

(2023) 02 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 1653 Of 2015

Rajesh Kumar Mishra S/o Shri Awadh Behari Mishra Staff No. 12922, Presently Working As Senior Section Engineer In Production Control Office, DLW, Varanasi, R/o 927 A, DLW, Varanasi-221004 **APPELLANT**

Vs

Union Of India & Ors **RESPONDENT**

Date of Decision : 15-02-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 02 CAT CK 0034

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : A.K. Dave, K.K. Ojha, Ashish Srivastava

Final Decision : Dismissed

Judgement

Om Prakash VII, Member (J)

1. The present O.A. has been filed under Section 19 of the AT Act, 1985 with the prayer for quashing the impugned order dated 3.9.2015 and direct the respondents to correct the marks in paper I of applicant and thereafter after adding marks, the name of applicant may be interpolated in the select list/panel dated 3.1.2015 after deleting the name of respondent No. 7 from the select list/panel.

2. The brief facts emerges from the O.A. are that applicant was initially appointed as JE II through RRB, Mumbai in the grade of Rs. 5000-8000 and posted on 1.3.2000 in Central Railway Workshop, Mumbai.

Applicant joined as JE -2 in the year 2003 and transferred to DLW Varanasi in the year 2005. Applicant further promoted as Senior Section Engineer in the grade pay of Rs. 9300-34000+ G.P. 4600 w.e.f. April, 2013. In pursuance of the notification dated 10.3.2013 issued by the respondents for formation of panel of

5 persons (unreserved 3, SC-1, ST-1) to fill up the vacancies of Group B Assistant Works Manager (AWM) in Mechanical Engineer Department against 30% quota, applicant appeared in the test held on 30/31.8.2014 and after successful in the written and medical examination, appeared in the interview held on 5.11.2014. Final result declared on 3.1.2015. It is stated that from perusal of result, it is evident that against unreserved quota, three general candidates have been selected and the name of respondent No. 7 is shown at Sl. No. 3 of the final list. It is stated that after receiving the detail marks obtained in the written examination, applicant came to know that he has obtained 96 marks in 1st paper and 115 marks in the IIInd paper = Total 211 marks and applicant stands at IIIrd position in the list out of 148 candidates. Respondents provided answer script to the applicant vide letter dated 20.2.2015. It is stated that applicant had failed to award marks against the reply submitted by the applicant in Q.No. 2(a), 3(a) and 3(b) of the first paper. Applicant submitted representation dated 2.4.2015 and 13.4.2015, when no reply has been received, applicant filed O.A. No. 152/2015, which was disposed off vide order dated 22.4.2015 directing the respondents to dispose off the applicant's representation. Thereafter, applicant received impugned order dated 3.9.2015, which has been challenged by the applicant in the present O.A.

3. Per contra, learned counsel for the official respondents have filed counter Affidavit, denying the contention raised by the applicant in the O.A. However, it is stated that in the final result, applicant could not secure his position due to lower in merit position based on the marks obtained in written and viva voce test. Successful candidates were empanelled and promoted on the post of Assistant Works Manager on 5.1.2015. It is further stated that on demand of the applicant, answer sheet was provided to the applicant. In pursuance of the order dated 22.4.2015, passed by this Tribunal in O.A. No. 512/2015, respondents have passed the impugned order dated 3.9.2015, rejecting the prayer of the applicant. It is further stated that evaluation of answer of question No. 2(a), 3(a) and 3(b) was done by the competent authority. It is further stated that while giving answer against question 2(a), applicant has clearly written its answer as Rashtra Ka Pratham Sevak in place of Rashtra Ka Pradhan Sevak. Further answer given 3(a) is also not in conformity with the model answer and reply to answer 3(b) was also not correct.

4. Learned counsel for the private respondents have also filed counter reply, stating therein that evaluation of disputed questions were correctly done and department offered promotion to respondent No. 7 only on the basis of merit which cannot be questioned by another candidate.

5. Heard the learned counsel for the parties.

6. Learned counsel for the applicant argued that answer given by the applicant has been misread by the respondents. It is further argued that marks were not properly awarded to the applicant and he was deprived of 6 marks in the three questions otherwise his aggregate marks would have been 256.5 instead of

250.5 . It is also argued that respondent No. 7 have obtained 253.8 marks and if applicant have been awarded 6 marks, which has wrongly not been given to him, his marks will be more than respondent No. 7. Learned counsel for the applicant placed reliance of the following case laws:-

i) Ranjeet Kumar Singh Vs. State of U.P. and others 2012 (2) LBESR 50 (All.) (Allahabad High Court).

ii) Manish Ujwal and others Vs. Maharishi Dayanand Saraswati (2005) 13 SCC 744 (Supreme Court)

7. Learned counsel for respondents argued that evaluation of the answer sheet was done by the competent authority and disputed questions were correctly evaluated by the authority. It is further argued that marks awarded by the interview committee was based on the performance of candidate before the interview board. It is further argued that selection was conducted in a very just and reasonable manner by following the provisions contained in IREM and Railway Board's circular and no discrimination has been done against the applicant in this selection. It is further argued that applicant has given wrong answers of all the three disputed questions, which can be evident from the answer sheet and respondents have passed a detailed and speaking order, showing the answer given by the applicant and correct answer of that questions. Hence, there is no illegality in the impugned order.

8. Learned counsel for respondent No. 7 has also relied upon on the following case laws:-

i) Ran Vijay Singh and others Vs. State of U.P. and others (2018) 2 SCC 357.

ii) Shashank Mishra Vs. State of U.P. and others (Service Single No. 19841 of 2019 decided on 15.10.2019) (Allahabad High Court)

iii) Dheerajanand Joshi Vs. UOI and others (O.A. No. 1280/2017 decided on 21.2.2019 – CAT (PB)

9. We have considered the rival submission of the parties and have gone through the entire record.

10. From perusal of record, it is evident that examination was conducted in the year 2014 and final result was declared on 3.1.2015. When applicant was declared unsuccessful, he filed representation 2.4.2015 and thereafter filed O.A. No. 152/2015 which was disposed off on 22.4.2015 and in pursuance of the same, respondents have passed the impugned order dated 3.9.2015, which is detailed and speaking order giving reply to all the queries raised by the applicant and also mentioned the answer given by the applicant of the disputed questions and correct answer of that question. From perusal of the impugned order, it is clear that applicant has given wrong answers of those questions. It is also worthwhile to mention here that applicant has not raised any objection against the disputed questions even after issuance of model answer sheet. Respondent

No. 7 has been selected as he has obtained 253.8 marks whereas applicant has obtained only 250.5 marks. There is no provision of revaluation of answer sheet. Learned counsel for applicant has produced a letter dated 9.2.2015, written by Harindra Kr. Pandey asking corresponding model answer sheet and in reply to this letter, respondents vide letter dated 23.2.2015, have not provided the same on the ground that as per rules there is a provision for providing model answer to evaluator for guidance and not for third party, so that model answer sheet is not possible to provide to the applicant. This RTI was not sent by the applicant but by some other candidate on which applicant is relying. It is also worthwhile to mention here that model answer sheet was published by the respondents and vide letter dated 20.2.2015, whole answer script was provided to the applicant by the respondents. Merely refusing to provide model answer sheet to third party does not mean that model answer sheet was not published.

11. In the case of Ranjeet Kumar Singh Vs. State of U.P. (supra), the High Court had disposed off the writ petition with direction that answer sheet in respect of above seven questions shall be examined in the manner as adjudicated in para 41 of the judgment and in para 41, it has been observed that answers given in Key-Answer was incorrect. But in the instant case, it is not the case of the applicant that answer given in the model answer sheet were incorrect whereas the case of the respondents is that, applicant has given wrong answers of the disputed questions, which is evident from the impugned order and answer sheet annexed along with the O.A. Hence, this case will not support the case of the applicant.

12. In the case of Manish Ujwal and others Vs. Maharishi Dayanand Saraswati (supra), Hon'ble Apex Court has held that appellants cannot be made to suffer on account of errors committed by the University by giving the erroneous key answers, which is not the case in the present O.A. Applicant has given wrong answer to the disputed questions, therefore, the evaluator has not provided marks to the applicant to that questions, which can be evident from the answer sheet annexed along with the O.A.

13. In the case of Ran Vijay Singh and others Vs. State of U.P. (supra), Hon'ble Apex Court has held as under:-

"30. 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."

14. In the case of Shashank Mishra Vs. State of U.P. (supra), Hon'ble High Court observed as under:-

"Once the experts of the Commission have already given their report dated 28.03.2019 whereby the answer to question no.7 has been indicated as option 'C' consequently this Court has to presume the correctness of the said answer and proceed on that assumption and in the event of a doubt the benefit has to go to the examination authority rather than to a candidate. In this regard, the law has been settled by the Apex Court in the case of Ran Vijay Singh (supra). For the sake of convenience, paragraphs 30 and 31 of the said judgment are reproduced below:-

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. 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;

30.2. 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;

30.3. 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;

30.4. The Court should presume the correctness of the key answers and proceed on that assumption; and 30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.

31. On our part we may add that sympathy or compassion does not play any role in the matter of directing or not directing re-evaluation of an answer sheet. If an error is committed by the examination authority, the complete body of candidates suffers. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied or perceive some injustice having been caused to them by an erroneous question or an erroneous answer. All candidates suffer equally, though some might suffer more but that cannot be helped since mathematical precision is not always possible. This Court has shown one way out of an impasse - exclude the suspect or offending question."

15. In the present case, the evaluation was done by the expert committee and committee has not awarded any marks to the applicant to the disputed questions because applicant has given wrong answers to those questions, If we direct for re-evaluation of the answer sheet, all candidates will suffer. The entire examination process does not deserve to be derailed only because some candidates are disappointed or dissatisfied, particularly, when the applicant has participated in the medical and interview after publication of model answer without filing any objection. Selection process is complete and all selected candidates have joined on the promotional post in the year 2015. More than 08 years have passed and now much water has flown. Applicant has not raised any objection before the respondents as has been pleaded in the present matter at the time of publishing of model answer sheet. Thus, it will not be fair to direct the respondents to re-evaluate the answer sheet at this stage. Respondents have passed a detailed and speaking order. We do not find any illegality in the selection process or in the impugned order and applicant is not entitled for any relief and O.A. is liable to be dismissed.

16. Accordingly, O.A. is dismissed.

17. There shall be no costs.