CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.No.060/00244/2017 Orders pronounced on:24.01.2020
(Orders reserved on: 02.12.2019)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
HON'BLE MR. A.K.BISHNOI, MEMBER (A).

Parminder Singh, age 40 years,

S/o Sh. Jaswant Singh,

Stenographer (Group-C Post),

Training Branch,

Post Graduate Institute of Medical Education & Research,

Sector 12, Chandigarh, Resident of H.No. 1700,Phase V,

S.A.S. Nagar, Mohali.

…. Applicant

Versus

1. Union of India through its Secretary,

   Ministry of Health & Family Welfare,

   Nirman Bhawan, New Delhi.

2. Post Graduate institute of Medical Education & Research,

   Sector 12, Chandigarh through its Director

…. Respondents

PRESENT: MR. ROHIT SETH, ADVOCATE,
FOR THE APPLICANT.
MR. VIKRANT SHARMA, ADVOCATE,
FOR R.NO.2.
NONE FOR RESPONDENT NO.1.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

The applicant has filed this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 13.2.2017 (Annexure A-1), vide which his claim for promotion to the post of Personal Assistant, on having qualified the relevant examination, has been rejected and for issuance of direction to the respondents to declare him as having qualified the departmental examination held on 3.9.2014 (result declared on 5.9.2014) and promote him as P.A. from due date with all the consequential benefits.

2. The facts are largely not in dispute. The applicant is working as Stenographer in the respondent PGIMER, Chandigarh. The next promotion is to the post of Personal Assistant (P.A) in the PB-2, Rs.9300-34800 + GP Rs.4200, which is filled up as per Recruitment Rules (Annexure A-2), as per which 50% posts are to be filled by Limited Departmental Competitive Examination (LDCE) failing which by promotion and 50% by promotion. The respondents initiated process for filling up of 11 posts of P.A. vide notice dated 10.9.2013/13.9.2013 (Annexure A-3), which was followed by a corrigendum dated 8.7.2014/10.7.2014 (Annexure A-4)

and 5.8.2014 (Annexure A-5). The applications were to be submitted latest by 20.7.2014. The Stenography Test was held on 3.9.2014 for promotion. The maximum permissible mistakes were 25. The applicant appeared with Roll No.106. In all 20 candidates appeared but all were declared as failed including applicant. The applicant obtained information under RTI Act, 2005 and came to know that though he had committed only 25 mistakes but it was shown that he had committed 27 mistakes. The applicant filed representation dated 1.12.2015 upon which a Committee was constituted to look into the matter, which held its meeting held on 11.4.2016 and found that there were mistakes in two words 'contact' and 'equipment' in original question paper and recommendation was made for revaluation of answer sheet of applicant. Upon this, answer sheets of applicant, Ms. Sonia and Sonu were re-evaluated and it was found that applicant had committed 25 mistakes, whereas Sonia and Sonu had committed 27 and 29 mistakes. The matter was placed before the competent authority on 4.11.2016, who opined that matter being 2 years old, entire exercise may be conducted afresh. Hence, the O.A.

3. The respondent No. 2 has filed a reply. The objection taken against claim of applicant is that competent authority finding that matter is 2 years old, has decided to

reconduct entire test. The applicant has filed a replication explaining that in similar circumstances, one Sunita Devi who had undergone shorthand test held on 29.6.2008 was declared failed as mistakes were taken as 33 instead of 23. Her case was reviewed and she was declared passed and appointed vide order dated 31.5.2010 and as such applicant deserves similar treatment. The respondent No.2 filed additional reply to explain that case of applicant is not similar to indicated individual and as such he is not entitled to any relief.

4. We have heard the learned counsel for the parties at length and examined the material on file with their able assistance.

5. The learned counsel for the applicant vehemently argued that once the applicant has qualified the test, there is no logic or reason to deny him fruits of such success and mere delay which too was caused by the respondents cannot be used as a tool to deny him appointment to the post of P.A. On the other hand learned counsel for respondents argued that case of applicant merits dismissal as competent authority has rightly decided to conduct the test afresh to give equal opportunity to all the individuals. He argued that if such claim is allowed, then those who have not challenged the

selection process, may start knocking the door of court of law and as such O.A. be dismissed.

6. We have considered the submissions minutely. The facts are not in dispute that the applicant had appeared in the Shorthand Test and the permissible mistakes were 25. In other words, a person with 25 mistakes was to be declared as qualified. Initially, the evaluator found that applicant had committed 27 mistakes. On re-examination of the issue, it was found that there were mistakes in paper itself and as such it was found that applicant had committed only 25 mistakes. Thus, obviously he had passed the examination. However, when the matter was placed for a decision on his appointment, the competent authority formed an opinion that matter being two years old, it would not be proper to offer appointment and examination be conducted afresh. The opinion formed by the authorities, to say the least, is not rational and does not appeal to reasons. The applicant is admittedly not at fault. The mistake was committed by department and delay was caused by them. They are trying to take benefit of their own wrong, to deny the rightful claim of the applicant, which cannot be appreciated by a court of law. The respondents have admitted there was mistake in question paper qua two words, which was corrected and applicant's mistakes were reduced from 27 to 25, thus

bringing him within striking distance. The learned counsel for the applicant has rightly placed reliance on decision of Apex Court in the case of **KANPUR UNIVERSITY AND OTHERS VS. SAMIRGUPTA & OTHERS**, C.A. No. 4092-4115 etc. decided on27.9.1983 to argue that if there is error in key answer to question paper and students answer correctly, he or she cannot be failed and would be entitled to admission after revaluation of answer sheets. Similarly, in **MANMIT SINGH VS. STATE OF PUNJAB** (P&H), 2014 (29) SCT 193, it was held that there was a mistake in the answer key and if the petitioner is given the benefit of ambiguity, he makes the grade, thus, court would be failing in its duty if it does not exercise its jurisdiction. In the wake of these decisions, after carrying out revaluation, learned counsel for respondent no.2 cannot be allowed to turn around and claim that there being no provision for revaluation, the applicant cannot be granted any benefit.

7. It is not in dispute that in the case of Ms. Sunita Devi as well, she had committed 23 mistakes in test held on 29.6.2008 but it was shown as 33. When mistake was discovered, she was appointed on 25.5.2010. For this, respondents have placed reliance on Instructions for conduct of Review Departmental Promotion Committee contained in instructions of Govt. of India, contained in Swamy's manual

on Establishment and Administration. Instruction No. 18.1 of the same clearly provides that DPC meeting can be reviewed if it is found that eligible persons were omitted to be considered. In this connection, there does not appear to be any difference in case of the applicant as well as Ms. Sunita Devi. When she has been granted benefit, there is no earthily reason to deny similar treatment to the applicant. Therefore, in the instant case also, applicant is legally entitled to the similar treatment in the similar circumstances of the case under Articles 14 and 16 of the Constitution of India, in view of the law laid down by Hon'ble Apex Court in case of **MAN SINGH VS. STATE OF HARYANA** and others AIR 2008 SC 2481 and **RAJENDRA YADAV VS. STATE OF M.P. AND OTHERS** 2013 (2) AISLJ, 120 wherein, it was ruled that the concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the Doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. It was also held that the administrative action should be just on the test of 'fair play' and reasonableness.

8. The learned counsel for the applicant referred to a decision of Kerala high Court in the case of **DR. DEEPU D VS. KERALA UNIVERSITY OF HEALTH**, WP © No. 38978 of 2015 (V) decided on 23.12.2015, in which it was held that the revalued results will relate back to the publication of the original results. Any modification in revaluation will hence supersede the original marks awarded. Similar view was taken by Delhi high Court in W.P © No. 10255 of 2015 titled **HIMANSHU PAL VS. UNIVERSITY OF DELHI & ANOTHER**, decided on 5.11.2015 and **PRASHANT SRIVASTAVA VS. C.B.S.E. & OTHERS**, 2001 AIR (Delhi) 28.

9. At last, the learned counsel for the respondents referred to a decision of Hon'ble Apex Court in the case of **RAN VIJAY SINGH & OTHERS VS. STATE OF U.P. & OTHERS**, 2018 (1) SCT, 334, in which it was held that revaluation is not permissible and court should not embark upon revaluation of answer sheets etc. This decision would not help the respondents at all, in the specific facts of this case, as the respondents are trying to change the goal post time and again. Firstly, they said that due to delay, it is not feasible to offer appointment. Then they say that equality demands that all should be put to test once again. Then they found that if applicant is given benefit, it would open flood gates of similar

claims by other candidates. This kind of attitude of the authorities is not permissible, at all. Once it is admitted fact that a mistake had taken place, which was corrected, then benefit has to flow to the applicant on correction of such an administrative error.

10. In regard to fear of respondents qua flood gate litigation which may be initiated by the other employees if the claim of the applicant in this O.A. is allowed by this Court, we may remind them that it is well settled principle of law that a legitimate and legal right of an employee should not be denied to him/her, on the ground of opening of flood gate litigations. The Hon'ble Apex Court has held in the case of **COAL INDIA LTD VS. SAROJ KUMAR MISHRA,** 2008 (2) SCC (L&S) 321, that plea of opening of Flood Gate Litigation, is no ground to take away the valuable legal right of a person. Such arguments were held to be of desperate, only because there was possibility of Flood Gate Litigation. Same analogy was settled in the past also by the Hon'ble Apex Court in the case of **ZEE TELEFILMS LTD. AND ANR. V. UNION OF INDIA AND ORS**. [(2005) 4 SCC 649], **WOOLWICH BUILDING SOCIETY VS. INLAND REVENUE COMMISSIONERS** (No.2) [(1992) 3 All ER 737] and **JOHNSON VS. UNISYS LTD**. [(2001) 2 All ER 801], wherein it was ruled that only because floodgates of cases will be

opened, by itself may not be a ground to close the doors of courts of justice. The doors of the courts must be kept open and the Court cannot shut its eyes to injustice.

11. In the wake of aforesaid discussion, this O.A. is allowed. The impugned order, Annexure A-1 is quashed and set aside. Respondent No.2 is directed to take remedial measures qua promotion of the applicant as P.A. within two months from the date of receipt of a certified copy of this order. No costs.

12. Connected M.As also stand disposed of accordingly.

(SANJEEV KAUSHIK)
MEMBER (J)

(A.K.BISHNOI)
MEMBER (A)

Place: Chandigarh
Dated: 24.01.2020

HC*