

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 15th day of November 2018.

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER -A
HON'BLE MR.RAKESH SAGAR JAIN, MEMBER -J**

Original Application No. 330/01157 of 2014

Rajesh Kumar Son of Anil Kumar Resident of Quarter No. 114/42,
Punchavati Vinayakpur, Post University, District Kanpur Nagar.

.... Applicant

By Adv: Shri Ashish Srivastava/Shri V.K. Agnihotri.

V E R S U S

1. Union of India through Railway Recruitment Cell, N.E Railway, Gorakhpur.
2. Chairman, Railway Recruitment Cell, N.E. Railway, Gorakhpur.
3. Controller Examination, Railway Recruitment Cell, N.E. Railway, Gorakhpur.

.... Respondents

By Adv: Shri L.M. Singh

ORDER

BY HON'BLE MR.RAKESH SAGAR JAIN, MEMBER - J

1. The applicant has filed this OA with the prayer for the following main reliefs:-

"(a) to summon the original O.M.R. sheet of the applicant for written examination for the post of Group 'D' which was held on 13.5.2012 and further be pleased to pass a suitable direction in favour of the applicant and also penalize the respondents for their malicious process.

(b) and/or pass such order and further suitable order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(c) Award the cost of the application of the applicant".

2. The facts as per the OA in brief are that the applicant applied for the post of Group 'D' in pursuance to the advertisement (Annexure-3) issued by respondents. The applicant successfully qualified the written test after which he was called for verification of documents and medical test. The final result for the post was not declared. Thereafter, the respondents issued a letter dated 28.04.2014 (Annexure-7) informing the applicant that his rank of 8896 falls within the Cut off rank of SC category of 17419. It was further informed that the candidature of the applicant has been cancelled since there was correction in his OMR answer sheet.
3. In the counter affidavit, it has been averred candidature of applicant had been cancelled in accordance with rules and instructions contained in the OMR sheet itself on the ground of tempering with OMR sheet.
4. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
5. Learned counsel for the applicant submitted that the cancellation of the candidature of the applicant was known to the applicant only after he received the letter in reply to the query under the Right to Information Act, 2005. It was submitted that the only reason for cancellation of the applicant's candidature as informed is that there was a correction in the OMR sheet. He also submitted that the applicant would have been selected for the post since he had secured a rank within the cut off rank in SC category. It has been submitted by the learned counsel for the applicant that the rules and instructions provide in the OMR sheet itself provide that 1/4th of the allotted marks will be deducted for every wrong answer/multiple answer,

the entire OMR sheet cannot be cancelled but less marks would be given for the multiple answer, which is the position in the present case and therefore the entire OMR sheet cannot be cancelled/invalidated. Learned counsel for the applicant placed reliance upon (1) Judgment dated 19.01.2016 passed by Hon'ble Supreme Court in Civil Appeal No(s). 587-588 of 2016 titled Hanuman Dutt Shukla and Ors. Vs. State of U.P. and Ors, (2) Judgment dated 11.07.2016 passed by Hon'ble High Court, Allahabad in Writ-A No. 23914/2016 titled Vijeta Singh Vs. State of U.P and Ors.

6. In Hanuman Dutt Shukla (supra), the Hon'ble Apex Court held that:

"It is submitted by Mr. P.P. Rao, learned senior counsel and other learned senior counsel/learned counsel appearing for the parties that as per the Recruitment Rules framed by the State Government to appoint the eligible candidates to the posts, referred to supra, there is no prohibition to disentitle a candidate from evaluating the answer sheets, who used whitener or blade in the relevant blocks in the OMR sheet (answer sheet). The said advisory note given by the Selection Board cannot be treated as a Rule to declare such candidates who have used whitener or blade in the relevant blocks in the OMR / answer sheet as ineligible for evaluating their answer sheets. This statement is in conformity with the Recruitment Rules and it would further support the stand taken by the learned Advocate General, representing the respondent – State of U.P. in making submission of the basis of written suggestions. "

7. And in Vijeta Singh (supra) and it was held by the Hon'ble High Court as under:-

"Learned counsel for the petitioner states that the petitioner has appeared in the selection of U.P. Sub Inspector (Civil Police) and Platoon Commander (PAC) Joint Examination-2011 for the post of Sub Inspector but his candidature was rejected on the ground of use of whitener.

It is submitted that even otherwise the petitioner had already qualified on the basis of remaining question if he had used whitener in any one question.

He further submits that this matter was examined by the Supreme Court in Civil Appeal Nos.587-588 of 2016, Hanuman Dutt Shukla and others vs. State of U.P. and others wherein the Supreme Court has held that State will appoint only those candidates who are in the fresh Notional Result to be prepared by the Board, who could not be selected due to use of whitener/blade.

Learned counsel for the petitioner further submits that the petitioner has obtained higher marks i.e. 278.333 and he is otherwise selected candidate, therefore, his matter should also be considered by the State Government.

No useful purpose would be served in keeping the writ petition pending.

This writ petition is therefore disposed of with a direction to the respondent no.2, Chairman/Additional Secretary, U.P. Police Recruitment & Promotion Board, U.P. Lucknow to examine the claim of the petitioner in the light of the observations made above and the judgment of the Supreme Court passed in Civil Appeal Nos.587-588 of 2016, Hanuman Dutt Shukla and others vs. State of U.P. and others within a period of two months from the date a certified copy of this order is received in his office.

It is made clear that the Court has not adjudicated the claim of the petitioner on merits."

8. As per the judgment of Hon'ble Supreme Court in the cases of Hanuman Dutt Shukla (supra), if the rules/recruitment rules applicable for the examination do not specifically provide for rejection of the entire answer sheet for valuation by use of whitener/marking multiple answer to a question, then the said answer sheet cannot be rejected in its entirety. Ratio of this judgment has been applied by Hon'ble Allahabad High Court in the case of Vijeta Singh (supra).
9. In the present case, perusal of the OMR sheet reveals that the applicant had unsuccessfully tried to erase one of the two multiple answer ticked in question No. 114.
10. Hence the OA is disposed of with a direction to the respondent No. 2 to reconsider the case of the applicant in the light of the judgment of Hon'ble Supreme Court in the case of Hanuman Dutt Shukla (supra) for giving multiple answer to one question in the OMR/answer sheet as discussed above and pass a speaking and reasoned order on this issue as per the rules applicable, under intimation to the applicant within a period of two months from the date of receipt of a certified copy of this order. There will be no order as to costs.

[Rakesh Sagar Jain]
Member-J

[Gokul Chandra Pati]
Member-A

Manish/-