(2012) 02 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 18068 of 2011

Bhanwar Lal Meena APPELLANT

Vs

The Union of India and Others RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : (2012) 3 RLW 2734 : (2012) 3 WLN 143

Hon'ble Judges : Narendra Kumar Jain, J;Mahesh Bhagwati, J

Bench : Division Bench

Advocate : Piyush Pani Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—By way of the instant writ petition, the petitioner has beseeched to quash and set aside the order dt. 23rd March, 2011, whereby the Central Administrative Tribunal (here-in-after to be referred as ''Tribunal'') dismissed the Original Application No. 208/2010 with Misc. Application No. 220/2010 filed by the petitioner Bhanwar lal Meena. Skipping unnecessary details, the facts of the case are that the petitioner was initially appointed in Group D on 6th February, 1989, through regular mode of selection/ recruitment. The petitioner was promoted on the post of Audit Clerk on 31st October, 1995 and thereafter, was further promoted to the post of Auditor in the year 2005, but since he could not pass the departmental examination for Auditor even in six consecutive chances, he was reverted to the post of Audit Clerk w.e.f. 2nd June, 2008. After reversion to the post of Clerk, he was eligible to get three more chances to take the examination in terms of Para 9.4.2 of CAG''s MSO (Administrative) Volume-I. It is further stated that the petitioner appeared with full preparation in the DCT examination. Paper-I comprised of two parts; Paper-A and Paper-B. The petitioner was exempted in Paper-A of Paper-I as also in Paper-II. In Part-B of Paper-I, he secured 17 marks out of 60 and in Paper-Ill, he secured 48 marks out of 100. Thus, the petitioner was admittedly exempted in Part-A of Paper-I and Paper-II. He was declared to have passed the examination in Paper-III.

2. The only and short controversy involved in the present petition is that the petitioner was required to have obtained 24 marks (40% of 60), but he was shown to have secured only 17 marks out of 60. The petitioner, then submitted a representation dt. 3rd December, 2009 to the Principal Accountant General. His representation was carefully considered. Principal Accountant General also went through the answer script of applicant and found that his answer script was duly and fairly evaluated and marks awarded to him were in consistence with the answers written by him and total of marks was also correct. These facts were communicated to the petitioner vide well reasoned and speaking order dt. 11th December, 2009.

3. The controversy, which emerged before the Tribunal was whether the petitioner was entitled to ask for revaluation of his answer sheets of Paper-I, Part-B, as he claimed the answers to the question numbers 6(e), 7(a), 7(d) and 8 to be correct?

4. The second question, which emerged for examination and consideration before the Tribunal was whether the petitioner was entitled for 5% bonus marks being ST category candidate, as per the office memorandum?

5. The scheme with regard to promotion is as under:-

(i) As per para 9.4.1 of the Comptroller & Auditor General''s Manual of Standings Orders (Administrative) Volume-I, the Clerks promoted as Auditor on seniority basis are required to pass the departmental examination for confirmation and promotion to the higher scale of Senior Auditor. The said examination is arranged to be held once in six months i.e. in February & August of each year.

(ii) Further, as per para 9.4.2 of the aforementioned Manual, the Clerks promoted on seniority basis may appear in the examination immediately after their promotion or they may not appear in the examination if it is held within 90 days of their promotion. They may instead appear in their first examination held immediately thereafter. They will have to pass the examination within six chances i.e. in six consecutive examinations held after they become eligible.

(iii) Absence in any examination for whatever reason will also be taken as a chance availed. Failure to pass the departmental examination within the stipulated time/number of chances will entail reversion to the Clerk''s Grade in the case of promoted Auditors. The reverted Clerks will have three more chances to clear this examination within two years of the reversion.

6. The Tribunal found that the petitioner had availed maximum nine chances, but he could not pass the examination, resultantly, the petitioner represented before the respondents on 3rd December, 2009 and respondents vide their order dt. 11th December, 2009, informed the petitioner that his answer sheet was correctly examined by the Examiner and the marks given by the Examiner were according to the answers given by him and the total of the marks awarded was

also correct. The Tribunal also carefully perused the answers given by the petitioner and on perusal of the same, it was revealed that the answers given by the petitioner were not correct and the Tribunal also found that the respondents had rightly awarded 17 marks to the petitioner, vhereas he was required to obtain minimum 24 marks to pass the examination.

7. So (sic) question of revaluation of answer script is concerned, it is pertinent to mention here that CAG''s office vide letter dt. 10th May, 1991, issued instructions that no revaluation would be done, once the final result was declared. The representation from failed candidates would be entertained in order to check whether all questions had been duly evaluated, marks had been correctly carried over and total of marks was correct. The learned counsel for the petitioner has also miserably failed to convince us that he was entitled to get revaluation of the answer script of Part-B of Paper-I. Thus, the prayer of the petitioner to get his answer script of Part-B of Paper-I reevaluated does not seem to be in conformity with the law or the settled procedure practiced by the Department of Comptroller and Audit General.

8. With regard to second issue, the Tribunal observed that awarding of 5% bonus marks to the petitioner, being a ST category candidate, was not within the domain of the Tribunal, but it was a discretion of the respondents to consider whether the applicant was entitled to be awarded 5% bonus marks or not? The Tribunal further observed that even after awarding 5% bonus marks to the petitioner, he was not getting the minimum passing marks, which was 24 out of 60. Apart this, he had already availed the maximum nine chances and was declared failed.

9. The Tribunal discussed all these facts and circumstances in the light of existing rules, adlongum, and did not find any merit in the Original Application and the same was dismissed. The impugned order of the Tribunal is well merited, based on sound and cogent reasoning, which suffers from no infirmity or illegality. We are also in unison with the finding arrived at by the Tribunal and do not find any ground to interfere with the impugned order. Thus, the writ petition being devoid of any substance deserves to be dismissed at the threshold. For the reasons stated above, the writ petition fails and the same being bereft of any merit stands dismissed in limine.

