

CASE NO.:
Appeal (civil) 2896 of 2008

PETITIONER:
N. Lokananandham

RESPONDENT:
Chairman, Tele-Com. Commission & Ors.

DATE OF JUDGMENT: 22/04/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2896 OF 2008
(Arising out of SLP (C) No.16640 of 2004)

S.B. Sinha, J.

1. Leave granted.

2. Appellant was at all material times a Junior Accounts Officer. He had passed Junior Accounts Officer Part-I examination held in 1998. For further promotion, he was required to appear in Junior Accounts Officer Part-II examination. It was held in December, 2000. The syllabus for the said examination consisted of nine papers. Paper IX thereof was a theory paper with the following syllabus:

- " 1. P. & T FHB Volume I (General Principles and cash)
2. P. & T FHB Volume III (Parts I, II and III)
3. P. & T FHB Volume IV
4. P. & T Manual Vol-X
5. P. & T Manual Vol-XIV
6. Telecom Accounts Manual (Chapters 1 to 7 and 11)
7. Books of Accounts Officer Forms, Vol. I
8. Book of P & T Accounts Forms"

3. Allegedly, questions in respect of 65 out of 100 marks were framed out of the prescribed syllabus. It is stated that question No. 1(b), 2(a), 2(b), 3 and 5 of paper IX were covered in F.B.H. Vol-1 under different chapters which were not prescribed in the syllabus.

Our attention in this behalf has been drawn to the following chart :

"Question
No.
Chapter No./Name
Rules
Marks
Allotted
1(b)
XI-Contingent charges
344
5
2(a)
XIII-Loans and Advances
to Govt servants
GID

under
Rule 410
10
2(b)
XIII-Loans and Advances
to Govt. servants
424
10
3.
XIII-Loans and Advances
to Govt servants
(GID-1 payment of
Advance to contractors)
(GID-2 Advance payment
to private Firms for supply
of stores/Services &
Maintenance of Machines)
GID
under
Rule 390
20
5.
VII-Revenue and
Miscellaneous Receipts
Under
D.G.
Orders
20
Total Marks out of Syllabus
65"

4. Appellant did not pass the said examination. He made a representation for declaration of his results by a letter dated 25.9.2002.

It is stated that the Government issued directions pursuant where to they became entitled to obtain six grace marks in any one of the subjects for being declared qualified in JAO-Part II examination. Despite grant of grace marks, he did not qualify.

5. Appellant filed an original application before the Central Administrative Tribunal questioning the right of the respondents to prescribe questions in paper IX of JAP \026 Part II examination 2000 out of the syllabus. A direction was sought for against the respondents to award minimum qualifying marks in that paper.

By reason of a judgment and order dated 23.4.2004, the Tribunal allowed the said application directing :

"Now since sufficient time has passed after the examination held in December 2000 and we are told by the Id. Counsel for the respondents that another examination has already taken place for JAO Part-II, in which all the applicants have appeared for all the papers including Paper-IX, it would not be advisable to hold any re-examination in Paper-IX at this stage. However, in the interest of justice, it would be proper to award minimum qualifying marks to each of the seven applicants, namely, 33 marks in Paper-IX. Since as per rules, 33% marks are to be obtained by the applicants in each of the papers and 35 per cent marks in the aggregate, the result would be her only 3 candidates, namely, N. Lokanadham, K.

Subrahmanyeswara Rao and I. Lakshmi would pass all the papers, after being given minimum pass marks in paper-IX and they will clear the JAO Part-II Examination, but the remaining four applicants of the two OAs who are short of the

minimum qualifying marks in other papers besides Paper-IX, would as a result not get the benefit of passing the JAO Part-II Examination, after being given the minimum pass marks in Paper-IX and they will have to appear again for the JAO Part-II Examination in future to clear all the papers. In the result, both the OAs stand disposed of with the direction to the respondents to award all the seven applicants the minimum qualifying marks in Paper-IX i.e. 33 per cent marks within two weeks from the date of receipt of a copy of this order and to declare their results accordingly."

6. Respondents sought extension of the said time which by an order dated 8.7.2004 was allowed. Respondent filed a writ petition before the High Court of Judicature of Andhra Pradesh at Hyderabad questioning the said order dated 23.4.2006. By reason of the impugned order dated 16.6.2006, the said writ petition has been allowed.

7. Mr. M.N. Rao, learned senior counsel appearing on behalf of the appellant, drew our attention to the syllabus contending that the first paper of Paper-IX being P & T FHB Volume I comprises of General Principles and Cash and, according to the learned counsel, General Principles are dealt with in Chapter 2 and the syllabus relating to cash is dealt with in Chapter 5 and in that view of the matter, no question out of the aforementioned syllabus should have been framed.

8. Ms. Shalini Kumar, learned counsel appearing on behalf of the respondents, on the other hand, would submit that the words 'General Principles and Cash' must be understood in its etymological sense and not in the context of their contents as contained in Chapter 2 and Chapter 5 thereof. It was pointed out that wherever the State intended to prescribe a particular Chapter, the same had categorically been mentioned in the syllabus.

9. Our attention in this behalf has been drawn to Item No.6 of the syllabus. The syllabus contains reference to the books which includes Financial Handbook. It may be true that the words 'General Principles and Cash' have been mentioned but it might not be intended to be kept confined to Chapter 2 and Chapter 5 of the said manual, as no other question was to be framed from the said volume.

10. The core question, however, would be as to whether the Tribunal had the jurisdiction to issue the impugned directions. The Tribunal, in terms of the provisions of the Administrative Tribunals Act, 1985 exercises a limited jurisdiction. Indisputably, a candidate, in order to qualify in the JAO Part II examination is required not only to secure 33 per cent marks in each paper but also to secure 35 per cent marks in aggregate. Rules of examination have been prescribed in terms whereof only a candidate who secures 60 per cent of the marks in any of the papers would be exempted from appearing in that particular paper in the subsequent examinations.

The marks obtained by the appellant are as under :

	"P-VII	P-VIII	P-IX	P-X	P-XI
1. N. Lokandaham	Out of 100	100	100	100	100
	35 56	20 35	98"		

11. Respondents contend that the duties of the Accounts Officer have been laid down in Rule 17 of Part-I of Financial Handbook Volume III which reads as under :

"17\005 The functions of Accounts Officers are threefold :

(a) For the correct compliance of the Accounts of the Division in accordance with the prescribed rules.

(b) For applying preliminary checks to initial accounts, vouchers etc., and pre check of claims.

(c) To render general assistance and advice to

the Divisional Engineer in all matters relating to accounts and budget estimates or to the operation of financial rules."

12. Reliance has been placed by Mr. Rao on Kanpur University, Through Vice-Chancellor & Ors. v. Samir Gupta & Ors. [(1983) 3 SCC 309], wherein multiple choice objective type test was conducted. Key-answers had been supplied by the paper-setter. It is in that connection this Court opined : "We agree that the key answer should be assumed to be correct unless it is proved to be wrong and that it should not be held to be wrong by an inferential process of reasoning or by a process of rationalization. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well-versed in the particular subject would regard as correct. The contention of the University is falsified in this case by a large number of acknowledged text-books which are commonly read by students in U.P. Those text-books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

It was held :

"If this were a case of doubt, we would have unquestionably preferred the key answer. But if the matter is beyond the realm of doubt, it would be unfair to penalize the students for not giving an answer which accords with the key answer, that is to say, with an answer which is demonstrated to be wrong."

13. This decision itself demonstrates to show the limited jurisdiction of the Superior Court. It does not advance the case of the appellant.

14. P.K. Velson & Ors. v. Union of India & Ors. [(2005) 11 SCC 192] was rendered in the peculiar facts and circumstances of the case. It was a case where several objective type questions were asked in the screening test which were confusing and were not according to the model question paper distributed earlier to them.

For the self same reasons, the said decision also does not render any assistance to us.

Manish Ujwal & Ors. v. Maharishi Dayanand Saraswati University & Ors. [(2005) 13 SCC 744] has been relied upon by Mr. Rao to contend that the Central Administrative Tribunal has the requisite jurisdiction to issue a direction for consideration of the representation of the aggrieved persons.

That case was one of those where again the key answers were provided.

15. The Court arrived at a finding that the key answers were palpably and demonstrably erroneous. It was in that context stated :

"For the present, we say no more because there is nothing on record as to how this error crept up in giving the erroneous key answers and who was negligent. At the same time, however, it is necessary to note that the University and those who prepare the key answers have to be very careful and abundant caution is necessary in these matters for more than one reason. We mention few of those; first and paramount reason being the welfare of the student as a wrong key answer can result in the merit being made a casualty. One can well understand the predicament of a young student at the threshold of his or her career if

despite giving correct answer, the student suffers as a result of wrong and demonstrably erroneous key answers; the second reason is that the courts are slow in interfering in educational matters which, in turn, casts a higher responsibility on the University while preparing the key answers; and thirdly, in cases of doubt, the benefit goes in favour of the University and not in favour of the students. If this attitude of casual approach in providing key answers is adopted by the persons concerned, directions may have to be issued for taking appropriate action, including disciplinary action, against those responsible for wrong and demonstrably erroneous key answers, but we refrain from issuing such directions in the present case."

16. We are herein dealing with the cases of experienced employees. They knew the significance of the departmental examination. They were aware what was expected of them. They knew the purport and object of holding departmental tests. It is furthermore not a case where key answers had been provided which were found to be palpably wrong.

17. For performing their functions in a more responsible position, they were required to be thorough with the rules pertaining to all receipts and expenditure of the Department and it is in that sense, the First Volume of Financial Handbook deals with such transactions in general. Indisputably, the cadre of Junior Accounts Officer is the feeder post for promotion to the cadre of Assistant Accounts Officer, Accounts Officer and Senior Accounts Officers. Officers belonging to the said cadre indisputably must have sufficient knowledge as regards the procedure pertaining to the Account Code, Treasury Rules, Financial Rules etc. Furthermore, assuming there was some ambiguity in the prescribed slabs, it would have been for an expert body to clear the same and in the event it is found that any question has been put out of syllabus, only those who could not answer the same might have been entitled to any relief. No relief in a case of this nature could have been granted on assumptions. It was not for the Tribunal to pass an order only on the supposition that the appellant did not prepare themselves well owing to some misunderstanding in regard to the extent of syllabus.

18. We may furthermore notice that the appellant herein without any demur whatsoever appeared in the subsequent examination. He even did not qualify therein. The principle of estoppel would, therefore, apply in this case.

Tribunal had, thus, exceeded to its jurisdiction in passing its order dated 23.4.2004.

19. There is, therefore, no merit in the appeal. It is dismissed accordingly with no orders as to costs.