



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 710/2015

This the 20th day of February, 2020

**Hon'ble Mr. Ashish Kalia, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sonia Rana (For Fresh Appointment)
Aged about 29 years,
W/o Sh. Lokesh Kumar,
R/o G-106, Punjabi Colony, Narela,
Delhi

...Applicant

(By Advocate: Sh. M.K. Bhardwaj)

VERSUS

Govt. of NCT of Delhi & Ors. through:

1. The Chief Secretary,
Govt. of NCT of Delhi,
New Secretariat, IP Estate,
New Delhi.
2. Delhi Subordinate Service Selection Board,
Through its Chairman,
FC-18, Institutional Area, Karkardooma,
Delhi
3. North Delhi Municipal Corporation,
Through its Commissioner,
SPM Civil Centre, Minto Road,
New Delhi.
4. East Delhi Municipal Corporation,
Through its Commissioner,
419, Udyog Sadan, Patparganj Industrial Area,
New Delhi



5. South Delhi Municipal Corporation,
Through its Commissioner,
SPM Civil Centre, Minto Road,
New Delhi.

...Respondents

(By Advocates: Ms. Purnima Maheshwari for
Respondents No. 1 and 2;
Sh. K.M. Singh for Respondent No.4)

ORDER (Oral)

Hon'ble Mr. Ashish Kalia, Member (J):

In the present Original Application, following reliefs have been sought:-

“(i) To declare the action of respondents in not considering the applicant for the appointment to the post of Teacher (Primary) as illegal, arbitrary and unjustified.

(ii) To declare the applicant as suitable for appointment to the post of Teacher (Primary) and direct the respondents to appoint the applicant as Teacher (Primary).

(iii) To declare the action of respondents in increasing the qualifying marks for appointment to the post of Teacher (Primary) for OBC category from 30% to 35% and not applying the relax standard to fill up all the notified vacancies in OBC category as illegal and direct the respondents to consider the applicant for appointment to the post of Teacher (Primary) by relaxing the standard and giving two bonus marks for the deleted questions.

iv) To allow the OA with cost.



v) Any other orders may also be passed as this Hon'ble Tribunal may deem fit and proper in the existing facts and circumstances of the case."

2. The applicant has applied for the post of Teacher (Primary) which was advertised in the year 2009 initially and was revised subsequently in the year 2011. According to the applicant, the scheme of the examination went under change from February, 2013. Initially, the minimum cut off percentage was 30% for SC category candidates, 40% for UR category candidates and 32% for OBC category candidates (which has changed only in the case of OBC category candidates to 35%).
3. The applicant has appeared in the necessary exam but did not qualify despite having secured 65.50 marks in the said examination which comes less than 35% cut off marks. The contention of the applicant is that there are 1044 vacancies for OBC category. Despite all these vacancies got filled up, he has relied upon the circular in para 3.8, issued by the Government, which reads as under:-

"3.8 In direct recruitment whether by examination or otherwise, if sufficient number of



*Scheduled Caste/Scheduled Tribe/Other Backward Class candidates are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to these communities should be selected to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes cannot be filled on the basis of general standard, candidates belonging to these communities will be taken by relaxed standard to make up the deficiency in the reserved quota, subject to the fitness of these candidates for appointment to the post/posts in question. **[MHA O.M No. 1/1/70-Estt (SCT), 25.7.1970]***

4. Taking shelter of this, the applicant submits that relaxed standards should have been given to the applicant in order to fill the vacancies.
5. Notices were issued by this Tribunal. Respondents put appearance and they filed their detailed reply.
6. Respondents, in their counter reply, submitted that eligibility criteria have been pre-decided before the exam took place and the applicant has not challenged it before appearing in the examination. Thus, the applicant has admitted that scheme of examination. It is stated that it is an administrative authority, which has fixed the minimum qualifying



marks/cut off marks for each category of the candidates. It is further stated that obligation of recruiting agency is to select the well qualified candidates rather than filling up the vacancies. Learned counsel for the respondents relied upon the judgment of this Tribunal in OA No. 703/2014, OA No. 1328/2014, OA No. 3044/2014, OA No. 3099/2014, etc. (Annexure R1) dated 27.05.2015, where this Tribunal has held as under:-

“Another vital issue raised in the OA was regarding the situation cropped up on account of two questions being found confusing i.e. according to applicants the questions had two correct answers. The stand of counsel for the applicants is that when the questions were wrong, each applicant should have been given 2 grace marks. The respondents have dealt with the situation by reducing the total marks from 200 to 198 and the qualifying mark are computed with reference to total 198 marks instead of 200 marks. The confusion in certain questions in any examination is an accidental and speculative situation. No hard and fast rules or guidelines can be laid down to deal with such kind of situation and it is for the concerned administrative authority or recruiting agency to evolve a solution to the problem with reference to the given circumstances. They may:-

- (i) cancel the examination itself;*
- (ii) give grace marks to all the candidates*
- (iii) reduce the total marks and may not give any credit to the confusing/wrong question. Once an authority takes a decision to evolve one of the apposite possible methods to solve the problem, the same should not be judicially interfered with. When the*



confusion was regarding two questions only and instead of giving advantage to all the candidates, as a grace, the respondents preferred to make realistic assessment of the suitability of the candidates i.e. they decided to give credit only to those candidates who actually attempted the questions, no fault can be found with them. Such proposition came up for adjudication before Hon'ble High Court of Judicature at Bombay in Writ Petition No.2209/2013 (Abhijit Uddhavrao Nikam and Ors Vs. The Maharashtra Public Service Commission) with Writ Petition No. 2499/2013 (Mahesh Nemchand Singhal Vs. The Maharashtra Public Service Commission) and their Lordships viewed that the corrective action of deletion of the question adopted by the respondent could not be found arbitrary and the course of corrective action proposed by the respondents for allotment of marks to all the incorrect questions to every candidate could not have been a solution to the problem. Para 7 of the judgment reads thus:-

The petitioners have not been able to establish that the corrective action of deletion of the questions adopted by the respondent is either arbitrary or contrary to law. The course of corrective action proposed by the petitioners of allotment of marks to all the incorrect questions to every candidate could not have been a solution to the problem. Since the evaluation of the papers involved negative marking, allotment of marks to incorrect questions would not have benefited everybody equally. With deletion of the questions and the marks therefore not only the marks allotted to the questions but also the negative marking wherever given got deleted thereby brining all the candidates to the same level or position. The assessment of the candidates then was only on the basis of the remaining questions that had been attempted by them. Since, there is neither any arbitrariness nor illegality in the course of action adopted by the respondent, there cannot be any judicial interference with the same. In the circumstances, we find no merit in the petitions. The Writ Petitions are therefore dismissed with no order as to costs.

Being bound by the view taken by the Honble High Court (ibid), we cannot interfere with the act of the



respondents to not award grace marks to every candidate and deduct the total marks by two. In view of the abovementioned, we are not inclined to grant the relief sought in these Original Applications. The same are accordingly dismissed.”

They also relied upon the Hon’ble Supreme Court judgement in **Kanpur University & Ors. Vs. Samir Gupta & Ors. 1983 AIR 1230**, where the Hon’ble Court observed:-

“....Fourthly, in a system of 'Multiple Choice Objective-type test', care must be taken to see that questions having an ambiguous import are not set in the papers. That kind of system of examination involves merely the tick-marking of the correct answer. It leaves no scope for reasoning or argument. The answer is 'yes' or 'no'. That is why the questions have to be clear and unequivocal. Lastly, if the attention of the University is drawn to any defect in a key answer or any ambiguity in a question set in the examination, prompt and timely decision must be taken by the University to declare that the suspect question will be excluded from the paper and no marks assigned to it.”

7. After hearing the both sides, following issues emerges, to be decided by this Tribunal, where respondents are bound to relax the eligibility criteria for reserved candidates than the vacancies are available. There is no denial to the recruiting agencies to fix the standards. The standards are fixed in order to see job requirements, which is universal in nature but it is not applied here for



individual candidates for the selection. In the case in hand, the criteria which was well advertised, was never questioned by the applicant before appearing in the examination. Therefore, we are in agreement with the contention raised by the respondents that it has been the accepted scheme of examination by the applicant.

8. During the course of the argument, learned counsel for the applicant has also pointed out that this was selection of the year 2014 and subsequent selection have also been taken place and vacancies were filled upon.

9. Subsequent issue raised by the applicant herein is whether the respondents are bound to relax the minimum cut off marks when vacancies are not fulfilled as advertised or not. Our answer is in negative that discretion is vested upon the authority and they have to see whether well qualified candidates have been selected in accordance with job requirements or not. It is not a mere exercise to fill up the vacancies but they should be filled by those who qualify the job



requirement. Similar view has been taken by the Tribunal. Thus, we find that there is no merit in the present case and is liable to be dismissed.

10. In view of aforesaid, OA stands dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

/akshaya/

(Ashish Kalia)
Member (J)