

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH : JAIPUR

Date of Order : 7-05-04

R.A. No. 23/2003.

IN

O.A. No. 581/2002

with

M.A. No. 400/2003

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Offices, Jaipur City, Jaipur.

Applicants/Respondents in OA.

v e r s u s

Kalu Ram S/o Shri Panchu Ram, by caste Balai, aged about 42 years, resident of Ramnagar P.O. Jagatpura, Via Malviya Nagar, Jaipur-17, presently working as Post Man, Gandhi Nagar Post Office, Jaipur-17.

Respondent/Applicant in OA.

Ms. Rajeshwari Proxy counsel for  
Mr. N. C. Goyal counsel for the applicant.  
Mr. P. N. Jatti counsel for the respondents.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.  
Hon'ble Mr. A. K. Bhandari, Administrative Member.

: O R D E R :

(per Hon'ble Mr. M. L. Chauhan)

The respondents in Original Application have filed this Review Application for reviewing the order dated 11.7.2003 passed in OA No. 581/2002.

2. Alongwith this Review Application, the applicant has filed Miscellaneous Application No.400/2003 for condonation of delay. Notice of this MA was given to the original applicant but he has not filed any reply. We have considered the averments made in the application. The delay of 34 days in filing the RA ~~for~~ is condoned. MA No.400/2003 for condonation of delay shall stands dismissed accordingly.

3. The facts of the case are that the original applicant has filed OA No.295/2001 in this Tribunal with the prayer that the respondents be directed to declare the result of the applicant of the examination held on 11.10.1998 and all consequential benefits with effect from 18.03.99 and also prayed for quashing the order dated 20.04.1989. The applicant was not permitted to appear in the examination to be held on 11.10.1998 on the ground that as per the Director General (P) letter dated 20.04.1989 ~~for~~ for departmental promotion examination to the cadre of Postal Assistants number of chances to candidates are 5 and this restriction was given effect vide letter dated 17.05.1990. Since the applicant has already appeared in the examination held during the years 1989 to 1995 and has availed of maximum chances up to 1995, he was not eligible to appear in the examination held in 1998. However, he was allowed to appear in the examination held on 11.10.1998 as per interim direction given by this Tribunal. This Tribunal after noticing the contention put forth by the learned counsel for the applicant that the recruitment rule do not provide fixing the number of chances of conducting the examination against the promotion quota, as such the administrative instructions issued in the year 1989 cannot restrict the number of chances to be availed for

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examination, Agreed with the contention of learned counsel for the respondents that recruitment rule do not normally contain the provisions with regard to manner of examination to be conducted and the number of chances to be availed for the examination and also in any case limiting the chances to 5 cannot be said to be an arbitrary restriction. However, on the basis of the arguments advanced by the learned counsel for the applicant that he will be satisfied if a direction is given to the respondents to communicate the marks obtained by the applicant in the examination held in the year 1998, this Tribunal disposed of the OA with the direction to the respondents to communicate to the applicant the marks obtained in each paper in the examination held on 11.10.1998 within a period of one month from the date of receipt of order. Subsequently, the respondents in compliance of the order passed by this Tribunal communicate the marks obtained by the applicant vide letter dated 8.8.2002.

Subsequently it appears that the applicant made another application dated 14.08.2002 regarding reverification/re-totaling of marks of the LGOs examination held on 11.10.1998. The request of the applicant was rejected vide letter dated 27.08.2002 (Annexure A-1) thereby holding that the result of the examination was declared on 15.03.1999, as such, in view of Rule 14 (C) of appendix 37 of P & T Manual IV Val. IV such application should have been submitted within six months from the date of announcement of the result, therefore, it is not possible to consider request of the applicant to re-total the marks of the above L.G.O. Examination at this belated stage.

4. The applicant again filed OA which was registered as OA No.581/2002. The said OA was finally disposed of by this Tribunal vide letter dated 11.07.2003 whereby  quashing <sup>the</sup>  impugned order Annexure A-1 and the respondents were directed to entertain the application of the applicant for re-totaling and verification of marks and act in accordance

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with Rule 14 of Appendix No. 37. In Para 7 of the judgement, the Tribunal observed that in the facts and circumstances, the date of declaration of the result of the applicant shall be treated to be the date on which the marks were communicated to him, since the applicant has made application for re-totaling and verification of marks before expiry of six months from the date of communication of marks.

5. Now the respondents have filed this Review Application with a prayer that the direction issued by this Tribunal in OA No.581/2002 cannot be complied with inasmuch as the answer sheet had ~~been~~ wedged out on 30.07.2002 as per the provision of Rule 17 (b) of Appendix No.37. As such it is not possible to consider the request of the applicant for re-totalling of the marks.

6. It is on this ground that the respondents have sought the review of the order dated 11.07.2003 in OA No.581/2002. Notice of this application as well as OA No.581/2002 was given to the respondents. Shri P. N. Jatti has put in appearance on behalf of the original applicant.

7. We have heard the learned counsel for the parties.

8. We are of the view that the respondents have made out a case for reviewing the order dated 11.07.2003 passed in OA NO.581/2002. As can be seen from the narration of the facts as stated above, the prayer of the applicant that direction be issued to the respondents to declare the result of the applicant of the examination held on 11.10.1998 was rejected on merit as this Tribunal in Para 5.1 of the order specifically held that limiting the chances five cannot be said to be an arbitrary restriction. It was further observed that though the respondents allowed the applicant to appear in the examination 1999 as per the directions of this Tribunal, but the applicant did not appear in the said

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examination. Thus, in view of this specific finding recorded by this Tribunal in Para 5.1 of the order dated 09.07.2002 passed in OA No.295/2001, the applicant who was allowed provisionally to appear in the examination was not legally entitled to seek direction from this Tribunal that result of the applicant of the examination held on 11.10.1998 be declared. In fact this Tribunal has also not given any such direction. However, what the Tribunal has directed to the respondents was that since the applicant was allowed to appear as per direction of the Tribunal and the applicant has specifically submitted that he will be satisfied if the marks obtained in the examination held in 1998 be communicated to him. A direction was given to the respondents to communicate the marks obtained by the applicant in his paper. In fact, such a direction was also complied with by the respondents by communicating the result vide order dated 8.08.2002. Subsequently, it was neither permissible for the applicant to submit another application regarding verification of totalling of marks of LGOsE examination held on 11.10.1998 and also to challenge the order dated 27.08.2002 (Annexure A-1) whereby the said request was rejected by the respondents.

Further at this stage, we may also notice that it was also not permissible for this Tribunal to entertain the subsequent OA No.581/2002 on the face of decision rendered by this Tribunal in earlier OA No.295/2001 decided on 09.07.2002 whereby the restriction of limiting the chances up to 5 was justified and also in view of the submission made by the learned counsel for the applicant that he is confining the OA only to the extent that a direction given to the respondents to communicate the marks obtained in the examination held in the year 1998. That apart, in the Review Application, the respondents have specifically stated that the answer sheet of the examination held on 11.10.1998 has been weeded out on 30.07.2002 in view of the provisions of Rule 17 (B) of Appendix 37, and then it is not possible to consider the

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request of the applicant for re-totaling of the marks. Admittedly the answer sheet was weeded out after the decision rendered by this Tribunal in earlier OA NO.295/2001 decided on 09.07.2002. Further as per para 17 (b) of the Appendix No.37, answer books in respect of the departmental examination has to be preserved for a period of 12 months from the date of announcement of their respective results. The result was declared on 15.03.1999 whereas the answer sheet was weeded out on 30.07.2002. Under these circumstances, no infirmity can be found in the action of the respondents. For the reasons stated above, the RA is allowed and OA No.581/2002 shall stand restored to its original number.

9. In OA No.581/2002, we have also heard the parties on merit. We are of the view that the applicant has not made out any case for our interference. This application has been filed by the applicant against the order dated 27.08.2002 (Annexure A-1), whereby the request of the applicant made vide letter dated 14.08.2002 regarding verification and retotaling of marks of the LGOs examination held on 11.10.1998 was rejected, in view of the Rule 14 (c) of the P & T Manual Vol.IV which stipulates that such application should have been submitted within six months from the date of the result. In view of the finding given by this Tribunal in Para 5.1 of the OA No.295/2001 decided on 09.07.2002, the relevant portion of which is reproduced hereunder, the OA could not have been entertained :-

"5.1 It is an admitted fact that the applicant had already availed 5 chances prior to 1998. The applicant was allowed to appear in the examination held in 1998 provisionally as per the directions of the Tribunal. The applicant although appeared in the examination but could not qualify. The contention of the applicant is that the recruitment rules do not provide fixing the number of chances for conducting the examination against the promotion quota and they were only based on administrative instructions issued by the Director General. These administrative instructions were issued in the year 1989. We agree with the contention of the learned counsel for the respondents that the recruitment rules do not

normally contain the provisions with regard to manner in which the examination is required to be conducted and the number of chances to be availed for examination and also that in any case limiting the chances five cannot be said to be an arbitrary restriction. It is not disputed by the parties that although the respondents allowed the applicant to appear in 1999 examination as per the directions of this Tribunal, but the applicant did not appear in the said examination."

10. Further this Tribunal in Para 5.2 has specifically noticed the arguments of learned counsel for the applicant that he will be satisfied if the marks obtained in the examination held in 1998 are communicated to him. In view of this statement made by the applicant in the earlier OA, it was not permissible for him to challenge the same selection by filing subsequent OA, thereby taking new ground which is not permissible in law and is barred by the principle of Constructive res-judicata/res-judicata.

11. In view of what has been stated above, the OA is dismissed with no order as to costs.

  
(A. K. BHANDARI)  
MEMBER (A)

  
(M. L. CHAUHAN)-  
MEMEBR (J)