

(2018) 04 CAT CK 0028

In the Central Administrative Tribunal

Case No : Original Application No. 2091 Of 2013

Vinod Kumar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 12-04-2018

Acts Referred:

Citation : (2018) 04 CAT CK 0028

Hon'ble Judges : V. Ajay Kumar, J;Nita Chowdhury, Member (A)

Bench : Division Bench

Advocate : Amit Anand, Shailendra Tiwary

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. This Original Application has been filed by the applicants claiming the following reliefs:-

"(i) direct the respondents to provide a copy of the answer sheet of the applicant for the examination of LDCE against 10% quota in LDCE and also the model answer sheets as requested;

(ii) to compare the answer sheets of the applicants with model answer and promote/consider them successful if they found fit on the basis of such comparison;

(iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice."

2. Brief facts of the case are that the respondents issued a notification dated 30.04.2012 for conducting a selection for the post of Commercial Apprentice grade in Rs.9300-34800+4200 Grade Pay against 10% LDCE quota in commercial department. Applications were invited to fill up the above posts from serving Class-III (other than Ministerial Cadre) working in the Grade Pay

Rs.1900/- and above on regular basis in Commercial Department and who are Graduates and are upto 40 years of age. Total 166 candidates were found eligible to appear in the written test. Written test was held on 03.11.2012 in which 152 employees appeared. Vide notice dated 09.10.2012, written test was held on 03.11.2012. On 04.04.2013 respondents issued the result for the said examination wherein names of the applicants were found missing from provisional panel in general standard. Applicants jointly gave representation dated 05.06.2013 to the respondents requesting for re-checking of answer sheets and also requested for putting on hold the DPC for the said post. It is further submitted that respondents have resorted the policy of 'pick and choose' for ulterior motive, therefore, they are not providing the copy of the answer sheet. The grounds taken by the applicants are that they are entitled to get a copy of the answer sheets which is in public interest as that removes any kind of malafide and promotes transparency in the conduct of the examination. They further submitted that they had done very well in the examination and their non-empanelment was perhaps due to wrong evaluation of answer sheet or due to some malafide action which also gathers strength from the fact that respondents have refused to give them their copy of answer sheet. In this regard they relied on the judgment of Hon'ble Supreme Court Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & ors., Civil Appeal No.6454/2011 (arising out of SLP (C) No.7526/2009).

3. Learned counsel for respondents have contradicted the claim made by the applicants in this OA and submitted that as the post of Commercial Apprentice is a non-safety category, 60% marks or more are required for unreserved candidates and 50% for SC & ST in relaxed standard and less than 50% (20 to 49%) against "Best Amongst Failure" scheme are required to qualify the written test for consideration of DPC. They have submitted that applicants appeared in the written test against unreserved category but they did not qualify the examination as they did not secure 60% marks which are required to qualify the written test for consideration of DPC. In response to applicants' representation for re-checking of answer sheets, respondents replied vide order dated 27.06.2013 that there is no such provision in rules for rechecking of the answer sheets. However, applicants were called vide office letter No.111-P/Confdl/56/2012 dated 18.09.2012 to see their answer sheets on 20.09.2013 but they did not attend the office. They were again asked on 24.09.2013 to see their answer sheets on 26.09.2013. They attended the office on 26.09.2013 and answer sheets were shown to them. As regards the model answers, it is mentioned that no model answers are prepared and to be provided to the paper evaluator. As per instructions, when question paper contains objective type of questions, 'KEY' have to be invariably prepared and sent in a sealed cover along with question paper to the officer nominated to evaluate the answer sheets.

4. In this regard, respondents have relied on the judgment of Hon'ble Supreme Court in Om Parkash vs. Akhilesh Kumar, AIR 1986 SC 1043 wherein it is held that "Having appeared in a test, one cannot question its validity after failing in

the test or finding himself unlikely to pass. There is no estoppel against challenging the rules of examination even after appearing in the test".

5. Learned counsel for the respondents also took a preliminary objection as to the maintainability of the OA as applicants made a representation on 05.06.2013 and without waiting for the reply from the department, have filed the present OA on 20.06.2013 which is premature. In this regard, the Full Bench of the Hon'ble Tribunal in the case of P.Parmeshwara Rao vs. Divsl. Engineer Telecom Eluru, CAT FB Vol II 1989-91 has held that:

"The Tribunal should not entertain an application before the expiry of six months period allowed for disposal of appeal etc. against the order in respect of service matter."

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

7. Learned counsel for applicants vehemently argued on the point of re-checking of answer sheets and relied on the judgment of Hon'ble Supreme Court in Central Board of Secondary Education vs. Aditya Bandopadhyay (supra) and submitted that the candidate has a right to get the copy of his evaluated answer sheet. This is also mentioned in the transparent system and lead to good administration.

8. However, counsel for respondents has refuted the allegation of the learned counsel for applicants that the applicants had exhausted their remedies up to the Central Information Commission under Right to Information Act wherein the applicants had not even preferred to exhaust the departmental remedies under Right to Information Act/Administrative Tribunals Act.

9. In the case of Ramesh Chandra Shah vs. Anil Joshi, (2013) 11 SCC 309 the Hon'ble Supreme Court has held as under:

"24. 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. In the light of the aforesaid reasons, we find that there is no merit in the OA and it deserves to be dismissed, as such and accordingly, the same is dismissed. No costs.