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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 13150/2018 and C.M. APPL. 51033/2018, 55214/2019

UNION PUBLIC SERVICE COMMISSION

..... Petitioner

Through: Mr. Naresh Kaushik, Ms. Vibhuti
Tyagi and Mr. Tapasvi Raj,
Advocates.

Versus

MUKESH KUMAR SUMAN & ORS

..... Respondents

Through: Respondent No.1 in person
Mr. A.K. Behera and Mr. A.P. Singh,
Advocates for R-2.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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21.01.2020

1. The present petition by the Union Public Service Commission ('UPSC') is directed against an order dated 18th September, 2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, ('CAT'). By the said order, the CAT allowed the OA No. 2179/2014 filed by Respondent No.1 and thereby set aside the selections made to the posts of Assistant Labour Commissioner (Central) etc. made by the Petitioner UPSC pursuant to an advertisement No. 51/2013, and further directed the UPSC to redo the entire exercise by restricting the marks to be allocated for the interview to 15% "without insisting on minimum marks therein" and then to publish the results.

2. It was further directed that if any of the private Respondents needed to be displaced on account of such an exercise, the possibility of adjusting them against the existing or subsequent vacancies may be considered.

3. It should be noted at the outset that, by an order dated 5th February, 2019 while directing notice to Respondent No.1, this Court stayed the contempt proceedings initiated by Respondent No.1 against the UPSC.

4. The background facts are that the UPSC on 4th January, 2005 issued a Circular No. 1/2005 stipulating the qualifying/ cut-off marks in interviews for various categories, which was placed in the public domain when a copy thereof was published on the UPSC's website. The Annexure to the said circular is titled "Procedures to be followed by the Interview Boards". Relevant for the present purpose, is para 9.3 of the said Annexure, titled "preparation of merit list", which reads as under:

"9.3. The marks awarded to each candidate should be in the scale of 0 to 100. The marks scored by each candidate should be entered in ink and signed by the President of the Board. The scale is used in the following manner to classify the candidates.

Values: 0-19 Very poor
 20-39 Below Requirement
 40-49 Average/Fair (Not Suitable)
 50-59 Good (Suitable)
 60-69 Very Good (More than meet requirement)
 70 & above Outstanding/Brilliant
 The "Very Poor" category is extremely rare."

5. Para 10 talks of 'cut-off marks'. Para 10.1 reads as under:-

“10.1 Cut off marks for the Interview for candidates belonging to various categories have been fixed and the same are given as under:-

(a) General Category	-50 and above
OBC	- 45 and above (on relaxed standards)
SC/ST	- 40 and above (on relaxed standards)

(b) The relaxation standard being followed in the case of SC/ST/OBC candidates may be extended to PH candidates also. Hence, any PH candidate securing 40% to 49%, be considered for selection on relaxed standard with varying periods of training, if required number of PH candidates are not available.”

6. As far as the present case is concerned, the UPSC published a Special Recruitment Advertisement No. 51/2013 in the Employment News, from 12th January to 18th January, 2013 for filling up of 57 posts of Assistant Labour Commissioner (Central)/ Assistant Welfare Commissioner (Central)/ Assistant Labour Welfare Commissioner (Central)/Assistant Director in Grade-V in Junior Time Scale (JTS) of the Central Labour Services, Ministry of Labour and Employment (hereafter collectively referred to as ‘Labour officers’). It must be noted here that this recruitment advertisement was also to fill up 39 posts of Medical officers, but in this petition we are concerned with the filling up of the 57 posts of Labour officers.

7. Relevant to the issue at hand is the Note (a) appearing immediately below para 2 of the advertisement, which reads as under:

“(a) Candidates are requested to apply only through Online Recruitment Application (ORA) website <http://www.upsconline.nic.in> and NOT write to the Commission for Application forms. They are also requested to

go through carefully the details of posts and instructions published below as well as on the website <http://www.upsconline.nic.in>.”

8. Note (j) stated that, “a written objective type recruitment test with multiple choice questions shall be conducted followed by interview for selection”.

9. The advertisement then specified the ‘scheme and syllabus for the recruitment tests’ for the aforementioned 57 posts of Labour officers which was for a maximum 100 marks. Below that, it was stated that the “respective weightage of the recruitment test and interviews shall be decided by the Commission.”

10. It is not in dispute that Respondent No.1 qualified in the written test and was called for an interview on 25th March 2014. The result of the interview was published on 17th June, 2014. As Respondent No. 1 did not score the minimum 50% marks in the interview, his name was not included in the result of finally selected candidates. The marks secured by Respondent No. 1 in the interview viz., 40%, was disclosed to him pursuant to the application filed by him under the Right to Information Act, 2005.

11. Aggrieved by his non-selection, Respondent No.1 filed OA No. 2179/2014 in the CAT on 30th June, 2014. Before the CAT, Respondent No.1 urged that the allocation of 50% marks for the interview as cut-off marks was “highly arbitrary”. Secondly, he submitted that as far as the weightage is concerned, the weightage allocated for the interview could not

exceed 15%. The argument of Respondent No.1 is captured in the last portion of para 4 of the impugned order as under:

“4. The applicant challenges the procedure adopted by the Commission in selection of the candidates in pursuance of the advertisement, referred to above. He contends that when the selection process comprises of written test and interview, the marks allocated for interview cannot exceed 15%, in view of the law laid down by the Hon'ble Supreme Court, and allocation of 50% marks for interview in the instant case is highly arbitrary. He further contends that by stipulating minimum percentage of marks in the interview, the Commission has virtually *topsy turvyed* the results which were otherwise to ensue.”

12. Respondent No.1 also argued that:

“according to the details of the marks allotted to candidates though he secured 75 marks in the written test, which is 4th in rank he was awarded 40 marks in the interview, and thereby kept out of selection, whereas a candidate who secured just 45 marks in the written test was awarded 74 marks in the interview and was selected. Similar instances are cited.”

13. The UPSC submitted before the CAT that, after having participated in the selection, Respondent No.1 could not have challenged the criteria. It was further pointed out that in the advertisement itself, it was clearly mentioned that the weightage would be decided by the UPSC and, therefore, no exception could be taken to granting a 50% weightage for the interview.

14. The CAT in the impugned order appears to have dealt mainly with the aspect of the weightage given for the marks secured in the written exam and the marks in the interview. The issue of minimum cut-off marks in the interview was addressed by the CAT in the following manner:

“20. Obviously, the Commission knew very well that in case it discloses in the notification that 50% marks would be allocated for interview, it is bound to be challenged, in all probability. Therefore, it has kept the candidates in total dark. The secrecy which it was required to maintain, in the context of conducting of examination was applied to a vital condition of selection, namely, allocation of marks for interview, and stipulation as to minimum marks. The result of such a secret operation has ultimately emerged on the expected lines. The applicant who has secured 75% marks in the written test (highest being 79) was awarded the least, that too below the minimum marks in the interview, i.e. 40 and a candidate who secured 47 marks in the written test was awarded 74 marks in the interview.”

15. It was further observed by the CAT, that Respondent No.1 was “the only candidate who was awarded less than minimum marks in the interview, whereas all others were awarded between 50-74%” and that “this kind of exercise does not go well for a premier and reputed agency like the UPSC”.

16. This Court has heard the submissions of Mr. Naresh Kaushik, learned counsel for the UPSC, Mr. A.K. Behera, learned counsel for Respondent 2 and Respondent No.1 who appeared in person.

17. It appears to this Court that there is a fundamental factual error in the determination of the CAT about the minimum cut-off marks for the interview. In other words, the CAT was in error in stating that the candidates were kept totally in the dark that they had to secure at least 50% marks in the interview. As already noticed hereinbefore, this criteria was placed in the public domain by the UPSC way back in 2005. Further in the advertisement in question, each of the prospective candidates were specifically advised by the note that they were required to go to the website of the UPSC to examine

the detailed instructions. If Respondent No. 1 chose not to do so, he then took the risk of participating in the selection without knowing the criteria that was already made known as far as the interview was concerned.

18. Once it is clear that Respondent No.1 did not secure the minimum 50% marks in the interview, he certainly stood disqualified. Having participated in the selection, with the criteria made known, he could not have questioned it only because he did not make the cut. The question of relevant weightage to be given for the written test and interview did not arise as far as he was concerned.

19. What the CAT appears to have missed is that the question of weightage would arise if and only if Respondent No.1 had in fact qualified in the interview. He could then question whether giving 50% weightage for the interview was justified. This is apart from the fact that UPSC placed before the CAT a large number of instances where a 50% weightage is in fact given for the interview/viva voce. Merely because Respondent No.1 secured only 40% in the interview while several others who qualified secured more than 50%, it did not render the marks given to Respondent No.1 in the interview arbitrary or illegal. There was no warrant for the CAT to comment that the UPSC had disregarded the principles laid down by the Supreme Court in that process.

20. This Court is of the view that the CAT exceeded its jurisdiction in setting aside the entire selection made pursuant to the advertisement No. 51/2013 for the aforementioned Labour officer posts and in holding that the UPSC had to redo the entire exercise by restricting the marks to be allocated

for the interview to 15% “without insisting on minimum marks therein”.

21. The impugned order of the CAT is accordingly hereby set aside. The petition is allowed but in the circumstances, no order as to costs. The pending applications also stand disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 21, 2020

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