

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.No.659/94

Dated this the 21st of November, 1994

Shri N.V. Krishnan, Hon. Vice Chairman(A)

Shri C.J. Roy, Hon. Member(J)

Shri Jagdish Chander,
R/o H.No.88/2, Padam Nagar,
Delhi-7, Working as Telephone
Operator in O/O TDM 'Const Br'
Rohtak, Haryana.

...Applicant

By Advocate:Shri Arun Bhardwaj.
versus

1. Union of India through
The Secretary,
Department of Telecommunication,
New Delhi.

2. The Assistant Engineer 'HRD',
C/o T.D.M. Rohtak Haryana.

3. The Assistant Director General 'D.E.'
Department of Telecommunication,
Department of Exam Section Dak Bhawan,
Parliament Street, New Delhi.

4. The Director Department Exam Section,
Dak Bhawan, Parliament Street,
New Delhi

...Respondents

By Advocate: Shri M.M. Sudan

O R D E R (Oral)

By Shri N.V. Krishnan

We have heard the parties.

2. The applicant's grievance concerns the answer paper to paper-V in the Department Examination of J.A.O. part-I conducted in October 1982. The applicant was awarded 40 marks. He applied for re-totalling and by the letter dated 27.4.93 ('Annexure-2) of the 3rd respondent, the Assistant Director General 'D.E.' addressed to the Assistant Engineer 'HRD', 2nd respondent it was communicated that the applicant has secured 47 marks instead of 40 marks. However, on this account, there was no change in the merit position. It was stated therein that each question attempted by the candidate has been duly assessed by the examiner and on re-totalling, the grant total was found wrong and the candidate is shown to have secured 47 marks instead

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of 40. However, subsequently, by the letter dated 8.2.94 ('Annexure-1'), the same authority, 3rd respondent, informed the 2nd respondent to treat the earlier letter as cancelled and that the applicant has secured only 40 marks in paper-V and that he has not qualified in the examination.

3. Therefore, this OA has been filed seeking the following reliefs:-

'A) That the order dated 8.2.94 be set aside.

'B) That the applicant be declared as qualified in the J.A.O. part-1 exam held in Oct.1992 on the basis of his increased marks in paper.V.

'C) That the order dated 27.4.93 bearing No.9-1/93 D.E. be enforced.

'D) That the applicant be allowed to take J.A.O. part-II exam, in June 1994, if his result of J.A.O. part-I is not declared by them.

4. The respondents have stated in their reply that in the garb of re-totalling, actually, revaluation has been made, which is prohibited by the rules. They have produced Annexure R-1 which is an extract of P&T Manual, Vol.IV, Appendix-37, para-I, containing Rules 14 & 15. Rule-15 clearly bars revaluation under any circumstance. The respondents have also annexed with their counter, a judgement of another Bench of this Tribunal in OA.85/94 and a batch of cases on the same point, in which, similar claims made by the applicants have been dismissed.

5. In the circumstances, we had directed the respondents who had filed the reply, to produce the records of the answer papers.

6. We have perused the answer paper and the learned counsel for the applicant was also permitted to look into it. The first page of the answer book shows that the applicant had answered six questions, for which, on the first page of the answer book, he has been assigned marks in respect of the respective questions in the columns provided, which correctly add up to

40 marks only. This has been entered in red ink. There is however, another entry in blue ink on this page, which gives the applicant additional 3 marks, 1-1/2 mark and 2 marks respectively in respect of questions No.1, 7 and 8. Thus 6-1/2 marks have been given in addition. The total has now been corrected in blue ink to read as 47 marks.

7. We have seen the question No.1 and question No.8. These are two questions where there are no sub questions. Marks have been given to the questions in red ink. There is subsequent addition of 3 and 2 marks respectively in a different red colour ink. In respect of question No.7, we notice that there are three sub-questions ie. 4, 2 and 6, for which, separate marks of 2, 2 and 1 have respectively been given in red ink. This adds upto 5 which is also recorded in red ink. Subsequently, another 1-1/2 marks has been given to the total of 5 in a different colour red ink, making it 6-1/2 marks. The original marks given to the three sub questions remain unchanged.

8. These observations, in our view, are a clear proof that what has been done is not a re-totalling but a re-valuation as contended by the respondents.

9. The learned counsel for the applicant bravely submitted that such a presumption cannot be made for, according to the reply of the respondents, the examiner is required to re-check the valuation. It is quite possible that additions have been made on re-checking. He also suggests that the examiner might have chosen to use a different colour red ink pen and blue ink pen at the time of re-checking.

10. We are not at all convinced by these arguments. These are contrary to normal human behaviour and are against the balance of probability. This story, as put up by the learned counsel, falls to the ground

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for two other reasons:-

(i) The manner in which additional marks have been given to question No.7 without giving such additional marks to the three sub-questions really clinches the issue;

(ii) The examinee has signed at the bottom of the docket ~~at~~ ^{at} page-1, wherein, the total has been given and he has also separately in the middle of the first page endorsed that the paper has been re-checked and given his signature. Both the signatures are in the same red ink, which has been used to indicate the marks given for the six questions, both on the first page and in the answers.

11. Therefore, on a perusal of the relevant answer book of the applicant, we are satisfied that 47 marks have been given not because there was any mistake in the initial totalling of marks, but because, 6-1/2 marks rounded off to 7 were given to 3 questions by way of re-evaluation.

12. The learned counsel for the applicant, however, contends that the manner in which the respondents have cancelled the additional marks given to him is violative of natural justice. We do not see any merit in this contention. They have given full justification for their action.

13. Lastly, he drawn our attention to para-7 of the judgement in OA.85/94 and batch of cases enclosed with the respondents reply. He states that his case is similar to that of Ramesh Chander because, he claims that even with 40 marks in paper-V, he is fully qualified. We are unable to agree. In OA.85/94, it was observed that Ramesh Chander who had scored 50 marks, even without re-totalling, had qualified. In the present case, without the re-evaluation, the

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applicant has not qualified. In fact, the applicant seeks a declaration that he is qualified on the basis of his higher marks ie. 47.

14. In the circumstances, we find that the respondents are fully justified in issuing ~~the~~ ^{the} impugned order dated 8.2.94. The OA is, therefore, dismissed as devoid of merit. No costs.

W. Roy
(C. J. ROY)
MEMBER (J)

/kam/

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

21.11.94