

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 680 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member
Hon'ble Mr. Swarup Kumar Mishra, Judicial Member**

Malaya Kumar Rout, aged about 38 years, S/o Gobinda Chandra Rout, at – Makundapur, PO – Harirajpur, PS – Banki, Dist. – Cuttack, presently working as SSE/Telecom/Con.Eco.Railway, AT/PO/Dist. – Sambalpur.

.....Applicant.

VERSUS

1. Union of India, represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda – 751017.
2. Chief Personnel Officer, E.Co.R. Sadan, 2nd Floor, South Block, Chandrasekharpur, Bhubaneswar, Dist. – Khurda – 751017.
3. Chief Signal & Telecommunication Engineer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda – 751017.
4. Sri Subir Ghosh, Senior Section Engineer, Signal, Construction, East Coast Railway, Vishakhapatnam (A.P.)

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.T.Rath, counsel

Mr.P.K.Mohapatra, counsel

Heard & reserved on : 19.12.2018

Order on : 3.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This OA has been filed seeking the following reliefs:-

- “(1) That the order dated 12.9.2013 (Annexure A/7) be quashed;
- (2) That direction be issued to the respondents to award full mark to the answer given by the applicant to the question No. 8.4 of the written examination held on 4.11.2012;
- (3) That the respondents be directed to empanel the applicant at Serial No. 4 under Annexure A/3 as 'Outstanding' against UR vacancy for 2011-2013;
- (4) That direction be issued to respondents to promote the applicant to Group B service as ASTE w.e.f. 5.3.2013 with all consequential benefits;
- (5) And further be pleased to pass any order/order (s) as deem fit and proper to give complete relief to the applicants.”

2. The applicant joined as Trainee Section Engineer on 19.4.2002 and was confirmed as a Section Engineer on 16.5.2003. The railway-respondents issued a notification dated 7.5.2012 for selection of a panel of 7 posts of Assistant Signal & Telecom Engineer (in short ASTE) (UR-4, SC-2 & ST-1) from 70% quota vacancy for the year 2009-11 and 2011-13. The written examination was for 150 marks with qualifying marks of 90 and those qualifying the written examination, will appear in viva-voce test with 50 marks (including 25 marks for the record of service), out of which, the qualifying marks will be 30 including minimum of 15 for record of service. The applicant furnished his willingness for appearing in the said examination, which was held on 4.11.2012 and the result was published on 14.12.2012 (Annexure A/2) in which, the applicant qualified alongwith 17 others. The viva-voce test was held on 17.1.2013 and the final result was declared on 22.1.2013 (Annexure A/3), in which the applicant's name was not included.

3. The applicant obtained the copy of his answer sheet and found that the marks awarded to him in respect of some questions are not proper and he should have been given more marks for which, he should have been included in the panel as 'outstanding' category candidates for year 2011-13. He submitted a representation, which was not responded. The OA No. 541/2013 was filed, which was disposed of with a direction to the Respondent no. 1 to dispose of the representation of the applicant. In compliance of the direction, the respondent no. 2 passed the order dated 12.09.2013 (Annexure A/7) which is impugned in this OA.

4. The OA has been filed mainly on the following grounds:-

(i) The applicant should have got 2 marks more in question no. 8.4 which was correct according to the Indian Railways Institute of Signal Engineering & Telecommunication (in short IRISSET). But the respondents have assessed it as wrong and deducted 2 marks for it, although there was no such rule for awarding negative marks for wrong answer.

(ii) The applicant was given 159.3 marks including written and viva-voce marks. If he would have been awarded 2 marks extra on account of correct answer to the question no. 7.5, then his marks would have been 161.3 out of 200 and his grading would have been 'outstanding' and would have qualified against the UR vacancy of 2011-13.

5. The official respondents have filed their counter denying the averments in the OA. It is stated that for the selection of ASTE post, a selection committee of three members including a member from reserved community, was nominated by the respondent no. 1. 25 candidates had appeared in the written

examination and 18 including the applicant had qualified in the written examination and they appeared in subsequent tests. The selection committee conducted the viva-voce test and final selection list was prepared by the committee comprising of 7 candidates and the applicant's name was not included in the final panel, which was duly approved by the respondent no.1. The applicant submitted a representation which was disposed of by the respondent no.1 as per the direction of the Tribunal vide order dated 12.8.2013 (Annexure A/6) by passing the impugned order dated 12.9.2013 (Annexure A/7). It is further stated in the counter that in the present selection guidelines, there was no provision for revaluation of the answer script, for which, the prayer in this OA for changing the marks secured in the answer sheet by revaluation, is not permissible. However, the official respondents have reviewed the marks obtained by the applicant and have found that though the applicant was to get 2 marks extra in respect of answer for the question no. 7.5, but he was to lose 2 marks for being given these marks extra for question no. 9.1 and there will be no change in the selected panel.

6. The applicant filed Rejoinder stating that his answer to the question no. 8.4 is correct as per the IRSET manual and his secured mark was 159.3 i.e. 79.65% which should have been treated to be 80% for which he should have been selected as outstanding category.

7. We have heard learned counsels for the applicant, official and private respondents and also perused the pleadings on record. The applicant's counsel also filed a written note of submissions enclosing copy of two judgments/orders of Hon'ble High Court in support of the applicant's case. The issue to be decided in this case is whether the applicant's claim for additional marks by way of revaluation of his answer sheet is to be accepted in the facts and circumstances of the case.

8. The official respondents in para 4 of their counter have stated as under:-

".....This apart law being well settled that no examinee has got any right to seek revaluation of Answer script unless specifically provided under the scheme. In the present case there being no such provision for revaluation of the answer script, the present OA seeking direction from this Hon'ble Tribunal to reevaluate the answer is not maintainable in law and as such the same is liable to be rejected by this Hon'ble Tribunal....."

'Guidelines in Selection Matters' have been enclosed with the counter in support of the above averments made in the counter and it is clear that there is no specific provision in these guidelines permitting revaluation of the answer script. This specific averment in the counter has not been contradicted by the applicant in the Rejoinder. There is no direction of this Tribunal vide order dated 12.8.2013 (Annexure A/6) for such revaluation, by which, the

respondent no. 1 has been directed to dispose of the applicant's representation. Therefore, it was open for the respondent no. 1 to have refused the revaluation of the answer script of the applicant on the ground that under the guidelines of the selection, there was no provision for such revaluation as requested in the representation of the applicant.

9. However, the respondent no. 1, vide the impugned order dated 12.9.2013, has revaluated the answers of the applicant and after such revaluation of the answer to the question no. 7.5 and 8.4, it was decided that there will be no increase in the marks of the applicant. This is disputed by the applicant since as per the scheme of the examination, there is no negative mark for wrong answer and hence, 2 negative marks cannot be given even after assuming that his answer for the question no. 8.4 was wrong. Subsequently, vide letter dated 3.12.2013 (Annexure A/10) attached to the Rejoinder filed by the applicant, it was stated that the applicant had been given 2 additional marks for question no. 9.1, which is to be deducted from total marks after adding 2 marks given for correct answer for the question no. 7.5 and there will be no increase in the total marks of the applicant. In the Rejoinder, it is averred that after the applicant challenged the order dated 12.9.2013 in the OA, the respondents no.2 with malafide intention issued the letter dated 3.12.2013 after reducing 2 marks from the question no. 9.1. It is further averred by the applicant that the authority issuing the letter dated 3.12.2013 is subordinate to the respondent no. 1 who had passed the impugned order dated 12.9.2013 in compliance of the direction of the Tribunal.

10. Learned counsel for the applicant has also cited two judgments/orders of Hon'ble High Court in his written note on submissions. The first judgment dated 11.12.2012 related to the issue of revaluation of the answer paper and revision of mark sheet in the examination conducted by the Council of Higher Secondary Education, Orissa in the case of Anupam Jena vs. Council of Higher Secondary Education & others in W.P.(C) 10361/2012 and it was held by Hon'ble High Court as under:-

".....since there are no rules for reevaluation of answer and marks awarded by the examiners appointed by the Council had reached its finality, no other authority had power to reassess the same for the purpose of awarding marks unless there are compelling reasons for the same. If it is found that the answer paper of an examinee could not be assessed by the examiner, the Court may direct for re-evaluation of the answers. However, that should be done only in rare cases where a very strong ground is made out for adopting such a course....."

In this cited case, it was admitted by the Council that there was mistake in re-addition/proper reflection of marks of the petitioner in 2 papers.

11. In another case of Prajna Lalit Mishra vs. O.P.S.C. and Ors. 2016(I)ILR-CUT652 in W.P.(C) No. 4986/2015, the issue was improper marking relating to one of the question and Hon'ble High Court, while allowing the writ, directed the O.P.S.C. to evaluate the answers to that question, which was found to be wrong and if the petitioner qualifies after such valuation, she is to be included in the merit list and appointed in view of large number of vacancies existing compared to the number of posts advertised. Clearly, the facts of this case are different from the facts in the present OA, where there after completion of the selection process, all notified vacancies have been filled up.

12. In the present OA, after re-evaluation of the answer sheet of the applicant it was found that he would not get higher total marks after taking into account the increase and decrease of marks for the question no. 7.5 and 9.1, as stated in the letter dated 3.12.2013 (Annexure A/10), which has not been challenged in this OA. There is no reply of the applicant for the reduction of 2 marks for the question no. 9.1 as stated in the letter dated 3.12.2013, except for stating that this letter was malafide and issued by authority subordinate to the respondent no.1. The reasons as to why the contentions in the letter dated 3.12.2013 are not correct, have not been furnished by the applicant. On the other hand, the contentions about the marks for the question no. 9.1 in the letter dated 3.12.2013 is in accordance with the para 10 of the part (C) of the 'Guidelines in Selection Matters' annexed to the counter.

13. The applicant's contention that his answer for the question no. 8.4 is correct in view of the entry in the IRISSET Manual, is not acceptable since there is no rule/guidelines furnished by the applicant in support of the contention. Normally, for such examinations, standard correct answers are specified before-hand for the evaluators (as stated in the guidelines attached to the counter). If such standard correct answer is changed, then that will affect marks of all the candidates. Hence, we are not inclined to accept the applicant's contention that his answer to the question no. 8.4 is correct.

14. In view of above discussions, the cases cited by the learned counsel for the applicant are factually distinguishable and we are of the view that the applicant has failed to furnish adequate justifications for interference in the matter. Accordingly, the OA is liable to be dismissed and hence, it is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

