

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 117/2019

Reserved on: 05.02.2020
Pronounced on: 14.02.2020

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Man Mohan Sharma son of Shri Ramavtar Sharma, aged about 34 years, by caste Brahmin, resident of House No.161, Parivahan Nagar, Khatipura, Jaipur. Seeking appointment as Medical Laboratory Technologist in the office of Respondent No.1.

...Applicant.

(By Advocate: Ms. Kavita Bhati)

Versus

1. National Institute of Ayurveda, Jorawar Singh Gate, Amer Road, Jaipur-302002 (Rajasthan through its Director.
2. Shri Rajesh Kumar S/o Shri Rajaram R/o J-648, Mangole Puri, New Delhi-110083.

...Respondents.

(By Advocate: Shri M.D. Agarwal)

ORDER

Per: A. Mukhopadhyaya, Member (A):

This Original Application, (OA), arises from the applicant feeling aggrieved by the result declared by the respondent in the examination held for giving appointment to the post of Medical Laboratory Technologist; (MLT).

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2. The applicant states that the respondent issued a vacancy notification No.02/2017 on 08.08.2017 for various posts including one post of MLT. The applicant, being eligible for the post, sat the screening test on 21.01.2018. Immediately after conducting the examination, the respondent published the answer key for the same on its website. Since the terms of the screening test, (Annexure A/4 - instruction No.16), allowed the candidates to raise objections regarding any question/questions asked in the question paper within a period of 24 hours, i.e. till 5.00 PM on 21.01.2018, the applicant availed of this opportunity within the period stipulated and conveyed his objections to 8 questions in the test including Question No.22 which is the subject matter of the dispute in this OA; (Annexure A/5). Question No.22 of the screening test, (Annexure A/4 - running page 31 of the paper book refers), and the options given as its reply reads as follows:

"What colour container is for disposal of needles and scalpel blades?

**(A) Blue (B) Yellow
(C) White (D) Red"**

3. The answer key initially issued by the respondent to this question gave 'C', i.e. "**White**" as the correct answer

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to Question No.22 and retained this answer as being correct in the revised answer key at Annexure A/1. Consequently, the applicant found himself in the third position in the merit list of candidates appearing in the screening test for appointment as MLT; (Annexure A/2 refers). Since Ms.Priyanka Yadav, the candidate at first position in the merit list, did not join service as MLT, the respondent appointed candidate No.2 of the merit list, one Shri Rajesh Kumar on the post of MLT; (para II of additional pleas in reply to OA read with Annexure R/4 refers). Thereafter, Shri Rajesh Kumar joined service as MLT with the respondent but resigned later. It is the contention of the applicant that Shri Rajesh Kumar was wrongly placed at Sl.No.2 in the merit list above the applicant who is at Sl.No.3 as a consequence of the respondent not admitting the valid objection of the applicant to Question No.22 of the screening test as mentioned earlier and had the objection been agreed to and the question excluded, the applicant would have been at Sl. No.2 of the merit list and hence the waiting list and would have been offered the position of MLT instead Shri Rajesh Kumar on the candidate at Sl.No.1 of the list not taking up the position.

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4. Aggrieved by this action of the respondent, the applicant has approached this Tribunal seeking the following relief:

It is therefore prayed that the present original application made by the applicant be allowed and the Answer Key (Annexure -A/1) and merit list (Annexure -A/2) be quashed and set aside/revised. The question no. 22 of the evaluation sheet be deleted or left out from the evaluation being incorrect question. The respondent be directed to prepare fresh merit list. The applicant be declared eligible for appointment to the post of Medical Laboratory Technologist, and direction be issued to respondent to give him appointment. Appointment given to respondent no.2 be quashed and set aside.

Any other relief or direction which is deemed fit in the facts and circumstances of the case be also passed in favour of the applicant.

5. In reply, the respondent, while not controverting the chronology of events as stated by the applicant, avers that the applicant has by his own admission stated that his reply to Question No.22 of the screening test was "**Red**"; (para 4.7 of OA read with reply to para 4.7 of OA refers). The respondent states that some other candidates who had written the same test had given the correct answer, i.e. "**White**"; (para 4.7 of reply refers). The respondent further avers that all the objections raised to the questions in the screening test were examined in detail by a duly constituted committee at the institute level on 31.01.2018, (para 4.10 of reply refers), and that the objection relating

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to Question No.22 as raised by the applicant was also examined. However, as per the opinion of the papersetter as well as the committee and as per the Bio-Medical Waste Management Rules Gazette of India Part-II, Section-3, Sub Section-1, it was decided unanimously that the correct answer is option 'C', i.e. "**White**". Thus, the objection raised by the applicant was found to be incorrect. Therefore, no amendment was necessitated in the answer key with regard to Question No.22. Accordingly, the final merit list, (Annexure A/2) was correctly issued. In its additional pleas, the respondent has stated that further to the merit list being finalised, Ms.Priyanka Yadav who was at first position in the list, (Annexure A/2 refers), was recommended for appointment as MLT and Shri Rajesh Kumar who was at Sl. No.2 was kept on the waiting list. When Ms.Yadav did not join service as MLT, the appointment for the same was duly issued to Shri Rajesh Kumar who did join on the post of MLT but later resigned. The respondent contends, (para III of additional pleas in reply to OA refers), that in view of this position, since only the name of Shri Rajesh Kumar had been retained in the waiting list for the post, the same cannot be offered to the applicant who was not even on the waiting list.

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6. Learned counsels for the applicant and the respondents were heard and the material available on record was perused.

7. Learned counsel for the applicant argued that while the expert committee of the respondent institute normally has the final say as regards what is the correct answer to a given technical question, (Question No.22 of the screening test in this case), the Hon'ble High Court of Rajasthan, Jaipur Bench in its judgment delivered on 23.04.2019 in SB Civil Writ Petition No.4700/2019 with connected Writ Petitions has ruled, (para 22 of the judgment refers), that as has been held by the Apex Court in the case of **Kanpur University vs. Samir Gupta** (1983) 4 SCC 309, in rare and exceptional cases where the answer to a question at the examination is established beyond question "**to be demonstrably wrong**", the matter can become the subject of judicial review and intervention; (the judgment of the High Court as produced by the learned counsel for the applicant has been taken on record as Annexure C-I). Referring to this judgment, learned counsel for the applicant argued that in this case also, the answer to Question No.22 of the screening test can be shown to be demonstrably wrong. The Gazette notification referred to by the respondent, i.e. the Bio-Medical Waste,

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(Management and Handling) Rules 1998, as amended by the notification, Rule 4(b), (Annexure A/6 – running page 39 of the paper book), states that "**storage**" of segregated biomedical waste like needles and scalpels, (referred to in Question No.22), is to be done in the manner specified in Schedule I to this Rule. Thereafter, she referred to Schedule I to this Rule, (Annexure A/6 – running page 46 of the paper book refers), to argue that for needles and scalpels, the container for storage purposes has to be "**White (Translucent)**" and that final "**disposal**" of such material had to be by "**Autoclaving or Dry Heat Sterilization followed by shredding or mutilation or encapsulation in metal container or cement concrete**". She argued that as per this notification, the colour of the container for final "**disposal**" was not mentioned, (since it would be a metal or cement concrete container), and that even the initial storage/disposal was not to be effected through a white container but was required to be effected through a "**White (Translucent)**"; container. She argued that although the applicant's objection to the question did not go into this level of detail, the expert committee should have considered the position detailed in the Gazette notification referred to by the respondents and disallowed/excluded Question No.22. She argued that had this been done, the candidate at Sl.No.2

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and consequently on the waiting list, Shri Rajesh Kumar, would not have got the single mark allotted for that question nor would half a mark be deducted from the applicant's score for his supposed incorrect answer. As a result, the applicant, who was separated from Shri Rajesh Kumar by half a mark on the merit list, (Annexure A/2 refers), would come to be placed above him and thus would rightfully have been on the waiting list for appointment to the post of MLT. Learned counsel for the applicant argued that the mistake made by the expert committee of the respondent in this case was thus demonstrably wrong as is clear from a plain reading of the above mentioned Gazette notification, (Rules), and therefore, in the light of the ruling of the High Court of Rajasthan in the case of Pankaj Raj (supra), this Tribunal should set aside the decision of the expert committee and grant relief to the applicant as urged.

8. Per contra, learned counsel for the respondent argued that in his objection to the original answer key to Question No.22, the applicant had not sought the disallowance/exclusion of Question No.22 at all and had requested the respondent "**to please review and make necessary correction in the keys provided by NIA**" and had further stated that the correct answer to Question

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No.22 in his, (applicant's), view was option 'D', i.e. "**Red**". He argued that this plea to exclude/disallow Question No.22 was an afterthought by the applicant when he found that the objection he had made along with the remedy he had suggested would not secure him the appointment he seeks and this is how, while there is no plea for disallowing/excluding Question No.22 in his original objections, such a plea finds place in this OA preferred much later. Learned counsel argued that since the objection was made admittedly as per the terms and conditions of this test, (Annexure A/4 instruction No.16 – running page 33 of the paper book), it was not open to the applicant to now make further objections other than the ones he had made during the period stipulated for this as such objections could obviously not have been dealt with by the expert committee at the relevant time.

9. On the question of the revised answer key to Question No.22 being demonstrably wrong, learned counsel for the respondent drew this Tribunal's attention to the question itself, i.e. "**What colour container is for disposal of needles and scalpels blades?**" He argued that the question clearly related to the colour of the container which was to be used for disposal and not to whether the container was required to be "**translucent**" or not. He

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argued that in any case a perusal of Schedule-I to the rules referred to by the applicant's counsel, (Annexure A/6 – running pages 44 to 46 of the paper book refer), shows that in column 1 of the table in the schedule, it is the colour of the containers in question that have been clearly shown, i.e. Yellow, Red, White and Blue etc. The word "**Translucent**" has specifically been placed in brackets under the description of colour in the relevant entry. Since Question No.22 related only to the colour of the container and not to whether it was translucent or not, the expert committee, in his view, had committed no error and certainly no demonstrable error in deciding that the correct answer to Question No.22 was indeed "**White**", i.e. option C.

10. As regards the use of the word "**disposal**" in the question, learned counsel pointed out that since the question was aimed at what the MLT would do, it clearly did not refer to final disposal of the aggregated waste later and was thus clear in its intent. He reiterated that this clarity of intent was shown by the fact that the applicant entered "**Red**", i.e. one of the colour options given, in his reply and later represented through his objection that this colour option was correct. Learned counsel for the respondents further argued that had the applicant truly been confused

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by the fact that "**White (Translucent)**", was not given as a colour option in the answer to Question No.22, he would certainly not have attempted the question and his objection to the question would have clearly mentioned this and asked for the disallowance/exclusion of the question. He further stated that since Shri Rajesh Kumar had joined as MLT on appointment pursuant to the examination in question, the process of appointment to the post of MLT through the examination in question stood completed in all respects and the present vacancy of MLT would necessarily have to be treated as a fresh vacancy for which the respondents had already advertised again on 27.09.2019. Finally, he argued that in the facts and circumstances of the case, since the expert committee had not committed any demonstrable error, there was no scope within the narrow compass of the order of the High Court of Rajasthan in the case of Pankaj Raj, (supra), or indeed the rulings of the Apex Court as referred to therein, to intervene with regard to a decision on a technical matter arrived at by a duly constituted expert committee. Thus, in his view, the OA, being entirely devoid of merit or substance should be dismissed.

11. On a consideration of the arguments preferred by the learned counsels for the parties and a perusal of the

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record, it becomes clear that the applicant in this case willingly accepted the terms and conditions of the screening test, (Annexure A/4), and submitted his objections to Question No.22 within the time stipulated in these instructions. Therefore, the submission of further objections well after the period allowed for the same can only be seen as an afterthought, especially where, as in this case, the applicant's objections stated in unequivocal terms that the correct answer to Question No.22 was "**Red**". Thus, the argument preferred in the present OA that Question No.22 should have been disallowed/excluded, palpably appears to be an afterthought. Even otherwise, there is no dispute among the parties that Question No.22 related to the "**colour**" of the container and not its being "**translucent**" or otherwise and therefore, we do not find any demonstrable error on the part of the expert committee of the respondent in reiterating "**White**" as the correct answer to Question No.22. As regards the argument that the colour of the container related to the "**storage**" and not the final "**disposal**" of the items, (needles, scalpels etc.), again it can be reiterated that the applicant's objection to the question did not raise this point. In the absence of the points now being pleaded in the OA being raised before the expert committee, we find that no case is made out for that committee to have

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committed any kind of demonstrable error in deciding the applicant's objection while finalising the revised answer key to the screening test. This being the position, there remains no scope or indeed justification for any intervention in this matter by this Tribunal.

12. In view of the detailed considerations as above, the OA is found to be devoid of merit or substance and is therefore dismissed.

13. There shall be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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