



2024:DHC:8730-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8896/2020, CM APPL. 28662/2020 & CM APPL. 34956/2020

UNION PUBLIC SERVICE COMMISSIONPetitioner
Through: Mr. Narsh Kaushik, Sr. Adv.
with Mr. Ravinder Aggarwal and Mr.
Shantanu Shukla, Advs.

versus

KALPANA VEDRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGEMENT (ORAL)
11.11.2024

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C. HARI SHANKAR, J

1. This writ petition assails a judgment dated 27 February 2020 passed by the Central Administrative Tribunal¹ in OA/100/4619/2014². The Union Public Service Commission³ has challenged the order.

2. The dispute pertains to a Limited Departmental Competitive Examination⁴ for appointment of Section Officer in the Railway Board Secretariat, undertaken by the respondent consequent to a notification

¹ "THE Tribunal" hereinafter

² *Kalpna Ved v UOI*

³ "UPSC" hereinafter

⁴ "LDCE" hereinafter

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issued by the UPSC on 20 September 2014.

3. The manner in which the application was required to be submitted by the candidates concerned is thus set out in the notice dated 20 September 2014 issued by the UPSC, under the title “COMBINED SECTION OFFICERS/STENOGRAPHERS’ (GRADE-‘B’/GRADE-I) LIMITED DEPARTMENTAL COMPETITIVE EXAMINATION, 2014”.

“4. LAST DATE FOR RECEIPT OF APPLICATION:

The candidates will have to fill in their application form online on UPSC website (www.upsc.gov.in). Detailed instructions to fill up the online application will be available on UPSC website. A printed copy of the submitted online application is required to be routed through their Head of Department/Head of Office to the Commission. The online applications can be filled by the applicants from 20th September, 2014 to 20th October, 2014 (till 11.59 p.m.), after which the link will be disabled. The last date for receipt of printed copy of the application in the Commission through proper channel is 31st October, 2014. The complete printed copy of the application form duly verified/certified by concerned Head of Department/Office must reach the Under Secretary (E-VI), Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110069 on or before the prescribed date.

e-Admit Card of the admitted candidates to this examination will be uploaded on the UPSC website (www.upsc.gov.in) three weeks before the date of commencement of this examination and can be downloaded by the eligible candidates. No paper admit card will be issued by the Commission. Candidates shall not be admitted to the examination unless he/she holds a downloaded e-Admit Card. Candidates are required to fill in their valid and active e-mail id in their online application form as Commission may use electronic modes for contacting them.

NOTE: Only those candidates whose printed copy of online application is forwarded by their Head of Department/Office will be considered for admission to this Examination. They should further note that the Commission will in no case be responsible for non-receipt of their application or any delay in receipt thereof on

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any account whatsoever. No application, received after the prescribed last date for receipt of printed copy of the application in the Commission through proper channel, will be entertained under any circumstances and all the late applications will be summarily rejected. They should, therefore, ensure that after verifying the relevant entries and completing the endorsement at the end of the application form, their applications are forwarded by their Department or Head of Office, so as to reach the Commission's Office on or before the prescribed last date.”

4. In the annexure to the said notice, it is again reiterated, at Serial No. 6, thus:

“6. A candidate must submit his printed copy of the online application through the Head of his Department or Head of Office concerned who will verify the relevant entries and complete the endorsement at the end of the application form and forward it to the Commission.”

5. Admittedly, the respondent did not submit any copy of her application for participation in the LDCE online as required by the above instruction. Her contention before the Tribunal was that, despite her best efforts, she was not able to submit the application online. She, however, submitted that a hard copy of the application had been submitted to the respondent offline and that, therefore, she should be permitted to participate in the LDCE.

6. The Tribunal, by an interim order dated 24 December 2014, permitted the respondent to provisionally take part in the LDCE.

7. The OA finally came to be disposed of by the Tribunal by judgment dated 27 February 2020, which is under challenge herein. Paras 2, 3, 5, 6 and 7 of the impugned judgment read thus:



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“2. The applicant states that in spite of her best efforts, she could not apply ‘online’ and though the hard copy of the application was forwarded to the respondents in complete form, she was not issued the admit card for the examination. With this background, she filed this OA with a prayer to direct the respondents to permit her to take part in the LDCE, for the post of Section Officer in the RBSS (Category III).

3. On behalf of respondents, counter affidavit is filed. It is stated that it is on account of fault on the part of the applicant, that she could not apply ‘online’ and had she followed the instructions strictly, there would not have been any difficulty. It is stated that once the applicant did not submit the form ‘online’, she cannot be treated as a candidate and that no relief can be granted to her.

5. The respondents have chosen the dual method of submission of applications. First, it is through ‘online’ and thereafter a hard copy of the same is required to be submitted to the HoD. *It is not difficult to imagine the handing of computers, particularly when several details are to be furnished. The applicant states that in spite of her best efforts she could not submit the form ‘online’ but she was able to retrieve the form and furnished the same in hard copy of the department. It is also not in dispute that the department forwarded the same to the UPSC without any objection. Though it would have been better and convenient for the UPSC had the ‘online’ application was also received, copy was received, that too with the recommendation of the HoD.*

6. An interim order was passed by this Tribunal on 24.12.2014 enabling the applicant to take part in the examination. It is brought to our notice that the applicant took part in the examination. However, the results were not declared.

7. We, therefore, dispose of this OA directing the respondents to declare the result of the applicant and take further steps, depending on the marks obtained by her. We make it clear that in case the applicant qualifies for selection, she shall be issued offer of appointment but without the benefit of arrears of salary. At the same time, she would be entitled to notional seniority based upon the rank in the merit list. The exercise in this behalf shall be completed within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.”

8. Having perused the judgment of the Tribunal, it is clear that the

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Tribunal has proceeded more on sympathy rather than on law. The Tribunal has observed that it was not difficult to imagine handing of computers, particularly when several details were to be furnished. With great respect, such an abstract observation cannot constitute the basis for deciding an application.

9. Before the Tribunal, *there is a categorical admission, by the respondent, that she could not submit the form online.* In fact, in para 5, the position is made clearer by the applicant who contended that, in spite of her best efforts, she could not submit the form online but she retrieved the form and furnished the same in hard copy to the department.

10. Sitting in writ jurisdiction over the decision of the Tribunal, we cannot wish away the fact that there was an acknowledgement by the respondent that she was unable to submit the application online. What was forwarded to the respondent was a print preview of the application. The said preview is available on record. We have perused the said screenshot and it indicates that what was furnished was a print preview of the application which the respondent perhaps intended to submit online but found herself, admittedly, unable to do so.

11. We understand the difficulty that the respondent may be facing. Also, it is possible that the respondent may not be at fault. However, we have to be conscious of the fact that as a writ court, we cannot set a precedent which may set a wrong example for future cases.



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12. *This is not a case in which there were two alternate modes of submission of the application available to the candidate, online and offline. Had that been so, perhaps the submission of the application offline might have sufficed even if the candidate was unable to submit it online. We have extracted Instruction 4 in the instructions issued for candidates applying for examination. It clearly requires the application to be submitted online and a copy of the online submitted application duly verified to be forwarded by the Head of the Department to the UPSC in a hard copy.*

13. Clearly, what was forwarded to the UPSC was a print preview of the application as the respondent herself submitted that she could not apply online.

14. If the respondent could not apply online, irrespective of the hardships which she may be facing, it amounts to failure to comply with the prescribed and stipulated mode for submitting the application.

In *UOI v Mahendra Singh*⁵, the Supreme Court held:

“14. The argument of Mr. Bhushan that use of different language is not followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. *It is well settled that if a particular procedure in filling up the application form is prescribed, the application form should be filled up following that procedure alone.* This was enunciated by Privy Council in the *Nazir Ahmad v. King-Emperor*⁶, wherein it was held that “that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

⁵ 2022 SCC OnLine 909

⁶ AIR 1936 PC 253



15. A three Judge Bench of this Court in a judgment reported as *Chandra Kishore Jha v Mahavir Prasad*⁷, held as under:

“17. ... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage : *Nazir Ahmad v King Emperor, Rao Shiv Bahadur Singh v State of V.P.*⁸, *State of U.P. v Singhara Singh*⁹. An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”

16. The said principle has been followed by this Court in *Cherukuri Mani v Chief Secretary, Government of Andhra Pradesh*¹⁰ wherein this Court held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”

17. Similarly, this Court in *Municipal Corporation of Greater Mumbai (MCGM) v Abhilash Lal*¹¹ and *OPTO Circuit India Limited v Axis Bank*¹² has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review.

15. The *Nazir Ahmad* principle – first enunciated in *Taylor v Taylor*¹³ squarely applies in a case such as this. If the prescribed

⁷ (1999) 8 SCC 266

⁸ AIR 1954 SC 322

⁹ AIR 1964 SC 358

¹⁰ (2015) 13 SCC 722

¹¹ (2020) 13 SCC 234

¹² (2021) 6 SCC 707

¹³ (1875) 1 Ch D 426



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procedure required the application form to be submitted online and a verified hard copy thereof to be forwarded by the Head of the Department to the UPSC, that was the only way of applying. All other ways, including a mere hard copy, stand necessarily forbidden.

16. Moreover, we cannot allow ourselves to be swayed by sympathy in a case as this. It would become impossible to distinguish between a genuine case and a case of sheer carelessness.

17. We, therefore, regretfully find ourselves unable to uphold the order passed by the Tribunal.

18. Accordingly, the impugned order dated 27 February 2020 is quashed and set aside.

19. The writ petition is allowed and the OA filed by the respondent shall stand dismissed.

20. Pending applications, if any, also stand disposed of.

C.HARI SHANKAR, J

ANOOP KUMAR MENDIRATTA, J

NOVEMBER 11, 2024

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[Click here to check corrigendum, if any](#)