

RESERVED ON 10.03.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **01ST** day of **MAY, 2018**.

PRESENT:

HON'BLE MR. JUSTICE DINESH GUPTA, CHAIRMAN
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 1789 of 2015

1. Vijay Pal S/o Shri Sher Singh, R/o: Village: Seena, Post: Mawana, Tehsil: Mawana, District: Meerut – Roll No. 2320785085.
2. Gyanendra Kumar S/o Shri Krishna Prasad R/o: Village: Girdharpur, Post Bamharauli, Bharwari, Roll No. 1510401019.
3. Dharma Raj Patel S/o Shri Chhabbu Lal Pate, R/o: Village: Dewari Khurd, P.O. Khain, The Karchhana, Allahabad – Roll No. 2521108940.
4. Pradeep Kumar Sharma, S/o Shri Suresh Chandra Sharma, R/o Najmusmat Chandapa, District Hathras, Roll No. 2521103079.
5. Preetam Kumar Gupta, S/o R/o:, Roll No 1510398649.
6. Dhiraj Kumar Pal, S/o, R/o: Roll No. 2521070748.
7. Susheela D/o Shri Lavlesh Kumar, R/o: Kapur ka pura, Karchchana, Allahabad Roll No. 1410297388.
8. Pradeep Kumar Meena S/o Shri Sampat Ram Meena, R/o: Roll No. 2521128281.
9. Umesh Chandra Chaurasiya, S/o Shri Amar Nath Chaurasiya R/o: Roll No. 2521125422.
10. Manraj Meena S/o Shri Ghamsu Meena, R/o: Village: Jeewali, Tehsil:Gangapur City, District: Sawai Madhopur – Roll No. 2320847077.
11. Maneesh Kumar Singh S/o Shri D.S. Singh R/o: Roll No. 2320816148.
12. Umesh Chandra S/o Shri Mohan Lal, R/o: C/o Adalti Singh, Manauri, Allahabd. Roll No. 2521121455.
13. Shailesh Kumar S/o Shri Kishan Lal, R/o Ainachh P.O. Birapuri S.R.N. Distt. Bhadohi, Roll No. 2421010602.
14. Krishna Kumar S/o R/o: Ramchaura, Allahabad Roll No. 2320802223.

15. Jitendra Pratap S/o Shri Hari Lal, R/o: Village: Dhamawan, Kunda, Pratapgarh, Roll No. 2521107524.
16. Jitendra Kumar S/o Shri Hira Lal, R/o: Village: Raibhanpur Post: Madarpur, Tehsil: Sadra, District: Jaunpur: Roll No. 1510414241.
17. Sanjay Kumar S/o Shri Raj Kumar, R/o Gasaipur Post Handia, Post: Handia, Allahabad, Roll No. 1410283068.
18. Govind Kumar S/o Shri Dasu Ram Bind, R/o:, Roll No. 2511040535.
19. Dharmendra Kumar S/o Shri Ram Sahayan, R/o: Village: Kudha Chak Sagonpur, Post: Vishundas Pur, District: Raibareilly, Roll No. 2521114796.
20. Rajesh Kumar Yadav S/o Shri Chinta Mani, Yadav, R/o Village: Rampur urf Daulatpur, Sikandra, Allahabad, Roll No. no. 2220725181.
21. Rajendra Prasad Patel S/o Shri Tribhuvan Nath Patel, R/o Moh. Majhuwa, Atraila Post: Ghodedih, Karchhana, Allahabad, Roll No. 2210622134.
22. Sanjay Singh Yadav S/o Shri Panna Lal Yadav, R/o Roll No. 2420963925.
23. Jawan Singh Gurjar S/o Ram Lal Gurjar, Roll No. 2521058536.

ALONGWITH

ORIGINAL APPLICATION NO. 73 of 2016

1. Mahendra Kumar Soni, Son of Sri Ram Shanker Soni, Resident of Village Malari, Post – Mauaima, District - Allahabad.

.....Applicants.

VERSUS

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Railway Recruitment Cell, Balmiki Chauraha, Nawab Yusuf Road, Civil lines, Allahabad through its Chairman.
3. Shri Sanjeev Kumar, Chairman, Railway Recruitment Cell, Balmiki Chauraha, Nawab Yusuf Road, Civil Lines, Allahabad
4. Assistant Personnel Officer (Recruitment) Railway Recruitment Cell, Balmiki Chauraha, Nawab Yusuf Road, Civil Lines, Allahabad.

.....Respondents

Advocate for applicants : Shri S.K. Kushwaha
Shri Shyamal Narain
Ms. Saumya Mandhyan

Advocate for the respondents : Shri R.K. Srivastava
 Shri K P Singh
 Shri Anil Kumar

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

Since in both the OAs the prayers are identical with common issues, cause of action and same respondents, these were clubbed together vide order dated 08.03.2018 and are disposed of by this common order, with OA No. 1789/2015 being the leading OA.

2. The prayer in both the OAs is for the following reliefs:-

- "(i) to issue a writ, order or direction in the nature of certiorari quashing the result dated 15.12.2015 and impugned show cause notice dated 22.01.2016 and impugned decision dated 31.03.2016 vide which candidate of the applicants have been cancelled as well as debarred from all RRBs/RRCs examination for life-time in respect of applicant no. 4. in so far as it rejects candidature of the applicants.***
- (ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to summon entire recruitment records in pursuance of the advertisement No. 01/2013 for filling of 2715 Group-D posts:.***
- (iii) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to pass any further order in pursuance of the declaration of the result dated 15.12.2015.***
- (iv) to issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.***
- (v) to award cost of the petition to the applicants."***

3. The facts of the case in brief are that the respondent no. 2 had issued an advertisement being no. 01/2013 for recruitment to 2715 Group – D posts. The applicants being eligible applied for the said posts. The applicants were issued admit cards and subsequently all of them appeared in the examination and were declared successful. Thereafter, another call letter was issued directing the applicants to appear for physical test. In the physical test too, the applicants were declared successful and they were also given counter slip confirming that they were

successful in the physical test. After qualifying the written examination and physical test, the applicants were called for medical examination and verification of documents. All the applicants were subjected to medical examination and verification of documents on various dates. When the final result was declared on 15.12.2015 (Annexure A-1), the applicants found that their candidature was rejected and remark was given as handwriting/thumb impression mismatch. Apart from rejecting cases of the applicants, website also disclosed that all such applicant have been debarred from appearing in any examination conducted by the R.R.C. Allahabad.

4. After interim order dated 31.12.2015 was passed by this Tribunal to keep 23 posts vacant, the respondents issued a show cause notice dated 22.01.2016 (Annexure No. A-1/A to the O.A.) vide which representation was sought from the applicant no. 4. The applicant no. 4 submitted his reply dated 15.02.2016 (Annexure No. A-10 to the O.A.) to the aforesaid show cause notice. Thereafter, respondent no. 3 passed the impugned order dated 31.03.2016 (Annexure No. A-1/B to the O.A.) vide which he rejected the representation against the show cause and observed that the competent authority has decided to cancel the candidature of the applicant against the E.N. No. 01/2013 and 'DEBAR' the applicant from all RRCs/RRBs examination for appointment in Railways for 'LIFE TIME'. The applicants by way of this O.A. have challenged the result dated 15.12.2015 and orders dated 22.01.2016 and 31.03.2016.

5. In the O.A. it has been stated that the respondents had adopted foolproof method to prevent any malpractice or impersonation in the examination such as taking thumb impression and signatures of all the candidates at every stage of the examination and the written examination was videographed also. Hence, it is not right on the part of the respondents to allege any deviation on the part of the applicants. It has also been submitted that several candidates were not even allowed to participate in the physical efficiency test as their thumb impression did not match. However, since the applicants were allowed to appear, it means that there was no discrepancy in their case. The applicants submitted their reply to the show cause notice. One such reply for the applicant No.4 has been attached at Annexure A-10 to the O.A. It is stated that the respondents did not consider the reply before passing the impugned order.

6. The applicants have also filed a supplementary affidavit dated 04.01.2016 for incorporating some new facts in the O.A. stating that the applicant no. 2 had inadvertently committed a mistake at the time of documents verification. The applicant was given a photo copy of a blank sheet having 02 columns and the applicant was required to put 04 right thumbs impression on one side and 04 thumb impression of the left hand on the other side, however, the applicant could not follow the instruction properly and as such one left thumb impression was also put on the right side, where only right thumb impression was to be given, but apart from that the 03 thumb impressions are of right hand. The applicant had informed regarding this mistake to the supervisor during documents verification, however, in place of supplying fresh copy of the sheet, he said that this was a minor mistake and would hardly make any difference. Regarding applicant no. 7, it has been stated that her application was filled up by her sister, but the signature and thumb impression were that of the applicant herself. The applicant no. 7 had put her thumb impression and signature during written test and P.E.T. and finally at the time of document verification. Therefore, she too had not indulged in any impersonation. With regard to applicant no. 11, it has been submitted that he had filled his application form in his own handwriting and put his thumb impression and signature. However, after giving thumb impression on the biometric machine before written examination, the applicant put his signature in English in his OMR and then after finishing the test he had to put his signature in Hindi, however, he forgot to put signature in Hindi due to paucity of time and this was the only mistake on his part. Finally, in respect of applicant no. 13, it has been stated that he had filled his application form himself as well as signed and put his thumb impression. He also gave his thumb impression during the written examination. However, the declaration which he was required to write on the OMR Sheet could not be written and the paragraph immediately above it was transcribed by mistake, and on finding his mistake, he immediately approached the Examination Incharge, who asked him to write in Hindi that whatever he has written true to his knowledge and nothing has been concealed and if anything is found concealed his candidature may be cancelled in Hindi.

7. In the Counter Affidavit filed by the respondents, it is stated that the applicants have deliberately concealed the material fact that all the applicants are similarly situated, whereas the fact remains that the candidatures of Sushila, Rajendra Prasad Patel & Jawan Singh Gurgar were cancelled and other applicants were debarred from all RRC/RRB Examinations for appointment in Railways for life time. Hence, the case of the applicant is not covered under Rule 4 (5) of CAT (Procedure) Rules, 1987. It has also been submitted that the applicants have not exhausted all the remedies available to them before approaching this Tribunal.

8. It has also been stated in the Counter Affidavit that the applicants had applied against advertisement no. En No. 01/2013 with own handwriting and had given declaration in column 22 in application under signature and thumb impression that as *"I hereby declare that all the statement by in the application are true and complete and correct to the best of my knowledge and belief. In the event of any information being found false and incorrect or myself being not eligible in terms of eligibility criteria during the selection/appointment is liable to be cancelled/terminated without any notice at any stage even after empanelment."* On the basis of the aforesaid declaration and other formalities, call letters were issued to the applicants to appear in written examination, physical efficiency test and thereafter, on the merit of marks secured in written examination, the applicants were called for verification of original documents, identity and medical examination.

9. It is further stated in the Counter Affidavit that the Chairman, RRC, NCR Allahabad, is empowered to form provisional panel to examine the documents relating to the applicants. During such verification by panel it is stated in the counter:-

"...but in the case of applications i.e., Vijay Pal and others, applicants themselves in durations of documents verifications and medical fitness test, doubt in regard to their candidature were detected by verifying official."

Therefore, the Chairman, declared the results of list for successful candidates as well as the list of candidates found indulging in impersonation etc and action as per existing rules was contemplated in accordance with the violation of instructions in regard to EN. No. 01/2013. Meanwhile, the competent authority of RRC, NCR, Allahabad,

on the basis of remarks of verifying official and Government Examiner and Questionable Document official's observations, each case was examined under existing rules of Employment No. 01/2013 provided by Railway Board, New Delhi, issued show cause notice and after on receipt of clarification of applicants taken final decision which were duly informed to each candidate separately. In the event of any information being found false and incorrect or being not eligible in terms of eligibility criteria during the selection/appointment is liable to be cancelled/terminated without any notice at any stage even after empanelment.

10. It has also been stated that although thumb impression was taken by biometric machine to conduct the examination fairly and properly, however, no videography of the written examination was conducted. It has further been submitted that the applicant should have complied with the instructions contained in EM. No. 01/2013 as well as procedure of recruitment for Group 'D' posts, stating as under:-

“....applicant's most purposefully ignored and discarded the instructions in regard to recruitment of Group 'D' post against En. No. 01/2013 and tried to get job by hook and crook having violated the prescribed instructions differently.”

11. We have heard learned counsels for the applicants and perused the pleadings of the parties. Due to the reason that all the applicants did not have the same penal action, the respondents in their Counter Affidavit have mentioned that this O.A. is not admissible in terms of Rule 4 (5) of CAT (Procedure) Rules, 1987. We are not able to accept the contention of the respondents in view of the fact that the cause of action was same arising out of the employment notice no. 01/2013 and in all the cases, the candidature of the applicants has been cancelled. In case of three applicants, no decision to debar them from all RRB examinations has been taken. Therefore, the decision to club all the cases of the applicants together in this O.A. has been correctly taken, which has been accepted by this Tribunal

12. Learned counsel for the applicants, while reiterating the contentions in the pleadings, also submitted that the basis on which the respondents have concluded that the applicants have committed impersonation and

malpractice for the examination has not been informed to the applicants. Report of the panel or expert who opined that there is mismatch has not been furnished while issuing the show cause notice. It was submitted that there was videography of the written examination to detect and check all possible malpractices and there is no report that the applicants have indulged in malpractices during the examination. He also submitted that vide the show cause notice dated 22.01.2016, it was stated that based on the report regarding mismatch of handwriting for some applicants and thumb impression for some applicants, their candidature has already been cancelled and the applicants were to show cause why they will not be debarred for life. He also submitted that the decision to cancel the candidature has been taken without giving any opportunity to the applicants of being heard as would be clear from the show cause notice to the applicants, thereby violating the principles of natural justice. He also argued that without mentioning anything about the alleged malpractices or wrongdoing committed by the applicants in the show cause notice, the respondents have debarred the applicants from all RRB examinations for lifetime. The applicants' counsel has relied on the following judgments:-

- (i) **Judgment dated 18.03.1986 passed by the Hon'ble Supreme Court in Civil Appeal No. 2999 of 1985 – Om Prakash Shukla Vs Akhilesh Kumar Shukla and Ors. (AIR 1986 SC 1043).**
- (ii) **Judgment dated 12.04.2001 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) 14656 of 2000 – All India SC & ST Employees Assn. & Anr. etc. Vs. A. Arthur Jeen and Ors. etc. (AIR 2001 SC 1851).**
- (iii) **Judgment dated 17.07.1984 passed by the Hon'ble Supreme Court in Civil Appeals Nos 1653 to 1691 of 1980 and 2491 of 1982 – Maharashtra State Board of Secondary and Higher Secondary Education and Anr. Vs Paritosh Bhupesh Kumar Sheth and Ors and Alpana V Mehta VS Maharashtra State Board of Secondary Education and Anr. (AIR 1984 SC 1543).**
- (iv) **Order dated 04.03.2011 passed by CAT, Allahabad Bench in O.A. No. 612 of 2009 & Ors – Sanjeev Kumar Jaiswal Vs UOI through CAG of India.**
- (v) **Order dated 25.03.2011 passed by CAT Allahabad Bench in O.A. no. 1487 of 2004 – Shri Ajai Kumar Vs UOI through the Genera Manager and Ors.**

13. Learned counsel for the respondents reiterated the contentions in the pleadings and stated that the decision has been taken after giving the opportunity of hearing to the applicants. Copies of the judgments in following cases were submitted by him in support of his case:-

- (i) Order dated 08.09.2015 passed by CAT Allahabad in O.A. No. 1184 of 2015 – Rajesh Vs UOI through its Secretary and ors.
- (ii) Judgment dated 11.05.1973 passed by Hon'ble Allahabad High Court in Writ Petition no. 624 of 1972 - Satwant Singh Grewal Vs The Board of High School and Intermediate Education, Allahabad and ors.

14. We have perused the submissions and the materials on record. For the alleged malpractices, two types of penal/coercive actions have been taken by the respondents against the applicants. For the applicant no.1, a notice dated 22.01.2016 (Annexure CR-1) to show cause within 30 days and after considering the reply, decision was taken to debar the applicant from appearing all RRC/RRB examinations for life time vide order dated 31.03.2016 (Annexure CR-2). The show cause notice dated 22.01.2016 stated as under:-

“As confirmed by the Government Examiner of Questioned Documents, Hand writing on the Application Form and that on answer sheet (OMR)/verification sheets are of different person (s). It has been established that the candidate did not appear himself in the written examination or PET examination and rather somebody else appeared in the same on his behalf, which is a case of impersonation, a malpractice and on offence.

Accordingly, you are asked to show cause within 30 days of issue of this memorandum, as your candidature for the above selection has already been cancelled and why you may not be debarred from appearing in all RRCs/RRBs examinations in future and further as to why criminal action may not be initiated against you for being involved in malpractice to procure Government job by fraud and criminal means.”

The reply furnished by the applicants to the show cause notice has not been produced before us neither by the applicants nor by the respondent, although reference to this reply has been given in the impugned order dated 31.03.2016 (Annexure No.CR-2), by which the applicant no.1 has been debarred from appearing in all RRB examinations for life time. This order which has been passed after examining the representation/reply furnished by the applicant, states as under:-

“As confirmed by the Government Examiner of Questioned Documents, Hand writing on the Application Form and that on answer sheet (OMR)/verification sheets are of different person (s). It has been established that the candidate did not appear himself in the written examination or PET examination and rather somebody else appeared in the

same on his behalf, which is a case of impersonation, a malpractice and on offence.

Accordingly, you were served with Show Cause Notice vide this office letter of even no. dated 22/01/2016. Your reply/representation was received in this office which is considered by the competent authority therein you have failed to submit satisfactory reply against show cause notice.

Keeping in view the instructions contained in Railway Board's letter no. E (RRB)/2001-25/1, dated 14/02/2002 (RRCB No. 05/2002) and in terms of Employment Notice No. 01/2013, the Competent Authority has decided to cancel your candidature for the post of Group 'D' Post of EN No. 01/2013 and also DEBAR you from all RRC/RRB Examinations for Appointment in Railways for LIFE TIME."

15. In the case of the applicant No.4, the show cause notice dated 22.01.2016 (Annexure CR-7) mentions only about mismatch of his thumb impressions and allegation of impersonation. It states as under:-

"As you are aware bio-metrics attendance were obtained during each phase of examination. It is bring into your notice that your impression during document verification did not match with written and PET examination. It means someone else had appeared in written and PET examination impersonating your candidature.

Accordingly, you are asked to show cause within 30 days of issue of this memorandum, as your candidature for the above selection has already been cancelled and why you may not be debarred from appearing in all RRCs/RRBs examinations in future and further as to why criminal action may not be initiated against you for being involved in malpractice to procure Government job by fraud and criminal means."

In his reply to the show cause notice, copy of which has been enclosed at Annexure A-10 of the OA, the applicant No. 4 has stated as under:-

- "1. That I had put my own thumb impression of my hand in the application form.
2. That my thumb impression was obtained at every stages of selection i.e. written examination, PET, verification and at last medical examination.
3. That at no stage I was informed regarding the mismatching of thumb impression.
4. That I am still available and ready for matching my thumb Impression to verify the truth.
5. That none except me had put my thumb impression, thus no question of some one else had appeared in written and PET examination.
6. That at every stage of selection video photography was done, thus my appearance may be verified.

7. The charges as leveled are vague and have no substance at all."

In response to this reply, the respondents have issued the order dated 31.03.2016 (Annexure CR-8) as for the applicant no.1 as indicated in para 14, debarring the applicant from all examinations of RRCs/RRBs.

16. In case of applicant no. 7, the show cause notice dated 22.01.2016 (Annexure CR-13) indicated the following:-

"As confirmed by the Government Examiner of Questioned Documents, Hand writing on the Application Form and that on answer sheet (OMR)/verification sheets are of different person (s).

Accordingly, you are asked to show cause within 30 days of issue of this memorandum, as your candidature for the above selection has already been cancelled and why you may not be debarred from appearing in all RRCs/RRBs examinations in future and further as to why criminal action may not be initiated against you for being involved in malpractice to procure Government job by fraud and criminal means."

The decision of the respondents in respect of the applicant no.7 as communicated vide order dated 09.05.2016 (Annexure No. CR-14) is to cancel the candidature of the applicant No.7 without debarring the applicant unlike the applicant No.1.

"It is bring into your notice that while going through the verification of documents, Application Form and answer sheet (OMR), the following irregularities were observed and approved by handwriting expert that you have not written the declaration in application form in your own hand writing, hence, it is clear that you did not adhere the instructions mentioned in para 17 (iv) of En No. 01/2013.

Accordingly, you were served with Show Cause Notice vide this office letter of even no. dated 22/01/2016. Your reply/representation was received in this office which is considered by the competent authority therein you have failed to submit satisfactory reply against show cause notice. It is clear that you have not adhered the instructions during examination. Hence, your candidature has been cancelled by the competent authority for the post in grade pay Rs. 1800/- against Employment Notice No. 01/2013."

Apart from the applicant No. 7, applicant No. 21 and 23 also faced the action of cancellation of candidature, without any debarment for life time. All other applicants faced the action of cancellation of candidature and debarment from all RRB/RRC examinations for life time. As would be

clear from the show cause notice and final order, the reason for which some applicants faced the action of debarment is not clear.

17. Coming back to the judgments which have been referred by the learned counsel for the applicant as listed in para 12, it is seen that in the case of Om Prakash Shukla (supra), the issue was applicability of the rule to direct recruitment examination. In the case of All India SC & ST Employees Assn. & Anr. etc. (supra), the issue was reservation and in Maharashtra State Board of Secondary and Higher Secondary Education and Anr. (supra), the dispute was relating to validity of a particular regulation under which the examination was conducted by the Board. Hence, these three judgments do not have any application to the present case, where the dispute relates to the action of the respondents on the ground of alleged malpractices in the examination.

18. In the case of Sanjeev Kumar Jaiswal Vs Union of India and ors. in O.A. No. 612 of 2009 decided by this Bench of the Tribunal, after selection, the candidates were given appointment order. Then the Staff Selection Commission informed them that there was a mismatch of signature in the specimen signature and between the signature in the written examination for which the fraud was alleged basing on that the charges were framed and inquiry was conducted. Issue in that O.A. was that the inquiry officer conducted the inquiry solely relying upon the recommendation of the Staff Selection Commission. Hence, the report of inquiring officer and the punishment order were set aside. The facts in the present case are different as the applicants have not been issued any appointment order, although they have cleared all tests before cancellation of their candidature. In the case of Shri Ajai Kumar (supra) in O.A.No. 1487 of 2004, decided by Allahabad Bench of the Tribunal, the decision of the respondents to reject the candidature of the candidates and debarring them was set aside on the ground that no notices were issued prior to issuing the impugned order and the principle of natural justice was violated. In the present O.A. also similar contention has been taken by the learned counsel for the applicant who argued that while communicating the show cause notice copy of which is at Annexure CR-1 for applicant no. 1, it is mentioned that the candidature of the applicant has already been cancelled but before this cancellation, no opportunity of hearing was given to the applicants. It is the case of the applicants that the show cause

notice was issued only for the purpose of debarring the applicants and not for cancelling the candidature. Therefore, the principle of natural justice has been violated.

19. Now coming to the judgments cited by the learned counsel for the respondents as listed in para 13, it is seen that in the case of Rajesh (supra) passed by this Tribunal, the candidature of the applicant in that O.A. was cancelled on the allegation that the hand writing on the application and the hand writing on the answer sheet were by different persons, for which the applicant had no explanation. There was no debarment. It was submitted in the O.A. that the thumb impression was not matched to determine whether there was impersonation. The Tribunal held that since this issue was not included in the explanation submitted by the applicant to the show cause notice, it cannot be accepted by the Court and the O.A. was dismissed. In the case of Satwant Singh Grewal (supra), the Hon'ble Allahabad High Court (Lucknow Bench) considered the issue of withholding of the result of the petitioner on the ground that his mistakes in answer exactly matched with another candidate, for which the Board concluded that both of them had adopted unfair means from common source. In this case the petitioner's counsel argued the matter on the ground of violation of principles of natural justice. Hon'ble High Court decided not to interfere in the matter with the following observations:-

"5....The simple question -is whether on the basis of the aforesaid circumstance the conclusion of practice of unfair means by the petitioner and Syed Istifa Ali can be justified. In my opinion, it cannot be said that the decision arrived at by the Enquiry Committee could not justifiably be reached on this circumstance. It may well be that if the matter was left to this Court in appeal it might have come to a different conclusion on this circumstance but this Court does not act as a court of appeal in proceedings arising out of article 226 of the constitution and, therefore, assess the evidence for itself and substitute its own conclusion to the conclusion of domestic tribunals howsoever erroneous it may appear to be. The only other question is whether the decision can be said to be based on no evidence is whether the probabilities and circumstances could not justify that decision. To my mind, it cannot be said that the circumstance relied upon by the Enquiry Committee did not justify the use of unfair means by the petitioner and the other candidate. That being so, it cannot be found that the decision was based on no evidence."

20. We have also noticed the judgment in a case with similar issues passed by Hon'ble Allahabad High Court in the case of **Sanjay Kumar vs.**

Chairman Railway Recruitment Cell North Eastern Railway & Anr

(<https://indiankanoon.org/doc/180953483/>) in Service Bench No. 482 of 2016, in which the petitioner was also debarred from all examinations of RRC, apart from cancellation of candidature for the examination in question. The OA filed before this Tribunal was dismissed by order which was challenged in above writ. Hon.ble High Court has held in this case as under:-

“It is further submitted by learned counsel for the petitioner that after issuing a final result of the selected candidates about a period of one year, show cause notice was issued to the petitioner in which it is mentioned that after forensic document verification, the signature on the application form and that on attendance sheet, question booklets, answer sheets are different and the petitioner was given 30 days time to explain as to why his candidature for the above post be not cancelled and he may not be debarred from all RRC examination in future.

.....

Accordingly, the argument advanced by learned counsel for the petitioner, that no adequate opportunity has been given to the petitioner prior to passing of the impugned order, has got no force because from the perusal of the record, the position which emerges out is that show cause notice was given to the petitioner to submit his reply but he submitted an affidavit, so taking into consideration the same as well as report of the Forensic Document Examiner, the impugned order has been passed.

Even otherwise, in the present case, on the basis of the report submitted by the Forensic Document Examiner after verification, it is clearly established that the signature on the application form and that on attendance sheet, question booklets, answer sheets is not of the petitioner and the said fact has been clearly established on the basis of the report cannot be denied by the petitioner in any manner, so we do not find any illegality or infirmity in the impugned order passed by the Tribunal.

In the result, writ petition lacks merit and is dismissed.”

In this case, there was a finding that apart from the handwriting mismatch, there was mismatch of the signature of the candidate, which established the fact that the candidate had committed fraud while appearing in the examination. As a result, the decision to cancel the candidature and to debar from RRC examinations was found to be in order by this Tribunal as well as by Hon’ble High Court.

21. It is also noted that while deciding another case of similar nature, Mumbai Bench of this Tribunal in the case of **Santosh Kumar Tiwari vs. Union of India** (<https://indiankanoon.org/doc/126647559/>) in the OA No. 432/2009, there was mismatch of handwriting of the candidate/applicant in the examination conducted by RRB, Mumbai by the GEQD. In this case, it was held as under:-

“10. In view of the above, it is established during the hearing and from a perusal of the Report given by GEQD that the Applicant had not filled up the Application Form himself but was done by someone else. However, the

Respondents have not been able to establish that the signatures appearing in the Application Form, OMR Sheets and the Question Booklet do not belong to the Applicant. The opinion given by the GEQD is valid for establishing the handwriting of the Applicant which establishes that the Application Form is not filled in the Applicant's handwriting. However, there are no reports available from the Forensic Laboratory to establish that the signatures of the Applicant do not match the signatures on the Application Form, OMR Sheets and Question Booklet. Therefore, the charge levelled against the Applicant has not been fully established.

11. In view of the above, the Original Application is partially allowed. The impugned order dated 02.11.2007 is modified to the extent that the Applicant is disqualified only from the examination held on 16.11.2003, 17.4.2005 and 24.4.2005 vide Employment Notice No.1/2003 by the Railway Recruitment Board. However, we are not convinced that the facts and circumstances of the present case justifies imposing a lifetime ban on the Applicant from appearing in all Examinations to be conducted by the Railway Recruitment Board or from getting appointment in the Railway in future.”

22. Thus, in the case before Mumbai Bench of the Tribunal, there was no mismatch of the signature of the candidate in different documents, but the mismatch in handwriting was established. In the present O.A. before us, there is allegation of mismatch of the handwriting for applicants no. 1, 7, 11, 12, 13, 14, 15, 18, 19, 20, 21 and 23 as examined by the Government Examiner of Questioned Documents (in short GEQD), but no mismatch of signature has been alleged against the applicants. Except for the applicant no. 7, 21 and 23 who have not been debarred as there is no allegation of impersonation, all other applicants have been debarred from all examinations of RRCs/RRBs for life apart from cancellation of candidature for the recruitment in question. For the applicant no. 2, 3, 4, 5, 6, 8, 9, 10, 16, 17 and 22, the allegation is mismatch of thumb impression, which has not been examined by any government expert as per the show cause notice issued to the applicants, they have been debarred and their candidature has been cancelled. In these cases also, there is no allegation of mismatch of signatures. In the case of Sanjay Kumar (supra), the debarment of the candidate was found by this Tribunal and Hon'ble Allahabad High Court to be correct in view of signature mismatch which has been confirmed by GEQD as discussed in para 20. No such signature mismatch has been alleged against the applicants in this case, which implies no mismatch of the signatures. It is not known on what basis the respondents have concluded that the applicants have impersonated in the examination, when there is no mismatch of the signature alleged against the applicants.

23. We also note that in both the cases cited by the learned counsel for the respondents, the penal action taken consisted of cancellation of candidature only, without any debarment of the candidates. Further, in the case of Santosh Kumar Tiwari (supra) decided by Mumbai Bench of this Tribunal, there was mismatch of handwriting and no mismatch of signature, for which, the Tribunal found the decision to debar the candidate for life time to be invalid. We are of the view that the facts and circumstances of the present O.A. before us are similar to the case of Santosh Kumar Tiwari (supra), discussed in para 21 of this order.

24. In the circumstances, following the decision taken in the case of Santosh Kumar Tiwari (supra) to this case, we also come to the conclusion that from the facts and circumstances of the case based on the materials on record and as discussed in para 22, the respondents have not been able to establish the allegation of impersonation against the applicants, since the allegation comprised of only mismatch of thumb impression or handwriting, without any mismatch of the signature of the applicants. In case of impersonation the mismatch in signature would have been detected also. The mismatch of signature is not reported or detected for any of the applicants in this case. However, there is violation of the instructions of the examination as per the advertisement No.1/2013, for which there is mismatch of handwriting or mismatch of thumb impression for the applicants and these mismatches have not been explained satisfactorily as the explanation in one applicant's explanation/reply at Annexure A-10 of the OA reveals. In fact, there are such violations as mentioned in the Suppl. Affidavit filed by the applicants. Further, no specific reason has been indicated in the show cause notice or impugned order in support of the allegation of impersonation against any of the applicants. Hence, taking into accounts the facts of the case, we consider the cancellation of the candidature of the applicants for the advertisement No. 1/2013 to be just and proper. But the decision of the respondents to debar some of the applicants for all examinations of RRCs/RRBs is not at all justified based on the materials on record. **Accordingly, the impugned orders dated 31.03.2016, debarring the applicants from all examinations of RRCs/RRBs is set aside and quashed.** However, we uphold the decision/orders of the respondent No.2 to cancel the

candidature of the applicants for the examination pertaining to the advertisement No. 1/2013. Respondent No.2 is directed to modify the penal action against the applicants accordingly. The interim orders in the case to keep 23 posts vacant in O.A. No. 1789/2015 and one post vacant in O.A. No. 73/2016 are vacated and if some of the applicants have appeared in subsequent examinations provisionally by virtue of the interim orders, their candidature shall be considered by the respondent No. 2 as per the rules applicable for the said examination in view of the quashing of the punishment of debarment from all examinations of RRCs/RRBs as per this order.

25. For the O.A. No. 73/2016, the allegation against the applicant is for mismatch of handwriting as verified by the GEQD like the case of the applicant No.1 in the O.A. No. 1789/2015. The reply furnished to the show cause notice and enclosed at Annexure SA-2 of the Supplementary Affidavit filed by the applicant, does not give any convincing explanation for mismatch of handwriting. Hence, the finding as at para 24 will also be applicable for the O.A. No. 73/2016.

26. Before we part with the case, we notice that there appears to be no Rule or Regulation laying down the procedure to be followed by the RRC/RRB, in situations where there are discrepancies for a candidate like mismatch of handwriting or thumb impression or signature etc. or allegation of impersonation in the examination, as no such Rule/Regulation has been produced before us in this case. The respondents may consider to put in place an appropriate Rule/Regulation to deal with such situations in a just and fair manner as per the provision of law.

27. The O.A. No. 1789/2015 and O.A. No. 73/2016 are allowed partly in terms of the para 24 and 25 above. No order as to costs.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Chairman

Arun...