

**Sharda Ram Vs. State of U.P. and Others**

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**Court :** Allahabad

**Decided On :** Dec-23-2010

**Judge :** Sunil Ambwani; Mrs. Jayashree Tiwari, JJ.

**Appeal No. :** CIVIL MISC. WRIT PETITION NO.11186 OF 2008

**Appellant :** Sharda Ram

**Respondent :** State of U.P. and Others

**Advocate for Pet/Ap. :** Shri. H.N. Singh

**Judgement :**

1. The petitioner has prayed for a writ of certiorari to quash the order dated 7.2.2008 communicated to him by the Special Secretary, Irrigation Department-6, Government of UP, on behalf of the Governor of U.P. in consultation with the UP Public Service Commission reverting him to one stage lower than the post held by him after holding a departmental enquiry.

2. The petitioner was at the relevant time from 22.5.2003 to 9.5.2005, serving as Executive Engineer, Tubewell Division, Siddharthnagar. He was appointed as Chairman of the Selection Committee for selections to the posts of Nalkoop Mistris. A large number of irregularities were reported in the selections on which a charge sheet was served upon the petitioner alleging that he had orally dictated the marks awarded to the candidates in respect of their educational qualifications and for certificates of sports, prohibited by Rule 5 (4) (c) of the U.P. Procedure for

Direct Recruitment for Group 'C' Posts (Outside the Purview of the UP Public Service Commission) Rules, 2002. He thus against the provisions in the Rules had knowledge of the marks awarded to the candidates. He was also charged with preparing the proceedings of the meeting of the Selection Committee on 10.9.2004 and 11.9.2004 in which 111 candidates of Other Backward Classes; 84 of Scheduled Castes, and 77 of Scheduled Tribes were found to be eligible, whereas in the broad sheet prepared by them these persons were shown as 111 for OBC; 80 for SC and 74 for ST. He was also charged with making incorrect entries in the broad sheet allowing certain candidates to participate in the interviews. These mistakes were detailed in the charge sheet as follows:-

1. The experience of Shri Diwakar Prasad Srivastava at serial No. 146 in the broad sheet was six days less in five years' experience, whereas he was shown to have five years' experience and thus he was allowed to participate in the interviews inspite of being ineligible.
2. Shri Vivek Srivastava at serial No. 177 of the broad sheet has only three years' experience after completing ITI, whereas in the brought sheet his experience was shown as five years. He was also allowed to appear in the interviews, whereas he was ineligible.
3. Shri Anoop Kumar Srivastava at serial No. 194 of the broad sheet had not annexed his mark sheet of the ITI but was still given 20 marks and his experience also shown as five years without there being any certificate supporting it making him eligible for interviews;
4. Shri Virendra Singh at serial No. 215, in the broad sheet had completed High School in 3rd Division, whereas his marks were calculated as if he had passed the examination in 2nd Division on the brought sheet, increasing his marks to 28 and was made eligible for interviews;
5. Shri Amrish Chandra Srivastava at serial no. 351 in the broad sheet had three years' experience after ITI whereas his experience was entered as five years and was thus made eligible for interviews.

3. The petitioner submitted his reply to the charge sheet stating that clauses (a), (b) and (c) of sub rule (3) of Rule (5) (4) of the Rules of 2002 provide that at the time of interviews the Chairman and members of the Selection Committee will not be given information about the marks secured by the candidates. These provisions were strictly followed. In respect of the allegations constituting second charge, the petitioner submitted that a number of candidates appearing in the selections belonging to Scheduled Castes and Scheduled Tribes were wrongly entered in the records on account of a typing mistake. Out of these 80 candidates in Scheduled Caste and 74 in Scheduled Tribe, as against 84 and 77. These wrong entries, however, did not affect the selections at all. On the third allegation with regard to the entries of the marks and experience of the five candidates named as above, the petitioner submitted that Shri Diwakar Prasad Srivastava and Shri Vivek Srivastava had submitted the experience certificates. The experience of the second candidate has not been counted in preparing the broad sheet. In respect of Shri Anoop Kumar Srivastava, the year, name of the examination and the number was given in the application. The experience certificate in respect of Shri Virendra Singh was annexed to his application. The reference of second candidate was correctly dictated but was wrongly typed. In respect of Shri Ambrish Chandra Srivastava, he had enclosed two experience certificates totalling experience of five years and two months. There was thus no mistake in the broad sheet except in respect of Shri Virendra Singh. Shri Anoop Kumar Srivastava, Shri Virendra Singh and Shri Ambrish Chandra Srivastava were not selected and thus the mistake, if any, in respect of Shri Virendra Singh did not result into any benefit to him.

4. In the enquiry report the disciplinary authority found that prior to interviews the members of the Committee had knowledge about the marks but that whether these marks were available to the Selection Committee at the time of interviews was not established. The petitioner was found guilty of committing breach of Rule 5 (4) (c) of the Rules of 2002, on the charge of wrongly entering the number of candidates of Scheduled Castes and Scheduled Tribes. The enquiry officer found that since the petitioner had signed the broad sheet, he was responsible and was found guilty of making wrong entries of the number of candidates belonging to these two groups.

5. In respect of the last charge, the enquiry officer found that the experience of Shri Diwakar Prasad Srivastava was six days' less than five years. The defence of the officer, that he had annexed a second experience certificate for the period w.e.f. 20.12.1998 to 18.1.2001, is not supported by any document inasmuch as the defence of annexing the second experience certificate was an after thought. If the second experience certificate was available, the fact should have been noticed at the time of framing of the charge.

6. In respect of Shri Vivek Srivastava the enquiry officer found that he had only three years' experience w.e.f. 2.8.2001 to 31.7.2004. The second experience certificate of the period w.e.f. 2.8.1996 to 5.6.1999 was of the period prior to the issuance of the ITI certificate. The defence taken by the officer, that the experience of a period prior to the essential qualification can also be counted is against the Government order dated 9.11.2001 which does not mention that the experience of a period prior to the acquiring educational qualification could be considered and could be tagged with the later experience in completing five years.

7. In respect of Shri Anoop Kumar Srivastava, it was found that the number of marks given in the application of the candidate in the ITI certificate were mentioned as 546 but that there was cutting on record and that the division, in which he had passed the examination, was not entered. The candidate could not be given the marks to be made eligible for interview unless the mark sheet was examined by the Selection Committee.

8. In respect of Shri Virendra Singh and Shri Ambrish Chandra Srivastava though they were not selected but that since their marks were not correctly entered in the broad sheet, the negligence of the officer is established. In respect of the 4th charge relating to the award of the marks for participating in sports, the enquiry officer found that the defence of the officer, that the designation of the competent authority, who could have issued the certificate for sports at District level, is not given in the Rules, and in the Government order dated 20.7.2002, was not acceptable inasmuch as only those certificates, which were issued by the Sub Officiating Director or Additional Director or Deputy Director of the State Government could be accepted. The Government Order in this regard issued on

20.7.2002 had clarified the position. The officer should have taken the Government Order dated 20.7.2002 into consideration for selections. His ignorance of the Government Orders, could not be a defence to award marks for sports to the candidates.

9. We have heard Shri H.N. Singh, learned counsel for the petitioner. Learned Standing Counsel appears for the State respondents.

10. It is submitted by Shri H.N. Singh, that the typing mistake on the broad sheet and the calculation of marks could not be taken into consideration for awarding major penalty to the petitioner. The petitioner, was the Chairman of the Selection Committee. He was responsible to prepare the broad sheet. The dictation given by him to the senior clerk of the number of marks awarded to them on the basis of educational qualifications, experience and pro-efficiency in sports did not affect the transparency and fairness of the selections. The restriction for disclosure of marks to the members of the Selection Committee is only at the stage of interview, so that the marks may not be increased by the interview board for allowing certain candidates to be selected. The Chairman of the Selection Committee has to prepare, and is responsible for the records of the selections, and thus the fact, that he had dictated the marks, could not be a ground to hold that he had leaked the secrecy. The typing mistakes on the record of selections could not be a ground to hold the petitioner guilty of misconduct, unless the mistakes had affected the selections. Shri H.N. Singh submits that the enquiry officer has not recorded any finding that the selection was affected by the alleged mistakes. There is no finding that any ineligible candidate was selected or that the mistake had affected the fairness of the selections. Shri H.N. Singh submits that these days, the selections of Group 'C' and 'D' employees attract thousands of applications. It is not possible to maintain absolute accuracy at every stage of selection. There is always a possibility of small mistakes. He submits that unless these mistakes have affected in the selections, in that any ineligible candidate is selected, the Chairman of the Selection Committee cannot be held guilty of misconduct.

11. Shri H.N. Singh submits that the Selection Committee included Shri Arjun Singh, Executive Engineer, Tubewell Division, Basti; Shri Om Prakash Srivastava,

Executive Engineer, Tubewell Division, Sant Kabir Nagar and Shri Sheraj Ahmad Ansari, Assistant Engineer, Tubewell Division, Siddharthnagar were members of the Committee. Shri A.P. Patel, Sub Divisional Magistrate, Basti was nominated as Member of the Selection Committee by the District Magistrate. A total number of 410 applications were received for selections for posts. One Shri Munna Singh Chauhan, Member of Legislative Council requested the petitioner on telephone on 28.9.2004 between 07.30 to 8.00 PM to select one Shri Anoop Srivastava. The petitioner expressed his inability on the ground that the selection process has to be fair. Shri Munna Singh Chauhan subsequently was included in the State Cabinet and became the Minister of Irrigation, Government of U.P. He initiated an enquiry against the selection and managed to punish the petitioner.

12. Shri H.N. Singh submits that though a complaint was made that a number Srivastavas' candidates have been selected, not a single candidate with Srivastava as surname was selected. The typing mistakes in the broad sheet could not made a ground to hold departmental enquiry. None of the candidates shown in charge no.3 (1), (ii), (iii), (iv) and (v) were selected. He submits that with regard to the sports certificate, the Rules did not prescribe for the competent authority for verifying the sport certificate issued by the Schools and Colleges at local level. The Committee thus did not make any error in awarding marks to the candidates. He submits that on such charges the award of major penalty of reduction to a lower post or grade was highly disproportionate. The two other members of the Committee namely Shri Arjun Singh and Shri Sheraj Ahmad Ansari were punished with minor punishment and Shri A.P. Patel and Shri O.P. Srivastava were not given any punishment at all.

13. Learned Standing Counsel on the other hand submits that the petitioner was afforded adequate opportunity to defend himself. The petitioner was found guilty of making incorrect entries in the brought sheet. As a Chairman of the Selection Committee he was required to maintain transparency at every level of selection. Shri Munna Singh Chauhan has not been impleaded nor the allegations of malafides have been established. Shri Arjun Singh and Shri Sheraj Ahmad Ansari have retired. They were awarded reduction of 5% from their pension as punishment. The punishment was not awarded to Shri O.P. Srivastava and Shri

A.P. Patel as they were only members of the Selection Committee of which the petitioner was Chairman. He submits that the Court should not interfere on the merits of the allegations which were found to be proved by the enquiry officer and thereafter by the disciplinary authority.

14. Rule 5 of the Rules of 2002 provides for awarding marks on the basis of academic qualifications after which interviews are held. The first division carries 30 marks; the second division 20 marks and third division 10 marks. In case of retrenched employee the maximum 15 marks are awarded with five marks for every completed year. For the sports on international level five marks; national level four marks; state level three marks; University/College/School level two marks, are provided. Clause (c) of Rule provides that the Chairman and members of the Selection Committee shall, in no case, be provided any information with regard to marks obtained by the candidate under clauses (a) (b) (c) of sub rule (3) at any time of the interviews, namely the marks awarded for educational qualifications, the completed years of service of retrenched employees and the marks awarded for sports. The first amendment to the Rules in 2003 is not relevant for the purposes of the case.

15. The Government Order dated 20.7.2002 providing for the authorities who are competent to issue certificates of participation in sports. They include the concerned National federation of Sports for international competition; the National Federation or the Secretary of State association for national competition, the Dean of Sports of the University for inter-Universities competition and the Executive Director, Additional Director and Deputy Director in respect of national schools competition. For State level competitions the Secretary of the State of Sports is the competent authority. Although the Rules provide for award of two marks for the University, College, School level competition, no authority is specified in the Government order dated 20.7.2002 to verify the certificates of participation in the sports.

16. The petitioner has not taken any ground nor the counsel of the petitioner pressed any point with regard to the observance of the principle of natural justice in holding departmental enquiry. The rules for giving opportunity of hearing to the

delinquent Government servant in a departmental enquiry under U.P. Government Servants (Punishment and Appeal) Rules, 1999 were strictly followed. In the absence of impleadment of the person against whom the malafides have been alleged, we do not find it proper to examine the allegations. The arguments were thus confined only to the proof of charges and the proportionality of the punishment.

17. There was no allegation in the charge sheet, nor the enquiry officer has recorded any finding with regard to selection of any ineligible candidate. Further there is no allegation against the petitioner for having failed to observe the procedure of selections provided under the Rules of 2002 as amended in 2003. The enquiry officer has only found non-observance of Rule 5 (4) (c) by the Chairman. In the findings recorded by the enquiry officer he has clearly stated that there was no evidence that the members of the Selection Committee had knowledge of the marks awarded to the candidates at the time of interviews. In the circumstances the dictation of marks and mistake in the typing of marks on the broad sheet by itself could be a ground of violation of Rule 5 (4) (c). The Selection Committee consisted by five persons with the petitioner as Chairman. Under the Rules the Chairman is responsible for selections, after he is delegated the authority by the appointing authority under Rule 4. The Chairman has to prepare the records before the candidates are interviewed. The dictation of marks by him to his clerk will not constitute the breach of transparency to be maintained at the time of interviews.

18. We further find that the second charge regarding typing mistake of the number of Scheduled Castes and Scheduled Tribes candidates and the calculation of marks after taking into account the experience of the five candidates named as above in which there were some typing mistake in respect of the award of the marks to four candidates, did not affect the selection as none of these candidates were selected and the award of marks for sports on the basis of certificates issued by the Schools also could not be a ground inasmuch as the authority for verifying the certificate was not specified, in the Government order dated 20.4.2002.

19. We also find substance in the contention of learned counsel for the petitioner, that the four charges leveled against the petitioner were not proved. The mistakes of typing on oral dictation of the numbers of marks by the clerk in the broad sheet; the typing mistake in the number of Scheduled Caste and Scheduled Tribe candidates, and a mistake for recording the marks of one Shri Virendra Singh, who was not selected, have been highlighted as the mistakes committed by the Chairman of the Selection Committee to award major penalty.

20. Learned Standing Counsel has not been able to explain and point out as to how these marks had affected the selections and whether any ineligible candidate had succeeded in obtaining appointment.

21. The petitioner was appointed as Chairman of the Selection Committee for Nalkoop Mistri which is a Class IV post, for which he along with three Executive Engineers and one Sub Divisional Officer as members of the selection committee were made responsible to hold the selections. There are no allegations of any favouritism, corrupt practice or violation of Rules which may have affected the selections of the candidates. Further there is no allegation at all that any unqualified and ineligible candidate made way through the selection process to be appointed on the post as Nalkoop Mistri. The High Court exercising powers under Article 226 of the Constitution of India does not ordinarily possess the powers of judicial review in disciplinary enquiries to review the findings of the disciplinary authority on merits. The powers of judicial review on the proportionality of the punishment are also very limited. The Court can interfere only if the procedure of holding departmental enquiry is not followed resulting in violation of the principles of natural justice. The Court, however, cannot sit back and refuse to judicially review, initiation of proceedings and the penalty where a Government servant has been punished without establishing any charges against him. Where the Court finds that the charges did not amount misconduct under Rule 3 of the UP Government Servants Conduct Rules, 1956 and there is no allegation of any favouritism; appointment of any ineligible candidate, or corrupt practice the Court has legal authority to interfere with the order of punishment.

22. The writ petition is allowed. The impugned order dated 7.2.2008 passed by Special Secretary, Irrigation, Section-VI, Government of UP is set aside. If the punishment order has been carried out, the respondents shall restore all the service benefits to the petitioner including the status, and financial loss, which he may have suffered on account of reduction in rank. The petitioner will also be awarded cost to the writ petition.

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