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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No. 260/00559/2014

Cuttack this the 13<sup>th</sup> day of January, 2016


Surendranath Dash .... Applicant


-VERSUS-

Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ☒
2. Whether it be referred to PB for circulation? ☒

  
[R.C.Misra]  
Member(Admn.)

  
[A.K.Patnaik]  
Member (Judl.)



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CORAM

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

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

Surendranath Dash aged about 52 years S/o Sri Punananda Dash Vill./P.O. Samanga, P.S./Dist. Jagatsingpur, presently working as Accountant, Cuttack G.P.O., Buxi Bazar Town, District-Cuttack-01.

...Applicant

By the Advocate(s)- Mr.S.K.Ojha

-VERSUS-

- 1- Union of India represented through the Secretary to Government of India cum – Director General (Posts), Ministry of Communications & I.T., Department of Posts, Dak Bhawan, Sansad Marg, New Delhi- 110 001.
- 2- Director (Budget & Administration), Department of Posts, PA Wing, Dak Bhawan, New Delhi – 110 001.
- 3- Chief Postmaster General, Odisha Circle, P.M.G. Square, Bhubaneswar, District Khurda.
- 4- Senior Superintendent of Post Offices, Cuttack City Division, 15-Cantonment Road, Cuttack – 753 001.

...Respondents

By the Advocate-Mr.D.K.Mallick

**ORDER**

**PER A.K.PATNAIK, MEMBER(J):**

The facts leading to filing this O.A. is that the applicant while working as Postal Assistant in the Department of Posts, became eligible to appear in the JAO Examination now AAO Examination (Junior Accounts Officer Examination and now known as Asst. Accounts Officer Examination) notified in the year 1992. Since, the applicant appeared in that examination and completed Part-I thereof allowed taking part in Part-II examination conducted from time to time. However, the applicant could not attend Part-II examination before 2012 due to his personal problems. However, in 2012 as a last chance, scope was made available to the applicant and likewise persons to appear and to complete the Part-II of Accounts Examination.



2. Further, it is clear from the Annex.A/1 that 512 posts were notified for LDCE Selection vide office notification dtd.11.09.2012. However, as against 512 posts only 360 eligible persons were allowed to take part in Para-II examination and the name of the applicant is appearing at Sl.no.314. Finally, result was published vide notification dated 04.06.2013 and 51 candidates declared qualified in the said selection.

3. Since, applicant did not qualify in the said selection; he has applied under the RTI seeking information regarding his non-selection. After receiving information, it came to his knowledge that he has qualified in three papers except Paper-VI in which he has secured 52 marks which is short of 8 marks from pass mark.

4. As against such non-selection, applicant preferred representation dated 06.05.2014 seeking re-check and re-evaluation of answer paper particularly answer given to Question no.4 of Paper-IV. In the representation, applicant has indicated that the answer given to the Q.no.4 is exactly same to the answer available in the Key Answer; therefore, decision may be taken after re-evaluation of the answer sheet. However, the Respondent No.4 referring the CPMG/Odisha office letter no.RE/30-15/2012, dated 26.05.2014 has intimated that as per instructions contained in Directorate letter no.A-34018/10/2010-DE, dated 02.08.2010 circulated among all concerned vide CO letter no.RE/30-6/83(Rlg)Corr, dated 10.08.2010, since the evaluation has been made by the examiner, the representation of the applicant cannot be forwarded to the Directorate for consideration.

5. As against such communication made to the applicant under Annexure-A/7, he has filed OA No-260/00413/2014 seeking directions to the Respondents to consider his representation and re-evaluate the answer taking the Key Answer into consideration. However, this Tribunal disposed of the OA at the stage of admission vide order dated 04.06.2014 with the following direction;

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"Para-4. Considering the submissions of learned counsel for both the sides, I direct Respondent No.3 and 4 to forward the representation of the applicant to Respondent No.2, within a period of one week from the date of receipt of this order and the Respondent No.2 is also directed to consider and dispose of the said representation as per rules within a period of four weeks from the date of receipt of the representation. Order accordingly."

6. Basing on the directions of this Tribunal, the Respondent No.2 has considered the representation of the applicant and vide letter dated 25.06.2014 has intimated the outcome which was forwarded to the applicant vide CPMG/Odisha, Bhubaneswar letter no. RE/30-15/2012 dated 02.07.2014 which is impugned in the present OA.

7. In this OA, applicant has taken the stand that the order of rejection communicated is non-speaking one and also violating their own circular circulated vide Government of India, Ministry of Communications & Technology, Department of Posts letter dated 02.08.2010. Further, the applicant has also pleaded that while rejecting the representation of the applicant, though the authority has taken note of aforesaid circular, but without referring the relevant provisions/paragraphs of the said circular, in a whimsical manner has rejected the claim of the applicant. At the same time, it is also indicated in the OA that eventhough the circular dated 02.08.2010 has been issued later on and having the statutory in nature, rejection on the basis of Rule-15, Appendix-37 of the Postal Manual Vol.IV is illegal.

8. By filing counter, Respondents have objected the claim of the applicant and also supported the impugned order on the ground that the law has been settled in Civil Appeal No(s). 897 of 2006 (**H.P.S.C Vs. Mukesh Thakur**) and in AIR 2004 SC 4116 (**Pramod Kumar Srivastava Vs. Chairman, Bihar Service Commission, Patna**) to the extent that in absence any statutory provision authorizing evaluation of the answer paper, no such direction can be issued by the Court or Tribunal. On the other hand, Rule-15, Appendix-37 of the Postal Manual, Vol.IV clearly prohibits for any such evaluation of the answer paper. Hence, the O.A. is liable to be dismissed.

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9. Replying to the counter, applicant has filed the rejoinder indicating that the Circular dated 02.08.2010 issued by the Govt. of India is statutory in nature and specific provision has been made permitting evaluation under certain circumstances. That apart, referring to Para-3 (iii) of circular dated 02.08.2010, it is further pleaded that there is clear discrimination in awarding the marks to applicant and answer given to Question- no. 4 was struck off putting the cross mark even if the answer is exactly same with the key answer.

10. Heard, learned counsels appearing for the respective parties and also taken note of the written note of submissions filed from both sides.

11. In course of hearing, Shri S.K.Ojha, learned Counsel appearing for the applicant has submitted that there is no dispute with regard to the settled law of the Hon'ble Apex Court in the matter of evaluation of answer paper. It is also not in dispute that in absence of any provision either in rules or regulations, no such evaluation is permissible. However, in the present case, the Government of India has issued the Circular dated 02.08.2010 taking into account the decision of the Hon'ble Apex Court in **Himachal Pradesh Public Service Commission** case. In the Circular issued on 02.08.2010, permitting evaluation under three circumstances such as;

**(i) Particular answer(s) were not evaluated;**

**(ii) Excess attempted answer(s) were not evaluated;**

**(iii) For the same answer(s), the examiner awarded marks to one candidate and to other candidate no marks were assigned or the answer struck off as wrong.**

**(iv) All the answers were evaluated but justified marks were not awarded by the examiner.**

Therefore, the stand taken by the Respondents in the counter cannot be accepted and decisions so relied on by the Respondents have no application to the present case.

12. Further, Shri Ojha, learned counsel for the applicant has also submitted that even if the provisions under Rule-15, Appendix-37 of the Postal Manual prohibits for evaluation,

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the Circular issued on 02.08.2010 is having the same statutory force and overrides the aforesaid provision available under the statute in view of law laid down by the Hon'ble Apex Court reported in AIR 2000 SC 1535 (**Allahabad Bank Vs. Canara Bank**) and reported in (2004)2 SCC 297 (**Delhi Development Authority &ors Vs. Joginder S. Monga & ors**). Referring to the decision of this bench in OA No.615/2009, Shri Ojha submitted that while considering the similar issue, this Bench has also taken note of the decision of the Hon'ble Apex Court in the case of **H.P.P.S.C Vs. Mukesh Takur** and observed that "it is no doubt but true that the court cannot take upon itself the task of the examiner or selection board and examine discrepancies and inconsistencies in question papers and evaluation thereof and award marks over the marks awarded by the experts, but certainly it cannot be said that the authority competent is not endowed with power, if on necessary judicial scrutiny, it is found that awarding of such marks is not befitting to the answers given by the candidate or for similar answer mark has been given to other candidate." Further, he has submitted that if the key answer will be treated as the candidate securing cent percent marks, in comparison, the applicant is also entitled to get the appropriate marks against the answer no.4 of Paper-VI.

13. On the other hand, Shri D.K.Mallick, learned counsel appearing for the Respondents submitted that Rule-15 of Postal Manual is clear on the subject. Further, it is the settled law laid down by the Hon'ble Apex court in various cases that court/Tribunal should not encroach upon the domain of the examiner directing evaluation of answer paper. It is not the case that the applicant has not been awarded marks for the question. However, adequacy or inadequacy of awarding marks cannot be grounded upon to challenge the action of the examiner.

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14. We have considered the submissions of respective parties and also gone through the documents available on record. On a close scrutiny of the impugned order dated 02.07.2014 (Annexure-A/11), it is clear that the authority has taken into consideration the provisions of Postal Manual and regretted the claim of the applicant. Further, the authority has held that since the answer given by the applicant has been evaluated, hence, no further scope is available for further evaluation of answer. It is not in dispute that in the absence of any provision of evaluation, Court or Tribunal cannot direct re-evaluation of the answer paper. But in the present case, the Govt. of India, Department of Posts has issued clear circular indicating that under three circumstances (supra), revaluation of answer paper can be undertaken nominating an independent examiner. As it appears, it is the specific case of the applicant that he has been discriminated while awarding marks by the Examiner so far as Question No. 4, Paper-VI is concerned. Since, the subject matter is arithmetic and the answer given by the applicant is numerically tallied with the Key answer supplied by the department, the allegation of discrimination cannot be ruled out. It is equally true that this Tribunal cannot take the task of the examiner nor can set right the discrepancies in awarding the marks; but, certainly the action and decision of the Authority can be subjected to judicial scrutiny. Hence, the decisions relied on by the respondents is of no help in view of specific rules issued by the appropriate authority permitting a evaluation of answer paper. While considering the representation of the applicant as per directions made in the earlier OA, the Respondent No.2 has confined himself within the Rule-15 of the Postal Manual and Para-3(iv) of the Circular dated 02.08.2010. It is the case of the applicant that whereas he has answered correctly and in conformity with the key answer to Question No.04 of Paper-VI, which carries 30 marks, the examiner has assessed and awarded only 3 marks. It is the further

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contention of the applicant that the answer given by him to Question No.4 of Paper-VI is a sum and the arithmetical accuracy of his answer completely tallies with that of the answer key at every step for which he deserves full mark 30 out of 30. In this connection, we would like to note that Clause(iv) of Circular dated 02.08.2010 as quoted above, no doubt puts a spanner on revaluation of answer to Question No.4 of Paper-VI. But the fact remains that the answer given by the applicant to Question No.4 of Paper-IV is a sum from costing paper and the arithmetical accuracy is asserted to have tallied with the key answer in words and figures. On the other hand, answer so given by the applicant is neither a descriptive or comprehensive one so as to be covered under Clause-(iv) of circular dated 02.08.2010, which very clearly lays down that once answers were evaluated but justified marks were not awarded by the examiner, there would be no scope of revaluation. Since a genuine apprehension is writ large that the answer given by the applicant is a sum which tallies with the key answer textually carrying 30 marks and instead of 30 marks he has been awarded 3 marks only, the word "answers were evaluated but justified marks were not awarded by the examiner" as mentioned in (iv) of Circular dated 02.08.2010, can not be interpreted to mean in relation to arithmetical marks where key answer has already been provided. All through the counter, respondents have nowhere uttered a single word regarding the correctness or otherwise of answer given by the applicant to Question No.4 of Paper-VI, except harping on the legality or otherwise of the applicant's claim for revaluation of answer. There might be an error or omission by the examiner due to inadvertence in awarding marks against Question No. 4 of Paper-VI and thus, instead of awarding 30 marks, he has awarded 3

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marks. Therefore, a pertinent question does arise whether under such circumstance, a bona fide claim could be thrust aside on the ground that the rules prohibit for revaluation and if so, whether it would meet the ends of justice.

15. There is no dispute that the answer to the question given by the applicant against Question No.4 of Paper-VI is an arithmetical one carrying 30 marks. There is also no dispute that the said answer given by the applicant tallies with the key answer textually. In the face of these admitted positions, why the applicant shall be made to suffer by the operation of Clause-(iv) of circular dated 02.08.2008, which lays down that there is no need to consider the request where "all the answers were evaluated but justified marks were not awarded by the examiner" ? In the facts and circumstances of this case, in our considered view, there would be an apparent miscarriage of justice if the Tribunal does not interfere in the matter, particularly when the answer sought to be revaluated is arithmetical one and fully tallies with the key answer without barring any scope for the examiner to award marks which is not justified. Therefore, to meet the ends of justice, equity and fair play, we feel it proper to rise to the occasion and accordingly, we quash the impugned order dated 02.07.2014 (Annexure-A/11) and remit the matter back to the Respondent No.2 with a direction to consider the matter afresh by nominating independent examiner to reevaluate the Q.No.4 of Paper-VI and in such eventuality, result of such revaluation shall be communicated to the applicant within a period of two months from the date of communication of this order.

16. We further make it clear that if the applicant in the process is declared successful in the examination, Respondent No.1 will take appropriate action in extending

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consequential benefit in his favour within one month from the date of communication of result of evaluation. With the aforesaid observations and directions the OA is allowed as above. No cost.



**(R.C.MISRA)**  
**Member (A)**



**(A.K.Patnaik)**  
**Member(J)**

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