

Before Permod Kohli, Ritu Bahri, JJ.

AJAY KUMAR KUKREJA,—Petitioner

versus

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH
& ANOTHER,—Respondents**

CWP No.17009 of 2011

12th October, 2011

Right to Information Act, 2005 - Petitioner gave departmental examination known as Appendix III (IREM) 2006 conducted by Railway Department for purposes of promotion - Petitioner could not qualify examination - Hence applied under Act for inspection and supply of his answer sheets and key (model) answers - Petitioner after receiving copies of his answer sheet, made further application for supply of answer sheets of qualified candidates along with representation asking for re-checking and revaluation of his papers - Not receiving any reply petitioner filed application before Central Administrative Tribunal seeking rechecking and revaluation of answer sheet - Rejected - Writ filed - Held admittedly there is no rule or regulation that permits rechecking - Writ dismissed - Upholding order of Tribunal.

Held, That admittedly, there is no rule or regulation which inter alia permits re-evaluation of the answer sheets. Petitioner has not been able to bring his case within the exceptions noticed by the Hon'ble Supreme Court like certain answers to remain unmarked or evaluation has been done contrary to any norms or where the answer key is found to contain wrong answers etc.

(Para 13)

Further held, That we are of the considered opinion that the re-evaluation without statutory sanction is prejudicial to the public interest and is unwarranted unless the circumstances in a particular case so permit. No such circumstances have been brought to our notice in the present case.

We find no infirmity in the judgment of the Tribunal nor do we feel it is a fit case, where the Court should exercise its extra ordinary jurisdiction or the circumstance warranted to order re-evaluation.

(Para 14)

J.N. Gupta, Advocate, *for the petitioner.*

Puneet Jindal, Advocate for respondents.

PERMOD KOHLI.J (ORAL)

(1) This petition arise out of judgement dated 26.4.2010 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Tribunal) dismissing the O.A filed by the petitioner herein for seeking a direction for re-checking or re-evaluation of the answer sheets. While dismissing the O.A the Tribunal, however, allowed the petitioner to make a representation to the concerned authorities for seeking information under R.T.I. Act.

(2) Resume of the facts leading to the filing of the present writ petition is summarized hereinafter.

(3) In the year 2008 Railway Department conducted a departmental examination known as Appendix III (IREM) 2006. This examination is mandatory for promotion to the posts of Section Officers/Inspectors of Station Accounts/Inspectors of Store Accounts. The petitioner claiming to be eligible for the post appeared in the departmental examination held between 15.4.2008 to 23.4.2008 under Roll No. 02174. The petitioner could not qualify the examination, result for which was declared on 13.11.2008. Petitioner applied under the R.T.I Act vide application dated 18.11.2008 for inspection and supply of his answer sheets and key (model answers). This application was rejected by the Public Information Officer on 23.12.2008 on the ground that there were more than 5,000 candidates who appeared in the test. Petitioner filed First Appeal on 26.12.2008 which also came to be dismissed. Consequently, an appeal was preferred before the Central Information Commissioner, New Delhi on 31.3.2009. This appeal was allowed vide order dated 25.5.2009 directing the authority to provide information on points No.6 and 7. On receiving the information, which inter alia includes copies of the answer sheets and key, the petitioner

made another application on 4.9.2009 seeking the copies of the answer sheets of those candidates who had been declared passed. This prayer was, however, declined by the authorities. Petitioner yet made another representation on 17.9.2009 asking for re-checking and re-evaluation of his papers. Receiving no answer, the petitioner filed O.A before the Tribunal on 9.3.2010, which has been dismissed vide the impugned judgement.

(4) The petitioner has reiterated the prayer made before the Tribunal for re-checking and re-evaluation of his answer sheets. The Tribunal has held that the re-checking and re-evaluation is impermissible in absence of any specific rule authorizing re-checking and re-evaluation.

(5) Indubitably, there is no rule or regulation in respect to the examination in question which permits re-checking or re-evaluation. The two expressions “re-checking” and “re-evaluation” carry different meanings. In common parlance re-checking is confined to the examination of the answer sheet to find out whether any question has remained unmarked and whether the marks awarded for questions have been properly compiled and totaled, whereas re-evaluation inter alia requires reassessment and re-evaluation of the answers and consequently the marks awarded by the examiner.

(6) To support his contention for re-checking and re-evaluation, petitioner has relied upon a Full Bench judgement of this Court reported as **Sirandip Singh Panag versus State of Punjab & others (1)**. The issue before the Hon’ble Full Bench was segregation of the nontainted officers from tainted ones. There were allegations against the Public Service Commission for conducting unfair selection. A committee was constituted to hold an inquiry and segregate the non-tainted officers from the tainted ones. It was under these circumstances an exercise was carried out under the orders of the Court for re-checking and re-evaluation of the answer sheets of the selected officers. This judgement does not deal with the question whether re-evaluation is permissive in absence of rules. Another judgement relied upon by the petitioner is **Puneet Mehta versus State of Punjab & others (2)**. This case again relates to the Judicial Service i.e. P.C.S. (Judicial Branch). In this case some of the candidates who participated

(1) 2008 (3) SCT 766

(2) 2011 (1) SCT 396 (P&H)

in the Preliminary Examination, which was objective in nature with multiple choice, challenged the selection on the ground that the answer key to various questions was wrong as either there were more than one correct answers or no correct answer was given in the answer key. Considering this aspect a learned Single Judge of this Court directed the respondents to constitute a committee to consider the questions given out in the examination and the answer key for the same and if, the allegations are found to be correct, answer key be re-drafted and the papers of the candidates would be rechecked to prepare the new merit list.

(7) Both these judgements do not deal with the question before us. Another judgement relied upon by the petitioner is **Secy. W.B. Council of Higher Secondary Education versus Ayan Dass & others (3)**. In this case a learned Single Judge of the High Court directed the answer sheet to be re-assessed by another examiner after the same was produced in the Court and inspected by the student of higher secondary examination. On appeal a Division Bench of the Hon'ble Calcutta High Court itself examined the answer sheet and came to the conclusion that there is a scope for re-assessment and thus affirmed the order of the learned Single Judge. In a Civil Appeal filed before the Hon'ble Supreme Court relying upon its earlier judgements in cases of **Maharashtra State Board of Secondary and Higher Secondary Education versus Paritosh Bhupeshkumar Sheth (4)** and **Kanpur University versus Samir Gupta (5)** observed as under:-

“ 9. *The permissibility of reassessment in the absence of statutory provision has been dealt with by this Court in several cases. The first of such cases is Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth. It was observed in the said case that finality has to be the result of public examination and in the absence of statutory provision, the court cannot direct reassessment/re-examination of answer scripts.*

10. *The courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has*

(3) 2007 (8) SCC 242

(4) 1984 (4) SCC 27

(5) 1983 (4) SCC 309

not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the court that model answer is different from what has been adopted by the Board. Then only can the court ask for the production of answer scripts to allow inspection of the answer scripts by the examinee.”

(8) Hon’ble Supreme Court set aside the judgement of the Hon’ble Calcutta High Court. In **H.P. Public Service Commission versus Mukesh Thakur & Anr.** (6) Again examining the question of jurisdiction of the court to order re-evaluation of answer sheets, Hon’ble Supreme Court postulated following question for its consideration:-

“(iii) Whether in absence of any statutory provision for reevaluation, the court could direct for re-evaluation.”

(9) This question was answered by the court on consideration of the various judgements including judgement rendered in case of Maharashtra State Board of Secondary and Higher Secondary **Education v. Paritosh Bhupeshkumar Sheth** and other judgements of Hon’ble Supreme Court in the following manner:-

“ Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct re-evaluation.”

(10) From the ratio of the aforesaid judgements, it emerges that reevaluation is only permissible, if, the rule governing any particular examination so permits. It has also been observed that where the nonevaluation of any question or evaluation is done contrary to the norms fixed by the examining body, the court may resort to re-evaluation, however, the court cannot take upon itself the task of statutory authorities. In order to apply the ratio of the above judgements to the facts of the present case, it is noted that the allegations of the petitioner before the Tribunal are that in spite of the exceptional performance of the applicant, he has been intentionally failed. It was further alleged that he has been awarded less marks in respect to question nos. 2 (a), 3, 4 (a, b, c & d), 7 (a, b, c & d) 8 (a & b). Similar allegations were made in respect to some other questions.

(11) The Tribunal relying upon the judgement of the Hon'ble Apex Court reported as **2004 (5) SLR 457** dismissed the O.A. The Tribunal also noticed the observations of the Hon'ble Supreme Court in case of **Pramod Kumar Srivastava versus Chairman, Bihar Public Service Commission, Patna & Others (7)**, which are reproduced hereunder:-

“9. Even otherwise, the manner in which the learned Single Judge had the answer-book of the appellant in General Science paper reevaluated cannot be justified. The answer-book was not sent directly by the Court either to the Registrar of the Patna University or to the Principal of the Science College. A photocopy of the answer book was handed over to the standing counsel for the Patna University who returned the same to the Court after some time and a statement was made to the effect that same had been examined by two teachers of Patna Science College. The names of the teachers were not even disclosed to the court. The examination in question is a competitive examination where the comparative merit of a candidate has to be judged. It is, therefore, absolutely necessary that a uniform standard is applied in examining the answer books of all the candidates. It is the specific case of the Commission that in order to achieve such an objective, a centralized system of evaluation of answer books is adopted wherein different examiners examine the answer books on the basis of model answers prepared by the head examiner with the assistance of other examiners. It was pleaded in the letters patent appeal preferred by the Commission and which fact has not been disputed that the model answer was not supplied to the two teachers of the Patna Science College. There can be a variation of standard in awarding marks by different examiners. The manner in which the answer books were got evaluated, the marks awarded therein cannot be treated as sacrosanct and consequently the direction issued by the learned single judge to this Commission to treat the marks of the appellant in General Science paper as 63 cannot be justified.”

(12) We have heard learned counsel for the parties at length and carefully perused the judgements relied upon by the parties as also the O.A filed before the Tribunal.

(13) Admittedly, there is no rule or regulation which inter alia permits re-evaluation of the answer sheets. Petitioner has not been able to bring his case within the exceptions noticed by the Hon'ble Supreme Court like certain answers to remain unmarked or evaluation has been done contrary to any norms or where the answer key is found to contain wrong answers etc. Entire case of the petitioner is that he has been awarded less marks by the examiner. This cannot be a ground for re-evaluation of the answer sheets. In cases of **Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth** and **Kanpur University v. Samir Gupta**, it has been held that finality has to be given to the examination. The court has no expertise to assess the award of marks as the same is the job of the experts. The court also cannot take upon its shoulders the responsibility and task of the statutory authorities entrusted with the job of conducting scrutiny, if, so permitted by any rule or regulation. A mere desire of a candidate or allegations that he has not been fairly assessed without any specific allegation of malafide either against the authorities or the examiner, it is impermissible in law to order re-evaluation on the mere ipse dixi of the candidate. Every unsuccessful candidate would like to seek re-assessment time and again.

(14) We are of the considered opinion that the re-evaluation without statutory sanction is prejudicial to the public interest and is unwarranted unless the circumstances in a particular case so permit. No such circumstances have been brought to our notice in the present case. We find no infirmity in the judgement of the Tribunal nor do we feel it is a fit case, where the Court should exercise its extra ordinary jurisdiction or the circumstance warranted to order re-evaluation.

(15) This petition, thus, fails and is, accordingly dismissed. However, before parting with the judgement, we may like to say that the Tribunal has permitted the petitioner to make a representation for purpose of re-checking to the authorities. If, any such representation is made by the petitioner for re-checking of the answer sheet to find out whether any question remained unmarked or the total of the marks awarded for various questions is wrong, the authorities shall conduct re-checking for these purposes and in the event of variation of marks, the same shall be communicated to the petitioner.

S. Sandhu