

(2023) 02 CAT CK 0014

In the Central Administrative Tribunal

Case No : Original Application No. 1308 Of 2021, 2047 Of 2022

Nikita Khatri & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Citation : (2023) 02 CAT CK 0014

Hon'ble Judges : Anand Mathur, Member (A); Manish Garg, Member (J)

Bench : Division Bench

Advocate : Sonika Gill, Ashok Kumar, Yogesh Kumar Mahur, Bharpur Singh, Harkesh Parashar

Final Decision : Allowed

Judgement

Manish Garg, Member (J)

1. The moot point involved in both the OAs is same, therefore, with the consent of learned counsel for the parties, these OAs were heard together and are being disposed of by this common judgment.

2. Applicants are seeking the following reliefs:

OA No.1308/2021

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 16.3.2021 (Annexure A/1) and consequently, pass an order directing the respondents to consider and appoint the applicant to the post of Junior Hindi Translator with all consequential benefits from the date of appointment of her junior including seniority and notional fixation of her pay.

(ii) Any other relief which this Hon’ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

OA No.2047/2022

"a) Quash and set aside the impugned action/order of the respondent to the extent that the applicant's candidature is reflected as "Rejected-Without Signature" in the impugned marks statement in the remark's column issued by the respondents for the Tier-III (Paper-III) examination annexed as Annexure A-1.

b) Direct the respondents to restore the candidature of the applicant in the ongoing selection process of CGLE 2020 Examination by declaring the result of Paper-III (Tier-III) Examination and allow the applicant to participate in the Skill test which is scheduled for 4/5.08.2022, if he has qualified in the Tier-III (Paper-III) and thereafter allow the applicant to participate in the selection process.

c) Accord all consequential benefits.

d) Award costs of the proceedings and

e) Pass any order/relief/direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicant."

3. Learned counsel for applicant states that the present matter is squarely covered by the decision rendered by a Coordinate Bench at Principal Bench of this Tribunal in OA No.4005/2017 and batch cases –Rupesh Kumar Jha etc. etc. v. Union of India & Others decided on 11.01.2023. The issue involved in the aforesaid case is identical to the facts of the present case. The candidature of the applicants was rejected on the ground that they failed to put their signatures on the answer book for the respective examination, however, thumb impression is present on the answer sheets.

4. Learned counsel for respondents though not disputing the aforesaid decision but contends that the Coordinate Bench of this Tribunal in the case of Rupesh Kumar Jha (supra) has ignored the decision rendered by Bangalore Bench of this Tribunal in the case of Ajay Patil vs. Union of India and others, OA No.170/593/2020 decided on 29.06.2021, wherein in similar facts and circumstances, the Coordinate Bench has dismissed the OA. He further contends that this Tribunal cannot take a contrary view and ought to have taken judicial notice of the aforesaid decision of the Bangalore Bench. In order to appreciate the contentions raised by the learned counsel for respondents, though it is not mandated upon the Bench to refer and rely on each and every case highlighted by the respective counsels and to deal each and every case law so cited by them. Since the learned counsel vehemently stresses to take a judicial notice of the decision rendered upon the Bangalore Bench of this Tribunal in Ajay Patil (supra) it was imperative for this Tribunal to take judicial notice of the said fact and delve upon the same. It is not disputed that the applicant in the said OA too did not put his signature, however, he put his left thumb impression. On perusal of the aforesaid decision passed in Ajay Patil (supra), it is noticeable that in the facts of the said case, the answer-sheet was not evaluated and the candidate was awarded zero marks.

5. On careful consideration, it is also seen that prima facie interim orders were passed in both the OAs, relevant part of which reads as under:

"OA No.1308/2021

In the facts and circumstances, as an interim measure, it is ordered that appointment of the last person to the post of Jr. Hindi Translator, in the department of CBDT shall be subject to outcome of the present OA.

OA No.2047/2022

It is made clear that the result of the applicant in the said skill test shall be kept by the respondents in a sealed cover and the same will be opened only with the leave of this Court. It is further made clear that participation of the applicant in the said skill test will not bestow any enforceable right upon the applicant for grant of relief prayed for in the present OA and/or for appointment to the post for which the said selection process is being held. It is further added that if the final result of the selection process is notified and/or any appointment on the basis of such selection process is made by the respondents, the result and/or the appointment of the last candidate, shall be subject to the final outcome of the present OA."

6. It is also noticeable that the decision rendered in Ajay Patil (supra), the Coordinate Bench has not dealt with the issue pertaining to the role assigned to the Invigilator. Furthermore, the Bench in para 19.11 had relied upon decision rendered in Civil Appeal No.5823/2011, Lachhmi Narain Singh (D) Through LRs & Ors. Versus Sarjug Singh (Dead) Through LRs. & Ors. decided on 17.08.2021, while upholding the genuineness of cancellation deed, the Hon'ble Apex Court, observed as under :-

"18. The key characteristic of thumb impression is that every person has a unique thumb impression. Forgery of thumb impressions is nearly impossible. Therefore, adverse conclusion should not be drawn for affixing thumb impression instead of signing documents of property transaction. Therefore, genuineness of the Cancellation deed cannot be doubted only due to the fact that same was not signed and Rajendra as a literate person, affixed his thumb impression. This is more so in this case since the testator's thumb impression was proved to be genuine by the expert. "

7. The relevant part of the order passed in Rupesh Kumar Jha (supra) reads as under:

"20. The purpose of exam invigilation is to ensure that all candidates are under active surveillance for every moment of the duration of the examination. Invigilators should also try to provide a suitably pleasant and supportive atmosphere for candidates. However, they must also ensure and prevent any kind of communication between candidates (by copying, whispering or any kind of signal, exchange of paper or objects) and any kind of access to books, papers or electronic media of any kind (unless specifically authorized) for the exam

duration. Invigilators also need to ensure the security of the examination hall before, during and after the examination. From the moment the question papers are given out until all answers are collected, exam invigilators should patrol vigilantly.

Particular emphasis should be given to multiple-choice and short-answer questions. The main goal should be to prevent possible candidate malpractice and administrative failures. Some of the other general duties may include:

- a) Implementing the exam rules and regulations and remaining vigilant throughout the examination duration.
- b) Assisting the candidates before, during and after the examination by directing them to their seats, advising them about possessions permitted at examination venues and dealing with queries raised by candidates etc.
- c) Checking attendance during examinations, recording details of late arrivals and ensuring that proper seating plans are followed.
- d) Escorting candidates during water breaks or washroom breaks as required and detecting any unauthorized materials inside the examination hall.
- e) Delivering and collecting scripts carefully at the start and end of the examination in accordance with strict examination procedures.
- f) Assisting with the packing of examination scripts, stationery and other equipment from the examination venues.
- g) Supervising candidates in leaving the examination venues in a quiet and disciplined manner and ensuring that candidates do not remove equipment or stationery from the examination venue without the permission of the authority.
- h) After the examination is over, the exam invigilators should collect the scripts, question papers, stationery and other reference booklets from the candidates and check that all the required information (name, candidate number, venue, date etc.) have been filled out by the candidates on their scripts properly. When all the scripts are collected, invigilators should release candidates and direct them towards the exit of the examination hall in complete silence.

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26. Conclusion:-

In view of the aforesaid discussion in detail, the impugned rejection order dated 01.04.2021, more particularly para 10, in OA No.973/2020 and the impugned order(s) of rejection of candidature in the respective OAs are quashed and set aside. All the OAs are allowed with the direction that the Competent Authority amongst respondent shall process the answer booklets and evaluate the same qua the applicants wherever they have not evaluated either in Tier-II or III examination.

27. In the event, the applicants stand on the merits of the respective examination either in Mutli Tasking (Non-Technical) Staff, 2019, examination or CGLE-2018 examination, they shall be offered the offer of appointment as per the respective merits as per rules and instructions.

28. We direct the respondents to process the candidatures of the applicants in case they are ineligible for any other reasons. The answer sheets of the candidates who have not been evaluated shall be evaluated within the period of two months from the date of receipt of the certified copy of this judgment. In the event, the applicants are found eligible on merits list in Tier II (non-technical)/ Tier III, then there cases shall be scrutinized in order of merits. Thereafter, further process of taking up Tier-IV (technical) shall be taken up for successful candidates (if not undertaken) within a period of two months from date of declaration of results of Tier III of above applicant(s) strictly as per merits for relevant examination year.

29. It is made clear that the applicant(s) who are issued offer of appointment shall not be entitled to any arrears of salary. It is also made clear that the date of appointment shall be prospectively applied for grant of consequential relief(s). It is further directed that successful applicants as per merits shall be adjusted against either existing and/or anticipated vacancies for the year 2022-2023 and/or by creation of supernumerary posts as per administrative convenience."

9. There is a noticeable difference that in the case of Rupesh Kumar Jha (supra) substantially answer-sheets were evaluated and were declared to be selected and put on merit list as compared to the facts in Ajay Patil (supra) wherein answer-sheets were not evaluated. It is only at a later stage their candidature came to be rejected granting zero marks.

10. The aforesaid decision in Ajay Patil (supra) is per incuriam in the facts and circumstances of the case in Rupesh Kumar Jha (supra), the decision rendered by it cannot be applied to the facts and circumstances of the present case.

11. Conclusion:-

In view of the aforesaid discussion in detail, the impugned action/order of the respondents to the extent it declares that the applicants' candidatures are rejected without signature, is quashed and set aside. Both the OAs are allowed with the direction that the Competent Authority amongst respondents shall restore the candidature of the applicants by declaring the result of their respective examination. In the event, the applicants stand on the merits of the respective examination, they shall be offered the offer of appointment as per the respective merits as per rules and instructions.

12. In the event, the applicants are found eligible on merits list, their cases shall be scrutinized in order of merit. It is made clear that the applicant(s) who are issued offer of appointment shall not be entitled to any arrears of salary. It is also made clear that the date of appointment shall be prospectively applied for

grant of consequential relief(s). It is further directed that successful applicants as per merits shall be adjusted against either existing and/or anticipated vacancies for the year 2022-2023 and/or by creation of supernumerary posts as per administrative convenience.

13. Needless to say that in any event the above exercise shall be completed within a period of four months from the date of receipt of the certified copy of this judgment.