

(Reserved on 28.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/01649/2014

This the **30th** day of **May, 2018**

HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

Prabhakar Kumar Deo, Son of Sri Satya Narayan Poddar, Resident of Village Lohia Nagar, Post Suhid Nagar, (Remand Home East), District Begu Sarai (Bihar) PIN 851218.

.....**Applicant**

By Advocate: Shri S.K. Kathyar

Versus

1. Union of India through Chairman, North Eastern Railway, Gorakhpur.
2. Chairman, Railway Recruitment Cell, North Eastern Railway, CCM Annex Building, Railway Road no. 14, Gorakhpur - 27312.
3. Assistant Personnel Officer (Recruitment), N.E. Railway, Gorakhpur.

.....**Respondents**

By Advocate : Sri P.N. Rai

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicant has prayed for following main reliefs:-

- “(i)to quash the impugned order dated 30.09.2014 passed by Respondent no. 2 (Annexure A-1 to Compilation no. I).
- (ii)to direct the respondents to appoint the applicant for the post of Group ‘D’ against Employment Notice No. NER/RRC/D/02/2010 dated 15.12.2010 and given him joining on the post from the date on which other candidates joined the service alongwith salary and arrears.
- (iii).
- (iv).”

2. The facts of the case, in brief, are that pursuant to the advertisement dated 15.12.2010 published by the Railway Recruitment Cell, North Eastern Railway, Gorakhpur, for filling Group ‘D’ posts, the applicant had sent his application and he appeared in the written examination held on 24.06.2012. The result of written examination was declared in which the applicant was declared successful. Thereafter, the applicant appeared in physical test held on 31.10.2012 which he cleared (Annexure A-4). Then the applicant was called to appear in medical examination and for document verification. The applicant appeared in medical examination held was 19.01.2013 in which he was declared fit (Annexure A-6). The documents of the applicant were also verified.

3. Thereafter, the applicant received a show cause notice dated 07.02.2014 (Annexure A-7) informing him that as per Forensic report, the signature of the applicant on application form as well as in the attendance sheet/question booklets/ answer sheet were found to be different. The applicant submitted his reply on 26.02.2014 (Annexure A-8) to the show cause notice denying the allegation and requested for some documents as stated in his letter, to give proper reply to show cause notice. Having received no response, the applicant sent a reminder dated 17.06.2014 (Annexure A-9) by registered post, which, as per the postal remarks dated 24.06.2014 (Annexure A-9), was refused to be received by the authority concerned. Thereafter, the respondent No. 2 passed the impugned order dated 30.09.2014 (Annexure A-1), cancelling the candidature of the applicant and debarring him from all examinations conducted by Railway Recruitment Boards / Railway Recruitment Cells for lifetime.

4. Aggrieved, the applicant has filed the instant OA on the ground that the action of the respondents is unjust, illegal and arbitrary because the candidature of the applicant cannot be cancelled and he cannot be debarred only on the basis of report of Forensic Examiner. It is stated that the applicant had filled up the application form in his own hand writing and he

himself appeared in the written examination. The applicant put his signature in both Hindi and English and also put his thumb impression on the attendance sheet, question booklets and answer sheet, wherever it was required. It is also stated that there is no evidence that the person other than the applicant appeared in the written examination. It is further stated that the action of the respondents in not supplying the requisite documents to the applicant, which were necessary for the applicant to submit proper reply to the show cause notice is arbitrary and violative of principle of natural justice.

5. The respondents have filed their Counter Reply in which they did not dispute the fact that the applicant cleared the examinations as per the advertisement dated 15.12.2010. It is submitted that at the time of document verification, samples of writing, signature and thumb impression of the applicant were obtained, which were matched with the sample obtained during the different stages of examination and it was found that there was mismatch. Hence, the documents of the applicant were segregated and sent for examination to the Forensic Document Examiner. After receiving report of the Forensic Document Examiner (Annexure CA-1), a show cause notice was issued to the applicant to which he submitted his reply. It is stated that no reminder dated 17.06.2014, as alleged by the

applicant, has been refused to be received by the respondents. After receipt of reply to the show cause notice, all the documents of the applicant were again sent to the Forensic Document Examiner for re-examination, where no change was found in earlier opinion furnished by the Forensic Document Examiner. Hence, the order dated 30.09.2014 (Annexure A-1) was passed after giving due opportunity to the applicant.

6. The applicant has filed Rejoinder. It is stated that as per Annexure CR-1 of the Counter Reply, it would reveal that the Forensic Document Examiner gave his report only in respect of handwriting, expressing his opinion and no opinion has been expressed by the Forensic Document Examiner regarding signatures and thumb impressions of the applicant. It is further stated that the opinion of the Forensic Document Examiner is only corroborative evidence and not a conclusive proof. Unless there are other evidences is against the applicant, it cannot be said that the applicant himself did not appear in the written examination. It is further stated that only on the basis of some differences in handwriting characteristics , it cannot be said that some one had appeared in the written examination in place of the applicant. It is also stated that there is no mention in the Counter Reply regarding difference in thumb impression. It is also stated that the written examination was covered by the

videography and the respondents said nothing where in the video film, some other person was present in place of the applicant on the seat in the examination hall.

7. We have heard Shri S.K. Kathyar, learned counsel for the applicant and Shri P.N. Rai, learned counsel for respondents, who reiterated the stand as per their respective pleadings.

8. The main ground taken by the applicant in the O.A is that some documents which were requested by the applicant vide his letter dated 26.02.2014 in reply to the show cause notice dated 07.02.2014 (Annexure A-7) to enable him to submit proper reply to the show cause notice, has not been supplied to the applicant. The paragraph 3 of the letter dated 26.02.2014 of the applicant is as under: -

“3. In order to give a reasoned reply, I may kindly be given attested photo copy of the following documents. So that I may give reply: -

- 3.1. Copy of the report of forensic documents examiner.
- 3.2. Copy of the signature on the application form.
- 3.3. Copy of attendance sheet, question booklet/answer sheet.
- 3.4. All the photo graphs showing my photo during the exam and other places where such arrangements was made by RRC.”

9. It is seen that most of the documents, which were requested by the applicant could have been supplied by the respondents so as to enable the applicant to furnish his reply.

However, there is nothing on record to show that these documents were supplied or the reasons for non-supply of documents were indicated by the respondents in their pleadings. In reply to the contentions of the applicant in this regard in para 4.15 of the O.A, para 22 of the counter reply does not mention any thing about the reasons for non-supply of these documents to the applicant.

10. On perusal of the show cause notice, it is seen that no specific ground has been mentioned in the show cause notice dated 07.02.2014 (Annexure A-7), which states as under: -

“On the basis of written examination organized by this RRC for selection for the post of Group ‘D’ posts against Employment Notice No. NER/RRC/D/02/2010 dated 15.12.2010 you were called for the document verification. As confirmed by the Forensic Document Examiner, signature on application form and that on attendance sheet/question booklets/ answer sheet were of different person. It has been established that you did not appear yourself in the written examination on your behalf, and thereby tried to procure government job by fraud and criminal means.

You are therefore, required to explain within 30 days as to why not your candidature for the above post against the said employment Notice be cancelled and action be taken for debarring you from all RRC/ examinations for future and to initiate criminal proceeding against you on this matter.”

11. It is seen from the above that as per the report of Forensic Document Examiner, the signature of the applicant on the different records were of different persons. However, from the

report of the Forensic Document Examiner, as enclosed at Annexure CR-1 of the counter reply filed by the respondents, which states as under:

- “1. Inter-se comparison of the blue enclosed writing stamped and marked S-1 to S-6 and Q-3 reveals similarities in handwriting characteristics indicating that they were all written by one and the same person.
- 2. The person who wrote the blue enclosed writings stamped and marked S-1 to S-6 did not write the blue enclosed writings similarly stamped and marked Q-1 & Q-2 for the reasons that there are differences in handwriting characteristics.”

12. From the above report of the Forensic Document Examiner, it is seen that nothing has been mentioned about the signature of the applicant. It is not known that on what basis the conclusion has been drawn by the respondents that the signatures of the applicant on attendance sheet/ question booklets/ answer sheet were not of the applicant, but of a different person, as stated in the show cause notice dated 07.02.2014. The show cause notice also did not indicate any specific evidence to corroborate the allegations against him, which was furnished to the applicant, on the basis of which the applicant could have submitted his reply.

13. In view of the above, we are of the considered view that non-furnishing of the documents as required by the applicant

vide letter dated 26.02.2014 for submission of the reply or non-communication of the reasons for not furnishing of some of the documents has adversely affected the applicant's ability to explain the mismatch or irregularities that have been indicated by the respondents in the applicant's case. Hence, there has been violation of the principles of natural justice in this case.

14. Accordingly, we allow the OA and the impugned order dated 30.09.2014 is quashed and set aside. The respondents are directed to supply the documents requested by the applicant subject to its availability with the respondents and allow further reasonable time to the applicant to submit the reply to the show cause notice dated 07.02.2014. On receipt of such reply to the show cause notice dated 07.02.2014 from the applicant, the respondent No. 2 / competent authority shall pass a reasoned and speaking order to be communicated to the applicant within two months from the date of receipt of the reply to the show cause notice from the applicant or from the date by which the applicant is directed to furnish the reply to the show cause notice by the respondents while furnishing copy of the documents to the applicant, as stated above. No costs.

(GOKUL CHANDRA PATI)

MEMBER-A

Anand...

(DR. MURTAZA ALI)

MEMBER-J