

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

+ W.P.(C) No. 4942/2015 & C.M.Nos.8934-8935/2015

% **18th May, 2015**

AJAY KUMAR

..... Petitioner

Through: None

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Bharathi Raju, CGSC, for R- 1 & 2.
Mr.Manoj, Standing Counsel for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one was present for the petitioner on the first call. No one is present for the petitioner even on the second call although it is 2.45 P.M. I am hence proceeding to dispose of the writ petition on merits.

2. By this writ petition filed under Article 226 of the Constitution of India, petitioner impugns the show cause notice dated 27.1.2015 issued by the respondent no.1. By the show cause notice, petitioner has been called upon to explain his case, as to why the petitioner's candidature should not be cancelled and the petitioner be prevented from appearing in Staff Selection Commission's examinations for three years on account of unfair means

indulged by him in the examination conducted by the respondent no.2 on 15.4.2012. The show cause notice dated 27.1.2015 reads as under:-

“F.No.2/26/2015-ND-1/Legal
Government of India
DEPARTMENT OF PERSONNEL AND TRAINING
Staff Selection Commission (Northern Region)

BLOCK NO.12,CGO COMPLEX
LODHI ROAD, NEW DELHI-110003
Dated: 27-01-2015

SHOW CAUSE NOTICE

Whereas Shri Ajay Kumar son of Shri Ravinder Singh, resident of **Village- Rampuri, Tehsil & Distt.- Rewal, Haryana** was a candidate of Food Corporation of India Examination, 2012. He appeared for the said examination under Roll No. 2405500017.

2. Whereas Shri Ajay Kumar appeared in Paper-II of the above mentioned examination on 15.4.2012

3. Whereas the Commission, with a view to protecting the integrity of the selection process and to prevent candidates who are found to indulge in unfair means in such examination from entering into government service through manipulative practices, carried out post examination analysis of performance of the candidates with the help of experts who have proven this expertise in the same field.

4. In the multiple choices objective type test used by SSC there are 4 choices/alternative answers in each question out of which only one is the right answer and other three are wrong answers. As far as possible all choices are made attractive enough, therefore, if the candidate does not happen to know the correct answer he would select one of the three wrong answers by chance. Thus, probability of picking a particular wrong answer is out of 3 or 1/3 or 0.33. Similarly, if the

other candidate of the pair also does not happen to know the right answer to the same question, he would also happen to select one of the 3 wrong answers. Therefore, the occurrence of one question with identical wrong answer by a pair of candidates will be $=1/9=(1/3)^2=(0.33)^2$. Similarly, the probability of a pair of candidates having 2 question with identical wrong answers would be $(0.33)^2*(0.33)^2=(0.33)^4$. If it is continued in the same way, the probability of the pair making wrong answers to 12 question will be $(0.33)^{24}$ i.e. 0.00000000000027. The probability of the pair making 7 wrong answers will be $(0.33)^{14}$ i.e. 0.0000002 and 6 wrong answers will be $(0.33)^{12}$ i.e. 0.0000018. It means that one can be certain that such an event just cannot occur by chance. In case such a matching has taken place it clearly indicates collusion amongst the candidates.

5. Whereas it emerged during such scrutiny and analysis that Shri Ajay Kumar had resorted to malpractice/unfair means in association with Shri Pukhraj, Shri Rahul Yadav, Mainpal, Ms. Nagina and Prabhu Day in Paper-I and Paper-II. The analytical data clearly showed abnormally high matching of answer responses of Shri, Ajay Kumar with other candidates. Details of matching of their answer responses are given below.

Paper-I

Sh. Ajay Kumar, Roll No. 2405500017- Shri Pukhraj Roll No.2405026460

	Total Match	Right Right match	Wrong Wrong match	Blank Blank match
T1	41	37	4	0
T2	9	8	1	1
T3	48	38	10	0
T4	44	28	16	0

Paper-II

(a) Sh. Ajay Kumar, Roll No. 2405500017- Shri Pukhraj Roll No.2402500092

	Total Match	Right Right match	Wrong Wrong match	Blank Blank match
T1	44	36	4	4
T2	46	40	6	0
T3	45	35	8	2

(b) Sh. Ajay Kumar, Roll No. 2405500017- Shri Mainpal Roll No.2402003448

	Total Match	Right Right match	Wrong Wrong match	Blank Blank match
T1	46	35	4	7
T2	45	39	6	0
T3	46	36	8	2

(c) Sh. Ajay Kumar, Roll No. 2405500017- Ms. Nagina Roll No.2405002210.

	Total Match	Right Right match	Wrong Wrong match	Blank Blank match
T1	39	32	3	4
T2	45	38	7	0
T3	42	37	5	0

(d) Sh. Ajay Kumar, Roll No. 2405500017-Shri Parbhu Day, Roll No. 2405003896

	Total Match	Right Right	Wrong Wrong	Blank Blank
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		match	match	match
T1	46	35	4	7
T2	42	38	4	0
T3	46	37	7	2

6. Apart from high matching of response, there were identical wrong answer (IWW) given by Shri Ajay Kumar and the other candidates, the extent of which cannot happen by chance and establishes collusion among the candidates/common source of answers. Looking at the improbability of such matching, the instant case is a glaring example of collusion to vitiate the sanctity of the examination.

7. Whereas, Shri Ajay Kumar was served with a show cause notice dated 10.6.2013 as to why his candidature should not be cancelled and why he should not be debarred for three year from appearing in Commission's Examination for his indulging in unfair means in the above mentioned examination. The Delhi High Court vide order dated 17.11.2014 in W.P.(C) 7604/2014 quashed and set aside the show cause notice dated 10.6.2013, with liberty to the respondents to issue fresh show cause notice.

8. Shri Ajay is, therefore, directed now to respond within 21 days of issue of this detailed show cause notice as to why his candidature should not be cancelled and why he should not be debarred from the Commission's examination for Three years from the date of examination."

3. The show cause notice in question was issued pursuant to the order dated 17.11.2014 passed in W.P.(C) No.7604/2014, and by which order the earlier show cause notice dated 10.6.2013 and the order dated 27.1.2014 passed by the respondent no.2 were quashed but liberty was given to issue a

fresh show cause notice alongwith the relevant information to substantiate the allegations against the petitioner. The earlier show cause notice and order were quashed because petitioner was not confronted with the material on the basis of which petitioner's candidature was cancelled and he was debarred.

4. It is really premature for the petitioner to rush to this Court at the show cause notice stage, inasmuch as, the show cause notice gives detailed facts as to why there cannot be co-incidence of various persons similarly answering the questions and therefore getting the similar marks with respect to particular questions. Whatever the petitioner has to plead in his defence has necessarily to be pleaded in response to a show cause notice in a reply to the show cause notice which has been given by the petitioner on 12.2.2015, but not by challenging the show cause notice at this preliminary stage before the court even before an order has been passed. The impugned show cause notice will be decided by the competent authority in terms of the reply given by the petitioner, but before even the decision is taken and order is passed by the competent authority, petitioner cannot rush to the court at the premature stage.

5. I have had an occasion to consider similar issues, but after the order was passed by the competent authority, in the judgment in the case of *Varun*

Bhardwaj Vs. State Bank of India & Ors. in W.P.(C) No.3707/2011 decided

on 06.2.2013, and the said judgment reads as under:-

“1. This writ petition filed by the petitioner under Article 226 of the Constitution of India seeks appropriate writ or order or direction from this Court to declare the result of the petitioner for the examination held by the respondent no.1 on 15.11.2009 and thereafter to appoint the petitioner to the post of a clerk for which the examination was held.

2. The test in question was admittedly an objective type test. Counsel for the petitioner states that there were four sections of this objective type test.

3. The respondent no.1, on the basis of a report given by the Institute of Banking Personnel Selection (IBPS) has denied appointment to the petitioner suspecting that unfair means were used by the petitioner inasmuch as wrong answers which are given by the petitioner tally with the wrong answers given by two other candidates namely Ms. Pooja and Ms. Rinku. It is admitted on behalf of the respondent no.1 that the petitioner was not directly caught in using the unfair means, however, the scientific consideration which is used by IBPS is applied by all banks to ensure that whoever has indulged in malpractices should not be appointed in a bank which deals with public moneys. The relevant averment of facts in this regard are contained in paras C to I in the preliminary counter-affidavit, and the same read as under:-

“C. IBPS, who were entrusted with the task of conducting the said written test, evaluated the answer sheets. That the Institute of Banking Personnel Selection (IBPS) is an autonomous body; registered as a Public Trust under the Bombay Public Trust Act of 1950; a Scientific and Industrial Research Organization by the Department of Scientific and Industrial Research, Ministry of Science and Technology, Government of India. The IBPS became an independent entity at the behest of Reserve Bank of India (RBI) and Public Sector Banks. The first Chairman of its Governing Board was Dr Manmohan Singh, the then Governor of RBI. IBPS is envisioned as self governed academic and research oriented institute, with a mission of enhancing human resource development through personnel assessment. The Institute is known for accessing candidates with accuracy, which is time-tested and validated. Since last more than 3 decades, the IBPS has

been following a scientific/theoretical method/consideration in detecting the use of unfair means/malpractices in objective test, by the candidates. The manner and the method in which the IBPS detects the use of unfair means/malpractices in objective tests by the candidates is annexed hereto and marked as **ANNEXURE R-2.**

D. Based on the scientific and theoretical method, which is time tested, for detection of use of unfair means, IBPS sent a report/analytical data of merit listed pairs of candidates established/suspected to have copied/used unfair means. So far as the Respondent is concerned, the said analytical data clearly showed that it was a case of “use of unfair means” being suspected. The Petitioner had indulged in using unfair means with 2 Candidates namely Ms. Pooja and Ms. Rinku. The basis of suspecting use of unfair means was that there were identical wrong answers (IWW) 6/7 (for 50 items test) in Marketing Aptitude/computer knowledge. Copy of the analytical data prepared by the IBPS, is annexed hereto and marked as ANNEXURE R-3.

E. It is relevant to point out at this stage that the said written test was held on All India basis. Based on the report of IBPS, the Respondent Bank has cancelled the candidature of 976 candidates who had appeared in the said test and which were cases of use of unfair means beyond reasonable doubt as well as cases where use of unfair means was suspected.

F. It is further relevant to state herein that even though the candidates suspected to have copied/used unfair means, were sitting at different venues/centres while writing the said test, it is a rampant practice wherein the candidate have been caught using mobile phone while attempting to answer the question papers. In fact, in the written test held at Hisar, Ludhiana and Karnal centres, the candidates were caught red handed discussing answers, while attempting to answer the question paper. In few cases, the candidates have confessed using the mobile phone/SMS the answers, even though they were sitting at different centres.

G. In the multiple choices objective type test used by IBPS there are 5 choices/alternative answers in each question out of which only one is the right answer and the other 4 are wrong answers. As far as possible all choices are made attractive enough, therefore, if the candidate does not happen to know the correct

answer he would select one of the 4 wrong answers by chance. Thus, probability of picking a particular wrong answer is out of 4 or 1/4 or 0.25. Similarly, if the other candidate of the pair also does not happen to know the right answer to the same question he would also happen to select one of the 4 wrong answers. Therefore, the occurrence of one question with identical wrong answers by a pair of candidates will be $=1/16=(1/4)^2$

$=(0.25)^2$. Similarly the probability of a pair of candidates having 2 question with identical wrong answers would be $(0.25^2)^2=(0.25)^4$. If it is continued in the same way, the probability of the pair making wrong answers to 12 question will be $(.25)^{24}$ i.e. 0.00000000000000035. The probability of the pair making 7 wrong answers will be $(0.25)^{14}$ i.e. 000000003 and 6 wrong answers will be $(0.25)^{12}$ i.e. 000000059. It means that one can be certain that such an event just cannot occur by chance.

H. It is respectfully submitted that the Respondent Bank deals with public money, wherein its employees are expected to have highest degree of integrity and trust worthiness, which is must and unexceptionable [AIR (2003) SC 1462]. An employer, particularly like the Respondent Bank, who deal with public money, is entitled to satisfy itself as to the competence of a candidate to be appointed in service.

I. Upright and honest Bank employees are needed not only to bolster the image of the bank in the eyes of the general public, but also to sustain the culture of integrity, virtue and ethics among its employees. It is imperative to maintain a high benchmark of honesty, accountability and good conduct. The Petitioner was to be appointed to the clerical post of the Respondent Bank. They are required to take responsibilities, risk and maintain confidentiality. Thus the decision of the Respondent bank in canceling the candidature of the Petitioner cannot be said to be arbitrary or illegal. “ (underlining is mine).

4. A reference to the aforesaid paras shows that the respondent no.1 uniformly applies the scientific test as devised by IBPS to all candidates. It is not as if the petitioner or any other person is selected or targeted. The respondent, in para G has given the probability levels for a pair of candidates giving wrong answers simultaneously, and which are with respect to those questions where 5 similar choices are given. For two persons giving 6 wrong identical answers the probability is found to be

$(0.25)^{12}$ i.e. 0.000000059. The petitioner Mr. Varun Bhardwaj is found to have 6 identical wrong answers with one candidate Ms. Pooja and 7 identical wrong answers with another candidate Ms. Rinku. With respect to a pair of candidates giving 7 wrong answers the probability is in fact much lesser i.e. $0.000000003 = (0.25)^{14}$.

5. In my opinion, Courts cannot sit as an expert body to decide the rational test which has been applied by institutions to find out use of unfair means, and this is because unfair means are on many occasions never found to have been caught red handed. Of course, it is possible that there may be the greatest possibility of a co-incidence of the petitioner not having used unfair means, however, once the respondent no.1 uniformly applies the IBPS test, Courts would prefer not to interfere for any one of the candidate who gives the examination inasmuch as this would mean to quashing of the application of the IBPS test which is used by the respondent no.1 bank which deals with public moneys. No doubt the petitioner's argument that he was not sitting at the same centre with the other two candidates with whom the petitioner had same answers, and they were sitting at different centres in Delhi, but, in these days of technology and communications, some things do happen and therefore as long as the respondent No.1 is not acting arbitrarily there is no reason for the Court to interfere.

6. In view of the above, once it is found that there is no discrimination against the petitioner inasmuch as the IBPS Scientific Test is uniformly applied by the bank, and also the fact that the probability is so negligible of various wrong answers being identical for a pair of persons inasmuch as five options are given in the objective type test, I do not feel in the facts and circumstances of the case that Courts should substitute its own opinion for that of an expert body.

7. There is hence no merit in this petition, which is accordingly dismissed, leaving the parties to bear their own costs."

6. I hasten to observe that I am not observing in one way or the other the merits of the case, however, what is stated is that it is only after a decision is taken by the competent authority in terms of the show cause notice dated 27.1.2015, that the petitioner will have a legal cause of action to approach the

court on the basis of the order which would be passed by the competent authority and today it cannot be urged that the show cause notice is vague and does not contain the necessary information and particulars. Today obviously the writ petition is premature because there are sufficient facts which are mentioned in the show cause notice dated 27.1.2015, which notice has already been replied to by the petitioner, as per his reply dated 12.2.2015. The show cause notice issued shows that the competent authority has sufficient reasons for issuing of the show cause notice dated 27.1.2015.

7. In view of the above, there is no ground for quashing of the show cause notice dated 27.1.2015 at this stage, however, the petitioner is at liberty, in case any order adverse to him is passed by the competent authority debarring him or passing any other order, then to approach the court at that stage.

8. Dismissed.

MAY 18, 2015
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VALMIKI J. MEHTA, J.