

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No. 378/2010
This the 1st day of January 2012**

*X' Consulted
vide order
dt 23.2.12.
SPS*

**Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)**

J.B. Durgapal, aged about 51 years, son of Late C.C. Durgapal, at present working as Assistant Director (TG)/Modernisation, in the Office of Chief Post Master General, U.P. Circle, Lucknow.

...Applicant.

By Advocate: Sri Surendran P.

Versus.

1. Union of India through Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Senior Superintendent of Post Offices, Lucknow.

.... Respondents.

By Advocate: Sri S.P. Singh holding brief for Sri Rajendra Singh.

(Order reserved on 25.01.2012)

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following relief's;

"(a). quash the order dated 27.10.2008 and declare the applicant successful in the said examination and promote him in the cadre of P.S. Group 'B' with all consequential benefits.

(b). a direction be issued to the respondents to re-evaluate the answer sheet by an officer of the rank not below to the Joint Secretary as ordered by the Principal Bench of CAT, New Delhi in a similar case Rahul Vs. Union of India and Others in O.A.No.1551 of 2009."

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2. The case of the applicant is that he is working on the post of Assistant Director in the cadre of PS-Group 'B' on ad-hoc basis. The Department of Posts held on 17.2.2008, the Limited Departmental Competitive Examination for the accumulated vacancies for the period 2003-2006 by promotion of the officials working in the cadre of Inspector of Posts and General line. The applicant being eligible to appear in the said examination also appeared alongwith other candidates. The result of the examination was declared on 01.08.2008 in which 67+2 candidates were declared successful (Annexure-2). Annexure -1 is the list of selected candidates while (Annexure-2) is Tabulation sheet. The marks secured by the applicant has been shown as under:-

Sl No.	Roll No.	Name	Category	Marks secured by the Candidates in each paper				
				I	II	III	IV	V
3	UP/IP-03	J.B. Durgapal	OC	62	99	72	47	280

3. The applicant applied for scrutiny of Answer Book of Paper IV. But, the Respondent No.3 vide letter-dated 27.10.2008 informed after re-totaling that no change was found. But the applicant was not satisfied with the marks in paper-IV. Therefore, he applied for copy of evaluated answer sheet of Paper IV under Right to Information Act, 2005, which was supplied to him on 12.04.2010 (Anneuxre-3). The perusal of the answer sheet of Paper-IV reflects that examiner has awarded the marks in the answer sheet against question no.2 (a) and 3 as under:-

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Question No.	Previously awarded marks	Rewarded marks by over writing
2 (a)	3-1/2	3
3	7	5

4. According to Rule 8(a) and 8 (c) part IV Appendix 37 of P&T Manual Vol. IV, the examiner should insert marks awarded on the margin at the end of the answer. So far as the question no.3 is concerned, the applicant answered in two pages. But the examiner awarded the marks on first page only and left the second page un-assessed. In the marks awarded on the first page too there is over figuring without authentication (Signature) as provided in Rule 8 (h) of the said rules. The rules have been filed as Annexure-4. Similarly, there is cutting and overwriting in the answer sheet of question no.2 (a) and 2 (f). Similarly, under Rule 8 (a) and 8 (k) of the Rules, where a question consists of more than one part each part should be evaluated separately. The first part was to make a précis of the passage by reducing it to one third of its length and second part to give a suitable title. But the examiner did not give marks separately. The examiner also committed a gross delinquency and negligence while entering all the awarded marks in the cage of the title page which is as under:-

Question No.	1	2	3	4	5	6	7	8	9	10	Total
Marks awarded	10	13.5		5		6.5	5		7		47

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5. The correct entry required was as under:-

Question No.	1	2	3	4	5	6	7	8	9	10	Total
Marks awarded	10	13.5	5	6.5	5		7				47

6. On account of the above irregularities, the applicant has been put below the qualifying marks i.e. 50 marks in one paper and could not be selected for promotion in question. Had he secured 50 marks in paper IV, his grand total would have been 283 whereas, the last selected candidate has secured 266 marks only. The applicant therefore moved a representation-dated 28.04.2010 in this regard. One Rahul had also similar grievances. He therefore filed O.A.No.1551/2009, which was decided by the Principal Bench of Central Administrative Tribunal, New Delhi in his favour on 16.12.2009 (Annexure-7). Hence this O.A.

7. The claim has been contested by filing a Counter Affidavit on behalf of Respondent No.1 to 3. Besides, raising the point of O.A. being barred by limitation it has been contended on behalf of the respondents that though the examiner has not put his initials against overwriting and cutting and in support of marks awarded by him but on this ground nothing adverse can be attributed against him. But, the charts shown in the O.A. have not been refuted. However, in respect of question no.1, it has been said that there was no indication either on the question paper or in the Key to question paper that marks for title and précis have to be awarded separately. For the general candidates there was a eligibility criterion for qualifying in the

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examination i.e. 50% marks in each papers and 50% in aggregate. In case of Rahul, it was found by the Principal Bench that one question was not evaluated therefore, passed the order for evaluation although according to Rule 15 of Appendix 37, Part-I of Postal Manual Volume-IV, "revaluation" of answer scripts is not permissible.

8. The applicant filed a Rejoinder Affidavit reiterating his pleadings and controverting the pleadings of the Counter Affidavit.

9. The judgment of this court on a similar matter given in the case of Sri G.P. Bajpai, O.A.No.453/2010, on 11.08.2011 has also been enclosed alongwith rejoinder affidavit.

10. We have heard the learned counsel for the parties and perused the material on record.

11. Before entering into the merits of the case, we carefully perused the judgment of Principal Bench in the case of Rahul (Supra) as also the judgment of this Tribunal given in O.A.No.453/2010 filed by G.P. Bajpai. In the case of Rahul , it was found that in paper no. IV he could secure only 42 marks whereas in other papers he had secured more than 50% marks due to which, he could not be selected. On perusal of the answer scripts, it was found that Question No.3 was not evaluated and while entering the marks in the cage against question no.3 no marks were entered. Even Zero (0) had not been entered and in this regard no satisfactory answer could be given. Though, as pointed out by respondents, it was found that while answering the Question No.3 the applicant had not written Question No.3

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but he had written "Question No. "Mail business Center" after question no. in the answer script. Therefore, it was clearly identifiable that this was the reply of Question No.3. The Tribunal also compared his answer with the model answer and reached to a prima-facie conclusion that there is error in awarding him Zero (0) marks for his answer, and that, perhaps he has been dealt with unfairly and unjustly. Therefore, deciding the O.A. in favour of the applicant, the tribunal directed Respondent No.2 to get the answer re-evaluated through an independent examiner not below the rank of Joint Secretary and in case it is found that the applicant has obtained minimum 50% marks in the said paper and is otherwise eligible then, it was also directed to issue follow up orders with regard to the applicant's result within a fixed time frame.

12. In the case of G.P. Bajpai (O.A.No.452/2010) also it was found that the applicant has secured 80% marks in other papers but in paper-IV he could get only 40 marks totaling 302 marks. Under Right to Information Act, it was informed that he has been awarded '0' marks in Question No.3. At the stage of conclusion of this O.A. the above case of Rahul decided by Principal Bench of Central Administrative Tribunal was also taken into consideration. It was also informed to the Tribunal that after evaluation Rahul has been declared successful and the said matter has attained finality. The point of alleged embargo Under Rule 15 of Appendix 37, of Postal Manual regarding refusal for re-evaluation raised by the respondents was also raised before the Principal Bench and also in the O.A. filed by G.P. Bajpai. But

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as said above, the O.A. filed by Rahul was allowed in his favour giving direction for re-evaluation of Question No.3 of Paper-IV through an independent examiner. Similarly the judgment of Hon'ble Supreme Court in Civil Appeal mentioned in the present O.A. as also in the O.A. filed by G.P. Bajpai was considered and it was found that there is no blanket embargo on re-evaluation. Para-3 and 4 of the relevant letter-dated 02.08.2010 of the respondents themselves reflects that re-evaluation was permissible by an independent examiner where the claim of the candidate appears to be genuine. In the backdrop of the above, in the case of G.P. Bajpai it was prima-facie found by this Tribunal that though the answer was in accordance with the model answer, still Zero (0) marks were awarded. Therefore adhering to the principles and norms of the Principal Bench in the aforesaid case of Rahul, this Tribunal allowed the O.A. filed by G.P. Bajpai with a direction to Respondent No.2 to get the particular answer re-evaluated through an independent examiner not below the rank of Joint Secretary.

13. In the present case before us, the learned counsel for the applicant pointed out towards the following lapses/ shortcomings. He drew the attention of this Tribunal to Rule 8 (a) and (b) contained in Appendix No.37 of Rules relating to departmental examination (Annexure-4), which are as under:-

"8 (a). The examiner should insert marks awarded to each answer in the margin of the script at the end of the answer. In the case of questions with parts, the final marks given to a question may also be similarly inserted, except that since the final marks will be the total of the different parts of the question, the final marks may in addition be circled.



Marks awarded to portions of an answer should be crossed out lightly.

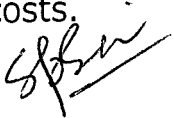
(b). If any answer deserves 'Zero' then it may be so marked instead of leaving it blank as otherwise it may lead to an inference being drawn that it has been overlooked in valuation."


14. The Electrostat copy of the answer sheets received under Right to Information Act has been brought on record in this case as Annexure-3. The learned counsel drew our attention to page-29 of this answer sheet. This is the answer to question no.3 and it has been answered in two pages. But, the marks have been awarded on page 1 instead at the end of page-2, which is against the aforesaid Rule-8 (a). Similarly, the learned counsel rightly pointed out that initially 7 marks were given. Thereafter, 5 marks have been over-written without making any initials. This is again against the specific instructions under Rule 8 (h), which says that corrections must be initialed and it would always be desirable to score out over-writing and re-write the number separately with initials. Similarly, in respect of Answer No.2 of the answer script as pointed out from the side of the applicant there are cuttings in the awarded marks at two places without initials. As it is matter of record there was nothing substantial to say on behalf of the respondents. Nevertheless, it was opposed from their side. But, from the above discussion, we reach to a definite conclusion that the applicant has substantiated his pleadings. We do not find any good ground to deprive the applicant from getting the same benefits of similar norms and principles, which had been adhered, by the Principal Bench and

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also this Bench of the Tribunal in the aforesaid cases of Rahul and G.P. Bajpai.

15. Finally, in view of the above, the present O.A. is decided in favour of the applicant with a direction to the Respondent No. 2 to get the answer no.2 and answer no.3 re-evaluated through an independent examiner not below the rank of Joint Secretary and after such re-evaluation, incase the applicant is found to have obtained minimum 50% marks in Paper-IV Part-'B' and is otherwise eligible in all respect as per rules then follow-up orders may also be issued with regard to applicant's result. This exercise may be conducted within a period of one month from the date of receipt of a certified copy of this order. No order as to costs.


(S.P. Singh)
Member (A)


(Justice Alok Kumar Singh) 1-2-12
Member (J)

Amit/-

X' Conclude
vide
1st Order
dt 23.2.12
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