

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

F.No.63-17/2014-DE

Dated th 20 November, 2014

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.

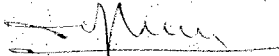
Sir,

I am directed to forward herewith copy of judgement dated 14.10.2014 of Hon'ble CAT, Chandigarh Bench in connection with revaluation of answer sheet in LDCE conducted by BSNL.

2. It is requested that wherever required this judgement may also be quoted in the para-wise comments being prepared to defend the cases. The judgement 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,


(O P JAT) 20/11/2014
AGM(Rectt-III)
Ph:23766167.

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

(orders reserved on 7.10.2014).

O.A.NO. 1489/CH/2012 Date of order:- 14.10.2014

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Ved Prakash son of Shri Ram Rakha Mal, working as Sub Divisional Engineer, Bharat Sanchar Nigam Limited, Office of the Chief General Manager Telecom, Punjab Telecom Circle, Bharat Sanchar Nigam Limited, SCO 102-103, Sector 34, Chandigarh.

.....Applicant.

(By Advocate :- Mr. R.K.Sharma)

Versus

1. Union of India through the Secretary, Ministry of Communication & Information Technology, Sanchar Bhawan, 20, Ashoka Road, New Delhi.

2. The Chairman & Managing Director, Bharat Sanchar Nigam Limited, (BSNL), Harish Chandra Mathur Lane, Connaught Place, New Delhi.

3. The Chief General Manager Telecom, Punjab Telecom Circle, Bharat Sanchar Nigam Limited, SCO 102-103, Sector 34, Chandigarh.

...Respondents

(By Advocate : Mr. Sanjay Goyal).

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ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Ved Prakash has filed the present Original Application praying for the following reliefs:-

"1. Quash order No.63-4/2010-DE dated 27th July, 2012, copy Annexure A-1 whereby representation of the applicant assessment of unassessed/unverified answers of Part II paper of TES Group 'B' against 25% Limited Departmental Competitive Examination held in December, 2002 has been rejected;

2. Issue direction to the respondents to carry out checking of the unassessed and unverified answers of the applicant of Paper II of Telecom Engineering Service Group B, Limited Departmental Competitive Examination 2002 and then declare the result and promote the applicant to the post of Sub Divisional Engineer on regular basis from due date, with all the consequential benefits, as there has been numerous irregularities and illegalities in award of marks and checking of papers of the applicant as explained in the body of the petitioner and action of the respondents amount to adopting an unfair practice and malafide as they have acted arbitrarily and capriciously and have given a result which is preserve and no reasonable or prudent man would approve of it. The applicant be extended benefits of promotion with all the consequential benefits such as seniority and arrears of pay and allowances, with interest on arrears @ 18% per annum from the date of amount became due to the annual date of payment."

2. Facts as projected by the applicant, briefly are, that he was initially appointed as Junior Telecom Officer from 7.3.1994 as a direct recruit against outsider quota. On the basis of his service record and seniority, the applicant was promoted as regular Sub Divisional Engineer on 30.9.2004 and at present he is working as Senior Sub

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Divisional Engineer under the respondents. The next promotion from the post of Junior Telecom Officer is to the post of Telecom Engineering Service Group 'B'. As per Recruitment Rules known as Sub Divisional Engineer (Telecom) Recruitment Rules, 2002, 75% posts is to be filled by promotion on the basis of seniority-cum-fitness and 25% by Limited Departmental Competitive Examination amongst the Junior Telecom Officers (Telecom) who have rendered not less than three years regular service in the grade on 1st July of the year of examination. The applicant has stated that the respondents had conducted Limited Departmental Competitive Examination (for short LDCE) for the post of Sub Divisional Engineer (Telecom) in 2002 and various irregularities and illegalities were committed in the said examination. Against the irregularities and illegalities, the applicant submitted a detailed representation on 18.12.2003. Again, the applicant submitted a representation dated 24.12.2003 for favourable solution to the problem by reevaluating the papers of S.D.College, Ambala Cantt. When no reply was received, the applicant along with others filed CWP No.2726 of 2004 before the Hon'ble High Court of Punjab & Haryana for issuance of direction to the respondents to reevaluate the answer papers of the applicant and others. The said writ petition was dismissed.

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3. The applicant again submitted a number of representations by requesting therein that his both papers may be revaluated and re-examined. On 17.9.2007, the applicant submitted a representation dated 17.9.2007 to CMD, BSNL, for revaluation of both papers. When the applicant was not furnished with the answer sheets, the applicant filed an appeal before the CIC and in pursuance of CIC decision dated 21.2.2008, the office of respondent no.3 vide its letter dated 15.3.2008 has supplied the photocopy of answer booklet of Paper II of TES Gr.B Departmental Competitive Examination to the applicant. On receipt of the answer-sheets, the applicant submitted a representation dated 8.12.2008 explaining therein that certain answers were left for checking and for some answers, no marks were awarded and in case he is awarded marks, his marks would reach to 59, thereby declaring him as having passed. Ultimately, the applicant approached the Tribunal by filing OA No.18/CH/2010 for redressal of his grievance. The said OA was disposed of vide order dated 25.4.2012 by directing the respondents to examine the prayer of the applicant with regard to paper No. II and then pass appropriate orders as per law and rules and instructions on the subject, after affording an opportunity of hearing to the applicant. In pursuance of the order dated 25.4.2012 passed by the Tribunal, the applicant was called for personal hearing before the Committee on 16.7.2012 and he apprised the discrepancies found in paper II and submitted the

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relevant documents with the representation. The respondent no.1 has rejected the representation of the applicant vide order dated 27.7.2012 by saying that the Committee is of the opinion that any revision of the marks awarded by the evaluator will amount to revaluation which is not permissible under the rules. Hence the present Original Application.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the evaluator has duly assessed the marks in all the questions and that any revision of marks awarded by the evaluator will amount to re-evaluation which is not permissible in terms of Rule 15 of Part 1 of Appendix 37 of P & T Manual Volume IV. The said rule reads as follows:-

"Re-evaluation of answer scripts is not permissible in any case or under any circumstances".

Further as per Rule 14(d) of Part I of Appendix 37 of P & T Manual Volume IV (Annexure R-2), re-totalling/verification of marks is permissible, if applied within the stipulated time.

5. They have further pleaded that about ten thousand candidates appeared in the LDCE which was held on 1.12.2002 for promotion to the grade of SDE(T) on all India basis for the vacancy

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years 1996-97, 1997-98, 1998-99, 1999-2000 & 2000-2001 and 1612 candidates were declared as successful as per rules declared on 15.12.2003. Again, LDCE under 25% quota was held on 15.7.2008 for the vacancy years 2001-2002, 2002-2003, 2003-2004, 2004-2005 & 2005-2006 and 8594 candidates appeared in the said examination and 1867 candidates were declared successful as per result declared on 8.7.2008 and all the results have since attained finality. Further LDCE (33% quota) was conducted on 4.3.2012 for the vacancy years 2006-2007, 2007-2008, 2008-2009 & 2009-2010 and the result of the said examination was also declared on 4.7.2012. They have further stated that the presumption of the applicant that the answer-sheet has not been properly checked is devoid of merit as his answer-sheet has been evaluated impartially by High Level Officer of the department who is considered to be expert on the subject. The examiner is the final authority in evaluation of answer scripts and his wisdom cannot be challenged in view of judgment passed by the Hon'ble Allahabad High Court in WP No.34725 of 2004.

6. They have also relied upon a order passed by the Tribunal in TA No.18/CH/2009 wherein it was held that if it is possible to weed out the beneficiaries of irregularities or illegalities, there is no justification for en block cancellation of the selection and there is no

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—justification to deny appointment to those selected candidates. They have thus prayed for dismissal of the OA.

7. The applicant has filed a rejoinder by generally reiterating the averments in the OA.

8. We have heard the learned counsel for the parties and have perused the material placed on record. We have also not failed to note that the disputed examination was held as back as 2002 as a history of litigation on this issue since then.



9. With regard to the revaluation of answer-sheets, the learned counsel for the applicant has placed reliance upon a judgment passed by the Hon'ble Delhi High Court in the case of **D.P.S.Chawla** versus **Union of India & Ors.** (WP © NO.6201 of 2011) decided on October 24, 2011 wherein the Hon'ble High Court has directed to reevaluate the answer-sheet despite there being no provision in the law. The learned counsel for the applicant has also placed reliance on an order dated November 4, 2011 passed by the Tribunal in the case of **Rakesh Kumar Sharma** versus **Union of India & Ors.** (O.A. No.457/HP/2010) wherein the respondents were directed to get the unmarked question assessed for award.

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10. The moot question for our consideration in the instant OA is as to whether revaluation of an answer-sheet is permissible in the absence of any rule? Before advertng to the merits of the case, we may mention that in the present case, concededly, there is no provision under the BSNL Rules or under the P&T Manual for revaluation of answer-sheets. In this regard, reference is made to Rule 15 (Part I) of Appendix 37 Rules relating to Departmental Examination of P & T Manual Volume IV.

11. The question posed before us is no more res-integra as the similar issue has already been put to rest by the Hon'ble Apex Court in the case of H.P. Public Service Commission versus Mukesh Thakur & Another decided on 25.5.2010 (2010(4) AWC 3798 S.C.), where the Hon'ble Apex Court have held that in the absence of any rules or instructions, revaluation of answer-sheet is not permissible.

The relevant observations of the judgment reads as follows :-

"19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. It there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent No. 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics , chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.

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20. Therefore, we are of the considered opinion that such a course was not permissible to the High Court.

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"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."

Following the authoritative law laid down by the Apex Court in the case of Mukesh Thakur (supra), a Bench of this Tribunal in the case of **Gursharanjit Singh Dhunna versus Union of India & Ors.** (O.A. No.1401/PB/2012) decided on 26.7.2012 & O.A.No.938/HR/2012 (**Yogender Kumar Sharma versus Union of India & Ors.**) decided on 16.12.2013 in which one of us [Sanjeev Kaushik, Member(J) who wrote the order] rejected the claim of the applicants therein for revaluation of the answer papers. We are also well aware of the judgment passed by the Hon'ble Allahabad High Court in the case of **Km. Sneha Bhaisora versus State of Uttaranchal** (2003(53) A.L.R. Page 96), and judgment dated 18.3.2008 passed by the High Court of Judicature Andhra Pradesh in the case of **Md. Mahaboob Ali and V.S.V.S. Veerabhadra Rao.**



12. It is necessary to discuss briefly the applicability of the citing offered by the learned counsel for the applicant. He has mainly relied upon the judgment passed by Delhi High Court in the case of D.P.S.Chawla (supra). However, a reading of the judgment reveals

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that the Hon'ble Court has made a distinction between re-evaluation on one hand; and, re-computation and of correction of mistake, on the other. In the case before the Hon'ble High Court, an objective type question, which had only one right answer was rightly answered by the petitioner but was wrongly not marked as the right answer at the time of evaluation. Consequently, he was awarded one mark less. He was awarded 49 marks, which deprived him from qualifying the test as 50 marks were the requirement for qualifying. In the instant case, firstly it is not a case of re-computation or correction of a mistake as the nature of the question is neither objective nor it can be said to be wrongly evaluated. We had the occasion to look at the answer-sheet and we found the claim of the applicant that the particular part of the question under 'Co-axial Cable Section', has not been marked, not substantiated. Of course, a question can be raised whether the marks given by the examiner were fair or not, but such a question cannot be gone into and examined by us in the light of the rules as also the legal pronouncements on this issue. Further, the applicant has not indicated in his application as to by how many marks he has missed qualifying. A case has not been made that had he got just one mark more, he would have been promoted.

13. Coming to the other citation i.e. an order passed by this Tribunal in case of **Rakesh Kumar Sharma** versus **Union of India &**

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Ors. (O.A.No.457/HP/2010) decided on November 4, 2011, a careful reading of the order makes it clear that here the nature of the question was again different. In this case, the question required the candidate to write five specific services provided by C-DOT DSS MAX exchange for PSTN (Analog) as well as ISDN subscribers. It is therefore, in the nature of an objective type question and if all five are correctly mentioned, the examiner ought to give full marks. However, the examiner has not given the full marks to the candidate despite his giving five correct specific services.



14. In the present OA, neither the question is of objective type nor the wording of the question suggests one and only one correct answer(s) and therefore, the order passed in the case of Rakesh Kumar Sharma (supra) by this Tribunal does not help the applicant.

15. Having examined the applicability of the citations made available to us by the learned counsel for the applicant and having found it inapplicable in the instant case, we are not inclined to interfere in the impugned order. As articulated above in para 11 the prevailing rulings on such issues clearly do not favour intervention of the courts in matters of re-evaluation in examinations of this nature.

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16. In the above background, we find no reason to interfere with the well reasoned order. Accordingly, this OA, bereft of any merit, is dismissed. Parties will bear their own costs.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 14.10.2014.

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Certified True Copy/प्रमाणित सत्य प्रतिलिपि
(Signature)
29/10/14
Section Officer (Jyoti)
Central Administrative Tribunal
Chandigarh Bench
Chandigarh