

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4311/2016

Order Reserved on:03.01.2017
Order pronounced on 05.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

D.S.Rawat
Aged 52 years
S/o Late Sh. G.S.Rawat
Working as Section Officer (Budget) in the
Ministry of Electronics & Information Technology
Electronics Niketan, 6, CGO Complex, New Delhi
R/o 948, Block 17, Lodhi Colony, New Delhi. Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

1. Union of India through the Secretary
Ministry of Electronics & Information Technology
Electronics Niketan, 6-CGO Complex, New Delhi.
2. The Director (Pers. Division)
Ministry of Electronics & Information Technology
Electronics Niketan, 6-CGO Complex, New Delhi.
3. The Director General
National Institute of Electronics & Information Technology
(NIELIT), Electronics Niketan
6, CGO Complex, New Delhi-3. Respondents

(By Advocate: Sh. Hanu Bhaskar for R-1 and R-2)

O R D E R

By V. Ajay Kumar, Member (J):

Heard the learned counsel for the applicant.

2. The applicant, a Section Officer (Budget) in the Ministry of Electronics and Information Technology, New Delhi, filed the OA, seeking the following relief(s):

“(i) That the Hon’ble Tribunal may further graciously be pleased to pass an order of quashing and set asideing the answer key in respect of question paper of LDCE 2014 for the post of Section Officer regarding question No.8,12,27,39, 42,52,59,65,66,80,111(Paper-II), question No.60,(Paper-III), question No.7,16,28 (Paper-IV) and question No.13,31,33,39,46,52,68 (Paper No.V), declaring to the effect that the same are wrong and consequently pass an order directing the respondents to recast/review the answer key accordingly.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to revise the result of the applicant as per correct answer key and accordingly consider the case of the applicant for his appointment/Promotion to the post of Section officer w.e.f 26.5.2014 with all the consequential benefits.”

(iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.”

3. Brief facts of the case, as narrated in the OA, are that the respondents conducted the Limited Departmental Competitive Examination (in short, LDCE) 2013 for promotion to the post of Section Officer. As per the Notification, 11 vacancies of Section Officers were notified being 5, 2 and 4 vacancies for the years 2011, 2012 and 2013 respectively. Since the applicant fulfilled the eligibility criteria, applied and participated in the selection process, held during 6th to 10th January, 2014. Though 11 vacancies were notified, but only 4 candidates, i.e., Shri Sandeep Ambasta, Shri Sushil Tyagi, Smt. K. Bhanu Hari Haran and Smt. Ashma Gandhi were selected and

appointed as Section Officers vide Notification dated 26.05.2014 (Annexure A3). It is stated by the applicant in Para 4.7 of the OA that the respondents conducted another Limited Departmental Competitive Examination for the years 2014 and 2015 in the month of November, 2015 (23-30 November). In this connection, all candidates were allowed to take question papers with them. It is submitted that in the 2nd week of December, 2015, the NIELIT put the answer key of objective type question papers on their website by giving a link. On going through the answer key, the applicant was shocked to find that many of the answers given in the answer key of NIELIT were wrong. Accordingly, the applicant and one more candidate represented to Controller of Examination of the society concerned. The society admitted that the answers of 17 questions (3.4% of total 500 objective type questions) given in the key answers were wrong and accordingly the answer sheets of candidates were reevaluated and the applicant secured highest marks and ranked 1st in the LDCE held in November, 2015 and promoted as Section Officer.

4. It is submitted that since the question papers for the LDCE Exam conducted in January, 2014, were not given to the candidates, the applicant sought the question papers and key answers of the exam under RTI Act and finally received the same in April, 2015. In view of the admission of the wrong answers in respect of LDCEs, for the years 2014 and 2015, and consequential selection of the applicant, as stated above, he compared and checked the Key answers of LDCE-

2013 obtained by him under RTI Act, and found that out of 475 objective questions, 22 answers of the Key were wrong. His application for furnishing of the Optical Mark Recognition (OMR) answer sheets of answers given by the applicant for the LDCE examination of 2013, was rejected by stating that the evaluated answer scripts are kept for a maximum period of six months in a normal course and the NIELIT which conducted the examination was not able to provide the attested copies of the said OMR answer sheets.

5. The learned counsel for the applicant submits that even in the LDCE conducted in the month of November, 2015, the respondents though initially followed a wrong answer key and finally rectified their mistake and accordingly reevaluated the answer sheets of the candidates and applicant secured highest marks being ranked as No.1 and promoted as Section Officer. Since the applicant given correct answers even in the LDCE conducted in January, 2014 but because of the wrong answer key followed by the respondents, he was not selected and if his OMR answer sheets for the said examination conducted in January, 2014 are reevaluated, by correcting the answer Key of the said exam, the applicant would be entitled for promotion in the said Examination itself.

6. The Hon'ble High Court of Delhi in WP(C) No.7750/2016, decided on 23.09.2016 (2016 SCC online DEL 5347) in **Sagar Sanjeev Dua v. Central Board of Secondary Education and others**, considered an identical issue and by following the decision of the Hon'ble Apex Court

in **Himachal Pradesh Public Service Commission v. Mukesh Thakur**, (2010) 6 SCC 759 and a Judgement of the Hon'ble High Court of Delhi, in WP(C) No.5719/2015, dated 13.07.2015 in **Atul Kumar Verma v. Union of India**, rejected the identical prayer. The relevant paragraphs of the said decision read as under:

"1. The petitioner has filed the present petition seeking to challenge the answers of respondent No.1 to question Nos.73, 103, 124, 135, 158 of National Eligibility cum Entrance Test (NEET)-2016 and for appointment of an independent expert or panel of experts to examine the contentions of the petitioner and to evaluate whether the answers given by the petitioner to the questions set by the respondent No.1 were correct or the view of the respondent No.1 is correct.

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8. I am unable to accept the course of action suggested by the petitioner. Even if this Court were to *prima facie* agree with the contention of the petitioner that the answers, as marked by the petitioner, are correct and the answer key of the respondent is incorrect, in my view, this Court would not be competent to carry out such an exercise, more so, in view of the fact that the questions are from technical subjects. The question paper is from Physics, Chemistry and Biology. For a Court to assess and examine even, *prima facie*, whether the answers are correct or incorrect, would be beyond the competence of a Court, which may not be an expert in the said subjects.

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13. The Coordinate Bench has taken a view that there can be no judicial review of the answer key which the question setter has prepared and who, upon objection being raised, has reiterated the answer key. In the instant case also, the experts, who had set the question paper, have reiterated the answer key and the objections raised by various candidates have been dealt with. The answer key has been uniformly applied to all candidates who have taken the examination.

14. The question paper and the answer key are prepared by independent subject experts. The Court, in exercise of powers under Article 226 of the Constitution, cannot take over the task of correcting the answer set in the answer key framed thereto by an independent subject expert. Nothing has been pointed out for me to take a view different from the view taken by the Coordinate Bench in **Atul Kumar Verma** (supra).

15. In view of the above, I am not inclined to exercise powers under Article 226 of the Constitution and to examine the questions and the answer key set by the respondents and even to return a *prima facie* finding that the contention of the petitioner the answers given by the petitioner are correct or the answers given by the respondents are incorrect.

16. In view of the above, the writ petition is dismissed. No order as to costs."

7. In the circumstances and in view of the aforesaid settled position of law, we do not find any merit in the OA, and accordingly, the same is dismissed. No costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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