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

Date of Decision: 31st August, 2022

+ W.P.(C) 13782/2021 & CM APPL. 43499/2021

DR. JITENDER KUMAR

..... Petitioner

Through: Mr. Sourabh Gupta and Mr. Puneet
Yadav, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Kirtiman Singh, Ms. Manmeet
Kaur Sareen, Mr. Waize Ali Noor and
Mr. Madhav Bajaj, Advocates for R-
2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The short question for consideration in the present petition is whether Petitioner, as a matter of right, is entitled to award of full marks for an incorrect question in an examination.

2. Question No. 3B in paper-II of Orthopaedics speciality in Diplomate of National Board Final Theory (Board Specialty) Examination held in December 2020 [*hereinafter*, “**DnB theory examination**”] carried 05 marks. It was declared ‘technically incorrect’ by Respondent No. 2 – National Board of Examinations [“**NBE**”] at the time of evaluation. Petitioner has been awarded 02 marks for the said question, which takes his total score to



189 out of 400 marks. He insists to be awarded 05 marks, which would increase his total score to 192, and bring him within the zone of consideration for 08 grace marks that would make him eligible for DnB practical examination, for which the cut-off is 200 marks.

3. Before analysing merits of Petitioner's case, a brief introduction to the scheme of DnB examination as well as facts, would be apposite. DnB examination is conducted in two stages viz. theory and practical examinations. DnB theory examination consists of four papers and to qualify, candidates must secure minimum 200 marks in aggregate. Question No. 3B in paper-II of DnB theory examination was technically incorrect and NBE decided that all candidates shall be given additional marks applying the process of extrapolation. Petitioner was allocated 02 marks for said question, based on his performance in paper-II, bringing his final score to 189.

4. Mr. Sourabh Gupta, counsel for Petitioner, makes following submissions:

4.1 Candidates were not intimated about the incorrect question before or during the examination; it is only after declaration of results that the incorrect question and decision to allot marks for the same was revealed. If Petitioner would have been aware of the erroneous question, he would have utilised limited valuable time to attempt other questions and scored better. Thus, all candidates should be allocated full 05 marks, without any distinction.

4.2 Manner of extrapolation is erroneous and unjustified as NBE



has failed to provide the formula used for extrapolation. Same extrapolated marks have been given to all students who scored between 38-47 marks despite there being a difference of about 10%. The wrong method is causing injustice to many candidates.

4.3 In a similar situation, in final examination of Urology (paper I) held in December, 2020, when a question was found to be incorrect, NBE had informed candidates prior to commencement of examination.

4.4 Considering the nature of DnB theory examination, no settled rights would be affected, if relief sought in the present petition is granted; it would only make some unsuccessful candidates eligible to appear for practical examination, without prejudicing others.

4.5 In the past, NBE itself has awarded full marks for incorrect questions. In FMGE (screening test), June 2019 session, when two questions were found to be technically incorrect, it was decided that all candidates would be awarded full marks for these questions, irrespective of whether they were attempted or left un-attempted.

4.6 The Central Board of Secondary Education [**“CBSE”**] vide circular dated 13th December, 2021, provided for allocation of full marks, in respect of questions which were not in accordance with its guidelines. The same criterion should be applied by NBE.

4.7 Reliance is placed upon *Anil Kumar v. State of Uttar Pradesh*¹ wherein the Supreme Court allowed full marks to be awarded for erroneous questions attempted by candidates; and

¹ (2019) 17 SCC 725.



*Sasmita Pattnaik and Anr. v. State of Odisha and Ors.*² wherein the High Court of Orissa did not interfere with SSB's decision of awarding full credit for 11 incorrect questions. Further reliance is placed upon *Kanpur University, through Vice Chancellor and Ors. v. Samir Gupta and Ors.*,³ *Manish Ujwal and Ors. v. Maharishi Dayanand Saraswati University and Ors.*⁴ and *Salil Maheshwari v. High Court of Delhi.*⁵

4.8 NBE has acted maliciously as Petitioner's answer sheets were swapped, and lesser marks were accorded to him. On Petitioner's application dated 10th August, 2021 for release of xerox copies of answer sheets, NBE instead provided answer sheets belonging to another candidate. Thereafter, Petitioner filed an RTI as well as an application on NBE's web portal for inspection of records. Finally, when original answer sheet was shown on 17th November, 2021, he was informed that revised results would be declared for candidates whose answer sheets were erroneously swapped, and his score was increased to 45.5. from 33.5 in paper-IV.

5. *Per Contra*, Mr. Kirtiman Singh, CGSC on behalf of NBE, makes the following submissions:

5.1 For incorrect question, marks were given applying extrapolation methodology, based on performance in the remaining questions of paper-II. No prejudice has thus, been caused to any candidate. Since Petitioner

² 2020 SCC OnLine Ori 728.

³ (1983) 4 SCC 309.

⁴ (2005) 13 SCC 744.

⁵ 2014 SCC OnLine Del 4563.



has secured only 189 marks out of 400, he does not fall within the zone of consideration (*i.e.*, 192-199 marks) and is therefore, not entitled to any grace marks in terms of the information bulletin

5.2 Reliance is placed on *Kanpur University, through VC and Ors. v. Samir Gupta and Ors.*,⁶ *Prabha Devi and Ors. v. Govt. of NCT of Delhi and Ors.*,⁷ *Kuldeep Kumar and Ors. v. State of Jammu and Kashmir and Ors.*,⁸ *Pankaj Sharma v. State of Jammu and Kashmir & Ors.*,⁹ *Ran Vijay Singh and Ors. v. State of Uttar Pradesh and Ors.*¹⁰ and *Uttar Pradesh Public Service Commission and Anr. v. Rahul Singh and Anr.*¹¹ to contend that incorrect questions in a question paper are required to be deleted, and no marks are to be allotted for such questions.

5.3 Petitioner's score was increased to 45.50 out of 100 marks in paper-IV subsequent to his representation that answer sheet for said paper, provided to him, was of another candidate. This error occurred on account of a technical mistake in decoding data for paper-IV, however, no such error was found in any of the speciality examinations such as paper-II. Despite increase in score, he failed to meet the qualifying criteria and cannot be permitted to appear for practical examination.

6. The Court has heard counsel for the parties. Scheme of DnB theory examination, as set out in Information Bulletin for DnB/DrNB Final Examination June 2022 [*hereinafter*, "**Information Bulletin**"], provides for

⁶ 1983 (4) SCC 309.

⁷ 2016 SCC OnLine Del 3253.

⁸ 2007 (1) JKJ 254.

⁹ 2008 (4) SCC 273.

¹⁰ (2018) 2 SCC 357.

¹¹ (2018) 7 SCC 254.



four papers, each having maximum 100 marks – 10 short notes of 10 marks each, and candidates must score at least 200 out of 400 marks in aggregate to qualify for DnB practical examination. Grace marks of up to 2% of maximum marks *i.e.*, 8/400 are also given to candidates who score between 192-199 marks in aggregate, in terms of clause 4.2.1 of Information Bulletin, relevant portion whereof reads as under:

*“• Candidate must score at least 200/400 in the aggregate of 4 papers to qualify the theory examination. Grace marks of up to 2% of maximum marks *i.e.* 8/400 shall be given only to the candidates falling in the zone of consideration *i.e.* securing between 192-199 marks out of 400.”*

7. Petitioner's main grievance is that NBE has not awarded him full marks for the incorrect question. It is settled law that the Courts must presume correctness of the methodology applied by test conducting agency, unless contrary is demonstrated. Scope of judicial review is limited in such situations, and Court cannot venture into re-evaluation or re-examination of answer sheets, unless the method is manifestly arbitrary or contrary to law.¹² Academic matters such as setting of question-paper, preparation of answer keys, evaluation and award of marks for incorrect questions are within the domain of body of academicians, and Court has no expertise to re-evaluate the answer sheets of candidates.

8. NBE has employed extrapolation method for award of marks. In simple terms, extrapolation is estimation/ prediction of a future value based

¹² *Salil Maheshwari (Supra); Abhijit Uddhavrao Nikam v. The Maharashtra Public Service Commission*, MANU/MH/0757/2013.



on anterior performance or events. In present case, 05 marks, weightage of incorrect question, were deducted from 100 marks (total marks of paper-II). Candidate's total score was then calculated against 95 marks of 'valid' questions. On the basis thereof, candidate's performance was evaluated against score of 100. Insofar as need of extrapolation is concerned, it has been explained that although question No. 3B was deleted for evaluation purposes, its weightage (05 marks) has not been deducted from total maximum score (400 marks) as rules of DnB examination and Information Bulletin prescribe minimum/qualifying marks out of 400 marks for the purpose of appearing for DnB practical examination.

9. The technically incorrect question was never evaluated by theory assessors. Therefore, question No. 3B was treated as null and void, and as such, no candidate was put to any disadvantage since marks were proportionately extrapolated. Petitioner secured 39 marks out of 95 in paper-II, which were extrapolated to 41 out of 100 as per his performance in remaining questions. The following table, as included in NBE's counter-affidavit, explains process of extrapolation:

<i>S.NO.</i>	<i>MARKS OBTAINED IN PAPER II (OUT OF 95)</i>	<i>EXTRAPOLATED MARKS IN PAPER II (OUT OF 100)</i>
<i>1</i>	<i>20.00</i>	<i>21.00</i>
<i>2</i>	<i>20.50</i>	<i>21.50</i>
<i>3</i>	<i>21.00</i>	<i>22.00</i>
<i>4</i>	<i>22.00</i>	<i>23.00</i>
<i>5</i>	<i>28.50</i>	<i>30.00</i>
<i>6</i>	<i>29.00</i>	<i>30.50</i>



7	29.50	31.00
8	30.00	31.50
9	30.50	32.00
10	31.00	32.50
11	31.50	33.00
12	38.00	40.00
13	38.50	40.50
14	39.00	41.00
15	39.50	41.50
16	40.00	42.00
17	40.50	42.50
18	41.00	43.00
19	47.50	50.00
20	48.00	50.50
21	48.50	51.00
22	49.00	51.50
23	49.50	52.00
24	50.00	52.50
25	50.50	53.00

10. Petitioner finds the above unjustified on the ground that NBE has extrapolated the same marks to all students scoring between 38-47 despite a difference of 10% therein. Mr. Singh has clarified that the tabulation is only illustrative, and value arrived at after extrapolation in paper-II, is added to candidate's total score in all papers of DnB theory examination. In case the final figure is in fractions/ decimals, it is rounded off to the nearest whole number. Petitioner scored 39 out of 95 marks (about 41%); applying the method of extrapolation, he was awarded 41 out of 100 marks in paper-II, thereby maintaining the overall percentage *i.e.*, 41%. No manifest



irregularity, illegality or arbitrariness in this method of extrapolation is made out, prejudicing Petitioner.

11. Next, we must also deal with some of the judgements relied upon by Petitioner. In *Kanpur University (Supra)*, candidates had alleged that paper-setters of the Combined Pre-Medical Test had erroneously identified incorrect response as the correct one. The Supreme Court held that it would be unfair to penalise students who selected the correct answer merely because it did not match with answer key. Similarly, in *Manish Ujwal (Supra)*, relief was granted to students as some questions as per the answer key, were found to be demonstrably and palpably wrong. Both these judgements, do not further the case put forth by the Petitioner primarily for two reasons: *first*, the issue urged herein is entirely different. In the aforesaid judgements, the dispute was whether the identified questions were incorrect or not. In those circumstances, the Supreme Court ascertained the discrepancy in the question paper/ answer key and then granted appropriate remedy to protect interests of concerned candidates. However, in the present case, it is an undisputed fact that question is incorrect, and thus, the scope of consideration in present petition is limited to appropriateness of NBE's criteria for award of marks for a wrong question. *Second*, afore-noted judgements pertained to examinations that were in a multiple-choice question (MCQ) format that require candidates to select correct option from a list provided, whereas DnB theory examination is admittedly a subjective-type paper wherein candidates have to write detailed answers substantiated with proper reasonings. The scheme of marking for a MCQ is different from a subjective question. Subjective questions are evaluated by assessors



having expertise in the concerned subject/topic and marks are awarded on the basis of quality of answers given. The Court cannot dwell into how the body of experts chose to mark such answers, and substitute its own opinion with that of the evaluator's. Furthermore, Petitioner's reliance on NBE's past decision to award full marks for two incorrect questions in FMGE June 2019, is misplaced as the said examination was also in MCQ format, having only one correct answer, and there was no question of varied marks being awarded to all candidates. No parallel can also be drawn with the decision of CBSE to award full marks for wrong question in English paper of class X board examinations, which was done as per its own guidelines.

12. Petitioner's reliance on *Salil Maheshwari (Supra)* is also misconceived. In that case, Petitioner therein had challenged framing of answer key for Delhi Judicial Service (DJS) Preliminary Examination, 2014 on the ground that there was more than one correct response to certain questions, and he should not be made to suffer for default of paper-setters. The said judgement is distinguishable on facts as in the said case, the High Court establishment (Respondent therein) had contended that there were no discrepancies in the answer key. In the instant case, admittedly question No. 3B in paper-II is incorrect. NBE having acknowledged the same, proceeded to formulate a mechanism for allocating marks in lieu thereof, which was best suited considering the scheme of examination.

13. Petitioner's contention relating to wastage of time in attempting the incorrect answer, is also not convincing enough. Candidates are given a total of three hours, which includes time to answer all questions. There has been



no loss of time in real terms since Petitioner was required to attempt all questions, irrespective of correctness of questions, as none of the questions were optional. Therefore, contention is based on mere conjecture of what could have happened, without any justifiable basis. Moreover, this situation applied to all candidates, without exception. Petitioner therefore, cannot claim that he lost an opportunity to answer other questions efficiently. He has been awarded marks commensurate with his performance in the remaining paper, and that methodology, has a rationale which is noted and discussed above. Plea of equity cannot be asserted for award of extra marks to qualify the said examination. Petitioner is attempting to seek Court's assistance in circumventing the admission process, and gain an opportunity to appear for DnB practical examinations, not having met the eligibility criteria. Lastly, it must also be noted that finality should be accorded to results of a public examination declared by competent authority in order to maintain the judiciousness and efficiency of evaluation process.

14. For the foregoing reasons, the Court is not inclined to grant the reliefs sought.

15. Accordingly, petition is disposed of along with any pending application(s).

SANJEEV NARULA, J

AUGUST 31, 2022

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