

Supreme Court of India

Krishan Yadav vs State Of Haryana (Mohan J.) on 12 May, 1994

Equivalent citations: 1994 AIR 2166, 1994 SCC (4) 165

Author: S Mohan

Bench: Mohan, S. (J)

PETITIONER:

KRISHAN YADAV

Vs.

RESPONDENT:

STATE OF HARYANA (Mohan J.)

DATE OF JUDGMENT 12/05/1994

BENCH:

MOHAN, S. (J)

BENCH:

MOHAN, S. (J)

AGRAWAL, S.C. (J)

CITATION:

1994 AIR 2166

1994 SCC (4) 165

JT 1994 (4) 45

1994 SCALE (2) 889

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by MOHAN, J.- Both these cases can be dealt with under a common judgment since what arises for our consideration is the validity of selection of Taxation Inspectors by the Subordinate Selection Board (hereinafter referred to as 'the Board'). The appellants are unsuccessful candidates.

2. The Board issued an Advertisement bearing No. 5 of 1986 on 22-11-1986 inviting applications for 96 posts for Taxation Inspectors in Excise and Taxation Department. Out of these 96 posts, 24 were reserved for Scheduled Castes, 10 for Backward Classes and 17 for ex-Servicemen of Haryana. The minimum qualification was graduation of a recognised University or equivalent and knowledge of Hindi up to Matric level. The selection was to be made on the basis of written test of 250 marks and viva voce test. The candidate will not be eligible unless he obtained 33 per cent marks in each subject and the minimum of 40 per cent in the aggregate. In response to the advertisement many candidates applied but for some reason the written test could not be conducted.

3. The Board again advertised for the very same number of 96 posts of Taxation Inspectors as per the Advertisement No. 3 of 1988 dated 7-7-1988. The reservation was as was done previously. The other conditions and qualifications were also the same. It was mentioned in this advertisement that those candidates who had earlier applied against Board's Advertisement No. 5 of 1986 and were eligible according to the prescribed qualifications, need not apply again. The previous applications would be considered for these posts. It requires to be stated at this stage that the Board first allotted roll numbers to the applicants who applied in 1986 then to the candidates who applied in 1988. The continuity of the roll numbers was maintained.

4. The Board conducted the written examination at various centres in the State of Haryana on 17-12-1988 and 18-12- 1988. On receipt of the answer books from different centres a key book was got prepared by the Secretary of the Board with the help of the confidential branch. This key book contained the following particulars:

(i) The name of the candidate with the parents' name.

(ii) Roll Number.

(iii) The details of the subject of the written test.

5. Fictitious roll numbers were allotted to each candidate in the key book by removing the original roll number slips. Thereafter, the answer books were sent to different examiners for evaluation. After examining the answer books, the examiners were required to prepare an award list which is a summary indicating the fictitious roll number of the candidates and the marks obtained by them in each subject. On receipt of the answer books the marks obtained by the candidates in each subject were entered in the key book. On the basis of the key book award lists and answer books, the result of the written test was prepared by the Board. Thereafter the same was published by displaying 'It on the Notice Board.

6. Any candidate who desired to get his answer book re- checked could do so within a period of 30 days from the declaration of the result of written test only after depositing the prescribed fee. Such a procedure was indicated in the rules. This was also the practice prevalent in the Board.

7. However, strangely, the interviews were directed to take place on 3-10-1989 after the expiry of only 17 days. The interviews were held in three different centres: (1) Hissar, (2) Kamal and (3) Pinjore. Therefore, three Interview Committees had to be constituted. Each Committee consisted of two Board Members and one Advisor from Excise and Taxation Department. The interviews went on till 12-10- 1989. About 200 candidates were to be interviewed by each Committee on each day. The appellants claim that their performance in the interviews was excellent. Therefore, if judged on the basis of the written test and performance of the interview they ought to have been selected on the basis of the merit.

8. Originally, Respondent 4, Anand Singh Dangi was the Chairman of the Board. He resigned. After his resignation a new Chairman in his place was appointed by the State Government. After the

appointment of the new Chairman on the next day the selection list for the post in question was finalised. That list was sent to the Department secretly. This was in clear violation of the norms which requires publication on the Notice Board so that it could be made known to the public. The selection list was kept a highly secret document. The same was sent to the second respondent (the Excise and Taxation Commissioner) by hand. Appointment letters were issued after calling the selected candidates. Joining reports from all the selected candidates were obtained in Chandigarh on the spot. Some of them were shown to have joined the respective place of posting. No medical examination for selected candidates was conducted nor were their antecedents got verified before actual appointment. This will clearly establish that favouritism, nepotism, unfairness and a good deal of political influence played a vital role in this selection disregarding merit altogether.

9. For reasons best known the original record including the answer books were destroyed on 27-12-1989. This is attacked by the appellant as an attempt to cover up the illegalities committed by the Board.

10. Primarily, on these allegations several writ petitions were filed before the High Court of Punjab and Haryana. The facts as obtainable in CWP No. 7748 of 1990 were taken into consideration. The High Court was of the opinion that in view of the fact that all answer sheets and the tabulation sheets having been destroyed the allegations of the petitioners therein could not be ascertained. The award of 100 marks for viva voce would work out to 28.5 per cent of 250 marks. This was not excessive. Ultimately, a direction was given not to fill in beyond the advertised number of 96 posts. The other writ petitions came to be dismissed applying the ratio of this judgment.

11. Aggrieved by the judgments dated 10-9-1990 and 10-8- 1990 passed by the High Court in CWP No. 8286 of 1990 and CWP No. 8171 of 1990 Krishan Yadav and Ashok Kumar, the appellants herein, have preferred Civil Appeal Nos. 726 and 727 of 1993 respectively.

12. In view of the serious allegations made particularly the destruction of records alleged to be for want of space this Court passed orders on 9-10-1991 directing the Government of Haryana to refer the matter to the CBI for investigation and to complete the investigation within 3 months. The time for completing the investigation was extended. The Superintendent of Police, SPE/CBI/Chandigarh has filed a detailed report. We record the same.

13. The arguments on behalf of the appellants addressed by their learned counsel Mr Gobinda Mukhoty and Mr A.K. Ganguli may be summarised thus. This is a clear case in which various acts of nepotism and favouritism have been committed. The whole selection is arbitrary. Very conveniently destruction of records is pleaded. Unfortunately, the High Court has not given much attention to the allegations and examined the veracity of these allegations. When the respondents sought cover under the destruction of records that plea had come to be accepted. As a result the appellants' allegations could not be verified. This is hardly the way to render justice. Fortunately, before this Court there is a report of the CBI. This will clearly establish how there is concerted fraud. Persons in authority have played truant with the fate of many candidates. There are overwritings and interpolations in the selection list. Persons who did not attend the interview have been awarded marks. Forgery has been committed. There are several cases where the persons who took the viva

voce have been declared absent in the final selection list. Political influence has had a free hand. Hence the entire selection will have to be set aside.

14. In opposition to this, Mr R.K. Garg, learned counsel for the selected candidates, argued that they are not, in any manner, responsible for the alleged fraud or nepotism. Therefore, "the sins of the others" should not be visited upon the selectees. Even otherwise, as on today, they have rendered service for nearly 4 years. If they are thrown out of the jobs now, they will be on the streets. It will work great hardship. Therefore, the selections may be spared and the authorities concerned may be pulled up for the lapses. Even otherwise, the Court should so mould the relief as to protect the interest. Should a further selection be directed the question of relaxation of age, may also be considered.

15. It is not possible for this Court to enter into the factual domain and decide the case one way or other. We have already mentioned about recording the report of CBI. We will go only by that, as the report commends itself to acceptance. In our considered opinion, the CBI has done a commendable job and has not failed to call a spade a spade, without shielding anyone concerned including a Minister. We will extract the following from the report setting out our conclusion at the end of each extract:

" The investigation has revealed that the interview sheets of some of the Board Members were either blank or they had awarded their assessments in Alphabet A B C. At Pinjore, interviews were to be conducted by the Chairman, Shri Nirpal Singh Malik, Rao Inderpal and Shri H.M.L. Miglani. The interview sheets meant for the Chairman Shri Nirpal Singh Malik were totally blank showing as if they had not recorded anything on the interview sheets. On all the dates only one Member from the Board was present in the interview whereas Shri H.M.L. Miglani, Advisor, remained present on all the dates. Shri Nirpal Singh Malik was never seen by Shri Miglani at the interview centre. On the first day of the interview, Shri Miglani had met Shri Dangi, Chairman at the interview centre and he was asked by Shri Dangi to allot marks extra for additional qualifications of Postgraduate/LL.B. etc. Accordingly, he allotted marks on his interview sheet out of 25 and for those who had additional qualifications, he had allotted 5 marks extra (to them). He did not see Shri Puneet Jain attending the interview at Pinjore and he has not interviewed him....." (Conclusion.- No interview) "In one of the interview sheets, Shri Shakti Singh (Roll No. 6600) is shown to have been interviewed by Shri Bachna Ram on 12-12-1989 whereas the same candidate has been shown to have been interviewed on 19-10-1989 by S/Shri Samey Singh Kamboj and Rao Inderpal Singh. Similarly, in one of the interview sheets, 4 candidates viz. S/Shri Ram Kumar (Roll No. 17859), Narender Singh (Roll No. 18540), Sumanshiv Rana (Roll No. 18851) and Ram Singh (Roll No. 23101) have been shown to have been interviewed in Board's Office by Shri Samey Singh Kamboj on 30-10-1989 whereas the same candidates have also been shown to have been interviewed on 19-10-1989 by Rao Inderpal Singh and Samey Kamboj, in the Board's Office....."

(Conclusion.- Fake interview) "The relevant attendance sheet and other sets of interview sheets did not contain the name of Shri Mohinder Singh and he had not appeared in the interview at Karnal on 12-10-1989. The Sheet No. 88 of interview sheets dated 12-10- 1989 for Pinjore was also typed and prepared by Shri Bhupinder Pal Singh in April 1990. Both S/Shri Samey Singh Kamboj and Rao Inderpal had signed this sheet after 6-4-1990 but they had backdated their signatures."

(Conclusion.- Ghost interview) "The records like key book, answer books and award lists which could tell the marks obtained in the written test by the candidates are not available with the Board. In view of this position, it is not possible to contradict the marks of the written test shown in the 166 pages list. The marks of interview have been shown in the interview sheets prepared subsequently as well as in the 166 pages list. The scrutiny of these records has revealed grave irregularities."

Sr. No. in 1	Roll No.	Marks shown in interview	Marks of sheet shown
1.	1906	Pen 9 pencil 8	8
2.	2339	6	7
3.	2734	5	9
4.		2735	7
5.		2739	6

(Conclusion.- Grave irregularities) "When the Board received notice from the Hon'ble High Court for filing replies and for production of records, the entire record of selection viz. key book, interview sheets, result of written test etc. were available with Shri A.P. Jain and he used to keep the same in his Almirah. In order to justify the selection made by the Board, S/Shri A.P. Jain and Bachna Ram, with the active assistance of S/Shri Devi Dayal and Samey Singh Kamboj, prepared and completed the record of selection for several days in the Board's Office and they used to sit late hours in the office for the said purposes.....

(Conclusion.- Fabrication of records) "It was some time in the month of November 1989 that Shri Rajiv Kumar Mahindra the then daily wages typist was called by Shri A.P. Jain in his room and he was asked not to leave the office after 5 o'clock. In the evening, he came to the room of Shri A. P. Jain when the staff had left the office and Shri Jain gave him one attendance sheet bearing the signatures of the candidates and he asked him to add the name of his son Shri Puneet Jain in the said attendance sheet by typing out a fresh attendance sheet. Accordingly, he typed out the names, addresses and other particulars of the candidates and included the name of Shri Puneet Jain in that sheet. He delivered all the copies of the said sheet including the original attendance sheet to Shri A.P. Jain. Thereafter he showed him another set of the interview sheets used for the post of Taxation Inspector and asked him to find out

the relevant typewriter used for typing out the said sheet. The said sheet contained the interview marks written in pencil. He asked Shri Mahindra to bring the specimen impressions of all the typewriters of the Typing Branch which he brought and the relevant typewriter was found out and brought to the room of Shri A.P. Jain by Shri Mahindra. Shri Jain asked him to type out the name, address and other particulars of Shri Puneet Jain under the name of Shri Pawan Kumar in one copy of the interview sheet which contained the marking in pencil. First, he typed out the said particulars after Shri Pawan Kumar (Roll No. 9722) which was objected by Shri Jain who asked him to type out the said particulars of Shri Puneet Jain under the other name of Shri Pawan Kumar having Roll No. 9728. Accordingly, he again typed out the particulars of Shri Puneet Jain under the name of Shri Pawan Kumar having Roll No. 9728 after erasing the earlier one. In this way, he inserted the name of Shri Puneet Jain in the relevant interview sheet of the Adviser for the post of the Taxation Inspectors interview held on 6-10-1989 at Pinjore. He had done so as he was working on daily wages under Shri A.P. Jain and he had fear in his mind that his services would be terminated in case he did not comply. One of the sheets typed by Shri Rajiv Mahindra by including the name of Shri Puneet Jain was used by Shri A.P. Jain as attendance sheet. On this sheet, Shri Puneet Jain put his genuine signatures in order to show as if he attended the interview on 6-10-1989 at Pinjore and the signatures of the remaining candidates were forged on the said attendance sheet. Seven such signatures were forged by Shri Mahavir Sharma, daily wages worker who joined the department on 2-5-1990 which has been confirmed by the handwriting expert also. Shri A.P. Jain asked Shri Mahavir Sharma that certain records pertaining to Taxation Inspector were to be prepared for filing in the High Court and he asked him to forge the signatures of certain candidates on the attendance sheet which he did under his directions. For this purpose, he provided him the original sheet on which the signatures of the original candidates existed. On seeing the signatures from that sheet, he was asked to forge the signatures of the candidates on the attendance sheet which was already available with Shri A.P. Jain. He did this job in the room of Shri A.P. Jain in the late hours. Shri A.P. Jain had also asked him to write down the marks in pencil against the name of certain candidate on certain interview sheets. For this purpose, he gave him rough sheet on which marking was already done and on that basis he was asked to copy out the same in his handwriting in pencil on the other copies of the interview sheets. He has also stated to have forged the signatures of Shri Rao Inderpal on certain interview sheets but he does not remember whether those interview sheets pertained to Taxation Inspectors or Patwaris. All the pencil markings on Sheet No. 29 of the said set of interview sheets dated 6-10-1989 for Pinjore, were written by him as stated by him. This sheet indicated the markings of interview and marks obtained by the candidates including Shri Puneet Jain in various examinations. He admitted having practised the signatures of Shri Rao Inderpal on the back side of Sheet No. 6 of the office copy of the interview sheet dated 6-10-1989 for Pinjore. Similarly, pencil markings in Column Nos. 4 to 8 of Sheet No. 77 of interview sheets dated 12-10-1989 of Hissar, were written by Shri Mahavir Sharma under the directions of Shri Jain on the basis of the interview sheet given to him. The

additional sheets serially marked I to 4 attached with the blank set of interview sheets dated 12-10-1989 of Hissar, were also written by Shri Mahavir Sharma and these sheets indicated the names and other particulars of the candidates interviewed at Hissar on 12-10-1989."

(Conclusion.- Forgery) "This note of Shri A.P. Jain indicated that all the relevant records including the key book and award lists pertaining to the written test for the posts mentioned in 26 categories of posts which included the post of Taxation Inspectors at SI. No. I were available in the office on 2-2-1990. Thereafter, Shri A.P. Jain wrote letter dated 2-2-1990 to the Chief Secretary, Government of Haryana mentioning therein that the reports received within the Subordinate Services Selection Board revealed that there was nothing outstanding against Shri A.S. Dangi. Thereafter, the resignation of Shri A.S. Dangi was accepted from the post of Chairmanship of the Board. After Shri Dangi left the Board, no Chairman could be appointed by the Government for a few months. Shri A.P. Jain, then used to receive the instructions directly from the higher-ups and would execute the same (Conclusion.- Action at the behest of higher- ups) "On 20-4-1990, Shri A.P. Jain sent another list of 12 candidates (7 general category, 2 SC category, 2 ex-Servicemen and 1 Backward Class category) to the Excise & Taxation Commissioner for issuing appointment letter to them. This list was received in the office of Excise and Taxation Commissioner on 20-4-1990 at 5.50 p.m. This list included the name of under general category, who was related to Shri Tyagi, the then State Minister of Haryana. In fact, Shri Tyagi had also forwarded a note dated 23-4-1990 to the Excise and Taxation Commissioner directing that all the 96 candidates sponsored by the Board should be issued appointment letters irrespective of their categories. In other words, he wanted the Excise and Taxation Commissioner to issue the appointment letter to all the candidates of the general category also...."

(Conclusion.- Ministerial interference) "Out of the remaining 14 disputed candidates, one candidate namely Shri Puneet Jain, Roll No. 9749 is the son of Shri A.P. Jain, the then Secretary of the Board. The evidence on record clearly shows that he had not appeared for the interview on 6-10-1989 at Pinjore as shown in the fabricated record and that he has also been selected arbitrarily. Investigation has revealed that the original relevant page of the interview sheet was removed from the record and the same was replaced by a fabricated one. The typewriter impression of the relevant page in the attendance sheet as well as in the interview sheet of the member of the Board is the same whereas it is different from the typewriter impression of the same page available in the Advisor's copy of the interview sheet. Investigation has revealed that Shri A.P. Jain got a fresh sheet typed much after the completion of the interview, from a daily wage worker by including the name of his son Shri Puneet Jain and he got inserted the name of his son in the Advisor's copy of the interview sheet (Conclusion.- Favouritism) The above extracts unmistakably establish the "misdeeds" of the Board.

16. Having regard to all the above, the irresistible conclusion is "fraud has reached its crescendo". Deeds as foul as these are inconceivable much less could be perpetrated. We are reminded of the words of Shakespeare:

"Thus much of this, will make Black, white; foul, fair; wrong, right; Base, noble; Ha, you gods! why this?"

(Timon of Athens, Act IV, Sc. 3)

17. It may not be too much to draw an inference that all these were motivated by extraneous considerations. Otherwise, how does one account for selection without interview, fake and ghost interviews, tampering with the final records, fabricating documents, forgery? Each of this would attract the penal provisions of Indian Penal Code. They have been done with impunity.

18. The story does not end here. From out of the "selection list" secret Communications have been sent to the candidates. Selections were made without medical test or verification of antecedents.

19. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least Resistance stating, in view of the destruction of records, that it was helpless. It should have helped itself. Law is not that powerless.

20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors.

21. The effect of setting aside the selection would mean the appointments held by these 96 candidates (including the respondents) will have no right to go to the office. Normally speaking, we should require them to disgorge the benefit of these ill-gotten gains. That means they will have to repay the entire salary and perks which they have received from the said office. But, here we show a streak of sympathy. For more than 4 years they were enjoying the benefit of "office". The proper lesson would be learnt by them if their appointments are set aside teaching them that dishonesty could never pay.

22. The next question is what is the future course of action? It is hereby ordered:

(i) A fresh selection shall be made for 96 posts of Taxation Inspectors.

(ii) All candidates who had applied in response to Advertisement No. 3 dated 7-7-1988 and who were found eligible will be entitled to take such an examination.

(iii) The total marks for written examination shall be 200.

(iv) The total marks for viva voce shall be 25 that is not more than 12 1/2 per cent as has been laid down in Mohinder Sain Garg v. State of Punjabi with reference to the very post.

(v) The advertisement announcing the fresh examination shall be issued immediately, fixing the last date as 30-6-1994.

(vi) Intimation as to the acceptance of applications and the schedule of the examination shall be given on or before 16-8- 1994.

(vii) The examination shall commence in as many centres as required from 1-9-1994.

(viii) The evaluation shall be completed before 31-10-1994.

(ix) The marks obtained shall be published in three prominent dailies having large circulation in the State of Haryana in addition to the display on the Notice Board.

(x) The number of candidates called for viva voce shall not exceed three times the number of posts to be filled.

(xi) The viva voce shall commence from 7-11- 1994 and be completed by 25-11-1994. The final analysis of the tabulated results shall be submitted to this Court on or before 10- 12-1994.

We make it clear that not one of the persons connected with the present examination shall be allowed to have anything to do with the previous examination. We expect strict compliance with this order. Under no circumstances will there be an extension of time in this regard. The State shall endeavour its best to see that the examinations are conducted fairly without giving any room for any complaint. If necessary, it could have an independent body or agency in order that it may infuse confidence and make people believe that the misdeeds complained of in this case constitute an isolated chapter and a thing of past.

(xii) Since we have accepted the CBI report we direct that necessary prosecutions be launched early against all concerned however high or low they may be in the hierarchy of officialdom. The State Government will do well to grant the necessary sanctions if so required without undue delay. The Chief Secretary of the State of Haryana shall pay his best attention to this.

23. The candidates like the appellants have suffered immensely in view of the arbitrary selection. They have been waging battles relentlessly. They should be compensated adequately. We think the

least that we could do, is they should be compensated at least in a small way. Therefore, we impose a cost of Rs 10,000 (Rs Ten thousand only) on each of the Respondents I to 4 1 (1991) 1 SCC 662: 1991 SCC (L&S) 555 :(1991) 16 ATC 495 making it clear that each member of the Selection Board shall pay out of person and the same shall not be debited to the account of the State. Normally, we should have awarded costs against A.P. Jain who is the archvillain as per the report of the CBI but unfortunately he is not impleaded as a party. But we are comforted by the thought that the long arm of law will not fail to reach him. The award of cost is only to express our profound displeasure on this unjust and arbitrary selection.

24.All these efforts by us are aimed at cleansing the public administration. No doubt, it may be stupendous task but we do hope this small step will make great strides in the days to come. Accordingly, the appeals stand allowed.