

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2088/2013

Reserved on : 13.12.2017.

Pronounced on : 19.12.2017.

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Praveen Mahajan, Member (A)**

Sh. Bishamber Dayal,
S/o Sh. Shanker Singh,
R/o Mohalla-Bhim Nagar,
Hastinapur,
Distt-Meerut (UP). Applicant

(through Sh. Deepak Verma with Sh. R.P. Sharma, Advocate)

Versus

Union of India & Others : through

1. The Secretary,
Ministry of Communication,
Sanchar Bhawan,
New Delhi-110 001.

2. The Director General,
Dept. of Posts, Dak Bhawan,
Sansad Bhawan,
New Delhi-110 001.

3. The Post Master General,
Bareily Region,
Bareily (UP).

4. The Sr. Superintendent of Post
Offices,
Meerut (UP). Respondents

(through Ms. Aishmanya Dobhal for Sh. Hilal Haider and Dr. Ch. Shamsuddin Khan, Advocates)

ORDER

Ms. Praveen Mahajan, Member (A)

The current O.A. has been filed by the applicant against the impugned order dated 15.06.2012 issued by the respondents by which, even after re-evaluation of answer sheet of Paper-I of Postman Examination, 2009, it has been concluded that there is no change in the marks secured by the applicant.

2. The facts of the case are that the applicant in the year 2009 appeared in Postman Examination, 2009 held on 18.11.2009. The respondents declared the result of the examination on 06.01.2010 wherein the applicant found that he was not declared pass. He filed an application under RTI Act, 2005 for supply of information including the certified copy of the answer sheet of Paper-I. On perusal of the same, he came to know that he had secured 103 marks out of 150 marks. Paper wise marks secured by the applicant are as follows:-

“Paper-I = 22 marks out of 50 marks
Paper-II = 50 marks out of 50 marks
Paper-III = 31 marks out of 50 marks
Total - 103 marks out of 150”

2.1 The applicant states that he got only 22 marks in Paper-I in which he was expecting to secure more marks. The required percentage/minimum marks, in individual paper is 45%, i.e. 22.5 marks out of 50 marks. On 18.05.2010, he made a representation for re-evaluation of his answer script. He submits that answer to

Question Nos. 1 & 9 of Paper-I were not evaluated properly where zero (0) mark (in both the answers) were allotted to him and lesser marks were awarded to the answer of Question Nos. 6 & 8 . Further, in Question No. 2, initially 05 marks were awarded, which were later changed to 04 and further reduced to 03. The applicant alleges that he suspects some mala fide in this action of the respondents.

2.2 Vide order dated 03.06.2010, the respondents rejected the representation dated 18.05.2010 of the applicant. Aggrieved by this, the applicant filed OA-3462/2010, which was disposed of vide order dated 11.07.2011 with directions to the respondents for re-evaluation of Paper No.1 by another examiner. The applicant submits that the respondents, vide their impugned order dated 15.06.2012, without application of mind, have given an erroneous finding that his marks remain unchanged.

2.3 It is further averred that the respondents have turned down his request to provide the answer sheet after re-evaluation under the RTI Act. The applicant's appeal dated 15.10.2012 under the RTI Act, 2005 to the first Appellate Authority, has also been rejected. The orders rejecting his claim being bad in law, he has filed the present O.A.

3. The respondents, in their counter, have rebutted the allegations of the applicant. They submit that there is no rule for re-evaluation,

however, in order to put an end to the issue, the competent authority, on 21.05.2012 appointed an examiner to re-evaluate Paper-I of the applicant. The examiner found that 22 marks secured by the applicant are justified. Feeling aggrieved by the marks secured in Paper-I, the applicant filed OA-3462/2010 before CAT. The O.A. was disposed of on 11.07.2011 with a direction to the respondents to re-evaluate the answer sheets of Paper-I by another examiner and communicate the final decision to the applicant. After re-evaluation of the answer sheet, the examiner again found that the 22 marks secured by the applicant in Paper-I, are justified. Hence, the same has been communicated to the applicant vide the impugned order.

4. During the course of hearing, the learned counsel for the applicant forcefully argued that the independent examiner appointed by the respondents has not really re-evaluated the answer sheet of Paper-I in the manner, as was directed by the CAT.

5. He drew our attention to para-5 of the impugned order dated 15.06.2012, which reads as under:-

"The independent Examiner observed that the case of the applicant does not come under the purview of sub para (i) to (iii) above. Neither there was any issue that particular answer (s) were not evaluated (all the answers were evaluated) nor there was issue of excess attempted answer for evaluation. There was also not the IIIrd issue involved that for the same answer the examiner awarded marks to one candidate & to

another candidate no marks were assigned or the answer struck off as wrong."

6. Learned counsel argued that instead of following the directions of the CAT in letter and spirit, the examiner has only referred to the guidelines contained in para-3 of the Postal Directorate letter No. A-34018/10/2010 dated 02.08.2010, which stipulate that:-

"The Directorate guidelines referred to above read as under:-

"It may be seen that representations requesting for revaluation of answer papers are being received in this office specifically pointing out the following grievances:

- (i) Particular answer(s) were not evaluated.
- (ii) Excess attempted answer(s) were not evaluated.
- (iii) For the same answer(s) the examiner awarded marks to one candidate and to another candidate no marks were assigned or the answer struck off as wrong.
- (iv) All the answers were evaluated but justified marks were not awarded by the examiner.

The issue indicated at (i) to (iii) above are justified and need to be examined by the competent authority to find out the fact and if the claim of the candidate appears to be genuine revaluation may be got done by an independent examiner in such cases and further necessary action may be taken. In so far as the issue indicated at (iv) above, there is no need to consider such requests and merits rejection at the initial stage itself."

7. He submitted that the language used in para-5 of the impugned order dated 15.06.2012 clearly shows that the examiner, has erroneously concluded that the reevaluation is warranted, only in those cases, which are envisaged in Para-3 of the Guidelines

referred to above. Since the present case had different set of facts, he has not re-evaluated it, as directed by CAT.

8. In support his contentions, learned counsel for the applicant has relied on the following judgments:-

- (i) **Rajesh Kumar & Ors. Vs. State of Bihar & Ors.**, 2013(3)SCT 449.
- (ii) **UPSC Vs. Arun Kumar**, 2015(1)AISLJ 165.
- (iii) **Vijay Pal Singh Vs. UOI & Ors.**, OA-2152/2013 decided on 13.10.2014.

8.1 Learned counsel for the respondents vehemently denied the allegation that the case of the applicant has not been reevaluated as per directions of the CAT. He contended that the candidate (applicant in OA) cannot blame the respondents for his failure to secure the requisite qualifying marks. He also placed reliance on the following judgments:-

- (i) **Sneh Kumar Sharma & Anr. Vs. UOI & Ors.**, Special Leave to Appeal (Civil) No. 26697/2011 decided on 15.07.2013.
- (ii) **Sneh Kumar Sharma & Ors. Vs. UOI & Ors.**, OA-2230/2010 decided on 26.10.2010 by CAT, Principal Bench.

9. After hearing both sides and the careful consideration of facts, we cannot help, but confirm, the suspicion of the applicant, that the independent examiner appointed by the competent authority to re-evaluate Paper-I of Sh. Bishamber Dayal, Roll No. MT-115, erred in assuming that the re-evaluation task assigned to him had to conform

only to the guidelines of the Postal Directorate's letter dated 02.08.2010.

10. A perusal of the impugned order dated 15.06.2012 makes it clear that re-evaluation has not been carried out in the manner in which it was meant to be done. The language of Para-5 leaves no doubt in our mind that instead of re-evaluation of answer sheet of Paper-I of the applicant, the examiner has merely chosen to confirm the earlier evaluation based on the guidelines supplied above.

11. Apart from the CAT order dated 11.07.2011, such kind of evaluation also runs contrary to the provisions of Appendix-37 of P & T Manual Volume-IV-Part-II (reproduced by the applicant in his O.A.) wherein it has been laid down that:-

"4. Care to be taken in valuation-Utmost care should be exercised in marking of answer books, so as to ensure that no answer or option thereof remains unevaluated, and that the totals of the marks awarded are correct. The necessity for this cannot be over-emphasized, as any mistake or omission detected later-particularly after the announcement of the results-reflects seriously on the efficiency of the administration, besides undermining the sanctity and reliability of the examination results; in some cases, it may also give rise to an unfounded suspicion. The examiners should, therefore, ensure meticulously that no such occasion is allowed to arise.

8. (a)The examiner should insert marks awarded to each answer in the margin of the script at the end of the answer. In the case of questions with parts, the final marks given to a question may also be similarly inserted, except that since the final marks will be the total of the different parts of the question, the final marks may in addition be circled. Marks awarded to portions of an answer should crossed out lightly.

(b) If, any answer deserves 'Zero' then it may be so marked instead of leaving it blank as otherwise it may lead to an inference being drawn that it has been overlooked in valuation.

(c) The examiner must ensure that all the answers are valued and for every question marks entered inside the answer book. Thereafter, he must enter all the marks in the cage of the title paper below the question answered, and then exclude, where necessary marks secured in the excess number of answers attempted by the candidates keeping in view the revised instructions referred to in Rule 10. In the case the excess marks should be circulated and the work "EXCESS" should be written below the question with an indicative arrow.

(d) Instead of putting a cross-mark or a dash or a 'O' examiner should put 'Zero' in words in the relevant column of the title page. All 'Zeros' must be entered in the cage.

(k) Where a question consists of more than one part, each part should be valued and marked separately and the total of all the part put in the page at the proper place."

12. A bare perusal of the answer sheet also shows that there has been a mismatch of marks awarded in Question-II where the marks awarded indicate 5, 4 and 3. Thus, there appears to be considerable substance in contention of the applicant that there was indeed carelessness and non-application of mind by the original examiner while evaluating Paper-I of the applicant.

13. We once again direct the respondents to re-evaluate Paper No.1 of the applicant by another examiner categorically pointing out the alleged discrepancies by the applicant. The final decision may be informed to the applicant by issue of a reasoned and

speaking order. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.

14. The O.A. stands disposed of in the above terms. No costs.

(Praveen Mahajan)
Member (A)

(Raj Vir Sharma)
Member (J)

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