

Dinesh Kumar Vs. Bharat Sanchar Nigam Limited and ors.

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Court : Allahabad

Decided On : Sep-01-2004

Reported in : (2005)2UPLBEC1309

Judge : Vineet Saran, J.

Appeal No. : Civil Misc. Writ Petition Nos. 53947 and 54100 of 2002

Appellant : Dinesh Kumar;ram Kumar and anr.

Respondent : Bharat Sanchar Nigam Limited and ors.;chief Managing Director,
Bharat Sanchar Nigam Limited and ors.

Advocate for Def. : Amit Sthalkar, ;B.N. Singh, ;Mahendra Bahadur Singh,
;Suboth Kumar and ;N.K. Chatterji, Advs.

Advocate for Pet/Ap. : N.C. Rajvanshi, ;M.K. Rajvanshi, ;P.C. Srivastava and
;Satish Mandhyan, Advs.

Judgement :

Vineet Saran, J.

1. Since common questions of law and facts and involved in both these writ petitions hence they have been heard together and are being disposed of by this common judgment.

2. The writ petitioners are working as Telecom Technical Assistants in Bharat Sanchar Nigam Limited. The admitted position is that 35% of the posts of Junior Telecom Officers are to be filled up by promotion from amongst the Telecom Technical Assistants. The examinations for such promotion were initially to be held on 11.4.1999 but were thereafter postponed for 30.4.2000. The qualifying marks to be obtained by a candidate for selection/promotion on the post of Junior Telecom Officer was 40% marks. The petitioners in both the writ petitions had appeared in the said examinations and were declared unsuccessful as they could not obtain 40% marks. The respondent Nos. 4, 5 and 6 of Writ Petition No. 54100 of 2002 were initially not declared as selected for promotion because they had obtained less than 40% marks but on re-assessment, the marks obtained by them were determined to be more than 40% and hence they were declared selected. Aggrieved by the action of the respondents in not promoting the petitioners, alleging that there were irregularities in the conduct of the examinations and the procedure adopted for reassessment of the answer books of the petitioners and other candidates, they have filed these writ petitions.

3. In Writ Petition No. 53947 of 2002, Dinesh Kumar v. Bharat Sanchar Nigam Limited and Ors., the following prayers have been made to issue a :

'(a) Writ in the nature of mandamus directing the respondents to produce the answer books of the petitioner before this Hon'ble Court and further be pleased to get it revalued from an expert examiner.

(b) Writ, order or direction in the nature of mandamus directing the respondents to keep one post of Junior Telecom Officer reserved/ vacant during the pendency of this writ petition.

(c) Writ, order or direction which this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case to meet the ends of justice.

(d) Award cost of this writ petition to be paid to the petitioner.'

4. In Writ Petition No. 54100 of 2002, Ram Kumar and Anr. v. Chief Managing Director, Bharat Sanchar Nigam Limited, New Delhi and Ors., the following

prayers have been made :--

'(i) issue a writ, order or direction, in the nature of mandamus commanding respondent No. 1 to re-value answer books of the petitioners and to declare the petitioners successful to promotion to the post of J.T.O. in the event of their achieving more than 40% marks.

(ii) issue a writ, order or direction in the nature of mandamus commanding respondent to produce answer books of the petitioners and to get it re-examined/re-evaluated by an independent authority as this Hon'ble Court may deem fit.

(iii) issue such order and further writ, order or direction which this Hon'ble Court may deem fit and proper in the nature and circumstances of the present case.

(iv) Award costs of the petition to the petitioners.'

5. Pursuant to an order dated 12.2.2004 passed by this Court, the respondent-General Manager, Telecom, Muzaffarnagar produced the answer sheets of the petitioners in both the writ petitions as well as the private respondents No. 4, 5 and 6 in Writ Petition No. 54100 of 2002. In the presence of the learned Counsel for all the parties, they were examined by this Court on 18.5.2004 and 19.5.2004. After noticing that there were certain irregularities in assessment of the marks awarded to the petitioners as well as private respondents, this Court passed the following order on 26.5.2004 :--

'In continuation of the orders dated 19.5.2004 and 25.5.2004 passed by this Court, since on examination of the answer copies produced before me on 18.5.2004 it was found that there was some discrepancy in the evaluation of marks awarded to the petitioners in both the writ petitions and the private respondents, it was necessary to have a report from an independent body/persons with regard to the correctness of the evaluation of marks awarded by the Respondent-Corporation so as to enable this Court to come to a conclusion as to whether the examination was properly conducted or not. This was necessitated because it is neither proper nor possible for this Court to examine each answer copy and see whether the marks

have been properly awarded on the basis of key answers as have been prepared by the Respondent-Corporation for assigning marks. For this purpose this Court had requested the learned Counsel for the parties to give the name of an independent body/persons by consensus who could be assigned this job. Since the parties could not arrive at any common name, they left it to this Court to appoint any person/persons for this purpose.

Accordingly, with the consent of the learned Counsel for the parties, I request Sri R.K. Awasthi and Sri C.P. Gupta, learned Counsel of this Court, to carry out this job. They would be required to carefully examine the answer sheets of the petitioners as well as the private respondents and see whether the marks have been allotted to the candidates on the basis of key answers which were prepared by the Respondent-Corporation. They shall then submit a report with regard to the correctness of the evaluation of marks done by the Respondent-Corporation. Sri Amit Sthalkar and Sri Mahendra Bahadur Singh, learned Counsel for the Respondent-Corporation, have submitted that the answer sheets along with key answers on the basis of which marks have to be assigned, shall be handed over to Sri R.K. Awasthi and Sri C.P. Gupta by tomorrow. The same shall be examined by them within 3 days and they may submit their report in a sealed cover by 6.7.2004.'

6. In response thereto the Advocate Commissioners submitted their detailed report on 6.7.2004 alongwith the relevant annexures which shall form part of the record of this writ petition.

7. I have heard Sri P.C. Srivastava and Sri Satish Mandhyan, learned Counsel appearing for the petitioners in both the writ petitions as well as Sri Amit Sthalkar and Sri Mahendra Bahadur Singh, learned Counsel appearing for the Bharat Sanchar Nigam Limited and Sri Subodh Kumar, learned Counsel appearing for the private respondent No. 4 Prem Chand and have perused the record.

8. On considering the entire facts and circumstances of this case and on perusal of the original answer sheets as well as the Advocate Commissioner's report I am of the firm opinion that the evaluation of the marks was not done properly by the respondents nor docs it appear that the same has been done fairly.

9. The provision under Rule 14 of the Appendix 37 of the Rules relating to departmental examinations provides for retotalling and verification of marks. The relevant Rule is quoted below :--

'14. Retotalling and Verification of marks.--.....

(d) The retotalling and verification of marks should be carried out by an officer other than the one who had originally valued the answer scripts concerned. No remuneration will be payable for this work.'

10. Rule 15 specifically prohibits revaluation of answer-papers. The relevant Rule is quoted below :--

'15. Revaluation of answer books.--Revaluation of answer scripts is not permissible in any case or under any circumstances.'

11. From the perusal of the record it appears that under the garb of the retotalling and verification of marks there has been revaluation of answer-papers. A perusal of the Advocate Commissioner's report as well as on examination of certain answer-sheets by this Court, it is clear that in large number of cases, under the garb of retotalling and verification of marks under Rule 14, revaluation has been done as right answers have been assessed as wrong and wrong answers have been assessed as right. In the net result the private respondent Nos. 4, 5 and 6 in Writ Petition No. 54100 of .2002 have been found to have obtained qualifying marks although initially they were not qualified. On revaluation of the answer-papers which the respondent authorities have done under the garb of the reassessment and verification of marks, in the case of respondent No. 4 Prem Chand the marks initially obtained by him were 23 and on revaluation/re-assessment the same were brought up to 39-1/2, which was rounded off to 40, and thus he was found qualified for promotion. As per the Advocate Commissioner's report even on revaluation (nor retotalling and verification), he ought to have been awarded only 38-1/2 marks.

12. The conclusions recorded by the Advocate Commissioners in their report dated 6.7.2004 is quoted below :--

'Thus on over all assessment of all the 6 answer books as per direction of this Hon'ble Court the glaring discrepancies in evaluation of marks have been found. Contrary to the intents of the Rules, answers have been revaluated/reassessed in some cases. Although in any of the answer book no question was left unassessed and there was no totalling mistakes. In some cases revaluation has been done which has been prohibited under the Rules. By revaluation/reassessment the ultimate result has been effected.'

13. In a detailed report running into nine pages, in the chart given below, the marks initially obtained by three petitioners and the three respondents in both the writ petitions; as well as the marks allotted to them after the said retotalling and verification (under the garb of revaluation); and the marks which ought to have been allotted to them as per the Advocate Commissioners' Reported are given :--

Advocate Commissioner's report				Name	Initial	Marks
given	Marks	as	per marks	after	revaluation	

1. Dinesh Kumar (Petitioner in Writ No. 53947 of 2002)	32	32	44	2. Ram Kumar (Petitioner in Writ No. 54100 of 2002)	16	18
3. Nasim Ahmad (Petitioner in Writ No. 54100 of 2002)	16	23	24	4. Prem Chand (Respondent No. 4 in Writ No. 54100 of 2002)	23	39-1/2
5. Anil Sharma (Respondent No. 5 in Writ No. 54100 of 2002)	34	41	41	6. Virendra Pal Singh (Respondent No. 6 in Writ No. 54100 of 2002)	35	43
						41
						54100
						of 2002)

14. In their report, the Advocate Commissioners took the pain of comparing each answer of all the six answer sheets with the key answers. Petitioners of Writ Petition No. 54100 of 2002, even as per the report of Advocate Commissioners, would be entitled to get only 18 and 24 marks. Thus they would not qualify under any circumstance. The petitioner of Writ Petition No. 53947 of 2002 (Dinesh Kumar), although allotted 32 marks initially, was on revaluation given the same marks. However, as per the report of the Advocate Commissioner he ought to have been given 44 marks. Certain questions which were correctly answered by him as per the key answers supplied by the respondents, had been wrongly

assessed to be incorrect. Such position could not be denied by the learned Counsel for the respondents who were shown the answer books and key answers in my presence. Learned Counsel for the respondents could not justify the revaluation of the answer books as done by them as there were several errors found apparent on the face of the record when the same were examined by this Court, and also as per the report of the Advocate Commissioners.

15. Examinations had been conducted in the year 2000 and results had been declared immediately thereafter. As per the records, promotions have also been granted to the candidates who had qualified. From the record it is clear that 450 candidates had appeared in the examination out of which 222 have been declared selected. It is further clear from the original record (although not there is the pleadings) that 42 persons had applied for retotalling and verification under Rule 14 out of which in 38 cases there were no changes. There was change in only 4 cases, out of which 3 have been selected, who have been arrayed as respondent Nos. 4, 5 and 6 in Writ Petition No. 54100 of 2002.

16. A perusal of the prayer would make it clear that there is no relief claimed for quashing of the promotion of the private-respondents or cancelling the examinations. On revaluation and re-assessment, it has been found that the petitioners in Writ Petition No. 54100 of 2002 have still not obtained the qualifying marks of 40. As per Advocate Commissioner's report, the petitioner of Writ Petition No. 53947 of 2002 (Dinesh Kumar) has certainly obtained more than 40 marks on re-assessment as had been got conducted by this Court. However the respondents do not accept this position, but having perused the answering sheets as well as the key answers provided and on perusal of Advocate Commissioner's report I am of the definite view that injustice has been done in the case of Dinesh Kumar, who ought to have been awarded more than 40% marks, and thus would be entitled to the said promotion.

17. Even though this Court is of the opinion that the examinations had not been conducted by the respondents fairly and properly but considering the fact that no prayer for cancellation of the said examination or cancellation of the promotion of the private respondents has been made and also considering the larger interest,

keeping in view that since the promotions have already been granted in the year 2000 on the basis of the said examination, I am of the opinion that the promotions which have already been granted need not be disturbed. The petitioners of Writ Petition No. 54100 of 2002 have not been found to have obtained qualifying marks even on reassessment as has been got conducted by this Court and hence they would not be entitled to the prayer made by them. The Writ Petition No. 54100 of 2002 is, accordingly, dismissed.

18. The position in the other Writ Petition No. 53947 of 2002 of Dinesh Kumar would be different. On re-assessment/revaluation of marks, as has been got conducted by this Court, and on perusal of the original answer- sheets when compared with the key answers produced by the respondents, it has been found that the said petitioner ought to have been awarded 44% marks, which is more than the 40% qualifying marks. Taking note of the fact that gross irregularity in evaluation of marks have been there and the Respondent Nos. 4, 5 and 6 have been given the benefit of revaluation of answer books (which may not actually be permissible under Rules) and have been declared selected because of such revaluation, (conducted under the garb of retotalling and verification of marks), the petitioner Dinesh Kumar, having been found to have obtained more marks than the requisite qualifying marks, would, in my view, be entitled to the same relief of being declared selected, which benefit has been given even after the initial declaration of result to the Respondent Nos. 4, 5 and 6. The learned Counsel for the respondents only submits that as and when vacancy would be available, the petitioner Dinesh Kumar would also be promoted as Junior Telecom Officer.

19. Writ Petition No. 53947 of 2002 is thus allowed and the respondents are directed to promote the petitioner Dinesh Kumar along with all other candidates who were declared selected after the results of the examinations held in pursuance to the Notification dated 30.4.2000 had been declared. The said petitioner will be entitled to get all the consequential benefits.

20. In the result Writ Petition No. 54100 of 2002 stands dismissed and Writ Petition No. 53947 of 2002 stands allowed. No order as to cost.

