

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/1007/2014

HYDERABAD, this the 18th day of September, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



R. Indiramma, W/o. K. Santhosh Reddy,
Aged about 41 years, Occ: Store Keeper /P.No.051220-7,
Stores Section, Ordnance Factory,
Yeddumailaram, Medak- 502 205,
R/o. Q.No.22400, Ordnance Factory Estate,
Yeddumailaram Village & P.O.,
Medak District, Pin – 502 205, Telangana State.

... Applicant

(By Advocate: Mr. K. Ram Murthy)

Vs.

1. Union of India rep. by
its Director General and Chairman,
Ordnance Factory Board,
Government of India, Ministry of Defence,
10-A, S.K. Bose Road, Kolkatta – 700 001.
2. The Principal Director,
Indian Ordnance Factories Institute of Learning,
Khamaria, Jabalpur- 482 005, M.P.
3. The Principal Director,
Indian Ordnance Factories,
Ordnance Factories Institute of Learning,
Yeddumailaram Post, Medak Dist.,
Pin – 502 205, Telangana.
4. The General Manager, Ordnance Factory,
Ministry of Defence, Yeddumailaram Post,
Medak Dist., Pin – 502 205, Telangana.
5. B. Raju, S/o. Sri B. Venkataiah,
Aged about 34 years,
Occ: Charge man /NTS, Y&E Section,
Ordnance Factory, Medak – 502 205,
R/o. Yeddumailaram, Sangareddy Mandal,
Medak District, Pin- 502 305.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC
Mr. M. Hara Bhupal, for R5)

ORDER (ORAL)

Hon'ble Mr. B.V. Sudhakar, Admn. Member

Through Video Conferencing:

2. The OA is filed challenging the selection pursuant to conduct of Limited Departmental Examination-2013 (in short "**LDCE-2013**") for the post of Chargeman/NT (Stores).


3. Brief facts of the case are that the applicant appeared in the LDCE -2013 for the post of Chargeman/NT (stores) and was expecting 187 marks but was awarded 171/250. On getting less marks than expected applicant obtained the key to the answers and found that the answers given to some questions in the key were wrong. Applicant claims that she should get 16 marks more than what was awarded. The 5th respondent who got only 178 marks was selected. On representing to 2nd respondent, to reconsider her exam result, it was rejected. Representations made to the 1st respondent on several occasions have not been disposed till date and hence the OA.

4. The contentions of the applicant are that she is presently working as store keeper and hence has good knowledge in Material Management and therefore should have got more marks but for the wrong key. The 2nd respondent has framed the wrong key to help the 5th respondent to be meritorious. No court will support a wrong key. Respondents have denied to furnish answer sheets of co-competitors under RTI. Respondents by not disposing representations have given room for raising doubts about respondents approach to the issue, since they should have ordered inquiry to know the truth. Impugned order is contrary to the guidelines issued by OFB. The candidate who stood 2nd in the merit list is a welder and not LDC or equivalent but made eligible for the Post of Chargeman. Answer sheets

should have been kept with the vigilance wing to avoid any tampering to favour the 5th respondent.

5. Respondents in the reply statement state that a notification was issued on 21.6.2013 to fill up different categories of Chargeman and one among them is Chargeman (Non. Tech. Stores) for which the applicant applied and stood 4th in the merit list. The 5th respondent who stood 1st in the merit list was appointed as Chargeman on 25.4.2014, based on the orders of the tribunal in OA 1495/2013. The questions and answers were decided by an expert committee set up, as per prevalent Ordinance Board Manuals. To demonstrate that the Key was correct, respondents cited the answer to question No.44 in G.K. Paper was D whereas applicant has shown it as B. Hence the allegation that the key is incorrect is baseless. Respondents submit that revaluation of answer sheets, questioning the key etc. is not permitted as per Hon'ble Supreme Court judgment in H.P. Public Service Commission vs. Mukesh Thakur & Anr. in CA 907/2006 and by judgments of different Benches of this Tribunal. Applicant presumes that she has done well but there are 2 more meritorious candidates before her other than the 5th respondent. Syllabus for the exam was published in the website and candidates are expected to prepare with the help of reference books keeping in view the relevant latest amendments. Representations made were duly disposed. Mere working in stores section will not guarantee higher marks in the exam. Candidates who fail in the exam cannot challenge the exam as observed by the Hon'ble Apex Court in K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515. Information that could be given under RTI Act was furnished but supply of other candidates answer sheets was denied keeping in view the directions of the Hon'ble Apex Court on the issue.





5th respondent in his reply submits that the LDCE exam is a competitive exam, held all over the country and that the 2nd respondent Institute takes the responsibility of setting question papers and releasing the key etc. 3 sets of questions papers are framed to bring about transparency in the exam. Out of 53 candidates, who competed for the single post of Chargeman, he stood first in the merit list. However, when the candidate who stood 2nd in the exam was offered the appointment based on a dispute in regard to academic qualification, it was challenged vide OA 1495/2013 and on succeeding in the same he joined as Chargeman on 25.4.2014. If the answers to the 16 questions are to be revised then the same apply to his case as well and hence it cannot be said that the applicant will only be selected in the process. Other submissions made are akin to those made by the respondents.

6. Heard both the counsel and perused the pleadings.

7. I. The dispute is about the claim made by the applicant that the key released by the respondents in respect of the LDCE -2013 is incorrect. In this regard it is evident from the facts on record that the respondents have got the questions and the key to the answers framed by an expert committee as per the relevant Ordinance Board manuals. Experts in the respective field have contributed to the setting up the question papers and releasing the key. The exam was competitive in nature with a large number of candidates appearing in the same. Hence, the same key will apply to all the candidates who appeared. Moreover, only an expert body can decide as to what should be the key to the answers and it is not for the Tribunal to interfere in such matters. The expert body was constituted as per OFB. The applicant has come to the conclusions that the answers to certain questions as shown in the key as wrong on her assumptions. She is not an expert to

state so. The respondents have made it clear that the syllabus was published in the website and that the latest amendments brought about are to be followed so as to arrive at the correct answer. Not going through the latest amendments may obviously lead one to come to a wrong conclusion. This appears to be the case in respect of the applicant. Nevertheless, reverting to the core aspect, applicant is effectively seeking re-evaluation of the answer sheets under the garb of claiming that the key to the answers for certain questions to be wrong. This is impermissible under law, as observed recently by Hon'ble High Court of Rajasthan, in the **Rajasthan Public Service Commission vs Pankaj Raj**, on 29 May, 2019, in Special Appeal Writ No.697/2019, as under, wherein a catena of judgments of Hon'ble Apex Court were quoted:

The decisions of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth and Others (1984) 4 SCC 27; Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors. (2004) 6 SCC 714; Ran Vijay Singh and Ors. v. State of Uttar Pradesh & Ors (2018) 2 SCC 357; Gangadhara Palo v. Revenue Divisional Officer & Anr. (2011) 4 SCC 602; Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr (2010) 6 SCC 759; Central Board of Secondary Education Through Secretary, All India Pre-Medical/Pre-Dental Entrance Examination & Ors. v. Khushboo Shrivastava & Ors (2014) 14 SCC 523; Board of Secondary Education v. Pravas Ranjan Panda (2004) 13 SCC 383; and Rahul Singh (supra) have consistently underlined that judicial review, in the absence of any provision for revaluation, should be rarely exercised- preferably under exceptional circumstances. For instance, a three judge Bench of the Supreme Court, in Pramod Kumar Srivastava (supra) held as follows:

"Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer- book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re- evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re- evaluation of his marks."

Again, in Khushboo Shrivastava (supra) the Supreme Court held as follows:

"7. We find that a three-Judge Bench of this Court in Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Ors. (supra) has clearly held relying on Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v.



*Paritosh Bhupeshkumar Sheth and Ors. (supra) that in the absence of any provision for the re-evaluation of answers books in the relevant rules, no candidate in an examination has any right to claim or ask for re-evaluation of his marks. The decision in **Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Ors. (supra)** was followed by another three-Judge Bench of this Court in **Board of Secondary Education v. Pravas Ranjan Panda and Anr. (2004) 13 SCC 383** in which the direction of the High Court for re-evaluation of answers books of all the examinees securing 90% or above marks was held to be unsustainable in law because the regulations of the Board of Secondary Education, Orissa, which conducted the examination, did not make any provision for re-evaluation of answers books in the rules.”*

The applicant has not produced any statutory provision which will permit revaluation of answer sheets. Hence the question of re-evaluation of the answer sheets would not arise, in view of the observations of the superior judicial fora as at above.

II. The other aspect which is of crucial significance is that the applicant having appeared and failing in the exam cannot turn around and find fault with the exam. Had she passed the exam the question of contesting the key would not have arisen. Honble Supreme Court has made this aspect clear in **Air Cmde Naveen Jain vs Union of India** on 3rd October, 2019, Civil Appeal No.3019 of 2017:

23) *Apart from the policy, we also find that the appellant is estopped to challenge the policy after participating in the selection process on the basis of such policy. It has been so held by this Court in **Madan Lal & Ors. v. State of J & K & Ors.**14:*

“10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews.

Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body

and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

24) In a judgment reported as *Ashok Kumar v. State of Bihar*¹⁵, a three Judge Bench held that the appellants were estopped from turning around and challenging the selection once they were declared unsuccessful. The Court held as under:-



“17. In *Ramesh Chandra Shah v. Anil Joshi* [*Ramesh Chandra Shah v. Anil Joshi*, (2013) 11 SCC 309 : (2011) 3 SCC (L&S) 129] , candidates who were competing for the post of Physiotherapist in the State of Uttarakhand participated in a written examination held in pursuance of an advertisement. This Court held that if they had cleared the test, the respondents would not have raised any objection to the selection process or to the methodology adopted. Having taken a chance of selection, it was held that the respondents were disentitled to seek relief under [Article 226](#) and would be deemed to have waived their right to challenge the advertisement or the procedure of selection. This Court held that: (SCC p.318, para 18) 14 (1995) 3 SCC 486 15 (2017) 4 SCC 357”

“18. It is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome.”

18. In *Chandigarh Admn. v. Jasmine Kaur* [*Chandigarh Admn. v. Jasmine Kaur*, (2014) 10 SCC 521 : 6 SCEC 745] , it was held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non-selection. In *Pradeep Kumar Rai v. Dinesh Kumar Pandey* [*Pradeep Kumar Rai v. Dinesh Kumar Pandey*, (2015) 11 SCC 493 : (2015) 3 SCC (L&S) 274], this Court held that: (SCC p. 500, para 17) “17. Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. This, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted.” This principle has been reiterated in a recent judgment in *Madras Institute of Development Studies v. K. Sivasubramaniyan* [*Madras Institute of Development Studies v. K. Sivasubramaniyan*, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164 : 7 SCEC 462] .

19. In the present case, regard must be had to the fact that the appellants were clearly on notice, when the fresh selection process took place that written examination would carry ninety marks and the interview, ten marks. The appellants participated in the selection process. Moreover, two other considerations weigh in balance. The High Court noted in the impugned judgment [*Anurag Verma v. State of Bihar*, 2011 SCC OnLine Pat 1289.] that the interpretation of Rule 6 was not free from vagueness. There was, in other words, no glaring or patent illegality in the process adopted by the High Court. There was an element of vagueness about whether Rule 6 which dealt with promotion merely incorporated the requirement of an examination provided in Rule 5 for direct recruitment to Class III posts or whether the marks and qualifying marks were also incorporated. Moreover, no prejudice was established to have been caused to the appellants by the 90:10 allocation.”

In the case on hand, it is also seen that the applicant has not raised the objection till the results were announced. Therefore, only when she failed the exam, the challenge was mounted which is violative of the observations made by the Hon'ble Apex Court in paras supra.



III. Moreover, the 5th respondent has joined the post way back in 2014. He has acquired the vested right to hold the post. A challenge to his appointment alleging that the key has some defects would not stand to reason. In addition the applicant has stood 4th in the merit list and there are two other candidates who are more meritorious than her, whose merit has not been challenged by impleading them as proper parties. Hence even on the ground of mis-joinder of parties the OA is liable to be dismissed. Applicant claiming that since she is working in the stores wing and therefore because of the knowledge she has in material management, she ought to have got higher marks in the said subject is unacceptable because knowledge and performance are two separate aspects. Performance in the exam is the clincher and not just having knowledge. Under RTI Act information which furthers public interest is provided and not that which serves one's personal interest. The applicant was seeking answer sheets of other candidates to pursue her personal interest. Further, when 3rd party interests are involved, any information to be provided has to be with the consent of the 3rd party. Hence respondents not providing the answer sheets of other candidates, is in compliance with the provisions of the RTI act. Other grounds raised by the applicant about keeping the answer sheets with the vigilance wing, 5th respondent was helped by the respondents to get selected etc do not hold ground, for the simple reason that the respondents have been conducting the exam over the years and the applicant has not filed any complaint/s about the conduct of the exam by the respondents nor did

she submit any justifiable evidence that the 5th respondent was helped. One another contention that the candidate who stood 2nd in the merit list is a welder and not LDC or equivalent but made eligible for the Post of Chargeman will not help the applicant since it was the candidate who stood 1st was selected and not the candidate who stood 2nd. The reality that looms large is that the applicant has failed in the exam and therefore discovering some grounds to get herself selected is not supported by law as was brought out in paras supra.

IV. In view of the aforesaid circumstances, we find no merit in the case. Hence the OA is dismissed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER(JUDL.)

al/evr