

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 275/2008

Dated this the 18th day of November, 2009.

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

N. Zulfikhar Ahamed S/o N. Mohammed Abdurahman
Technical Gr I/Train Lighting
O/o the Senior Section Engineer/Electric Power
Southern Railway, Palghat Division
residing at Quarter No. 138-A
Hemambika Nagar, Railway Colony
Kallekulangara Post, Olavakkot
Palghat District.

Applicant

By Advocate Mr. T.C. Govindaswamy

Vs

- 1 Union of India represented by
the Secretary to Government of India
Ministry of Railways
Rail Bhavan, New Delhi.
- 2 The General Manager, Southern Railway
Headquarters Office
Park Town PO
Chennai-3
- 3 The Chief Personnel Officer
Southern railway
Headquarters Officer
Park Town PO
Chennai-3
- 4 The Sr. Divisional Personnel Officer
Southern Railway, Palghat division
Palghat
- 5 Shri C. Saravana Kumar
Technician Gr II/Power/Southern Railway/Erode
through the 4th respondent

6 Shri P.A. Naushad
Technician Gr.I II/Power/
Southern Railway/Palghat
through the 4th respondent

7 The Divisional Railway Manager
Southern Railway,Palghat
Palghat. Respondents.

By Advocate Mr. Thomas Mathew Nellimootttil for R 1-4 & 7

The Application having been heard on 9.11.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant alleges wrong valuation of his answer sheets and consequent exclusion from the panel of selected candidates for promotion to the post of Junior Engineer against 25% LDCE quota.

2 The brief facts are that the applicant who is a Diploma holder in Electrical Engineering, is presently working as Technician Gr. I/Train Lighting in the scale of Rs. 4500-7000 in the Electrical Department of the Southern Railway. The respondents invited applications from eligible departmental volunteers for appointment to two posts of Junior Engineer Gr. II in the scale of Rs. 5000-8000 in the Electrical General Service against 25% LDCE quota.(A2).. He appeared in the examination, obtained 55% marks and was placed at Sl. No. 4. The applicant not satisfied with the low marks obtained by him, asked for re-valuation of the answer papers which was rejected stating that there is no provision for revaluation. However, he obtained copy of the answer sheets under the right to Information Act (A-13). According to him, there are some vital illegalities in the valuation. Hence he has filed this Application to quash A-1 and A-5, to revalue the answer papers and to consider empanelling him and consequential promotion in accordance with his mark. The applicant has mainly raised the grounds of (i) the answers of the

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applicant to a few questions were not properly valued, marks were to be awarded to certain questions in his answer sheet and the rejection of revaluation of answer papers is without application of mind.

3 The official respondents 1 to 4 and 7 filed reply statement in which it is stated that the applicant scored only 55% marks in the examination notified for filling up of two posts of JE/II against 25% LDCE quota. As per the marks obtained in the written examination, only two out of the 12 candidates scored 60% marks, the applicant who got only 55% marks is at Sl. No.3. They submitted that as per instructions of the Railway Board on the subject there is no provision for revaluation of answer papers. They denied the contention of the applicant that the answer papers are not correctly valued. They further denied that there is provision of or revaluation of answer sheets (R-7). They relied on the dictum laid down by the Apex Court in UPSC Vs. Rajaiah & Others (2005) 10 SCC 15) regarding interference by court in evaluation made by expert committees.

4 Applicant filed rejoinder and the respondents filed additional reply statement producing Annexure R-8 instructions on revaluation of answer sheets.

5 The party respondents have not entered appearance nor filed any reply statement.

6 We have heard learned counsel for the parties and perused the pleadings.

7 The grievance of the applicant is that had the answer papers were properly valued he should have got more than sixty percent marks and the refusal to revalue the answer papers is without any application of mind. He has specifically pointed out some of the vital irregularities in the valuation. The respondents have replied to each points raised by the applicant. The applicant states that he is dissatisfied with the marks awarded to him in 9

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questions viz .question No.3, 14 and 26 in Part-A and 4 in Part A-II, question No. 1 and 3 in Part B and question No. 3, 4 and 4(i) in Part-C. A cursory reading of answers does show that certain objective questions were not framed properly leading to a situation where there can be more than one answer. The questions were not specific and lacked clarity. For instance

(i) **Part-A-Question No. 3-** Maximum permissible earth resistance(combined value) in a distribution sub station is--- ohm. The answer given by the applicant is 1 ohm. According to the respondents the correct answer is 2 ohm because there are three types of substations The resistance for Large Power Station (Generating station), Major substation and Small sub station (Distribution Sub station) is 0.5 ohm, 1 ohm and 2 ohm respectively. The question should have been specific.

(ii) **Question No. 14-** The insulation resistance of a wiring in a 110 VDC TI coach should not be less than Mega ohm even at a moist weather- The answer given by the applicant is 1. The Correct answer according to respondents is 1 Mega ohm. The word **Mega** is already in the question itself. Therefore the answer given by the applicant is correct and marks should have been awarded to him.

Therefore, the key to the question paper which was provided to facilitate awarding of uniform marks was called for. It was produced by the respondents at Annexure R-9. Therein the question No. 25 in Part-A is left blank and for descriptive question, no answer was provided. At least a reference to the rules, in the manual should have been indicated. Therefore certain short comings in the framing of questions and valuation of answer is established.

8 The learned counsel for the applicant relied on the following judgments in support of applicant's case.

(i) T.R. Raveendran & Ors Vs. Union of India and Others
(2000(3)SCJ 115(CAT))

(ii) Karnataka Power Corporation Ltd. V. A. T. Chandrashekhar
(AIR 2007 SC 2480)

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(iii) Pankaj Sharma Vs. State of Jammu and Kashmir and others with connected cases(2008) 1 SCC (L&S) 1020

In T.R. Raveendran & Ors and connected cases the CBI found irregularities committed by Sr. Divisional Commercial Manager in reevaluation and giving wrong marks to a few, it suggested either cancellation of whole test or to reevaluate papers. Railway decided to issue show cause to those beneficiaries of wrong marks and uphold balance selections- The Tribunal held in the prevailing circumstances it could not be certain that these were the only beneficiaries and there were no irregularities in other cases. Directed to re-evaluate all the papers and then take appropriate action.

In Karnataka Power Corporation's case there was an allegation of malpractices in the examination-Test checks conducted by the Chief Examiner resulted in wide variation of marks without any justifiable reasons. Though it was not a case of mass malpractice, later on proved that allegations of malpractices were not wrong. Order of appointing authority sending paper for revaluation is not improper. No notice to individual candidates before sending their papers for revaluation was considered necessary.

In the case of Pankaj Sharma and others there were discrepancies in the question papers. Decision taken by the Public Service Commission to delete defective questions and to add pro rata marks held as not arbitrary or irrational.

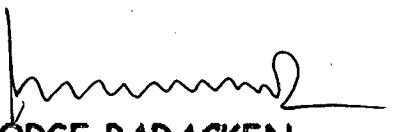
9 It is well settled law that the evaluation made by expert committee should not be intervened with by courts which do not have the necessary expertise to undertake the exercise that is necessary for such purpose. But, in the facts and circumstances of the case, having noticed some discrepancies in the valuation pointed out above, we are of the view that the valuation was not properly done. However, we find that the two persons who

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qualified in the examination were already appointed. Though notices were served on them through the 4th respondent, they have not contested the O.A. In this view of the matter, we are of the view that this O.A. can be disposed of with a direction to the respondents to conduct checking of the question paper and valuation of answer sheets by a senior officer to ascertain whether there is any question having more than one answer possible, whether any correct answer was rejected, any answer has been left without valuing or whether there is any mistake in totalling, etc. This exercise shall be done within two months from the date of receipt of a copy of this order. If the applicant gets more marks than respondent Nos. 5 & 6, he shall be considered for promotion in accordance with his rank. The O.A. is disposed of with the above direction. No costs.

Dated 18th November, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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