

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
(Reserved on 29.03.2017)

OA No.060/00304/2014

Date of decision- 26.4.2017

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Harpal Singh son of Sh. Sukhdev Singh, aged 26, House No. 399, Sector 15/A, Chandigarh.

...APPLICANT

BY ADVOCATE : Mr. Mukesh Rao.

VERSUS

1. U.T. Chandigarh through its Administrative, U.T, Chandigarh.
2. Law and Prosecution department, U.T, Chandigarh, Deluxe Building, U.T. Secretariat, Sector 9, Chandigarh through its Director.
3. Legal Remembrancer-cum-Director of Prosecution, Law and Prosecution Department U.T, Chandigarh, Deluxe Building, Sector 9, Chandigarh.
4. Rakesh Son Karanvir Singh, resident of H.No. 330, Pipliwalा Town, Manimajra, Chandigarh.
5. Yadwinder Singh, Roll No. 221.
6. Mrs. Monika Goyal, Roll No. 206.
7. Mandeep Singh Kainth, Roll No. 230.
8. Surinder Pal Singh, Roll No. 215, respondent no. 5 to 8 through its Legal Remembrancer-cum-Director of Prosecution, Law and Prosecution Department U.T Chandigarh, Deluxe Building, Sector 9, Chandigarh.

(Respondents no. 5 to 8 names are deleted vide order dated 24.03.2015)

...RESPONDENTS

BY ADVOCATE: Sh. Arvind Moudgil, counsel for respondent nos. 1 to 3.
Sh. Parveen Gupta, counsel for respondent no. 4.

52

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The applicant has impugned the final merit list prepared for filling up the post of Law Officer in the Law and Prosecution Department, U.T, Chandigarh and also seeks issuance of direction to respondent no. 2 from this Tribunal to recast the final merit list after correcting the answer key and prepare fresh final merit list on the basis of correct answer key. He further sought issuance of direction to respondent no. 2 to appoint him to the post of Law Officer as he falls at position no. 1 in the final merit list to be prepared on the basis correct answer key.

2. To appreciate the controversy centered round the litigation, few relevant facts may be noted. The applicant, Harpal Singh, is a Law Graduate and completed his LLB in the year 2011. Respondent no. 2, Law and Prosecution Department, U.T, Chandigarh issued an advertisement on 06.09.2013 calling applications for filling up six posts of Law Officer in the Law and Prosecution Department in the pay scale of Rs. 10,300-34,800+ GP/Rs. 4,200/- plus allowances. Out of six posts, one was reserved for SC category, two were reserved for OBC category and three were for General Category. The applicant who belongs to SC category, applied being fully eligible in his category. As per the criteria published in the advertisement, the selection process involved two essential steps, first a written examination of objective type (multiple choice) question of 100 marks. Each right answer would carry one mark and for each wrong answer 0.25 marks were to be deducted. On the basis of assessment in written examination, candidates were shortlisted; who were to be called for second phase i.e. interview. The applicant appeared in the written examination which was held on 17.12.2013 under Roll No. 247. The

result of the same was declared on 30.12.2013. On the basis of marks obtained by candidates, they were shortlisted for second stage i.e. for interview. The applicant was called for interview on 09.01.2014 vide letter dated 27.12.2013 before the Selection Committee. On that date, the applicant appeared and was interviewed by Selection Committee. Final result was declared on 30.01.2014 where the applicant was kept at S.No. 1 in the waiting list and respondent no. 4 was declared successful against the reserved post of SC. The respondents published the answer key on their website on 12.02.2014 from where the applicant came to know that at least four answers to the questions i.e. 55, 75, 79 and 99 in question paper of Set B are incorrect in answer key. Thereafter, the applicant submitted a representation on 13.02.2014 requesting the respondents to rectify the answer key and recast the merit list and to consider his case for appointment for the post in question as he will secure more marks than the selected candidate (respondent no.4). Vide letter dated 24.02.2014 issued by official respondents, the applicant was directed to furnish supporting text to substantiate the version made in the representation which the applicant submitted on 05.03.2014. Pending representation, the applicant approached this Court by filing the present O.A wherein he impugned the entire selection carried out by the respondents for the post of Law Officer. On 24.03.2015, learned counsel appearing for the applicant made a statement at the bar that he has not prayed any relief against private respondent no. 5 to 8, therefore, their names be deleted from the array of parties. Accordingly, notice was only issued to respondent no. 4 whose selection is under challenge and name of other respondents no. 5 to 8 was deleted from the array of respondents.

3. Official respondent nos. 1 to 3 and respondent no. 4 have filed their separate written statement. Official respondents did not

dispute the factual accuracy with regard to notifying the vacancies for the post in question and selection process undertaken by them. They have also taken a plea that the applicant cannot be allowed to challenge the selection once he had already appeared in the selection process and being unsuccessful, he cannot be allowed to impugn the selection. They submitted that as per the settled proposition of law, candidates after becoming unsuccessful for the post cannot challenge the selection in which he himself participated that too without any protest. They have placed reliance upon the **Simarjit Singh Tiwana**

Vs. State of Punjab, 2012(4) SCT 328, **Dhanajay Malik & Ors. Vs.**

State of Uttaranchal & Ors., 2008(4) SCC 515 and judgment in case of **Ramesh Kumar Vs. High Court of Delhi**, AIR 2010 SC 3714. It

has also been submitted that the applicant has concealed the material fact with regard to decision on his representation dated 13.02.2014 which was conveyed to him vide order dated 19.03.2014, therefore, it has also been prayed that present O.A be dismissed on the ground of concealment of material fact.

4. On merit, they have submitted that the allegation made in his representation has already been answered, therefore, unless the applicant impugned their decision (official respondents decision), the present O.A is not maintainable in its present form. They submitted that they have answered the allegation made by the applicant in reply to their para 4 (xi) to 4 (xiii), reads as under:-

"That in reply to these sub-paras, it is stated that the applicant was given the question paper of Set B when he appeared for the written test held for the post of Law Officer. The applicant vide Annexure A-7 informed that the Question Nos. 55, 75, 79 and 99 in the Answer Key have been shown with wrong options and according to him the correct answers to the aforesaid four questions would have the options as mentioned in his request dated 13.02.2014 (Annexure A-7). The answering respondent vide Annexure A-8 advised the applicant to give supportive text to substantiate his version made in his representation dated 13.02.2014 and vide Annexure A-9, applicant supplied the requisite information. After the receipt of the requisite

information, a detailed communication vide Annexure R-1 dated 19.03.2014 was sent to the applicant, wherein it has been mentioned that the subject of law is an art and not a science and sometimes, either, the candidate or question paper settled falls into trap of available text or legal precedent which generally vary from time to time and case to case. Not only this, vide aforesaid memo, each and every question as pointed out by the applicant was answered as the answering respondent in order to know the correctness of the contentions raised in the representation dated 13.02.2014 examined the case in detail. It was conveyed that his contentions regarding Answer to Question nos.55, 75 and 79 are devoid of any merit because of the reasons mentioned in Annexure R-1. As regards the Question no.99, it was conveyed that it was a clerical mistake but the applicant had tick-marked as option 'C' which was a wrong answer. It was also conveyed that the applicant had not attempted Question no.55 and treating the answer of Question No.99 being wrong (although not admitted) and adding one more number into the marks of the applicant, he would have been able to secure the total marks as 58.75 which is total (written test plus interview) are less than the marks secured by the candidate, who was selected for the post of Law Officer. Further, it is submitted that in case such benefit of Question no.99 being wrong (although not admitted) is to be extended to the said applicant, no discrimination of any kind could be done with other candidates who appeared for the said written test of Law Officer irrespective of the fact that they were given either Set-A, Set-B or Set-C Question Papers for the purposes of examination. Taking this into account, if one more mark is to be awarded to every candidate whosoever appeared in written test, then the respondent no.4 would be able to secure one more mark and the fact remains that the applicant secured less marks as compared to the respondent no.4. It is not out of place to mention that such contentions of the applicant regarding the wrong answers in the Question Paper is also an afterthought and he has tried to lay his claim on conjecture and surmises. Had the applicant found any wrong question in the written test, he should have, there and then reported the matter to the Centre Superintendent or to the other officers/officials of the Law & Prosecution Department who were present. He could have immediately after the completion of the written test, made some representation to the office of answering respondent, which he failed to do so."

They have also submitted that the applicant had secured less marks than respondent no. 4 who has also performed well in interview, therefore, he was awarded 15 marks whereas the applicant was awarded only nine marks, therefore, there is no discrepancy as alleged by the applicant in his representation and in O.A, as such petition be dismissed being devoid of merit.

5. Respondent no. 4 has also filed short reply wherein he submitted that he had secured 68 marks (53 in written + 15 (in interview)) whereas the applicant secured 66.75 marks (57.75 (in written) + 9 (in interview)). It is also submitted that the allegations leveled by the applicant is false and without any basis. The official respondents have assessed the entire question as per the answers indicated in the answer key. Pending O.A, the official respondents have got two expert reports on these four questions i.e. one report dated 15.09.2015 from Rajiv Gandhi National University of Law, Punjab and second report dated 18.03.2016, from Panjab University, Chandigarh.

6. The applicant as well as private respondents have filed additional pleadings by way affidavit and submitted that both the report submitted by the two different expert bodies are contradictory. Based upon these two expert reports, this Court directed the respondents to again relook into the matter and decide the issue before taking any view in the matter. In furtherance to that Sh. Anurag Agarwal, IAS, Law Secretary, Chandigarh filed his affidavit on 15.03.2017, but the position remains that they have not come up with any solution.

7. We have heard Sh. Mukesh Rao, learned counsel for the applicant, Sh. Arvind Moudgil, counsel for respondents no. 1 to 3 and Sh. Parveen Gupta, counsel for respondent no. 4.

8. Sh. Mukesh Rao, learned counsel for the applicant vehemently argued that impugned selection of respondent no. 4 is liable to be set aside as it has been found that there are discrepancies in the answer key qua questions no. 55, 75, 79 and 99. To substantiate his arguments, he submitted that these four questions were re-assessed and as per two expert reports, the applicant will get higher marks than the private respondent no. 4, therefore,

appointment of private respondent be set aside and resultantly the applicant be offered appointment. 57

9. Per contra, Sh. Arvind Moudgil, learned counsel for the official respondents vehemently argued that there is contradiction in the reports submitted by two independent expert bodies, therefore, right course to settle the issue that court may take its own view based upon the material and statute as all these questions are in legal filed whereas, Sh. Parveen Gupta, counsel for respondent no. 4 apart from submissions made by counsel for official respondents, submitted that respondent no. 4 is continuing to work as Law Officer with the Chandigarh Administration for the last more than three years and is also pursuing his PhD degree. He secured more marks in interview than the applicant who is only a Law graduate and considering his higher qualification in the field of Law, he was appointed. He also argued that as per the answer key, he has been assessed by the examiner and he secured higher marks than the applicant. There is a no allegation of misrepresentation or foul play against respondent no. 4 that he played fraud in getting appointment, therefore, he prayed that O.A be dismissed. Lastly, sh. Gupta argued that since respondent no. 4 is continuing in service for the last more than three years and there is nothing against him, therefore, if any adverse order is passed or his appointment is upset, that will affect his entire life. To buttress his submissions, he placed reliance upon following judgments:

1. **Guneet Pal Singh Sodhi Vs. Punjab State Power**

Corporation Ltd. and another, 2015 (3) SCT 726 decided by Punjab and Haryana High Court.

2. **Harinder Pal Singh Vs. State of Punjab & Ors.** (CWP No.

18419/2013 decided on 03.11.2014 b)

3. **Vikas Pratap Singh & Ors. Vs. State of Chhattisgarh & Ors. etc** (Civil Appeal Nos. 5318-5319 of 2013 decided on 09.07.2013).

4. **Buddhi Nath Chaudhary Vs. Abahi Kumar**, 2001 (3) SCC 328.

10. We have heard learned counsel for the respective parties and have gone through the pleadings, judgments cited by them with their able assistance.

11. Conjunctive perusal of the pleadings as noticed above and the arguments advanced by learned counsel for the respective parties, it is clear that the applicant raised alarm against the respondents by submitting that he has not been properly assessed or not awarded proper marks for the question which he had attempted as the answer key to those questions itself is defective as the answer key to those four questions are not in conformity with the Act or statute governing the field. These four questions are 55, 75, 79 and 99. During the course of the arguments, the learned counsel for the applicant submitted that two questions are material for the fate of the candidates i.e. 55 and 75 only and rest will not change the field as their answers will not affect both the candidates. It is to be recorded here that there is no dispute qua two sets of papers involved here which the applicant and the private respondent no. 4 had attempted, they are set B and C. Set B question paper was attempted by the applicant whereas set C by the private respondent but questions are same with change of sequence in number. For proper adjudication of the matter, we deem it appropriate to reproduce these two questions i.e. 55 & 75 as under:-

"Q. No. 55 The Lok Sabha is called in Session for at least how many times in year?

- (a) Twice
- (b) Once
- (c) Thrice

(d) Four times

Q. No. 75. In execution of a decree for the maintenance, salary of a person can be attached to the extent of

- (a) One fifth
- (b) One third
- (c) Two third
- (d) One fourth"

Though the official respondents have taken advised from two independent institutions about these questions and both reports submitted by experts are different with each other as the answer given by experts are different. The relevant paras of their opinions, are also reproduced as under:-

"1st Report by Rajiv Gandhi National University of Law, Punjab

The Law Secretary,
Chandigarh Administration

Subject:- Clarification regarding answer key.

Reference:- Your office Memo No. SA-LD-2015/11100 dated 4/9/2015

Dear Sir/madam

In relation to above subject and reference the clarification for the questions cited it is stated as follows:-

Q 1. The Lok Sabha is called in Session for at least how many times in year?

- (a) Twice
- (b) Once
- (c) Thrice
- (d) Four Times

Answer is (a) Twice

(Article 85 of the constitution at least two sessions in practice may be three in a year but at least two in a year)

Q2. In execution of a decree for the maintenance, salary of a person can be attached to the extent of

(a) One fifth	(b) One third
(c) Two third	(d) Four fourth

Answer is -(b) one third

(As per Section 60 (ia) of Code of Civil Procedure 1908, though the opinion of the courts are different there are decisions in which the court has attached one fourth, one fifth amount of salary also)

2nd report by Panjab University-

Proceedings of the meeting of the Committee constituted by the Registrar to give correct option/answers to four questions of the written test for filling up the posts of the Law Officer conducted by the Law & Prosecution Department, Chandigarh Administration as sought by the Law Secretary, Chandigarh Administration vide letter No. SA-LD-2016/2586 dated 03.03.2016. The meeting was held on 18.03.2016 at 12.00 noon

in the syndicate room of the university the following members were present:-

- 1) Prof. Emeritus Dr. Virender Kumar..... Chairperson
- 2) Prof. Nishtha Jaswal, Member
- 3) Prof. Vijay Nagpal, Member
- 4) Sr. Law Officer Convener

The correct option/answers to four questions as sought by the Secretary Chandigarh Administration vide letter no. SA-LD 2016/2586 dated 03.03.2016 are as under:

Questions Nos.	Answers	Documentary Proof
1	(a)	The answer stands covered under Article 85 (1) of the Constitution of India.
2	(c)	The answer stands covered under Section 60(1) (IA) of the Code of Civil Procedure.
3	(d)	
4	(b)	The responses to these two questions namely 3 & 4 are essentially based on first principle emanating from the perusal of the relevant statutory provisions contained in Limitation Act read with provisions of CPC

12. It is to be noted here that the applicant did not attempt question no.55, whereas private respondent no. 4 has opted for and ticked his choice as (c). Question no. 75 has been opted by both the candidates, the applicant out of choice tick marked (c) , whereas private respondent (b) . As per the opinion given by the two expert reports there is no dispute as they said that the Lok Sabha session is called for at least twice in a year and as such right answer to this question is "a". Respondent no.4 has said it is thrice by marking his choice as "c" and was awarded one mark for this which is otherwise, for this question he is not entitled for any mark, rather 0.25 mark has to be deducted, therefore, he will lose 1.25 marks out of total marks. With regard to question 75 in set B same as in set C, the applicant gave his choice as "c" whereas the private respondent has ticked 'b' as his choice. As per record 0.25 has been deducted from applicant's marks for giving wrong answer and the private respondent was given 1 mark.

13. As per applicant arguments and as per the material available, 2/3 of the salary can be ordered to be attached for satisfying maintenance decree. Therefore, the applicant submitted that the answer given by the private respondent is wrong, as one mark given to him is also wrong rather 1.25 marks are to be deducted from his total marks. Therefore, total 2.25 marks are to be reduced from his total marks. Accordingly, his marks will be lower than the marks to be given to the applicant. It is important to note here that there is difference of opinion qua answer to this question between two expert reports, where one says 1/3rd salary can be attached whereas other report says 2/3rd. Thus, position emerges that the applicant will get 1.25 marks for question no. 75(which is question no.76 in set B) i.e. 0.25 mark which was deducted by treating his answer as wrong and 1 mark for treating it right and his total number will come to 68. Whereas the private respondent losses 1.25 marks for question no.55 and his total marks will come to 66.75. With regard to question no 76 of set C (same as 75 in set B), if we consider the expert reports and award marks to both the candidates even then the applicant marks will be higher than the private respondent as his marks will be 68 and the private respondent will have 66.75.

14. Now we will consider the last argument raised by the learned counsel for private respondent no. 4, to allow him to continue on the post as if his appointment is upset at this stage, it would not only impinge upon the economic security of the private respondent and their dependants but also adversely affect his career. This would be highly unjust and grossly unfair to him, who is innocent appointee of an erroneous evaluation of the answer scripts. As noticed above, we are of the considered view that no fault can be attributed to respondent no. 4 in securing an appointment, nor can he be accused of making any misrepresentation, deceit or the kind and therefore, it

would be rather unfair and unjust to disturb his appointment after three years. The applicant was declared unsuccessful after evaluation of answer script and by giving him marks less marks in the interview, and respondent no. 4 case was considered for appointment. Though point raised by the applicant with regard to wrong answer of two questions in answer key will affect the entire selection, but since no one other than the applicant has approached this court by challenging the selection of selected candidates on this ground, therefore, the judgment in this case will not give rise any cause of action to any other similarly situated candidate. Admittedly, the error committed by official respondents in the matter of evaluation of the answer scripts could be attributed to respondent no. 4 as he has neither been found to be have committed any fraud or misrepresentation in being appointed qua the merit list nor has the preparation of the erroneous model answer key or the specious result contributed to him. Had the contrary been the case, it would have justified their ouster upon revaluation and deprived them of any sympathy from this Court irrespective of his length of service.

15. As informed by learned counsel for the respondent that he is pursing Ph.D and settled his life, therefore, at this stage if his appointment is set aside then it will not adversely affect him but his dependant also, therefore, we are of the view that while offering appointment to the applicant against the post occupied by respondent no. 4, the officials respondents are directed to allow respondent no. 4 to continue in service by taking necessary steps to protect his appointment either by counting him on an available vacancy or by subtracting one post from future vacancies and adjusting him accordingly. Our view is also supported by the observation made by the Lordship in case of **Buddhi Nath Chaudhary and Ors. v. Akhil Kumar and Ors.**, (2001) 2 SCR 18 where it is also held that even

though the appointments were held to be improper, the Hon'ble Supreme Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed:

"We have extended equitable considerations to such selected candidates who have worked on the posts for a long period."

We also place reliance upon the judgment of the Hon'ble jurisdictional High Court in case of Sahil Aggarwal Vs. State of Punjab & Ors., 2014(3) S.C.T 813 wherein their Lordship in para 22, 23 & 24 held as under:-

" 22. The enunciation of law, as emerges from the aforesaid cases, is that in case some candidates are appointed on the basis of result of competitive examination and later on it was found that there was some error either in the questions or any answer key, their appointments is not to be set aside if they had worked on the selected post for three years or more, unless there are allegations of fraud, mischief or misrepresentation against the selected candidates. In the present case, the selection and appointments were made as a consequence of the result of the written test declared on 2.5.2010. The test was outsourced to an independent agency, i.e., Panjab University. Undisputedly the last appointment from the waiting list was made in March, 2011, meaning thereby for the last three years they are working. The appointments on the basis of revised result after correction of the answer keys were made subsequently, hence, the appointment of the Kumar Manoj candidates, who got merit position in terms of the result declared at the first place cannot be set aside even if they have not got merit position in terms of the revised result declared after correction of the answer keys.

23. However, as stated by learned counsel for the State, the seniority and benefits accruing to the candidates earlier selected and who were appointed on the basis of revised result shall be strictly in terms of the guidelines given in judgment of Hon'ble the Supreme Court in Rajesh Kumar's case (supra).

24. Hence, the selection and appointment of the candidates, who were appointed on the basis of evaluation of answer sheets at first time and who do not find place in revised merit list, does not deserve to be set aside."

Our view also find support from the judgment of the Hon'ble jurisdictional High Court in case of Harinder Pal Singh Vs. State of Punjab & Ors. (CWP No. 18419/2013 decided on 03.11.2014 b) and judgment of the Hon'ble Supreme Court in case of Vikas Pratap

Singh & Ors. Vs. State of Chhattisgarh & Ors. etc (Civil Appeal

Nos. 5318-5319 of 2013 decided on 09.07.2013) .

16. Accordingly, the present O.A is allowed in above terms. No costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 26.4.2017

'jk'

