

WP.CT 52 OF 2024
The Union of India & Ors.
-Vs-
Debu Ghosh

Mr. Sauvik Nandy, Sr. Adv.
Mr. Sujit Bhunia, Sr. Adv.

.....for the petitioners

Mr. Tanmay Chowdhury
Ms. Ritoprita Ghosh
Ms. Sulagna Sarkar

.....for the respondent

PER, PARTHA SARATHI SEN, J.:-

1. In this writ petition as filed under Article 226/227 of the Constitution of India, the judgment and order dated 13.06.2023 as passed in O.A. 350/00872/2020 by the Central Administrative Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as the said Tribunal in short) is assailed.
2. By the said impugned judgment and order the said Tribunal while allowing the original application of the respondent herein directed the respondent authorities of the said original application to evaluate the answer-sheet of Paper-I of the original applicant and in the event it is found that the original applicant has scored higher marks than the minimum marks scored by the selected candidates in the said examination subject to the original applicant

obtaining qualifying marks in Paper-III, the original applicant be offered with appointment in the promotional post.

3. The writ petitioners who are the respondents in the said original application that is Union of India and its instrumentalities thus preferred the instant writ petition.
4. For effective adjudication of the instant writ petition the chronology of events leading to filing of the instant *lis* are required to be looked into and those are discussed hereinabove in seriatim:
 - i. On 15.09.2019 the respondent/ original applicant appeared at the limited departmental competitive examination for the vacancy of Postal Assistants which arose during 2016-17, 2017-18 and 2018-19.
 - ii. The said examination consists of three papers out of which Paper-I is competitive and Paper-II and Paper-III are qualifying, however, the merit list in such examination was to be drawn in the order of marks scored in Paper-I only and the candidates who qualified in each paper that is Paper-I, II and III would be considered for final selection.
 - iii. The original applicant's name was not there in the final list of successful candidates since the original applicant made mistake in blackening

the relevant boxes of the OMR answer sheet in respect of his Roll No.

- iv. Challenging the decision of the authorities/writ petitioners herein the original applicant filed O.A. 350/369/2020 before the said Tribunal which came to be disposed of by a judgment and order dated 08.07.2020 by the said Tribunal whereby the said Tribunal granted liberty to the original applicant to prefer a representation within a stipulated time with a further direction to the respondent authorities to consider such representation.
 - v. Pursuant to the leave granted by the said Tribunal the writ petitioner submitted his representation dated 14.07.2020. The writ petitioner no. 2 authority herein by his reasoned order dated 15.09.2020 however declined to consider the said representation favourably.
 - vi. Challenging the said order the writ petitioner filed O.A. 350/00872/2020 in which the aforementioned impugned order is passed giving rise to the instant writ petition.
5. At the time of hearing Mr. Nandy, learned Advocate appearing on behalf of the writ petitioners/ Union of India and its instrumentalities at the very outset submits before this Court that on perusal of the

impugned order it would reveal that the original applicant/ respondent herein failed to fill up the relevant boxes of the OMR Sheet in respect of his Roll No. correctly and as a result, whereof the OMR Sheet in respect of Paper-I could not be evaluated and thus, the original applicant was not allowed to sit in Paper-III examination.

6. It is further submitted that since OMR Sheets of the candidates were evaluated through automated machine, the said automated machine could not identify the candidate (herein the original applicant) and on account of such the writ petitioner was deprived from appearing in Paper-III examination.
7. It is further submitted that the said Tribunal while passing the impugned order has failed to visualize that the writ petitioner cannot be permitted to take advantage of his own wrong. It is further submitted that in the meantime, the aforementioned recruitment process is over and successful candidates have been recruited.
8. It is further submitted that since in the meantime valuable rights have been accrued in favour of the successful candidates in respect of their posts where they have been recruited, the learned Tribunal ought not to have allowed the original application as filed by the respondent/ original applicant herein to the detriment of the said successful candidates.

9. Per contra, Mr. Chowdhury, learned Advocate appearing on behalf of the respondent/ original applicant supports the impugned order. It is submitted that on perusal of Paragraph 5.3 of the impugned judgment it would reveal that the said Tribunal while passing the impugned judgment followed an earlier finding of the Principal Bench of the Central Administrative Tribunal as well as the view taken by the Punjab and Haryana High Court in WP(C) No. 13730 of 2012 (**Rohit Kumar Vs. UOI and Ors.**).
10. This Court meticulously gone through the entire materials as placed before it. This Court has given its anxious consideration over the submission of the learned Advocates for the contending parties.
11. On careful perusal of the entire materials as placed before this Court it would reveal that it is not the case of the department that the original applicant made some wrong marking in the OMR Sheet in connection with any questions. Rather it appears to this Court that it is the specific case of the writ petitioner/ authorities that such mistake has been done in the said OMR Sheet of Paper-I in connection with the Roll No. of the original applicant.
12. It has also been noticed by us that the said Tribunal while disposing the said original application came to a factual finding that the original applicant before it

however correctly entered the Roll No. of himself by pen in the self-same OMR Sheet at the demarcated place. Such being the position it appears to us that when a mismatch occurred in respect of the answer sheets of the original applicant on account of wrong filling of boxes of OMR Sheets in respect of his Roll No. the authorities could have identified the candidature of the original applicant on perusal of the Roll No. of the original applicant as has been written by pen.

13. It further appears to us that the said Tribunal while passing the impugned order noticed that the mistakes committed by the original applicant is minor in nature and similar such minor mistake(s) has/have been condoned by the Principal Bench of the said Tribunal as well as by the Punjab and Haryana High Court in the case of **Rohit Kumar** as well as in an identical matter disposed of by the Principle Bench of the said Tribunal. It appears to us that the view taken by the writ petitioners authorities are too much hypertechnical especially when there were ample opportunities on the part of the writ petitioners authorities to identify the candidature of the respondent/original applicant since in such answer sheets the respondent/ original applicant has rightly written his Roll No. by pen also.

14. It also appears to us that the writ petitioners/ authorities being a model employer ought not to be so higher technical and ought to have given an opportunity to the original applicant to sit in Paper-III examination subject to obtaining qualifying mark in Paper-I.
15. In view of the discussion made hereinabove, we are thus of considered view that the view taken by the said Tribunal while passing the impugned judgment is quite plausible one and we do not find any reason to interfere with the same.
16. As a result, the instant writ petition fails and is hereby dismissed.
17. Admission is declined.
18. Urgent photostat certified copy, if applied for, be given to the parties on completion of usual formalities.

(SUJOY PAUL, CJ.)

(PARTHA SARATHI SEN, J.)