

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.3860 OF 2016

New Delhi, this the 15th day of September, 2017

CORAM:

**HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

Robin Chaudhary,

s/o Sh.Babu Ram,

R/o H.No.411, Street No.9,

Jagatpur Village, Delhi 110084

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Applicant

(By Advocate: Mr.Ajesh Luthra)

Vs.

1. Commissioner of Police,
PHQ, M.S.O.Building,
I.P.Estate, New Delhi.

2. The Deputy Commissioner of Police (Recruitment Cell),
New Police Lines,

Kingsway Camp, Delhi-110009

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Respondents

(By Advocate: Mr.Amit Anand)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have carefully perused the records, and have heard Mr.Ajesh Luthra, the learned counsel appearing for the applicant, and Mr.Amit Anand, the learned counsel appearing for the respondents.

2. The applicant was a candidate for recruitment to the post of Constable (Executive) Male in Delhi Police, pursuant to the recruitment notification issued in January 2013. The present O.A. was filed by him on

11.11.2016 under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- õa) To quash and set aside the impugned orders/actions of the respondents placed at Annexure A/1 and A/2 above and
- b) To direct the respondents to delete all such questions wherever there have been a mismatch in English and Hindi versions, from the question papers of the selection/recruitment to the post of Constable (Exe.), and grant appropriate credit of marks ó either to all the candidates and revise the entire result accordingly, or at least, to the applicant herein and
- c) Further consider and appoint the applicant to the post of Constable (Exe.) with all consequential benefits.ö

3. Resisting the O.A., the respondents filed their counter reply on 17.1.2017. In the counter reply, the respondents have contended, *inter alia*, that the question raised in the present OA is no longer *res integra* inasmuch as the Tribunal, by its order dated 5.5.2016, dismissed O.A.Nos.969 and 1244 of 2016 filed by Sandeep Kumar and others challenging the very same select list dated 23.2.2016 and the decision of the respondents reducing the total number of questions from 100 to 79 and awarding bonus marks to all the candidates who appeared in the recruitment examination for the post of Constable (Executive)Male in Delhi Police pursuant to the notification issued in January 2013. W.P.(C) No.7624 of 2016 (*Bijender Kumar and others vs. C.P.Delhi and others*) and W.P. (C) No. 7411 of 2016 (*Sandeep Kumar vs. C.P.Delhi & others*) filed against the Tribunal's order dated 5.5.2016(íbid) were dismissed by the Honøble High Court of Delhi, vide

judgment dated 7.9.2016. It was submitted by the respondents that the order dated 5.5.2016 passed in OA Nos. 969 and 1244 of 2016 (*Sandeep Kumar and others Vs. Delhi Police and others*), being binding on the Tribunal, the present O.A. has to be dismissed.

4. It was submitted by Shri Ajesh Luthra, the learned counsel appearing for the applicant that there was complete mismatch in the English and Hindi versions in Question Nos. 34 to 37 of Set D. The Expert Committee wrongly and incorrectly cleared Question Nos. 34 to 37 of Set D. If, for other questions where there was mismatch in the English and Hindi versions, the Expert Committee recommended deletion of those questions for the purpose of re-evaluation of the answer sheets of all candidates and further recommended award of credit marks to all candidates, then the same treatment was required to be given to Question Nos. 34 to 37 of Set D because there was complete mismatch in the Hindi and English versions and the applicant was entitled to credit marks towards the said questions. Because of the erroneous recommendation of the Expert Committee in clearing Question Nos. 34 to 37 of Set D and re-evaluation of the answer sheet of the applicant on the basis Answer Key prepared on the basis of the erroneous recommendation of the Expert Committee, the applicant has been treated in an utmost unfair manner by the respondents. Therefore, the impugned select list dated 23.2.2016 qua the applicant should be interfered with and appropriate direction should be issued by the Tribunal to the respondents to award credit marks to the applicant for Question Nos. 34 to

37 of Set-D while re-evaluating his answer sheet and accordingly decide his selection or otherwise for recruitment to the post of Constable (Exe.) Male in Delhi Police.

5. *Per contra*, Mr.Amit Anand, the learned counsel appearing for the respondents, submitted that the present O.A. is squarely covered by the decision of the Tribunal in *Sandeep Kumar and others Vs. Delhi Police and others* (supra), and that there is no scope for interference.

6. In *Sandeep Kumar and others Vs. Delhi Police and others* (supra), the Tribunal has held thus:

õ9. On a perusal of the Expert Committee's report, along with the correct Answer Keys and other documents annexed thereto, it is found that prior to the constitution of the Expert Committee, 07 questions, being reported to be wrong, had already been declared as void. Thus, the Expert Committee only examined the correctness, or otherwise, of 93 questions and the Answer Keys submitted by the paper setter in respect of each of the question sets. It was found by the Expert Committee that 14 out of those 93 questions were to be cancelled/declared 'Null/Void' for reasons, like, none of the given options being correct, question having more than one possible answers, mismatch in the meaning of English and Hindi versions, etc. It was also found by the Expert Committee that in respect of 3 Nos. of questions, the correct answers were different from what the paper setter had given in his Key. Accordingly, the Expert Committee prepared the correct Answer Keys in respect of the four sets of questions. The Expert Committee's report, along with the correct Answer Keys for the four sets of questions, was accepted by the competent authority. Accordingly, 21 (7 + 14) questions were deleted/removed from all the question sets, and all the candidates were given 21 bonus marks each, irrespective of the fact as to whether or not they had given their answers to the same. The OMR answer sheets of all the candidates were re-evaluated on the basis of the correct Answer Keys, as recommended by the Expert Committee and accepted by the competent authority. After re-evaluation of the OMR answer sheets, and upon awarding of 21 bonus marks to each of the candidates, the result was published on 22.2.2016. Therefore,

it cannot be said that the relative merits of the candidates were not properly assessed, and that less meritorious candidates, who had not been selected as per the result declared on 17.7.2015, were selected, and the applicants were not selected, as per the result declared on 22.2.2016. In our considered view, when all the candidates have been awarded 21 bonus marks each, because of the erroneous questions, no prejudice or injustice can be said to have been caused either to the applicants or to any other candidate. It is pertinent to mention here that after re-evaluation of the OMR answer sheets on the basis of correct Answer Keys, and upon awarding 21 bonus marks to each of the candidates, the revised final result was declared on 22.2.2016, wherein not only the applicants of the O.As., but also several others, who had been declared as provisionally selected as per the result published 17.7.2015, did not figure, because of their not having made the grade.

10. As discussed in paragraph 7 above, the facts and circumstances of the case of *Rajesh Kumar & Ors., etc. Vs. State of Bihar & Ors.* (supra) are different from that of the present case. In that case, the appellants, who were beneficiaries of the erroneous evaluation of the answer scripts, had been appointed as Junior Engineers (Civil) and had served the Government for nearly seven years. Even after selection and appointment of the appellants, a large number of posts had remained unfilled. Considering these aspects and other relevant factors, the Honøble Supreme Court, while directing re-evaluation of the answer sheets on the basis of correct answer key, and preparation of fresh merit list, observed that such of the appellants who would not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of the advertisement NO.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006. It is, thus, clear that the Honøble Supreme Court did not uphold the selection and appointment of the appellants who were beneficiaries of the erroneous evaluation of the answer scripts. But, in the instant case, before the offers of appointment could be issued to the applicants, pursuant to the result dated 17.7.2015, the respondents took appropriate remedial measure. On the basis of the recommendation of the duly constituted Expert Committee, the respondents removed 21 questions, and awarded 21 bonus marks therefor to each of the candidates. The OMR answer sheets were re-evaluated on the basis of correct Answer Key. Thereafter, the revised final result was declared by them on 22.2.2016. As per the result published on 22.2.2016, 518 candidates belonging to different

categories were selected. Due to non-availability of suitable candidates belonging to Ex-Servicemen category, only five vacancies remained unfilled. Thus, we find that the decision in *Rajesh Kumar & Ors., etc. Vs. State of Bihar & Ors.* (supra) is clearly distinguishable on facts, and can be of no help to the case of the applicants. We would also like to observe here that consequent upon publication of the revised final result on 22.2.2016, the result dated 17.7.2015 has become non est, and that acceptance of the applicants' claim for appointment on the basis of the result dated 17.7.2015 would amount to reversing the result dated 22.2.2016, and granting undeserved advantage to the applicants over others who have been placed above the applicants in the merit list/result dated 22.2.2016 published by the respondents after re-evaluation of the OMR answer sheets. Therefore, we do not find any substance in the contention of the applicants that having been selected as per the result dated 17.7.2015, they should not be denied appointment.

11. In the light of what has been discussed above, we hold that both the O.As. are devoid of merit and liable to be dismissed.

7. It is, thus, clear that the entire matter relating to constitution of the Expert Committee, deletion of questions, re-evaluation of the answer sheets on the basis of the correct Answer Key, awarding of bonus marks, and preparation & publication of the select list dated 23.2.2016 by the respondents has already been considered and decided by the Tribunal in *Sandeep Kumar and others Vs. Delhi Police and others*' case (supra). Furthermore, when according to the Expert Committee, there was no mismatch in English and Hindi versions of Question Nos.34 to 37 of Set-D and those questions were correctly set, we are not inclined to go into that aspect of the matter at this juncture, while exercising the power of judicial review. Considering the totality of the facts and circumstances of the case, we find no reason to differentiate between the applicant in the present O.A. and the applicants in *Sandeep Kumar and others Vs. Delhi Police and others*

(supra). In our considered view, the decision of the Tribunal in *Sandeep Kumar and others Vs. Delhi Police and others* (supra) applies on all fours to the present O.A.

8. Resultantly, the O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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