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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: September 26, 2022

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W.P.(C) 13847/2022 & CM APPL. 42349/2022

DEEPAK KUMAR YADAV

..... Petitioner

Through: Mr. Vivek Sheel, Advocate.

versus

DIRECTOR GENERAL, SSB & ORS.

..... Respondents

Through: Mr. Ajay Jain, SPC with
Mr. Chetanja Puri, (GP) and Mr.
Keshav Ahuja, Advocates for R-1 to 4
with SI Harendra Singh for SSB.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT (oral)

1. By way of the present petition, petitioner is seeking the following reliefs:-

“(i) This Hon’ble Court may graciously be pleased to quash and set-aside order No. 361/RC/SSB/AC (GD) LDCE-2018/2021/4664-65 dated 12.09.2022; and

(ii) Direct the Respondent No. 3 to get the OMR answer-sheets of the Petitioner under Roll No. 13230138 for Paper I & II evaluated for booklet code ‘A’ and declare result of the Petitioner; and

(iii) In consequence of relief (ii), if the Petitioner scores qualifying marks or equal marks to the last selected candidate within same category, direct the Petitioner to



take part in rest of the selection process for LDCE for AC(GD)2018-2022 for ITBP, strictly in accordance with merit.

(iv) Award cost of litigation in favour of the Petitioner.”

2. The case of the petitioner is that since his appointment as a Sub-Inspector in Indo Tibetan Border Police (ITBP) in 2016, he is continuing as such in service. On 22.04.2022, the respondent No.2-SSB issued an advertisement inviting applications from eligible serving Sub-Inspectors and Inspectors for the post of Assistant Commandant (GD) in the 04 CAPFs through Limited Departmental Competitive Examination (LDCE) for the vacancy years 2018, 2019, 2020, 2021 & 2022 as per Recruitment Rules of the respective Forces. After being issued the admit card on 23.08.2022, the petitioner sat for the written examination consisting of three papers in Delhi (Paper-I & II objective and Paper-III descriptive). The respondent No.3 declared the result of the written examination on 01.09.2022 and a list of 241 qualified candidates from ITBP for PST/PET examination was released.

3. Finding his name missing in this list, the petitioner submitted a request to the respondents on 02.09.2022 seeking reasons for non-inclusion of his name in the list of qualified candidates despite securing more marks as per the answer key. Thereafter the respondents further released the schedule of PST & PET examination for the eligible candidates of ITBP commencing from 28.09.2022 without including the name of the petitioner. It was then that on 12.09.2022, the respondent no.3 issued the impugned order intimating the petitioner that he was not declared qualified as his Paper-I was not evaluated for the reason that the Question Booklet code was not entered in the Optical Mark Recognition (OMR) answer sheet. On



15.09.2022, the petitioner submitted a detailed representation to the respondent No.1 and requested for evaluation of his OMR answer sheet. However, according to the petitioner, the said representation is still pending.

4. Learned counsel for the petitioner has drawn our attention to clause (b) of the instructions under 'Do's and Dont's for the Candidates' which states that important instructions are mentioned on the question booklet and '*Invigilators will apprise candidates about these instructions and ensure compliance*' to contend that it was the duty of the Invigilator to have conveyed the instructions as to the writing /darkening of the Question Booklet code to the petitioner.

5. Learned counsel for the petitioner has relied upon the judgements in ***Union of India and Ors. Vs. Sumit Kumar*** 2017 SCC OnLine Del 10138, ***Sneh Sharma Vs. Union of India and Anr.*** 2019 SCC OnLine Del 9531 and ***Union of India Ministry of Personnel and Ors. Vs. Guduru Raja Surya Praveen and Ors.*** 2015 SCC OnLine Hyd 437, to submit that the failure to write or darken the bubble in respect of the Question Booklet code in the OMR answer-sheet was a clerical error which was rectifiable.

6. Per contra, learned counsel appearing on behalf of the respondents has drawn the attention of this Court to the copy of the OMR answer sheets for Paper-I and II placed on record by the petitioner wherein in part B, there are four codes of Question Booklet i.e., A, B, C and D. In competitive examinations, the examiners set four Booklets of the same questions but reshuffle the same so that there is no occasion for copying of the answers of the other candidates. Thus, in the Question Booklet Code, the said four options A, B, C and D are given and the candidate has to mandatorily fill



either of one, so as to indicate the Booklet he/she is answering to and accordingly the answer-sheet will be evaluated. Learned counsel further contends that the petitioner had correctly darkened the Question Booklet code in Paper-II, however, had failed to do the same in Paper-I resulting in the same not being evaluated.

7. Learned counsel for the respondents also draws our attention to the clauses (d) and (e) of the 'Do's and Dont's for the Candidates' as per which '*The candidates should mention all details on OMR sheet*' and '*The candidates should darken the relevant bubbles for indicating Roll Number, Set Number, Question booklet series and name of Force in Paper-I & II*', to contend that it was not the duty of the Invigilator but that of the candidates like the petitioner herein to have complied with the instructions.

8. In the present case, admittedly, since the petitioner failed to fill up the Question Booklet code in the Paper-I indicating the Question Booklet he was answering, it is difficult to point out the questions to which the petitioner had answered. The same is an act of gross negligence and carelessness on part of the petitioner, especially while he was answering the questions in the Booklet. As such it was highly improbable for the respondents, especially the examiner, to correct the OMR sheet bereft of the exact code of the Question Booklet.

9. Also, the decision in the case of **Sneh Sharma** (supra) will not come to the aid of the petitioner as the same was pertaining to the rectification of a clerical mistake of the wrong mentioning of the roll number which was permitted to be corrected whereas in the present case, the petitioner has failed to fill up the Question Booklet code in the Paper-I indicating the



Question Booklet he was answering. Similarly, the decision in *Union of India and Ors.* (supra) will also not come to the rescue of the petitioner as the candidate therein had failed to mention the language in which the questions were answered in a descriptive type examination, whereas in the present case the petitioner has failed to fill the Question Booklet code pertaining to his answers relating to an objective examination. Lastly, the decision in the *Union of India Ministry of Personnel and Ors.* (supra) will also be of no assistance to the petitioner as in the said case, the court had permitted the evaluation of the answer sheets of only those candidates who might have made an error in not thickening/blackening the appropriate circles relating to one column or the other for hall ticket number and roll number whereas in the present case, the petitioner has failed to fill up the Question Booklet code in the Paper-I indicating the Question Booklet he was answering.

10. In view of the aforesaid, we find no merit in the present petition and same is accordingly dismissed. Pending application also stands disposed of.

SURESH KUMAR KAIT, J

SAURABH BANERJEE, J

SEPTEMBER 26, 2022/So