

**Central Administrative Tribunal
Principal Bench:New Delhi**

OA No.4230/2014

Reserved on :19.07.2016
Pronounced on:10.11.2016

**Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)**

Nisha/Age 24 years
D/o Shri Mani Ram
R/o H.No.237 Extension-II,
Block D, Nangloi, Delhi-41.Applicant.

(By Advocate:Shri Jagdev Singh)

Versus

Staff Selection Commission
Through its Chairman
Staff Selection Commission
Department of Personnel & Training
Ministry of Personnel, Public Grievances
& Pensions, Block No.12,
Kendriya Karyalay Parisar,
Lodhi Road, New Delhi-110003.Respondent.

(By Advocate: Shri S.M.Arif)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA has approached this Tribunal because she is aggrieved by the alleged illegal and arbitrary action of the respondent - Staff Selection Commission (SSC, in short), whereby they have awarded "zero" marks to the applicant, without even checking & evaluating her OMR Answer

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Sheet in respect of Combined Higher Secondary Level (10+2) Examination held on 27.10.2013 for the post of Data Entry Operator (DEO, in short), on the ground that the particulars of the applicant on the OMR Answer Sheet were incomplete, and all the columns were not properly filled. The applicant has further submitted that she has been discriminated against because it was specifically stated in the OMR Answer Sheet that the Invigilator should sign after verifying whether all the particulars have been filled in by the candidates properly and, according to her, in view of the instructions to the Invigilators on the OMR Answer Sheet, it was the responsibility of the Invigilator appointed for the said examination to look into as to whether the applicant had filled up her particulars properly or not.

2. When the results were declared in April 2014, the applicant was disappointed that her name was not shown in the list of the successful candidates, and she applied for a copy of the OMR Answer Sheet under RTI Act, and then discovered that she should have been in the list of the successful candidates. On enquiry regarding this, she was informed by the respondent that only in view of the incomplete particulars in the OMR Answer Sheet, her answers were not evaluated, and her representation in this regard did not yield any results.

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3. The applicant has alleged that even though her Test Form was No.005LQ6, the Invigilator had verbally told all the candidates present in the Examination Hall that the candidates have to write No.005LG as their Test Form Number in the OMR Answer Sheets, and the applicant had blackened those digits and alphabets in the OMR Answer Sheet, following the instructions of the Invigilator. She has submitted that even the Invigilator, while signing upon it, did not point out that her OMR Answer Sheet column is incomplete. She has, therefore, faulted the Invigilator alone, and submitted that it was the duty of the Invigilator to check the OMR Answer Sheets before signing the same, when there was some confusion created in respect of the Test Form Number. She has submitted that the candidates may or may not be aware of such technicalities, but it was the duty of the Invigilator, as an expert person, on behalf of the respondent, to stop the candidates from committing such mistakes. She had further submitted that since at the time of filing of the OA, the selection process regarding the posts pursuant to the above examination was at the initial stage, therefore, the action of the respondents of not checking and evaluating the OMR Answer Sheet of the applicant was totally illegal, arbitrary and in violation

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of the Fundamental Rights of the applicant, guaranteed under Articles 14, 16, 19 & 21 of the Constitution.

4. In filing this OA, she has taken the ground that the action on the part of the respondent was not only violative of the fundamental rights of the applicant, but also in disregard of the directives principles of the State Policy, under Part-IV of the Constitution, as they were duty bound to act in a reasonable and fair manner towards her, which they have not done. She has taken the further ground that she has been penalized for the fault of the Invigilator, even though it was the responsibility of the Invigilator to check and sign only after verifying that all the particulars had been filled by the applicant properly.

5. She has submitted that she would have been a successful candidate, if the respondent had checked & evaluated her OMR Answer Sheet, but she has been a victim of negligence on the part of the Invigilator, who has signed the OMR Answer Sheet in a very casual manner, without checking the same, and had failed to discharge his duties. She has taken the further ground that all the vacancies of the DEO are still to be filled up, and there is continuous requirement of the DEOs in different Government Departments from time to time, and, therefore, she can still be appointed on the post of DEO, if her OMR Answer Sheet gets

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checked and evaluated by the respondent. She made a representation to the respondent on 04.08.2014 in this regard, which representation had not yielded any result. In the result, the applicant had prayed for the following reliefs:

"(a) issue a writ of mandamus or any other Writ of like nature, directing the respondent to check & evaluate the OMR Answer Sheet of the applicant in respect to the Combined Higher Secondary Level (10+2) Examination held on 27.10.2013 for the appointment of Data Entry Operator, in the interest of justice.

(b) further, issue a writ of mandamus or any other Writ of like nature, directing the respondent to appoint the applicant on the post of Data Entry Operator, if the applicant is found successful in the Combined Higher Secondary Level (10+2) Examination after evaluation of her OMR Answer Sheet.

(c) pass such other or further order which this Hon'ble Court may deem fit and proper in the interest of justice."

6. The applicant had also sought interim relief, and *ex parte* direction to the respondent to reserve one post of DEO for the applicant during the pendency of the OA, but that interim relief was never considered and allowed at any stage of hearing of the case.

7. The respondent filed their counter reply on 13.04.2015. It was submitted that the instructions on the OMR Answer Sheet

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had clearly laid down that the particulars of the candidates i.e. Name, Roll Number, Signature, Test Form Number etc. should be coded correctly, and incorrect coding of any particulars would be awarded "zero" marks. The applicant had coded her Test Form Number incorrectly, and, therefore, as per the instructions already contained on the first page of the OMR Answer Sheet, the respondents had awarded her "zero" marks, and did not consider her candidature for the subject recruitment any further. It was further submitted that no cause of action had arisen in favour of the applicant for filing the present OA, and that she has only tried to shift the blame in regard to her own mistake on the Invigilator, while it is the primary responsibility of the applicant to fill up the particulars in the OMR Answer Sheet correctly, and, therefore, she cannot blame the Invigilator for the mistake committed by her.

8. It was further pointed out that the Hon'ble Delhi High Court had in WP(C) No.6740/2011, in the matter of **Inderjit Singh vs. Staff Selection Commission & Another**, and in WP(C) No.6743/2011, in the matter of **Dinesh Soni vs. Staff Selection Commission & Another**, vide its order dated 26.09.2011, dismissed the Writ Petitions on this very ground that out of 6,09,572 candidates who took the examination, a majority of

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them, barring 38,216 candidates, had correctly filled up all the details correctly, and their answer sheets were evaluated. It was further observed that in the Notification announcing the examination, the instructions were quite explicit, and the consequences of a candidate not correctly filling up the particulars were also unambiguously spelt out, and, therefore, the High Court had found no merit in those Writ Petitions, and had dismissed the same.

9. It was submitted that in Review Petition No.548/2011 in WP(C) No.6742/2011 in the matter of **Emami vs. Staff Selection Commission & Another**, in its order dated 27.09.2011, the Hon'ble Delhi High Court had dismissed the Review Petition also, on the analogy of the above order passed in the above Writ Petitions on 26.09.2011. It was further submitted that in WP(C) No.8364/2011, in the matter of **Mohit Sharma vs. Staff Selection Commission**, the Hon'ble Delhi High Court had on 28.11.2011 dismissed the Writ Petition by observing that there were clear instructions in the OMR Answer Sheet that incorrect coding of any of the particulars would be awarded "zero" marks, and the action of the Respondent-SSC in awarding "zero" marks cannot be faulted with.

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10. In reply to the grounds, it was submitted that primarily the responsibility lies with the applicant herself to fill up all particulars correctly, and she cannot escape the liability for her mistake by blaming the Invigilator, and that there is no merit in the O.A., and the same deserves to be dismissed. They had also produced a photocopy of the OMR Answer Sheet as Annexure R-1, and also copies of the above cited judgments of the Hon'ble Delhi High Court, as Annexures R-2 & R-3.

11. The applicant filed her rejoinder on 16.12.2015, more or less reiterating her contentions, as already made out in the OA. She had further stated that the Test Form of other candidates may be called to verify the above fact of changing the Test Form Number, as had been instructed by the Invigilator. It was reiterated that the Invigilator, while signing it, did not point out that her OMR Answer Sheet column is incomplete, and had submitted that the judgments relied upon by the respondents are not applicable in the facts and circumstances of the present case, and that the future of a bright candidate is at stake due to the mistake of the Invigilator, who was an expert person, appointed on behalf of the respondent, and he was duty bound to check the OMR Answer Sheet before signing it. It was, therefore, prayed that the OA deserves to be allowed, in the interest of justice.

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12. Heard. During the course of arguments, learned counsel for the applicant argued on the lines of the pleadings in the OA as well as in the rejoinder.

13. On the other hand, learned counsel for the respondents took us through the judgments of the Hon'ble Delhi High Court in the case of **Inderjit Singh vs. Staff Selection Commission & Another** (supra) filed as Annexure R-2, and the case of **Emami vs. Staff Selection Commission & Another** (supra) filed as Annexure R-3, and also relied upon the order of the Tribunal pronounced by the same Bench on 12.02.2016 in (i) OA No.2349/2014 in **Suresh Kumar vs. Staff Selection Commission & Another**, and the orders passed by this Tribunal in (ii) OA No.3119/2011 in **Shri Harish Kumar vs. Through Secretary, Staff Selection Commission** by a Coordinate Bench, including one of us [Member (A)] decided on 26.03.2012, and (iii) OA No.4193/2012 in **Vinita Sharma vs. Through Secretary, Union of India & Another** and (iv) OA No. 4194/2012 in **Preeti Singh vs. Through Secretary, Union of India & Others** passed by a Coordinate Bench. He also relied upon the judgment of the Punjab and Haryana High Court at Chandigarh (v) in **Surinder Kumar vs. Union of India & Others** in CWP No.15272 of 2012, and the order & judgment

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passed by a Coordinate Bench of the Tribunal at Chandigarh in (vi) OA No.060/00982/2014 decided on 21.10.2015 in **Vijay Kumar vs. Staff Selection Commission & Another**, and the order dated 04.11.2011 passed by another Coordinate Bench of this Tribunal in (vii) OA No.3751/2011 in **Shri Mohit Sharma vs. Staff Selection Commission**, and (viii) the order & judgment dated 28.11.2011 in WP(C) No.8364/2011 passed by the Hon'ble Delhi High Court, arising out of the order of the Tribunal in the above cited OA No.3751/2011 decided on 04.11.2011, in which the Division Bench of the Delhi High Court, including Acting Chief Justice, had held that the action of the Respondent-SSC in awarding "zero" marks cannot be faulted with, and the order of this Tribunal dated 04.11.2011 (supra) had been upheld, (ix) and the order and judgment dated 01.10.2012 of the High Court had in WP(C) No.5375/2012 in **Roshan Lal vs. Union of India & Another**, in which the Hon'ble High Court had held in Paras 8 to 11 as follows:

"8. To explain it to a layman, if after optical reading, a computer has to identify, say a cat or a rat, the best drawn cat or the rat, but minus the tail, would not be read/identified by the computer.

9. Coming to the argument advanced, the answer-sheet in question has a Part "A" and a Part "B". Part "A" has to be filled in with a ball pen and the Note in question on which petitioner relies forms part of Part "A". Thus, the duty of the invigilator is to

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ensure that Part "A" of the answer sheet has been properly filled up by the candidate and not Part "B" where the shading has to be done and the questions answered. It has to be so, for the reason, in Part "A" the roll number and the ticket number have to be filled in by the candidate and with reference to the same i.e. the numbers filled in and the original ticket issued to the candidate, which contains not only the roll number but even the photograph and the specimen signatures, the task of the invigilator is to pen her signatures and the Note in question requires the invigilator to so do after verifying that the said particulars i.e. pertaining to Part "A" have been correctly filled in by the candidate. Thereafter it is the candidate and her God alone.

10. The writ petition is dismissed.

11. No costs."

14. The learned counsel for the respondents had also relied upon (x) the order & judgment of the Hon'ble Rajasthan High Court dated 08.08.2012 in SB Civil Writ Petition No.11680/2011 in **Chandra Mohan Sharma vs. The Govt. of India and Another**, which had followed the judgment of the Hon'ble Delhi High Court in the case of **Inderjit Singh vs. Staff Selection Commission & Another** (supra).

15. In the instant case also, the signature of the Invigilator is after the signature and the Left Thumb Impression of the candidate, and the Invigilator had to write his full name and sign in the upper half portion of the Answer Sheet, but the applicant's

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Name, Roll No., Signature, Ticket No. and Test Form number in the lower half were not required to be attested by the Invigilator. The note stating the instructions to the Invigilator to sign after verifying whether all the particulars had been filled in by the candidates properly related only to the upper half portion of the OMR Answer Sheet, in which the applicant had certified that she is the person, whose name and roll number appear on that Answer-Sheet, and had put her left hand thumb impression. It is, therefore, clear that instructions to the Invigilator do not apply to the lower half portion of the OMR Answer Sheet.

16. In the lower half portion of the OMR Answer Sheet, it had been indicated that on the OMR Answer Sheet itself that in case of discrepancy, the candidates would be awarded "zero" marks, and it was only the applicant's responsibility to fill up her Name, Roll No., Signature, Ticket No. and Test Form No. correctly, when the Test Form Number was available before her to be filed up correctly, and the applicant cannot be allowed to get away by making an allegation that the Invigilator had instructed all the candidates in the Examination Hall to fill one single Test Form Number, which he could not have obviously done, as such Test Form Number may have varied in the case of all the candidates in the same Examination Hall. Therefore, we find no merit,

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whatsoever in the applicant's bald allegation in this regard, and also in the wake of preponderance of law, as already been settled in this regard, from the above cited judgments.

17. In the result, we find no merit in the OA, and the same is dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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