

(2013) 10 AP CK 0035

Andhra Pradesh High Court

Case No: Writ Petition No. 21345 of 2010

P. Balasubrahmanyam

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision:** Oct. 8, 2013

**Hon'ble Judges:** L. Narasimha Reddy, J; Challa Kodanda Ram, J

**Bench:** Division Bench

**Advocate:** P. Balasubrahmanyam and Party in Person, for the Appellant; Ponnamm Ashok Goud, Asst. Sol. Gen., for the Respondent

**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The petitioner was appointed as Postal Assistant, in the year 1991. Thereafter, he was promoted as Inspector of Post Offices, in the year 2000, on the basis of his performance in the written examination. He was also promoted to the post of Assistant Superintendent of Post Offices. Promotion to the post of Superintendent of Post Offices, which is in Grade-B, is caused by holding limited departmental competitive examination, for the Assistant Superintendents of Post Offices.

2. A notification, dated 16.11.2007, was issued by the second respondent herein, in relation to a proposed examination, furnishing the list of prescribed books that cover the syllabus for the examination. After some postponements, the examination was conducted on 01.04.2008. The examination comprises of four papers. The petitioner appeared in the examination along with other eligible candidates. The results were declared and in Papers-I to IV the petitioner was shown to have secured 56, 89, 70 and 48 marks respectively. The relevant Regulations stipulate that a candidate must secure a minimum of 50% of marks in each paper, and failure to do so would disable him from being considered.

3. Feeling that he has not been awarded the marks, which he deserves in Paper-IV, the petitioner submitted applications, including those under the Right to Information Act, 2005. The petitioner contends that for question 2(d) in Paper-IV, the examiner awarded 3 marks, but later on that figure "3" was corrected to "2", and ultimately, both the figures were struck off and the figure "1 1/2" was written underneath it. Taking the plea that the award of 1 1/2 marks was done without any basis, and that the same has resulted in his being disqualified, the petitioner approached, initially, the authorities of the department and thereafter, the Hyderabad Bench of Central Administrative Tribunal, by filing O.A. No. 1012 of 2009. He pleaded that had the initially awarded "3" marks remained, he would have secured 49 1/2 marks in Paper-IV, and if the fraction is rounded off to the next integer, he would have cleared the examination and thereby, become eligible for promotion. The respondents raised the plea that revaluation of answer scripts is not permissible and one has to go by the valuation made by the examiner. The Tribunal dismissed the O.A., through its order, dated 06.7.2010. Hence, this writ petition.

4. The writ petition is argued by the petitioner himself. Arguments on behalf of the respondents are advanced by Sri Ponnamm Ashok Goud, learned Assistant Solicitor General.

5. In the examination conducted by the respondents, for the purpose of promotion to the post of Superintendent of Post Offices, the petitioner appeared. But for the fact that he secured 48 marks in Paper-IV, he would have been eligible to be promoted, having regard to the aggregate he has secured. Naturally, there is bound to be perseverance and he took every step in this behalf. It is not necessary to deal with the minute aspects urged by the petitioner. We will confine our consideration to the valuation of Paper-IV.

6. After hearing the matter at some length, this Court passed a detailed order on 08.4.2013. The gist of it reads as under.

Having regard to the objections raised by the petitioner, as we are of the view that prima facie case is made out, and to remove the doubts that have arisen in the matter, we are of the view that it is a fit case to order revaluation of the answer scripts of Papers I and IV of the petitioner by a higher officer than that of the officer who has valued the said answer scripts earlier. During the course of arguments, it is submitted by the learned counsel for the petitioner that, earlier, Junior Assistant Grade Officer has valued the answer scripts of the petitioner and higher officer to that of Junior Assistant Grade Officer is Higher Administrative Grade Officer.

In the circumstances referred above, we direct respondents 2 and 3 to get the answer sheets of Papers I and IV of the petitioner revalued, by any other officer of Higher Administrative Category Officers and submit a report to this Court indicating the marks on such revaluation in a sealed cover, through the Assistant Solicitor General within a period of four weeks from the date of receipt of this order.

7. In compliance with the said direction, the respondents got the answer scripts of Paper-I and IV revalued. The result thereof, in relation to Paper-IV, was that for questions 4(b), 7, 2(d) and (f), the fresh examiner awarded 1/2, 1, 1/2 and 1/2 (in all 2 1/2) marks respectively, over and above what was awarded by the original examiner. However, for questions 4(c), 2(e) and 1, he awarded, 1, 1/2 and 2 (in all 3 1/2) marks respectively, less than what was awarded by the original examiner. The result is that aggregate in Paper-IV was reduced from 48 to 47. In Paper-I, there was substantial increase.

8. Normally, this Court would not insist on revaluation of the answer scripts, unless a strong case is made out. The performance of the petitioner, in other three papers, was almost excellent. He was missing the Paper-IV just by two (2) marks. The revaluation, as a whole, resulted in reduction of one (1) mark.

9. After taking note of the result of the revaluation, this Court passed an order directing the concerned examiner to indicate the basis. For question 2(d), he mentioned the fact that the petitioner failed to indicate the date of implementation of the scheme and as such, the marks could not be awarded to the optimum. However, a copy of the answer script, which, the petitioner filed, after obtaining the same by filing an application under the Right to Information Act, discloses that the date was, in fact, furnished at the threshold of the answer itself. We do not intend to undertake our own valuation of the answer scripts. We are also conscious of the fact that no two examiners would award, that too for the answers to all the questions, in the same manner. Whatever edge the petitioner got, in the revaluation for certain questions, was neutralized, in a more negative way, on account of reduction of marks to certain answers.

10. Even if one ignores the result of revaluation, there is an important aspect, in this case, which needs to be taken note of. For the answer of the petitioner to question 2(d), the examiner initially awarded 3 marks and that figure was later on modified to "2". However, the entire corrected figure was struck off, to ensure that it is not identified. Underneath that, the figure "1 1/2" was written. Surprisingly, this is only figure, where the examiner has put his initial. In the counter affidavit, the justification pleaded for this is that the figure 1 1/2 had to be written in a different place, for want of place in the margin. However, if one looks at the answer script, this plea becomes totally untenable. The examiner did not feel any discomfort, in writing the figure "3" initially. In fact, it is in the same margin and just underneath the figure "3", the examiner has written 1 1/2.

11. Whatever may have been the intention of the examiner, in doing so, the career of the petitioner cannot be subjected to such whims and fancies. If, according to the assessment, the answer deserves 3 marks, there is no reason why it must be reduced to 1 1/2, that too by smudging in a very unconventional way. The amount of study, which an employee at that stage undertakes, is not difficult to imagine. On the one hand, he has to discharge the day-to-day official functions, which are by

themselves onerous, and on the other hand, he has to undertake the studies, by cutting substantial time from his family life. If the performance is poor, nobody can have grievance or sympathy. The performance of the petitioner, in other subjects, is excellent, and he is missing chance with a small fraction. The Court cannot remain oblivious to situations of this nature. We are of the view that it is a fit case, where the petitioner can be extended the benefit of award of marks by the original examiner, ignoring the alteration made by him. If so done, the aggregate marks of the petitioner in Paper-IV would be 49 1/2, and once it is rounded off to the next higher integer, as is done in every examination, the aggregate would be 50. The respondent does not dispute that if the petitioner is found to have obtained minimum marks in Paper-IV, he would become eligible, to be considered for promotion.

12. Hence, this writ petition is allowed, and the respondent shall consider the case of the petitioner, for promotion to the post of Superintendent of Post Offices, by treating him as having secured minimum marks in Paper-IV. If all the vacancies, for which the examination was held in 2007, are filled, the petitioner shall be considered against a vacancy that arose thereafter. Such exercise shall not displace any person, who was already promoted to the post of Superintendent. The petitioner shall not be entitled to be paid any back-wages. He shall take the seniority after the last candidate, who has been appointed as Superintendent of Post Offices, on regular basis, as of now. There shall be no order as to costs. The miscellaneous petitions filed in this Writ Petition shall also stand closed.