



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

TA No. 10/2017

Page | 1

Reserved on: 04/02/2020

Pronounced on: 12.03.2020

**Hon'ble Mr. S. N. Terdal, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Nitin Kumar Jain,
S/o Devender Kumar Jain,
4649/181, Gali No. 08,
New Modern Shahdara,
New Delhi – 110032.

...Applicant

(By Advocate: Mr. Sumit K. Kumar)

Versus

1. Union of India,
Through,
Human Resources Development,
Department of School Education and Literacy,
Shastri Bhawan, New Delhi – 110001.
2. Central Board of Secondary Education,
Through its Director,
Shiksha Kendra, 2 Community Centre,
Preet Vihar, Delhi – 110092.
3. National Council for Teacher Education (NCTE),
Hans Bhawan, Wing II, 1,
Bahadur Shah Zafar Marg,
New Delhi – 110002.
4. Delhi Subordinate Services Selection Board,
Through Chairman,
FC-18, Institutional Area,
Karkardooma, Delhi – 110092.

...Respondents

(By Advocate: Ms. Seema Dolo)



O R D E R

Mohd. Jamshed, Member (A):-

This is a transferred matter by the Hon'ble High Page | 2 Court of Delhi vide order dated 02.02.2017. The applicant in pursuance of advertisement No. 1/13, post code 14/13 applied for the post of Trained Graduate Teacher (TGT) (Sanskrit). He cleared the written examination conducted by Delhi Subordinate Services Selection Board (DSSSB). The applicant was, however, apprehensive that his selection as TGT (Sanskrit) is subject to his having passed the Central Teacher Eligibility Test (CTET). In CTET held in November, 2012 conducted by Central Board of Secondary Education (CBSE), the applicant was not declared passed as he was short of 01 mark. He contends that the respondents i.e. CBSE did not award him 01 mark in the CTET examination incorrectly, due to which he became ineligible and subsequently not appointed as TGT (Sanskrit). It is obvious that the applicant had earlier filed W.P. (C) No. 4475/2013 seeking the same relief. Vide order dated 19.07.2013, the said petition was disposed of by the Hon'ble High Court



of Delhi directing the respondents i.e. CBSE to treat the said petition as a representation, place it before the Committee of Experts and take an appropriate decision in the matter. The CBSE in accordance with the directions issued by Hon'ble High Court of Delhi constituted a Committee of Experts. The view of the Committee of Experts that the correct option for the Question No. 108, is Option No. 02, was also intimated to the applicant vide their letter dated 05.08.2013.

Page | 3

2. The applicant has approached the Tribunal with the same plea which has already been adjudicated by the Hon'ble Delhi High Court and orders were passed. The applicant submits that he has been disqualified in CTET held in November, 2012 as he obtained 01 mark less than the qualifying marks on the basis of wrong evaluation, which is arbitrary, unfair and unreasonable. It is stated that the applicant appeared in CTET held on 18.11.2012. The results of this examination were declared on 27.12.2012 wherein the applicant secured 89 marks against 90 marks required to qualify the examination. The applicant was not satisfied with this result. Therefore, the applicant



under the Right to Information (RTI) Act, 2005 asked the respondents a copy of the answer key and OMR sheet. The applicant observed that the answer key provided by CBSE indicated wrong answer to Question No. 108. According to the applicant, the correct answer of Question No 108 should have been Option No. 01 but in answer key Option No. 02 was mentioned as the correct answer. He, further checked up the correct answer from various sources and found that the option given by him was correct and the answer key indicated the wrong answer. The applicant, thereafter, approached the Hon'ble High Court of Delhi immediately after the publication of result by filing a WP (C) No. 4475/2013 and the Hon'ble High Court of Delhi passed the order dated 19.07.2013 directing the respondents to place the representation before Committee of Experts and take appropriate action. The respondents i.e. CBSE in accordance with the directions of the Hon'ble High Court of Delhi set up a Committee and reiterated that in view of the Experts Committee the correct option for the Question No. 108, is Option No. 2 and the representation of the applicant was



accordingly disposed of. The applicant once again approached the Hon'ble High Court of Delhi which in turn transferred the case to this Tribunal vide order dated 02.02.2017 passed in W.P. (C)

2306/2016, which reads as under:-

“1. Petitioner seeks employment with Government of NCT of Delhi. Therefore the issues, which arise in the writ petition, have to be decided by Central Administrative Tribunal, Principal Bench, New Delhi.

2. Instead of dismissing the petition, at the request of the petitioner, this petition is transferred for decision to CAT, Principal Bench, New Delhi. Parties to appear before the CAT, Principal Bench, New Delhi on 1st March, 2017. Registry will ensure that file of this case is available to Registrar of CAT on the date fixed.”

3. The applicant has sought the following relief (s) in the present OA:-

“(a) issue an appropriate writ, order or direction setting aside the impugned order bearing No. CTET/F-62/2013 dated 05.08.2013 issued by respondent No. 3 herein;

(b) Issue an appropriate writ, order or direction directing the respondent No. 3 to correct the answer key of Central Teacher Eligibility Test (CTET-NOV 2012) with respect to question No. 108 of Hindi language-I, by replacing option 1 with option 2 as correct answer and accordingly award 1 more marks to the petitioner for the said question and consequently declare the petitioner as pass in Central Teacher Eligibility Test (CTET-NOV 2012) as on 27.12.2012 and also issue CTET Eligibility certificate to the Petitioner with retrospective effect, and

(c) pass such further or other order as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.”



4. The respondents have opposed the contention made by the applicant. It is submitted that his request was primarily to correct the answer key of CTET held in November, 2012 with regard to Question No. 108 by replacing Option No. 02 with Option No. 01 as the correct answer. He obtained a total of 89 marks against 90 marks required for qualifying the examination. The Hon'ble High Court of Delhi vide order dated 19.07.2013 disposed of the Writ Petition filed by the applicant by giving a direction to the respondents i.e. CBSE to treat the said petition as a representation and place it before an Experts Committee to take appropriate action.

5. In compliance of the order of the Hon'ble High Court of Delhi, the CBSE constituted an Experts Committee. It was recommended by the Committee that the most accurate and correct option of the Question No. 108 is the Option No. 02. The respondents in support of their averments have strongly argued that through a catena of judgments the Hon'ble Apex Court has clearly laid down the law that it is not for the Courts or Tribunals to undertake evaluation of answer books



and the functions assigned to the universities and the examining bodies should be continued to be imparted by them without any judicial intervention by Courts and Tribunals. Learned counsel for the

respondents in support of their arguments have relied upon the judgment of Hon'ble Apex Court in

Himachal Pradesh Public Service Commission

vs. **Mukesh Thakur and another** (2010) 6 SCC

759 and **Ran Vijay Singh and others vs. State of**

Uttar Pradesh and others (2018) SCC 357 and

Hon'ble High Court of Delhi order in **Atul Kumar**

Verma vs. UOI & Anr. W.P. (C) 5719/2015.

Learned counsel for the applicant relied upon the judgment of Hon'ble Apex Court in **Sanjay Singh**

and another vs. U.P. Public Service Commission,

Allahabad and another (2007) 3 SCC 720.

6. We heard Mr. Sumit K. Kumar, learned counsel for the applicant and Ms. Seema Dolo, learned counsel for the respondents.

7. It is evident that the applicant has qualified the written examination conducted by DSSSB for the post of TGT (Sanskrit). However, the pre condition for appointment as TGT (Sanskrit) is also



passing of CTET. The applicant who appeared for CTET, November, 2012 obtained 89 marks against the qualifying 90 marks. On having obtained the answer key and his OMR sheet, he found that the correct answer of Question No. 108 is Option No. 01 whereas the answer key indicated Option No. 02 as the correct answer. It is also submitted that he also sought opinion from various persons connected with academics and was of the firm opinion that the answer given by him in Question No. 108 was the correct answer and the answer indicated in the answer key is not correct. The applicant filed a Writ Petition in the Hon'ble High Court of Delhi in 2013, which was disposed of by directing the respondents i.e. CBSE to set up a Committee of Experts in this regard and take a decision. In accordance with the directions given by the Hon'ble High Court the CBSE set up a Committee of Experts and reaffirmed that the answer indicated against Question No. 108 in the answer key is Option No. 02 and did not agree to the claim made in the representation made by the applicant. The applicant again challenged the same and the Hon'ble Delhi High court vide order dated



02.02.2017 ordered that instead of dismissing the petition, at the request of the petitioner, the petition is being transferred to Central Administrative Tribunal.

Page | 9

8. There is a larger question involved in this matter which is judicial review/intervention by Courts and Tribunals in the functioning of examining bodies and the expert opinions. The Hon'ble High Court of Delhi order in **Atul Kumar Verma vs. UOI & Anr.** W.P. (C) 5719/2015 relied upon by the respondents clarified this proposition.

Relevant paras of the same read as under:-

“17. Unless the Courts, though accustomed to resolve / adjudicate on disputes, curb their temptation to interfere with the question paper and answer key inspite of counter view, of other subject experts, being brought before them and there being thus a dispute as to which view is correct, the Universities and the examining bodies on whom the said function has been entrusted, would loose their sheen and the respect in which they are held. I would go to the extent of saying that if the Courts, which cannot possibly be experts in all subjects, on the basis of opinions to the contrary obtained from other „independent” subject experts, were to start setting aside the questions and answer keys bona fide prepared by the subject expert and who bona fide continues to believe in correctness thereof, we may reach a day where no self respecting expert would agree to partake in the exercise of setting the question papers and answer key (and which mostly is honorary or for nominal remuneration) for the fear of his / her opinion, bona fide held being pitted against that of other in Court and his name and honour being sullied in the process. We, in my opinion, ought not to allow our Universities and examining bodies being so reduced to a „medium” as the



Supreme Court observed in *Tata Cellular* instead of Centres of learning and expertise. If they have ceased to be so, the jurisdiction under Article 226 ought to be exercised to set right their functioning rather than the Court taking over the mantle of correcting the question paper set and answer key thereto framed by them.

xxx

19. A Division Bench of this Court also recently in *Salil Maheshwari Vs. The High Court of Delhi* MANU/DE/2085/2014 held that, (i) a candidate in an examination who has not availed of the opportunity given for objecting to the answer key is estopped from raising a challenge at a belated stage; (ii) that the Supreme Court in *Kanpur University* has held that the answer key must be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation; it must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct; and if the traditional parameters of judicial review - illegality, irregularity, non-consideration of material facts or consideration of extraneous considerations or lack of bona fides in decision making process as contrasted with the decision itself, are satisfied can the decision be corrected in judicial review; (iii) in matters of judicial review which involve examination of academic content and award of marks, a circumspect approach, leaving evaluation of merits to the expertise of academics has to be effected; (iv) and, else judicial review is permitted only when decision is so manifestly and patently erroneous that no reasonable person could have taken it.”

9. The Hon'ble Apex Court in **Ran Vijay Singh**

and others vs. State of Uttar Pradesh and others

(2018) SCC 357 settled the law in this regard.

Relevant portion of the judgment reads as under:-

“4. The candidates who qualified in the written examination were called for an interview held between 16th and 26th July, 2010. Eventually, the combined result (written examination and interview) was declared on 14th September, 2010. According to the appellants, they were successful in the written



examination as well as in the interview and were amongst those who were in the select list for recruitment.

5. Some candidates who were not successful in the written examination or in the interview filed writ petitions in the Allahabad High Court between 2010 and 2011. All these writ petitions were dismissed by a learned Single Judge. The reasons for dismissal of these writ petitions were that there was no provision for re-evaluation of the answer sheets in the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 or the Rules framed thereunder. Reliance was also placed by the learned Single Judge for dismissing writ petitions on the decision of this Court in [Himachal Pradesh Public Service Commission v. Mukesh Thakur](#) 1 in which this Court considered a large number of its earlier decisions and held:

“Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation.”

....

30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

10. Thus, it is well settled that the judicial review in such cases is limited and is to be



carefully exercised by the Tribunal and the Courts. Hon'ble Apex Court has ruled that Court and Tribunals should not assume the authority of the examining bodies and experts. In the present OA, applicant's prayer was considered by the Hon'ble High Court and the respondents were directed to obtain the opinion of the Experts Committee. The respondents have in terms of the directions issued by the Hon'ble High Court taken necessary action and set up an Experts Committee, obtained its view which reiterated that the answer key given by the respondents is correct and did not consider the plea of the applicant.

11. In view of the ratio and law laid down in judgments mentioned above and in view of the facts and circumstances of the case, we do not find any merit in the present OA and the same is, accordingly, dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(S.N. Terdal)
Member (J)

/Ankit/