

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

OA. No. 060/00955/2016

Date of Decision : 29.11.2017

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

Anshuman Jaspal, son of Sh. Rajesh Jaspal, resident of H. No. 280,
 Sector 7-A, Chandigarh.

.....Applicant

BY ADVOCATE: **Mr. Parveen Gupta**

VERSUS

1. Chandigarh Administration through its Secretary, Deartment of Engineering, Deluxe Building, Sector 9, Union Territory, Chandigarh.
2. The Chief Engineer, Union Territory, Chandigarh Administration, Chandigarh, Union Territory Secretariat, Deluxe Building, 3rd Floor, Sector 9, Union Territory, Chandigarh.
3. The Superintending Engineer, Construction Circle-1, Union Territory, Chandigarh Administration, Chandigarh, Union Territory Secretariat, Deluxe Building, 3rd Floor, Sector 9, Union Territory, Chandigarh.

.....Respondents

BY ADVOCATE: **Mr. Rakesh Verma proxy counsel for Mr. Aseem Rai**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicant had applied in response to an advertisement on 29.06.2015 for filling up the post of 24 Junior Engineer (Civil) in the Public Health Wing, UT Chandigarh. Applicant appeared in the written test on 17.07.2016. Annexure A-4, answer key to the written test was uploaded on the website by the respondents with a public

notice inviting objections from the candidates to the answer keys. The applicant submitted his objections through email.

2. Applicant argues that question No. 5 was of a higher level than can be expected from a candidate of Civil Engineering. Question No. 6 is erroneous and does not have the possibility of a correct answer in the answer options provided. Question No. 17 is incorrect as multiple answers are possible. The standard of question No. 21 is one requiring higher degree of knowledge in the field of Computer Science and Engineering. The applicant takes the help of Oxford English Dictionary to analyse the answer relating to Question No. 15 stating that "Senility and Dotage" have the same meaning. The applicant had submitted his representation to the respondent No. 3.

3. The applicant secured 89 out of 100 marks in Paper I (Civil Engineering) and 21 marks out of 49 in Paper II Set D. Applicant secured 110 marks as aggregate marks in both the papers. As against the requirement of securing 45% marks, the applicant should have secured 22.05% i.e. 22% (rounded off). The applicant is short by one mark as he has secured 21 marks in Paper II after cancellation of question No. 23 by the respondents for all those who appeared in the Examination. Applicant argues that if one grace mark was given for the question which was cancelled in Paper II, he would have made the rank for selection as he would have got 22 marks.

4. The applicant's argument is that instead of cancelling question No. 23, grace marks should have been awarded for this question. Applicant's prayer in the OA is for grant of grace marks in paper II to declare him eligible for appointment to the post. Thus, the applicant is seeking the grant of one grace mark as a special case to him so that he would have the required qualifying marks to be eligible for appointment.

5. The applicant is strongly resisted by the as follows:- Applications from eligible candidates were called for 31 posts of Junior Engineers (Civil) online through-DAC. 4809 candidates were found eligible. The examination was conducted on 27.07.2016 and 2731 candidates appeared in the exam. After the exam, the question and answer keys were uploaded in the website in C-DAC to seek comments/observations of the candidates online. Some candidates raised objections related to objective Paper I and objective Paper II and answer keys.

6. An Expert Ccommittee comprising of Sh. Rajesh Sharma, Professor, CCET, Chandigarh, Sh. Roshan Lal, Assistant Professor, PEC, Chandigarh and Sh. Sanjay Sharma, Professor, Department of Civil Engineering, NITTR, Chandigarh was constituted to examine the objections received from candidates and submit recommendations. The Committee submitted its recommendations on 19.08.2016. A meeting of the core committee was held on 26.08.2016 to discuss the recommendations of the expert committee and it was decided as follows:-

Objective Paper I

(a) Out of total 100 questions only 3 questions were found to be incorrect. Therefore, the marking shall be carried out by deleting 3 questions i.e. marking shall be done only for 97 questions.

(b) The correct answer for 5 questions shall be amended and the marking shall be given to the candidates, accordingly.

Objective Paper II

(a) Out of total 50 questions only 1 question is found to be incorrect. Therefore, the marking shall be carried out by deleting 1 question i.e. marking shall be done only for 49 questions.

(b) The correct answer for 4 questions shall be amended and the marking shall be given to the candidates accordingly.

7. Based on above recommendations received and examined by the two committees, the papers were evaluated and final result was published. The applicant in the OA had got 89 marks in paper I and 21 marks in paper II. Applicant failed to acquire qualifying marks required in paper II i.e. 22.5 as per notified selection criteria published in the advertisement dated 29.06.2015. Hence, applicant was not given an offer of appointment to the post of Junior Engineer (Civil).

8. The Bench notes that all the candidates who appeared in the exam, have been given uniformity of treatment in so far as they were assessed by the answer key which was cleared by two committees.

9. Respondents argue that the syllabus of paper I and II was published on the website before conduct of the examination and the questions put to the candidates were as per syllabus uploaded. Hence, complaint of the applicant about the question being out of

syllabus is not correct. The criteria for qualifying marks was also made known to the candidates who had applied for the post. The suggestions received after uploading the answer key, were examined by two expert committees and the so drawn up answer key was used to uniformly assess all persons who appeared in the examination. The applicant having participated in the exam cannot now complain about the syllabus or the answers as all persons who appeared, were assessed by the same criteria after giving all those who participated a chance to express their views about the answer key, which was considered and finalized by two Committees as detailed supra.

10. The applicant being short of one qualifying mark out of 22 marks required in Paper II, having participated in the exam, now seeks to find a reason to give himself that one mark. Applicant by praying for one grace mark, is aspiring to qualify by being given a differential treatment from the other 2730 candidates who participated in the exam. Such differential treatment is not to be entertained, particularly, after the results have been declared and the applicant finds himself short of one qualifying mark in paper II.

11. All examinees including the applicant have been treated equally by ignoring the one disputed question and no person has been given any advantage. The applicant's contention that his answer was correct and hence he should be awarded marks in order to make him qualify in the examination when the same benefit is denied to others, is not acceptable. It is for the respondents to set the question paper, and also draw up the answer from the multiple

choices provided. Respondents have published the answer key, called for response from the candidates, taken note of the same and made corrections wherever considered necessary. It is not a case as if the persons, who appeared and attempted the examination, should be allowed the last word on what is to be included or excluded, or dictate the correctness of the answers. In such a situation, normally most persons who apply for the post are prone to carry the view that his answer is correct and he should be assigned the right to be selected. It is not for the applicants to demand that their own point of view be treated as final and selection be made accordingly. Somewhere there is need to draw line on the system of award of marks in an examination or the exercise would turn into an endless process of debate on what is right and what is wrong or the entitlement of marks. Applicant's prayer is that the said question which was treated by the respondent, as ignored, should be treated as correct in his case as his answer was correct and marks be awarded accordingly. This would violate the right to equality as he is expecting a treatment different from others similarly placed, who also took the examination with applicant. This is not a case where the answer key was kept undisclosed or under wrap. It was openly published for all to see and offer suggestions. But the recruiting body and the examiner would reserve the right to have the final say in the matter of answers, failing which this would be an endless exercise.

12. The Tribunal while exercising the power of judicial review should not enter into findings of facts for which it may not possess the

expertise. In this case, it is left to respondents who are experts in the matter to take a final decision. It is not for the applicant and other similarly placed to dictate the manner in which they will be evaluated for the examination. The Apex Court has in a catena of decisions held that, judicial review is not an appeal from a decision but a review of the manner in which the decision was made. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafide. None of the above is attracted in this matter. Judicial review is not an appeal from a decision, but a review of the manner in which the decision is made. It would be erroneous to think that courts sit in judgement not only on the correctness of the decision making process, but also on the correctness of the decision itself. Power of judicial review is meant to ensure that the individual receives fair treatment, which in this case has been met vis-a-vis the applicant and all others similarly placed. In OA No. 180/00133/2014 titled *Firos K.A. Vs. BSNL and other* connected OAs, the Tribunal had rightly observed as follows:-

“We are not here to question the erudition, knowledge or the expertise of the experts nor are we to question the competency of such experts. There were no large scale discontentment among the candidates. There was no unfairness or unreasonableness also. Only 5 among the candidates (nearly ten thousand) have come forward with the allegation as stated in these O.As. There is no illegality or unfairness in the conduct of the selection process nor is there any malafides or favouritism. The whole selection process involving nearly ten thousand candidates cannot be upset because of such allegations made by 5 among them. We find no reason to interfere with the selection process undertaken by the respondents.”

13. The OA lacks merit and is accordingly dismissed.

(P. GOPINATH)
MEMBER(A)

(JUSTICE M.S. SULLAR)
MEMBER(J)

Dated: 29.11.2017
ND*

