

Pranay Kumar Soni Vs. the Chairman, U.P.S.C. and anr.

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Court : Delhi

Decided On : Apr-25-2003

Reported in : 2003(69)DRJ278

Judge : C.K. Mahajan, J.

Acts : Service Law; Administrative Tribunal Act, 1985 - Sections 3; [Constitution of India](#) - Article 226; Union Public Service Commission Rules

Appeal No. : CWP No. 5257 of 2002

Appellant : Pranay Kumar Soni

Respondent : The Chairman, U.P.S.C. and anr.

Advocate for Def. : R.V. Sinha, Adv.

Advocate for Pet/Ap. : Keshav Dayal, Sr. Adv. and; Arun Beriwal, Adv

Disposition : Writ petition dismissed

Judgement :

C.K. Mahajan, J.

1. The petitioner seeks re-assessment/re-evaluation of the answer-sheet of the petitioner in second paper of Commerce and Accountancy (Civil Services Main Examination) 2001.

2. The petitioner passed the preliminary Civil Services Examination on 20th May, 2001. He appeared in the main examination on 24th August, 2001. The petitioner was declared successful in the written examination and was called for interview on 9th April, 2002. The petitioner was interviewed but he was not selected. The total marks obtained by him were communicated to him after declaring the final result. The petitioner was awarded 75 marks in the optional one Commerce and Accountancy Paper (Code-II). The petitioner made a representation to the Union Public Service Commission hereinafter called UPSC with a request that second paper of first optional (Commerce and Accountancy) be re-checked/re-evaluated. The respondent/UPSC considered the representation and confirmed that there was no error in the marks communicated of the petitioner. Hence the present petition.

3. Learned counsel for the petitioner contends that petitioner has an outstanding academic record and had passed 10-1-2 Higher Secondary with distinction in four out of five subjects. He secured the first position in the State of Madhya Pradesh in Class-XII exam (commerce stream). The petitioner obtained 72% marks in the B. Com. He was also awarded a certificate of merit. Counsel contends that respondent No. 1 ought to have re-assessed/re-evaluated the answer-sheet of the petitioner keeping in view the fact that petitioner had secured good marks in all the other subjects in the main examination. The petitioner apprehends that his paper of Commerce and Accountancy had not been assessed/evaluated correctly in light of his past academic record. The respondent No. 1 ought to have acted with transparency and in a fair manner. The respondent No. 1 ought not to have rejected the representation of the petitioner in a summary manner and ought to have ordered re-evaluation/reassessment of the petitioner's answer-sheets in the peculiar facts of the case and keeping in view of the past-performance of the petitioner in the commerce and accountancy. The rejection was arbitrary and without application of mind.

4. Reliance is placed on a judgment of this Court in Parent Forum for Meaningful Education and Ors. v. Central Board of Secondary Education and Ors., : AIR1994 Delhi44 to the effect that introduction of system of re-valuation of answer sheets could be advantageous though the matter was left open to the Board to take a

decision in this regard. Relying on the decision, the counsel contends that UPSC may be directed to take a decision in the matter. Reliance is also placed on a decision of this Court in Sh. Vipin Sanduja v. Registrar, Delhi High Court and Anr., : 85(2000)DLT471 and an order of the Supreme Court in Madhya Pradesh Public Service Commission v. Om Prakash Gupta and another, 1997 (2) JLJ 362 to the limited extent of the observations that rules of the UPSC contained provision for re-valuation and re-checking or re-evaluation of the papers.

5. Reliance is also placed on a judgment of this Court in Dr. N.C. Singhal v. Union of India, 1989 (1) Delhi Law 114 wherein this Court dealt with Section 3(q) of the Administrative Tribunal Act.

6. The petition is opposed by the respondents. A preliminary objection was raised with regard to maintainability of the petition in light of the Sections 14 and 28 of the Administrative Tribunals Act, 1985 and the decision of the Apex Court in L. Chandrakumar v. Union of India, AIR 1997 SC 1156. It was contended that rules do not provide for re-evaluation/re-assessment and as such the prayer was not maintainable. The papers of the petitioner were correctly scrutinized and there was no error found in the marks of concerned papers of the petitioner. Reliance is placed on the decisions of this Court in Nighal Parveen (Ms.) v. Union of India and Ors. 1996 (2) SLR (DB) 769, Rajinder Kumar Aggarwal v. High Court of Delhi and Anr., : 1993(25)DRJ602 , Vipin Sanduja v. Registrar, Delhi High Court and Anr., : 85(2000)DLT471 , Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kumar Sheth etc., : [1985]1SCR29 .

7. I have heard learned counsel for the parties. The short question that arises for consideration is whether or not the subject-matter of this petition is covered in the category 'service matter'.

8. Section 14 and 28 of the Administrative Tribunal Act are extracted hereunder:-

'14. Jurisdiction, powers and authority of the Central Administrative Tribunal

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers

and authority exercisable immediately before that day by all courts (except the Supreme Court * * * in relation to -

(a) recruitment and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defense services, being, in either case, a post filled by a civilian ;

(b) all service matters concerning -

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any civil service of the Union or any civil post under the Union ; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any defense services or a post connected with defense,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) or Clause (b), being a person-whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation :- For the removal of doubts, it is hereby declared that references to 'Union' in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities within the territory of India or under the control of the Government

of India and to corporations [or societies] owner of controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government;

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dated may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to -

(a) recruitment, and matters concerning requirement, to any service or post in connection with the affairs of such-local or other authority or corporation (or society); and

(b) all service matters concerning a person [other than a person referred to in Clause (a) or Clause (b) of Sub-section (1)] appointed to any service or post in, connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.

28. Exclusion of jurisdiction of courts except the Supreme Court.

On and from the date from which any jurisdiction, powers and authority become exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any Service or post, [no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force.

Shall have] or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.'

9. Article 323A of the Constitution was introduced making provisions for establishment of Administrative Tribunals. In terms of Article 323A, disputes and complaints regarding recruitment to public service were to be adjudicated upon by Tribunals to be set up under the said Article. The jurisdiction, powers and authority which may be exercised by the Tribunal were to be provided under the said Article. The Act was made applicable w.e.f. 1.11.1985 and jurisdiction of the Tribunal was defined under Section 14 of the Act. A plain reading of Section 14 shows that subject-matters covered by the jurisdiction stood divided into two categories. The first category catered to Clause (a) of Sub-section (1) of Section 14 and the second category catered to by Clauses (b) and (c) of the same Section and sub-section of the Act. Under Clause (a), the matters that came within the ambit of the jurisdiction of the Tribunal related to matters concerning recruitment. Clause (b) pertained to service matters. The expression 'service matter' is defined in Section 2(q) of the Act. The arrangement of the provisions of Section 14 show that the disputes which the Tribunal could adjudicate upon could arise before the appointment of a person as also after the appointment of a person to civil posts. All disputes regarding selection, recruitment and appointment arise before a person is appointed to a post. Appointment is the culminating point in the process of selection and recruitment. Thus all disputes that may arise from the process of selection, recruitment and appointment are covered under Section 14(1)(a). Other disputes that arise after the appointment are included in the expression 'service matters' and are taken care of by Clause (b). The Act has to be interpreted as it is. I am clear in my mind that the disputes and complaints regarding recruitment and selection were fully covered under Clause (a) of Sub-section (1) of Section 14.

10. Section 28 excludes jurisdiction of other Courts in respect of service matters and gives them to the Tribunal and empowers a Tribunal to deal with them. A close reading of Section 28 shows that other Courts are debarred from dealing with disputes not only to service matters but also disputes regarding recruitment and matters concerning recruitment. The Section as it stands deals with both the situations as envisaged in Section 14. thereforee, on a conjoint reading of Sections 14 and 28 of the Act, there is no manner of doubt with regard to the jurisdiction of the Tribunal to deal with disputes regarding recruitment or matters concerning recruitment.

11. Even otherwise, if the definition of 'service matters' is considered, then also it would be clear that the said definition is very wide. There is no reason to give a narrow interpretation to the term 'service matters' or relate it directly to the conditions of service. The term 'service matters' includes not only the conditions of service but also other incidental and ancillary matters. The expression is wide and covers even the process of selection and recruitment to the service.

12. A Division Bench of the Allahabad High Court in the matter of Sudhanshu Tripathi v. Union of India and Anr., 1988 (2) SLR 688 had an occasion to deal with the question whether IAS Recruitment Examination is a part of the process of recruitment or not. The Court examined the Sections 14 and 28 of the Administrative Tribunal Act. The Court also examined Article 323A of the [Constitution of India](#) pursuant to which Administrative Tribunal Act, 1985 was enacted. In that petition the petitioner had challenged the examination held by the respondents for recruitment to Civil Services including Indian Administrative Service in 1985. Preliminary objection was raised by the Government Counsel with regard to jurisdiction of the High Court to entertain the petition. The Court held that since the dispute raised in the petition directly concerns the recruitment to All India Service, the petition could be entertained only by the Administrative Tribunal. Help was drawn on a decision of the Orissa High Court in Pratap Chandra Rout and Ors. v. State of Orissa and Ors., 1987 L.I.C. 104, which laid down that disputes and complaints relating to the stage of recruitment i.e. a stage prior to actual appointment in service, are within the exclusive jurisdiction of the Administrative Tribunal. To the same effect was a Full Bench decision of the Andhra Pradesh

High Court in K. Naga Raja and Ors. v. Superintending Engineering, Irrigation Department and Anr., : AIR 1987 AP230 . The words 'recruitment' and 'matters concerning recruitment' have also been used in Clause (a) of Section 15(1) which were considered in the above decisions. The relevant observations of the judgment are extracted as under :-

'6. Taking clues from the words used in Article 323-A of the Constitution the Parliament deliberately used the words 'recruitment' and 'matters concerning recruitment' in Section 14 and 28 of the Act so as to indicate that the Tribunal shall have exclusive jurisdiction to deal with these matters and that the High Court in view of the specific provisions contained in Section 28, shall not have jurisdiction to entertain or adjudicate upon the petition in which questions relating to recruitment and matters concerning recruitment are raised.

7. It is not disputed that holding of competitive examination is a condition precedent for appointment to an All India Service for which the petitioner had applied and appeared and was ultimately declared not to have succeeded. It is also not disputed that appointment to All India Services, atleast, to the Indian Administrative Service as indicated in the petition, is made on the basis of the result of the competitive examination, held by the Union Public Service Commission. The examination, therefore, is a part of the process of recruitment.'

13. This Court in NighalParveen (Ms) case (supra) held that 'service matters' contained in Section 3(q) of the Administrative Tribunals Act is very wide. It includes incidental and ancillary matters like selection/short listing and interview etc. The relevant observation of the Court is extracted as under :-

'5. In view of this contention of the respondents it is necessary to be considered as to whether the claim made by the petitioner is governed by the provisions of the Administrative Tribunal Act 1985. Respondent Nos. 1 to 3 are admittedly representing the Central Government and the job in question is with the Central Government. None of the respondents are covered by the provisions of Section 2 of the Administrative Tribunal Act, 1985. Consequently, the job in question is governed by the provisions of the Administrative Tribunals Act, 1985. Section 3(q) of the Administrative Tribunals Act, 1985 gives the definition of service matter as

under :

'Service Matter' in relation to a person, mean all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government as the respects.

(i) remuneration (including allowances) pension and other retirement benefits.

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation ;

(iii) leave of any kind ;

(iv) disciplinary matters ; or

(v) any other matter whatsoever.

If the above definition of Service Matter is considered then it would be quite clear that the said definition is very wide. There is no scope to consider narrowly the term 'Service Matter' or to limit its meaning strictly to the conditions of service. Thus, the term service matter includes not only the condition of service but also other incidental and ancillary matters. The expression service matter has a very white amplitude. thereforee, even the process of selection for the service would be governed by the words service matter.'

14. The decision relied upon by the petitioner in the case of Dr. N.C. Singhal (supra) is of no help to him. It is distinguishable on facts. This matter pertains to tortuous liability (defamation), which was not covered in the service matters. In the present case, the petitioner appeared in the written examination for the Civil Service Examination, which was the process of selection.

15. In light of the aforesaid position, I am satisfied that the present petition is covered in the category 'Service Matters'. The same can only be entertained by the Administrative Tribunal.. The contention of the counsel for the petitioner that Central Administrative Tribunal has no jurisdiction to decide the present

controversy is devoid of merits. Even on merits, this Court in various decisions as relied upon by the respondent has declined the prayers for revaluation of papers in the absence of any statutory rules. As stated above, the UPSC rules do not provide for re-evaluation/re-assessment of the answer sheets. The reliance placed by the petitioner on the decisions of this Court in *Sh. Vipin Sanduja v. Registrar, Delhi High Court and Anr.* and *Madhya Pradesh Public Service Commission (supra)* to the extent that the rules of the UPSC contained provision for re-valuation and re-checking or re-evaluation of the papers is mis-placed.

16. Dismissed.

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