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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 821/94

New Delhi this the 19th day of Dec, 94.

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

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

Roop Chand Saini,  
S/o Shri Ghosi Ram,  
R/o C-21(B), New Multan Nagar,  
Delhi-56. ...Petitioner.

By Advocate Shri Sant Lal.

Versus

1. The Union of India, through  
The Secretary,  
Ministry of Communication,  
Department of Telecommunication,  
Dak Bhawan,  
New Delhi.

2. The Advisor (H.R.D.),  
Telecom Commission, D.O.T.,  
Sanchay Bhawan,  
New Delhi. ... Respondents.

By Advocate Shri M.M. Sudan, Additional Standing Counsel.

ORDER (ORAL)

Shri N.V. Krishnan

The applicant had appeared in the departmental examination of JAO Part-I. He was informed that in paper VI he had obtained 76 marks and that, therefore, he did not qualify in the examination. Subsequently, after he made a request for retotalling, he was informed on 3.6.1993 (Ann.5) that he had secured 81 marks in that paper. As the qualifying marks are 40% of 200 marks assigned to this paper, he was informed that he had qualified. To his surprise, he was, however, informed later on, by the impugned order dated 8.2.1994 (Annexure A-1) that he had secured only 76 marks in

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paper VI and that he had not qualified in the examination and that the earlier communication dated 3.6.1993 (Annexure A-3) should be treated as withdrawn. Aggrieved by this letter, he has filed this O.A. for a direction to quash the impugned Annexure A-1 order and to direct the respondents to declare that he has qualified in this examination.

2. The respondents have filed a reply contesting this claim. It is stated that he has, in fact, secured only 76 marks. He was, no doubt, informed by the Annexure A3 letter that he had secured 81 marks and not 76. This was done when he asked for a retotalling. It was, later on, found that the answer script was not merely retotalled but was revalued unauthorisedly and 81 marks were awarded to him by revaluation. Hence, the Annexure A-3 letter was cancelled by the Annexure A-1 letter. It is also stated by the respondents that similarly circumstanced persons had filed O.As 85/95 to 88/94 (Ved Parkash and Others Vs. Union of India & other cases) which were dismissed on 17.5.1994 by another Bench vide the Annexure R-3 order. Hence, it was prayed that the O.A. be dismissed.

3. To find out the truth, we directed the respondents to produce the answer scripts, which has been done. It has also been seen by the learned counsel for the applicant.

4. The present O.A. was heard along with O.A. 659/94 Jagdish Chander Vs. Union of India. That O.A. was also dismissed by an order to which one of us (N.V. Krishnan) was a party. However, when the answer paper of the applicant was seen on that date, certain special features were noticed which distinguished it from Jagdish Chander's case. We,

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therefore, directed the respondents to produce the connected records which was done.

5. We have heard the learned counsel for the parties.

6. The following observations are made after a perusal of the answer script:

(i) There is a table on the cover page of the answer script in which the marks are entered by the examiner for each question and the total marks are mentioned. These entries relating to 6 questions have been made in blue ink and they add upto 76 marks. In this table, the marks assigned to the first question about which there is a dispute, are 29.

(ii) The examiner K.S. Rajagopal has signed on the first page after recording the marks and he has also stated that he has rechecked it. All this has been done in blue ink.

(iii) In the first question, there are four sub-questions. They were given respectively 5, 5, 4, and 15 marks in the red ink adding to 29.

(iv) The marks given to sub-questions 1 and 2 have been scored and the marks have been changed in the same red ink to 8 and 7 marks respectively so that there is an addition of 5 marks (3 marks for sub-question (1) and 2 marks for the second sub-question).

(v) The corrections made have been attested by the examiner Shri K.S. Rajagopal in the same red ink.

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(vi) However, the total of 29 marks in red ink is left unchanged.

(vii) All these marks are ~~tick marked~~ or scored by green ink. The examiner has recorded the marks given to the sub-questions at the end of the question in green ink and has struck the total as "  $8+7+4+15=34$  " and has signed in green ink.

(viii) It is this total of 34 marks that has been carried to the first page to the table. For the first question the marks shown in green ink is 34 and the total is shown as 81. This has been duly signed by the examiner in green ink.

It was this circumstance that led us to conclude, *prima facie* that there is a difference between this answer paper and the answer paper of Shri Jagdish Chander in O.A. 659/94. We felt that the charges and corrections made could be consistent with the claim of the applicant that there was no revaluation but only a retotalling. In other words, *it could be that* the individual marks given to the first question had not been added correctly in the first instance. It is only when it was taken up for retotalling at the request of the applicant that the correct <sup>the total</sup> ~~date~~ of 34 marks for the first question was arrived at.

7. At a subsequent hearing, we directed the respondents to produce the records in which they came to the conclusion that this was a case of revaluation and not retotalling, to find out how such conclusion was arrived at.

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8. The learned counsel for the respondents produced for our perusal the records of the department. It reveals that the answer paper was sent to the examiner Shri K.S. Rajagopal in connection with the applicant's request for retotalling. He then sent his reply on 25.5.1993. That reply reads as under:

"Sub: Re-checking/Re-totalling of marks of answer book of Roll No. HTC-225 (Security No.152109) in paper VI of JAO Part-I Examination held in October, 1992.

Ref: Your letter No. 9-1/93-DE dt. 4.5.93.

Dear Sir,

Kindly refer to your letter cited above on the subject. I have reviewed the answer book of the above candidate. My comments are as under.

On a review, I find that the candidate deserves a total of  $(8+7+4+15) = 34$  (thirty four) marks for question No.1, for the way the answer is presented.

The answer book is returned herewith duly corrected as desired.

Kindly acknowledge receipt.

Yours faithfully,

Sd/-  
( K.S. RAJAGOPAL )"

9. He, therefore, urged that this reply of the examiner reveals that a revaluation has been done and not mere retotalling. Therefore, the revalued marks of 81 should not be taken into account for any paper.

10. It is on these facts we have to determine as to whether this is a case of retotalling or this is a case of revaluation which, admittedly is prohibited by the rules.

*[Signature]*

11. The learned counsel for the applicant submitted that it has been averred in para 4.6 of the O.A. as follows:

"That in view of the communication dated 3-6-93 and 10.8.93 (Annexures A-3 and A-4), the applicant has secured qualifying marks of 40% in each paper and 45% in the aggregate as prescribed in the Rules and he is entitled to be declared as qualified".

He points out that the respondents have not given any reply to this averment. The applicant has, therefore, contended in the rejoinder that, in the circumstance, the respondents should be deemed to have admitted this averment.

12. We are of the view that the reply of the respondents has to be read as a whole. Merely because a specific reply has not been given to paras 4.6 of the O.A. it cannot be held that the respondents have admitted this allegation. Their case as mentioned in para 2 is fully set out under heading 'Facts of the case' in the reply.

13. The learned counsel for the applicant also submits that there is no indication that there has been actually any revaluation. The reply dated 25.5.1993 of Shri Rajagopal cannot be interpreted to indicate that there is an admission of revaluation. That apart, he also argues that, in any case, the examiner himself has stated that he has given the marks which the candidate deserved. In other words, no favour has been done. That being the case, the higher marks given by the examiner cannot be ignored, because they are marks which the applicant should have got in the first instance and the applicant has the right to retain those marks.

14. We have considered the rival contentions. The only question for consideration is whether this is a case of revaluation or whether the marks have been only retotaled.

15. It is clear from the reply reproduced in para 8 that

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this examiner did not merely retotal the marks already given but reviewed the marks given and found that the candidate deserved higher marks. Hence, he corrected the marks and revalued the answer paper. The learned counsel for the respondents points out that, in fact, a mistake was committed by the Department itself in sending the answer paper of the applicant to the original examiner Shri Rajagopal. The rules regarding these examinations are given in the P&T Manual, Vol.IV in Appendix 37 Part-I. Extracts are at Annexure R-I. Rule 14(d) requires that in such cases "the retotalling and verification of marks should be done by an officer other than the one who had originally valued the answer scripts concerned". Rule 15 does not permit revaluation of answer scripts under any circumstances.

16. That there has been a revaluation can be established even otherwise. The case of the applicant is that when the answer script was first valued, the examiner had given only 5 marks each for sub-questions 1 and 2 of the first question, but that he revised those marks then and there to 8 and 7 respectively and that there was no revaluation later on. However, the examiner failed to correctly total the marks given for the <sup>4 sub</sup> four questions. Instead of recording the correct total of 34 marks, he recorded only 29 marks. This, he corrected when he received the script again for retotalling.

17. We find this explanation to be highly improbable specially for two reasons.

Firstly, the total of 29 marks for the first question happens to be the total of the marks given to the sub-questions before marks for sub-questions 1 and 2 were enhanced, i.e.  $5+5+4+15 = 29$ . It would have been different if the total was struck initially at 24 marks and later it was corrected to read

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as 29. For, it could then have been held that there was a genuine totalling mistake and 5 marks to one of the sub-questions had not been taken into account. That is not the situation here.

Secondly, assuming that, when the answer script was still with the examiner (i.e. long before the applicant made his request), the marks given for sub-questions 1 and 2 were raised to 8 and 7 on rechecking of the valuation, it is highly improbable that the examiner would not have simultaneously, corrected the total marks to read as 34, particularly when he has taken the precaution to authenticate the corrections by affixing his full signature. One would have expected him to have corrected '29' to read as '34' and authenticate it too by red ink. Therefore, it is quite clear that the enhancement of the marks to sub-questions 1 and 2 was made at a later date when the examiner reviewed it on 25.5.1993. In other words, there was a revaluation.

18. We notice from Rule 15 of the P&T Manual, Vol. IV (Annexure R-1) that revaluation of answer scripts is not permissible in any case or under any circumstance. That rule is not under challenge in this O.A. Therefore, even if it is contended that the applicant deserved the higher marks, the applicant cannot get the benefit of the higher marks if it is established that this has been done by revaluation.

19. We are satisfied that the applicant has been given 81 marks by revaluation, which is not permissible. Hence, the Annexure-1 letter cannot be faulted.

20. The O.A. has no merit and is dismissed. No costs.

*W.S.M*  
(C.J. ROY)  
MEMBER(J)

*19.12.94*  
(N.V. KRISHNAN)  
VICE CHAIRMAN(A)

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