

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 166 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Niraj Kumar Sharma, aged about 27 years, S/o Nand Kumar Sharma, Village/PO-Ossain, PS-Bihiya, District-Bhojpur, State-Bihar, Pin-801302.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Ministry of Railways, Board, Rail Bhawan, New Dehli-110001.
2. General Manager, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar-751017, District- Khurda.
3. Chief Personnel Officer, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar-751017, District- Khurda.
4. Deputy Chief Personnel Officer (Recruitment), Railway Recruitment Cell, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar-751017, District- Khurda.

.....Respondents

For the applicant : Mr.A.Swain, counsel

For the respondents: Mr.D.K.Behera, counsel

Heard & reserved on : 29.11.2019 Order on : 24.12.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has prayed for the following reliefs in this OA:-

“The Hon'ble Tribunal may graciously be pleased to quash Annexure A/9 dated 4.2.2013 and direct to the respondent to appoint the applicant as per his preference i.e. Junior Trackman and Helper-II in respect of '01' and '02' category within a stipulated period;

And pass any other order/orders as this Hon'ble Tribunal deem fit and proper as per the circumstances of the case.”

2. The applicant had participated in the selection process for the post of Junior Trackman and Helper-II as per the advertisement notice dated 28.10.2006 (Annexure-A/1). The applicant submitted his application for the above post as per the requirement of the advertisement and also appeared in the written examination and put his signature and Left hand Thumb Impression (in short LTI) marks on the OMR papers. It is stated in the OA that the examiner had allowed him to sit in the examination after tallying the signature and photograph. He was declared successful in the written examination and was called for the physical efficiency test on 31.3.2008, which was cleared by him. Then he was called for verification of his documents on 30.3.2012 and during the verification, he was asked to sign and put his LTI on verification slip. His medical examination was also undertaken.

3. The result was declared when the first provisional list was published on internet. The applicant was not included in the list. In the second provisional list, his name was not included. Then he received the show cause notice dated 21.8.2012 (Annexure-A/7) on the ground of non-matching of his LTI. He replied on 7.9.2012 as he received the show cause notice belatedly. Being aggrieved, the applicant filed the OA No. 981/2012, which was disposed of with direction to dispose of the matter within a period of two months. It is stated in the OA that the respondent no. 4 issued an order dated 4.2.2013 (Annexure-A/9) rejecting the applicant's case, which is impugned in this OA.

4. The grounds advanced in the OA are that the authorities have acted arbitrarily while cancelling the applicant's candidature for non-matching of the LTI, where as the applicant was allowed to participate in all the stages of the examination after due verification. Issue of show cause notice for non-matching of LTI was belated and not sustainable. It is also stated that the impugned order dated 4.2.2013 has been passed without application of judicial mind.

5. Counter filed by the respondents stated as under:-

"After completion of written test, Physical Efficiency Test (PET) as well as document verification, a thorough check of the application was undertaken by Railway Recruitment Cell (RRC) before publication of the final panel for appointment against the said employment notice. While verifying the LTIs available on the application form of the applicant with the LTIs obtained at the time of verification of documents by the Finger print examiner, it was concluded by the Finger print examiner that the finger prints on the original application and the verification sheet do not match and hence are not of the same person. Basing on the remarks of the finger prints examiner, the application of the applicant was rejected on the ground of impersonation and the facts were conveyed to the applicant through Show Cause notice dated 21.8.2012 (Annexure A/7 to the OA)."

6. It is further stated in the Counter that as per the terms and conditions of the advertisement, the Railway administration reserves the right to cancel the selection at any point of time. It is also stated in the Counter that due to mismatch of the LTI finger prints of the applicant, it is a case of impersonation as opined by the finger print examiner and the explanation furnished by the applicant was unsatisfactory.

7. Learned counsel for the applicant was heard. Besides reiterating the points mentioned in the OA, he submitted that the impugned order dated 4.2.2013 (A/9) was not a reasoned order which is liable to be set aside. Learned counsel for the respondents was also heard. He submitted that as explained in the Counter, the case of the applicant was rejected by the respondents on the basis of the opinion of the finger print examiner that the LTI of the applicant taken at the time of verification of documents did not match with the LTI on the application form. He further submitted that as per

the rules governing the advertisement, the authorities are competent to cancel the candidature at any point of time if any discrepancy is noticed.

8. We have examined the pleadings of the parties on record and also considered the submissions by learned counsels for applicant as well as the respondents. The show cause notice dated 21.8.2012 (Annexure-A/7) stated as under:-

“1. You were an applicant for the posts of Jr.Trackman and Helper-II against Category No. 1 & 2 of Employment Notice No.ECoR/RRC/D/2006/01 dtd. 28.10.2006 of Railway Rec3ruitment Cell, East Coast Railway, Bhubaneswar.

2. You were called for Document Verification with Roll Number **3152996** for the above mentioned recruitment.

3. While verifying the finger prints (LTI) available on your Application with the LTIs obtained at the time of verification of documents the finger print Examiner concluded that the finger prints of the original application and verification sheet did not match and hence not of the same person. This reveals that you have resorted to impersonation.

4. As per extant rules, candidates found guilty of impersonation should be debarred for life from appearing in any examination conducted by all Railway Recruitment Cells (RRC) and Railway Recruitment Boards (RRB) and also for appointment in Railways. Further you are also liable for prosecution as per law.

5. Under the above circumstances, you are being given an opportunity to explain in writing as to why you should not be debarred for life from appearing in any examination conducted by all RRCs/RRBs and also for appointment in Railways apart from your candidature being rejected/cancelled from the above mentioned recruitment.

6. Your explanation, if any, in writing should reach this office by 05.09.2012 addressed to ‘The Dy.Chief Personnel Officer, Railway Recruitment Cell, IIInd Floor, Rail Sadan, Chandrasekharpur, Bhubaneswar-751017’. If no explanation is received from you by 05.09.2012 the decision of Railway Recruitment Cell, East Coast Railway, Bhubaneswar, will be final and no further correspondence will be entertained.”

9. The impugned order dated 4.2.2013 (Annexure-A/9) stated as under:-

“Sub – Orders passed by the Hon’ble CAT/CTC in OA No. 981 of 2012 dtd 31.12.2012.

In obedience to the orders passed by Hon’ble CAT/CTC in OA No. 981 of 2012 dtd. 31.12.2012, your case has been reviewed by the competent authority.

Based on the review of photos, signatures, handwriting & ID marks available on Application Form, Written Attendance Sheet and Documents Verification Form, it has been decided by the competent authority to uphold the decision communicated vide this office letter No.ECoR/RRC/D/2006/01 dated 21.8.2012 that your candidature against Group-D recruitment notified vide Employment Notice No. ECoR/RRC/D/2006/01 dated 28.10.2006 cannot be considered.”

10. It is stated in the order dated 4.2.2013 (A/9) that the case of the applicant was reviewed with reference to the documents furnished by him and the handwriting and ID marks on the application form, attendance sheet and document verification form. The authorities have not mentioned the findings of the review, but communicated the decision to uphold the order passed earlier to reject the candidature of the applicant for the selection in question. It is not mentioned whether there is any mismatch of photographs, signature, handwriting or any other ID furnished by the applicant at the time of submission of application form, written examination and document verification. From the show cause notice dated 21.8.2012 and the impugned

order dated 4.2.2013, the decision of the respondents in respect of the applicant's candidature is because of the mismatch of the LTI only. No mismatch of the signature or other identification marks of the applicant has been reported. It is not clear from the pleadings of the respondents if the opinion of the Government Examiner has been obtained in respect of the LTI mismatch for the applicant in this case or not. IN the circumstances, it will not be appropriate to conclude that the applicant has adopted malpractice like impersonation based only on LTI mismatch without verifying other evidences available with the respondents.

11. While examining a similar dispute, Allahabad Bench of this Tribunal in OA No. 1789/2015 (Vijay Pal and others vs. Union of India through General Manager, North Central Railway), in which the mismatch of the LTI/ signature was established on the basis of the report of the GEQD, it was observed by the Tribunal vide the order dated 1.5.2018 as under:-

“26. Before we part with the case, we notice that there appears to be no Rule or Regulation laying down the procedure to be followed by the RRC/RRB, in situations where there are discrepancies for a candidate like mismatch of handwriting or thumb impression or signature etc. or allegation of impersonation in the examination, as no such Rule/Regulation has been produced before us in this case. The respondents may consider to put in place an appropriate Rule/Regulation to deal with such situations in a just and fair manner as per the provision of law.”

We also reiterate the same observations in this case since no action was taken by the competent authority to get the matter inquired through a responsible officer after receipt of the opinion of the finger print expert regarding mismatch of the applicant's LTI and to mechanically conclude that the applicant has resorted to impersonation, based only on such opinion, thus adversely affecting the applicant's interest.

12. In the circumstances as discussed above and taking into consideration the fact that the respondents have passed the impugned order dated 4.2.2013 to cancel the applicant's candidature for the examination in question only on the basis of the mismatch of his LTI marks, the impugned order dated 4.2.2013 (Annexure-A/9) is set aside with a direction to the respondents to get the LTI, signature and handwriting of the applicant submitted at different stages of the selection in question, examined by the Government Examiner of Questioned Documents (in short GEQD) and to take a fresh decision in respect of the applicant's candidature in the selection in question after receipt of the report of the GEQD on above aspects and after conducting an inquiry as deemed appropriate to ascertain whether the applicant had resorted to any malpractice in the examination and pass a reasoned and speaking order, which is to be communicated to the applicant within four months from the date of receipt of a

copy of this order. The respondents will be at liberty to examine the CCTV footage of the written examination and examine any other record/evidence in the inquiry to find out whether the applicant has committed any malpractice in the examination. If the applicant is cleared from the allegation of impersonation after re-consideration as above, then he will be entitled for being considered on merit for appointment against any available vacancy.

13. This OA stands disposed of as above with no order as to costs.

14. Registry is directed to send a copy of this order to the respondent No. 1 for action as deemed appropriate on the observations at paragraph 11 above.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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