

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR

Original Application No.129/2011

**Jodhpur, this the 19<sup>th</sup> day of May, 2014**

**CORAM**

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, JUDICIAL MEMBER  
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Mohammed Husnain s/o Shri Abid Husnain, age about 50 years r/o Outside Merti Gate, Stadium road, Jodhpur. The applicant is presently working as Sr. TOA (T) in the office of GMTD, BSNL, Jodhpur

.....Applicant

By Advocate : Mr. Kuldeep Mathur

Vs.

1. the Bharat Sanchar Nigam Ltd., through the Chairman & Managing Director, Bharat Sanchar Nigam Ltd., Corporate Office, New Delhi.
2. The Chief General Manager Telecommunication (CGMT), Bharat Sanchar Nigam Ltd., Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur
3. The Assistant General Manager (Recruitment), Bharat Sanchar Nigam Ltd., Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur
4. The General Manager Telecommunication (GMTD), Bharat Sanchar Nigam Ltd., Jodhpur

...Respondents

By Advocate : Mr. S.K.Mathur

**ORDER (ORAL)**

Per Justice K.C.Joshi, Member (J)

The applicant has filed this OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) That the Original Application may kindly be allowed.
- (ii) That the communication dated 28.07.2010 (Annexure-A/1) and 27-28/01/2011 (Annecure-A/1/A) may kindly be declared illegal.
- (iii) That the respondents may kindly be directed to rectify the mistake in the marks calculation and by awarding correct marks to the applicant he may be declared successful/passed in JAO Part-II Examination with all consequential benefits.
- (iv) Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may kindly be granted.
- (v) Costs of this application be ordered to be awarded in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are that he was appointed as Telegraphist on 29.6.1981 and in October, 2003 he passed the Junior Accounts Officer (JAO) Part-I examination. In the year 2006, he appeared in JAO Part-II examination but could not qualify the same. The Assistant General Manager (DE) BSNL, New Delhi on 4.8.2009 issued a letter regarding JAO Part-II Internal Competitive Examination against 40% quota. In the above letter, it was stated that the eligible candidates may submit their application on or before 14.9.2009. The applicant being eligible submitted his application for appearing in the JAO Part-II Internal Competitive Examination well before the due date. The applicant was allotted roll number and he did well in the examination and was expecting favourable result, but he was declared fail by the respondents. Dissatisfied with the marks given, the applicant sought information under the RTI Act and the answer books supplied to the applicant reveals that he has been erroneously declared failed in the JAO Part-II examination. According to the applicant, the answer book of Paper-V –



Civil Works Accounts-Rules and Procedure reveals that he secured 60 marks but by misunderstanding of examiner 4 marks were not added and finally 56 marks were allotted, consequently, due to this error, the applicant was declared failed. The applicant has further stated that he has been deprived of 4 marks for his answer to Q.5(c) under a wrong presumption by the examiner, that this is an answer to one of the sub-question no.7. The applicant submitted various representations for correcting the mistake committed by the examiner but the applicant was informed vide communication dated 28.7.2010 that his representation cannot be accepted because there is no facility provided in the relevant rules for revaluation of answer script. The applicant also served a legal notice and thereafter advised to deposit re-totaling fee of Rs.300 but vide letter dated 27-28/01/2011 he was informed that his request for re-totaling/verification of marks in case of departmental examination cannot be acceded to as the same should be made within a period of 3 months from the date of declaration of the result. Therefore, aggrieved by the action of the respondent department, the applicant has filed this OA praying for the reliefs as extracted in para-1 above.

3. By way of filing reply to the OA, the respondents have submitted that perusal of Ann.A/6 at page 47 of the paper book shows that the answer to question No. 5 C has been crossed by the examiner and hence there is no question of counting any marks to this answer, thus four numbers claimed against answer to this question is wrong. The examiner checked the answer book as per the key supplied by the

paper setter and the answer key provided by the paper setter is taken as guidance by the evaluator and he use his/her own wisdom of evaluating the answer sheets. The paper was evaluated by a fairly high level officer of the department who is expert of the subject. It has been further submitted that re-evaluation of the answer books is not permissible under the rules and regulations of the examinations. The examinations were conducted in accordance with the provisions of P&T Manual Vol.IV and other administrative instructions and Rule 15 provides that re-evaluation of answer scripts is not permissible in any case under any circumstances. As per the prevailing instruction of the BSNL HQ issued vide letter dated 6.8.2010 a candidate can apply for re-total/verification of marks in case of departmental examinations within a period of three months from the date of declaration of result. In the reply, the respondents have also referred the judgments of Hon'ble Allahabad High Court, Hon'ble Supreme Court and CAT-Principal Bench on the subject and submitted that the applicant is not entitled to any relief.

4. Heard both the parties. Counsel for the applicant contended that while attempting the questions of the question paper the applicant attempted question No. 7 which can be perused at pages No. 44, 45, 46 and on some part of page 47. The examiner awarded 16 marks for question No. 7 and thereafter examined the answer of question No. 5 (c) and 5 (b) i.e. unpaid wages and re-appropriation of funds. Counsel for the applicant contended that it appears from the answer sheet obtained through RTI that the examiner inadvertently considered the

answer of question No. 5 (c) as choice of question No. 7 whereas as per examination paper only 4 questions were required to be attempted from questions No. 7. Counsel for the applicant further contended that before obtaining the copies of the answer sheet it was not possible for the applicant to see this inadvertent mistake committed by the examiner. Thereafter he made representation to the respondent-department but the respondent-department simply rejected his representation on the ground that whatever the examiner has done is final and there is no provision of re-evaluation. He contended that this is not a case of re-evaluation but a case of correction of errors, which may be called as patent error on the record because the examiner after assessment of the answers allotted only 4 marks in the question No. 5 whereas he ought to have allotted 4 marks for 5 (b) and 4 marks 5 (c) respectively. He further contended that the respondent-department rejected the claim merely on the ground that there is no provision for re-evaluation whereas the respondent-department ought to have considered his representation in the light of apparent error found in the answer sheet in allotting the marks.

5. Per contra, counsel for the respondents contended that the applicant's representation was considered and while relying upon the judgment of Andhra Pradesh High Court at Hyderabad in WP No.26059/2007 the same was dismissed on the ground that there is no provision of re-evaluation of the answer sheet in the examination undertaken and in the absence of such a provision, the representation was rejected by a speaking order and the reasons referred in the

rejection order are genuine and valid. He further contended that the answer of question No. 5 (c) has been crossed by the examiner and it shows that no mark has been allotted for answer of question No. 5 (c) and cross mark clearly shows that the answer of question 5 (c) was considered as wrong by the examiner and now at this stage the answer cannot be re-evaluated by this Tribunal because the Tribunal cannot sit as an appellate authority over the evaluation of the answer sheets by the examiner. He further contended that the applicant opted to file this OA at very belated stage because the examination was held in the year 2010 and he filed the OA in the year 2011 that too in the month of May, 2011 and he also not applied for the re-totaling of the marks within the prescribed time of 3 months.

6. Considered rival contentions of both the parties. So far as the delay part is concerned the applicant after receiving photo copies of the answer sheets applied for re-totaling of the marks. As the representation of the applicant was not rejected on the ground of delay but it was dismissed after considering the merit of the application by referring to the judgment of Andhra Pradesh High Court at Hyderabad and after rejection of the representation in July, 2010, the applicant filed this OA within a year of the rejection of the representation. It is well settled principle of law that such matters should not be decided on the technicalities but such questions ought to be decided on merit because deciding the issue on merit always advances the cause of justice and merely rejecting the genuine claim on the basis of technicalities may result in injustice and, therefore, delay is condoned.

7. Now we come to the merits of the case. It appears from the answer sheets that 4 marks have been allotted in the margin of question No. 5 (c) and at the same time it has been crossed by the examiner and it has been written on the answer sheet that 5<sup>th</sup> choice not considered whereas this answer of question No. 5 (c) at page No. 47 of the OA cannot be said to be 5<sup>th</sup> choice of questions No. 7 but it is an answer of question No. 5 (c) and it appears that the examiner committed some error in considering the answer of question No. 5 (c) as 5<sup>th</sup> choice of question No. 7. This can be fortified by allotment of marks of question No. 7 at the end of page No. 47 which refers total of question No. 7 as  $4+4+4+4=16$  marks for question No. 7. It is seen that at page No. 39 of the OA i.e. on the first page of the answer key, only 4 marks have been allotted for question No. 5. There appears to be some unintentional error on the part of the examiner while calculating the marks for question No. 5 (b) and 5 (c). In such cases, simple reply on the part of the respondents that any evaluation made by the examiner cannot be reevaluated by the respondent-department or any authority cannot be said to be reasonable approach in the circumstances of the case. If from the record it appears that some unintentional mistake has been committed by the examiner the same requires to be corrected and rectified by the respondent-department, but when it has not been corrected by the respondent-department then it is the pious duty of the Tribunal to direct the respondent-department to correct it in the interest of justice because ultimate objective of deciding such issues is to do real justice between the parties.

Accordingly, the argument advanced by counsel for the respondents that this Tribunal cannot sit as an appellate authority over the evaluation of marks by the examiner does not hold good. Therefore, in our considered view, the OA filed by the applicant required to be allowed and Annex. A/1 is required to be quashed.

8. In view of the discussions hereinabove made, the OA is allowed and Annex. A/1 is quashed. The respondent-department shall consider the representation of the applicant objectively and in the light of the observations made by us in earlier paras and after hearing the applicant, decide the same within three months from the date of receipt of a copy of this order. Thereafter if any grievance remains to the applicant, he can approach the appropriate forum. There shall be no order as to costs.

  
(MEENAKSHI HOOJA)  
ADMINISTRATIVE MEMBER

  
(JUSTICE K.C.JOSHI)  
JUDICIAL MEMBER

 R/SS

COPI<sup>Y</sup> received  
Sust<sup>in</sup> Informant  
26/5/14

RCC  
FBI  
26/5/14

for - K. muthu  
RCC