



2024:DHC:9522-DB



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

+ **W.P.(C) 15157/2024, CM APPLs. 63562/2024 & 63563/2024**

**UNION OF INDIA THROUGH THE GENERAL
MANAGER & ORS.**

.....Petitioners

Through: Mr. Subhash Tanwar, CGSC
with Mr. Sandeep Mishra, Mr. Naveen and
Ms. Bhavi Garg, Advs.

versus

RAKESH KUMAR

.....Respondent

Through: Mr. Bhuvnesh Shukla and Mr.
Sachin Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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09.12.2024

C. HARI SHANKAR, J.

1. The Railway Recruitment Cell¹ of the Northern Railway, *vide* notification dated 30 December 2013, invited applications for recruitment to Group D posts. The respondent applied. He underwent the examination and the process of document verification followed by physical examination, which was scheduled for 21 April 2015. Following this, in July/August 2015, the respondent was issued an admit card for undergoing the medical examination, scheduled for 10 August 2015. He underwent the medical examination on the said date

¹ "RRC" hereinafter



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and claims to have been informed that he was declared medically fit.

2. As nothing happened thereafter, the respondent made applications under the Right to Information Act, 2005, seeking information as to why his result was not being declared. Finally, in August 2016, the following order came to be issued by the RRC, cancelling the respondent's candidature:

“A recruitment process to fill up 5679 vacancies in Pay Band- I Rs. 5200-20200 GP 1800/- Group “D” Post was initiated vide Notification No.: 220E/Open Mkt/RRC/2013 Dated: 30/12/2013. In the said notification detailed information for the candidates was given. Notification clearly stipulates how to apply, general conditions and invalid applications etc. General conditions of the notification also stipulates that mere selection and empanelment does not confer any right of appointment to the candidate. Admission of the candidate at all stages of recruitment will be purely provisionally subject to satisfying the prescribed conditions.

Before the written examination, it was informed to all concerned candidates that OMR answer sheet is to be filled up properly, failing which candidature will be cancelled. It was also stipulated under instructions on the OMR sheet itself that once answer is marked for a specific question by darkening a bubble, subsequent changes are not permissible. During process of post examination scrutiny of original OMR vis a vis carbon copy of OMR in respect of the cases of shortlisted candidates by a committee nominated for the purpose it has been observed that applicant has done excessive cutting, erasing or used fluid etc on OMR sheet circumventing the given instructions.

Accordingly, applicant's candidature has been cancelled by competent authority i.e. Chairman/RRC for violation of examination conditions. Moreover the issue of violation of examination conditions involved is no more res integra in view of the decision dated 2/9.7.2014 of CAT/Chandigarh in Deepak Vs UOI OA No.1355/HR/2013, order dated 27.04.2012/ 01.05.2012 in OA No.1181/2012 by Principal Bench/CAT/New Delhi, order dated 30.05.16 in OA 1966 Of 2015 Ram Singh Rajput V UOI (OA dismissed order yet to be received) & Apex Court Judgment in SLP(C) No.706/2014 i.e. UOI & Anr. Vs Sarwan Ram.



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Chairman/RRC”

3. As the ground for cancelling the respondent’s candidature was that he had made “excessive cutting, erasing or using fluid on OMR sheet”, the respondent sought a copy of the OMR sheet which had been filled in by him at the time of undergoing the examination. The OMR sheet was received by the respondent on 15 September 2016, and was filed before the Tribunal as well as before this Court.

4. Contending that he had not carried out any excessive cutting, erasing or using of fluid on the OMR Sheet and that, therefore, the cancellation of his candidature was illegal, the respondent approached the Tribunal by way of OA 289/2017 (*Rakesh Kumar v General Manager, Northern Railway*), praying that the afore-extracted undated decision of the RRC, cancelling his candidature, be quashed and that he be appointed to the appropriate Group D post. Consequential benefits were also sought. Among other contentions, the respondent submitted that cancellation of his candidature, without issuing him any show cause notice, was violative of the law.

5. The petitioners filed a counter affidavit before the Tribunal, by way of reply to the OA filed by the respondent. It was alleged that the respondent had “done cutting, erasing or used fluid on OMR sheet against the instructions”. The nature of the cutting, erasure or using of fluid, by the respondent, was however not disclosed in the counter affidavit. It may be noted that the only alteration in the OMR sheet, carried out by the respondent, was that he used white fluid to erase Option ‘D’ which he had originally blackened as the correct option



answer to Question 52. It is relevant to mention, however, that the respondent did not blacken any other option against the said question in place of Option 'D'.

6. Mr. Sandeep Mishra, who appears for the petitioners, does not dispute the fact that this was the only alteration carried out by the respondent in the OMR Sheet.

7. However, his contention is that the said alteration was by itself sufficient to cancel the candidature of the respondent. Mr. Mishra has placed reliance, in this context, on the following instructions on the face and reverse of the OMR sheet:

Instructions on the face of the OMR sheet

- “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 पर्यवेक्षक 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।”

(which translates in English as under:

1. Circles once filled are not allowed to be erased with blade or correction fluid.
2. Gel pens or pencils are not acceptable.
3. Box numbers 1 to 7 and 9 to 15 must be filled.
4. Please hand over the answer sheet along with its duplicate copy to the invigilator before leaving the examination hall.



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5. Do not write anything on the duplicate sheet.
6. Any mistakes in filling box numbers 13, 14 and 15, will lead to automatic rejection of your answer sheet (OMR) by the computer.”)

Instructions on the reverse of the OMR sheet

- “4. Your answer sheet will be evaluated through electronic process. Incomplete and incorrect entries may render your answer sheet invalid.
5. Carefully fill up all the necessary particulars in the answer sheet. Change of answer/sheet is not permissible.

9. Candidates are to answer questions from the multiple choice of answers A, B, C or D. Select the right answer to each question and darken the correct circle on the answer sheet. Once darkened changes are not permitted.

12. Failure to adhere to instructions above will render your answer sheet as invalid and it will not be evaluated.”

8. The Tribunal has, in the impugned order, placed reliance on its own earlier order dated 9 August 2023 in OA 399/2017², involving an identically situated candidate who had also participated in the selection for recruitment against Group D posts following the RRC Notification dated 30 December 2013. The Tribunal, *vide* judgement dated 9 August 2023, quashed the cancellation of the candidature of Nitesh Kumar and directed that he be offered appointment to a suitable Group D post from the date of issuance of the offer of appointment to similarly situated persons. Besides, the Tribunal held,



by reference to Instructions 1 to 5 on the face of the OMR sheet, reproduced *supra*, that cancellation was notified as a consequence only in the event of any process in the filling of the circles relating to Boxes 13, 14 and 15. Though Instruction 1 generally proscribed erasure of the blackened bubble against any question, the Tribunal interpreted the instructions, particularly Instruction 6, as indicating that cancellation could be resorted to only where there was any mutilation with respect to Boxes 13, 14 and 15. Inasmuch as the only erasure on the part of the respondent, in his OMR sheet, was with respect to Question 52, the Tribunal has, following its earlier view in **Nitesh Kumar**, quashed the cancellation of the respondent's candidature and has directed the respondent to be issued an offer of appointment to a suitable Group D post from the date of issuance of the offer of appointment to similarly situated persons. The respondent has, however, been granted consequential benefits on actual basis from the date he joins the post, with benefits on notional basis for the period prior thereto.

9. Aggrieved by the aforesaid decision, the petitioners have approached this Court by means of the present writ petition.

10. We have heard Mr. Mishra, learned Counsel for the petitioners and Mr. Bhuvnesh Shukla, learned Counsel for the respondent at length.

11. Mr. Mishra seeks to place reliance on Instructions 4, 5, 9 and 12



on the reverse of the OMR sheet which, according to him, permit cancellation of the candidature of a candidate who infracts any of the prior instructions. Inasmuch as Instructions 4, 5 and 9, as also the vernacular instructions on the face of the OMR sheet, extracted *supra*, clearly proscribed any tampering or erasure of the entries once made by darkening the circles on the OMR sheet, Mr. Mishra's contention is that, by erasing the darkened Option 6 in respect of Question 52 by using white fluid, the respondent, by his own act, had rendered his candidature liable to cancellation.

12. Mr. Mishra also placed reliance on the judgment of the Supreme Court in *State of Tamil Nadu v G. Hemalathaa*³ and *UOI v Mahender Singh*⁴.

13. As against this, Mr. Shukla, learned Counsel for the respondent, has placed reliance on Clause 7.6 of the Open Market Recruitment notification dated 30 December 2013 whereby applications were invited for the aforesaid selection, which reads thus:

“7.6 Only those candidates who qualify in the Written Examination will be called for Physical Efficiency Test (PET). Candidates to the extent of three time the number of vacancies in order of merit out of those who have obtained the prescribed minimum pass marks in the written examination will be called for being subjected to PET as per standard mentioned below. A separate admit card indicating date, time & venue will be sent to qualified candidates for PET.”

14. Mr Shukla further submits that the judgement of the Tribunal in

³ (2020) 19 SCC 430

⁴ (1997) 1 SCC 245



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Nitesh Kumar stands affirmed by this Court in its judgement dated 30 August 2024 in WP (C) 11982/2024⁵.

Analysis

15. Having considered Mr. Mishra's contentions, we find ourselves unable to agree with him.

16. It is true that the judgment of the coordinate Bench in **Nitesh Kumar** does not take note of the instructions contained on the reverse of the OMR Sheet, including Instruction 12. We are also in agreement with Mr. Shukla that the instructions contained on the reverse of the OMR Sheet are also required to be taken into consideration along with the vernacular instructions contained on the face of the OMR Sheet.

17. The question that arises before us, therefore, is whether we should adopt a view different from that adopted by the Coordinate Bench in **Nitesh Kumar**, on the basis of the instructions contained on the reverse of the OMR sheet, and the judgments in **Mahender Singh** and **Hemalathaa** on which Mr. Mishra sought to place reliance.

18. The answer, in our opinion, has necessarily to be in the negative. We say so for the following reasons.

19. *Firstly*, there is no distinguishing feature worth the name between **Nitesh Kumar** and the present case. The only distinction is

⁵ UOI v Nitesh Kumar



that, in the present case, the alleged violation of instructions was with respect to Question 52 whereas in **Nitesh Kumar**, a different Question was involved.

20. We also note that it is not as though the respondent erased the blackened circle against the answer to Question 52 and substituted it with another correct option. As such, the respondent would, at the highest, be liable not to be marked against Question 52.

21. *Secondly*, we are unable to convince ourselves that Instructions 4, 5, 9 and 12 on the reverse of the OMR sheet make any substantial difference to the merits of the case. Instruction 4, 5 and 9 are merely instructions relating to the manner in which the OMR sheet is to be filled up.

22. Instruction 12, no doubt, specifically states that failure to adhere to the prior instructions would render the answer sheet invalid *and that the answer sheet would not be evaluated*. This instruction, in our view, cannot make out a case to distinguish this case from **Nitesh Kumar**, for the simple reason that the respondent's answer sheet was *in fact* evaluated.

23. We say so for two reasons.

24. Mr. Mishra has not been able to draw our attention to any assertion either in the counter affidavit filed before the Tribunal or in the present writ petition to the effect that the respondent's answer sheet was not evaluated.



25. Even otherwise, Clause 7.6 in the Notification dated 30 December 2013, notifying the subject examination, specifically states that only candidates who had qualified the written examination would be called for the Physical Efficiency Test. There is no dispute about the fact that the respondent was *in fact* called not only for the Physical Efficiency Test but also, thereafter, for Medical Examination, both of which he cleared. The assertions by the respondent to this effect, as contained in paras 4.5 to 4.10 of the OA, and the reply to the said paras in the counter affidavit of the petitioners' thereto, read as under:

Paras 4.5 to 4.10 of OA

“4.5 That in March 2015, the Applicant came to know that he cleared the Written Exam. Therefore the respondent issued the admit card to the Applicant for Physical exam, which was scheduled for 23.03.2015. A true copy of the admit card issued by the Respondents is annexed herewith as **Annexure No. A-4**.

4.6 That before 23.03.2015, the Applicant came to know that the Respondents had cancelled the Physical exam, which was scheduled for 23.03.2015.

4.7 That in April 2015, the Applicant received the admit card from the Respondents for the Physical exam which was rescheduled for 21.04.2015. A true copy of the admit card issued by the Respondents is annexed herewith as **Annexure No. A-5**.

4.8 That on 21.04.2016, the Applicant came to know that he cleared the Physical Exam on the basis of the list issued by the Respondents on same date.

4.9 That in July/Aug 2015, the Respondents issued the admit card to the Applicant for the Medical Exam, which was scheduled for 10.08.2015 at Railway Hospital, Ambala Cantt. A true copy of the admit card issued by the Respondents is annexed herewith as **Annexure No. A-6**.

4.10 That on 10.08.2015, the Applicant appeared in the Medical Exam, which was conducted by the Respondents at Railway Hospital, Ambala Cantt and the applicant was declared medically



fit. On the same date, the Applicant was told by the doctor that he had cleared the Medical Exam.”

Reply to paras 4.5 to 4.10 of OA in counter-affidavit

“4.2 to 4.19 That the contents of Para of the Original Application need no comments being matter of record.”

“Matter of record” is defined, in P. Ramanatha Aiyar’s Advanced Law Lexicon 6th Edition, as “facts the truth of which can be established by reference to a record”.

26. As such, the inevitable presumption is that the respondent’s answer sheet was in fact evaluated and that, after the respondent had cleared the written examination, physical test and normal test, his candidature was cancelled for the sole reason that he had erased the entry against Question 52 in the OMR sheet.

27. *Thirdly*, the judgments in ***Hemalathaa*** and ***Mahender Singh***, in our view, do not make out any ground for us to differ with the view adopted in ***Nitesh Kumar***.

28. In ***Hemalathaa***, the applicable instructions for filling in the question paper prohibited the use of a pencil and specifically read:

“Penalty for violation of Commission’s instruction in the descriptive type examination.

The answer books of the applicants will be invalidated / marks deducted / debarred for violations of any one or more of the instructions, besides initiating criminal action wherever necessary.

1) Invalidation



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- (i) ...
- (ii) Usage of whitener, sketch pens, pencil, colour pencils, multi-colour pens, crayons or any other writing materials, for any purpose.”

Hemalathaa was found to have underlined several portions of the answer sheet in pencil. The Supreme Court held that the lapse on Hemalathaa’s part was not condonable and that the High Court had erred in setting aside the invalidation of her answer sheet despite the breach of the afore-extracted instructions.

29. In *Mahender Singh*, the respondent Mahender Singh filled up his OMR Sheet in Hindi and his Answer Sheet in English. The communication cancelling the candidature of Mahender Singh noted that, by reason of the fact that he had filled in the OMR Sheet and the Answer Sheet in different languages, it was impossible to compare the two in order to ensure that they were filled in by the same person. Similarly, Mahender Singh had signed on the application form in English and on the OMR sheet in Hindi. The Supreme Court observed that the purpose of requiring a candidate to choose the language in which he would fill in the OMR form and the answer sheet was to ensure that there was no impersonation and that the candidate who had filled up the application form was the candidate who appeared in the examination.

30. One cannot compare chalk with cheese. The indiscretion committed by the respondent in the present case cannot be analogised to the breaches of instructions committed by concerned applicants in



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Hemalathaa and Mahender Singh.

31. There are at least two other reasons why we are not inclined to hold in favour of Mr. Mishra on the basis of the decisions in ***Hemalathaa and Mahender Singh.***

32. The first is that ***Nitesh Kumar*** is a judgment of a Coordinate Bench involving an identically situated candidate, who had committed a near identical infraction, which ruled in favour of the candidate concerned. The reasoning adopted by the Coordinate Bench was, primarily, that instructions contained on the face of the OMR sheet, in vernacular, indicated that cancellation of candidature would visit a candidate only in the event of any tampering with respect to filling up of the circles against Boxes 13, 14 and 15. The Coordinate Bench has taken the view that no such consequence, as per instructions contained on the OMR, could visit breach of Condition 1.

33. It is trite that ordinarily decisions of coordinate benches constitute binding precedents. One may refer, in this context, to the following exordium from ***State of Punjab v Devans Modern Breweries***⁶, as followed in ***Mary Pushpam v Telvi Curusumary***⁷:

“Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench.”

On this aspect, the decision in ***Official Liquidator v Dayanand***⁸ comments, critically, thus:

⁶ (2004) 11 SCC 26

⁷ (2024) 3 SCC 224



90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down *by coordinate* and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that *predictability and certainty is an important hallmark of judicial jurisprudence developed in this country* in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.”

34. *Inter alia* for the reasons of maintaining uniformity and consistency, and in view of the undisputed position that the facts in this case are identical to those in **Nitesh Kumar**, we are not persuaded to take a different view.

35. Mr. Mishra, despite a valiant effort, has not been able to persuade us to adopt a view different from that adopted by our learned brethren in **Nitesh Kumar**.

36. The second distinguishing feature, between this case and the decisions in **Hemalathaa** and **Mahender Singh**, is that, in the present case, the consequence of breach of the instructions, as noted in Instruction 12 on the reverse of the OMR Sheet, was that the answer sheet *would not be evaluated*. *The respondent's answer sheet was in fact evaluated*, as was apparent from the fact that he was thereafter



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called not only for physical test but also for the medical test and that he cleared both. This, therefore, is not a case in which the respondent's answer sheet was not evaluated on account of the alleged breach of procedure on his part. The fact that he was called for the physical test and medical test also indicates that he had cleared the written examination.

Conclusion

37. We, therefore, see no reason to differ with the impugned judgment of the Tribunal which is, therefore, upheld in its entirety.

38. Accordingly, the writ petition is dismissed *in limine*, with no order as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

DECEMBER 9, 2024/aky/ar

Click here to check corrigendum, if any