

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-2016/2016
MA-1333/2017**

Reserved on : 19.07.2018.

Pronounced on : 02.08.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

1. Sh. Pardeep, 26 years
S/o Sh. Isham Singh,
R/o V.P.O-Gagsina, Tehsil
Ghorounda, Dist. Karnal,
Haryana.
2. Sh. Nikhil Mishra, 26 years
S/o Sh. Satya Prakash Mishra,
R/o Village Faizpur, Post Jahrinagar,
Dist. Mainpur, UP.
3. Sh. Rajat Kumar Garg, 26 years
S/o Sh. Rakesh Kumar Garg,
R/o H.No. 57, Plot No.12, Gali No.6,
Om Vihar Phase 1S, Uttam Nagar,
New Delhi-110059.
4. Sh. Salman, 22 years
S/o Sh. Yunus,
R/o Village +Post Asivan,
Dist. Unnao, Tehsil Hasanganj,
UP.

.... Applicants

(through Sh. Ajesh Luthra, Advocate)

Versus

1. GNCT of Delhi through
Its Chief Secretary,
A-Wing, 5th Floor,
Delhi Secretariat, I.P.Estate,
New Delhi.

2. Delhi Subordinate Services Selection Board (DSSSB) through Its Secretary,
FC-18, Karkardooma Institutional Area,
Delhi-92.
3. New Delhi Municipal Council
Through its Chairman,
Palika Kendra, Sansad Marg,
New Delhi-110001.
4. Delhi Jal Board through
Its Chief Executive Officer,
Varunalaya Ph-II, Jhandewalan,
Karol Bag, New Delhi-110005.
5. South Delhi Municipal Corporation
Through its Chairman,
Dr. S.P.M. Civic Centre, Minto Road,
New Delhi-2.

.... Respondents

(through Sh. Amit Anand, advocate for R-1 and R-2, Sh. Yogesh Pachauri, advocate for R-3, Sh. Raj Kumar Bhartiya, advocate for R-4 and Sh. R.K. Jain, advocate for R-5)

ORDER

Ms. Praveen Mahajan, Member (A)

Briefly stated, the facts of the current O.A. are that the applicants, in pursuance to an Employment Notification No. 3/2013 issued by the respondents to fill up various posts of Junior Engineer, applied for the same. So far as the posts of Junior Engineer (Civil) under Post Code-64/2013 in New Delhi Municipal Council were concerned, there were 92 vacancies. Under Post Code-66/2013 for Delhi Jal Board there were 103 vacancies and under Post Code-69/2013 for MCD, there were 289 vacancies. For these three Post Codes, common examination was conducted by the respondents

on 31.05.2015. The respondents published a provisional answer key to the exam, on 07.09.2015. The applicants finding that there were certain wrong answers in the provisional answer key, submitted their written objections. The applicants submit that even though they raised objections to many questions but only in one case the error was rectified.

2. Later, the respondents on 04.12.2015 changed their answer key in respect of three other questions to which the provisional answer key had correct answers. Thus, as per the applicants, the three correct answers (as published earlier in the provisional answer key) were changed wrongly in the final answer key. Applicant No.1 immediately submitted a representation on 08.12.2015, in this regard. This was not responded to and the respondents published the mark statement on 02.03.2016 wherein the applicant No.1 has been shown to have obtained 74 marks, applicant No.2 to have obtained 75.75 marks, applicant No.3 to have obtained 78 marks and applicant No.4 to have obtained 78.75 marks. As per Notice dated 26.04.2013, candidates of general category were required to have at least 40% minimum qualifying marks in Tier-I Examination to qualify for further stages or selection. The applicants contend that they have been wrongly excluded from participation in further stages of selection as they have not been awarded credit of their correct answers and subjected to deduction of marks on account of

negative marking despite their answers being correct. Had they been given the credit of marks for their correct answers, they would have got positive marks for their correct answers and would have secured more than 40% marks.

3. Aggrieved, the applicants have impugned the statement of marks issued on 02.03.2016 (Annexure A/1) and sought for following reliefs in the current O.A.:-

- “(a) Quash and set aside the impugned statement of marks issued on 02.03.2016 placed at Annexure A/1.
- (b) Direct the respondents to re-evaluate the answer sheets of the applicants and other candidates by applying correct answers to the various questions mentioned above and also either by deleting or by granting grace marks to the wrong questions.
- (c) Prepare a revised result for the paper 1 (qualifying examination)- the written test conducted on 31/5/2015.
- (d) Further consider the applicants for appointment in the selection process with all consequential benefits.
- (e) Costs of the process.
- (f) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicants and against the respondents in the facts and circumstances of the case.”

4. Respondents No.1 & 2 have filed their reply confirming the factual position. The respondents state that vide Notice dated 07.09.2015, the Board uploaded the Answer Key for the said posts. Thereafter, vide Notice dated 04.12.2015, final Answer Key of the four questions was changed. Later, marks of the said posts were uploaded on 02.03.2016.

5. It is contended that the Answer Keys of 04 questions was changed after representation of the candidates. However, in the second last para of Final Answer Key dated 04.12.2015, it was clearly mentioned that no further correspondence shall be entertained in respect of the Answer Keys. Therefore, question of taking action on the representation of the applicant dated 08.12.2015 did not arise especially when the Final Answer Key had already been issued after taking into account various objections raised by the participating candidates.

6. Without disputing the basic facts, counter reply has been filed by respondent No.4 stating that this application is time barred under Section 21 of the Administrative Tribunals Act, 1985 and the O.A. be dismissed with costs. Reply has also been filed by respondent No.5 stating that no action is to be taken by them.

7. We have gone through the facts of the case carefully and considered the rival submissions. The entire controversy in the instant O.A. hovers around the alleged discrepancies in the model answer key published by the respondents in Tier-I Examination. The case of the applicants is that the answer key of objective type written examination, for the aforementioned Post Codes was published on 07.09.2015. To the wrong answers in the provisional answer key, the applicants submitted their objections, out of which only one was rectified. However, in the so called final answer key published on

04.12.2015, even the three correct answers published earlier, were changed, giving incorrect answers. The applicants aver that this wrong information provided by the DSSSB has led to deduction of marks to their right answers coupled with negative marking causing severe prejudice to them. They have thus prayed for re-evaluation of the answer sheets by applying the correct answers either by deleting or by granting grace marks for the wrong questions/answers.

7.1 The respondents, on the other hand, state that in the Notice dated 07.09.2015, it was made clear that discrepancies relating to answer keys will be entertained upto 22.09.2015 and no representation would be entertained thereafter. This exercise was completed and final answer key was published on 04.12.2015. No genuine candidate was ignored and marks have been correctly awarded to the candidates as per the final answer key. Since the applicants did not secure the minimum qualifying marks they are now unnecessarily agitating the matter.

7.2 During the course of hearing, learned counsel for the applicant Sh. Ajesh Luthra vehemently argued that grave injustice has been meted out to the candidates by awarding them less marks (coupled with negative marking) based on the wrong answer key published by the respondents on 04.12.2015. He stated that respondents have a legal duty towards the public and that evaluation has to be done

by applying correct answers. He argued that genuine candidates like the applicants have been excluded from the selection due to the substantial error of the respondents in awarding less marks to the answers offered by them. Hence, he prayed that if a wrong has been committed by the respondents then the same should be rectified by intervention of the Court either by way of re-evaluation or by setting up a Committee to look into the matter afresh.

7.3 Per contra, the learned counsel for the respondents Sh. Amit Anand submitted that similar issue has been examined by the Hon'ble Supreme Court in **Civil Appeal No. 367/2017** (Ran Vijay Singh & Ors. Vs. State of U.P. & Ors.) on 11.12.2017. He drew our attention to paras-17, 18 and 19 of the aforesaid citation in which the Hon'ble Supreme Court has held that:-

"17. It was submitted by learned counsel for the appellants that the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 and the Rules framed thereunder do not provide for any re-evaluation of the answer sheets and, therefore, the learned Single Judge ought not to have undertaken that exercise at all. Reference was made to the following passage from Mukesh Thakur which considered several decisions on the subject and held:

"In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

18. A complete hands-off or no-interference approach was neither suggested in Mukesh Thakur nor has it been suggested in any other decision of this Court – the case law developed over the years admits of interference in the results of an examination but in rare and exceptional situations and to a very limited extent.

19. [In Kanpur University v. Samir Gupta](#)³ this Court took the view that “.... the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct.” In other words, the onus is on the candidate to clearly demonstrate that the key answer is incorrect and that too without any inferential process or reasoning. The burden on the candidate is therefore rather heavy and the constitutional courts must be extremely cautious in entertaining a plea challenging the correctness of a key answer. To prevent such challenges, this Court recommended a few steps to be taken by the examination authorities and among them are: (i) Establishing a system of moderation; (ii) Avoid any ambiguity in the questions, including those that might be caused by translation; and (iii) Prompt decision be taken to exclude the suspect question and no marks be assigned to it.”

He further submitted that the Hon'ble Supreme Court in the same judgment has held that:-

“23....“The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners.”

8. We are inclined to agree with the contention of the respondents that if at all there was a discrepancy in framing the questions or publishing the answers, its implications were applicable to all the candidates appearing for the exam and not for the applicants alone. In the instant case, the respondents examined the objections raised by the candidates, rectified the errors wherever

found necessary and published the final answer key. Merely because the applicants did not succeed in a public exam in which they participated, cannot be the ground to allow them to question the process of evaluation. In this regard, we refer to paras-31 & 32 of the aforesaid judgment wherein the Hon'ble Supreme Court has observed that:-

"If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer."

9. In the instant case the entire process of selection has already attained finality and the successful candidates would already have been allocated the posts for which they have qualified. Any intervention by the Tribunal at this stage would only derail the selection process, which is not desirable. In view of the aforementioned facts and discussions, the O.A. is dismissed. MA-1333/2017 also stands disposed of. No costs.

(S.N. Terdal)
Member(J)

(Praveen Mahajan)
Member (A)

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