

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 102/2009

Date of Order: 17th March, 2011.

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

N.K. Arora S/o Shri Ramniwas, aged about 53 years, R/o Postal Colony, Maglana Road, Makrana, District Nagaur (Raj.), presently working on the post of Postmaster, Post Office Makrana, District Nagaur.

...Applicant.
Mr. S.K. Malik, counsel for the applicant.

Versus

1. The Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Director General, Department of Posts, Dak Bhawan, New Delhi.
3. The Chief Post Master General, Rajasthan Circle, Jaipur.

...Respondents.
Mr. M. S. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

**ORDER
(Per Mr. Sudhir Kumar, Administrative Member)**

The applicant of this Original Application is before us aggrieved by the communication dated 05.02.2009 Annexure A/1 whereby he has been informed that the papers in respect of his Limited Departmental Competitive Examination (L.D.C. Examination, in short) for promotion to the cadre of Postal Services Group 'B' examination have been retotalled, verified and found to be correct, and that there is no change in his marks after such re-totalling and verification. The applicant had alleged that there is an interpolation / overwriting in the marks obtained by

him in the first paper because of which he was entitled to relief from the respondents.

2. Through their letter dated 26.10.2007 (Annexure A/2), the respondents had invited applications for the L.D.C. Examination for 70 vacancies of Inspector line, and 29 vacancies for general line, for promotion to the post of Postal Services Group 'B'. The stated criteria for selection was minimum passing marks of 50% in each paper, as well as 50% in aggregate, and the examination was scheduled to be held on 16-17.02.2008. The applicant took the examination, the result whereof was declared on 01.08.2008, and circulated through a covering letter dated 06.08.2008 (Annexure A/3), which disclosed that the applicant had passed in all the papers, except in one paper, in which he had been given 38 marks. Immediately thereafter he applied on 11.08.2008 (Annexure A/4) for re-totalling of his marks in the paper, by depositing Rs. 100/- as fee thereof. In reply to this, through the impugned letter dated 05.02.2009 (Annexure A/1), he was informed that there is no change in his marks as given in the paper after re-totalling and verification. Aggrieved with this order, the applicant first applied for a copy of the answer book of that paper, along with the answer key of that paper, under the Right to Information Act, 2005, vide his application dated 28.02.2009 (Annexure A/5), and through the forwarding letter dated 08.04.2009 (Annexure A/6), the same were furnished to him. The applicant has stated that from a perusal of this answer sheet as supplied to him, it appears that in respect of his answer to question no. 6, he had first been awarded 20 marks by the examiner, and the same was then struck out and changed to be

10 marks, without any signature or initials etc. The applicant has also submitted that in respect of answers to other questions also, he has been given very less marks, although his answers tally with the answer key to the said paper as supplied to him in response to his query under the Right to Information Act.

3. Aggrieved by this, he has approached this Tribunal on the ground that if he had been given marks strictly as per the answer key provided by the respondents, then he would not only have stood selected, but would have been on the top of the merit list in the general line. He has taken a further ground that if the examiner had not changed his marks in respect to question no. 6 from 20 to 10, and he had been awarded 20 marks in that question, his total would come to 48 marks. Also, he further submitted that if his other answers to the other questions also had been correctly assessed, he would have got more than 50 marks in the paper, and he would have stood selected in the said examination for appointment of Postal Services Group 'B'. He has, therefore, alleged that the respondents have indulged in a colourable exercise of power, and hence the impugned communication stating that there is no change in his marks deserves to be set aside. In the result, he had prayed for the following reliefs, apart from an interim relief for keeping one post vacant in his favour till the final decision on his Original

Application: -

"(i). By an appropriate writ, order or direction, the impugned order dated 5-2-09 at Ann-A/1 be declared illegal and be quashed and set aside.

(ii). By an order or direction, respondents may be directed to declare the applicant qualified in the result declared on 1.8.2008 by awarding more than 50 marks in paper 'I' by

taking into account 20 marks in answer to question no. 6 of the paper 'I' and further promote him on the post of PS Group-B officer against the examination 2003-2006 held in pursuance of Annexure A/2 w.e.f. the date, persons so declared successful and promoted with all consequential benefits including arrears of pay and allowance etc.

- (iii). By an order or direction, the respondents may be directed to produce original copy of answer sheet of paper 'I'.
- (iv). Exemplary cost for causing undue harassment to the applicant be passed in favour of the applicant and against the respondents.
- (v). Any other relief which is found just and proper in the fact and circumstances of the case be passed in favour of the applicant in the interest of justice."

4. The respondents submitted their detailed reply written statement on 07.10.2009. In their reply, they pointed out the marks obtained by the applicant in the Postal Services Group 'B' Examination, and submitted that when he had applied for re-totalling and verification of his marks in paper-I, such re-totalling and verification was carried out by the ADG (DE), and no discrepancy/error in totalling of marks was noticed, and as such there is no change in the marks, and the circle office was informed accordingly, which was in turn communicated to the applicant also through the impugned letter.

5. They pointed out that the qualifying criteria in the said examination for the applicant's category was 50 marks in each paper, and 50% marks in aggregate. However, the applicant failed by 12 marks in paper-I, and knowing fully well that there is no provision in the rules for re-evaluation of the answer scripts, he has filed the instant O.A. for trying to qualify in the said examination by resorting to misrepresentation. The respondents pointed out that paper-I was descriptive paper, in which aid / assistance of books was allowed, and the candidates were

awarded marks by the examiner according to their understanding and interpretation of rules, skill of writing and expression in their own words. It was submitted that on examination of answers of the applicant, it appears that the examiner had objectively applied his mind, and that the answer script was correctly evaluated. It was further submitted that there is no correction in respect to the marks entered by the examiner in the cages provided on the first page of answer script, and therefore it is apparent that no interpolation of the answer script was done after the examiner had examined and awarded the total marks.

6. It was further submitted that when on re-totalling and verification, it was found that there is no change in the marks obtained by the applicant, the question of any arbitrariness or malafide on the part of the respondents, and violation of the rights of the applicant does not arise. In the result, it was prayed that the applicant is not entitled to any relief, and the Original Application deserves to be dismissed.

7. The applicant filed a rejoinder on 19.02.2010. In this, he cited the case of **Mangilal & Another vs. Union of India & Ors.** (OA No. 575/1990) decided by this Tribunal on 10.09.1993, wherein this Tribunal had directed the respondents to nominate some responsible officer, who is higher in rank than the officer who checked the copies earlier, to re-examine the copies and then declare the result within a period of one month of that order, and that if the applicants succeed, all the consequential benefits shall follow. He further submitted that in the present case the examiner had failed to tally the answers provided by him with the

answer key provided by the department in respect of paper-I, while his answers tallied with the answer key in respect to paper-II and paper-III.

8. The respondents thereafter filed an additional affidavit on 12.05.2010. They submitted and reiterated that as per Rule 15 Part-I, General, of Appendix 37 of Postal Manual Volume-IV, reevaluation of answer scripts is not permissible in any case or under any circumstances. It was submitted that since no question or any part of the question replied to by the applicant has been left without evaluation, it can be seen that the evaluation of the answer paper was done with great care, correctly and judiciously by the examiner. They pointed out that while on the one hand the applicant is alleging poor evaluation in the paper-I, he is quite happy with the procedure adopted by the examiner in paper-II and paper-III, just because he has secured more marks in those two papers. It was submitted that examiners are always Junior Administrative Grade (JAG) and Senior Administrative Grade (SAG) level officers, who have good knowledge of rules and regulations prescribed in various postal manuals as well as reference books, and the evaluation of the answer sheet was done very fairly and in accordance with the procedures laid down in the Departmental Examination Rules. It was submitted that as per departmental rules reevaluation of the answer paper is not permissible in any case or under any circumstances, which has been upheld by the Hon'ble High Court of Madras in the Writ Petition No. 22766 and 22767 of 2009 and Misc. Petition No. 01 of 2009 in W.P. No. 22766 of 2009 when the Hon'ble High Court passed the following order on 09.11.2009:-

"2.Such submission cannot be accepted, as re-totalling and verification of the marks stipulates only assessment for the purpose of verification of marks and re-totalling, and it was found to be correct and communicated to the petitioners.

3. Secondly, it was contended that the petitioners did fairly well in the answer books in which they have been declared unsuccessful. But that cannot be a ground to hold Rule 15 illegal or ultra-vires for refusing re-valuation of the answer books. Then, it was contended by the learned counsel for the petitioners that now lots of illegalities and irregularities are committed by the examiners and therefore, re-valuation of the answer books should be permitted. But such submission cannot be accepted for declaring Rule 15 as ultra-vires, where re-valuation of the answer scripts is held to be not permissible in any case or under any circumstances."

9. In the light of these submissions, the respondents had prayed for the Original Application to be rejected.

10. The applicant filed a counter to this additional affidavit also on 19.07.2010, and submitted that he was unable to understand as to why the respondents are afraid for a fresh evaluation of the said paper by an officer other than the one who has done the evaluation earlier. He further submitted that once answers given by him match with the key supplied by the department, it is not understood as to how the marks had been changed from 20 to 10, which had given rise to doubt about the reliability of the person who examined the answer-sheet. He submitted that if this Tribunal directs the department to re-evaluate the answer-sheet of this particular paper of the applicant by an independent officer other than the officer who has earlier done the evaluation, as had been ordered by this Tribunal on 10.09.1993 in **OA No. 575/1990 – Mangilal & another vs. Union of India & Others**, no prejudice will be caused to the department, and if the applicant succeeds all consequential benefits will follow, and he

had therefore prayed for re-evaluation of the question paper and a fresh declaration of his result.

11. In support of his contentions, the learned counsel for the applicant filed a copy of the order of this Tribunal dated 10.09.1993 in the said **OA No. 575/1990 – Mangilal & Another vs. Union of India & Ors.** in which the following directions had been passed: -

"3. During the course of arguments, we have seen the copies which have been submitted by the learned counsel for the respondents No. 1 to 3. Without making any comment on the copies, we dispose of this OA by simply giving a direction to the respondent No. 2 that he will nominate some responsible Officer, who is higher in rank than the officer who checked the copies earlier, to re-examine the copies and then declare the result within a period of one month of this order. After declaration of the result, if the applicants succeed, all the consequential benefits shall follow. No order as to costs."

12. The learned counsel for the applicant also produced a copy of the letter No. A-34013/03/2007-DE (Pt.) dated 16.07.2010 issued by the Department of Posts (Departmental Examination Section), New Delhi. This order had been issued on the basis of CAT, Patna Bench's judgment in OA No. 649/2008 and 146/2009, in which CAT Patna Bench of the Tribunal had directed the department to consider the representations of the applicants because of wrong preparation of the key for the answers to the question Nos. 5 & 9 and 7 of paper-III of Inspectors of Posts Examination, 2007, which was held from 10th to 12th August, 2007, and the result of which had already been declared on 26th February, 2008. The learned counsel for the applicant submitted that through this, in that case the department had accepted the mistake in preparation of the key to question Nos. 5 & 9 and 7 of Paper-III, and had entirely revised the result of the paper

accordingly, further stating that there is no need for any candidates for applying for re-totalling of marks and for reevaluation of answer-sheets etc. The country wide revision of the list of selected candidates announced as a result of this order was pressed by the learned counsel for the applicant as precedence for being followed in the present case also.

13. On the other hand, in his reply, the learned counsel for the respondents submitted a copy of the judgment of the Hon'ble Supreme Court in **Civil Appeal No. 907/2006 – H.P. Public Service Commission vs. Mukesh Thakur & Anr.**, in which in its order dated 25th May, 2010, the Hon'ble Supreme Court had examined all the case laws in regard to reevaluation of answer books and had held in para 27 of the judgment as follows: -

"27. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules / Regulations, the Court should not generally direct revaluation.

14. He also cited the judgment of the Hon'ble High Court of Madras dated 09.11.2009 referred to in para 8 also above, where in the case of **M. Radhakrishan & T. Sundaramonickam vs. Union of India & Ors.**, WP No. 22766 of 2009 and WP No. 22767 of 2009, the Hon'ble High Court of Madras had stated in para 3 of the judgment as follows: -

"3. Then, it was contended by the learned counsel for the petitioners that now lots of illegalities and irregularities are committed by the examiners and therefore, re-valuation of the answer books should be permitted. But such submission cannot be accepted for declaring Rule 15 as ultra-vires, where re-valuation of the answer scripts is held to be not permissible in any case or under any circumstances." (Emphasis supplied)

15. We have given our anxious consideration to the facts of this case. The applicant's case is not that of a wrong preparation of

key to the questions as provided to the examiners, which was the case before the Patna Bench of this Tribunal in **OA No. 649/2008 and OA No. 146/2009**, where, due to its mistake in preparation of the answer key in respect to question nos. 5 & 9 and 7 of the concerned examination, the department had not filed any appeal, but had obeyed the orders of this Tribunal, and had changed the list of selected candidates for the whole country through their letter dated 16.07.2010 produced by the learned counsel for the applicant.

16. A coordinate Bench of this Tribunal had in the case of **Mangilal & Another vs. Union of India & Ors.** – OA No. 575/1990 (supra) on 10.09.1993, issued an order for reevaluation, which the learned counsel for the applicant wanted us to follow in this case. However, as submitted above, it is seen that the Hon'ble High Court of Madras has since in the case of **M. Radhakrishan & T. Sundaramonickam vs. Union of India & Ors.**, WP No. 22766 of 2009 & WP No. 22767 of 2009, respectively, on 09.11.2009 refused to declare Rule 15 of the Rules relating to the Departmental Examinations as ultra-vires, which stipulates that the reevaluation of the answer scripts is not permissible in any case or under any circumstances, and it had therefore dismissed the Writ Petitions filed by the applicants, upholding the order of Madras Bench of this Tribunal dated 25.07.2008 refusing to entertain the applications for reevaluation. The highest court of the land, the Hon'ble Supreme Court, has also just recently on 25th May, 2010, in the cited case of **H.P. Public Service Commission vs. Mukesh Thakur & Anr.** (supra) examined all the available case law on the subject in

detail, and has come to the conclusion that the law on the subject emerges to the effect that in the absence of any provision under the statute, the Court should not generally direct reevaluation (cited in para 13 above).

17. We bow down before the wisdom of the orders of the Hon'ble High Court of Madras in the case of **M. Radhakrishan & T. Sundaramonickam vs. Union of India & Ors.**, WP No. 22756 of 2009 and WP No. 22767 of 2009, respectively (supra), and the ultimate wisdom of the Hon'ble Supreme Court in the case of **H.P. Public Service Commission vs. Mukesh Thakur & Anr.** – Civil Appeal No. 907/2006 (supra).

18. Further, in this particular case, even if the applicant is entitled is allowed the benefit of his marks against question no. 6 to be counted as 20 instead of 10, he would still reach only 48 marks, and would not qualify as passed in the absence of his reaching 50 marks, and he cannot reach 50 marks without a re-valuation of his entire answer script being ordered, and such re-valuation going in his favour. But since the law has been laid down that no such re-valuation can be ordered by this Tribunal, the applicant is not entitled to any relief from this Tribunal. Thus, there is no merit in this Original Application, and the Original Application is dismissed. There shall be no order as to costs.


(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

विनांक ४१-८-१६ के आदेशानुसार
मेरी अपरिवारिके द्वितीय ०९-६-१६
को ज्ञात-११ वा १२ फिल राप् ।

अनुशास अधिकारी
केन्द्रीय इसासनिक अधिकारण
जोधपुर नवायपीठ, जोधपुर