

Amit Kumar and ors. Vs. the Union of India Through the Chief Managing Dire

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Court : Delhi

Decided On : Aug-01-2013

Judge : V. Kameswar Rao

Appellant : Amit Kumar and ors.

Respondent : The Union of India Through the Chief Managing Dire

Judgement :

\$~ *IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: August 01, 2013 + W.P.(C) 4843/2013 AMIT KUMAR & ORS. Petitioners Represented by: Mr.Sunil Kumar Verma, Advocate versus THE UNION OF INDIA THROUGH THE CHIEF MANAGING DIRECTOR, BHARAT SANCHAR NIGAM LTD. (BSNL) & ORS. Respondents Represented by: None CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V.KAMESWAR RAO V.KAMESWAR RAO, J.

(Oral) 1. The Central Administrative Tribunal, Principal Bench, New Delhi has decided 7 Original Applications by way of a common order dated May 21, 2013 whereby certain directions were given to the respondents. These 7 Original Applications also include Original Application No.644/2013 filed by some of the petitioners herein.

2. It was the case of all the petitioners before the Tribunal that a Limited Departmental Competitive Examination for promotion from the grade of Junior

Telecom Officer (T) to the grade of Sub-Divisional Engineer (Telecom) under 33% quota was held by the respondent, Bharat W P (C) 4843/2013 1 of 5 Sanchar Nigam Limited (BSNL).

3. They also contended that the selection was to be effected through two papers vis. Paper I (Advanced Technical Paper), General (objective type) and paper II (Advanced Technical Paper [Special] Objective Type) having 100 marks each. The minim qualifying marks for OBC candidates was 50% in each paper and 45% for SC/ST candidates.

4. The examination was conducted on OMR (Optical Mark Reading) based evaluation. Each question had 4 multiple choice answers and the candidates had to select the most appropriate one. The scheme of examination provided negative marking and in the case of wrong answer 25% of that question was to be deducted.

5. 7471 candidates appeared in the examination held on March 04, 2012. On March 12, 2012 BSNL published a provisional answer key in their website inviting representation/feedback within 10 days. The All India Graduate Engineers and Telecom Officers Association vide its letter dated March 20, 2012 raised objections with respect to 28 questions in Set C, paper I. After taking into consideration all the objections a final answer key for paper I was prepared and the results were declared on June 12, 2012.

5. The petitioners herein were unsuccessful in the examination.

6. The petitioners filed an Original Application No.644/2013 before the Patna Bench and it was later transferred to the Principal Bench. The grievance of the petitioners was primarily, that there are discrepancies and ambiguities in the questions which vitiated the entire process of selection.

7. The respondents stand before the Tribunal was that the objections/representations received against the provisional answer key were W P (C) 4843/2013 2 of 5 referred to the concerned paper setter as well as expert panel. The paper setter has reviewed answers in set A, B, C and D and modified

the answer key to the question numbers 3, 6, 14, 23, 55, 56, 61, 70, 79 and 88 in set C. The expert panel submitted its report on May 28, 2012 and in para 3 thereof it was stated that during deliberations of the committee it came across some questions, of which all the options mentioned in the paper were wrong. For those questions it recommended to award full marks. They have also opined that answers mentioned in the provisional key for all questions except questions No.3,6,10,13,14,16,31,34,55,56,70 and 88 are all right. They undertook similar exercise in respect of other set also. Thereafter the respondent BSNL considered the observations and recommendation of paper setter and expert panel in detail and came out with its own answers.

8. The Tribunal while disposing of the Original Applications had come to the following conclusion:

19. In our considered view, still there are discrepancies and, therefore, still there is scope for improvement. According to the Expert Committee, for some questions, 2 options can be taken as correct, for some other questions all options are wrong and for few other questions, one option is alone correct. But according to paper setters for some questions (3) three options are correct and for some other questions (2) two options are correct. In such circumstance, we shall look forward to the principles laid down by Apex Court which say that merit shall not be allowed to be the casualty of wrong answer key and the correct answers shall not be sacrificed. Further, in such circumstances, as far as possible, the final authority to decide whether a answer is correct or wrong shall be left to the Expert(s). For some questions, however, if the decision of the Expert(s) does not solve all the problem, we are bound to take appropriate decisions. Therefore, there is W P (C) 4843/2013 3 of 5 nothing wrong in accepting the recommendation of the Expert Committee to award one full mark to all the answers where all options are wrong. Again, for a set of questions when the Expert Committee says option D is the only correct answer and for another set of questions when it says, option A alone is the correct answer, the Respondent-BSNL shall go with the said recommendations and not to substitute them with its own compromise formula of awarding full one mark to all who have opted for A, B and D or A and D respectively. Conversely, the recommendation of the Expert Committee that two options for another set of

questions also cannot be accepted as it would create further confusion, particularly when there is negative marking. Therefore, all such questions shall be totally ignored.

20. We, therefore, dispose of all these OAs with the direction to the Respondent-BSNL to re-evaluate all the answer sheets of all the candidates based on the aforesaid principles and parameters and prepare a fresh list of qualified candidates. Since the examination was held on 04.03.2012 and candidates are awaiting for their promotion for over an year, the Respondent-BSNL shall ensure that the fresh list of qualified candidates is published as early as possible, preferably within 2 months from the date of receipt of a copy of this order.

9. We have heard the counsel for the petitioners, and seen the conclusion arrived at by the Tribunal and are of the view that the Tribunal has considered all aspects of the case and in its ultimate conclusion has prescribed principles/methodology for revaluating the answer sheet. While doing so the Tribunal has relied on law as laid down by the Supreme Court. It is seen, the final answers were settled by the respondents, after calling objections W P (C) 4843/2013 4 of 5 from all concerned. The Association has filed a representation in that regard. The directions of the Tribunal are proper. No interference is called for by us in the impugned order and we dismiss the writ petition as being without merit.

10. No costs. (V.KAMESWAR RAO) JUDGE (PRADEEP NANDRAJOG) JUDGE
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