

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

+ **Judgment reserved on: 20.08.2014**

Judgment delivered on: 18.09.2014

% **W.P. (C) No. 3892/2014**

RAJESH KUMAR Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

HIGH COURT OF DELHI Respondents

Through: Sh. S.A. Saud, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J.

1. The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to seek the quashing of the Office Order dated 31.05.2014 passed by the Respondent-rejecting the representation of the Petitioner, and a Writ of Mandamus directing the Respondent to correctly evaluate the answers given by the Petitioner and to appoint the petitioner to the post of Administrative officer (Judicial) from the date the successful candidates were appointed to the said post, along with consequential benefits.

2. The brief facts are that in 2001, the petitioner was appointed as a Junior Judicial Assistant in the High Court of Delhi. Thereafter, he was

promoted to the post of Senior Judicial Assistant in 2006 and he continues to serve in the same post till date.

3. On 27.11.2012, a notification was issued by the respondent for filling up of 9 vacancies of Administrative Officer (Judicial)/ Court Master against 75% test quota on the basis of a Written Test (which consists of written paper-I and written paper-II) and Interview. Further, the notification prescribed that the candidates who obtain 50% marks in each of the written papers will be called for interview, and only those candidates who secure 50% marks in aggregate of the marks prescribed for written test and interview will be considered qualified for appointment as Administrative Officer (Judicial)/ Court Master. Both Written Paper I and Written Paper II carried 100 marks each, and the interview carried 50 marks.

4. As the petitioner fulfilled the eligibility criteria prescribed in the aforesaid notification, he appeared, under Roll No. 4, in test conducted for written paper-I and II which were held on 01.01.2013 and 06.01.2013 respectively. Written paper-I consisted of two parts, Part A and Part B. Part A consisted of 7 questions-each having 10 marks (any 5 to be attempted), and Part B consisted of 5 questions-each having 10 marks (all compulsory).

5. The petitioner obtained 63 marks and 52 marks in written papers I and II respectively i.e. he secured more than 50% marks, thus qualifying for the interview. Out of the 28 candidates who qualified in the said examination, 24 candidates appeared in interview, petitioner being one of them. The petitioner secured 27 marks in the interview. Thus, the total marks secured by the petitioner were 142 out of 250. Thereafter, the appointments were

made to the post in question vide Notification dated 01.04.2013. The petitioner was, however, not selected. The last selected candidate scored 152 marks in the aggregate.

6. On 03.04.2014, the petitioner applied under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act) to seek his evaluated/checked answer sheets of both the written papers. The respondent furnished the aforesaid answer sheets vide letter dated 30.04.2014.

7. On inspecting his answer sheets pertaining to written paper – II, the petitioner discovered that, apparently, in the first instance he was awarded marks for the answer given by him to question no. 9, which were subsequently struck off, and the answer remained unevaluated. Further, he discovered that question no. 5 in his answer sheet pertaining to written paper – I had been struck off by the examiner who checked the answer sheet. The petitioner submits that this was a patent error on the part of the examiner and, therefore, his answer went unevaluated.

8. On 02.05.2014, the petitioner submitted a representation to the Chief Justice, High Court of Delhi for seeking redressal of his grievance pertaining to incorrect evaluation of his answer sheets.

9. The aforesaid representation dated 02.05.2014 submitted by the petitioner was rejected by the Memorandum dated 31.05.2014, which reads as follows:

“With reference to his representation dated 02.05.2014, in respect of Admn. Officer (Judl.) /Court Master Examination – 2012 against 75% test quota, Mr. Rajesh Kumar, Senior

Judicial Assistant is hereby informed that on re-examination/ evaluation of his answer sheets of Paper I and Paper II of AOJ/ CM Examination – 2012, he has been awarded 2 (two) marks to Q. No. 5 of Part B of Paper I and 7 (seven) marks to Q. No. 9 of Paper II, and his revised result is as under:

S. No.	Roll No.	Marks in Written Examination			Marks in Interview (50 marks)	Total Marks Written + Interview (250)	Remarks
		Paper I (100 marks)	Paper II (100 marks)	Total (200 marks)			
11	4	63+2 = 65	52+7 = 59	115+7+2 = 124	27	142+7+2 = 151	Earlier at S. No. 19

Mr. Rajesh Kumar is further informed that he does not find place in the select list even after the reports of the examiner in respect of re-examination/ evaluation of his answer scripts of Paper I and Paper II. Accordingly, his representation dated 02.05.2014 stands disposed of by the competent authority.”

10. Being aggrieved by the rejection of the aforesaid representation, the petitioner has preferred the present Writ Petition.

11. Learned counsel for the petitioner submits that in respect of question no. 5 of paper – I, part B, the answer given by him (the petitioner) had been struck off completely by the evaluator, and no marks were awarded for it. Even after the representation, only two marks were awarded out of ten, even though his answer was in complete consonance with Delhi High Court

(Original Side) Rules, 1967. Question no. 5 of Written Paper I read as follows:-

“What do you mean by transmission of decree for execution and what is the procedure prescribed for transfer of decree?”

12. Thus, it would be seen that the said question consisted of two parts, the first part being the definition/meaning of transmission of a decree for execution, and the second part being the procedure prescribed for such transmission.

13. The answer given by the petitioner to the said question is as follows:

“An application for transmission of decree to another court for execution shall be in the form prescribed and shall describe/state the court to which the transmission is sought and shall state whether the decree is satisfied in part if so to what extent. The same shall be supported by an affidavit. It is also accompanied by a certified copy of decree.

The Registrar shall transmit by registered post at the cost of plaintiff a certified copy of decree along with other documents as specified in Order XXI Rule 6 as the manner provided in Order XXI Rule 4 & 5.

The above procedure enumerated in Chapter 24 of Original Side Rule.”

14. The petitioner further submits that one of the candidates-Babita Haritash, appearing in the same exam obtained seven marks for writing a similar answer, whereas the petitioner was awarded only two marks. The answer given by Babita Haritash to the said question reads as follows:

“An application for the transmission of a decree shall be made in the form prescribed and shall specify the court to which the transmission of decree is sought. It shall state whether decree has been satisfied in part or not and if so to what extent. It shall also be accompanied by an affidavit in support of the application. With it also be annexed the certified copy of the decree and other documents relating thereto. Registrar shall at the cost of person, seeking transmission of decree shall transmit the decree by registered post to the court to which the transmission of decree is required for execution. Certified copy of the decree & other documents shall be sent by registered post at the expense of the party concerned seeking transmission of decree.”

15. The petitioner submits that one Mr. Sudhir Sachdeva, another candidate was also a victim of incorrect evaluation of his answer sheet. After revaluation of his paper, he obtained 152 marks which were same as that obtained by the last candidate selected for the post of Administrative Officer (Judicial)/ Court Master and, therefore, he was selected for the post of Administrative Officer w.e.f. 22.03.2013. He submits that this instance shows that the examiners deployed by the respondent for the Written examinations in question did not perform the task assigned to them with a sense of responsibility and that they were casual and cavalier in their functioning.

16. The respondent has contested the petition by filing a counter affidavit. The respondent submits that on the basis of the representation dated 02.05.2014, the Selection Committee directed the examiner to re-examine the answer sheets in which discrepancies were found during scrutiny on 17.05.2014 and thereafter, the examiner submitted his report. On 19.05.2014, the Committee examined the representation as well as the report

of the examiner and the draft revised result (merit-wise) prepared by the Registry based on the report of the Examiner. Thereafter, the Examiner was further asked to evaluate the petitioner's answer to question no. 5 of Part B, written paper – I. Consequently, 2 marks were awarded to him against his answer. The respondent distinguishes the case of Babita Haritash by submitting that her answer included the meaning as well as the procedure for transmission of decree, unlike the answer of the petitioner, where he described only the procedure for transmission of decree and hence, answers of the two candidates cannot be compared.

17. It is further submitted by the counsel for the respondent that on 20.05.2014, the Selection Committee considered the further draft revised result (merit-wise) prepared by the Registry based on the reports of the Examiner. The Selection Committee prepared its report dated 20.05.2014 (duly approved by the Hon'ble Chief Justice on 21.05.2014) as per which the petitioner, even after re-evaluation of the answer scripts of Paper-I and Paper-II, did not get selected for the post of Administrative Officer (Judicial)/ Court Master as he scored 151 marks while the last candidate selected secured 152 marks in the examination.

18. Learned Counsel for the Respondent also contended that this Court, while exercising jurisdiction under Article 226 of the Constitution of India, would not interfere with the process of evaluation of answer scripts. It was further urged that the petitioner cannot seek re-evaluation of his answer scripts as there is no provision under the rules for re-evaluation/ re-examination. In this respect, reliance was placed on the following cases:

- i. ***Pramod Kumar Srivastava vs. Chairman, Bihar Public Service Commission***, (2004) 6 SCC 714
- ii. ***Kapil Malik vs. Union Public Service Commission***, 2008 (1) ILR (Del) 791
- iii. ***Neel Ratan vs. Union of India***, 2006 (129) DLT 130
- iv. ***Nimmakayala Geeta Swappa vs. Union of India***, W.P.(C) 3771/2008
- v. ***Rajesh Kumar Verma vs. High Court of Delhi***, W.P.(C) 207/2013 and ***Bhupender Pal Sharma vs. High Court of Delhi***, W.P.(C) 337/2013

19. We have heard learned counsels for the parties and considered the rival submissions. The original answer scripts of the petitioner in relation to written Papers I and II have also been produced before us. At the outset, we would like to record our concern for the casual and cavalier manner in which both the answer scripts of the petitioner were evaluated. A perusal of the original answer scripts show that in Paper I, answer to question No. 5 was completely scored out and no marks were awarded in the first instance. In respect of the answer to question No. 9, in para II, no marks were awarded and only a hyphen (-) had been put. Pertinently, on the opening sheet of the answer paper II, the printed column has been filled to indicate the marks awarded against the answer to each questions. In fact, the original answer scripts of both the papers show that even after rechecking/revaluation on the representation of the petitioner, no marks have been inscribed on the answer sheets themselves, though, two and seven marks have been awarded to the petitioner in respect of answer to question No. 2 in paper I and, answer to question No. 9 in paper II respectively, as is seen from the respondent's communication contained in the memorandum dated 31.05.2014. So far as

the answer to question No. 9 on paper No. II is concerned, once again, a perusal of the original answer scripts shows a casual and cavalier approach of the examiner. Though, the answer scripts show that the answer has been marked as correct and marks were awarded on the answer script in red ink pen, the same have been scored out with the same or similar kind of red ink pen. One fails to understand the purpose of this exercise, and the circumstances in which the examiner resorted to such a practice. It has not been explained as to why the examiner did not award any marks against the answer to question No. 9 in paper No. II, even though the said answer had been checked and apparently some marks were awarded in the first instance.

20. For someone who aspires to obtain a job or get into a higher position through a competitive examination, the importance of such an examination cannot be over emphasized. It is, therefore, expected of the examining body that the task of valuation of the answer sheets is undertaken with utmost care and caution so that no candidate suffer on account of a careless or casual approach of the examiner, much less on account of any deliberate manipulation. We are not suggesting that in the facts and circumstances of the present case, one can conclude that the petitioner had deliberately not been properly awarded marks in respect of the answers given to the aforesaid two questions in paper I and II. But the circumstance that the answer to question No. 9 in paper II had been initially checked and marks awarded, which were subsequently scored out, leaves us to conclude that such a possibility cannot be ruled out.

21. So far as answer to question No. 9 in paper II is concerned, upon the representation of the petitioner, the respondent has awarded seven marks in

respect thereof. At the cost of repetition, we again observe that the original answer script does not even contain the seven marks awarded to the petitioner against the said answer. Therefore, it is not clear as to when, and who, awarded the seven marks to the petitioner as recorded in the memorandum dated 31.05.2014 issued by the respondent. Be that as it may, since the petitioner has been awarded seven marks out of 10 marks in respect of the answer given to question No. 9 in paper II, so far as the said questions/answer is concerned, the grievance of the petitioner has been addressed.

22. Turning to the submission of the petitioner with regard to the evaluation of question No. 5 in Paper I, we find that there is merit in the petitioner's submission that he has been discriminated against and has not been properly evaluated in respect of his answer to question No. 5. A perusal of the said question, and the answer given by the petitioner shows that the question was in two parts, namely, the candidate was expected to firstly explain the meaning of transmission of a decree for execution, and thereafter to describe the procedure prescribed for transmission of decree. A perusal of the petitioner's answer shows that he had merely described the procedure prescribed for transmission of a decree for execution. Thus, to that extent, the submission of the respondent has to be accepted.

23. It is not for this Court to evaluate the answers given by a candidate by resort to the text of the subject to which the answer relates. We do not propose to, therefore, compare the answer given by the petitioner to question No. 5 of paper I with the statutory rule dealing with the procedure for transmission of a decree as contained in Delhi High Court Original Side

Rules, 1967. However, there is no explanation forthcoming from the respondent as to why the petitioner has been discriminated in the matter of award of marks to the said question. A perusal of the answer given by another candidate, namely, Babita Haritash, with the answer given by the petitioner, shows that there is hardly any difference in the two answers. The answer given by Babita Haritash also describes only the procedure for transmission/transfer of a decree. It does not define or explain the meaning of transmission of a decree, as required by the first part of the said question. Therefore, the submission of the respondent that the answer given by Babita Haritash is a complete answer and that the petitioner's answer cannot be compared to the same, cannot be accepted. If Babita Haritash was entitled to award of seven marks for practically the same answer as given by the petitioner to the same question, one fails to understand how the petitioner could be discriminated and awarded only two marks in the process of revaluation stated to have been undertaken on the representation of the petitioner.

24. As we have noticed above, the original answer sheet of the petitioner does not show that the process of revaluation has taken place on the original answer script, as no marks have been awarded on the answer script in pursuance to the petitioner's representation. It has not been disclosed as to when, where, and by whom, the revaluation of the answer of the petitioner in respect of the answer to question No. 5 in Paper I was done. There is nothing to suggest that revaluation has been undertaken by adopting the same standards and yardstick as was initially done, when the answer scripts were evaluated, including that of Babita Haritash. Apparently, some other

examiner appears to have undertaken the exercise of revaluation of the petitioner's answer script vis a vis answer to question No. 5 in paper No. 1. Even if it were to be assumed that the same examiner has re-examined the answer of the petitioner, it is abundantly clear that the same standard/yardstick has not been adopted.

25. Reference to the aforesaid decisions by the respondent, in our view, is of no avail primarily for two reasons. Firstly, the respondents have themselves undertaken the process of re-examination/evaluation of the petitioner's answer sheets in the two papers-as is acknowledged in the impugned memorandum dated 31.05.2014 itself. The approach of the respondent, upon receipt of the petitioner's representation, was not to turn down the representation without re-examination/revaluation of the petitioner's answer sheets. Both the answer sheets were actually re-examined/evaluated inasmuch, as, in respect of answer of question No. 5 of paper I and question No. 9 of paper II, the petitioner was awarded 2 and 7 marks respectively, which had earlier not been so awarded. It does not lie in the mouth of the respondent to now contend that the answer sheets of the petitioner could not be re-examined/re-evaluated. Secondly, and even more importantly, the petitioner has made out a case of stark discrimination in the matter of evaluation qua his answer to question No. 5 of paper I. None of the cases relied upon by the respondent was a case bringing out the discrimination meted to the petitioner candidate.

26. As noticed above, it is not even clear as to who re-evaluated the petitioner's answer script vis a vis question No. 5 of Paper I, since the original answer scripts does not even bear the two marks stated to have been

awarded upon re-examination/revaluation and the said marks have not been awarded on the answer script itself. It does not entail a process of revaluation/assessment to merely compare the answer given by the petitioner with the answer given by Babita Haritash in respect of question No. 5 of paper I. Even a lay person conversant with the English language can read the two answers to conclude whether, or not, they are the same. It is evident that neither Babita Haritash nor the petitioner answered the first part of the said question which requires the candidates to set out the meaning of transmission of a decree. However, both-the petitioner and Babita Haritash, more or less identically, described the procedure for transmission of a decree. When Babita Haritash was awarded 7 marks for her answer, there can be no justification for award of only 2 marks for practically the very same answer to the petitioner. This conclusion also does not amount to revaluation of the petitioners answer script by this Court, as the comparable evaluation is already available. The only reason we can fathom for this discrimination is the different standards/yardstick adopted in the evaluation of the answers given by Babita Haritash and the petitioner-possibly on account of some other examiner re-examining/re-evaluating the petitioner's answer script and not the original examiner. On the basis of parity, in our view, the petitioner has to be treated as having secured 7 marks in respect of his answer to question No. 5 of paper I as awarded to Babita Haritash.

27. Consequently, the total marks awarded to the petitioner would jump to 156 and would cross the threshold of 152, marks which were awarded to the last selected candidate.

28. In view of the aforesaid discussion, we allow the present petition and direct the respondent to declare the petitioner successful and appoint him to the post of Administrative Officer (Judicial) by fixing his seniority on the basis that his total marks obtained in the examination are 156, and not 151. The petitioner would be entitled to notional pay fixation and seniority from the date when other successful candidates were appointed to the said post.

29. The petition stands disposed of.

30. The parties are left to bear their respective costs.

VIPIN SANGHI, J

S. RAVINDRA BHAT, J

SEPTEMBER 18, 2014

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