

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

121

CWP-6121-2021

Reserved on : 06.09.2023

Pronounced on : 18.09.2023

Sonu

..... Petitioner

Versus

Union of India and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Himanshu Sharma, Advocate
for the petitioner.
Mr. Anil Chawla, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through the instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of second/ revised select list as well as revised waiting list issued by respondent-Board, which has been issued after putting the original merit list in abeyance.

2. The respondents produced original record of meeting of Board constituted to revise the result. Photocopy of the proceedings is taken on record.

3. The respondent through notification No. DAVP 10702/11/005/1819 dated 28 April-4 May, 2018 advertised 95 posts of Fireman classified as Group 'C'. 19,073 candidates out of total 2,24,997 were shortlisted and called for written examination. 3954 candidates appeared for written examination. As per prescribed standards, candidates who qualified written examination were called for Physical Endurance Test (in short "PET"). 908 candidates appeared for PET. 718 candidates qualified

the same. Based on performance in both examinations, result of provisionally selected candidates was prepared and out of 95 selected candidates, 74 were appointed till 17.12.2018 in different units. One candidate sought information under RTI and at this stage, it was found that mistake in evaluation has occurred due to erroneous answer key. The matter was discussed with Ministry of Law and Justice and on the advise of Law Ministry, fresh Board of officers was set up for re-evaluation of OMR answer sheets and preparation of 'Revised Merit List'. The competent authority approved speaking order dated 5.2.2019 of withdrawal of appointment letters of 32 provisionally appointed candidates. Notification was published on the website on 17.02.2019 and subsequently in Employment News dated 23/29 March, 2019 disclosing, "the Select List and Wait List published vide Employment News under reference is held in abeyance with a view to rectify discrepancies and errors in marks/results, the revised result will be uploaded on the website www.bhartiseva.com and published in the Employment News in due course".

4. The petitioner in the original result was at serial No.37 in the waiting list and in his own category (OBC), he was falling at Serial No. 13. He was not issued appointment letter. In the revised result, he is no more in the waiting list. The cut off for the OBC category as per revised result is 75 whereas petitioner has secured 69 marks. 467 candidates who earlier have not undergone PET were called for. The revised result of selected and waiting list candidates was uploaded on website on 28.09.2019 and published in Employment News dated 05-11 October, 2019 after completing all the formalities. The candidates were provisionally selected for appointment to the post of Fireman and called for pre-recruitment

formalities.

5. Learned counsel for the petitioner inter alia contends that respondent after completion of process of recruitment could not recall the process and make fresh appointments because it amounts to colourable exercise of power. It also amounts to favoritism and arbitrary action on the part of respondent. The respondent has not placed on record the copy of RTI application which prompted the respondent to have re-look at question papers and carry out fresh exercise of recruitment.

He further submits that respondent has revised result on the basis of an application filed by candidate under Right to Information Act. An application under RTI is filed before a different office than recruitment office. The respondent has not disclosed as to how recruitment office came to know of RTI application and its mistake. The respondent has claimed that there was mistake in Booklet B and Booklet D. The petitioner was having Booklet A, thus, there was no question of change of marks, whereas, in the original result he was awarded 67 marks as per information received under RTI whereas as per revised result he has been awarded 69 marks. If there was no mistake in the Booklet A, there was no question of variation in marks in the revised result. The respondent has constituted Board of Officers for re-evaluation of OMR answer sheets, however, there is no document on record disclosing that Board was constituted.

The competent authority approved issue of speaking order dated 05.02.2019 for withdrawal of appointment letter of 32 provisionally appointed candidates, however, notification with respect to putting recruitment process in abeyance with a view to rectify discrepancies was published on website on 17.02.2019 and released in Employment News

dated 23-29.03.2019. All these facts collectively indicate that respondent authorities have acted in very casual and whimsical manner.

6. Learned counsel for the respondents on instructions from Mr. Anil Totade, Manager (Recruitment) submits that in case of set 'A', there were 06 questions bearing Nos.22, 82, 91, 97, 99 and 72 which were having wrong answers in the answer key. Similarly, there were errors in set 'B' and 'D'. On scrutiny of answer key, it was found that correct answers of these questions are different from options given in the question paper, thus, it was decided to grant 06 marks to every candidate irrespective of category and paper set. The petitioner according to incorrect answer key was granted 04 marks and on account of fresh decision, the petitioner was granted 06 marks like other candidates.

He further submits that on revision of result, 32 candidates who were already given provisional appointment letter were not found in the revised selection list and 25 of them have filed OA No.1329 of 2019 before Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal vide order 02.02.2023 disposed of their application with liberty to them to make comprehensive representation before competent authority for the redressal of their grievances. The aforesaid applicants have not filed representation to the respondents.

7. The petitioner is not disputing authenticity of answer key and he is principally assailing procedure adopted by respondent in revising the result. There is no allegation of fraud against a particular person and selected candidates have already been appointed.

8. Learned counsel for the petitioner in rebuttal of arguments of the respondents submits that respondents are changing their stand because

earlier stand of the respondents was that there was mistake in two sets out of 04 sets whereas now they are claiming that there was problem in the answer key of all the sets.

9. I have heard the arguments of learned counsel for the parties and perused the record.

10. The conceded position emerging from the record is that pursuant to advertisement, the petitioner applied for the post. There was advertisement for 95 posts of firemen classified as Group "C". There were 04 sets of question papers. The respondents conducted written examination, physical endurance test, medical examination and thereafter selected 95 candidates out of which 74 were provisionally appointed till 17.12.2018 in different units. The respondents while adverting with an application under RTI Act found that there is mistake in the answer key. The respondents re-evaluated all the answer sheets and revised the result. The petitioner in the original list was in the waiting list whereas in the revised list, he was not found in the waiting list. 32 candidates who had been selected in the original result were not found in the revised result. 25 candidates out of aforesaid 32 candidates approached Central Administrative Tribunal, New Delhi. The Tribunal disposed of applications of aforesaid candidates with liberty to make comprehensive representation before the competent authority for redressal of their grievances. They have not filed any representation to the respondents.

11. The edifice of the arguments of learned counsel for the petitioner rests upon the allegation that there was no occasion to revise result on the basis of an application filed under RTI. The stand of the respondents with respect to mistake in different sets of question papers is

contradictory in the reply vis-a-vis arguments. There is further allegation that respondents have revised result with intent to favour selected candidates and act of respondents amounts to colourable exercise of power.

12. The respondents declared result wherein 95 candidates were declared successful. The result was revised and in the revised result, 32 candidates were not found which were present in the original result. The petitioner is not alleging that revised result is based upon incorrect answer key meaning thereby the petitioner is not disputing the answer key. If the contention of learned counsel for the petitioner is accepted, it would amount to permitting perpetuation of mistake. The source of knowledge of mistake may be any. The question is whether revised result is based upon correct or incorrect answer key. If the original result was founded upon incorrect answer key, the respondent was well within its jurisdiction to correct error. Nobody can be heard or permitted to claim that mistake must perpetuate. The authorities are bound to correct their mistake.

13. It is not a case that one person at his whims has revised the result. The respondents discussed the issue with Ministry of Law and Justice and on the advise of Law Ministry, fresh board of officials was set up for revaluation of OMR answer sheets. The competent authority approved issuance of speaking order dated 05.02.2019 for withdrawal of appointment letters of 32 provisionally appointed candidates. 467 candidates who had not undergone Physical Endurance Test were called and revised result was declared after completing procedural formalities. The contention of learned counsel for the petitioner that an application received under RTI could not prompt the respondents to look at their mistake and revise the result seems to be highly technical, imaginary and without any

foundation. The respondents initially claimed that there was mistake in two sets of paper, however, during the course of arguments, the respondents have pleaded that in set 'A' also, 06 questions were found having incorrect answer. The contention of learned counsel for the respondents is different from earlier stand, however, original record of the respondents is making it clear that earlier result was withdrawn with the approval of competent authority and 06 marks were awarded to all the candidates. The record is further disclosing that a Board consisting of 07 members carried out revaluation of OMR sheets and revised merit list. In the Board meeting, it was decided that 06 marks would be awarded to all the candidates for error in question paper.

13. A three-Judge Bench of Hon'ble Supreme Court in **Pankjeshwar Sharma and others vs. State of Jammu & Kashmir and others, (2021) 2 SCC 188** has adverted with question of adherence to procedure prescribed under recruitment rules. The Court has held that State is bound to follow rules of recruitment and to make selection of candidates as per recruitment rules. The relevant extracts of the judgment read as :

24. It is a settled principle of service jurisprudence and has been consistently followed by this Court that the rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates to be made as per the scheme of recruitment rules and appointments shall be made accordingly. At the same time, all the efforts shall be made for strict adherence to the procedure prescribed under the recruitment rules. On the contrary, if any appointments are made bypassing the recruitment procedure known to law, the same will result in violation of Articles 14 and

16 of the Constitution. This Court in State of U.P. v. Rajkumar Sharma [State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330 : 2006 SCC (L&S) 565] and later in Arup Das v. State of Assam [Arup Das v. State of Assam, (2012) 5 SCC 559 : (2012) 2 SCC (L&S) 24] considered the question of filling up of vacancies over and above the number of vacancies advertised and held that the filling up of vacancies over and above the number of vacancies advertised would be violative of fundamental rights guaranteed under Articles 14 and 16 of the Constitution and the selectees could not claim appointments as a matter of right. This Court further held that even if in some cases appointments had been made erroneously or by mistake, that did not confer any right of appointment to another person as Article 14 of the Constitution does not envisage negative equality and if the State or its authority had committed a mistake at any given stage, it cannot be forced to perpetuate the said mistake under the writ jurisdiction of the High Court under Article 226 of the Constitution. In a situation where the posts in excess of those advertised had been filled up in extraordinary circumstances, instead of invalidating the excess appointments, the relief could be moulded in such a manner so as to strike a just balance keeping the interest of the State and the interest of the person seeking public employment depends upon the facts of each case for which no set standard can be laid down.

14. The petitioner was not selected in the original result and he was found in the waiting list. There are 32 candidates who were initially selected and in the revised result, their candidature has been rejected. Selection of a candidate on the basis of wrong result does not create any vested or fundamental right. A candidate can claim correction of result

whereas no one can claim that he should be selected on the basis of incorrect result. If contention of learned counsel for the petitioner is accepted, it would amount to permitting perpetuation of mistake committed by authorities while releasing initial result. It is further settled proposition of law that a person cannot claim right on the basis of mistake of any other person. The petitioner is attempting to claim his right over a post, on the basis of mistake committed by respondents which stands duly corrected. The petitioner, except making bald allegations, has not brought on record any evidence of favouritism or colourable exercise of power. A Board consisting of 07 senior officials of respondents have revised earlier result and thereafter correcting mistakes erupted in original result, has issued revised result.

15. In the wake of above facts and findings, this Court is of the considered opinion that the present petition sans merit and deserves to be dismissed. Accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

18.09.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>