

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. NO. 352/2006

Date of Order: 4th July 2011

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [Judicial]
Hon'ble Mr. Akhil Kumar Jain, Member(Administrative)

Rajeev Ranjan son of Sri Ram Prit Choudhary resident of Village- Naya Tola Sangat, P.O. And P.S.- Bakhtiyarpur, District- Patna.

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Applicant.

By Advocate: - Shri B.K. Sinha, Sr. Advocate With Shri P. Kumar

-Versus-

1. The Union of India, through the Secretary to the Govt. of India, Ministry of Railways, New Delhi.
2. The Chairman, Railway Recruitment Board, Gorakhpur.
3. The Assistant secretary, Railway Recruitment Board, Gorakhpur.

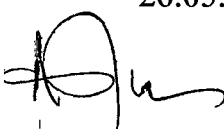
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Respondents.

By Advocate: - Shri R.N. Choudhary

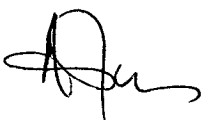
ORDER

Akhil Kumar Jain, Member [Administrative] :- In this OA and the subsequent MA 54/2008 filed due to some new developments during the pendency of the OA, the applicant has sought for quashing the RRB, Gorakhpur letter dated 19.03.2007 (Annexure A/12) issued on behalf of the Chairman, RRB, Gorakhpur whereby the candidature for the selection of the applicant for the post of Goods Guard, Category-17 in the Employment Notice No. RRB/AG/01 2002-03 was cancelled and he was debarred for all RRB examinations for lifetime. The applicant has also sought for quashing the show cause notice dated 18/24.05.2006 (Annexure A/8 of the supplementary application) issued to the applicant and for declaration of opinion of GEQD dated 30.09.2005 on documents received on 26.05.2005 as incomplete, non-conclusive opinion and no substantive evidence to



establish the allegation of impersonation against the applicant, as such non-est in the eyes of law. He has also prayed for issuing direction on the respondents to issue the recommendation/offer for appointment in respect of the the applicant to the post of Goods Guard under North Eastern Railway meant for Scheduled Caste Category against which applicant was duly selected after following the due process of selection and accordingly for issuance of the appointment letter in favour of the applicant in accordance with law.

2. The facts of the case, in brief, are that the applicant applied for selection to the post of Goods Guard in SC category against Employment Notice No. RRB/AG/1/02-03 dated 01.02.2003 issued by RRB, Gorakhpur (Annexure A-1). The number of vacancies of Goods Guard in Category 17 was notified as 38 (UR-18, SC-7, ST-3, OBC-10). The number of notified vacancies of Goods Guard was subsequently amended and increased to 71 (UR-18, SC-23, ST-20, OBC-10) by a corrigendum dated 18.02.2003 (Annexure A-2). The applicant was issued Admit Cards. He claims to have appeared in the preliminary and main written examination held on 21.09.2003 and 11.01.2004 respectively and that he was declared successful in the result published on 29.02.2004 (Annexure A-5). Thereafter, he received a call letter dated 29.02.2004 (Annexure A/6) for remaining present in the office of RRB, Gorakhpur on 29.03.2004 for verification of original certificates/documents. He accordingly appeared on 29.03.2004 and his certificates/documents were verified. He also submitted attested copies. Thereafter, the applicant claims to have made several visits to the office of RRB to know about his offer letter, but in vain. As nothing was heard from the respondents, he filed this OA on 14.06.2006. In the meantime, a letter dated 18/24.05.2006 (Annexure A/8 of the supplementary application) was issued on behalf of the Chairman, RRB, Gorakhpur asking him to show cause within 30 days as to why his selection may not be cancelled and he should not be debarred from appearing in all RRB examinations in future on the ground that he himself did not appear in



the written examination and rather somebody else appeared in the written examination on his behalf which is a case of impersonation, a malpractice and an offence. This could not have happened without applicant's active participation and consent. The applicant replied vide letter dated 11.09.2006 denying the allegation and asking for questioned documents. Thereafter, the impugned letter dated 19.03.2007 as contained in Annexure A-12 was issued.

3. Heard the learned counsel for the parties.

4. At the outset, the learned counsel for the respondents raised the issue of jurisdiction and stated that in para-6 of the written statement, maintainability of the OA has been challenged on this ground. He further submitted that in para 5.15 of the Employment Notice as contained in the annexure of the written statement under the heading "Special Attention to the Candidates", it is clearly stated that "any legal issues arising out of this Employment Notice would fall within the legal jurisdiction of the Central Administrative Tribunal, Allahabad." By applying against this Employment Notice, the applicant has, by implication, accepted all the terms and conditions stipulated in the Notice, and hence, he cannot now claim jurisdiction of this Tribunal.

5. The learned counsel for the applicant submitted that the applicant is a resident of Bihar which falls within the jurisdiction of this Tribunal. Moreover, a notice debarring him from appearing in all the Railway Recruitment Board examinations all over the country was served on him at his residence in Bihar. Hence, the cause of action has arisen within the jurisdiction of this Tribunal. He further submitted that this issue was not pressed by the respondents at the early stage. Instead, they not only filed the written statement, but also produced the documents called for by the Tribunal. Hence, at this belated stage, the issue of jurisdiction cannot be agitated upon by the respondents.

6. Before proceeding further, we deal with the issue of jurisdiction.

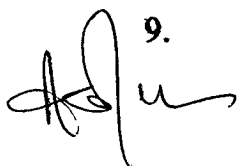
This Tribunal in a number of OAs relying upon the judgment in OA No. 640/2009



decided on 11.02.2010 passed by a Division Bench, has held that merely service of notice does not constitute any cause of action. In the instant case, we are in agreement with the applicant that this issue should have been pressed by the respondents at an early stage. They have not only filed the written statement but also submitted the the documents called for by this Tribunal, and hence, at this final stage of hearing, it will not be appropriate on our part to dismiss this OA merely on the ground of jurisdiction. However, this will not be treated as a precedent in future on the issue of jurisdiction.

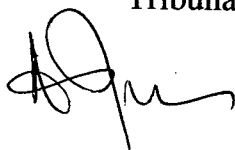
8. Proceeding with the arguments on the main issues in the OA, the learned counsel for the applicant submitted that no copy of questioned documents or opinion of the experts were supplied to the applicant. The applicant appeared both in the preliminary and mains written examinations and signed attendance sheets/question booklets/answersheets and in token of proof of the same, the concerned invigilator had duly signed on the called letters after verifying and being satisfied with the applicant's signature and presence. The applicant qualified both in the preliminary and mains written examination as is clear from the result published on 29.02.2004 vide Annexure A/5. Furthermore, after verification of the documents on 29.03.2004, a penal of selected candidates was sent by RRB to the General Manager (Personnel), NER, Gorakhpur on 30.03.2004 for further processing the offers of appointment. In spite of this, according to the respondents, the case of the applicant was referred to the GEQD on 07.12.2004. There is no explanation on the part of the respondents as to what action was being taken by the respondents between 30.03.2004 to 07.12.2004 in the matter of offer of appointment to the applicant. This clearly shows that respondent no. 2 and 3 with malafide intentions have purposely suppressed and concealed the facts between 30.03.2004 to 07.12.2004 in order to delay and deny the offer of appointment to the applicant.

9. The learned counsel for the applicant further submitted that it was



only after order dated 05.07.2006 passed in this OA that the applicant on 21.07.2006 received at his home address, the impugned letter dated 18/24.05.2006 (Annexure A/8 of the supplementary application) issued on behalf of/for the Chairman, RRB, Gorakhpur, respondent no. 2 which was after two years from the verification of documents. A perusal of the said letter reveals that it is cryptic, illegal and arbitrary with frivolous pleas without any substance or any legs to stand on, issued just in order to deny legitimate claim of the applicant in a circuitous manner. Moreover, no copies of the questioned documents or opinion of GEQD were given to the applicant. It was alleged by the learned counsel for the applicant that the issuance of the said show cause notice after two years from the date of verification of document was an afterthought and is malafide. There is no explanation of delay in issuing the said order.

10. The learned counsel for the respondents submitted that on verification of the documents of the applicant on 29.03.2004 in terms of the Employment Notice, some variations were noted in the handwriting as well as signature of the applicant obtained at the time of verification of certificates and at the time of written examinations. Subsequently, the matter was referred to GEQD on 07.12.2004 for obtaining expert's opinion about the genuineness of the candidate. As confirmed by the GEQD, signatures on the application form, and that on attendance sheets/ question booklet/answersheets were of different person. It established that the candidate did not appear himself in the written examination, rather somebody else appeared on his behalf which is a case of impersonation or a malpractice and an offence of criminal nature. This could not have happened without active participation and consent of the applicant. The learned counsel for the respondents submitted that the applicant was asked vide letter dated 18/24.05.2006 to show cause in writing within 30 days. But instead of replying to the show cause within the prescribed time, the applicant approached the Tribunal through the present OA on 06.06.2006 concealing this fact and without

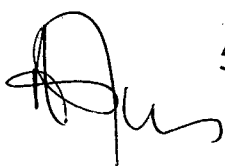


exhausting the remedies available to him.

11. The learned counsel for the respondents further submitted the applicant's contention that the invigilator was satisfied while verifying signature does not have any bearing on the fact that impersonation has not been done. Considering the various aspects, many stages/layers of checks have been incorporated in the system to ensure fair and impartial examination, e.g signatures and handwriting samples on answersheets at the time of examination being one such back up check system to verify subsequently in case of doubts. In case of applicant, on the basis of GEQD's opinion and also after considering all aspects including the contention of the applicant made in his letters referred to in the order dated 19.03.2007 (Annexure A/12), the decision was taken by the competent authority. The action was taken against the applicant in terms of para 5.6 of the Employment Notice. Furthermore, as per para 14.2 under the heading "General", a decision of RRB, Gorakhpur in such a matter is final and binding on the applicant. It is not obligatory for RRB to inform the candidate about his rejection. Denying the allegation of malafide, arbitrariness and illegality in passing the order, the learned counsel for the respondents submitted that on the contrary the applicant has suppressed vital information about issuance of show cause etc. from the Tribunal. As regards alleged delay, the learned counsel for respondents stated that the RRB deals with a large no. of recruitments. In such matters, especially when verification is done by seeking expert opinion, time is taken in completing the procedural formalities.

12. On the direction of the Tribunal, the following documents in original were also filed by the respondents for perusal of the Tribunal:-

1. Application Form (two pages with photograph).
2. Check Note dated 29.03.2004 (one page).
3. Handwriting of the applicant in English with signature of the candidate (one page).
4. Call letters of Main and Preliminary examinations (one page photocopy).
5. OMR Answer Sheet Sl. No. 117679 (one page).



6. Confidential letter dated 23.03.2005 and 18.05.2005 referred to GEQD (two pages).
7. Expert Opinion/Report No. DCX- 219/2005 dated 30.09.2005 containing forwarding letter, case abstract and opinion/report (four pages).
8. Show Cause Memorandum dated 18/24.05.2006 and 04.09.2006 (two pages).
9. Debarred letter dated 19.03.2007 (one page).
10. List of documents dated 28.09.2007 (one page).
11. Photocopy of letters bearing no. RRB/AG/1/2002-2004/17/2004 dated 30.03.2004, 07.07.2004 and 22.05.2007 recommending names of total 70 selected candidates for appointment on the posts of Goods Guards in Category 17 based on result of written examination held on 21.09.2003 and 11.01.2004 and verification of original certificates on 29.03.2004 along with forwarding letter dated 13.04.2011 addressed to learned counsel for the respondents (5 pages).

13. After perusal of the aforesaid documents, the learned counsel for the applicant submitted that the opinion of the expert in the instant case is incomplete, non-conclusive opinion and non-substantial evidence to establish the allegation against the applicant, as such non-est in the eyes of law. He submitted that the respondent no. 2 and 3 purposely suppressed, concealed and not sent the following relevant documents in original for verification/examination by the GEQD vide confidential letter dated 18.05.2005 received on 23.05.2004 by GEQD.

“[A] (i) Original attendance sheet pertaining to the preliminary examination held on 21.09.2003.


(ii) Original admit card pertaining to the preliminary examination held on 21.09.2003, containing original applicant's signature in Hindi, English, original Invigilator's signature in English and original photograph of applicant.

[B] (i) Original attendance sheet pertaining to the Mains examination held on 11.01.2004.

(ii) Original admit card pertaining to the Mains examination held on 11.01.2004, containing original applicant's signature in Hindi, English, original Invigilator's signature in English and original photograph of applicant.

(iii) Original answer sheet duly signed by applicant and pertaining to the Mains written examination held on 11.01.2004.”

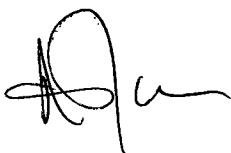
14. It was submitted by the learned counsel for the applicant that allegation of impersonation is merely a conjecture on the part of the respondents no. 2 and 3 when applicant's aforementioned admit cards, photographs and



handwritings as well as many other documents were available with them which clearly show that the applicant was present on the dates of preliminary and main examinations.

15. He further submitted that on a careful perusal of the documents and the opinion No. DXC-219/2005 dated 30.09.2005 and documents received on 26.05.2005 by GEQD, it transpires

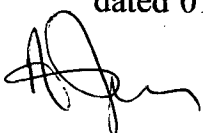
- (i) That the application form was duly filled by the applicant in the month of March, 2003 in his own handwriting. As such the applicant's application form cannot be rejected in terms of clause 12 of the advertisement.
- (ii) That there is no observation nor opinion in respect of the applicant's signature on the admit cards for both the preliminary and main written examination even after the careful examination of the aforesaid questioned documents S/3, S/4 and S/5, i.e. the applicant's signatures in Hindi and English on both the admit cards.
- (iii) That there is no observation nor any opinion relating to comparison of applicant's signature/LTI on the attendance sheet, applicant's signatures on admit card pertaining to preliminary examination on 21.09.2003 with sample copy of applicant's signature/LTI taken during verification on 29.03.2004 and with those in application form.'
- (iv) That there is no observation nor any opinion relating to comparison of applicant's signature/LTI on attendance sheet, applicant's signature on admit card and answersheet pertaining to main examination held on 11.01.2004 with sample signatures/LTI of applicant taken during verification of documents on 29.03.2004.
- (v) That writing and signatures of the applicant taken during verification of documents on 29.03.2004 and those on application form are of the same person and as such there is no allegation of impersonation by the applicant during verification.
- (vi) That the opinion of GEQD that the person who wrote enclosed writing and signature Q. 1 to Q. 5, S1, S2, A1 to A7 did not write the enclosed signature similarly stamped and marked S/6, i.e.



Applicant's signature on the answersheet of preliminary examination held on 21.09.2003 cannot be taken as conclusive as there is no opinion of its (S/6) comparison with questioned document S/5, i.e. applicant's signature on the admit card or the signature/LTI on the attendance sheet of the preliminary examination dated 21.09.2003 which was not included by the respondents in the questioned documents and in view of specific observation that " it has not been possible to express a definite opinion on rest of the items on the basis of materials at hand."

16. In view of these facts, the learned counsel for the applicant submitted that the opinion No. DXC-219/2005 dated 30.09.2005 was an incomplete and non conclusive opinion and allegation of impersonation based on such inconclusive and incomplete opinion is false, incorrect and unsubstantiated. He also drew attention to the order dated 05.02.2003 passed by this Tribunal in OA 112/2001 in the matter of Vijaya Nand Jha and UOI and Others. In that OA also, similar allegation of impersonation against the applicant therein was there, based on the opinion of the handwriting expert. The Tribunal observed that " We come to conclusion that impugned order is so passed simply basing upon the opinion of the handwriting expert which can well be said to be an evidence of frail character and on no account be said to be substantive in nature for which it was incumbent on the part of the respondents before passing the order under challenge (Annexure A-8) as to search for corroborative evidences instead of blindly relying upon the same." The learned counsel argued that in the instant case also there is no corroboration of the opinion of the expert, rather the same is incomplete and inconclusive and hence can not be relied upon.

17. We have carefully perused the records including the documents submitted by the respondents as referred to in para 12 above and considered the submissions made by the parties. We note that the admitted facts are that the applicant applied for the post of Goods Guard against the Employment Notice dated 01.02.2003, he was issued admit cards for the preliminary and main written

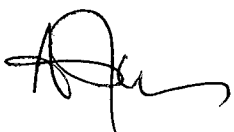


examinations bearing roll no. 1013785, he was declared successful in the written tests vide result published on 29.02.2004 and he appeared for verification of documents on 29.03.2004. The only disputed issue is whether the applicant himself appeared in the written examinations and there was impersonation. As per the show cause notice at Annexure A/8, the allegation against the applicant was that he did not appear himself in the written examination and rather somebody else appeared in the written test on his behalf which is a case of impersonation, a malpractice and an offence which could not have happened without applicant's active participation and consent. It is not clarified whether this is for preliminary or main written test or for both. From perusal of the documents submitted by the respondents in pursuance of the order of the Tribunal, it is clear that the documents mentioned by the learned counsel for the applicant as referred to in para 13 above were not sent to the GEQD. It clearly shows that in so far as main written examination is concerned, only photocopy of admit card was sent. No opinion has been expressed by the GEQD on signatures thereon. As such no conclusion can be drawn that the applicant did not sign the attendance sheet/question booklet/answersheet in respect of the main written test on the basis of the expert opinion of GEQD. As regards the preliminary written test, the OMR sheet in original and photocopy of the admit card were sent to the GEQD. No opinion has been expressed by the GEQD about the signature on the admit card. The only opinion expressed is that the person who wrote the enclosed writing and signature stamped and marked Q 1 to Q 5, S 1, S 2 and A 1 to A 7 did not write enclosed signature similarly stamped and marked S/6 Q 1 to Q 5 are specimen signature of the applicant in Hindi and English and writing of the candidate in the check note dated 29.03.2004 at RRB/GKP. A 1 to A 7 are signatures in Hindi and English and writing in application form of the applicant. S 1 and S 2 are handwriting and signature of the candidate on one page. It is not clear from this document as to when those signature/handwriting were taken. S/6 is signature in English and



Hindi on OMR answersheet of preliminary test on 21.09.2003. There is no mention of comparison with attendance sheet nor the same seems to have been sent, though in the show cause notice and debarment order, a mention has been made about attendance sheet/question booklet/answersheet. The dissimilarity has been point out only in respect of S/6 with the writing/signed in application form or those obtained at the time of verification or on the sample sheet. On OMR sheet, there are other writings also, e.g. Question Booklet no., Roll No., date of examination etc. The same have not been stamped for comparison. No opinion of its comparison with signature on admit card or attendance sheet is there. The GEQD has also not expressed any definite opinion on rest of the items on the basis of materials available. The finding of GEQD is based only on dissimilarity of one set of signature on OMR sheet of preliminary examination. There is no indication of any other dissimilarity.

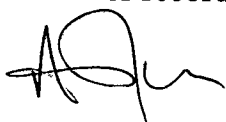
18. In view of these observations, we are inclined to agree with the applicant that the GEQD's opinion is incomplete and can not be treated as conclusive for substantiating the allegation of impersonation against the applicant in written examination. We also note that though the respondents have claimed in their written statement that the case of the applicant was referred to GEQD on 07.12.2004, no copy of letter dated 07.12.2004 under which the case of the applicant was referred to GEQD has been submitted by the respondents. They have submitted copies of forwarding letters dated 23.03.2005 and 18.05.2005 in which reference to the case of the applicant has been made. We further note that after verification of documents on 29.03.2004, a panel of 67 selected candidates was sent to the indentor of vacancies on 30.03.2004 in which name of the applicant is not there. It was mentioned therein that panel of 1 UR, 1 SC and 2 ST candidates would be sent later. Subsequently, vide letter dated 07.07.2004 and 22.05.2007 names of 1 UR, 1 SC and 1 ST candidates respectively were sent. The delay in referring the matter to GEQD or issuing the show cause notice/debarred orders



even after receipt of GEQD's opinion has not been satisfactorily explained by the respondents.

19. After hearing the learned counsels for both the sides and perusing the records and documents produced and in view of the foregoing discussions and after considering the facts and circumstances of this case, we are of the considered opinion that since in the instant case the conclusion has been drawn by the respondent no. 2 on the basis of incomplete opinion of the GEQD which cannot be treated as conclusive, this a fit case to be remitted back to the concerned respondent, i.e. Respondent no. 2 [Chairman, RRB, Gorakhpur] for examining the matter afresh in the light of observations made in this order and pass a reasoned and speaking order in accordance with law. The respondents will be at liberty to get further opinion and collect other evidences in the matter, if so desired, by them. However, if that is done, copies thereof should be furnished to the applicant allowing him reasonable time to represent. The final order should then be passed after due consideration of the representation, if submitted by the applicant. The entire exercise should be completed within a period of three months from the date of receipt/production of a copy of this order. Till the matter is finally disposed of by respondent no. 2 as per observations and direction given above, the operation of the impugned order dated 19.03.2007 as contained in Annexure A/12 whereby punishment has been imposed on the applicant, shall remain defunct. Furthermore, no further recommendation will be sent against one vacancy of Goods Guard reserved for SC category notified in the instant case, which has not been sent so far, till the disposal of the matter by respondent no. 2 as per this order.

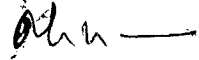
20. The Registry is directed to return the documents mentioned in para-12 of this order, submitted by the respondents and which have also been signed by Member(A) as a token of receipt and perusal, in a sealed cover to the respondents through the learned counsel for the respondents after retaining photocopies thereof for record.



21. The OA is disposed of with these directions. There is no order as to costs.



[Akhil Kumar Jain]
Member[A]



[Rekha Kumari]
Member[J]

srk.

