

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00407/2016

Date of CAV - 21st May, 2019

Date of order : 29.05.2019

C O R A M

Hon'bleShri Jayesh V. Bhairavia, Member [Judicial]
Hon'bleShri Dinesh Sharma, Member [Administrative]

Harendra Kumar Choudhary, S/o Sri Parsuram Choudhary,
resident of Village –Salempur Dumrasan, PO & PS – Tekari,
District Gaya.

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Applicant.

By advocate :Shri J.K.Karn

Vs.

1. The Union of India through the D.G.-cum-Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services [HQ], O/o the Chief Postmaster General, Bihar Circle, Patna.
4. The Asstt. Director [Staff & Recruitment], O/o the Chief Postmaster General, Bihar Circle, Patna.
5. The Sr. Superintendent of Post Offices, Gaya Division, Gaya.

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Respondents.

By advocate : Mr. M.D.Dwivedi

O R D E R

Per Jayesh V. Bhairavia , Member [J] : The applicant has filed the present, seeking the following reliefs : -

“8[A] The Letter No. B2-1/PA/SA/Rectt./2011-12 Dtd. at Gaya 04.06.2015 issued by the Sr. Superintendent of Post Offices, Gaya Division Gaya as contained in Annexure-A/3, may be quashed and set aside.

8[B] The Selection and Appointment of applicant against the post of Postal Assistant, Gaya Postal Division, Gaya may be

declared correct, issued in accordance with Rules of Recruitment & Advertisement, after observing due process of Selection.

8[C] The respondent authorities may be directed to permit the applicant to join his post of Postal Assistant in Gaya Postal Division, Gaya with all consequential benefits.

8[D] Any other relief/reliefs as the applicant is entitled and you Lordships may deem fit and proper in the ends of justice."

2. The case of the applicant in short, is as follows :-

[i] The applicant submitted that several posts of Postal Assistants/Sorting Assistants were advertised by the Department of Posts in October, 2012. According to the applicant, he applied for the same and his candidature was accepted and shortlisted to participate in the selection. The applicant was selected for the post of Postal Assistant in Gaya Postal Division, vide letter dated 20.12.2013 [Annexure-A/1], whereby he was intimated that "you have been provisionally selected for appointment to the post of Postal Assistant in Gaya Division under direct recruitment quota for the vacancy year 2011 and 2012. He was further directed to submit his certificates/documents in original within ten days from the date of receipt of the letter failing which it will be presumed that you are not willing to the post of PA and your name will be deleted from the selected list. Thereafter, the necessary pre-joining formalities of medical, police verification as well as attestation of applicant were made, vide Annexure-A/2 series.

[ii] The applicant submitted that all other candidates were sent for training and subsequently permitted to join their posts, but the

applicant was asked to put his signature on a plain paper and was asked that the same is being sent for Forensic Examination.

[iii] The applicant submitted that he was waiting for the result of Forensic Department but the same was delayed inordinately and finally the department communicated a letter dated 04.06.2015 referring the letter dated 21.01.2015 issued by the Director, CFSI, Kolkata and intimated that your signature do not tally with specimen signatures put on attestation form and as such it confirms a case of impersonation, accordingly, the Sr. Superintendent of Post Offices, Gaya Division, Gaya has cancelled the candidature of the applicant, hence this OA, vide letter dated 04.06.2015 [Annexure-A/3].

[iv] The applicant relied upon the decisions rendered by Central Administrative Tribunal, Patna Bench in OA No. 112 of 2001, Vijaya Nand Jha vs. Union of India & Ors., decided on 5th Feb., 2003 and OA No. OA No.51 of 2003, Dilip Kumar vs. Union of India & Ors. decided on 3rd Feb., 2004, wherein this Tribunal has held that the respondents would not have been blindly relied upon simply on the basis of the opinion of the handwriting expert and, thus, the Tribunal find the OA also a fit case to be remitted back to the concerned respondents, the Staff Selection Commission, Central Region, Allahabad as to fresh examine the matter in the light of observations so made in the order.

3. The respondents have filed their written statement and contested the case. According to them, the applicant applied for the post of Postal Assistant and appeared in the examination held in 2013 for the vacancies of the year 2011-12 . The result of the aforesaid

examination was published vide letter dated 04.12.2013 in which the applicant was selected for appointment to the post of Postal assistant in the Department of Posts, Gaya Postal Division, Gaya. But during the course of observing all required formalities for further action for appointment, it was observed that the handwritings/signatures of the applicant do not resemble on all relevant documents, like OMR sheet, Answer Paper, Typing Test, Data Entry Test, Attestation Form etc., rather there appeared difference in handwriting/signatures on all the above documents. Therefore, it was decided to get these differences verified through scientific process by CFSL, Kolkata. The documents were sent to Kolkata. On forensic examination, vide their letter dated 28.01.2015, the handwriting on OMR Sheet, Answer Paper, Typing Test, Data Entry Test, Attestation Form have not tallied which confirms a case of impersonation. The respondents further submitted that on the basis of report of CFSL, Kolkata, the candidature of the applicant has been cancelled.

4. Heard the learned counsel for the parties and gone through the materials on record.

5. The respondents relied upon the decision rendered by the Hon'ble High Court of Judicature at Patna in the case of Manish Kumar Paswan vs. Union of India & Ors. [CWJC No.7494 of 2017 decided on 18.05.2018] has held as follows :-

"6. I have heard the learned counsel for the parties and considered the materials on record. At the outset it is to be noted that the petitioner has not contradicted any of the findings either the one contained in the report of CFSL or that of the respondent authorities much less contradicting the Patna High Court CWJC No.7494 of 2017 dt.18-05-2018 6/8 documents/ mismatch showing that the petitioner had engaged in impersonation and, in fact,

somebody else other than the petitioner herein had appeared in the written examination. A bare perusal of the report of the CFSL would show that there was no fundamental similarity in question writing and signature when compared with the standard writing and signature and that of the petitioner herein, thus, it is apparent that actual writing and signature of the petitioner has not matched the writing and signature available on the OMR sheet of written part of the examination as well as with the writing and signature available on admission certificate kept available in the examination hall at the time of examination on 12.5.2013, hence it has been concluded that somebody else had appeared on behalf of the petitioner in the written part of the examination and the present case is a clear case of impersonation. 7. It is a trite law that in cases where impugned order has been passed on the basis of information given by the expert agency, it is not for the court to sit in appeal over the information of the expert agency and controvert the finding recorded by the expert agency. In any view of the matter, the petitioner has also failed to contradict the finding arrived at by the CFSL. It is equally a well settled law that in a case of mal-practice in the examination, no notice or Patna High Court CWJC No.7494 of 2017 dt.18-05-2018 7/8 opportunity is required to be given to a candidate. As far as the contention of the respondents that the principles of natural justice has not been complied with, it has been held times without number by various courts including the Hon'ble Apex Court that fraud vitiates all solemn acts, hence the requirement of complying the principles of natural justice/ grant of an opportunity of hearing is obviated in the event of fraud. Reference in this regard be had to a judgment reported in (2009) 13 SCC 600 [State of Chhattisgarh Vs. Dhirjo Kumar Sengar]. 8. For the reasons mentioned herein above, as also the fact that the report of the CFSL has not been controverted by the petitioner herein and the present case is admittedly a case of the petitioner herein trying to secure government job by playing fraud, there is no requirement of complying with the principles of natural justice, hence the principle of audialterapartem shall stand obviated and excluded in the present case. Another aspect of the matter is that since the evidence in the present case is purportedly plain and transparent, which clearly shows that some other person, other than the petitioner, had appeared in the written examination and further the said evidence has not been controverted by the petitioner herein, there is no need for giving an opportunity of hearing much less giving any show Patna High Court CWJC No.7494 of 2017 dt.18-05-2018 8/8 cause notice to the petitioner herein. In such view of the matter, this Court finds no illegality either in the impugned order dated 4.4.2016 passed by the Deputy Director (nomination) of the Respondent No.3 or in the order dated 11.4.2017 passed by the respondent no.4, hence the present writ petition is dismissed."

6. In the present case also, the Tribunal noticed that the applicant has not contradicted anywhere either before the respondent authorities or in his pleadings that he has not impersonated. The CFSL, Kolkata opined that there was no fundamental similarity in the applicant's signature when it is compared with the signature on OMR

sheet. Thus it is apparent that the actual signature of the applicant on OMR Sheet has not matched with the signature of the applicant, which was obtained by the respondents in a plain sheet.

Further, the judgment relied upon by the applicant in the present case is not at all applicable, in view of the facts and circumstances of the case as also in view of the judgment rendered by the Hon'ble Patna High Court in the case of Manish Kumar Paswan [supra].

7. In view of the aforesaid discussions, as also the fact that the report of the CFSL, Kolkata which has not been controverted by the present applicant, it is apparent that admittedly the applicant tried to secure government job by playing fraud, therefore, there is no requirement of complying with the principles of natural justice, hence the principle of *audialterampartem* shall stand obviated and excluded in the present case. In view of the foregoing paragraphs, we do not find any infirmity in the actions of the respondents.

8. The OA is, accordingly, dismissed. No costs.

Sd/-

[Dinesh Sharma]M[A]

Sd/-

[Jayesh V. Bhairavia]M[J]

mps.