

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No 48 of 2006

Date of order : 30th March 2012

C O R A M

Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Bidisha Banerjee, Member [J]

Dinesh Kumar, S/o Shri Satya Narayan Sah, r/o village – Patdaura, P.S- Bajpatti, District – Sitamarhi.

.....Applicant.

By Advocate : Shri S.K. Bariyar

Vs.

1. The Union of India through the Secretary cum Director General, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffarpur.
4. The Assistant Director [Recruitment] O/o the Chief Post Master General, Bihar Circle, Patna.
5. The Superintendent of Post Offices, Sitamarhi, Sitamarhi.

.....Respondents.

By Advocate : Shri Rajesh Kumar.

O R D E R

Naresh Gupta, M [A] - This is an application filed by one Dinesh Kumar seeking quashing of the letter dated 06.06.2005 of the Superintendent of Post Offices, Sitamarhi Division addressed to him [Annexure A/4 of OA] containing the marks obtained by him after re-totalling in paper I, for revaluation of answer book of paper I and to consider the case of the applicant for promotion to the post of Postman after verification and re-evaluation of the answer book of the applicant in paper I. The facts of the case as presented in the OA are as follows:

2. The applicant while working in the post of GDSBPM, Bajpatti, S.O, Sitamarhi Postal Division, submitted his application for promotion to the Postman cadre pursuant to the notification issued by the Department to conduct Departmental competitive examination. There is provision of promotion from Gramin Dak Sevak to Postman cadre through Departmental competitive examination and an employee is

permitted to appear in the Departmental competitive Examination for promotion to Postman cadre after rendering 5 years of service in Gramin Dak Sewak. The applicant was allotted Roll No. STM -37 and was permitted to appear in the written examination consisting of 3 papers, scheduled on 21.03.2004. But when the result was announced, the applicant found his Roll Number missing in it and he, therefore, submitted a representation to the Assistant Director [Recruitment] O/o Chief PMG, Bihar after depositing the requisite fee, praying for supply of marks obtained by him in the examination. The marks obtained by the applicant were communicated to him vide letter dated 14.02.2005 issued by the Superintendent of Post Offices, Sitamarhi Division [respondent No. 5] according to which he got the marks in Paper I, II and III as 18, 37 and 41 respectively [Annexure A/1 of OA].

3. It is alleged that the department had intentionally given lower marks in Paper I only to give promotion to favour some others as in the examination of 1998 and 2001, the applicant had obtained 42 and 47 marks respectively in Paper I, but in the instant examination, the applicant was given only 18 marks [copy of marks sheets marked as Annexures A/2 and A/3]. In as much as the applicant was aggrieved by the marks awarded to him in Paper I, he deposited the requisite fee for re-evaluation of marks obtained in Paper I within the prescribed time frame of six months. It is stated by the applicant that there is a provision for re-totalling and verification of marks which stipulates that if a candidate desires the re-totalling of his marks and verification of the fact that all answers written by him have been duly assessed by the examiner, he should submit an application in prescribed form within six months from the date of announcement of the result. The re-totalling and verification of marks should be carried out by an officer other than one who had originally evaluated the answer script concerned. However, only re-totalling of marks was done, and the same was communicated to the applicant vide letter dated 06.06.2005 [Annexure A/4 of OA].

4. The applicant has cited the case decided by the Hon'ble Patna High Court [1990 PLJR Vol I page 270] wherein when the petitioner had sought revaluation of the answer book in a particular subject, and it was submitted by the respondents that there was no provision for revaluation and that the answer book was traceless, it was held that

“a person could well invoke the jurisdiction of Court to get his answer book reevaluated provided that he made out a grievance in that regard and adduced satisfactory material.”

5. The applicant has contended that in the several previous examinations, the applicant had got more than 80 % marks in Paper I, but in this examination, the applicant was intentionally awarded lower marks in Paper I, and that the re-evaluation had not been done, and re-totalling was only an eye wash and intended to favour some candidates. Further, one Suman Kumar having the same grievance, i.e., on re-evaluation of answer book of Paper I of the examination dated 21.03.2004 of Postman, had filed a case in OA 658 of 2005 which was subjudice before this Tribunal.

6. The respondents in their written statement have submitted that the conduct of Departmental Examination for promotion of EDAs and Group 'D' /Mailman to the cadre of Postman / Mailguard for the year 2002 was notified vide the letter dated 22.12.2003 of the Post Master General [Northern Region], Muzaffarpur, the last date for receipt of the application in the O/o of S.P.O's Sitamarhi being fixed as 20.1.2004. In response to the notification, the applicant also applied for the promotion to the cadre of Postman, and was permitted to appear in the said examination held on 21.03.2004 and he was allotted Roll No. SIM – 37. He appeared in all the three papers i.e., Paper A, B, & C at Muzaffarpur. The result of the said examination was declared vide memo of P.M.G [N.R], Muzaffarpur dated 05.11.2004. The applicant's name did not figure in the list of successful candidates.

7. The representation given by the applicant seeking communication of the marks obtained by him in the examination held on 21.3.2004 was forwarded to the PMG [N.R], Muzaffarpur, and the marks obtained by the applicant received on 07.02.2005 under R.O letter No. R&E Marks /98 dated 01.02.2005 was communicated to the applicant vide letter dated 14.02.2005. Subsequently, the application dated 04.03.2005 of the applicant for re-totalling of marks of Paper A of the aforesaid examination was forwarded to the P.M.G [N.R], Muzaffarpur, and the re-totalling of marks of Paper A communicated vide P.M.G [N.R]'s letter dated 27.05.2005 was communicated to the applicant in the letter dated 06.06.2005 [Annexure A/4 of OA].

8. The respondents have further indicated that only verification / retotalling is permissible under the Department Rules and there is no provision for revaluation of answer book of Departmental Examination. The allegation of the applicant regarding foul play was baseless and false. The applicant was awarded correct marks in Paper I.

9. In the supplementary written statement the respondents have submitted that the answer sheet for Paper I ordered to be produced vide order of this Tribunal dated 01.02.2006 which was brought by one Shri Chamak Lal Sah, Section Supervisor, Legal Cell, Office of the Chief Post Master General, Bihar Circle, Patna before this Tribunal on 14.08.2007 was complete. In the said answer sheet, first [1st] Page [sheet] is covering one and the second [2nd] page [sheet] is answer written by the candidate in the format of Postmans' Delivery Book. The 1st Paper of the said examination is related to the test of ability to make "entry in the Postmans' book".

10. It is seen that the respondents were directed vide order dated 01.02.2006 in the order sheet to produce, in sealed cover, copy of the answer sheet relating to Paper I. and subsequently, the Assistant Director [Recruitment] in the Office of the PMG, Bihar Circle [respondent No. 4] was directed to appear before this Tribunal to explain why the pages of the answer book [other than first page] were not available in the office, and how the first page was so kept. In compliance with the direction, the Assistant Director [Recruitment] appeared on 14.02.2007 before this Tribunal to explain that the first page carried the marks obtained in different questions, the total of which was shown to be 18, and the second page was the answer sheet in which answers were given and marking was done just below the answer. The Officer explained to this Tribunal that in the first six questions at page 1 of answer sheet, one mark on each question was given whereas on four questions on the second page, three marks on each answer was given, and therefore, a total of 18 marks was given which was reflected on the first page of the document. It is also indicated in the order sheet that the document which was brought to the Tribunal on 14.08.2007 was kept in a cover on record. The sealed cover was opened on 04.12.2008 in the presence of the counsels for the both sides for the perusal of the Bench of this Tribunal. Again, with reference to the order vide order sheet dated 17.01.2012, a photo copy of the answer sheet was filed by the learned counsel for the respondents with the

additional written statement with a copy being given to the learned counsel for the applicant on 17.01.2012.

11. Heard the learned counsel for the applicant and the respondents on 01.02.2012 and perused the entire record. During the course of hearing of the case, the learned counsel for the applicant pointed out that the request for revaluation had been rejected and that the marks were manipulated. On the other hand, the learned counsel for the respondents submitted that revaluation cannot be done and that the applicant cannot claim that he would have done well in the particular paper in the examination held on 21.03.2004 merely because in the earlier examinations [held in 1998 and 2001], he had scored high marks in the particular paper.

12. A perusal of the photo copy of the answer sheets does not indicate any manipulation of marks. It may be worthwhile to refer here to some case laws in regard to revaluation of marks and production of answer books.

13. In Civil Appeal No. 907 of 2006, H.P. Public Service Commission vs Mukesh Thakur & Anr. on 25 May, 2010, arising out of the final judgment and order dated 26.12.2005 passed by the High Court of Himachal Pradesh at Shimla, the respondent No. 1 was not found eligible to be called for interview/ viva-voce for the reason that he failed to secure 45% marks in the paper of Civil Law - II, though he had secured 50% marks in aggregate. Being aggrieved, the said respondent filed writ petition seeking direction for revaluation of the paper of Civil Law - II and appointment to the said post as a consequential relief. The High Court vide order dated 3rd October, 2005 directed the appellant- Commission to produce his answer sheets before it and the appellant produced the answer sheets of that paper before the High Court on 05.10.2005. The High Court passed an order dated 05.10.2005 directing the appellant to arrange for a special interview for the said respondent in view of the fact that the High Court was of the view that there had been some inconsistency in framing the Question Nos.5 and 8 and in evaluation of the answer to the said questions. The Hon'ble Apex Court held as follows in this case [paras 12, 14, 19, 20, 24-27]:

12. In the facts and circumstances of the aforesaid case, three basic questions arise for consideration of this Court:- (i) As to whether it is

permissible for the court to take the task of Examiner/Selection Board upon itself and examine discrepancies and inconsistencies in the questions paper and valuation thereof.

(ii) Whether Court has the power to pass a general order restraining the persons aggrieved to approach the court by filing a writ petition on any ground and depriving them from their constitutional rights to approach the court, particularly, when some other candidates had secured the same marks, i.e., 89 and stood disqualified for being called for interview but could not approach the court.

(iii) Whether in absence of any statutory provision for revaluation, the court could direct for revaluation.

14. It is settled legal proposition that the court cannot take upon itself the task of the Statutory Authorities.

19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent no. 1 only.

20. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

24. The issue of re-evaluation 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 & Anr. Vs. Paritosh Bhupesh Kurmarsheth etc. etc. AIR 1984 SC 1543, wherein this Court rejected the contention that in absence of provision for re-evaluation, 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/ re-evaluation 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:

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..... 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 draw-backs 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 re-iterated by this Court in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors, AIR 2004 SC 4116* observing as under:

Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for reevaluation 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 re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for reevaluation of his marks.

26. A similar view has been reiterated in *Dr. Muneeb Ul Rehman Haroon & Ors. Vs. Government of Jammu & Kashmir State & Ors.* AIR 1984 SC 1585; *Board of Secondary Education Vs. Pravas Ranjan Panda & Anr.* (2004) 13 SCC 383; *President, Board of Secondary Education, Orissa & Anr. Vs. D. Suvankar & Anr.* (2007) 1 SCC 603; *The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das & Ors.* AIR 2007 SC 3098; and *Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors.* (2009) 1 SCC 599.

27. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation.

14. While dealing with a similar question, in *Pranshu Indurkhya vs State of M.P. and Ors.* on 5 January, 2005, the Hon'ble High Court of Madhya Pradesh referred to the case of *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumarsheth* (AIR 1984 SC 1543) wherein the Hon'ble Supreme Court while dealing with the contention that students who do very well in the examination, will be highly prejudiced if there is no provision for revaluation, and therefore Courts should interfere in such matters, held thus:

"It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one where to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice."

15. According to the extract of Posts and Telegraphs Manual, Volume IV, Part II(A)- Appendices- Establishments, paras 14 & 15, filed by the respondents with their WS, while retotalling and verification of marks is allowed, revaluation of answer scripts

is not permissible in any case or under any circumstances. The applicant has not established a case of malafides in award of marks or tampering of marks to warrant issue of a direction for revaluation of the answer paper or for his appointment to the post. The selection process had taken place in 2004 and a considerable time has elapsed since then.

As observed by the Hon'ble Supreme Court and the Hon'ble Madhya Pradesh Court in the above case, 'pragmatism' and not 'idealism' should be the basis for interference in such matters. Courts should not be swayed by sympathy and rhetoric in such matters.

16. We, therefore, hold that the applicant has not made out a case for allowing the OA and it is accordingly dismissed. No order as to costs.

Banerjee
[Bidisha Banerjee] M [J]

Naresh Gupta
[Naresh Gupta] M [A]

/cbs/