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

+ W.P.(C) 2519/2017 and CM APPL. 10882/2017 (stay)

LALIT KUMAR

..... Petitioner

Through: Mr. Ram Kumar, Mr. K.K. Nangia and
Mr. Sushil Kumar, Advocates

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Mrinalini Sen and Ms. Kritika
Gupta, Advocates with Mr. Vinesh Kr., SO, SSC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **20.03.2018**

1. The petitioner is aggrieved by his non-selection to the post of Constable (GD) in the recruitment examination conducted in the CAPFs, NIA & SSF and Rifleman (GD) in Assam Rifles Examination, 2015.
2. The facts of the case as narrated in the writ petition are that the respondent No.3/SSC had issued an advertisement in the Employment News on 24.01.2015 for filling up 62,390 vacancies to the post of Constable (GD) in the CAPFs, NIA & SSF and Rifleman (GD) in Assam Rifles Examination, 2015. Under the scheme of the examination, the candidates were required to fulfil a Physical Standard Test (PST) and Physical Efficiency Test (PET) and thereafter participate in the written examination and finally, the medical examination. The candidates, who would clear the PST and PET were expected to participate in the written examination

conducted in both, online and offline modes on 04.10.2015. The written examination that consisted of one objective type paper containing 100 questions carrying 100 marks each, had the following composition:-

	Subject	Number of Questions	Maximum Marks	Duration/ Time Allowed
Part A	General Intelligence and Reasoning	25	25	Two Hours
Part B	General Knowledge and General Awareness	25	25	
Part C	Elementary Mathematics	25	25	
Part D	English/Hindi	25	25	

3. All the questions in the written examination were objective multiple choice questions. At the footnote of para 8(II) of the advertisement, four Notes were inserted for the information of the candidates. Note-2 that is relevant for deciding the present case, states as below:-

*“**Note-2:** The Commission will not take cognizance of representations regarding the Question Paper of Written Examination, received later than **ten days** after placement of answer keys on the website.”*

4. The Notice of Examination had made it clear that only those candidates, who would score above the cut off marks fixed by the respondent No.3/SSC in the written examination could appear in the medical examination to be conducted by a Medical Board constituted by the CAPFs. Further, in para 11 of the of the said Notice, the respondent No.3/SSC had laid down the manner in which it proposed to resolve cases where there was

a “tie” between candidates in the following words:-

“11. RESOLUTION OF TIE CASES

- (a) *The tie is resolved by the Commission by referring to the total marks in the written examination i.e. a candidate having more marks in the written examination gets preference over the candidate(s) with less marks.*
- (b) *If the tie still persists then the marks in Part A are referred to i.e. a candidate having more marks in Part A is given preference.*
- (c) *If the tie still persists, the candidate older in age gets preference.*
- (d) *If the tie still persists, it is finally resolved by referring to the alphabetical order of names i.e. a candidate whose name begins with the alphabet which comes in the alphabetical order gets preference.”*

5. The petitioner who wished to participate in the CAPFs, NIA & SSF and Rifleman (GD) in Assam Rifles Examination, 2015 submitted an application and appeared at the Examination Centre at Delhi on 04.10.2015. The re-examination was conducted on 22.11.2015. The answer keys were uploaded by the respondent No.3/SSC on 27.01.2016 and representations were invited from the candidates online, by 6 PM on 02.02.2016. In response to the aforesaid notice amongst others, the petitioner had also submitted a representation in respect of question No.23 in Part A of the written examination claiming that he had ticked the correct answer, i.e., Option (C), but no marks were assigned to him.

6. The representations received from the petitioner and the other candidates were duly considered by a panel of subject experts who modified the answer keys that were uploaded on the website of the respondent No.3/SSC on 25.02.2016. A copy of the ID Note dated 25.02.2016 and the modified answer keys have been annexed by the respondents with the

counter affidavit and marked as Annexure R-3.

7. The result of the written examination was published by the respondent No.3/SSC on 07.04.2016 which revealed that the petitioner had secured 77 aggregate marks in the written examination, which was above the cut off marks for the unreserved candidates. Having qualified for participating in the medical examination, he was examined on 30.06.2016 (erroneously typed out as “14.03.2016” in para 7 of the brief background of facts set out as prelude to the counter affidavit). In the course of processing the final result, it transpired that the petitioner’s case came under the ‘*tie case*’, which had to be decided as per the procedure prescribed in para 11 of the Notice of Examination, extracted hereinabove, which laid down that a ‘*tie*’ had to be resolved by referring to the total marks secured by a candidate in the written examination and a candidate having more marks in the written examination would get preference over the one who had secured less marks. Further, it was clarified that if the ‘*tie*’ still persisted, then the marks in Part A must be referred to and a candidate securing more marks in Part A would be given preference.

8. The respondents have clarified in their counter affidavit that in the instant case, the last selected unreserved category candidate from Uttar Pradesh had secured 23 marks in Part A and an aggregate of 77 marks in the written examination. Although the petitioner herein had secured an aggregate of 77 marks in the written examination, which was equal to the marks secured by the last selected unreserved category candidate, it turned out that he had secured only 22 marks in Part A of the written examination, which happened to be one mark less than the marks of the last selected unreserved category candidate. Consequently, the petitioner could not make

it to the final merit list.

9. On 31.01.2016, the petitioner adopted the RTI route to gather information with regard to the correct answer to question No.23 in Part A of the written examination and also preferred an Online RTI Appeal dated 20.02.2017, but the requisite information was declined on the ground that the answer to the query posed was not available. Thereafter, the petitioner filed the present petition on 16.03.2017, claiming inter alia that had he been awarded one mark in respect of question No.23, then he would have secured a total of 23 marks in Part A of the written examination and his total aggregate marks would have come to 78, thereby making him eligible for selection to the subject post, vis-a-vis the other candidate, who had secured 77 marks. Learned counsel for the petitioner urges that the dispute regarding correct answer to question No.23 can be resolved by having the same checked in the Department of Mathematics, Delhi University or any other University.

10. Counsel for the respondents have opposed the aforesaid request by stating that after the answer keys were uploaded on their website by the respondent No.3/SSC on 27.01.2016, representations were invited from all candidates online and on receiving the said representations including one made by the petitioner, a panel of subject experts had considered and modified the answer keys that were duly uploaded on 25.02.2016. She submits that if the petitioner had a genuine grievance with regard to the modified answers uploaded on 25.02.2016, he ought to have sought immediate legal recourse. Instead, he accepted the view taken by the respondent No.3/SSC that had uploaded the modified answer keys on its website, whereby questions No.4 and 7 of Part A (General Intelligence and

Reasoning) and questions No.42 and 47 (General Knowledge and General Awareness) alone were modified. It is submitted on behalf of the respondents that the present petition deserves to be dismissed on account of the gross delay and *laches* on the part of the petitioner in approaching the Court, inasmuch as he has elected to agitate the issue of the alleged improper modification of the answer keys that were uploaded by the respondent No.3/SSC as far back as on 25.02.2016 and much after declaration of the final result on 02.02.2017, only because his case turned out to be a “*tie case*” It is contended that once the petitioner had accepted the modified answer keys as a final decision and proceeded to appear for his medical examination without raising any objection, he is deemed to have waived his right to question the answer keys uploaded by the respondents on 25.02.2016.

11. As for the plea taken by the petitioner that the dispute raised in this petition ought to be resolved by referring the matter to the Department of Mathematics, University of Delhi, learned counsel for the respondents has relied on the decision of the Supreme Court in the case of Himachal Pradesh Public Service Commission vs. Mukesh Thakur reported as **(2010) 6 SCC 759** to canvass that it is a settled legal proposition that the Court cannot take upon itself the task of Statutory Authorities. Learned counsel submits that once the answer keys had been applied uniformly to all candidates sitting in the subject examination, the question of reviewing the answer keys under Article 226 of the Constitution of India does not arise, more so when the entire process of the examination stood concluded, on declaration of the final results on 02.02.2017.

12. We have heard the arguments advanced by the counsels for the parties

and carefully perused the records.

13. It is apparent from the records that the petitioner could not get selected in the final merit list on the application of the provisions of para 11 of the Notice of Examination as the marks secured by him in Part A of the written examination were one mark less than those secured by the last selected unreserved category candidate. The petitioner had marked Option “(C)” against question No.23 of Part A of the written examination, whereas the respondents had declared the correct answer to the said question as Option “(D)”. While declaring the correct answer keys for the question paper vide notice dated 27.01.2016, uploaded on their website, the respondent No.3/SSC had also invited representations/objections to the answer keys from all candidates. The representation made by the petitioner and other candidates were duly considered by a panel of subject experts, who gave an opinion rejecting the petitioner’s representation and maintaining the correct answer to question No.23 of Part A as Option “(D)”.

14. The aforesaid decision was not challenged by the petitioner till after the declaration of the final result on 02.02.2017. The only reason for the non-selection of the petitioner was that there was a ‘tie’ with another candidate, who had also secured an aggregate of 77 marks but had happened to secure more marks than the petitioner in Part A of the written examination and therefore, was given preference over him in terms of para 11(b) of the Notice of Examination. It is not as if the respondents have treated the petitioner on a different footing vis-a-vis the other candidates, who had participated in the subject examination. The answer keys have been uniformly applied to all the candidates in the examination and in the aforesaid facts and circumstances, there is no scope of this Court to exercise

its powers of judicial review only to direct a third agency to go into the dispute raised by the petitioner with regard to the correct answer to question No.23 of Part A of the written examination.

15. In the above context, we may refer to a recent decision of the Supreme Court in the case of Ran Vijay Singh & Ors. vs. State of U.P. & Ors. reported as (2018) 2 SCC 357, wherein it was held as below:-

“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.***"
(emphasis added)

16. In the instant case, lakhs of candidates had applied for participating in the Examination-2015, for filling up 62,390 vacancies in the subject post for which Examination Centers were established in about 100 cities all over the country. Given the number of participants and the scale of the examination, there is no good reason for this court to refer the dispute raised by the petitioner in the instant case to a third Agency, as requested, particularly when the Notice of Examination had laid down the procedure required to be adopted in cases of a "tie" and had followed it to the "T". Simply because the petitioner got wiser later on when the procedure prescribed to break the "tie up" was applied in his case, would not be a ground to permit him and that too at this belated stage, to re-agitate the very same grievance that was raised by him when the respondent No.3/SSC had uploaded the answer keys on its website on 25.02.2016 and the panel of subject experts had considered and rejected his representation.

17. Much water has flown under the bridge by now, as the final merit list was also declared over a year ago, in February, 2017. It is too late in the day

for the petitioner to seek reassessment/modification of his answer sheet in respect Question No.23 in Part A of the written examination. Even otherwise, this court is not inclined to go into this issue by sitting in appeal over the decision of the panel of subject experts, as such an exercise is considered beyond the scope of judicial review. As held by the Supreme Court in the case of Mukesh Thakur (supra):-

“20.it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.” (emphasis added)

18. In view of the aforesaid discussion, we are of the opinion that no ground has been made out by the petitioner for this court to exercise its extraordinary powers vested under Article 226 of the Constitution of India, in his favour. The present petition is accordingly dismissed as devoid of merits alongwith the pending application.

HIMA KOHLI, J

PRATIBHA RANI, J

MARCH 20, 2018

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