

25

07/09/2012

O.A. No. 493/2009

Mr. S. Shrivastava, Counsel for applicant.

Mr. Surresh Parrekh, Counsel for respondents.

Heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K. S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 07th day of September, 2012

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. **ORIGINAL APPLICATION No. 493/2009**

Girish Kumar son of Shri Vaidy Shiv Charanlal aged about 42 years, resident of 616/25, Govind Nagar, Ramganj, Ajmer. Presently working as Accounts Assistant under SAFA, Ajmer (Loco Workshop), Ajmer.

... Applicant

(By Advocate : Mr. S. Shrivastava)

Versus

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi
2. Finance Commissioner, Railway Board, Rail Bhawan, New Delhi.
3. Executive Director (Finance), Railway Board, Rail Bhawan, New Delhi.
4. General Manager, North Western Railway, In front of Railway Hospital, Hasanpura, Jaipur.

... Respondents

(By Advocate : Mr. Suresh Pareek)

2. **ORIGINAL APPLICATION No. 82/2010**

Mahendra Maurya son of Shri Govind Prasad Maurya aged about 44 years, resident of Maurya Bhawan, Johns Ganj Garh Road, Ajmer. Presently working as Account Assistant under Dy. CAO Workshop & Store, Ajmer.

... Applicant

(By Advocate : Mr. S. Shrivastava)

Versus

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi
2. General Manager, North Western Railway, HQ Office, In front of Railway Hospital, Hasanpura Road, Jaipur.
3. General Manager, Western Railway, Church Gate, Mumbai.
4. Director Finance (Accounts) Room No. 417, Railway Board, Rail Bhawan, New Delhi.
5. Finance Commissioner, Railway Board, Rail Bhawan, New Delhi.

... Respondents

(By Advocate : Mr. Suresh Pareek)

ORDER (ORAL)

Since the facts of OA No. 493/2009 (Girish Kumar vs. Union of India & Others) and OA No. 82/2010 (Mahendra Maurya vs. Union of India & Others) are similar, therefore, they are being disposed of by a common order. The facts of OA No. 493/2009 (Girish Kumar vs. Union of India) are being taken as a lead case.

2. The applicant has filed this OA claiming for the following reliefs:-

- “(A) That this Hon’ble Tribunal may graciously be pleased to direct the respondents to constitute special committee for the purpose of rechecking of the answer sheet of the petition in respect of paper without book on the subject “General Expenditure” (Code-11) held on 23.04.2008 against the notification dated 01.08.2006 for the examination titled as “Annendix-3A Examination, 2006”.
- (B) That respondents may further be directed that in case on the rechecking of the Answer Sheet as mentioned above, in case petitioner gets qualifying marks (4) then respondents would include the name of the petitioner in the list of successful candidates who appeared for the test against the notification dated 01.08.2006 for “Appendix-3 A

Anil Kumar

- Examination, 2006 and will also provide all consequential benefits in case has occurred.
- (C) Respondents may further be directed to produce entire record of other incumbents who had taken "General Expenditure" as optional subject so as to make comparison of the marks to the petitioner given by the examiner viz-a-viz. other incumbents.
 - (D) Any other relief, which this Hon'ble Tribunal may deem fit and proper as per the facts of the case, may also be granted in favour of the petitioner."

3. Learned counsel for the applicant submitted that the applicant while working as Assistant Accountant under the respondents and being eligible incumbent, applied for the departmental examination for selection to the post of Section Officer. The examination was conducted in two parts. There were compulsory subjects in Part I examination and after qualifying the Part I examination, the applicant was entitled to appear in Part II examination. The applicant was successful in Part I examination and consequently, he was called for to appear in Part II examination. The Part II examination was based on optional subjects. The applicant opted the subjects titled as "Workshop Accounts" and "General Expenditure". The applicant obtained copy of the result of this Part II Examination through internet and found that the applicant was not awarded even qualifying marks that is 40 in the paper of "General Expenditure" (Code 11) conducted without books. He was awarded only 24 marks in that paper which is quite below to his expectation based on the answers provided to the questions attended by the applicant in the said paper.

Anil Kumar

4. Learned counsel for the applicant further submitted that after seeing the result on internet, the applicant submitted a representation through proper channel to the Executive Director, Railway Board wherein he prayed for rechecking/ revaluation on certain grounds. However, all the efforts made by the applicant in this regard at administrative level went in vain.

5. The applicant subsequently moved an application under the Right to Information Act, 2005 to provide copy of the answer sheet vide appeal dated 14.08.2009 which was ultimately provided to him vide letter dated 16.09.2009 (Annexure A/1). The applicant also requested for a copy of the standard answer sheet expected from the incumbents against the questions. The true copy of the said board's expected answers has been filed as Annexure A/8.

6. Learned counsel for the applicant further argued that from the perusal of the answer sheet of the applicant in respect of the paper "General Expenditure" without books compared with standard answers, it can easily be inferred that the examiner has examined the copy carelessly and awarded reasonably low marks knowingly or unknowingly. The examiner has not checked the copy properly. Therefore, he argued that the respondents be directed to recheck the answer sheet of the applicant. The examiner has not awarded the marks based on segments of the question itself.

Anil Kumar

7. In the case of Mahendra Maurya vs. Union of India (OA No. 82/2010), the learned counsel for the applicant drew our attention to Para No. 3.3 of the instructions for evaluation of answer book of Appendix-3 (IREM) Examination, which is quoted below:-

"3.3 The answer books of such of the candidates who fail to obtain the minimum pass marks or fail to secure an exemption, by a small margin of say 3 marks or less, should be carefully reviewed so that the Examiner has no doubt in his/her mind as to whether the candidate deserves to pass or not to secure an exemption."

8. Learned counsel for the applicant further argued that in the paper of "Traffic Book & Traffic Statistic", the applicant, Shri Mahendra Maurya, was awarded 37 marks while the qualifying marks were 40. Thus the applicant secured only 3 marks less in the qualifying marks. Therefore, the provisions of Para 3.3 of the above guidelines are applicable and he is entitled for a review of his marks.

9. On the other hand, learned counsel for the respondents submitted that there is no provision of re-evaluation of the answer sheets, once the examiner has examined and awarded marks to the candidates. He further submitted that answer books are collected by the Ministry of Railways and are got evaluated in a very confidential and fair manner. For evaluation of answer books, senior experienced Indian Railway Accounts Service (IRAS) officers not holding the post below Jr.

Anil Kumar

Administrative Grade (Deputy Secretary's level) with proven integrity are nominated by the Ministry. The examiner while checking the answer books do not know the identity of the candidate, as fictitious roll numbers are put on these answer books by the Ministry of Railways before giving these to the examiners. This ensures that no candidate suffers on account of personal bias of the examiner. Further there is also a provision of 10% check of answer books evaluated by each examiner, by the Principal Examiner [Senior Administrative (IRAS) officers that is Joint Secretary/Special Secretary level officers]. Thus the process ensures fair evaluation of answer books, strictly based on performance of the candidates. Since the exam is held in a very fair and confidential manner, there is no provision of re-valuation in this examination like other departmental exam of similar nature.

10. Learned counsel for the respondents further brought to our notice the order dated 27.09.2002 of the Central Administrative Tribunal, Calcutta Bench in OA No. 751/1996 in the case of Shri Deepak Chowdhury vs. Eastern Railway in which the Tribunal had held that "every unsuccessful candidate has the tendency to say that he had performed well but assessed poorly. There is no provision in the Railways to allow inspection or evaluation of the Answer sheet or a provision to show it to the person concerned." (Annexure R/3). This order was upheld by Hon'ble High Court of Calcutta in the WPCT NO. 13/2003 (arising out OA No. 751 of 1996 of Central

Anil Kumar

Administrative Tribunal, Calcutta) (Annexure R/4). The related Special Leave Petition to Appeal (Civil) No. 10450/2003 was also dismissed by the Hon'ble Supreme Court of India on 14.08.2003 (Annexure R/5).

11. Learned counsel for the respondents further argued that out of 121 candidates, 37 candidates secured either minimum 40% or higher marks and remaining 84 candidates secured less than the qualifying marks. Therefore, it is clear that every candidate secured the marks as per his performance. The examiner has evaluated the answer books with utmost care and best of his knowledge. The applicant is acting as a super examiner and not only challenged the knowledge and wisdom of the examiner but also the Principal Examiner. He further argued that the request of revaluation of answer books is not within the purview of Right to Information Act and there is no provision of re-evaluation of answer books of this examination as per existing rules.

12. With regard to the averments made by the learned counsel for the applicant in the case of Mahendra Maurya in OA No. 82/2010 with regard to Para No. 3.3 of the instructions for evaluation of answer books of Appendix -3 (IREM) Examination is concerned, he argued that these are instructions for the examiner and for Principal Examiner. The reading of Para No. 3.3 of the said instructions would make it clear that there is no separate provision for revaluation of the answer sheet after the

Anil Kumar

examiner as awarded the marks to the candidates. It only provides that answer book of such candidates who failed to obtained minimum pass marks or fail to secure an exemption, by a small margin of say 3 marks or less, should be carefully reviewed so that the examiner has not doubt in his/her mind as to whether the candidate deserves to pass or not or to secure an exemption. This simply implies that the examiner who has examined the copy of a candidate should carefully review at his own level if that candidate fails to secure an exemption or obtain minimum pass marks by a small margin of say 3 marks or less. In the written submissions also, they have clearly pointed out that answer sheets of such papers were reviewed carefully as per the rules and result was declared after compliance of all instructions regarding evaluation of answer books of each subject. It is prejudice thinking of the applicant that his answer book had not been reviewed according to the rules.

13. Therefore, learned counsel for the respondents argued that there is no merit in both these OAs and they should be dismissed with costs.

14. Heard the rival submissions of the parties and perused the relevant documents on record. With regard to the averment of the learned counsel for the applicant that his answer sheet may be re-checked, the learned counsel for the respondents has categorically stated that there is no provision

Anil Kumar

for re-evaluation and to support his averment, he has also referred to the order dated 27.09.2002 of the Central Administrative Tribunal, Calcutta Bench in OA No. 751/1996 in the case of **Dipak Chowdhury vs. Eastern Railway** (Annexure R/3). We have carefully gone through the order of the Central Administrative Tribunal, Calcutta Bench. The ratio decided by the Central Administrative Tribunal is squarely applicable under the facts & circumstances of the present case. In this case, the Tribunal in Para Nos. 12 & 13 has held that:-

"12.In our considered view, every unsuccessful candidate has the tendency to say that he had performed well but assessed poorly. There is no provision in the Railways to allow inspection or evaluation of the Answer Sheet or a provision to show it to the person concerned.

13. Once the applicant has participated in selection and having failed in it, it does not lie within his right to challenge the proceeding on the ground of malafide or violation of rules, which the applicant failed to point out."

15. This order of the Hon'ble Tribunal has been upheld by the High Court of Calcutta in WPCT No. 13 of 2003 vide order dated 26.02.2003 (Annexure R/4). The related Petition(s) of Special Leave Petition to Appeal (Civil) NO. 10450/2003 was also dismissed by Hon'ble Supreme Court of India vide its order dated 14.08.2003 (Annexure R/5).

16. With regard to the submission of the learned counsel for the applicant in OA No. 82/2010 (Mahendra Maurya vs. Union of India & Others) regarding Para No. 3.3 of the Instructions for evaluation of answer book of Appendix-3 (IREM)

Anil Kumar

Examination is concerned, we are inclined to agree with the response of the respondents in this regard. The perusal of provision of Para 3.3 makes it clear that the answer book of such candidates who failed to obtain minimum pass marks or fail to secure an exemption, by a small margin of say 3 marks or less, should be carefully reviewed so that the Examiner has no doubt in her/his mind as to whether the candidate deserves to pass or not or to secure an exemption. This clearly implies that the examiner at the time of examining the answer sheet himself carefully review of such candidates who failed to obtain minimum pass marks by a small margin of 3 marks or less. It does not provide for re-evaluation of the mark sheet by another examiner or body of examiner. Therefore, we do not find any force in the submission of the learned counsel for the applicant that he could get any benefit out of provisions of Para 3.3 of the Instructions for evaluation of answer books of Appendix-3 (IREM) Examination, as quoted above. Therefore in our considered view, the applicant has failed to make out any case for our interference in this OA as well.

17. Therefore, we are of the view that the applicants have failed to make out any case for our interference as there is no rule in the Railways providing for re-evaluation of the answer sheet of the applicants.

Anil Kumar

18. Consequently both the OA No. 493/2009 (Girish Kumar vs. Union of India & Others) and OA No. 82/2010 (Mahendra Maurya vs. Union of India & Others) being devoid of merit are dismissed with no order as to costs.

Anil Kumar,

(Anil Kumar)
Member (A)

AHQ

J. S. Rathore

(Justice K.S. Rathore)
Member (J)