

41
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 260/00870/2011

this the 14th day of September, 2016

Kulamani Sahoo ...Applicant

-VERSUS-

Chairman-cum-MD,BSNLRespondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *Yes*



(R.C.MISRA)
MEMBER(A)



(A.K. PATNAIK)
MEMBER(J)

42

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 260/00870 of 2011

this the 1st day of September, 2016

CORAM

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

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

Kulamani Sahoo aged about 49 years S/o Late Shri Harihara Sahoo at present working as Sr.Telecom Office Assistant (TOA)Grade II in the office of the Chief General Manager, Bharat Sanchar Nigam Limited, Orissa Circle, Bhubaneswar-01.

...Applicant

By the Advocate(s)- Mr. G.Rath & Mr.A.K.Mohanty

-VERSUS-

1- Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, BSNL House, Harish Chandra Mathur Lane, Janpath, New Delhi – 01.

2- The General Manager (Recruitment), Bharat Sanchar Nigam Limited, Corporate Office, Eastern Court Building, Janpath, New Delhi – 01.

3- The Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Orissa Circle, Bhubaneswar-01.

...Respondents

By the Advocate(s)-Mr.S.K.Patnaik & Mr. H.K.Tripathy

ORDER

R.C.MISRA, MEMBER(A):

The applicant of this O.A. working as Senior Telecom Office Assistant, Grade-II in the Office of Chief General Manager, Bharat Sanchar Nigam Limited, Orissa Circle, Bhubaneswar has approached this Tribunal praying for the following reliefs.

(A) *To direct the respondents to reevaluate the answers papers (paper-I and Paper-II) of the applicant with reference to the model answers / key notes and give him additional 17.5 marks in subject-1 (11 marks in paper-1 and 6.5 marks in paper-II) which have been erroneously given short.*

(B) *To direct the respondents to give grace marks of 3 in one paper if necessary in accordance with the Department of Telecom order dated 20.06.1994.*

(C) *To give grace marks of 15 in paper-II to the applicant for questions set out of syllabus against Q.No. 2 & 3.*

(D) *To Declare that the applicant has qualified in the examination by securing the prescribed percentage of marks in the JAO (Part-II) examination and thereby has been qualified in the said examination to become eligible to get all consequential benefits viz. seniority and promotion etc.*

(E) *To pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice.*

(F) *To order and direct that the cost of litigation be paid to the applicant by the respondents for unnecessarily dragging him in to unwarranted and avoidable litigation."*

2. The brief facts of the case are that applicant was initially appointed in the erstwhile Department of Telecom in March 1986. He was

43
 promoted as LDC in 1990 and thereafter, consequent to restructuring, he was designated as Telecom Office Assistant (TOA) w.e.f. 09.09.1992. Further, he was promoted as Sr.TOA w.e.f. 05.04.1995 and is presently posted in the Office of Chief General Manager, BSNL, Bhubaneswar. It is further to be noted that Department of Telecom was corporatized as BSNL w.e.f. 01.10.2000. It is averred that applicant passed departmental competitive examination Part-I for JAO as per the BSNL Circular No. 4-29/2003-SEA(BSNL) dated 12.10.2004 and thereupon, appeared in the JAO Part-II departmental competitive examination conducted from 4th January to 6th January, 2010 with the Roll No. OR/2009/JAO-II(40%)/269, against 40% quota meant for such candidates. In the said Part-II examination, there were five papers from three subjects, as quoted below :

<u>Subjects of Examination</u>	<u>Details of Paper</u>	<u>Marks</u>
Telecom Accounts-I	Paper-I(Theory) Without books	100
	Paper-II(Practical) With books	100
Telecom Accounts-II	Paper-III(Theory) Without books	100
	Paper-IV(Practical) With books	100
Civil Works,Accounts Procedure	Paper-V (With books)	150

As per BSNL Circular dated 12.10.2004, minimum marks required to pass the examination are as follows :

“(a)For other category (OC):-40% in each subject (theory & practical put together) and 45% in the aggregate.

(b)For SC/ST/Physically handicapped candidates:-33% in each subject (theory & practical put together) and 38% in aggregate).”

3. The results of the aforesaid examinations were published vide letter dated 19.03.2010 (Annex.A/2)in which 34 candidates were declared successful excluding the applicant. The applicant in reply to his request dated 20.03.2010 was informed on 26.03.2010 (Annex.A/3), about his marks in the JAO Part-II Examinations in the following terms:

Subject Paper	Telecom Accounts-I		Telecom Accounts-II		Civil Works Accounts Paper – V
	Paper-I	Paper-II	Paper-III	Paper-IV	
Full Marks	100	100	100	100	150
Marks	23.5	42	36.5	80	105

It is contended that applicant came to know that he has secured 58.25% marks in Telecom Accounts-II and 70% marks in Civil Accounts, whereas, he has secured only 32.75% marks in Telecom Accounts-I papers, and thus, was declared as failed in one subject. The applicant was, on his request, supplied with copies of answer papers and copies of model answers(key notes used by the examiners) vide Annex.A/4. Thereafter, applicant submitted a detailed representation on 27.05.2010 (Annex.A/6) to the Director (HR), stating certain discrepancies which are quoted hereunder :

1. *Question No. 2 and question no. 3 of Section A, Paper-II (With Book) of Telecom Accounts-I (Practical) are set from out of syllabus. The questions come from P&T FHB Vol.I do not find any place in the Chapters "Gen;. Principles & Cash" which is prescribed in the syllabus (An extract copy of syllabus attached for reference).*
2. *In the same subject stated above, I have not been awarded any mark for the answer to question No. 1(iii) under Section-C (Copy of answer sheet attached).*
3. *As per Circular no. 4-29(2003-SEA9BSNL) dt. 12/10/2009 (Copy enclosed for ready reference, it was specifically mentioned that Subject-I, Paper II will be practical paper whereas all the questions asked in the Paper-II were theoretical questions. The pattern of question has been changed altogether without any prior notification. Thereby my devotion of much time in solving practical questions goes in vain.*
4. *In Paper I (Theory), I have been awarded with a total mark of 23.5. It is seen that I have been awarded less mark although I have written correct answer to the Question no.-II and Question no. IV(1).*

The applicant on the basis of above alleged discrepancies prayed to the respondents that he may be allowed 28 additional marks.

4. The applicant, since no heed was paid to his representation, sent reminders on 17.05.2010, 28.06.2010, 16.08.2010 and on 8.10.2010. He has categorically stated that BSNL Employees Union and the Bharatiya Telecom Employees of the BSNL Union, also questioned such anomaly in conduct of the JAO Part-II examinations.

5. In his O.A., applicant submitted that (a) Q.Nos.2 & 3 of Paper-II, Section-A having 15 marks each, were out of syllabus. Applicant could not attend Q.No.2 and attended Q.No. 4 in which he was given only 6 marks.Thus he was given 9 marks less; (b) No marks was awarded to him

4B

for his answer to Q.No. 1(iii) of Section C of Paper – II and thus he was given 2 marks less; (c) when the answer to Q.No. 2 of Paper- I was correctly given by the applicant without any mistake, he was awarded only 7 marks instead of 10. Thus the applicant was given 3 marks less in this paper and lastly (d)the applicant had answered Q.No.4(i) of paper-I correctly as per the model answer/key note but he was given only 6.5 marks instead of 10 marks.Thus he was awarded 3.5 marks less against Q.No.4 in paper-I.

6. Apart from the discrepancies which the respondent-authorities had allegedly committed during the checking of the answer-sheets, the applicant has also pointed-out about the provision of Grace Marks subject to certain conditions, to candidates who failed in one paper vide its Circular dated 20.06.1994. It is pleaded that had this grace mark been given to him then also he would have come in the zone of consideration, but, the respondents did not do so. The applicant belongs to other category (OC). Such grace marks have been given to 9 SC/ST candidates as a result of review conducted by the circle office giving them concession of 5 marks vide office letter dated 25.09.2010 pursuant to Circular dated 08.07.2010. The applicant, therefore, prays that due to erroneous valuation and putting questions out of syllabus, he has been deprived of the benefit claimed in the O.A. hence, to meet the ends of justice, he has prayed that in the interest of equity, justice and fair play, respondents be directed to reevaluate the answer books and award him additional marks which he has been deprived of because of wrong valuation, and also award him grace marks as per their own circular and declare him qualified in JAO (Part-II) examination and give him consequential promotion as JAO.

7. The respondents have filed a counter-affidavit urging that applicant's prayer is not tenable on the ground that (a) there is no provision for revaluation of answer papers, rather rule 15 of the Appendix 37 of P&T Manual, Vol.IV according to which, the examination in question was conducted, specifically debars revaluation and applicant

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46

was duly intimated vide Annex.A/5 on 13.08.2010 regarding this matter (b) The minimum pass marks have been reduced and fixed subject-wise (including more than one paper) in the present system of BSNL and not paper-wise, as was prevalent during DoT period and there is no relevance for applying the Circular dated 20.06.1994 because after formation of BSNL, Junior Accounts Officer Recruitment Rules, 2001 were framed w.e.f. 31.08.2001 which only are applicable, and, lastly (c) the allegation of setting questions in Paper II out of syllabus, is also incorrect, and no one else has raised any grievance in this regard. The respondents on the basis of above grounds have contended that the applicant's case for awarding grace marks is unfounded.

8. It is further submitted by the respondents that the prayer of the applicant for re-evaluation is not admissible in view of the provision of Rule 15 of the Part-1 of the P&T Manual, Vol.IV Appendix-37 specifically providing that revaluation of answer script is not permissible in any case or under any circumstances. The respondents have mentioned about the order of the Hon'ble High Court of Andhra Pradesh dated 18.03.2008 in **Writ Petition No. 26059 of 2007**, in which it was decided that the Courts cannot compel respondents to undertake revaluation of papers unless there is such a specific provision in the relevant rules. It is further observed in the said order that in the event that revaluation is permitted, the process will go on, and the result of the examination will never attain finality. When the applicant has failed, he is trying to find loop-holes in the marks awarded which should not be encouraged. The Hon'ble High Court of Delhi in **Writ Petition (C) No. 3712 of 2011** has also expressed a view that the answer script of subjective paper cannot be evaluated strictly as per the answer key. In the exercise of power of judicial review the Court/Tribunal can neither step into the shoes of an expert body nor can give a direction for revaluation.

9. It is further clarified by the respondents that the Circular dated 20.06.1994 is only applicable to departmental qualifying examinations with descriptive type of questions. This examination is however, a



47
competitive examination and the said circular would not apply. The respondents have admitted that they have reviewed result of failed SC/ST candidates according to Government of India Circulars, but such provision of review is not applicable to other candidates. The Part-II examination for appointment of JAO was held on All India basis, and 1430 persons have been declared passed. No grace mark was awarded to any general category candidate. Respondents have argued that the applicant in this O.A. cannot claim any special privilege, or any relaxation in the standard of evaluation. Since this is a competitive examination award of grace marks will alter the inter-se seniority, and also distort the result of the examination. Therefore, valuation is purely an administrative function, and keeping this in view, the Courts/Tribunals have consistently rejected such prayers. Respondents in this regard have submitted that the Madras Bench of the Tribunal in their order dated 14.09.2011 in **OAs No. 920 and 1289 of 2010** in the matter of **T. Vijayan and Smt. V. Thangamani Vs. UOI & Ors.**, has rejected the prayer for revaluation following the ratio of judgment dated 25.05.2010 of the Hon'ble Apex Court in the matter of **H.P.Public Service Commission Vs. Mukesh Thakur and Anr** reported in (2010) 6 SCC 759. The respondents have emphatically submitted in the counter-affidavit that in a number of judicial pronouncements it has been settled that departmental authorities cannot be directed to undertake revaluation of answer papers, if a provision for revaluation is not specifically available in the relevant rules. The applicant in this OA is not eligible for revaluation of marks, or award of grace marks, and his prayer should be rejected outright.

10. Having heard learned counsel for both parties, we have perused the records. The learned counsels have filed written notes of submission which we considered. The two important issues for resolution in this O.A. are 1) whether the respondents in the case should be directed to reevaluate the answer sheets of the applicant, and 2) whether the applicant is eligible for award of grade marks as prayed for by him.



48

11. We have come across quite a few judicial pronouncements that have dealt with this issue earlier. In the case of **H.P. Public Service Commission Vs. Mukesh Thakur and Anr.** reported in 2010 STPL (LE) 43711 SC decided by the Hon'ble Apex Court on 25.05.2010, the view as quoted below was taken:

"The issue of re-evaluation of answer books is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary & Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Karmasheth etc. Reported in AIR 1984 SC 1543 wherein this Court rejected the contention that in the absence of provision of re-evaluation, a direction to this effect could be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking / verification / re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision."

The Hon'ble Apex Court further observed that this view has been approved and relied upon and reiterated in **Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission & Ors.** reported in AIR 2004 SC 4116.

"9..... The Apex Court in the H.P. Public Service Commission case (supra) has concluded that "thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory Rules/Regulations, the Court should not generally direct reevaluation."

12. We have also perused the judgment of the Hon'ble Delhi High Court in the matter of **Chairman-cum-Chief Managing Director & Ors. Vs. Chandresh Kumar Tripathy and Ors. in Writ Petition No. (C) 2224/2014** decided on 21.08.2014. In that case, involving similar facts and issues, orders of the Tribunal in OA No. 3275/2012 were challenged. By the order impugned in the writ application, the Tribunal had found that the grace marks which the applicants had sought, should be given to them and issued directions in this regard. The Tribunal in passing this order was principally influenced by the past practice which the BSNL adopted. The Hon'ble High Court after a detailed discussion of the various facts and issues came to the conclusion that the applicants could not have claimed for a direction that the BSNL ought to have awarded grace marks since there is nothing which creates a vested right in that regard. The Hon'ble High Court was of the opinion that



impugned order of the Tribunal was clearly an error of law and required to be set aside, and accordingly allowed the Writ Petition.

13. The applicants in the Tribunal challenged the orders of the Hon'ble High Court in a Special Leave Petition filed before the Hon'ble Supreme Court of India. The Apex Court dismissed the petition with the following observations :

"The Division Bench of the High Court while setting aside the order of the Central Administrative Tribunal made it clear that since the Rules do not provide for grant of grace marks, the direction of the Tribunal was illegal and cannot be sustained. Learned counsel for the petitioners, by referring to the affidavit of the applicant filed before the Tribunal pointed out such grant of grace marks against the post of JAO, Part II Examinations of 2000, 2003 and 2007. Since it is tacitly admitted that there is no provision in the Rules or any other proceedings for grant of such marks, reliance placed upon such illegality committed in the past cannot be a ground to sustain the order of the Tribunal. We, therefore, do not find any scope to interfere with the order of the Division Bench of the Hon'ble High Court. We only direct the respondent-State not to violate the Rules by granting such grace marks in future."

The Hon'ble Apex Court by the above order has emphatically laid down the law that it is impermissible to award grace marks in the absence of such a provision in the Rules.

14. A matter containing similar facts and issues in OA No. 521 of 2011 was decided by this Bench of the Tribunal by an order of the Division Bench dated 20.08.2014. The operating part of this order is quoted below :

"18. In the present case, we have quoted the Rule 14 and Note thereto as well as Rule 15 of the Rules governing Departmental examination. The Rules clearly prohibit re-valuation of answer sheets. Only in case of re-totalling of marks and verification of the fact that all answers have been assessed, re-checking is permissible on the basis of application to be submitted in prescribed form. The applicant has not filed any such application. In his representation, he has not raised any grievance that any of his answers was not assessed Under the Rules, therefore, no relief could have been given to him by the respondents. Having considered all aspects of this matter, the position of Rules, as well as the ratio of judgment of the Hon'ble Apex Court in similar matters, we have come to the conclusion that the applicant is not entitled to any relief in the present case.

19. The prayer of the applicant in the O.A. having been found sans merit, is thus dismissed. No costs."



50

15. In dismissing similar claim of the applicant in OA No. 521/2011, the Tribunal has carefully considered the position of Rules, and the various judicial pronouncements in the matter, and also the law that has been settled by the decision of the Hon'ble Apex Court. We are to take a consistent view in the present matter also, considering the fact that similar facts and issues are involved.

16. We need to further emphasize that the applicant cannot claim award of grace marks on the basis of Departmental Circular dated 20.06.1994. It is mainly because of the fact that this Circular is on "grant of grace marks to candidates appearing in departmental qualifying examination with descriptive type question papers – instructions regarding". The respondents' stand that the examination involved in the O.A. is competitive and will not attract the provisions of Circular dated 20.06.1994 is therefore well supported. Law therefore, does not countenance the prayers of the applicant with regard to re-evaluation of answer-sheet, and also award of grace marks. Therefore, both these issues framed in paragraph 10 of this order (supra) are answered against the applicants, in view of the settled position of law.

17. The O.A. being devoid of merit is accordingly dismissed with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)