

(2019) 03 CAT CK 0125

In the Central Administrative Tribunal

Case No : Original Application No. 2543 Of 2017

Sanjay Kumar

APPELLANT

Vs

Union Of India, Through Its Secretary And Other

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Citation : (2019) 03 CAT CK 0125

Hon'ble Judges : Nita Chowdhury, J; S.N. Terdal, J

Bench : Division Bench

Advocate : Ajesh Luthra, Gyanendra Singh

Final Decision : Dismissed

Judgement

Nita Chowdhury, J

1. By filing this OA, the applicant is seeking the following reliefs:-

"(a) Call for the records of the case including the original answer scripts of the applicants for the Typing Test towards the Combined Higher Secondary Level (10+2) Examination, 2015.

(b) Quash and set aside the impugned results declared by Staff Selection Commission, placed at Annexure A/1 and Annexure A/2 above.

(c) Direct the respondent to re-adjudge/evaluate the Typing answer scripts of the applicants and the candidates who appeared in the Typing Test through an independent agency, especially the typing answer scripts of the applicant and re-draw/revise the results of the Typing Test in accordance thereof.

(d) Further consider the applicants for appointment in pursuance to the CHSL (10+2) Examination, 2015 in accordance with their merit position taking into account their service preference.

(e) Accord all consequential benefits.

(f) Award Costs of the proceedings; and

(g) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicants."

2. The grievance of the applicants in this case is that they appeared in the examination conducted by the Staff Selection Commission for the post of Combined Higher Secondary Level Examination, 2015. However, the respondents have rejected their candidatures on the basis of typing test. According to the applicants, there are several discrepancies in the evaluation of their answer scripts of typing sheets. They represented to the respondents to show them their answer scripts, but the same has not been responded to. Being aggrieved by inaction of the respondents, the applicants have filed this OA seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they stated that the applicants applied for the said CHSL-2015 and appeared in Tier-I and Tier-II of the said written examinations. On the basis of their performance in the said written examinations, they were called for skilled test. All of them appeared in the skill test. Some of them appeared only in typing test and some appeared in typing test and data entry skill test. In the typing test, the applicants committed mistakes more than the cut-off percentage of mistakes fixed by the SSC. Hence, they were declared unsuccessful in the Typing Test.

3. 1 The applicants not being satisfied with the result of their Typing Test submitted their applications of under RTI Act, 2005, seeking their typing answer scripts in July 2017. Thereafter filed this OA on 24.7.2017.

3.2 They further stated that as per the write up of the result of DEST/Typing Test declared on 30.6.2017 following is the category-wise cut-off percentage of mistakes in Typing Test:-

SC

ST

OBC

EXS

OH

HH

VH

UR

10%

10%

10%

10%

10%

10%

10%

7%

The percentage of mistakes committed by the applicants in the Typing Test are as under:-

Sl. No

Name

Roll No.

Category

Cut-Off on % of mistakes in Typing Test

Error % in Typing Test

1.

Sanjay Kumar

2201303706

Genera

7%

10.34%

2.

Charu

2405163087

Genera

7%

10.62%

3.

Nagendra Singh Tanwar

2405360019

Genera

7%

12.01%

4.

Rattiram Meena

2405233006

ST

10%

11.76%

5.

Rahul Rajoria

2405394081

SC

10%

12.01%

6.

Dibyendu Mukherjee

4410044635

General

7%

20.07%

7.

Seema Vaishnav

2405114828

OBC

10%

13.55%

8.

Anush Singh

2201046805

General

7%

16.22%

9.

Nitin Raj

2201362818

SC

10%

10.13%

10.

Preeti Tripathi

3003085537

General

7%

7.88%

11.

Vikrant Gautam

220251204

SC

10%

32.12%

12.

Abhishek Kumar

2201313414

General

7%

10.62%

13.

Shekhar Sarkar

4410141595

SC

10%

20.61%

14.

Nakul Sharma

2201426933

General

7%

9&

15.

Rupesh Panwar

2002001645

General

7%

20.20%

16.

Indrajeet Pankaj

245307553

SC

10%

26.44%

17.

Kiran Kumari

2201617654

UR/HH

10%

10.73%

18.

Animesh Singh

2201666621

Genera

7%

7.44%

19.

Sarbajit Bandyopadhyay

4410135966

General

7%

15.56%

3.3 They also stated that the SSC conducted DEST/Type Test of the said examination on computer. The answer scripts of the skill test were also evaluated electronically, i.e., computerized evaluation of skill test was adopted. The applicants could not qualify the Skill Test/Typing Test as they committed mistakes higher than the cut-off fixed by the SSC. The applicants' contention that their typing answer scripts have not been adjudged and evaluated in an appropriate and fair manner is not correct. The request for re-evaluation of skill test answer script cannot be accepted as the SSC does not entertain re-evaluation work of skill tests which has zero human intervention in their evaluation due to the fact that the same being evaluated on computer uniformly for all candidates appearing in the said skill test. Besides, the SSC has already completed the recruitment process and declared the final results of the said examination on 28.8.2017.

3.4 Lastly they stated that the applicants are not entitled to any relief as sought by them in the OA.

4. The applicants have also filed their rejoinder to the reply filed by the respondents in which they stated that they received the copies of their answer scripts of typing test and when they checked the same manually as per SSC criteria for calculating the errors, they found that 8 of them have errors less than the prescribed passing limit.

5. 1 The applicants further stated that the respondents have not treated them fairly and the plea of the respondents that the typing answer scripts have also been evaluated electronically does not give any credence to the respondents' claim, as in the reply to another OA No.722/2017 (Kamal Kumar and others vs. UOI and another), the respondents had themselves stated that the then electronic evaluation is not correct and thus they have resorted to evaluations through examiners.

5.2 It is further stated that request of the applicants for re-evaluation of their typing answer scripts cannot be said to be a baseless, since the SSC has

committed mistakes in earlier examination causing denial of employment to the applicants towards public posts, the OA deserves to be allowed as this Tribunal has already vide Order dated 1.9.2017 passed the interim order to keep one post vacant for each of the applicants and therefore, plea of the respondents that the selection process has already been completed upon the declaration of final results on 28.8.2017 is frivolous.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. Learned counsel for the respondents submitted that typing answer scripts of all the candidates, including the applicants, were evaluated electronically, i.e., computerized evaluation, which was specifically mentioned in the recruitment notification of Combined Higher Secondary Level (10+2) Examination, 2015 that the speed will be adjudged on the accuracy of typing on the computer of the given text passage in 10 minutes. Visually Handicapped candidates (with 40% disability and above) will be allowed 30 minutes. Counsel for the respondents further submitted that in the rejoinder, the applicants have themselves admitted that according to them out of 19, only 8 of them have committed errors less than the prescribed passing limit as per their own evaluation. Counsel further submitted that evaluation of their answer scripts as annexed with the rejoinder by the applicants cannot be a reasonable basis to re-evaluate their typing answer scripts in view of the fact that evaluation of typing answer scripts of all the candidates had been done on computer uniformly and if the respondents are directed to re-evaluate the typing answer scripts of these applicants then the respondents will have to evaluate the typing answer scripts of all the candidates, although the final result has already been declared on 28.8.2017.

8. Counsel for the respondents especially drew our attention to the notice for the CHSL (10+2) Examination, 2015 in which in para 12.2 rules of skill test have been clearly laid down as under:-

"The "Data Entry Speed" Skill Test would be of qualifying nature. Candidates allowed to take this test, will have to qualify the test at the prescribed speed on Computer, to be provided by the Commission or the agency authorized by the Commission to conduct such skill test at the Centre/venue so notified.

Further in para 12.3 of the said notice, it has been provided as under:-

"The speed will be adjudged on the accuracy of typing on the Computer of a given text passage in 10 minutes. Visually Handicapped candidates (with 40% disability and above) will be allowed 30 minutes."

They further pointed out that the skill test was directed to be held at the Commission's Regional Offices or other centers as may be decided by the Commission to ensure the quality of evaluation of typing answer scripts, the same was done by computer. Counsel further submitted that applicants who participated in the examination and after having declared as unsuccessful, they

cannot be allowed to raise such a plea of re-evaluation of their typing answer scripts through examiner.

9. After having regard to the contentions of counsel for the parties, we observe that applicants have themselves admitted in the rejoinder that out of 19, only 8 have committed less errors than the prescribed passing limit as per their own evaluation by through manual method. Mere averment of the applicants on the basis of their own evaluation that 8 out of 19 have cleared the said typing test cannot be a sustainable ground to direct the respondents to re-evaluate their typing answer scripts through examiner in view of the admitted fact that typing answer scripts of all the candidates including the applicants had been evaluated on computer uniformly and therefore, deviation only on the basis of applicants' aforesaid averment would lead to change the rule of game. Reliance placed by the applicant on the counter reply filed by the respondents in OA 722/2017 is concerned, the same is not applicable to the facts of this case as in that case the issue of evaluation of transcriptions was involved, however, in the present case only Typing answer scripts are required to be evaluated, which can be done easily by computer with zero human intervention. Further the applicants of this OA cannot contend that what should be the method of evaluation of the typing answer scripts when the same method was applied in the cases of all the candidates who participated in the said examination. Further it is settled law that a person who consciously takes part in the process of selection cannot, thereafter, turn around and question the method of selection and its outcome, as held by the Supreme Court in catena of judgments, especially in the case of Chandigarh Admn. v. Jasmine Kaur, (2014) 10 SCC 521, Apex Court held that a candidate who takes a calculated risk or chance by subjecting himself or herself to the selection process cannot turn around and complain that the process of selection was unfair after knowing of his or her non selection; and also in Pradeep Kumar Rai v. Dinesh Kumar Pandey, (2015) 11 SCC 493, the Apex Court held that:

"Moreover, we would concur with the Division Bench on one more point that the appellants had participated in the process of interview and not challenged it till the results were declared. There was a gap of almost four months between the interview and declaration of result. However, the appellants did not challenge it at that time. Thus, it appears that only when the appellants found themselves to be unsuccessful, they challenged the interview. This cannot be allowed. The candidates cannot approbate and reprobate at the same time. Either the candidates should not have participated in the interview and challenged the procedure or they should have challenged immediately after the interviews were conducted."

The aforesaid principle has been reiterated in the case of Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454.

10. It is not the case of the applicants that there has been any discrimination and malafide in the act of the respondents while evaluating their typing answer

scripts by computer uniformly.

11. In the result, for the foregoing reasons, the present OA being devoid of merit and the same is accordingly dismissed.

12. Since this case is dismissed by us, the interim order granted vide order dated 1.9.2017 stands vacated.

There shall be no order as to costs.