

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

OA-3412/2013

Reserved on : 08.01.2018.

Pronounced on :06.02.2018.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Sh. Ramesh Chand Bairwa, 33 years
S/o Sh. Moti Lal Bairwa,
R/o Plot No. 63, Near Rose
Garden, Baad Deori, Sector-7,
Mansarovar, Jaipur. Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

The Union of India through
the Secretary,
Staff Selection Commission (Eastern Region)
Government of India, Ministry of Personnel,
Public Grievances & Pensions Department of
Personnel & Training, 234/4, A.J.C. Bose Road,
Nizam Palace, 1st MSO Building, 8th Floor,
Kolkata-700020. Respondents

(through Sh. S.M. Arif, Advocate)

O R D E R

Ms. Praveen Mahajan, Member (A)

The current O.A. was originally filed before the Jaipur Bench of Central Administrative Tribunal. On 17.05.2013, while issuing notice in the OA, Jaipur Bench of the Tribunal directed the respondents that "If any post of Laboratory Assistant (Chemical) Grade III under SC category in pursuance to the advertisement issued by the

respondent department dated 18.09.2010 (Annexure A/4) is vacant then one post in the said category be kept vacant till the next date."

The respondents filed PT No. 113/2013 to transfer this case to Kolkatta Bench. However, on 04.09.2013, being agreed to by both the sides, the matter has been transferred to this Bench.

2. Briefly stated, the facts of the current case are that the respondents published an advertisement in the Employment News dated 18-23.09.2010 inviting applications for 24 posts of Laboratory Assistant (Chemical). The applicant applied for the post of Laboratory Assistant (Chemical) Grade-III mentioned at S.No. 1.6 of the advertisement. He was issued an admission certificate for the screening test conducted on 30.01.2011 and allotted Roll No. 2050600181 and Ticket No. 201303. Despite having appeared in the screening test, he was not informed about the fate of his selection/non selection. He learnt from the G.S.I. Office Jaipur that the selection list of Laboratory Assistant (Chemical) had been received by them in January, 2012 for five persons, where against 24 vacancies only 22 candidates have been selected, out of these only 18 have joined. He also found out that two vacancies for SC category were still available.

3. He approached the Delhi Office of the respondents but did not receive substantial response. He then filed number of applications

under Right to Information Act, again, to no avail. Finally, he made two appeals before the higher authorities and was provided with reply dated 07.11.2012 whereby the cut off marks were informed to him. He also received his OMR sheet vide letter dated 25.02.2013.

4. The applicant states that he has been given zero marks in the O.M.R. sheet merely on a technical reason of invalid Roll No. in impugned Annexure A/1 whereas a copy of the O.M.R. sheet available at Annexure A/3 shows that he had filled his Roll No. and the Ticket No. correctly, belying the reasons assigned by the respondents, for rejection. The applicant further submits that in the O.M.R. sheet itself it is mentioned "that the invigilator to sign after verifying whether all particulars have been filled in by the candidate properly". The invigilator had signed the same and no shortcoming was pointed out by him.

5. In this background, the applicant has sought the following reliefs:-

- "(i) by an appropriate order or direction the impugned rejection orders Annexure A/1 to A/3 may kindly be quashed and set aside and the respondents may be directed to provide marks obtained by the applicant in his O.M.R. Sheet Annexure A/3 and further provide him appointment with all consequential benefits, as has been given to the low merit candidates as also against four vacancies of Laboratory Assistant (Chemical) available with the respondents.
- (ii) That if during the pendency of the O.A. any adverse order affecting the right of appointment of the applicant is passed, the same may kindly be taken note of and may kindly be quashed and set aside.

(iii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicants.

(iv) Costs be quantified in favour of the applicant."

6. In the counter, the respondents have not disputed the basic facts of the case. They submit that the Commission conducted a Common Screening Test (CST) on 30.05.2011 for short listing candidates for interview. The applicant was issued two admission certificates since he had applied for the post of Lab. Asstt. (Geology), Grade-III & Lab Asstt. (Chemical) Grade-III. The candidates were provided question booklet and OMR answer sheet at the time of CST. In the answer sheet, not only the particulars have to be given in the boxes provided, but also corresponding ovals below the boxes have to be blackened/darkened. It was made clear in the Instructions that answer sheet with any incorrect coding/entry of any of the particulars either in the boxes or the ovals would be awarded zero marks. Since the applicant did not properly darken the ovals pertaining to Roll No., his answer sheet was not evaluated and he was awarded zero marks. The respondents contend that 499 other candidates, along with the applicant have also been awarded zero marks due to similar reason of not correctly coding the OMR answer sheet. They aver that The issue involved has already been considered and adjudicated upon by Hon'ble High

Court of Kerala at Ernakulam in WP(C) No. 26843 of 2011 (E) – **Firosh**

Rajan P.Vs. SSC, KKR & Ors., in which the following has been held:-

“....The care and attention to detail that goes into the filling up of the application form as well as the answer sheet also form valuable inputs in determining the suitability of a person for selection to the notified post. It is certainly open to the recruiting agency to stipulate that an application or the answer sheet that does not provide the necessary details would be rejected. The column specifically requiring the affixture of a candidate's left hand thumb impression is prominently provided in the answer sheet. But, the petitioner has not affixed his left hand thumb impression. Therefore, his answer sheet has been rejected. As many as 961 candidates, who had committed the same omission, have been awarded zero marks as awarded to the petitioner. The case of the petitioner does not merit any different consideration or treatment. The contention that the omission to stipulate that zero marks would be awarded if the left hand thumb impression was not affixed is of no consequence. The answer sheet has intimated the candidate that instructions are to be read carefully and strictly followed. The further contention that, the Invigilator had instructed the candidates that it was not necessary to affix their left hand thumb impression, also cannot be accepted. The petitioner, being an educated candidate who had applied for appointment to a responsible post, cannot take shelter under the alleged instructions issued by the Invigilator.

.... The answer sheet also shows that the Invigilator has to sign after verifying whether all the particulars have been filled in by the candidates properly. However, it cannot be said that it was the duty of the Invigilator to have ensured that the candidate had affixed his/her left hand thumb impression in the answer sheet. It cannot also be held that for such omission, the candidate should not be penalised. At the top of the answer sheet, it has been indicated in bold letters that an answer sheet not bearing candidate's name, Roll Number, Test Form Number, signature and ticket number will not be evaluated and would be awarded zero marks. It is true that the left hand thumb impression is not one of the details made mention of in the said column. However, considering the prominent manner in which the requirement of affixing the left hand thumb impression has been indicated on the answer sheet, there cannot be any doubt that an omission to affix the same would be fatal.”

The respondents have also relied on the judgment of Allahabad Bench of the Tribunal in OA-128/2010 – **Shailendra Yadav Vs. UOI & Ors.**, where similar view has been held.

7. In the rejoinder to the reply filed by the respondents, the applicant has reiterated the same issues as submitted in his OA. He states that his OMR sheet has not been evaluated, as such. Since the invigilator signed the OMR sheet, it is clear that he found no short coming in the same. Hence, the action of the respondents is bad in law.

8. We have heard the learned counsel for the parties and perused the material placed on record. During the course of arguments, learned counsel for the applicant has relied on the decision of Principal Bench of CAT in OA-4331/2014, MA-172/2016 (**Smt. Vijay Rohilla Vs. GNCTD & Ors.**) dated 04.02.2016, in which the Tribunal has held that:-

“11. It is well settled that applications or candidatures or selections normally shall not be rejected by the authorities, basing on the minor mistakes committed by the youngsters in filing up the application forms or in the examinations, if otherwise, they establish their identity and that they are qualified and eligible for consideration of their cases by furnishing the documents in proof of the same.

12. This Tribunal disposed of a batch of OAs bearing OA No. 4445/2014 (**Neha Nagar v. Delhi Subordinate Services Selection Board & Others**), decided on 18.12.2015 and OA No. 4583/2014 (**Santosh v. Delhi Subordinate Services Selection Board & Anr.**), decided on 30.10.2015 (pertaining to same notification), after considering a catena of cases whereunder the Courts held that the indiscretions committed by the youngsters while filling the OMR Sheets, etc. shall be condoned and that their candidatures should be considered on merits along with others. Since the present OA is also identical, we are disposing of this OA on the same lines.”

9. The respondents too have cited the judgment of Principal Bench of CAT in OA-3278/2014, MA-2803/2014, MA-4090/2014 (**Shamsher Kharab & Ors. Vs. SSC**) with OA-3277/2014, MA-4191/2014,

MA-2804/2014 (**Vikash Kumar & Ors. Vs. SSC**) and OA-3276/2014 (**Rohit Kumar Vs. SSC**) decided on 07.12.2017 in which it was held that:-

"7. Now, it is settled that the applications or candidatures or selections shall not be rejected, normally, by the authorities, if the mistakes committed by the applicants are minor, insignificant, non-substantive, non-material and can be cured, if otherwise establishes the identification of the person concerned, and does not dilute the confidentiality required in evaluating the answer-sheets. Hence, each case has to be decided on its individual facts and the nature of the mistake and its impact on the evaluation of the examination paper.

8. In fact, certain decision, on which the applicants' counsel placed reliance such as OA No. 1413/2014, dated 07.12.2015 in **Ms. Kritika Raj v. Staff Selection Commission (Hqrs.)**, (where one post was reserved for the applicant at the time of admission of the OA, as an interim measure), in support of the OA averments, pertaining to the very same CGLE-2013, and the orders therein were said to have been complied with. The issue in **Ms. Kritika Raj** (supra) was that she passed the Tier-I, Tier-II, Interview and was allotted to the post of Inspector in Central Excise originally, but later in view of revised ranking due to awarding of 'O' marks in Module-3 of Computer Proficiency Test, as she wrongly mentioned her Roll number was allotted Assistant post. The said mistake of the applicant was condoned in the facts therein. The selection process of CGLE-2013 includes not only Tier-I and Tier-II Examinations but also Interviews and Computer Proficiency Tests, etc. depending on the post for which option was given.

9. Admittedly, as the applicants failed to code the Test Form Number rightly in their OMR answer-sheets of Tier-Examination, they were awarded 'zero' marks for the same. The subject CGLE Examination was of 2013. Since no vacancies were reserved or the process was not stayed, the answer-sheets of all the candidates, other than the applicants herein, were evaluated for Tier-I and Tier-II Examinations, and as per the merit position, selected persons were appointed against the vacancies notified under the subject Notification. Even, if the OMR answer-sheets of the applicants are directed to be evaluated, at this belated stage, i.e., after a lapse of about 4 years, and if any of the applicants secured enough marks, there would be no vacancies to accommodate them. It is to be seen that though the approach should be to condone the minor indiscretions/mistakes, but it cannot be termed as a right of a candidate, who admittedly committed a mistake....

10. In the circumstances and for the aforesaid reasons, the OAs are dismissed. Pending MAs, if any, stand disposed of accordingly. No costs."

10. After going through the facts of the case, perusing the records, and taking into consideration the judgments cited by both sides, we feel that each case has to be decided on its individual facts, and the nature of the mistakes committed by the applicant. Generally, the approach has been to condone minor, insignificant mistakes committed by the candidates. Having said that, it is equally true that sanctity of an examination process has to be observed. It does not become an automatic right of an employee to take shelter under the garb of a technical mistake to get his/her paper re-evaluated. The common screening test conducted by the Commission, in short listing the candidates for interview, by calling the eligible candidates has already attained finality. It is also a matter of fact that similarly placed candidates (449) have also been disqualified on similar ground and awarded zero marks due to not correctly coding the OMR answer sheet as per instructions. It is thus clear that the applicant's answer sheet has not been evaluated on a valid ground in terms of the clear instructions contained on the answer sheet. Hon'ble High Court of Kerala, in the case of **Firosh Rajan P** (supra) has also held that the petitioner being an educated candidate, who had applied for recruitment in response to a responsible post, cannot take shelter under the alleged instructions or signing of OMR sheet, by the invigilator.

11. In view of the foregoing, the issue does not merit any intervention by the Tribunal. We, therefore, dismiss the O.A. being devoid of merit. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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