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

\+ **W.P.(C) 445/2018**

DELHI JAL BOARD AND ORS. ..... Petitioners

Through: Ms. Kanika Agnihotri, Standing Counsel, DJB with Ms. Sneha Jheetay, Advocate.

versus

BHUVNESH KUMAR SHARMA ..... Respondent

Through: Mr. L. R. Khatana, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **13.01.2020**

1. This writ petition has been filed by the Petitioners challenging the order dated 30.03.2017 passed by the learned Central Administrative Tribunal (CAT), Principal Bench and they have prayed for quashing of the said judgment arising out of O. A. No. 4465/2013 filed by the present Respondent.

2. The Petitioner No.1 is a statutory body under Government of National Capital Territory of Delhi (GNCTD). The Respondent is an employee working as Head Clerk with the Petitioners. A revised examination scheme for SAS Accountant/JAO in Delhi Administration was issued by the Finance (Accounts) Department vide order dated 11.05.1983. The rules of the examination scheme were made applicable to the JAO examination held by

Delhi Jal Board (DJB). On 24.06.2009 a circular was issued by the petitoners for conducting a limited departmental examination Part-I and II for filing up vacant posts of JAO. The examination was to be conducted in December, 2009. On 09.10.2009, a circular was issued inviting applications for the post of JAO with the Petitioners' organization. It was mentioned in the circular that it was in continuation of the earlier office circular dated 24.06.2009 and the rules/guidelines applicable in the GNCTD for JAO examination shall apply in the Petitioner organization also. The Respondent had appeared in the examination.

3. Vide order dated 29.04.2010, promotions were made of the selected officials as JAO. The name of the Respondent was not present in the said list but he was orally informed that he was not successful in the examination as he had not secured 45% marks in aggregate. So, the Respondent was aware in 2010 itself that qualifying marks are 45%. On 12.11.2012, the applications were again invited for filling up vacant posts of JAO, now called as AAO through limited deparmental examination. The present circular also relies on the earlier ciruclar through which syllabus of examination was circulated in 2008 and 2009. The examination was held between 05.07.2013 and 07.07.2013. The procedure followed was same as was for the post of JAO in 1983. The respondnet had again appeared in the year 2013. Even in this examinaiton, the Respondent failed to qualify/pass JAO Part-II examination as he scored 95/200, 60/150 and 40/100 marks in three papers totaling to 195 marks out of 450 marks i.e. 43.33% whereas he was required to obtain 45% marks, i.e., 202.5 marks out of 450 marks. Hence, he was declared unsuccessful in JAO Part-II examination in the year

2013. On 24.09.2013, the Respondent wrote to the Chief Executive Officer of DJB requesting revaluation of his answersheets for the first and second papers. Again, in the letter dated 09.10.2013 the Respondent reiterated his request for revaluation/rechecking of his answersheets.

4. Thereafter, the Respondent filed an Original Application (OA) before CAT challenging his non-selection on the ground that the condition of obtaining an aggregate percentage of marks as 45% was extraneous as it was not part of the circular of the examination and moreover the same was contrary to the judgment of Hon'ble Supreme Court in ***Hemani Malhotra v. High Court of Delhi*, (2008) 7 SCC 1**. The Respondent further stated that it was his fundamental right to be conisdered for promotion and he prayed that he be considered for promotion as he had passed all three qualifying papers.

5. Counter affidavit was filed by the Petitioners mentioning that the OA was devoid of any merits and as the Respondent had not fulfilled the conditions for being declared successful, so he could not be declared as successful/qualified candidate.

6. The Petitioners had relied on circulars dated 12.11.2012, 24.06.2009 and 09.10.2009. In the circular dated 09.10.2009, it was specifically mentioned that the rules/guidelines applicable in the GNCTD with regard to JAO examination shall also apply to the examination being conducted by the Petitioners. As per the Petitioners, they had followed the same procedure in 2010 and 2013 for the limited qualifying examination for appointment of JAOs. The terms and conditions were already circulated in 2009. The

Respondent had applied for appearing in JAO Part-I and Part-II examination in 2009/2010 wherein he cleared only JAO Part-I examination, hence, he was aware of the terms and conditions with regard to qualifying the exam.

7. To this counter, the present Respondent had filed rejoinder before CAT mentioning therein that the documents placed on record by the present Petitioners do not support their contention. He also placed on record the rules/guidelines downloaded from the website of GNCTD. He further submitted that the Petitioners had raised a baseless contention of obtaining 45% aggregate percentage of marks for being declared as successful.

8. The CAT passed the impugned order dated 30.03.2017 directing the Petitioners to grant promotion to the Respondent as JAO with effect from the date his immediate juniors were granted such promotion with all consequential benefits. The said order has been challenged on the ground that the tribunal failed to take into account that the Petitioners had fully followed the rules/guidelines of GNCTD and as per the circular dated 11.05.1983 the candidate had to secure 45% marks in the aggregate and minimum marks of 40% in each of the subjects but the Respondent failed to obtain 45% aggregate marks. Since the guidelines of GNCTD provide for aggregate percentage of 45% marks and the Petitioners are following those guidelines, hence the tribunal has erred in stating that condition of aggregate qualifying mark of 45% was added lateron. The circular itslef is of 1983 on which reliance has been placed. The Respondent had earlier appeared in 2010 examination but he could not qualify the same in the year 2010 as far as Part-II is concerned, hence, he was aware that he was supposed to get

45% aggregate marks. The respondnet had himself admitted that in the year 2010 when he was sure to be promoted as JAO, to his utter shock and surprise he was informally told that although he had passed all papers but he could not be said to successful in qualifying exam becuase he had not secured 45% aggregate marks and he did not get promotion. Hence, it is clear that in the year 2010 itself, Respondent was aware that he was to secure 45% aggregate marks. He never challenged the result of the year 2010 where condition of obtaining 45% aggregate marks was there but he sought relief after 2013 examination on the same ground. It has been prayed that impugned order 30.03.2017 be set aside.

9. Notice was issued. The pleadings before CAT have been filed before this Court, hence, the requirement of filing the counter affidavit was dispensed with.

10. The Petitioners moved an application under Section 151 of Code of Civil Procedure (CPC) to place on record circular dated 11.05.1983. The same was allowed vide order dated 05.10.2018 while reseving the right of parties to make their submissions in respect of the said circular at the time of final arguments.

11. We have heard the learned counsel for the parties and perused the record.

12. The major contention to be decided in this case is whether there was any provision in the rules for the candidates to obtain 45% marks in aggregate apart from obtaining the passing marks in the different subjects and whether the Respondent was aware about the same prior to appearing in the

examination conducted in the year 2013.

13. The Respondent had appeared in Part-I and Part-II examination of JAO in 2010 and he was able to clear only Part-I of the said examination. Vide order dated 08.12.2011, he was appointed as Junior Accounts Officer on local officiating arrangement since he had qualified Part-I examination of JAO. The result dated 29.04.2010 in respect of JAO Part-II examination has been placed by the Respondent himself on record wherein his name is missing as he had not qualfiied in Part-II examination. The Respondent has to say the following in resepct of his 2010 examination in para 4(d) of the OA filed before CAT :

> "4(d) That it is also relevant to mention that the Limited Departmental Examination for Junior Accounts Officer Part-II is a qualifying examination and after having passed/qualified the said examination the Respondents consider the candidates for appointment on the basis of their inter se seniority first from amongst the Head Clerks, thereafter UDCs and thereafter the LDCs. The applicant, being at No.3 in the cadre of Head Clerks was sure to be appointed/promoted but for the impugned action of the Respondents. in this regard a true copy of the Office Order No.82(Min) dated 29.04.2010 relating to the appointments made on the basis of the previous examination is annexed hereto and marked as **Annexure-A4**. Thus the applicant who was sure to be promoted/appointed as JAO (now AAO), to the utter shock and surprise of the applicant he has been informally told that though he had passed all the papers but he cannot be said to be successful/qualified in the examination because he has not secured 45% marks in the aggregate and hence he would not be considered for appointment/promotion. This stand of the Respondents is totally illegal and

> arbitrary inasmuch as that securing a particular percentage of aggregate marks was not the conditoin in the Circular inviting applications for the said Examination and the Respondents have thus introduced an extraneous condition which was not part of the Circular inviting applications for the Examination and this amount changing the rules of the game after the game had already been played which is not permissible in law. "

14. This paragaraph makes it very clear that in the year 2010 itself when the result was declared on 29.04.2010 and the Respondent made enquiries, he orally came to know, as per his own version, that he had not qualified the examination because he had not secured 45% marks in aggregate. So the stand of present Respondent that there was no such condition of obtaining 45% aggregate marks and this conditoin was introduced midway after beginning of the process of 2013 Part-II examination is contrary to his own pleadings.

15. The Petitoners have time and again stated in every circular that they had called for applications for the post of JAO/AAO as per rules/guidelines as applicable in GNCTD for the said examination and the same are applicable to the said examination being conducted by the Petitioner organization. The Respondent has not challenged the said contention of the Petitioners before CAT; however, at the time of arguments, learned counsel for the Respondent has tried to place relieance on the judgment of Hon'ble Supreme Court in ***Rajasthan Agriculture University v. Ram Krishna Vyas*****, (1999) Volume-4 SCC 720** to support his half hearted argument that the rules of GNCTD had not been specifically adopted by the Petitioners. This contention is without any basis as the DJB is an entity under GNCTD and the examination itself is

conducted by the Office of CGA, GNCTD. The syllabus, rules, regulations etc., everything which is applicable to other departments of GNCTD, has been made applicable to the Petitioners's organization and nowhere it has been denied by the Respondent in the pleadings that the said rules framed by GNCTD are not applicable to the employees of Petitioner organization.

16. The entire judgment of the CAT is based on the ground that Petitioners have changed the rules of the game midway after the game has begun and the circulars dated 12.11.2012, 09.10.2009 and 24.06.2009 nowhere mentions that 45% minimum aggregate marks have to be obtained. The circular in this regard is dated 11.05.1983 which provides as under:

> "*8) Syllabus*
> *i) The syllabus and subject of the course will be as prescribed in annexure: I & II.*
> *ii) A candidate will be declared to have passed in part I and part II of the examination if he secured not less than 45% of the marks in the aggregate and 40% of the marks in each of the subject provided if there are two papers on the subject, theoretical/practical, the must also secure the minimum of the 40% of the marks in the practical paper. No grace mark will be awarded either in an particular paper or in the aggregate."*

17. All the subsequent circulars were issued in continuation of this circular and the circular issued in the year 1983 has not been revoked till date. As far as the knowledge of the Respondent regarding the circular and specifically the condition of obtaining 45% aggregate marks is concerned, in the pleadings itself he had stated that in the year 2010 itself it came to his knowledge that he was not shown as successful candidate in Part-II examination because he had not obtained 45% aggregate marks.

18. Another important spect to be noticed is the contents of the requests submitted in writing by the Petitioners on 24.09.2013 and 09.10.2013 addressed to the Chief Executive Officer of DJB. The said requests are reproduced as under :

REQUEST DATED 24.09.2013:

"To,

The Chief Executive Officer
Delhi Jal Board
Varunalaya Ph-II
New Delhi

Subject: Revaluation of Answer Sheet.

Respected Madam,

I had appeared in the 2nd Part of Limited Departmental Examination for the post of Asstt. Accounts Officer held on 5th to 7th August-2013. The Administration has been kind enough to declare successful maximum participants. But I got shocked to see the result displayed by the Administration, in which I got total number as 95 out of 200 in paper-I, 60 out of 150 in paper-2 and 40 out of 100 in paper-3. I have qualified in all three papers but shown just too short of aggregate marks as prescribed as 45% Total aggregate marks as given are 43.33% i.e. 195 out of 450 beyond my approach of confidence and expectation. So it is requested with folded hands to your honor to kindly consider my request for revaluation of 1st and 2nd papers for orders on humanitarian grounds so that I may get relief from mental depression and puzzleness and stigma of unfitness on the other hand.

Hoping for an early and favorable consideration *at your hands please.*

Yours faithfully,

(BHUVNESH KUMAR SHARMA)
AAO c/o EE(EAST)- I

Copy to:
President, DJD Accounts cadre Association, Varunalaya Ph-II.

REQUEST DATED 09.10.2013:

REMINDER
To,

The Chief Executive Officer
Delhi Jal Board
Varunalaya Ph-II
New Delhi

Subject: Revaluation of Answer Sheet.
Ref: Request dated 24.09.13.

Respected Madam,

I had appeared in the 2nd Part of Limited Departmental Examination for the post of Asstt. Accounts Officer held on 5th to 7th August-2013. The Administration has been kind enough to declare successful maximum participants. But I got shocked to see the result displayed by the Administration, in which I got total number as 95 out of 200 in paper-I, 60 out of 150 in paper-2 and 40 out of 100 in paper-3. I have qualified in all three papers but shown just too short of aggregate marks as prescribed as 45% Total aggregate marks as given are 43.33% i.e. 195 out of 450 beyond my approach of confidence and expectation. So it is requested with folded hands to your honor to kindly consider my request for revaluation of 1st and 2nd *papers for orders on humanitarian grounds so that I may get relief from mental depression and puzzleness and stigma of unfitness on the other hand. Provision for re-checking/Re-evaluation is also available copy of the same is enclosed for reference please.*

Hoping for an early and favorable consideration at your hands please.

Yours faithfully,

(BHUVNESH KUMAR SHARMA)
AAO c/o EE(EAST)- I"

19. In both these request letters, he has prayed for revaluation of answersheets specifically mentioning that he had qualified in all three papers but he was just too short of aggregate marks as prescribed as 45%, whereas he had otbained 43.33%. It is again pertinent to mention that he changes his stand immediately before filing of the OA and he dispatched a letter 13.12.2013 which is reproduced hereunder:

"To

The Chief Executive Officer
Delhi Jal Boqrd
Varunalya Building : Phate-ll
Karol Bagh New Delhi

Subiect: Request to consider qualified candidate on qualifying all three exams by the applicant.

Respected madam,

Most Respectfully, I want to bring to your kind notice that I had appeared in the departmental competitive accounts examination conducted by CAG on Subordinate Accounts Services in Delhi Jal Board from 5.8.2013 to 7.8.2013. 1 had qualified all the three papers with the obtaining marks In paper-1 (95/200), *paper-ll (60/150) and paper-III (40/100), My name in seniority of ministerial cadre stands at serial no.3. But It is regretted to state that in-spite of having myself as successful candidate, I have been declared fail without any prescribed criteria of Recruitment Rules for the post of AAOs. I am discouraged with the stigma of unfitness and unqualified even 1had qualified the said competitive accounts exam. So your honour is requested to kindly look into this for necessary directions to the concerned dealing authorities issue the earliest orders for my recruitment to the post of AAO while considering me qualified and successful candidate on the analogy of others.*

Early ordersare solicited.

Thanking you,

Yours faithfully,

(B.K Sharma)
AAO (FR-35) ,
c/o EE(East)l

Copy to:

Member (Admn.)"

20. In this letter, he intentionally omits the discussion about having to obtain 45% aggregate marks and he being just too short of obtaining the said bench mark. This is to be read along with the date of the writ petiton which was filed on 19.12.2013 i.e. just 6 days after the submission of said letter dated 13.12.2013. It is again pertinent to mention that Respondent has nowhere discussed in his OA about the two letters submitted on 24.09.2013 and 09.10.2013 mentioning about him not attaining 45% total aggregate marks although he had filed copies of the same on record along with other correspondence as ***Annexure A-5***. The Respondent has also relied upon a

print out taken from website of GNCTD regarding consolidated instructions on common JAO Part-I and Part-II examination and has submitted that in the said instructions, no where it is mentioned that the aggregate of 45% marks should be obtained by the successful candidate in Part-II examination.

21. In view of the fact that the circular of 1983 of GNCTD is still in force and all the rules and regulations of GNCTD are applicable to the Petitioner organization and specifically in view of the fact that the Respondent was aware about the condition of obtaining 45% aggregate marks in the year 2010 itself and he chose not to challenge the same before any forum and once he was not successful in second attempt in the year 2013 he filed the OA No.4465/2013 and further in view of the fact that the conclusion arrived at by the CAT that the rules of the game were changed after the game had started, being without any basis, so there was no ground for allowing the OA, hence, impugned order dated 30.03.2017 passed in O. A. No. 4465/ 2013 is hereby set aside.

22. The writ petition is allowed in these terms. No order as to costs.

S.MURALIDHAR, J

TALWANT SINGH, J

JANUARY 13, 2020
ssc