

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

Reserved on: 19th January, 2017
% **Date of Decision:** 31st May, 2017

+ **W.P.(C) 7981/2012**

KAILASH PRASAD MEENA Petitioner
Through Ms. M. Sarada and Mr. Rajeev
Gautam, Advocates

Versus

UNION OF INDIA AND ORS. Respondents
Through Mr. Vivek Goyal, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

The petitioner by way of this writ petition under Article 226/227 of the Constitution of India impugns the order dated 13.09.2012 passed by the Central Administrative Tribunal ('Tribunal'), dismissing Original Application No.3943/2011.

2) The petitioner is an employee of the Postal Department working as a Sorting Assistant at New Delhi Railway Station, Transit Mail Office.

3) The Union of India - Respondent No.1 herein, vide Office Memorandum dated 30.4.2007 introduced a scheme for 3 years for conducting an All India Limited Departmental Competitive Examination

(LDCE for short) for recruitment to the post of Inspector Of Posts (IPO) and allotment of surplus qualified candidates in the said exam to other circles. The petitioner participated in the said exam and was declared a surplus candidate in the Scheduled Tribe (ST) category in the result declared on 26.2.2008.

4) The first respondent claims that the petitioner was asked to give his preferred choice for posting and the petitioner in turn gave choices all over India, which the petitioner feels was misconstrued by the Tribunal, thereby leading to the Bench recording an erroneous finding on the said fact. Learned counsel for the petitioner submitted that two candidates from Bihar circle who had also appeared in the IPO exam 2007 challenged the key to Q Nos. 5, 7 and 9 of paper III as wrong by filing OA No. 649/08 before the Patna Bench of the Central Administrative Tribunal and sought reassessment. The Bench directed the first respondent to consider the grievance of the petitioner therein. In view of the above direction, respondent No.1 rechecked the said questions in the answer sheets of all candidates. On rechecking, the petitioner and other private respondents were declared as unsuccessful candidates. The fact that the private respondents had also failed was discovered subsequently by the petitioner.

5) The Petitioner's marks in paper III were reduced from 34 to 26 after rechecking. The relaxed/qualifying standard/criteria fixed for ST category was 33%. The petitioner asked for the supply of the new key under the Right to Information Act, 2005 (RTI Act) and was given the key along with the new revised mark sheet. Vide letter dated 06.10.2010, the petitioner requested the first respondent to grant him grace marks as per the purported policy for grant of relaxation to ST candidates. The official respondents

did not accept this request. Respondent No.1 replied to the representation of the petitioner dated 6/10/2010 under the RTI Act vide letter dated 09.03.2011. The petitioner gathered information and had felt that some candidates of the IPO exam were favoured by the respondents by awarding extra marks while reassessing their answer sheets to declare them successful. The petitioner applied under RTI Act for the answer sheets of those favoured candidates.

6) The grievance of the petitioner is that the respondents have favoured some candidates in passing the LDCE, 2007 examination to the prejudice of others. This fact the petitioner submits' was brought to the notice of the respondents by the petitioner vide letter dated 26.4.2011. Thereafter, the first respondent response dated 13.05.2011 referred to the reply dated 9.3.2011 which had already been given on the said aspect.

7) The satisfied petitioner filed an OA No.3943/2011 before the Tribunal. Respondent No.1 in counter affirmed that the surplus qualified SC/ST candidates would be considered, if the circles indicate unfilled vacancies. Consequent to the challenge posed to questions in paper III, the Circle High Power Committee had examined the issue of awarding grace marks to the failed SC/ST candidates under relaxation of the standards. The petitioner in the rejoinder had questioned the second rechecking.

8) The petitioner submits that the IPO examination was conducted in 2007 under the scheme which was valid for 3 years. Further, the petitioner by letter dated 04.05.2007 had given 22 States as his preference of posting but the Tribunal wrongly recorded that the petitioner gave preference as Delhi and Rajasthan only. The petitioner could be posted anywhere in 22 circles in India as per the preference letter. It is asserted in the written

arguments that the first respondent had favoured few candidates including the private respondents. The petitioner has pleaded and argued that he be allowed to retain his original marks wherein he was declared successful in the IPO exam and accordingly be posted anywhere in India as he is willing to join anywhere.

9) On the other hand, respondent No.1 has denied the averments made in the petition and stated that the name of the petitioner was included in the list of Surplus Qualified ST Candidates for considering allotment at appropriate time. As per the surplus qualified scheme, the surplus qualified SC/ST candidates of other circles were to be considered only after review of the failed SC/ST candidates of respective Circle by the High Power Committee. Such Surplus qualified SC/ST candidates would be considered for allotment only if there were unfilled vacancies in the circles even after review and such vacancies were continued to be filled up as per extant rules on the subject. Once the review was completed and sufficient number of SC/ST candidates were still not available in the Home Circle, then the circle would notify such unfilled SC/ST vacancies to the Directorate for filling them through surplus qualified SC/ST candidates in the All India merit list.

10) In the present case, even before options form the surplus qualified SC candidates of 2007 IP Examination were invited, the petitioner had submitted his options on 11.05.2007 without properly appreciating para 6 of the Office Memorandum No. A-34020/01/2007-DE dated 13.04.2007 (Annexure RR-1).

11) This Memorandum reads as under:

“In so far as filling up of the unfilled SC/ST vacancies of IP Departmental Examination is concerned, such unfilled

vacancies of the respective Circles would continue to be filled up as per the extant rules on the subject, whereby the Circle High Power Committee examines the issue of awarding grace marks to the failed SC/ST candidates under relaxations of standards. The review by the Circles shall be carried out within three months of the announcement of the results. After the review is completed, if sufficient number of SC/ST candidates are still not available in the Home Circle, the circle shall notify such unfilled SC/ST vacancies to the Directorate for filling up these vacancies through the surplus qualified SC/ST candidates of the All India Merit list. As for 'OC' surplus qualified candidates, the SC/ST surplus qualified candidates will also be given an opportunity to change their preference at this stage. In the Circle Seniority list, in respect of SC/ST candidates, the surplus qualified SC/ST candidates allotted to the Circle based on All India merit list will rank senior to the SC/ST candidates of the Home Circle who have been awarded grace marks under relaxation of standards."

12) The Circle High Power Committee had examined the issue of awarding grace marks to the failed SC/ST candidates under relaxations of the standards. Two candidates of Bihar circle had filed OA Nos. 649/2008 and 146/2009 before the Central Administrative Tribunal, Patna Bench about wrong answer of Key to Qn. Nos. 5, 7 and 9 of Paper III of IP Examination 2007 and in compliance to the directions of CAT Patna Bench, the competent authority had ordered revaluation of the answer scripts of Paper-III of IP Examination 2007 of all the candidates through an independent Examiner by preparing a revised key. It is pertinent to note that there is no provision for revaluation under Rule 15 of Appendix 37 of Volume IV. However, directions given by the Patna Bench had to be followed. This rechecking of answer scripts of Paper-III with particular reference to Q. Nos. 5, 7 and 9 was extended to all the candidates who

appeared in IP Examination 2007 to maintain transparency and uniformity. This was required and necessary as wrong answers were earlier treated and recorded as correct.

13) On revaluation of Paper-III, the petitioner's marks were reduced from 34 to 26, thereby he failed to secure qualifying marks even by the relaxed standards and therefore, his name was deleted from the surplus qualified IPO list issued on 16.07.2010. The marks were reduced based on the revised key prepared and supplied to the independent examiner for rechecking.

14) The petitioner has referred to answer to question No.7. The Q.No.7 in Paper-III of IPO Examination 2007 was about fixation of pay of a Government servant on promotion. The Petitioner fixed the pay at the stage of Rs. 3270 under FR 22 (i) (a) (i) without giving any explanation. The Examiner in the first evaluation had awarded 8 marks and taking these 8 marks into account, his total marks in Paper-III were 34. Consequent to framing the revised key in obedience to the directions of the Hon'ble CAT, Patna Bench in OA No. 649/2008 and 146/2009 (filed by Manoj Kumar and Binod Kumar, respectively), the key prescribed that "the basic pay in lower post is Rs. 3200 and one increment notionally has to be added subject to the minimum of Rs. 100 raising his pay to Rs. 3300. Since the stage of increment in the promoted scale of pay has not been mentioned in the question, the candidates need to be awarded full marks if they just mention that the pay has to be fixed at a stage higher than 3300 in the promoted scale even without indicating the exact higher stage.

15) The independent Examiner, keeping this revised key in view, awarded zero marks for Q.No.7, for the reason that the Petitioner has not added notional increment subject to a minimum of Rs. 100 and suggested the pay to be fixed on promotion at the stage higher than Rs. 3300. As per the original answer script, the Applicant has not added notional increment and had fixed pay at Rs. 3270 as can be seen in the answer scripts of the petitioner of paper III (Annexure S-I). Therefore, his answer is not as per revised key and he does not deserve any marks for such an incomplete and incorrect answer.

16) In any case, it is not for the court to reevaluate the answer and given marks. It is only in extraordinary situations, where perversity and arbitrariness is predictable and apparent, that some interference could be possibly justified.

17) The Competent Authority had considered the request of the Petitioner for total rechecking of Paper-III and had ordered rechecking of the answer script by an independent Examiner before deciding further action based on the revised marks. The independent Examiner appointed was at the level of HAG. The officer after independent re-assessment of the Petitioner with respect to revised key for Q. Nos. 5, 7 and 9, held that the evaluation was correctly done and that there was no change in the marks allotted to the candidates. Thus, even after re-assessment by an independent Examiner, Shri K. P. Meena (Petitioner) could not secure 33% marks in Paper-III as per the relaxed standards and therefore, his case was not considered for inclusion in the list of surplus qualified ST candidate from the select list of Delhi Circle.

18) The Answer script of the applicant in Paper-III was rechecked and his marks were reduced from 34 to 26 as per the revised key prepared. Since the Petitioner was not satisfied and represented, the Respondents also got his answer scripts assessed for a third time and even after such an exercise, the petitioner could not secure required 33% marks in Paper-III. This third rechecking was done in respect of 5 candidates since they failed to secure less than qualifying marks in rechecking and this was due to a conscious decision taken to protect the interest of those candidates who were declared qualified and working. Out of these 5, only one applicant was cited as a private respondent (Shri Sajan Ram Choudhary). With regard to the other two private respondents, there was no change in the marks after third checking and they were not favoured at all. However, in order to provide equal treatment, the representation of the petitioner was considered carefully and his answer script was revalued for the third time by an independent Examiner at HAG level and even after thorough checking, he could not secure the qualifying marks in Paper-III as per relaxed standards also. There was nothing illegal and the Department has not given any special/favourable treatment to other candidates to the prejudice of the petitioner. He was given a fair and just opportunity to be considered by way of third checking by an independent Examiner. This obviously shows the transparency of the Respondents in the said matter.

19) The respondent submission that he could not secured 33% marks in Paper-III, is self serving and make belief. The petitioner cannot act as self evaluatory and examiner. It is for the examiner to decide his performance based on the key.

20) The marks of the petitioner were reduced from 34 to 26 which clearly proves that the petitioner failed to qualify the exam as his answer was not found to be as per the revised answer key prepared by the department. The marks were reduced based on the revised scheme for rechecking. Even otherwise, respondent No.1 re-evaluated the answer sheet for the IIIrd time by appointing an independent examiner at the level of HAG. This re-evaluation was by an independent examiner. However, there were no change in the marks from the second re-evaluation. The petitioner despite the reassessment by the independent examiner did not secure 33% marks and it is clear that his case due to this fact, was not considered in the list of surplus candidates from the ST category.

21) The question of granting grace marks as per the policy relating to SC/ST candidates does not arise in this case as there were no unfilled ST vacancies for Delhi Circle in the year 2007 Examination. This was applicable only where there are unfilled SC/ST vacancies, even after all the successful candidates were posted. In Delhi Circle, only 1 ST vacancy was notified in IP Examination 2007. Shri Devender Kr. Prasad, an ST candidate who secured 281 marks and qualified in all Papers with Roll No. DI-146/IPO/2007 was selected for this reserved & notified lone ST vacancy.

22) The respondents have not favoured any candidate. It is submitted that at the time of taking decision for rechecking of Paper-III, a conscious decision was taken by the Competent Authority that as a result of the revaluation, if any candidate already declared successful in the main result announced on 26-2-2008 and working elsewhere fails, he will not be reverted. This decision was taken by the competent Authority as

the candidates already working could not be reverted. The allegation of the petitioner that the first respondent had favoured Ms. Meenu Pareek of Rajasthan Circle and Shri Abhijeet Bannerjee of West Bengal Circle, was not found to be factually correct. The position is that Ms. Meenu Pareek was declared successful as a surplus qualified SC candidate and ranked I on the merit list in the Rajasthan Circle in the main results and after rechecking she was relegated to second position on the merit list. With respect to Shri Abhijeet Bannerjee, he was a surplus qualified OC candidate of West Bengal Circle and allotted to Bihar Circle and even after rechecking of Paper-III, there was no change in the position and his allotment to Bihar Circle stood as was originally ordered. Ms. Meenu Pareek of Rajasthan secured 40 marks in Paper-III in the initial checking and even after rechecking, the independent Examiner confirmed the same marks. Shri Abhijeet Bannerjee also secured 40 marks as per original valuation and even after rechecking there was no change in his marks. This obviously shows that these two candidates were not favoured at all by the Respondents.

23) The petitioner has failed to point out any illegality in the process of the examination conducted by respondent No.1. The conduct of respondent No.1 shows transparency in the matter. We do not find any infirmity in the impugned order of the Tribunal dismissing the OA holding that the applicant having failed to secure even the minimum marks in Paper III, and not being qualified to be declared a selected candidate even after relaxed standards and two stages of re-evaluation of his answer sheets cannot now claim to be appointed against any of those four ST vacancies, which lie in circles other than the ones against which the petitioner had initially given

his option, and against which his case could perhaps have been considered, had he had passed Paper-III.

24) We do not find any error in the decision of the Tribunal, affirming the standard and stance of the respondent No.1. The Writ Petition is accordingly dismissed with no orders as to costs.

**(CHANDER SHEKHAR)
JUDGE**

**(SANJIV KHANNA)
JUDGE**

**May 31, 2017
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