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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 350/01275/2015

Date of order: 4.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Shri Tutun Kumar @ Tuntun Kumar,
Son of Late Rajendra Das,
Aged about 28 years, Unemployed,
Residing at Village - Chautha,
Post & P.S. - Rajauli,
Dist. - Nawada, Pin - 805125, Bihar.

.. Applicant

- V E R S U S -

1. Union of India,
Service through the General Manager,
S.E. Railway,
11, Garden Reach Road,
Kolkata - 700 043.
2. The Chairman (Rectt.),
Railway Recruitment Cell,
S.E. Railway,
11, Garden Reach Road,
Kolkata - 700 043.
3. The Chief Personnel Officer (Rectt.),
Railway Recruitment Cell,
S.E. Railway,
11, Garden Reach Road,
Kolkata - 700 043.
4. The Assistant Personnel Officer (Rectt.),
Railway Recruitment Cell,
S.E. Railway,
11, Garden Reach Road,
Kolkata - 700 043.

.. Respondents

For the Applicant : Mr. J.R. Das, Counsel

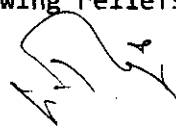
For the Respondents : Mr. A.K. Banerjee, Counsel

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard Ld. Counsel for both sides.

2. This O.A. has been filed seeking the following reliefs:-



- (i) To direct the respondent cancel, withdraw, rescind the purported Show Cause Notice dated 17.12.2013 and pass further order/orders if holding any cancellation of the candidature of the applicant being bad in law, therefore, set aside the same.
- (ii) To direct the respondents to hold Medical Test for appointment in Group 'D' post forthwith for which he already has passed the Written Test and Physical Efficiency Test and also the document verification and that the scenario there being of rigorous verification of all papers/documents/signatures on different occasions, and to further direct the respondents to incorporate the name of the applicant in the selection list for Medical Test by amending the same or by publishing a separate memo as per rule.
- (iii) An order directing the respondents to call the applicant for medical test and to hold medical examination of the applicant within no time.
- (iv) An order directing the respondents to enlist the applicant in the list of selected candidates without further delay.
- (v) An order directing the respondents to offer appointment to the applicant in the aforesaid Gr. 'D' post at the earliest.
- (vi) An order directing the respondents to dispose of the appeal made by the applicant.
- (vii) An order directing the respondents to produce entire records of the case since lying within the jurisdiction of this Hon'ble Tribunal.
- (viii) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. The Ld. Counsel for the applicant would submit that his client underwent written test and the Physical Efficiency Test successfully. He also furnished his documents at the stage of document verification. Thereafter he was not sent for medical examination. Subsequently a communication from the Railways would indicate and exemplify that he allegedly committed fraud by impersonation in the written examination as well as in the PET and that he admitted his guilt also. Virtually the applicant at no point of time admitted his guilt as he did not commit any fraud or impersonation. Accordingly, he has prayed for suitable direction.

4. The point for consideration is as to whether the Railway authorities were justified in allegedly conducting enquiry in the absence of the applicant and then come to a conclusion as against him.

5. In this connection, we would like to refer to a decision of the Hon'ble Calcutta High Court. The Hon'ble High Court in its judgment directed the Railway authorities to consider the case of the applicant and give a suitable reply to his representation dated 26.06.2009. Thereafter, the Railway authority passed a speaking order dated 8.4.2013 rejecting the claim of the applicant. Challenging and impugning the said speaking order this O.A is focused.

6. Learned counsel for the applicant would submit that no opportunity was given to the applicant to participate in the process of verification of the signatures of the applicant, and he was not given opportunity of cross examining the experts who gave the opinion of mismatch of the signatures of the applicant. Accordingly he would pray for setting aside the impugned order.

7. Per contra the learned counsel for the Respondents would submit that there was impersonation at the time of written examination and that was found out by the Railway authorities in this case and therefore they rejected the candidature of the applicant. The expert in an unbiased manner found out that there was mismatch in the signatures of the applicant. He would answer to the allegation of the applicant by stating that if an opportunity has to be given to the applicant to cross examine the expert who analysed the documents, it would be a difficult task for the respondents, as most of them might have retired or they might be in a far off place.

8. One more point for consideration is as to whether this case has to be processed by taking a cue from the decision of the Hon'ble High Court in WPCT No. 467 of 2012 dated 5.6.2013. The perusal of the records would demonstrate that in a sizable number of cases the Hon'ble



Calcutta High Court interfered in the matter of expert opinion, regarding the alleged mismatch of the applicant's signature and observed that opportunity should be given to the applicant to cross examine the experts. Hence in the factual matrix of this case also, we are of the view that the applicant cannot be singled out and he should also be treated like others. In the meantime, we are also of the considered opinion that if there is any practical difficulty in securing the presence of the experts for cross examination then as suggested by the learned counsel for the Respondents, the Railway authority is at liberty to get the disputed signature/signatures compared with the admitted and anti litum motum signatures of the applicant by an expert and after getting opinion from him, if it is found that it was adverse to the applicant a copy of the same be served on him and opportunity be given to him to file his objection and cross examine the expert. Thereafter, a reasoned order shall be passed by the appropriate authority of the Railway and communicate the same to the applicant. The entire process shall be completed within a period of four months from the date of receipt copy of this order.

9. O.A is accordingly disposed of. No costs.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP