
(2008) 05 GAU CK 0061
In the Gauhati High Court

Monotosh Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 GLT 571

Hon'ble Judges : Jasti Chelameswar, C.J;Biplab Kumar Sharma, J

Bench : Division Bench

Judgement

B.K. Sharma, J.—The challenge made in this writ petition is the judgment and order dated 3.7.2007 passed by the Central Administrative Tribunal, Gauhati Bench in Original Application (O.A.) No. 122/2006 rejecting the claim of the petitioner for appointment as Trackman (Group- "D").

2. In response to the Employment Notice No. 1/2003 inviting applications, amongst others, for the post of Trackman under Category No. 1, the writ petitioner responded to the same by offering his candidature in the prescribed application form. The particular declaration under Clause (6) of the application form was to be written by the candidate in his/her own running hand in English. The declaration is quoted below:

6. Declaration : I hereby declare that the facts and evidences given by me in the above application are true, complete and correct to the best of my knowledge and belief. In the event of any misstatement/discrepancy in the particulars being detected at any stage my candidature/service would be cancelled/terminated without any notice.

3. According to the petitioner, the application form was filled in his own handwriting including the declaration. The application was submitted on 23.7.2003. Upon acceptance of candidature offered by the petitioner, he was called for written test held on 12.12.2004. He having cleared the written test, was invited for physical efficiency test, in which he appeared on 23.6.2005. He

could also clear the test successfully.

4. After having qualified in the written test as well as physical test, the petitioner was asked to attend the office of the Railway Recruitment Board on 24.6.2005 along with all his original certificates, testimonials etc. That was a stage prior to issuance of the order of appointment. The petitioner duly appeared on 24.6.2005 as was directed. Upon his appearance, apart from verification of certificates and testimonials, he was also asked to write a particular paragraph in his own handwriting which he accordingly did.

5. The final result of the selection was published in the Employment News dated 6/12.8.2005, which did not carry the Roll No. of the petitioner. Being aggrieved, he made representation but to no avail. Thereafter, he approached the Tribunal by filing O.A. No. 235/2005, which was disposed of by order dated 12.9.2005 directing the respondents to dispose of the representation of the petitioner by a speaking order. His representation having not been disposed of and he having been intimated by letter dated 3.10.2005 that his case was receiving due consideration and investigation and that, he would be intimated after the decision was taken finally by the competent authority, the petitioner once again approached the Tribunal by filing O.A. No. 9/2006, which was disposed of by order dated 24.1.2006 directing the respondents to dispose of the representation within 3(three) months from the date of receipt of copy of the order.

6. After the disposal of the aforesaid OA by the Tribunal, the Chairman, R.R.B. passed order dated 10.4.2006 cancelling the candidature of the petitioner on the grounds assigned in the order itself. For a ready reference, the order is quoted below:

RAILWAY RECRUITMENT BOARD: GUWAHATI

The Hon"ble CAT Guwahati Order dated 24.01.2005 in the O.A. No. 09/2006 has been carefully gone through by the undersigned and after due consideration the undersigned passes the following order:

1. While verifying the original documents of Sri Monotosh Das, S/O Late Kirti Ch. Das, R/O Vill.- Barnipar, P.O.- Salchapra, P.S.- Silchar, District - Cachar, Assam, there had been some doubt about the handwritings of the Original Application form of the petitioner in response to the Centralized Employment Notice of 1/2003 with reference to the handwritings of the particulars filled up by Sri Monotosh Das in the office of RRB/Guwahati on 24.06.2005 before verification of documents.

2. As such for further verification of hand writings of Sri Monotosh Das also taken on the very date as at token of sample with his clear signature and thumb impression.

3. For conformation of the dis-similarity of the handwritings of Sri Monotosh Das at different places in different times the case was referred to The Director of Forensic Laboratory, Government of Assam, Kahilipara, Guwahati-19.

4. In the report received from the Director of Forensic Laboratory vide his letter No. FSL. 1208/05-06/239 dated 24.03.2006 conformed that (a) handwritings of the person, who reported for verification of documents on 24.06.2005 and the handwritings of the person who actually appeared in the Written Examination held on 12.12.04 as same.

(b) handwritings of the person, who reported for verification of documents on 24.6.2005 and the handwritings of the original application are not same.

5. It has been specifically pointed out in the Centralized Employment Notice No. 1/2003 directing all the candidates who desired to apply in response to the Employment Notice 1/2003 that He/She should fill up his/her application format in his/her own handwritings. But in this particular case the person who appeared in the written examination and appeared on 24.6.2005 for verification of original Documents is not the same person. As per guidelines to the candidates in the Centralized Employment Notice, this is the false/misstatement declared by the candidate himself in the original application form which tantamount cancellation of his candidature.

6. In view of the facts narrated above the candidature of the Original applicant (Sri Monotosh Das S/O. Late Kirti Ch. Das) is treated as cancelled.

Please communicate the order to the applicant.

Sd/- Chairman, RRB/Guwahati (Emphasis supplied)

7. As per the aforesaid order, the matter was referred to the Forensic Science Laboratory and as per the report submitted by the Laboratory, the handwriting of the person, who reported for verification of the documents on 24.6.2005 and the handwriting of the person, who actually appeared in the written examination held on 12.12.2004 is same. However, the handwriting in the original application i.e. the application form, is not the same with that of the handwriting collected on 24.6.2005, the date on which the documents were verified and the handwriting in the answer script.

8. Being aggrieved by the aforesaid order dated 10.4.2006, the petitioner once again approached the Tribunal by filing O.A. No. 122/2006 praying for setting aside and quashing of the order and for a direction to the respondents to appoint him to the post of Trackman (Group-"D") for which he was selected. The O.A. having been dismissed by judgment and order dated 3.7.2007, the petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India by filing the instant writ petition.

9. We have heard Mr. B.C. Das, learned Sr. counsel assisted by Mr. I.H. Laskar, learned Counsel for the petitioner as well as Mr. S. Sengupta, learned Counsel representing the respondents. We have also perused the materials on record including the records pertaining to selection concerning the petitioner. We have given our anxious consideration to the same.

10. There is no dispute that the appointment of the petitioner was withheld and eventually, his candidature was cancelled only on the ground that the handwriting appearing in the application form differs from the handwriting appearing in the written test and the one obtained on the date of verification of certificates and testimonials. Because of such variation, the matter was referred to the Forensic Science Laboratory, which opined vide its report dated 23.3.2006 as follows:

OPINION

The disputed writings and signatures received vide No. RRB/GEQD/Gr.D/EN.1/2003(loose) dtd. 21.09.05 have been carefully and thoroughly examined and compared with the supplied standard writings and signatures from their original documents in all aspects of handwriting identification and detection of forgery with scientific aids in the laboratory.

2. The person who wrote the blue enclosed writings and signatures stamped and marked S.1 to S.3 also wrote, the red enclosed writings and signatures similarly stamped and marked B1 to B6.

3. The person who wrote the blue enclosed writings and signatures stamped and marked S. 1 to S. 3 did not write the red enclosed writings and signatures similarly stamped and marked Q1, Q1/1 and Q2 to Q11

11. The Chairman, Railway Recruitment Board in its order dated 10.4.2006, while cancelling the candidature of the petitioner upon a reference to the aforesaid report, erroneously held that the person who appeared in the written examination and appeared on 24.6.2005 for verification of original documents, is not the same. Such finding on the part of the Chairman, Railway Recruitment Board is contradictory to the findings of the Forensic Science Laboratory referred to in the order itself. The order has been quoted above. The observations of the Chairman in Paragraphs 4 and 5 of the order run counter to each other. While in Paragraph 4, upon a reference to the report of the Forensic Science Laboratory, it has been observed that the handwriting of the person who appeared in the written examination and reported for verification of documents are of the same person, but in Paragraph 5, it has been observed that the person who appeared in the written examination and appeared on 24.6.2005 for verification of original documents is not the same.

12. The Tribunal in its impugned judgment and order dated 3.7.2007, while accepting the aforesaid order dated 10.4.2006, has emphasized on the marked variation of handwriting appearing in the application form with that of the handwriting in the written test and those obtained at the time of verification of the certificates and testimonials. There is no definite finding that it is a case of impersonification. The petitioner has been deprived of his appointment solely on the ground that there is marked variation of the handwriting in the application form with that of the other handwriting. It will have to be born in mind that there is an intervening gap of about two years and three years respectively during the

intervening period from the date of filling up the application to the date of written test and the date on which the certificates and testimonials were verified. It is in this context, the learned Counsel for the petitioner submitted that having regard to intervening period, some amount of variation in the handwriting of the same person cannot be ruled out.

13. From the materials on record, what has transpired is that the Chairman, Railway Recruitment Board as well as the Tribunal, while deciding the issue, heavily relied on the purported variation in the handwriting of the petitioner and it was on that basis, the conclusion was arrived at that the person, who appeared in the selection and who actually filled in the application form was not one and the same. There is no direct attribute of impersonification. From the entire materials on record, what can be gathered is that the decision of the railway authority which eventually found support of the Tribunal is the purported marked variation of the handwriting in the application form with that of the other handwriting

14. The Forensic Science Laboratory in its report did not indicate as to whether the thumb impressions of the petitioner were also verified or not. On perusal of the records produced by the learned Counsel representing the respondents, it has come to our notice that the thumb impressions of the petitioner are there in the application form as well as in the Attendance Sheet pertaining to the written test and so also, below the handwriting obtained on 24.6.2005, the date fixed for verification of the certificates and testimonials. When there might be variation in the handwriting of the same person obtained at different times but no such variation, perhaps, is possible in respect of the thumb impression of the same person obtained within a period of about two years.

15. In the instant case, the petitioner submitted his application form on 23.7.2003. The application form bears his left thumb impression. He appeared in the written examination on 12.12.2004 and in the Attendance Sheet, his thumb impression was obtained against his name. Likewise, on the date of verification of the records etc. on 24.6.2005 his handwriting was obtained under which his thumb impressions were also obtained. When the thumb impressions are available on record, we are of the considered opinion that it would have been appropriate for the authorities to get the same tested and verified through scientific method so as to come to the conclusion as to whether it is the same person who filled in the application form and also appeared in the written examination and in the office of the Railway Recruitment Board for verification of certificates etc. When the handwriting of the same person obtained at different points of time and in different context, may vary, but the thumb impression of the same person cannot normally vary.

16. In view of the above, we are of the considered opinion that the matter needs fresh consideration of the respondents. It will be appropriate for them to get the thumb impressions appearing in all the aforesaid 3 documents, which the petitioner claim to be his own, through proper scientific method so as to

ascertain as to whether thumb impressions are of the same person i.e. the petitioner. For the purpose, the respondents may also take further thumb impressions of the petitioner. All the thumb impressions should be verified through scientific method so as to get the answer to the all important question as to whether it is the petitioner, who in fact, is the candidate who filled in the application form, appeared in the written test, physical test and also appeared before the authority of the Railway Recruitment Board for verification of certificates and testimonials etc. After all, it is a matter of employment. While any erroneous decision in the matter will lead to the deprivation of the petitioner from being employed, but at the same time, no person should be appointed on the basis of the misrepresentation and/or impersonification.

17. The entire exercise shall be carried out as expeditiously as possible but at any rate, not later than 31st July, 2008.

With the above direction, writ petition is disposed of.