

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3246/2016

MA 2871/2016

Reserved on 21.02.2019
Pronounced on 27.02.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)

1. Rupesh Kumar Maan, Aged-31 years,
S/o Shri Chander Pal Singh
R/o VPO Sinouli, Tehsil Badaut,
Distt. Baghpat (UP)
 2. Rajendra Kumar, Aged-35 years,
S/o Shri Rampal Singh
R/o VPO Sinouli, Tehsil Badaut,
Distt. Baghpat (UP)
 3. Praveen Kumar, Aged-26 years,
S/o Shri Rajbir Singh
R/o VPO Dhikana, Tehsil Badaut,
Distt. Baghpat (UP)
 4. Pravendra Kumar, Aged-25 years,
S/o Shri Jagpal Singh,
R/o VPO Gaidabra, Tehsil Badaut,
Distt. Baghpat (UP)
 5. Pravendra Kumar, Aged-33 years,
S/o Shri Rajinder Singh,
R/o VPO Lohari, Tehsil Badaut,
Distt. Baghpat (UP)
 6. Chander Prakash, Aged-35 years,
S/o Shri Munni Lal,
R/o VPO Madanpur, Post Borla,
Distt. Aligarh (UP).
- ... Applicants

(By Advocate: Mr. Yogesh Sharma)

VERSUS

1. Union of India through the General Manager,
Northern Railway, Baroda House,
New Delhi.
 2. The Chairman,
Railway Recruitment Cell
Lajpat Nagar-1, New Delhi-24.
- ... Respondents

(By Advocate: Mr. R.V.Sinha with Mr. Amit Sinha)

ORDER**(Hon'ble Mr. S.N.Terdal, Member (J):****MA 2871/2016**

Miscellaneous Application for joining together in a single petition is allowed.

OA 3246/2016

We have heard Mr. Yogesh Sharma, counsel for applicants and Mr. R.V. Sinha, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicants have prayed for the following reliefs:

- '(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned answer key and consequently pass an order directing the respondents to recheck the answer/ result keys of examination in respect of employment notification No.220E/open mkt/rectt./2012 dated 30.8.12 for selection to the Group 'D' posts in Northern Railway and after correcting the result keys, the result of the applicants as well as other candidates may be recast and revise accordingly with all consequential action/benefits including appointment of the applicants from the date of appointment of similarly situated and juniors persons with all benefits including pay and allowances.
- (ii) That the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondents to declare the merit list/marks obtained all the candidates in the written examination after correcting the answer key.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

3. This is a second round of litigation. The relevant facts of the case are that in response to the Employment Notification issued by the respondents dated 30.08.2012 inviting applications for more than 7000 group 'D' posts, the applicants submitted their applications. The result was declared on 6.02.2014 in which the applicants were also short listed

and were called for Physical Efficiency Test (PET). The applicants cleared the PET also. Thereafter the respondents appointed selected candidates but, however, the applicants were not appointed. They applied for information under RTI, but, however they were not provided with the OMR sheet and copies of the answer key with respect to the applicants, though the marks obtained by them was furnished. Aggrieved about not providing OMR sheet, the applicants filed OA no. 2592/2014 before this Tribunal. This Tribunal vide order dated 1.05.2015 directed the respondents to publish the answer key of the said examination and also to supply OMR sheets to the applicants. After securing the above information, the applicants filed the present OA seeking above stated reliefs claiming that they had answered correctly five questions but the answer keys were wrong as such if the answer keys were to be correct they could have got more marks sufficient to be declared selected. The specific averments made in the OA are extracted below:

“4.12 That ongoing through the answer key, the applicants came to know that in respect of more than five question, the in the answer key wrong answer has been given and due to these five wrong answer the applicants have been awarded less marks and also deducted marks as negative markings also and the particulars of wrong answer are as under:

S.No	Q.No.'A' Series	Answer as per Ans. Key.	Correct answer as per books	Material on the basis of correct answer stated.
1	4	C	D	As per General Books, Extract annexed here as Annex./4.
2	15	A	D	As per General Books, Extract annexed here as Annex./4.
3	98	B	A	As per calculation Correct sheet annexed here as Annex.A/5
4	100	B	A	As per calculation Correct sheet annexed here as Annex.A/5.

5.	62 in 'D'series	B	A	As per General Books, Extract annexed here as Annex./4.
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4.13. That all the applicants given correct answer as stated above and therefore, all the applicants have been awarded 4 less marks and also deducted negative marks and therefore, after granting 4 marks and after restoration of negative marks, all the applicants became entitled to be appointed, as all the applicants have been denied appointment due less than 5 marks in respect of cut of marks.”

On the above facts and grounds the counsel for the applicants vehemently contended that the reliefs prayed for be granted. In support of his contention, he has relied upon the judgment of Hon’ble Supreme Court in the case of **Rajesh Kumar and Others Vs. State of Bihar and Others** (2013) 4 SCC 690) and the order of this Tribunal in the case of **Sushil Kumar Vs. BSNL through its Chairman cum Managing Director and Ors** (OA No. 75/2012). The counsel for the applicant specifically brought to our notice paragraph 21 of the above said judgment of Hon’ble Supreme Court in the case of Rajesh Kumar and Others (supra). The para 21 of the judgment is extracted below:

“21. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re- evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.”

4. The counsel for the respondents submitted that the answer keys provided in compliance with the order of this Tribunal dated 1.05.2015 are applied to evaluate the answer sheets of all the 5 lakhs candidates who had appeared in the said examination and on the basis of the said answer key, 7000 candidates have been appointed in the said selection process. Thereafter as a consequence of selection process started in the year 2013 more than 5000 candidates have already been appointed, as such the selection process is long over. There is no provision for revaluation and as per the law laid down by the Hon'ble Supreme Court in the following cases, the candidates are not entitled for revaluation and in case relief is granted it will open pandora box. He relied upon the following judgments of Hon'ble Supreme Court:

- (1) **S.S.Rathore Vs. State of Madhya Pradesh** (1989) 4 SCC 582).
- (2) **D.C.S.Negi Vs. Union of India** (SLP (Civil) 7956/2011)
- (3) **Himachal Pradesh Public Service Commission v. Mukesh Thakur & Anr.** (2010) 6 SCC 759)
- (4) **Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna & Ors** (2004) 6 SCC 714).
- (5) **Ram Vijay Singh & Ors v. State of U.P. & Ors** (2017) SCC Online SC 1448)

Amongst others, the counsel for the respondents brought to our notice the following law laid down by the Hon'ble Supreme Court in the cases of Pramod Kumar Srivastava (supra) and recent judgment of Ram Vijay Singh (supra). The counsel for the respondents specifically brought to our notice paragraph 7 of the above said judgment of Hon'ble Supreme Court in the case of Pramod Kumar Srivastava and para 33 of the recent

judgment in Ram Vijay Singh (supra). The said paras are extracted below:

"7. We have heard the appellant (writ-petitioner) in person and learned counsel for the respondents at considerable length. The main question which arises for consideration is whether the learned Single Judge was justified in directing re-evaluation of the answer-book of the appellant in General Science paper. Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for re-evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re-evaluation of his marks. This question was examined in considerable detail in [Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupesh Kurmarsheth and others](#) AIR 1984 SC 1543. In this case, the relevant rules provided for verification (scrutiny of marks) on an application made to that effect by a candidate. Some of the students filed writ petitions praying that they may be allowed to inspect the answer-books and the Board be directed to conduct re-evaluation of such of the answer-books as the petitioners may demand after inspection. The High Court held that the rule providing for verification of marks gave an implied power to the examinees to demand a disclosure and inspection and also to seek re-evaluation of the answer-books. The judgment of the High Court was set aside and it was held that in absence of a specific provision conferring a right upon an examinee to have his answer-books re-evaluated, no such direction can be issued. There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned Single Judge had clearly erred in having the answer-book of the appellant re-evaluated.

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33. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are: (i) If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it; (ii) If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the Court may permit re-

evaluation or scrutiny only if it is demonstrated very clearly, without any “inferential process of reasoning or by a process of rationalisation” and only in rare or exceptional cases that a material error has been committed; (iii) The Court should not at all re-evaluate or scrutinize the answer sheets of a candidate – it has no expertise in the matter and academic matters are best left to academics; (iv) The Court should presume the correctness of the key answers and proceed on that assumption; and (v) In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

At the time of hearing, when we asked the counsels for the applicants he could not show any rule or provision regarding revaluation of the answer sheets in the concerned selection process.

5. In view of the law laid down by the Hon’ble Supreme Court referred to above in the cases of Parmod Kumar Srivastava (supra) and recent judgment of Ram Vijay Singh (supra), we are of the opinion that the applicants in this OA are not entitled to the reliefs prayed for.

6. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhary)
Member(A)

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