

O.A. No.721/2017**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.721 of 2017

CORAM:

HON'BLE MR. A. MUKHOPADHAYA, MEMBER(A)

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)

Upendra Yadav, aged about 29 years, S/o. Bijaya Sankar Yadav, presently working as Helper to Grade-D Railway Staff in the office of Senior Section Engineer, Electrical Maintenance Office, at Secunderabad, Dist. Hyderabad, State-Telangana.

.....Applicant

VERSUS

1. Union of India represented through its Chairman, Railway Recruitment Board, Bhubaneswar, D-79/80, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
2. Member Secretary, Railway Recruitment Board, Bhubaneswar.
3. Senior Divisional Personnel Officer, Office of the Divisional Railway Manager, Personal Branch, 4th Floor, Sanchalan Bhavan, Secunderabad-500071.
4. Divisional Railway Manager, Khurda Road, Dist-Khurda

.....Respondents.

For the applicant : Mr. P.K. Mohanty

For the respondents: Mr. T. Rath

Heard & reserved on : 16.04.2021

Order on :02.07.2021

O R D E R**Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-**

This Original Application has been filed by the applicant challenging the order dated 02.11.2017 under Annexure-A/12 debarring the applicant to appear the RRB Examination for life time on account of using impersonator during 1st page CBT against CEN-03/2015 with the following relief:-

“(i)Quash the impugned order dated 2.11.2017 under Annexure-A/12 debarring the applicant for appearing the RRB examination life time.”

(ii)And further be pleased to declaring the applicant a successful candidate for the post of Goods Guard having secured the marks for qualifying the test.

(iii) And pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.”

2. The applicant has raised the following grounds in support of his case that the allegations brought under Annexure-A/9 is ill founded and the consequence thereof under Annexure-A/11 is the arbitrary decision of the Respondents debarring the applicant for appearing the RRB examination for life time. It seems as if the respondents as determined to punish the applicant, even if there are two views of the experts, one view giving opinion that the LTIs were unsuitable for comparison and other view of another expert giving opinion that the writings at the time of verification of documents had difference with the writings at the 1st page CBT. In that view of the matter the allegations are clouded with doubts. The benefit of doubts should have been extended to the applicant. It is submitted that before imposing such punishment a due enquiry should have been conducted after following due procedure of law. The Respondents having not done so have acted illegally in passing the order under Annexure-A/12. Even if the examination centre and the concerned examination hall was under the CCTV, the respondents after taking a close view of the CCTV footage of that day and also of that room should have been able to give a finding whether there was impersonation or not by the applicant.

3. It is further submitted that the call letter shows that there is a photograph of the applicant on it. Therefore, the invigilator in the examination hall should have pointed out that the candidate in person did not seem to the same person as on the call letter, if anybody else than the applicant was appearing in the test in the 1st page of CBT. The evidence collected from the Forensic expert is also not a conclusive proof, unless it is corroborated by any other evidence. Here in this case, there is no corroboration to the evidence of forensic expert. Therefore, solely on the basis of the report of the Forensic expert the punishment should not have been

imposed debarring the applicant for appearing RRB examination for life time. The applicant is also a physically handicapped person. Therefore, when there is physically informative in the applicant, there may occur some infirmities relating to the other parts of the body. Therefore, the respondents also have not taken into consideration that aspect of the matter. In any view of the matter, order under Annexure-A/12 is illegal, arbitrary and not sustainable in law.

4. The respondents by filing counter inter alia submitted that vide Centralized Employment Notice (CEN) No.03/2015 dated 26.12.2015 the RRB, BBSR inviting online applications for filling the vacancies of Non-Technical Popular Category (Graduate) posts with closing date of online application dated 25.01.2016. The selection procedures and other terms & conditions have been incorporated in the Employment Notification which is binding upon the candidates.

A) That under sub-para-13.01 of para-13 of Centralized Employment Notice (CEN) No.03/2015 under caption ‘IMPERSONATION/SUPPERESSION OF FACTS WARNING:’, IT HAS BEEN STIPULATED THAT “No candidate should attempt impersonation or take the help of any impersonator at any stage of the selection process. Such candidates will be debarred for life from appearing in all RRB examinations for appointment in Railways. In addition, legal action may also be taken against candidate. Further under subpara -13.02, it has been mentioned that “Any candidate found using unfair means in the examination or sending someone else in his/her place to appear in the examination will be debarred from appearing in all the examinations of all the RRBs for lifetime. He/she will also be debarred from getting any appointment in the Railways. Such candidates are also liable for prosecution.”

5. It is submitted that during the process of document verification, suspicion arose over the applicant’s candidature due to mismatch of biometric left thumb

impression (LTI) taken in 2nd CBT with the biometric left thumb impression (LTI) taken in 2nd CBT with the biometric left thumb impression (LTI) taken during the Document Verification as reported by the verifying official deputed by Examination conducting Agency. As per the rules framed by Railway Board and communicated vide letter dated 14.02.2002 (RRCB No.05/2002) (Annexure-R/4), thumb impression is to be taken at the time of written examination and at the time of certificate verification to enable verification by Finger Print Expert in cases of doubt. Further, verification of handwriting through Government Examiner of Questioned Document (GEQD) only in cases of doubt and not through private agency. Hence, thumb impressions taken at various stages of recruitment cell process were sent to Railway Finger Print Examiner for examination. On examining the case of the applicant, the Railway Finger Print Examiner has reported that the manual Left Thumb Impressions (LTIs) taken during 1st stage and 2nd stage CBT in the instant case could not be read due to blurred impression. As per the laid down procedure mentioned above, the case of the applicant along with similar cases was referred to the Forensic Document Examiner (Government Examiner of Questioned Document) for verification/examination of handwritings for expert opinion. After examining the instant case, the said Government Examiner of Questioned Document (GEQD) has furnished his opinion indicating that the handwriting characteristics in 1st stage CBT differs from 2nd stage CBT and document verification. As such, it was established that the applicant had himself not attended the 1st stage CBT and arranged an impersonator to appear the said examination on his behalf. It is submitted that as per para -3 of Annexure-R/4, the candidates found guilty of arranging impersonation should be debarred for life from appointment in Railways, after giving them due notice. Despite clear mention in para -13.02 of CEN-03/2015, the applicant resorted to impersonation ignoring the caution given by the RRB. Therefore, based on the opinion of the GEQD, the applicant was debarred

from appearing in all the future examinations of all the RRBs for lifetime by following due procedure vide RRB letter dated 02.11.2017 under Annexure-A/12 .

6. The Forensic Government Examiner vide his opinion dated 25.09.2017 has reported that “The original documents relating to the recruitment of the person called UPENDRA YEADV, Roll No.16348028480015 have been carefully and thoroughly examined by me with the help of available scientific instruments in all aspects of handwriting identification and detection of forgery. In my opinion:

- i.) Inter-se comparison of the enclosed writings stamped and marked S-1 to S-7 and Q-2 reveals similarities in writings characteristics indicating that they were all written by one and same person.
- ii.) The person who wrote the blue enclosed writings stamped and marked as S-1 to S-7 did not write the red enclosed writings similarly stamped and marked A-1 for the reasons that there are differences in handwriting characteristics.”

The opinion of the expert being crystal clear and unambiguous and there being no significant defense of the applicant in his representation refuting the expert opinion, the competent authority accepted the experts opinion and accordingly the order under Annexure-A/12 was issued. On the face of the Expert Opinion vis-à-vis applicant's contention, the finding of the competent authority that applicant used impersonator in the 1st stage CBT is proper and justified. In view of what has been stated above, the O.A. being devoid of any merit is liable to be dismissed.

7. The applicant has filed his rejoinder inter alia submitted that the respondent have taken stand in their counter that only at the stage of verification of documents suspicion arose over the applicant's candidature due to mismatch of biometric left

thumb impression (LTI) taken in the 2nd CBT with the biometric left thumb impression (LTI) taken during the document verification and this stand has been taken in para-C of their counter. But under Annexure-A/12 and A/9 of the O.A. reveal that there is mismatch of writings of the 1st stage CBT with the writing at the time of verification of documents. Therefore, the respondents' action in this regard is highly arbitrary, since there is no finding that whether there was any mismatch of LTI of the 1st stage of CBT matched with the 2nd stage of CBT test and the stage of documents verifications. Since there is no reply to it, it seems as if the respondents are determined to punish the applicant.

8. It is further submitted that the allegations made by the respondents against the applicant that the applicant had not attended the 1st stage CBT and arranged an impersonate to appear the said examination on his behalf, is completely false on the ground that if a close view/look is given to Annexure-R/5, R/6 and R/7 there would be no doubt or confusion that all the writings are by one person. The Court is the expert of all experts and this Tribunal may take care of it. It is further submitted that at the time of examination before going to the system i.e. Computer the photograph is taken and thumb impression is also taken. Furthermore, the photograph is shown on the right side of the screen. The Monitor of the system is covered by three sided board boxes. But from the shoulder, neck, face and head are quite visible to everyone and there are not covered. In this scenario the Investigator could have pointed out if there was any impersonation. It is submitted that when the applicant took stand that the Examination Hall was under CCTV coverage, the respondents now take the stand that during 1st stage CBT the Exam. Hall was not under CCTV, Coverage. Therefore, the stand of the respondents is based no materials, since all the examination conducted by the RRB are done under CCTV coverage.

9. It is further submitted that the 1st stage CBT Test was held between 28.03.2016 to 03.05.2016. The 2nd stage CBT was conducted from 17.01.2017 to 19.01.2017. The verification of documents was conducted pursuant to notice dated 07.08.2017. It was quite clear there is much gap of period/time from one test to another test and the writings are also younger and older in that respect. Besides the gist of writing is also not same in 3 stage of examination. Further, the writings taken during documents verification are also not required for examination point of view. Taking into all these aspects of this matter, it is quite clear that it is the arbitrary decision of the respondents with an ulterior motive to impose punishment on the applicant debarring him to appear the RRB Examination life time, since all the allegations levelled against the applicant are clouded with doubts and the benefit of doubt may be extended to the adversary, the present applicant. The opinion of the Forensic Expert is that the writings at the time of verification of documents are similar with the 2nd stage CBT and the writings at the time of verification of documents is not similar with the 1st stage CBT. The question of dissimilarity of the writings arose only after the suspicion arose with regard to thumb impression. Furthermore, the opinion with regard to thumb impression could not be given by the experts. It is also not understood how the suspicion arose with regard to thumb impression. Given at the time of the stage of 1st CBT Furthermore, the handwriting expert did not take a little pain to compare the 1st stage CBT writing with the 2nd stage CBT writing to come to a correct conclusion. These allegations raised in the counter by the respondents though not specifically denied are deemed to have been denied.

10. We have heard learned counsels for the applicant and the respondents, gone through the pleadings. The applicant, who was a Railway employee had applied for the post of Goods Guard in pursuance to the advertisement vide Annexure-A/1

dated 26.12.2015. The said examination was restricted only for the Railway employees. He had submitted his online application vide Annexure-A/2. He was issued with E-call letters for the first phase examination for computer test vide Annexure-A/4 and subsequently final E-call letter was issued to him vide Annexure-A/5. Thereafter, show cause notice vide Annexure-A/9 dated 05.10.2017 was issued to him on the ground that there is impersonator on his behalf in appearing the examination in question. The said fact was rejected at the time of verification of document on dated 14.09.2017. There was mismatching of the LTI seconded by the biometric device and the LTI of the applicant also Tried to be compared but the same could not be compared as the same is unprintable. The matter was also referred to the forensic expert who had mentioned that the LTIs are not traceable and therefore cannot be compared. On examination of the handwriting the Forensic Document Examiner opined that handwriting characteristics in 1st stage CBT differs from 2nd stage CBT and document verification. The applicant in pursuance to the show cause notice vide Annexure-A/9 had submitted show cause reply vide Annexure-A/10 inter alia mentioning that the CCTV footage has not been checked and due inquiry has not been made.

11. It was inter alia submitted by the Ld. Counsel for the applicant that due to lack of long period of absence between the LTI given by the applicant for the first examination in pursuance to the E-call letter vide Annexure-A/4 and subsequently vide Annexure-A/5 final E-call letter and the date of verification of document there is every chance that there will be change of handwriting since it is also claimed by the applicant that he is a physically challenged person.

12. In this regard, the Ld. Counsel for the respondent had submitted that the claim made by the applicant that he is a physically challenged was not supported any documents and was also not mentioned in the show cause in this regard vide

Annexure-A/10. He had also submitted that since there was no CCTV coverage due to non availability of the same, therefore, the question of taking up CCTV footage did not arise. In this regard, in the counter the Ld. Counsel for the respondents draw to the averments made in Para 20 of the counter affidavit (See counter Page 82 & 83). The document vide Annexure-R/5, R/6 & R/7 were sent to the handwriting expert.

13. Ld. Counsel for the applicant had submitted that the Tribunal is the expert of the expert and therefore the Tribunal can compare the handwriting documents in question and therefore, can definitely come to a conclusion. Since there is one expert opinion given by the fingerprint forensic expert, this Tribunal in the circumstances do not want to go into the fact that whether it will proper or not to examine the said handwriting directly by us.

14. Ld. Counsel for the applicant averred in para-3 of the rejoinder that the applicant humbly submits that at the time of examination before going to the system i.e., Computer, the photograph is taken and thumb impression is also taken. Furthermore, the photograph is shown on the right side of the screen. The Monitor of the system is covered by three sided board boxes. But from the shoulder, neck, face and head are quite visible to everyone and there are not covered. In this scenario the Investigator could have pointed out if there was any impersonation.

15. Ld. Counsel for the applicant in Para-5 (G) at page -9 of the OA submits that the applicant is also a physically handicapped person. Therefore, when there is physically infirmative in the applicant, there may occur some infirmities relating to the other parts of the body. Therefore, the Respondents also have not taken into consideration that aspect of the matter. In any view of the matter, order under Annexure-A/12 is illegal, arbitrary and not sustainable in law.

16. Besides that it appears that the signature as given in document vide Annexure Nos. R/5 (Page-82), R/6(Page-83) & R/7 (Page-84) are different and do not match with the sample signature of the applicant taken at page 88.

17. It is mentioned in para-7 of the counter that during verification of documents and genuineness of candidature, a mismatch in biometric capture of LTI in Computer Based Test was detected and reported by the verifying official of Examination conducting Agency. For clarifying the doubt of mismatch of biometric LTI, the manual LTIs taken in the Computer Based Tests and during the document verification stage were examined by the Railway Finger Print Examiner. However, the Finger Print Examiner opined that the LTIs are blurred and not fit for verification. Since the matter did not get clarified by the Railway Finger Print Examiner, the handwritings pertaining to the applicant taken in various stages of recruitment process viz. Handwritings of 1st stage CBT, Handwritings of 2nd stage CBT and Handwritings taken during document verification were sent to Forensic Document Examiner (Government Examiner of Questioned Documents) for verification of handwritings to ascertain the genuineness of candidature as per procedure in vogue. The photocopy of handwritings of 1st Stage CBT marked as 'Q1' enclosed as Annexure-R/5, The photocopy of handwritings of 2nd Stage CBT marked as 'Q2' enclosed as Annexure-R/6, photocopy of handwritings taken during document verification marked as "S-1 to S-7" enclosed as Annexure-R/7. The Forensic Document Examiner communicated his opinion to Chairman, Railway Recruitment Board, Bhubaneswar vide letter dated 25.09.2017(Annexure-R/8). It is clear from the opinion of Forensic Document Examiner that the person who wrote the writings during 2nd stage CBT and Document Verification did not write the writings during 1st stage CBT as there were differences in handwriting

characteristics. Hence a show cause of notice dated 05.10.2017 was served to the applicant giving an opportunity to submit written defence.

18. It is submitted in Para 3-A of the counter (13.01 circular) the point as to whether it is proper and justified and the respondents were empowered to debar the applicant to appear in examination throughout the lifetime. Ld. Counsel for the respondents has drawn the attention of this Tribunal to the averments made in Para 3-A of the counter that under sub-para 13.01 of para-13 of Centralized Employment Notice (CEN) No.03/2015 under caption 'IMPERSONATION/SUPPRESSION OF FACTS WARNING:', it has been stipulated that "No candidate should attempt impersonation or take the help of any impersonator at any stage of the selection process. Such candidates will be debarred for life from appearing in all RRB examinations for appointment in Railways. In addition, legal action may also be taken against candidate. Further under subpara-13.02, it has been mentioned that "Any candidate found using unfair means in the examination or sending someone else in his/her place to appear in the examination will be debarred from appearing in all the examination of all the RRBs for lifetime. He/She will also be debarred from getting any appointment in the Railways. Such candidates are also liable for prosecution".

19. The process for recruitment is an important and a sacrosanct process and integrity is to be maintained. With a view to avoid impersonation, certain procedures have been laid down. In the instant case the procedure includes that a candidate has to write in his own handwriting the same paragraph at the stage of making application, at the stage of writing examination in OMR sheet as well as at the stage of documents verification. In view of a large number of candidates, the occasion for verification of the same arises at the stage of documents verification. Thereafter, the doubtful cases are sent for report by the expert, viz. Forensic Document Examiner

(GEQD). In this case the GEQD report indicated mismatch in handwriting as well as in signatures and thus a doubt about impersonation got confirmed. This cannot be faulted. Since this rule, for cancellation of candidature in such cases of mismatch, is uniformly applied, the applicant's candidature was rejected after calling for show cause from the applicant and thereafter considering his reply, the respondents passed the punishment order in question. We do not find any illegality or irregularity in the said action of the respondents.

20. Accordingly, the OA being devoid of merit is dismissed but in the circumstances without any order to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(A. MUKHOPADHAYA)
MEMBER