

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: 24th August, 2011
Judgment Delivered On: 29th August, 2011

+ W.P.(C) 5325/2008

MAHINDER SINGH CHAUHAN & ORS. Petitioners
Through: Mr.Kuldeep Singh, Advocate

versus

UOI & ORS. Respondents
Through: Mr.A.S.Chandhiok, ASG with
Mr.Tarun Sharma, Mr.Ritesh Kumar,
Mr.Piyush Sanghi and Mr.Sumit
Goyal, Advocates for R-1 to R-5
Mr.P.K.Mehta, IPS and Director
General – RPF in person
Mr.Jayant Nath, Sr.Advocate with
Mr.Ujjwal K.Jha, Advocate for
Noticee – Mr.S.Z.Khan with
Mr.S.Z.Khan in person
Ms.Anjana Gosain, Advocate for
Noticee – Mr.Ratan Chand with
Mr.Ratan Chand in person
Mr.J.S.Sinha, Mr.Vikas Malhotra,
Mr.Mareesh P.Sahay, Advocates for
Noticee – Mr.Laxmi Narain with
Mr.Laxmi Narain in person

W.P.(C) 14154/2009

IBAD ALI KHAN & ORS. Petitioners
Through: Ms.Jyoti Singh, Sr.Advocate with
Mr.Amandeep Joshi and
Mr.N.S.Bajwa, Advocates

versus

UOI & ORS.

.....Respondents

Through: Mr.A.S.Chandhiok, ASG with Mr.Tarun Sharma, Mr.Ritesh Kumar, Mr.Piyush Sanghi and Mr.Sumit Goyal, Advocates for R-1 to R-5
Mr.P.K.Mehta, IPS and Director General – RPF in person
Mr.Jayant Nath, Sr.Advocate with Mr.Ujjwal K.Jha, Advocate for Noticee – Mr.S.Z.Khan with Mr.S.Z.Khan in person
Ms.Anjana Gosain, Advocate for Noticee – Mr.Ratan Chand with Mr.Ratan Chand in person
Mr.J.S.Sinha, Mr.Vikas Malhotra, Mr.Mareesh P.Sahay, Advocates for Noticee – Mr.Laxmi Narain with Mr.Laxmi Narain in person

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. On 12.2.2007 applications were invited from Constables and Head Constables working in RPF for being appointed as Assistant Sub-Inspectors on the basis of a Limited Departmental Competitive Examination. 745 persons submitted their applications and out of which only 482 appeared at the written examination.

2. The task of conducting the examination was assigned to a Committee headed by Sh.Rattan Chand, Senior Security Commissioner (RPF) who was to act as the convener of the committee, Sh.S.Z.Khan Divisional Security Commissioner and Sh.Laxmi Narain Assistant Security Commissioner were the two members of the committee. The paper setter was Sh.Rattan Chand. Under his supervision and guidance the papers were to be checked by Sh.S.Z.Khan and Sh.Laxmi Narain. All 3 were responsible for the written examination and it was their duty to ensure that the candidates did not indulge in any nefarious activities or did not resort to malpractices when the answer sheets were being written. The purity and integrity of the examination was to be maintained by them.

3. The examination was completed by 1.9.2007 and a list of 177 candidates who had qualified at the written test was notified. Date was fixed for viva-voce. The process was completed when on 5.10.2007 a provisional list was notified listing names of those who were brought on the select panel for promotion.

4. Hell broke loose. Large number of anonymous and named complaints were made alleging that Sh.Rattan Chand, Sh.S.Z.Khan and Sh.Laxmi Narain had pocketed sums ranging up to ₹80,000/- per candidate and have resorted to malpractices by firstly permitting mass copying and cheating at the written examination held and thereafter by fudging marks, in that, awarding marks to wrong answers and permitting the bribe givers to correct wrong answers.

5. A vigilance inquiry was ordered. Answer sheets were seized. Since the written examination was video-graphed, the video recording was seized. Report of the vigilance inquiry found large scale malpractices by Sh.Rattan Chand, Sh.S.Z.Khan and Sh.Laxmi Narain and taking cognizance of the same the examination was cancelled and a decision was taken to re-conduct the examination.

6. Above captioned writ petitions came to be filed by the candidates who were empanelled for promotion questioning the examination being cancelled without they being put to notice. It is urged in the writ petitions that the order cancelling the examination is a non-reasoned order. It is urged that such taints which were found during the vigilance inquiry could be worked upon by reducing the marks of such candidates who were found to have been given a favour and thus corrective action warranted was not the cancellation of the entire exam and lastly that no decision adverse to the empanelled candidates could be taken without hearing them.

7. Let us re-produce what has been found to be tainted at the vigilance inquiry. We highlight the core area of the taint found at the vigilance inquiry by extracting from the inquiry report as under:-

“Selection Proceedings :-

Earlier written examination was held on 07.08.07 for promotion of ASI at Daya Basti/Delhi, but it was cancelled. Again, this selection held at RPF Lines from 01.09.07 to 03.09.07 for written exam and out-door test the viva-voce test was held on 26.09.07.

Written examination was held on 01.09.07 for which total 745 candidates were applied out of them 97

candidates submitted their unwillingness, 166 candidates did not turn up and only 482 candidates had appeared in the selection. 10+2 candidates were found using unfair means in the written examination, whose answer sheets were seized and they were debarred for further examination. After examination, the Answer Books were coded and fly sheets were removed. These answer books were evaluated by S.Z.Khan, DSC/UMB and Laxmi Narain, ASC/HZNM. Out-door test for I.T./P.T./W.T./R.D. was held from 02.09.07 to 03.09.07 for 20 marks.

On the basis of performance in written and outdoor tests, General Candidates securing 60% marks and SC/ST Candidates securing 50% marks were segregated. Out of above candidates, total 177 candidates (General Candidates – 108, S.C.Candidates – 65 and ST Candidates – 04) were qualified and called for viva-voce test. CSRs of qualified candidates were scrutinized and marks were awarded on the basis of assessment of their gradings. Viva-voce test was held on 26.09.07 at Daya Basti Lines and finally 122 candidates were recommended for promotion to the rank of ASI/RPF against the 129 vacancies.

After preparation of final broad sheet it was found that total 11 candidates from SC category and one candidate from ST category had qualified against the 100 vacancy of general category without availing any relaxation on the basis of merit. List of 100 candidates was prepared on the basis of merit against the 100 vacancies of general category. Further against the 19 vacancies of SC category, 19 candidates of SC Category were qualified and list was prepared accordingly in order to merit list. Against the 10 vacancies of ST category only three candidates had qualified and names against other 07 vacancies of ST Category could not be considered due to paucity of candidates from that category (S.No.20/42-46). List of 122 Candidates recommended for promotion to the rank of ASI by the Selection Committee is placed at S.No.20/47-50.

Re-checking of Answer Books :-

Answer Books (both descriptive and objective) were evaluated by S.Z.Khan, DSC/UMB and Laxmi Narain, ASC/HZNM both the members of Selection Committee. There were total 6 questions in Descriptive Question Paper out of which 5 questions had to be attempted, all the questions had equal marks. There were total 20 questions in Objective Question Paper each question had one mark. The questions were in four parts and each part of questions was compulsory. Total marks of Written Test were 40 (20+20). Answer Books (Descriptive & Objective) of all the candidates were re-checked at Board office, with the help of solved question papers (both descriptive and objective) obtained from the railway and it came to notice that there are many irregularities in their evaluation of Answer Books. Details are mentioned below –

Descriptive Answer Books :-

Maximum marks have been awarded to some of the candidates for improper replies in descriptive Answer Books. In some copies, it appears that question had been copied by the candidates by using unfair means, as they have written the question in same wording as in books. Generally, one cannot write the question in same wording of books. Details of such candidates are placed in Annexure – ‘A’ (S.No.37).

Objective Answer Books :-

Marks have been awarded for wrong answers also. Some of the candidates have written answer several times by cutting the answer in their answer books. Overwriting had also been done in most of the copies, but full marks have been awarded for overwritten, manipulated answers. In two copies answer of a question was incomplete but it appears that evaluator had himself completed the word with his pen and awarded full marks. On seeing the Answer books it appears that maximum questions have been done by

the candidates with the help of each others, as the candidates were not sure that whether the answers written by them were correct or not, they have cut the answers many times and also overwritten the answers. In a question (fill in the blank – Q.No.05) name of the Secretary of UNO was to be filled up in the blank. The correct answer was “Ban Ki Moon” but some of the candidates have filled up his name as “Ban ki Bhun”, “Pan Ke Moon”, ‘Vanki’, ‘Vanki Moon’, ‘Vang Ki Moon’, ‘Vanking Moon’, ‘Vanki Boon’, ‘Y.K.Moon’, ‘Van Kyu Noon’, ‘Bankiya Mool’ ‘Banki Maun’, ‘Vanki Mooni’, ‘Bhan Ki Moon’, ‘Paan di Mool’ & ‘Baal ki Moon’ etc. these all names have been marked correct and full marks has been given to such candidates besides some candidates have also written this name as ‘Baan Ke Mung’, ‘Paankin Moon’, ‘Bakin Moon’, “Bhanki Mool”, ‘Banki Mool’, ‘Maankin Moon’, ‘Bhan ki Moon’, Shri Pan Poom’, ‘Bandh ki Moon’, ‘Manti Mool’, ‘Paan ki Boon’ etc. but these names have been marked wrong. Apart from this in Question (Q.No.02) Author of ‘Akabarnama’ was asked, the correct answer was “Abul Fazal” but most of the candidates have written his name as Abdul Faizal/Fazal and ‘Habul Fazal’ mark has been given for these answers also. Like this other questions have also been done by the candidates. These all things indicate that such candidates were not known the correct answer they might have asked from others and written the answers what they have listened. In most of the copies there are many cuttings, overwriting and manipulated answers, even though marks have been awarded for such answers. Details of such candidates are mentioned in Annexure – ‘B’ (S.No.38).

Due to above faulty evaluation of Answers Books some candidates like mentioned at S.No.04, 08, 13, 17, 30, 32, 50, 74, 81 and 91 in Annexure - ‘B’ could be able to get opportunity of promotion of ASI/RPF, otherwise, if correct valuation was done they could not be succeeded for this selection of ASI/RPF. Faulty evaluation has been found in both the Answer Books i.e. descriptive and objective Answer Books of some candidates as mentioned in Annexure – ‘C’ (S.No.39),

who have selected for ASI promotion by the Selection Committee. On the other side, if the same liberty was given to the candidates mentioned in Annexure – 'D' (S.No.40), they may also come in the zone of consideration, who have disqualified only by one or less the one mark (in written + outdoor tests).

Written examination for the selection of ASI was earlier also conducted by the same Selection Committee at Daya Basti on 07.08.07 but it was cancelled by the Chairman of the Selection Committee on administrative reasons. Nine candidates were caught red handed using unfair means in that examination, whose details are mentioned in Annexure – 'E' (S.No.41). The candidates mentioned at S.No.2, 3, 6 & 7 of same Annexure were appeared in re-examination held on 01.09.07 and selected for ASI promotion. Instead of taken suitable action against them, they have been recommended for promotion of ASI, by the Selection Committee.

Copies (Descriptive Answer Books) relating to both the written exams held on 07.08.07 (cancelled) and 01.09.07, of some suspected candidates (as pointed in the complaints) who have been selected for the promotion of ASI, were segregated. Handwritings available in both the copies of the candidates were matched but prima facie handwritings in both the copies are appeared to be same and no discrepancy came to notice. Details of such candidates whose handwriting were matched are mentioned in Annexure – 'F' (S.No.42). Details of suspected candidates (as pointed by the complainants and sources) who have been recommended for promotion to the rank of ASI are mentioned in Annexure 'G' (S.No.43).

It revealed from the reliable sources that questions of written examination held on 01.09.07 were leaked out in the night of 31.08.07. It was whispering in some candidates in the night of 31.08.07 that the question had been disclosed to them. They were asking the answers of some questions from the others and in the next morning it was found that the same questions

had been asked in the written examination held for selection of ASI/RPF at Daya Basti.

Reliable sources also strongly indicate that some of the candidates had paid sound money to the committee members for getting promotion to the rank of ASI. Some of the RPF officials have also taken the money from some candidates as mediators. Efforts were made to gather written evidences regarding money matter but none became ready to give in writing.

The written and physical tests were held from 01.09.07 to 03.09.07 at Daya Basti. The candidates who were qualified in written and physical tests (SC/ST candidates secured 50% and General/OBC candidates secured 60% marks aggregate in written and physical tests) were called for interview/viva-voce test. The viva-voce test of the qualified candidates was held on 26.09.07, after a long period of 22 days. This test was held for 20 marks which were purely on the discretion of committee members. Similarly 20 marks of outdoor test were also in the discretion of the committee members. Delay in viva-voce test is also created doubts in selection proceedings.

Written test was held on 01.09.07 at RPF Lines Daya Basti, Delhi where 482 candidates had appeared. Only 3 Invigilators from DRM office were deputed for invigilation and monitoring the 482 candidates. Three invigilators were insufficient on 482 candidates. Video-graphy of written test was done at the examination venue. Video CD of the said video-recording has been obtained and seen. This Video CD reveals that some candidates were asking the answer of the questions from other candidates openly. Some candidates were detected using unfair means in written exam, but their names are not mentioned in Broad Sheet or any other record as made available by the railway. Three Invigilators who were deputed for invigilation duty could not control the candidates properly.

It is a fact that the written examination was earlier also conducted by the same Selection Committee for selection of ASI/RPF under Rule 72 of RPF Rules 1987 at Daya Basti on 07.08.07, but it was cancelled by the Chairman of the Selection Committee Shri Rattan Chand, Sr.DSC/RPF/NDLS, vide his letter dated 08.08.07 addressed to Addl.CSC/NR in which he has mentioned that written test for selection of the post of ASI/RPF in NR was held on 07.08.07 but due lack of information regarding of settling of question paper containing 50% objective type questions and optional questions on Rajbhasha only descriptive type question paper with compulsory question regarding rajbhasha was set. This error was come to his notice during discussion over telephone with HQ office. The Chairman/Selection Committee cancelled the said examination due to above lapses. (S.No.28/4) Documents with regard to approval accorded by the competent authority for cancellation of the written examination were called for from the Railway but only a copy of above letter dated 08.08.07 written by the Chairman of Selection Committee has been furnished, no other document relating to approval of competent authority has been furnished by the Railway."

8. We would highlight that pertaining to the descriptive answers, it has been found that candidates whose names have been put in Annexure 'A' to the report have been awarded maximum marks notwithstanding the answers being not fully correct and in many copies it was noted that questions have been replied to in the same words as in the standard prescribed text book and needless to state the same suggests mass copying from the same text book.

9. Pertaining to the objective type questions the taint found was:-

A. Marks being awarded for wrong answers.

B. Not one, not two but several cuttings and overwriting pertaining to the same answer in the answer book.

C. Full marks awarded to the answers as per B above.

D. Answer sheets being detected where the answer was incomplete and words being completed by the evaluator himself.

E. Many answer sheets, with reference to the cuttings and overwriting, suggesting that candidates were seeking assistance from each other and upon receiving a wrong answer and having written the same, repeatedly corrected themselves to achieve perfection.

10. To illustrate we may bring out that one candidate named Vijay Shankar Pandey, with reference to objective type question No.7 where the answer was 'George Stephanson' wrote the answer 'Jeorge Stephan' and in the answer sheet with the use of a different ink and in a different handwriting, the word 'son' was suffixed to the word 'Stephan' to make the word 'Stephanson'. This highlights that whosoever out of the 3 members of the committee evaluated the answer sheet of Vijay Shankar Pandey, to confer a benefit upon him, interpolated on the answer sheet. Similarly, pertaining to a candidate Ranbir Singh, there are not only overwriting and cuttings but even a different pen and a different handwriting is to be seen. The two are merely illustrative and not exhaustive.

11. As we heard the writ petition on 28.7.2011, when aforesaid gross irregularities were brought to our notice, we had seen the video of the written examination conducted and were shocked to note that the candidates were squatting in a

lawn and were merrily writing the answer sheets having free conversation with each other. We were surprised to note that the Indian Railways does not even have a hall with chairs and tables where candidates can sit in an orderly manner and take an exam with the solemnity required at a Limited Departmental Competitive Examination. When we noted in the inquiry report that the same selection committee had earlier on conducted a written examination which was cancelled due to irregularities, we had sought an explanation as to what departmental action was taken against the three honourable men who seemed to have perfected the art to mint money. We were informed that a minor penalty of warning was inflicted upon Sh.S.Z.Khan and that of censure upon Sh.Laxmi Narain. Sh.Rattan Chand was simply warned to be careful in future. We were a little surprised that on the one hand the department was taking a stand that so pervasive were the irregularities committed that the same warranted the examination to be cancelled and on the other hand trivialized the matter when it came to penalty being inflicted upon the wrong doers. We had opined in our order dated 28.7.2011 that if the report was correct, it was apparent that a scandal had taken place and the lead players were Sh.Rattan Chand, Sh.S.Z.Khan and Sh.Laxmi Narain. We had expressed our pain when we were told that Sh.Rattan Chand had connived with the senior officers to have his name recommended and earned a Presidential medal for meritorious service.

12. Laxmi Narain has since retired and thus it was noted in the order dated 28.7.2011 that the remaining 2 officers Sh.Rattan Chand and Sh.S.Z.Khan required to be put to

notice and so should Sh.Laxmi Narain for the reason we had wanted the Director General RPF to respond as to how the 3 officers were let off lightly in the face of a scandal of such a magnitude.

13. At the hearing held on the next date i.e. 24.8.2011, Sh.A.S.Chandhiok learned Additional Solicitor General informed the Court that indeed the matter was very serious and that an FIR has been registered and thus learned counsel said that Sh.Rattan Chand, Sh.S.Z.Khan and Sh.Laxmi Narain have been made accountable. The 3 officers appeared through their counsel and made submissions and justified the trivial penalties imposed upon them by urging that the wrongs committed by them were trivial and not serious. Their counsel highlighted that the competent authority was satisfied with their response and finding the 3 having committed minor technical infirmities, levied minor penalties. Sh.A.S.Chandhiok learned Additional Solicitor General conceded that the penalties levied on the 3 were shockingly disproportionately low but stated that the department could do nothing on the administrative side inasmuch as minor penalties have already been levied upon the 3 officers, 1 of whom has since retired. However learned counsel very robustly stated that the 3 would certainly pay for their sins at the criminal proceedings which would soon be taking place since an FIR has already been registered.

14. With reference to the vigilance inquiry report we see no scope for an argument that the irregularities were trivial. Indeed, the irregularities were widespread and all pervasive affecting the result in a manner making it difficult to

pick out and segregate the unlawful beneficiaries and tainted persons. Indeed, the irregularities condemn the examination as ineffective for the purpose for which it was held. The ratio of law in the decisions reported as AIR 1970 SC 1269 The Bihar School Examination Board Vs. Subhas Chandra Sinha & Ors., 1996 (10) SCC 742 Hanuman Prasad & Ors. Vs. UOI & Anr. and (2002) 3 SCC 146 UOI & Ors. VS. O.Chakradhar is clearly attracted that in such situation no show cause notice has to be given to the affected candidates. Indeed, the law is that nobody has right to promotion. The only right is to a fair consideration to be promoted. Where a promotional exercise is abrogated on account of shortcomings noted in the selection process, administrative action is required and for which a reasoned decision akin to one where either a lis is decided or a civil right is decided need not be penned.

15. We dismiss the writ petitions but direct that in future Sh.Rattan Chand and Sh.S.Z.Khan would not be assigned duty pertaining to any examination and the two would never be included as members of a Departmental Promotion Committee where selection has to be made. Both of them would never be posted in the Vigilance Department of RPF. An entry would be made in the service record that the two have been seriously indicted by this Court and if the two become eligible for further promotion, the present decision would be placed before the Departmental Promotion Committee. The answer sheets of all the candidates would be preserved and so would the video recording of the examination. Director General RPF shall render full assistance to the Investigating Officer who shall investigate the FIR

registered at PS Sarai Rohilla. We direct that the FIR be transferred to the Crime Branch of Delhi Police for investigation and for which Director General RPF would transmit a copy of this decision to the Commissioner of Police Delhi.

16. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

AUGUST 29, 2011
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