

02.09.2024
rpan/A27

WPCT 509 of 2013
Sri Sushanta Mahata
- Versus -
Union of India & Others

Mr. Siddhartha Ruj
... for the Petitioner.

The present writ petition has been preferred challenging an order dated 28th August, 2013 passed by the learned Tribunal in the original application (in short, OA), being OA 731 of 2011. By the said order the learned Tribunal rejected the petitioner's claim as he did not secure qualifying marks in paper A-1 and was unsuccessful in the examination.

Records reveal that responding to a notification dated 3rd October, 2005, the petitioner participated in the selection process for promotion to the cadre Postman/Mail Guard from the Group – 'D' / Mailman and Gramin Dak Sevak against the vacancies upto 31st December, 2005. In the said examination, the petitioner secured full 50 marks in Paper – B, 40 marks in Paper – C out of 50 marks and surprisingly he was given 0 marks in paper A-1. Aggrieved thereby, the petitioner approached the learned Tribunal by filing OA 241 of 2007 which was disposed of by an order dated 13th July, 2010 with a direction upon the competent authority to get the petitioner's answer script in paper – A-1 to be re-examined by another examiner and to decide his candidature on the basis of the marks obtained as per

rules. The said order was unsuccessfully challenged by the respondents before this Court by filing a writ petition, being WPCT 313 of 2010, which was dismissed on 21st March, 2011 and thereafter, the respondents complied with the direction of the learned Tribunal and communicated a memo dated 28th June, 2011 intimating that the petitioner had been given 12 marks in paper A-1. Being dissatisfied with such marking, the petitioner again preferred OA 731 of 2011 and the order passed in the same has been impugned in the present writ petition.

Drawing our attention to page 52 of the writ petition, Mr. Ruj, learned advocate appearing for the petitioner submits that the questions were objective in nature and for each question equal marks were allotted. As there were 10 questions, the marks allotted for each of the question was stipulated to be 5 marks. In the event the examinee gave the right answer to a question, he would be entitled to 5 marks and in the event he gave a wrong answer, he would be marked zero. There is no scope towards grant of any marks in between 0 to 5 marks. However, the petitioner was given 12 marks and from such marking it is explicit that the petitioner's answers have not been appropriately marked by the concerned examiner.

Mr. Ruj has also drawn our attention to the observation of the learned Tribunal in paragraph 6 of the order dated 13th July, 2010 passed in OA 241 of 2007 wherein the learned Tribunal *inter alia* observed that the

petitioner rightly did not fill up column 3 as the same was not meant for postman. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned in the same. Such infirmity warrants interference of this Court.

No one appears today on behalf of the respondents and no affidavit-in-opposition had also been filed on their behalf.

We have heard Mr. Ruj and considered the materials on record. Indisputably, the petitioner did not secure the qualifying mark stipulated in paper A-1. He obtained only 12 marks. In view thereof, he did not come within the zone of consideration. He, however, got appointment to the post of Postman in the recruitment process of the year 2009.

The argument of Mr. Ruj that the petitioner had not been properly marked is not acceptable to us. No contemporaneous record has been produced to establish that the respondents applied any different yardstick in respect of petitioner. All the candidates, who participated in the examination, were uniformly examined. A perusal of the question paper and the corresponding Postman's Book MS-27 does not establish that the questions were specifically objective in nature and that a candidate in any question can be given either 0 marks or 5 marks.

In the said conspectus and moreso when the Court should be slow to interfere with an expert opinion, the learned Tribunal rightly refused to exercise discretion in

favour of the petitioner and we do not find any error, least to say any patent error of law in the order impugned, warranting interference of this Court.

The writ petition, being WPCT 509 of 2013 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)