Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH JABALPUR

ORGINAL APPLICATION NO. 200/00187/2015

Jabalpur, this Wednesday, the 11th day of April, 2018

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ajay Kumar Tiwari, S/o Shri Ram Kumar Tiwari,
Aged about 36 years, Occupation-Service as Supervisor
at Ordnance Factory Khamaria, Jabalpur,
R/o Dada Dhani Ram Ward, Maharajpur, Mandla,
District Mandla (MP) **- APPLICANT**

(By Advocate – Shri Ravendra Tiwari)

Versus

1. Union of India through the Secretary,
Ministry of Defence, South Block, New Delhi-110 001

2. Chairman/Director General Ordnance Factory Board,
10-A, Saheed Khudhee Ram Bose Road, Kolkata-700 001

3. The General Manager, Ordnance Factory Khamaria,
Jabalpur (MP)-482005

4. Principal Director, Indian Ordnance Factories,
Institute of Learning Khamaria, Jabalpur
District Jabalpur (MP)-482005 **- RESPONDENTS**

(By Advocate – Shri S.K.Mishra)

(Date of reserving the order: 26.03.2018)

O R D E R

By Navin Tandon, AM-

The applicant is aggrieved by rejection of representation submitted by him for revaluation of his answers given by him in the Limited

Departmental Competitive Examination (for brevity 'LDCE') held for promotion to the post of Charge-man.

2. This is the second round of litigation. The applicant had earlier approached this Tribunal by filing Original Application No.200/00714/2014, which was disposed of vide order dated 16.09.2014 (Annexure A-15) with a direction to the respondents to decide his representation dated 23.06.2014. In compliance to the said direction the respondents have passed order dated 27.11.2014 (Annexure A-16) stating that since there was no provision for revaluation in the notice dated 29.06.2013 issued by the Ordnance Factory Board, the representation submitted by the applicant seems to be baseless.

3. In this Original Application the applicant has, therefore, sought for the following reliefs:

> "08(I) To call the entire record of the examination organized since 28-09-2013 to 30-09-2013 by the respondent No.4 form his office.
>
> (II) To direct the respondent No.4 to make correct assessment of the options of the questions in accordance with Manuals, Rules, Regulations and other recognized record for the purpose and to revalue the marks given to the applicant.
>
> (III) To declare the applicant to be entitled to be promoted to the post of Charge-man.
>
> OR
>
> To direct the respondents to be promoted to the post of Chargeman.
> (IV) Any other relief this Hon'ble Tribunal find fit and proper in the circumstances of the case".

4. The case of the applicant is that while he was working as Supervisor (NT) (Stores) under the respondents the applicant participated in the LDCE held between 28.09.2013 and 30.09.2013 for promotion to next higher post. He claims that since he had not been given any marks in respect of several questions given by him in three question papers of (i) General Knowledge, (ii) Labour Accounting and Factory accounting, and (iii) Stores Procedure and Material Management, he obtained copies of question papers (Annexure A-1) under the Right to Information Act.

4.1 The applicant submits that the applicant has not been given any marks in respect of Question No.9 of the Paper – Store Procedure and Material Management of Sec-C. Though the option 'C' chosen by the applicant is the correct answer to the question in accordance with OFB Manual 2005 (Annexure A-2). The question No.9 read thus:

> "(9) Bill of Entry is prepared by :
> (A) DGOF (B) Accounts Office (C) EHQ (D) Shipping Company"

The answer given by the applicant was "C" which was correct as per Office Manual,2005 (Annexure A-2), however, no marks were given to him in respect of this question.

4.2 Similarly, by placing reliance on various Manuals, Material Management, Labour Accounting/ Factory Accounting Book, the applicant has stated that he has not been given any marks for the correct answers given by him in respect of Questions Nos.41, 59, 61, 65, 67, 74,

87, 90, 93 of Subject: Store Procedure and Material Manager of Section-C. Further in respect of Questions Nos.42, 72 & 97 of Labour Accounting and Factory Accounting he has also not been given any marks.

4.3 The applicant submits that the respondent No.4 wrongly assessed the answers given in the question papers and did not give marks to the applicant for the same. His representation was rejected solely on the ground that there is no provision of revaluation.

4.4 The applicant submits that his case is not a case of revaluation but of re-computation and of correction of mistake. In support of his claim the applicant has placed reliance on the decision of Hon'ble High Court of Delhi in the matters of **D.P.S.Chawla** Vs. **Union of India and others**, W.P.(C) No.6201 of 2011 decided on 24.10.2011 (Annexure A-20) as well as decision of Chennai Bench of this Tribunal in the matters of **V.Rajkumar** Vs. **Union of India and others**, Original Application No.706 of 2014 decided on 07.04.2016.

5. On the other hand, the respondents have submitted that the selected candidates have been given appointment in the order of merits. Having obtained less mark in merit, the applicant could not be selected for said post. All the questions were based on the latest amendment information. While checking the answer copies, respondent No.4 has thoroughly and cautiously seen the answers provided in the master answer keys of these

subjects. All the questions and their respective answers are based on the questions provided by the experts of respective papers and the question booklets were duly checked by the answer furnished by them. They have further stated that in catena of judgments the Hon'ble Supreme Court has held that if there is no provision for revaluation of answer sheet in the rules and regulations, a direction to this effect cannot be issued. In this regard the respondents have placed reliance on the decision of Calcutta Bench of this Tribunal in the matters of **Pratap Chakraborty** Vs. **Union of India and others**, O.A. No.908 of 2012 decided on 30.11.2012 (Annexure R-1) as well as the decision of Hon'ble Supreme Court in the matters of **H.P.Public Service Commission** Vs. **Mukesh Thakur & another**, AIR 2010 SC 2620.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. As regards the contention of the respondents that if there is no provision for revaluation of answer sheet in the rules and regulations, a direction to this effect cannot be issued, we find that a similar issue had arisen before the Hon'ble High Court of Delhi in the matters of **D.P.S.Chawla** Vs. **Union of India and others**, W.P.(C) No.6201 of 2011 decided on 24.10.2011 (Annexure A-20), relevant paragraphs of the said order read thus:

*"**(9).** It is the contention of the petitioner that the present is not a case of re- evaluation but of re-computation and of correction of a mistake. On the said contention of the petitioner, vide order dated 26 th August, 2011 (supra) the respondents were directed to file an affidavit as to whether the answer of "935-960 MHz" given by the petitioner was correct or not.*

***(10).** The respondents in the affidavit filed have failed to controvert that the answer given by the petitioner is correct. It is however stated that total 8594 candidates had appeared in the examination and of which 1867 were declared successful on 8th July, 2008; that all answer sheets were examined in an impartial manner; that the paper setter besides the question paper had also provided an answer key; that the answer sheets were evaluated by fairly high level officers of the department who are experts in the subject; that the answer sheets were distributed to a number of evaluators all of whom were to, besides being guided by the answer key, also use their own wisdom; that the examiner is the final authority in the matter of evaluation; that the result has attained finality; that the next examination is scheduled to be held in December, 2011/January, 2012. It is however admitted by the respondents that some of the other examiners/evaluators had marked the answer (c) "935- 960 MHz" to be correct and awarded marks therefor. It is however pleaded that if the matter is to be reopened, it needs to be reopened qua all the candidates who had appeared in the examination and which is not possible as the answer sheets have since been weeded out.*

***(11).** The counsel for the respondents has also placed reliance on Pramod Kumar Srivastava Vs. Bihar Public Service Commission AIR 2004 SC 4116 and on Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. Vs. Khushboo Shrivastava 2011 (9) SCALE 63 both deprecating the practice of directing re-evaluation in the absence of any provision therefor.*

***(12)**. Per contra, the counsel for the petitioner refers to Guru Nanak Dev University Vs. Saumil Garg (2005) 13 SCC 749 and to Manish Ujwal Vs. Maharishi Dayanand Saraswati University (2005) 13 SCC 744 where in the face of defects in the answer key it was held that merit should not be a causality.*

***(13).** It is also the contention of the counsel for the petitioner and not controverted by the respondents that vacancies in the post to which the petitioner would become entitled to be promoted if declared successful, exist.*

***(14)**. The petitioner has also placed before this Court independent material to show that the answer given by him of "935-960 MHz" is the correct answer.*

***(15).** The judgments relied upon by the Tribunal as also by the counsel for the respondents before us are relating to questions requiring essay type*

answers and do not relate to answers to multiple choice questions, as the subject question in the present case was. While in the evaluation of an essay type answer, subjective assessment of the examiner/evaluator assumes importance and is prohibited under the Rules, it cannot be said to be so in case of answers to multiple choice questions. In multiple choice questions, generally, there is only one correct answer and evaluation of such answers requires the examiner/evaluator to only evaluate whether the correct choice has been exercised by the examinee and if so to award marks therefor; there is no scope of controversy or possibility of different examiners awarding different marks for the correct choice exercised. In multiple choice questions, the examiner/evaluator strictly speaking is left with no role whatsoever and in fact most of the examinations with multiple choice questions have now substituted the examiners/evaluators with an Optical Mark Reader (OMR). Thus, the Rule prohibiting re-evaluation framed with respect to the essay type answers cannot be said to be applicable to the answer to multiple choice questions.

(16). *From the record before this Court, it is amply established that the correct answer to the question aforesaid was "935-960 MHz" as answered by the petitioner and which was placed in the question paper as option (c) but in the answer key was erroneously shown as option (b). Once, it is established that the answer is correct, the error in not giving the marks for the same, is but an error akin to a mistake / re-totaling which under the Rules (supra) of the examination also is permitted. We are therefore of the opinion that the Tribunal erred in applying the prohibition under the Rule as to re-evaluation to such a mistake also.*

(17)*. We may notice that the Supreme Court recently in CBSE Vs. Aditya Bandopadhyay (2011) 8 SCC 497 has held the examinees to be entitled to inspection of their answer sheets under the Right to Information Act, 2005. Such right to inspection has to be given a meaning and cannot be made to be an empty exercise. Right to inspection carries with it a right to seek judicial review of error/mistake as has occurred in the present case and is intended to eliminate arbitrariness and injustice.*

(18). *In the present case we find injustice to have been meted out to the petitioner. Instead of being declared successful, owing to the mistake/error of the respondents themselves, he has been declared unsuccessful. This Court in exercise of powers of judicial review is not called upon to undertake any exercise of re-appreciation/re-assessment of the answer of the petitioner but to only correct the obvious mistake. We therefore are of the opinion that the power of judicial review cannot be denied in such cases.*

(19). *As far as the contention of the counsel for the respondents of the petitioner alone being not entitled to the benefit of the error/mistake in the answer key and it being not possible to re-evaluate of answer sheets of others is concerned, we have before this Court the case of the petitioner*

> *only who has been agitating the same since the declaration of the result. No other candidate is stated to be so pursuing the matter. Moreover, the answer sheets having been reported to have been weeded out, the possibility of grant of relief to petitioner opening flood gates of litigation by others also does not arise".*

7.1 On perusal of the above order of Hon'ble Delhi High Court we find that after considering the decision of the Hon'ble Supreme Court in the matters of **HPSC** Vs. **Mukesh Thakur & another**, (supra), relied upon by the respondents, Hon'ble Delhi High Court has held that where powers of judicial review is not called upon to undertake any exercise of re-appreciation/re-assessment of the answer of the petitioner but to only correct the obvious mistake, judicial review cannot be denied in such cases.

8. We find that the present case is fully covered by the decision of Madras Bench of this Tribunal in the matter of **V.Rajkumar** (supra), relevant paragraphs of which read thus:

> *"**(2)**. Learned counsel for the applicant draws attention to Annexure A-13 document by which an elaborate representation was made by the applicant pointing out that the answer keys for several of the questions were wrong and a request was made to reconsider the valuation on the basis of correct answers. By Annexure A-18, the representation was disposed of stating that OFIL Avadi had intimated that OFIL Khamaria had informed that the question papers of LDCE-CM 2013 were set up by the Experts of that particular subject. Before publishing the question booklets and the answer sheets set wise, their respective answers were duly checked. Also, the latest amended information was followed while setting the question paper.*

(3). It is seen that whereas the applicant had raised specific queries and made allegations that the answer keys were wrong, the disposal of representation does not at all go into such specifics. *For example, Question No.2 in Labour Accounting and Factory Accounting, was posed as follows: ▯*

'The object of maintaining Cost Card is :'

A. Calculating earning of Piece work

B. Calculating the cost of Product of an item

C.Cost Ascertainment and Cost control

D. None of these.

The answer given by the petitioner was "C" which was correct as per Office Manual VI. However, the key answer as per LAFA answer key is "B". Even though the learned counsel elaborately took us through every question that had allegedly been provided an incorrect answer key, we mention only the above as a sample.

(4). In view of the above, the mere fact that the question booklets were prepared by experts and the answers were ' duly checked' is not sufficient to prove that the claim of the applicant is wrong and the answers were correct. *If the answer keys were incorrect as alleged by the applicant, it would be against the principles of natural justice to exclude him for marking the really correct answers.*

(5). The right course of action in such cases would be for the Competent authority to refer the representation to the experts who had set the question paper and provided the answer keys and call for their comments. Alternatively, the authorities could have referred the matter to an independent body of experts with a view to verifying the claim of the applicant. In the event of the experts admitting to certain errors or validating the claim of the applicant, it would be incumbent on the authorities to revisit the whole issue with a view to neutralising the effect of such erroneous evaluation leading to undeserved / unfair inclusion and exclusion of candidates in the final select list. Neither of the options seems to have been exercised in the instant case and therefore, the impugned order at Annexure A-18 cannot be sustained. The same is accordingly quashed and set aside.

(6). The respondents are directed to refer the representation at Annexure A-13 of the application dated 13.12.2013 followed by representation dated 02.01.2014 and 12.1.2014 Annexure A-14 and A-16 as well as the relevant answer keys to a small committee of experts to be constituted by them for this purpose. Based on the report of the Committee, necessary action shall be taken and the respondents shall, thereafter, pass a speaking order on the representations / action taken as per law and apprise the applicants.

(emphasis supplied by us)

9. In the instant case also it is seen that whereas the applicant had raised specific queries and made allegations that his several questions were wrongly given no marks, by placing reliance on various rules/regulations/manual, his disposal of representation does not at all go into such specifics. In the instant case also the mere fact that the question booklets were prepared by experts and the answers were 'duly checked' is not sufficient to prove that the claim of the applicant is wrong and the answers were correct.

10. Considering the above scenario, the Madras Bench of the Tribunal in the case of **V.Rajkumar** (supra) held that the right course of action in such cases would be for the Competent authority to refer the representation to the experts who had set the question paper and provided the answer keys and call for their comments. Alternatively, the authorities could have referred the matter to an independent body of experts with a view to verifying the claim of the applicant. In the event

of the experts admitting to certain errors or validating the claim of the applicant, it would be incumbent on the authorities to revisit the whole issue with a view to neutralising the effect of such erroneous evaluation leading to undeserved / unfair inclusion and exclusion of candidates in the final select list. Neither of the options seems to have been exercised in the instant case by the respondents while rejecting the representation of the applicant.

11. As regards the contention of the respondents in para 5 of their reply that there is error of non-joinder of necessary party as the applicant has not made the selected candidate as a party-respondent, we find that along with rejoinder the applicant has placed a copy of the order of the Hon'ble Supreme Court in the matter of **Rajesh Kumar Vs. State of Bihar,** (2013) 4 SCC 690, wherein it has been held thus:

> ***"15.*** *There is, in our view, no merit in that contention of Mr Rao. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates as party-respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the "model answer key" which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the "model answer key" was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the "model answer key" to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in 'A' series question paper. Other errors were also*

> *found to which we have referred earlier. If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key".*

11.1 Since in the instant case also the applicant had raised specific queries and made allegations that his several questions were wrongly given no marks, by placing reliance on various rules/regulations/manual, his disposal of representation does not at all go into such specifics. Thus in view of the above finding of the Hon'ble Supreme Court in the matters of **Rajesh Kumar** (supra) we do not find any force in the contention of the respondents that there is error of non-joiner of necessary party in this case and accordingly same is rejected.

12. In the result, the Original Application is allowed. The impugned order dated 27.11.2014 (Annexure A-16) is quashed and set aside. The respondents are directed to refer the matter of the applicant to a small committee of experts to be constituted by them for this purpose, along

with all relevant materials. Based on the report of the Committee, necessary action shall be taken and the respondents shall, thereafter, pass a speaking order on the representations/action taken as per law and apprise the same to the applicant. This whole exercise shall be completed by the respondents within a period of three months from the date of communication of this order. No costs.

(Ramesh Singh Thakur) **(Navin Tandon)**
Judicial Member **Administrative Member**

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