

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 409 of 2011

...Tuesday, this the 15th day of May, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Sasi P.K., S/o. Sri. Koman Nair.P
Senior Social Security Assistant,
Sub-Regional Office,
Employees Provident Fund Organization,
Eranhipalam, Kozhikode – 673 006. - Applicant.

(By Advocate Mr. O.V. Radhakrishnan Senior with
Mr. Antony Mukkath and Mrs. K. Radhamani Amma)

versus

1. Central Provident Fund Commissioner,
Employees Provident Fund Organization
Head Office, Bhavishyanidhi Bhavan,
14 Bhikaji Cama Place, New Delhi – 110 066.
2. Regional Provident Fund Commissioner (Exam),
Employees Provident Fund Organization
Head Office, Bhavishyanidhi Bhavan,
14 Bhikaji Cama Place, New Delhi – 110 066.
3. Regional Provident Fund Commissioner,
Employees Provident Fund Organization
Regional Office, Bhavishyanidhi Bhavan,
Pattom, Thiruvananthapuram – 695 004.
4. Jithendran, Enforcement Officer,
Employees Provident Fund Organization,
Sub-Regional Office, Bavishyanidhi Bhavan,
Kaloor, Ernakulam – 682 017.
5. Union of India, represented by its Secretary,
Ministry of Labour and Employment,
New Delhi – 110 001. - Respondents.

(By Advocate Mr. N.N. Sugunapalan, Senior for R1-3 with Mr. Sujin,
Mr. M.K. Aboobacker, ACGSC for R-5)



This application having been heard on 28.03.2012, the Tribunal on 15/05/2012 delivered the following:

ORDER

By HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A. had appeared in the departmental examination for promotion to the post of Enforcement Officer / Accounts Officer held from 07.12.2009 to 11.12.2009. On publishing the list of successful candidates, the applicant applied for retotalling of his marks in the written examination. He was informed that after retotalling, his total marks is 341 as against 342 before retotalling. He had submitted representations pointing out that on retotalling he is entitled to get 71.5 marks to be rounded off to 72 as against 68 marks awarded to him for paper IV and that his total aggregate marks would come to 345 and consequentially he should be included in the list of successful candidates for promotion to the category of Enforcement Officer / Accounts Officer. He was further informed that there is no change in the position on retotalling and verification of the marks done. Aggrieved, he has filed this O.A for the following reliefs:

"i. to call for the records leading to Head Office Letter No. Exam 5(2)2009/25 dated 15.04.2011 made mention of in Annexure A-9 and to set aside the same;

ii to call for the records leading to the selection and appointment of respondent No. 4 to the post of Enforcement Officer/ Accounts Officer and to set aside the same to the extent they adversely affect the applicant;

iii to issue appropriate direction or order directing the 2nd respondent to re-total the marks adding the marks awarded to the answer to question No. 4(6) of Paper IV which has been assessed and valued by the examiner as evident from Annexure A-6(a) and to total up the marks by adding all the marks awarded to all the answers and to award 71.5 to be rounded off as 72 to



Paper IV to the applicant and to award 345 total aggregate marks for Papers 1 to 5 and to include him in the list of successful candidate for promotion to the cadre of Enforcement Officer/Accounts Officer;

iv. to issue appropriate direction or order directing the respondents 1 to 3 to review the selection and appointment of 4th respondent and to promote the applicant to the post of Enforcement Officer/Accounts Officer with effect from the date of promotion of the 4th respondent replacing him on the basis of the higher marks secured by the applicant in the departmental examination for promotion held from 7th to 11th December, 2009 with all consequential benefits including arrears of pay and allowances;

v) to grant such other reliefs which this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case;

vi) to allow the above Original Application with costs to the applicant."

2. The applicant submitted that if all the marks awarded to each of the answers in paper IV, he would be getting 71.5 marks to be rounded off as 72 marks as against 68. Answer to question No. 4 (6) has been assessed and valued by the examiner and the applicant has been awarded 04 marks to that answer. Therefore, there is no logic in not adding those marks awarded to him while totalling up the marks, although the applicant had shown as 5(6) against his answer to question No.4(6) which is inconsequential for the reason that the applicant had clearly indicated the question 'sealed cover procedure' and given answer thereunder leaving no room for any confusion. The very object of making retotalling is to rectify mistake, if any, in totalling the marks by inadvertent omission. The answers assessed, valued and the marks awarded to those answers cannot be excluded while totalling the marks. If adding the marks awarded to question No. 4(6) of Paper IV are totalled, he would get 345 marks which is above the total marks secured by the



respondent No.4. Therefore, the applicant is better merited than the 4th respondent and he is entitled to be included in the list of successful candidates.

3. The respondents in their reply statement submitted that there is no totalling mistake by the examiner or while retotalling.. The examiner excluded the marks of the wrong answer marked as 5(6). This cannot be included during retotalling as it does not provide for correcting the mistakes made by the applicant. Revaluation of answer-sheet is not permissible under any circumstances as provided in the Scheme under which the examination was conducted.

4. In the rejoinder statement, the applicant submitted that in case of the applicant alone eligible marks are not added while totalling and the mistake in totalling stands unrectified. The official respondents had admitted that the award of 04 marks by the examiner to short note on 'Sealed Cover Procedure' in question No. 4(6) and, therefore, the question of revaluation does not arise. Since the question No. 4(6) was assessed by the examiner and 04 marks were awarded for that answer, it cannot be heard to contend that the answer to question No. 4(6) was wrong without revaluation. If the examiner had any intention at the relevant time of valuation of Paper IV that the 04 marks awarded are to be excluded, he would have corrected the awarded marks of 04 under attestation as '0'. As such it is only an addition mistake committed by the examiner or the clerk who added the marks. The tabulation of marks is usually done by the clerk and not by the examiner and when the tabulation is made by a person other than the examiner, no discretion is given while doing

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tabulation. The discretion rests with the examiner only in awarding the marks during the process of valuation of papers officially. Since there is no revaluation, the assessed marks can never be excluded under any pretext. The retotalling authority had no difficulty in identifying the answer to question No.7 in Paper-V, i.e. Annexure A-10 answer sheet of the 4th respondent. There is no question number at all for the answer written to question No. 7 by the 4th respondent. Answers to question No. 7 was written in continuation to answer to question No.5. However, all marks were taken into account in respect of the 4th respondent. If the same approach and relevance of question number were adopted in the applicant's case also, the retotalling authority ought to have added the 04 marks awarded to short note on 'Sealed Cover Procedure', i.e. question No. 4(6) to the applicant. Otherwise, the 13 marks ought to have been excluded during retotalling of the marks of the 4th respondent. The retotalling authority has taken a discriminatory approach in the case of the applicant and refused to rectify the mistake committed during totalling of the marks in Paper-IV.

5. We have heard Mr. O.V. Radhakrishnan (Sr.) with Mr. Antony Mukkath, learned counsel for the applicant and Mr.N.N. Sugunapalan (Sr.) with Mr. S.Sujin, learned counsel for the respondents No. 1 to 3 and Mr. P.M. Saji for Mr. M.K. Aboobacker, learned ACGSC for respondent No.5 and perused the records.

6. The party respondent was served with notice but chose not to respond.

7. Clause 13 of the Enforcement Officer/Accounts Officer and

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Superintendent Departmental Competitive Examination Scheme, 2002, provides for retotalling of marks and verification of facts that all answers written by a candidate have been duly assessed by the examiner. Notes I and II of the said clause are extracted as under :

"13. Retotalling and verification of marks:

- (a)
- (b)
- (c)

Note I : It must be clearly understood that the only scrutiny intended under this provision is whether all the answers written by the candidates have been assessed and there is no mistake in the totalling of the marks.

Note II: Revaluation of answer scripts is not permissible in any case or under any circumstances."

(emphasis supplied)

Revaluation of answer script is ruled out, but scrutiny intended under clause 13 is whether all the answers written by the candidates have been assessed or not and whether there is a mistake in totalling of the marks or not.

8. The applicant had given the correct answer for question No. 4(6) in Paper IV. He was awarded 04 marks for that answer even though he had shown the question number as 5(6). He had also answered the question No. 5(6). Thus, there were two answers given for question No. 5(6). In totalling the marks, 04 marks were not taken into account. The representation of the applicant for rectifying the mistake was rejected vide Annexure A-9 dated 06.05.2011 on the ground that the certificate "retotalling and verification of marks done on the top sheet of answer sheet", clears the position that all the answers of the applicant "were verified by the examiner and totalling of the



marks with reference to each question is correct". The word 'verifying' means ascertaining correctness by examination. As revaluation is ruled out in the Scheme of examination, there is no scope for ascertaining the correctness of valuation done by the examiner in respect of the question number. It is open to the examiner not to assess or to consider the answer as wrong if correct question number is not given by a candidate. If an examiner assessed the answer as correct and awarded marks even when the question number is shown wrongly, he exercised the discretion to ignore the slip of pen on the part of the candidate in writing the question number. After exercising his discretion by awarding marks to a correct answer with a wrong question number, it is not open to ignore the said marks in totalling the marks. What is required under clause 13 of the scheme with notes thereunder is not verification of the valuation done by the examiner in any manner but only to check whether all the answers written by a candidate have been assessed and whether there is any mistake in totalling of the marks. In the instant case, the examiner had given 04 marks after assessing certain answer. There is a mistake in ignoring the said marks in totalling of the marks of Paper IV of the applicant. The respondents erred in not correcting the mistake which caused prejudice to the applicant. While ignoring the slip of not writing the question number in the case of the 4th respondent giving him a benefit of 13 marks, the applicant is subjected to hostile discrimination by the respondents in not ignoring the slip of pen in writing the question number wrongly, thereby giving a benefit of 04 marks. There is no provision for penalising wrong writing of question number or not writing question number at all in the scheme of examination. The valuation and totalling of marks are different. Valuation is done by the examiner. Totalling is merely adding of the marks which can be

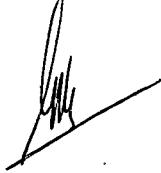


done by the examiner or by a clerk. If the examiner had failed to add up all the marks valued by him, it is wrong. If all the marks are again not added up by the clerk during retotalling done under clause 13 of the scheme, it is wrong for the reason that a mistake committed by the examiner is not rectified as per the scheme of the examination.

9. In the result, the O.A. is allowed as under. The 2nd respondent is directed to retotal the marks of the applicant in respect of Paper IV in the light of the observations above and to take consequential actions within a period of 60 days from the date of receipt of a copy of this order.

10. No order as to costs.

(Dated, the 15th May, 2012)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.