

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

W.P.No.17428 of 2015 &
M.P.No.1 & 2 of 2015

S.Muthu Krishnan

... Petitioner

versus

1.The Senior Superintendent of Police Offices,
Tuticorin Division, Tuticorin 628 008.

2.The Inspector of Post Offices,
Tuticorin Sub Division,
Turicorin 628 001.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 001.

... Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari, to quash
the order, dated 22.04.2015, passed by the Central
Administrative Tribunal, Madras Bench, in O.A.No.1411 of 2013.

For Petitioner : Mr.S.Arun

For Respondents 1 & 2 : Mr.Venkataswamy Babu
For R1 and R2
R3 - Tribunal

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ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this Writ Petition is, to the order, dated
22.04.2015, made in O.A.No.1411 of 2013 along with
M.A.No.310/00657/2014, on the file of the third respondent.

2. Facts, as adduced from the material on record are that initially, the petitioner was appointed as a Gramin Dak Sevak in the respondent department on 13.04.1989. On 28.04.2013, the department conducted a Limited Departmental Examination to the post of Postman in Tamil Nadu circle. The petitioner participated in the said examination and was declared as selected, by the proceedings of Senior Superintendent of Post Offices, first respondent herein, dated 22.05.2013. By order, dated 30.05.2013, the first respondent also directed the petitioner to attend the institutional induction training, for two weeks, commencing from 03.06.2013 to 15.06.2013. After the training, the petitioner was appointed as a Postman in Chidambaranagar SO, vide order, dated 13.06.2013, issued by Inspector of Post Offices, Tuticorin Sub-division, Tuticorin, the second respondent herein. The petitioner was also directed to undergo training at Workplace Computer Training Centre, Madurai, in order to complete the training with regard to "Data Entry in Departmental Software to Postman", which he also completed. On 04.10.2013, he was issued with a notice, dated 25.09.2013, wherein it was proposed to cancel his appointment as Postman, on the ground, that, after revaluation of the answer scripts, he was found to have failed. According to the petitioner, no reason was indicated in the notice. Aggrieved over the same, petitioner made a representation, dated 09.10.2013, to the Senior Superintendent of Post Offices, Tuticorin Division, Tuticorin, namely, the first respondent. Thereafter, petitioner has filed O.A.No.1411 of 2013, under Section 19 of the Administrative Tribunals Act, 1985, before the Central Administrative Tribunal, Chennai, seeking to set aside the said notice, dated 25.09.2013.

3. Before the Tribunal, the petitioner has contended that the notice, dated 25.09.2013, issued, cancelling his appointment as Postman, is illegal and without any jurisdiction. Reference has been made to Appendix 37 Rule 15 to the Postal Manual Vol IV, and a contention has been raised that no revaluation of answer script of a candidate, appearing for departmental examination, is allowed, under any circumstances. Contention has also been made that the notice was issued after the recruitment process was over and all the selected candidates, including the petitioner, had successfully completed the respective training, and appointed to different Post Offices in the department.

4. The respondents, in their reply, have submitted, that a notification, calling for applications from eligible

candidates for the examination to fill up the vacancies in Postman/Mail Guard cadre for the year 2012 of Tuticorin Division was issued, fixing the date of examination as 14.04.2013, vide the letter of first respondent, dated 19.02.2013. The said examination was rescheduled from 14.04.2013 to 21.04.2013 and again on 28.04.2013. The respondents have furnished the details of the approved vacancies for the examination, as hereunder:

Vacancies falling under Departmental Quota
50% by Limited Departmental Competitive Exam
by promotion among MTS

UR	SC	ST	Total
5	0	1	6

Under Direct Recruitment Quota -
50% by Direct Recruitment through
Competitive Exam Limited to GDS

UR	SC	OBC	Total
3	1	2	6

5. The respondents have further submitted that out of 63 applications received, 61 Gramin Dak Sevaks (GDS) were permitted to appear for the said examination. None of MTS appeared for the exam under Departmental quota. The petitioner was one among the candidates permitted to appear for the Postman Examination for the year 2012 in the capacity as GDS under the Direct Recruitment quota. Out of 61 candidates of Tuticorin Division, 56 candidates attended the said examination held at Tirunelveli Centre on 28.04.2013. The said Examination was conducted as per Postmen/Mail Guard (Amendment) Recruitment Rules 2012 for Postman Cadre,

(a) 50% on the basis of Limited Departmental Examination by promotion from among MTS, and

(b) 50% by Direct Recruitment on the basis of Competitive Examination Limited to GDS.

6. The Examination was conducted as per revised pattern and syllabus with Aptitude Test of the level of 10th class/Matriculation covering the following subjects/topics for Total Marks-100.

Part 'A' -25 Marks: 25 questions on General Knowledge, Reasoning and Analytical Ability - Multiple choice questions

Part 'B' -25 Marks: 25 questions of Mathematics - Multiple choice questions Part 'C' - 50 Marks - (Two segments)

(i) 25 marks - English language - Objective Type/ Multiple choice questions.

(ii) 25 marks - Regional Language - Objective Type/Multiple choice questions.

7. On receipt of evaluated answer sheets of the said examination from the Chief PMG, Tamil Nadu Circle, Chennai, vide Letter dated 13.05.2013, the following Merit/Select List was arrived at and accordingly, the results were announced by the 1st Respondent vide Memo dated 22.05.2013:

Sl. No.	Name	Community	Marks Part A	Marks Part B	Marks Part C (i)	Marks Part C (ii)	Total
	Against UR Vacancy						
1	D.Devarajan	OBC	19	11	17	18	65
2	J.V.Sakthi	SC	15	20	17	11	63
3	C.Ravi Balan	OBC	16	18	12	14	60
	Against SC Vacancy						
1	T.Sadavopan	SC	13	19	13	15	60
	Against OBC Vacancy						
1	S.Muthu Krishnan	OBC	18	14	18	9	59
2	M.Bala	OBC	11	19	16	11	57

8. The respondents have further submitted that the applicant was selected under OBC category. Necessary practical and theoretical training were imparted to the selected candidates from 03.06.2013 to 15.06.2013, vide 1st Respondent's Memo, dated 30.05.2013, and all the above six selected candidates were issued allotment orders, vide 1st Respondent's Memo, dated 07.06.2013. The Applicant was allotted to Tuticorin Sub Division and he joined as Postman at Chidambaranagar SO on 16.06.2013, in accordance with the appointment order issued by the Inspector Posts, Tuticorin Sub Division vide Memo dated 13.06.2013, with the stipulation that appointment was purely temporary and subject to terms and conditions laid down in General Civil Services (Temporary Services) Rules, 1965, and his services might be terminated at any time by one month's notice given by the Appointing Authority without assigning any reason. At the time of declaring the Applicant as successful candidate in Postman examination for the year 2012, the 1st Respondent had stated in Memo dated 22.05.2013, inter-alia that if any mistake was

found, with regard to announcement of results of any candidate, for any reason whatsoever, his/her name would be deleted from the list of successful candidates, as the case may be. They have further submitted that the result of the examinations was also subject to any change in merit list of successful candidates, due to any reason, in accordance with the existing rules and instructions on the subject.

9. The respondents have further submitted that few representations were received by the Department stating that answer for few questions, provided in the key, for the examination were not correct. The comments of the Officer who set the Question Paper were obtained by the office of the Chief PMG, Tamil Nadu Circle, Chennai and the case examined with reference to the source and comments of the Officer who set the question paper. As the discrepancy in answer key for two questions would have affected the results of many deserving candidates, it was found necessary to re-assess the marks of the candidates based on revised answer key. As per the letter dated 10.10.2011 of the Directorate, New Delhi, the examiner was guided by the key given by the Officer who set the question paper. Since the key answer was changed in respect of two questions, the candidates who attempted correct answers with reference to revised key, were to be awarded eligible marks. The revised evaluated answer sheets were received from the Chief PMG, Tamil Nadu Circle, Chennai vide letter dated 13.09.2013, and as per the revised results, the Applicant secured marks as follows:-

Part A	Part B	Part C(i)	Part C(ii)	Total
18	14	19	8	59

10. As per the revised pattern and syllabus for examination to fill up the posts of Postman and Mail Guard by Departmental promotion and direct recruitment communicated in the Directorate's letter dated 31.07.2012, the minimum qualifying marks for OBC candidate is 9 in each Part. As the Applicant did not secure the minimum qualifying 9 marks in Part C(ii), he became ineligible for selection for appointment to the cadre of Postman. Mr.C.Ravi Balan, who has secured 60 marks in earlier evaluation, has now secured 59 marks in the revaluation and Mr.M.Bala, who has secured 57 marks in earlier evaluation, has now secured 58 marks in the revaluation and retained second position in OBC category, vide 1st Respondent's memo dated 22.05.2013.

11. Therefore, a Show Cause notice for the cancellation/termination of selection/appointment to the cadre

of Postman was issued to the Applicant by the 1st Respondent, vide letter dated 25.09.2013 and the revised results as per revalued answer scripts were announced vide 1st Respondent's memo, dated 30.09.2013. Aggrieved by the issue of show cause notice dated 25.09.2013, by the 1st Respondent, the Applicant has filed the Original Application before the Central Administrative Tribunal. On 10.10.2013, interim order has been issued, directing the Respondents to maintain status quo, with regard to the service of the Applicant, as on 10.10.2013.

12. The respondents have further added that the answer sheets of all the candidates who took part in the examination have been uniformly evaluated based on the revised key answers. The revised evaluated answer sheets were received from the Chief PMG, Tamil Nadu Circle, Chennai, vide letter dated 13.09.2013, along with a direction to tabulate and recast the merit position of the candidates against each category of vacancy, and to compare with reference to already selected candidates and the results declared, and in case if any of the candidates who were already declared selected and appointed as Postman, but not eligible to be selected on merit, as per the revised merit list, the appointment of such candidates were to be cancelled by the Divisional Heads, after issue of show cause notice and following necessary prescribed formalities, and to declare the result of meritorious candidates, with reference to the revised marks, as a result of revaluation against the respective vacancies. In the said show cause notice, the Applicant was informed that he was not selected as Postman, as per revised merit list, prepared after revaluation of answer scripts of Postman examination held on 28.04.2013. The Applicant was given seven days time to submit his representation, if any to the show cause notice. Thus reasonable opportunity was given to the Applicant. The Applicant submitted his representation dated 09.10.2013, but before receipt of representation by the 1st Respondent, being aggrieved by the order to issue show cause notice for termination issued vide letter dated 25.09.2013 and the revised result published vide letter dated 30.09.2013, the Applicant has filed the Original Application before the Tribunal.

13. The respondents have further submitted that in normal circumstances, the request for revaluation of answer scripts by the candidates is not possible as per Rule 15 of Appendix 37 of P&T Manual Volume IV. In this case, the Chief Postmaster General, Tamil Nadu Circle, Chennai, has acted as per instructions contained in the letter of the Postal Directorate, New Delhi, dated 10.10.2011 and directed the 1st

Respondent to forward the answer scripts of Postman examination held on 28.04.2013 of all the candidates including that of applicant for revaluation vide letter dated 19.07.2013, as there was changes in the answer key of Part C (i) and Part C(ii). The contention of the Applicant stating that the revaluation was not possible, cannot be accepted, as the Department itself has taken up revaluation of all answer scripts with corrected answer key. The Hon'ble Supreme Court in Rajesh kumar & Others Vs. State of Bihar & Others reported in 2013 (4) SCC 690, has given a direction that answer scripts of all candidates who appeared in the exam shall be re-evaluated with reference to correct key and fresh merit list be drawn on that basis. The Department has taken corrective steps by ordering revaluation of answer scripts of all the candidates, which have evaluated with wrong answer key and prepared a revised merit list, according to marks secured on the basis of correct answer key, so as to select the meritorious candidates, in the competitive examination.

14. After considering the submissions of the learned counsel appearing for both the parties and several decisions, at Paragraphs 13 and 14, the Central Administrative Tribunal, Madras Bench, on 22.04.2015, has ordered as follows:

"13. In the facts and circumstances of the case and the legal position set , out above, the action of the Respondents cannot be held to be unjustified. It s, therefore, not possible to provide the relief sought by the Applicant. However, inasmuch as the Applicant was already appointed as Postman and also attended some training after induction, he should be taken back, if he is willing, in his previous capacity, that is as GDS in the original station or some nearby location. In the case cited by the learned Counsel for the Applicant, that is Vikas Pratap Singh & Ors. vs. State of Chhattisgarh & Ors. in CA Nos. 5318-5319 of 2013 with CA No. 5320 of 2013 decided on 09.07.2013, the persons had served for some years in the post and accordingly the Hon'ble Supreme Court gave a direction to the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. This was also the case in Rajesh Kumar & Others Vs. State of Bihar & Others - Civil Appeal No. 2525-2516 of 2013 [cited by the Respondents]. The instant case is distinguishable inasmuch as the revaluation was taken up within a short time on the

representation of some candidates who had a genuine grievance.

14. With the above observations, the OA together with MA bearing No.310/00657/2014 which was filed for vacation of the order of this Tribunal on 10.10.2013, whereby a direction was given to Respondents to maintain status with regard to the posting of the Applicant as Postman, stands disposed of."

15. Seeking to set aside the abovesaid order, Mr.S.Arun, learned counsel for the petitioner, reiterated that as per Appendix 37 Rule 15 to Postal Manual IV, no revaluation of answer scripts of the candidates appearing for the departmental examination is permissible under any circumstances, but, the Tribunal has failed to consider the same in proper perspective. He further submitted that when the entire recruitment process was already over, and when the petitioner had also successfully completed the training required for the post of Postman, and had been serving for quite some time, the impugned notice issued by the first respondent, based on revaluation conducted, is contrary to the rules, and, therefore, without jurisdiction. It is also his contention that when there was no misrepresentation or fraud alleged against the petitioner, or against any other candidate, who had appeared in the Limited Departmental Examination, conducted to fill up the post of Postman and in such circumstances, revaluation is impermissible under the rules, and instead of revising the marks based on such exercise, the department ought to have awarded marks to all the candidates, who had attended the questions, for which the key answers prepared by the department itself was wrong. According to him, when the key answers for some questions prepared by the department were apparently found to be wrong, candidates, who attended such questions, cannot be penalised. He also submitted that even in the judgment in Rajesh Kumar & Others Vs. State of Bihar & Others reported in 2013 (4) SCC 690, the Hon'ble Supreme Court, in order to do complete justice, has directed the respondents therein to accommodate those affected persons, subject to the stipulation that they should be placed at the bottom of the seniority list, for the post notified.

16. Per contra, reiterating the averments made in the counter affidavit, extracted supra, Mr.V.Balasubramanian, learned counsel for the respondents submitted that there is no error in the impugned order of the Central Administrative Tribunal, warranting intervention. He further added that when

certain answers to the questions were found to be wrong, they were to be rectified and re-valuation to be done and while doing so, the petitioner did not secure the marks for selection. Thus, a show cause was issued, to cancel his appointment. He prayed to sustain the order of the Tribunal.

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

17. Indisputably, the petitioner has been selected, vide order, dated 22.05.2013. He had attended institutional induction training, for two weeks, from 03.06.2013 to 15.06.2013. After the training, he has been appointed as Postman in Chidambaranagar SO, vide order of the Inspector of Post Offices, Tuticorin Sub-division, Tuticorin, namely, the second respondent, dated 13.06.2013. Thereafter, he has been directed to undergo training at Workplace Computer Training Centre, Madurai, in order to complete the training with regard to "Data Entry in Departmental Software to Postman", which he has also completed. While the matter stood thus, on 04.10.2013, he has been issued with the impugned show cause notice, dated 25.09.2013, by which, his appointment as Postman, is sought to be cancelled, on the ground that after revaluation of the answer scripts, he was found to have failed.

18. As per the stand of the respondents, out of 63 applications received, 61 Gramin Dak Sevaks (GDS) were permitted to appear for the said examination to the post of Postman/Mail Guard, for the year 2012 of Tuticorin Division. None of MTS appeared for the exam under Departmental quota. 56 candidates attended the examination held at Tirunelveli Centre, on 28.04.2013. The petitioner has been selected under OBC vacancy.

19. The respondents have further submitted that representations were received by the Department, stating that answers for few questions provided in the key, for the examination, were not correct and after getting comments from the Officer, who set the Question Paper, the case was examined and the discrepancy in answer key for two questions, was noted. Therefore, the Department has decided to re-assess the marks of all the candidates, based on the revised answer key and after doing so, the petitioner has become ineligible for selection, as he did not secure eligible marks, nine marks in each part. Therefore, the impugned show cause notice has been issued.

20. In *P.Shiva v. Union of India* reported in 2003 ILR (Kar) 3806, a Hon'ble Division Bench of the Karnataka High Court, considered a case where promotion, ordered to the petitioner therein, based on examination to the post of Ticket Collector, was sought to be cancelled, on the basis of the error in revaluation. In the said case, written test was conducted on 03.03.2001. The petitioner therein was provisionally selected and empanelled on 10.04.2001. Thereafter, the petitioner was promoted and absorbed as Ticket Collector, with effect from 01.04.2001. In the mean while, there was a complaint on 18.04.2001, from a person belonging to a political party. Answer scripts were revalued. On revaluation, it was found that the petitioner was awarded two objective questions, where the answers were found to be wrong. Thereafter, he was issued with a show cause notice on 21.09.2001 and consequently, on 30.01.2001, his empanelment was modified, by removing his name and the Department included some other person. He challenged the same before the Central Administrative Tribunal, Bangalore and the Tribunal dismissed the petitioner's application. Dismissal of the application was questioned before the High Court of Karnataka. After considering the rival submissions, a Hon'ble Division Bench of the Karnataka High Court, by observing that in the absence of any fraud or malpractise or misrepresentation in the valuation, the candidate cannot be blamed and held that the results of the examination, cannot be altered, once he was selected and promoted. At Paragraph 13 to 18, the Hon'ble Division Bench held as follows:

"13. But, on the ground that on such revaluation, it was found that there was an error in regard to award of two marks in regard to the answer script of the petitioner, the petitioner was issued a show cause notice, as if the matter was still at the stage of provisional empanelment, ignoring the fact that by then the petitioner had completed the training and had been promoted and appointed as Ticket Collector. The question therefore is whether the discovery of an error in awarding two marks in the written test (thereby reducing petitioner's marks to 49, which is below the minimum of 50 marks required for being called for interview, subsequent to the promotion, can result in cancellation of promotion.

14. If the error in award of marks had been found when the petitioner was still at the empanelment stage and had not been regularly promoted as Ticket Collector, it is possible that, the panel could have been modified by removing his

name from the panel by taking action as required by Rule(1), which provides:

"If after the formation and announcement of the panel with the approval of the competent authority, it is found that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel."

But, where the candidate who succeeds in an examination and empanelled for selection, has passed the empanelment stage and has already been promoted, appointed and assumed charge of the higher post, the position is completely different. Cancellation of promotion on the ground that a candidate has not in fact secured the required marks for passing or acquiring eligibility for vivo voce, is permissible only if there was any fraud or mal-practice or irregularities in the conduct of the examination or evaluation or if the candidate himself is guilty of any malpractice, misrepresentation or suppression of facts or wrongful act. In the absence of such reasons, a mere change in marks, as a result of a revaluation which is not part of the regular Selection process, cannot be a ground for cancelling the promotion.

15. It is well-known that evaluation of answer script by different evaluators will show marginally different results as the evaluation depends on the perceptions and mindset of the Evaluators. That is why, even where revaluation is permitted, changes within permissible limits, say variations upto 5% are ignored. In the absence of any malpractice or blameworthy conduct on the part of the candidate, or any fraud or irregularity either in the conduct of the examination or in the evaluation or in the declaration of results, and in the absence of any provision for review/revaluation, as a part process of selection/promotion, the written examination results which has been acted upon, resulting in promotion, cannot and will not be varied on the ground that an error had crept in. This is because of doctrine of finality and estoppel.

16. The principles relating to promotions based on examinations can, therefore, be summarised thus:

i) The examination result of a candidate, published and given effect cannot be altered: a) where the candidate is not guilty of mal-practice or misrepresentation or any blameworthy conduct; or b) where there is no fraud or irregularity in the conduct of examinations or evaluation or tabulation; or c) where the Rules do not provide for change of results on the basis of review or revaluation of the answer scripts.

ii) Where the Rules governing recruitment provide for empanelment or preparation of select list based on the result in an examination, and a candidate empanelled or placed in the selection list on being declared as successful in the examination, is promoted on the basis of such selection, such promotion cannot be cancelled or withdrawn on the ground that on a revaluation which is not a part of the process of selection under the Rules, he was found to have failed in the examination. Any revaluation or review of the examination results, necessarily, should be prior to the promotion or appointment based on the selection list.

iii) But, where there is fraud, or irregularities in the conduct of examination/valuation/ tabulation or malpractice or blameworthy conduct on the part of the candidate himself, the result of an examination can be altered and all consequences can be set at naught, as discovery of fraud overrides doctrine of estoppel or Rule of finality or principle of equity.

17. We are, therefore, of the view that once the petitioner was selected and empanelled on the basis of the marks secured in the examination, and promoted as Ticket Collector in pursuance of such selection, his promotion cannot be cancelled merely on the ground of a error in evaluation, in the absence of any circumstances mentioned in para 15 (iii) above. To hold otherwise, would mean that there can be no finality to any process of selection, thereby leading to uncertainty and chaos.

18. The Tribunal has not considered the matter with reference to the aforesaid well settled principles, resulting in a grave injustice. Its assumption that when the Department found an error in valuation by two marks, it was entitled to

automatically cancel the empanelment and consequential appointment, is without basis. As the Order of promotion and absorption, dated 27/28.6.2001 has not been cancelled, the petitioner is to be treated as having" continued as a Ticket Collector."

21. In *Rajesh Kumar & Others Vs. State of Bihar & Others* reported in 2013 (4) SCC 690, the High Court considered a case of an erroneous appointment, with wrong key answers and directed to conduct fresh selection and re-draw the merit list, on that basis. For those, who have already been appointed, on the basis of the earlier examination, fresh examination was directed by the High Court, before they are ousted from the posts held by them. The appellants before the Hon'ble Supreme Court, were the beneficiaries of the earlier examination and they were all appointed as Junior Engineers in various Departments. When the correctness of the orders of the High Court was tested, the Hon'ble Supreme Court, at Paragraph 15 and 19, held as follows:

"15.If the key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination in so far as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.

19. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission

especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case."

However, while considering the case of the appellants therein, at Paragraph 21, held as follows:

"18. There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list."

In Rajesh Kumar's case, The Hon'ble Supreme Court directed the Government of Bihar that such of the appellants therein, who do not make the grade after reevaluation shall not be ousted from service, but shall figure at the bottom of the list of the selected candidates based on the first selection in terms of advertisement No.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006.

22. In *Vikas Pratap Singh v. State of Chhattisgarh* reported in 2013 (14) SCC 494, there was a selection for recruitment of 380 posts of Subedars, Platoon Commanders and Sub-Inspectors of Police, in the Police Headquarters, Chhattisgarh. The selected candidates were issued with the appointment orders. Complaints were received by the Inspector General of Police and in respect of defects in the main examination papers, the Board constituted an Expert Committee to enquire into the complaints. The Board decided to reevaluate the answer scripts and accordingly, revised the merit list, in which, 26 appointees did not figure and accordingly, their appointments were cancelled. Being aggrieved, they moved the High Court. A learned single Judge, while admitting the writ petition, issued an interim order, directing the State not to make any coercive steps against those appointees, whose appointments were cancelled and further directed to allow them to continue training programme. The learned Judge, referred the matter to the Hon'ble Division Bench. After considering the rival submissions, the Hon'ble Division dismissed the writ petitions. They moved the Apex Court. After considering the rival submissions and in the plight of the selected candidates, at Paragraphs 27 to 29, the Hon'ble Apex Court, held as follows:

"27. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the

revised merit list.

29. Accordingly, we direct the respondent-State to appoint the appellants in the revised merit list placing them at the bottom of the said list. The candidates who have crossed the minimum statutory age for appointment shall be accommodated with suitable age relaxation."

23. In *Union of India v. Kuldeep Kumar* reported in CDJ 2014 DHC 3006, an advertisement was issued on 20.08.2010, for recruitment of Postal Assistants. The process includes written test, an aptitude test and a computer test. After selection, the petitioners therein joined the services, some time in 2011. One of the unselected candidates, raised queries under the Right to Information Act and demanded answer sheets, in respect of the aptitude test of certain candidates and thereafter, alleged irregularities. The Department conducted a review, which included re-evaluation of the answer sheets of all the 1425 candidates, who responded to the recruitment process and found that 11 individuals, who were found to have obtained less marks were not shown as successful candidates. They moved the Central Administrative Tribunal, wherein, one of the contentions was that in the absence of any power to re-evaluate the answer sheets, the Government of India ought not to have ordered such a course of action. The Union of India defended its action and justified the correctness of its order before the Tribunal. However, by observing that the review in the form of re-evaluation, at least in this instance, has operated rather harshly and it was nobody's case that these individuals were in any manner involved, which resulted in their inclusion in the select list and their consequential appointment and taking note of the judgment of the Apex Court in *Vikas Pratap Singh (supra)*, the Tribunal has directed the State to appoint the appellants therein in the revised merit list, placing them at the bottom of the said list. On appeal, having regard to the above circumstances, the Delhi High Court held as follows:

"Having regard to the above circumstances, even while upholding para 12 of the impugned order, it is clarified that the UOI shall proceed to pass appropriate orders, giving effect to the revised merit list to the extent that the 7 candidates who secured higher marks should be now offered appointment and at the same time ensuring that the candidates who will be displaced by these seven candidates are protected from termination. Such of them who have in fact been terminated during the pendency of the proceedings shall be offered

appointment. Necessary consequential action in treating these appointments as against vacancies which exist as on date or if need be, to adjust them against the future vacancies to the extent necessary, shall be taken. It is made clear that the appointments shall be treated as fresh appointments and such incumbents, i.e. those who secured lower marks in the revised list would not be entitled to claim seniority for any prior date. The writ petitions and pending applications are allowed to the above extent."

24. Reverting to the case on hand, it could be seen that though the decisions of Vikas Pratap Singh's case (cited supra) and Rajesh Kumar's case (cited supra), were brought to the notice of the Central Administrative Tribunal, Madras, the same were distinguished on the ground that in Vikas Pratap Singh's case (cited supra), the appellant therein had served for some time and therefore, the Hon'ble Supreme Court directed the State to place them at the bottom of the merit list. Likewise, Rajesh Kumar's case (cited supra), has also been distinguished, stating that in the case on hand, revaluation has been done within a short time.

25. No doubt, revaluation has been done, within a short time and thereafter, a show cause notice, has been issued, adhering to the principles of natural justice. But the petitioner has approached the Central Administrative Tribunal, immediately and obtained an interim order of status-quo on 10.10.2013. Like in the case of Vikas Pratap Singh's case (cited supra), by virtue of the interim order, dated 10.10.2013, passed by the Tribunal, the petitioner had also continued in the post of Postman, right from the date of appointment, ie., from 30.05.2013, for nearly three years.

26. As rightly contended by the learned counsel for the petitioner, there is no fraud or misrepresentation in the valuation. The petitioner cannot be found fault with, in the preparation of wrong key answers. Courts of Karnataka, Delhi and the Hon'ble Supreme Court in Vikas Pratap Singh's case (cited supra) and Rajesh Kumar's case (cited supra), have considered such candidates, having been selected and appointed to the post and cancellation of the appointment, after sometime. As observed in Vikas Pratap Singh's case (cited supra), the termination of such appointees would not only impinge upon their economic security, but also adversely affect their career. Paragraphs 28 and 29 of the said judgment squarely apply to the case of the petitioner.

27. Perusal of the supporting affidavit of the writ petition, shows that the petitioner was appointed as a Gramin Dak Sevak in the respondent department on 13.04.1989 and for nearly 24 years, he had worked as Gramin Dak Sevak, until he became successful in the departmental examination, conducted on 22.05.2013. As of now, he is aged 54 years. The decisions relied on by the learned counsel for the petitioner, squarely apply to the case on hand. With due respect, the abovesaid judgments cannot be said to be distinguishable, as observed by the Central Administrative Tribunal, Madras Bench.

28. While setting aside the order of the Central Administrative Tribunal, Madras Bench, this Court directs the respondents to post the petitioner as Postman, in any of the available vacancies, within a period of two weeks, from the date of receipt of a copy of this order, if the Department had reverted him as Gramin Dak Sevak. If no such order has been passed, selection of the petitioner as postman, will continue to hold and he should have placed at the bottom of the selection list, as observed in the decisions, extracted supra.

29. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

skm
To

Sub Assistant Registrar

1. The Senior Superintendent of Police Offices,
Tuticorin Division, Tuticorin 628 008.
2. The Inspector of Post Offices,
Tuticorin Sub Division,
Tuticorin 628 001.
3. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 001.

+lcc to Mr.S.Arun, Advocate, S.R.No.69358

+lcc to Mr.Venkataswamy Babu, Advocate, S.R.No.69302

W.P.No.17428 of 2015

PA(CO)

CA(20/01/2016)