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

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Date of Decision: 29.04.2019

% **W.P.(C) 4418/2019**

ASHISH KANCHAP

..... Petitioner

Through: Mr. Omung Gupta, Adv.

versus

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mrs. Avnish Ahlawat, St. Counsel,
GNCTD (Services) with Mr. N.K.
Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. Issue notice. Ms. Ahlawat accepts notice on behalf of respondents. Looking to the nature of controversy raised, and the order that we propose to pass, we do not consider it necessary to call for a reply from the respondents.

2. The petitioner assails the order dated 12.03.2019 passed by Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 815/2019. The learned Tribunal has rejected the petitioner's Original Application, wherein his grievance was that in relation to six questions

posed in the examination for the post of Primary Teachers in the Govt. of NCT of Delhi vide Advertisement No. 02/2017 (post code No. 16/17), the answer key issued by the respondent in relation to part 'A' question paper of the examination conducted on 30.09.2018, was incorrect. In the original application, the petitioner specifically set out the said six questions; the key answers, and; the answers which, according to him, were correct. The relief sought in the Original Application were the following:

"I. Allow the present Original Application.

II. Direct the Respondent No. 1 to delete the aforementioned 6 questions holding them to be incorrectly marked by the Respondent in the answer key and grant marks for the abovementioned 6 Questions to the Applicant, and;

III. Direct the Respondent No. 1 to redraw the result of the Applicant after adding the marks in light of clause II of the prayer, and/or;

IV. Pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case."

3. While rejecting the Original Application, the Tribunal takes note of the prayer made in paragraph (II) and (III) quoted hereinabove. The Tribunal also takes note of the relief that the result by redrawn after adding six marks.

4. The reason why the Tribunal has rejected the Original Application is found in paragraph 5 of the impugned order, which reads as follows:

"5.The relief claimed in the OA is in fact objectionable. The nature of relief claimed by the applicant can be considered, if only, a declaration to the effect that the questions objected to by him were not properly framed or that the answer keys were not

correct. Without seeking such a declaration, the applicant straightaway claimed for addition of marks to him. Secondly, in all fairness to the candidates, the respondents published a draft key inviting objections. The applicant raised objections to six questions and through an order dated 05.12.2018, they rejected the same. The applicant did not choose to challenge the said order.”

5. We are afraid, we cannot agree with the reasoning, or the approach of the Tribunal. The reason for rejection of the Original Application is that the petitioner had not sought a declaration to the effect that the questions objected to by him, were not properly framed, or that the answer keys were not correct. The Tribunal is of the view that without seeking such a declaration, the petitioner/ applicant could not have straight away claimed addition of marks to him. The other ground on which the Tribunal rejected the Original Application was that the petitioner’s objection to the model answer key was rejected on 05.12.2018, and the petitioner has not assailed the same.

6. The Tribunal, in our view, has taken a hyper-technical approach in the matter. The petitioner has set out in the Original Application itself, detailed grounds as to why, according to him, answer key in relation to six questions was incorrect. The relevant grounds set out in the Original Application are the following:

“E. Because in Question No. 75 of Question Booklet A, the question was what is the opposite gender of tiger (Baagh) called? The options were as mentioned below:

(A) Baaghi, (B) Baghani, (C) Baghni, (D) Baghini

It is pertinent to mention herein that the correct answer as per the answer key by the Respondents is “C”. However, as per the NCERT Class 5 Hindi Textbook, Chapter 14 titled as “Baagh Aaya” at page No. 113, the opposite gender of Baagh is “Baghin”. Further, as per the DSSSB TGT Hindi Paper Series JDD 40 TGT Hindi X 14 Set A, Question No. 73, the correct answer is Baghin.

Therefore, this clearly showcases that Question No. 75 has been incorrectly marked by the Respondents.

F. Because Question No. 133 in the Question Booklet A sought to as “A language used primarily in our home, chool and societal environment for communication is called?” and the options given are as under:

(A) Mother Tongue, (B) First Language, (C) Home Language, (D) None of the Above

It is humbly submitted that the as per the answer key provided by the Respondents, the correct answer is (B), however, as per the NCT 2005, Chapter 3, sub topic 3.1.2 at page No. 37, it is clearly mentioned that Home, First Language(s) or mother tongue language are all the same or one and that there is no difference as they are synonyms.

Therefore, the correct answer should be multiple, i.e. option (A), (B) and (C).

G. Because Question No. 134 of the Question Booklet A was “What is the full form of CCE?” and the options given were as under:

(A) Continuous and Comprehensive Education

(B) Child Care Enforcement

(C) Child Centric Education

(D) Child Care Education

It is submitted that as per the answer key, the correct answer to the aforesaid question is option (C), however, as per the NIOS Block 2 (510), at page number 54, CCE stands for Continuous Comprehensive Education. Thereby, clearly the answer provided by the Respondent in the answer key is incorrect as the correct answer shall be option (A), i.e., Continuous Comprehensive Education.

H. Because Question No. 141 was “The teaching of _____ develops ethical values in the learners.” and the options given in the Question paper were as under:

(A) Sociology, (B) History, (C) Civics, (D) Economics.

It is humbly submitted that the correct answer as per the answer key by the Respondent is option (B), i.e., History. However, as per the NCF 2005, Chapter 3, Sub Topic 3.4 at page No. 58, it is stipulated that “Samajik Vigyan” which translates in English to “Sociology”, develops ethical values in learners. Therefore, clearly showcasing that the evaluation done by the Respondents in the said Question is incorrect as the correct answer is option (A), i.e., Sociology.

I. Because Question no. 181 was “The purpose of _____ is to mobilize the resources of the child and make energy available for activity in order to meet the new situation.” and the options given in the answer key were as under:

(A) Pressure, (B) Tension, (C) Motivation, (D) Aggression

It is submitted that the answer as per the answer key was option (B), i.e., Tension however, as per the NCERT class 11 textbook of Psychology, Chapter 6 at page no. 129, it is clearly mentioned that the purpose of Motivation is to mobilize the resources of the child and make energy available for the activity in order to meet the new situation.

J. Because Question No. 184 was “The direction of development is _____” and the options given in the question paper were as under:

(A) Cephalo-caudal, (B) Proximo-distal, (C) Both (A) and (B), (D) None of the above.

It is submitted that the answer as per the answer key is (B), i.e., Proximo-distal. However, as per the NCERT textbook of class 11 on the subject of psychology, in chapter 4 at page no. 74 as well as in the NIOS booklet, Block 1 (506), chapter 1, at page no. 3, it is mentioned that the direction of development is Cephalo-caudal as well as Proximo-Distal. Therefore, the correct answer is option (C), i.e., both (A) and (B).”

7. The petitioner was not obliged to independently seek “declaration”, inter alia, that the answer keys were not correct. The relief that he sought was premised on the submission that the answer key was not correct and, therefore, the relief of “declaration” was implicit by the relief that he had sought. Secondly, merely because the petitioner had not challenged the order dated 05.12.2018, was no reason to reject the Original Application when the said rejection was mechanical. Pertinently, the order dated 05.12.2018 – rejecting the petitioner’s objections to the model key answers, was completely unreasoned and it only tabulated the petitioner’s objection and disclosed the “challenge status” as “rejected”. The Tribunal is not bound by strict rules of procedure contained in the Code of Civil Procedure (Section 22(1) of the Administrative Tribunals Act, 1985). Its proceedings are guided by the principles of natural justice. The CAT (Procedure) Rules, 1987 also do not contain any rule which could justify the rejection of the Original Application on the grounds disclosed in the impugned order.

8. We are conscious of the fact that the remand of cases by this Court to the Tribunal leads to burdening of the docket of the Tribunal. However, in such like situations, that is the only course left open to us to adopt, since, it is the Tribunal's responsibility and jurisdiction to examine the claims/ disputes on merits in the first instance.

9. We, therefore, set aside the impugned order and remand the Original Application back to the Tribunal for consideration on merits. Since the Original Application, apparently, was rejected even without notice to the respondents, we issue notice to the respondents in the Original Application, and the respondents may file their response within four weeks.

10. The parties shall appear before the Tribunal on 30.05.2019.

11. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

REKHA PALLI, J.

APRIL 29, 2019

N.Khanna