

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No.417/2005

T.R. NANDAKUMAR ..... Petitioner  
Through Mr. D.K. Garg, Advocate

versus

JAMIA HAMDARD,  
A DEEMED UNIVERSITY & ORS. .... Respondent  
Through Mr. Ravi Sikri, Advocate

**CORAM:**

**Hon'ble Ms. Justice Gita Mittal.**

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**GITA MITTAL, J (Oral) :**

1. The present petition has been filed by the petitioner impugning the action of the respondents in announcing the award of a gold medal in the Master of Physiotherapy in (Sports Medicine) specialisation course which commenced in the year 2002. The facts giving rise to the present petition briefly

stated are as hereunder.

2. The petitioner along with one Shri Fakhre Ibrahim, arrayed as respondent No.3, herein were both selected for pursuing a Master of Physiotherapy (Sports Medicine) specialisation course in the year 2002 in the Department of Rehabilitation Sciences, Faculty of Allied Health Sciences, Jamia Hamdard which is a deemed university (hereinafter referred to as respondent No.1). The petitioner claims to have scored better than the respondent No.3 in the results declared by the respondents. According to the petitioner as per the scheme of course, the candidates to the said course were require to participate in five seminars. The marks for the seminars were to be awarded out of a total of hundred marks. Final examinations are conducted at the end of the first and second year of the academic session. Learned counsel for the petitioner submits that out of the total five seminars, only one seminar was conducted in the first year. The petitioner scored 14 marks in the seminar against 15 marks which were awarded to the respondent No.3. In order to wrongfully benefit the respondent No.3, it is contended that the marks scored by respondent No.3 were increased to 16 marks. The submission made on behalf of the petitioner is that the respondents failed to conduct five

seminars and again in order to benefit the respondent No.3, the marks awarded further for the first seminar were multiplied by five to compute the aggregate to be given to the students against the 100 marks prescribed for the seminars. Consequently, the petitioner achieved a total of 70 against the 80 marks which the respondent No.3 was awarded on account of the wrongful increase in marks.

3. The second limb of the submissions on behalf of the petitioner is that the result of the final examination was announced in October, 2004. The marks scored by respondent No.3 were announced as 71. According to the petitioner, the respondent No.3 with mala fide intention sought revaluation of the marks scored by him in paper Management Administration and Ethical Issues paper (which was awarded code No.202 by the respondent No.1) Upon revaluation respondent No.3 was awarded 86 marks in this paper. The petitioner alleges mala fide in this award and it has been vehemently contended that the entire action was motivated on the part of the respondent Nos.1 & 2 to benefit the respondent No.3 illegally.

4. According to the petitioner, he had scored a total of 1336 marks out of 2050 marks. Petitioner was at merit No.1 in the course and was entitled to the gold medal.

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5. The matter had come up for hearing on 12.1.2005 when notice was directed to issue to the respondents. Mr. Ravi Sikri Advocate has entered appearance on behalf of respondent Nos.1 & 2 and has made oral submissions before me. In support of the submissions made, the original record relating to the petitioner and the respondent No.3 has also been produced which has been perused by me.

I had also given liberty to the learned counsel for the petitioner to inspect the same in order to satisfy himself about the contents thereof.

6. It is pointed out on behalf of respondents that revaluation is permitted to all candidates in terms of a policy letter dated 9.10.2001. As per the scheme of revaluation, an application for revaluation has to be made within 15 days of the distribution of mark-sheets. Material terms thereof, which are necessary for the appreciation of the matter in controversy, are as hereunder:

"6. The examiners for such a revaluation will be decided by the Controller from a list of three examiners provided by the Board of Studies/Head of the respective department. Preferably, two examiners may simultaneously evaluate the script to eliminate any chance of discrepancy and to avoid undue delay in declaring the result.

7. The examiner can be appointed from outside the University to provide greater satisfaction to

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the applicant.

Or

Alternatively a revaluation committee may be constituted which may include an external examiner recommended by the Board of Studies, Head of the concerned department and a nominee of the Vice-Chancellor."

It is, therefore apparent that the respondents have taken into consideration the element of prejudice if revaluation was to be conducted by the same examiner.

7. It is also noteworthy that the name of the candidate is not written on the answer sheet. A candidate is required to mention the roll number assigned to him by the respondent no. 1.

After the candidate has written the answer book and submitted the same to respondent No.1, the roll number is replaced by a code number given by a tabulator. These answer books are received by an examiner only with such secret code number and not even the roll number of the candidate.

It is also pointed out that as far the instructions to examiners are concerned, the examiner is prohibited from putting the marks awarded to a candidate against the answers in the answer-sheet. The cover sheet of the answer sheet contains a tabulation setting out question numbers which are in a printed form. The examiner is required to put his marks

against the space provided in relation to various questions numbers. Thus, so far as an examiner is concerned, he is precluded from having information with regard to the identity of the candidate whose paper he is being examined.

8. I am informed by counsel for the respondents, who submits on instructions from the officer of the respondent No.1 who are present in the Court for the purposes of revaluation that in order to maintain this element of secrecy and fairness, the opening sheet wherein the marks awarded by the original examiner have been set out, is removed and an identical sheet with blanks against the marks awarded is supplied along with the answer sheet to the examiner to whom the answer sheet is sent for revaluation. Thereby the respondent Nos. 1 & 2 are able to ensure that revaluating examiner also does not know either the identity of the candidate or the marks which were awarded by the original examiner.

9. Counsel appearing for the petitioner submits that the respondent could not have sent the paper for revaluation to an external examiner. I find that the same is permissible under the policy of the respondent No.1 as contained in letter dated 9.10.2001. This is obviously to ensure the fairness to a candidate and obtain a fair assessment of a candidate's answers.

in a examination.

10. I have examined the mark-sheet of the respondent No.3 in the Management, Administration Ethical Issues paper in order to satisfy myself that there was no tampering with the result and that such procedure was scrupulously followed. I am satisfied that the prescribed procedure has been adhered to. In this view of the matter, it appears that upon revaluation of the answers given by the respondent No.3, a different examiner arrived at a different result with regard to marks awarded to the respondent No.3. Where as the first examiner had given a total of 71 marks to the respondent No.3, the later examiner on revaluation arrived at a figure of 86 marks which were awarded to the respondent No.3. The respondent nos. 1 and 2 cannot be faulted for the higher score secured by the respondent no. 3. For the same reason, I do not find any mala fide in the actions of the said respondents. The procedure laid down by law was followed to the letter and the result so achieved was announced.

11. There is no challenge to the revaluation policy of the respondent No.1. It appears that unlike other universities and education boards, respondent No.1 actually carries out a revaluation of the answer sheets if so required by the candidates in accordance with their policies. Revaluation is not

restricted to mere re-totalling of marks. Therefore, such revaluation having been carried out on the request of the respondent No.3, no fault can be attributed to the respondent Nos.1 & 2 in respect of the marks scored by the respondent No.3 upon the revaluation. It is also noteworthy that the policy dated 9.10.2001 stipulates that along with the revaluation application, a student is required to surrender the original mark-sheet and has to accept the revised marks secured after revaluation as final marks which could be lower or higher than the original marks. Therefore respondent No.3 took a chance and was fortunate inasmuch as upon revaluation, the examiner awarded him higher marks.

So long as the policy stands, there is no merit in the submission on behalf of the petitioner that the revaluation could not have been by an external examiner. It is so provided in the policy for revaluation as set out hereinabove.

12. So far as the first submission is made to the fact that the respondents changed the marks from 15 to 16 marks in the seminar in respect of respondent No.3, it has been contended on behalf of the respondents that the change was effected at the time of the awarding of the marks itself by the examiner. It is also submitted that this change was not only qua respondent



No.3 but with regard to other candidates as well. The original record relating to such changes has been perused by me and I find that contentions made by learned counsel for the respondent is supported by the record in this behalf. Furthermore in view of the variance in the marks scored by the petitioner and respondent No.3 in the paper of Management, Administration and Ethical Issues, it may be noticed that even if the respondent No.3 was held to have secured only 15 marks, he has still scored more marks in total than the petitioner.

In these circumstances, in view of the marks awarded to the parties, it is pointed out that the petitioner has secured a total of 1336 marks out of 2050 as against the respondent No.3 who secured 1350 marks out of 2050.

Consequently, it cannot be held that the petitioner is more meritorious than respondent No.3.


13. Before parting with the case learned counsel for respondent Nos.1 & 2 has contended that gross allegations alleging communal bias to respondent No.1 have been made in the writ petition which are wholly unfounded. Learned counsel for the petitioner on instructions submits that he does not press the allegations made in this behalf in the writ petition and has submitted that the same may be treated as withdrawn. It is

ordered accordingly.

14. In view of the aforesaid, I find no merit in the writ petition which is hereby dismissed.

Keeping in view that the petitioner is a student, there is no order as to costs.

JANUARY 13, 2005  
aj.

  
GITA MITTAL, J