

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 453 of 2010

This the 11th day of August, 2011

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

G.P. Bajpai, Aged about 51 years, S/o Sri Lalta Prasad Bajpai,
R/o E-2/391, Sector F, Jankipuram, Lucknow

.....Applicant

By Advocate : Sri A. Moin

Versus.

1. Union of India through the Secretary, Department of Posts, Ministry of Communications & IT, Government of India Dak Bawan, Sansad Marg, New Delhi.
2. Director General of Postal Services, Government of India, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
3. Chief Postmaster General, U.P. Circle, Lucknow.

.....Respondents.

By Advocate : Sri S.P. Singh for Sri R. Mishra

ORDER (Oral)

Justice Alok K Singh, Member-J

This O.A. has been filed for following relief(s):

- (a) *to quash the impugned order dated 2.3.2010 passed by the respondent no.1, as contained in Annexure A-1 to the O.A.*
- (b) *to direct the Respondent no.1 to re-evaluate the answer-sheets of Paper IV of PSS Group 'B' Examination within a specified time by a person not lower than the rank of Joint Secretary and declare the result of the revaluation and if applicant passes the same to post him w.e.f. the date the persons similarly circumstanced of the said examination were promoted with all consequential benefits."*

2. The case of the applicant is that he appeared in Limited Departmental Competitive Examination for promotion to the cadre of PS Group 'B' which was held on

AR

16th and 17th February, 2008 and answered the relevant questions to the best of his ability. The result was declared by the respondents vide letter dated 1.8.2008 in which the name of the applicant did not appear in the names of selected candidates. From the perusal of the said result, it came out that the highest merit of the selected candidate of other category (to which the applicant belongs) was 343 and lowest candidate of other category had secured 266 in I.P. Line. Perusal of tabulation sheet revealed that the applicant secured 88 marks in paper -I, 94 in paper-II, 80 in paper III, 40 in paper IV totaling 302 marks. The applicant thereafter sought information under Right to Information Act, 2005 and a copy of answer sheet of paper -IV was provided to him on 16.10.2009. In answer of question no. III, the applicant has been awarded '0' marks though the answer of the same was in consonance with the departmental instructions issued by competent authority (Annexure A-4). Therefore, he submitted an appeal dated 8.9.2009 through proper channel indicating the aforesaid irregularity committed by the examiner, but no action was taken. The applicant, then, filed O.A. no. 442 of 2009 before this Tribunal and by means of judgment and order dated 5.11.2009, this Tribunal directed the respondents to consider the O.A. as his representation and decide the same. In compliance thereof, his representation was considered, but it was rejected (Annexure A-1).

3. The respondents have contested the O.A. by filing Counter Reply saying that after due consideration, the representation of the applicant has been rejected. In respect of revaluation, it has been said that it is not possible under Rule 15 of Appendix-37 of Postal Manual Vol. IV Part II as upheld by Hon'ble Supreme Court in judgment dated 25.5.2010 in Civil Appeal Nos. 897 of 2006 and 907 of 2006 circulated by the Postal Directorate vide memo dated 2.8.2010. Therefore, no relief can be granted.

AC

4. In Rejoinder reply, besides reiterating the earlier pleadings, it has been further added that in similar circumstance one Sri Rahul had filed O.A. before coordinate Bench of this Tribunal (Principal Bench, New Delhi) and after considering the matter, the Principal Bench directed to reevaluate paper no. IV through an independent examiner who should be an officer not lower than the rank of Joint Secretary and after such evaluation, in case it is found that the applicant has obtained minimum 50% marks in the said paper and is otherwise eligible in all respects as per rules and in accordance with law then follow up orders may be issued with regard to the applicant's result. It has been further said that in compliance of order dated 16.12.2009 passed by Principal Bench (O.A. no. 1551 of 2009), the copy of Sri Rahul was reevaluated and he was declared successful for the cadre of PSS Group 'B' and that matter has attained finality because he was promoted from the date when other declared successful candidates were given their promotion. It has been further submitted that the department should not be permitted to make 'U' turn in the case of the applicant to reject his application for reevaluating the paper no. IV by an independent examiner. The same principle/formula is also applicable in the case of the applicant and, therefore, O.A. should be allowed, it has been further averred. Copy of the aforesaid judgment of Principal Bench has also been enclosed alongwith Rejoinder Reply.

5. Heard the learned counsel for the parties and perused the material on record.

6. As far as the averments made in para 4 of the O.A that there is no dispute that the applicant secured 88 marks in paper -1, 94 in paper-II, 80 in paper III, 40 in paper IV totaling 302 marks. An electrostat copy of entire answer-sheet of the applicant has also been brought on record as Annexure A-3, which is also not in dispute. Similarly, model answer is contained in the letter dated 15.1.2007 in respect of "Mail Business Centres" in

DR

respect of question no.3 is also not disputed. Further, it is also not in dispute that the point of alleged embargo as contained in Rule 15 of Appendix-37 of Postal Manual Vol. IV Part II was also raised before Principal Bench. It is true that while describing the facts, there is mention of alleged embargo, but while giving findings, specific mention regarding this rule has not been made. Nevertheless, in view of the discussions made in the judgment and keeping in view the peculiar facts and circumstances of the case, O.A. was allowed in favour of the applicant giving directions to the respondents to reevaluate the question no.3 of paper IV (Part B) through an independent examiner. As far as the judgment of Hon'ble Supreme Court in Civil Appeals mentioned in para 11 of Counter Reply is concerned, learned counsel for the applicant points out and rightly so that the Rule 15 as also reference of the aforesaid judgment of Apex Court, are mentioned in letter dated 2.8.2010 of the respondents themselves, which has been brought on record alongwith Counter Reply. Perusal of para nos. 3 & 4 of the letter would reveal that it is in favour of the applicant. Both these paragraphs are extracted below:

"3. it may be seen that representations requesting for revaluation of answer papers are being received in this office specifically pointing the following grievances:

- (i) Particular answer(s) were not evaluated*
- (ii) Excess attempted answer(s) were not evaluated.*
- (iii) For the same answer(s), the examiner marks to one candidate and to another candidate no marks were assigned or the answer struck off as wrong.*
- (iv) All the answers were evaluated but justified marks were not awarded by the examiner.*

4. The issues indicated at (i) to (iii) above are justified and need to be examined by the competent authority to find out the facts and if the claim of the candidate appears to be genuine, revaluation may be got done by an independent examiner in such cases and further necessary action may be taken. In so far as the issue indicated at (iv) above, there is no need to consider such requests and merits rejection at the initial stage itself.

AL

7. Learned counsel for the applicant points out that in para 4, it has been clarified that the issues indicated at (i) to (iii) above are justified and need to be examined by the competent authority to find out the facts and if the claim of the candidate appears to be genuine, revaluation may be got done by an independent examiner in such cases and further necessary action may be taken. But so far as the issue indicated at (iv) is concerned, such requests may be rejected at initial stage itself. He further adds that the case of the applicant is covered under para 3 (iii), which mentions about awarding no marks or striking of the answer as wrong. In respect of the aforesaid answer, the applicant was also given '0' marks. It is not in dispute that for this answer, the applicant was awarded '0' marks.


8. Now, we have to see as to whether the answer given by the applicant was in consonance with model answer as contained in the aforesaid letter dated 15.1.2007 (Annexure A-4). We have carefully gone through the relevant answer-sheet at page 33 of O.A. vis-à-vis model answers (page 42 -43) and find that prima-facie it appears that most of the answer are in accordance with the aforesaid model answers particularly the answer given in para nos. 3, 5, 8 and 9 of answer-sheet. But we are conscious of the fact and we also do not wish to assume the role of examiner/expert and, therefore, the above observations are being made without entering into the merits of the case. It is only prima-facie finding.


9. Coming back to the judgment rendered by Principal Bench, it is again not in dispute that there also on the question no.3 (Part B) '0' marks were awarded. Some of other things may defer such as using different ink, pen etc. That being so, we do not find any reason or justification to deprive the present applicant from getting benefit of similar norms and principle, which had been adhered to by the Principal Bench in the aforesaid similar case.

10. Finally, therefore, in view of the aforesaid discussion and keeping in view the peculiar facts and circumstances of this case and also having regard to the judgment rendered by

Al

Coordinate Bench at New Delhi, we are of the opinion that the interest of justice would be met if the present O.A. is disposed of with a direction to respondent no.2 to get the answer written by the applicant to question no.3 of paper-IV (Part-B) of the said examination re-evaluated through an independent examiner, who should be an officer not lower than the rank of Joint Secretary and after such re-evaluation, in case it is found that the applicant has obtained minimum 50% marks in the said paper and is otherwise eligible in all respects as per rules and in accordance with law, to issue follow up orders with regard to applicant's result. Accordingly, it is so ordered. It would be appreciated if the above directions are complied with within a period of one month from the date of receipt of a certified copy of this order. No order as to costs.


 11.8.11
(S.P. Singh)
Member-A


 11.8.11
(Justice Alok K Singh)
Member-J

Girish/-