

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

% **Date of decision: 19th October, 2020.**

+ **W.P.(C) 8142/2020, CM No.26407/2020 (of the petitioner for direction) & CM No.26408/2020 (of the petitioner for taking on record additional documents)**

ROHIT DABAS

.... Petitioner

Through: Mr. Anuj Aggarwal, Adv.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Nitesh Kumar Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a candidate for recruitment as a Warder (Male), applications wherefor were invited by the respondents Delhi Subordinate Services Selection Board (DSSSB) vide Advertisement dated 24th October, 2017, has filed this petition (a) impugning the order dated 19th August, 2020 of the Central Administrative Tribunal, Principal Bench, New Delhi of dismissal of OA No.834/2020; and, (b) seeking a direction to the respondents DSSSB to supply to the petitioner copies of the answer sheet with complete status of questions/answers attempted by the petitioner.

2. It is the case of the petitioner, that (i) he took online examination held on 18th June, 2019 for the subject post and in the result thereof declared on 25th September, 2019 was shown to have secured 84 out of 200 marks as against the pass marks of 81.25 for OBC category candidates and to which category the petitioner belongs; (ii) as per the self assessment of

the petitioner, he should have secured much more than 84 marks; (iii) the respondents DSSSB uploaded answer sheets of several online examinations for various posts conducted pursuant to the same Advertisement dated 24th October, 2017 but failed to upload the answer sheets of the examination taken by the petitioner for the post of Warder (Male); (iv) the petitioner, being desirous of seeing his answer sheet, on 26th September, 2019 preferred an application under the Right to Information Act, 2005; (v) however the respondents DSSSB, vide reply dated 20th December, 2019 rejected the said request, citing *UPSC Vs. Angesh Kumar* (2018) 4 SCC 530; (vi) the final result of provisionally recruited candidates was declared on 12th March, 2020 and in which the last candidate selected for the post of Warder (Male) in the OBC category had 94 out of 200 marks; (vii) the petitioner, as per the answers given by him, was expecting 110 marks; (viii) the petitioner made several visits to the office of the respondents DSSSB, seeking his answer sheet with the status of the questions attempted but was not furnished the same; (ix) the respondents DSSSB, on 10th June, 2020 declared a supplementary result and in which the marks of the last candidate provisionally selected for the post of Warder (Male) in the OBC category were 93.75 out of 200 marks i.e. again less than 110 marks which the petitioner expected; and, (x) the petitioner got served a legal notice dated 20th June, 2020 on the respondents DSSSB and on not receiving any reply thereto, preferred OA No.834/2020 aforesaid before the Central Administrative Tribunal, Principal Bench, New Delhi and which has been dismissed vide impugned order dated 19th August, 2020.

3. It is the contention of the counsel for the petitioner that the reliance by the respondents DSSSB on *UPSC Vs. Angesh Kumar* supra is

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misconceived since that was a case pertaining to subjective type test with essay type answers and which is not the case here. It is argued that the online examination taken by the petitioner was objective type and just like the answer sheets of several other examinations held pursuant to the same advertisement were put up on the website, the answer sheets of the petitioner who had secured more than the minimum marks prescribed, should have been uploaded and wherefrom the petitioner would have been able to point out that the petitioner had been allocated lesser marks than he deserved. The counsel for the petitioner relies on a judgment of the Central Administrative Tribunal, Principal Bench, New Delhi in ***Rupesh Kumar Maan Vs. Union of India*** 2015 SCC OnLine CAT 2612 to support this contention.

4. A perusal of the advertisement dated 24th October, 2017 pursuant to which the petitioner applied, shows the same to have notified all concerned that there was no provision for re-evaluation/re-checking of answer sheets/answer scripts.

5. We have drawn the attention of the counsel for the petitioner to ***Ran Vijay Singh Vs. State of Uttar Pradesh*** (2018) 2 SCC 357 laying down that in the absence of a Rule or Clause permitting re-evaluation and supply of copies of the answer sheets, there is no right for re-evaluation or to obtain certified copies of the answer sheets.

6. The counsel for the petitioner states that notwithstanding the conditions for examination for recruitment for all posts, for which the advertisement was issued being the same, the respondents DSSSB on its own displayed the answer sheets of the examinations held for other posts.

7. Even if that be so, once the petitioner, as per ***Ran Vijay Singh*** had no right to scrutiny of his answer sheets, merely because answer sheets qua examination held for other posts were disclosed would not vest any right in the petitioner. There is no right to negative equality under the Constitution of India. Reference in this regard may be made to ***State of Haryana Vs. Ram Kumar Mann*** (1997) 3 SCC 321; ***Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain*** (1997) 1 SCC 35; ***Financial Commissioner (Revenue) Vs. Gulab Chand*** (2000) 10 SCC 656; ***Anand Buttons Ltd. Vs. State of Haryana*** (2005) 9 SCC 164; ***Vishal Properties (P) Ltd. Vs. State of Uttar Pradesh*** (2007) 11 SCC 172; ***State of Bihar Vs. Upendra Narayan Singh*** (2009) 5 SCC 65; ***Fuljit Kaur Vs State of Punjab*** (2010) 11 SCC 455; ***Union of India Vs. M.K. Sarkar*** (2010) 2 SCC 59 and ***Dalip Singh Vs State of Haryana*** (2019) 11 SCC 422.

8. Attention of the counsel for the petitioner is also drawn to ***High Court of Tripura Vs. Tirtha Sarathi Mukherjee*** (2019) 16 SCC 663 laying down that in the absence of any provision, the Courts are completely denuded of power, in the exercise of jurisdiction under Article 226 of the Constitution of India, to direct re-evaluation; however if a grave injustice is occasioned in the circumstances of the case, the Court, notwithstanding the absence of a provision for re-evaluation, may direct re-evaluation but in rare cases. It was further held that if there is any doubt about the correctness of the question or the answer, the same must be resolved in favour of the examining body, rather than in favour of the candidate.

9. The petitioner has not pleaded or placed before us any facts to show that any grave injustice has been occasioned, from this Court to treat the present case in the “rare” category. The advertisement pursuant to which

the petitioner applied, (a) provided “There is no provision for re-evaluation / rechecking of answer sheets / answer scripts in respect of the examinations conducted by DSSSB” and that “Negative marking will be applicable and deduction of 0.25 marks will be made for each wrong multiple choice question answer”; (b) shows that there were 401 vacancies for Warder (Male) and of which 161 were for unreserved category, 140 for OBC category, 70 for Scheduled Caste category and 30 for Schedule Tribe category; and, (c) shows that the examination for the said post comprised of multiple choice questions on the subjects of General Awareness, General Intelligence and Reasoning Ability, Arithmetical and Numeral ability, test of Hindi language and comprehension and test of English language and comprehension. The petitioner has not pleaded that any of the questions in the examination was wrong or erroneous or that none of the answers from which choice was to be made was correct or that two or more correct answers were provided. It is also not the case that the petitioner, at any time after the examination pointed out any error therein or sought the answer sheet. The petitioner while pleading that he expected to score 110 out of 200 marks, has not pleaded having computed the element of negative marking. As per the judgments aforesaid of the Supreme Court, in the absence of any provision for re-evaluation / rechecking of answer sheets or for supply of copies thereof, for the petitioner to obtain relief in this respect, a case of grave injustice has to be made out. Mere pleading that the petitioner expected more marks than what he has scored, does not amount to a case of grave injustice.

10. We may mention that the petitioner, though initially sought copies of his answer sheet under the Right to Information Act, but subsequently gave

up the said line of action and the claim now for answer sheets is *de hors* the Right to Information Act and *de hors* which the petitioner has no right whatsoever to seek copies of his answer sheets or to seek re-evaluation. Reference in this regard may be made to our recent judgement in ***Bhaskar Singh Chilwal Vs. Union of India*** MANU/DE/1850/2020. As far as the judgment relied on by the counsel for the petitioner of the Central Administrative Tribunal is concerned, the same does not bind us.

11. It cannot be lost sight of that the last candidate of the OBC category whose name figured in the list of provisionally selected candidates had 93.75 out of 200 marks as against 84 marks of the petitioner and it is not the case of the petitioner that anyone in the examining body was/is inimical to, or prejudicial to the petitioner. Generally, the multiple choice questions answer sheets are corrected by an Optical Mark Reader and without pleading any error in questions or answers, no fault can be found therewith.

12. The claim of the petitioner for copies of answer sheets as well as filing of this petition, is by way of legal speculation and fails and is dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

OCTOBER 19, 2020

‘pp’..