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OF C.A.T. (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos. 1759/94, 1800/94, 23/95
24/95, 25/95 & 30/95

FRIDAY THIS THE 6TH DAY OF JANUARY, 1995

CORAM

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S. P. BISWAS, ADMINISTRATIVE MEMBER

O.A.1759/94

1. K.Venugopalan Nair II, Trainee Regional Telecom Training Centre, Trivandrum.

2. Usha Ramachandran, Asstt. Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

3. R.V.Suma, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

4. Sobhana Raveendran, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

5. M.B.Shaji, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

6. M.Remadevi, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

7. R.Ravichandran, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

8. M.S.Murali, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

9. N. Laila, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

10. T.Krishnakumar, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

11. C.Krishnakumar, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

12. N.Hemalatha, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

13. Geetha Devi Suresh, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

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14. N. Bhagavathi, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

15. Babu Saratchandran, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

16. A.S.Abdul Rassac, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

(Applicants through authorised agent rep.by Ist applicant) ... Applicants

(By Advocate Mr. M.R.Rajendran Nair)

Vs.

1. The Chief General Manager, Telecom Kerala Circle, Trivandrum.

2. The Director, Regional Telecom Training Centre,, Trivandrum-40.

3. Union of India represented by Secretary to Government of India, Ministry of Communications, New Delhi. ... Respondents

4. The National Union of Telegraph Traffic Employees Class-III, Kerala Circle, rep. by its President CCP Kurup, Central Telegraph Office, Kozhikode.

5. All India Telegraph Traffic Employees Union Class III, Kerala Circle represented by its Secretary PK Gopala Pillai, Central Telegraph Office, Trivandrum.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R.1to3
Mr. P.C.Sebastian for R5
Mr.S.Krishnamoorthy ()
Mr. R.Santhoshkumar () Advocate Commissioners
Mr.S.Soman ()

<u>O.A.1800/94</u>

1. N.Balachandran,Telegraphist Central Telegraph Office,Cochin.

2. P.A.Joseph, Telegraph Assistant Central Telegraph Office, Cochin.

3. Merina James, Telegraph Assistant Central Telegraph Office, Cochin.

4. A.Sreedevi, Telegraphist, Central Telegraph Office, Cochin. ... Applicants

(By Advocate Mr. G.D.Panicker)

Vs.

1. Union of India rep.by Secretary, Ministry of Communications, Sanchar Bhavan, New Delhi.

2. The Chairman, Telecom Commission
   Sanchar Bhavan, New Delhi.

3. Chief General Manager,
   Telecommunications, Kerala Circle,
   Trivandrum. ... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.23/95

C.M.Anandakrishnan, Telegraph
Assistant, Central Telegraph
Office, Trivandrum. ... Applicant

(By Advocate Mr.E.V.Nayanar)

Vs.

1. The Chief General Manager,
   Kerala Telecommunications,
   Kerala Circle, Trivandrum.

2. The Asst.Director (Rectt)
   Office of the Chief General Manager,
   Telecom Kerala Circle,
   Thiruvananthapuram. ... Respondents

(By Adocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.24/95

C.Kirar, Telegraph Assistant,
Central Telegraph office,
Trivandrum. ... Applicant

(By Advocate Mr. E.V.Nayanar)

Vs.

1. The Chief General Manager,
   Kerala Telecommunications,
   Kerala Circle, Trivandrum.

2. The Asst.Director (Rectt)
   Office of the Chief General Manager,
   Telecom, Kerala Circle, Trivandrum. ... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.25/95

1. Mrs. P.N.Sobha, Telegraphist
   Central Telegraph Office,
   Muttancherry.

2. K.M.Subhadra, Telegraphist
   Central Telegraph Office,
   Irinjalakuda.

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3. K.Thanumoorthy, Telegraph Assistant, Office of the Sr.Supdt. of Telegraph Traffic, Calicut.1.

4. Santhamma Purushan, Telegraphist,Telecom Centre, Perumbavoor. ... Applicants

(By Advocate Mr. D.Anil Kumar)

Vs.

1. Union of India represented by Secretary, Ministry of Communications, New Delhi.

2. Chairman, Telecom Commission, Sanchar Bhavan, New Delhi.

3. The Chief General Manager, Telecom Kerala Circle, Trivandrum. ... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.30/95

1. The All India Telegraph Traffic Employees Union Class III, Kerala Ckrcle, P&T Hpuse, Thiruvananthapuram-1 rep.by its President Joseph Thomas,Central Telegraph Office, Kochi.2.

2. Smt. Usha Ramana, Telegraph Assistant Office of the Sr.Supdt. Telegraph Traffic, Kozhikode.

3. Sri V.Radhakrishnan, Telegraphist, Central Telegraph Office, Palakkad. ... Applicants

(By Advocate Mr. P.C.Sebastian)

Vs.

1. The Chief General Manager, Telecom Kerala Circle, Thiruvananthapuram-695 033.

2. Union of India represented by its Secretary to Govt. of India, Ministry of Communications, New Delhi.

3. K.Venugopalan Nair II, aged 35 years Trainee, Regional Telecom Training Centre, Thiruvananthapuram.

4. Usha Ramachandran, Asstt.Supdent. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

5. R.V.Suma, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

6. Sobhana Raveendran, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Thiruvananthapuram.

7. M.B.Shaji, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

8. M. Remadevi, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

9. R.Ravichandran, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

10. M.S.Murali, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

11. N.Laila, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

12. T.Krishnakumar, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

13. C.Krishnakumar, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

14. N.Hemalatha, Asst.Supdt. Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

15. Geetha Devisuresh, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

16. N.Bhagavathi, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

17. Babu Saratchandran, Asst.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centre, Trivandrum.

18. A.S.Abdul Rassac, Asstt.Supdt.Telegraph Traffic Trainee, Regional Telecom Training Centrel, Trivandrum.

19. P.M.Joshi, Telegraph Asstant, Central Telegraph Office, Kochi.16.

20. P.V.Joy, Telegraph Assistant Telecom Centre, Kothamangalam. ... Respondent

(By Advocate Mr.TPM Ibrahim Khan, Sr.CGSC for R1&2)

ORDER

CHETTUR SANKARAN NAIR(J),VICE CHAIRMAN:

The issues involved in these applications are similar, and they are therefore disposed of by a common order. Applicants challenge the orders evidenced by A1 in O.A.1759/94.

2. An examination was held on 11th and 12th December,1993 for recruitment to the cadre of Assistant Superintendent of Telegraph Traffic. Respondent department on the basis of an investigation made by it pursuant to complaints, found that malpractices had crept into the conduct of the examination/valuation and decided to cancel the examination. Pursuant to cancellation of the examination , candidates sent for training were recalled by A2 order in O.A.1759/94.

3. Applicants and all Respondents are agreed on the fact that malpractices did take place. The divergence of opinion is only regarding the follow up action to be taken. To ascertain for ourselves the state of affairs, we appointed three Court Commissioners S/Shri S.Krishnamoorthy, S.Soman and R.Santhoshkumar to examine the answer books and tabulation statements and submit a report, as to whether any irregularity had taken place in the valuation. The Commissioners examined all the answer papers and found overwriting, erasures and errors in totalling and retotalling. They also noticed serious discrepancies between the marks shown on the answer papers and the tabulation sheets.In paragraph 4 of their report, the Commissioners state:

> "The Commissioners found very serious irregularities in recording of marks in the Answer Books. There were several overwritings, additions, deletions, corrections entries inside the margin etc. The Commissioners found

it very difficult to ascertain the real marks awarded to answers. It was found that different inks and different colour pencils were also used for giving the marks. The marks awarded in one ink or pencil were seen corrected either by overwriting or striking off, without proper attestation. In addition to this, there were lot of additions and deletions in marks. In the case of several entries it was not possible to ascertain the exact marks awarded. It was also difficult to arrive at a correct conclusion as to which of the marks recorded in 2 or more inks or pencils is to be taken for totalling. After discussions among the Commissioners, it was decided to make separate entries of marks by each Commissioners and to recheck the same. Accordingly the Commissioners got prepared tabulation sheets for each candidate for entering the marks awarded to each question and its divisions. The marks shown in each answer book were entered into the tabulation sheets prepared for the purpose by the Commissioners. The Commissioners also recorded their observation and remarks regarding correction, overwriting etc. of marks in the tabulation sheet. On totalling, it was found that several marks differ. Again each of the paper was rechecked and it was found that the marks in several Answer Papers cannot be totalled as there were doubts regarding the exactness of the marks awarded."

4. It is clear as day light, that gross improprieties have been committed in valuing the Answer papers, in totalling the marks, in retotalling them and in entering marks in the tabulation sheets. The process of valuation stands self-condemned.

5. What should be the course to be adopted in these circumstances is the surviving question. According to applicants, in the cases other than O.As.23/95 and 24/95, the Answer Books could be revalued, and results declared. Senior Central Government Standing Counsel appearing for the Department objected to this course, and for valid reasons too. So did applicants in O.As

23/95 and 24/95. According to Standing Counsel, the existing marks or entries on the Answer Papers will have to be effaced, if revaluation is to be made. If these are effaced, valuable evidence available against those who committed improprieties, will be obliterated. That apart, when whatever is visible is tainted, there is no assurance that whatever preceded that, is not tainted. We think there is force in the submissions. In such cases, the proper course would be to order a reexamination. In Pritpal Singh vs. State of Haryana, 1994(5) JT SC 245, the Supreme Court had occasion to consider a situation though not entirely similar, similar in the sense that the conduct of the examination and declaration of results created suspicion. In that case the Answer Books were not available and the court had no means of ascertaining the marks obtained. There were allegations of manipulation of results. In view of the suspicious circumstances, the Court ordered cancellation of the examination. Though the facts of the case on hand are slightly different, the basic allegations are same. The valuation is tainted by gross improprieties, and there is no guarantee that the vice entered the process only at that stage. Besides, as we pointed out earlier, effacing part of the answer papers would be effacing evidence against those responsible for the malpractices. That cannot happen. Though we are aware that a re-examination may cause hardship to those candidates who had obtained high marks deservedly, we cannot help it because there is no other way of salvaging the situation. Such a situation arose in the case before the Supreme Court also.

6. Question papers are set for all the zones and there may be difficulty in setting question papers for one zone. But that cannot be helped. Besides, as matters now stand there is not

going to be another all India examination, states Senior Standing Counsel.

7. We will notice an argument raised by some of the applicants against Paragraph 15 of Appendix No.37 of Posts & Telegraphs Manual Vol.IV. This rule states that "Revaluation of answer scripts is not permissible in any case or under any circumstances". Applicants say that this provision is illegal. It is upto the authority which conducts an examination, be it a University or a Department, to decide whether there should be revaluation or not. It is not as if, revaluation is a matter of right in the examinee. For that matter, there are several examinations of a high academic order including those relating to doctoral degrees, where no revaluation is contemplated. Lack of a provision for revaluation, or prohibition against revaluation, does not suffer from any vice or illegality. Applicants have no legally protected rights, in this behalf. The contention has to be noticed, only to be rejected.

8. It has come to light that at least some of the officers involved in the process of valuation, totalling or retotalling are, prima facie, involved in offences punishable under the Indian Penal Code. The Chief General Manager, Telecom will cause appropriate departmental action to be taken at his level, or at higher levels. He is directed further to lodge a report with the police for causing an investigation into what, prima facie, appear to be cognizable offences.

9. In the result we hold that the cancellaton of the examination was proper and direct the department to hold a fresh examination as early as possible.

10. We record appreciation of the work rendered by Court Commissioners appointed by us who have spent hours and put in earnest work. Parties will suffer their costs.

Dated the 6th January, 1995.

Sd/-
S.P.BISWAS
ADMINISTRATIVE MEMBER

Sd/-
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

TRUE COPY
10.1.95
Deputy Registrar
10/1/95

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

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List of annexures (OA-1759/94)

Annexure A.1 : True copy of the Order No. Rectt/29-4/93 dated 20.12.1994 issued by 1st respondent to the applicants.

Annexure A.2 True copy of the Memo No.T.1070/B.2/57 dated 20.12.94 issued by the 2nd respondent to the applicants.