

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.4348/2013

Reserved on : 05.10.2016.
Pronounced on: 15.11.2016

Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Raj Kumar S/o Subhram
R/o Village Zahidpur,
P.O. Bhurthala Tehsil Kosli
Rewari, Haryana 123302.

...Applicant.

(By Advocate: Shri Aditya Singh)

Versus

Employees' State Insurance
Corporation (ESIC) Hqrs.,
Office Panchdeep Bhawan,
C.I.G. Marg, New Delhi.
(By Advocate: Shri M.K. Sareen)

...Respondent.

ORDER

Per Sudhir Kumar, Member (A):

The applicant is aggrieved with the letter dated 12.09.2013 issued by the respondent- Employees' State Insurance Corporation (ESIC, in short), by which they have cancelled/withdrawn the offer of appointment made to him through their earlier order dated 22.01.2013 for the post of Multi Tasking Staff (MTS, in short), and hence this OA.

2. The respondents had brought out an advertisement inviting applications for filling up 67 vacancies for the posts of MTS in the ESIC, with the last date for receipt of the online applications having been set as 20.01.2012. The applicant had applied in the

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OBC category, and an Admit Card was issued to him, allotting a Roll Number and Reference Number through Annexure P-3.

3. After the examination, result of the same was declared on 12.06.2012 through Annexure P-4, in which applicant's name figured among the selected candidates at Sl.No.37. The respondents then called him vide letter dated 09.07.2012 Annexure P-5 for verification of documents, after which process, an offer of appointment was issued to him through Annexure P-6 dated 22.01.2013, subject to certain terms and conditions, as specified in Para 1 to 11 to that letter. Thereafter, through letter dated 12.09.2013, the respondents informed the applicant that on scrutiny of the applicant's OMR Answer Sheet, it had been observed that he had used correcting fluid on it at several places, and, therefore, on re-evaluation, he was found to be not qualified in the MTS Examination, and hence the offer of appointment to the said post stands cancelled/withdrawn.

4. The applicant filed an RTI application through Annexure P-7, which was forwarded to the Regional Office, ESIC, Faridabad, but no response was received by him. However, this Tribunal does not have any jurisdiction in regard to the RTI Application.

5. The case of the applicant is that as per the candidate's alert produced by him at page 36 of the Paper Book of the O.A., the

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Staff Selection Commission (SSC, in short) of the Government of India, Northern Region, had decided that correcting fluid may be allowed in the Examination Hall for altering/correcting the OMR Answers already recorded on the OMR Answer Sheet, by filling in or darkening the rectangle/oval on the OMR Sheet, by blue or black pen.

6. He has, therefore, taken the ground that when he had properly applied to the post, and had never been engaged in any kind of illegal or unlawful activity, and he had been properly selected, and even received an offer of appointment after completing all formalities for his appointment, any rejection of his selection because of the use of correcting fluid was not proper, as no further reasons or information were given by the ESIC regarding cancellation of his appointment. He has also taken the ground that use of correcting fluid by a candidate does not, in any way, qualify as mal-practice, and it is an intrinsic right of the candidate to correct the errors, if any, made by him in answering the questions during the examination, before actually submitting the same for evaluation, which in no way could cause any prejudice to anybody entailing cancellation of candidature.

7. He has taken the further ground that he has not been given a fair and adequate opportunity of hearing to explain the sudden

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change in stance made by the respondents, and the action of the respondents has caused him great mental agony and pain. He has taken the ground that since use of correcting fluid in the OMR Answer-Sheet had been allowed by the SSC, the respondent-ESIC was wrong in having withdrawn the offer of his appointment. In the result, he had prayed for the following reliefs:

- "a). Quash and set aside of impugned Order(s)/Action(s) of the Respondents and
- b) Direct the Respondents to further consider the Applicant for appointment to the notified/qualified post(s) and appoint him as such with all consequential benefits including seniority and monetary benefits.
- c) Award cost of proceedings in favour of the Applicant and
- d) Pass any other order(s) direction(s) which this Hon'ble Tribunal deems fit and proper in favour of the Applicant and against the Respondents in the facts and circumstances of the present case."

8. The respondent filed counter reply on 13.08.2014, denying the applicant's contentions, and submitted that he has suppressed the facts regarding the existing instructions already contained in the Question Booklet and the OMR Answer Sheet, which had clearly stipulated that the answer once given cannot be changed, and on this score itself, the OA is fit to be dismissed.

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9. It was further submitted that when the result of the examination was declared on 12.06.2012, a note, however, had been appended, which stated that while every care has been taken in preparation of the result, the respondents reserve the right to modify the result, in case any discrepancy comes to their notice later on, and the candidature of all the candidates was provisional, subject to the verification of the original documents regarding age, educational qualification, category etc.

10. It was submitted that the Regional Office of ESIC had forwarded the dossiers of the selected candidates to the ESIC Headquarters, with a request to ensure that each successful candidate fulfils the eligibility criteria, after thorough scrutiny of the data, and it was also directed by the Recruitment Branch ESIC Headquarters, that the handwriting, photocopy and signatures of the candidates may be verified at the appropriate places. It was further submitted that a letter of appointment had been issued after verification of educational documents. Before allowing the applicant to join on the post of MTS, it was observed by the ESIC that more than 50 answers had been changed by the applicant in his OMR Answer Sheet, by using white fluid, and, in fact, the Answer Sheet of the applicant had to be re-evaluated, as it came to notice only during the course of confirming the identity

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of the candidate concerned. It was submitted that there was a clear direction on the OMR Answer-Sheet, which stated as under:

“Use Blue/Black Ball Pen for all your work on the OMR Answer Sheet. The ovals on the OMR Answer Sheet are to be completely filled by Blue/Black Ball point Pen only. Answer once given cannot be changed.”

11. It was, therefore, submitted that once there was a clear direction that answer once given cannot be changed, and, as such, in view of the said stipulation the applicant could not have used white fluid (eraser) on the OMR Answer Sheet to change the answers once given. In fact, he had used white fluid not at one or two places, but in respect of more than 50 answers, and when this fact was noticed, the respondent had no option but to withdraw the letter of appointment issued to the applicant. It was submitted that the action of the Respondent-Corporation cannot be faulted with, as the applicant had used white fluid to change more than 50 answers in his OMR Answer-Sheet, and, as such, those while fluid corrected answers had to be ignored for the purposes of arriving at his final score, which stands now as 91.50, instead of 153.25 marks secured earlier, and, therefore, the appointment letter had been withdrawn.

12. It was submitted that when on further scrutiny, the marks obtained by the applicant itself got revised, and he stands not

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qualified, no notice was required to be given to him, as the ESIC Corporation had the right to re-evaluate the Answer Sheet, and correct/revise the result.

13. It was further submitted that the instructions of the SSC could not be *ipso facto* made applicable to the examination conducted by the Respondent-ESIC, and that even those instructions of the SSC had been issued on 07.05.2012, one week after the ESIC Examination, which was held on 29.04.2012. It was further submitted that recently the Railway Recruitment Board had also directed the candidates as per the instructions printed on Specimen OMR Answer Sheet not to overwrite or erase, because it will be treated as multiple/wrong answer, and "negative" marks will be awarded. It was prayed that there is no ground whatsoever made out to grant relief in the OA, and the same is, therefore, liable to be rejected.

14. Heard. During the course of their arguments, while learned counsel for the respondents produced a colour photocopy of the OMR Answer Sheet of the applicant, which clearly shows that numerous corrections had been made by the applicant, learned counsel for the applicant, on the other hand, relied upon a judgment of the Coordinate Bench dated 13.02.2013 in OA No.2603/2012 in **Ravindra Malik vs. SSC and Others**, and the

judgment of the Hon'ble Delhi High Court dated 06.07.2013 in WP(C) No.4401/2010 in **Parag Tyagi and Anr. vs. UOI and Ors.**

15. It is seen that the case of **Ravindra Malik vs. SSC and Others** (supra) relates to non-filling of the particulars in the Answer Sheet, and the Coordinate Bench had held that when the applicant had himself committed a mistake by not coding his Ticket Number correctly on his OMR Answer Sheet, he cannot throw the blame on the Invigilator, by stating that it is for the Invigilator to verify whether all the particulars have been filled properly or not, before affixing his signature on the OMR Answer Sheet. However, in that case, since the OMR Answer Sheet had already been evaluated, and the marks had been allotted to the applicant therein, in the peculiar facts and circumstances of the case, that OA was allowed.

16. The case in **Parag Tyagi and Anr. vs. UOI and Ors.** (supra) relates to applicants' admission to the Medical Colleges, in which the Hon'ble High Court had taken note of the fact that colouring in HB pencil rather than ink has been prescribed to allow a candidate, to erase the mistakes, if any, while filling up answer sheet, and which may not be possible, if the answer sheet is filled up in ink. The Hon'ble High Court had, therefore, held that

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it will be open to the respondents, entrusted with conducting of the examination for entrance to the Medical Colleges to consider this aspect, and had allowed the use of HB pencil in order to allow erasers.

17. We have given our anxious consideration to the facts of the instant case. The instructions on the top of the OMR Answer Sheet are reproduced below:

- “1. Read all the instructions carefully before filling the form.
2. Darken the circles with Black/Blue Ball Point Pen only.
3. If you darken more than one circle your answer will not be evaluated.
4. Do not make any stray marks on this Answer Sheet.
5. Do not fold the Answer Sheet.
6. Check the Roll No. before signing.
7. 0.25 Negative Marks will be deducted for every wrong answer.”

18. Therefore, it is clear that darkening of circles was to be made with Black/Blue Ball Point only, and in cases of darkening of more than one circles, the answer was not to be evaluated. In the instant case, the applicant had darkened more than one circles in respect of many of the answers, and had applied white fluid in respect of more than 50 answers, in order to leave only one darkened circle for each answer.

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19. It is seen that in respect of some answers, he had applied white fluid for more than two circles, and had then left only one circle fully darkened, like the Question No.51 etc.

20. It is, therefore, clear that in view of the instructions contained on the OMR Answer Sheet itself, the applicant was not entitled to darken more than one circle, and to then apply white fluid on some of them, in order to leave only one darkened circle. Therefore, the applicant cannot be allowed to draw much sustenance from the instructions of the SSC, which, in any case, were issued after the examination of the respondent-Corporation, and also, the instructions of the SSC cannot be borrowed automatically and made applicable in the case of the Respondent-Corporation also.

21. It is seen that from the cited order of the Coordinate Bench of this Tribunal in **Ravindra Malik vs. SSC and Others** (supra), and the judgment of the Hon'ble Delhi High Court in **Parag Tyagi and Anr. vs. UOI and Ors.** (supra), the applicant cannot draw any sustenance, as the cited order and the judgment were related to a different scenario of non-coding of the Answer-Sheet and the Ticket Number properly, and the suggestion of the High Court to the respondents to prescribe the manner of colouring of the OMR Answer-Sheets. None of the above cited order and judgment can

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be directly made applicable to the facts and circumstances of the instant case.

22. Therefore, we find that there is nothing wrong in the order of the respondents in their having considered the applicant's method and manner of filling up OMR Answer Sheet, and making corrections thereupon to be against the instructions for the relevant examination, and, therefore, no fault can be found in the order rejecting the applicant's candidature for not answering the questions in a proper manner, and not following the instructions contained at the top of the OMR Answer Sheet, which instructions were binding on all the candidates.

23. Showing any concession to the applicant herein may be against the principles of equity, as the candidature of many other such candidates may also have been rejected by the respondents for the same reasons, who have not approached this Tribunal, and any relief granted to the applicant alone, would then operate against the principles of equity.

24. Therefore, the OA is rejected, but there shall be no order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/

