

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 260/585/ 2017

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Date of Reserve: 13.02.2019

Date of Order: 27.03.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

IN O.A.NO.260/585/2017

Sri Matia Pradhan, aged about 36 years, S/o. Late Kastia Pradhan, permanent resident of Vill/PO-Purusottam Prasad, PS-Fatehgarh, Dist-Nayagarh and presently working as GDSPkr., Khandaparagarh S.O.

IN O.A. NO.260/586/2017

Sri Bipin Bihari Swain, aged about 36 years, S/o. Late Bholeswar Swain, permanent resident of Vill/PO-Khairapalli, PS-Rajaranapur, Dist-Nayagarh and presently working as GDSBPM, Kairapalli B.O..

...Applicants

By the Advocate(s)-M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Govt. Of India cum- Director General (Posts), Ministry of Communications & IT, Dept. Of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General, Odisha Circle, P.M.G.Square, Bhubaneswar, Dist-Khurda-751 001.
3. Senior Suptd. Of Post Offices, Puri Division, Puri-752 001.
4. Sri Sarat Kumar Sahoo, presently working as Postman, Jatani S.O., At/PO-Jatani, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.A.C.Deo &
Mr.M.R.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Since the identical question of law is involved and the relief sought for are the same, both the above Original Applications are being disposed of through this common order.

2. Both the applicants are GDS employees under the Department of Posts. They had appeared the Limited Departmental Competitive Examination for filling up the posts of Postman/Mail Guard in pursuance of a circular dated 12.09.2016 (A/2) issued by the Respondent-Department. Applicant in O.A.No.585/2017 secured 68 marks out of 100 marks and the applicant in O.A.No.586/2017 secured 69 marks out of 100 marks in the LDCE. However, they were not declared successful in the said LDCE. After receipt of information through the R.T.I. Act concerning the LDCE, they preferred representations to the Chief Post Master General, Odisha Circle (Respondent No.2) with a prayer for re-evaluation of their respective answer sheets. This request of the applicants having not been acceded to, they were communicated with the rejection letters dated 03.04.2017. On a further representation made by the applicant in O.A.No.586 of 2017, the same was also turned down vide communication dated 30.05.2017. While challenging the legality and validity of the aforesaid communications and for praying for quashing those impugned communications, the applicants have sought for the following further reliefs:

- i) To direct the Respondent No.2 to give due application of mind scrutinizing the question paper so also evaluate the answer sheet of the applicant afresh particularly the mistake so pointed out in the representations and crept in course of evaluation of answer sheet in question No.20 (GK, Odiya Part) and question no.77 (Odiya Section).
- ii) To direct the Respondents to extend the consequential benefit of promotion and other benefits to the applicant forthwith.

- ii) To pass any further order/orders as deem fit and proper in the facts and circumstances of the case.

3. According to the applicants, the selection test is comprised of General Knowledge, Mathematics, English Grammar and Odiya Knowledge carrying 25 marks each and 100 marks in toto. Grievance of the applicants is that whereas the questions set in respect of English Part-I(GK) and the vernacular language “Odiya” are different, the Key Answers to those two different questions are one and the same. Applicants had chosen to follow the Regional Language (Odiya Part) and answered to the questions in Odiya. According to applicants the question set against English Part of GK Section is as under:

“Indian Constitution was adopted by the Government on –

- (a) 26th November, 1949,
- (b) 26th January, 1950.
- (c) 15th August, 1947
- (d) 30th January, 1948.

4. As per the Key Answer (a) is the right answer. However, the same question, i.e., Question No.20 of the General Knowledge was –

“When the Constitution was implemented by the Government of India “-

- (a) 26th November, 1949,
- (b) 26th January, 1950.
- (c) 15th August, 1947
- (d) 30th January, 1948.

5. Since the question given in English part differs from the Odiya Part, the answer to the question should have been (b) i.e., 26th January, 1950. Applicants have pointed out that even if there has been no wrong committed while evaluating the answer sheets with reference to Key Answer, but due to change of the question in different part and on the same subject, the answer differs from each other and this the background why the candidates like the applicants suffered due to wrong setting of the question papers.

6. Similarly, the applicants have further pointed out that the mistake has crept in Odiya Section, Part-IV in so far as Question No.77 is concerned. According to them, the question was to find out the nearest related word of 'PARAKASTHA' (i.e., Extreme). Their grievance in this regard is that none of the options given in the Key was befitting to that question. Therefore, they have claimed that in respect of Question No.20 and Question No.77 as mentioned above, they ought to have been awarded two more marks and according to them, had two marks more been awarded, they could have been selected and appointed to the post of Postman/Mail Guard, as the case may be.

7. The grounds on which applicants have based their claims are that even if statutory prohibition is there for revaluation of answer sheet, nothing stands in the way to rectify the mistakes which are apparent in the face of the record. In this connection, learned counsel for the applicants has relied on Rule-4, Appendix-37 of Postal Manual, Vol.IV regarding instructions for the examiners, which reads as under:

“...utmost care has to be taken while undertaking valuation of the answer sheet as any mistake or omission detected later particularly after publication of result-reflects seriously on the efficiency of the Administration, besides undermining of sanctity reliability of the examination results”.

8. It has been pointed out that as per established principle of law every action of the authorities/executives should be fair, reasonable, transparent and legitimate. Procedural fairness is a mandatory requirement to protect against arbitrary action even where statute confers powers coupled with the discretion on the authorities. Since the decision taken by the respondents is patently wrong and illegal, the same needs to be rectified by this Tribunal.

9. Opposing the prayer of the applicants, respondents have filed their counter. They have pointed out that the answer to Question No.20 (in English Language) as already indicated above is (a) as mentioned in the Key Answer. The applicant has answered to the Question No.20 as (b) and therefore, he has not been awarded any mark. According to Respondents, Question No.20 on being translated into Odiya is as follows:

“Bharatara Sambidhana keun tarikhare sarakaranka dwara prachalita hoithila” ?

10. In this regard, replying to the claim of the applicants that they were entitled for getting one mark more for the Question No.20 (Odiya version) as they had correctly answered as (b), but no mark was awarded, the respondents have stated that there was no such instruction for the candidates either to follow English or Odiya version in respect of Part-A (General Knowledge) and Part-B (Mathematics) and according to them, the candidates should have followed both English and Odiya versions in case of any ambiguity was noticed. In the instant case, the applicants could have asked for clarification of their doubts from the Invigilator(s) concerned at the time of examination if they had any doubt to follow English or Odiya Version.

11. As regards the claim of the applicants that they are entitled for one more mark against Question No.77 (Odiya Language) on the plea that none of the options given in the answers is close to the question, the respondents have pointed out that the answer to the said question is option (b) as mentioned in the Key Answer whereas both the applicants have given their answer as (a) and as such they were not awarded any mark in respect of Question No.77 (Odiya Language).

12. Respondents have submitted that as per the Directorate instructions contained in letter No.A-34018/10/2010-DE dated 02.08.2010, re-evaluation may be permissible by an independent examiner where the competent authority found justifiability of such re-evaluation having regard to the following guidelines.

- 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 mark was assigned or the answer struck off as wrong.
- iv) All the answers were evaluated but justified marks were not awarded by the examiner.

13. It is the case of the respondents that the claim of the applicants does not come within the ambit of the above mentioned criteria and therefore, their representations for re-evaluation of marks have rightly been rejected.

14. Applicants have filed rejoinders to the counters more or less reiterating the same stand point as in the OAs.

15. We have heard the learned counsels for the respective parties and perused the records. We have also gone through the written notes of submissions as well as the citations filed by both the sides. We have also gone through the impugned communications dated 03.04.2017 and dated 30.05.2017. We find therefrom that Respondent No.2 has not considered their grievance within the four corners of rules as laid down in Directorate Instructions dated 02.08.2010 and by a stroke of pen has rejected the requests of the applicants for re-evaluation. This in our considered view, is unreasonable and irrational. As quoted above, there are various guidelines

issued by the Directorate for the purpose of re-evaluation and as it appears, none of the guidelines form the basis of such rejection. We are conscious that the applicants herein have assailed the Key to Question No.20 (Odiya Version) and the Key to Question No.77 (Odiya Language) on the ground that the answers set therein are wrong. On the other hand, it is the case of the respondents that the the answer to Question No.20 (in English Language) as per Key is option (a). So far as the same Question No.20 on being translated into Odiya, the answer is option (a) as per Key and the applicants having ticked option (b) no mark was awarded against that. Similarly, as per Key option to Question No.77 (Odiya Language) is (b) whereas the applicants have ticked (a) and as such no mark was awarded. Be that as it may, in either of the questions, the applicants have answered on their own wisdom presuming the same to be the right answers. However, with reference to Key, those answers turned to be negative. Having applied their mind and consequently exercised the options in answering the questions, applicants are estopped to assail that the Key Answers to Question No.20 (Odiya Version) was incorrect, apart from pointing out that none of the answers in the Key to Question No.77(Odiya Language) was close to that particular question. However, as mentioned above, the impugned rejection letters are bald and sketchy, without taking into consideration the guidelines issued by the Directorate in its letter dated 02.08.2010. In this connection, we would like to note that the respondents in their counter have pointed out that the result of the LDCE so far as Puri Division is concerned was declared on 03.11.2016 and four GDS officials who had ranked higher in the merit list securing more marks were selected against four vacancies of Postman belonging to UR category. Respondents have not brought to our notice whether the four GDS

officials who have been declared successful and qualified in the LDCE under Puri Division had ticked the same options as that of the applicants herein in so far as Question No.20 (Odiya Version) and Question No.77(Odiya Language) are concerned and if so, whether they had been awarded marks thereon. In the absence of any such averments or the corroborative documents submitted by the respondents, this Tribunal is of the opinion that to meet the ends of justice, the Chief Post Master General, Odisha Circle (Respondent No.2) shall examine the answer sheets of the applicants herein vis-a-vis the answer sheets of four selected candidates in order to come to a finding that there has been no discrimination while awarding marks to the applicants and the four selected candidates against the Question No.20(Odiya Version) and Question No.77(Odiya Language) and pass an appropriate orders within a period of forty-five days from the date of receipt of this order. In the circumstances, the impugned communications dated 03.04.2017 and dated 30.05.2017 in both the OAs are quashed and set aside.

16. In the result, both the O.As are allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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