

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH


Original Application No.348/2010 & 603/10


Thursday, this the 28th day of July, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

O.A 348/10

1. **M.J Paul**
HR No. 198503061
Sr.TOA (P), Sales Associate, Project Udaan,
O/o PGMT, BSNL, Sanchar Bhavan
Kovilakathupadam, Thrissur – 680 022
 2. **P.S Shaji**
Senior TOA, Telephone Revenue Inspector
HR No. 198810067, O/o DGM(TR)
BSNL, Thiruvananthapuram
 3. **S Suresh Kumar**
Senior TOA, O/o DET
Telephone Exchange, Kaniyapuram
 4. **A.S Sunil**
Telephone Supervisor (Operation)
Presenting Working as Sales Associate
Project Udaan O/o PGMT
BSNL Bhavan, Kochi – 16
 5. **R Sanal Kumar**
Senior Accountant presently
Junior Accounts Officer (Officiating)
H.R No.199803454, Staff No. 4347002
Office of DGM (TR), BSNL,
Thiruvananthapuram
 6. **Prema Mohan**
Senior TOA, O/o Principal
RTTC, Thiruvananthapuram – 40
 7. **P.L Renuka Devi**
Senior TOA, O/o Principal
RTTC, Thiruvananthapuram – 40
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8. **V.S Sheeja**
Senior ToA (G), PC Section , O/o the PGM TD
BSNL Bhavan, Uppalam Road, Thiruvananthapuram -1
 9. **P.M Manjula**
Senior TOA (G), Legal Section
O/o CGMT, Thiruvananthapuram
 10. **B Meena**
Senior TOA (T), O/o DGM (Marketing)
CTO Building, Thiruvananthapuram -1
 11. **F.Vijaya Mohini**
Senior TOA, Commercial, O/o DGM (Marketing)
CTO Building, Thiruvananthapuram- 1
 12. **K.V Jayalekshmi**
Senior TOA(G), O/o PGM TD
Thiruvananthapuram- 1
 13. **R Jyothi**
Senior TOA(T), PR Section
O/o PGMT, BSNL Bhavan
Thiruvananthapuram
 14. **V.S Jayasree**
Senior TOA(T) HR Section
O/o PGMT, BSNL Bhavan
Thiruvananthapuram
 15. **A Rekha**
Junior Accountant, Banking Section
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O/o. CGMT, BSNL
Thiruvananthapuram -33
 16. **V Vgidya Rani**
Senior TOA (G), HRD Section
O/o CGM, BSNL, Thiruvananthapuram
 17. **K.M Subhadra**
Senior TOA (T), Commercial Section
O/o PGMT, BSNL, Thrissur -22
 18. **Sreedevi M Menon**
Senior TOA, Staff Section
O/o PGMT, BSNL, Thrissur – 22
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19. **K Anil Kumar**
Senior TOA(G), O/o DGM (NSS)
Mobile Services, BSNL, Thrissur
20. **K.P Parameswaran**
Junior Accounts Officer (O)
IMS Work Accounts
BSNL, O/o PGMT, Thrissur
21. **T.T Lenin**
Senior TOA(G), TR IV, O/o PGMT
BSNL Centre, Thrissur
22. **A.I Jose**
Senior TOA (TG), TRA Section,
P.O Road
O/o PGMT, BSNL, Thrissur – 1
23. **N.L Lenin**
Senior TOA (G), Commercial Section
O/o PGMT, BSNL, Thrissur -1
24. **M.V Joseph**
Telephone Supervisor (o)
Project Udaan, BSNL Bhavan, Ernakulam
25. **K.P Mary**
Senior TOA, O/o DGM
BSNL, Transmission Project
CTST Complex, Gandhinagar, Kochi – 20
26. **Eldho Kuriakose**
TTA, O/o DGM (TP), BSNL
Gandhinagar, Ernakulam – 20
27. **P.R Renu**
Senior TOA (G), CA-I Section
O/o CGMT, BSNL, Thiruvananthapuram

(By Advocate – Mr.K.R.B Kaimal, Sr.,
Mr.Vishnu S Chempazhanthiyil)

O.A 603/10

1. **B Irshad**
Senior TOA(G)
O/o GMTD, BSNL, Alappuzha

2. **G Rathee Devi**
Senior TOA (G)
O/o GMTD, BSNL, Alappuzha

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Applicants

(By Advocate – Mr.Vishnu S Chempazhanthiyil)

V e r s u s

O.A 348/10

1. The Chief General Manager
Bharat Sanchar Nigam Limited
Kerala Circle, Thiruvananthapuram
2. The General Manager (Recruitment)
BSNL Corporate Office
Bharat Sanchar Bhavan
New Delhi - 1
3. The Chairman & Managing Director
Bharat Sanchar Nigam Limited
Corporate Office, New Delhi -1
4. Rosamma Benny
Senior TOA (G)
Electrical Division , O/o GMT Kannur
5. B Vijayakumar
Aged 50 years, S/o Late Bhaskara Nair
Working as Senior TOA
O/o the Executive Engineer
BSNL Electrical Division, Ernakulam
residing at Varun Nivas,
Aroor P.O, Cherthala
6. K.K Jayanthi, Aged 45 years,
W/o Sunil Kumar R
Working as Senior TOA, O/o Area Manager(Urban)
Panampalli Nagar, Cochin – 36
7. K Prasanna
Aged 45 years
W/o M Ajayakumar
Working as TOA, O/o SDET, Piravam
Residing at Chalasseril House,
Piravam,
Ernakulam



8. P.R Sujatha
Aged 50 years
W/o K Mukundan
Working as Senior TOA
O/o PGMT, BSNL Bhavan
Cochin – 16, Residing at
Pookot Bungalow, Edappally
9. Amathlal V
Sr.TOA (General)
O/o CGMT, BSNL, Trivandrum
10. Rema C, aged 39 years,
W/o T.A Ramesan
'Gayathri' Dilkush Lane
Kottappuram, Thrissur -4
now working as Sr.TOA(G) at PGMT BSNL
Kovilakathumpadam, Thrissur Respondents

(By Advocate – Mr.George Kuruvilla (R 1-3)
Mr.G.D Panicker (R 4-8)
Mr.K.P Satheesan (R9)
Mr.Nireesh Mathew (R 10) in O.A 348/10)

O.A 603/10

1. The Chief General Manager
Bharat Sanchar Nigam Limited
Kerala Circle, Thiruvananthapuram
2. The General Manager (Recruitment)
BSNL Corporate Office
Bharat Sanchar Bhavan
New Delhi - 1
3. The Chairman & Managing Director
Bharat Sanchar Nigam Limited
Corporate Office, New Delhi -1
4. Rosamma Benny
Senior TOA (G)
Electrical Division , O/o GMT Kannur Respondents

(Bt advocate – Mr.George Kuruvilla R 1-3)

This Original Application having been heard on 14.07.2011, the
Tribunal on the ^{28.07.2011} day delivered the following:



ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. As the above two cases have identical legal issue and facts are also by and large same, these Original Applications are dealt with in this common order. For the purpose of reference O.A 348/10 is taken as the pilot case.

2. The applicants are Senior Telecom Operating Assistants/Accountants, as the case may be, under the first respondents. They had appeared in the JAO Part II internal Competitive Examination consisting of 5 papers. According to the applicants, while there is no quarrel with regard to the first four papers, paper five happened to be different in that, there are a number of latent and patent defects therein, consequent to which the applicants could not secure the minimum 40% marks. Thus according to the applicants, though the notified vacancies in Kerala were 112, only 51% could qualify in Kerala circle under the OC category.

3. The applicants had applied for copy of their mark sheets and they were communicated the same vide Annexure A-4 and Annexure 4(a).


4. Infact, even before the results could be published the applicants

moved a representation dated 15.01.2010 and submitted the same through proper channel vide Annexure A-5. This was followed by Annexure 5(a) representation. On receipt of the mark sheets, yet another representation dated 23.03.2010 was submitted vide Annexure A-6. Similar applications were raised by other failed candidates also requesting for cancellation of the examination and holding of a fresh examination in respect of paper 5.

5. In order to show that there have been patent mistakes, the applicants have produced Annexure A-7, question paper and Annexure A-8 guide. In so far as the question No.1 of paper 5 is concerned, the same is the reproduction of one of the questions of Annexure A-8. That question contains a number of mistakes.

6. Annexure A-9 is the key supplied for valuation purposes and the same referred to only CPWD mannual (Vol-2) and CPWD Code as the key answers. In another words, the works mannual which has been taken assistance of by the applicants has not been indicated in the key to answers.

7. The grievance of the applicants is that whereas they had utilised the works manual as a reference book for answering various questions in paper 5, the department had ignored the same and insisted upon CPWD mannual Vol.2 which, according to the applicants, was out of their reach. The grievance of the applicants is



that though the answers written by them in respect of various questions in paper 5 are correct answers on the basis of the works manual, according to the applicants, by blindly following the CPWD manual, the respondents have ignored the answers written by the applicants with particular reference to the works manual.

8. The applicants have therefore prayed for the following reliefs.

(1) Direct the respondents 1 to 3 to cancel the examination for Paper V in Part II of JAO Examination (40% quota) held pursuant to Annexure A1 & A2 and direct the above respondents to hold a fresh examination in Paper V.

(2) Direct the respondents 1 to 3 to publish a fresh rank list after holding a fresh examination in Paper V (Civil Works Accounts – Rules and Procedure (with books)).

(3) Call for the records leading to the issue of Annexure A3 and set aside Annexure A3.

(4) Direct the respondents 1 to 3 to take remedial action in respect of Paper V of JAO Part- II examination.

(5) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

(6) Award the cost of these proceedings

(7) Call for the records leading to the issue of Annexure A18 and set aside Annexure A18.

9. The respondents have contested the O.A. They have brought in all the legal aspects as to the limited jurisdiction of the Tribunal. They have fully justified the issue of the question paper and they have admitted to make all the averments and grounds as contained in para 4 & 5 of the O.A.

10. The respondents have also annexed a copy of the Order of the

Hyderabad Bench in O.A 644/09 as well as copy of writ petition No.2696 of 2004., to press the point that the applicants have no case on merit. The applicants have filed their rejoinders and added some annexures.


11. M.A 88/10 was filed for amendment to the O.A impleading certain private respondents and the same was accompanied by a copy of the representation dated 29.07.2010. Reply and rejoinder have also been exchanged.

12. The senior counsel for the applicant had commenced his arguments by stating that there is no quarrel in so far as the first four papers are concerned and the entire controversy centres around the fifth paper. He has taken us through the entire question paper (No. V) and pointed out the defect in each of the question. For convenience sake, the same is produced below in a tabular column, including the defects pointed out by the senior counsel:

<i>Sl No.</i>	<i>Question</i>	<i>Defects pointed out</i>	<i>Remarks</i>
Question No. 1.	To write up the cash book	<p>This question is verbatim reproduction of guide published by a private party.</p> <p>Entry at (e) contained private cheque for Rs 3000 which cannot be brought into books and it is a mistake.</p> <p>Refund of EMI of Rs 5000 through Ch. No. 107 vide entry on 22-07 while through the same cheque No. paid contractor's 3rd on account bill for construction of staff quarters. This is incorrect as two amounts cannot be issued to two different parties through the same cheque No.</p>	Compulsory Qn.

<i>Sl No.</i>	<i>Question</i>	<i>Defects pointed out</i>	<i>Remarks</i>
Question No. 2	Preparation of 2 nd running account bill of a Contractor	There have been confusions over the unit which has been stated as) % cft for certain items and % per cft for certain other items.	Compulsory Qn.
Question No. 3	About Measurement Book	The book permitted is CPWD Manual, which being out of print, CPWD Works Manual was followed by the applicants and because the paragraphs did not tally though the substance of the answer is one and the same, marks were not awarded. (Paragraphs as per manual are 7.5, 7.6, 7.27.1 to 7.27.3, while those of Works Manual are 7.1 to 7.5)	
Question No. 4	Relating to award of work without call of tenders	Same as above.	
Question No. 5 (c)	Short note on Unpaid wages	The key gives the relevant para as 10.2.4 of the CPWD Code, while the correct answer is 10.2.28	
Question No. 6	Relating to security deposit refund	Paras 23.1 to 23.6 of the Manual is prescribed in the key to answers, and the applicants adopted para 21.1 to 21.2 of the CPWD Works Manual and though these two are identical in substance, no marks were awarded.	

13. Counsel for the respondents referred to certain decisions to hammer home his point that the applicants cannot be permitted to raise such an issue for either cancellation of the examination or revaluation of answer papers. He had referred to a decision of the CAT, Madras Bench of this Tribunal in OA No. 76 of 2011 wherein an identical matter has been dismissed by the CAT. He has also referred to the decision of the Apex Court in the case of Himachal Pradesh Public Service Commission vs Mukesh Thakur and another (2010) 6 SCC 759 wherein it has been held as under:-

 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, 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* 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, Board of Secondary Education v. Pravas Ranjan Panda, Board of Secondary*

Education v. D. Suvankar, W.B. Council of Higher Secondary Education v. Ayan Das and Sahiti v. Dr. N.T.R. University of Health Sciences.

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.

14. The senior counsel in respect of the decision in the case of the Madras Bench, has rightly pointed out that it was a case where liberal marks were sought and the Bench has declined to allow. Again, he has referred to the mark sheet in respect of a few candidates filed with the application. He has fairly stated that those who have failed to secure 40% marks in papers I to IV cannot be permitted to agitate against the question paper V or its valuation. In respect of those who have secured more than 60% in all papers, they have failed only in paper V which is on account of the defects pointed out as above. The senior counsel also stated that out of a total of 172 candidates, only 51 had qualified, and most of them have been awarded low marks in paper V. This itself would go to show that there are certain serious deficiencies in the setting up of the paper, providing wrong key answers.

15. Counsel for the private respondents submitted that the books permitted included CPWD Manual and in so far as lack of availability of adequate number of copies for which photocopies were permitted, the same related to the P & T Manual. Again, the Works Manual is not included in the list of books permitted in the exam. As such, it is not known as to how the applicants could have consulted such books. It has also been contended by the counsel for the private respondent that save the applicants herein no other person who had failed in the examination had any grievances over the matter.

16. Senior counsel for the applicants in rejoinder to the contentions of the counsel for the private respondents has stated that in so far as the use of Works

Manual is concerned, the same could not be avoided due to non availability of CPWD Manual, whose last publication was as early as in 2003 as could be seen from the foreword to the Works Manual rendered by no other then the very Director General of Works, CPWD. As such, the respondents ought to have allowed the answers given on the basis of the Works Manual. In so far as the qualified candidates, the senior counsel argued that the claim of the applicants is not to dislodge those who had already been declared qualified. Since vacancies do exist still, the applicants' case could be re-examined and they could be accommodated against the existing vacancies, in case cancellation of the entire examination is not permissible. As regards the revaluation, the senior counsel invited our attention to Annexure A-24, which is the answers awarded to paper V wherein, there have been corrections carried out and such corrections have been carried out at a later date as could be seen from two dates appended.

17. Arguments have been heard and documents perused. It is not that as a matter of rule, judicial intervention is absolutely barred to ascertain whether a competitive examination has been properly conducted. In *K. Channegowda vs Karnataka Public Service Commission* (2005) 12 SCC 688, the Apex Court has approached the issue as hereunder:

"2. In this batch of appeals the common judgment and order of the High Court of Karnataka at Bangalore dated 11-10-2002 has been assailed. The matter relates to the conduct of competitive examination by the Karnataka Public Service Commission for recruitment to the post of Gazetted Probationers (Group 'A' and 'B' posts). Some of the unsuccessful candidates approached the Karnataka Administrative Tribunal with a grievance that the competitive examination conducted by the Karnataka Public Service Commission was not fair and impartial. The manner in which the examination was conducted and the evaluation of the answer scripts by the examiners were suspect. In particular allegations were made about the favours shown to one K. Rameshwarappa, the appellant in civil appeal arising out of SLP (C) No. 24322 of 2003 and two of his relatives who had secured high positions and were ultimately selected.

3. The Karnataka Administrative Tribunal by its judgment

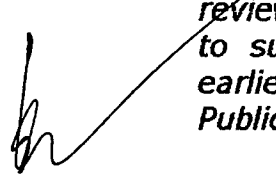
and order dated 6-2-2002 allowed the applications filed before it, inasmuch as it found certain irregularities committed in the conduct of the competitive examination, and in particular favours shown to the aforesaid Rameshwarappa and some of his relatives. The Tribunal ultimately directed the Karnataka Public Service Commission to get all the answer scripts evaluated afresh after appointment of fresh examiners in accordance with the procedure contained in the order. It also gave certain directions in regard to the evaluation of the answer scripts and the declaration of the result.

4. The Karnataka Public Service Commission filed writ appeals before the High Court of Karnataka at Bangalore challenging the findings recorded by the Administrative Tribunal and the ultimate order passed by it. **The High Court after hearing the parties gave certain directions for the re-evaluation of some of the answer scripts, though not all. The High Court was of the view that having regard to the findings recorded by it, it was not necessary to get all the answer scripts evaluated over again. The judgment and order of the High Court has been impugned in this batch of appeals.**

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12. The Karnataka Administrative Tribunal concluded that the valuation of the answer scripts could not be regarded as fair. In the facts and circumstances of the case no distinction could be made between answer scripts validly valued and those not validly valued. It was, therefore, necessary that all the answer scripts should be re-evaluated. Accordingly, it directed the Karnataka Public Service Commission to get all the answer scripts valued afresh by appointing examiners who are in no way interested in the candidates taking the examination. The examiners were to be appointed after verifying their declaration that none of their relatives specified in the format of the declaration was a candidate. The Commission was directed to erase all the code numbers and give fresh code numbers to the answer scripts relating to the compulsory as well as the optional subjects. It, further, directed that all answer scripts wherein more than 60% marks were awarded must be valued by a set of two examiners. In case there was a difference exceeding 5% of the marks in evaluation by the two examiners, the matter must be referred to the third examiner. It also directed that the Karnataka Public Service Commission shall permit re-evaluation of answer scripts of all those candidates who seek such re-evaluation within the time to be specified, and on such payment as may be determined. It further obliged the Commission to furnish to all candidates marks obtained by them in all the papers.

13. The High Court, however, modified the directions of the Tribunal. It came to the conclusion that in the facts and circumstances of the case it was not necessary to get all the answer scripts re-evaluated. It directed moderation/random review by the Head Examiner and Chief Examiner only in regard to subjects where the same had not been adequately done earlier. This had to be done in the manner suggested by the Public Service Commission in para (b) of its memo dated 27-3-



2002 which reads as follows:

"... on the basis of random review of answer scripts done in respect of answer scripts evaluated by each examiner average variation shall be arrived at. Wherever the average variation is less than plus or minus 20, general review of the marks awarded need not be done. However, where the average difference is plus or minus 20 or more the marks awarded by such examiner shall be increased or decreased by that average in respect of each of the answer scripts evaluated by that examiner. In case the average variation is less than plus or minus 20 but variation in respect of ~~some~~ individual answer scripts is plus or minus 20 or more those answer scripts would be subjected to third valuation."

14. The entire process of moderation was directed to be done under the supervision of the Secretary of the Karnataka Public Service Commission. It was left to the discretion of the Secretary of the Karnataka Public Service Commission to have the moderation done either at a two-tier level (Head Examiner and Chief Examiner) or at only one level. The Secretary of the Karnataka Public Service Commission was directed to select and prepare a fresh panel of Head/Chief Examiners for this purpose. The process of interviews and selection carried out during the pendency of the applications before the Karnataka Administrative Tribunal was declared to be illegal. The Commission was further directed to re-evaluate the compulsory papers (English and/or Kannada) of those candidates who had approached the High Court or Tribunal for such re-evaluation before the date of judgment. After re-evaluation and moderation as directed, the Commission shall prepare the list of candidates to be called for personality test in accordance with the Rules

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24. The Tribunal also held that the Karnataka Public Service Commission could not deny revaluation of answer scripts if sought by any candidate who is aggrieved by the valuation of his answer scripts. To deny a candidate the right to seek revaluation amounted to denial of fairness to him. Therefore, in the absence of a specific rule prohibiting re-evaluation, it would be obligatory on the Karnataka Public Service Commission to grant such re-evaluation within a specified time after the announcement of the result. It referred to earlier instances where the Public Service Commission had permitted re-evaluation of the answer scripts.

25. On such findings the Tribunal came to the conclusion that the award of marks to the candidates did not appear to be fair resulting in the vitiation of the merit list. But the Tribunal following the principles laid down in *Anamica Mishra v. U.P. Public Service Commission*, Allahabad held that the entire examination need not be set aside in the facts and circumstances of the case. Fairness could be ensured if the answer scripts were revalued after taking necessary precautions to ensure fairness. It, therefore, passed an order for fresh valuation of all the answer

scripts laying down guidelines which have been earlier referred to in this judgment.

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28. In the writ petitions preferred before the High Court against the order of the Tribunal, while the selected candidates challenged the order for fresh moderation in some subjects, the unsuccessful candidates challenged the fairness of the examination and prayed for cancellation of the examination itself. The Karnataka Public Service Commission justified its stand before the Tribunal.

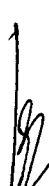
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37. In view of its findings the High Court set aside the direction of the Karnataka Administrative Tribunal for a fresh evaluation of all the answer scripts. **The High Court directed that moderation, or random review, will be undertaken only where such moderation/random review was found to be inadequate.** The subjects in which re-evaluation has been ordered have been enumerated in para 39(b) of the judgment of the High Court. In so doing, the Karnataka Public Service Commission has been directed to apply the scaling method as described in para (b) of its memo dated 27-3-2002. The moderation is required to be done under the supervision of the Secretary of the Karnataka Public Service Commission, and it is open to him to have the moderation done at two-tier level (i.e. Head Examiner and Chief Examiner) or at only one level, that is Chief Examiner. A fresh panel of Head and/or Chief Examiner shall be prepared. The High Court did not direct moderation/ random review in respect of the subjects where it found random review to be adequate and there was no conspicuous variation in marks awarded by the examiner and the Head Examiner. The High Court in its impugned order has enumerated those subjects/papers in sub-para (c) of its order.

38. The High Court further directed to hold fresh interviews and selection in place of those carried out during the pendency of the applications before the Karnataka Administrative Tribunal. **It further directed the Karnataka Public Service Commission to re-evaluate the compulsory papers (English and/or Kannada) of those candidates who had approached the High Court and the Tribunal for such re-evaluation before the date of the judgment. The High Court has directed that a fresh list of candidates shall be prepared and candidates invited for personality test in accordance with the Rules.**

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40. So far as the Tribunal is concerned, it has ordered fresh evaluation by the examiners, while the High Court has directed re-evaluation only at the Head Examiners'/Chief Examiners' level, that is at the stage of moderation/ random review. We find that there is really no justification for fresh evaluation of all the answer scripts by the examiners, and we concur with the finding of the High Court.



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53. Having considered all aspects of the matter, we are satisfied that no interference by this Court in these appeals is called for. The High Court has taken care to safeguard the interest of all concerned and to rule out the possibility of unfairness in the re-evaluation of the answer scripts. The directions made by the High Court are adequate to deal with the peculiar facts of this case.

18. Thus, there is no outright bar for judicial intervention in matters of revaluation of answer sheets. It is, however, to be seen as to whether the irregularity or deficiencies are such as to warrant any such judicial intervention and if so, to what extent.

19. Analysing the objections raised in respect of various questions, as given in the tabulation given above, the deficiencies or defects vary at least, with reference to Question No. 1 and 2 on the one hand and Question No. 3 onwards on the other. At the outset, it is made clear that just because one question (compulsory) has been taken verbatim from one of the books would not mean that the very question is vitiated or the question paper is not correct. In so far as question No. 1 is concerned, though private cheque may not be recognized as per rules, the question is one of accountancy, and all that has to be taken into account is how to account for in the accounts book and not whether the same is as per rules or not. If the entry is not as per the accounting system of general commerce, then again, with a proper footnote, the entry could be duly addressed or omitted. Questioning the correctness of the said question on the ground that the CPWD rules do not permit private cheque being accounted for cannot be a ground to make the very question faulty.

20. Again, in the very same question, It is, no doubt, seen that certain discrepancies have crept in as for example, two transactions of different amounts having contained the same cheque No. 107. Of course, in the key to answers, the second cheque has been shown as 108. The expectation from the

candidates is whether they have understood the concept clearly. If the question paper did not contain the cheque No. , the same would not matter much at all. With a foot note entry of both the items could have been made and perhaps, the same would have been followed by various candidates (who have scored more than 40%).

21. Similarly, the second question is also not that much perplexing and answer could have been given as given in the key to answers. This also does not warrant any action.

22. As regards the third question onwards, the contention of the senior counsel has substance. The subject matter being one and the same, if the same has been dealt with in the CPWD Manual in a particular chapter or paragraph, and if the same subject has been dealt with in the Works Manual in a different chapter or paragraph, it should not matter much. For what is to be seen is the subject matter and not the form or the para Number. The paper could be answered with the help of reference books and if the applicants have answered such questions using the Works Manual, adequate marks could be given to such answers since the answer would be full save the paragraph No. Which would be different compared to CPWD Manual. If marks of 3 to 5 out of 20 is given, despite the substance being the same, there appears some good ground for revaluation. As it has been demonstrated through various annexures that there was revaluation in certain cases, such a revaluation not being totally barred, certainly revaluation of these answer sheets could be permitted, but at the same time without disturbing the result of those who had already qualified. Thus, following the pattern followed in the case of *K. Channegowda vs Karnataka Public Service Commission* (2005) 12 SCC 688 revaluation of paper V could be got conducted on a random basis to first ascertain whether the valuation was conducted only with reference to CPWD Manual

or even answers written with the help of Works Manual had been awarded suitable marks. In case such a valuation had taken place, then there need not be any further revaluation. However, if the works Manual had not been considered, then, paper V in respect of those candidates who had failed only in that paper in Kerala Circle should be revalued through some other examiner and the result thereof be taken into account for selection and if there be candidates who could be selected, these be adjusted against the vacancies available from out of the 172 vacancies for which the exam had been conducted.

23. The OAs are thus disposed with the direction to the respondents as under:-

- (a) The respondents shall take out a few sample answer sheets in Paper V to ascertain whether the answers based on Works Manual were properly evaluated and if so, the applicants be accordingly informed.
- (b) In case evaluation was not proper in that answers as per the CPWD Manual have been preferred to Works Manual, then, the respondents shall segregate those cases wherein the candidates had failed only in paper V.
- (c) These papers be got evaluated by some other examiners and the results compiled and those who have qualified in all the papers be arranged on merit basis and accommodated against the balance of the vacancies out of 172 initial vacancies. The results of already qualified candidates shall not be disturbed.

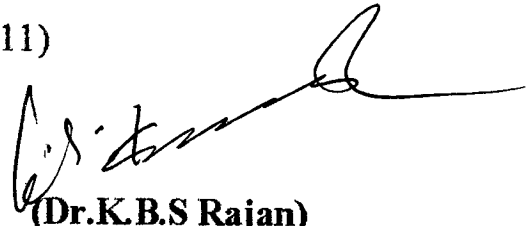
- (d) The results be declared to all the candidates as per the normal practice of declaration of results.

24. Time calendared for compliance with the above order is four months.

No cost.

(Dated this the 28th day of July, 2011)


(K Noorjehan)
Administrative Member


(Dr.K.B.S Rajan)
Judicial Member

SV