CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

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ORIGINAL APPLICATION NO.060/01243/2017
Chandigarh, this the 3rd day of May, 2018

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CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)

...

Sonam Saini, aged 23 years, daughter of Sh. Surjit Singh resident of House No. 314, Street No. 11, Aman Nagar, Patiala City.

....Applicant

(Argued by: Mr. Rohit Sharma, Advocate)

Versus

1. Bharat Sanchar Nigam Ltd. through its Assistant General Manager (Rectt-1), Corporate Office, Recruitment Branch, Eastern Court, 2nd floor, room No. 223, Janpath, New Delhi.
2. Bharat Sanchar Nigam Ltd. through its Chief General Manager, Punjab Circle, Plot No. 2, Himalaya Marg, Sub City Centre, Sector 34-A, Chandigarh.

..... **Respondents**

(Argued by: Mr. D.R. Sharma, Advocate)

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in the instant Original Application (O.A.), instituted by applicant Sonam Saini, daughter of Sh. Surjit Singh, is to the impugned result dated 21.11.2016 of the candidates provisionally selected for the post of Junior Engineer (for brevity, JE), through the online competitive examination, in pursuance of advertisement dated 20.06.2016 (Annexure P-1).

2. The epitome of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy, involved in the instant O.A., and exposited from the record, is that in response to the pointed advertisement, the applicant applied for the post of J.E., under OBC category. She appeared for the online examination on 26.09.2016, as per roll no. slip (Annexure P-2). Subsequently, the respondents declared the

result of the examination, in which the applicant did not succeed, and has challenged its validity.

3. The case set up by the applicant, in brief, insofar as relevant, is that key to questions no. 54, 65, 89, 90, 123 and 152 demonstrated wrong answers, and the candidates who had given wrong answers were wrongly granted the marks, whereas the candidates who gave correct answers were ignored. The applicant made representation dated 26.11.2016 (Annexure P-4), but in vain.

4. Levelling a variety of allegations and narrating the sequence of events, in details, in all, the applicant claims that since the candidates who gave wrong answers were given marks, so the result of the candidates for the post of JE is vitiated, arbitrary and illegal. On the strength of the aforesaid grounds, the applicant seeks to quash the result of the examination held for the post of J.E., in pursuance of advertisement (Annexure P-1), in the manner, indicated hereinabove.

5. On the contrary, the respondents have refuted the claim of the applicant, and filed the written statement, wherein it was, inter-alia, pleaded as under:-

> That it is submitted that the examination for Direct Recruitment (Erstwhile TTA) was held between 25.9.2016 to 29.9.2016 in two sessions each viz Morning and Evening session. Questions for each session for the exam were separate. As per Standard Operating Procedure after conducting the examination, the question of each session along with their provisional Answer Keys were uploaded on examination website viz.externalexam.bsnl.co.in on 17.10.2016 and candidates were asked to upload/ submit their queries/complaints/ representations etc. on the question papers and answer keys till 28.10.2016. Thereafter, an Expert Committee has been formed on 19.10.2016, for examining the discrepancies in question papers and answers keys and considered the queries / complaints / representations received from the candidates till 28.10.2016 and submitted its report. On the basis of the report / recommendations of the Committee and BSNL Notification for DRJE 2016 the result / merit list was declared on 22.11.2016. There is no scope of further review of final answer key as per Standard Operating Procedure for conducting online examination in BSNL. Any exercise of powers to over ride the decision of the Expert Committee will be contrary to SOP and also it may create a complex situation in the recruitment

process and may result much litigation. The applicant has submitted her representation on 26.11.2016 i.e. after the last date of submissions of representation / queries by the candidates. The contention of the applicant that the answers of question no. 54, 65, 89, 123, 152 in answer keys are wrong is denied. The answer keys have been finalized by the expert committee after taking into consideration the queries and representations of the candidates, therefore, the contention of the applicant is not sustainable. Furthermore, from the perusal of the prayer of the applicant it reveals that she is seeking quashing of the result of the candidates provisionally selected as Junior Engineer. The applicant has not arrayed the selected candidates as party, nor she has given names of such selected candidates who have been granted marks for these questions. The Apex Court time and again held that the Courts donot have expertise and are not equipped to test correctness or otherwise of methods which have been adopted internationally for assessing the answers and interference in technical and academic matters is allowed only if violation of law or malafide motive is proved. In the present case, admittedly, no allegations of malafide have been made in any of the petitioners. Thus, the O.A. filed by the applicant is liable to be dismissed being devoid of merits.**"**

6. According to the respondents, that an expert committee examined the question papers, answer sheets and duly considered the complaints/representations/objections received from the candidates, and thereafter submitted its report. On the basis of the recommendations of the committee/report, the merit list/result was duly notified on 22.11.2016. It was also alleged that even otherwise, no relief can be granted, to the applicant, in the absence of impleadment of selected candidates. Instead of reproducing the entire contents of the reply, and in order to avoid the repetition of the facts, suffice it to say that while acknowledging the factual matrix, and reiterating the validity of the impugned result, the respondents have stoutly denied all other allegations and grounds, contained in the O.A., and prayed for its dismissal. That is how we are seized of the matter.

7. Having heard learned counsel for the parties, having gone through the record, with their valuable help, and after considering the entire matter, we are of the firm view that there is no merit and

the instant O.A. deserves to be dismissed for the reasons mentioned herein below.

8. What cannot possibly be disputed here is that the applicant herself has applied and appeared for the recruitment process, in pursuance of the advertisement (Annexure P-1). Having remained unsuccessful in selection, she has filed the instant O.A., challenging the result on the ground that the key provided the wrong answers to the above mentioned questions. However, no material, much less cogent, is forthcoming on record that she would be benefitted in any manner, in this regard, particularly when keeping in view the complaints/representations/objections of the candidates, the expert evaluation committee was formed, which examined the matter, in the right perspective and gave its report. In the wake of recommendations/report of the expert committee, the result was duly declared. Since the applicant herself applied and appeared, and having remained unsuccessful in the examination, she has challenged the validity of the result. As such, she is stopped from challenging the result, and she has no locus standi in this regard. It is now well settled principle of law that a person, who consciously take part in the process of selection, is stopped from challenging the result. This matter is no more *res integra*, and is now well settled.

9. An identical question came to be decided by the Hon'ble Apex Court in the case of **Madras Institute of development Studies Vs. K. Sivasubramaniyan,** (2016) 1 SCC 454, wherein it was ruled as under:-

"20. The question as to whether a person who consciously takes part in the process of selection can turn around and question the method of selection is no longer res integra.

21. In Dr. G. Sarana vs. University of Lucknow & Ors., (1976) 3 SCC 585, a similar question came for consideration before a three Judges Bench of this Court where the fact was that the petitioner had applied to the post of Professor of Athropology in the University of Lucknow. After having appeared before the Selection Committee but on his failure to get appointed, the petitioner rushed to the High Court pleading bias against him of the three experts in the Selection Committee consisting of five members. He also alleged doubt in the constitution of the Committee. Rejecting the contention, the Court held:-

> "15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee.

This view gains strength from a decision of this Court in Manak Lal's case where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting: "It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point."

22. In Madan Lal & Ors. vs. State of J & K & Ors. (1995) 3 SCC 486, similar view has been reiterated by the Bench which held that:-

> "9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned.

Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla1 it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without

protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

23. In Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576, this Court reiterated the principle laid down in the earlier judgments and observed:- "We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection.

The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

24. In the case of Ramesh Chandra Shah and others vs. Anil Joshi and others, (2013) 11 SCC 309, recently a Bench of this Court following the earlier decisions held as under:-

> "In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

10. Again, the same view was reiterated in the case of **Chandra Prakash Tiwari Vs. Shakuntala Shukla**, 2002 AIR (SC) 2322, wherein it was held as under:-

> “There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.”

11. Thus, it would be seen that the applicant is estopped from and has no locus-standi to challenge the impugned result, at a subsequent stage.

12. There is yet another aspect of the matter, which can be viewed entirely from a different angle. It is not a matter of dispute

that similarly situated applicants Ratesh Kumar and Others had challenged the validity of the same very impugned result on the same very grounds and the validity of the result was upheld, vide order dated 09.03.2017 in O.A. NO. 223/2017 (Annexure R-1), by the Central Administrative Tribunal, Principal Bench, New Delhi, which, in substance, is as under:-

> **"**We have heard both sides and have perused the material placed on record. We find that the discrepancies pointed out by the applicants in the examination conducted by BSNL can be grouped into two categories. The first category pertains to mistakes in the questions and the evaluation process. The second category pertains to wrong classification of candidates in different categories, such as, reserved or unreserved. As far as the first category of discrepancies we are concerned, we find that the respondents first published the model answer key on 17.10.2016. They invited objections by the candidates till 28.10.2016. They constituted an Expert Committee to examine the objections received and prepare the final answer key. Evaluation has been done on the basis of final answer key prepared after taking into account the report of the Expert Committee. Thus, the respondents have correctly followed the process and have maintained transparency. The applicants have asserted that even in the final answer key prepared, there were several mistakes and, therefore, evaluation based on this has lead to wrong result. In our opinion, the difference of opinion between Experts as regards to which was correct answer to question persists. This process cannot go on indefinitely. The respondents on their part have followed the correct process by giving one opportunity to the candidates to raise objections on the model answer key. Their objections thereafter have been examined by the Expert Body. It was not necessary for them to give any further opportunity to candidates to file objections to the final answer key. If this is allowed, no result can ever be finalised.
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> 6. Thus, as far as procedure is concerned, we do not find any infirmity in the action of the respondents. Courts are also not equipped to sit in judgment over report of Expert Committees. Therefore, evaluation based on the answer key prepared by the Experts needs to be accepted as final.**"**

13. Therefore, once the validity of the impugned result has already been upheld by the Central Administrative Tribunal, Principal Bench, in that eventuality, we see no reason to differ with the conclusion arrived at by the Principal Bench. Moreover, the judgment (Annexure R-1) is relevant to decide the real controversy between the parties, on the basis of doctrine of stare decisis. Thus seen from any angle, no ground, much less cogent, to set aside the

impugned result is made out, in the obtaining circumstance of the case.

14. As a consequence thereof and in the light of the aforesaid prismatic reason, as there is no merit, so the instant O.A. is hereby dismissed as such. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
Dated: 03.05.2018

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