

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 535/2013

Reserved on: 29.08.2019
Pronounced on: 19.09.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Anil Sharma S/o Late Shri Jai Prakash Sharma, a/a 40 years, R/o Plot No.4, New Kesri Colony, Adarsh Nagar, Ajmer. Presently posted as J.E. in Carriage Workshop, Ajmer.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India through General Manager, North Western Railway, H.Q. Office, Jagatpura, Jaipur.
2. Chief Mechanical Engineer, North Western Railway, H.Q. Office, Jagatpura, Jaipur.
3. Deputy C.M.E. (Carriage) Ajmer Workshop, Ajmer.
4. Chief Workshop Manager (Carriage & Wagon), Ajmer.
5. Krishan Swaroop Sharma (J.E.) C/o Chief Workshop Manager (Carriage & Wagon), Ajmer Workshop, N.W.R. Ajmer.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

ORDER

Per: A.Mukhopadhaya, Member (A):

The brief facts of this Original Application, (OA), are that the applicant was selected for the post of Junior Engineer (E) through

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a Limited Departmental Competitive Examination, (LDCE), held on 29.10.2010, (Annexure A/6), and was posted as such after completion of training vide order dated 31.01.2012; (Annexure A/7). He states that thereafter on 28.01.2013, (Annexure A/8), he was served with a show cause notice indicating the intention of the respondents to delete his name from the panel of successful candidates in the aforementioned LDCE and place the name of another candidate, (private respondent No.5 – Krishan Swaroop Sharma), in this panel. The reason given for the proposed reversion was that a complaint had been received about the answer key of this LDCE being erroneous. On getting this matter examined by a committee consisting of two JAG level officers other than those who were earlier the selection committee members, the answers were reframed correctly and a **“reevaluation”** was carried out in which the answers to the objective type questions in the LDCE were reevaluated; [para (iii) of show cause notice dated 28.01.2003, (Annexure A/8), refers]. At this, the applicant approached this Tribunal in OA No.113/2013 which was decided vide order dated 12.02.2013, (Annexure A/9), giving him liberty to file a representation against the show cause notice and the respondents were directed to decide the same by way of passing a reasoned and speaking order on such representation expeditiously but in any case not later than a period of two months from its receipt. They were also restrained from passing any adverse order against the applicant pursuant to

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the show cause notice dated 28.01.2013; (Annexure A/8). The applicant thereupon made a representation to the respondents on 12.02.2013, (Annexure A/10), in which he sought some documents such as a copy of the complaint filed, a copy of the report submitted by the committee, copies/answer sheets of the candidates, who were declared passed in the written examination, the rule/provision under which re-evaluation had been done in this case as well as a copy of the letter by which the approval of the competent authority had been received for such rechecking and re-evaluation. The applicant avers, (para 4.7 of OA), that the official respondents have themselves confirmed to the private respondent no.5 who had applied for a re-evaluation of his answer sheet that there is no provision in the rules for any such re-evaluation; (Annexure A/13 dated 01.02.2011 refers). He contends that despite the rule position clearly not allowing for any such re-evaluation and that too after long period of near about two years after the panel of successful candidates was first published on 29.10.2010, (Annexure A/6), such re-evaluation was carried out under the pressure of the UPRMS Railway Union, and that too by revising the answers to the questions in the original questions arbitrarily and incorrectly; (para 4.11 of OA refers).

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2. As regards the exercise conducted by the JAG level committee to prepare the revised/corrected answer key, the applicant avers that this type of revision as well as the re-evaluation of the answer books as per the revised answer key was done by **"one and the same committee having knowledge of names of candidates with coding on their answer books to know that which candidate has given what answers to various questions and how the final result will be affected by changes in the answer key"**; (para 4.10 of OA refers). The applicant also alleges that **"the report and revised answers key prepared by the JAG level committee were arbitrary and incorrect and appear to have been deliberately prepared so as to favour some candidates and discriminate in against other"**; (para 4.11 of OA refers). In this para, the applicant has also sought to provide various examples of the committee amending the answers given to a number of questions. Referring to the report of the JAG level committee dated 08.10.2012, (Annexure A/3), the applicant has raised a number of issues relating to the revised answer key which are summarised as below:-

- i) In some cases, (e.g Question No.1 sub section (8) and Question No.1 sub section (1.8) the answers given have been sought to be corrected so as to be in units of millimetres based on the committee's assessment that the question itself makes it clear that the answer is

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required in millimetres. The applicant avers that the original answer key options gave the answer to the question in units of metres also and that there was no valid reason to make this new stipulation.

- ii) In several cases, (e.g. question no.3 sub section (10) question no.5 sub section (2) question no.5 sub section (6) and question 5 sub section (8), the committee has specifically recorded that for the reasons recorded against the concerned questions, they have added options in the reframed answers. The immediate inference which arises from this is that these options were obviously not available to the candidates taking the examination originally as they simply did not exist at that time. The applicant contends that such an action is totally against the principles of fair play and alleges **“a well designed conspiracy to anyhow exclude certain candidates and include other candidate to whom they want”**; (para 4.10 of OA refers). In para 4.11 of OA, the applicant contends in this context that **“the report and revised answers key prepared by the JAG level committee were arbitrary and incorrect and appear to have been deliberately prepared so as to favour some candidates and discriminate against other(s)”**

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- (iii) Apart from the above, the applicant also alleges that the reframed answers are factually wrong in some other cases.

3. Aggrieved by the aforementioned action of the respondents, the applicant has now approached this Tribunal seeking to set aside and quash:-

- (A) (i) Order dated 12.7.2013 (Annexure A-1), reverting him from the promotion earlier given to him on the basis of his having cleared the examination in question and placing private respondent No.5 in the panel instead;
- (ii) Revised panel prepared on the basis of reevaluation of the candidates based on the revised answer key (Annexure A-2);
- (iii) Proceedings and report of the JAG committee and the incorrect revised answer key.
- (B) Respondents be directed to induct the name of the petitioner in the revised panel dated 05.07.13 so as to maintain the existing position of earlier panel dated 29.10.10.
- (C) Any other relief which is deemed fit and proper as per the facts and circumstances be also granted in favour of the applicant.

4. This Tribunal while admitting the OA passed an interim order on 23.07.2013. The relevant operative portion of the interim order is as follows:

“In the interest of justice, the respondents are directed not to give effect to the impugned order dated 12.07.2013 (Annexure A/1) qua the applicant”.

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5. *Per contra*, the respondents aver that the change effected in the promotion panel after due approval of competent authority as per rules cannot be said to be arbitrary or illegal and there is no time limit prescribed to correct a mistake. They further aver that the JAG level committee was set up by them in pursuance of the guidelines issued by the Railway Board vide its letter of 08.09.2005, (Annexure R/1), in which, giving reference to certain rulings of the Hon'ble Supreme Court, the respondent Railways have been advised to first examine the feasibility of correcting the kind of irregularities that may have occurred in such examinations as the one in question before taking the extreme step of cancelling the same. They contend that it is in this context that a JAG level committee was constituted and that this committee has kept in view the Railway Board's aforesaid guidelines and corrected the irregularities which occurred in the holding of the examination from the stage at which they occurred. They also aver that the process of evaluation of the answer sheets as per the revised/reframed answer key cannot be considered to be a reevaluation; (Annexure R/2 - dated 02.07.2013 refers). Accordingly, they pray for dismissal of the OA.

6. Heard learned counsel for the parties and perused the material available on record.

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7. Learned counsel for the applicant cited the order of this Tribunal dated 07.09.2012 passed in OA Nos.493/2009 and 82/2010 to argue that it has been noted and established in a judicial order that the respondent Railways do not have any provision in their rules for re-evaluation of the answer sheets of the same question paper as was done in the present case. He argued that in such a case no re-evaluation is permissible as laid down by the Apex Court in the case of **HP Public Service Commission vs. Mukesh Thakur & Another**; [2010 (6) SCC 759]. Therefore, he argued, such a process of re-evaluation, as admitted by the respondents themselves in their response to the request of private respondent no.5 for the same at Annexure A/13, is not permissible under law.

8. Learned counsel for the respondents on the other hand reiterated the points made in the reply to the effect that the reframing of the answer sheet in this case was an exercise carried out in pursuance of the guidelines of the Railway Board dated 08.09.2005, (Annexure R/1), in letter and spirit and since it was found feasible to correct the irregularities that had occurred in this examination, this was accordingly done, as communicated to the applicant vide respondents' letter No.स.सीई 1136/2/पार्ट 9 dated 02.07.2017; (Annexure R/2). In this view of the matter, the respondents constituting a committee for correcting and reframing the answer key correctly and thereafter marking the

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examination as per the revised answer key does not represent a re-evaluation of the answer sheets.

9. The substantive question which first has to be determined in this case is whether the exercise of evaluation of the answer sheets of the applicant and the private respondent No.5, carried out with the revised answer key provided by the JAG level committee, represents a re-evaluation or not and if it does whether such re-evaluation is permissible in law and rules. It is undisputed that in this case the applicant was placed in a promotion panel and promoted in the year 2010, (Annexure A/6 – dated 29.10.2010 refers), and reverted on being excluded from the said panel in July 2013, (impugned order at Annexures A/1 and A/2 refer), i.e. over two years later. It is also undisputed that the promotion in question was done on the basis of an evaluation carried out vis-a-vis the original answer key of the question paper of the examination whereas the reversion was based on another subsequent evaluation done on the basis of a revised answer key for the same question paper. Accordingly, since the question paper remained the same and the subsequent evaluation of the candidates' answer sheets was done after a period of over two years based on a revised answer key, this is a very clear case of re-evaluation of the answers given to the same question paper. It is noted in this context that the respondents, in their show cause notice to the applicant, (in para (iii) of

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Annexure A/8) and again in their communication of 01.02.2011, (Annexure A/13), addressed to the private respondent No.5, have themselves stated, in the first instance, in Annexure A/8, that the written test was subjected to **"reevaluation"**, and, in the second instance in Annexure A/13, that there is no provision for such re-evaluation. This rule position is also confirmed by this Tribunal's order of 07.09.2012 in OA Nos.493/2009 and 82/2010 in which the Tribunal has observed that the Indian Railway Establishment Manual, (IREM), does not provide for re-evaluation of the marks by another examiner or body of examiners in such examinations; (para 16 of order refers). In the cited case of **HP Public Service Commission vs. Mukesh Thakur & Another**, (supra), the Hon'ble Supreme Court also ruled as follows:

27. Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct revaluation.

10. Thus it is now a settled proposition of law that unless a specific enabling provision exists in the rules for undertaking the kind of re-evaluation that is found to have been carried out in this case, such re-evaluation is not permissible in law and is therefore entirely unsustainable.

11. Apart from this, without going into the intricacies of the correctness or otherwise of the procedure followed and the

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reframed answers provided by the JAG level committee in this case, it would be fair to observe that a revision/reframing which includes inter alia the addition of options as valid answers where such options were clearly not given to the examinees at the time of the original examination is completely unsustainable in terms of both logic as well as the principles of fair play. Such an action militates against the basic concept of fairness and equal opportunity, as well as the objectivity of the entire examination process. As such therefore, even without entering into the intricacies of the factual rights or wrongs of the matter, the very act of the JAG level committee in reframing/revising the answer sheet of the question paper by way of adding options as answers where the examination had already been taken, renders the whole process completely vitiated.

12. Given the findings as above, the OA succeeds and the revised panel issued vide respondents' letter of 05.07.2013, (Annexure A/2), the connected office order No.186/2013 dated 05.07.2013, (Annexure A/1), as well as letter No. स.सीई 1136/2/पार्ट 9 dated 02.07.2017, (Annexure R/2), are quashed and set aside along with the entire re-evaluation exercise carried out by the respondents on the basis of the report of the JAG level committee; (Annexure A/3 - letter No.सीई 1136/2/ पार्ट 9 (confidential) dated 08.10.2013). Accordingly, the respondents are directed to restore status quo ante in the matter as

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established in the earlier panel of 29.10.2010; (Annexure A/6).
The interim order earlier issued by this Tribunal on 23.07.2013 is
thus confirmed.

13. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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