

विधि अनुभाग

Legal Cell

कार्यालय मुद्राभा.स.निलि.

O/o CGM BSNL

टी.एन.परिमंडल, चेन्नै - 600 002.

T.N. Circle, Chennai - 600 002.

No. 38

दिनांक / Date 13-1-14

**CENTRAL ADMINISTRATIVE TRIBUNAL
Madras Bench; Madras.**

**Original Application Nos.749/2010,768/2010
&
1407/2012**

Dated the 17th day of December, two thousand thirteen.

Hon'ble Mr. B.Venkateswara Rao, Judicial Member.

Hon'ble Dr.P. Prabakaran, Administrative Member.

R.V.Pattabhiraman, S/o R.V. Raghavan, 21, Bashyam Street,
Cuddalore 607001

1st Applicant in O.A. NOs. 749/2010 &
1407/2012

S. Manibalan, S/o Pazhamalai, BSNL, Ulundurpettai.

2nd Applicant in O.A. NO. 749/2010

Mrs.Saroja Devi, W/o Govindaraju, BSNL Cuddalore.

3rd Applicant in O.A. NO. 749/2010

A.Sadik Basha, S/o Aziz Sahib, No. 67, Kurinji Nagar, Gundu
Salai Cuddalore 607001.

1st applicant in O.A. No. 768/2010

2nd applicant in O.A. No. 1407/2012

R. Jayabalan, S/o Ramalingam, 2. Nellikuppam Main Road,
Semmandalam, Cuddalore 607001.

2nd Applicant in O.A. No.768/2010

3rd applicant in O.A. No. 1407/2012

Usha Gopalakrishnan, W/o Gopalakrishnan, No. 9 Sudakar
Nagar,Cuddalore

3rd applicant in O.A. NO. 768/2010.

R.Ravikumar, S/o S.Rangraju, B11, BSNL Staff Quarters,
Chidambaram.

4th Applicant in O.A. No. 768/2010.

R.Srinivasan, S/o V.Ragagopalan, BSNL Vellore.

5th Applicant in O.A. NO. 768/2010



Rep. by M/S..Gururaj , : Counsel for the applicants in.
M.Sudarsan OA No 749/2010
& O.A. No. 1407/2012
Mr. M. Nasarulla: Counsel for applicants in
OA No. 768/2010

Versus

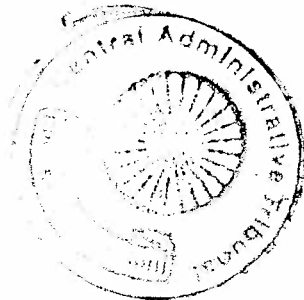
The Chief General Manager, Tamil Nadu Telecom Circle Bharat
Sanchar Nigam Limited (BSNL), Chennai

1st respondent in all the three O.As.

The Assistant General Manager, (Recruitment) Bharat Sanchar
Nigam Limited (BSNL), Tamil Nadu Telecom Circle, Chennai
2nd respondent in all the three OAs

Respondents

Rep. by Mr. R.Priya Kumar : Counsel for the respondents in
All the three O.As



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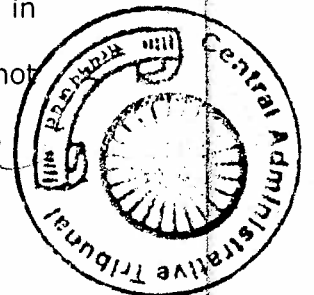
ORDER

(Pronounced by Hon'ble B.Venkateswara Rao Judicial Member.)

Since the issue involved in all these applications is same and the relief sought for is also same, they were heard together and are being disposed of by this common order.

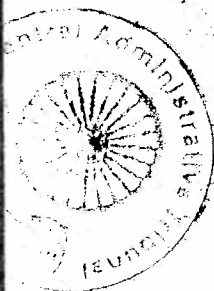
2. The applicants are employees of Bharat Sanchar Nigam Limited (BSNL for short). They belong to absorbed non executive category. The respondents conducted examination for the post of Junior Accounts Officer (JAO for short). The present applications relate to Tamil Nadu Circle except Chennai. 50% posts are earmarked for direct recruits and the remaining 50% posts meant for BSNL employees. The applicants appeared in the competitive examination. Results were published on 19.03.2010. They are aggrieved by their non selection to the post of JAO.

3. The Selection consists of Part -I and part -II examinations. The candidates who qualified in part I examination are eligible to appear in part II examination. All of them passed part I examination. Hence they had appeared in part II examination held in January 2010. But they were not selected.



4. As per the scheme of the examination, a candidate has to secure the minimum 40% marks in paper II & IV, whereas no minimum marks had been prescribed for paper I & III and one has to secure 60 marks out of 150 in paper V and 45% in aggregate. The minimum qualification for taking JAO examination is a pass in Ten plus two course. Persons having a degree or diploma from Open Universities without passing in 10+2 pattern they are not eligible. The applicants have stated that conducting examination as per old syllabus is irrational. The applicants in O.A. Nos. 749/2010 and 768/2010 were challenging the examination held in January 2010 and the applicants in O.A. No. 1407/2012 were challenging examination held in December 2012.

5. The applicants have challenged various discrepancies in framing questions. Hence the applicants in O.A.Nos. 749/2010 and 768/2010 have prayed that a direction be issued by this Hon'ble Tribunal to the respondents to revalue all the papers and also grant full marks to questions mentioned in the relief column. The three applicants in O.A. No. 1407/2012, are also applicants in the other two OAs, had prayed for quashing of the Examination held in December 2012.



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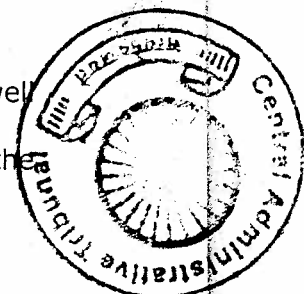
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6. The learned counsel for the applicants argued that ordering revaluation of papers is necessary on the ground that the applicants are subjected to serious prejudice on account of improper questions.

7. Upon notice the respondents have appeared and filed replies almost on similar lines. They have contended that the applicants are aware of the syllabus before appearing part I examination and if they had any objection to the syllabus of the examination they should have represented against the same before appearing in the examination and since they had accepted the syllabus of the examination and took part they cannot now question the conduct of the examinations. They have stated that at the time of conduct of JAO Part I screening test on 27.05.2007, candidates possessing educational qualification through open universities are treated equal with candidates who possess degree on regular stream. It is contended by the respondents that according to OM No. 107 dated 18.08.2009, issued by the State Government, Degree/Diploma/PG degrees acquired through open universities after passing 10+2 alone are eligible for consideration for recruitment/promotion in Public Services.

8. The respondents have contended that the law is well settled that if a candidate takes the exam knowing the

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methodology and is not selected, he cannot later challenge the methodology adopted. They rely on the judgement of the Hon'ble Supreme Court rendered in the case of **The General Manager, South Central Railway Secunderabad vs. A.V.R. Siddhanti** [1997 (4) SCC 348] wherein the Hon'ble Apex Court held as under:

"One having appeared in the examination cannot be allowed to later challenge the procedure of selection."

The respondents have also relied on the judgement of the Hon'ble Supreme Court rendered in the case of **Suneeta Aggarwal vs. State of Haryana and others** [2003 (30 AISL) SC 30], wherein the Apex Court held as under:

" The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of Vice Chancellor."

9. The respondents have further stated that examination was conducted in all the circles by BSNL using the same set of question papers. A total 1323 candidates have been declared as qualified in the examination and in TN circle alone 177 candidates have been declared as passed in the examination against 244 vacancies. The applicants did not qualify in the said examination. Some of the applicants in O.A. Nos. 749/2010 & 768/2010, in order to thwart the conduct of examination in 2012 filed O.A. No 1407/2012. Hence the respondents have prayed for the dismissal of the O.As.

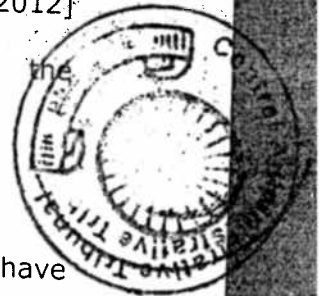


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10. We have heard learned counsel for the parties and perused the pleadings available on records.

11. The learned counsel for the applicants relied on the judgement of the Apex Court rendered in **Guru Nanak Dev University vs. Saumil Garg and ors.** [(2005) 13 SCC 749] and submitted that the Hon'ble Supreme Court had directed the University to reevaluate the answer book of the respondents before it. The learned counsel also relied on the judgement of the Apex Court in **Institute of CA of India vs. Shaunak H Satya** [2011 STPL (LE) 45594 SC]. We are of the view that the judgement of the Hon'ble Apex Court is not applicable to the facts of these cases since the issue involved in the above case is that the respondent therein made a query under RTI and the information sought was not given to the respondent. In such circumstances, the Apex Court had held that the appellant had to supply the information asked for by the respondent. The learned counsel for the applicants also relied on the Judgement of the Hon'ble High Court of Madras in **T.Vijayan vs. Chairman BSNL AND ORS.** [W.P. No. 26648/2011- decided on 12.03.2012] wherein the Hon'ble High Court of Madras directed the respondents to award marks for two pages.

12. Per contra, the learned counsel for the respondents have relied on the orders of this Tribunal dated 13.03.2012 and



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02.07.2013 passed in O.A. Nos. 851/2010 and O.A Nos. 1249/2010 and batch and contended that there is no provision in the rules for revaluation.

13. We have carefully gone through the orders of this Tribunal relied on by the respondents. The issue involved in the instant cases is, the applicants have failed in the examination and now they wanted to declare them as qualified in the examination. We are of the considered view that the decisions relied on by the learned counsel for the applicants are not of much helpful to the applicants since the issue involved in the present cases is different from the issue involved in the cases relied by the applicants .

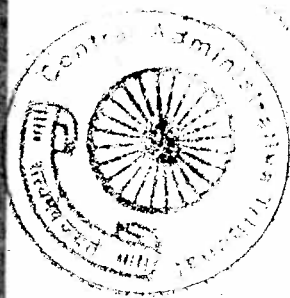
14. The relevant portion of the order dated 13.03.2012 passed in O.A. No. 851/2010 reads as under:

" The same issue was raised before this Tribunal in O.A. Nos. 920/2010 and 1289/2010. the applicant in that case was also challenging the order No. ART/100-3/JAO-part II/2009/19 dated 09.03.2010 issued by the 3rd respondent raising the ground that there were anomalies in the question and key answers.

We further notice from the order passed in O.A Nos. 920& 1289/2010 dated 14.09.2012, that relief prayed for cannot be granted to the applicants The relevant portion reads as under:

Para 12

At the cost of repetition, we would like to reiterate that quality and contents of the answers will determine the quantum of marks to be awarded to a particular answer. It is well within the comprehension of the of the expert examiner to decide the mark. In the absence of any mala fide or violation of any statutory provlsion in conduct of the



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examination, it cannot be said that there is any issue of adjudicative disposition. In such view of the matter, we refrain from granting the relief claimed by the applicants."

15. The learned counsel for the respondents also brought to our notice the order of this Tribunal dated 02.07.2013 passed in O.A. Nos.1249/2010 and batch wherein this Bench of the Tribunal relying on paragraph Nos 24,25,26 and 27 of the judgement of the Hon'ble Supreme Court in the case of **H.P. Public Service Commission vs. Mukesh Thakur and Anr. in C.A. No. 907 decided on 25.05.2010**, dismissed the batch cases. The relevant paragraphs reads as under:

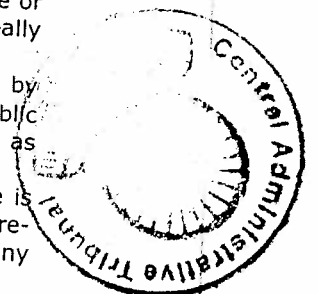
24. The issue of re-evaluation of answer book is no more res integra. This issue was considered at length by this Court in Maharashtra State Board of Secondary and Higher Secondary Education & Anr. Vs. Paritosh Bhupesh Kurmarsheth etc.etc. AIR 1984 SC 1543, wherein this Court rejected the contention that in absence of provision for re-evaluation, 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/re-evaluation cannot be challenged unless there are grounds to show that the policy itself is in violation of some statutory provision. The Court held as under:

".....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....."

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 draw-backs 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....."

25. This view has been approved and relied upon and re-iterated by this Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors, AIR 2004 SC 4116 observing as under:

"Under the relevant rules of the Commission, there is no provision wherein a candidate may be entitled to ask for re-evaluation of his answer-book. There is a provision for scrutiny



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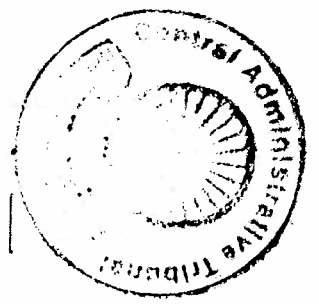
only wherein the answer-books are seen for the purpose of checking whether all the answers given by a candidate have been examined and whether there has been any mistake in the totalling of marks of each question and noting them correctly on the first cover page of the answer-book. There is no dispute 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 re- evaluation of answer-books in the relevant rules, no candidate in an examination has got any right whatsoever to claim or ask for re- evaluation of his marks." (emphasis added)

26. A similar view has been reiterated in Dr. Muneeb Ul Rehman Haroon & Ors. Vs. Government of Jammu & Kashmir State & Ors. AIR 1984 SC 1585; Board of Secondary Education Vs. Pravas Ranjan Panda & Anr. (2004) 13 SCC 383; President, Board of Secondary Education, Orissa & Anr. Vs. D. Suvankar & Anr. (2007) 1 SCC 603; The Secretary, West Bengal Council of Higher Secondary Education Vs. Ayan Das & Ors. AIR 2007 SC 3098; and Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors. (2009) 1 SCC 599.

27. 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 revaluation.

16.. Since the issue involved in the present cases is similar to the O.A. NOs. 1249/2010 and batch decided on 02.07.2013, as per judicial propriety, we have no other option except to dismiss the present O.As Accordingly, the OAs are dismissed. No order as to costs.

Free Copy U/R 22 of CAT (Procedure) Rules



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K. Kishor Kumar
SECTION OFFICER 27/12/13