

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 373 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Satya Ranjan Das, aged about 41 years, S/o Arakhita Das, resident of At/Vill. Katikata, Via- Rambag, PS- Mangalpur, Dist- Jajpur, Odisha, PIN-755014, presently working as GDSBPM, Katikata BO, Dist- Jajpur, PIN-755014.

.....Applicant

VERSUS

1. Union of India represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/P.O. Bhubaneswar, Dist. – Khurda, Odisha-751001.
3. Superintendent of Post Offices, Cuttack North Division, Cuttack, PIN-753001.
4. Nihar Ranjan Mishra, Postman, Rajnagar SO, Dist- Kendrapara, PIN-754225.

.....Respondents

For the applicant : Mr. C.P.Sahani, Counsel

For the respondents: Mr. B. Swain & N. R. Routray, Counsel

Heard & reserved on : 16.3.2020 Order on :13.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant, working as Gramin Dak Sevak Branch Post Master (in short GDSBPM) in Andhari Branch Office under Jajpur Road SO, had appeared in the Limited Departmental Competitive Examination (in short LDCE) for selection to the Postman cadre of different divisions from out of the GDS employees. He is aggrieved by selection and appointment of the Respondent No. 4 who, according to the applicant is less meritorious than the applicant and has filed this OA, challenging selection of Respondent No. 4 and evaluation of his answer-sheet, seeking the following reliefs as under:-

“(i) Admit the Original Application and call for the records.

(ii) After hearing the counsels for the parties be further pleased to quash the Memo No. B/Genl-1/Ch-XI dated 15.11.2017 at Annexure- A/4 in respect to the appointment of Respondent No. 4 and the rejection order No. B/Genl-1/Ch-XI dated 21.05.2018 at Annexure- A/6. And consequently, orders may be passed directing the departmental respondents to give marks to the applicant against the Question No. 85 & 89 and to

issue fresh merit list and appointment order against the vacant post of Postman in Cuttack North Division.....”

2. The LDCE for the selection in question was held by the Respondent No. 2 on 29.10.2017 and the applicant had appeared. The result of the examination was declared on 7.11.2017 and the applicant was not selected. He requested for the copy of his answer sheet and the answer key, which were supplied by the authorities. It is the case of the applicant that although he had answered the question nos. 85 and 89 correctly, but he was awarded no mark for these questions. He submitted a representation dated 22.1.2018 (Annexure-A/5) to the Respondent No. 2, which has been rejected vide order dated 21.5.2018 (Annexure-A/6) on the ground that revaluation of the answer sheet is not permissible under the rules.

3. The ground advanced in the OA is that his answers to the question nos. 85 and 89 were correct, but he was not awarded any mark due to some discrepancies in the answer key and if he will be awarded marks for these two questions, then his score will be higher than the Respondent No. 4 and he should be selected/appointed. But the authorities have rejected his case arbitrarily vide the impugned order dated 21.5.2018 (A/6).

4. Counter filed by the respondent nos. 1 to 3 without disputing basic facts. It is stated that in the examination, the applicant and the Respondent No. 4 had secured same marks, but since the later had joined service as GDS on 3.6.1997 compared to the applicant's date of joining of 30.11.2011, Respondent No. 4 was selected for one post in 'UR' category for Cuttack North Division earmarked to be filled up from the GDSs through LDCE. It is averred in the Counter that the evaluation of the answer sheets has been done correctly as per the answer key as the applicant has answered both the questions as (c), where as the correct answer as per the answer key it was (b) for both the question nos. 85 and 89. It was therefore contended that there was no need to for revaluation in view of the Rule 15-Appendix 37 of the Postal Manual and the Directorate circular dated 2.8.2010 (Annexure-R/1).

5. Rejoinder has been filed denying the contentions in the Counter relating to the answer of the question nos. 85 and 89. It is averred that in the answer key, the answers to both the questions have been wrongly shown as (b), where as it should have been (c). Hence, it was argued that the answer of the applicant was correct and he should have been awarded marks for those two questions. Regarding the rules, it has been averred that the examinee can ask for verification as to whether the answer sheet has been correctly assessed or not as per the Rule 14 of the Appendix-37 of the Postal Manual (Annexure-A/9).

6. We heard learned counsel for the applicant who submitted that the rule 15 of Appendix-37 has been superseded by the circular at Annexure-R/1 which states that revaluation can be made in certain circumstances when the error is genuine. It is also submitted by applicant's counsel that the mistakes in the answer key for question nos. 85 and 89 are obvious from the answer key at Annexure-A/3. For question no. 85, the correct answer is written to be (b), but the answer that is written in odia language in the key is actually (c) of the question paper (Annexure-A/2). Similar is the case for the question no. 89. A written note of argument was also submitted on behalf of the applicant enclosing copy of the following judgments in support of the applicant's case:-

- (i) Rajesh Kumar & Ors. vs. State of Bihar & Ors. (2013) 4 SCC 690
- (ii) UOI vs. R. Reddappa & Anr. (1993) 4 SCC 269
- (iii) Matia Pradhan vs UOI and Bipin Bihari Swain vs. UOI in OA Nos. 585 & 586 of 2017

7. Learned counsel for the respondents was heard who reiterated the stand taken in the Counter and he filed copy of the following judgments/rules:-

- (i) Appendix No. 37
- (ii) Judgment dated 11.12.2017 of Hon'ble Apex Court in C.A. No. 367 of 2017
- (iii) Judgment dated 25.5.2010 of Hon'ble Apex Court in C.A. No. 907 of 2006
- (iv) Judgment dated 19.11.2012 of Hon'ble Delhi High Court in W.P.(C) No. 7207/2012

8. With regard to the submissions as well as the pleadings on record by the parties, the issue to be resolved in this case is whether the request of the applicant for revaluation of his answer script is permissible as per the existing rules/policy circular of the Government. The applicant's plea is that there is an error in the answer key for which such revaluation is permissible under the rule 14 of the Appendix-37 of the Postal Manual and also as per the DG's circular at Annexure-R/1.

9. The relevant provisions of the rules 14 and 15 of the Appendix-37 of the Postal Manual are as under:-

"Rule 14. Retotalling and Verification of marks.- (a) If a candidate desires the retotalling of his marks and verification of the fact that all answers written by him have been duly assessed by the examiner, he should submit an application in the prescribed form (as shown in Annexure III) and pay the prescribed fees. The fee for this purpose is Rs. 5 per paper. (b).....

(c) Such application must be submitted within six months from the date of announcement of the respective results. Any application submitted thereafter should not be entertained.

(d).....

(e).....

Note 1.- it must be clearly understood that the only scrutiny intended in this Rule is as shown in clause (a) viz., whether all the answers written by a candidate (provided that they are not in excess of the number required to be attempted) have been assessed, and that there is no mistake in totalling of the marks.

Note 2.-.....

15. Revaluation of answer books.- Revaluation of answer scripts is not permissible in any case or under any circumstances."

It is seen from above, that the rule 15, on which the respondents have relied upon, is very clear that there will be no revaluation of the answer scripts. The rule 14, which has been cited by the applicant in his Rejoinder to justify his prayer for revaluation, relates to re-totalling and verification of marks. The scope of verification has been specified in the Note-1 of the rule i.e. whether all the questions have been assessed and whether there is any error in totalling of marks. Clearly, the re-assessment of marks in respect of some questions is not permissible as per the scope in the rule 14 and such re-assessment or revaluation has been specifically disallowed in the rule 15. Hence, we are unable to agree with the applicant's interpretation of the provisions of the rule 14 in his Rejoinder.

10. Regarding the circular dated 2.8.2010 (Annexure-R/1 of the Counter) on which the applicant has relied on in his written note of arguments, the said circular is as under:-

"No.A-34018/10/2010-DE

Dated: 02.08.2010

To

1. All Heads of Circles
2. Addl. D G APS, West Block III, Wing No.5, R.K.Puram, New Delhi-110067.
3. BD and PLI Directorate
4. Directors, Postal Staff College India, Ghaziabad and PTCs

Sub: Revaluation of answer papers- judgment pronounced by Hon'ble Supreme Court in the Civil Appeal No(s) 897 of 2006 and 907 of 2006 between Himachal Pradesh Public Service Commission (Appellant) and Mukesh Thakur & Anr. (Respondents).

Sir/Madam,

I am directed to enclose copy of the subject cited judgment of Hon. Supreme Court of India.

2. Consequent on introduction of RTI Act 2005 and the directions of the CIC to supply photocopies of answer papers to the candidates, filing of Court cases in the Tribunals has increased enormously. Various CAT Benches are also directing the Department to get the answer papers reevaluated. On filing writ petitions in the High Courts against the orders of the CAT Benches, the High Courts are also disposing off the cases saying that they don't want to interfere in the matter. It is stated that Rule 15 - Appendix-37 of Postal Manual Volume-IV clearly stipulates 'Revaluation of answer script is not permissible in any case or under any circumstances'. Thus it is not permissible to consider requests of candidates for revaluation after declaration of results as it will not only cause great inconvenience to the examination process and also cause hindrance to the administration in the absence of vacancies of particular category viz; OC, SC, ST etc. under departmental quota but also be against the spirit of ibid Rule.

3. It may be seen that representations requesting for revaluation of answer papers are being received in this office specifically pointing out the following grievances:

- (i) Particular answer(s) were not evaluated
- (ii) Excess attempted answer(s) were not evaluated
- (iii) For the same answer(s), the examiner awarded marks to one candidate and to another candidate no marks were assigned or the answer struck off as wrong
- (iv) All the answers were evaluated but justified marks were not awarded by the examiner

4. The issues indicated at (i) to (iii) above are justified and need to be examined by the competent authority to find out the facts and if the claim of the candidate appears to be genuine, revaluation may be got done by an independent examiner in such cases and further necessary action may be taken. In so far as the issue indicated at (iv) above, there is no need to consider such requests and merits rejection at the initial stage itself.

5. In the similar situation in the Civil Appeal NO.(s)897 of 2006 and 907 of 2006 between Himachal Pradesh Public Service Commission (Appellant) and Mukesh Thakur & Anr. (Respondents), Hon. Supreme Court of India has upheld the plea of the Himachal Pradesh Public Service Commission rejecting the request of a candidate for revaluation. In the light of the judgment of Hon. Supreme Court, it is requested to review all pending court cases filed in various CAT Benches/High Courts by the candidate of various departmental examinations seeking directions for revaluation and declaring them as successful on the pretext that the evaluation was not done properly by the examiners and file suitable interim replies in the courts producing the copy of the Supreme Court judgment seeking dismissal of the cases. All pending representations received from the applicants seeking revaluation of answer papers covered under item (iv) of para 3 above may also be disposed off at the Divisional/Regional/Circle level as the case may be without forwarding the same to this office.

6. This issues with the approval of Member(P).

7. The receipt of the letter may please by acknowledged."

11. It is seen from the provisions of the circular that it was issued after the judgment of Hon'ble Apex Court in the cases as stated therein. It advises the authorities how the requests from the examinees for revaluation are to be disposed of. Categories of such requests have been mentioned in para 3 of the circular. The applicant in his Rejoinder or the written note has not explained under which category of the requests his request for revaluation falls. The applicant's case is that he was not awarded marks correctly for the question nos. 85 and 89 for which he should have been awarded full marks against no mark awarded by the examiner. It is clear to us that his request will fall in the category as listed in sub para (iv) of the para 3 of the circular at Annexure-R/1 extracted above. In that case, the circular clearly states that such requests falling under sub para (iv) are to be rejected. It is not the case of the applicant that the examiner has assessed the questions differently for different candidate as in sub para (iii) of para 3 of the circular. The contention of the respondents that the marks for the question nos. 85 and 89 have been awarded assuming the answer (b) as given in the key to be correct. The applicant challenges such

answer in the key, but then such grievances will not be under sub para (iii) of para 3 of the circular. The applicant's grievances can also not be categorized under sub para (i) or (ii) of para 3 of the above circular. Hence, the circular at Annexure-R/1 will not be helpful for the applicant.

12. In the case of Rajesh Kumar (supra) relied by the applicant, the fact that the model answers of some questions were wrong was proved as per the direction of Hon'ble High Court and the entire examination and appointments made were cancelled by Hon'ble High Court. The candidates who were appointed had filed the appeal before Division Bench of Hon'ble High Court and then before Hon'ble Apex Court. No such allegation of erroneous answer key as in the cited case has been alleged in this case. The applicant has alleged incorrect assessment of 2 questions for which the errors were alleged in the answer key. But the respondents have refuted such allegation and averred that those 2 questions have been assessed for all candidates assuming the answer key of (b) to be the correct answer. Hence, the cited case is factually distinguishable.

13. In the case of R. Reddappa (supra) cited by the applicant, the dispute related to punishment orders of dismissal from service were passed without conducting any enquiry. The Tribunal's orders were challenged before Hon'ble Apex Court. The observations made in the order about arbitrariness, were made with regard to the orders passed by the authorities in disciplinary proceedings in the cited case. In the present OA, it cannot be said that the order of the respondents has been arbitrary in view of the contentions of the respondents that their action is in accordance with the rule 15 of the Appendix-37 of the Postal Manual. Hence, the cited judgment is inapplicable for the present OA.

14. Regarding the order dated 27.3.2019 of the Tribunal in OA Nos. 585 and 586 of 2017, which is cited by the applicant's counsel, the allegation of the applicants in those OAs was that one question in Odiya language and English language were different, but the answer key for both was the same for which, the answer of the candidate choosing Odiya language was incorrect as per the key, although it was correct as per the meaning of the question. Hence, the candidates choosing Odiya language was at a disadvantage compared to the candidates choosing English language and there was a possibility of discrimination. With such factual background in OA nos. 585 and 586 of 2017, following direction was given to the CPMG in the order of the Tribunal as under:

"Respondents have not brought to our notice whether the four GDS officials who have been declared successful and qualified in the LDCE under Puri Division had ticked the

same options as that of the applicants herein in so far as Question No.20 (Odiya Version) and Question No.77(Odiya Language) are concerned and if so, whether they had been awarded marks thereon. In the absence of any such averments or the corroborative documents submitted by the respondents, this Tribunal is of the opinion that to meet the ends of justice, the Chief Post Master General, Odisha Circle (Respondent No.2) shall examine the answer sheets of the applicants herein vis-a-vis the answer sheets of four selected candidates in order to come to a finding that there has been no discrimination while awarding marks to the applicants and the four selected candidates against the Question No.20(Odiya Version) and Question No.77(Odiya Language) and pass an appropriate orders within a period of forty-five days from the date of receipt of this order. In the circumstances, the impugned communications dated 03.04.2017 and dated 30.05.2017 in both the OAs are quashed and set aside."

It is seen that such complaint will be in the category of complaints listed in sub para (iii) of para 3 of the circular dated 2.8.2010 which needed further examination as provided in that circular reproduced at paragraph 10 of this order. Further, the applicants in those OAs had cited the rule 4 of the Appendix-37 of the Postal Manual as one of the ground as observed in the order dated 27.3.2019. As discussed in paragraph 11 of this order in the present OA before us, the nature of complaint or allegation of the applicant falls under category of sub para (iv) of the para 3 of the circular dated 2.8.2010 (Annexure-R/ 1). Hence, the nature of complaint in OA nos. 585 and 586 of 2017 was different from the nature of complaint in the present OA, for which the cited judgment will not be applicable to the present OA.

15. Learned counsel for the respondents has cited the judgment of Hon'ble Delhi High Court in the case of Sachin Varshney (supra) in W.P.(C) No. 7207/2012 in which similar request for revaluation of the answer sheet in the LDCE conducted by the Postal Department for selection for promotion to Group C posts was rejected by the Tribunal. The order was challenged before Hon'ble Delhi High Court in the above cited writ petition, in which it was held as under:-

"2. We now come to the merits of the matter. We find that the petitioners are seeking re-evaluation/re-checking of their answer scripts in the LGQ Examination 2010 (Group-D) for promotion to Group-C posts. The Tribunal has rejected the prayer of the petitioners on the ground that there are no rules permitting re-evaluation of the answer scripts. On the contrary, the Tribunal has taken note of Clause 15 of Appendix No.37 of the Postal Manual Volume- IV Rules, relating to the departmental examination. The said Clause-15 reads as under:-

"15. Revaluation of answer books - Revaluation of answer scripts is not permissible in any case or under any circumstances."

3. It is clear that the said clause does not permit re-evaluation of the answer scripts in any case or under any circumstances. This clause/rule has to be read in the backdrop of the Supreme Court's decision in the case of H.P. Public Service Commission vs. Mukesh Thakur, (2010) 6 SCC 759, wherein the Supreme Court after considering its earlier decisions in the case of Maharashtra State Board of Secondary and Higher Secondary Education & Anr vs. Paritosh Bhupesh Kumarsinh, AIR 1984 SC 1543, and Pramod Kumar Srivastava vs. Chairman Bihar

Public Service Commission, Patna & Ors, AIR 2004 SC 4116, held as under:-

"26. A similar view has been reiterated in Dr. Muneeb Ul Rehman Haroon & Ors. Vs. Government of Jammu & Kashmir State & Ors. AIR 1984 SC 1585; Board of Secondary Education Vs. Pravas Ranjan Panda & Anr. (2004) 13 SCC 383; President, Board of Secondary Education, Orissa & Anr. Vs. D. Suvankar & Anr. (2007) 1 SCC 603; The Secretary, West Bengal Council of Higher Secondary Education vs. Ayan Das & Ors AIR 2007 SC 3098; and Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors. (2009) 1 SCC 599.

27. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation."

4. It is obvious that the Tribunal has arrived at the correct decision inasmuch as there is no rule or regulation permitting re-evaluation of answer scripts insofar as the facts of the present case are concerned. On the contrary, there is a rule prohibiting any re-evaluation of answer scripts. There is no merit in this writ petition."

16. In view of the discussions above and taking into consideration of the rules in Appendix-37 of the Postal Manual and the circular dated 2.8.2010 (Annexure-R/1 of the Counter), we do not find any infirmity in the decision of the authorities in the matter and hence, the OA being devoid of merit, is liable to be dismissed. Accordingly, it is dismissed but with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)