

13
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.636OF 2011
CUTTACK THIS THE 18th DAY OF JUNE, 2013

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Bijaya Kumar Das, aged about 39 years, Son of Sri Gayadhar Das of
Village/PO-B.D.Pur, PS-Rajkanika, Dist-Kendrapara

...Applicant

By the Advocate(s)-M/s. A.Routray
U.R.Bastia

-VERSUS-

Union of India represented through

1. The C.P.M.G., Orissa, Bhubaneswar-751 001
2. The Director of Postal Services, Orissa Circle, Bhubaneswar-751 001
3. The Superintendent of Post Offices, Cuttack North Division, Cuttack-753 001
4. Sri Srikanta Kumar Rath, Postman, Aul SO, Dist-Kendrapada
5. Sri Krushna Prasad Rath, Postman, Kendrapada HO, Dist-Kendrapada
6. Sri Rabindranath Sahoo, Postman, Salipur m.d.g., Dist-Cuttack
7. Sri Debendra Nath Nayak, Postman, Jajpur HO, Dist-Jajpur
8. Sri Surendra Behera, Postman, Rajkanika SO, Dist-Kendrapada
9. Sri Satchida Nanda Das, Postman, Jajpur HO, Dist-Jajpur
10. Sri Chow.Girija Sankar Mohanty, Postman, Kendrapada HO, Kendrapada
11. Sri Sanath Kumar Patra, Postman, Patamundai SO, Dist-Kendrapada
12. Sri Kishore Ch.Sahoo, Postman, Jajpur Road MDG, Dist-Kendrapada

...Respondents

By the Advocate(s)-Mr.G.Singh

2
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ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A)

The applicant in this case is working as Gramin Dak Sevak Branch Post Master (in short GDSBPM), Ghagra B.O.

2. The facts as ^ucalled out from his application are that in response to a Circle Office letter dated 28.10.2009, he had applied for the post of Postman by way of promotion, through a Departmental Examination. The Respondent No.3 in this O.A., the Superintendent of Post Offices, Cuttack North Division published a total vacancy of 10 consisting of UR-6 and SC-4 covering the years 2006, 2007 and 2008, on 28.1.2010. The applicant was permitted to appear in the above mentioned Departmental Examination. The Select List was published on 27.4.2010, and the applicant to his dismay did not find his name in the said list. He made a representation to the Respondent No.3 to provide him his mark sheet, which was provided on 25.05.2010, on scrutiny of which the applicant found his marks to be 50 out of 50 in Paper – B, 49 out of 50 in Paper-C, but 32 out of 50 in Paper-A. His grievance was in respect of Paper-A in which he had expected 100% score, since the paper was about filling up some departmental forms, which he claimed to have done as per the given instructions. His allegation was that when he deserved 100% marks in Paper-A, he was given less marks due to mala fide intention of the concerned examiner who wanted to favour some specific candidates. He mentions to have learnt from some sources that such discrimination was caused not only to him, but also to some other candidates, because of mala fide motive of the examiner to show favouritism to some specific persons. The applicant also alleges that the Superintendent

15
of Post Offices had on 28.1.2010 shown the UR vacancy as 6, SC vacancy as 4, but the next day, i.e., 29.1.2010, the vacancy position was changed to UR-9 and SC-1. This, the applicant alleges, was done by the Superintendent of Post Offices, Respondent No.3 to adjust his own favourite candidates.

3. The applicant had approached this Tribunal earlier in O.A.No.322 of 2010, and as per directions of this Tribunal in its order dated 08.07.2010 and 23.07.2010, the Respondent No.3 gave a personal hearing to the applicant, and rejected his representation by letter dated 2.12.2010(Annexure-3 to the O.A.).

4. This constitutes the background against which the present O.A. has been submitted by the applicant.

5. At Annexure-3 to the O.A. is the minutes of personal hearing on grievances of the applicant dated 2.12.2010 given by the Superintendent of Post Offices, Cuttack North Division. In course of the hearing, the applicant put forth his demand for re-evaluation of Paper-A, in which as alleged, injustice was caused to him by the examiner who gave him unreasonably low marks, even when the answers given were absolutely correct in accordance with the provisions of Rule-110 of Postal Manual, Vol.VI, Part-III.

6. Superintendent of Post Offices, Cuttack North Division examined the xerox copy of applicant's answer sheet and observed that **"on examination of the answer sheet of the candidate, it reveals that he made entry in the Postman Book according to the provisions of Rule-110(a) Vol.VI, Part-III"**. He did not find any evidence to support the allegation of the applicant regarding mala fide intention and corrupt motive of the examiner. However,

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regarding the demand for re-evaluation of answer sheet, he decided that it was not permissible under Rule-15 of Appendix-37 of P & T Manual Vol.IV. Finally, in view of the observations, he rejected the representation of the applicant.

7. The applicant had challenged the order at Annexure-3 in O.A.No.834 of 2010, but the said OA was permitted to be withdrawn for filing a better application in order dated 15.9.2011 of this Tribunal.

8. The applicant in the present O.A. has prayed for due assessment of his answer sheet in Paper-A and declaring him selected to the post of Post Man on the basis of the examination held on 31. 01.2010.

9. The grounds that he has pleaded for making such a prayer are as follows.

- i) Rule-14 of the Appendix-37 of P & T Manual, Vol.IV provides for retotalling and verification of marks according to which if the candidate desires the retotalling of his marks and verification of the fact that all answers written by him have been duly assessed by the examiner, he should submit an application in the prescribed form and pay the prescribed fees. Such application must be submitted within six months from the date of announcement of the results. The retotalling and verification of marks should be carried out by an officer other than the one who had originally valued the answer scripts concerned.
- ii) Rule-15 provides that re-evaluation of answer scripts is not permissible in any case or under any circumstances.

10. The contention of the applicant is that Rule-15 is applicable only to the long answers, since there the marks awarded would depend upon



assessment of examiners. But when there are objective type of questions and answers, assessment of examiners cannot be subjective or different. In the present case, the Superintendent of Post Offices has found that answers of the applicant in Paper-A are according to the provisions of Rules, and therefore, re-evaluation should have been permitted to ensure justice to the applicant. Rule-15, the learned counsel for the applicant has pleaded, militates against Articles 14 and 16 of the Constitution. This Rule is liable to be quashed being ultra vires the Constitution. The specific prayer is that the answer scripts of the applicant should have been re-evaluated and the case of the applicant should have been considered for promotion along with other selected persons.

11. We may now turn to the contents of the counter affidavit filed by the learned counsel for the Respondents. According to the counter affidavit, in pursuance of C.P.M.G. Orissa Circle, Bhubaneswar letter No.RE/30-2008 dated 28.10.2009, Notification was issued by the Respondent No.3 vide letter No.B/Genl.-1/Ch.VII dated 6.11.2009 to hold departmental examination for promotion of Group D/Mailmen and GDS to Postman/Mail Guard cadre against the vacancies for the years 2006, 2007 and 2008. The last date of submission of application was 25.11.2009, and date of examination was fixed to 31.10.2010. In response to the application dated 6.11.2009, 198 GDS candidates and one Group-D candidate applied. 176 GDS candidates appeared in the examination. All Heads of Postal Divisions including Respondent No.3 attended the office of Chief P.M.G. on 26.4.2010 for declaration of the results. All answer sheets duly evaluated were handed over to Divisional Heads on spot on 26.4.2010 to declare the

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18

results. After addition of each paper, the result was declared on ^P27.4.2010.

All the 10 posts were filled up from amongst the GDS candidates on the basis of marks secured in the Departmental Examination. The highest mark secured by the UR candidate was 146, and marks obtained by the lowest selected UR candidate was 136. The only SC candidate selected obtained 131 marks. The applicant in this O.A. secured 131 marks being a UR candidate, and therefore, could not compete on merit with the selected UR candidates.

12. The counter affidavit mentions that there was a change in the vacancy status, and the number of UR vacancies was increased from 6 to 9, but the applicant belonging to UR category should not have any valid grievance in this regard.

13. The other facts mentioned in the O.A. regarding his approaching the Tribunal, the personal hearing given to the applicant, and the order of rejection of his representation dated 02.12.2010 by the Respondent No.3 have all been confirmed in the counter filed by the Respondents.

14. On the most important point of contention in this O.A., the respondents have pleaded that under the provisions of Rule-15 (Appendix-37 of P & T Manual, Vol.IV, Part-II), review on evaluation or to change the valuation of an answer sheet is not permissible. A copy of the above Rule has been filed as Annexure-R-7 to the counter.

15. The submission made in the counter is that in view of the facts and also provision of Rule – 15 as mentioned above, the Original Application is devoid of merit, and thus liable to be dismissed.

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16. In course of hearing of this case, it was considered necessary to examine the answer sheet of the applicant and therefore, the learned Addl.CGSC appearing for the Respondents was asked to produce the said document. In obedience to this direction, the learned Addl.CGSC has produced a Xerox copy of the answer sheet in Paper-A of the applicant, of the date of examination 31.1.2010. The subject of this paper is "Entries in Postman's Book". Against the various entries, marks $4 \frac{1}{2}$, $4 \frac{1}{2}$, $3 \frac{1}{2}$, 3, $2 \frac{1}{2}$, 3, $2 \frac{1}{2}$, $3, 2 \frac{1}{2}, 2 \frac{1}{2}$, have been recorded, and on top of the answer sheet a total mark of $31 \frac{1}{2}$, say 32 has been accorded, out of a total 50.

17. In the minutes of personal hearing dated 2.12.2010, the Respondent No.3 has observed that on examination of answer sheet, it was revealed that the applicant made entry in the Postman Book according to the provisions of Rule-110(a) Vol. VI, Part.III. But there is no mention of the marks given nor is there any remark whether these marks are in consonance with his observation. Respondent No.3, thereafter cites Rule 15 of Appendix - 37 of P & T Manual, Vol.IV which lays down that re-evaluation of answer sheet is not permissible.

18. A relevant question here arises. If the Respondent No.3 took a stand finally that re-evaluation of answer sheet is not permissible under Rule-15, then why did he make the observation that the applicant made entries in the Postman Book according to the provisions of Rule-110(a) Vol.VI, Part-III. Having made that observation, why did he not mention about the marks given to the applicant, and why did he not relate the marks to his observation. Why did he suddenly refer to Rule-15 ? Was his earlier observation just a casual observation ? Or did he mean to convey that even

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20

though the answers were in accordance with Rules, he is estopped from making re-evaluation under the provisions of Rule-15? This ambiguity is a striking deficiency in the order dated 2.12.2010 at Annexure-3. Rules have to be followed by the Departmental authorities, and if there is a restriction imposed by Rule 15, that has to be respected. But if the authorities make an admission that injustice was done, but they are not in a position to provide relief, on account of some restrictive provision in the Rules, it would then lead to a fairly disturbing situation.


19. Having observed that, it is also very difficult for us to accept that on the basis of this case, the said Rule 15 should be considered ultra vires, and that it should be made applicable to only long answers and not to objective type answers. Every Rule has been framed with due deliberation, and with specific objectives, and on the basis of some facts brought out in a particular case, the validity of a rule can not be questioned.

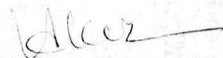
20. Having, therefore, considered the contentions of learned counsels for both parties, and perused the documents, in conclusion, having noted the embargo on re-evaluation of answer sheet imposed by Rule 15 of Postal Manual as stated above, we can not, however, entirely dismiss the plea of the applicant because of the legitimate and valid questions that have agitated our minds, and are discussed in the paras above. We are, therefore, of the considered view that the case of the applicant needs to be looked into afresh by Respondent No.1, i.e. Chief Post Master General, Orissa Circle, on the basis of the valid concerns that have been articulated in this order. He will examine the documents afresh, give the applicant a fresh hearing, and pass a reasoned and speaking order concerning the grievance of the applicant,

within a period of three months from receipt of a copy of this order, and send a communication to the applicant, conveying his decision. We would further like to mention that in case the Respondent No.1 comes to a finding that injustice has been done to the applicant on the basis of evidence, and he deserves to get relief, he may then consider seeking appropriate relaxation of Rule-15 of Postal Manual mentioned above, from the competent authorities, in the interest of justice, and remedying any wrong that might have been caused to the applicant.

The O.A. is disposed of with the above observations and directions.

The parties will bear their respective costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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