

(12)

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.233/2004

With

O.A.No.2555/2004

Hon'ble Mr.Justice V.S. Aggarwal, Chairman  
Hon'ble Mr.S.K. Naik, Member(A)

New Delhi, this the 9<sup>th</sup> day of November, 2004

O.A.233/2004

Dr.Bhawesh Kumar Mishra  
S/o late Shri C.N. Mishra,  
H-15A,Bhagat Singh Park,  
Delhi-42

....Applicant

(By Advocate: Shri S.N.Anand)

O.A.2555/2004

Vinod Kumar Sharma,  
S/o Shri Amir Singh,  
WZ-533, Sri Nagar,  
Shakur Basti,  
Delhi-34

....Applicant

(By Advocate: Shri S.N. Anand)

Versus

1. Central Provident Fund Commissioner  
14, Bhavishya Nidhi Bhawan,  
Bhikaji Cama Place,  
New Delhi-66

2. Regional Provident Fund Commissioner (Exam)  
14, Bhavishya Nidhi Bhawan,  
Bhikaji Cama Place,  
New Delhi-66

....Respondents

(By Advocate: Shri V.S.R. Krishna)

Order(Oral)

Justice V.S. Aggarwal, Chairman

By this common order, we propose to dispose of two Original Application Nos.233/2004 and 2555/2004.

2. It was not disputed that controversy is identical. In the light of that, the respondents' learned counsel did not even deem it necessary to file a fresh reply in O.A.2555/2004. He has adopted the defence taken in O.A.233/2004. Consequently, we are only taking the facts from O.A.233/2004 for the sake of facility.

3. The applicant seeks a declaration that Note – II to Clause-13 of the Scheme of Examination is invalid. The result of the applicant should be declared to be invalid to the extent showing award of 32 marks in Paper-V to him and Master Key of questions alongwith answer sheets should be called and corrected marks should be awarded.

4. The applicant joined the department as a Lower Division Clerk (LDC). He was regularized as an Assistant in the year 1999. The respondents conducted a departmental examination for promotion to the post of E.O./A.A.O./Superintendent from 16<sup>th</sup> to 20<sup>th</sup> June, 2003. The examination is governed by Enforcement/Assistant Accounts Officer and Superintendent Departmental Competitive Examination Scheme, 2002. The result was declared on 6.11.2003. The name of the applicant did not figure therein.

5. The applicant had represented on 6.11.2003 contending that he has only been awarded 32 marks out of 100 in Paper No.V i.e. Elementary Principles of Book Keeping. He applied for re-totaling and verification of marks. The respondents had done the re-totaling. The applicant was informed that the totaling done is correct. It is in this backdrop that the aforesaid reliefs are being claimed.

6. In the reply filed, the application is being contested.

18 Aug

7. Respondents plead that post of Enforcement Officer/Assistant Accounts Officer/Superintendent in the Employees Provident Fund Organization are filled 50% by seniority, 25% by departmental competitive examination and 25% by direct recruitment conducted by the Union Public Service Commission. The applicant had taken the departmental competitive examination. According to para 8.1 of the Competitive Examination Scheme, the General candidate must secure 40% marks in each paper. The applicant had only secured 32 marks in Paper No.V. It contained questions on Elementary Principles of Book Keeping, Numerical Ability and Reasoning. Para 13 of the Scheme reads:

“(a) If a candidate desires re-totalling of his marks and verification of the fact that all answers written by him/her have been duly assessed by the examiner he/she should submit an application to the Head Office through his/her Regional Office/Sub-Regional Office for undertaking the re-totalling and verification. The application must be supported with confirmation from Regional Office/Sub Regional Office that a fee of Rs.5/- per paper has been deposited by the candidates applying for re-totalling/ verification of marks within the prescribed time.

(b) Such applications must be submitted within 15 days from the date of communication of the respective results. Any application submitted thereafter shall not be entertained.

(c) Fee paid for re-totalling of marks will not be refundable in any circumstances.

Note I : It must be clearly understood that the only scrutiny intended under this provision is whether all the answers written by the candidates have been assessed and there is no mistake in the totaling of the marks.

Note II: Revaluation of answer scripts is not permissible in any case or under any circumstances.

Note III: All fee received in response to the requests for re-totalling and verification of marks shall be credited by the Regional Provident Fund Commissioner / the Officer-in-Charge of Sub Regional Office and Regional Provident Fund Commissioner (Administrative Service Division), Head Office, on receipt, to the Employees Provident Fund Account No. 2/ 4 respectively.”

18 Aug

8. The respondents plead that the apprehension expressed by the applicant that his Paper No. V was not properly assessed or that it was assessed by a less competent person having no knowledge of the subject, is baseless. The officers evaluating the answer sheets are qualified with expert knowledge of the subject. It is further stated that the provisions of the Scheme are valid and there is no ground to quash any part of the Scheme.

9. We have heard the parties counsel and have seen the relevant record.

10. Learned counsel for the applicant contended that under the Freedom of Information Act, 2002, the applicant has a right to know as to how the evaluation has been made and, therefore, rejection of his claim in this regard that he has a right to see his answer sheets for re-evaluation must be held to be invalid.

11. The Freedom of Information Act, 2002 (for short "the Act") has been enacted to have a suitable, honest, transparent and efficient set up. The Bill enables the citizens to have access to information on a statutory basis. It defines the Freedom of Information under Section 2(c) in the following words:

"2(c) "freedom of information" means the right to obtain information from any public authority by means of -

- (i) inspection, taking of extracts and notes;
- (ii) certified copies of any records of such public authority;
- (iii) diskettes, floppies or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

12. In addition to that, Section 2(g) defines the Public Information Officer in the following words:

"2(g) "Public Information Officer" means the Public Information Officer appointed under sub-section (1) of Sec. 5"

13. Section 5 provides for appointment of Public Information Officers and in accordance with this provision, every public authority shall for the purposes of this Act, appoint one or more officers as Public Information Officer. He has to deal with the

18 Aug

requests for information and render reasonable assistance to any person seeking such information. Under Section 6 of the Act, a person desirous of obtaining information should make a request in writing and under Section 7 of the Act, the said request can be disposed of in accordance with the provisions. Any person aggrieved by the decision of Public Information Officer can prefer an appeal to such authority as may be prescribed.

14. These facts clearly show that the Freedom of Information Act, 2002 is a complete code in itself. The information can be sought from the Public Information Officer and against such an order, an appeal is prescribed. The applicant has not adhered to the same. Thus in this Tribunal, he cannot enforce the provisions of the Act for which remedy has already been prescribed. Consequently, it becomes unnecessary for us to delve into the question if the applicant can, in fact, insist for such an information under the provisions of this Act because that would be embarrassing for either party.

15. Admittedly, the applicant had earlier applied for checking of the total. The said request has been adhered to and it was found that the totaling was correct. Presently the grievance is that :

- (a) experts were not associated in checking of the papers; and
- (b) master key was not prepared.

16. The learned counsel further relied upon the decision in the case of Sh. Subash Chandra Verma & Ors. etc. v. State of Bihar & Ors. etc., 1995 (2) AISLJ

41. In the cited case, the papers were stated to have leaked and further that the papers were examined with the help of clerical staff. The Supreme Court held that no prejudice was caused. Since the facts before the apex court were totally different, it must be stated that the decision is distinguishable.

17. Reverting back to the contention of the applicant that the master key was not prepared and was not given to the examiner, we have no hesitation in rejecting the same because simply if the master key was not given, will not be a factor to quash the result. It

18 Ag

is not a case that different standards have been applied for different persons. In the absence of any such basis having been shown, the contention necessarily must be repelled.

18. As regards persons who checked the papers being not experts, again the plea has to be stated to be rejected. The respondents have specifically pointed that the officers evaluating the answer sheets are qualified with expert knowledge of the subject. We find no reason in the absence of any other material on the record to hold otherwise.

19. Lastly the learned counsel prayed that the Scheme which prescribes for re-evaluation of the answer sheets is not permissible in any case. In the first instance, it must be taken that the applicant took the test conscious of this being in the Scheme. Otherwise also, the said stipulation in the Scheme cannot be termed to be illegal or violative of any law for the reason that re-evaluation, if necessary, could only be conducted if the Tribunal/Court finds that in the facts of a particular case, it so required. Otherwise re-evaluation, in the absence of any other reasons, cannot be termed to be a right of any individual. There is thus no discrimination or right of the applicant which is being violated.

20. No other argument has been advanced.

21. For these reasons, the O.As. being without merit must fail and are dismissed.

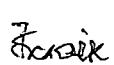
  
( S.K. Naik )  
Member(A)

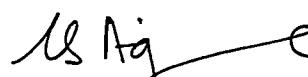
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( V.S. Aggarwal )  
Chairman

In the order pronounced on 9.11.2004, in paragraph 11 after the first sentence, the following inadvertently has not been noted. Therefore, it is directed that it should also be read after the first sentence of paragraph 11 as under:

"Though the said Act has not been enforced, still if the same is considered, the result is identical."

  
( S.K. Naik )  
Member(A)

  
( V.S. Aggarwal )  
Chairman

17.11.2004