

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 675 of 2000@@
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Union Public Service Commission ...Appellant (s)

Versus

Jagannath Mishra ...Respondent(s)

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Union Public Service Commission (for short "the UPSC") is the appellant against the impugned judgment of the Division Bench of the Patna High Court affirming the judgment of the Central Administrative Tribunal (for short "the Tribunal"). The respondent, Shri Jagannath Mishra, was a candidate for Indian Engineering Service during the year 1995 and he had appeared at the written test. The examiner, while examining the answer paper of his in Civil Engineering Paper II (Conventional), reported the fact that person having Roll No. 006179 is suspected to have copied from the person having Roll No. 006178 and that Shri Mishra was having Roll No. 006178. In view of the aforesaid report of the examiner, the UPSC got the papers examined by an Expert Committee, which Committee also reported that the candidate bearing Roll No. 006179 has copied from the candidate having Roll No. 006178 and the latter has helped and connived in such copying. The UPSC ...2

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therefore issued show cause notice to both the candidates, namely, one having Roll No. 006178 and the other having Roll No. 006179 indicating thereunder that the person having Roll No. 006179 has copied from the person having Roll No. 006178 and the latter person has connived and/or facilitated in the matter. The person having Roll No. 006179 filed a show cause indicating that he never knew that copying is prohibited and also took the defence that he has not copied. Shri Mishra in his reply, however, submitted that he has not allowed anybody to copy from his answer papers in the said examination and the sitting arrangement might have been compact making it easy for the other candidate to catch sight of some answers and further since the Invigilator was continuously moving around the examination hall and there has been no warning from him nor has there been any report from him, he has totally failed to understand as to how the other person has been able to copy from his answer paper. He also stated that in a competitive examination normally one would not allow the other to copy from him and in the case in hand the other person is neither a relation nor a friend. The UPSC, on considering the show cause furnished by the two candidates and also on examining the answer papers, came to the conclusion that both the candidates have infringed rule II(G) of the Instructions to

the candidates and it is apparent that the candidate having Roll No. 006179 has copied from Shri Mishra having Roll No. ...3

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006178 and that such copying could not have been possible, but for facilitation and connivance of said Shri Mishra. The UPSC then punished debarring this candidate to appear in any competitive examination for a period of 10 years.

The respondent moved the Tribunal assailing the order of punishment inflicted upon by the UPSC. The Tribunal set aside the said order of punishment basically on the ground that there has been no complaint from the Invigilator concerned that such unfair means were adopted and that specially in paper in which the alleged copying is said to have been made is such that it is not improbable that even the sequence of answers would be similar. The Tribunal then relied on the decision of this Court in the case of Rajesh@

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Kumar v. Institute of Engineering [(1997) 6 SCC 674] where@

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this Court had exonerated the candidates in a somewhat similar situation, according to the Tribunal. The order of punishment having been set aside, the UPSC went in a writ petition to the High Court. The High Court also was persuaded to agree with the conclusion of the Tribunal basically relying upon the decision of this Court referred to earlier and also on the ground that the answer being mathematical and objective there was every likelihood of those answers tallying as the same answers had been answered by the other candidates and, according to the learned counsel also, as it is borne out from the report of the examiner the answers were more or less

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similar, it is difficult to jump to the conclusion that the respondent had allowed the candidate sitting behind him to copy from his answer paper. The High Court having dismissed the writ petition filed by the UPSC, the UPSC is before us in appeal, special leave having been granted.

Mr. Parekh, appearing for the UPSC vehemently urged that a bare look at the answer papers of the two candidates would be sufficient to come to a conclusion that one has copied from the other and such copying could be possible only because of the assistance and/or connivance of the person from whom the other can be said to have copied and therefore the Tribunal and the High Court committed error in interfering with the decision of the UPSC. He also contended that in a matter like this when the UPSC on examining the relevant materials, has come to a definite conclusion, the same should not be interfered with by the Court or Tribunal by appreciation of evidence unless it is established either there has been any violation of principles of natural justice or that the UPSC has taken the decision malafide and, since none of the two requirements are satisfied here, the Tribunal as well as the High Court committed error in interfering with the ultimate decision of the UPSC. According to Mr. Parekh, the judgment of this Court on which the Tribunal as well as the High Court had relied upon will have no application to the circumstances of the present case. Mr. Mishra, the learned

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senior counsel appearing for the respondent, on the other hand, contended that the Tribunal and the High Court were fully justified in relying upon the aforesaid decision of this Court. He also contended that in the absence of any materials before the UPSC to show as to in what way the respondent can be said to have connived with the other candidate who is said

to have copied from him the ultimate conclusion would be a conclusion without any evidence and as such the Tribunal was fully justified in interfering with the said conclusion and the High Court also did not commit any error in not interfering with the said conclusion. Mr. Mishra also submitted that the respondent was a brilliant student being an Engineering Graduate from the Indian Institute of Technology and it is not likely that he would have allowed the other candidate to copy from his answer paper though he is not in a position to indicate as to how such a situation could be possible.

Before we answer the questions posed, to have our conscience clear, we had called upon the UPSC to produce the answer papers of both the candidates. We have carefully scrutinised the answer papers of both the candidates and on a thorough scrutiny of the same, we have no doubt in our mind that but for assistance and/or connivance of the respondent it would not have been possible for the other candidate to answer in the manner in which he has answered. As has been stated by

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this Court in the case of Prem Parkash Kaluniya v. The Punjab@
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University & Ors. [(1973) 3 SCC 424], in a matter like this@
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it would be difficult to get direct evidence and so long as an inquiry is held to be fair and it afford the candidate adequate opportunity to defend himself, the matter should not ordinarily be examined by courts with the same strictness as applicable to criminal charges. The Court had further held that where findings are based on probabilities and circumstantial evidence, such findings cannot be said to have been based on no evidence. From the facts alleged, it is crystal clear that the respondent was a brilliant student. But, if a brilliant student is found to have adopted any unfair means in a competitive examination, he will have to bear the consequences of the same. Since we ourselves have examined the two answer papers in question and have come to the conclusion that but for the assistance or connivance of the respondent in some way or the other, it would not have been possible for the other candidate to answer his question paper in the manner in which he has answered, who was sitting just behind the respondent, we see no justification for the Tribunal to interfere with the conclusion of the UPSC. The judgment of this Court on which the Tribunal as well as the High Court has placed reliance will have no application to the case in hand. In that view of the matter, we are of the considered opinion that the Tribunal committed serious error

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in interfering with the conclusion of the UPSC and in interfering with the punishment awarded by it. The High Court also committed error in affirming the said decision of the Tribunal. It is true that there has been no report from the invigilator indicating any mal practice by the respondent or the person who was sitting behind him. But, mere absence of such report would not be sufficient to exonerate the delinquency, if otherwise a conclusion could be arrived at that but for the assistance of the respondent the candidate sitting behind him could not have copied in the manner he has done. The Tribunal as well as the High Court committed serious error by giving extra weightage for the absence of any report from the invigilator. It cannot be held as a principle that wherever there is no report from the invigilator indicating adoption of mal practice in any examination the Appropriate Authority cannot come to the conclusion about the adoption of mal practice. It would always be a case depending

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. P.H. Parekh, Adv.

For Respondent (s) Mr. P.N. Mishra, Sr. Adv.
 Mr. Manoj Saxena, Adv.
 Mr. Pravir Choudhary, Adv.

UPON hearing counsel, the Court made the following
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Appeals is allowed to the extent indicated in the
signed order.

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(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)