

(2018) 05 PAT CK 0105

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7494 Of 2017

Manish Kumar Paswan

APPELLANT

Vs

Union Of India Through The Directorate And Ors

RESPONDENT

Date of Decision : 18-05-2018

Acts Referred:

Citation : (2018) 3 PLJR 326

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Pravina Kumari, Anjani Kumar Sharan, S.D Sanjay, Rajesh Kr. Verma

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for setting aside the order dated 04.04.2016 issued by the Deputy Director (nomination) of the Respondent

No.3 whereby and where under the candidature of the petitioner has been cancelled and he has been debarred from appearing in any examination

held by the Staff Selection Commission for three years. It has been further prayed to direct the respondents to accept his joining and quash the letter

dated 11.04.2017 whereby and where under the offer of appointment of the petitioner has been cancelled.

2. The short facts of the case are that the Staff Selection Commission published an advertisement for recruitment to the post of constable (GD) in

Central Armed Police Force (CAPF) and Rifleman (GD) in Assam Rifles in the year 2013 where under there were three tier examination consisting

of physical standard test/ physical efficiency test and written examination followed by Medical examination. The petitioner had applied for the said

examination and on the basis of his performance in the examination, he was

declared qualified to the post of constable (GD) on provisional basis.

Thereafter, the petitioner had cleared the physical test and he was issued an Admit Card for written test, which was also passed/ qualified by the

petitioner herein, hence he was called for medical test wherein also he was found fit and, accordingly, provisional selection was made and the

petitioner was offered appointment on the post of constable (GD) in C.R.P.F. vide letter dated 27.02.2017 and he was directed to join duties on

21.3.2017. It is the case of the petitioner that when he reported for his joining on 21.3.2017 before the respondent no.4, instead of accepting his joining,

the respondent no.4 handed over an order dated 4.4.2016 to the petitioner herein wherein it was mentioned that upon an enquiry it has been found that

the signature and left thumb impression (LTI) of the petitioner herein differs at different stages, hence his candidature has been cancelled and he has

been debarred from participating in Staff Selection Examination for three years.

3. The learned counsel for the petitioner has submitted that the impugned order dated 04.04.2016 was neither sent to the petitioner nor any enquiry

report has been made available to the petitioner herein. It has been further submitted that the entire proceeding has taken place at the back of the

petitioner herein and without giving any show cause notice and complying with the principles of natural justice, the candidature of the petitioner has

been cancelled.

4. Per contra, the learned counsel for the respondents by referring to the counter-affidavit filed by the respondent nos. 2 and 3 has submitted that in

paragraph-2 of the â??important instruction to Candidatesâ? of the examination it has been clearly stated that in view of the anticipated large number

of applicants, details scrutiny will be made subsequently and the candidature of the candidates will be accepted only provisionally and in case the

discrepancy is found upon scrutiny, the candidature shall be cancelled. Reference has also been made in paragraph-10 of the write up of the final

result declared on 30.05.2014 that the list of candidates is subject to their fulfilling all the eligibility conditions prescribed in the notice of the said

examination and also subject to amongst other things thorough verification of their identity with reference to their photographs, signatures, handwriting,

etc. on the application forms, admission certificate etc.. In this regard it is submitted that upon scrutiny difference in signature, handwriting and thumb

impression was noticed in case of some of the candidates including the petitioner and as such the dossier of the petitioner was forwarded to the office

of CISF vide letter dated 20.10.2014 on provisional basis and they were advised to issue offer of appointment only after thorough verification of their

identity etc. The CISF had then directed the candidates to appear for verification, on the basis whereof the petitioner had also appeared and submitted

his specimen hand writing, signature and thumb impressions before the concerned authority of CISF on 26.12.2014, where after his case was

forwarded to the Central Forensic Science Laboratory for their opinion along with original OMR answer sheet of written examination, application

form, statement filed by the petitioner at the time of PET/ PST and Medical Examination. The CFSL had then submitted its report on 01.02.2016

to CISF in connection with the petitioner herein and it was found that the petitioner had engaged in impersonation in written part of the examination

and, in fact, someone else had appeared on behalf of the petitioner in the written part of the examination and the petitioner had tried to secure

government job by fraudulent means. In fact, the signature/ thumb impression/ specimen handwriting of the petitioner herein was found to be different

at different stages. In such view of the matter, the petitioner was informed by a letter dated 4.4.2016 about mismatch and the discrepancy, which had

led to confusion that somebody had impersonated the petitioner herein and appeared in the written examination. The respondents have put on record

the entire materials to prove the fact that the petitioner had engaged in impersonation and in fact somebody else had appeared instead of the petitioner

herein in the written examination.

5. The learned counsel for the respondents has submitted that the aforesaid issue is no longer res Integra inasmuch as the Hon'ble Allahabad High

Court by a judgment dated 20.7.2016 passed in WRIT-A No.-32867 of 2016, in an identical case, has refused to interfere in the matter and has,

accordingly, dismissed the writ petition.

6. I have heard the learned counsel for the parties and considered the materials on record. At the outset it is to be noted that the petitioner has not

contradicted any of the findings either the one contained in the report of CFSL or that of the respondent authorities much less contradicting the

documents/ mismatch showing that the petitioner had engaged in impersonation

and, in fact, somebody else other than the petitioner herein had appeared in the written examination. A bare perusal of the report of the CFSL would show that there was no fundamental similarity in question writing and signature when compared with the standard writing and signature and that of the petitioner herein, thus, it is apparent that actual writing and signature of the petitioner has not matched the writing and signature available on the OMR sheet of written part of the examination as well as with the writing and signature available on admission certificate kept available in the examination hall at the time of examination on 12.5.2013, hence it has been concluded that somebody else had appeared on behalf of the petitioner in the written part of the examination and the present case is a clear case of impersonation.

7. It is a trite law that in cases where impugned order has been passed on the basis of information given by the expert agency, it is not for the court to sit in appeal over the information of the expert agency and controvert the finding recorded by the expert agency. In any view of the matter, the petitioner has also failed to contradict the finding arrived at by the CSFL. It is equally a well settled law that in a case of mal-practice in the examination, no notice or opportunity is required to be given to a candidate. As far as the contention of the respondents that the principles of natural justice has not been complied with, it has been held times without number by various courts including the Honâ??ble Apex Court that fraud vitiates all solemn acts, hence the requirement of complying the principles of natural justice/ grant of an opportunity of hearing is obviated in the event of fraud. Reference in this regard be had to a judgment reported in (2009) 13 SCC 600 [State of Chhattisgarh Vs. Dhirjo Kumar Sengar].

8. For the reasons mentioned herein above, as also the fact that the report of the CFSL has not been controverted by the petitioner herein and the present case is admittedly a case of the petitioner herein trying to secure government job by playing fraud, there is no requirement of complying with the principles of natural justice, hence the principle of audi alteram partem shall stand obviated and excluded in the present case. Another aspect of the matter is that since the evidence in the present case is purportedly plain and transparent, which clearly shows that some other person, other than the petitioner, had appeared in the written examination and further the said

evidence has not been controverted by the petitioner herein, there is no need for giving an opportunity of hearing much less giving any show cause notice to the petitioner herein. In such view of the matter, this Court finds no illegality either in the impugned order dated 4.4.2016 passed by the Deputy Director (nomination) of the Respondent No.3 or in the order dated 11.4.2017 passed by the respondent no.4, hence the present writ petition is dismissed.