

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3567 OF 2015

New Delhi, this the 13th day of February, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE MS.PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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Ms.Sushma,
D/o Virender Singh,
R/o H.No.96, Som Bazar Chowk,
Village Siraspur, Delhi 110042 Applicant

(By Advocate: Mr.V.S.Rana)

Vs.

1. Govt. of Delhi,
Through Director of Education,
Old Secretariat, Delhi 110054
2. Delhi Subordinate Services Selection Board,
Through its Secretary,
FC-18, Institutional Area,
Karkardooma, Delhi 110092 Respondents

(By Advocate: Ms.Harvinder Oberoi)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- “(a) Direct the respondents to revise/re-total the marks obtained by the petitioner as per the OMR sheet as

presented by petitioner. As petitioner has obtained 69.5 marks as claimed direct respondents to immediately revise her result and sent her dossier to MCD for her appointment as Teacher (Primary).

- (b) Direct the respondents to show/submit original OMR sheet in the Hon'ble Tribunal and explain how petitioner is shown to have secured 68.75 and not 69.5 as alleged by the petitioner.
- (c) Impose heavy costs/penalties on respondents for taking no action on representations of petitioner and for giving false information that cut-off marks is 69.75 when those having secured 69.25 marks have already been appointed.
- (d) Pass any such order/orders which deem fit and proper in the interest of justice."

2. We have carefully perused the records, and have heard Mr.V.S.Rana, learned counsel appearing for the applicant, and Ms.Harvinder Oberoi, learned counsel appearing for the respondents.

3. Brief facts, which are relevant for the purpose of deciding the issue involved in the present OA and are not disputed by either side, are that the applicant was an OBC candidate for selection and recruitment to the post of Teacher (Primary), MCD, vide Post Code 70/09, Advertisement No.004/09 issued by the respondent-Delhi Subordinate Services Selection Board (DSSSB). The respondent-DSSSB had conducted the written examination on 29.12.2013. But due to alleged leakage of question paper, the said examination was cancelled, and the examination was rescheduled and held on 2.2.2014. The respondent-DSSSB uploaded the answer key of the questions on 7.2.2014, inviting objections relating to the answer key. After examining the objections received from several candidates, the respondent-DSSSB decided to delete two questions, and the total number of

questions remained 198 instead of 200. As per result of the written examination held on 2.2.2014, uploaded by the respondent-DSSSB on its website, the applicant had scored 68.75 marks. The respondent-DSSSB, vide result notice dated 5.12.2014 (Annexure A-5), declared the final result of the recruitment examination and forwarded the dossiers of the selected candidates to the SDMC. The last selected OBC candidate recommended by the respondent-DSSSB had scored 69.25 marks. Therefore, the applicant, having scored 68.75 marks, was not selected by the respondent-DSSSB. After obtaining the photocopy of her OMR answer sheet from the respondent-DSSSB under the RTI Act, the applicant made representation dated 13.3.2015 (Annexure A-1) requesting the respondent-DSSSB to re-total/revise the marks obtained by her in the written examination. In the said representation, it was claimed by the applicant that her total marks ought to have been 69.50, instead of 68.75.

4. In the above context, it is the contention of the applicant that the respondent-DSSSB did not pay any heed to her representation for revision and/or re-totalling of the marks obtained by her in the written examination. She had given correct answers to 95 questions and wrong answers to 102 questions, leaving one question unattended. Thus, her total marks were 69.50. The last OBC candidate scoring 69.25 marks having been selected, she was entitled to be selected. Therefore, the respondent-DSSSB should be directed to re-total and/or revise her total marks as 69.50 and,

accordingly, select and recommend her for appointment to the post of Teacher (Primary) in MCD.

5. *Per contra*, it has been asserted by the respondent-DSSSB that by letter dated 1.5.2015 they had intimated the applicant that the marks awarded to her were correct and her claim was not valid.

6. There is no allegation of mala fide or bias made by the applicant against any of the functionaries of the respondent-DSSSB in the matter of awarding of marks to her. The applicant has not brought to the notice of the Tribunal any provision in the Advertisement/employment notice regarding re-totalling/revision of marks obtained by any candidate. In **Pramod Kumar Srivastava vs. Chairman, Bihar Public Service Commission**, (2004) 6 SCC 714, the Hon'ble Supreme Court has held that in absence of rules providing for re-evaluation of answer-books, no such direction can be issued. It has been further held that in absence of clear rules on the subject, a direction for re-evaluation of the answer-books may throw many problems and in the larger public interest such a direction must be avoided. In **President, Board of Secondary Education, Orissa, Orissa vs. D.Suvankar**, (2007) 1 SCC 603, it has been held by the Hon'ble Supreme Court that if inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of

the labour and time involved in the process. In **Himachal Pradesh Public Service Commission vs. Mukesh thakur and another**, (2010) 6 SCC 759, it has been observed by the Hon'ble Supreme Court that the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation. In view of this settled position of law, the applicant cannot be said to have any right, far less any enforceable right, to claim revaluation of her OMR answer sheet and/or re-totalling/revision of her total marks in the recruitment examination. Furthermore, a process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions stipulated by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates.

7. In the light of what has been discussed above, we do not find any merit in the O.A. which is accordingly dismissed. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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