CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/21/483/2020

HYDERABAD, this the 16th day of September 2020
(Reserved on 09.09.2020)

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Naresh Juttukonda S/o Sri Koteswar Rao,
Aged about 30 years, Gr. 'C',
Occ : Postal Assistant, Department of Posts,
Kodad SO, Suryapet, Suryapet Division,
Hyderabad Region, Telangana Circle,
R/o Suryapet ...Applicant

(By Advocate : Mr.Siva)

Vs.

1. Union of India Rep by the Secretary to Government,
   Ministry of Communication, Department of Posts,
   Dak Bhavan, Sansad Marg, New Delhi-100 001.

2. The Director General, Department of Posts,
   DAk Bhavan, Sansad Marg, New Delhi-100 001.

3. Chief Post Master General, Telanana Circle,
   General Post Office, Abids, Hyderabad-500 001.

....Respondents

(By Advocate : Mrs.K.Rajitha, Sr. CGSC)

Order
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA is filed for non evaluation of the answer script of the applicant in the Group 'B' officers examination held by the respondents.

3. Brief facts, which require narration, are that the applicant while working as Postal Assistant in the respondents' organization has appeared in the Limited Departmental Competitive Examination (for short "***LDCE***") comprising of four papers, held by the respondents pursuant to the notification dated 9.9.2019 for promotion to Group B cadre. Applicant was declared as not qualified on 24.6.2020 for the reason that he did not write the Hall Ticket number in papers II to IV of the examination on the Optical Mark Recognition (for short "***OMR sheet***"). Paper I to III have only multiple choice questions and paper IV along with multiple choice questions it has some descriptive type questions. Applicant represented on 25.6.2020 for evaluating the question papers II to IV manually and there being no response, OA has been filed.

4. The contentions of the applicant are that due to examination anxiety, hall ticket numbers were not mentioned by mistake in papers II to IV. Paper IV has both multiple choice and descriptive type questions. The descriptive part answers written on a separate sheet has the hall ticket number written on it. Therefore, even if the hall ticket number were not to be mentioned on OMR sheet, it could be deciphered that the same belongs to the candidate based on the number written on the descriptive portion of the answer sheet. Non evaluation of the papers for an error in OMR sheets exhibits lack of application of mind by the respondents. Applicant cited certain judicial

pronouncements to further his contentions. Besides, Postal Manual Volume III Para 17 prescribes equal responsibility on the supervisor to check the hall tickets written on the OMR sheets. The exam itself being limited to a few candidates the papers could be evaluated to uphold merit. Even in respect of series B of the question booklets there appears to be some errors in the question booklets which has created confusion leading to the mistakes in question. There being some error in regard to the key of series B question booklets, though the results have been announced, they are kept on hold. Applicant claims that even by ignoring the 50 marks allocated for the descriptive portion of paper IV, he has scored 850 marks which is equal to the marks scored by the topper in Telangana Postal Circle, as per the key released by the respondents and therefore has bright chances to be selected on merit. Besides, the eligibility criteria in respect of length of service to appear in the exam has been changed from 5 years to 8 years and therefore he has to wait for another 3 years to appear in the exam, if his answer sheets remain to be unevaluated.

5. *Per contra*, respondents state that Paper IV of the examination held pursuant to the notification dated 9.9.2019 contained 125 multiple choice questions and a descriptive portion for 50 marks. Other papers, which were fully objective had 150 multiple choice questions with a maximum marks of 300 per paper. Noting the hall ticket number at the appropriate place is the basic thing to be done by a candidate. Results were announced on 24.6.2020 and the applicants name figured in the rejected list for the error in not noting the hall ticket numbers in the OMR sheets. The pattern and syllabus applicable to the examination had also been indicated in the

notification cited. The applicant has not followed the instructions as laid down in Part II of Appendix 37 of Postal Manual Vol.- IV. Instruction in the first page of the question booklet at point number 4 was uncared for. Further, on the obverse of the OMR sheet instructions stated therein have been ignored. Guidelines as specified on the reverse of the hall ticket were also not abided by. The invigilators have announced in the exam halls the important instructions but the applicant failed to pay any heed to the same. The OMR sheet is evaluated by electronic means and the applicant is fully aware of the same. In the absence of the hall ticket number, the machine does not evaluate the answer sheet. It was pure negligence on the part of the applicant in not mentioning the hall ticket number in Papers II to IV. Respondents have rejected all the cases where errors were found in the OMR sheet including that of the applicant. The applicant claiming that he would get 850 marks is only an assumption. Applicant represented on 25.6.2020, but before the same could be disposed OA has been filed and hence, liable to be dismissed. Evaluation of OMR sheets has to be done as per conditions stated in the notifications but not as per the needs of the applicant and if conceded to it would go against the Principles of Natural Justice. Electronic evaluation has brought in transparency. It was in applicant's interest that he should have taken care to write the correct details rather than shifting the blame on to the respondents. If he was not able to take such minimal care, then he is unfit to occupy a responsible position like that of inspector. Respondents cited judgments to strengthen their contentions. Combined Graduate Level Exam is conducted online for direct recruits and whereas in the present case it is based on OMR sheets for those who are in service. The results declared have been kept on hold.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is in regard to non evaluation of the answer sheets of the applicant for not writing the hall ticket numbers, in respect of papers II to IV in the Group B Limited Departmental Examination, held by the respondents in pursuance of the notification dated 9.9.2019. To resolve the dispute, a reference to the instructions issued by the respondents would make it known as to which way the scale of justice should swing. The first page of the question booklet at point number 4 states as under:

> *"An OMR answer sheet and Answer Booklet for Noting and Drafting will be supplied to you separately by the invigilator to mark the answers. You must follow the instructions given on the OMR and Answer Booklet. You much write your Name, Roll No, Question Booklet Series and other particulars in the space provided on the OMR and Answer Booklet, failing* ***which your OMR answer sheet and Answer Booklet will not be evaluated****."*

It was emphasized at page (instructions) no (ii) of Question Booklet, under point No.11, that:

> *"Failure to comply with any of the above instructions will render you liable to such action or penalty as the Department may decide."*
>
> *"Further on the obverse of OMR sheet (Annexure R-3), under 'Note', it was mentioned that "Please read all the instructions given on the reverse side carefully before filling the OMR answer sheet". On the reverse of OMR sheet, under point No.2 & point No.3, it was clarified that (i) "Point No.2- The applicant should fill in the information in columns 1 to 9 (except column 2), in the boxes and darken the corresponding circles wherever required correctly and (ii) Point No. 3 – Care should be taken to fill in Roll Number, Exam Paper No, Question Booklet Serial No… Series of Question Booklet etc. correct and complete filling will be the sole responsibility of the applicant".*

Even on the obverse of the admit card, the instructions printed are reproduced hereunder:

> *"Further instructions were also issued on the reverse side of Admit Card (Annexure R-4) issued to applicant (well before seven days) under Point Number 12 wherein it was clearly mentioned that "Please read the instructions carefully on Question Booklet and OMR answer sheet. The candidate should fill up all the particulars on the OMR Answer Sheet legibly before starting to answer the Questions."*

In addition part II of Appendix 37 of the Postal Manual Vol – IV makes it explicit as under:

> *"Point No.4- Directions on Question Papers – The candidate should read the directions on question papers and should carefully observe them.*
>
> *Point No. 7 – Instructions on answer book – The candidates should carefully read and follow the instructions on the cover of the answer book."*

The instructions are clear and specific making it abundantly evident that the applicant has to write/bubble the hall ticket number at appropriate places where required.

II. Even at the time of the examination, invigilators have announced the instructions which has not been denied by the applicant. Therefore, as can be seen there are elaborate instructions in regard to the necessity to indicate the hall ticket number on the OMR sheet. The hall ticket number identifies the candidate. Without the hall ticket number the answer sheets belongs to none. One cannot assume or presume identity, be it on representation, to evaluate such answer sheets. The applicant for not having written the hall ticket number, the computer software which the respondents and applicant christened it as a machine, would not identify the candidate and terms it as an error in the OMR sheet. This is what has happened to the applicants answer sheets in respect of papers II to IV. It is

not that the applicant who is a Government service with adequate years of service would not be aware of the basic fact that he has to adduce the hall ticket number on the OMR sheet. Nevertheless, when instructions were scribed on the OMR sheet, admit card coupled with invigilators announcements and yet the applicant committing the error of not writing the Hall ticket number in papers II to IV is beyond one's comprehension. The Ld. counsel submits that due to emotional anxiety of the exam the error has crept in and that but for the error the applicant would have made it in the exam, based on self evaluation with reference to the key published by the respondents. Confusion created about series B has compounded the anxiety. Merely because a technical error has been committed a meritorious candidate's future should not be forestalled. Further, adding punch to his argument, the Ld. Counsel submits that as per Postal Manual Volume III para 17, extracted hereunder, Invigilator too has the responsibility to verify as to whether the applicant has written the hall ticket number.

> *"The Supervising Officer and the Invigilators should ensure ... and they write the roll number. ... Before accepting the answer book he should see that the candidate has entered his correct roll number on the answer book and that he has not written his name on the cover of the answer book. ..."*

True, we agree it has to be, but the primary responsibility lies with the applicant. The instructions do not state that if the invigilator does not check the hall ticket number the answer sheet would be made invalid but, in contrast, there are a number of instructions as elaborated above, which places the sole responsibility on the applicant to mention the hall ticket number lest his answer sheets would not be evaluated. Respondents can act

against the invigilator for the lapse pointed out and not beyond. Emotional anxiety to a certain level is required to garner confidence for doing right things but having it beyond a limit is what the applicant has to work it out but not blame the system. Confusion is individual specific. Clear mind gives no room for confusion. Presuming for a moment that there was confusion, but that would be to all candidates and not just to the applicant. Clarifying on inadvertent errors, which do creep in sometimes, during the examination process is a part of the examination drill. In the garb of questioning such inbuilt processes to cover up one's own failure is unfair to say the least. The error is not merely technical but a serious error which stowed away the very identity of the applicant. In respect of merit spoken of by the applicant, it has to be unequivocally mentioned that merit is the quality of being particularly good or worthy, especially so as to deserve praise or reward. Doing right things, as instructed in an exam, is a part of the process of merit evaluation of being worthy. If one takes a false start by not writing the hall ticket number, then winning the race is ruled out. The result of the false start would be disastrous though one may have the full potential to win the race, as in the present case of resulting in non evaluation of the answer sheets. Therefore, the objections raised by the applicant, as referred to, appear to be raised for the sake of raising them without a realistic foundation. Such objections would not sustain as pointed out by the Hon'ble Supreme Court in *Kanta Goel v. B.P. Pathak, (1977) 2 SCC 814*, at page 815, as under:

> *"An objection for the sake of an objection which has no realistic foundation, cannot be entertained seriously for the sake of processual punctiliousness."*

Hence, in view of the above observation, we would not be able to entertain the objections raised seriously.

III. Moreover, it requires no elaboration that the mistake was committed by the applicant and is attempting to rub it on to the respondents. Can this be fair? No, it is not, though the Ld. Counsel garnering all his persuasive skills, tried to make a judicially active suggestion that the respondents can first evaluate the answer sheets and if he qualifies then the question of his selection can thereafter be decided. We cannot right the wrong committed by the applicant. If allowed, it would become a precedent for others to claim and thereby, the wrong gets perpetuated. In fact, such a decision would be perpetuating the wrong and would go against the legal principle laid down by the Hon'ble Supreme Court in ***State of Odisha and another v Anup Kumar Senatpati & Anr*** in Civil Appeal Nos. 7295 & 7298 of 2019, wherein it was observed that a wrong or illegality cannot be perpetuated since Article 14 of the Constitution of India recognizes positive equality and not negative equality. Applicant has done the wrong of not indicating the hall ticket number. It cannot be made right by forcing the respondents to do the wrong of ignoring the mistake and thereby perpetuate it. The Tribunal has to necessarily promote positive equality.

IV. True to speak, making a mistake and then finding fault with others, without a basis that is justifiable as explained above, is not permitted under law. To state what we have stated, we rely on the observation of the Hon'ble Supreme Court in A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287 as under:

> *"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."*

Applicant, therefore, cannot be allowed to take advantage of his own mistake of not writing/bubbling the hall ticket number on the OMR sheets and conveniently pass on the blame to the respondents by citing reasons which are not acceptable.

V. Applicant cited the judgment of the Hon'ble High Court of AP in WP No.28874/2015 delivered on 18.11.2015. The issue in principle was in respect of an error committed in violation of exam instructions in noting details of the test form number. The judgment of the Hon'ble High Court when challenged in Special Leave to Appeal (C) No- 18592/2016, the Hon'ble Supreme Court has permitted application of the Hon'ble High Court judgment only in respect of the respondent and the question of law was kept open.

The question of law was later settled by the Hon'ble Apex Court in ***State of Tamil Nadu & Ors v G. Hemalathaa & Anr*** in Civil Appeal No. 6669 of 2019, decided on 28.8.2019

> *10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India, Venkataramiah, J., held that:*
>
> > *"13…. exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules."*

11. Roberts, CJ. in Caperton v. A.T. Massey held that:

> *"Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."*

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."

The case of the applicant is undoubtedly a hard case. The Ld Counsel for the applicant though was arguing strenuously that technical errors should be ignored and merit should be given priority. However, hard cases make bad law as observed by the Apex Court. In appointments to Group B cadre through promotions by a competitive Limited Departmental exam, the process should be fair and impartial and should not create a feeling of distrust amongst all those who participate. Group B positions are at the cutting edge of the organization. These positions mostly have a direct interface with the public. Hence they are sensitive and important which decide the future of the organization. To hold such positions one has to have a calm and clear mind and not get confused at the drop of a hat. Hence the exam is to test not only the knowledge but the ability to follow instructions. Those who do not follow the instructions fall by the way side. Applicant failed to comply with the mandatory instructions as specified on the OMR sheets, admit card and P&T Manual referred to above and hence granting relief as sought, would not be resonating with the above judgment.

VI. In addition, learned counsel for the respondents has pointed out that there are many other candidates whose answers were not evaluated

for errors committed in the OMR sheet like the applicant. As a policy it was the decision of the respondents not to entertain any requests for evaluation of answer sheets with defects noticed in the OMR sheets. The applicant made a request but before the respondents could respond, OA was filed. It is expected of a Govt. Servant to wait for a reasonable time and thereafter approach the Tribunal. Nevertheless, reverting to the issue the Tribunal should not interfere in policy decisions unless it is irrational, as laid down by the Hon'ble Apex Court as under:

a. ***BALCO Employees' Union (Regd.) v. Union of India***, (2002) 2 SCC 333,

> *This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India.*

b. ***CSIR v. Ramesh Chandra Agrawal*** in Civil Appeal No.1716 of 2004,

> *".. Indisputably, a policy decision is not beyond the pale of judicial review. But, the court must invalidate a policy on some legal principles. It can do so, inter alia, on the premise that it is wholly irrational and not otherwise…"*

We find no irrationality in the policy decision of the respondents in rejecting the request of the applicant as the same decision was uniformly applied to all the candidates who committed errors in filling up the OMR sheets. Moreover, such a policy decision is required to validate the reliability and transparency of the examination process. One cannot raise eye brows on the same. Instead the applicant should make another effort with a positive mind. It is better to light a candle than curse the darkness.

Rather than cursing oneself about the darkness of having committed the mistake it is always better to light the candle of attempting the exam again.

VII. Indeed, to treat sharply dissimilar persons equally is subtle injustice. The candidates who have filled in the OMR sheet properly and responsibly would be discriminated by allowing the relaxation sought. The very sanctity of the exam and the relevance of the rules would be compromised. Therefore treating the applicant, who has not filled the OMR sheet as required, equally with those who had filled it properly in strict adherence to the instructions given, is akin to treating dissimilar persons equally which indeed is subtle injustice. We are forbidden to do so under law.

VIII. Besides, equal opportunity is a hope to be pursued within legal limitations but not to lengths where it takes the form of a menace. The claim of the applicant that opportunity could be given to him based on his projected claim of merit, as per self evaluation, could be in the realm of hope but should not turn out to be a menace to the respondents by inviting similar claims from many others who committed similar errors in filling the OMR sheet. Entertaining such claims, would decry the trustworthiness and sanctity of the exam, since the palpable message that would percolate is that the rules of the exam are unreliable and are liable for change suiting the needs and convenience of some of the candidates who are enterprising enough to test the waters in as many forums as is permissible. Rule is a rule and it has to applied uniformly to all, which is what the respondents did. Rule bending will lead to rulelessness in the respondent organization. Infringement of any rule is unwelcome as expressively observed by the

Hon'ble Apex Court in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 as under:

> "*Action in respect of matters covered by rules should be regulated by rules*".

The decision of the respondents is covered by the various instructions referred to above in respect of recording the hall ticket number on the OMR sheet and therefore we cannot find fault with the respondents for regulating their decision to not to evaluate the answer sheets of the applicant as per the well laid out instructions cited. *Defacto*, Tribunal is not empowered to relax the rules framed by the respondents and accommodate the applicant plea, as pointed out by the Hon'ble Apex Court in ***Govt. of Orissa v. Hanichal Roy***, (1998) 6 SCC 626,

> *"3……we do not think that the Tribunal was right in, in effect, relaxing the appropriate rule itself…."*

In the instant case the respondents have adopted a fair and transparent approach. It is not the case of the applicant that he has been discriminated with respect to others who committed similar follies. All those candidates whose OMR sheets were found to be defective faced the same fate as that of the applicant.

IX. Being on the subject, we must observe that the end has to be legitimately justifiable. The means that are to be adopted should be within the constitutional scheme of things but not prohibited. In making the observation, we have echoed the observation of the Hon'ble Apex Court in ***State of Kerala v. N.M. Thomas***, (1976) 2 SCC 310, at page 356, as under while stating the above:

> *Chief Justice Marshall's classic statement in McCulloch v. Maryland followed by Justice Brennan in Kazenbach v. Morgan remains a beacon light:*
>
> > *"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."*

The applicant is seeking a relief which is prohibited in the context of rejection of the OMR sheets with errors. Providing relief to the applicant as prayed for by discriminating others who are similarly placed is inconsistent with the letter and spirit of the constitution and hence, would be unconstitutional.

X. For a tangentially opposite folly of writing the hall ticket number in all the pages of the answer book instead of writing only on the first page, the Hon'ble Supreme Court in ***Karnataka Public Service Commission vs B.M. Vijaya Shankar And Ors*** reported in ***1992 AIR 952, 1992 SCR (1) 668***, has held that any violation of instructions by the candidates does not call for the Principles of Natural Justice to be applied and relief granted. Once instructions are not followed, then the requirement to evaluate the answer books is not called for. Ld. Counsel for the applicant claims that the judgment is not applicable to the case of the applicant since the facts and circumstances are different. However, the Principle that can safely be derived from the cited judgment relied upon by the respondents is that, if there is violation of exam related instructions, then the candidate's answer book need not be evaluated. Therefore, the said judgment does apply to the case of the applicant as well. In view of the Hon'ble Supreme Court judgments cited supra backing our views, the relevance of the decision relied upon by the respondents in OA 2949/2019 of the Hon'ble

Principal Bench of this Tribunal and hotly contested by the Ld. counsel by the applicant for being in variance with the Coordinate Bench decision in OA 3057/2017 dated 10.8.2018, need not be gone into. Nevertheless, in particular, the latest judgment of the Hon'ble Supreme Court in ***State of T.N. v Hemlathaa*** rendered as recently as in 2019 cited supra governs the field, which makes the applicant ineligible for the relief sought.

XI. It is contextual to state that judicial intervention will be on facts, law and in public interest. The Public interest involved in conducting an exam is to ensure that it is fair, transparent, objective and as per relevant rules, which govern the conduct of the exam. The objective is to provide for a level playing field so that merit emerges with all parameters applied without any detour. The rules are universally applicable to all the candidates and any deviation from the same, to favour some for one reason or the other, would raise questions on the very objective of the exam which obviously is not in public interest. The rules have to be consistent till the selection is finalised. They cannot be changed *en route* as prayed by the applicant. Rules of the game once set cannot be changed in accordance with the legal principle pronounced by the Hon'ble Apex Court in ***K. Manjusree v. State of A.P.*** : (2008) 3 SCC 512, as under:

> *"Selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible."*

The rule was to mention the hall ticket number as per relevant instructions. After the exam is over, the applicant is implicitly seeking a change of the rule by pleading for getting his answer script evaluated even if the rule of noting the hall ticket number as prescribed has not been followed. This would mean changing the rules after the game of conducting the exam was over and it is exactly this aspect which is impermissible as per the above legal principle. Respondents cannot do it, even if they want to, nor the Tribunal can butt in.

XII. Moving forward, it is proper to state that the clear drafting of the OA by the Ld. Counsel for the applicant has created an illusion of a cause of action, which had to be looked into, but after traversing through the contours of the case we find it meritless. *Albeit,* we could have dismissed the OA at the admission stage, given the facts clearly outweighing the applicant's cause but the Principles of Natural Justice leaned us to adopt the approach of allowing the voice of the effected to be heard with the intensity it deserves. We heard the Ld. Counsel for the applicant on multiple occasions and that too elaborately but we are not persuaded to pronounce other than what is to be pronounced in accordance with rules and law as portrayed in the previous paras. While commenting as above, we are reminded of an insightful observation of the Hon'ble Supreme Court in ***Kanta Goel v. B.P. Pathak, (1977) 2 SCC 814***, at page 815:

> *"If on a meaningful – not formal – reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the judge should exercise his power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing"*

The OA is not vexatious but is definitely meritless in view of the aforesaid circumstances. The scale of justice has thus swung in the direction of the respondents answering the question we posed to ourselves at para 7(I). Hence, the OA being devoid of merit, deserves to be dismissed and is accordingly dismissed, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

Vl/evr