

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/0091 of 2018
Cuttack, this the 10th day of May, 2018

CORAM:
THE HON'BLE MR.S.K.PATTNAIK, JUDICIAL MEMBER
THE HON'BLE DR.M.SARANGI, ADMN. MEMBER

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Binod Kumar Saha aged about 44 years, S/o. Ram Chandra Saha, Sr. Section Engineer, Electrical, Head Quarter, East Coast Railway, Rial Vihar, Bhubaneswar presently working on deputation as Asst. Manager Electrical, Rail Vikash Nigam Ltd., R/o.Qr.N.D/36/F, Rail Vihar, Chandrasekharpur, Bhubaneswar-23.

.....Applicant

By the Applicant :Mr.K.C.Das, Advocate

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17.
2. Principal Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17.
3. Principal Chief Electrical Engineer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17.

..... Respondents

By the Respondents : Mr.T.Rath, Advocate

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O R D E R

S.K.PATTNAIK, JM:

The Applicant, in paragraph 8 of this Original Application has sought the following reliefs:

“(i) That the impugned order/decision vide letter dated 20/11/2017 under Annexure-9 may be quashed;

(ii) A direction may be issued upon the respondents

and/or their agents to reevaluate the question No.1 xxi and xxii in part -1 and question No. 4, 7 & 8 in part 2 of Paper-1 in written examination for Group -B/AEE-30% LDCE for the year 2013-2015. And award the differential mark as per the remark of question setter/model answer provider (Respondent No.3) in said Paper -1. Accordingly, the result of applicant may be declared within stipulated period;

(iii) Direction upon the respondents to transmit and certify the records connecting this case so that concessionable justice may be done. And pass such other order/orders as this Hon'ble Tribunal may deem fit and proper.”

2. Uncontrovertibly, Respondent No.2 issued notification No. ECoR/Pers/Gaz/Elect./AEE-30%/LDCE dated 28/01/2016 inviting applications from the eligible employees of the zone to form a Group B/Elect. Panel of 03 (UR-02, ST-01) posts of AEE against 30% LDCE quota of vacancies for the period 2013-2015 in Electrical Department of East Coast Railway. The employees found eligible appeared in the written test held on 21/08/2016, result of which was published on 27/10/2016 and none was found successful as no candidate had secured 60% marks in each of the two professional papers to qualify in the written test. After obtaining the answer sheets under the RTI Act, the applicant submitted representation for awarding proper marks in Paper I which was duly considered by the Chief Electrical Engineer (CEE)/ ECoR/BBS who opined that the applicant is entitled to get 20 marks against his answer in question No.4 of Paper I. The observations made by the CEE under Annexure-A/5 in support of his findings are extracted herein below:

iii. *The candidate has proceeded correctly till such a point beyond which it is not possible to proceed without the help of a calculator.*

iv. *As per the decision taken vide letter No. ECoR/ELE/CON/406/01(A) dated 29/08/2016 (F/335) and intimated to CPO vide letter No. ECoR/ELE/Con/406/01(A)/477 dated 08/09/2016 (F/306), the candidate should get full marks (i.e. 20 marks) for this question.*

(v) *The candidate has got 5 marks for this question. He should get 20 marks i.e. 15 marks extra for this question.*

xxx

xxx

xxx

(V) *Summary of representation of the candidate vis-a-vis marks which I feel should have been awarded to the candidate is given as below:*

Question No. for which representation received	Marks awarded by the evaluator	Marks demanded by the candidate	Remarks for CEE, i.e. opinion of CEE to award marks.
Paper-I, Part I, Q.1	20	22	22
Paper I, Part II Q.4	5	20	20
Paper I, Part II, Q.7	4	7	4
Paper I, Part II, Q.8	3	15	15

Thereafter, the General Manager, ECoR/BBS constituted a committee to examine the issue and the Committee after examining the matter in great detail submitted its report, placed at Annexure-A/7, stating as under:

“2) For subjective questions:

Evaluation of subjective questions shall vary from evaluator to evaluator accordingly to their judgment which ranges from liberal to strict. In this case the committee feels the evaluation is a bit strict and there was scope of granting higher marks.”

3. Thereafter, the matter was placed before the competent authority and the competent authority despite the recommendation of the Committee so constituted for considering of awarding marks more than the marks given to the applicant in paper I, rejected the grievance of applicant in the impugned letter dated 20/11/2017 under Annexure-A/9 which reads as under:

“With reference to your representation dated 06/12/2016 in connection with re-evaluation of Professional Paper I of the AEE -30% (2013-2015) for which written test held on 21/08/2016 it is intimated that the competent authority did not agree for the same since there is no provision for re-evaluation of answer book.”

4. The grievance of the applicant in the present OA is that notwithstanding the recommendation of the Committee so constituted and instruction dated 08/09/2016 providing that candidates who have attempted Q.No.4 and proceeded correctly will be given full marks (20 marks) irrespective of whether their final answer is correct or not, his representation was rejected depriving him his legitimate right for fair marking. It has been contended that the lapse on the part of the examiner and the authority concerned were indeed very serious. The promotional career of the applicant was dependent on the result of the examination and such lapses on the part of the examiner and authority concerned breeds frustration on the applicant and other employees. Hence judicial intervention to remove the injustice caused in the decision making process of the matter is sought by the applicant in this OA.

5. We find that the applicant out of 150 marks has secured 75 marks in paper II (I) and out of 150 he has secured 117 in Paper II (II). We find that the marks secured by the applicant are the highest marks than the marks secured by other employees in the above papers. Award of marks by an Examiner is to be fair and the Examiner has to be careful, cautious and has a duty to ensure that the answers are properly evaluated. No element of chance or luck should be introduced. An examination is a stepping-stone on career advancement of an employee. Absence of a provision for revaluation cannot be a shield for the Examiner to arbitrarily evaluate the answer script. That would be against the very concept for which revaluation is impermissible. We are also conscious of the position of law that revaluation of answer script is not permissible unless it is provided under rules. It may not be lost sight of the fact that when valuation is not made in accordance with answer keys or contrary to the departmental guidelines and norms, the Tribunal has every right to interfere to set right the wrong committed in the matter; more so when the expert committee so constituted had also recommended for enhancing the marks of the applicant, as quoted above. We find that the claim of applicant for enhancement of the marks was duly recommended by the Committee but the same was rejected by the competent authority on the ground that there is no provision for such evaluation of answer book even though instruction dated 08/09/2016 clearly provides that candidates who have attempted Q. No. 4 and proceeded correctly will be given full marks irrespective of whether their final answer is correct or

not. In strictest sensu this is not a case of revaluation of answer sheet but rectification of the mistakes in awarding wrong marks by the examiner. We are reminded by the legal maxim *Nullus commodum capere potest de injuria sua propria* (No one can gain advantage by his own wrong).

6. In view of the discussions made above, we quash the order of rejection dated 20/11/2017 under Annexure-A/9 and direct the Respondents to rectify the injustice caused to the applicant in the decision making process of awarding marks as per the recommendation of the Committee vide letter dated 21.10.2017 (Annexure-A/7) so constituted so also in the light of the recommendation of the question setter and model answer key maker clarification dated 08.09.2016 (Annexure-A/6) wherein it has been clarified to give full marks (20 marks) to candidates who have attempted Q.No.4 and proceeded correctly in the light of Annexure-A/5 wherein CEE has certified that the candidate has proceeded correctly and should get full marks, i.e. 20 marks and take other follow up action based on the revised marks to be awarded to the Applicant.

7. In the result, this OA is allowed as per the above observation and the exercise be completed within two months. No costs.

(M.SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)