

(2016) 04 PAT CK 0066

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21156 of 2014

Shambhu Nath Mishra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Citation : (2016) 3 PLJR 542

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Munna Pd Dixit (M.P. Dixit), Advocate, for the Appellant; Mr. Anil Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mr. Hemant Gupta, J.(Oral)—The present writ petition is directed against an order dated 7th May, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna in Original Application No. 866 of 2010, whereby the Tribunal has directed Question Nos. 2(a)(b)(c) to be re-examined by the Examiner.

2. On 24th July, 2006, the Ministry of Railways issued a Notification for conduct of Appendix-III A (I.R.E.M.) (Part-I and Part-II) Examination, 2006. The petitioner is one of the candidates appearing in the said examination, the result of which was declared on 12.11.2008. The name of the petitioner does not appear in the result of successful candidates so declared. The petitioner inspected the answer-sheet in terms of the Right to Information Act, 2005 and found that the answer-sheet is without any signature of the Examiner. The petitioner sought copy of the answer-sheet which was supplied to him and found that no separate mark was allotted to him against some of the answers, whereas in respect of other candidates mark against each answer was given separately.

3. The stand of the respondents is that as per Appendix-III A, I.R.E.M. Examination is a centralised examination for Accounts Department of All India Railway, conducted by the Ministry of Railways. The answer-books were collected

by the Ministry of Railways and got evaluated in a very confidential and fair manner. There is no provision of re-evaluation of the answer-sheets. It is also pointed out that the Examiner has not signed below the details of the answer-sheets in both the papers in respect of "Traffic Statistics and Traffic Books (with books)" and in respect of "Traffic Statistics and Traffic Books (without books)". He signed the other supporting documents, i.e., Tabulation Sheets of both the papers. It was thus sought to be conveyed that marks obtained by the petitioner on the unsigned page of the answer-sheet and the signed tabulation list of the concerned paper are submitted by the evaluator alone. The mark given to the petitioner may be co-related with the help of fictitious number written on answer-sheets as well as Tabulation Sheets (mark lists). Thus it was pleaded that there was no discrimination or malafide intention on the part of the evaluator when he did not sign the answer-sheet.

4. The learned Tribunal recorded the following findings in paragraph-10 of the impugned order:-

"10. It is noted that the respondents themselves have admitted that the examiner by omission has not signed the answer-sheets, which shows clear casual approach and carelessness on the part of the examiner being a high official. Moreover, we are also not convinced with the submission of the respondents that out of total 20 marks each part may be taken as 6.7 marks as it is not practicable in any examination. In the examination, against one question there are 3 sub parts and that each part carries different marks and in the case of other candidates the examiner has given separate marks for each part. Even in the case of the applicant also the examiner had awarded separate marks for the separate parts against question no. 4 & 5, whereas, against question no. 2(a) (b) (c), he has awarded 8 marks though he had ticked all the answers as right one. Though generally reevaluation is not permissible but when there is a glaring mistake on the face of record, answers must be properly evaluated by the examiner on the ground of equity as has been done in the case of other candidates. The respondents cannot adopt different mode of evaluation for different candidates. The learned counsel for the appellant has vehemently argued that since the examiner has ticked all the answers he should get full marks for the said answers. We are not agreeable to the proposition that mere ticking of right answer in a descriptive type question does necessarily call for full marks, which is the prerogative of the examiner. We are also not convinced with the submission of the respondents that they have destroyed the answer-sheets as because they themselves have enclosed the answer-sheets with the written statement."

5. We find that the Tribunal has done what is prohibited in law, i.e., re-evaluation of the petitioner's answer-sheet. Even without signature on the answer-sheet, the marks are quoted in the tabulation sheets which are signed by the evaluator. It does not mean that the answer sheet has not been evaluated. The reason given by the Tribunal in this respect cannot be sustained. Reference may be

made to the judgment of the Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [(1984) 4 SCC 27], in which it has been held that answer-sheets cannot be re-evaluated. It is also not permissible. What has been done by the Tribunal is re-evaluation and nothing less than that.

6. In view of the above, we find that the order of the Tribunal directing re-evaluation of question no. 2(a)(b)(c) is wholly unjustified. We are conscious of the fact that the Railways are not in a writ petition being aggrieved against the said direction. But, a fact which is patently illegal cannot be allowed to be sustained. We cannot allow that illegality.

7. Consequently, the writ petition is dismissed. The order passed by the Tribunal for re-evaluation of question no. 2(a)(b)(c) is also set aside.