in the case of Mrs. Swati

Satish Chitnis (supra) relied upon by the learned Senior Counsel for the petitioner, a perusal of the judgment rendered by the Tribunal in para 10 goes to show that the Railway Administration in the said case did not bring to the notice of the Tribunal any instructions, Rule or regulations which was circulated to the candidates in the examination indicating to them the effect of making any mark in the answer sheet. It was in view of the aforesaid that the Tribunal interfered into the matter. In the present case, the answer sheets and the instructions strictly prohibits mentioning of any mark or things in a unspecified place and as the petitioners have violated the instructions, we see no error in the order passed by the Tribunal warranting interference.

8. Accordingly, finding no case for interference on the grounds raised, the petition is dismissed. (Rajendra Menon) (Mrs. Vimla Jain) Judge Judge mrs.mishra

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