



2023:090:7183-09



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

**Judgment delivered on: October 04, 2023**

+ W.P.(C) 2732/2020, CM APPL. 9518/2020

**NIRVIKAR KAUSHIK**

..... Petitioner

Through: Ms. K. Kiran, Adv. with  
Petitioner-in-person.

versus

**GOVT OF NCT OF DELHI & ANR**

..... Respondents

Through: Mrs. Avnish Ahlawat, SC with  
Mr. Nitesh Kumar Singh,  
Ms. Tania Ahlawat, Ms. Palak  
Rohmetra, Ms. Laavanya Kaushik  
& Ms. Aliza Alam, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**J U D G M E N T**

**V. KAMESWAR RAO, J**

1. The challenge in this writ petition is to an order dated November 25, 2019 passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) in Original Application No.1525/2019 ('OA', for short) whereby, the Tribunal has dismissed the OA filed by the petitioner herein, as being devoid of merit.

2. The facts as noted from the record are that the petitioner had



applied for the post of TGT (Social Science) – Male, Post Code 137/17 with the respondent No.1. The selection was conducted through Delhi Subordinate Service Selection Board / respondent No.2.

3. The petitioner sat in the written examination which was held on September 9, 2018. After the examination, the draft answer keys to the examination were uploaded by the respondent No.2 and objections were invited from the candidates on the draft answer keys. It was the case of the petitioner before the Tribunal that the answers with respect to nine questions as provided in the answer key were wrong and accordingly, it was prayed that a direction be given against the respondents therein to correctly assess, evaluate and publish the result of the objective type examination for the post in question.

4. Whereas, the case of the respondents before the Tribunal was that after the draft answer keys were uploaded and objections were invited from the candidates till September 22, 2018, the matter was referred to Experts and the final answer keys were published stating that no further correspondence would be entertained with respect to answer keys.

5. The objection of the petitioner before the Tribunal as well as before us, is primarily with regard to answers provided by the respondents to question Nos.132, 166, 172, 174, 178, 182, 186, 188 and 190. The answers given and the objections raised by the petitioner are provided in the chart submitted by the respondent No.2, which we reproduce hereinbelow for ready reference:



| S. No. | Objection raised by the petitioner (Q. No.) Set B | Answer given by the petitioner | Corresponding question as per Master Set (Q. No.) Set A | Draft Answer as per Expert | Final Answer as per Expert after filing Objection | Number of Candidates raised objections including Petitioner |
|--------|---------------------------------------------------|--------------------------------|---------------------------------------------------------|----------------------------|---------------------------------------------------|-------------------------------------------------------------|
| 1      | 186                                               | D                              | 106                                                     | C                          | None (Deleted)                                    | 19                                                          |
| 2      | 190                                               | D                              | 110                                                     | C                          | D                                                 | 11                                                          |
| 3      | 132                                               | D                              | 127                                                     | C                          | C                                                 | 3                                                           |
| 4      | 166                                               | A                              | 146                                                     | B                          | B                                                 | 1                                                           |
| 5      | 172                                               | B                              | 162                                                     | C                          | C                                                 | 12                                                          |
| 6      | 174                                               | A                              | 164                                                     | C                          | C                                                 | 17                                                          |
| 7      | 182                                               | B                              | 177                                                     | C                          | C                                                 | 1                                                           |
| 8      | 178                                               | A                              | 193                                                     | D                          | D                                                 | 2                                                           |
| 9      | 188                                               | D                              | 108                                                     | A                          | A                                                 | 1                                                           |

6. The submission of the learned counsel for the petitioner before us is primarily the one which was urged before the Tribunal, i.e., the respondents have not considered the answers given by the petitioner and declared him unsuccessful and if any of the answer is found to be correct, the petitioner would qualify for the post in question. Whereas, it is the case of the respondents that since the petitioner had secured 87 marks which was less than the cut-off marks of 88.25, the petitioner was not selected.

7. The Tribunal while relying upon the judgment of the Supreme Court in the case of **Ran Vijay Singh & Ors. v. State of U.P. & Ors., AIR 2018 SC 52**, has in paragraphs 4 and 5, held as under:

*“4. Learned counsel for the respondents, Ms. Esha Mazumdar, has referred to detailed counter reply. In the counter they have stated that by notice dated 15.09.2018, draft answer keys were uploaded and objections were invited from the candidates up to 22.09.2018. Thereafter, the matter was referred to experts and the final answer keys were published stating that no further correspondence would be entertained with respect to answer keys and therefore the OA is devoid of merit. The respondents have referred to the law laid down by the Hon’ble Supreme Court in **Ran Vijay Singh and Ors. vs.***



***State of U.P. and Ors., AIR 2018 SC 52.*** The relevant para of the counter reply along with the relevant paragraph of the judgment of the Hon'ble Supreme Court in *Ran Vijay Singh (supra)*, is extracted below:

“II. That Respondent No. 2 vide notice dated 15/09/2018 uploaded the draft answer keys of the said examination on Board's website and invited the objections on the draft answer key from the candidates upto 22/09/2018 and after consideration of the objections, final answer keys were issued vide the notice dated 18/10/2018. In the final answer key, the following changes were made in the draft answer key:

| S.No. | Question No. in different sets |     |     |     | Draft Answer Key | Final Answer Key |
|-------|--------------------------------|-----|-----|-----|------------------|------------------|
|       | A                              | B   | C   | D   |                  |                  |
| 1.    | 7                              | 11  | 3   | 15  | B                | D                |
| 2.    | 59                             | 43  | 47  | 51  | B                | N                |
| 3.    | 106                            | 186 | 151 | 116 | C                | N                |
| 4.    | 110                            | 190 | 155 | 120 | C                | D                |
| 5.    | 171                            | 141 | 106 | 176 | C                | D                |

*N-Question deleted*

*Copy of notice dated 15/09/2018 is attached herewith and marked as Annexure R-1.*

*Copy of notice dated 18/10/2018 of Final Answer Key is attached herewith and marked as Annexure R-2.*

III. That after revision of the draft answer key, this board had evaluated the answer sheet of the candidates of said examination. Vide the notice dated 15/02/2019 the marks of the said post was declared and e-dossiers of the successful candidates had also been called. Further, vide the notice no.452 dated 28/05/2019, result for the post of TGT Social Science-Male, post code 137/17 had been declared.

IV. That in the OA the main contention of the applicant is that they had challenged nine questions i.e., question numbers 132, 166, 172, 174, 178, 182, 186, 188 and



*190 of the question paper for the post code 137/17, TGT (Social Science)-Male but the DSSSB had accepted one challenge i.e. Q.No. 190 and deleted Q.No. 186 and rejected the remaining 07 challenges.*

*V. That in this matter, it also pertinent to mention here that the Hon'ble Supreme Court of India in the matter titled Ran Vijay Singh & others versus State of Uttar Pradesh in Civil Appeal No. 367 of 2017 in it's judgment dated 11/12/2017 held as under;*

*"...30. The law on the subject is, therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the reevaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit reevaluation or scrutiny of an answer sheet (as distinct from prohibiting it ) then 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 that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate..."*

*5. In view of the facts and in view of the exercise undertaken by the respondent elaborated above and in view of the law laid down by the Hon'ble Supreme Court extracted above, we are of the view that this OA is devoid of merits. The OA is accordingly dismissed. No costs."*



8. The issue with regard to correctness of the answers which fall for consideration in this petition has been settled by the authoritative pronouncement by the Supreme Court in the case of **Ran Vijay Singh & Ors. (supra)**, wherein in paragraphs 30 and 31, it has been held as under:

*“30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:*

*30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;*

*30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then 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 rationalisation” and only in rare or exceptional cases that a material error has been committed;*

*30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;*

*30.4. The court should presume the correctness of the key answers and proceed on that assumption; and*

*30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.*

*31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having 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 helped since mathematical precision is not always possible. This Court has shown one way out of an impasse — exclude the suspect or offending question.”*

*(emphasis supplied)*

9. Even in the recent judgment of the Supreme Court in the case of **Dr. NTR University of Health Sciences v. Yerra Trinadh & Ors.**, **MANU/SC/1441/2022** in paragraphs 7, 8 and 9, it has been held as under:

*“7. The short question which is posed for consideration before this Court is, “whether in the absence of any provision for re-evaluation, the High Court was justified in ordering re-evaluation after calling for the record of the answer scripts?”*

*8. While considering the aforesaid issue/question, few decisions of this Court including two, referred to hereinabove, which have been relied upon by the learned Counsel appearing on behalf of the University, are required to be referred to and considered.*

*8.1. In the case of Pramod Kumar Srivastava (supra), it is observed and held by this Court that in absence of any provision for re-evaluation in the relevant rules, examinees have no right to claim or demand re-evaluation. In paragraphs 7 & 8, it is observed and held as under:*

*“7. We have heard the Appellant (writ Petitioner) in person and learned Counsel for the Respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the Appellant in General Science paper. Under the relevant Rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a*



*candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the Appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [MANU/SC/0055/1984 : (1984) 4 SCC 27; AIR 1984 SC 1543]. In this case, the relevant Rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the Petitioners may demand after inspection. The High Court held that the Rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant Rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the Appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the Appellant re-evaluated.*

*8. Adopting such a course as was done by the learned Single Judge will give rise to practical problems. Many candidates may like to take a chance and pray for re-*



*evaluation of their answer-books. Naturally, the Court will pass orders on different dates as and when writ petitions are filed. The Commission will have to then send the copies of individual candidates to examiners for re-evaluation which is bound to take time. The examination conducted by the Commission being a competitive examination, the declaration of final result will thus be unduly delayed and the vacancies will remain unfilled for a long time. What will happen if a candidate secures lesser marks in re-evaluation? He may come forward with a plea that the marks as originally awarded to him may be taken into consideration. The absence of clear Rules on the subject may throw many problems and in the larger interest, they must be avoided.*

8.2. *In the case of Ran Vijay Singh v. State of U.P., MANU/SC/1578/2017 : (2018) 2 SCC 357, in paragraph 32, it is observed and held as under:*

*32. It is rather unfortunate that despite several decisions of this Court, some of which have been discussed above, there is interference by the courts in the result of examinations. This places the examination authorities in an unenviable position where they are under scrutiny and not the candidates. Additionally, a massive and sometimes prolonged examination exercise concludes with an air of uncertainty. While there is no doubt that candidates put in a tremendous effort in preparing for an examination, it must not be forgotten that even the examination authorities put in equally great efforts to successfully conduct an examination. The enormity of the task might reveal some lapse at a later stage, but the court must consider the internal checks and balances put in place by the examination authorities before interfering with the efforts put in by the candidates who have successfully participated in the examination and the examination authorities. The present appeals are a*



*classic example of the consequence of such interference where there is no finality to the result of the examinations even after a lapse of eight years. Apart from the examination authorities even the candidates are left wondering about the certainty or otherwise of the result of the examination -- whether they have passed or not; whether their result will be approved or disapproved by the court; whether they will get admission in a college or university or not; and whether they will get recruited or not. This unsatisfactory situation does not work to anybody's advantage and such a state of uncertainty results in confusion being worse confounded. The overall and larger impact of all this is that public interest suffers.*

8.3. In the case of Vikesh Kumar Gupta (supra), after considering catena of decisions on scope of judicial review with regard to re-evaluation of the answer sheets, it is observed and held that the court should not re-evaluate or scrutinise the answer sheets of a candidate as it has no expertise in the matter and the academic matters are best left to academics.

9. Applying the law laid down by this Court in the aforesaid decisions to the facts and circumstances of the case on hand, we are of the opinion that the High Court was not at all justified in calling the record of the answer scripts and then to satisfy whether there was a need for re-evaluation or not. As reported, the High Courts are calling for the answer scripts/sheets for satisfying whether there is a need for re-evaluation or not and thereafter orders/directs re-evaluation, which is wholly impermissible. Such a practice of calling for answer scripts/answer sheets and thereafter to order re-evaluation and that too in absence of any specific provision in the relevant Rules for re-evaluation and that too while exercising powers Under Article 226 of the Constitution of India is disapproved.”

*(emphasis supplied)*



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10. If that be so, having noted the settled position of law, we are of the view that in the absence of any Rule stipulating re-evaluation in the present case, a direction cannot be given to the respondents to re-evaluate the answer sheet of the petitioner. Further, as held by the Supreme Court that the Court should not scrutinise the answer sheet of a candidate and academic matters are best left to academicians and it is the case of the respondents that the matter was referred to the Experts before the answer keys were uploaded, we are of the view, that the order of the Tribunal needs no interference. It would be appropriate to dismiss the petition. It is ordered accordingly. No costs.

**CM APPL. 9518/2020**

Dismissed as infructuous.

**V. KAMESWAR RAO, J**

**ANOOP KUMAR MENDIRATTA, J.**

**OCTOBER 04, 2023/aky**