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

+ **Date of Decision: 10th August, 2017**

% **W.P.(C.) No.4829/2017 & CM Nos.20834/2017, 23433/2017**

UNION OF INDIA & ORS. Petitioners
Through: Mr.Ruchir Mishra, Adv.

versus

SUMIT KUMAR Respondent
Through: Mr.Ajesh Luthra, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petition assailing the order dated 21.02.2017 passed by the Central Administrative Tribunal in OA No. 215/2017 preferred by the respondent Mr. Sumit Kumar. The Tribunal has allowed the said OA along with two others, since the Tribunal considered that the issue arising in the said OAs was, more or less, the same.
2. The respondent/applicant was a candidate for Combined Higher Secondary Level (10+2) Examination, 2015 held for filling up various posts under the Union of India. He applied under the OBC category. Written Examination Paper-I was conducted on 06.12.2015 wherein the Respondent participated. On 29.07.2016, result of this examination was published and

he was shown as qualified for the descriptive type Paper-II. On 31.08.2016, the marks list was published in respect of the Paper-I examination in which the Respondent was shown to have secured 137 marks-which was more than the cut off marks, i.e. 119 for unreserved category, and 110 marks for the OBC category. He participated in the Paper-II examination held on 18.09.2016. However, the Respondent's candidature was rejected. This was done on the ground that on the cover sheet of his answer sheet, he had not mentioned the medium in which he was taking the examination, i.e. Hindi or English. Consequently, the Respondent preferred the aforesaid OA before the Tribunal being aggrieved by the rejection of his candidature.

3. Before the Tribunal, the Respondent contended that the inadvertent omission on his part of his not mentioning the medium in which he had answered the question paper was an insignificant omission. He submitted that the medium i.e, the language in which the questions were answered would be evident from a bare look at the answer sheet. He submits that he realized his mistake even prior to the declaration of the result, and made representations on 22.09.2016 and 04.10.2016 stating that the medium in which he had taken the examination be treated as English. The final result was declared only on 04.01.2017-failing the Respondent. He claimed that the Petitioner herein had failed to take note of the said representations.

4. The Tribunal has allowed the said OA by placing reliance on several decisions rendered by the Supreme Court and High Courts, namely; ***Commissioner of Police, Delhi & Anr. vs. Dhaval Singh***, (1999) 1 SCC 246, ***Charles K. Skaria & Ors. Vs. Dr. C. Mathew & Ors.***, AIR 1980 SC 1230, ***Dolly Chhanda vs. Chairman, JEE & Ors.***, (2005) 9 SCC 779, and ***Union of India, Ministry of Personnel & Ors. Vs. Guduru Raja Surya***

Praveen & Ors., W.P. No. 28874/2015 decided on 18.11.2015 by the Andhra Pradesh High Court. Reliance was also placed on decisions each from the Punjab and Haryana High Court in the case of **Rohit Kumar vs. Union of India & Anr.**, W.P. No.13730/2012 decided on 27.07.2012 and of the Rajasthan High Court in **Anil Kumar vs. State of Rajasthan & Ors.**, W.P. No.657/2012 decided on 02.01.2013. The order shows that several other decisions were also considered by the Tribunal, including its own order passed by the Tribunal in **Neha Nagar vs. DSSSB** in OA No.4445/2014 decided on 18.12.2015. The Tribunal has held that the omission on the part of the Respondent/Applicant was insignificant and not a material one. Consequently, the Petitioner could not have rejected the candidature of the Respondent on that ground.

5. Mr.Ruchir Mishra, learned counsel for the Petitioner submits that the candidates were required to fill the particulars as per instructions in the answer sheet in respect of Paper-II. The first page thereof contains, inter alia, the following instructions:

- (i) Answer Books not bearing Candidate's name, Ticket No., Roll No. and Signature wherever required will not be evaluated and such candidates would be awarded 'Zero' mark.
- (ii) The candidate may attempt the question paper either in English or in Hindi. The language so opted may be mentioned in the box shown against the language column.
- (iii) The candidates will be awarded "zero" marks if they have not filled in the language in the box, or if there is mismatch in the language filled in the box and the language in which question paper is attempted.

6. The submission of Mr. Mishra is that the aforesaid instructions would show that the candidates were clearly put to notice that they had to indicate whether they were attempting the examination in Hindi or in English language in the box shown for the purpose. It was also made clear to the candidates that they would be awarded 'zero' marks if they do not fill up the language/medium in the box, or if there is a mismatch in the language filled in the box and the language in which question paper is attempted. His submission is that the Respondent, by failing to adhere to the said instruction, had invited the rejection of his answer sheet and he could not have raised the grievance subsequently. His further submission is that since lakhs of candidates appear in the examination, the Petitioner cannot be expected to examine for itself the medium/language in which the answer sheet is answered by the candidate. It is further submitted that the sorting of the answer sheets, according to the language used by the candidate, may be undertaken by persons who may not know the Hindi language. Mr. Mishra has submitted that in all 489 candidates had failed to fill in the language in which they had answered the question paper and, consequently, their answer sheets were rejected. He further submits that the Petitioner cannot be expected to turn the cover page of the answer sheet to determine the language in which the answer sheet has been answered, since the same would breach the confidentiality which is required to be maintained.

7. He sought to place reliance on the decision of this Court in ***Tarun Kant Pant vs. Union of India & Anr.***, W.P. No. 3624/2012 decided on 13.02.2013. In this case, the candidate had failed to appear in the examination on the ground that he had not received the Admit Card. The Court held that the terms and conditions of the examination could not be

varied, even in circumstances where the candidate may not be at fault. He has also placed reliance on the decision of the Allahabad High Court in ***Ram Kailash Saroj & Anr. Vs. Government of India & Ors., W.A. No.48846/2006*** decided on 28.08.2012 which, in turn, places reliance on ***Dr. M. Vennila Vs. Tamil Nadu Public Service Commission, 2006 LAB. I.C. 2875***. The Madras High Court in ***Dr. M. Vennila*** (supra) held that the instructions contained in the information brochure are sacrosanct. Similarly, according to the Petitioner, the instructions printed on the answer sheets are sacrosanct and cannot be deviated from. In ***Ram Kailash Saroj*** (supra), the candidate had, instead of putting his signatures, written his name in capital letters. The Court rejected his claim made in the writ petition that the said omission could be overlooked. He further submits that the rules of the game could not be changed at the instance of the Respondent, merely because he and some other candidates did not fill in the language/medium in the box in which the question paper was answered.

8. Having considered the submissions of Mr. Mishra, and perused the impugned order as well as the decisions relied upon by him, we are of the view that there is absolutely no merit in this petition. The relevant instructions contained in the answer sheet have been extracted hereinabove. No doubt, they prescribe that the candidate should, inter alia, fill in the language in the box in which the question paper is being answered by the candidate, and any failure to do so would invite 'zero' marks. However, it also contains a note that the "*invigilator to sign after verifying that all particulars have been filled in/affixed by the candidate properly*". The opening sheet of the answer script of the Respondent-which is placed on record, shows that the invigilator had signed the same. Thus, not only the

Respondent/Applicant, but also the invigilator-who is an agent of the Petitioner, had failed to notice the omission on the part of the Respondent in indicating the language/medium in which the answer sheet was answered. According to the Petitioner, the said failure on the part of the invigilator should be of no significance or consequence, and the Respondent should be condemned for the said omission.

9. We may now consider the manner in which the Courts have dealt with similar situations. In ***Dhaval Singh*** (supra) the authorities had rejected the candidature of the applicant therein without considering the information conveyed by the respondent, which had cured the defect that had occurred in his form. Consequently, his candidature was restored.

10. The Supreme Court in ***Charles K. Skaria*** (supra) disapproved the ouster of the three candidates, merely for the reason that they had not produced certificate of diploma together with the application for admission. In this context Supreme Court in para-24 observed as follows:-

“It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in Administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities,

why, even bail orders from courts and government orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. **But a prospectus is not scripture and commonsense is not inimical to interpreting and applying the guidelines therein.** Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.” (emphasis supplied)

11. In **Dolly Chhanda** (supra), the candidature of the applicants to MBBS course were rejected on the ground that the certificate entitling them to reservation was found wrong on the date of counseling. The Supreme Court, while holding in favour of the candidates, observed as follows:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These

are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.” (emphasis supplied)

12. The Andhra Pradesh High Court in ***Guduru Raja Surya Praveen*** (supra) held that non-substantive and non-material irregularities should not result in denying benefit of evaluation of answer sheet of a candidate. Paras-7 to 10 of this judgment have been relied upon by the Tribunal, which read as follows:-

“7. However, it is not the same with regard to entering the test form number, ticket number and roll number. The first respondent has entered his ticket number, roll number and also the test form number very accurately against the respective columns. There is no difficulty or denying of this fact. There is also no denying the fact that he has thickened the appropriate circle with regard to all the digits of ticket number and roll number. Only with regard to test form number while the initial four circles have been accurately thickened, the last two columns relating to thickening the letter P and digit 3 were left without being thickened. It is so obvious that there was lapse of concentration on the part of the first respondent in omitting to thicken two out of six columns relating to the test form number. Therefore, the failure to thicken two relevant circles with regard to the test form number namely letter P and digit 3 will not in any manner materially or substantially alter or cause hardship in evaluating the answers which have been furnished for the

questions 1 to 200. At best, it would require a little more time to be spent on the part of the concerned at the stage of tabulating the marks secured by the respective candidates. But in no manner, it will impact the process of evaluating the answer sheets. We are, therefore, of the opinion that such non-substantive and non-material irregularities shall not result in denying the benefit of evaluating of the answer sheet of a candidate.

8. One should not loose sight of the fact that the primary concern and aim of the Staff Selection Commission was to select the most meritorious candidate amongst the competing candidates. With a view to maintain the accuracy and integrity of the process of evaluation of the answer sheets, instead of undertaking evaluation manually the process of errs furnished for questions 1 to 200, the failure of any candidate to thicken any other column relating to the test form number, ticket number or roll number will not come in the way or cause any hindrance. For instance, a candidate may not be knowing answers for certain number of questions and hence he may not chosen to take a chance and may not have thickened any of the four options on the answer sheet for such questions. That will not come in the way of the computer reading the rest of the questions answered by him and awarding marks for the correct answers furnished by him. For the failure to thicken all the circles of the ticket number, at best, the evaluated marks may not automatically be posted in the record relating to the respective candidates. It might require a verification by one concerned or the other of such an answer sheet. But, that is no reason for denying the evaluation itself.

9. Providing an equal opportunity to compete for selection to public employment is a fundamental right enshrined under

Articles 14 & 16 of our Constitution. In matters of such fundamental rights, no impediment which is more in the nature of a technicality should be allowed to play a substantive role resulting in denial altogether of such rights. To the extent possible, fundamental rights should be allowed to have a free flow effect and impact. Therefore, looked at from any perspective, failure to thicken a couple of circles not with regard to the answers to be furnished by the candidate to the questions 1 to 200, but with regard to the test form number, in our opinion would not be fatal. In fact, in the present case, the test form number has been accurately filled-in, in the column provided for that purpose in the answer sheet. There is also a corresponding verification exercise by thickening the circle concerned furnished down below the test form number. Due to lapse of concentration, obviously induced by the enormous pressure, one would feel at the initial stage of subjecting himself to an examination, an error resulted in not thickening the circle relating to the token number and such technical error should not result in negation of the right to be considered for public employment notwithstanding the demonstrable merit processed by the candidate concerned. We are, therefore, of the opinion that the failure on the part of the Staff Selection Commission to evaluate the answer sheet of the respondent relating to Paper-II of the Tier-II test that was conducted on 12.04.2015 as an erroneous decision.....”

(emphasis supplied)

13. In **Rohit Kumar** (supra), the Punjab & Haryana High Court was dealing with a case where, while filling in OMR (Optical Mark Recognition) sheet, the petitioner had wrongly darkened the roll number, although in letters he had rightly filled his roll number. The Court held that for such mistake, his career should not be jeopardized.

14. In **Anil Kumar** (supra), the candidature of the applicant had been rejected because he had failed to mention his gender in the OMR sheet. The Rajasthan High Court allowed his Writ Petition, and directed the respondents to examine him on merits.

15. In **Subhanta Devi** (supra), the applicants had committed a minor mistake relating to darkening the circles pertaining to their date of birth. The respondents were directed to evaluate the OMR sheets of the applicants and consider their cases for appointment.

16. In **Sandeep Kumar** (supra), the candidature of the respondent was upheld by the Hon'ble Supreme Court, taking a lenient view of the situation and holding that at young age, people often commit indiscretions, and such indiscretions can often be condoned.

17. In **Gyan Prakash Srivastava** (supra), the respondent was a candidate for the post of Legal Advisor-cum-Standing Counsel in Land and Building Department, Government of N.C.T of Delhi. The Commission had rejected his candidature on the ground that he had not enclosed any document to show that he had been awarded Degree in Law by a recognized University. The CAT and the High Court had nullified the decision of the Commission. The Supreme Court observed that the respondent had attached with his application the certificate issued by Bar Council of Uttar Pradesh. The respondent had been appointed as Asstt. (Legal) and Officer on Special Duty (Litigation) in the employment of the Central Government. The Supreme Court ruled that sufficient evidence was available before the Commission to come to the conclusion that the applicant possessed a valid law degree. Otherwise, neither the Bar Council of Uttar Pradesh would have issued

such a certificate to him, nor could he have been in employment of the Central Government for which he was duly selected by the Commission. On the basis of the aforesaid, the appeal filed by UPSC was rejected by the Supreme Court.

18. This Court, in **Neeraj Kumar** (supra), held that instructions given to candidates-not to sign in block letters in English, was merely directory and not mandatory.

19. Thus, there is sufficient authority available to guide us in the matter, and what emerges is that the minor omissions, which do not come in the way of the examining body in fairly evaluating the candidature of the candidates-without compromising the confidentiality required to be maintained in the examination, should not be accepted as an excuse to reject the candidature of the candidate. The claim of the Petitioner that each and every instruction issued by the examining body in relation to an examination process is sacrosanct, and has to be rigidly and strictly *followed to the T*, cannot be accepted.

20. The examining body is examining and evaluating human beings. The Petitioner is undertaking the task by employing human beings to conduct the examination; sort the answer scripts; have them evaluated; compile the result and; declare the same. Since the Petitioner is undertaking their tasks by employing human beings-who necessarily have to be persons of normal and reasonable intellect, they cannot shirk their responsibility of using their common sense, and they cannot work mechanically-like machines. The Petitioner cannot say that its personnel - undertaking the sorting of answer scripts for the purpose of evaluation according to the medium/ language used by the candidate,

would not even move their little finger to flip a couple of pages of the answer script, to find out what medium/ language has been used by the candidate, in case the candidate has, inadvertently, failed to indicate on the cover sheet the medium/ language used by him. This completely “hands-off” approach of the Petitioner cannot be appreciated, considering the fact that it is entrusted with the task of evaluating young aspirants vying for public employment. Such indifference on the part of the Petitioner not only mars the promising career of a young and deserving aspirant, but may also deprive the employer of a worthy, deserving and meritorious candidate.

21. Thus, it is clear to us that not every omission committed by a candidate would have the consequence of his answer sheet being rejected, or being awarded ‘zero’ marks. It would depend on the nature of the omission committed by the candidate. The candidates for the examination in question are mere school pass-outs. If there has been a failure on the part of a candidate to fill up the column relating to the medium/ language in which the answer sheet has been written, the same is not such a significant omission, as could not have been remedied by the personnel of the Petitioner itself. All that they had to do was, to turn over a couple of pages and see for themselves the language in which the answer sheet had been answered.

22. The submission of Mr. Mishra that the answer sheet cannot be looked at by turning the opening sheet, since it would breach confidentiality, has no merit. This is for the reason that on the answer sheet itself, nothing can be written which would personally identify the candidate, for example, name, roll number, mobile number, address etc.

If the submission-that turning a couple of pages would breach confidentiality were to be accepted, it would mean that the system adopted itself is flawed, since it cannot be ensured that the persons handling the answer sheets would never get to see, or even glance at, the contents of the answer sheets, so as to be able to make out the language in which it has been answered. If the Petitioner's submission had any merit, certainly, the Petitioner would have adopted a system, where the opening sheet-which contains the Form, would not form part of the answer sheet itself, and would be filled up separately by the candidate. That is not the case. Moreover, to notice the medium/language used by a candidate in his answer script, is not to read the answers. When one looks at a writing, one notices the medium/language used, without actually reading any of the written text-for reading of the text requires one to focus on the content which one seeks to read, which is not required to only notice the language/medium used in the script. Thus, the mere turning of the answer script-to observe the language/script in which it has been written does not tantamount to reading it, or breaching its confidentiality.

23. Even if someone were to even read the answer script, it would not lead to breach of confidentiality. After all, all answer scripts have to be read by the examiner who evaluates them. Merely by reading the answer script, the examiner does not become aware of the identity of the examinee. Thus, this submission of Mr.Mishra, which is completely misplaced, is rejected.

24. The submission of Mr.Mishra that lakhs of candidates take the competitive examination, and the Petitioner cannot be expected to

undertake such an exercise for all the candidates who may have made an inadvertent lapse, is also misplaced. It is not the Petitioner's case that such an innocuous omission is rampant. The percentage of such cases is low. According to the Petitioner, out of lakhs of candidates who took the examination, 489 candidates had omitted to indicate on the cover sheet the language/medium in which the answer sheet had been answered. Thus, the number is not a very high percentage. In any event, it is so easily remediable that we see no reason why the person concerned—who is sorting the answer scripts, cannot apply his mind (and not much of it is required), to do the needful.

25. The submission that the person concerned may not know Hindi, also has no merit. The examination could be undertaken either in English or in Hindi language. The cover sheet contains the instructions in both the languages. The candidates may fill up the particulars in either of the language. Thus, firstly, the concerned person who is employed to sort the answer sheets should be aware of both the languages to be able to perform his job. Secondly, if he knows either one of the languages, and finds that the answer script is not written in that script, by default it would follow that it is written in the other language—as there are only two options/languages in which the question paper could be answered.

26. Reliance placed by Mr. Mishra on the aforesaid decisions is also misplaced. ***Tarun Kant Pant*** (supra), as noticed above, was a case where the candidate did not appear in the examination on the ground that he had not received the Admit Card. Obviously, this was a completely different fact situation. The candidate who could not appear

in the examination for whatsoever reason, cannot claim right to be considered. Similarly, reliance placed on ***Ram Kailash Saroj*** (supra) is misplaced. In this case, the candidate had written his name in capital letters, instead of signing the Form. The purpose of requiring the candidate to sign the Form is to ensure that no other person is impersonating him while taking the examination. Otherwise, it is possible that some other person may impersonate the candidate, and may put the name of the candidate in capital letters instead of putting the signatures, as the signatures put by him would not match the ones affixed by the candidate while filling the application examination form, and impersonation may be detected. This is not the situation in the case in hand. Reliance placed on ***Dr. M. Vennila*** (supra) is also misplaced. That was a case where the candidate had not affixed his signature on the answer sheet. It was for this reason that the Court held that the answer sheet was not authenticated, and could not be considered as valid.

27. The submission of Mr. Mishra that allowing the Respondent's candidature would tantamount to changing the rules of the game, or that the Tribunal or this Court is not authorized to do so, has no merit. The Tribunal has not changed the rules of the game. It is only a question of the manner in which the Petitioner is processing the answer sheets. The Petitioner should be conscious of the fact that it is dealing with the career of young candidates. They are not being tested for their skill in filling up the Form. They were to be tested with the objective of selecting the best and most meritorious candidates on the basis of the answers given by them in the examination.

28. For the aforesaid reasons, we find no merit in the instant petition and the same is, accordingly, dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

AUGUST 10, 2017
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