

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.64 OF 2015**

DISTRICT : KOLHAPUR

Shri Satishkumar Ashok Madake,)
Age 38 years, Medical Practitioner,)
R/at Kochi, Tal. Hatkanangale, District Kolhapur)..Applicant

Versus

1. Maharashtra Public Service Commission,)
3rd floor, Bank of India Building, M.G. Road,)
Mumbai)
2. State of Maharashtra,)
Through its Chief Secretary, M.S.,)
Mantralaya, Mumbai)..Respondents

Shri K.R. Jagdale with

Shri M.A. Patil – Advocates for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 6th September, 2021

PRONOUNCED ON: 17th September, 2021

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri K.R. Jagdale with Shri M.A. Patil, learned Advocates for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicant challenges his non-selection to the post of Class-I through MPSC State Services (Main) Examination, 2009 due to alleged act of destroying the answer-sheets by the respondents depriving him of getting the Class-I post in the Government of Maharashtra.

3. The applicant prays for direction to the respondents to appoint him on the post of Class-I officer into the services of Government of Maharashtra as due to the alleged act of the respondent no.1 the applicant is deprived from getting Government service of Class-I officer. The applicant also prays that if this Tribunal comes to the conclusion that the reliefs claimed by the applicant cannot be granted, then this Hon'ble Tribunal be pleased to direct the respondent no.1 to pay the compensation of Rs.50,00,000/- (Rupees fifty lakhs).

4. Brief facts of the case are as follows. The applicant was a candidate of MPSC State Services (Main) Examination, 2009. He was confident that he would get selected. The results of the Main Examination were declared on 17.7.2010. When his name did not appear in the list he filed an application under RTI on 19.7.2010 asking for the answer sheets because he had apprehension that there might be some mistake in counting of marks. On 4.8.2010 M.P.S.C. replied him that he could not be provided with the answer sheet. The Applicant relies on the judgment of Hon'ble Supreme Court in case of ***Poonam Rani Versus State of Haryana and Another reported in (2012 AIR (SC) 1811)***. As per the Central

Information Commission and State Information Commission, the MPSC refused to give copies of the answer sheet and informed him accordingly through letter dated 4.8.2010.

5. Further on 28.8.2010 the applicant also applied for recounting of marks. With reference to the said application the Commission informed the applicant on 7.4.2011 that there will be no change in the marks.

6. Being aggrieved the applicant under Section 19(1) of RTI applied before the appellate authority on 13.9.2010 and he was called for hearing on 26.10.2010. First appeal of the applicant under RTI was dismissed by the MPSC on 10.11.2010 intimating him that the order of the Central Information Commission dated 25.6.2010 will not be applicable to the UPSC or other PSC.

7. Being aggrieved by the said order dated 10.11.2010 applicant filed second appeal under Section 19(3) of RTI before the Hon'ble State Information Commissioner, Pune. On 28.8.2011 he sought information under RTI in respect of photocopy of the answer sheet of the said examination.

8. On 26.4.2013 the State Information Commissioner, Pune passed order imposing a fine of Rs.5000/- (Rupees five thousand only) on the then Desk Officer for not providing the requisite information.

9. After declaration of the results of the State Services (Main) Examination, 2009 on 8.10.2010 as per Commission's standing order No.3/1980 dated 25.5.1982 the answer-sheets were to be destroyed after six months. However, in this case the answer-sheets were destroyed on 4.8.2011.

10. The Ld. Advocate for the applicant states that the State Information Commissioner, Pune Division by his order dated 2.8.2012 issued a show-cause notice to Public Information Officer and Desk Officer to show cause why penalty of Rs.5000/- should not be imposed on them for not providing information. The order of imposing cost was confirmed by the State Information Commissioner, Pune by order dated 16.4.2013.

11. Ld. Advocate for the applicant argued that due to the fact that answer-sheets of the applicant were destroyed he was unable to get appointment to the Class-I post to the services of Government of Maharashtra. He alleged that the record has been destroyed in a malafide manner.

12. Per contra, Ld. CPO argued that the applicant was a candidate of the State Services ((Main)) Examination, 2009. As he did not qualify for the said examination he applied for copies of the answer-sheet under RTI on 19.7.2010. However, as per the decision of the Central Information Commission and State Information Commission the MPSC refused to give him copies of the answer-sheets and informed him accordingly. She further stated that the record of the MPSC was destroyed on 23.3.2010 as per standing order No.3/1982 dated 25.5.1982 and this was informed to the applicant through letter dated 23.9.2011.

13. Ld. CPO referred to the affidavit in reply dated 23.4.2015 filed by Maruti Pandurang Jadhav, Under Secretary in the office of MPSC. Referring to para 10 of the reply, he stated that the applicant had applied under the RTI however, as per the then existing decision of the Hon'ble Supreme Court, Central Information Commission and State Information Commission, Mumbai the MPSC refused to give copies of the answer-sheets and accordingly informed the applicant through letter dated 4.8.2010.

14. Ld. CPO pointed out the affidavit in reply wherein it is stated that applicant has secured 834 marks whereas the cut-off was 886 marks. It is further stated that previously copies of answer-sheet were never provided to the candidates as per Commission's standing order dated 25.5.1982 and answer-sheets were destroyed after six months. However, in this case answer sheets were destroyed on 4.8.2011 almost after ten months. Hence, the allegation made by the applicant that record was destroyed is not justified.

15. In para 25 and 30 of the affidavit in reply dated 23.4.2015 it is stated as under:

“25. Moreover, Hon'ble chief Information Commissioner's order dated 7.4.2007 in the case of Smt. Ratnamala Dafre that “non providing of the copies of answer-sheets by the Commission is righteous thing was informed to the petitioner through a letter dated 4.8.2010. Hence, the allegation of the petitioner that he was deprived of getting the Class-I post and that the Commission deliberately destroyed the answer-sheets of the petitioner are not correct.”

30. The Commission is a Constitutional Authority and strict secrecy is maintained while evaluating answer-sheets of every examination. Coding is done to each answer-sheet of the descriptive exam therefore nobody can recognize the identity of the candidates.”

16. Hence, she pointed out that no injustice has been done to the applicant.

17. A query was put to learned C.P.O. as to what is the rule for destruction of record. The learned C.P.O. replied that after of 6 months from the date of declaration of results the record is to be destroyed. In case of applicant the record is destroyed on 04.08.2011 i.e. after 10 months of the date of declaration of the results. Whereas the applicant has made application for verification of his answer sheet on 19.07.2010 under RTI Act i.e. after two days of declaration of result i.e. on 17.07.2010. The learned C.P.O. submits that there was no policy giving the candidates answer sheet for verification.

18. The learned C.P.O. further submitted that the cut off marks for main examination of 2009 is 886 whereas the applicant secured 834 marks.

19. As regards the question of providing compensation of Rs.50,00,000/- (Rupees fifty lakhs) as demanded by the applicant for alleged act of destroying his original record is concerned, the Ld. CPO pointed out that there was no injustice done to the applicant. Furthermore she referred to the judgment of the Hon'ble Supreme Court in **Maharashtra Public Service Commission Vs. Dr. Bhanumati Purushottam Rathod & Ors. (1997) 5 SCC 128**, wherein it is observed in para 3 that, "Even otherwise also, the Tribunal could not award any damages as it is beyond its jurisdiction to grant relief by way of damages".

20. We have carefully considered the pleadings before us and the arguments advanced by both the sides. It is a fact that the candidate did not clear the State Services (Main) Examination, 2009 as he secured 834 marks while the cut-off was 886 marks. It is also evident that as per the decision of the Hon'ble Supreme Court, Central Information Commission and State Information Commission, the MPSC refused to give copies of the answer-sheets to the applicant.

21. Keeping in mind the then existing rules the MPSC has not erred in refusing to provide copies of answer sheets. It was proper and legal as per standing orders dated 25.5.1982. We are of the view that no injustice is caused to the applicant. It was incumbent on the applicant to file an application before the State Information Commission asking them to give directions to the MPSC to preserve the record. However, he failed to do so. In such cases it is necessary for the aggrieved person to be vigilant of his own rights and take proper steps accordingly. As far as question of compensation is concerned, it is clearly outside the jurisdiction of this Tribunal. Hence, we cannot consider his prayer for compensation.

22. In view of the above, Original Application is dismissed. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
17.9.2021

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
17.9.2021

Dictation taken by: S.G. Jawalkar.