

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.475 OF 2010

Cuttack this the 8th day of February, 2012

Sri Nayan Chandra Hansa Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Tribunal or not?

(C.R. MOHAPATRA)
Member (Admn.)

(A.K. PATNAIK)
Member (Judl.)

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CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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Sri Nayan Chandra Hansa, aged about 48 yrs., S/o. Sri Madhab Hans, presently working as Sr.T.O.A.(A), O/O. T.D.E., BSNL, Phulbani residing at – Dhipasahi, Post-Phulbani, Dist-Kandhamal, Orissa-762 001

...Applicant

By the Advocates:M/s.P.K.Padhi, M.P.J.Roy & Mrs.J.Mishra

-VERSUS-

1. Bharat Sanchar Nigam Limited (BSNOL) represented through it's Chief Managing Director, BSNL, Eastern Court, Janpath, New Delhi-110001
2. Chief General Manager, Telecom, BSNL, Bhubaneswar, Orissa Circle, Bhubaneswar, At/PO-Bhubaneswar, Dist-Khurda-751001
3. Assistant General Manager (DE), BSNL, Departmental Examination Branch, 222, Eastern Court, Janpath, New Delhi-110 001
4. General Manager (HR & Admn.), O/O. the Chief General Manager, telecom, BSNL, At/PO-Bhubaneswar, Dist-Khurda-751001

... Respondents

By the Advocates:Mr.J.K.Panda

ORDER

A.K.PATNAIK, MEMBER (J):

The Applicant, at present working as Sr.T.O.A.(P) under the Respondent-Organization has filed this Original Application being aggrieved by the issuance of Annexure-A/9 dated 12.8.2010 wherein he has been communicated with the re-totaling and verification of marks of JAO, Pt-II Internal Competitive Examination(40% quota) held on 4th, 5th & 6th January, 2010 and in the circumstances, he has sought for the following relief:

- i) to direct the Respondents to award grace mark/compensate the candidates for setting out of syllabus question.

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- ii) to direct the Respondents to evaluate the answer, which has not been evaluated and direct the Respondents to take into account the mark, which is advantageous to applicant, where there is confusion regarding awarding of mark & there are 2 marks.
- iii) to quash Annexure-A/9 and the O.A. may be allowed with costs".

2. Briefly stated, the facts of the case are that in response to notification dated 4.8.2009 issued by the Respondent-Department, applicant was one of the candidates for JAO Part-II Internal Competitive Examination Against 40% quota that was held from 4th to 6th January, 2010. The applicant having been declared unsuccessful in the said examination, sought the marks secured by him. Since he found to have secured less marks beyond his expectation, he asked for the answer papers through RTI Act and in the above backdrop, Respondent No.2, according to applicant, communicated the revised mark after rectifying the error vide Annexure-A/4 dated 22.5.2010. Further, it has been submitted that it came to the notice of the applicant that the examiner had not evaluated question No.1(ii) of Section-C of Paper-II, which was with the aid of book although the answer given by him was fully correct (Annexure-A/5). According to applicant, the same examiner has also given 10/11 but the calculation has been made as 10 in Section A, i.e., 1st page of answer sheet. In the same answer sheet in Section C(iii) against lapsed deposit has given 1 out of 2 which is fully correct but in respect of Section 1(i) has awarded 3 but against given 2 and has taken into consideration only 2 marks. It is the case of the applicant that in case 2 marks will be 2 and 10 will be 11 and the fully correct answer is given 2 & ½ marks, then the problem of qualifying aggregate mark will be over for all times to come. In the above backdrop, the applicant's representation having been

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rejected vide Annexure-A/9 dated 12.8.2010, by filing the instant OA the applicant has sought the above relief.

3. Respondent-Department have filed their counter opposing the prayer of the applicant. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard Mr. P.K.Padhi, learned counsel for the applicant and Mr. J.K.Panda, learned counsel for the Respondents and perused the materials on record.

5. Mr. Padhi, Learned Counsel appearing for the Applicant, in support of his case submitted that the questions set in Papers-II, III and V were out of syllabus which led to his disqualification. It has been contended that Paper-II Telecom Account – I is practical with books whereas all the questions asked in Paper-II were theoretical. In the said subject Question No. 1 to 4 pertains to Telecom Account –II i.e., Paper-III. In Paper-I, theory question No.1 sub question No. 1 to 8 pertains to Telecom Accounts II, i.e., Paper-II. In question No.VI(4) pertains to Telecom Accounts II i.e., Paper-III. According to Shri Padhi, the Examiner should evaluate the answer paper afresh and award grace marks to the applicant. In support of his contention, Shri Padhi has relied on the decision of this Bench in O.A.No.443 OF 2010 disposed of on 28.3.2011.

6. In reply to the above contentions, Mr. J.K.Panda, learned counsel for the Respondents submitted that the questions set were not out of syllabus and that the marks were properly awarded by the examiners after the papers having been evaluated. According to Shri Panda, since the applicant has failed in the examination, he is trying to find loopholes in the examination

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systems and the evaluation of marks which is after thought and that none of his rights having been infringed; the O.A. is liable to be dismissed.

7. We have considered the submissions made by the learned counsel for the applicant and given our anxious considerations to the arguments advanced at the Bar. We have also gone through the representations filed by the applicant vide Annexures-A/7 and A/8. In Annexure-A/7, the applicant has submitted as under;

"I could not qualify in the examination for strict valuation and want of just of a few marks, i.e., 4 marks to achieve 45% aggregate in total. Kindly consider for relaxation for qualifying in the said Examination".

8. Vide Annexure-A/8 representation; the applicant had just made a request for re-totaling/verification and valuation of answer papers.


9. Viewed from the above angle, we do not find that the applicant had ever agitated his grievance before the authorities regarding the questions set out of syllabus nor any wrong evaluation of marks. Be that as it may, the points urged in this Original Application were not the points raised by the applicant before the competent authorities and as such, he is estopped to raise those points before the Tribunal directly and unhesitatingly. The Tribunal, in judicial review, is not expected to go into the facts which were not raised before the authorities competent to deal with the matter save and except the legal points. It also reveals that the applicant had never agitated the questions set out of syllabus during the course of examination.

10. Apart from the above, the decision of the this Bench in O.A.No.443 OF 20120(supra) is of no help to the applicant as the relaxation sought by the applicant in that O.A. was in respect of exhaustive questions in respect of which there was specific instructions issued by the Department in

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that behalf. In the instant O.A. applicant has not stated as what right of his has been infringed.

11. For the reasons discussed above, we hold that the applicant has not been able to make out a case for any of the relief sought. In the result, O.A. being devoid of merit is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

BKS/PS


(A.K. PATNAIK)
JUDICIAL MEMBER