

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.2286 of 2009 (O&M)**

**Date of Decision: 22.10.2016**

Kuldeep Singh Dhaka

... Petitioner

Versus

The State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Rose Gupta, Advocate, for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

Mr. Ashwani Talwar, Advocate, for respondent No.3.

Ms. Promila Nain, Advocate.

Mr. Sumeet Sheokand, Advocate, for  
Mr. R.S. Tacoria, Advocate, for respondent No.4.

Mr. Amandeep Singh, Advocate, for respondent No.5.

**RAJIV NARAIN RAINA, J.**

1. This is a selection matter involving recruitment to the post of Assistant Food & Supplies Officer (AFSO). The Government of Haryana sent a requisition on August 24, 2006 to the Department of Social Justice and Empowerment, Haryana for filling up one post of AFSO by an orthopaedically handicapped candidate. The advertisement was placed in the print media on August 29, 2006 inviting applications from eligible candidates from the reserve category of applicants suffering from orthopaedic disabilities to the extent indicated. Other posts were also advertised including the post of Auditor, Clerks and Chowkidars etc. with which we are not presently concerned. The territory of State was divided into four zones for interview purposes since the number of candidates who responded to the employment notice were 1294 in number. For each zone was constituted an independent Interview Committee

headed by a Senior District Level Officer of the department. Each zone had different committees depending on the volume of work. The interviews were conducted in the first fortnight of October 2006. The criteria of selection consisted of 20 marks out of which 5 were for academic qualifications, 5 marks for experience and 10 marks for viva voce. A total of 1022 candidates appeared before the Interview Committees. The rest dropped out of the competition.

2. The petitioner was an applicant in the category of orthopaedically handicapped persons. He has challenged the selection of Bharat Bhushan as AFSO who is named the 3<sup>rd</sup> respondent to the petition.

3. The State has filed its written statement and so has the selected candidate Bharat Bhushan defending his selection. Besides, affidavits and additional affidavits have been filed as per directions issued by this Court from time to time. The pleadings are complete and the matter was taken up for final hearing and judgment was reserved on October 07, 2016 after hearing the parties, which is being pronounced today containing the reasons for the decision taken to allow the petition.

4. The sheet anchor of the case of the petitioner is a detailed interim order passed on September 23, 2009 by Ranjit Singh, J. The order was passed after His Lordship called for the original record of selection and examined the same in court. After delving into the record and upon hearing the parties in challenge to the selection and in defence of the appointment of the 3<sup>rd</sup> respondent, the following order was passed:-

*"The original record of selection has been produced before me. Conceded position is that the petitioner has been given 12 marks in all. 9 in interview and 3 for the experience. The selected candidate Bharat Bhushan has obtained 12.80 marks. He is shown to have obtained 3.80 marks for*

*qualification and 9 marks in interview. From the original result produced before the Court, the clear manipulation and interpolation in the marking can be seen.*

*Mr. Rathee was asked to explain as to how the selected candidate has been given 3.80 marks on the basis of qualification. As per the criteria laid down, total marks for qualification were 5 and 3 out of it were for graduation and 2 for post graduation. The selected candidate had obtained 56.7% marks in the graduation but has been given 2.85 marks out of total 3. He has been given 1.05 marks for post graduation thus making total of 3.80. The person who has come to assist Mr. Rathee could not explain as to how the selected candidate was given 2.85 marks for securing 56.7% in graduation. Obviously, the marks which could have been awarded to him could have been 1.85 and not more as can be seen for the marks given to him for 50% marks obtained in M.A. Indeed that appears to be so. It is even apparent to the naked eye that initially this candidate was given 2.80 marks for the purpose of qualification whereas 2 has been changed to 3. It is also apparent that initially the selected candidate has been given 7 marks in interview, which has been overwritten to make 9. Even the total of the two had initially been written as 10.80, which has been over written to make 12.80. It is thus clear that this interpolation has been made with the motive and purpose.*

*The selection of Bharat Bhushan may not be sustainable. The matter cannot be left at that. The members of Selection Committee obviously has acted in unfair and arbitrary manner in the method of selection. The members, who constitute a Selection Committee including the Convenor cannot be allowed to escape for acting with malice and motive. They have already failed in acting in a fair manner while performing their onerous and pious duties expected from them. The suitable directions, therefore, need to be issued for taking appropriate action against the members of Selection Committee and the Convenor. It would be fair to issue show cause notice to them, in case the members and the Convenor wish to say anything in this regard.*

*Let notice be issued to the members of Selection Committee and the Convenor through the State counsel. The State counsel would disclose the name of the members of the Selection Committee as well as of the Convener within a period of one week to the Registry of this Court. Thereafter, the notice will issue to them on their respective present addresses, to enable them to explain the alleged overwriting/manipulation. In the meantime, the details of the result of two candidates of the waiting list be also produced before the Court. The original result produced in respect of selected candidate is returned to Mr. Rathee.*

*Adjourned to 23.10.2009."*

5. Not only was the selection of Bharat Bhushan found not sustainable but this Court did not spare the members of the Selection Committee who had acted in an unfair and arbitrary manner in the method adopted for the selection. The Committee did not, according to the learned Single Judge, in the interim order perform their onerous and pious duties expected from them. Show cause notices were issued to the members of the Committee and the convener if they wished to say anything in this regard. The members of the Committee have been brought to Court on summons and are represented by counsel. To this end, the State counsel was asked to disclose the names of the members of the Selection Committee as well as of the convener to facilitate issuing notice to them at their respective addresses, to enable them to come forward and explain the alleged overwriting/manipulations noticed by the learned single judge. The details of the result of the two candidates of the waiting lists were also directed to be produced before the Court. The original result produced which led to the appointment of the selected candidate was returned to the Law Officer and the matter was adjourned to October 23, 2009. It took time to effect service on the members of the committee. By order dated March 15, 2010 the Court impleaded them as respondents No.4 to 8 and called

upon the petitioner to file an amended memo of parties for effecting service. On many dates of appearance, they took time to file their replies. Directions were issued to make available to the members the original record of the selection to enable them to file their replies. Once the case was dismissed for non-prosecution on March 03, 2014 and the restoration application was allowed on April 23, 2014. On October 03, 2016 when the matter came up before me I called for the original record to be produced by the State to see it for myself by passing the following order:-

*"Mr. Ashwani Talwar, Advocate is not available to argue the case as he is busy in some other Court. His assisting counsel has requested a short accommodation.*

*List on 07.10.2016.*

*To be shown in the urgent list for final disposal.*

*Original record be produced by the State on the next date of hearing including documents containing original signatures of the members of the Selection Committee and how the file was dealt with and the file containing acceptance of the recommendations of the Selection Committee be also produced."*

6. This is how the matter came up for final disposal in the urgent list. The original record was produced before me which, the State counsel assured was the same which was produced when the order dated September 23, 2009 was passed, when Mr. Harish Rathee, Sr. DAG, Haryana appeared for the State. Though this case is marked to Ms. Shruti Jain Goyal, AAG, Haryana but Mr. Rathee present in Court confirms the fact.

7. The record reveals the clear overwriting and manipulation of figures on the original result/calculation sheet. It would be best to insert the scanned copy of the relevant sheet in this paragraph for all to see the work of

| NAME OF DEPARTMENT: |                   |                           |                                                                      | FOOD AND SUPPLIES, HARYANA |               |                        |                        |                  |
|---------------------|-------------------|---------------------------|----------------------------------------------------------------------|----------------------------|---------------|------------------------|------------------------|------------------|
| DISTRICT:           |                   |                           |                                                                      | FARIDABAD                  |               |                        |                        |                  |
| NAME OF POST:       |                   |                           |                                                                      | AS-50                      |               |                        |                        |                  |
| Sl. NO.             | NAME OF APPLICANT | FATHER'S / HUSBAND'S NAME | ADDRESS                                                              | DATE OF BIRTH              | QUALIFICATION | % OF PHYSICAL HANDICAP | SIGNATURE OF APPLICANT | REMARKS          |
| 1                   | ASHOK KUMAR       | PREV SINGH                | BEPPY BASI, FARIDABAD OLD PULJANI BASTI, SALOARCH, PALWAL.           | 08.04.1972                 | MA            | 70                     | <i>[Signature]</i>     | 3-15 + 3 = 6-15  |
| 2                   | ASHOK KUMAR       | SURESH CHAND              | FARIDABAD D-88, CHAWLA COLONY, BALI AHROARH, FARIDABAD               | 12.07.1977                 | B.COM         | 9                      | <i>[Signature]</i>     | 3-15 + 4 = 7-15  |
| 3                   | DEEPAK BILSAN     | SH. ADWAN DASS            | WARD NO. 10, KACHA TALAB DISTT, FARIDABAD                            | 11.06.1976                 | M.COM         | 40                     | <i>[Signature]</i>     | 3-80 + 9 = 10-80 |
| 4                   | DEEPAK BILSAN     | GOVAL                     | WARD NO. 9, KUNDA COLONY, NEAR DENWAL CLINIC, DODAL, FARIDABAD       | 03.01.1979                 | B.SC          |                        | <i>[Signature]</i>     | 3-80 + 4 = 7-80  |
| 5                   | DEEPAK BILSAN     | AGGARWAL                  | 1100, BE. BEHEND NEW POST OFFICE SHYAM COLONY, BALLAHGARH, FARIDABAD | 29.06.1975                 | B.SC. A.I.D   | 90                     | <i>[Signature]</i>     | 2-65 + 3 = 5-65  |
| 6                   | DEEPAK BILSAN     | AGGARWAL                  | FARIDABAD VILL. SOJLA.                                               | 28.03.1970                 | B.COM         |                        | <i>[Signature]</i>     | PHOTO ATTACHED   |

It is clear that Bharat Bhushan was originally awarded 3.80 marks for academic qualifications and 2 marks for interview totalling 5.80 marks. Quite apparently the figure 2 is overwritten with 9. In the total marks 5 has been converted to 2 and digit 1 added before the sum to make the total read 12.80 marks to bring the candidate to success at No 1. There is no valid explanation for this overwriting coming forth either from the original record or the pleadings put in by the authorities in this case including those put in by the members of the Committee and the convener.

8. I have examined the result in the original running into 23 landscape sheets of paper. I am left with no manner of doubt that the selection of 3<sup>rd</sup> respondent was born in fraud and fraud vitiates everything. I can do no better than the eyesight on the learned Single Judge reflected in the order dated September 23, 2009 including marks awarded to the 3<sup>rd</sup> respondent for his qualifications. I have seen those too and have not an iota of doubt that there was something seriously remiss in the selection and appointment of Bharat Bhushan to a superior post in the service of the Haryana Government. Normally the selection of AFSO would go either to the Haryana Staff Selection Commission or the Public Service Commission as the case may be but the selection was left to the department.

9. On a pointed query to the learned counsel including the Law Officer whether the Haryana Staff Selection Commission was functioning when the selection was made in 2006. The answer was in the affirmative. Therefore, the action of the respondent-State in constituting Departmental Selection Committees without taking the post out of the purview of the Commission was wrongful and improper action which belied chances of a fair and proper selection consistent with the constitutional scheme in Articles 14 &

16 of the Constitution of India. This was a scam and, therefore, the learned Single Judge was correct in not only focusing on the nature of the selection of the 3<sup>rd</sup> respondent but also in enlarging the case for examining the conduct of the members of the Committee and the Convener calling upon them to explain the overwriting and the manipulation of the original selection record to award a trophy to the 3<sup>rd</sup> respondent. I would have no hesitation in making the order dated September 23, 2009 absolute by concurring wholeheartedly with the views expressed by Ranjit Singh, J. in his interim order and satisfying myself that four eyes have seen the same thing in the same way. Accordingly, I would be inclined to think that the appointment of the 3<sup>rd</sup> respondent stands prima facie vitiated by taint, cheating exposed by apparent manipulation of record and reconstructing marks and figures to bring him undue benefit.

10. Now the question is what has to be done to the 3<sup>rd</sup> respondent who has in the meanwhile served as AFSO for several years in this litigation pending since 2009 and without any delay in bringing the challenge to Court.

11. I have heard Mr. Ashwani Talwar, learned counsel appearing for the 3<sup>rd</sup> respondent and anxiously considered as many aspects as I could foresee. He submits that in case the selection is set aside it would cause great and undue hardship to his client as it would entail sudden loss of employment. The 3<sup>rd</sup> respondent is not responsible or at fault. The selection was made on merit and the petitioner remaining unsuccessful has filed the petition from frustration.

12. This Court may have considered the request had there been a shadow of doubt as to whether the selection and appointment was an irregular or an illegal. Irregular acts are curable but illegal acts not quite. Lord Herbert Samuel had this to say on motive “if the motive is bad the man is acting, in that respect immorally. The consequences of the act may be good, but nevertheless

the motive is bad, and the good consequences do not alter that fact”. Sympathy and compassion is described as an unruly horse and it is hard to stay on the saddle, even with the foot in stirrups. Cuttings and overwriting on the face of the original record at the crucial page to produce an appointment to public service is a fraud committed on others in the queue. “Fraud and justice never dwell together” is a thing “which has never lost its temper over all these centuries”. Chief Justice Edward Cook of England observed three centuries ago that “fraud avoids all judicial acts, ecclesiastical or temporal”.

13. Loss of livelihood when the job is ill gotten is inevitable and a natural consequence of disgraceful acts and cannot be brushed under the carpet. The Court cannot accept the reprieve that the idiom 'let's forgive and forget' pardons. The 3<sup>rd</sup> respondent has had a long run only due to law's delays and he can reap no benefit in equity by long standing employment pending litigation in challenge to the selection. I would, therefore, decline the request of Mr. Talwar that his client should be allowed to continue in service by forgetting it all. The writing on the wall was scripted in the order dated September 23, 2009 passed by the co-ordinate bench. The intervening years are a bonus for dishonest entry into service to the despair of the petitioner. The selection has to be set aside with no option left to Court since justice is the supreme virtue. Even handed justice to all is the effort of the Court. I am conscious that in some cases, appointments have been saved after long passage of time but those are cases which do not involve commission of the evils of manipulation, deceit, fraud committed on the face of the record and other species of the same kind of misdemeanour where illegality or irregularities have been committed in conducting the selection. Then Court would have to step in to remove the impurities and find solutions to the future course of action to be adopted in the matter. If the mischief played is writ large and is pervasive affecting the result

and vitiating it then the Court would not act in aid of the defaulters. The only beneficiary of the fudging of record to secure appointment to a single post, and many contenders losing out, with one in Court assailing the selection as tainted by fraud, is the 3<sup>rd</sup> respondent. The law in this regard can be found in Supreme Court judgments and a few of them, for example, may be noticed such as Union of India v. O.Chakradhar, (2002) 3 SCC 146 and Krishan Yadav and another v. State of Haryana and others, (1994) 4 SCC 165; in such cases where there are allegations of mala fide, nepotism or favouritism in a selection then there may be room for some degree of honest error in the matter of evaluation to be countenanced but still the error is not a mere error but a deliberate act it cannot be ignored since public interest is involved and private interest must succumb. These type of allegations can be checked with reference to record maintained. The Supreme Court in D.V. Bakshi and others v. Union of India and others, (1993) 3 SCC 663 observed that the oral test is a highly subjective one and is susceptible to misuse. The degree of proof required for bringing home the charge of nepotism or favouritism may be light. Grave and serious suspicion has its own place but in the present one, the manipulation and overwriting is glaring and strikes the eye.

14. For the foregoing reasons, I would allow this writ partly and set aside the selection of the 3<sup>rd</sup> respondent as illegal and vitiated by fraud. However, the petitioner will get no benefit from this since the post vacated by the 3<sup>rd</sup> respondent would have to be re-advertised and filled in accordance with law. In the fresh selection, the 3<sup>rd</sup> respondent would have a right to apply and the State would consider his case as well as that of the petitioner even if in the meanwhile they may have become over-age.

15. The equally serious question which remains is the future course to be adopted in the cases of respondents No.4 to 7. Their cases will be handed over by the State of Haryana to Vigilance Bureau to make an investigation into their conduct. No comment is made or opinion expressed on them so as not to cause them any prejudice in the inquiries they may face as a result of this order. It will be open to the investigating agency to examine threadbare whether fraud was committed by the Selection Committee bordering on the criminal and the role, if any, of the successful candidate may also be investigated. However, and use of the word “fraud” in this order would not cause prejudice anyone connected with the matter so as to leave the Vigilance Bureau or any other agency free to apply its independent mind.

16. The Court Secretary would hand over the original record to Ms. Shruti Jain Goyal, AAG, Haryana on the day of pronouncement of the order.

**22.10.2016**  
manju/Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**

*Whether speaking/reasoned* : *Yes*

*Whether reportable* : *Yes*