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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK

O.A.No. 260/00462 of 2013
Cuttack, this the 19th day of January, 2018

CORAM:

THE HON'BLE MR.S.K.PATTNAIK, MEMBER (JUDL.)
THE HON'BLE DR.M.SARANGI, MEMBER (ADMN.)

.....

Shri Pratap Chandra Swain,
Aged about 43 years,
S/o. Late Liingaraj Swain,
At/Po. Dhumuchhai,
Via-Tanarada, Dist. Ganjam,
at present serving as Mail Overseer,
Aska East Sub Division, Aska Postal Division,
Aska-761110, Ganjam.

..... Applicant

For the Applicant : M/s.G.K.Behera, D.R.Mishra, Advocates

-Versus-

1. Union of India represented through the Director General of Post, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General, Odisha Circle, Bhubaneswar-751001, Dist. Khurda.
3. The Post Master General, Berhampur Region, Berhampur, Gm.
4. The Superintendent of Post Offices, Aska Division, Aska, Gm.

..... Respondents

For the Respondents : Mr.S.B.Mohanty, ACGSC

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19/1/18

ORDER

S.K.PATTNAIK, MEMBER (JUDL.):

The Applicant has filed this Original Application seeking the following reliefs as reflected in Col.8 of the OA:

- “(i) Hold/declare that the order (Annexure-8/A) in rejecting the prayer of the applicant for re evaluation of marks of the applicant in respect of Question No. 31 of Paper-I of LGO Exam 2012 for promotion to the cadre of PA is bad & illegal;
- (ii) Hold/declare that the action of the respondent in not giving relaxation in respect of questions No.6 to 10, 12 & 22 in Paper-I of LGO Exam 2012 which were out of syllabus is bad & illegal;
- (iii) Direct the respondents to award marks to the applicant in respect of the Question No. 31, 6 to 10, 12 & 22 of Paper I in LGO Exam 2012 and to notify the Revised Result immediately declaring the applicant as qualified for promotion to the cadre of PA with consequential service benefits;
- (iv) And pass any such other order(s) as may be deemed fit and proper in the bonafide interest of justice.

2. Respondents filed their counter contesting the case of the

Applicant and the Applicant has also filed rejoinder as well as additional verification.

3. Heard Ld. Counsels for the respective parties and perused the records.

4. The facts of the matter are that the Respondents conducted Limited Departmental Competitive Examination on 16/09/2012 for appointment/promotion to the post of Postman. The examination was conducted on turnkey basis carrying 02 marks on each correct answer, consisting of 50 multiple choice questions. The Applicant, who is

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working as Mail Overseer, Aska Division of Odisha Circle, appeared at the said examination held on 16/09/2012 but could not be qualified as he failed to secure the minimum mark of 40% in each paper. Thus, by making representation dated 16/03/2013, he has prayed for re-evaluation of his answer sheets. The representation of the applicant was examined and he was intimated vide letter dated 23/04/2013 (Annexure-A/8) as under:

"As per para 3 & 4 of Directorate's letter No. A-34018/10/2010-DE, dated 02/08/2010, there is no scope for revaluation on the ground that an answer was evaluated but justified marks was not given. As the answer keys given by the Question Setter is to be followed, raising the marks obtained by Sri Pratap Chandra Swain, O/S mails, Aska (East) Sub Division could not be acceded to."

5. The ground advanced by the Applicant in this OA is that the Respondents have given a wrong key and not giving relaxation and that some questions are out of syllabus. The Respondents contested and resisted the claim of the applicant by stating that as per the guidelines, no questions were set beyond the 10th syllabus and the answer sheets of the candidates, who had appeared at the examination, were evaluated properly by expert without any discrimination.

6. We find that the request of applicant for re-evaluation of the answer sheets was considered and rejected vide letter dated letter dated 23/04/2013 (Annexure-A/8) due to the prohibition imposed vide Directorate's letter No. A-34018/10/2010-DE, dated 02/08/2010. The applicant in this OA has neither challenged the said order of rejection

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at Annexure-A/8 nor the Directorate's letter dated 02/08/2010 based on which his request was rejected. Filing Original Application without challenging any impugned order is not permissible under Sec. 19 of the A.T. Act, 1985 in which it has been provided that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for redressal of his grievances.

As such, this OA in the present form is not maintainable.

7. Further prayer of the applicant is for re-evaluation of the answer sheets. The scope of judicial interference in such matters of re-evaluation of answer sheets is very very limited and is no more *res integra* and it would suffice to place reliance on one land mark decision of the Hon'ble Apex Court rendered in the case of **H.P. Public Service Commission v. Mukesh Thakur**, reported in (2010) 6 SCC 759 wherein Their Lordship have been pleased to hold that answer key finalized by the experts should not be interfered with in exercise of judicial review as the opinion of the experts has to be respected and it was further held that in exercise of power of judicial review the Court cannot substitute the opinion of experts either by itself or seeking an opinion of a court appointed expert. Further, Their Lordships observed that re-evaluation is permissible only when the rule provides and not otherwise. Since there is no rule for re-evaluation or awarding grace mark, such a direction cannot be imparted by this Tribunal. Hence ordered.

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8. The OA being devoid of merit is hereby dismissed. No costs.

M. Sarangi
(M. SARANGI)
MEMER (ADMN.)

S.K. Pattnaik
(S.K. PATTNAIK)
MEMBER (JUDL.)
19/1/18

RK/CM

