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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 02.04.2024***

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W.P.(C) 1845/2024 & CM APPL. 7718/2024 (stay)**UNION OF INDIA AND ORS**

..... Petitioner

Through: Ms. Manisha Agrawal Narain, CGSC
with Mr. Sandeep Singh Somaria, Ms. Khsuhi
Mangla, Advs.

versus

VINAY KUMAR

..... Respondent

Through: None.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 23.11.2022 passed by the learned Central Administrative Tribunal (the Tribunal) in O.A. No. 1251/2015. Vide the impugned order, the learned Tribunal has allowed the original application (OA) filed by the respondent/applicant and has consequently, quashed the petitioners' decision to award zero marks to the respondent in paper-II of the two tier recruitment exam for the post of MTS (Non-Technical Staff) held in the year 2013.

2. We may, at the very outset, note that the petitioners decided to award zero marks to the respondent in paper-II after noticing the fact that he had, while correctly writing the ticket number on his answer sheet, failed to



write the last digit of his ten digit roll number on the same. The respondent's representation for evaluation of his paper-II was rejected vide order dated 22.09.2014 leading to the filing of the OA which has been allowed under the impugned order.

3. Before us it is an admitted position that the answer sheet of the respondent was duly identified from his ticket number and therefore, it was not a case of any impersonation or mistaken identity. The plea of the petitioners, however, is that the respondent's failure to write the complete roll number on his answer sheet qua paper-II was in breach of the specific instructions which required him to write the complete roll number and therefore, the petitioners had correctly awarded him zero marks in the said paper.

4. On the last date, after hearing learned counsel for the petitioner at some length, we had put to her as to how the lapse on the part of the respondent could be said to be a substantive or material irregularity so as to deprive him of the evaluation of his answer sheet in itself. We had also put to the learned counsel for the petitioners as to why the error committed by the respondent should not be considered as a trivial error and the writ petition be dismissed by following the ratio of recent decision of the Apex Court in *Vashist Narayan Kumar v. State of Bihar*, 2024 SCC OnLine SC2. She had prayed for and was granted time to obtain instructions and make further submissions.

5. Today, Ms.Agrawal, while submitting that in *Vashist Narayan Kumar (Supra)*, the Apex Court was dealing with a situation where the mistake in filling his date of birth was committed by an applicant belonging to a remote village, who did not know anything about computers, contends



that in the present case, the respondent belongs to Rewari, which is a fairly large city, well connected with Delhi and therefore, the lapse committed by him has to be viewed differently. She submits that the function of Multi Tasking Staff, a post which the respondent is vying for, requires making entry in despatch registers and therefore, candidate like him who did not fulfil the form correctly, were rightly rejected by the petitioners. She, therefore, prays that the impugned order be set aside.

6. Having considered the submissions of the learned counsel for the petitioner and perused the record, we find that while allowing the OA filed by the respondent, the learned Tribunal relied on its own decisions in various earlier OAs as also a decision of this Court in ***Tarun Kant Pant vs. Union of India & Anr.*** in **W.P.(C) 3624/2012** which decision was unsuccessfully assailed before the Apex Court. At this stage, it would, therefore, be apposite to refer to the relevant extracts of the impugned order which read as under:-

“8. The short question raised in the present OA is whether applicant’s Paper II could be checked if the last digit of the roll number is not written by him in the answer-sheet.

9. Learned counsel for the applicant has drawn our attention to his answer sheet, i.e. Annexure A-5(pg. 24) wherein two columns are there Ticket Number, which is according to the applicant correctly filled in but Roll No. last digit “9” is not mentioned. On this ground, his candidature was cancelled.

10. As far as the identification of the applicant is concerned, learned counsel for the applicant tried to impress this Tribunal that it can be identified by Ticket Number also. There are two identification marks apart from others. Lastly, he has submitted that the applicant is applying for a lower rank of post, thus, strict rule of game shall not be applied in the applicant's case and he has drawn our attention to the recent judgment passed by this



Tribunal in OA No.215/2017 in the matter of Sumit Kumar Vs. Union of India and others, in which this Tribunal has . given benefit to the petitioner by relying upon various judgments, including WP (C) No. 1004/2012 dated 24.02.2012 in which it was held that instructions given to a candidate not to sign in block letters in English was merely a directory and not mandatory and relief was provided to the respondents' as also the judgment of Hon'ble High Court of Hyderabad in the case of UOI, Ministry of Personnel and Ors. v. Guduru Raja Surya Praveen and Ors. (W.P. No.28874/2015) decided on 18.11.2015, it has been held that "non substantive and non-material irregularity" shall not result in denying benefit of evaluation of the answer sheet of the applicant and also the similar views were taken in Ms. Kritika Raj Vs. SSC (OA-1413/2015) dated 07.12.2015 and UPSC Vs. Gyan Prakash Srivastava (2012)1 SCC 537, the Tribunal has allowed the said case. The matter went to Hon'ble High Court by way of Writ Petition (Civil) No-4829/2017 which was decided on 10.8.2017. The Hon'ble High Court while discussing the legal position in this regard, basically relied upon the decision in Tarun Kant Pant vs. Union of India & Anr. (WP No. 3624/2012). The relevant paras 26, 27 & 28 are reproduced as under:-

"26. Reliance placed by Mr. Mishra on the aforesaid decisions is also misplaced. Tarun Kant Pant (supra), as noticed above, was a case where the candidate did not appear in the examination on the ground that he had not received the Admit Card. Obviously, this was a completely different fact situation. The candidate who could not appear in the examination for whatsoever reason, cannot claim right to be considered. Similarly, reliance placed on Ram Kailash Saroj (supra) is misplaced. In this case, the candidate had written his name in capital letters, instead of signing the Form. The purpose of requiring the candidate to sign the Form is to ensure that no other person is impersonating him while taking the examination. Otherwise, it is possible that some other person may impersonate the candidate, and may put the name of the candidate in capital letters instead of putting the signatures, as the signatures



put by him would not match the ones affixed by the candidate while filling the application examination form, and impersonation may be detected. This is not the situation in the case in hand. Reliance placed on Dr. M. Vennila (supra) is also misplaced. That was a case where the candidate had not affixed his signature on the answer sheet. It was for this reason that the Court held that the answer sheet was not authenticated, and could not be considered as valid.

27. The submission of Mr. Mishra that allowing the Respondent' candidature would tantamount to changing the rules of the game, or that the Tribunal or this Court is not authorized to do so, has no merit. The Tribunal has not changed the rules of the game. It is only a question of the manner in which the Petitioner is processing the answer sheets. The Petitioner should be conscious of the fact that it is dealing with the career of young candidates. They are not being tested for their skill in filling up the Form. They were to be tested with the objective of selecting the best and most meritorious candidates on the basis of the answers given by them in the examination.

28. For the aforesaid reasons, we find no merit in the instant petition and the same is, accordingly, dismissed."

11. Thereafter the matter went to Supreme Court in SLP (Civil) No. 18743/2018 and the same has been dismissed by the Hon'ble Apex Court vide judgment dated 22.11.2019. The judgment so passed by the High Court has attained finality and thus. binding upon this Tribunal.

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14. In view of this fact, the OA is disposed of. The impugned order dated 22.09.2014 is quashed and set aside: We direct that the applicant's Paper-II shall be examined afresh within a period of two months and in case he gets through Paper II, he may be considered for appointment and consequential benefits thereto. However, no monetary benefit will be given to the appellant."



7. From a perusal of the aforesaid, we find that the learned Tribunal was of the view that as long as the identity of the respondent could be easily verified from his answer sheet, the lapse on his part in not writing the last digit of his ten digit roll number on the same, could not be treated as a material irregularity. In the light of this finding of the learned Tribunal, we have given our thoughtful consideration to the pleas raised by the petitioners but are inclined to agree with the learned Tribunal that the lapse on the part of the respondent was indeed trivial and did not play any part in the selection process. It would be highly unjust to deprive the respondent of the fruits of his labour only on account of this insignificant lapse where, perhaps due to the anxiety of appearing in the exam, he forgot to write the last digit of his roll number. As noted hereinabove, it is not a case where there was any dispute regarding his identity. It is not even the petitioners' case that there was any suspicion of impersonation, on the part of the respondent's only plea being that the respondent had failed to abide by the specific instructions which required him to write his complete roll number on the answer sheet.

8. In this regard, reference may be made to the observations as contained in paragraph nos.10, 11, 15, 18 & 19 of *Vashist Narayan Kumar (supra)* wherein the Apex Court held as under:

“Question for Consideration

10. The question that arises for consideration is whether the error committed in the application form, which was uploaded is a material error or a trivial error and was the State justified in declaring the appellant as having failed on account of the same?



Discussion

11. Admittedly, the appellant derived no advantage as even if either of the dates were taken, he was eligible; the error also had no bearing on the selection and the appellant himself being oblivious of the error produced the educational certificates which reflected his correct date of birth.

15. Recently this Bench in **Divya vs. Union of India & Ors.**, 2023:INSC:900 = 2023 (13) Scale 730, while declining relief to candidates who acquired eligibility after the date mentioned in the notification carved out a narrow exception. There, the judgment in **Ajay Kumar Mishra vs. Union of India & Ors.**, [2016] SCC OnLine Del 6563, a case very similar to the facts of the present case, was noted. In **Ajai Kumar Mishra (supra)**, Indira Banerjee, J. (as Her Ladyship then was) speaking for the Division Bench of the Delhi High Court in para 9 stated as under:-

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/ or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.” (emphasis supplied)

The exception for trivial errors or omissions is for the reason that law does not concern itself with trifles. This principle is recognized in the legal maxim - *De minimis non curat lex*.

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18. The learned counsel for the State drew attention to the verification by the appellant, of the details in a printed form furnished by the selection board. He contended that the appellant



signed the form which carried the date of birth. First of all, the form was a printed form which reflected the date of birth as given by the appellant and the appellant signed the printed form on 10.03.2018. We are inclined to accept the explanation of the appellant that since the appellant was unaware of his own mistake he had mechanically signed the printed form. It is only later, on 11.06.2018, on the publication of the result that the appellant realized the error. We do not think that the appellant could be penalised for this insignificant error which made no difference to the ultimate result. Errors of this kind, as noticed in the present case, which are inadvertent do not constitute misrepresentation or wilful suppression.

19. In this case, the appellant has participated in the selection process and cleared all the stages successfully. The error in the application is trivial which did not play any part in the selection process. The State was not justified in making a mountain out of this molehill. Perhaps the rarefied atmosphere of the cybercafe, got the better of the appellant. He omitted to notice the error and even failed to avail the corrective mechanism offered. In the instant case, we cannot turn a Nelson's eye to the ground realities that existed. In the order dated 22.11.2021 in C.A. No. 6983 of 2021 [Prince Jaibir Singh vs. Union of India & Ors.], this Court rightly observed that though technology is a great enabler, there is at the same time, a digital divide."

9. In the light of the aforesaid, we have no hesitation in concurring with the learned Tribunal that the lapse on the part of the respondent was insignificant as he could be easily identified from his ticket number written on the very same answer sheet where he had missed to write the last digit of his roll number. We, are, therefore of the view that such a trivial and *bonafide* lapse on the part of the respondent could not be a ground to reject his candidature. We, therefore, find no reason to interfere with the impugned order



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10. The writ petition being meritless is, along with all pending applications, dismissed.

(REKHA PALLI)
JUDGE

(DR. SUDHIR KUMAR JAIN)
JUDGE

APRIL 2, 2024
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