

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 12.04.2012
Judgment pronounced on: 23.4.2012

+ W.P.(C) 10140/2009

SYED SHABBIR ALI

..... Petitioner

versus

UPSC

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. K.A. Dewan
For the Respondent : Mr. Naresh Kaushik

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 4.2.2009, passed by the Central Administrative Tribunal, Delhi (hereinafter referred to as the 'Tribunal'), whereby OS No. 133/2009 filed by the petitioner was dismissed. The facts giving to the filing of this writ petition can be summarized as under:

The petitioner appeared in Civil Services Examination 2006. He cleared the preliminary examination but could not make it in the main examination. Since the petitioner was informed that he had not done well in English, which was a compulsory paper, his answer book of English paper was rechecked and the marks

were re-totaled by the respondents. No mistake was, however, found in the answer sheet since all the answers had been evaluated and there was no totalling mistake.

The petitioner, therefore, filed OA No. 133/2009 seeking the following reliefs:

- “i) to order and direct the Respondent to produce all the records relating to the case including the answer books of the Applicant in all the subject and verify the irregularities committed by the Respondent in the evaluation of the answer books. If the Respondent fail to produce the optional subjects, General Studies and Essay answer sheet of the Applicant, the Applicant then deserves to be awarded 1900 marks out of 2000; and
- ii) to order and permit the Applicant to carrying out the inspection of the answer books in the tribunal; and
- iii) to order and direct the Respondent to reexamine and re-evaluate the answer books of the Applicant where the irregularities are found to be existing in the evaluation process of Civil Service (Main) Examination 2006; and
- iv) to order and direct the Respondent to declare the Applicant successful candidate in the first rank in the Civil Service (Main) Examination 2006; and
- v) to order and direct the Respondent to declare the Applicant pass in the Civil Service (Main) Examination 2006 as after evaluation he has obtained more marks than the marks as OBC reserved candidate than the marks achieved by the last candidate in this category and give the Applicant the appointment in the category of OBC quota candidate; and
- vi) to pass such other order/orders as this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the case.”

Relying upon its earlier decisions in some other OAs including OA No. 1389/2007 and OA No. 1747/2007, the Tribunal dismissed OA filed by the petitioner.

2. In OA No. 1389/2007 and 1747/2007 decided by the tribunal on 18.7.2008, the applicants who had appeared in Civil Services Examination conducted by the UPSC had sought re-examination and re-evaluation of their answer sheets by an independent person. The contention of the applicants was that the method of inter-examiner moderation which is done to counter the effect of leniency or strictness of examiners and the inter-subject moderation which is done to counter the effect of nature of different optional subjects, was erroneous. It was also submitted by them that the scheme of examination does not provide for such moderation and scaling in respect of the marks awarded by the examiner. The Tribunal, relying upon the decision of the Supreme Court in **Sanjay Singh vs. UPSC, Allahabad and Anr. (2001) 3 SCC 720** and the decision of this Court in **Neel Rattan vs. Union of India LPA No. 615/2006**, held that since the methodology of moderation and scaling had already been examined and approved by the Supreme Court as well as by this Court, there was no merit in the petition seeking re-evaluation of the answer sheet.

3. As regards re-evaluation of the answer sheet of the petitioner, admittedly, there is no rule of UPSC entitling a candidate to seeking re-evaluation of his

answer sheets. This issue came to be examined by the Supreme Court in **Promod Kumar Srivastava vs. Chairman, Bihar Public Service Commission and Ors** (2004) 6 SCC 714 as well as in **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth**, (1984) 4 SCC 27.

In *Paritosh Bhupeshkumar Sheth* (*supra*), the relevant rules provided for scrutiny of marks on application submitted by the candidate. In a writ petition filed by some of the candidates, the High Court held that the rule providing for evaluation of marks gave an implied power to the examinees to demand not only a disclosure and inspection but also re-evaluation of the answer books. The decision of the High Court was set aside by the Supreme Court noticing that there was no rule entitling a candidate to have his answer books re-evaluated.

In *Promod Kumar Srivastava* (*supra*), the Supreme Court, while rejecting the prayer for re-evaluation of the answer book, inter alia observed and held as under:

“Many candidates may like to take a chance and pray for re-evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result

will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear rules on the subject may throw many problems and in the larger interest, they must be avoided.”

Following the decision of the Supreme Court in *Promod Kumar Srivastava* (*supra*), an identical view has been taken by this Court in WP(C) 3771/2008 decided on October, 24, 2008. We, therefore, find no merit in the contention that the petitioner is entitled to re-evaluation of his answer sheets.

4. It is not in dispute that the English paper was a qualifying paper, for candidates of all categories, for the Civil Services Examinations 2006. As noted earlier, the case of UPSC is that the petitioner did not clear the English paper. During the course of arguments before us, we directed the respondent to produce the answer sheets of the petitioner in respect of the qualifying paper in English, in a sealed cover. We also directed the respondent to disclose to us, the cut off marks for the qualifying English paper for the Civil Services Examination 2006. The answer sheet was accordingly produced before us in a sealed cover and was perused by us. The cut off marks fixed by UPSC for qualifying the English paper was also given to us in a sealed envelope. On perusal of the record, we found that the raw marks obtained by the petitioner in English paper have been moderated and

resultantly, he has been awarded higher marks, but despite that he was well below the qualifying cut off which UPSC had prescribed in respect of the English paper. We also found that all the answers had been evaluated by the examiner and there was no totaling mistake. Since the petitioner wanted to be sure that the answer sheet produced before us was his answer sheet only, we allowed him to see one page of the answer sheet and he confirmed that the answer sheet produced before us was his answer sheet only. We are, therefore, satisfied that no mistake has been committed by the respondent in evaluating the answer sheet of the petitioner in respect of English paper and the petitioner has failed to obtain qualifying marks in the said paper. The petitioner wanted us to direct the respondents to produce his answer sheet in respect of other subjects as well. We, however, found no ground for giving such a direction, considering that the petitioner did not clear the English paper, which was a qualifying paper and consequently his marks in other subjects, irrespective of what they may be, would not result in his succeeding in the Civil Services Examination 2006.

5. We would also like to note here that the Central Information Commission while deciding an appeal filed by the petitioner under Section 19 of the Right to Information Act, 2005 held that the information regarding raw marks/moderated marks cannot be disclosed. The tribunal had also seen the raw/moderated marks obtained by the petitioner in the English paper and was apparently satisfied. A

perusal of the order of the Commission dated 30.10.2008 would show that on perusal of answer sheet of the petitioner, the Commission found that there was no tampering or alteration of the marks. The Commission felt that the quality of the answers given by the petitioner call for considerable improvement. Before the Commission, the petitioner submitted a copy of the essay submitted in the answer seeking to know whether the same quotation from the famous Poet Iqbal and reference to Portuguese was there in the answer sheets shown to the commission. On examination, the Commission was satisfied that the answer sheet shown to them was in fact the answer sheet of the petitioner. The order passed by the Commission was not challenged further by the petitioner, and therefore, has become final and is binding on him. In any case, since we have ourselves perused the answer sheet and the petitioner has admitted that the answer sheet produced for our perusal is his answer sheet, the issue in this respect needs to be finally closed.

6. For the reasons stated hereinabove, we find no merit in the writ petition and the same is hereby dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

APRIL 23, 2012
‘raj’