

**SUPREME COURT OF INDIA**

C.G.M.,Cal.Tel.Dist.,B.S.N.L

Vs.

Surendra Nath Pandey & Ors.

C.A.No. 9058 of 2011

(Altamas Kabir,J., Surinder Singh Nijjar and Gyan Sudha Misra,JJ.,)

03.11.2011

**JUDGMENT**

**Surinder Singh Nijjar,J.,**

SLP(Civil)No. 6629 of 2010

1. Leave granted.
2. This appeal is directed against the final judgment and order of the High Court of Judicature at Kolkata dated 1st September, 2009, in F.M.A. No. 807 of 2009. The Division Bench of the High Court in the impugned order dismissed the appeal of the appellants thereby affirming the order passed by the Learned Single Judge in W.P. No. 18313 of 2004, directing the appellants herein, to inform the respondents about the marks obtained by them in the examination in question and grant promotion to the respondents pursuant to the result of the departmental examination.
3. The respondents are employees of the appellants, i.e., Department of Telecommunication within the Department of Post & Telegraph, Government of India, now renamed Bharat Sanchar Nigam Limited. They appeared in an examination for being promoted to Junior Accounts Officers. Junior Accounts Officers Service Postal Wing (Group C) Recruitment Rules, 1977 regulate recruitment and conditions of service for this post. The rules provided for a two stage departmental examination for appointment to this post.
4. The appellants conducted the aforementioned departmental examination on 20th February, 1999, 21st February, 1999 & 22nd February, 1999 for appointing Junior Accounts Officers in the Department of Telecommunication under the Ministry of Communication. The respondents appeared in the said examination; however, when the result consisting of lists featuring names of both successful and unsuccessful candidates was displayed, their names did not appear in either of the lists.

5. The respondents in order to know their result deposited Rs. 25/- each for being apprised of the marks secured by them along with a representation before the appropriate authority. The respondent's request was in accordance with Rule 13 of the (Rules Relating to Departmental Examination, Part I General) of Post & Telegraph Manual, Volume IV. Rule 13 states:

"Communication of Marks: (a) After the result of an examination has been announced, the marks obtained in such paper by a candidate may be communicated to him, and to him alone, on application, and on payment of a fee of Re.1/- per examination per candidate.....

(d) Application for supply of marks should be given priority at all stages."

Thereafter, the Assistant General Manager, Recruitment & Establishment, Calcutta Telephones wrote a letter to the Assistant Director General (Departmental Examination), New Delhi on 9th February, 2000 requesting disclosure of marks obtained by the respondents in the said examination."

6. The respondents' request for being intimated of the marks secured was not acceded to, nor did the authorities reply to the representation.

7. Thereafter, the respondents filed O.A. No. 629 of 2000 before the Central Administrative Tribunal seeking disclosure of marks and disposal of the representation by the respondents. Vide its order dated 26th July, 2000 the tribunal directed the appellants to publish the result of the said examination, dispose off the representation and allow the respondents to appear in the examination next year.

8. The Chief General Manager, Calcutta Telephones complying with the order of the tribunal disposed of the respondent's representation by means of a speaking order. It was stated therein, that the respondent's candidature was cancelled on account of some irregular practices having been noticed on their part. It was further stated that on account of cancellation of candidature, it was not permissible to communicate the marks obtained by the respondents in the said examination contemplating disciplinary proceedings for adopting unfair means.

9. Challenging the abovementioned order passed by the Chief General Manager, Calcutta Telephones, the respondents filed W.P. No. 18313 of 2004 in the Calcutta High Court. The writ petition was allowed, quashing the order of cancellation of candidature of the respondents. The learned Single Judge held that the appellants had failed to establish their claim wherein the respondents were accused of mass copying and were, therefore, obliged to intimate to the respondents, the marks secured by them in the examination. The learned counsel for the appellants had alleged before the learned Single Judge that the syllabus for the examination prescribed the books allowed to be used by the candidates for answering questions however; the respondents had used guide books for answering questions in the

examination. Use of guide books was not permissible. The Learned Single Judge observed that, the allegation was unfounded since the supervising officers in the examination hall did not prevent the respondents from using the guide books. Moreover, no disciplinary action was initiated against the respondents. On the other hand, the respondents were awarded ad hoc promotion to the post of Junior Accounts Officer; an unmarried vigilance report is a pre-requisite for the same. The reports submitted by the vigilance wing stated that the examination was conducted in a fair and peaceful manner. The appellants were, therefore, directed to inform the respondents of the marks obtained by them and to consider them for promotion if successful in the examination. They were also held entitled to the financial benefits that would have accrued to them since the date of adhoc promotion.

10. The appellants aggrieved by the order and judgment of the learned Single Judge, filed appeal before the Division Bench of the Calcutta High Court vide FMA No. 807 of 2009. The Division Bench dismissed the appeal by affirming the decision of the learned Single Judge. The Division Bench has observed that the appellants' contention of there being no scope for disciplinary action against the erring employees could not be accepted, especially since the respondents had been granted ad-hoc promotion. The Division Bench stated that it is well settled that promotion wipes out all past alleged misconduct. It was also observed that the respondent's decision not to appear in the examination in the subsequent year could not act as an estoppel for challenging the action of the appellants.

Hence, the present appeal.

11. We have heard the learned counsel for the parties.

12. Ms. Pinki Anand, learned senior counsel appearing for the appellants submitted that both the learned Single Judge as well as the Division Bench have erred in coming to the conclusion that the decision for cancellation of the examination was in breach of rules of natural justice. She submits that this is a case of mass-copying; therefore, the question of giving opportunity of hearing to each individual candidate did not arise. Rule 18 is applicable in the case of individual candidate who is found to have used unfair means. In this case, mass-copying was discovered only because the answers given to some of the questions were identical. Subsequently, it was discovered that answers to questions in Paper X given by 66 candidates was so much similar as to indicate suspected mass-copying. Consequently, a three member committee was constituted to examine the issues. Upon examination of the relevant material, the committee concluded that it was a case of mass- copying. On the basis of their report, the candidature of 66 candidates including the respondents herein was cancelled. Learned senior counsel further submitted that the candidates had copied the answers from guide book which was not permissible. They were only entitled to make the use of the books which was on the list of the prescribed books. It is further submitted that undoubtedly the candidates had been given ad-hoc promotion. However, for regular promotion, it was necessary for the candidates to pass the departmental examination. She further submits that CAT in its order dated 26th July, 2000 had directed the appellants to allow the respondents and all other candidates to appear in the examination, if they were otherwise eligible or if they wish to appear. Taking advantage of this direction, 42 candidates, who were similarly

situated as the respondents, appeared in the subsequent examination. They were duly given regular promotion. However, the respondents did not avail of the chance. Therefore, they can not claim promotion on regular basis. In support of her submissions, learned senior counsel relied on the judgments in the case of *The Board of High School & Intermediate Education U.P. Vs. Bagleshwar Prasad*, *Union Public Service Commission Vs. Jagannath Mishra*<sup>2</sup>, *Madhyamic Shiksha Mandal, M.P. Vs. Abilash Shiksha Prasara Samiti*<sup>3</sup>, *Chairman J & K State Board Education Vs. Feyaz Ahmed Malik & Ors.*<sup>4</sup>, and *Chairman, All India Railway Recruitment Board Vs. K. Shyam Kumar & Ors.*<sup>5</sup>

13. Mr. Bidyut Kumar Mukherjee, learned senior counsel appearing for the respondents submits that the SLP does not involve any substantial question of law. The learned Single Judge as well as the Division Bench has only redressed the injustice that had been done to the respondents. Learned senior counsel submits that this plea of mass-copying is an afterthought; initially when the respondents had approached the CAT, the appellants did not take any plea with regard to the cancellation of the whole examination. The respondents only came to know about it when they received the speaking order. Learned senior counsel further submitted that during the proceeding before the learned Single Judge, the appellants did not produce the original record, therefore, the question would arise as to 'how' and 'who' cancelled the result of the entire examination. It is submitted by Mr. Mukherjee that the report of the three member departmental committee was available with the department on 3rd January, 2000. The same was not brought to the notice of the CAT when it delivered its order on 26th July, 2000. It is further submitted that there is no provision under the rules for constituting a three member committee. In any event, the proceedings before the committee are shrouded in mystery. None of the candidates was asked to appear before the committee, even the examiners and/or the supervising staff were not called for questioning. By his letter dated 14th October, 1999, DGM (Admn.) Calcutta Telephones forwarded the report of DE (Vigilance)/CTD to ADG (DE), New Delhi. In this report, it was stated that the examination was conducted in a fair and peaceful manner on all the three dates as per the report of the Officers of the Vigilance Wing. Making a reference to the rules relating to the departmental examination, Part III of the rules relates to instructions for the supervising officers. Rule 4C requires that the supervising officer should make certain announcements before the commencement of the examination. These are that: candidates should make sure that they have no unauthorized books or paper with them; they should carefully read and follow the instructions on the cover of the answer book as also on the question paper and they will be expelled from the examination hall for resorting to unfair means and subjected to departmental proceedings. Rule 4E provides that supervision must be effective and active. It is not sufficient for them to be merely present in the examination hall. Referring to Rule 26, learned senior counsel submits that on conclusion of the examination after the last paper, the supervising officer is required to give a very comprehensive certificate in the form prescribed in the aforesaid rules. According to the learned senior counsel, once the certificate was issued by the supervising staff, a presumption would arise that the candidates had not used any books of reference except those authorised for answering papers. Learned senior counsel further submitted that action against the departmental candidates is to be taken under Rule 18 contained in Part I of the Rules relating to departmental examination. Under this rule, there is no provision for cancellation of the report.

Under Rule 14 of Part IV, disciplinary proceedings have to be initiated against the candidate for using unfair means. None of the candidates were proceeded against, departmentally. It is submitted that the result could be cancelled only after the candidate is found guilty. This can only be on the basis of a finding of unfair means given by a properly constituted committee. Without completing the proceeding under the aforesaid rules, 42 candidates were permitted to take the examination on the basis of the order passed by the CAT on 26th July, 2000. Those candidates had been given regular promotion on the basis of the subsequent examination. The respondents have been denied the promotions as they have not appeared in the examination. According to the learned senior counsel, the action of the respondents in not permitting the respondents promotion on a regular basis is violative of Articles 14 and 16 of the Constitution. It is emphasised by Mr. Mukherjee that all the respondents have been given ad-hoc promotion and are continuing on the promoted post. Since the ad-hoc promotion can be given only with the clearance from the vigilance department, according to the learned senior counsel, the respondents are entitled to be regularized on the post on which they have been promoted on ad-hoc basis on numerous occasions. Finally, it is submitted by Mr. Mukherjee that, in fact, there is no conclusive proof that the respondents have indulged in mass copying from the guide book which had not even been published at the time of the examination. It is pointed out that the guide book was published in December, 1999 whereas the examination had been held on 18th, 19th & 20th of February, 1999. According to the learned senior counsel the judgment of the Division Bench correctly recorded the conclusion that since the respondents have been given ad-hoc promotion in the next higher rank, any past alleged misconduct is wiped out.

14. In reply, Ms. Pinki Anand, learned senior counsel reiterated that rule 18 has no application in the facts and circumstances of this case. There is no provision under the rules specifically dealing with cases of mass-copying. The rule only deals with the cases of individual use of unfair means. Learned senior counsel further submitted that the respondents have not pleaded either in the OA or in reply to the writ petition in the High Court that the cancellation of the examination was in breach of rules of natural justice. Even the submissions with regard to breach of rules of natural justice are made for the first time in this Court.

15. We have considered the submissions made by the learned counsel for the parties at length. The undisputed facts are that all the respondents had participated in the departmental examination. The respondents were permitted the use of books specifically prescribed for the purpose of answering the question paper. The books that are prescribed do not include the guide book which was used by all the candidates. Upon completion of the examination, the supervisor undoubtedly gave a report that the examination has been held peacefully and in a fair manner.

16. On this basis, Mr. Mukherjee has submitted that this would lead to a presumption that no unfair means had been used. We are unable to accept such a submission. The report at best indicates that the examination was not disrupted by any untoward incident. It has been rightly pointed out by Ms. Pinki Anand that the use of unfair means was not detected in the

examination centre. It was detected by the examiner of the answer books of Paper X. It was noticed that the answers written by 66 candidates at the centre at which the respondents along with other candidates had taken the examination were so similar as to indicate that this case is a suspected mass copying. The examiner, therefore, did not evaluate the answer books of the candidates allegedly involved in mass-copying. With a view to look into the observations of the examiner, it was decided by the Adviser (Finance), DOT that the answer books of the candidates suspected to have indulged in mass-copying be gone through by three high ranking officers of the department. Therefore a three member committee was constituted to submit its report on the following points :

“(a) Whether the observation of the examiner is correct that the answers written by the candidates tally word for word with those given in the key and therefore full marks would have to be awarded to all these candidates suspected to have indulged in mass-copying;

b) Whether the observation of the examiner regarding suspected mass-copying is reasonably substantiated on the basis of the review of the answer-books; and

c) In case the inference of mass-copying is not reasonably established, the committee should also suggest guidelines, if any, considered necessary for evaluating these answer-books.”

17. The aforesaid committee examined all the 66 answer books through evaluated answer books which were supplied for comparison and review. The Committee observed as follows:

“1. The observation of the examiner is correct.

This is an established case of mass copying.

2. The mass copying was made easy because the paper was set from one guide book only and all answers were available in the same book.

3. Co-incidentally guide book is written by the officer stationed at Calcutta so it is presumed that this guide book might be readily available with candidates.

4. Though guide is not authorised as a reference book it seems that the centre supervisor has not taken proper care and because of his negligence the guide book might be available in the examination hall.”

18. We are of the considered opinion that the procedure adopted by the appellants can not be said to be unfair or arbitrary. It was a reasonable and fair procedure adopted in the peculiar circumstances of the case. It can not be said to be in breach of rules of Natural Justice. It must be remembered that rules of Natural Justice are not embodied rules. They can not be

put in a strait-jacket. The purpose of rules of Natural Justice is to ensure that the order causing civil consequences is not passed arbitrarily. It is not that in every case there must be an opportunity of oral hearing. We may notice here the observations made by this Court in the case of *Bihar School Education Board Vs. Su bhas Chandra Sinha* <sup>6</sup>, wherein a similar plea with regard to breach of rules of Natural Justice was examined. In this case, the appellant board had cancelled the examination upon detection of mass copying without affording the affected candidates the right to be heard. This Court rejected the plea of breach of rules of Natural Justice, as follows:-

"This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

(emphasis supplied)

19. In the present case, there is not even a denial that the answers have been taken from the guidebook. Mass copying is accepted on the plea that it was permissible to take books into the examination. This plea was rejected by the Expert Committee, as the candidates were only allowed to use the books prescribed in the syllabus. The guidebook used by the candidates was not permitted to be taken into the examination centre. Given the fact situation in the present case, the appellant constituted a three members Committee of high ranking officers to enquire into the matter. Since there is no provision under the rules with regard to mass copying, the appellants were fully justified in constituting a Committee to enquire into the matter.

20. We may also make a reference here to the observations made by this Court in the case of *Union of India & Ors. Vs. An and Kumar Pandey & Ors.*<sup>7</sup> In this case, the Railway Recruitment Board, Patna invited applications for selection and recruitment of various posts of Non-technical Popular categories in the Eastern Railway. The selection was to be made on the basis of a written examination followed by a viva-voce test. A large number of candidates appeared in the written test from various centres in the city of Katihar. The respondents in the appeal had appeared in the written examination and duly qualified. They had also qualified in the viva-voce test and their names were included in the panel of selected candidates, which was published. On a complaint of mass copying at Centre No. 115, the Railway Authorities conducted an enquiry and found the complaint to be correct. The Railway Authorities decided to subject the 35 candidates, who had qualified the written test

from Centre No. 115, to a fresh examination. The CAT set aside this decision of the Railway Authorities as being violative of rules of Natural Justice. It was held that a panel of selected candidates having been prepared and published, the same could not be cancelled without assigning any reason and without affording opportunity to the empanelled candidates. On appeal by the Union of India, this Court set aside the decision of the Tribunal. It was held that the Tribunal was wholly unjustified in interfering the order of the appellants, calling on the respondents to sit in the written examination again. In Paragraph 9 of the aforesaid judgment, it is observed as follows:-

"This Court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. Out of the total candidates who appeared in the written test at the Centre concerned only 35 candidates qualified the test. In that situation the action of the railway authorities in directing the 35 candidates of Centre No. 115 to appear in a fresh written examination virtually amounts to cancelling the result of the said centre. Although it would have been fair to call upon all the candidates who appeared from Centre No. 115 to take the written examination again but in the facts and circumstances of this case no fault can be found with the action of the railway authorities in calling upon only 35 (empanelled candidates) to take the examination afresh. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different than an examination held by a college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case the railway authorities have rightly refused to make appointments on the basis of the written examination wherein unfair means were adopted by the candidates. No candidate had been debarred or disqualified from taking the exam. To make sure that the deserving candidates are selected the respondents have been asked to go through the process of written examination once again. We are of the view that there is no violation of the rules of natural justice in any manner in the facts and circumstances of this case."

21. As noticed earlier, in the present case, the appellants had adopted a very reasonable and a fair approach. A bonafide enquiry into the fact situation was conducted by a Committee of high ranking officers of the department. In our opinion, the High Court was wholly unjustified in interfering with the decision taken by the appellants in the peculiar circumstances of the case. It is settled beyond cavil that the decisions taken by the competent authority could be corrected provided it is established that the decision is so perverse that no sensible person, who had applied his mind to the question to be decided could have arrived at it. The aforesaid principle is based on the ground of irrationality and is known as Wednesbury Principle. The Court can interfere with a decision, if it is so absurd that no reasonable authority could have taken such a decision. In our opinion, the procedure adopted by the appellants can not be said to be suffering from any such irrationality or unreasonableness, which would have enabled the High Court to interfere with the decision.

22. It is perhaps keeping in mind the aforesaid principles that this Court in the case of *B. Ramanjini & Ors. Vs. State of A.P. & Ors.*<sup>8</sup>, indicated that a decision taken by the competent authority on the basis of relevant material ought not to be lightly interfered with by the Court in exercise of its power of judicial review. In Paragraph 8 of the aforesaid judgment, this Court observed as follows:

"Further, even if it was not a case of mass copying or leakage of question papers or such other circumstance, it is clear that in the conduct of the examination, a fair procedure has to be adopted. Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same. The courts ought not to take the action lightly and interfere with the same particularly when there was some material for the Government to act one way or the other."

(emphasis supplied)

23. In view of these observations, we are of the considered opinion that the High Court ought not to have interfered with the decision taken by the appellants requiring the candidates, who appeared in the cancelled examination, to reappear in the subsequent examination, in order to qualify for regular promotion.

24. We also do not find any merit in the submissions of Mr. Mukherjee that all cases of unfair means have to be examined on the basis of Rule 18 of Part I of the rules. The aforesaid rule deals with the situation where a candidate is found or discovered to be using unfair means in the examination itself. It is only in these circumstances that the candidate has to be subjected to disciplinary proceeding which has to be conducted on the basis of the report submitted under Rule 14(4). Since this is a case of mass-copying, which was discovered only at the time of the review of the answer books, Rule 18 would have no relevance. Rule 14 would not, in any manner, improve the case of the respondents as it merely enables the disciplinary authority to impose major penalty on a candidate who is found to have used unfair means. Merely because no disciplinary proceedings have been initiated against the respondents, it would not be a justification to hold that the cancellation of the result is in any manner, impermissible.

25. We are also of the considered opinion that the Division Bench was not justified in holding that merely because the respondents had been given ad-hoc promotion, the previous alleged misconduct stands wiped out. The respondents were given equal opportunity to compete in the examination subsequent to the cancellation of their examination result. It is a matter of record that 42 candidates who were similarly placed took advantage of the order passed by the CAT on 26th July, 2000 and appeared in the subsequent examination. They have been promoted in accordance with the rule to the next higher post. The respondents,

however, chose not to appear in the examination. They cannot at this stage be permitted to complain that they have been treated unfairly.

26. In view of the above, we are of the opinion, that the judgment of the learned Single Judge and the Division Bench impugned herein are not sustainable. Consequently, the appeal is allowed and the judgments of the learned Single Judge as well as the Division Bench are hereby set aside.

<sup>1</sup>(1962) 3 SCR 0767

<sup>2</sup>(2009) 9 SCC 0237

<sup>3</sup>(1998) 9 SCC 0236

<sup>4</sup>(2000) 3 SCC 0059

<sup>5</sup>(2010) 6 SCC 0614

<sup>6</sup>(1970) 1 SCC 0648

<sup>7</sup>(1994) 5 SCC 0663

<sup>8</sup>(2002) 5 SCC 0533