

BHARAT SANCHAR NIGAM LIMITED  
DE SECTION  
Room No.222, Eastern Court,  
Janpath, New Delhi.

F.No.63-14/2011-DE

Dated 24<sup>th</sup> October, 2011

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- answer sheets-reg.**

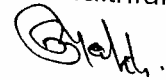
Sir,

I am directed to forward herewith a copy of the common judgement dated 14.09.2011 of Hon'ble CAT, OA No.920/2010 filed by Sh.T.Vijayan and OA No.1289/2010 filed by V.Thangamani before the Hon'ble CAT, Madras Bench regarding discrepancy in evaluation of answer sheets of JAO Part-II against 40% quota examination held on 4,5, & 6 January, 2010.

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,



(R.S.MALIK)

AGM(DE)

Ph:23710284.

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**MADRAS BENCH**

Wednesday, the Fourteenth day of September, Two  
Thousand Eleven

**P R E S E N T**

**THE HON'BLE MR. G. SHANTHAPPA, JUDICIAL MEMBER  
AND  
THE HON'BLE MR. R. SATAPATHY, ADMINISTRATIVE  
MEMBER**

**ORIGINAL APPLICATION NOS.920 AND 1289 OF 2010**

T.Vijayan,  
S/o late Thirunavukarasu,  
Senior Telecom Operating Assistant,  
O/o Sub Divisional Engineer(G),  
BSNL, Thiruthani.

.. Applicant in O.A.  
920/2010

Smt. V. Thangamani,  
Senior Telecom Operative Assistant,  
O/o Sub Divisional Engineer  
BSNL, Chennai Telephones,  
Thiruninravur Telephone Exchange,  
Thiruninravur.

.. Applicant in O.A.  
1289/2010

Vs.

1. Union of India  
rep by its Chairman and  
Managing Director,  
Bharat Sanchar Nigam Limited(BSNL),  
7<sup>th</sup> Floor Bharat Sanchar Bhavan,  
No.170, Janpath Road,  
New Delhi.

2. The Chief General Manager,  
Bharat Sanchar Nigam Limited(BSNL),  
Chennai Telephones,  
No.78, Purasaiwalkam High Road,  
Chennai.

3. The Deputy General Manager,  
Human Resourcers(A),  
Bharat Sanchar Nigam Limited(BSNL),  
Chennai Telephones,  
No.89, Millers Road, Chennai.

.. Respondents 1-3  
in both the OAs



4.The Sub Divisional Engineer(G),  
Bharat Sanchar Nigam Limited(BSNL),  
Thiruthani.

.. Respondent No.4  
in O.A.920/2010

5.The Sub Divisional Engineer,  
Bharat Sanchar Nigam Limited(BSNL),  
Chennai Telephones,  
Thiruninravur Telephone Exchange,  
Thiruninravur.

.. Respondent No.4  
in O.A.1289/2010

M/s Karthik, Mukundan and  
Neelakandan

.. Counsel for the  
applicants

Mr. A.S. Chakravarthy

.. Counsel for the  
respondents



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**ORDER**

(Pronounced by The Hon'ble Mr. R. Satapathy, Administrative Member)

As the relief sought for in both these applications is identical, these applications were heard together and are being disposed by this common order.

2. The applicants have come before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, claiming the following relief:

"to set aside the order No.ART/100-3/JAO-Part II/2009/19 dated 9.3.2010 issued by the third respondent Order No.ART/100-JAO/Part-II/CM/2009/27 dated 17.5.2010 issued by the third respondent and consequently direct the respondents to award appropriate marks to the applicants in Civil Works Accounts Rules and Procedure Paper to all the questions/answers in which the discrepancies and anomalies have arise and declare the applicants as qualified and eligible to the post of Junior Accounts Officer and further promote them as such with effect from 9.3.2010 with all consequential benefits."

3. The facts of the case as stated in the applications are that both the applicants are working as Senior Telcom Operating Assistant in the office of the 4<sup>th</sup> respondent and they belong to Scheduled Caste community. It is stated that for promotion to the post of Junior Accounts Officer under 40% quota from among the Group 'C' staff, an internal competitive examination is conducted in two occasions viz. Part I and Part II. It is further stated that those candidates who have passed in Part I are alone are



eligible to participate in the Paper II examination which consists of five papers which are as follows:

<u>Subject</u>	<u>Paper</u>
1. Telecom Account -I Theory(without books)	I
2. Telecom Accounts-I Practical(with books)	II
3. Telecom Accounts-I Theory(without books)	III
4. Telecom Accounts-II Theory(with books)	IV
5. CivilWorks Accounts Rules & Procedure (with books)	V

The minimum marks for passing the Part II are 40% in each subject and 45 in aggregate. The maximum total marks to be secured by a candidate for qualifying is 550 marks. It is also mandatory on the part of the candidate to qualify himself to secure minimum 40% in Practical Papers separately. However, the minimum qualifying marks for SC/ST candidates is 33 marks in each subject and 38% in aggregate. As the applicants claim that they had performed well in the examinations and hence they should have been selected. However, their names did not figure in the proceedings dated 9.3.2010 issued by the third respondent wherein the list of qualified candidates was published. In the annexure to the said proceedings, only the names of 48 candidates have been included as against 112 vacancies in the post of JAO in the Chennai Telephone District. The individual marks of the applicants were not mentioned in the said proceedings. On the request made by the applicants, the marks secured by them in each paper have been revealed by the proceedings dated 26.3.2010 and 24.5.2010 respectively.



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On perusal of the said proceedings, it is seen that the applicants have been declared to have failed only on account of the marks awarded in Paper V i.e. in the subject of Civil Work Accounts Rules and Procedures. As such, by invoking the RTI Act, they obtained Answer Sheets in the said subject. On perusal of the answer sheets, it is stated by the applicants that while the candidates including the applicants had properly mentioned the Para Number as per In the 2007 Edition, merely because the key answers provided to the Examiners were extracted from the Answers as provided in the 2003 Edition, the applicants have been awarded less marks.

4. It is alleged by them that on account of improper framing of Key answer and in few instance improper questions, and in view of non -awarding of marks or awarding less marks in violation of the Examiners Notes, the same has resulted in awarding the least marks to the applicants and to have declared them as failed in Paper V of the JAO Competitive Examination..The applicants also contended that review is permissible for SC/ST candidates and such exercise has not been done by the respondents. The further contention of the applicants is that if the marks have been properly allotted to them on the basis of their answers in respect of question Nos.2 and 3 and also in respect of theory questions, In addition to the grace



marks available to SC candidates they would have easily passed the examination. The failure of the respondents in awarding appropriate marks to the applicants failed to qualify them by a mere one mark which is totally unjust and arbitrary.

5. An identical but separate reply has been filed in these applications. It is the contention of the respondents that if a candidate takes the exam knowing the methodology and is not selected, he/she cannot later challenge the methodology adopted. As such, the applicants are barred to raise any objection against it in view of the law of estoppels by their own act or conduct. It is stated by them that answer key provided by the paper setter is taken as guidance by the evaluator and he/she uses his/her own wisdom for evaluation of answer sheets. It is pointed out by the respondents that the papers were evaluated by fairly high level officers of the Department who were also expert on the subjects. The examiner is the final authority in so far as evaluation of answer sheet is concerned and his/her wisdom cannot be challenged. The further contention of the respondents is that in terms of the Rule 15 of Part I of Appendix 37(Rules relating to Departmental Examination) of P& T Manual Vol.V, "revaluation of answers scripts is not permissible in any case or under any circumstances." It is also their case that even after review, the applicants have not scored the



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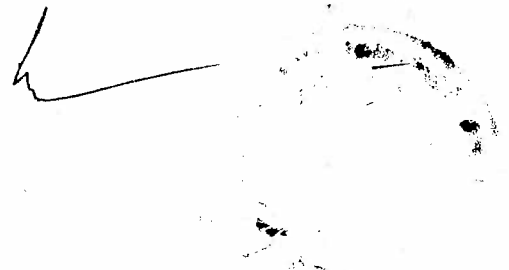


minimum required marks. Therefore, they prayed for dismissal of the applications.

6. We have heard the learned counsel on both sides and perused the pleadings and the documents available on records as well as the citations produced by the respective parties.

7. Learned counsel for the applicants states that the applicants herein have been granted less marks in Paper V compared to simllary placed candidates. In the rejoinder by the applicant in O.A.920 of 2010, he has quoted the name of one K. Muthukrishnan who has been awarded 15 marks for question No.6 whereas the applicant who has been given the correct answer has been awarded only 9 marks. Learned counsel for the applicants placed reliance on the order passed by the Ernakulam Bench of this Tribunal in O.A.348 and 603 of 2010 dated 28.7.2011. He has also drawn our attention to the Department's recent instructions with regard to Revaluation of Answer Sheets issued by the MInistry of Communication & I. Technology, Department of Posts (DE Section) dated 2.8.2010 (Annexure A-1 in the rejoinder by the applicant in O.A.920 of 2010)

8. Having considered the arguments on both sides, we also drawn the attention of the learned counsel for the applicant that the issue has already been discussed by this Tribunal after placing reliance on the judgement of the





Hon'ble Supreme Court in the case of **H.P. Public Service Commission Vs. Mukesh Thakur & Anr. In Civil Appeal No.907 of 2006 decided on 25.5.2010.** The relevant portion of the Apex Court judgment reproduced hereunder:

"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 Bhpesh Kumarsheth 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 reiterated by this Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors AIR 2004SC 4115 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 only when 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., 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



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Rules/Regulations, the Court should not generally direct revaluation."

Thus, it may be seen that the Hon'ble Supreme Court after discussing many of its earlier decisions has given a clear finding that in the absence of any specific provision in the rules governing conduct of the exam no relief can be granted by way of revaluation. Admittedly, in the present case, there is no statutory provision governing the conduct of the exam to revalue the answer sheets.

9. We would like to mention here that in this exam which was held during the year 2010 throughout India, question papers were same in all Centres. There is no allegation of any mala fide or irregularity in the conduct of the examination. It is not the case of the applicants that they have been singled out for less marks compared to other candidates. Further, it is seen that 1275 candidates have been declared pass in these examination against 2638 vacancies and they have been given promotion and working in the promoted posts. Hence, at this stage if any direction is given for revaluation of the answer sheets of the candidates, it will open a Pandora box and all the unsuccessful candidates throughout India will also seek similar relief. Therefore, in the absence of mala fide, irregularity or violation of any statutory provisions, we do not find any merits in the arguments of the learned counsel for the applicants.



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10. Whether a particular question has been answered correctly and whether such answer deserves a particular quantum of mark or not has to be decided by the Examiner who has the domain expertise of the subject matter. The Examiner alone can decide the relative merit of the answer sheet and award marks. It is not the case of the applicants that they have not been awarded marks, but what they want is for question No.6 in Paper V, they should be awarded higher marks than nine which has been awarded to them. Moreover, this issue is also not covered within the instructions contained in the letter dated 2.8.2010 on which reliance has been placed by the learned counsel for the applicants. For the purpose of clarity, we would like to reproduce para 3 of the said letter as hereunder:

"It may be seen that representations requesting for revaluation of answer papers are being received in this office specifically pointing out the following grievance:

- i. Particular answer(s) were not evaluated
- ii. Excess attempted answer(s) were not evaluated
- iii. For the same answer(s), the examiner awarded marks to one candidate and to another candidate no marks were assigned or the answer struck off as wrong.
- iv. All the answers were evaluated but justified marks were not awarded by the examiner.

11. Learned counsel for the respondents has very clearly highlighted that none of the contingencies enumerated above applies to the facts of this case. In the instant case before us, all the questions answered by the



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applicants have been evaluated and marks awarded. In that view of the matter, the argument of the learned counsel for the applicant that clarification in letter dated 2.8.2010 is applicable to the applicants fails. So far as the reliance placed on the orders of the Ernakulam Bench is concerned, we would like to mention that this Tribunal has earlier discussed all the issues in the O.As 634 to 651 of 2010 and 76 of 2011 decided on 4.5.2011. Since one of the Member of this Bench(Self) was also a party to that Bench, we would like to follow our own order. The above order was passed based on the decision rendered by the Hon'ble Supreme Court cited supra and also the orders of the Principal Bench of this Tribunal in O.A.3582 of 2010 and 1071 of 2011, which have been marked as Annexures R.2 and R.3 in the O.As decided by us. Therefore, we are not inclined to take a different view in these applications.

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 expert examiner to decide the mark. In the absence of any mala fide or violation of any statutory provision in conduct of the 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.



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13. Placing reliance on the Hon'ble Supreme Court in the **Mukesh Thakur case** cited supra and also for all the reasons discussed above, we dismiss the Original Applications. In the circumstances, no order as to costs.

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



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*Rajibablu* <sup>Mr</sup> 20/9/11  
DEPUTY REGISTRAR