

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A No.:366 of 2005[Patna, this *Thursday*, the *6th* Day of *June*, 2006]C O R A MHON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.
HON'BLE SHRI SHANKAR PRASAD, MEMBER [ADMN.]

Dilip Kumar, S/o Shri Dwarika Singh, resident of mohalla – West Ashok Nagar, Road No.1/D, P.O.: Kankarbagh, P.S.: Kankarbagh, Distt.: Patna.

.....APPLICANT.By Advocate :- Shri Chitraranjan Sinha,
Shri S.K.Bariar.

Vs.

1. Union of India through Secretary, Personnel, Public Grievances and Pensions, North Block, New Delhi-11.
2. The Deputy Secretary [C], Staff Selection Commission, Block No.12, CGO Complex, Lodhi Road, New Delhi-3.
3. The Under Secretary [Cell], Staff Selection Commission, Block No.12, CGO Complex, Lodhi Road, New Delhi-3.
4. The Regional Director [C.R], A B, Bailey Road, Allahabad-2.
5. The Deputy Director, Staff Selection Commission [C.R.] Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, 8 A-B Bailey Road, Allahabad-2.....RESPONDENTS.

By Advocate :- Shri Dwivedi Surendra, ASC.O R D E R

Shankar Prasad, Member [A]:- In this round of litigation the applicant is aggrieved by the order dated 07.04.2005. He has sought for the following reliefs :-

“8. In view of the facts mentioned in various para 4 and ground enumerated in para 5 the applicant seeks following reliefs :- *SN*

6. The order dated order dated 7/4/05 (Ann A/13) of the & applicant may be treated and be quashed. (sic) &

[B] The applicant further prays that respondent may be directed to appoint the applicant on the post of Sub-Inspector of Central Bureau of Investigation.

[C] Any relief/reliefs may be granted to the applicant for ends of justice.”

2. The facts lie in a narrow compass. The respondents had notified vacancies for various posts vide their selection notification of 199⁹. After the applicant was successful in the preliminary examination, he also participated in the written and interview tests. His name appeared in the list of successful candidates for the post of Sub-Inspector of CBI.

He was, however, asked to appear before Regional Director, Staff Selection Commission, Allahabad vice letter dated 23.02.2002. He was also issued a show cause notice [Annexure-A/6] as to why his candidature should not be cancelled. His candidature was cancelled vide order dated 03.02.2003.

The applicant appears to have approached the Tribunal vide OA 51 of 2003 against the show cause notice. The order terminating his candidature was passed during the pendency of the OA. The said OA was decided on 03.02.2004 and certain directions were given to the respondents. The review application filed by the respondents was dismissed. CCPA 94 of 2004 filed by the applicant was also dropped as the respondents stated that they need some time to implement the orders.

The respondent thereafter issued show cause notice and after considering the reply have passed the impugned order.

3. We have heard the learned counsels and have gone through the

record.

4. The learned counsel for the applicant has stated that in spite of the directions of the Tribunal in the previous round of litigation and the dismissal of the R.A. the respondents have again solely relied on the decision of Government Examiner of Questionable Documents. They have ^{also &} rejected the request of the applicant to refer the matter to a third handwriting expert, as the handwriting expert consulted by the applicant had opined to the contrary. In any case it is a settled principle that opinion of handwriting expert is not a conclusive evidence. The decision of Hon'ble Court reported in para 26 of AIR 1963 SC 1728 & para 7 of AIR 1977 SC 1091 refers.

5. Shri Dwivedi Surendra, learned counsel for the respondents has defended the action of respondents. He has argued that the action of respondents is in consonance with the decisions annexed at R9 to R11 [R9 is the decision of CAT, Allahabad Bench in OA 429 of 2003; R/10 is extracts from some commentary in Indian Evidence Act & R/11 is the decision of Apex Court in Alamgir Vs. State].

6. The Tribunal in the earlier round of litigation had held as under :-

“6. After hearing the learned counsel for the applicant and the other side, in the light of arguments so advanced on behalf of the applicant that this matter can well be said to be a covered matter, in support of which reference is made to the orders so passed in OA 112 of 2001 so disposed of on 5th February, 2003, we have carefully gone through that order. While disposing of the said OA we have held that as regard Handwriting Expert's opinion and its evidentiary value, it cannot be said to be *8*

substantive evidence, which should not have been blindly acted upon and it can only be worthy of acceptance if there is internal and external evidences in support of the allegations so given by the expert. The two reported cases so cited, as also referred to above, 1992 [3] SCC 700 and AIR 1964 [SC] 529 are also looked into. In AIR 1992 SC page 2100 [State of Maharashtra Vs. Sukhdeo Singh] it has been held by the Hon'ble Supreme Court that though the handwriting expert opinion is recognised as relevant under the provisions of the Evidence Act but the Court cannot overlook the fact that science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints and, therefore, the court is expected to look for corroboration. To us, in the instant case, the opinion of the handwriting expert was not so high as to command acceptance without corroboration. As regards another reported case so cited, AIR 1964 SC page 529 [supra], it is held particularly in paras 21 & 23 of the said judgment that expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence, it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In that background, when we go through the order under challenge [Annexure-A/14], we find that the same was passed simply on the basis of the opinion of the handwriting expert and no pain was taken by the authorities as to look into other corroborative evidence, direct or indirect.

7. That being the position, we, thus, come to the conclusion, as also so held while disposing of OA 112 of 2001 on 5th February, 2003, which is the order so passed by this Bench, a copy of which is made available, that in the instant case Annexure-A/14, the memorandum dated 3rd February, 2003, would not have been blindly relied upon simply on the 

basis of the opinion of the handwriting expert and, thus, we find this case also a fit case to be remitted back to the concerned respondent, particularly Government of India, Staff Selection Commission, Central Region, Allahabad, as to afresh examine the matter in the light of the observations so made above in this regard and to pass reasoned and speaking order in accordance with law and this exercise, as per the directions so given, is to be completed within three months from the date of receipt/production of this order. If the applicant, in the meanwhile, so desires, to represent himself before the concerned respondent because the matter is being remanded to the concerned authority, the concerned authority [respondent] will also give a personal hearing to the applicant in the matter. Since the matter is remanded back, till the matter is finally disposed of in the hands of the concerned respondent, as per observations and directions so given, the order under challenge [Annexure-A/14] by which the applicant's candidature is so cancelled, even debarring the applicant from appearing in examination of the Commission for a period of three years, shall remain and to be kept defunct. This also disposes of MA 114 of 2003 so filed by the applicant, However, the parties to bear their own costs. “

7. The respondents thereafter preferred Review Application 10 of 2004 . Para 2, 6 & 15 of the decision dated 29.12.2004 in the said R.A. is as under :-

“2. The main ground for challenge, as submitted by the applicants, is that the Court has come to wrong conclusion and erred gravely when it is held that the opinion of hand-writing expert as well as its evidenciary value cannot be said to be substantive evidence and the respondents should not have blindly acted upon unless it is corroborated either by direct

clear evidence or by circumstantial evidence. While coming to this conclusion the Court has quashed the order under challenge [Annexure-A/14 to the OA], whereby, applicant's prayer for cancelling the order of cancellation of his candidature, whereby he was debarred from appearing in the examination of the Commission for a period of three years has been rejected.

* * * * *

6. In support of his contention that the opinion of the hand-writing expert has an evidentiary value, the learned counsel for the present applicants has drawn our attention to the decision passed by the Allahabad Bench in OA 655 of 2003, decided on 12.01.2004 [Rakesh Kumar Dubey Vs. Union of India] and OA No. 429 of 2003, decided on 12.02.2004 [Shailendra Kumar Verma Vs. Union of India] and [2003] 1 SCC 21 [Alamgir Vs. State (NVT), Delhi], wherein, the Court has declined to agree with the contentions of the applicant that the expert opinion must be supported by the circumstantial evidence as strict adherence to the provisions of the Evidence Act is not required in the service jurisprudence wherein documentary evidence is sufficient. Hence, the plea of the applicants is that the Court should have taken inconsistent view to those orders passed by the parallel Benches of the Tribunal.

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15. In nutshell, in view of the observations as made herein above, we have come to the conclusion that the present applicants have failed to convince us by pointing out any error on the face of record. Therefore, we find no merit in the present R.A. Hence, the same being devoid of merits is dismissed with no order as to costs."

8. The relevant part of orders in CCPA 94 of 2000 is as under :-

"It is stated by the learned counsel for the alleged contemner respondents that since the R.A. filed by the official *Sm*

respondents has been dismissed by order dated 29th December, 2004, therefore, he needs some time to comply with the orders.

2. In view of this, we hereby give directions to the authorities concerned to comply with the others passed by this Court in OA 51 of 2003 within a period of three months from the date of receipt/production of a copy of this order.

3. In terms of these observations, we are not inclined to proceed further in the matter, therefore, notices issued to the respondents are hereby discharged. Accordingly, the CCPA stands disposed of. No costs.”

9. The respondents have thereafter issued the show cause notice dated 14.02.2005. The applicant in his reply amongst others pointed that the charges of alleged impersonation is for the preliminary examination and that he has successfully passed the main examination and viva voce. Another handwriting expert has pointed out to the contrary. In spite of the Tribunal's direction the show cause is based only on GEDQ's opinion. A request for personal hearing was also made.

10. A bare perusal of the show cause notice shows that it is based on the opinion expressed by the GEDQ's. The extract of the said notice available at page 4 & 7 are as under :-

“In this regard it is to mention that the opinion of the GEDQ's is based on certain facts and proof, which have been taken into account while formulating the opinion that the applicant had procured impersonation in the said examination, which are mentioned below :-

“In view of the aforesaid details and findings by the GEDQ's it is indicated that the applicant Shri Dilip Kumar procured impersonation in the combined Graduate Level Preliminary Examination, 1999 held on 04.07.1999.” *S.*

Preliminary Examination, 1999 held on 04.07.1999.”

There is also a reference that there is a discrepancy in the photograph furnished by the applicant at the time of interview for the post of Assistant and that affixed by him on his application form in preliminary and main examinations and attendance sheet of preliminary and main examination.

11. We also note that the opinion of the handwriting expert consulted by the applicant has been turned down on the following grounds :-

“First of all, private handwriting expert is hired and paid by the applicant in lieu of the services offered by him. Whereas, in case of GEQD, this is not so. GEQD is an independent organ of Govt. of India and is in no way subordinate to the Commission. GEQD is also not paid by the Commission either. Therefore, Commission can in no way influence the GEQD to furnish the opinion to suit its convenience.

It may not be out of place to mention that such problem arising out of conflicting views of two experts had been duly addressed by the Hon'ble High Court of Himachal Pradesh. In case of Raj Mohammad and another Vs. State of H.P. 1995, Law Journal 810, Hon'ble High Court of Himachal Pradesh had held that “There is natural tendency on the part of the expert to support the view of the person who had called him. Looking to the conflicting statements of the two experts proving their expert opinion, produced by the prosecution and the defence, the Hon'ble Court preferred to depend on the opinion given by the GEQD whose findings were found to be more reasonable and more scientific as compared to the opinion of the defence expert.”

12. The request for the examination from a third handwriting expert has been rejected on the following ground :- *As*

"The applicant has also asserted that further opinion should have been sought from other handwriting agencies. There is no merit in such a request. After due deliberation, if a court of law comes to a conclusion that the expert-opinion is half-baked or not based on facts, the court would definitely order for a fresh opinion from a body or institution having better credibility. If such a request is accepted without sufficient reasons, the applicant would not be satisfied unless and until any such expert gave an opinion favouring him, as if rendering expert-opinion were a matter of probability depending on the number of times it is sought."

13. Considering the fact that the applicant had himself requested for obtaining the opinion of a third handwriting expert in view of the two different opinions, we, having regard to the facts and circumstances of the case, are of the view that such a request for obtaining the opinion of a third handwriting expert should have been allowed with a view to set this controversy at rest.

14. Having regard to the above discussions, we quash and set-aside the order dated 07.04.2005 passed by the respondents and direct the respondents to proceed from the stage of obtaining the opinion of a third handwriting expert and to take a decision in the light of the same in accordance with law. This exercise be completed within four months of receipt of this order.

15. The OA is disposed of accordingly with no order as to costs.


[Shankar Prasad]/M[A]

skj.


[P.K.Sinha]/VC