

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
OA 46/2004**

Friday this the 3rd day of November, 2006

CORAM

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

H.Ganeshan,
LR Postal Assistant,
Ernakulam Postal Division,
attached to Head Post Office,
Ernakulam.

... Applicant

By Advocate Mr.Antony Mukkath

V/s.

1. Director General of Posts,
Dak Bhavan, New Delhi.
2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Postmaster General
Central Region, Kochi
4. Assistant Director(Recruitment)
Office of the Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
5. Senior Superintendent of Post Offices,
Ernakulam Division, Ernakulam
6. Union of India, represented by its Secretary
Ministry of Communications, New Delhi

... Respondents.

By Advocate Mrs.Mariam Mathai ACGSC

This OA having been heard on 20th October, 2006, the Tribunal delivered the following on 3.11.2006

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

The applicant is aggrieved by the Annexure A-8 letter dated 29/10/2003 of the 5th respondent, namely, the Senior Superintendent of Post Offices, Ernakulam Division conveying the decision of third

respondent, namely, Postmaster General, Central Region, Kochi that it was not inclined to forward the representation of the applicant to the first respondent, namely, the Director General of Post, New Delhi for re-evaluation of the answer sheet in respect of paper I of the IPO examination 2002 in which he had secured only 38 marks against the minimum requirement of 40 marks.

2. The brief facts of the case are that the applicant appeared in the Departmental Examination for promotion to the cadre of Inspector of Posts for the year 2002 conducted from 27/8/2002 to 29/8/2002. According to Rule 279.1 of the P&T Manual Vol IV, a candidate must obtain minimum 40% in each paper and 45% in the aggregate to qualify in the examination. The Applicant came to know that he was not selected as Inspector of Posts on the basis of aforesaid examination as his name was not included in the Annexure A-4 list dated 2/5/2003 of the selected candidates. Thereafter, on his request, the respondents vide Annexure A-5 letter dated 27/6/2003 informed him that he secured only the following marks:-

Papers				
I	II	III	IV	V
38	60	52	73	46

Again, on his another request, the marks awarded to him were re-totaled and he was informed that the marks were correctly totaled in respect of all the papers. Then, he submitted the Annexure A-7 representation on 16/10/2003 for revaluation of paper-I, as a special case. According to him he had performed better in that paper in the present exam than in the previous examination and according to him, he ought to have been awarded more marks and there was no possibility of his failing in the said paper. It was in reply to this representation that the impugned Annexure A-8 letter dated 29/10/2003 was issued to him informing him that there is

provision only for re-totaling and there is no provision for re-evaluation of the answer papers.

3. The applicant's contention is that the refusal on the part of the respondents to revalue the Paper is clearly illegal, arbitrary, discriminatory and violative of Articles 14 and 16(1) of the Constitution of India. According to him Rule 15 of Appendix 37 of the P&T Manual, Volume IV which says "Revaluation of answer scripts is not permissible in any case or under any circumstances." is liable to be declared as ultra vires, unconstitutional and void. He contends Rule 15 is only a guideline issued by way of administrative instructions to regulate the conduct of departmental examinations and it has no statutory force or binding character and the respondents have no authority whatsoever to impose an absolute bar against revaluation of answer scripts without any exception and it is oppressive for reasons that even in genuine cases and where misfeasance of the examiners is proved or substantial, revaluation of the answer papers through another Independent agency is not made permissible. He has also submitted that vide Annexure A-9 order dated 6/3/1996 in OA 95/95, this Tribunal itself has called for the answer scripts of the applicant therein and directed to revalue and award marks in respect of the answers given to certain questions and to consider him for selection on the basis of the revised total marks so awarded. He had also relied upon the directions of this Tribunal in OA-708/2002 according to which the respondents had carried out the verification regarding the correctness of the answer(s) and the award of marks by an expert. In that case, after due verification, it was found that the marks awarded to Paper II (Arithmetic) was not correct and there was some discrepancy in valuation and after revaluation the total marks has gone from 30 to 55 out of 100. He has also relied upon the judgment of the High Court of Kerala in the case of MG University and

others Vs. Millu Dandapani and another reported in 2000(1) KLJ 1 in which it was held as :-

"where ever a genuine plea is raised, it is always open to the Court to accept the said plea and adopt a fair and reasonable Course in the facts and circumstances of the case. That is, where the exercise of the Court if called for, nothing precludes the Court from exercising such discretionary power in a case like the present one. When the Courts are satisfied prima facie that the matter requires to be looked into, it is our duty to satisfy ourselves about it in the best manner possible."

4. He had also challenged the action of the respondents in fixation of the minimum marks at 40% when the Recruitment Rules do not prescribe any such condition. He contended that in a Departmental Examination the Competent Authority must bring down the minimum marks to fill up the vacancies set apart for departmental candidates depending upon the number of such vacancies and number of departmental candidates available for filling up those posts.

5. Respondents have submitted in the reply that this Tribunal had an occasion to consider the constitutionality of Appendix 37 of the P&T Manual in OA-708/2002 decided on 15/1/2004 and also the question of prescribing the minimum qualifying marks of 40% in each paper. In the said case, the applicant therein was working as a Postman. He appeared for the Departmental Examination for lower grade officials for promotion as Postal Assistant/Sorting Assistant. She had obtained 69 marks for Paper I, 30 marks for Paper-II and 33 marks for Paper -III. The applicant averred that she did well in both Paper II and Paper III and would have secured at least 70% marks if her answer papers were correctly valued and at any rate no examiner could have awarded 30 and 33 marks as have been done in her case. In the said OA also the contention was that the Rules relating to Departmental examinations are contained in Appendix No.37 of the P&T Manual Vol.IV were only guidelines and the same cannot injure the rights

of the employees and Rule 15 provides that revaluation of answer scripts is not permissible in any case or under any circumstances is invalid as the power of judicial review cannot be displaced in such circumstances. The applicant has sought revaluation of those papers but the same was rejected following an earlier order of this Tribunal in OA-841/1996 dated 26/7/1996 on a similar issue. This Tribunal held that it was "not inclined to grant this prayer because there is no statutory or fundamental right to have one's answer papers revalued." This Tribunal has also rejected the other prayer of the applicant in OA that the respondents should have relaxed the lower minimum qualifying standard for OBC candidates taking into account the minimum standard necessary for the maintenance of efficiency of administration on the ground that relaxation is a concession i.e. to be granted by the respondents on the strength of the Rules of Recruitment on the relevant subject and the Tribunals shall not grant relaxation as it would amount to gross interference with the administration's prerogative and the conduct of examination.

6. The applicant has filed a rejoinder to the reply affidavit filed by the Respondents. They have submitted that the orders of this Tribunal in OA-708/2002(supra) is under challenge before the Hon'ble High Court and in view of the judgment of the apex Court in State of Punjab Vs. Manjit Singh & Ors. Reported in (2003) 11 SCC 559 : AIR 2003 SC 4580 it cannot be said any more that fixing up of cut of marks is the exclusive domain of the administration.

7. We have heard Advocate Shri Antony Mukkath for the applicant and Mrs. Mariam Mathai ACGSC for the respondents.

8. Initially when this case came up for hearing, the applicant's counsel had made a prayer to scrutinize the answer papers and see whether the evaluation was done rightly or not. Accordingly, we have called for the

answer papers and perused them and found that all the answers have been evaluated and marks awarded and did not find any apparent infirmity. However, we are, not inclined to order for the revaluation of the answer paper as prayed for by the Applicant. In this regard, we respectfully agree with the orders of the Coordinate Bench of this Tribunal contained in OA 708/2002 dated 15/1/2004 (supra) and reject the contention of the applicant that he has an indefensible right to get the answers re-evaluated. We also respectfully follow the judgment of the High Court of Kerala in the case of MG University and Ors. V/s. Millu Dandapani & anr.(supra) that where ever a genuine plea is raised, it is always open to the Court to accept the said plea and adopt a fair and reasonable course in the facts and circumstances of the case and nothing precludes the Court from exercising such discretionary power. In our considered opinion, there is no such circumstance exists warranting for the intervention of this Tribunal to direct the Respondents for a revaluation of the answers in Paper I as demanded by the Applicant. It was only the Applicant's pious hope that he fared well in the examination and could have secured 70% marks in Paper I, if the answer sheet was properly evaluated. In our considered opinion, the request for revaluation of answer papers cannot be accepted in a routine manner but it shall be resorted to only, in exceptional circumstances. The various constitutional bodies like UPSC, Staff Selection Commission, the Ministries and Departments periodically conduct various direct recruitment examinations, as well as Limited Departmental Competitive Examinations and large number of candidates participate in them. If the failed candidates are of the view that they have got less marks than what they have expected, one of the reasons could be the error in totaling the marks and the request for re-totaling of marks is generally entertained. The re-totaling of marks is purely an arithmetic

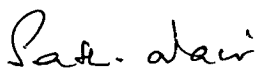
exercise and this can be done by anyone and no expertise is required for this purpose. However, evaluation or re-evaluation of an answer to a question is a serious work which has to be done by an expert. Moreover, it is practically impossible in many cases, particularly when the number of candidates involved in an examination is very large. His reliance on the case of State of Punjab Vs. Manjit Singh & Ors(supra) is absolutely misplaced. The Apex Court in the said case has only held that while the Public Service Commission can short list the candidates generally in the ratio of three to five candidates for one post which is generally accepted depending upon the number of seats, it is not necessary to fix any minimum qualifying marks for that purpose as it would amount to a selection by excluding those who possess the prescribed qualifications. The present case is not a case of such shortlisting. It is only the case of exclusion of those candidates who did not secure the minimum qualifying marks in the test held for preparing the select list. It is the prerogative of the respondent department to fix the minimum marks in each paper depending upon various factors and specific requirements of the post to which such selection is made. We, therefore, do not find any arbitrariness or unconstitutionality for fixing such minimum marks. The principle of "estoppel" also would operate against the applicant. As held by the Apex Court in Madan Lal Vs. State of Jammu & Kashmir(1995) 3SCC 486, Om Prakash Shukla Vs. Akhilesh Kumar Shukla 1986 Supp SCC 285 etc and reiterated in K.H.Siraj Vs. High Court of Kerala (2006)6SCC 395, after having participated in the written test, it is not open to the applicant to turn around thereafter when he failed in the test and contend that the provision of a minimum mark for a paper in the written test was not proper.

9. In the above facts and circumstances of the case, we are of the view that the OA has no merit and it is, therefore, dismissed. There shall be no order as to costs.

Dated 3rd Nov.2006



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

abp