

Court No. - 39

Case :- WRIT - A No. - 17678 of 2023

Petitioner :- Union Of India And 7 Others

Respondent :- Sandeep Kunwar Singh And 9 Others

Counsel for Petitioner :- Ashish Kumar

Counsel for Respondent :- Surya Bhan Singh

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri S.P. Singh, learned Additional Solicitor General of India along with Sri Ashish Kumar, learned counsel for the Union and Sri Surya Bhan Singh, learned counsel for the caveator.

2. Present writ petition has been filed against the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad dated 19.05.2023 passed in Original Application No. 766 of 2022 (Sandeep Kunwar Singh and 8 Others Vs. Union of India and 7 Others).

3. The summary of reasoning and the operative portion of the impugned order reads as below:-

"14. It transpires from the record also that opinion was formed by the respondents and the committee constituted for review the matter on the basis of conjecture and surmises. Suspicion was only shown on the basis of high marks of the some candidates in the examination. It may be mentioned here that suspicion how so strong cannot take place of proof until or unless suspicion is supported with material evidence. In the present matter, nothing is on record to show that any malpractices was adopted during the examination or any irregularity occurred. It is also evident from the record that none has complained in the present matter regarding malpractices or irregularity. Obtaining high scores in the examination by the candidates itself is not a disqualification for a candidate and entire examination process when

it was not vitiated of malpractices of irregularity cannot be cancelled on the ground taken by the respondents. It also appears that respondents have acted in cancelling the examination arbitrarily which is violative of Article 14 and 16 of Constitution of India and action of the respondents is also colourable exercise of power vested in it. Fair procedure have not been adopted by the respondents in dealing with matter.

15. Considering the above circumstances and the legal principles cited supra, the action of the respondents in cancelling the exam under reference, is not in accordance with law. Therefore, the impugned orders are quashed. Respondents are directed to declare the result of the examination conducted on 28.3.2022, 29.3.2022, 30.3.2022 and 31.3.2022 and finalize the selection on the post of CCTC (Level-3) under 33.1/3 % of promotion quota within a period of 03 months from the date of receipt of certified copy of this order. Fresh examination conducted on 15.11.2022, 16.11.2022 and 17.11.2022 subsequent to cancelling of the examination conducted on 28.3.2022, 29.3.2022, 30.3.2022 and 31.3.2022, which has been stayed by this Tribunal vide order dated 14.11.2022, during the pendency of the O.A., is hereby cancelled.

16. With the above observations, O.A. is allowed."

4. While the learned Additional Solicitor General has vehemently urged that there was something wrong in the examination, other than the general suspicion voiced, on the self appraisal and not external complaint, only this much is clear while 37.25% of all candidates who appeared at selection exam qualified the same, a few obtained marks 95 or more. Thus 8 candidates scored 95 marks while 35 scored 98 marks out of 1055 candidates, who appeared at that examination.

5. With competition at public examination is growing stiffer with the passage of each day as better education and tutoring increases the skill of the examinees, in the context of fewer jobs available, there is every possibility and it is a matter of common knowledge that lower posts attract higher merit for reasons of compulsion and

desperation commonly faced by citizens. Thus many meritorious candidates having better education are often seen applying for lower posts. Here the post was of Commercial-cum-Ticket Clerk (C.C.T.C.).

6. In absence of any external complaint and in absence of any credible or objective material seen existing as may have allowed the respondent to reach the conclusion that there was any wide spread malpractice or error in the conduct of the original selection examination, we find no error in the order of the Tribunal in setting aside the cancellation of that examination.

7. Accordingly, the petition lacks merit and it is **dismissed**.

Order Date :- 29.11.2023

SK Srivastava

(Shiv Shanker Prasad,J.) . . . (S.D. Singh,J.)