

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

% **Date of decision: 5th March, 2021**

+ **W.P.(C) 2994/2021**

MAHESH KUMAR **Petitioner**

Through: Mr. Gaurav Bhardwaj, Adv.

Versus

STAFF SERVICE COMMISSION & ANR. **Respondents**

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petition, (i) impugns the order dated 14th December, 2020 of the Central Administrative Tribunal (CAT), Principal Bench, Delhi of dismissal of OA No.2059/2020 preferred by the petitioner; and, (ii) seeks mandamus to the respondents Staff Selection Commission (SCC) and Ministry of Personnel, Public Grievances and Pensions, Government of India, to grant the qualifying marks to the petitioner in the Computer Proficiency Test (CPT) (Module-II) and to consequently grant the requisite post as opted by the petitioner.

2. The petitioner filed the OA No.2059/2020, pleading that (i) the petitioner applied for Combined Graduate Level Examination-2017, under the unreserved and orthopedically handicapped category ; (ii) as per the result of the said examination declared on 15th November, 2019, the petitioner was selected for the post of Auditor in the Department / Offices of Comptroller & Auditor General of India; (iii) however as per the post

preference opted by the petitioner, had the petitioner cleared the CPT Module with 100 qualifying marks, as per his category, he would have become eligible for the post of Inspector (Central Excise/GST); (iv) the CPT comprises of three modules i.e. word processing, spreadsheet and generation of slides; (v) being not satisfied with the result of the CPT, the petitioner earlier filed W.P.(C) No.2322/2020 in this Court, which, on objection being taken by the respondents as to the very maintainability thereof in view of the alternate remedy of approaching CAT being available, was not pressed and was ordered to be treated as a representation of the petitioner and directed to be decided within four weeks thereof; (vi) the said representation was disposed of vide order dated 22nd July, 2020, stating that, (a) the petitioner had secured 97 marks in the CPT, having scored 35 marks in Module-II and 62 marks in Module-III; (b) the cut-off in Module-II and Module-III was fixed as 100 marks, for the category to which the petitioner belongs; (c) since the petitioner did not secure the cut-off marks, he was declared not qualified in the CPT and was hence ineligible for certain categories of posts; (d) the petitioner had requested for re-evaluation of answer script of CPT (Module-II); (e) the petitioner, vide letters dated 20th January, 2020 and 5th February, 2020 was informed that the CPT answer script of all candidates are evaluated by subject experts and the request for re-evaluation could not be entertained; (f) in pursuance to the order dated 2nd March, 2020 in W.P.(C) No.2322/2020, the answer scripts of the petitioner were re-examined in consultation with the subject expert and the subject expert, in his / her report had opined that evaluation of CPT (Module-II) answer script of the petitioner was in order and did not deserve any revision; (vii) the petitioner sought the report of re-evaluation

through the medium of Right to Information Act, 2005; (viii) the re-evaluation, as done, was in contradiction with the questions asked in the CPT qualifying module and contrary even to the evaluation on the basis of model answers provided by the respondent No. 1 SSC itself; (ix) though the petitioner had been asked to join the office of Accountant General (Audit), Chhattisgarh by 30th June, 2020, but had sought extension thereof; (x) the petitioner challenged the order dated 22nd July, 2020 supra qua his representation, by filing W.P.(C) No.7244/2020 in this Court but which was dismissed on 30th September, 2020 with liberty to the petitioner to approach CAT; (xi) the representation of the petitioner pursuant to directions contained in order dated 2nd March, 2020 in W.P.(C) No.2322/2020 had been decided in an arbitrary, non-reasoned and illegal manner; (xii) as per the re-evaluation report, the deduction of 30 marks is wrong and without any explanation; (xiii) once an 'absolute' formula is applied in MS Excel sheet, the same does not and by the very definition of 'absolute', cannot, provide a negative mathematical result of the calculation; (xiv) the explanation provided by the subject expert is tailor made to suit the respondents; (xv) as per the re-evaluation report, 15 marks had been deducted for wrong format for calculated cells and which was not permissible; and, (xvi) re-evaluation has not been done in the correct manner.

3. CAT, vide impugned order dated 14th December, 2020 has dismissed OA No.2059/2020 preferred by the petitioner, reasoning that (i) though it was the stand of the respondents that there was no provision for re-evaluation of the result of the examination but in compliance with the

assurance given before this Court on 2nd March, 2020 in W.P.(C) No.2322/2020, the result of the petitioner was re-examined but no fault was found therein; (ii) as per the dicta of the Supreme Court, re-evaluation of a result of a competitive examination cannot be claimed as a matter of right; (iii) the petitioner had been successful in the examination, though could not secure the post of his choice; and, (iv) the petitioner had indulged in excessive litigation at the threshold of his career.

4. We have heard the counsel for the petitioner.

5. What the petitioner wants us to do is to adjudicate, (a) whether the evaluation of the answer script of CPT taken by the petitioner as part of Combined Graduate Level Examination-2017 is in order or not; (b) whether the re-evaluation thereof is in order or not; and, (c) whether the petitioner, in the CPT is entitled to any marks in excess of 97 marks evaluated by the examining authorities / subject experts entrusted with the evaluation of the answer scripts, not only of the petitioner but of all others similarly placed as the petitioner.

6. The same is not in the domain of the Courts or of the jurisdiction under Article 226 of the Constitution of India. We have no expertise in evaluation of the results of an examination least of the CPT. Even in a subject like law, in which Judges can claim to have knowledge, in ***Pranav Verma Vs. Registrar General of the High Court of Punjab and Haryana*** (2020) 15 SCC 377, relying on ***H.P. Public Service Commission Vs. Mukesh Thakur*** (2010) 6 SCC 759 and ***Pramod Kumar Srivastav Vs. Bihar Public Service Commission*** (2004) 6 SCC 714, it has been held that the Court cannot take upon itself the evaluation of the answers given by a

participant or direct re-evaluation by an independent committee. Moreover, the answer scripts of all examinees are to be examined objectively and preferably by the same examiner and / or even if by different examiners, by following the same criteria. It is not the case of the petitioner that there was any flaw in evaluation of answer scripts of all candidates who took the CPT. This Court would not be justified in, even if it was possible for the Court to examine / evaluate the answer script, to examine / evaluate the answer script of the petitioner only and which is likely to result in disparity and open the floodgates, with all others who may have also not qualified in the CPT wanting their answer scripts also to be evaluated by the Court.

7. The counsel for the petitioner has referred us to ***Rajesh Kumar Vs. State of Bihar*** (2013) 4 SCC 690. We have perused the said judgment and find that, (i) in that case 13 unsuccessful candidates had assailed the evaluation of the answer sheets; (ii) during the pendency of the writ petition before the High Court, appointments were made; (iii) a very small number of candidates had qualified for appointment and thus a large number of posts advertised had remained unfilled; (iv) the Single Judge of the High Court, before whom the writ petition came up, had referred the model answer key to the experts who found several of the answers in the model answer key wrong and two of the questions to be wrong and two other questions were found to have been repeated and another question to have been only partially printed; (v) based on the report of the said experts, the Single Judge held that 41 model answers out of 100 were wrong and held that the entire examination as well as appointments made pursuant thereto were liable to be cancelled; and, (vi) the Division Bench in appeal modified

the order of the Single Judge by directing a fresh examination in one of the papers of the examination only. In the said facts, the Supreme Court directed re-evaluation on the basis of answer key prepared on the basis of correct answers prepared by the experts appointed by the High Court.

8. The challenge in the aforesaid case was to the entire examination, as distinct from the challenge in this petition, only to the evaluation of the answer script of the petitioner. Else, after the aforesaid judgment, Supreme Court has repeatedly, in *Central Board of Secondary Education Vs. Khushboo Shrivastava* (2014) 14 SCC 523, *Ran Vijay Singh Vs. State of Uttar Pradesh* (2018) 2 SCC 357, *High Court of Tripura Vs. Tirtha Sarathi Mukherjee* (2019) 16 SCC 663, *Bihar Staff Selection Commission Vs. Arun Kumar* (2020) 6 SCC 362 and *Vikesh Kumar Gupta Vs. State of Rajasthan* (2021) 2 SCC 309 held that in the absence of any provision for re-evaluation of answer books in the relevant Rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks and the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any inferential process of reasoning or by a process of rationalization, and only in rare or exceptional cases. It was further held that the Courts should not re-evaluate or scrutinize the answer sheets of a candidate as the Court has no expertise in the matter and academic matters are best left to the academics. It was yet further held that the Courts should presume the correctness of the evaluation and proceed on that assumption and in the event of a doubt, the benefit should go to the examination authority rather than to the candidate. Sympathy or compassion has been held to be not having any role in the matter of directing or not directing re-

evaluation of an answer sheet, reasoning that if an error is committed by the examining authority, the complete body of candidates suffer and the entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice has 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 held since mathematical precision is not always possible. It has also been held that examination authorities instead of the candidates should not be under scrutiny and that a massive and prolonged examination exercise should not be permitted to be derailed, also leading to a number of public posts remaining vacant. The petitioner herein has not made out any case for re-evaluation or interference in the examination exercise.

9. We therefore do not find any merit in the petition.
10. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

MARCH 05, 2021

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