

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00836/2015

Date of CAV - 28th May, 2019

Date of order : 30.05.2019

C O R A M

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

Omprakash Sah, S/o Sri Hiralal Sah, resident of Village –
Kundilpur, PO – Bargajwa, PS – Shikarpur, District – west
Champaran [Bihar].

..... Applicant.

By advocate : Shri J.K.Karn

Vs.

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The Chairman, Railway Recruitment Cell, E.C. Railway, Polson Complex, Digha Ghat, Patna.
3. The Chief Personnel Officer, E.C. Railway, Hajipur.
4. The Dy. Chief Personnel Officer [Recruitment] RRC, E.C. Railway, Polson Complex, Digha Ghat, Patna.
5. The Asstt. Personnel Officer, Railway Recruitment Cell, E.C. Railway, Polson Complex, Digha Ghat, Patna.

..... Respondents.

By advocate : Mr. Mukund Jee/Shri S.K.Ravi

O R D E R

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

“8[1] The action of respondent authorities in removing the applicant midway on 05.08.2015, during verification of documents, from the Selection itself without issuing any order, even cancelling his candidature, on verbal ground of mismatch of thumb impression may be declared bad and invalid.

8[2] The verification of documents as well as the other formalities, pre-appointment process of applicant may be

directed to be completed at the earliest in accordance with law and the applicant may be directed to be issued his order of appointment, in pursuance to result of the selection with all consequential benefits.

8[3] The cost of litigation, incurred in filing the instant OA, may be awarded upon the respondents.

8[4] Any other relief/reliefs as the applicant is entitled and your 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 he participated in selection process of Group-D post conducted by Railway Recruitment Cell, Digha Ghat, Patna and finally selected. He was called for verification of documents on 05.08.2015 at Polson Complex, Dighat Ghat, Patna, vide Annexure-A/1 series. The applicant appeared for verification of documents on 05.08.2015 and after verification, all the documents were found correct.

[ii] The applicant further submitted that finally on erroneous and extraneous considerations, he was told by the officials of Polson Complex, Digha Ghat, Patna that there was mismatch in thumb impression, and as such, he would not be appointed.

[iii] On being rejected by the officials at Digha Ghat, the applicant filed an application dated 31.08.2015 and 17.09.2015 before the authorities explaining all his points, vide Annexure-A/2 series but till date nothing has been done.. The applicant pleaded that no procedure was followed in his case. The applicant further pleaded that any

decision on mismatch of thumb impression or mismatch of handwriting can be taken on the basis of expert's opinion. The applicant also submitted that there was no allegation from any invigilator upon him that there was another candidate in the examination.

3. The respondents have filed their written statement and contested the case. According to them, the Railway Recruitment Cell, ECR, Patna, vide employment notice dated 02.09.2013 [Annexure-R/1] invited applications for Group-'D' posts having G.P. of Rs. 1800/-. The applicant applied for the said post along with 179 candidates. The respondents submitted that in terms of employment notice [Annexure-R/1], the applicants were required to submit inter alia a self-declaration in their own handwriting, their left thumb impression, their signatures, marks of identification and a photograph. Further, during the course of written examination, candidates were required to give samples of signature and left thumb impression, declaration in their own handwriting and to submit a photograph.

4. The respondents submitted that on the basis of performance in the written examination, candidates equal to 02 times of the vacancies, were shortlisted for appearing in the next stage of selection process, viz. physical efficiency test [PET]. During the physical efficiency test, samples of signature, left thumb impression and a photograph were again obtained from each candidate and videography of the test was also done at this stage and when the candidates were called for verification process, further samples of their handwriting, signatures and left thumb impressions were collected by the document

verification committee. And, while executing the Ministry of Railways instructions dated 02.02.2005 [Annexure-R/2] and letter dated 14.02.2002 [Annexure-R/3] at the time of document and candidature verification by a Four Member Document Verification Committee, it was found that someone else appeared in the written examination held on 02.11.2014 in place of the applicant, bearing Roll No. 1020310075.

5. The respondents further submitted that during the course of verification process, discrepancies were noticed in the samples collected in the aforesaid four stages in respect of the applicant, therefore, all the documents pertaining to the applicant were referred to Finger Print Expert who opined that the left thumb impression of the applicant bearing Roll No. 1020310075 does not match with the thumb impression taken at the time of document verification and other stages. Thus, it is confirmed that the applicant did not appear in the written examination and accordingly, his candidature was cancelled.

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

7. 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 CSFL. 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 audi alteram partem 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."

8. 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], we are of the considered opinion that this OA has no merit since during the course of verification process, discrepancies were noticed in the samples collected in the aforesaid four stages in respect of the applicant, therefore, all the documents pertaining to the applicant were referred to Finger Print Expert who opined that the left thumb impression of the applicant bearing Roll No. 1020310075 does not match with the thumb impression taken at the time of document verification and other stages. Thus, it is confirmed that the applicant did not appear in the written examination and accordingly, his candidature was cancelled. Further, we do not notice any infirmities in the action of the respondents.

9. In view of the aforesaid discussions, this OA is dismissed. No costs.

Sd/-

[Dinesh Sharma]M[A]

mps.

Sd/-

[Jayesh V. Bhairavia]M[J]