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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Decision delivered on: 30.08.2024**+ **W.P.(C) 11982/2024 & CM APPL. 49855/2024**UNION OF INDIA, THROUGH, THE GENERAL MANAGER &
ANR.PetitionersThrough: Mr. Subhash Tanwar, Mr. Sandeep
Mishra and Mr. Ashish
Choudhary, Advocates

versus

NITESH KUMARRespondent

Through:

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA**J U D G M E N T (O R A L)****CM APPL. 49856/2024 (exemption)**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. By way of the present writ petition filed under Article 226 read with 227 of the Constitution of India, the petitioner has sought the following relief:

“(i) Pass The Direction(S), Order (S) To Setting Aside the Order

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*Passed By Ld. Central Administrative Tribunal In Original Application
No. 399/2017 Dated 09/08/2023;”*

4. The respondent had participated in the selection process initiated by the petitioners herein for Group ‘D’ post and on being declared successful at various stages of the examination and document verification, followed by medical examination, he was advised to submit his preference for posting. At that stage, while he was awaiting his offer of appointment, he received a communication (‘Annexure A1’ before the learned Tribunal) wherein, the candidature of the respondent has been rejected for the reason “rejected for violation of examination conditions”. Aggrieved by the same the respondent had filed O.A. No. 399/2017 before the learned Tribunal and same has been allowed vide order dated 09.08.2023, which is impugned in the present petition.

5. The case of the petitioners before the learned Tribunal and before this Court is that in the examination certain instructions were mentioned and the respondent has violated the same, which are reproduced as under:

- “1. एक बार रंगे हुए गोले को ब्लेड या सफेदी से मिटाने की अनुमति नहीं है।
2. जैल पेन अथवा पेंसिल मान्य नहीं है।
3. बॉक्स संख्या 1 से 7 और 9 से 15 को अवश्य भरें।
4. कृपया उत्तर-पत्र, द्वितीय प्रति के साथ, परीक्षा भवन छोड़ने से पहले परीक्षक को सौंप दें।
5. डुप्लीकेट शीट पर कुछ न लिखें।
6. बॉक्स संख्या 13, 14 एवं 15 के गोले को भरने में किसी भी प्रकार की त्रुटि करने पर कंप्यूटर आपके उत्तर-पुस्तिका (OMR) को स्वतः निरस्त कर देगा।”

6. The learned Tribunal observed in the impugned order that under



the said head instructions, specifically at Sl. No.6, in case of any correction or change with respect to column nos.13, 14 & 15, the OMR sheet of the candidate shall not be evaluated rather it would stand cancelled. However, with respect to all the other instructions, no such condition is mentioned.

7. Before the learned Tribunal in the O.A., the answer sheet of the respondent was produced duly evaluated and the respondent secured 106.21 marks against the cut-off marks i.e. 92, which is fairly above the merit.

8. Accordingly, the learned Tribunal observed that it is clear from the instructions that the cancellation was invited only in violation with respect to condition no.6.

9. It is not in dispute that the respondent herein had violated instruction no.1, which clearly does not invite any rejection/cancellation. The learned Tribunal observed that the candidature of the respondent has been cancelled incorrectly by applying the exclusivity clause.

10. Consequently, the impugned rejection information ('Annexure A/1' before the learned Tribunal) has been quashed being illegal. Except the aforesaid violation of the instructions the petitioners could not establish any other case that it is a case of cheating or malpractices adopted by the respondent.

11. Even if we presume that the respondent violated the instructions, then the question 15 of the OMR sheet may be ignored wherein he made



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the overwriting.

12. Accordingly, we find no perversity or illegality in the impugned order passed by the learned Tribunal, finding no merit in the present petition, the same is accordingly dismissed along with pending application.

13. Consequently, the petitioners are directed to comply with the directions passed by the learned Tribunal within a period of four weeks from today.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 30, 2024/riya

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