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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISIDITION**

WRIT PETITION NO. 1147 OF 2021

Radhika Nachiket Chavathe

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr. Sandeep V. Marne, for the petitioner.

Mr. T. J. Pandian a/w Mr. T. C. Subramanian, Dheer Sampat & Prachi Shah, for the respondents.

**CORAM : DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE : JULY 13, 2021

PC:

1. The unsuccessful original applicant in Original Application No. 210/255 of 2020, on the file of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter "the Tribunal", for short), is the petitioner before us. She challenges judgment and order dated January 29, 2021 of the Tribunal refusing to grant relief as prayed in the original application and in the process dismissing the same. The prayers in the original application were as follows: -

"(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the letters

dated 20.02.2020 and 19.03.2020 with all consequential benefits.

(b) This Hon'ble Tribunal may further be pleased to direct the Respondents to remove award of negative marks to the candidates who made corrections in the answer-sheet and replace them with zero marks as per the Railway Board letter dated 19.03.2019 and further process selection for the post of Assistant Personnel Officer on the basis of revised marks obtained by the candidates in the written test held 24.10.2019 (Main) and 29.11.2019 (Supplementary)."

2. The dispute arises out of a selection process undertaken by the respondents/Central Railway for promotion to 70% of the vacancies in the post of Assistant Personnel Officer from amongst officers of the Personnel Department in the feeder posts. It is not in dispute that the selection process comprises of a written test followed by medical examination, followed further by a viva-voce. Only those officers who succeed in the written test as well as the medical examination are called for viva-voce. It is further not in dispute that the petitioner succeeded in the written test as well as the medical examination, and was thereafter called upon to attend the viva-voce. Incidentally, in respect of the unreserved quota, the petitioner emerged as the only candidate who qualified in the written test. As per the petitioner's estimation, she had acquitted herself creditably in the viva-voce too. However, while the petitioner was expecting an order of promotion to the post

of Assistant Personnel Officer, she was surprised to learn that by a letter dated February 20, 2020, the competent authority had decided to cancel the written test since it was not conducted exactly as per the guidelines of the Railway Board contained in a letter dated March 19, 2019.

3. Aggrieved by cancellation of the written test, communicated vide letter dated February 20, 2020, the petitioner had submitted a representation which stood rejected by a further letter dated March 19, 2020.

4. The reason as to why the written test was cancelled is this. The process of selection envisaged that in the written test the officers in the feeder posts aspiring for promotion would have to answer multiple choice objective questions and that there would be negative marking for incorrect answers. All the aspirants called upon to take the written test participated therein with the knowledge that incorrect answers would attract negative marking. However, at the inception of the written test, they were instructed that any overwriting or correction made while answering the questions would also attract negative marking. According to the competent authority, this instruction was issued to the aspirants without there being any sanction or authority of the higher authority, i.e., the Railway Board (hereafter "the offending instruction", for short) or without the same being part of the guidelines having approval of the Railway Board dated March 19, 2019. Since the written test was cancelled on the ground that it was not conducted exactly as

per the said guidelines of the Railway Board, we have noted the same. What such guidelines stipulate is that,

“(iii) There shall be negative marking for incorrect answers. One-third of the marks allotted for each question will be deducted for every wrong answer.”

5. Before the Tribunal, it was urged on behalf of the petitioner that there was no warrant for cancelling the entire written test. The mistake that cropped up for awarding of negative marks for overwriting/correction could easily be rectified by replacing the negative marks with zero. It was also urged on her behalf that since she was the only candidate who had succeeded from the unreserved quota, cancellation of the entire written test had caused severe prejudice to her.

6. The Tribunal in the impugned judgment and order has assigned reasons as to why the contentions of the petitioner do not deserve acceptance. In the process, it also distinguished the decision of the Supreme Court in **Union of India & Ors. Vs. Rajesh P.U., Puthuvalnikathu & anr.**, reported in (2003) 7 SCC 285.

7. Mr. Marne, learned advocate appearing for the petitioner, has repeated the contentions which were raised before the Tribunal.

8. We have heard Mr. Marne and considered the materials on record.

9. The only question we are tasked to decide is, whether cancellation of the written test on facts and in the circumstances was justified.

10. The contention that a corrective action of substitution of negative marking by awarding zero to those aspirants who had resorted to overwriting or correction of answers to the questions set appears, at first blush, to be attractive but on a keener scrutiny does not deserve acceptance.

11. It is axiomatic that all the aspirants for promotion must have a level field to play on. This would mean that all of them would be subject to the same yardstick by which their performances are to be tested. In a sense, all the aspirants were informed of overwriting/correction attracting negative marking at the very inception of the written test; and viewed from that angle, it cannot be said that all the aspirants including the petitioner were treated unequally. However, what is of significance is that the offending instruction given to the aspirants prior to the written test was potent enough not only to mould the mindset with which they arrived at the examination centre but also to create a fair degree of confusion in them.

12. We cite an instance. It is quite common that in a written test, based on multiple choice objective questions, the alternatives which are given and from which the examinees are

required to choose the most appropriate or correct answer, at times, are capable of creating serious doubts in the minds of the examinees as to which one is the most appropriate/correct. It would not be rare that an examinee initially chooses an incorrect/wrong alternative but, later on, realizing that another alternative represents the most appropriate/correct answer, he proceeds to make the necessary correction. Even if he had the time to correct himself, the offending instruction would result in the examinee not being able to answer the question appropriately/correctly because that would inevitably result in an overwriting or a correction. It is difficult, if not impossible, to assess to what extent the offending instruction resulted in forbidding the examinees to correct their answers after they initially chose an incorrect/wrong alternative, for, even if they were to answer correctly, not only would they be deprived of the marks they deserved, but would receive negative marking for overwriting or correction.

13. Another instance can be cited. It is not reasonably expected that all aspirants would have the same calibre. One set of brilliant examinees may seamlessly proceed to write answers without the need for any overwriting or correction. These are one of a type who are adept in neat and clean reproduction of answers. There could be another set of examinees, not equally as brilliant as the other set who, due to susceptibility to psychological imbalance when informed of something other than the normal, could develop mental stress and tension due to examination phobia at the time the test

begins. The very fear of overwriting/correction in the answer sheets attracting negative marking could have the potential of marring their performance though otherwise well prepared. Having been told beforehand that incorrect/wrong answers would attract negative marking, anything over and above such stipulation could bring about a tendency not to attempt such borderline questions where the examinee is in doubt as regards the most appropriate or correct answer. If negative marking were confined only to incorrect/wrong answers, both sets of examinees would be at par; however, once the concept of negative marking is introduced for overwriting/correction, the second set invariably would stand at a disadvantage and suffer. For such second set of examinees, to change their mindset and acclimatize to new conditions could be impossible and produce undesirable results for them.

14. If indeed overwriting/correction were to attract negative marking, an announcement to that effect ought to have been made before the game began and not in the midst thereof. The purity and sanctity of the selection process could not have been tinkered with in the absence of a proper announcement of the procedure to be followed in course thereof, having the authority of law.

15. We had put these instances to Mr. Marne for his response. In his usual fairness, he accepted that these are possibilities and the situation cannot be cured by merely substituting the negative marks with zero.

16. What cannot also be overlooked by the Court exercising judicial review powers is that the satisfaction reached by the respondents of the need for cancellation of the written test is not based on any extraneous reason. The respondents having formed the opinion that the process of selection suffers from a serious flaw, in that the offending instruction was given to the aspirants without authority, and that it would be in the interest of all the aspirants that a fresh test be conducted in accordance with the extant guidelines, the writ court may not interfere on the ground that there was another option open which would have, in its opinion, served the interests of the aspirants better.

17. We are also ad idem with the Tribunal that the ratio of the decision in **Rajesh P.U.** (supra) does not apply here. The decision proceeds to lay down the law that if it is possible to weed out the beneficiaries of illegalities or irregularities, there would be no justification to deny the selectees, whose selection is not under any cloud, of the fruits of their labour. What follows is that, the grain ought to be sifted from the chaff. However, for reasons discussed above, this particular case is one where the grain and the chaff are so inextricably mixed with each other that no sifting would reasonably be possible.

18. While we uphold the judgment and order of the Tribunal under challenge, we grant the respondents four months' time to conduct the written test afresh. However, the selection process must be confined to those aspirants who were

otherwise eligible and had participated therein; and no officer in the feeder posts who had stayed away from the selection process shall be allowed to participate.

19. It is made clear that since some officers of the Central Railway have incurred the wrath of the Tribunal for issuing the offending instruction, we hope and trust that they will not be involved in the selection process to be started anew to maintain the purity and sanctity thereof.

20. Accordingly, the writ petition stands disposed of with the aforesaid directions. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

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signed by
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DASHARATH
PANDIT
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