

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3450/2013

Reserved on: 20.07.2016
Pronounced on: 23.07.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Shri Pankaj Prabhat
S/o Shri V.N. Prasad Yadav
New Delhi GPO, New Delhi-110001
R/o H.No.C-8, Arjun Park, Main Rd.
Najafgarh, Delhi-110043 ...Applicant

(Through Sh. R.P. Sharma and Sh. Deepak Verma, Advocates)

Versus

1. The Union of India
Ministry of Communication & I.T. through Secretary
Dept. of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001
2. The Assistant Director General (DE)
C/o Director General Posts, Dak Bhawan,
Sansad Marg, New Delhi-110001
3. The Chief Postmaster General
Delhi Postal Circle, Meghdoot Bhawan,
Link Rd., N. Delhi-110001
4. The Director, New Delhi HQ
Gol Dak Khana, N. Delhi-110001 ... Respondents

(Through Shri D.S. Mahendru, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant entered service as Postal Assistant. He later appeared in Limited Departmental Examination (LDE) held on

10/12.08.2007 for appointment to the post of Inspector. However, he could not secure qualifying marks in Paper-III and as such was not considered for selection against the notified vacancies. The applicant had secured 38 marks in Paper-III whereas it is stated that minimum qualifying marks were 40. Later on, after declaration of the impugned result, two OAs were filed namely OA-146/2009 and OA-649/2008 alleging incorrect preparation of key to Question Nos.5,7 and 9 of Paper-III of the examination. The department, therefore, issued revised key and recast the result on 16.07.2010. However, as per the tabulation register, the applicant in this OA retained the same marks in Paper-III and could not qualify the examination.

2. The applicant has filed copy of the order of the Patna Bench of the Tribunal in OA-701/2011 dated 23.01.2015, which was specifically with regard to Question No.7 of Paper-III of the same examination. The OA was allowed and the respondents directed to reassess the Question No.7 of Paper-III giving applicant therein 10 marks, keeping in view the ratio propounded by the Hon'ble High Court of Delhi in W.P. (C) No.6533/2013, **Meena Dutta Vs. Union of India and others** decided on 25.11.2013.

3. In Meena Dutta (supra), the issue before the Hon'ble High Court was again with regard to Question No.7 of the same examination and the Writ Petition was allowed on the principles of parity as another candidate had been granted 10 marks for a similar answer. The applicant has also produced before us copy

of order dated 31.07.2014 of the Hon'ble Supreme Court in the SLP filed by the respondents against the decision of the Hon'ble High Court in Meena Dutta (supra). The SLP was dismissed.

4. The learned counsel for the applicant has also produced copy of order dated 13.10.2014 in OA-2152/2013 of the Principal Bench of the Tribunal, which again related to Question No.7 of the same examination and the OA was allowed with a direction to grant 10 marks to the applicant in that case namely Shri Vijay Pal Singh instead of 5. In that OA, the respondents had taken the plea that the original answer script of Paper-III of Indian Postal Examination 2007 had already been destroyed before receipt of the judgment as the preservation period had expired. This order of the Tribunal was challenged in W.P. (C) No.1282/2015 before the Hon'ble High Court and the High Court dismissed the Writ with the following observations:

"We are unable to find that once the Division Bench of this Court in similar circumstances had taken a view and the fact that no further challenge was raised against the decision of the Division Bench, how the petitioners could have filed the present writ petition. Time and again the Courts have expressed serious view where the Government unnecessarily indulges into litigation specially in the cases where the legal position has attained finality. Petitioners cannot say that they are not aware of the said decision of the Division Bench as the case of Meena Dutta itself had been cited in their counter affidavit filed before the Tribunal.

The present petition filed by the petitioners is thus a gross abuse of the process of the Court and the same is hereby dismissed."

5. The learned counsel for the respondents placed before us copy of order dated 4.03.2014 in OA-4081/2012. In the said case, the issue before the Tribunal was of totaling of marks and the OA was dismissed holding that nothing can be said definitely in absence of the original answer sheets and no relief can also be granted on the basis of Xerox copies as it is well known that Xerox copies can very easily be manipulated. It is argued by the learned counsel that answer sheets pertaining to 2007 examination had already been destroyed as the preservation period had expired and, therefore, in the absence of originals, no definite conclusion can be drawn.

6. Secondly, it is argued that in case of the applicant, re-evaluation was made by an independent examiner but his marks still remained the same. The learned counsel for the respondents also raised the preliminary objection that though the results were declared in 2008, the OA has been filed only in September, 2013 and, therefore, it is barred by limitation.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record as well as the judgments cited by either side.

8. It would be seen from the order dated 25.11.2013 in the case of Meena Dutta (supra) that the Court had directed 10 marks to be awarded. The facts of the case do not exactly match. In that case, the Hon'ble High Court had compared the case of the petitioner with another candidate who had also given a wrong answer and directed that in answer to Question No.7,

10 marks should be assigned as the other candidate was also assigned 10 marks. In the present OA, there is no such comparison. Moreover, the issue of destruction of records was not an issue before the Hon'ble High Court.

9. In the case of Vijay Pal Singh (supra), however, the issue of destruction of records has been raised but the Tribunal relied on Xerox copies and gave its findings. In fact, the order in Vijay Pal Singh is dated 13.10.2014. Before that, in OA 4081/2012, vide order dated 4.03.2014, this Tribunal held that in absence of original answer sheets, no relief can be granted based on Xerox copies as it is well known that Xerox copies can very easily be manipulated. In fact, it is on this ground, that the OA was dismissed. Incidentally, Late Hon'ble Mr. G. George Paracken was Member (Judicial) in both the OAs namely OA 4081/2012 (order passed on 4.03.2014) and OA 2152/2013 (order passed on 13.10.2014), i.e. later than order passed in OA 4081/2012. Therefore, the order passed in OA 2152/2013 has to be treated as *per incuriam* as it did not take into account the order of this Tribunal in OA 4081/2012. Clearly, therefore, the order in OA 2152/2013 cannot be relied upon.

10. As regards order dated 23.01.2015 in OA 701/2011, this order has been passed again relying on Meena Dutta (supra) in which, as stated above, the facts are different. As such, the order in OA 701/2011 (supra) also does not help the applicant.

11. In this case, first of all, the applicant had indeed delayed in filing this OA as the original cause of action arose in 2008

whereas the OA has been filed in 2013. In the meantime, the original answer sheets have been destroyed, compounding his problem. In our opinion, this OA is clearly hit by limitation under Section 21 of the Administrative Tribunals Act 1985. Moreover, we are of the view that no decision can be taken based on Xerox copies as Xerox copies can very easily be manipulated as held by the Tribunal in OA 4081/2012. Therefore, on these two counts, we dismiss this OA. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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