

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

R.A. 350/28/2019

Date of order: 21.02.2020

IN

O.A. No. 350/1077/2015

**Present: HON'BLE SMT. MANJULA DAS, MEMBER (J)
HON'BLE NEKKHOMANG NEIHSIAL, MEMBER (A)**



Shri Progyadyuti Dutta
Son of Subodh Kumar Dutta
Aged about 42 years
Working as Upper Division Clerk
In Ordnance Factory, Dum Dum
Kolkata at D & LS Section
Residing at Holding No. 49
Basu Bagan, Bankim Pally
Madhyamgram, P.O. & P.S. – Madhyamgram
Dist – North 24-Pgs., Pin – 700129.

...Applicant

-Versus-

1. Union of India
Through the Secretary to the
Govt. of India, Ministry of Defence
Department of Defence Production
South Block, New Delhi – 110001.
2. The Chairman, Ordnance Factory
Board/Director General
Ordnance Factories, 10A
S.K. Bose Road, Kolkata – 700001.
3. The Principal Director
Ordnance Factories Institute of Learning
Ambarnath, Pin – 421502.
4. The Principal Director
Govt. of India, Ministry of Defence
Ordnance Factory Institute of Learning
Ichhapore – 743144.

Handwritten mark

5. The General Manager
Ordnance Factory
Dum Dum, Kolkata - 700028.
6. Shri Amit Gupta
Chargeman (NT/Store)
Ordnance Factory, Dum Dum
Kolkata - 700028.

...Respondents

For the Applicant : Sri S.K. Datta



ORDER IN CIRCULATION

NEKKHOMANG NEIHSIAL, MEMBER (A):-

This R.A. No. 350/00028/2019 has been filed by the Review Petitioner/Applicant against the order of this Tribunal dated 20.11.2012 in O.A. No. 350/1077/2015. In the said order, this Tribunal has passed order as below dismissing the said O.A.:-

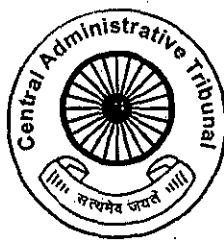
"7. Keeping in view of the above, and also fact that the applicant has failed to bring out that his case is entirely difference from that of Shri Pratap Chakraborty in O.A. No. 908 of 2012 which has already been dismissed by the Hon'ble CAT, of this Bench, we are not in a position to take a divergent view on the same issue and give a different order in this O.A. This is particularly, more so, keeping in view of the fact that the respondent authorities have effectively contested the claim of the applicant on the substance of dispute and challenged the very author on which the applicant's claim of giving the right answers."

W. Murray Hunt

2. In this R.A., the applicant has brought out as under:-

- (i) That in course of hearing on behalf of the applicant, the discrepancies in the answer keys were clearly pointed out e.g. so far as the question No. 4 of Labour Accounting & Factory Accounting is concerned the answer as per answer key is "C" and the applicant in the answer sheet marked the Option - b as correct and the authority in support of the correct answer given by the applicant would appear at page No. 22 which is the answer of question No. 82 as per key answers and if the same is tallied with the question and answer of the applicant against question No. 4 at page 33 it would be clear that the answer given by the applicant was correct.
- (ii) That several instances were given at the time of hearing referring to the annexures to the original application but none of the instances except one was considered by the Tribunal while passing the final order dted 20.11.2019 which was contradicted on behalf of the respondents but the Tribunal failed to consider the provision of FR 53 (1)(a)(iii) which was brought to the notice of the Tribunal at the time of final hearing as also the Tribunal failed to consider the rejoinder filed by the applicant which was also placed at the time of hearing of the original application.

3. The applicant cited the case of **Rajesh Kumar and Ors. Vs. State of Bihar and Ors., (2013) 2 SCC (L&S) 359 and (2013) 4 SCC 690** and **Vikas Pratap Singh and Ors. Vs. State of Chattisgarh and Ors., Civil Appeal Nos. 5318-5319 of 2013 [@ S.L.P. (c) Nos. 26341-26342 of 2011]** in support of his case. We have carefully gone through the R.A. once again particularly the judgement and order of the



Hon'ble Apex Court in respect of **Rajesh Kumar and Ors. Vs. State of Bihar and Ors.** and also **Vikas Pratap Singh and Ors. Vs. State of Chattisgarh and Ors.** In the case of **Rajesh Kumar**, it is a case wherein the competitive examination was conducted by Bihar Staff Selection Commission. In the petition filed before the Hon'ble High Court of Judicature at Patna regarding erroneous evaluation of "model answer key", the Single Judge of the Hon'ble High Court referred the "model answer key" to experts. The model answers were examined by two experts, Dr. (Prof.) C.N. Sinha and Prof. K.S.P. Singh, associated with NIT, Patna, who found several such answers to be wrong. In addition, two questions were also found to be wrong while two others were found to have been repeated. Finally 45 questions out of 100 were to be defective/wrong. As such, entire examination was considered to be vitiated and re-evaluation was allowed to be done and fresh merit list drawn up and inter se merit list was allowed. But those who have already been selected earlier and undergoing training, have been allowed to stay in service with change in inter se position and a fresh merit list drawn up on the basis of re-evaluation. This action on the part of the



Manu Singh

respondent authorities in compliance of the Hon'ble High Court of Judicature at Patna has been upheld by the Hon'ble Apex Court.

4. In the case of **Vikas Pratap Singh and Ors.**, re-evaluation of answer scripts was allowed by the respondent authorities in terms of Clause 14 of the Rules providing for procedure to be adopted in respect of erroneous objective question. This has been challenged in the Hon'ble Apex Court and the same has been dismissed.



5. In this instant case, the applicant is aggrieved that this Tribunal have not taken into account the rejoinder submitted by him on 16.11.2016. We have carefully gone through the rejoinder once again. At para 6, he had admitted that there was no irregularity and/or illegality in the letter dated 18.07.2012 as well as 11.07.2014 and the result as forwarded by the Ordnance Factory Institute of Learning, Ichhapore through a letter dated 18.07.2012. But he contested the claim of the respondents that Swamy's Hand Book, 2014 is an authoritative book recognized by the Central Government unless the respondent authorities are able to show from any other authentic document

Wimmin and

and/or book that the answer as depicted in the said book is wrong or erroneous. Other aspects of the rejoinder are about the contentious correctness of the answer keys which is not accepted by the respondent authorities.

6. We have carefully considered once again the issue placed before us. This particular O.A. No. 350/1077/2015 has arisen due to the claim of the applicant that some of model answer keys are wrong and therefore, he could have got appointed, if these answer keys have been correctly set by the respondent authorities. This has not been accepted by the respondent authorities, particularly on the plea that the questions and answer keys were set by the independent dedicated organizations within the department i.e. Ordnance Factory Institute of Learning, Ambarnath. This organization is independent of the respondents and has nothing to do with the selection and appointment of the candidates. Moreover, they have refuted point by point all the allegations of wrong answers made by the applicant. In addition to the above, the respondent authorities have also brought out that there is no provision for re-evaluation of answer scripts for Limited Departmental Competitive



[Handwritten signature]

Examination. In the similar case of **Sri Pratap Chakraborty in O.A. No. 908 of 2012**, the same has already been dismissed by this Tribunal. As regards to the citing the case of **Rajesh Kumar (supra)**, it is observed that the very act of re-evaluation of answer scripts has been upheld by the Hon'ble Apex Court. But the circumstances are significantly different. There were as many as 45 questions/answers out of 100 were found to be defective/wrong by the expert committee. Accordingly, the examination conducted was found to be vitiated. This has not been challenged by the respondent authorities. In the case of **Vikas Pratap Singh (supra)**, re-evaluation done has been upheld as there was a specific provision under Clause 14 of the Rules for re-evaluation of the answer scripts, in the scheme of the examination.

7. In the present case, though the applicant claimed that some of the answer scripts are found to be wrong to his disadvantage, this has never been accepted by the respondent authorities. They also further stated that there is an element of clear objectivity and fairness as the questions and answers were set by the independent organization which have nothing to do with the selection



and appointment of the candidates. Moreover, they also take shelter that in the absence of any provisions/rules regarding re-evaluation of answer scripts for LDC Examination, the claim of the applicant is not tenable. The respondent authorities also cited the case of **Sri Pratap Chakraborty** rendered by this Tribunal in O.A. No. 908 of 2012.



8. As regards to the submission that the Tribunal failed to consider the provision of FR 53 (1)(a)(iii), we have checked up the said Rule position. Under this Rule, it has been recorded as under:-

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above."

It is seen that this particular provision of FR 53(1)(a)(iii) is dealing with the matter of rate of dearness allowance with reference to subsistence allowance admissible to Govt. servant under suspension. As such, there is no question that this provision be brought into the case and considered by this Tribunal.

9. Keeping in view of the above, wherein the two cases cited by the applicant, in the facts and

Morning set

circumstances are found not applicable to the case of the applicant and also the fact that the respondent authorities do not have any provisions of re-evaluation for answer scripts, we are constraint reject the R.A. being devoid of merit. Moreover, in the R.A., the applicant has not brought out any material that his case is different from that of **Sri Pratap Chakraborty in O.A. No. 908 of 2012**

which had already been dismissed by this Tribunal for the reasons stated therein.

10. Accordingly, R.A. is hereby dismissed.

11. There shall be no order as to costs.



(NEKKHOMANG NEIHSIAL)
MEMBER (A)


(MANJULA DAS)
MEMBER (J)

PB