

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-215/2017

With

OA-263/2017

OA-391/2017

Reserved on : 13.02.2017.

Pronounced on : 21.02.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

OA-215/2017

Sh. Sumit Kumar, 28 years
S/o Sh. Amarjeet Singh,
R/o H.No. 509/16, Gudha Road,
Chakki Wali Gali, Gohana,
Sonepat, Haryana.

.... Applicant

(through Sh. Ajesh Luthra, Advocate)

1. Union of India through
Its Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievance & Pension,
North Block, New Delhi.
2. Staff Selection Commission through
Its Chairman (Headquarter),
Block No. 12, CGO Complex,
Lodhi Road, New Delhi.
3. Staff Selection Commission (Northern Region)
Through its Regional Director,
Block No.12, CGO Complex,
Lodhi Road, New Delhi. Respondents

(through Sh. Piyush Gaur, Advocate)

OA-263/2017, MA-273/2017

1. Sh.Avinash Chandra Singh (OBC)
S/o Sh. Surendra Singh
R/o Village Batrouly, Post-Kishundeopur,
Fazilnagar, Dist.-Kushinagar-274401
Aged about 23 years
2. Sh.Anand Patel (OBC)
S/o Sh. Heera Lal Patel
R/o Village Ankhoriya, Post Kunda,
Dist.-Pratapgarh, Uttar Pradesh-230204
Aged about 25 years
3. Sh.Anjanee Kumar Byahut (OBC)
S/o Sh. Surendra Jee Byahut
R/o Village Baleur, Post-Sahatwar,
Dist.-Ballia, Uttar Pradesh-277211
Aged about 25 years
4. Sh.Abhisek Kumar Singh (UR)
S/o Sh. Pramod Kumar Singh
R/o 382, 1st Floor, Sector-15,
Huda, Sonipat, Haryana-131001
Aged about 25 years
5. Sh.AShwini Kumar Yadav (OBC)
S/o Sh. Anant Lal Yadav
R/o Village Ranipur, Post-Sirs Chouraha,
Hardia, Allahabad-221503.
Aged about 25 years
6. Sh.Anil Dhull (OBC),
S/o Sh. Prakash Singh Dhull,
R/o H.V.P.O. Ikkas, Jind,
Haryana-126102.
Aged about 24 years
7. Sh.Amarchand Gehlot (OBC)
S/o Sh. Anada Ram
R/o Near Railway Station, Village—Chhoti Khatu,
Tehsil-Didwana, Dist. Nagaur,
Rajasthan-341302.
Aged about 25 years
8. Sh.Abhinav Richhariya (UR)
S/o Sh. Devendra Kumar Richhariya
R/o Block-B6, H.No.205, Samwad Nagar,

Scheme No.98, Near Navlakha Square,
Indore, Madhya Pradesh-452001.
Aged about 25 years

9. Sh.Akash Kumar (OBC)
S/o Sh.Indresh Kumar
R/o Village Kriyandheer, Post-Kniyaknera,
Dist. Farrukhabad, Uttar Pradesh-207503
Aged about 26 years
10. Sh.Arvind Kumar (SC)
S/o Sh. Janak Singh
R/o A-207, Street No.7, Meet Nagar,
North-East, Delhi-110094.
Aged about 30 years
11. Md. Aamir Ahsan (UR)
S/o Md. Manazir Ahsan
R/o H.No. 17, Road No.1,
KGN Colony, Old Purulia Road Mango,
Jharkhand-832110.
Aged about 26 years
12. Sh.Abhisek Patidar (OBC)
S/o Sh. Rajpal Singh Patidar
R/o 60/5, Aajad Chowk, Near Ram Mandir,
Ranthbhanwar Shajapur, Madhya Pradesh-465110
Aged about 25 years
13. Ms. Anjali Kumari (OBC)
D/o Sh. Amrendra Kumar
R/o Vill + PO- Sarbahdi, Dist-Nalanda,
Bihar-803107
Aged about 24 years
14. Sh.Arvind Kumar (SC)
S/o Sh. Chiranjilal
R/o WE-119, Rama Park Road,
Mohand Garden, New Delhi-110059
Aged about 25 years
15. Sh.Ashutosh Kumar Singh (OBC)
S/o Sh. Deep Narayan Singh
R/o H.No. 540K, Ramjanki Nagar,
Block-A, Bashratpur, Gorakhpur-273004
Aged about 23 years

16. Sh.Ashish Kumar Prasad (OBC)
S/o Sh. Khalipha Prasad
R/o C-213, C-Block, Gali No.39,
Mahavir Enclave, Part-III, Delhi
Aged about 25 years
17. Sh.Badal Kumar (OBC)
S/o Sh. Mahendra Prasad
R/o Koire Tola, Bharech Nagar Sandi,
Ramgarh, Jharkhand-829117
Aged about 23 years
18. Sh. Balra Meena (ST)
S/o Sh. Samay Singh Meena
R/o Vill+ Post-Todupura,Tehsil-Hindaun City,
Karauli, Rajasthan-322234
Aged about 25 years
19. Sh.Deepak Badolia (SC)
S/o Sh. Kana Ram Badolia
R/o 119/570, Agarwal Farm,
Mansarovar, Jaipur
Aged about 26 years
20. Sh.Darpan Pal Singh (UR)
S/o Sh. Satypal Singh
R/o H.No. 7B, New Colony Charbhujia Road,
Amet Rajasa Mand, Rajasthan-313332
Aged about 24 years
21. Sh. Gupta Sunny Suresh (OBC)
S/o Sh. Suresh Gupta
R/o Hariom Colony, 11/5, Near Shivaji Colony,
Kalsewadi, Kalyan East,
Dist.Thane, Maharashtra-421306
Aged about 23 years
22. Sh.Himanshu Patel (OBC)
S/o Sh. Prakash Narayan
R/o H.No.307, Sector-4, Shastri Nagar,
Meerut, Uttar Pradesh-250004
Aged about 25 years
23. Quazi Izharul Haque (UR)
S/o Quazi Merazul Hasan

R/o H.No.56, Imambada, Faizabad Road,
Gonda, Uttar Pradesh-271001.
Aged about 28 years

24. Sh.Jay Prakash Saroj (SC)
S/o Sh. Ram Palat Saroj
R/o Village-Kasaipur, P/o-Bhua Pathkhauli,
Dist-Sultanpur, Uttar Pradesh-222303
Aged about 25 years
25. Sh.Jitendra (OBC)
S/o Sh. Chob Singh
R/o H.No. 189, Ward No.13,
Old Ward No.12, Shorgir, Mohala,
Pehowa, Dist. Kurukshetra, Haryana-136128
Aged about 26 years
26. Sh.Jitendra Kumar (OBC)
S/o Sh. Ram Ashish Prasad Sah
R/o S/10, Bankar, Near Durga Mandir,
PO Sarubera, Dist-Ramgarh, Jharkhand-829134
Aged about 26 years
27. Sh. Jitu Kumar (OBC)
S/o Sh. Rajendra Prasad
R/o Moh.-Kharkhura Baluehi,
PO-R.S., PS Delha, City Gaya, Bihar-823002
Aged about 26 years
28. Sh. Krishna Mahore (SC)
D/o Sh. Chimanlal Mahore
R/o H.No. 196, Lal Kurti, Agra Cantt.,
Agra, Uttar Pradesh-282001
Aged about 25 years
29. Sh.Krishan Kumar (SC)
S/o Sh. Tikam Singh
R/o H.No.55/2, Nazimpura (Bhoor),
Bulandshahr, Uttar Pradesh-203001
Aged about 22 years
30. Sh.Koushik Kumar Chandra (UR)
S/o Sh. Bijan Kumar Chandra
R/o C/o Balram Mourya, Q.No.16/65,
Gajra Colony, Kobra, Chattisgarh-495447
Aged about 29 years

31. Sh.Lokesh Kumar Meena (ST)
S/o Sh. Ram Bharosi Meena
R/o Village Bhuda, Post Sankar Wara,
Tehsil-Todabhim,
Dist.-Karouli-321610
Aged about 23 years
32. Sh.Manish Kumar Shukla (UR)
S/o Sh. Ramkishor Shukla
R/o Village Purainapure Ruihanpurwa,
Post-Malawo, Dist.Gonda, Uttar Pradesh-271504
Aged about 21 years
33. Sh.Manoj Singh Meena (ST)
S/o Sh. Srambharosi Meena
R/o Village-Munapura, Post-Kot,Teh.Mahwa,
Dist. Dausa, Rajasthan-321609
Aged about 23 years
34. Sh. Manish Sharma (UR)
S/o Sh. Rajdeep Sharma
R/o H-173, Alpha-2, Greater Noida,
Uttar Pradesh-201306
Aged about 26 years
35. Sh Mothukuri Venkata Phaneendra (OBC)
S/o Sh. Mothukuri Venkate Swara Rao
R/o D.No.7-27/1, Srinagar Siwaru Pagolu,
Challapalli Mandal, Dist. Krishna,
Andhra Pradesh-521126.
Aged about 24 years
36. Sh. Manoj Kumar Meena (ST)
S/o Sh. Ram Khilari Meena,
R/o Village-Pilodi, Post-Thikaria,
Tehsil-Sikrai, Dausa, Rajasthan-303509.
Aged about 24 years
37. Sh. Mukesh Kumar Meena(ST),
S/o Sh. Sanwarmal Meena,
R/o V/P-Anoppura, Teh. Amer,
Dist. Jaipur, Rajasthan-303801.
Aged about 27 years
38. Sh. Mayank Dular (OBC),

S/o Sh. Shish Ram Dular,
 R/o A-398, Ph.II, Residential Colony,
 RIICO Jhunjhunu, Rajasthan-333001.
 Aged about 23 years.

39. Ms. Monika Yadav (OBC),
 D/o Sh. Ashok Kumar Yadav,
 R/o Plot No.12, Ganesh Colony,
 Jagatpura, Jaipur, Rajasthan.
 Aged about 24 years.
40. Sh. Navdeep (UR),
 S/o Sh. Vedprakash,
 R/o Dholakuan, Near Dhirja Mandir,
 Narwana, Dist. Jind, Haryana-126116.
 Aged about 26 years.
41. Sh. Pushpendra Kumar (OBC),
 S/o Sh. Pratap Singh,
 R/o Village-Churaha, Post-Rahank,
 Dist. Hamirpur, Uttar Pradesh-210430.
 Aged about 26 years
42. Sh. Prasann Samadhiya (UR),
 S/o Sh. Santosh Kumar Samadhiya,
 R/o 18017, Behind Hotel Chanda,
 Civil Lines, Jhansi, Uttar Pradesh-284002.
 Aged about 24 years
43. Ms. Pooja (OBC),
 D/o Sh. Pancham Singh,
 R/o B-135, Amar Jyoti Colony,
 Near-DTU, Bawana Road,
 Delhi-110042.
 Aged about 25 years.
44. Ms. Poonam Kumari (OBC),
 D/o Sh. Vishnu Dev Mandal,
 R/o B-54, Amar Jyoti Colony,
 Near-DTU, Bawana Road,
 Delhi-110042.
 Aged about 24 years
45. Pankaj Kumar Verma (OBC),
 S/o Sh. Kanhaiya Lal,
 R/o Vill+Post-Banni Kaharai ILA,

Thana-Manpur, Biswan, Sitapur,
Uttar Pradesh-261145.
Aged about 28 years.

46. Sh. Prashant Kushwaha (OBC),
S/o Sh. Harendra Kushwaha,
R/o Village-Bishunpura, Post-Tamkuhiraj,
Kushinagar, Uttar Pradesh-274401.
Aged about 25 years.
47. Ms. Preeti Meena (ST),
D/o Sh. Shriphool Meena,
R/o P/No. C-67, Kusum Vihar,
Jagatpura, Jaipur, Rajasthan.
Aged about 23 years
48. Sh. Prem Singh Meena (ST),
S/o Sh. Prakash Meena,
R/o Village-Hingot, PO-Danalpur,
Teh.-Hindaun City, Dist. Karauli,
Rajasthan-322220.
Aged about 22 years
49. Sh. Pikesh Kumar Meena (ST),
S/o Sh. Avtar Narayan,
R/o VPO-Sankaarwar, Teh.Todabhim,
Dist. Karauli, Rajasthan-321610.
Aged about 22 years.
50. Ms. Pooja Yadav (OBC),
D/o Sh. Jaswant Singh,
R/o VPO-Darauli, Teh. Rewari,
Dist.-Rewari, Haryana-123401`.
Aged about 24 years
51. Sh. Rajmohan Meena (ST),
S/o Sh. Kedar Prasad Meena,
R/o Vil-Sikrou, Post-Amawara,
Teh.-Bamanwas, Dist. Swaimadhopur,
Rajasthan.
Aged about 24 years.
52. Sh. Rajesh Jangir (OBC),
S/o Sh. Purnmal,
R/o VPO-Ghirdoda Mitha,
Tehsil-Ladnun via-Didwana,

Dist. Naaur, Rajasthan-341303.
Aged about 23 years

53. Sh. Rakesh Kumar Garg (UR),
S/o Sh. Girraj Prasad,
R/o Plot No. 71, Adarsh Colony,
Daudpur, Alwar, Rajasthan-301001.
54. Sh. Rakesh Singh Raghuwanshi (UR),
S/o Sh. Bhagbat Singh Raghuwanshi,
R/o Village-Devari, Post-Bhadore,
Teh. Aron Guna, Madhya Pradesh-473101.
Aged about 26 years.
55. Sh. Roop Singh Meena (ST),
S/o Sh. Ram Singh Meena,
R/o Meena Basti, Village-Gadhouli,
Post-Gadhouli, Karauli, Rajasthan-322241.
Aged about 27 years.
56. Sh. Rohit Kumar Ahlawat (SC),
S/o Sh. Rajpal,
R/o H.No. 65, Street No. 18,
Dabar Enclave, Rawta More, Jaffarpur
Kalan, South West, New Delhi-110073.
Aged about 23 years.
57. Sh. Rajender Kumar Bodliya (OBC),
S/o Sh. Chhitar Mal Bodliya,
R/o VPO-Panihari, Post-Sindoiya via-Jobner,
Tehsil-Phulera, Jaipur, Rajasthan-303328.
Aged about 24 years
58. Sh. Rakesh Kumar Chaturvedi (UR),
S/o Sh. Nand Kumar Chaturvedi,
R/o Near O.R.O.A. Office, Karamchari Colony,
Karauli, Rajasthan-322241.
Aged about 25 years
59. Sh. Sushant Kumar Das (OBC),
S/o Sh. Satyawan Das,
R/o Primary School Tantipada,
Dist+Post-Pakur, Jharkhand-816107.
Aged about 28 years.
60. Sh. Shashank Soni (OBC),

S/o Sh. Mahesh Chandra Soni,
 R/o Moh.-Ganj, Post-Ranipur,
 Dist. Jhansi, Uttar Pradesh-284205.
 Aged about 24 years.

61. Ms. Shweta (OBC),
 D/o Sh. Chandan Prasad Singh,
 R/o Village-Chaidha, Post-Babu Bagicha,
 Siruja, Dist. Khagaria, Bihar-851214.
 Aged about 27 years.
62. Sh. Sanjay Kumar (UR),
 S/o Sh. Rampalat,
 R/o Katehari Bazar, Ambedkar Nagar,
 Uttar Pradesh-224151.
 Aged about 25 years.
63. Sh. Shailendra Shandilya (UR),
 S/o Sh. Mahendra Kumar Sharma,
 R/o C-79, Dr. Rajendra Prasad Nagar,
 Badarvas Ajmer Road, 200 Feet Bypass,
 Jaipur, Rajasthan-302020.
 Aged about 24 years.
64. Sh. Sony (OBC),
 S/o Sh. Rohtas,
 R/o VPO-Pur, Tehsil-Bawani Khera,
 Dist. Bhiwani, Haryana-127032.
 Aged about 23 years.
65. Sh. Tanamay Yadav (OBC),
 S/o Sh. Ramnaval Singh Yadav,
 R/o Vill-Uchauri, Post-Uchauri,
 Gazipur, Uttar Pradesh-233307.
 Aged about 25 years.
66. Sh. Utkarsh Yadav (OBC),
 S/o Sh. Naresh Chandra Yadav,
 R/o Village-Udaipur, Post-Ranipur,
 Mainpuri, Uttar Pradesh.
 Aged about 26 years.
67. Sh. Vikash Kumar (OBC),
 S/o Sh. Himanshu Yadav,
 R/o Bhartiya Nagar, Ward No.26,
 Batraha Saharsa, Bihar.

Aged about 25 years.

68. Sh. Vinesh Kumar (UR),
S/o Sh. Jagdish Chander,
R/o H.No. 37, Near G.S. School,
Village-Bighar, Fatehabad,
Haryana-125050.

Aged about 27 years.

..... Applicants

(through Sh. Ajesh Luthra, Advocate)

Versus

1. Union of India through
Its Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievance & Pension,
North Block, New Delhi.

2. Staff Selection Commission through
Its Chairman (Headquarter),
Block No. 12, CGO Complex,
Lodhi Road, New Delhi.

..... Respondents

(through Sh. Gyanendra Singh, Advocate)

OA-391/2017

Sh. Nitish Kumar (OBC), 24 years
S/o Sh. Ajay Kumar,
R/o 3395, Qutab Road,
Sadar Bazar, Delhi-6.

.... Applicant

(through Sh. Ajesh Luthra, Advocate)

Versus

1. Union of India through
Its Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievance & Pension,
North Block, New Delhi.

2. Staff Selection Commission through
Its Chairman (Headquarter),
Block No. 12, CGO Complex,

Lodhi Road, New Delhi. Respondents
 (through Sh. Gyanendra Singh, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The issue involved in these three OAs is similar. Hence, they are being disposed of by this common order.

2. The applicants of OA-263/2017 were all candidates for the post of Junior Engineers in various disciplines for the examination, which commenced in the year 2015. Paper-I was held on 31.01.2016. In the marks statement published on 05.05.2016 they were shown to have obtained high merit position. Paper-II was conducted on 24.07.2016 in which the applicants participated. On 02.01.2017 the marks statement of the candidates was issued. They were shown to have been rejected although no reason for the same was given. They submitted a representation on 12.01.2017. They did not receive any reply so far. On 17.01.2017 other candidates were called for document verification, the applicants were then forced to approach this Tribunal by filing this O.A. seeking the following relief:-

“(a) Quash and set aside the impugned action/order of the respondents rejecting the applicant's candidature reflected in their impugned decision dated 02/01/2017 placed at Annexure A/1 to the extent they relate to the applicants.

- (b) Direct the respondents to restore the candidature of the applicant in the ongoing selection process of Junior Engineers (Civil, Mechanical, Electrical, Quantity Surveying & Contract) Examination 2015 and further consider the applicants case for appointment as per their merit position alongwith others.
- (c) Accord all consequential benefits.
- (d) Award costs of the proceedings.
- (e) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicants."

2. The case of applicant of OA-391/2017 is similar except that in a list published on 25.01.2017, the applicant was shown to have been rejected on the premise 'Subject'.

2.1 Applicant of OA-215/2017 was a candidate for Combined Higher Secondary Level (10+2) Examination, 2015 held for filling up various posts under the Union of India. He applied under the OBC category. Written examination Paper-I was conducted on 06.12.2015. The applicant participated in the same. On 29.07.2016 result of this written examination was published in which the applicant was shown to have qualified for the descriptive type Paper-II. On 31.08.2016, the marks list was published in which the applicant was shown to have secured 137 marks, which was more than the cut off 119 for unreserved category and 110 marks for OBC category. He participated in the Paper-II examination held on 18.09.2016. Inadvertently, he forgot to mention medium in the

relevant column in the answer sheet. Realising his mistake he submitted his representation on 22.09.2016 requesting for acceptance of his paper in English medium. He submitted another representation on 04.10.2016. However, in the statement of marks issued on 04.01.2017, the applicant was shown to have been rejected. The applicant submitted another representation on 07.01.2017 but to no avail. Hence, he has approached this Tribunal.

3. In their common reply filed in all the three OAs, the respondents have submitted that the applicants of OA-263/2017 and the applicant of OA-391/2017 were rejected because they did not indicate the subject for which they were answering the paper in the relevant column on the right hand side at the top of the answer sheet.

3.1 Applicant of OA-215/2017 was rejected because he did not fill the relevant column indicating the medium in which he was taking the examination.

3.2 The respondents have submitted that in the instructions given to the candidates in the answer sheet itself it was mentioned that they will be awarded zero mark if they do not fill the language in which they were taking the examination. Similarly, in the examination for Junior Engineers, it was mentioned that if the relevant column pertaining to the subject at the right hand top corner of the answer

sheet was not filled, the candidates would be awarded zero mark. The respondents have produced the answer sheets of all the applicants and shown that these instructions were violated by them. Consequently, they have been awarded zero mark. They have further submitted that the terms and conditions of the examination are sacrosanct and cannot be questioned by the candidates once they have accepted them and participated in the examination. The applicants have not been vigilant enough and have contravened the mandatory instructions as they did not mark the subject or the medium in the answer sheets. Thereafter, as per terms and conditions of the examination, they were awarded zero mark in Paper-II. The respondents have submitted that they conduct the examination within the frame work of the Rules/Guidelines and Instructions, which are uniformly applicable to all candidates. It was not possible for the Commission to overlook or condone any violation of these guidelines or instructions. If any such concession is given to anyone candidate, it would be discriminatory.

4. Learned counsel for the applicants argued that candidates are prone to committing such mistakes at the time of examination. However, in the past such mistakes have been condoned as the aim of the selection is to find out most meritorious persons suitable for the job. Elimination on hyper technical ground is not countenanced in law. Inadvertent omission due to examination related stress should

not come in the way of finding most meritorious candidates. Further, the applicants' counsel argued that the Instructions also provide that it was the duty of the Invigilator to check whether all the relevant columns have been rightly filled by the candidates and to sign the answer sheet only then. In these cases, the Invigilator has signed the answer sheet but has failed to check the inadvertent omissions by the candidates. Thus, Invigilators, who were acting on behalf of the respondents have contributed to the negligence.

5. We have heard both sides and have perused the material placed on record. The short issue to be decided in these cases is whether the omissions of the candidates be condoned or whether their candidature was liable to be rejected on these grounds. Both sides have submitted several judgments in support of their contention. We first deal with the judgments submitted by the applicants in support of their cases:-

(i) The first judgment submitted by the applicants in support of their case is of Apex Court in the case of **Commissioner of Police, Delhi & Anr. Vs. Dhaval Singh**, (1999) 1 SCC 246. On going through the facts of this case, we find that relief was provided to the applicant when it was found that the authorities had rejected the candidature of the applicant therein without considering the

information conveyed by the respondent, which had cured the defect that had occurred in his form.

(ii) Next the applicants have relied on the judgment of Apex Court in the case of **Charles K. Skaria and Ors. Vs. Dr. C. Mathew and Ors.**, AIR 1980 SC 1230 in which three candidates, who had been admitted by the Selection Committee were ousted merely for the reason that certificate of diploma had not been produced together with the application for admission. In this contest, Apex Court in para-24 observed as follows:-

"It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in Administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations.

But a prospectus is not scripture and commonsense is not inimical to interpreting and applying the guidelines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks."

(iii) Next the applicants have relied on the judgment of Apex Court in the case of **Dolly Chhanda Vs. Chairman, JEE & Ors.**, (2005) 9 SCC 779 in which applicants to MBBS course were rejected on the ground that the certificate entitling them to reservation was found wrong on the date of counselling. The Apex Court observed as follows:-

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement for benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

(iv) Applicants have further relied on the judgment of Hon'ble High Court of Judicature at Hyderabad in the case of **UOI, Ministry of Personnel and Ors. Vs. Guduru Raja Surya Praveen and Ors.**, (WP No. 28874/2015) dated 18.11.2015 wherein it has been held that non-substantive and non-material irregularities should not result in

denying benefit of evaluation of answer sheet of a candidate.

Paras-7 to 10 of this judgment are relevant and read as follows:-

“7. However, it is not the same with regard to entering the test form number, ticket number and roll number. The first respondent has entered his ticket number, roll number and also the test form number very accurately against the respective columns. There is no difficulty or denying of this fact. There is also no denying the fact that he has thickened the appropriate circle with regard to all the digits of ticket number and roll number. Only with regard to test form number while the initial four circles have been accurately thickened, the last two columns relating to thickening the letter P and digit 3 were left without being thickened. It is so obvious that there was lapse of concentration on the part of the first respondent in omitting to thicken two out of six columns relating to the test form number. Therefore, the failure to thicken two relevant circles with regard to the test form number namely letter P and digit 3 will not in any manner materially or substantially alter or cause hardship in evaluating the answers which have been furnished for the questions 1 to 200. At best, it would require a little more time to be spent on the part of the concerned at the stage of tabulating the marks secured by the respective candidates. But in no manner, it will impact the process of evaluating the answer sheets. We are, therefore, of the opinion that such non-substantive and non-material irregularities shall not result in denying the benefit of evaluation of the answer sheet of a candidate.

8. One should not lose sight of the fact that the primary concern and aim of the Staff Selection Commission was to select the most meritorious candidate amongst the competing candidates. With a view to maintain the accuracy and integrity of the process of evaluation of the answer sheets, instead of undertaking evaluation manually the process of computerized evaluation was chosen and hence, the method of thickening the circle concerned against each question was devised. Therefore, for the evaluation of the answers furnished for questions 1 to 200, the failure of any candidate to thicken any other column relating to the test form number, ticket number or roll number will not come in the way or cause any

hindrance. For instance, a candidate may not be knowing answers for certain number of questions and hence he may not chosen to take a chance and may not have thickened any of the four options on the answer sheet for such questions. That will not come in the way of the computer reading the rest of the questions answered by him and awarding marks for the correct answers furnished by him. For the failure to thicken all the circles of the ticket number, at best, the evaluated marks may not automatically be posted in the record relating to the respective candidates. It might require a verification by one concerned or the other of such an answer sheet. But, that is no reason for denying the evaluation itself.

9. Providing an equal opportunity to compete for selection to public employment is a fundamental right enshrined under Articles 14 & 16 of our Constitution. In matters of such fundamental rights, no impediment which is more in the nature of a technicality should be allowed to play a substantive role resulting in denial altogether of such rights. To the extent possible, fundamental rights should be allowed to have a free flow effect and impact. Therefore, looked at from any perspective, failure to thicken a couple of circles not with regard to the answers to be furnished by the candidate to the questions 1 to 200, but with regard to the test form number, in our opinion would not be fatal. In fact, in the present case, the test form number has been accurately filled-in, in the column provided for that purpose in the answer sheet. There is also a corresponding verification exercise by thickening the circle concerned furnished down below the test form number. Due to lapse of concentration, obviously induced by the enormous pressure, one would feel at the initial stage of subjecting himself to an examination, an error resulted in not thickening the circle relating to the token number and such technical error should not result in negation of the right to be considered for public employment notwithstanding the demonstrable merit processed by the candidate concerned. We are, therefore, of the opinion that the failure on the part of the Staff Selection Commission to evaluate the answer sheet of the respondent relating to Paper-II of the Tier-II test that was conducted on 12.04.2015 as an erroneous decision. In fact, we should also record that, pursuant to an interlocutory order passed by us on 14.10.2015, the answer sheet of the first respondent herein was got evaluated

and the learned Assistant Solicitor General has, brought on record the order dated 06.11.2015 passed by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Staff Selection Commission (Southern Region), bringing it out that the first respondent herein has qualified in Tier-II for appearing in the interview for posts other than the Statistical Investigator Grade-II and also for such posts for which interview is not forming part of the selection process. In other words, the merit of the first respondent herein has been held established. We have taken on record the communication dated 06.11.2015 of the Regional Director of the Staff Selection Commission (Southern Region) which was placed before us along with a memo dated 12.11.2015 by the learned Additional Solicitor General.

10. We are, therefore, of the opinion that there is no merit in this writ petition, inasmuch as, the order passed by the Central Administrative Tribunal does not warrant any interference at our hands."

(v) The applicants have further relied on the judgment of a Co-ordinate Bench of this Tribunal in OA-4445/2014 along with connected OAs titled **Neha Nagar Vs. DSSSB** dated 18.12.2015 in which it was held that minor mistakes committed by youngsters in filling up in the application forms or in the competitive examination be condoned.

(vi) Applicants have also relied on the judgment of Hon'ble High Court of Punjab & Haryana in the case of **Rohit Kumar Vs. UO& Anr.**, (CWP No. 13730/2012) dated 27.07.2012. The relevant part of the judgment is as follows:-

"It is admitted position on record that while filling in OMR (Optical Mark Recognition) sheet petitioner had wrongly darkened the roll number although in letters he had rightly filled his roll number. When seen from other angle petitioner has secured 75.25% marks, this shows that the candidate appears

to be quite meritorious and, therefore, for such mistake his career should not be jeoparadise. It is stated that main written examination for the post for which the petitioner had applied i.e Sub Inspector in the Central Armed Police Forces and Assistant Sub Inspector in Central Industrial Security Force is fixed for 29.07.2012, therefore, direction is issued to the respondents to accept the candidature of the petitioner and permit him to participate in the main written examination."

(vii) The applicants have further relied on the judgment of Hon'ble High Court of Judicature for Rajasthan at Jodhpur in the case of **Anil Kumar Vs. State of Rajasthan & Ors.** [WP(C) No. 657/2012] dated 02.01.2013 in which the candidature of the applicant had been rejected because he had failed to mention his gender in the OMR sheet. Hon'ble High Court allowed his Writ Petition and directed the respondents to examine him on merits.

(viii) The applicants also relied on the judgment of a Co-ordinate Bench of this Tribunal in **OA-2063/2012** (Ravindra Malik Vs. DSSSB) dated 13.02.2013 in which case the applicant while appearing in Tier-II examination wrote the ticket/seat No. as 2201023 instead of 2109123. Therein also the Instructions provided that candidates not filling the right ticket No. will not be evaluated and will be awarded zero mark. However, the Tribunal allowed the O.A. and directed that respondents consider him on merits.

(ix) Applicants have further relied on the judgment of a Co-ordinate Bench of the Principal Bench of CAT in the case of **Arvind Kumar Kajla Vs. UOI & Ors.** (OA-1802/2012) dated 30.10.2013. In this

case although the applicant had entered his Roll No. correctly at two places he forgot to code it. For this error the respondents gave him zero mark thus disqualifying him. Relief was, however, allowed by a Co-ordinate Bench and respondents were directed to evaluate Tier-II of his answer sheet.

(x) Applicants have further relied on the judgment of Hon'ble High Court of Judicature for Rajasthan in the case of **Subhanta Devi Vs. State of Rajasthan** [WP(C) No. 11269/2011] dated 13.05.2014. In this case the applicants had committed a minor mistake relating to darkening the circles pertaining to their date of birth. The respondents were directed to evaluate the OMR sheets of the applicants and consider their cases for appointment.

(xi) Next the applicants have relied on the judgment of Hon'ble Supreme Court in the case of **Commr. Of Police and Ors. Vs. Sandeep Kumar**, (2011) 4 SCC 644 wherein the candidature of the respondent (Sandeep Kumar) was upheld by the Hon'ble Supreme Court taking a lenient view of the situation and holding that at young age people often commit indiscretions, and such indiscretions can often be condoned.

(xii) Next the applicants have relied on the judgment of a Co-ordinate Bench of this Tribunal in **Ms. Kritika Raj Vs. SSC** (OA-1413/2015) dated 07.12.2015. In this case the applicant had wrongly mentioned her Roll No. 221032268 instead of 2201032268. This

mistake was condoned by the Tribunal and respondents were directed to allot the relevant post to the applicant if she was otherwise eligible. The aforesaid judgment of the Tribunal was upheld by Hon'ble High Court of Delhi in **WP(C) No. 4519/2016** on 19.05.2016. SLP filed against the same was dismissed by Hon'ble Supreme Court on 20.01.2017.

(xiii) Next the applicants have relied on the judgment of Supreme Court in the case of **UPSC Vs. Gyan Prakash Srivastava**, (2012)1 SCC 537. In this case the respondent was a candidate for the post of Legal Advisor-cum-Standing Counsel in Land and Building Department, Government of N.C.T. of Delhi. The Commission had rejected his candidature on the ground that he had not enclosed any document to show that he had been awarded Degree in Law by a recognized University. The CAT and Hon'ble High Court had nullified the decision of the Commission. Hon'ble Supreme Court observed that the respondent had attached with his application the certificate issued by Bar Council of Uttar Pradesh. They also found that the respondent had been appointed as Asstt. (Legal) and Officer on Special Duty (Litigation) in the employment of the Central Government. Then the Apex Court ruled that sufficient evidence was available before the Commission to come to the conclusion that the applicant possessed a valid law degree. Otherwise, neither the Bar Council of Uttar Pradesh would have issued such a certificate to him

nor could he have been in employment of the Central Government for which he was duly selected by the Commission. On the basis of the aforesaid, the appeal filed by UPSC was rejected by the Apex Court.

(ivx) Lastly the applicants have relied on the judgment of Hon'ble High Court of Delhi in the case of **DSSSB & Anr. Vs. Neeraj Kumar and Anr.** [(WP(C) No. 1004/2012) dated 24.02.2012 in which it was held that instructions given to candidates not to sign in block letters in English was merely directory and not mandatory and relief was provided to the respondent.

6. From the above judgments, we find that the Apex Court has ruled that in young age youth do commit some minor mistakes which need to be condoned. They have also held that much hardship and harassment in Administration flows from overemphasis on the external rather than the essential. They have frowned upon the tendency of the administration to be formalistic and ritualistic holding this to be unrealistic and unwittingly traumatic, unjust and subversive. According to them, this dehumanises the administrative, judicial and even legislative process. Further, they have held that what is essential is that a candidate must possess the eligibility qualification for a post on the last date fixed for such purpose either in the appointment brochure or in the application form. Submission

of documents is only in the nature of proof and there can be some relaxation in the matter of submission of such proof. Every infraction of the rule relating to submission of proof need not necessarily lead to rejection of candidate. In the case of **Guduru Raja Surya Praveen and Ors.** (supra) Hon'ble High Court of Hyderabad has held that non-substantive and non-material irregularities shall not result in denying the benefit of evaluation of the answer sheet of a candidate. In the case of **Ms. Kritika Raj** (supra) this Tribunal had condoned her mistake of mentioning wrong roll No. in the Power Point test. The aforesaid decision was upheld by Hon'ble High Court of Delhi and SLP filed against this was also dismissed by the Apex Court. Hon'ble Supreme Court in the case of **Gyan Prakash Srivastava** (supra) has held that even non-submission of Law Degree for the post of Legal Advisor-cum-Standing Counsel under Government of NCT of Delhi would not prove fatal when enough evidence was otherwise available to establish the fact that the candidate possessed a valid Law Degree. Lastly in the case of **Neeraj Kumar and Anr.** (supra) Hon'ble High Court of Delhi has held that the identity of a candidate could easily have been established from his photograph and, therefore, the direction not to sign in block capital letters in English was merely directory and not mandatory. They went on to provide relief to the respondent on this premise.

7. In the instant case, we find that applicants of OA-263/2017 and applicant of OA-391/2017 were disqualified by the respondents on the ground that the subject had not been indicated by them on the top right hand corner of the answer sheet. We find from perusal of the answer sheet that the same information was sought by the respondents three times on the same page. Thus, besides the columns on right hand top corner just below that where particulars of candidate have been sought there is a column to indicate the subject. Further, on the right hand side at the bottom again some information has been sought. Thus, even if the candidate had not encircled the top right hand corner of the answer sheet from other columns it was possible to know which subject the applicant was attempting.

7.1 Applicant of OA-215/2017 has been disqualified for not indicating the medium in which he was taking the examination. Only two options, namely, English and Hindi were possible in this category and mere turning over the age of his answer sheet would have revealed the language in which he was attempting the question paper.

7.2 Thus, in our opinion all the applicants herein have been rejected for non-essential reasons. Enough evidence was available with the respondents from the answer sheet itself to obtain the

information which these candidates had inadvertently omitted to provide. Even the invigilator who was tasked by the respondents to sign the answer sheet after ensuring that all the relevant columns had been filled by the candidates did not fulfil his duty and signed the answer sheets even when certain columns were unfilled.

7.3 In support of their contention the respondents have relied on the judgment of Hon'ble High Court of Judicature at Madras in the case of **Dr. M. Vennila Vs. Tamil Nadu Public Service Commission** (WP No. 32895/2005) dated 12.06.2006. On going through the facts of this case we find that in this case the petitioner Dr. M. Vennila had forgotten to sign the declaration in the application form below the columns regarding previous/present employment, which was prescribed in the information brochure. The respondents have also relied on the judgment of Hon'ble High Court of Delhi in Writ Petition (C) No. 3264/2012 titled **Tarun Kant Pant Vs. UOI & Anr.** Dated 13.02.2013. The petitioner in this case after successfully qualifying the Tier-I examination could not appear in the Tier-II examination because he was not aware of the date of the Tier-II examination. Holding that the petitioner had not been vigilant enough Hon'ble High Court had dismissed the Writ Petition of the petitioner. We, however, feel that this case does not help the respondents as herein the candidate had not taken the Tier-II examination at all, which is not the situation in the present cases. The respondents have also

relied on the judgment of Hon'ble High Court of Allahabad in **Writ Petition No. 24372/2012** (Brij Kishor Jaiswal Vs. UOI & Ors.) dated 28.05.2012 in which the petitioner had wrongly coded his roll No. and on that ground his candidature had been cancelled. Cancellation of the candidature was upheld by Hon'ble High Court. They have also enclosed copy of order dated 28.08.2012 in another **Writ Petition No. 48846/2006** (Ram Kailash Saroj and Anr. Vs. Government of India and Ors.) in which candidature of the petitioners was rejected for putting their signatures in capital letters. Again the cancellation of the candidature was upheld by Hon'ble High Court. However, on going through these judgments, we find that none of these judgments have noticed the pronouncements of the Apex Court relied upon by the applicants as mentioned in the earlier part of the judgment. Moreover, both the judgments of Hon'ble High Court of Allahabad have been delivered by a Single Judge Bench whereas Division Bench of our jurisdictional High Court i.e. Hon'ble High Court of Delhi have condoned such mistakes as is evident from judgments cited by the applicants.

8. Thus, our conclusion is that judicial pronouncements are overwhelmingly in favour of the applicants. The mistakes or lapses committed by them were non-essential and not substantive. Cancellation of their candidature for these minor lapses was unwarranted. Enough material was available with the respondents

to evaluate them despite the lapses committed by the applicants. If candidates are rejected on these non-essential grounds than the very objective of conducting the competitive examination, namely, to identify the most meritorious candidates for filling up the available posts would be defeated.

9. We, therefore, find merit in the submissions of the applicants and allow all these OAs. We direct the respondents to process the candidature of the applicants herein in case they are not ineligible for any other reason. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/