

(2019) 10 CAT CK 0064
In the Central Administrative Tribunal
Case No : Original Application No. 575 Of 2016

Satbir Swami

APPELLANT

Vs

Ministry Of Railways And Ors

RESPONDENT

Date of Decision : 25-10-2019

Acts Referred:

Citation : (2019) 10 CAT CK 0064

Hon'ble Judges : Pradeep Kumar, Member (A), Ashish Kalia, J

Bench : Division Bench

Advocate : O.P. Agarwal, R.V.Sinha

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant is an OBC candidate who applied against employment notification dated 30.12.2013 which was published in Employment News dated 11-17 January, 2014 to fill up 5679 Group-D posts in respondent Railway in Pay Band-1 Rs.5200-20200 Grade Pay Rs.1800. The applicant qualified in the written examination, the Physical Endurance Test (PET) as well as in the medical test. The final result was published on the website on 02.11.2015 which reads as under:

Submit Clear

Control Number

12432129

Roll Number

40204149

Name

Satbir Swami

Father"s Name

Pushkar Mal Swami

Status

Case Rejected - "Mismatching in handwriting/Signature on relevant papers i.e. Application forms, OMR Sheet, DV Papers etc."

Description

Rejected. [Click here for reason in details](#)

2. The applicant made a representation on 07.12.2015 and when there was no response, he sent a legal notice on 07.01.2016. This legal notice has also not been answered and feeling aggrieved, the instant OA has been filed.

3. Applicant has prayed that the rejection communication be declared as illegal, invalid and inoperative and the respondents be directed to review and re-examine the whole matter and issue the appointment letter as the applicant has qualified all the examinations and test including medical examination as prescribed. Interim relief by way of reserving one post for the applicant till the final decision of the OA was also sought.

4. The respondents had filed a counter reply and opposed the OA. It was pleaded that as per the employment notification it was specified that candidate has to fill up the application form in his/her own handwriting and attest by his/her signatures. It was also specified that admission of the candidate at various stages of recruitment process will be purely provisional subject to satisfying the prescribed conditions. Mere selection and empanelment at any intermediate stage does not confer any right of appointment to the candidate.

5. The respondents also pleaded that with a view to detect any impersonation cases, applicants are required to write a specified sentence in their own handwriting in the application form wherein the candidate also puts his signatures. While appearing in the written exam, the candidate is again required to write a specified sentence in his handwriting along with his signatures on the OMR sheet. The candidates who are shortlisted for document verification are once again required to write a specified sentence in their own handwriting. After document verification, the handwriting and the signatures at these various stages, are matched in respect of candidates likely to be selected and in case of any mismatch, expert opinion is also obtained. If mismatch is established, the candidature is rejected as it is an indication of impersonation.

6. In the instant case, following specific averment was made in the counter reply:

"Further during examination of the case, it was decided to get the expert advice from Ex. Govt. Examiner for Questionable Documents duly nominated by Ministry of Railway for the purpose with reference to matching of Hand-writing/Signature on the relevant papers i.e. Application Form, OMR Sheet and Document

verification Performa. The Document Expert advised that writing/signature of the applicant herein do not match on the relevant papers and accordingly case was rejected by the competent authority, i.e., Chairman/RRC and status uploaded on RRC website for information of the candidates."

7. Since the handwriting/signatures of the applicant did not match at the three stages, it was a doubtful case and as per the decision of the competent authority, the candidature was rejected and result was uploaded on the website on 02.11.2015.

8. Respondents also relied upon various judgments which are as follows:

(a) In the case of Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. vs. Ramjee, AIR 1977 SC 965 wherein the Hon"ble Supreme Court observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, and the form, features and the fundamentals of such essential process is conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of.

(b) In Dr. Umrao Singh Choudhary vs. State of Madhya Pradesh & Anr., (1994) 4 SCC 328, the Apex Court held that the principles of natural justice do not supplant the law, but supplement the law.

(c) In Syndicate Bank & ors. vs. Venkatesh Gururao Kurati, JT (2006) 2 SC 73, it was held that to sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice.

(d) In Shankarsan Dash vs. UOI, AIR 1991 SC 1612, the Hon"ble Apex Court held that it is a trite law that merely because the candidate"s name appear in the select list, he/she does not get indefeasible right to get appointment and the employer still has got right to cancel the candidature. Same principle was upheld in T.Jay Kumar vs. A. Gopu, 2008 (9) SCC 403 and in Union of India vs. Sarwan Ram, Civil Appeal No.9388/14 which was decided on 08.10.2014. Similar position was upheld in Ekta Shakti Foundation vs. Govt. of NCT of Delhi, 2006 (II) SC 709.

(e) The issue raised in instant OA was adjudicated by the Tribunal also in many cases and issue is no more res-integra. Cases relied upon are Deepak vs. Union of India, OA No.1355/HR/2013 decided on 09.07.2014 by Chandigarh Bench of this Tribunal, Devendra Kumar vs. General Manager, Northern Railway and anr., OA No.2356/2014 decided on 27.07.2015 by Principal Bench of this Tribunal, Pradeep Kumar vs. Union of India and batch cases, OA No.4143/2013 and batch decided on 22.12.2015 by Principal Bench of this Tribunal, Praveen Kumar vs. Union of India and ors., OA No.128/2015 decided on 15.02.2016 by Principal Bench of this Tribunal, Deepak vs. Union of India and ors., OA No.060/00489/2015 decided on 05.02.2016 by Chandigarh Bench of this Tribunal.

(f) This issue was also adjudicated in Union of India & anr. vs. Sarwan Ram &

anr., Civil Appeal No.9388/2014 (in SLP No. 706 of 2014) decided on 08.10.2014 by Hon"ble Supreme Court.

9. The applicant submitted rejoinder as well as additional affidavit. It was brought out that the judgments relied upon by respondents, are in a different context and the applicant eventually relied upon a judgment by Hon"ble High Court of Delhi in Writ Petition No.3137/2016 decided on 04.08.2016 - Ajay Kumar vs. Union of India and ors., 2016 (233) DLT 231. The issue at hand before the Hon"ble High Court of Delhi in this case is noted in the said judgment as under:

"1. Applying for the post of Constable (Crew) in the Water Wing of BSF, the petitioner indicated that he was seeking the benefit of reservations for members of the Scheduled Castes and was found eligible to compete and was issued the admit card requiring him to take the written examination to be held on December 06, 2015. The number of candidates being large, aid of technology was taken, in that, the written examination was an objective type paper requiring the candidates to mark the answers in an OMR answer sheet by darkening the applicable circles for the correct answer. The OMR sheet had likewise to be darkened to record the name, roll number and date of birth of the candidate. The petitioner filled up the OMR sheet but forgot to darken one of the block to record the date of birth. But this did not cause W.P.(C) No.3137/2016 Page 2 of 5 any administrative inconvenience to tag the answer sheet and connect the same to the petitioner; apparent from the fact that the optical reader read the answer sheet and assigned the marks to the petitioner.

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9. In essence, the stand taken by the respondents to deny appointment to the petitioner is that instructions prescribed in the OMR answer sheet required the candidate to correctly fill his essential particulars including date of birth and petitioner having not correctly darkened one of the block to record the date of birth, the respondents are justified in denying appointment to the petitioner.

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13. It would also be relevant to note following observations made by the Rajasthan High Court in the decision dated September 04, 2012 SB Civil in Writ Petition No.9062/2012 Savita Budania Vs. State of Rajasthan & Ors.:-

"The respondents while making recruitment may avail assistance of technology but at the same time a human approach is also required to be kept in mind. The object of holding competitive test is to have best available hand and in this process merit should not be compromised just for the reason that the mechanical procedure adopted do not support the manual exercise. In the cases, if the human error is rectified with all diligence at earliest possible, a condonation of error is desirable."

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18. In view of above discussion the present petition is allowed. A mandamus is issued to the respondents to appoint the petitioner to the post of Constable (Crew) in Water Wing in Border Security Force with consequential benefits of seniority and pay to be fixed notionally. We deny back wages."

9.1 The applicant pleaded that in the ratio of the above judgment, since no difficulty was experienced and his answer sheets was evaluated as he cleared all stages, and the applicant was declared successful, he is required to be given the appointment letter notwithstanding any difference in the handwriting which was noted by the expert, which has led to rejection of his candidature.

10. Matter has been heard at length. Sh. O.P.Aggarwal, learned counsel represented the applicant and Sh. R.V.Sinha, learned counsel represented the respondents.

11. Holding of recruitment process is a big exercise undertaken by the respondents. A large number of candidates appear in such examinations and instances of impersonation have also been reported many times. Accordingly, various processes have been adopted from time to time on how to detect and to avoid such cases so that genuine candidates get selected.

It is towards this objective that respondents had specified the applicants to write a specified sentence in their own handwriting and signature on the application form at first stage, thereafter the same handwriting and signatures are captured in the written exam stage on the OMR sheet at the second stage and thereafter the candidates shortlisted for document verification are again required to give their handwriting and signatures at this third stage. The occasion to match the handwriting and signatures at these three stages arise only for those candidates who after document verification and fitness in the medical examination, come in the range of those to whom final appointment is to be offered.

At this stage, in the case of instant applicant, it was detected that the handwriting does not match. This leads to a reasonable doubt whether the same candidate had made the application, written the examination and appeared at document verification stage. It has been brought out that the respondents got the handwriting examined by a ex-government examiner for questionable documents also. The expert advised that the handwriting and signatures of applicant do not match on the relevant papers and this is what has led to rejection of the applicant's candidature by the competent authority.

12. The applicant has only pleaded that handwriting does not remain fixed at all times and there are human variations which need to be taken into account.

In this context, it is noted that in the instant case, the applications were invited in January 2014 and the candidature was rejected on 02.11.2015. Therefore, the entire process was completed within less than two years time.

The applicant's plea that the handwriting can get changed to such an extent that the expert found the same mismatched at various stages, is not acceptable. 13.

The relied upon judgment by Hon"ble High Court of Delhi in Ajay Kumar (para 9 supra) is in a different context.

In that case, the applicant therein did not fill the bubbles in OMR sheet in respect of his date of birth, however, this was written in words in the specified space. Non-filling of bubbles did not lead to any difficulty in evaluation of the OMR sheet. It was in this context that the Hon"ble High Court of Delhi allowed the OA.

As against this, the instant case is one wherein the handwriting of the candidate at various stages, e.g. when he applied, when he wrote the written examination and filled the OMR sheet and when he appeared for document verification, all the above three stages being within two years, have not matched.

14. In view of the foregoing, there is nothing to find fault with the system adopted and the finding of the expert and therefore the decision of the respondents based upon such an expert opinion can also not be faulted. The pleas of the applicant are not finding acceptability. OA is dismissed being devoid of merit. No costs.