

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 451 of 2005

Patna, Dated 8th of January, 2007

CORAM: The Hon'ble Mr. Justice P.K.Sinha, VC
The Hon'ble Mr.S.N.P.N.sinha, M[A]

Vivek Kumar Singh, son of Late R.N. Sinha, r/o -L/62, Sri Krishna Nagar, P.S. Budha Colony, District Patna.

Applicant

By Advocate: Shri Tuhin Shankar

versus

1. Union of India through Secretary, Department of Personnel and Training, North Block, New Delhi.
2. The Director, Lal Bahadur Shastri National Academy of Administration, Mussoore.
3. Government of Bihar, through its Chief Secretary, Patna.
4. Secretary, Union Public service Commission, Shahjehan Road, New Delhi.

Respondents

By Advocates: Shri M.K.Mishra for UOI
Shri Shekhar Singh for the State of Bihar
Shri R.K.Choubey for the UPSC

ORDER

Justice P.K.Sinha, Vice-Chairman:-

The present application has been filed for declaration that the marks awarded to the applicant in the District Training are anomolous and for grant of marks for the same on the basis of Director's assessment or average marking and for direction to the Union public Service Commission to make appropriate changes in the applicant's seniority.. The applicant is an IAS officer of 1989

[Signature]

batch originally belonging to Himachal Pradesh cadre. It is claimed that he had done his district training in Himachal Pradesh and successfully cleared all his departmental examinations and completed all assignments prescribed by the Lal Bahadur Shastri National Academy of administration [hereinafter mentioned as "Academy"] In 1991, his cadre was changed from Himachal Pradesh to Bihar. He resumed his district training in the new State and completed the Academy assignments like Village Study Report and Management Project Report on Stone Crusher Co-operative, although there was no instruction to that effect from the Academy. After this training, he reported back at the Academy, Mussoorie. He was not allowed to join on the ground that since he has been allotted a new State cadre, he must do training de novo in the new cadre. He had to go back to the State and join district training, although there was no formal order to that effect. He completed it and submitted all his assignments prescribed by the Academy. After this, he reported back to the Academy at Mussoorie and did his Phase II training during 1992 with 1990 batch. He made presentations with regard to all his assignments, which were duly accepted and appreciated. He had not received his marks sheet with respect to different examinations as well as Director's assessment for the different training programmes. He made a request for the same by letter dated 21.3.93 which was ignored. Again, by another letter dated 12.1.98, he repeated his request. Subsequently, by letter dated 4.9.2000, his marks sheet was forwarded to him. He was awarded 130 marks out of 200 in Director's assessment during Phase II of his training but he was awarded only 66 marks out of



200 for his district training. From the marks sheet, it appears that he was still being treated as belonging to Himachal Pradesh cadre. As a result, he has slipped to the 70th position from his original rank of 26 in the inter se seniority of his batch. He filed another representation for review of the records and marks on 28.3.2001. He was informed on 23.5.2001 that his records were examined and the marks given were correct. The said letter shows complete non-application of mind. He again filed an appeal on 4.12.2002, but to no effect. He moved this Tribunal in OA 25/2004. The application was disposed of with a direction to the Director, Academy, to dispose of his representation/appeal by a speaking order in accordance with law. He was informed by letter dated 22.7.04 that his marking against which he had complained was found to be justified. He has been given zero out of 25 marks for Socio Economic Survey, which was submitted to the concerned authority on 23.6.1992. The marks for this assessment were not conveyed by one Academy authority to another which was entirely fault of the Academy authorities. The reason assigned for not forwarding the marks is said to be non-evaluation of the paper in question. Similarly, he was given zero out of 15 marks for training at ATI.

2. It has been submitted on behalf of respondent no.2 [Director], Academy, that the representation made by the applicant was duly considered and the marks awarded to him were also communicated. After the direction of the Tribunal in OA 25/04, a speaking and a reasoned order was passed indicating that there was no need for any revision of marks. The applicant agitated his



case after a long gap. His alleged letters of 1993 and 1998 were never received in the Academy. The assessments/reports in question after such a long gap of time have been destroyed. He remained silent for a long time from 1992 to 2000. He did the first district training in Bihar for only 15 days as against requirement of 52 weeks. He was sent back for the same de novo. From the Academy records, it appears that his paper on socio Economy Survey was received in the Academy but these records do not exist any more. So it is not possible to make any revaluation. He made request for marks sheet in September 2000 for the first time, which was immediately communicated to him. Since the marks sheet relate to the period from 1989 to 1992 and the applicant belonged to H.P.cadre till April 1991, the marks sheet reflected his earlier cadre. This position has in no way affected the applicant's case.. Had the intention at the Academy been unfair, the applicant could not secure 130 marks out of 200 in the Director's assessment. As stated in the order dated 22.7.04, in pursuance of the direction of this Tribunal, the then Counsellor of the applicant at the academy stated that the marks obtained by him reflected the true worth of his performance.

3. The order of the Director of the Academy [dated 22.7.04] was made in pursuance of the direction of this Tribunal in OA No.25/04 and has been annexed with the present application. It appears that the applicant secured 0 in socio Economic survey against total marks being 25. Similarly, in the item Training at ATI, he secured 0 out of 15 [total marks]. On the first issue, the order



mentions that the then Professor of Economics in the Academy in his note dated 14.8.92 stated that marks for socio Economic Survey in respect of the applicant were awaited from Ms. Jalaja Sinha, the then deputy Director in the Academy. It is further mentioned that Smt. Sinha said that if marks were not forwarded to Sri Brijpal Singh then the paper in question was not evaluated. The Director observed that at this stage he could not overrule her. On the latter issue [Training at ATI] it is mentioned that enquiries were made from Sri N.P.Sinha who was his Counsellor during the period. He was absolutely categorical in stating that marks as obtained by him reflected the true worth of his performance.

4.. It will appear from the aforesaid, as seen, that in the case of the assignment Socio Economic Survey, the marks obtained by the applicant were admittedly not forwarded to the concerned Professor at the Academy. On enquiry from the then Deputy Director, it was said by her that in such a case, the paper was not evaluated. The applicant has evidently been affected adversely in his overall marking on this account for no fault of his. This is not the situation with the other assignment, i.e., training at ATI.

5. The reason for the aforesaid is apparent, as seen, from the perusal of Annexure -9, a letter issued to the applicant by the Director of the Lal Bahadur Shastri National Academy of Administration, Mussorie (National Academy in short) dated 22.7.2004. This was done in view of the representation filed by the applicant with copy at Annexure A-8 which was the order of this



Tribunal recorded on 9.1.2004 in OA 25 of 2004, which the applicant had filed for issuance of a direction to the Director of National Academy to re-calculate and review the marks of the applicant in District Training. This Tribunal, noting the facts, had issued direction to the respondent No. 2 to dispose of the representation/appeal of the applicant within a given period, on receipt of a copy of the order. The Director in his order has admitted that the applicant had been sent mark-sheet from the academy on 4.9.2000, whereafter on 28.3.2001 he had preferred a representation. The Director also mentioned that on 23.5.2001, the Controller of Examination of the Academy had written to him that the marks awarded to him indeed reflected the correct position. Thereafter, the applicant sent another representation which was also noticed in the order dated 22.7.04 (Annexure A/9), as also the Original Application preferred before this Tribunal and the order passed thereupon.

6. In Annexure A/9 the marks obtained under different heads by the applicant have been mentioned but the Column of the marks obtained in the subject "Socio-Economic Survey" is blank which carried a total of 25 marks. The Director also noticed that the applicant was not awarded marks for socio-Economic Survey but has admitted that his paper on Social Economic Survey was received in the National Academy on 23.6.1992. He noted that he had contacted, about that, the then Dy. Director of Academy, Ms. Jalaja Sinha (who was by then posted as Joint Secretary in the National Human Rights Commission) and also had perused the note of Shri Brij Pal Singh, the then Professor of Economics in the Academy.



Shri Singh in his note had stated that the marks for Socio-Economic Survey in respect of the applicant were awaited from Ms. Jalaja Sinha. The Director further noted that Ms. Sinha had told him that if the marks were not forwarded to Shri Brijpal Singh, then the paper in question was not evaluated. The Director opined that at that stage he could not overrule her.

7. Therefore, the admitted facts appear to be that the paper submitted by the applicant on Socio-economic Survey was duly received in the Academy, but that, somehow or other[the reason not explained in Annexure -9], was not evaluated, hence no mark could be added on that count in the case of the applicant.

8. In so far as the marks under other heads are concerned, the applicant has got various marks ranging from 0 marks out of 15 on account of training at ATI, to 13 marks out of 20 in the subject of 'Judgment in District Training' and 16 out of 25 in 'Land Reforms / Tribal Land'.

9. It is now neither desirable nor possible to order the respondents for re-evaluation of marks in all the papers on the ground that the applicant was not satisfied with the marks. If this is done, it would not create a healthy precedence, particularly when the Director has noticed in Annexure -9 that the Controller of the Examination of the Academy wrote to him that the marks awarded reflected the correct position.



10. However, non-marking of the paper submitted by the applicant in 'Socio-economic Survey' might have prejudiced the case of the applicant so far as his position in the cadre was concerned. It obviously was not a fault on his part that the paper submitted by him was not evaluated, thereby depriving him the benefits of those marks. Obviously, as per chart given in Annexure A/9, the applicant has been shown to have secured 65.5 % of marks out of 200, but actually it was out of 175 marks. In case the papers submitted by the applicant could not be evaluated, the respondents should have taken corrective steps on that count at the earliest.

11. One way was to add average of the total marks obtained by the applicant out of 175 marks and treat that to be marks obtained in 'Socio-economic survey paper'. Since the paper is missing, that cannot be resurrected. This is the best way to over-all evaluate the performances of the applicant in the District Training.


12. In the result, the respondents are directed to consider the average of marks obtained by the applicant out of 175 marks as the marks obtained by him in the 'Socio-economic Survey paper' and add that to his over-all total. This total may, thereafter reflect his position in the cadre. If by adding this he is likely to get seniority over other officer/officers of the batch who might have gained seniority over him by over-all assessment, the respondents will apprise them of the position and the proposed change in the matter of seniority of the applicant and ask them to show cause as to why this should not be done. After receipt of their replies, the competent authority /authorities would consider the same and thereafter take a




final decision about the position of the applicant in his cadre.

13. As the matter has already been delayed, this should be done within a period of four months of the receipt of copy of this order.

14. With the aforesaid directions, this application is disposed of. No order as to the costs.


[S.N.P.N. Sinha]
Member[A]


[P.K. Sinha],
Vice-Chairman

cm

