

BHARAT SANCHAR NIGAM LIMITED
Recruitment wing
Room No.222, Eastern Court,
Janpath, New Delhi.

F.No.63-5/2016-Rectt

Dated th 13 January, 2016

2. Feb

To

All Chief General Managers Telecom Circles, BSNL.
Chief General Manager Kolkata Telephones/Chennai Telephones.
Chief General Manager(Mtce), NTR, BSNL, New Delhi

Subject: LICE in BSNL-Revaluation of answer sheets-reg.


Sir,

I am directed to forward herewith copy of judgment dated 18.08.2015 of Hon'ble CAT, Jabalpur Bench, Circuit sitting Gwallior in OA No. 150/2013 filed by Smt. Vandana Sharma regarding ^{permatute} answer sheet in r/o JAO 40% quota which has been pronounced in favour of BSNL.

2. It is requested that wherever required this judgment may also be quoted in the para-wise comments being prepared to defend the cases. The judgment may also be brought to the notice of the concerned courts in respect of ongoing Court cases if any, involving the similar issues.

Encl: As above

Yours faithfully,


(OP JAT) 13.01.2016
AGM(Rectt-III)
Ph:23766441.

Original Application No.150 of 2013

Gwalior, this Tuesday, the 18th day of August, 2015

MRS. MANJULA DAS, JUDICIAL MEMBER
MR. G.P.SINGHAL, ADMINISTRATIVE MEMBER

Smt. Vandana Sharma W/o Shri D.K.Sharma, Age 50 years,
O/c Sr.TOA, O/o G.M.Telecom, BSNL, Gwalior
R/o 101, Amaltas Apartments, Green Garden, Estate,
Patel Nagar, City Center-II, Gwalior (M.P.)-474011

-Applicant

(By Advocate – Shri M.K.Sharma)

Versus

1. Union of India through the Chairman-cum-Managing Director,
M.D. BSNL, New Delhi, Bharat Sanchar Bhawan (BSNL B/d)
Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.

2. The Chief General Manager, M.P. Telecom Circles, BSNL,
Hoshangabad Road, Bhopal (M.P.)-PIN-462015

- Respondents

(By Advocate – Shri M.P.Agrawal)

ORDER

By G.P. Singhal, AM.-

By filing the Original Application the applicant has sought for direction to the respondents to correctly evaluate the mark sheet of the result of the Junior Accounts Officer (for brevity 'JAO') Internal Competitive Examination against 40% quota, dated 27.3.2010 (Annexure A-1) and grant her consequential benefits in the nature of promotion.

2. The brief admitted facts of the case are that the applicant while working in the Telecom Circle, TDM Guna, appeared in Departmental Examination for JAO Part-I and passed it. Thereafter, she appeared in the Departmental Examination for JAO Part-II, which was held on 4th to 6th January, 2010. However, she could not get the passing marks as is evident from the statement of marks dated 27.3.2010 (Annexure A-1). The applicant applied for re-totalling, but there was no change in the marks allotted to her as mentioned in letter dated 23.8.2010 (Annexure A-2). Thereafter, the



applicant got the copies of the evaluated answer books under the Right to Information Act.

3. The applicant's contention is that she has not been given sufficient marks even though her answers were correct. The contention of the learned counsel for the applicant is that as per directions given by CAG the answer books are to be evaluated by giving stepwise marks, however, the evaluators have not followed the principle and they have not given marks on correct steps written by the applicant in answer sheets.

4. The learned counsel for the respondents submitted that senior officers of the department having expertise in the subjects were appointed as evaluators of the said examination. Further solved answers to the questions prepared by the paper setter were also supplied to each of the evaluators to help them in making proper evaluation. The learned counsel for the respondents relied on the decision of Hon'ble High Court of Allahabad in W.P.No.34725/2004 wherein it has been held that the High Court cannot step into the shoes of an expert body and examine the answer books or reevaluate the marks given in the answer books on its own. The selection was made on all India basis in which only 222 candidates are said to have been selected. Mere revaluation of answer books of three or four candidates would not be proper for the purpose of taking a decision on the question whether the evaluation of marks given to all the candidates has been rightly done or not. If that exercise is to be done then the answer books of all the candidates who have appeared in the examination will have to be evaluated.

5. Heard the learned counsel for the parties and carefully perused the pleadings of the respective parties and the documents annexed therewith.

6. During the course of arguments the learned counsel for the applicant was asked to show any provision in the rules which permit reevaluation of the answer sheets. He admitted that there is no such provision. He was further asked to inform as to whether any question or any part of it remained unchecked to which he replied that there is no such question or part of a question which has not been evaluated.



7. The Hon'ble Supreme Court in the matters of **H.P. Public Service Commission v. Mukesh Thakur**, (2010) 6 SCC 759 has held that the issue of revaluation of answer book is no more res integra. This issue was considered at length by the Hon'ble Supreme Court in the matters of **Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth**, (1984) 4 SCC 27 wherein the Hon'ble Supreme Court rejected the contention that in the absence of the provision for revaluation, a direction to this effect can be issued by the Court. The Court further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/ revaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. In the said matter of **Paritosh Bhupeshkumar Sheth** (supra), the Hon'ble Supreme Court further held as under:

"14. ... It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. ...

* * *

16. ... The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act."

8. In the matters of **Mukesh Thakur** (supra) their Lordships have further held thus:

*"25. This view has been approved and relied upon and reiterated by this Court in **Pramod Kumar Srivastava v. Bihar Public Service Commission** (2004) 6 SCC 714 observing as under: (SCC pp. 717-18, para 7)*

"7. ... Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for revaluation of his answer book. There is a provision for scrutiny only wherein the answer books are seen for the



purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer book. There is no dispute that after scrutiny no mistake was found in the marks awarded to the appellant in the General Science paper. In the absence of any provision for reevaluation of answer books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for reevaluation of his marks."

A similar view has been reiterated in *Muneeb-Ul-Rehman Haroon (Dr.) v. Govt. of J&K State* (1984) 4 SCC 24, *Board of Secondary Education v. Pravas Ranjan Panda* (2004) 13 SCC 383, *Board of Secondary Education v. D. Suvankar*, (2007) 1 SCC 603, *W.B. Council of Higher Secondary Education v. Ayan Das* (2007) 8 SCC 242 and *Sahiti v. Dr. N.T.R. University of Health Sciences* (2009) 1 SCC 599.

26. Thus, the law on the subject emerges to the effect that in the absence of any provision under the statute or statutory rules/regulations, the Court should not generally direct reevaluation".

9. In the instant case the respondents have specifically stated that as per Rule 15 of Part I of Appendix 37 of P&T Manual Vol.IV 'reevaluation of answer scripts is not permissible in any case or under any circumstances, which has not been controverted by the applicant. Therefore, in view of the settled legal position as narrated above, we are of the considered opinion that the relief sought for by the applicant to direct the respondents to reevaluate her answer scripts cannot be granted.

10. In the result, the Original Application is dismissed, however, without any order as to costs.

Sd/-

(G.P.Singhal)
Administrative Member

rkv

5234
2.9.15

To.
Shri M.P. Agrawal,
Advocate
101, Royal Plaza,
High Court Road,
Jabalpur

Sd/-

(Mrs. Manjula Das)
Judicial Member

के.प्र.अ.प्रक्रिया नियमावली के नियम
22 के अंतर्गत निःशुल्क प्रतिलिपि

TRUE COPY

Section Officer
Central Administrative Tribunal
Jabalpur Bench, Jabalpur