

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 136 1991
T. A. No.

DATE OF DECISION 20.12.1991

A. Mohanan and 5 others Applicant (s)

Mr. G. Sasidharan Chempazhanthivil Advocate for the Applicant (s)

Versus

Director General, Telecommunication Respondent (s)
Dept., New Delhi and others

Mr. N. N. Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

Unsuccessful candidates who appeared for the qualifying examination held in May, 1990 for promotion to the post of Junior Accounts Officer, for short JAO, have filed this application under section 19 of the Administrative Tribunals' Act, 1985, mainly for a direction to the respondents to give full marks to all candidates who attempted question No. 3 in Paper VI of JAO Part I Examination (xxxxxxxxxxxxxx) or in the alternative to direct the respondents to conduct re-examination of papers of Part-I strictly in accordance with Annexure-I syllabus.

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2. Under Annexure-I revised syllabus for JAO Examination/ Part-I and II, Only those persons who qualify in Part-I Examination are eligible to appear for Part-II Examination. A candidate will have six chances for qualifying in Part-I. Those who pass in both parts shall be eligible for appointment as JAO. There is no direct recruitment for the post. Thus, the selection is exclusively on the basis of qualifying examination from among the departmental candidates.

3. The applicants are fully qualified for appearing in the examination. They have appeared but failed. According to the applicants, their failure is attributable to the irregular conduct of the examination setting question papers out of syllabus in such a manner as detrimentally affecting their chances of passing the examination and consequential promotion to the post of JAO. They further submitted that question No. 3 of paper VI of JAO Part-I Examination was a compulsory question carrying 60 marks out of the maximum marks of 400 and is a key question in the paper. This question was mistakenly printed with incorrect figures due to an error. There was a difference of Rs. 400 in the debit side of the trial balance in English version and of Rs. 20 in the debit side of the Hindi version. The figures given against misc. expenditure and motor car in the debit side respectively are Rs. 18620 and Rs. 16400. These are incorrect figures. The corresponding figures in Hindi version were respectively Rs. 18,600 and Rs. 16,000, which were also not correct. Due to these infirmities in the question paper of

Part-I, the applicants failed to get qualified in the Paper-VI. Their failure, according to the applicants is directly as a result of the mistakes in the question papers.

4. The learned counsel for the applicant Shri G. Sasidharan, Chempazhanthiyil, vehemently contended that re-examination for the selection of JAO in the Paper VI of Part-I should be held on the ground that the question asked was from out of syllabus being incorrect as indicated in the Original Application. The arguments of the learned counsel for the applicants is that (i) in Annexure-III question paper contains subject covered by Chapter-IV of 'Shukla and Grewal' which was not prescribed in the syllabus of the examination and (ii) the question No. 3 (compulsory) was printed with incorrect details as stated in the application. He further submitted that Annexures IV to VII mark lists communicated to the applicants show that they would have obtained the qualifying marks if there was no irregularity in the setting of the question paper as pointed out by the learned counsel.

5. The contentions of the applicants have been negatived in the reply statement filed by the respondents.

6. As indicated above, all the applicants are unsuccessful candidates in the examination held in May, 1990 for promotion to the post of JAO. A ^{subsequent} examination was also held for the same purpose in the year 1991. The applicants never raised any objection regarding the irregularity in the question papers either at the time when the examination was held or immediately thereafter. Annexure-VIII is

the first representation submitted in this behalf raising objection regarding the mistake in the question. It was submitted by the Circle Secretary of All India Telecom Administrative Offices Employees Union Group-C & D dated 18.6.90. In that representation the only complaint raised was in respect of question No.3 in paper VI of Part-I. The Secretary requested the Sr. Deputy Director General (M) that full marks may be given to those candidates who attempted question No. 3 in paper VI of Part-I or in the alternative to conduct re-examination for the above paper. Subsequently Annexure-IX to XI representations were also sent for the same purpose.

7. Regarding the typographical error in the question paper in respect of question No. 3 in paper VI, the respondents have admitted that there was a printing error in question No. 3 and that it was noticed and a confidential instruction was issued to all examiners/ indicating the manner in which that question is to be valued giving some guidelines. Accordingly the examiners have taken into consideration this printing error and valued that question bearing in mind the mistake taking a lenient view. This was uniformly applied to all the candidates who appeared in the examination through out India including the applicants. So no prejudice can be attributed to the candidates on account of the printing error, which was occurred in question No. 3 in paper VI, Part-I of JAO Examination held in May, 1990. It is an admitted fact that the applicants did not secure

even 50% marks in the rest of the questions which did not contain any such error as in the case of question No. 3.

8. The further contentions of the applicant is that the question paper is vitiated on account of the fact that some of the questions were asked out of syllabus. In none of the representations the applicants have highlighted this aspect. Having never pointed out specifically as to which exactly is the question which is asked from outside the syllabus/ books it is belated for consideration. The contention of the learned counsel for the applicants is that question No. 3 in Annexure-III question paper contained the subjects covered by Chapter IV of 'Shukla and Grewal' which was not prescribed in the syllabus of the examination. This is answered in the reply statement by stating that this submission of the applicant is misleading. Annexure-I only mentions that certain chapters are to be studied in detail which implies that the remaining chapters are also to be studied for obtaining basic knowledge. It is seen from question No.3 that it is only for preparation of Trading profit, loss account and balance sheet of the proprietor. It is termed as Financial accounts covered by Chapter II of the syllabus. The additional information 1 and 2 mentioned therein only relates to rectification of errors included in the books of the Proprietor before closing the accounts. For rectifying the misclassification, a detailed knowledge of joint venture

and consignment is not necessary. Thus, this does not require a detailed study of joint venture and consignment mentioned in Chapter-IV. There is no substance in the contention of the applicant that the questions were prepared which ^{to} in the Annexure-III question papers/are out of syllabus.

9. The right to challenge the examination by a candidate who sat for the examination without raising any protests either at the time of the examination or at least within a few days thereafter, cannot be appreciated as a bonafide claim. In the instant case, there is only a printing error in one of the questions which itself was noted by the authorities before valuation of the answer papers and appropriate guidelines were issued for safeguarding the interest of the examinees in the process of valuation.

I find no other infirmity in the examination in Part-I for promotion to the post of JAO held in the year 1990.

10. Having regard to the facts and circumstances of the case, I am of the view that there is no merit in the contentions of the applicants that the question papers were set by the examiners without reference to the syllabus prescribed and were covered by Chapter IV of 'Shukla and Grewal' which was not prescribed in the syllabus of the examination. In the result, I see no merit in this application, it is only to be dismissed. Accordingly, I dismiss the same but without any order as to costs.

(N. DHARMADAN)
JUDICIAL MEMBER

20.12.91

(S. S. J. 1991-92)
JUDICIAL MEMBER

Sh NV Krishnan, Administrative Member

I agree with the judgment of my learned brother. I would, however, like to add a few words about the following two contentions of the applicants:

(i) Additional information (i) and (iii) under Question-3 are outside the syllabus.

(ii) It is due to the mistakes in question No.3 that the applicants failed in part-I of the examination and in a similar situation full marks had been given earlier.

2 I would like to consider the submission regarding certain portions of question(3), being out of syllabus from a different angle. Additional information (1) and (2) are stated to be out of syllabus because they relate to consignments and joint ventures. It is surprising that the applicants have not objected to question 1(a) on this ground because item (iii), in respect of ~~which~~ rectification entries, have to be passed ^{Q of that question is} ~~which~~ relate to consignment. That reads as under:

"(iii) Sales included Rs 25,000 for goods sold for cash on behalf of Shri 'B'. Shri 'A' was entitled to a commission of 10% on sales plus expenses for which no adjustment was made. His trade expenses included Rs 1,500 as selling expenses in connection with the above sale".

This is very similar to additional information(i) to question-3. If the applicants did not object to question 1(a) on the same ground, it is due to the fact that consignment etc. is not entirely outside the syllabus.

The candidates are expected to have a working knowledge of this subject whereas certain other chapters above are to be studied in detail.

3 The applicants state that in a similar situation, full marks were given on an earlier occasion as evidenced by Annexure A12 letter dated 28.12.90 and therefore, full marks should now be given. That was an instruction to the Senior Central Government Standing Counsel to make certain submission before this Tribunal in another unnumbered O.A. which was pending. The Department communicated its decision that full marks will be given to both the candidates who have solved question as it stood as also to those who have solved the question after adding the word " more" after the figure " Rs 5180". In other words, it was possible to answer to the question as it stood. However, some examinees felt that the question would make sense only if the word " more" was added after the figure " Rs 5180". The Department before decided to give full marks to both the answers. That is precisely the decision taken in the present case also. It is stated in para 7 of the counter affidavit that confidential instructions were issued to the examinees as to how the answer is to be valued. That instruction was produced for our perusal. It reads as follows:

" It has been noticed that there is a printing mistake in the question paper, the correction of which could not be read out to the candidates. In question No.3 in the debit column the price of Motor Car was to be taken as Rs 16,000.00 instead of Rs 16,400.00.

"This may kindly be taken into account while evaluating the papers. The candidates may be given marks even if there is a difference of Rs 400 in the assets and liabilities column (i.e., if the assets exceed by Rs 400). Except the price of Motor car mentioned in Q/No.3. All figures given in the English version of the question paper may be treated as correct.

"However, if any of the candidate has attempted the paper in Hindi, the answers may be valued with reference to the Hindi version of the question paper".

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Hence, full justification has been done to the examinees.

4 That does not detract from the fact that the Department has been careless in releasing question papers without checking them for printing mistakes. I only hope that the first respondent has not taken this lightly and has instituted enquiries to fix responsibility for this lapse. For, in the book-keeping, the total of the 'Debtors' column, the 'Creditors' column has to be equal and there can be no difference whatsoever between them.

5 However, if the examinees found that in spite of their approaching the problem correctly, there was still a difference, it is expected of them, as elementary students of book keeping, to check and find out whether there was any mistake in the question paper itself.

A mere totaling of the 'Debtors' and 'Creditors' column of question-3 would have shown that the former is more by Rs 400. If any examinee made this discovery he could have stated that he was answering the question, *or stated that there was no solution* subject to this difference. In either case he would have been entitled to full marks.

6 On a perusal of the answer papers of the applicant produced for our perusal, we see that the ~~awareness~~ ^{of answers} of the applicants were wrong not on account of this mistake in the question, but because of their inadequate knowledge of the subject.

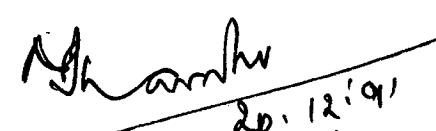
7 For the foregoing reasons, I am satisfied that the applicants are not entitled to any relief and therefore, I agree with the judgment of my learned brother.



(NV Krishnan)
Administrative Member

ORDER OF THE BENCH

There is no merit in this application.
Accordingly it is dismissed but without any order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER


(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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