

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th October, 2011.

+ **W.P.(C) 6201/2011**

% **D.P.S. CHAWLA** **.....Petitioner**

Through: Mr. Sudarshan Rajan, Mr. Hitesh
Kumar Saini & Mr. Narender Pal
Singh, Advocates.

Versus

UNION OF INDIA & ORS. **..... Respondents**

Through: Mr. Alakh Kumar, Adv. for BSNL.

CORAM:-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The petitioner impugns the order dated 22nd March, 2011 of the Central Administrative Tribunal (CAT) dismissing O.A. No.3582/2010 preferred by the petitioner.

2. Notice of the petition was issued and vide detailed order dated 26th August, 2011 the respondent directed to file an affidavit furnishing the information mentioned therein. Affidavit has so been filed and to which response has been filed by the petitioner.

3. The petitioner working as a Junior Telecom Officer (Assistant Manager) in the respondent Bharat Sanchar Nigam Limited (BSNL) appeared in the Limited Departmental Competitive Examination-2007 held for promotion to the grade of Sub-Divisional Engineer (Telecom). As per the scheme of the said examination, all candidates securing 50% marks in each of the two papers were to be declared successful and eligible for promotion. In the result declared, the petitioner was shown to have secured 49% marks in the first paper and 58% marks in the second paper; he was accordingly not declared successful.

4. The case of the petitioner is that the Question No.2 in the first paper in which he was awarded 49% marks, was as under:

“Which of the following is valid GSM downlink frequency band?
(a) 890-915 MHz (b) 1710-1785 MHz
(c) 935-960 MHz (d) 1900-1975 MHz”

5. It is undisputed that the petitioner exercised the option (c) i.e. “935-960 MHz”. The said answer of the petitioner was marked wrong and no marks awarded therefor. The petitioner contends that his answer was correct and if marks are awarded therefor, he would have 50% marks in the first paper also, making him successful in the examination.

6. The petitioner in this regard relied on the answer key for the aforesaid first paper in which the correct answer was shown as “(b) 935-960 MHz”. The contention of the petitioner is that the correct answer is “935-960 MHz but in the answer key the said correct answer has been erroneously given against option (b).

7. The representation of the petitioner having not met with any success, ultimately the O.A. No.3582/2010 under Section 19 of the Administrative Tribunals Act, 1985 was preferred.

8. The Tribunal, in the impugned order has noticed that Rule 15 contained in Appendix 37 (Rules Relating to Departmental Examinations) specifically prohibits re-evaluation of answer sheet and relying on ***H.P.***

Public Service Commission Vs. Mukesh Thakur (2010) 6 SCC 759 (laying down that in the absence of any provision of statute or statutory rules/regulations, the Court should not generally direct re-evaluation) held that no re-evaluation can be directed and dismissed the application.

9. It is the contention of the petitioner that the present is not a case of re-evaluation but of re-computation and of correction of a mistake. On the said contention of the petitioner, vide order dated 26th August, 2011 (supra) the respondents were directed to file an affidavit as to whether the answer of “935-960 MHz” given by the petitioner was correct or not.

10. The respondents in the affidavit filed have failed to controvert that the answer given by the petitioner is correct. It is however stated that total 8594 candidates had appeared in the examination and of which 1867 were declared successful on 8th July, 2008; that all answer sheets were examined in an impartial manner; that the paper setter besides the question paper had also provided an answer key; that the answer sheets were evaluated by fairly high level officers of the department who are experts in the subject; that the answer sheets were distributed to a number of evaluators all of whom were

to, besides being guided by the answer key, also use their own wisdom; that the examiner is the final authority in the matter of evaluation; that the result has attained finality; that the next examination is scheduled to be held in December, 2011/January, 2012. It is however admitted by the respondents that some of the other examiners/evaluators had marked the answer (c) “935-960 MHz” to be correct and awarded marks therefor. It is however pleaded that if the matter is to be reopened, it needs to be reopened qua all the candidates who had appeared in the examination and which is not possible as the answer sheets have since been weeded out.

11. The counsel for the respondents has also placed reliance on ***Pramod Kumar Srivastava Vs. Bihar Public Service Commission*** AIR 2004 SC 4116 and on ***Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. Vs. Khushboo Shrivastava*** 2011 (9) SCALE 63 both deprecating the practice of directing re-evaluation in the absence of any provision therefor.

12. Per contra, the counsel for the petitioner refers to ***Guru Nanak Dev University Vs. Saumil Garg*** (2005) 13 SCC 749 and to ***Manish Ujwal Vs.***

Maharishi Dayanand Saraswati University (2005) 13 SCC 744 where in the face of defects in the answer key it was held that merit should not be a causality.

13. It is also the contention of the counsel for the petitioner and not controverted by the respondents that vacancies in the post to which the petitioner would become entitled to be promoted if declared successful, exist.

14. The petitioner has also placed before this Court independent material to show that the answer given by him of “935-960 MHz” is the correct answer.

15. The judgments relied upon by the Tribunal as also by the counsel for the respondents before us are relating to questions requiring essay type answers and do not relate to answers to multiple choice questions, as the subject question in the present case was. While in the evaluation of an essay type answer, subjective assessment of the examiner/evaluator assumes importance and is prohibited under the Rules, it cannot be said to be so in case of answers to multiple choice questions. In multiple choice questions,

generally, there is only one correct answer and evaluation of such answers requires the examiner/evaluator to only evaluate whether the correct choice has been exercised by the examinee and if so to award marks therefor; there is no scope of controversy or possibility of different examiners awarding different marks for the correct choice exercised. In multiple choice questions, the examiner/evaluator strictly speaking is left with no role whatsoever and in fact most of the examinations with multiple choice questions have now substituted the examiners/evaluators with an Optical Mark Reader (OMR). Thus, the Rule prohibiting re-evaluation framed with respect to the essay type answers cannot be said to be applicable to the answer to multiple choice questions.

16. From the record before this Court, it is amply established that the correct answer to the question aforesaid was “935-960 MHz” as answered by the petitioner and which was placed in the question paper as option (c) but in the answer key was erroneously shown as option (b). Once, it is established that the answer is correct, the error in not giving the marks for the same, is but an error akin to a mistake / re-totaling which under the Rules (supra) of the examination also is permitted. We are therefore of the opinion that the

Tribunal erred in applying the prohibition under the Rule as to re-evaluation to such a mistake also.

17. We may notice that the Supreme Court recently in ***CBSE Vs. Aditya Bandopadhyay*** (2011) 8 SCC 497 has held the examinees to be entitled to inspection of their answer sheets under the Right to Information Act, 2005. Such right to inspection has to be given a meaning and cannot be made to be an empty exercise. Right to inspection carries with it a right to seek judicial review of error/mistake as has occurred in the present case and is intended to eliminate arbitrariness and injustice.

18. In the present case we find injustice to have been meted out to the petitioner. Instead of being declared successful, owing to the mistake/error of the respondents themselves, he has been declared unsuccessful. This Court in exercise of powers of judicial review is not called upon to undertake any exercise of re-appreciation/re-assessment of the answer of the petitioner but to only correct the obvious mistake. We therefore are of the opinion that the power of judicial review cannot be denied in such cases.

19. As far as the contention of the counsel for the respondents of the petitioner alone being not entitled to the benefit of the error/mistake in the answer key and it being not possible to re-evaluate of answer sheets of others is concerned, we have before this Court the case of the petitioner only who has been agitating the same since the declaration of the result. No other candidate is stated to be so pursuing the matter. Moreover, the answer sheets having been reported to have been weeded out, the possibility of grant of relief to petitioner opening flood gates of litigation by others also does not arise.

20. We accordingly allow this petition and set aside the order of Tribunal. The application under Section 19 of the Administrative Tribunals Act preferred by the petitioner is allowed. The marks secured by the petitioner in the first paper are enhanced from 49% to 50%. Axiomatically, the petitioner is declared successful in the examination and declared eligible for promotion in pursuance thereto. The respondents are directed to within six weeks hereof so promote the petitioner with effect from the date when others similarly situated as him were promoted and to within eight weeks hereof also pay all consequential benefits to the petitioner.

21. Though the petitioner has suffered owing to the mistake of the respondents and the cussedness of the respondents in, inspite of representations of the petitioner, not correcting the same but we refrain from imposing any costs on the respondents.

RAJIV SAHAI ENDLAW, J.

ACTING CHIEF JUSTICE

OCTOBER 24, 2011

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