

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 2377/2014
M.A. No. 2143/2017

Reserved on : 07.09.2017
Pronounced on : 10.10.2017

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

R.S. Rana,
S/o Shri P.S. Rana,
Assistant Director (Ministerial),
Land Management (Coordination),
Vikas Sadan, New Delhi. .. Applicant

(By Advocate : Shri Malaya Chand)

Versus

1. Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA,
New Delhi-110023.
2. The Commissioner (Personnel),
Delhi Development Authority,
Vikas Sadan, INA,
New Delhi-110023. .. Respondents

(By Advocate : Shri Arun Birbal)

ORDER

By Mr. V. Ajay Kumar, Member (J)

Briefly stated, the applicant, while working as Senior Stenographer, participated in Limited Departmental Examination under 25% quota for the post of Assistant Director (Ministerial), which was held on 24.07.2005 and 31.07.2005. The applicant failed

in Paper-IV, i.e. Language Paper. This paper was having option either to attempt it in Hindi or English. The applicant chose to attempt it in English. The results of the examination were declared on 16.01.2006. A total of 14 officials, including two with relaxed standard conditions, qualified the written examination. Accordingly, they were promoted to the post of Assistant Director (Ministerial) vide Establishment Order No.61 dated 16.01.2006. However, certain candidates, who opted Hindi language as Paper-IV, filed a Writ petition bearing WPC No.2795/2007 in the Hon'ble High Court of Delhi with a prayer to re-evaluate the Hindi language paper on the ground that the person evaluated the same was not qualified to do so.

2. The Hon'ble High Court, after certain hearing, directed the respondents to re-evaluate the answer-sheets of Hindi language paper. Consequently, the answer-sheets of those candidates, who opted Hindi language as Paper-IV, were re-evaluated. At this stage, the said WPC was transferred to this Tribunal as T.A. No.13/2008. The earlier marks and the re-evaluated marks of the candidates, who opted Hindi language, were submitted before this Tribunal and vide order dated 13.01.2010, the T.A. was dismissed as infructuous by observing that "The applicant had only requested for re-evaluation, which was done by a competent person appointed by the respondents."

3. When the applicant also made representations seeking re-evaluation of his English language paper, by quoting the orders passed by the Hon'ble High Court in respect of Hindi language paper, the respondents, though there was no court order either from the Hon'ble High Court or from this Tribunal in respect of English language paper, re-evaluated the same as if there was a court order in his favour. Basing on the marks as per the said re-evaluation, the respondents vide the Establishment Order dated 15.03.2012 declared the applicant as successful in the Limited Departmental Examination for the post of Assistant Director (Ministerial) and, accordingly, appointed him on the said post vide Establishment Order dated 16.03.2012 w.e.f. 24.01.2006, the date on which his junior was appointed as Assistant Director (Ministerial).

4. However, the respondents, on certain complaints, reviewed the promotion of the applicant and passed Establishment Order dated 11.05.2012 recording that without there being any court order in favour of the applicant and in respect of English language paper, they have re-evaluated his English language paper and promoted him to the post of Assistant Director (Ministerial) vide the aforesaid Establishment orders dated 15.03.2012 and 16.03.2012 and,

accordingly, declared the said orders as null and void and withdrawn.

5. The applicant filed O.A. No.2034/2012 questioning the said Establishment Order dated 11.05.2012 whereunder his promotion orders were withdrawn. This Tribunal by its order dated 21.02.2013 disposed of the said O.A. by holding that cancellation of the promotion of the applicant without providing an opportunity to show cause to the applicant is bad and since the applicant's appeal against the said withdrawal order is pending, and directed the respondents to consider the appeal of the applicant and to pass appropriate speaking and reasoned orders.

6. In pursuance of the said directions, the respondents considered the appeal of the applicant and passed the impugned speaking order dated 31.05.2013. The instant O.A. has been filed questioning the said order.

7. Heard Shri Malaya Chand, the learned counsel for the applicant and Shri Arun Birbal, the learned counsel for the respondents, and perused the pleadings on record.

8. The learned counsel for the applicant, while not denying the fact that there was no court order in his favour for re-evaluation of

his English language paper, however, submits that once the respondents re-evaluated his English language paper wherein he was awarded requisite marks, sufficient for his promotion, and withdrawing the said promotion at a later stage is illegal and arbitrary.

9. On the other hand, learned counsel for the respondents submits that the Limited Departmental Examination for promotion to the post of Assistant Director (Ministerial) was conducted in the year 2005 wherein initially the applicant was declared unsuccessful and the respondents conducted the same examination again in 2008 wherein also the applicant participated but failed to secure the qualifying marks. Hence, the applicant having accepted his result in 2005 Examination and having participated in the subsequent Examination in the year 2008 cannot have any balance of convenience in his favour for appointment as Assistant Director (Ministerial) in respect of 2005 Examination. The re-evaluation of the English paper of the applicant was done under the wrong notion that there was a court order in his favour and once it is admitted that there was no court order, the entire consequential action of re-evaluation and the appointment are null and void.

10. It is further submitted that the Hon'ble High Court in Writ Petition filed in respect of Hindi language paper, having satisfied

that the person evaluated the Hindi language paper was not qualified to do so, directed the respondents to get the re-evaluation of the Hindi language paper by another competent person, but in case of English language paper, neither there was such an allegation nor there was any *prima facie* findings by any court. Hence, once a mistake is committed, the respondents are always empowered to rectify the same.

11. The applicant filed the entire note file pertaining to the subject matter after obtaining under the provisions of RTI Act. A perusal of the same clearly indicates that when a representation was made by the applicant, the concerned officer has specifically endorsed that “In case, Shri Rana’s case is supported by a court’s order then it has to be re-done”, but though there was no court order, the English language paper of the applicant was re-evaluated and basing on the marks awarded in the said re-evaluation, he was promoted.

12. The respondents vide their counter have stated that the applicant, in fact, tampered with the official records including his answer-sheet of the English language paper of the examination held in 2005 and after a lapse of 6 years got his English language paper re-evaluated and basing on that could able to get the promotion and, in this connection, the respondents have issued a charge-

memorandum on 06.06.2013 to the applicant and the said departmental proceedings are pending as on today.

13. Admittedly, there was no court order in favour of the applicant. Hence, there was no occasion for the respondents to get the English language paper of the applicant re-evaluated after a lapse of 6 years, but for the alleged tampering of records by the applicant which are yet to be crystallized basing on the finalisation of the departmental proceedings. The applicant having participated in the Departmental Examination conducted in the year 2008 and failed therein cannot get benefited of the re-evaluation of his English language paper done without there being any basis or support of any court order.

14. In the circumstances and for the aforesaid reasons, we do not find any merit in the O.A. and, accordingly, the same is dismissed. Pending MA(s), if any, also stand disposed of. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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