

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.881/17

New Delhi, this the 20th day of March 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

.....

Shri Prabhakar Kasana,

s/o Dyaram,

aged 24 years,

candidate for appointment in Group 'D' in the

Divisions of Northern Railway,

New Delhi,

R/o Village & Post Office,

Karhi Kalanjri,

Tehsil Khekda,

District Baghpat,

Uttar Pradesh

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Applicant

(By Advocate: Mr. P.S.Nerwal)

Vs.

1. General Manager,

Northern Railway,

Baroda House,

New Delhi 110001

2. Chief Personnel Officer,

Northern Railway, Baroda House,

New Delhi 110001

3. Chairman, Railway Recruitment Cell,

Lajpat Nagar-1,

New Delhi 110024

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Respondents

(By Advocate: Mr. R.N.Singh)

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ORDER**Per RAJ VIR SHARMA, MEMBER(J):**

This Original Application under Section 19 of the Administrative Tribunals Act, 1985, was filed by the applicant on 8.3.2017 seeking the following reliefs:

- “A) Call for the Records of the case from the respondents;
- B) This Hon’ble Tribunal may graciously be pleased to direct the respondents to evaluate the answer sheet of the applicant and if secures marks more than the cut off marks for the OBC category he should be considered for appointment to any of Group D posts advertised in the said selection.
- C) Grant any other relief, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case in favour of the applicant.”

2. Opposing the O.A., the respondents have filed a counter reply. The applicant has also filed a rejoinder reply thereto.

3. We have perused the pleadings of the parties, and have heard Mr.P.S.Nerwal, learned counsel appearing for the applicant, and Mr.R.N.Singh, learned counsel appearing for the respondents.

4. Brief facts of the case, which are relevant for deciding the controversy and are not disputed by either side are as follows:

4.1 In pursuance of the Employment Notification No.220E/Open Mkt/RRC/2013 dated 30.12.2013, published in Employment News dated 11-17 January 2014, the recruitment process to fill up 5679 vacancies in Pay Band-I Rs.5200-20200 + GP Rs.1800/- Group ‘D’ posts was initiated by the

respondents. Paragraphs 5 to 11 of the employment notification contained detailed instructions/information as to how to make application, mode of selection, general conditions, invalid application, misconduct, etc. Instruction no.3, contained in the said notification, stipulated that an application will be strictly rejected if the same is signed in CAPITAL LETTER. Paragraph 10 of the said notification is to the following effect:

- “10. INVALID APPLICATIONS:
Candidates are requested to read all instructions thoroughly before sending their applications. Otherwise their applications are likely to be rejected on one or more of the following reasons:
- 10.7 Applications without signature or with signatures in capital letters or with different signature at different places.
- xx xx
xx xx”

Paragraph 8 of the notification contains the general conditions. Paragraph 8.5 stipulates that mere selection and empanelment does not confer any right of appointment to the candidates. Paragraph 8.6 stipulates that the admission of the candidate at all stages of recruitment will be purely provisional, subject to satisfying the prescribed conditions. The selection process consisted of written examination, followed by PET which was qualifying in nature only. Candidates equal to twice the number of vacancies were called for PET on the basis of merit in the written examination out of those whose candidatures were found fit as per the examination/recruitment conditions. This was followed by calling candidates, equal to number of vacancies, for document verification and medical examination on the basis

of merit in the written examination subject to the condition that such candidates have to qualify the PET.

4.2 In response to the aforesaid employment notification, the applicant applied and offered his candidature as an OBC candidate. The applicant appeared in the written examination held on 3.11.2014. The applicant put different signatures both in English and Hindi on application form as compared to OMR sheet used during the written examination and that too in capital letters. The applicant's signatures were in different style and form on the application form initially submitted by him and on OMR sheet. Therefore, the applicant's candidature was rejected for his having violated the terms and conditions of the employment notification.

4.3 The result of the written examination was declared by the respondents in February 2015. As his name did not appear in the list of successful candidates shortlisted for PET, etc., the applicant sought information from the respondents under the RTI Act, and filed WP (C) No. 4545 of 2015 before the Hon'ble High Court of Delhi. On 2.8.2016, when the learned counsel appearing for the respondents handed over to the learned counsel appearing for the applicant a copy of the answer sheet of the applicant, the learned counsel appearing for the applicant did not press the writ petition, and accordingly, the Hon'ble High Court, by order dated 2.8.2016, dismissed the writ petition as withdrawn.

4.4 The applicant made a representation dated 6.8.2016 requesting the respondents to rectify the mistake/anomaly in the result of the written

examination and to consider his candidature for selection and appointment on the basis of marks scored by him in the written examination. The applicant also made another representation dated 15.11.2016 in the matter. Thereafter, the present O.A. was filed by him on 8.3.2017 seeking the reliefs as aforesaid.

5. In the above backdrop, it was contended by Mr.P.S.Nerwal, learned counsel appearing for the applicant that when the concerned officers of the respondent-Railways had verified the applicant's signatures at the time of written examination and had found the same matching with those of the applicant appearing in the application form and other documents, the respondents ought not to have rejected his candidature at the time of evaluation of the answer sheet and/or publication of the result of the written examination. Mr.P.S.Nerwal relied on the decision of the Hon'ble High Court of Delhi in **Delhi Subordinate Services Selection Board and another vs. Neeraj Kumar and anr.**, W.P. (C) No.1004 of 2012 (decided on 24.2.2012), and the decision of the coordinate Bench of the Tribunal in **Sh.Sumit Kumar, etc. vs. Union of India and others, etc.**, OA Nos.215, 263 and 391 of 2017 (decided on 21.2.2017), to contend that the stipulation with regard to the invalidity of an application on the ground that the applicant's signature is merely directory and not mandatory and, therefore, the rejection of the applicant's candidature is unsustainable.

5.1 In **Delhi Subordinate Services Selection Board and another vs. Neeraj Kumar and anr.** (supra), the respondent-Neeraj Kumar was an

OBC category candidate for selection and recruitment to the post of Teacher (Primary) in MCD pursuant to the advertisement issued by the DSSSB. He appeared in the written examination. In the merit list the name of respondent-Neeraj Kumar appeared. He was shown to have scored 118 marks. The last selected OBC candidate had scored 101 marks. Respondent-Neeraj Kumar's name was not included in the final select list. With reference to his application under the RTI Act, respondent-Neeraj Kumar was informed that his application was rejected as being invalid on the ground that he had signed the application in capital letters in English and that is why his result was not processed for selection. Soon thereafter, respondent-Neeraj Kumar filed OA before the Tribunal. The Tribunal allowed the O.A. and directed the DSSSB and others to declare his result and offer him appointment with all consequential benefits except back wages. Considering the facts and circumstances of the case, the Hon'ble High Court held that the stipulation with regard to the invalidity of an application on the ground that the applicant's signature is in block capital letters in English is directory and not mandatory. Accordingly, the writ petition filed against the Tribunal's decision was dismissed by the Hon'ble High Court.

5.2 In **Sh.Sumit Kumar, etc. vs. Union of India and others, etc.** (supra), the candidature of applicant in OA No.215 of 2017 was rejected because he did not fill the relevant column indicating the medium in which he was taking the examination. The candidatures of applicants in OA

Nos.263 of 2017 and 391 of 2017 were rejected because they did not indicate the subject for which they were answering the paper in the relevant column on the right hand side at the top of the answer sheet. The Tribunal held that the mistakes or lapses committed by the applicants were non-essential and not substantive. Cancellation of their candidatures for these minor lapses was unwarranted. Enough material was available with the respondents to evaluate them despite the lapses committed by the applicants. If candidatures are rejected on non-essential grounds, then the very objective of conducting the competitive examination, namely, to identify the most meritorious candidates for filling up the available posts would be defeated. Accordingly, the Tribunal allowed the O.As. and directed the respondents to process the candidatures of the applicants in case they were not ineligible for any other reason.

6. On the other hand, Mr.R.N.Singh, learned counsel appearing for the respondents submitted that the applicant's candidature was rejected by the respondents in accordance with the terms and conditions contained in the employment notice. It was also submitted by Mr.R.N.Singh that after PET of the candidates shortlisted on the basis of the result of the written examination, the respondents have published the final result and the selected candidates have already been appointed, and consequently the recruitment process has been closed. Therefore, the applicant cannot be allowed to raise the issue of rejection of his candidature at this stage.

7. After having given our thoughtful consideration to the facts and circumstances of the case and to the rival contentions, we have found no substance in the O.A.

8. It is trite law that Courts/Tribunals are not invested with the power, authority and jurisdiction to sit in appeal over the decisions taken by the departmental authorities. Courts/Tribunals, in exercise of power of judicial review, can only examine whether the decision taken by the departmental authorities is vitiated on account of any legal flaw in the decision making process warranting their interference. Courts/Tribunals can interfere with the decision of the departmental authorities, if it is found that the authorities have failed to take all relevant factors into consideration, or have taken irrelevant factors into consideration while making the decision, and that the conclusion arrived at by the departmental authorities is perverse, or irrational, or in contravention of any rules. Admittedly, in the instant case, the candidature of the applicant has been rejected by the respondents strictly in accordance with the terms and conditions contained in the employment notice, and his answer sheet has not been evaluated by the respondents. The terms and conditions contained in the employment notice are sacrosanct and binding on all the candidates as well as the respondents. The compliance of the terms and conditions contained in the employment notice not only by the candidates but also by the respondents is mandatory. There is no provision in the employment notice for relaxation of any of the terms and conditions contained in the employment notice. Therefore, the

omission and commission on the part of the applicant could not have legally been ignored by the respondents. In terms of paragraph 8.6 of the employment notice, the admission of the applicant at all stages of recruitment is purely provisional, subject to his satisfying the prescribed conditions. Allowing the applicant to take the written examination would neither debar the respondents from rejecting his candidature at a later stage in accordance with the terms and conditions of the employment notice, nor would the same confer any right, much less any enforceable right, to have his answer sheet evaluated by the respondents ignoring the terms and conditions contained in the employment notice. A process of selection and appointment to a public office should be absolutely transparent, and there should be no deviation from the terms and conditions contained in the Advertisement issued by the recruiting agency during the recruitment process and the rules applicable to the recruitment process in any manner whatsoever, for a deviation in the case of a particular candidate amounts to gross injustice to the other candidates not knowing the fact of deviation benefitting only one or a few. The procedure should be same for all the candidates. Thus, we do not find any infirmity or illegality in the decision taken by the respondents rejecting the applicant's candidature for violation of the terms and conditions contained in the employment notice. This view of ours is fortified by the decision of the Hon'ble Supreme Court in **Bedanga Talukdar vs. SaifuddullahKhan**, (2011) 12 SCC 85; the decision of the Full Bench of the Hon'ble High Court of Haryana & Punjab in **Indu**

Gupta vs. Director, Sports, Punjab, Chandigarh, AIR 1999 Punjab & Haryana 319(FB); and the decision of the Hon'ble Madras High Court in **Dr.M.Vennila vs. Tamil Nadu P.S.C.**, 2006 Lab. & IC 2875.

8.1 In **Bedanga Talukdar vs. Saifuddin Khan**, (2011) 12 SCC 85, the Hon'ble Supreme Court has observed that the selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules, it must be mentioned in the advertisement. Such power, if exercised, should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to the mandate of equality in Articles 14 and 16 of the Constitution.

8.2 In **Indu Gupta vs. Director, Sports, Punjab, Chandigarh** (supra), the Full Bench of the Hon'ble High Court of Punjab & Haryana has observed that the terms and conditions of the brochure where they use peremptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in competitive examinations would stand frustrated. Vesting of discretion in an individual in such matters to waive or dilute the stipulated conditions would *per se*

introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention of the terms and conditions would decimate the very intent behind such terms and conditions. The brochure has the force of law and has to be strictly complied with.

8.3 In **Dr.M.Vennila vs. Tamil Nadu P.S.C.** (supra), the Hon'ble Madras High Court, following the Full Bench decision of the Hon'ble High Court of Punjab & Haryana in **Indu Gupta vs. Director, Sports,Punjab, Chandigarh** (supra), has held that the terms and conditions contained in the recruitment notification have the force of law and have to be strictly complied with. No modification/relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India, and application filed in violation of the Instructions, etc., to candidates, and the terms and conditions contained in the recruitment notification is liable to be rejected. Strict adherence to the terms and conditions is paramount consideration, and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language.

9. Furthermore, in the instant case, as per the scheme of the recruitment examination, the candidates shortlisted on the basis of their performance in the written examination were called to appear for PET. After the PET was conducted, the final result of selection was declared and select list was published. Accordingly, the selected candidates were appointed against the vacancies notified in the employment notice, and the recruitment process was closed. Therefore, the respondents cannot be faulted for not

entertaining the applicant's representations dated 6.8.2016 and 15.11.2016 for evaluation of his answer sheet by reviewing their decision rejecting the applicant's candidature for violation of the terms and conditions of the employment notice. Any intervention by the Tribunal in the matter at this belated stage would not only upset the entire select list, on the basis of which the selected candidates have already been appointed against the vacancies notified in the employment notice, but also adversely affect the rights of those selected candidates, none of whom is a party in the present proceedings.

10. The decisions cited by the applicant, being distinguishable on facts, do not go to support the case of the applicant.

11. No other point worth consideration has been urged or pressed by the learned counsel for the parties.

12. In the light of our above discussions, we have no hesitation in holding that the O.A. is devoid of any merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER