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

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Reserved on : 20.11.2020

Pronounced on: 07.12.2020

+ **W.P.(C) 2466/2020 and CM Nos. 8615/2020 and 19502/2020**

SHRI RAGHAV MANN & ORS. PETITIONERS

Through: **Mr. N.S. Dalal, Advocate**

versus

THE OFFICE OF DISTRICT & SESSIONS

JUDGE HEADQUARTERS

..... RESPONDENT

Through: **Ms. Avnish Ahlawat, Standing
Counsel, Services, GNCTD with
Mr. N.K. Singh and Ms. Palak
Rohmetra, Advocates**

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

1. Present petition has been filed by the Petitioners seeking a declaration that the Petitioners be considered as passed having secured more than 40 Words per Minute (wpm) in the Typing/Skill Test conducted on 21.01.2020 and set aside the result declared on 14.02.2020 qua the Petitioners. A direction is also sought to the Respondent to call the Petitioners to participate in the interviews.

2. The facts to the extent they are undisputed between the parties are that a Combined Recruitment Process was initiated for various

Ministerial posts in the office of District & Sessions Judge (HQ), Delhi as well as for analogous posts in the Family Courts, under a Centralized Recruitment Committee. A Vacancy Notice/Advertisement for 771 Cadre posts (Senior Personal Assistant - 41, Personal Assistant – 555, Junior Judicial Assistant – 161, Data Entry Operator – 14) in the Establishment of Delhi District Courts and Family Courts was published on 14.09.2019. Educational qualifications prescribed for the post of JJA was 'Graduate' with typing speed of not less than 40 wpm, on computer. Relevant part of the Advertisement is as under:

<i>Sl. No.</i>	<i>Post Code</i>	<i>Exam Mode</i>	<i>Post</i>	<i>Educational Qualification</i>
03.	A-3	<i>Objective Test, Skill Test, Descriptive Test & Interview</i>	<i>Junior Judicial Assistant</i>	<i>Graduate with typing speed of not less than 40 words per minutes on Computer.</i>

3. As per the Scheme of Examination the Recruitment process was to be held in four phases. Tier-I was Objective test for 120 marks; Tier-II included a Skill test (typing test); Tier-III prescribed a Descriptive test and Tier-IV was Interview. Syllabus of Objective test pertained to General English and Comprehension, General Knowledge and General Intelligence and format was Multiple Choice Questions (MCQ). Candidates who scored 50% marks (General Category) i.e. 60 marks out of 120 and 45% marks (Reserved Category) i.e. 54 marks out of 120 in

the Objective MCQ test were eligible to be called for skill test, which was a typing test requiring speed of 40 wpm and was qualifying in nature.

4. Tier-III was a Descriptive test and those candidates who qualified the skill test were to be called for Descriptive test and 100 marks were earmarked for it. Minimum passing marks for General Category Candidates were 50% i.e. 50 marks out of 100 and 45% for Reserved Category. The last phase of the process was Tier-IV, which was Interview of 30 marks and the minimum passing marks for General Category Candidates were 12 and for the Reserved Category Candidates were 10. It was mentioned in the Advertisement that the District & Sessions Judge (HQ), Delhi reserved the right to modify or dispense with any stage of the recruitment process, if deemed appropriate, especially in view of the number of applications received and as permissible under Delhi District Court (Establishment) Rules, 2012.

5. In the Meeting dated 06.01.2020, Recruitment Committee decided to dispense with the Descriptive test and the decision was approved by the District & Sessions Judge (HQ). Total 24,173 number of candidates including the Petitioners applied 'Online' for the post of JJA. The Objective/MCQ test was conducted on 29.11.2019 in two shifts. Out of total 24,173 candidates, 4,471 candidates including the Petitioners were declared qualified and were called to appear in the skill/typing test on 21.01.2020, at different online examination Centres.

6. In the skill test, which was qualifying in nature, total 3,775 candidates appeared and 460 were declared qualified and called for participating in the next Tier of recruitment i.e. interview. Not finding their names in the list of candidates shortlisted for interview, the

Petitioners filed the present petition assailing the criteria adopted by the Respondent for evaluating the speed required in the skill test and claim that stroke method should be applied in keeping with the past practice as well as the norms followed in various departments of the Government.

7. Learned counsel for the Petitioners Mr. N.S. Dalal contends that short of the final typing test, a Mock test was held by the Respondent, in which the Petitioners participated. As per the Instructions available on the website, Petitioners were required to type the displayed text on the desktop computers and the duration was 5 minutes. During the test whenever there was any mistake, the same was displayed in Red colour and if the word or formatting was correct, the same was displayed in Green colour. After the given time duration was over, the typed text was submitted and computer automatically displayed the total number of counts on the screen. The difference in the mock test and actual test was only in time duration, as the latter was for 10 minutes. The evaluation was done as per the stroke system. The Petitioners performed very well in the typing test. At the end of the typing test, gross number of counts were displayed and were noted by the Petitioners, from which it was evident that the typing speed was more than 40 wpm. In fact some of the Petitioners had 2400-2500 strokes and if the same has to be counted in terms of speed, it would be more than 48 wpm.

8. Counsel for the Petitioners further contends that the Guidelines framed by the DOPT, Government of India, are binding on the Respondent herein and this is evident from a Notification dated 02.12.2013. As an illustration, it is argued that for disciplinary proceedings CCS (CCA) Rules are followed, as in the case of other

Government Servants. Relevant part of the Notification dated 02.12.2013 relied upon by the Petitioners is as under :-

“In exercise of the power conferred by the proviso to Article 309 of the Constitution of India, read with Govt. of India, Ministry of Home Affairs Notification No.F27/40/50-NGS dated 28.10.1953 and all other powers enabling him in this behalf, the High Court of Delhi, with the prior approval of the Central Government and the concurrence of Hon 'ble Lt. Governor of National Capital Territory of Delhi, hereby makes the following rules, namely:- Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012 .”

9. On 17.05.2010 an O.M. was issued by the DOPT prescribing certain norms for the skill test for recruitment to the post of LDC. As per the said norms a formula has been prescribed for evaluating the speed of 35 wpm for a test duration of 10 minutes. The formula is as under :-

“35 words per minute & 30 words per minute correspond to 10500 KDPH/9000 KDPH on an average of 5 key depressions for each word”.

10. According to the Petitioners, Respondent is bound to apply the same formula for evaluating the speed of 40 wpm i.e. 40 words per minute correspond to 12000 KDPH on an average of 5 key depressions and cannot adopt any other method.

11. It is contended that following the aforesaid O.M., for the first time skill test for JJA was conducted for the year 2017-2018 by the Respondent and in that year speed of 40 wpm was counted on the basis of the norms fixed in the DOPT O.M. dated 17.05.2010 i.e. the stroke method. Elaborating the argument, it is submitted that the Respondent

consciously made certain changes qua the Objective Test and the Interview for the present selection, in contrast to the selection process in the earlier year. In the year 2017-2018, written test carried 200 marks and the Interview was for 30 marks, while for the present year 2019-2020, Objective Test was of 120 marks and the Interview marks were 12. However, there was no change in the criteria for typing test, which remained as 40 wpm. The contention is that wherever and whenever the Respondent wanted to change the criteria or the norms they have done so and notified, but as there was no change in the criteria advertised for the skill test, it was presumed that the evaluation of the answer sheets shall be as per the evaluation scheme followed for recruitment process in the past.

12. Mr. Dalal argues that for the first time it was learnt from the counter affidavit filed in this Court that Respondent has followed a totally different formula for calculating the typing speed, which is in stark contrast to the norms laid down by the DOPT and past practice. Respondent did not notify or inform the candidates that there would be a change in the criteria for evaluating the typing test and thus any change after the recruitment process had commenced, amounts to changing the Rules of the game, midway, which is impermissible in law. Reliance is placed on the judgement of the Supreme Court in the case of ***Maharashtra State Road Transport Corporation & Others v. Rajendra Bhimrao Mandve & Others*, (2001) 10 SCC 51**. Relevant para as relied is as follows:

“5. ...It has been repeatedly held by this court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection is commenced...”.

13. Counsel for the Petitioners also relies on the judgement in ***K. Manjusree v. State of Andhra Pradesh & Others, (2008) 3 SCC 512***, where the Supreme Court held that selection criteria has to be prescribed in advance. Rules of the game cannot be set or changed afterwards. In the said case, the minimum qualifying marks for interview were prescribed after the interview was over.

14. It was further argued that if the criteria followed in 2017-2018 which is based on DOPT O.M. dated 17.05.2010 is not followed, the consequences will be disastrous. As an Illustration, it is pointed out that if a candidate has typed 100 wpm and out of the same 60 are incorrectly typed while 40 words are correct, then he would meet the requisite criteria, if the stand of the Respondent is to be accepted. This is unjustified as the mistakes are as high as 60 percent. The purpose of the skill test to ensure that efficiency and accuracy in typing is maintained and mistakes are minimized would be defeated.

15. It was further contended that the only manner in which the Respondent could have evaluated the typing speed was by applying the 'strokes and spaces' methodology, which are an integral part of each other. Petitioner No.1 for example had 2526 strokes, according to which the typing speed should be 50.50 wpm, but the result shows that he achieved a speed of 39.1 wpm. The accuracy was around 97% to 99%, meaning thereby that even if two or three mistakes had occurred and were taken into account, the speed could not be evaluated at less than 48 wpm. Petitioners have a right to insist that the speed should have been calculated as per the criteria followed by the High Court for the same post

in the last several years as well as other Government Departments, including the last test for JJA conducted in the District Courts. Mr. Dalal had drawn the attention of the Court to the formula adopted by Staff Selection Commission for the post of LDC, wherein evaluation is by strokes method, as also similar Instructions issued by the Government of NCT of Delhi to the Delhi Subordinate Selection Board. To the same effect are the Notifications issued by Ministry of Home Affairs and DDA.

16. Learned counsel vehemently contends that the change in the evaluation system adopted by the Respondent has caused prejudice to the Petitioners. Had the Respondent adopted the 'strokes' method and not the 'unrestricted' method, Petitioners would have qualified the skill test. As an example, it is pointed out that Sh. Pradeep Mathur had appeared for the test in 2017-2018 for the same post. He had typed 350 words with 2180 strokes and 9 mistakes. The speed, when evaluated as per the strokes formula was 43 wpm. In the current recruitment process he had 2400 strokes and yet is unsuccessful in qualifying the skill test.

17. Per contra, Ms. Avnish Ahlawat appearing for the Respondent contends that there is no change in the criteria advertised, which is in sync with the Recruitment Rules. Unrestricted method of evaluation was applied as the same was found to be a better method to judge accuracy and efficiency in typing. The Recruitment Committee had carefully analysed the mechanism and approved the same. After the result of the skill test was declared, some representations were received from the candidates regarding the method/modalities adopted for evaluation of the skill/typing test for the post of JJA. The work of conducting the recruitment had been outsourced to an Agency, which is a Central Public

Sector Enterprise under the aegis of MHRD, Government of India. Before notifying the result, the methodology adopted by the Agency was discussed in detail in the meeting held on 14.02.2020 followed by a meeting on 18.02.2020.

18. A Public Notice was uploaded on the website of the Delhi District Courts on 03.03.2020, intimating to the applicants that the matter had been taken up with the Agency and the representations were under examination. In the meeting held on 04.03.2020, the Recruitment Committee examined the representations and found that there was no merit in the grievances raised.

19. According to Ms. Ahlawat, the main grievance raised in the representations was that the count of key strokes was not taken into consideration. However, the Committee was of the view that count of key strokes was not indicative of speed and accuracy in typing and in fact number of key strokes is inversely proportional to the speed and accuracy of the words typed, during the stipulated time of 10 minutes. The method adopted for evaluation of the answer sheets was carefully examined by the Committee and it found nothing wrong with the formula so adopted. The representations were rejected and a Public Notice in this regard was uploaded on the website on 06.03.2020.

20. It is argued that the claim of the Petitioners that they performed well is not reflected from the answer sheets, some of which have been appended to the counter affidavit. The formula adopted and applied for evaluation in the skill test as pointed by learned counsel and mentioned in the counter affidavit is as under :-

$$\text{“Speed (in words per minute)= } \frac{\text{Total correct words typed}}{\text{Time taken i.e.10 minutes”}}$$

21. It is submitted that the candidates were required to type atleast 400 correct words during the duration of 10 minutes. This assumes significance in the backdrop that the selected candidates are required to perform their duties in the District Courts, where they are supposed to do typing work on day-to-day basis and a large number of pages have to be typed, besides ensuring accuracy as well as correctness of the words. During evaluation, words which were incorrectly typed were not taken into account while calculating the speed and only the correct words formed the basis of calculation. However, no penalty in the form of reduction of speed or any other form was imposed for typing incorrect words. Use of ‘delete’ key and/or backspace was permissible in correcting a wrongly typed word within 10 minutes. The number of strokes displayed on the computer screen at the end of typing test is not indicative of speed as these include wrongly typed words, backspaces and use of delete keys. Since the evaluation mechanism is based on number of correct words typed, the question whether the space with character would be counted for speed does not arise.

22. In so far as the mock test is concerned, it is argued that the same does not confer any right for seeking to qualify in the main typing test and was only to acquaint the candidates with the format of the final test. A perusal of the mock test sheets would show that none of the Petitioners

except Petitioner No.1 have secured the required speed. Petitioner No.1 had net speed of 40.02 wpm in the mock test, but in the final test it is 38.7 wpm. Since the Petitioners have failed to qualify the skill test they cannot be called for the interviews. In fact the Respondent has alleged that the documents placed on record with respect to the Mock test are forged and fabricated.

23. The methodology followed by the Respondent for evaluation has been explained and detailed in the counter affidavit and is as follows :-

$$\text{“Speed (in words per minute) = } \frac{\text{Total correct words typed}}{\text{Time taken i.e.10 minutes}} \text{”}$$

1. Gross Keystrokes Count: This is the count of the characters typed by the candidate in the text area.

Note: This will not include the characters erased in the unrestricted mode. The Backspace key count is not included in the Gross Keystrokes count. **“Gross Keystrokes Count” Parameter is not considered for Net Word Speed Evaluation.**

2. Backspace Count: This is the number of times the Backspace key was pressed.

The following parameters and formula are used to calculate the speed and accuracy of the typing test conducted in the unrestricted mode:

1. Gross Words: This is the total number of words typed by the candidate; it includes both correct and incorrect words. Gross Words is calculated as: Typed words.

2. Gross Words per min (GWPM): The total number of words typed in one minute, GWPM is calculated as: Gross Words/Time taken in minutes

3. **Net Words:** The number of correct words typed. Net Words is calculated as: Correct Words

4. **Net words per min (NWPM)** = Net Words/Time taken in Minutes

Note: The above parameter (Net words per minute) has been considered for evaluation with defined criteria of @ 40 wpm in DDC JJA Exam.

5. **Accuracy:** The number of correct words entered. Accuracy of content is calculated as: $NWPM * 100 / GWPM$.

The above parameter (Net words per minutes) has been considered for evaluation with defined criteria of @ 40 wpm.

24. It is further argued that the Committee had also examined the issue raised in the representations regarding the criteria adopted in the earlier examination in 2017-2018 and found that the previous criteria was more difficult since more than 5% of mistakes resulted in penalizing the candidate ten times for a mistake.

25. Counsel for the Respondent submits that it is a settled law that it is in the domain of the employer to determine the methodology of evaluation in any process of selection/recruitment and it is not for the candidates or the Court to decide the formula or criteria that needs to be followed. It is also a settled law that it is not mandatory to disclose in the advertisements the methodology, by which the answer sheets would be evaluated and assessed. Respondent has adopted a simple methodology of deducting the wrong words from the typed words and dividing the same by the allotted time i.e. 10 minutes, to calculate the typing speed per minute. The formula is not unreasonable and the Court cannot in its scope

of judicial review examine its correctness or direct that a different/alternate formula be adopted for evaluating the typing speed.

26. Reliance is placed on a judgement of the Division Bench of this Court in *Ankit Thakran vs. The Registrar General, High Court of Delhi*, (2016) SCC Online Delhi 6556, which according to the Respondent covers the present case on all four corners. Reliance is also placed on *Maharashtra Public Service Commission vs. Sandeep Shriram Warade*, (2019) 6 SCC 362, wherein the Supreme Court held that it is for the employer to prescribe essential or desirable qualifications and it is the employer who is best suited to decide the attributes a candidate must possess according to the needs of the employer and the nature of the work.

27. Arguing in rejoinder, Mr. Dalal contends that having gone through the Minutes of Meeting dated 18.02.2020, shared with the learned counsel, during the course of hearing, it is clear that no decision was taken by the Respondent that there would be a change in the mechanism of evaluation of the answer sheets from the one followed in the earlier year. The Minutes indicate that the Respondent had left it to the Outsourced Agency to fix the criteria of evaluation and had subsequently only approved the criteria adopted by the Agency. It is not open to the Respondent to leave the fixation of the evaluation criteria to the Agency as that is an obligation and duty of the Respondent, which it was bound to discharge. Assuming that the Respondent wanted to adopt a new criteria different from the one followed earlier, the same should have been notified in the Advertisement. After the Tier-I Objective test over and result declared on 17.01.2020, the Rules could not be changed from the

ones set earlier. Mr. Dalal submits that the Minutes of the Meeting do not support the case of the Respondent and on the contrary reflect that there was no decision taken by the Respondent prior to the advertisement to adopt the unrestricted method of evaluation for the skill test.

28. Mr. Dalal emphasized the fact that even as late as on 13.02.2020 the stand of the Respondent was that in the skill test held on 21.01.2020, the evaluation method was as per the past practice and this is reflected from the response to the RTI.

29. The judgements relied upon by the Respondent are sought to be distinguished by Mr. Dalal. He submits that in *Ankit Thakran (supra)*, the Court had observed that there was no cogent material to show that there had been any change of practice with regard to the mode of computation of typing speed compared to previous years, which is not the case here. The judgement in *Maharashtra Public Service Commission (supra)* is also not applicable as the said case concerned the essential qualification of the posts in question which no doubt is a domain of the employer but that is not the issue involved in the present case.

30. I have heard the learned counsels for the parties and examined their contentions.

31. The present petition relates to recruitment to the post of Junior Judicial Assistants (Group-C) in the Office of District & Sessions Judge (Headquarters) Delhi, through an advertisement published on 14.09.2019. The required educational qualification is a 'Graduate' with typing speed of not less than 40 wpm on computer. Post of JJA is filled by the mode of Direct Recruitment and Promotion in the ratio of 4:1. Relevant part of the Recruitment Rule is as follows :-

Srl. No.	Name of Post	Method of Recruitment	Qualification etc.	Appointing Authority
(1)	(2)	(3)	(4)	(5)
23.	<i>Junior Judicial Assistant PB-I-5200- 20200+2800/-</i>	<i>a) 80% of posts by direct recruitment on the basis of written test and interview.</i> <i>b) 20% of the vacant posts by promotion from Head Jamadar / Daftri / Book Binder / Peon / Orderly / Dak Peon / Frash / Frash-cum-Dak Messenger / Chowkidar / Maali / Sweeper / Safai Karamchari on the basis of written test and interview.</i>	<i>a) Graduate with typing speed of not less than 40 words per minute on Computer.</i> <i>b) By promotion from members of the Establishment of this Court;</i> <i>(i) Matriculation pass or equivalent from a recognized board from the category of Head Jamadar/Daftri</i> <i>(ii) Matriculation pass or equivalent from a recognized board having five years service from the categories of Book Binder / Peon / Orderly / Dak Peon / Frash / Frash-cum-Dak Messenger / Chowkidar / Maali/ Sweeper / Safai Karamchari.</i> <i>They should have knowledge of English and speed of not less than 35 w.p.m. in typewriting.</i>	<i>District Judge</i>

32. The Scheme of Examination included an Objective Test (MCQ) of 120 marks. Candidates securing minimum 50% marks in General

Category and 45% marks in Reserved Category were eligible for appearing in the skill/typing test, which was qualifying in nature. The Descriptive test which was the third phase of the recruitment process was dispensed with and the next phase of recruitment was the Interview.

33. The issue with which this Court is concerned in the present petition is regarding the evaluation of the typing test. While it is the contention of the Petitioners that the evaluation should be on 'stroke' basis as followed in the past as also followed by the High Court and other Government Departments in accordance with the DOPT O.M. dated 17.05.2010, the Respondent contends that it has followed a simple mechanism i.e. 'unrestricted' mode of typing, under which incorrect words are to be deducted from the correctly typed words and divided by the time duration of 10 minutes.

34. The chronology of events indicates that the result of the written examination/MCQ test was declared on 06.01.2020 and notice for holding the skill test was issued on 07.01.2020. I have perused the Minutes of Meeting, shared by the counsel for the Respondent and it is revealed that the task of conducting the skill test and the formulation of the method for assessing/evaluating the typing speed was outsourced to an Agency. The methodology adopted by the Agency was discussed in detail by the Committee in two meetings held on 14.02.2020 and 18.02.2020. The representations received from certain candidates raising grievance with regard to the evaluation mechanism were discussed with the Agency at length again in the meeting held on 04.03.2020, who explained the reasons for adopting the unrestricted method of evaluation of speed. The Agency, as the minutes reflect, had submitted a detailed

report addressing the issues raised in the representations as well as by the Committee.

35. The Minutes record the two methods of evaluation which were possible to assess the skill test viz. 'Standard Mode' and 'Unrestricted Typing'. Agency informed that the Unrestricted Mode of Typing was used in the test held on 21.01.2020. The benefit of adopting the unrestricted method was explained to the Committee Members. Committee also reviewed the matter from the perspective of the criteria adopted for evaluation in the year 2017-2018. The Minutes further indicate that after having a detailed discussion, the Committee was of the unanimous view that the evaluation method adopted was founded on sound principles, which have been culled out in the Minutes and are as follows for a ready reference :-

- (i). Candidates were required to type atleast 400 correct words during the allotted time of 10 minutes in order to qualify the typing test. During evaluation incorrectly typed words were not taken into account while calculating the speed and only the correct words formed the basis of calculation.
- (ii). No penalty in the form of reduction of speed or any other form was imposed on the candidates for typing incorrect words.
- (iii). Use of 'delete' key and/or backspace was permissible in correcting a wrongly typed word within ten minutes.
- (iv). The number of strokes displayed on the computer screen at the end of the typing test were not indicative of the speed as these would include wrongly typed words, backspaces and use of 'delete' keys. Therefore, the

evaluation was done on the basis of number of correct words typed and not on characters/strokes typed.

(v). Since the evaluation mechanism was based on number of correct words typed, the question whether space with character would be counted for calculation of speed, became irrelevant.

36. After due deliberation, the Members of the Committee recorded their satisfaction on the evaluation method considered by the Agency. The Minutes also reflect that the representations were examined at length. The Agency explained in the meeting held on 04.03.2020 that in the Unrestricted typing method candidates were allowed to proceed with the typing test, even if the content was incorrectly typed. The incorrect text was highlighted in 'Red' and the correctly typed words were highlighted in 'Green' colour in the test. The candidates were allowed to use backspace and delete keys during the said process.

37. The Committee also concluded that the previous criteria adopted in the year 2017-2018 was rather more difficult since more than 5% of the mistakes resulted in penalizing the candidates 10 times the mistakes. Finally, the Committee expressed its satisfaction on the evaluation criteria adopted.

38. It is a settled law that it is in the domain of the employer to fix the criteria of recruitment/selection to the posts that are intended to be filled. As observed by the Supreme Court it is the employer who is best suited to decide the requirements of the post depending on the nature of work and also decide the evaluation mechanism/Scheme of an examination, so as to ensure that the candidates selected meet the threshold of efficiency required to carry out the job requirement of a post. It is neither the

domain of the Court to determine the method/criteria of selection nor does the Court have the necessary expertise to decide which criteria would be best suited to the job requirement. Supreme Court and various High Courts have repeatedly held that the Courts should not interfere in the examination processes with respect to the requisite qualifications and and in my view this shall apply with greater force to an interference in the methodology adopted to evaluate and assess the skill or trade tests.

39. In this context I may quote two passages from the judgement of the Supreme Court in ***Ran Vijay Singh vs. State of U.P., (2018) 2 SCC 357***, a reading of which shows that Constitutional Courts must exercise restraint in matters relating to examinations. Paras 31 and 32 are as follows :-

“31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.

32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination

exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination—whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.”

40. Useful in this regard would be to allude to the judgement of the Division Bench of this Court in **Ankit Thakran (supra)**. The said petition related to a challenge to a recruitment process for filling up the vacancies to the posts of JJA/Restorers in this Court and results of the typing test were assailed. Petitioners had contended that in the typing test the speed was evaluated without counting the space bars between the words and had the space bars been counted Petitioners would have scored higher speed per minute. It was also the contention that it was the practice in the previous year to treat the space bar as a character in calculating the typing

speed in the typing test for appointment of Junior Judicial Assistants/Restorers. The Division Bench observed that there was no hard and fast Rule that space bar must be counted as a character. The Authority conducting an examination in typing is entitled to fix its own rules with regard to the Examination. The nature of typing work required to be done in the Courts is different from the nature of typing work to be done in Government and other offices. The High Court is entitled to fix higher standards and need not necessarily conform to the standards applied by the Government Offices. Relevant paras of the judgement are as under :

“11. There is no hard and fast rule that space bar must be counted as a character. The space bar may or may not be counted as a character. The authority conducting an examination in typing is entitled to fix its own rules with regard to the examination.

12. The nature of typing work required to be done in the High Court and other Courts is different from the nature of typing work that is required to be done in Government and other offices. The High Court is entitled to fix higher standards. It is not necessary that the High Court should conform to standards applied by Government offices.

13. In the absence of any specific rule, which restricts the power of an employer to determine the typing speed, it is for the employer to determine the requisite typing speed for appointment.

xxx

xxx

xxx

16. There is no cogent material to show that there has been any change of practice with regard to the mode of computation of the typing speed, compared to previous years and in any

case, this is denied on behalf of the respondent. Furthermore there is no bar in law to making changes in the procedure of selection, in a subsequent year.

17. Vacancy notice does not specify the mode and manner of computation of the typing speed. The examining body may compute the typing speed in any legally acceptable manner, as long as the typing speed is uniformly assessed in case of all candidates.

18. We find no infirmity at all in the procedure adopted by the Registry of the High Court for assessment of the typing speed of candidates for the post of Junior Judicial Assistant/Restorer.”

41. In my view, the said judgement squarely covers the present case. The main plank of the argument of the Petitioners is two-fold i.e. there is a change of criteria after the selection process had begun, thereby changing the rules of game, midway and secondly, the evaluation mechanism followed in the previous years in the District Courts as well as in the High Court and Government offices must be followed by the Respondent. Following the judgement of the Division Bench, I find that in the present case there are no Rules which restrict the power of the Respondent to determine the typing speed by fixing its own criteria.

42. The Recruitment Rules extracted in the earlier part of the judgment, clearly stipulate the requirement of 40 wpm for the skill test and do not lay down any particular evaluation mechanism. The advertisement has been issued in line with the Recruitment Rules and also does not specify any particular criteria for assessing the typing test. Respondent is right in contending that since the advertisement did not prescribe any methodology to evaluate, it is wrong to contend that in

adopting the formula that was so adopted, the Respondent has changed the criteria midway. Once the rules for fixing the criteria were not set, it cannot be argued that the rules have changed or the goal post has been shifted. Therefore, the judgements relied upon by the Petitioners in the case of *K. Manjusree (supra)* and *Maharashtra State Road Transport Corporation & Others (supra)*, do not inure to the advantage of the Petitioners.

43. In so far as the argument that the Respondent should have followed the previous norms of the skill test adopted in 2017-2018 is concerned, the same has no merit. Each recruitment is an independent selection process and it is open to the employer to fix a criteria for selection/recruitment, which is best suited to the job description of the post in question, certainly with a caveat that the same should not be contrary to the Recruitment Rules of the post in question. As observed by the Division Bench, the Examining Body can compute the typing speed in any legally acceptable manner as long as the evaluation mechanism is uniformly applied to all the candidates.

44. In the present case, it is not even the case of the Petitioners that the evaluation mechanism has not been applied uniformly to all the candidates applying for the post. In this context I may quote a portion of the judgement of this Court in *Bhupinder Singh Negi and Ors. vs. Airport Authority of India and Anr., 2013 SCC Online Del 4524*, which is as follows :-

“3. On behalf of the petitioners, their counsel has drawn the attention of this Court to a letter dated 17.7.2012 issued by the respondent no. 1 to the respondent no. 2 wherein query was raised as to the aspect that one mark was deducted for

each mistake in the shorthand test conducted on 5.6.2011 whereas in the subsequent test which was conducted on 18.12.2011 two marks were deducted for each mistake in the shorthand test. It is argued that this change of criteria is illegal. However, counsel for the petitioners himself has drawn the attention of this Court to the letter dated 1.9.2012 sent by the respondent no. 2 to the respondent no. 1 and which specifies that two marks were deducted for each mistake because the test held on 18.12.2011 was made extremely simple at the last minute and therefore question paper was set much below the standard followed in previous examination. It is further clarified in this letter that marking is accordingly done by the same persons who have set the examination papers.

4. In the present case, the only right which can accrue to the petitioner would be on the basis of the respondents' actions being violative of Article 14 of the Constitution of India. In my opinion, there is no arbitrariness and consequent illegality in the action of the respondents in the present case for the same to violate Article 14 once it is seen that with respect to all candidates a uniform standard of marking is applied and given. The present is not a case where rules of the game are changed midway because issue is of marking/evaluation and not of change of any rules of selection which remains the same of clearing of the typing test and clearing of the shorthand and typing test thereafter.

5. In view of the above, I do not find any merit in the petition for the petitioners to be granted the reliefs, and who have been unsuccessful in the shorthand and typing tests as they have committed more mistakes than were permissible, and in fact there are other candidates who having committed less mistakes as per the uniform test applied were therefore selected.”

45. The Respondent has labored to explain how the formula that was adopted for evaluation was a better method in its wisdom to calculate the

speed and also that the previous methodology was disadvantageous to the candidates. The Minutes of the Meeting as noted above show a detailed consideration by the Committee Members to examine if the methodology was fair, transparent and did not disadvantage any candidate. Representations made by certain candidates have also been considered and all the pros and cons of the two alternate methods of calculating the speed have been examined at length. This Court is satisfied that the decision making process is not tainted or arbitrary or unreasonable and the decision to adopt a particular criteria for evaluation of the answer sheets or the skill test has been taken after due deliberation and is based on sound principles. Under Article 226 of the Constitution of India, this Court in its power of judicial review can only examine the decision making process and not the decision. This Court cannot direct the Respondent to adopt a particular criteria for evaluation, as is sought to be argued by the Petitioners, and that clearly is in the domain of the Respondent. The evaluation mechanism has been uniformly applied to all the candidates and calls for no interference by this Court.

46. For all the aforesaid reasons, I find no merit in the petition. The same is accordingly dismissed.

47. All pending applications stand disposed of.

JYOTI SINGH, J

DECEMBER 7th, 2020/yg