

Reserved
(On 29.05.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **01st** day of **June** 2018

Hon'ble Dr. Murtaza Ali, Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)

Original Application Number. 330/00407 of 2016

Subhash Chandra Mishra, S/o Shri L.P. Mishra, R/o 124/2A Maurabad,
Allahabad. Presently posted as Chief Controller North Central Railway,
Headquarters Subedarganj, Allahabad.

.....Applicant.

By Adv: Shri A. Srivastava

VER S U S

1. Union of India through General Manager, North Central Railway,
Allahabad.
2. Chief Personnel Officer, Headquarters North Central Railway,
Allahabad.
3. Chief Operations Manager, Headquarters, North Central
Railway, Allahabad.

.....Respondents

By Adv: Shri S.K. Pandey

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

By way of the instant OA, the applicant has prayed for following

reliefs: -

- “(i) Issue a writ order or direction in the nature of certiorari for quashing the impugned order dated 09.05.2013 and 30.09.2018 (Annexure A-1 and A-2 to the Compilation No. I).***
- (ii) Issue a writ order or direction in the nature of mandamus directing the respondents to promote the applicant as Assistant Operations Manager in the grade pay of Rs. 4800/- against 30% LDCE quota vacancy for assessment year 2009 – 2011 in operating department.***
- (iii) Issue a writ order or direction in the nature of mandamus directing the respondents to allow the applicant all consequential benefits including the fixation of pension accordingly.***
- (iv) Award the costs of the original application in favour of the applicant.”***

2. The facts of the case in brief are that the applicant applied for selection for filling up four posts of Group 'C' to Group 'B' against 30% vacancy quota for the year 2009-2011. The applicant's application was sent through proper channel as required under the said notification. The written examination was held on 20.12.2012 in which 48 candidates were declared successful and the applicant was placed in the select list at Sl. No. 06. He went for medical examination and then appeared in the viva-voce which was held in the chamber of Respondent No. 2. The final selection, after interview was made vide order dated 09.05.2013 (Annexure No.1 to the OA) of the respondents, in which the name of the applicant was not included.

3. Thereafter, the applicant obtained copy of the answer sheets of the written examination under RTI Act, 2005 and found that for the answer of some of the question he has been awarded less marks. Accordingly he submitted a detailed representation before General Manager (Vigilance) alleging irregularity in the selection process and evaluation in the answer sheets in pursuance of the circular of the Railway Board dated 10.12.1999. The representation of the applicant was rejected vide order dated 30.09.2015 (Annexure No. 2 to the OA).

4. The main grounds mentioned by the applicant in the OA are the following:-

- i. On verification of the copy of the answer sheets it is found that in question No. 3 the applicant was initially awarded 25 marks on which there was cutting and it was reduced to 20 marks, which was also crossed and he was finally awarded 18 marks.

- ii. The question No. 3 in the section 'Kha' the applicant was initially awarded 11 marks, which was reduced to 06 marks.
- iii. In paper No. 1, question No. 6 'Ka' he was awarded 04 marks out of 05, although he answered the question correctly. Similarly in question No. 6 about the name of the Chief Minister of Uttar Pradesh, he has answered correctly, but he was awarded less marks.
- iv. With regard to question No. 7, one correct answer has been crossed and the applicant has been awarded less marks. The answer, which was crossed, is the correct as per model answer sheet.
- v. In this way the applicant was awarded less marks by about 22 marks, compared to what he had secured actually in the examination. If this marks could be added to the applicant's marks then he had secured total 257 marks, whereas, candidates at Sl. No. 2, 3 and 4 in the select panel, at annexure 1 to the OA, had secured 252.6, 251.7 and 250.7 marks respectively. In other words the applicant would have been empanelled at Sl. No. 2.
- vi. As per the Railway Board's circular dated 20.10.1999 marks awarded once cannot be changed, there shall be no such cutting, reduction or addition of marks. But these have been found in the copies of the applicant for both the papers.

vii. The applicant being aggrieved, filed OA 947/15, which was disposed of by this Tribunal vide order dated 02.07.2015 (Annexure No. 9 to the OA) directing the respondents to decide the pending representation of the applicant. In pursuance of these order, respondents have passed order dated 30.09.2015 rejecting the representation with observations that there are no major irregularities in the evaluation process so as to change the allotted marks. These findings of the respondents are incorrect.

5. The respondents have filed counter reply, in which it was stated that the applicant has failed to implead necessary parties who are likely to be affected by any decision taken against them in the OA and in absence of their impleadment the claim of the applicant is not sustainable. It was submitted that the applicant could not get the requisite marks in the panel for the post of Assistant Operating Manager and it was not legally permissible to challenge the selection process. It is further submitted that the OA is time barred as it pertains to the selection for the vacancy for the year 2009 to 2011. It was further submitted that in the selection, the marks of the applicant was evaluated correctly. The allegations regarding irregularities in the selection process have been inquired by the Vigilance Department, which has recorded the finding that no irregularity has been committed in the selection process. It is further stated that although some corrections in the marks awarded to the applicant have been made in the answer sheets by the evaluator, the applicant could not secure the merit position on the basis of comparative evaluation.

6. In the Rejoinder Reply, the applicant has denied the contentions made in the Counter Reply and reiterated the contention that he is entitled for 22 marks more than what he has secured and for that reason he is entitled to be Railway Board Circular of 1999, the marks awarded once cannot be changed. The contention that the applicant was over assessed on initial marking which needed correction subsequently, was stated to be an afterthought to justify the reduction of marks by evaluating authority in contravention to the Railway Board instructions.

7. Heard Shri A. Srivastava, learned counsel for the applicant who broadly reiterated the contentions of the applicant that he was awarded less marks and that there have been cuttings in the marks awarded to the applicant in a number of places in answer sheet reducing the marks. He drew our attention to the copy of the answer sheets, enclosed at Annexure No. 4 to the OA and submitted that the applicant should have got more marks than what he has actually got.

8. Shri S.K. Pandey, learned counsel for the respondents reiterated the submissions in the counter reply and referred to para 19 of the counter where in it has been mentioned that some of the answers which are claimed to have been furnished actually by the applicant was actually incorrect answers. He further submitted that wherever, there has been correction in the answer sheets of the applicant, same has been explained in the counter.

9. We have considered the submissions made by the learned counsels for the parties in this case. Regarding the issue of limitation, it is seen that the applicant had challenged the order dated 09.05.2013 in OA No. 947/15 which was disposed of by this Tribunal vide order

dated 02.07.2015 disposing of the OA with direction to the respondents to decide the representation of the applicant dated 09.12.2014 within a period of 02 months. Accordingly, the said representation of the applicant was rejected by the respondents vide impugned order dated 30.09.2015 (Annexure No. 2 to the OA) and this OA has been filed impugning the said order dated 30.09.2015. Since the impugned order dated 30.09.2015 has been challenged within time as prescribed under Administrative Tribunals Act, 1985, the OA is not barred by limitation as submitted by the respondents.

10. Regarding merits of the case, the main issue is whether the applicant is entitled to get higher marks based on the scrutiny of his answer sheets and therefore, whether the selection process has been vitiated as claimed by the applicant. The representation of the applicant dated 09.12.2014 (Annexure No. 7 to the OA) stated the applicant's contention that he should have got 22 more marks in written examination. Following points has been made in the representation of the applicant dated 09.12.2014:-

*“.....
On the other hand it is also suspected whether (i) any cutting / reduction or addition of marks have been made out on the copies of pass out candidates also or not? (ii) any addition or detention have been made out on copies of other appeared Candidates also? This is matter of thorough investigation by independent investigating authority as it vitiates the whole process & Panel formation.*

In light of the facts narrated above, I request your honour to be kind enough to order to investigate the entire proceeding for sake of justice and redressal of my compliant. A suitable reply is solicited.”

11. This was considered by the respondents and vide their speaking order dated 30.09.2015 (Annexure No. A-2 to the OA), the Respondent No. 1 states as under:-

*“.....
1. The Evaluating Officer has correctly assessed the partially incorrect answer in Paper-I and accordingly given marks.*

2. *In Paper-II, it is observed that for some answers, the awarded marks have been modified by the Evaluating Officer. At the time of the evaluation, the instructions were – ‘Marks once awarded should not be corrected or amended. Corrections in the marks once awarded by way of erasing, cutting, overwriting, adding etc. are not allowed.’ Thus, it is true that the Evaluating Officer has failed to follow the instructions; however, she has submitted that the individual initial evaluation was done with a uniformly liberal frame of mind, awarding marks generously. On comparative evaluation, it was considered by her that candidates have been marginally over-assessed in some cases and to achieve maximum fairness it was considered necessary by her to make modifications.*

3. *I am inclined to believe the explanation given by the Evaluating Officer. Evaluation of Subjective Questions is different and there needs to be some liberty with the Evaluating Officials to modify the marks maintaining impartiality and parity. Accordingly, Railway Board has also issued Modified instructions vide RBE-67/2014, which reads – ‘Correction of marks, if genuinely warranted, may be made striking the marks originally given and entering the fresh marks duly attesting the correction.’*

I also considered the modifications in the marks awarded to Shri Mishra. Shri Mishra’s claim of less of 15 marks due to modifications by the evaluating officer is not tenable as per corrected marking and records and his position remains the same in the result.

I, therefore, dispose of this representation with the remarks that there are no major irregularities in the evaluation process so as to change his allotted position / marks. This order may be communicated to him.”

12. It is also mentioned in para 19 of the counter reply, which states as under:-

“19

In this regard, it will be relevant to submit that in reference to the letter to the General Manager (Vigilance), North Central Railway, Allahabad the desired documents were furnished from the office of the answering deponent and after going through the documents as furnished from the office of the answering deponent, after due investigation of the complaints not only of the candidates but of the other candidates, the Vigilance Department after going through the relevant documents and the complaints, had recorded its definite finding that no irregularity had been committed in the entire selection.”

13. In view of the above, the request of the applicant in his representation dated 09.12.2014 for inquiry into alleged irregularity in the selection process in question, has been accepted by the respondents by conducting the inquiry through the vigilance department of the Railways. As stated in the counter affidavit, the vigilance department, after inquiry did not find any irregularity in the selection process. Nothing specific has been mentioned in the

Rejoinder / pleadings of the applicant or any evidence has been furnished by the applicant to contradict or deny the contention that the vigilance department has not found any irregularity in the selection process in question. Further, cutting of the marks initially awarded to the applicant in the answer sheet have been explained by the evaluator which have been accepted by the respondent No. 1 as stated in the order dated 30.09.2015 (Annexure No. A-2 to the OA). In absence of any evidence to prove that the modification of the marks is malafide, we find the contentions in this regard in the order dated 30.09.2015 to be acceptable

14. In view of the above, we do not find the grounds mentioned in the OA as well as in the Rejoinder as adequate enough to justify any interference in the matter. The OA lacks merits and is liable to be dismissed. Accordingly, the OA is dismissed. There is no order as to costs.

(Gokul Chandra Pati)
Member (A)

(Dr. Murtaza Ali)
Member (J)

/pc/