

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 206/2011

Wednesday, this the 19th day of December, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.N.Manoj, S/o late Narayananan Nair,
GDS MD II, Thonoorkara.P.O.
Chelakara Via, Thrissur-680 586. - Applicant

(By Advocate Mr Shafik M.A.)

v.

1. Union of India represented by
the Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Senior Superintendent of Post Offices,
Thrissur Division, Thrissur. - Respondents

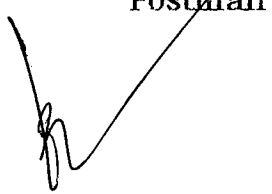
(By Advocate Mr Varghese P Thomas, ACGSC)

This application having been finally heard on 17.12.2012, the Tribunal on 19.12.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

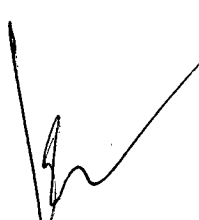
The applicant is functioning as GDS MD II at Thonoorkara Post Office under Respondent No. 2. Provisions exists for participation in the departmental examination for appointment/promotion to the post of Postman for which an examination was held on 29-08-2010 and the



applicant participated in the said examination. The applicant was not declared selected, though declared as passed. Annexure A-1 is the result of the examination. And, when he requisitioned the copy of the answer sheets under RTI Act, and the same was made available to him, vide Annexure A-3 and the applicant could observe that the answers though valued as correct were awarded only 37 marks. Despite the fact that the applicant had pointed out this error, there has been no salutary effect to the said representation and hence, this OA seeking the following reliefs:-

- (i) To call for the records relating to Annexure A-1 to A-4 and to declare that the applicant is entitled to be awarded atleast full marks for Paper A (i) (Postman Book Entry);
- (ii) To direct the respondents to re-evaluate the answer paper in Paper A(i) Postman Book Entry and to award the correct marks to the applicant and to revise the select list, include the applicant and to make appointments on the basis of such revised results;
- (iii) To declare Rule 15 of Appendix 37 of P&T Manual Vo.IV as unconstitutional, ultra vires, unreasonable and void;
- (iv) To issue appropriate direction or order to revise the select list and too appoint the applicant also a Postman in Thrissur Division, immediately on the basis of the marks on re-valuation, and to grant him all consequential benefits with effect from the date of his entitlement;
- (v) To issue such other appropriate orders or directions this

Hon'ble Tribunal may deem fit, just and proper in the




circumstances of the case.

2. Respondents have contested the OA. According to them, the applicant's answer paper has been valued correctly. They have pointed out certain mistakes in the answer paper and justified the marking as correct.

3. Counsel for the applicant argued that the manner in which the applicant had answered the questions readily warrant revaluation of the answer sheets. He has invited the attention of the Tribunal to the earlier order in O.A. No.781 of 2011 wherein certain defects could be observed in the evaluation of the answer sheets and the CPMG was directed to look into the matter and decide whether revaluation is warranted in the case and if so, the same be done.

4. Counsel for the respondents submitted that the marks awarded are justified since the answers were not fully correct. He had taken the Tribunal through the answer sheets and pointed out the deficiencies, as explained in the reply.

5. Arguments were heard and documents perused. It is appropriate to refer to one of the latest judgment of the Apex Court in respect of the subject matter - revaluation of answer sheet. In **Himachal Pradesh Public Service Commission vs Mukesh Thakur**, (2010) 6 SCC 759, the Apex Court has considered certain basic questions and addressed the



same as under:-

"14. In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court:

(i) As to whether it is permissible for the court to take the task of examiner/ Selection Board upon itself and examine discrepancies and inconsistencies in the question papers and evaluation thereof?

x x x x

(iii) Whether in the absence of any statutory provision for revaluation, the court could direct for revaluation?

15. x x x x x

16. It is a settled legal proposition that the court cannot take upon itself the task of the statutory authorities.

x x x x

20. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

x x x x

24. The issue of revaluation of answer book is no more res integra. This issue was considered at length by this Court in *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth(1)*, wherein this Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under: (SCC pp. 39-40 & 42, paras 14 & 16)

"14. ... It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. ...

* *

16. ... The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act."

25. This view has been approved and relied upon and reiterated by this Court in *Pramod Kumar Srivastava v. Bihar Public Service Commission*(2) observing as under:

"7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks." (emphasis added)

A similar view has been reiterated in *Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State*(3), *Board of Secondary Education v. Pravas Ranjan Panda*(4), *Board of Secondary Education v. D. Suvankar*(5), *W.B. Council of Higher Secondary Education v. Ayan Das*(6) and *Sahiti v. Dr. N.T.R. University of Health Sciences*(7).

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation."

1. (1984) 4 SCC 27.
2. (2004) 6 SCC 714
3. (1984) 4 SCC 24
4. (2004) 13 SCC 383
5. (2007) 1 SCC 603
6. (2007) 8 SCC 242
7. (2009) 1 SCC 599

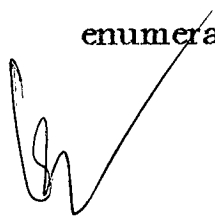
6. If the above decision is telescoped in this case, it could be seen that the Respondents have already provided for contingencies wherein revaluation is warranted and where not. The same is as under:-

"3. It may be seen that representations requesting for revaluation of answer papers are being received in this office specifically pointing out the following grievances:

- (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 another 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.*

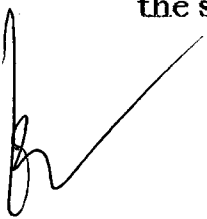
4. The issues indicated at (i) to (iii) above are justified and need to be examined by the competent authority to find out the facts and if the claim of the candidate appears to be genuine, revaluation may be got done by an independent examiner in such cases and further necessary action may be taken. In so far as the issue indicated at (iv) above, there is no need to consider such requests and merits rejection at the initial stage itself."

7. If the case of the applicant falls within any of the categories enumerated in (i) to (iii) above, then, revaluation is justified. Instead if



the case falls under (iv) above, the question of revaluation does not arise. Counsel for the applicant emphasized the main ground at para 5(b) of the OA to hammer home his point that revaluation is justified. The same is as under:-

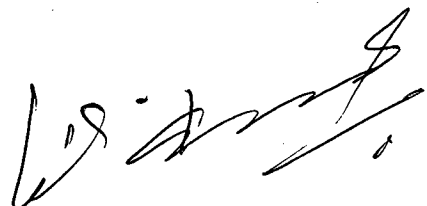
The applicant would respectfully submit that, the applicant has correctly answered all the answers in Paper A(i), (Postman Book Entry) as can be seen from A-2. If correct and full marks had been awarded to the applicant he would have been selected and appointed. Awarding only 37 marks in Paper A(i) inspite of answering all the questions correctly and not selecting him, even though he has scored high marks in other papers, without awarding marks for correct answers is highly illegal and arbitrary. In such circumstances the marks awarded to the applicant is one made without valuing the paper of the applicant, so as to make him unqualified. The action of the respondents is vitiated by oblique motives. The conduct of the respondents in declaring the results and not permitting a competent candidate qualify without applying any standards in evaluation is not only arbitrary, discriminatory and vitiated by malafides, but also is a clear attempt to subvert the constitutional policy of equal protection by law by playing subterfuge. The present action of the respondents is highly illegal and arbitrary and is to be interfered by this Hon'ble Tribunal.

8. The above would go to show that the case falls only under (iv) above - "all the answers were evaluated but justified marks were not awarded by the examiner." Though the above be not a statutory regulation, as the same is the guidelines uniformly followed by the Respondents, and as the same are not repugnant to any statutory provisions, the same should
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be followed in this case. Accordingly, the applicant's case falls under that category where no revaluation is permissible.

9. In view of the above, the OA lacks merits and, is therefore, **dismissed**. No costs.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

trs