

(Open Court)

Central Administrative Tribunal, Allahabad Bench, Allahabad

O.A. No. 330/00623/2020

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

This the 9thth day of November, 2020.

Sanjay Kumar Mishra 39 years son of Sri Onkar Nath Mishra, resident of 424/2, Balaji Colony, Bhagawanpur (Ext) Lanka , BHU, District- Varanasi (U.P.)-221005..

Applicant

By Advocate: Sri Sanjay Kumar Shukla

Versus

1. Union of India through Ministry of Human and Development Department of School Education and Literacy, New Delhi.
2. The Navodaya Vidyalaya Samiti through the Commissioner, 128 Kailash Colony, New Delhi.
3. Commissioner, Navodaya Vidyalaya Samiti, Department of School Education and Literacy , Govt. Of India, B-5, Institution Area, GB Nagar, Sector 62, Noida (U.P.).

Respondents

By Advocate: Sri Jitendra Prasad.

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Heard learned counsel for applicant, learned counsel for respondents and perused the record.

2. The applicant seems to have a grievance regarding evaluation of his answer sheets of recruitment to NVS-2009 of PGT (Computer Science).
3. This is the third round of litigation by the applicant. Earlier, O.A. No. 891/2014 was filed by him, which was disposed off vide order dated 31st July 2018 with a direction to the respondents concerned, to decide his representation by way of a speaking and reasoned order.
4. The representation of the applicant was decided by the respondents concerned, vide order dated 4/5-12-2018. However,

the applicant was not satisfied with the decision taken by respondents and with the allegation that representation has been decided without proper consideration of facts and without strict compliance of the order passed by this Tribunal, he filed contempt petition No. 203/2018, in this Tribunal.

5. The aforesaid contempt petition was disposed off by the order dated 21.2.2020 whereby C.P. was closed with a direction to the applicant/petitioner to file the enclosures referred to in his representation before the respondents within the stipulated time. Direction was also issued to the respondents to take a fresh decision on the representation of the applicant after considering all the enclosures within a period of two months.

6. The applicant was also granted liberty to revive the CCP after disposal of the representation, if he chooses to do so.

7. The representation of the applicant was decided 2nd time by means of order dated 10th July, 2020, whereby his claim was rejected once again.

8. It is against the aforesaid order dated 10.7.2020 that the applicant once again has approached this Tribunal by means of the instant O.A.

9. Learned counsel for applicant has challenged the impugned order on the ground that it is not in accordance with the instructions and guidelines issued by the CBSC Board, copy whereof has been annexed as Annexure No. 6 to the O.A. Para 5.9.1 has been specially pointed out in this regard, by learned counsel for the applicant, which provides as under:-

“Marks of each sub-part or part of a question should be allotted at the end of such specific sub part/part on the right hand side without a circle. The total of all such sub-parts/parts should be shown to the left hand side, very near

to the margin of the page and encircled and carry over to the title page;

10. To the contrary, learned counsel for the respondents has vehemently opposed the O.A. by contending that the impugned order is a very detailed order, whereby each and every claim of the applicant has been considered by the respondents. Moreover, the annexure-6, filed by the applicant is not of mandatory nature, which is evident from its title itself providing for duties and responsibilities of the examiner. He has prayed that the O.A. being meritless, be dismissed as such.

11. We have considered the rival contentions of the learned counsel for the parties and have carefully gone through the impugned order. The impugned order may be quoted below:-

“WHEREAS Sh. Sanjay Kumar Mishra had filed a contempt petition No. 203/2018 in O.A. No. 330/891/2014 before Hon’ble Central Administrative Tribunal , Allahabad Bench, Allahabad alleging willful disobedience of the order dated 31.7.2018 of Hon’ble CAT, Allahabad bench, Allahabad passed in O.A. No. 891/2014 vide which Hon’ble CAT had directed to the respondent No. 2 /competent authority to consider the grievances of the applicant Shri Sanjay Kumar Mishra, regarding evaluation of his answer sheet and other grievances, if any by passing a speaking and reasoned order.

WHEREAS, in compliance of the order dated 31.7.2018, NVS had disposed of the representation dated 13.8.2019 (received without enclosures) preferred by Shri Sanjay Kumar Mishra (Petitioner) by passing a speaking and reasoned order dated 5.12.2018. The very fact and other relevant factual position were appraised by NVS before Hon’ble CAT, Allahabad bench Allahabad in terms of compliance affidavit, supplementary affidavit to the rejoinder, together with the

supportive documents and annexures. However, CAT after having considered all facts and circumstances of the matter, disposed off the contempt petition No. 203/2018 (In O.A. No. 891/2014) vide order dated 21.2.2020. The operative part of the order dated 21.2.2020 passed in CP No. 203/2018 in O.A. No. 891/2014 are as under:-

15. In view of the facts and circumstances of the case, applicant is directed to give the enclosures referred to in his representation to the respondents within 15 days of receipt of a certified copy of this order. On the receipt of the enclosures, the respondents would consider afresh the representation of the applicant and dispose off the same by way of reasoned and speaking order within a period of 2 months from the date of receipt of enclosures with intimation to the applicant. Accordingly, contempt petition be consigned to record and applicant or respondent is at liberty to seek its revival on disposal of the representation , if they so choose.

WHEREAS, in compliance of the order dated 21.2.2020 of the Hon'ble CAT, Allahabad Bench passed in CP No. 203/2018 applicant Sri Sanjay Kumar Mishra preferred a representation dated 6.3.2020 (received on 16.3.2020) before respondent No. 2(i.e. Commissioner , NVS). Since lock down was inflected w.e.f. 24.3.2020 owing to the pandemic (Covid 19), the office was closed past 3 months. On the functioning of the office, the matter is taken up on priority, in order to comply with the direction of Hon'ble CAT, Allahabad Bench, Allahabad.

AND WHEREAS, on perusal of the representation dated 6.3.2020 of Sri Sanjay Kumar Mishra, it appears that the

grievances raised by the applicant are nothing but the repletion of the contention described in the previous representation dated 13.8.2018. However, main grievances put forth by Sri Sanjay Kumar Mishra through their representation dated 18.3.2018 and 6.3.2020 are reproduced as under:-

- i. In his answer sheet of paper (iii) [w.r.t recruitment drive 2009 of PGT (computer Science) part (b) of each answer was not evaluated deliberately to deprive him from selection.*
- ii. His answer sheet should be re-evaluated on the basis of the model answer sheet.*
- iii. Original marks allotted by the interview board to him may be provided.*

AND WHEREAS, the documents and file related to recruitment drive 2009 of PGT (Computer Science) vis-à-vis the representation dated 13.8.2018 (with enclosures) and the present representation dated 6.3.2020 together with its enclosures are perused applying thoughtful consideration over the grievances raised by the applicant Shri Sanjay Kumar Mishraa and the following are the considered view of the undersigned:-

- 1. In the recruitment drive 2009 for the post of PGT (Computer Science), the applicant Shri Sanjay Kumar Mishra appeared with roll No. 1616107199 in the written examination.*
- 2. The said recruitment drive PGT (computer science) was assigned to a renowned and impartial central govt. agency that was UIAMS Punjab University.*
- 3. The written examination was consisting of three papers, paper (i) and (ii) were*

objective nature and paper 9iii) was of subjective nature. Paper (iii) was of 80 marks consisting of total 8 questions out of which five questions are to be attempted. Each question was further divided into two parts 9a) and (b) carrying 8 marks each = total 16 marks.

4. *On qualifying the written examination, he appeared in the interview. He secured total 104 marks (100 in written examination = 4 in interview) and was placed at S.No. 452 of the merit list. Marks of last shortlisted candidate under General category was 116.5 . Since, the applicant Sri Sanjay Kumar Mishra secured only 104 marks, he could not get shortlisted under UR category in the recruitment of PGT (computer science) 2009.*
5. *Sri Sanjay Kumar Mishra had sought information through RTI application dated 14.8.2012 regarding minimum qualifying marks, category wise and marks secured by him in the recruitment drive 2009 of PGT (computer science). The said application dated 14.8.2012 was duly replied by NVS vide letter dated 7.9.2012 and intimated /informed therein the requisite information sought by applicant Shri Sanjay Kumar Mishra.*
6. *While replying the another RTI application dated 28.1.2013 preferred by Shri Sanjay*

Kumar Mishra (which was received from UIAMS, Punjab University vide letter dated 28.3.2013) seeking thereby information regarding six candidates written and interview marks, NVS inadvertently intimated the marks of one Shri Sanjay Kumar Pathak who secured 117 marks (109 in written examination + 8 in interview) and was placed in Sl. No. 150 in the merit list , in place of the marks secured by Sri Sanjay Kumar Mishra 104 marks (100 in written examination + 4 in interview) vide its letter dated 26.4.2013. The confusion took place due to the similar name of two participants of the recruitment drive of PGT (computer science) 2009 i.e. Sri Sanjay Kumar Pathak & Shri Sanjay Kumar Mishra (applicant).

7. **Sri Sanjay Kumar Mishra visited the NVS Hqrs on 9.5.2013 and on his personal visit, he preferred a representation dated 9.5.2013. In turn, NVS/Samity duly informed the factual and correct position w.r.t. the merit list, marks secured by Shri Sanjay Kumar Mishra and his position in the merit list. Further, he was also informed that last shortlisted candidate under General Category secured 116.5 marks 9109.5 in written examination + 7 marks in interview) and was placed at S.No. 168 in the merit list. Since, he secured only 104 marks (100 in written examination +4 in interview) and**

placed at S.No. 452 in the combined merit list of PGT (Computer Science) under recruitment drive 2009, he could not be shortlisted for the post of PGT (Computer Science) under General Category.

8. Cogent & justify reply w.r.t. the grievances raised by Sri Sanjay Kumar Mishra through representation dated 13.8.2018 & 6.3.2020:-

Sl.No.	Grievances	Reply
1	<i>With respect to paper (iii) of PGT (Computer Science) Examination 2009, answers attempted by the applicant towards part (b) of each question were not evaluated deliberately in order to deprive him from selection.</i>	<i>On perusal of the answer sheet of Sri Sanjay Kumar Mishra, his contention that in his answer sheet (paper 3 of PGT (Computer Science) exam 2009, answer attempted by him regarding part (b) of each questions were not evaluated, appears to be far from truth and totally misconceived. In fact, both of part of each questions were evaluated and consolidated marks for part (1) and (b) were awarded for the answers attempted towards each questions. Each question was divided into two parts (a) & (b) and carried total 16 marks , 8 marks for each part (a&b). he had attempted question No. 1,5,6,7 and 8 and for this, he was awarded 11,9,10,9 and 0 marks respectively. Contention of the applicant that his answers attempted regarding part (b) of each questions were not evaluated holds no water as 11,9,10& 9 marks cannot be granted only for part 9a) of the question which carried maximum 8 marks.</i>
2	<i>His answer sheet should be re-evaluated on the basis of the model answer sheet</i>	<i>Every candidate's answer sheets were evaluated adhering to the model answer sheet. Answer sheets were evaluated by the examiner in an identical manner and marks were awarded on the basis of qualitative and correctness of the attempted answers. The recruitment of PGT (Computer Science) was carried out through the third party that was UIAMS, Punjab University. Samiti was nowhere involved in</i>

		conducting of written examination , evaluation of the answer sheets and preparation of the merit list thereof. Demand of the applicant regarding re-evaluation of the answer sheet adhering to the model answer sheet and awarding of the marks for part (b) of each question of (iii) paper, are nothing but the afterthought of the applicant having not shortlisted in the recruitment drive of PGT (Computer science) 2009. Moreover, it is not tenable under eye of law.
3	Original Marks allotted by the interview board to him (Sri Sanjay Kumar Mishra) may be provided	Copy of original marks for written examination as well as interview is annexed herewith for information.

NOW THEREFORE, keeping in view the forgoing facts and circumstances , the undersigned having thoughtful consideration over the issue and having gone through the available records, is of the view that applicant had already been intimated regarding factual position and actual marks secured by him in the written examination and interview i.e. 104 marks (100 in written examination + 4 in interview) and placed at S.No. 452 in merit list. The applicant Sri Sanjay Kumar Mishra could not be shortlisted as the last shortlisted candidate under general category was secured 116.5 marks (109.5 in written examination + 7 marks in interview) and was placed at S.No. 168 in the merit list. Demands of the applicant regarding re-evaluation of the answer sheet adhering to the modal answers and awarding the marks w.r.t the part (b) of each answer attempted by him in paper (iii) have no substance & merit as every candidate's answer sheets were evaluated adhering to the model answer sheet. Answer sheets were evaluated

by the examiner in an identical manner and marks were awarded on the basis of qualitative and correctness of the attempted answers. Accordingly, the representation dated 13.8.2018 & 6.3.2020 of Sri Sanjay Kumar Mishra is disposed without any relief. With this order dated 21.2.2020 of Hon'ble CAT, Allahabad bench Allahabad passed in CP No. 203/2018 (in O.A. No. 330/891/2014) stands complied with.

Sd.
(Santosh Kumar Yadav)
Commissioner

**Sri Sanjay Kumar Mishra
S/o Sri Onkar Nath Mishra
Resident of House No. 424/2
Balaji Colony, Bhagawanpur (Ext) Lanka, BHU
Varanasi-221005 (Uttar Pradesh)**

12. Thus a perusal of the impugned order clearly shows that it is a well reasoned order leaving no stone unturned. Each and every point of challenge has been considered by the Department while deciding the representation of the applicant. The copy of the result of recruitment to NVS-2009 and merit list annexed with the order shows that applicant has secured 104 marks and he has been placed at 452nd rank in the examination. Moreover, all the marks given to him have been separately mentioned in the list. The applicant is a general candidate who could not be shortlisted due to securing less marks.

13. There does not appear any illegality and irregularity in the impugned order requiring any interference by this Tribunal.

14. The O.A. is without any merit and is liable to be dismissed at admission stage. Accordingly, the O.A. is dismissed.

15. No order as to costs.

**(Tarun Shridhar)
Member (A)**

**(Justice Vijay Lakshmi)
Member (J)**

HLS/-

