

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application No.330/01402 of 2015.

This the 31st day of October, 2018

**HON'BLE MR. GOKUL CHANDRA PATI, ADMINISTRATIVE MEMBER
HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER**

Afzal Mirza, presently posted as Income Tax Inspector, CGO-1, Hapur Road, Ghaziabad.

-Applicant

(By Advocate – Ms. S. Mandhyan/Shri S.J. Istiyaq)

V e r s u s

1. Union of India, through Secretary (Revenue) Government of India, Ministry of Finance, North Block, New Delhi.
2. Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. Member (P&V) CBDT New Delhi.
4. Director of Income Tax (Exams), Directorate of Income Tax, 5th floor, Mayur Bhawan, Connaught Circus, New Delhi 110011.
5. Chief Commissioner of Income Tax (CCA) Aaykar Bhawan, 16/69, Civil Lines, Kanpur.

-Respondents

(By Advocate – Shri L.P. Tiwari)

O R D E R

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

- “(i) To issue a writ, order or direction in the nature of certiorari quashing the order dated 14.08.2015;
- “(ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to embark upon the DPC for the post of ITOs for the RY 2015-16 as per instruction dated 17.6.2015 till the issue of the applicant is decided by the Director of Examination or one post may be reserved for the applicant from the post of

ITOs required to be filled up under the DPC to be held for the RY 2015-16.

- (iii) to issue such order and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.
- (iv) to award cost of the petition to the applicant".

2. The brief facts of the case are that the applicant is working on the posts of Income Tax Officer. It is stated that applicant appeared in the Departmental Examination for the post of Income Tax Officer under the category of 'partially qualified' candidates as he had already cleared 02 papers in earlier Departmental Examination, 2008. In Paper Code No. 03 (Allied Laws), he had been declared failed obtaining 44 marks. On enquiring, applicant was informed that he only had 05 grace marks to his credit and as such if he was awarded 05 marks then he cannot be declared to have cleared the said paper. Whereas, even as per the information available on Website of the department for the year 2012 and downloaded by him, applicant had 7 grace marks to his credit and none of these grace marks had been used in his case.
3. It is the further case of applicant that question No. 78 was correctly answered by the applicant by giving the answer 'D' but he was not awarded the marks, as the answer-key on the website shows the answer to be 'A' which is a wrong answer. The applicant made representation dated 20.11.2014 (Annexure A-6) through proper channel for revision of result only on the basis of 07 grace marks ought to be awarded so that he got successful in the departmental examination. Respondents have decided his representation by its order dated 20.2.2015 (Annexure A-7) in which it has been mentioned that applicant had already availed 02 grace marks in Book Keeping paper in the departmental examination 2008, as such, only 05 grace marks are left to his account and the mistake of 7 grace marks has been rectified, therefore, the result declared for the departmental examination 2014 is correct. Even in the result of

Departmental Examination, 2008, there is no indication of utilization of 2 grace marks.

4. It has been further averred in the O.A. that applicant moved application on 6.7.2015 to correct the mistake and accord him marks for question No. 78 as being correctly answered by him. It has also been submitted that the matter may be referred to the Expert Committee for the correction of mistake committed by the respondents but his representation has been rejected on the ground that there is no provision of revaluation or re-totalling of answer-sheets. It has been submitted that if the applicant is awarded correct marks to question No. 78, he shall qualify the said examination.
5. In the counter reply filed on behalf of respondents, it has been submitted that on the representation of the applicant, Directorate of Exam (CBDT) has observed vide its letter dated 20.2.2013 as under:-

“In this regard, on verification of results of the candidate, it is found that the candidate had already utilized 02 grace marks in ‘Book keeping’ paper in DE -2008 (copy of master result sheet is enclosed), therefore, the candidate has only 5 grace marks available in his account. But inadvertently in declared result of DE-2010, 2012, 7 available grace marks was shown. Now the mistake has been rectified in the declared result of the candidate, therefore, the result of the candidate declared for DE-2014 is correct”.
6. In the counter affidavit, respondents have stated that on the disposal of representation of applicant regarding question & answers key asked in DE 2014 and requesting for revised result, as per, Rule X(a) of the Departmental Examination Rules 2009, no request is permissible for revaluation/re-totaling of marks in respect of objective type papers.
7. In the rejoinder, the applicant has reiterated the averments made in the O.A. and further stated that the applicant had marked the question No. 78 in the paper Allied Laws (Code No. 03) as (d)

i.e. 'all of the above', which is correct but respondents are avoiding to award the marks though on the website correct answer as (A) i.e. by originator himself which appear to be wrong. Respondents have wrongly denied to the request of applicant for revaluation/re-totaling of marks in respect of objective type as rules say nothing with reference to the question of denying marks on correct answer.

8. We have heard Shri S.J Ishtiyaq, learned counsel for the applicant and Shri L.P. Tiwari, learned counsel for the respondents and perused the record.
9. In the present case, the prayer of applicant finds mention in para 8 of the O.A. wherein he seeks quashing of order dated 14.08.2015 and we, are therefore required to limit ourselves to this prayer/relief of the applicant as to whether direction can be given for re-evaluation of the answer sheet of applicant regarding question No. 78 for the paper Allied Laws (Code No. 03) wherein as per, applicant the correct answer as given by him is 'D' and not 'A' as held out by the department which appear to be wrong. Impugned Order dated 14.08.2015 reads as under:

“F. No. DE/2014/ITOs/ChallenedQs/DIT dated 14.8.2015

To,

The Pr. Commissioner
(Incharge of Examination)
Aayakar Bhawan 16/69, Civil Lines,
Kanpur 208001.

Sir,

Subject: Representation challenging the question & answers key asked in DE 2014 and requesting for revised result-reg.

Kindly refer to the representation of Shri Afzal Mirza, dated 6.7.2015 (advance copy) received in this office on 24.7.15 and his representation dated 23.7.15 addressed to the Hon'ble Member (P&V) CBDT, New Delhi on the above mentioned subject.

In this matter, I am directed to state that as per Rule (a) of the Departmental Examination Rules 2009, no request is permissible for revaluation/retotaling of marks in respect of subject type paper, therefore, the plea of the candidate for revaluation is being rejected.

The candidate may be informed accordingly"

10. Learned counsel for the respondents submitted that there is no rule in the department to re-evaluate and re-total the marks obtained by the candidate in the objective type question, rather Rule X of Departmental Examination Rules for Income Tax Officer -2009 prohibits the re-evaluation.
11. Learned counsel for the applicant has placed reliance upon the decisions of the Hon'ble Allahabad High Court in Ravi Bhushan Singh and others Vs. State of UP and others decided on 28.2.2013 in Writ A-11739 of 2012 along with connected O.A. and Anurag Tripathi Vs. UPPSC decided on 26.4.2016 in Writ A-58554 of 2015. However, the law in this regard has been laid down by the Hon'ble Apex Court in Ran Vijay Singh v/s State of U.P., (2018) 2 SCC 357, wherein it has been held that:

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare or

exceptional cases that a material error has been committed;

30.3. The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics;

30.4. The Court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

12. And in *Pramod Kumar Srivastava v. Bihar Public Service Commission*, [(2004) 6 SCC 714] wherein following observations were made by Hon'ble Apex Court that :-

“7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation 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 totaling 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 revaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for revaluation of his marks.”

13. Therefore, the law settled by, the Hon'ble Supreme Court is that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct revaluation.

14. Learned counsel for the respondents has relied upon the Rule X of Departmental Examination Rules for Income Tax Officer - 2009, which reads as under:-

"No request shall be entertained under any circumstances for revaluation or re-totaling of the Answer-scripts for the objective type papers. The request for recounting of marks will, however, be entertained for the subjective type paper if a representation submitted by the candidate to the Commissioner (Incharge of Examination) within 30 days from the date of declaration of the result by him. The Commissioner of Income Tax (In charge of Examination) shall forward all the representation received by him to the DIT (IT), New Delhi within the aforementioned period of 30 days".

15. Apart from Rule X (supra), the applicant has challenged the answer key with regard to one question only, though the marks allocated for each question, i.e., one, matter a lot for the applicant, however, there may be other candidates who might have attempted the same question and denied the mark on the basis of answer key published by respondent No.2. None of them have come to the Tribunal so far this bench is concerned. We do not know how many are likely to be affected if the re-evaluation is ordered. Obviously, re-evaluation of even one question involves an extensive exercise of examining the answer sheets of each of the candidates to find out who opted for Question No.78. Even though, one number matters for the applicant but it may or may not be so in respect to other candidates who might have attempted Question No.78. We cannot direct re-evaluation of only one candidate. It would amount to deny the similar treatment to others. There does not seem to be any provision of re-evaluation and no such provision has been brought to our notice. The law is settled by the Apex Court that no re-evaluation is permissible in absence of a rule, and on that count no relief can be granted to the applicant. Even, otherwise, looking to the pleadings in the O.A., applicant has been unable to demonstrate clearly, without "inferential

process of reasoning or by a process of rationalisation" that a material error has been committed

16. For these reasons, the applicant is not entitled to the relief claimed. This Original Application accordingly fails and is hereby dismissed. No costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-