

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.223/2019.**

Dated this the 21st day of October, 2021.

Reserved on :12.07.2021

Pronounced on: 21.10.2021

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

1. Atul Rajendraprasad Yadav
Age: 28 years (D.O.B being 04.02.1991)
Son of Shri Rajendraprasad Parasnath Yadav
Till 23.12.2015 was serving as Sorting Assistant in
RMNS "W" Division at Surat under SRM &
Presently working residing at No. 55, Madhav Park,
Part -1, Vastral Nagarpalika – 7, Vastral – 382 418.
Taluka: Daskroi, Dist: Ahmedabad.

...Applicant

(By Advocate Mr. M. S. Rao)

Vs

1. Union of India
To be represented through its Secretary to the Government of India
Department of Posts/ Recruitment Division,
Ministry of Communication & Information Technology,
Government of India, Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Postmaster General
Gujarat Postal Circle,
O/o C.P.M.G., Department of Posts,
Ministry of Communication & Information Technology,
Government of India, Khanpur, Ahmedabad – 380 001.
3. The Superintendent of Rail Mail Services,
"W" Division, Vadodara
O/o SRM, "W" Division, Department of post,
Ministry of Communication & Information Technology,
Government of India, Opp. Panavir Appartments,
Behind Natraj Talkies, Near Vikram Housing Colony,
Pratap Ganj, Vadodara – 390 002.

4. Central Forensic Science Laboratories
Notice to be served through its Director,
Near Hyderabad Public School
Ramnathapur colony Road, Ramnathpur,
Hyderabad – 500 013.

Telangana State.

...Respondents

(By Advocate Ms. R. R. Patel 1 to 3
& Mr. H. D. Shukla – 4)

ORDER

PER: Hon'ble Shri Jayesh V Bhairavia, Member (J)

1. Being aggrieved and dissatisfied with the impugned order dated 07.01.2018 (Corrected dated as 07.01.2019) (Annexure A/1), issued by the Superintendent of Rail Mail Services "W" Division, Department of Post, Vadodara i.e., respondent no. 3 herein, intimating that as per the adverse report received from CFSL, Hyderabad, the applicant is not eligible for reinstatement in service, the applicant has preferred the present OA under section 19 of the Administrative Tribunal Act seeking relief for direction to call upon official respondents to place the entire original file/documents, report of the committee constituted by the CPMG, Gujarat Postal Circle, the entire set of original correspondence exchanged between respondent no.1, 2, & 3 along with correspondence exchanged by CFSL, Hyderabad i.e., respondent no.4 herein, which gave rise to the issuance of impugned memorandum dated 07.01.2019 (Annexure A/1).

The applicant further prays to quash and set aside the impugned order at Annexure A/1 being unfair, unreasonable, discriminatory and also violative of the principles of natural justice, thereby infracting the applicant's fundamental right and further prays for appropriate direction to the respondents to forthwith reinstate the applicant herein back into service of the Department of Posts as he was prior to the issuance memorandum dated 23.12.2015 with all the consequential benefits following therefrom, from the judgment passed by Hon'ble Apex Court in a batch of SLP's filed before it on 20.07.2017 (Annexure A/18 referred). Specifically, the applicant seeks following reliefs:-

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- (A) *Call upon the official respondents herein to forthwith place before this Hon'ble Tribunal (i) the entire original files/documents, report of the Committee constituted by the CPMG, Gujarat Postal Circle, etc, (ii) the entire set of original correspondence exchanged between the respondents including its report/opinion exchanged by CFSL, Hyderabad i.e., the respondent no.4 herein, with the respondents no.1,2 and 3 herein, which gave rise to the issuance of the impugned Memorandum bearing No.B-1/1(b) Recruit SA13-14/Reinstat/2017 dated 07.01.2018 (wrongly typed instead of 07.01.2019) at Annexure – A/1 hereto.*
- (B) *Upon Perusal of the same, this Hon'ble Tribunal may be graciously pleased to quash and set aside, holding the same as whimsical, arbitrary, unfair, unreasonable, discriminatory and also violative of the principles of natural justice thereby infracting the applicant's fundamental rights guaranteed by the Articles 14, 16 and 21 of the Constitution of India, the impugned decision of the respondent no.3 herein as conveyed by him through his impugned communication bearing no.B-1/1(b)/Recruit SA 13-14/Reinstat/2017dated 07.01.2018 (wrongly typed instead of 07.01.2019) at Annexure-A/1 hereto, to the effect that as per the report /opinion of the CFSL, Hyderabad, the applicant's signature has not been confirmed with specimen signature given by the applicant herein and that therefore the applicant herein is not eligible for reinstatement in service.*
- (C) *This Hon'ble Tribunal may be graciously pleased to issue appropriate command to the official respondents herein to forthwith direct their officers, agents, representatives, etc., of the respondents no.1,2 and 3 herein to forthwith reinstate the applicant herein back into the services of the Department of Posts as he was prior to the issuance of the memoranda dated 23.12.2015, with all the consequential benefits flowing there from the Hon'ble Supreme Court of India's Final Order dated 13.07.2017, referred to herein above, in a batch of SLPs filed before it. At par with those candidates who came to be reinstated into the service of the respondent department in compliance with the aforesaid Final Order dated 13.07.2017 of the Hon'ble Supreme Court of India.*
- (D) *Grant such other/further reliefs as may be considered fit & appropriate in the peculiar facts & Circumstances of the present case.*

2. The brief facts as pleaded by the applicant are as under:-

- 2.1** It is stated that the president in exercise of his power conferred by Article 309 of the Constitution of India was pleased to notify the recruitment rules 2014 mainly i.e., "Ministry of Communication and Information Technology, **Department of Post**, Circular and Regional offices, Postal Assistant Group – C Post recruitment Rules, 2014". The said rule was published in official gazette on 27.01.2014 (Annexure A/2).
- 2.2** The respondent no.1 herein notified the notification dated 21.02.2014 on its official website inviting applications from eligible persons for filling up a large number of vacancies of Postal Assistant, Sorting Assistant for various departments including the circle and regional

offices for the year 2013 -14 in 22 postal circles in the country (Annexure A/3), (hereinafter referred to as the notification of 2014).

As per the said notification dated 21.02.2014 an eligible candidate could apply for only one Circle. In so far as the Gujarat Circle is concerned, the notified vacancies in the aforesaid posts were 36 in regional offices, 127 in Rail Mail Service and 51 in other offices.

- 2.3** The applicant herein who satisfied all the eligibility criteria for the post advertised, had offered his candidature online in the manner as per conditions set out in the para 15 of the said notification and had applied for only 1 postal circle i.e., Gujarat Postal Circle, submitting/indicating his individual preference for the post to which he intended to apply in terms of para 14 of the said notification.
- 2.4** The respondent had engaged M/s. CMC Limited (herein after referred as the CMC) to handle the entire process of conducting all the examination i.e., Aptitude Test and Computer / Typing Test prescribed for the direct recruitment to post of Postal Assistant/Sorting Assistant, from the stage of printing of application form till the preparation of merit list as per the letter dated 05.04.2011 (Annexure A/4).

So far as Gujarat circle list is concerned, CMC had conducted the Aptitude Test (Paper –I) at Ahmedabad and other Centers on 01.06.2014. The Applicant herein was issued admit card for paper – I and he appeared in the said examination from Ahmedabad center. Thereafter, the applicant being declared as qualified in the said Aptitude Test (Paper –I) by the CMC, he was issued another admit card to take part in Computer/Typing test (Paper –II), in terms of the instructions contained in para 11.1 of the notification 2014. The result of the said test was declared on 01.06.2014 (Annexure A/5), by issuing the list of candidates provisionally selected and allotted to postal /RMS/MMS/SBCO/PAC-RO in its circle as per the respective candidate's merit and availability of the vacancies based on his/her preference. The applicant's name was included in the said list.

- 2.5** The respondent no.2 vide its letter dated 08.12.2014 directed all the sub-ordinate formations for issuance of provisional appointment orders to the candidates selected in the respective cadre against the

vacancies for the year 2013-14 purely on provisional basis for 2 years. In pursuance to it, the applicant herein came to be issued with a communication dated 10.12.2014 (Annexure A/6), by the Superintendent of Railway Mail Service “W” Division, Vadodara, Gujarat informing him that he had been selected as Sorting Assistant and was allotted to **SRM** “W” Division for further posting and called upon the applicant to appear personally at Vadodara office on 29.12.2014 with all the original documents.

In compliance to the said direction, the applicant presented himself before the concerned authority at Vadodara and produced all the requisite documents. Thereafter, he underwent the requisite medical examination conducted by the competent authority. On being satisfied with the bona -fide and genuineness of the various documents produced by the applicant, as also the particulars and information furnished in the attestation form to the concerned authority in Vadodara, the respondent no.3 vide his letter dated 31.03.2015 (Annexure A/7) issued the appointment order in favour of the applicant and informed that the applicant was selected for appointment in Sorting Assistant cadre against the recruitment vacancies.

Pursuant to the appointment letter dated 31.03.2015 on his reporting before the respondent no.3, he was directed to undergo induction training at PTC Vadodara, scheduled from 06.04.2015 to 30.05.2015. He participated in the said induction training and in this regard, memorandum/certificate was issued by the PTC Vadodara on 30.05.2015 (Annexure A/8). Thereafter, applicant started working as Sorting Assistant in the office of SRM “W” Division, at Surat.

- 2.6** In the month of July 2015, it came to the notice of Department of Post, New Delhi that in some of the postal circles, there were proven cases of “Impersonation” in the matter of PA/SA direct recruitment examination 2014 and consequently, the Department of Post (DE Section) vide its communication dated 27.04.2015 (Annexure A/9) sent fax/e-mail message to all CPMG’s except a few Postal Circles, to convey the direction of the competent authority to the effect that (i) the appointment of successful candidates PA/SA examination for the year who have not yet been issued letter/offer of appointment may

immediately be “held in abeyance” till further orders. (ii) no training orders may also be issued for candidates in whose case pre-appointment formalities have been completed and (iii) formalities like verification of documents, police verification etc may be continue to be processed.

- 2.7** Further, vide order dated 09.09.2015 (Annexure A/10), the competent authority had ordered the revocation of the orders of abeyance dated 27.04.2015 in 10 postal circles. So far as the other postal circles are concerned, it was directed that in view of the proven cases of impersonation reported by one of the circles, CPMsG, before allowing the candidates to join or to report for training will exercise exhaustive diligence by constituting a committee under the chairmanship of **PMG/DPS** and carry out a thorough check of the personal details of the candidates. It was further directed to verify the certificates submitted by them, compare their signatures and photograph with records generated during the examination etc.
- 2.8** By letter/order dated 21.12.2015 the Gujarat Postal Circle had cancelled the result of the examination declared for the year 2013-14.
- 2.9** Subsequently, vide memorandum dated 23.12.2015 (Annexure A/11) the respondent no.3 herein conveyed to the applicant that the result of examination for the direct recruitment of Postal Assistant for the year 2013-14 stood cancelled with immediate effect. Further, on the same day vide another letter dated 23.12.2015 issued by respondent no.3 terminated the service of the applicant forthwith, with a direction that the applicant shall be entitled to claim a sum equivalent to the amount of his pay and allowances for a period of one month.
- 2.10** Applicant also came to know that 8 similarly situated direct recruit sorting/postal assistants working in Gujarat Postal Circle, who were also terminated on 23.12.2015 had filed OA 478/2014 before this Tribunal. Therefore, applicant had also approached this Tribunal by filing OA No.260/2016 challenging his termination order dated 23.12.2015 (Annexure A/13). In the said OA, upon the issuance of notice, the official respondents had filed their reply dated 06.02.2016 (annexure A/14). This Tribunal vide order dated 18.03.2016 disposed of the OA No.478/2014 filed by the similarly placed 8 candidates with a direction to the respondents that “to probe into the matter by

thorough investigation in a fair and transparent manner preferably within a period of three month". On the same terms, the OA No.260/2016 filed by the applicant herein was also disposed of vide order dated 18.03.2016 (Annexure A/15 & 16 referred).

- 2.11** Being aggrieved by the order dated 18.03.2016 passed by this Tribunal the official respondents had approached the Hon'ble High Court of Gujarat with various writ petitions, which came to be allowed vide judgment dated 16.08.2016 and the orders passed by this Tribunal were quashed and set aside (Annexure A/17). Aggrieved by the said judgment of Hon'ble High Court of Gujarat the Applicant with other similarly situated candidates approached the Hon'ble Apex Court by way of filing SLP's, vide order dated 13.07.2017 (annexure A/18) the Hon'ble Apex Court disposed of said SLP's wherein, the Hon'ble Apex Court observed as under:

"We find from a perusal of the report of the Vigilance Committee that the entire examination was not necessarily vitiated but some persons who are suspected of having used malpractices in the examination of Postal Assistant/Sorting Assistant in five Circles, viz., Uttarakhand, Rajasthan, Chattisgarh, Haryana and Gujarat have actually been identified. The respondents will proceed against them in accordance with law but since, they are quite a few in number, a formal show cause is dispensed with. However, they may be personally called and explain the allegations against them and given some reasonable time of about a week or ten days to give their reply to the allegations and then a final decision may be taken.

Those persons who are not suspected of having committed any malpractices and who have undergone the prescribed courses may be reinstated with all consequential benefits and 50% back wages with liberty to the respondents to take action against them in case subsequently it is found in the investigation that they have indulged in some malpractices.

We make it clear that the respondents are at liberty to take action against those persons who have violated the terms of the examination such as having appeared in more than one centre. Such violation will also be treated as malpractice.

We further make it clear that this order will not enure to the benefit of those persons who have not been given appointment letters. However, we also make it clear that those candidates who have not completed the course but wherein the process of completing the course until the impugned action was taken may be permitted to complete the course/training provided they are not suspected of any malpractice. The appeals and Special Leave Petition stands disposed of".

- 2.12** After the directions issued by the Hon'ble Apex Court, the respondent no.3 vide his letter dated 17.11.2017 (Annexure A/19) had called upon the applicant herein. Accordingly, the applicant appeared before

him on 28.11.2017. The Respondent no.3 asked the applicant to put his signature on some documents; as many as 100 specimen signatures of the applicant was taken by respondent no.3 and thereafter, the applicant was asked to leave the office.

- 2.13** The applicant had not received any response from the respondent no.3 thereafter he had approached the respondent no.3 sometime in the month of April 2018 to ascertain the fate of his case. In response thereto, vide letter dated 13.04.2018 (Annexure A/20), applicant was informed that his case was forwarded to CFSL, Hyderabad on 01.02.2018 for examination. Subsequently, the applicant received the impugned order/letter dated 07.01.2018 (Annexure A/1) (the dated is wrongly typed as 07.01.2018 instead of 07.01.2019) whereby, the applicant was informed that as per adverse reports/opinion of CFSL, Hyderabad, he was not eligible for reinstatement in service. The respondent no.3 had not supplied the copy of report of CFSL, though it was relied upon by the respondent no.3 for denial of reinstatement of applicant in service. Hence, the applicant has filed the instant OA.
- 3.** In backdrop of aforesaid pleadings, the Learned Counsel Mr. M.S.Rao for the applicant in support of the prayers sought in this OA, mainly submitted as under:
- 3.1** At the outset, it is most respectfully submitted that the impugned decision & stand of the respondent no.3 herein as conveyed by him in the impugned communication dated 07.01.2018 (the date wrongly mentioned as 07.01.2018 instead of 07.01.2019) at Annexure A/1 hereto is ex facie violative of the principles of natural justice. Even though in support of his decision, the respondent no.3 herein has sought to place reliance on a report /opinion of the CFSL, Hyderabad, for coming to a conclusion that the applicant herein was not eligible for reinstatement in service, the respondent no.3 herein did not bother to supply/furnish to the applicant herein, the report of CFSL alongwith his aforesaid impugned communication issued on 07.01.2019. It is relevant to note here that the aforesaid impugned decision has civil as well as penal consequences for the applicant herein and that being so, the principles of natural justice required that the respondent no.3 ought to have furnished to the applicant a copy of such report/opinion as claimed to have been received by the

respondent no.3 herein for making a decision adverse to him. Since the same was not done in the present case, the impugned communication (Annexure –A/1) deserved to be quashed and set aside. The very fact that the respondent no.3 herein had deliberately failed to furnish a copy of the so called adverse report/opinion of CFSL, clearly demonstrates that there was something amiss in the whole exercise which the respondents herein had undertaken in pursuance of the Hon'ble Supreme Court of India's order dated 13.07.2017.

- 3.2** Furthermore, the aforesaid course of action of the respondent to take the applicant's 100 specimen signature on 28.11.2017 in the office of the respondent no.3 herein is wholly whimsical, arbitrary, unfair, unreasonable and discriminatory on the part of the respondents herein. Nowhere in the previous proceedings either in their reply filed before this Tribunal or before the Hon'ble High Court of Gujarat, it was the stand of the respondents that the applicant herein has committed any malpractice of whatsoever nature during the course of the examination for the post in question. Thus, it is more than evident that going by the tenor of the Hon'ble Supreme Court's aforesaid Final Order dated 13.07.2017, it was not open to the respondents to enlarge the scope of the aforesaid list of 34 candidates and subject the applicant herein to the requirement of comparison of his specimen signature with his signatures taken during the selection process. In this nature of the situation, it is obligatory on the part of the respondents to explain to this Tribunal the basis, as to how and in what manner, prior to the issuance of communication dated 17.11.2017 referred to hereinabove the respondents had found the case of the applicant herein falling within the category of those candidates who were suspected of having used malpractices in the examination in question, while 3 out of the 4 applicants in the OA No.05/2016 as also many of the applicants in other OAs filed before this Tribunal were taken back into the service by the respondents herein.
- 3.3** The applicant herein further states and submits that the impugned decision at (Annexure A/1) is punitive in nature which has serious consequences on the future career of the applicant. Applicant is only 28 years of age, the refusal of the respondent to take him back in

service will render him totally ineligible for any future employment in any of the department either in the Central Government or in the State Government or even in any of the Central / State PSU's, in as much as the applicant herein would not be able to apply in response to any of the employment notification that might be issued by the Government. Therefore, the impugned decision would cause serious prejudice to the career prospects and progression of the applicant.

4. Per contra the respondents have filed their reply and denied the claim of the applicant.

4.1 It is submitted that so far selection and appointment of the applicant as sorting assistant in RMS "W" division as also completion of requisite training in the month of May 2015, the said factual part of pleading in the OA is not in dispute.

4.2 It is submitted that the applicant's service was ordered to be terminated vide order dated 23.12.2015 under the provision of sub-rule-1 of Rule-5 of CCS (Temporary Service) Rules 1965. Thereafter, as per the directions issued by the Hon'ble Apex Court in the order dated 13.07.2017 in the SLP filed by applicant and other similarly placed candidates, the respondents had conducted a meeting and decided to call the applicant on 28.11.2017 at O/o. SRM Vadodara. Accordingly, the applicant remained present on the said date and his 100 specimen signatures were taken on 28.11.2017. The applicant was informed vide letter dated 13.04.2018 that his case had been forwarded to CFSL, Hyderabad for the purpose of examination of his signature.

4.3 It is contended that the report of CFSL, Hyderabad being no. CFSL(H)/242/DOC/149/CH/68/2018 /4068 dated 17.12.2018 was received in respect of the applicant on 27.12.2018 (Annexure R/1). The conclusion recorded in the said report by the CFSL reads as under:

- “1. The person who wrote the blue enclosed signatures stamped and marked S1 to S100 also wrote the red enclosed signatures similarly stamped with mark Q1 and Q3.
2. All the writing characteristic features as occurring in the questioned signature stamped and marked Q2 could not be collectively accounted for, from any of the standard signatures similarly stamped and marked S1 to S100. It

is therefore, not been possible to express any opinion regarding the authorship or otherwise of the questioned signature.”

- 4.4** The O/o respondent no.2 vide letter dated. 01.06.2018 informed the Superintendent of PO's of Porbandar division that being an appointing authority necessary action will be taken at his end as per the CFSL report and prescribed rules of the department and copy of the said letter was also circulated to all SSPO's / SPO's /SRM's in Gujarat Circle for information and necessary action(Annexure R/3). In the case of present applicant, on receipt of the CFSL report dated 17.12.2018, his case was referred to the O/o respondent no.2 i.e. Chief Post Master General by the respondent no.3 vide letter dated 31.12.2018 (Annexure R/2). Thereafter, vide impugned letter dated 07.01.2019 the applicant was informed that as per the adverse report received from CFSL, he was not eligible for reinstatement in the service.
- 4.5** It is submitted that applicant could have availed the remedy in the nature of submission of his representation, if at all he had grievance qua the impugned order dated 07.01.2019. Instead, the applicant has directly approached this Tribunal. Therefore, the OA being premature, same was not maintainable.
- 4.6** It is submitted that the applicant cannot take shelter citing the reference of other candidates, as, gravity of his case was different from other cases. The applicant ought not to have reeled under misbelief that, he certainly would be reinstated. In fact, as per the directions given by the respondent no.2, cases were inquired independently, upon which, applicant's candidature was found tainted and therefore, he could not be reinstated.
- 4.7** In the present case, the question was not about the match or mismatch of thumb impression. In fact, the documents which were signed by the applicant at the time of examination i.e., the OMR sheet, Typing test evaluation sheet, data entry evaluation sheet were got verified with his signatures taken by the respondent personally on 28.12.2017. The final conclusion of CFSL i.e., handwriting expert report was communicated to the applicant. The impugned action on the part of the respondent was within the spirit of rule and cannot be

said as illegal. Thus, the applicant is not eligible to be reinstated in the service.

- 4.8** Further, it is submitted by the respondent that with regard to his application under RTI demanding the copies of his application form CFSL report, copy of 100 specimen signature and CCTV footage of exam hall etc. is concerned, the necessary reply was given by the authority under RTI to the applicant. Thus, the applicant ought not to have approached this Tribunal; even otherwise the applicant is not eligible to any relief as sought in this OA.
- 5.** The respondent no.4 i.e., CFSL has also filed its reply wherein by reiterating the opinion stated in the CFSL report dated 30.11.2018, the deponent further submits that respondent has contended that the contention of Superintendent of RMS “W” division Vadodara Department of Post, Gujarat, that the questioned signatures of the applicant have not been confirmed with the specimen signatures is not true. It is further contended that in the opinion of CFSL, a definite opinion with regard to the authorship of the questioned signatures marked Q1 and Q3 has been given, wherein in para 2 of the opinion, no conclusive opinion with regard to authorship is given due to paucity of features which connotes that the expert is silent over the authorship of otherwise questioned signature marked Q2 in comparison with the supplied and available specimen signatures.
- 6.** The applicant has filed common rejoinder to the written replies of the respondents. Learned counsel for the applicant additionally submits that the CFSL Report has to be examined and considered in the light of the written reply of respondent no.4 i.e., CFSL, Hyderabad filed in the present proceedings in OA. The respondent no.4 in its reply categorically stated that the CFSL, Hyderabad was not agreeable to what the respondent no.1 to 3 herein sought to interpret the said report for the purpose of depriving the applicant’s right to be reinstated back into the service.
- 6.1** Further, it is submitted that in the present case, it is not one of non-appointment but it is a case of termination from the service on the alleged ground of “impersonation”. It is further submitted that infact while many of those who were terminated from the services as in the case of applicant came to be reinstated in the department without calling for their specimen signature and only in the case of applicant herein and in few other cases the terminated employees were called

upon to visit the department and provide them their specimen signature.

- 6.2** It is submitted that undisputedly, before the postal authorities there was no expert opinion either from CFSL or any other agency specialized in examining the signatures. Thus, the respondent no.1 to 3 had to resorted to pick and choose and whims and called upon the employees including the applicant to provide the specimen signature.
- 6.3** Learned Counsel for the applicant submits that the respondent no.1 to 3 in their reply attempted to contend that it was a case of impersonation solely based on alleged mismatch of applicant's signature. To counter to the said submission of the respondents, he would place reliance on ratio laid down by the Hon'ble Apex court in the case of Maghan Biharlal Vs State of Punjab & Haryana reported in AIR 1977 SC 1091 (Annexure RJ/1) wherein the Hon'ble Apex Court held that the conviction cannot be based merely on the opinion of the Hand Writing expert as it is unsafe to base a conviction solely on expert opinion without any substantial corroboration. In the present case, the termination of the applicant by the postal department is no less than conviction in as much as it is stigmatic in nature and the applicant herein will not be able to secure any government employment in future.
- 6.4** Learned counsel for the applicant also placed reliance on the judgment passed by Allahabad High Court in the case of Ran Vijay Singh & Ors. Vs UOI decided on 16.11.2018 wherein it was held that the nature of expert opinion otherwise not being conclusive, could not solely be relied upon to cancel petitioner's provisional selection, ignoring other materials, particularly when the order was itself stigmatic. Further, he placed reliance on the order passed by Hon'ble High Court of Delhi in the case of Sombir Vs. Staff Selection Commission & Another i.e., WP(C) No.6256/2019 decided on 29.05.2019 to submit that the impugned decision for not reinstating the applicant in service as per the so called adverse report of CFSL, Hyderabad suffered from legal infirmities.
- 7.** Heard Shri M S Rao, learned Counsel for the applicant and Ms R R Patel, learned counsel for respondents at length and we have perused the material placed on record.

8. In the present case, it is noticed that pursuant to the notification 2014 for direct recruitment of Sorting Assistants / Postal Assistants, the applicant herein applied for the post of Sorting Assistant and had participated in the recruitment process. The applicant was declared successful in aptitude test and was appointed as Sorting Assistant vide order dated 31/03/2015. Thereafter, he participated in training at PTC, Vadodara for the period of 06.04.2015 to 30.05.2015. However, before the result of the said training was declared, the respondent no. 1 vide order dated 27.04.2015 directed the respondent no. 2 with immediate effect, that the appointment / training order / declaration of result of PA / SA DR examination 2013-14 be kept in abeyance till further orders. Further, vide order dated 09.09.2015 the respondent no. 1 directed the respondent no. 2 that in view of the proven cases of impersonation reported by one of the circles, it was requested that before allowing candidate to join or to report on training, the CPMsG would exercise exhaustive due diligence by constituting a committee to carry out a thorough check of personal details of the candidates, verification of the certificates submitted by them, comparison of their signatures and photograph with the relevant record generated during the examination/ submitted by them at the time of joining / training. This exercise was required to be carry out with regard to those candidates of PA / SA exam 2014 who had already been appointed / trained, and had to be completed by 31.10.2015 keeping in view the said direction & further instructions issued regarding parameters to be followed (Ann. A/10 referred). The respondent no. 3 vide order dated 23.12.2015 terminated the service of applicant along with other similarly placed candidates under the provision of Rule 5 of CCS (Temporary Service) Rules, 1965 (Annexure A/11). The said action of the postal department was challenged by the affected candidates including the applicants before this Tribunal by filing various OAs which came to be partly allowed with a direction to the respondent to carry out thorough investigation and till then the selection list was to be kept in abeyance. Aggrieved by the said decision the official respondent approached the Hon'ble High Court and the High Court upheld the decision of the Postal Department and quashed the order passed by this Tribunal vide common judgment dated 16.08.2016. Aggrieved by the said judgment, the affected candidates approached the Hon'ble Supreme Court by way of filing various SLPs.

The Hon'ble Apex Court while disposing of all such SLP's vide common order dated 13.07.2017 (Annexure A/18 refer) held that:-

“We find from a perusal of the report of the Vigilance Committee that the entire examination was not necessarily vitiated but some persons who are suspected of having used malpractices in the examination of Postal Assistant/Sorting Assistant in five Circles, viz., Uttarakhand, Rajasthan, Chattisgarh, Haryana and Gujarat have actually been identified. The respondents will proceed against them in accordance with law but since, they are quite a few in number, a formal show cause is dispensed with. However, they may be personally called and explain the allegations against them and given some reasonable time of about a week or ten days to give their reply to the allegations and then a final decision may be taken.

Those persons who are not suspected of having committed any malpractices and who have undergone the prescribed courses may be reinstated with all consequential benefits and 50% back wages with liberty to the respondents to take action against them in case subsequently it is found in the investigation that they have indulged in some malpractices.

We make it clear that the respondents are at liberty to take action against those persons who have violated the terms of the examination such as having appeared in more than one centre. Such violation will also be treated as malpractice.

We further make it clear that this order will not enure to the benefit of those persons who have not been given appointment letters. However, we also make it clear that those candidates who have not completed the course but wherein the process of completing the course until the impugned action was taken may be permitted to complete the course/training provided they are not suspected of any malpractice. The appeals and Special Leave Petition stands disposed of”.

9. Further, it is noticed that after the aforesaid judgment the applicant was called by the respondent no. 3 to attend the office and though his name was not in the list of tainted candidates, to show more diligence before his reinstatement, respondent had obtained applicant's signature on hundred papers and same was sent along with specimen signature of the applicant to CFSL, Hyderabad and report thereon was sought.

It is apt to mention that the CFSL in its examination report dated 17.12.2018 opined as under:-

1. *The person who wrote the blue enclosed signatures stamped and marked S1 to S100 also wrote the red enclosed signatures similarly stamped with mark Q1 and Q3.*
2. *All the writing characteristic features as occurring in the questioned signature stamped and marked Q2 could not be collectively accounted for, from any of the standard signatures similarly stamped and marked S1 to S100. It is*

therefore, not been possible to express any opinion regarding the authorship or otherwise of the questioned signature.”

10. Based on aforesaid opinion of CFSL, the respondent no. 3 denied the reinstatement of the applicant vide impugned dated 07.01.2019 (Ann. A/1) wherein following reason has been assigned by the respondent no.3 which reads as under:-

“With reference to above cited subject it is to intimate that as per the adverse report received from CFSL Hyderabad you are not eligible for reinstatement in service.”

11. It is the paramount submission of Learned Counsel for the applicant that aforesaid impugned order is contrary to the opinion tendered by the CFSL and no adverse remark against the applicant has been opined by the examiner. The respondent no. 4, i.e., CFSL in its reply filed in this OA also contended that it had not opined any adverse remark against the applicant and it was not correct on the part of respondent no. 3 to state contrary to the said opinion. Therefore, the reason assigned for not reinstating the applicant is stigmatic and cannot be said to be simpliciter. The said stigma will ruin the career of the applicant. The respondent ought not to have passed such an order without affording an opportunity to the applicant to explain his position. Considering the material on record we find force in the submission of the Counsel for the applicant.

It is noticed that in para – 1 of CFSL report, the examiner had opined that the author of S-1 to S-100 (i.e., blue enclosure, contained applicant’s signature stamped on hundred paper sheet taken by respondent no. 3) and the red enclosure contained signatures stamped and marked Q-1 and Q-3 (i.e., specimen signature of the applicant) is the same person, i.e., applicant herein. The examiner while recording reason of his opinion observed that there are no basic difference between writing habits of the questioned signatures and those of standard signature of comparison and opined that the signatures were of common authorship. Further, in para – 2 of the result of examination / opinion, the examiner has also observed that writing characteristic features had been occurring in the questioned signature, stamp and marked Q-2 could not collectively account for, from any of the standard signature similarly stamped and marked S-1 to S-100. It has therefore, (for the examiner) not been possible to express any opinion by the examiner regarding authorship or otherwise of the questioned signature. The

respondent no. 4, i.e., CFSL in its written reply in this OA has reiterated that it had not opined any adverse report against the applicant. Considering this factual aspect, in our considered view, the reason assigned by the respondent no. 3 in the impugned order (Ann. A/1) is found to be contrary to the report of the CFSL.

12. At this stage, it is appropriate to refer the law laid down by the Hon'ble Apex Court in the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Science reported in (2002) SCC (L&S) 170 wherein at para-21 the Hon'ble Apex Court as held as under :-

“21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into allegations involving moral turpitude or misconduct (c) which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld.”

In the present case, as noted hereinabove before issuance of order of termination, no inquiry was held. Subsequently, in light of direction issued by the Hon'ble Apex Court in the SLP filed by the applicant and the identically situated candidates, the respondent had undertaken the exercise to re-verify the identity of the candidate before their reinstatement and in this regard the respondent had obtained hundred signatures of the applicant and had sent for examination along with specimen copy to the CFSL and sought CFSL's report with respect to questioned signatures of the applicant by way of formal inquiry. The respondent Postal Department assigned the reason for not reinstating the applicant, that there was adverse report of CFSL against the applicant which amounted to allegation of moral turpitude against the applicant and finally culminated in a finding of guilt which resulted in issuance of the impugned order (Ann. A/1). All the three factors as stated by Hon'ble Apex Court in the case of Pavanendra Narayan Verma (Supra) are present in the case at hand. It can be seen that a plain reading of impugned decision dated 07.01.2019 (Ann. A/1), would indicate that it is stigmatic in nature. Thus, we are of considered opinion that the impugned decision of termination and denial of reinstatement of the applicant is punitive in nature and the same is stigmatic. The impugned order should not have been passed by the respondent (Postal Department) without observing

of principles of natural justice. The said impugned orders therefore, are not sustainable in the eyes of law.

The impugned decision is also not tenable in light of dictum laid down by Hon'ble Apex Court in the case of Magan Biharlilal Vs. State of Punjab & Haryana reported in AIR 1977 SC 1091 wherein it was held that conviction cannot be based on the opinion of the hand writing expert as it is unsafe to base a conviction solely on expert opinion without any substantial corroboration. In the present case, the respondent relied upon the CFSL hand writing expert opinion and based on it denied the reinstatement of the applicant and that too without any other corroboration whatsoever. In absence of any material contrary to what is noted hereinabove, the decision making process and the conclusion arrived at by the respondent, in our considered view is vitiated and suffers from legal infirmity and therefore the impugned orders deserve to be quashed and set aside.

13. In view of above discussions and in light of law laid down by Hon'ble Apex Court as referred hereinabove, the impugned order (Ann. A/1) passed by respondent no.3 is quashed and set aside. The case is remitted back to the respondent no. 2 & 3 with a direction to consider the candidature of the applicant for reinstatement in light of what is stated hereinabove as also, if no other adverse report is found against the applicant by following the principles of natural justice. It is expected that the respondent concerned will carry out the directed exercise within a period of 60 days positively from the date of receipt of the copy of this order.
14. Accordingly, OA stands partly allowed. No order as to cost.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

PA