

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of hearing and order : 18th March 2015.

+ W.P.(C) 2529/2015

UNION OF INDIA & ORS. Petitioners

Through: Mr.J.K. Singh, Mr.Arav
Singh, Advocates

versus

PRADEEP TOMAR Respondent

Through: Ms. Anjana Gosain, Mr. Pradeep
Desodhya, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **18.03.2015**

KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No.4509/2015 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 2529/2015 & C.M. Appl. No. 4508/2015 (Stay)

1. By way of this instant Writ Petition filed under Article 226 of the Constitution of India, the Petitioners question the tenability of the order dated 31.10.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 4136/2013, whereby it allowed

the Original Application preferred by the respondent.

2. In brief, the facts of the case are that the Respondent submitted his application pursuant to the advertisement published in Employment Newspaper dated 17th December 2010, the petitioner had invited applications to fill up 11439 vacancies in the pay band of Rs.5200-20200 with Grade Pay of Rs.1800, Group D post. The Respondent had appeared in the Written Examination as well as the Physical Efficiency Test (*hereinafter the PET*) on 24.06.2012 and 19.11.2012 and was declared successful in both. Thereafter, vide letter dated 23.11.2012, the petitioner No.3 informed the respondent that on the basis of the Written Examination and his performance in the PET, he was provisionally found eligible for documents verification and accordingly he was required to report on 17.12.2012 at 9 AM for the aforesaid purposes. He was also informed that the documents verification will be followed by a medical examination and that too only of those candidates who are further found suitable by the Screening Committee. This letter also made it clear that calling of candidates for documents verification does not automatically confer any right upon the candidate for his medical examination or appointment on any post of Northern Railways. A note was also inserted

at the end of this letter stating that all necessary care has been taken while preparing the list of eligible candidates for document verification but inadvertent human errors cannot be overruled. RRC/Northern Railway reserves the right to correct such mistakes whenever it is noticed. This respondent successfully completed the process of documents verification and thereafter was detailed for his medical examination wherein also he was found fit. Finally vide its letter dated 9th March 2013, the petitioner No.2 informed the respondent that he has been placed on provisional panel for the post of Grade Pay of Rs.1800- Pay Band Rs.5200-20200 in Ambala Division subject to usual terms and conditions governing his appointment. He was also advised to report to the office of the Senior Divisional Personnel Officer, Northern Railway, Divisional Railway Office, Ambala Cantt., for further joining formalities on 15.4.2013. He was also advised to bring certain documents as detailed in the letter itself.

3. Respondent reported to the Office of Senior DPO, Northern Railway, DRM Office, Ambala on 15.4.2013 and submitted all the documents as were required by him. He met with the concerned officer so as to ascertain his date of joining and in response thereto, he was asked to join on the next day i.e. on 16.4.2013. Respondent visited the office of

petitioner No.2 on 16.4.2013 again, wherein, he was informed that they had not received any letter from the Lajpat Nagar Office, Railways and he was advised to contact the office after 10-12 days. The Respondent failed to receive any letter of appointment despite the fact that the other selected candidates who had applied alongwith him had already joined their services. Respondent was also not disclosed any reason for not getting the letter of appointment. In such circumstances, respondent wrote a letter dated 8.6.2013 and then sent a legal notice dated 14.09.2013. In response to the legal notice, the respondent was informed for the first time that during the process of documents verification on 15.4.2013, it was found that his signature was not present on the application form and owing to this; his case has been sent back to the Railway Recruitment Cell, Lajpat Nagar, New Delhi for taking further action.

4. Feeling aggrieved by such a decision of the petitioners, the respondent preferred O.A.No. 4136/2013 whereby the learned Tribunal in the impugned order took a view that the blame attributable is more on petitioner No. 3 than on the respondent as there would not have been any dispute if they would have scrutinised the application forms of those candidates who had qualified in the Written Examination and admitted

for the PET, as only those, who had qualified in the Written Examination were allowed to appear in the PET. The tribunal also observed that before a candidate was admitted for PET, had the petitioner No.3 taken pains to scrutinise the applications to determine whether they were in order or not, many ineligible candidates could have very well been dropped at that very stage and would not have been called. The Tribunal further held that they found no justifiable reason as to why the petitioner No.2 did not verify the application forms of at least those candidates who were finally selected for appointment before their dossier was sent to the user department, and it went onto observe that if that much work also could not be done by the recruiting agency, then it wonders what service was being rendered by the petitioner No.3 in the matter. Tribunal also placed reliance on the judgment of this Court in ***Delhi Subordinate Services Selection Board and Anr. v. Neeraj Kumar and Anr. 188, (2012) DLT 501 (DB)*** and the operative part of the Tribunal's judgment are reproduced as under:-

“8. Further, in this case, as observed by the High Court in the case of Neeraj Kumar (supra), the signature of the applicant on the application form was not the only evidence to establish his identity but there was his photograph affixed on the application form. Further, in this case, the applicant's thumb impression was also on the application form. Therefore, we do not find any merit in the contention of the Respondents

at this belated stage that the candidature of the Applicant was cancelled for the reason that he did not sign the application form submitted to the third Respondent.

9. We, in the above facts and circumstances of the case, allow this OA and direct the Respondent No.2 to ensure that the Applicant is appointed to the Grade Pay of Rs.1800/- Pay Band Rs.5200-20200 on the basis of the offer of appointment issued to him by the second Respondent vide letter dated 19.03.2013 with all consequential benefits including notional seniority but excluding back wages, within a period of 2 months from the date of receipt of a copy of this order. The aforesaid directions shall positively be complied with, within a period of 2 months from the date of receipt of a copy of this order.”

5. Assailing the legality and correctness of the said order passed by learned Tribunal, Mr. R.V.Sinha, Advocate for the petitioners submits that the order passed by the learned Tribunal is ex-facie perverse and illegal as it had failed to appreciate that the respondent was only provisionally selected and such a provisional selection does not confer any right of appointment on the respondent. Counsel also submits that para 9 of the Employment Notification clearly states that the candidates are required to read all instructions thoroughly before sending their applications otherwise their applications are likely to be rejected on one or more grounds and one of the grounds being where the application is without signature or with signatures in capital letters or with different signatures at different places. Counsel also submits that the learned

Tribunal has failed to appreciate the law laid down by the Hon'ble Apex Court in the case of *Shankarsan Dash vs. Union of India*, AIR 1991 SC 1612 and in the case of *T. Jayakumar vs. A. Gopu and Anr*, 2008 (12) SCALE 815. Counsel also argued that the learned Tribunal has also wrongly shifted the blame onto the petitioners for not scrutinising the application forms at least of those candidates who had qualified in the Written Examination and were admitted for the PET.

6. Contention raised by the counsel is that the entire fault was on the part of the respondent who did not care to sign his application form, but nonetheless the Tribunal found fault with the Petitioners without appreciating the fact that the petitioner No.3 had received copious amounts of applications and therefore to scrutinise each and every application with utmost precaution and precision would have resulted in mammoth delay in the recruitment process. Therefore in the advertisement itself, it was made amply clear that admission of the candidates at all stages of recruitment will be purely provisional, subject to, their satisfying all the prescribed conditions. Based on these submissions, counsel for the Petitioners urged for setting aside the order passed by the learned Tribunal.

7. Ms. Anjana Gosai, Advocate for the respondent however strongly refutes the pleas raised by the petitioner and the arguments advanced by Mr.R.V. Sinha, learned counsel for the petitioner. Supporting the reasoning given by learned Tribunal in allowing the Original Application preferred by the respondent, the counsel also placed reliance on the judgment of this Court in *Neeraj Kumar's case (supra)*.

8. We have heard the submissions made by learned counsel for the parties at considerable length and given out thoughtful consideration to the arguments advanced by them. We have also perused the impugned judgment and the material placed on record.

9. Employment Notice No. 220E/Open Mkt/RRC/2010 was issued by petitioner No. 3 on 17.12.2010 with the closing date of 15.3.2011 inviting applications from citizens of India and such other candidates declared eligible by the Ministry of Home Affairs, Government of India, to fill up a total of 11439 posts in Pay Band-I of Rs.5200-20200, Grade Pay of Rs.1800 in various divisions of workshops/units of the petitioner No.2. The recruitment procedure consisted of the PET followed by written examination. Clause 6 of the said employment notification deals with the subject of mode of selection and same is reproduced as under:-

6. Mode of Selection:

The recruitment procedure consists of Physical Efficiency Test (PET) followed by Written Examination.

Candidates who fulfil the eligibility conditions will be called for a Physical Efficiency Test (PET). A call letter indicating date, time and venue will be sent to all the eligible candidates.

*Physical Efficiency Test (PET): **Passing the Physical Efficiency Test (PET) is mandatory and the same will be qualifying in nature.** The criterion for the PET is as under:*

<i>Male Candidates</i>	<i>Female Candidates</i>
<i>Should be able to run for a distance of 1500 meters in six minutes in one chance.</i>	<i>Should be able to run for a distance of 400 meters in there minutes in one chance.</i>

Only those candidates who qualify in the PET will be called for the Written Examination. A separate call letter indicating date, time and venue will be sent to qualified candidates to attend for the written examination.

The persons with disabilities are Exempted from appearing in PET.

Written Examination: *Written Examination will consists of objective type multiple choice question papers based on 10th class standard to assess the General Knowledge, Awareness, Mathematics, Reasoning etc.*

The question paper will be printed in Hindi, English, Punjabi and Urdu only.”

Negative Marking: There will be negative marking for marking wrong answers. 1/3 mark will be deducted for each wrong answer.

The candidates will be called for the verification of the original certificates based on basis of merit of the written examination.

The final recruitment panel will be strictly based on merit position obtained in written examination.”

10. Under clause 3 of the said notification, complete procedure has been laid down as to how the candidates have to apply for the said post. Alongwith the application form, the candidate is required to annex his one recent passport size photograph with clear front view of the candidate without cap or sun glasses and also required to sign in the space provided below the photograph. The candidates were also required to give their left thumb impression at the designated place in the application form. The applications without left hand thumb impression were to be summarily rejected. Candidates were also required to indicate any clear/visible mark of identification on their body and if the same was not indicated, the application form of the candidates was liable to be rejected. Under clause 7 dealing with general conditions it was made clear that admission of the candidate at all stages of the recruitment will be purely provisional subject to their satisfying the prescribed conditions and mere selection and empanelment does not confer any right of the appointment to the candidates. Clause 9 of the advertisement deals with invalid applications and since the subject matter of controversy is primarily related to this clause, therefore the same is reproduced as under:-

9. 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:

Applications receive before/after the closing date and time of employment notification.

Postal orders/Demand Drafts not enclosed or less fee enclosed or invalid IPO/DD, i.e. IPO/DD purchased before the date of issue or closing date of employment notice.

Applications not in the prescribed format or which are incomplete/illegible in any manner.

Candidates not in possession of the required educational qualifications on the date of applying or are underage/overage as on 01.01.2011.

More than one application submitted by the same candidate.

Applications without photo/latest photo not being affixed.

Applications without the declaration being re-produced by the candidates in the application.

Applications without signature or with signatures in capital letters or with different signatures at different places.

Left hand thumb impression not affixed or is blurred/smudged.

Copies of required enclosures as mentioned in para 8 not enclosed.

More than one application submitted in single envelope.

Applications, which are not addressed to the Assistant Personnel Officer (Recruitment), Railway Recruitment Cell, Northern Railway, Lajpat Nagar I, New Delhi – 110024.

Applications which are filled in a language other than Hindi/English.

Any other irregularity noticed and considered invalid by the RRC.

Identification marks column not filled up in application form.

Candidates name figuring in debarred list.

Category/post not filled up or incorrectly filled up.”

11. The respondent's application form got rejected on the sole ground that he had not signed his application form. There is no dispute apropos the educational qualification of the respondent, he was provisionally found eligible for verification of documents and Medical Examination on the basis of the Written Examination held in May and June 2012 and the PET. Having successfully cleared the process of verification and medical examination which were pre-requisites for final selection of the candidate, he was placed on the provisional panel for the post of Grade Pay Rs. 1800/- Pay Band Rs. 5200-20200 in Ambala Division and was asked to Report to the Office of Sr. DFO, Northern Railway DRO Office, Ambala for further joining formalities.

12. Identity of the candidate can be established from the photo affixed as well as the thumb impression on the application form and in this regard we are in conformity with the judgment of the Ld. Tribunal wherein it has

rightly placed reliance on a judgment of this Court in **Neeraj Kumar's** W.P.(C) 2529/2015

case (supra) wherein it was held:

“Furthermore, in order to ascertain as to whether there was any violation of the conditions stipulated in the advertisement with regard to signing in English in block capital letters, we directed the learned counsel for the petitioner on the previous occasion to place before us a copy of the very application form, submitted by the respondent. That copy is available with us and we find that the respondent has not signed in block capital letters in English as whole of his signature is not in capital letters. This is apparent from the fact that below the space provided for signature of the candidate, there is space indicated for giving name of the candidate: Whereas the name has been written entirely in block capital letters in English in the form "NEERAJ KUMAR", the signature of the candidate, above it, is in the following form "NEERAJ Kr." It so happens that this is the way in which the respondent signs normally and in order to make this clearer, an image of the signature and name, as given in the application form is reproduced hereinbelow:-

It is absolutely clear that the signature of the candidate is different from the manner in which his name has been written which is entirely in block capital letters in English. Therefore, in our view, it cannot be said that the respondent has signed the application in block capital letters in English.

Even otherwise, we are of the opinion that since the identity of the candidate could be established from his photograph on the application form as well as the photograph affixed on the roll number issued to him by the petitioners, 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 merely directory and not mandatory. The decisions cited by the learned counsel for the petitioner are clearly distinguishable.

13. Undeniably, every candidate seeking to apply for the post in response to any advertisement is required to go through the instructions in the advertisement scrupulously and carefully so that his/her application is

not rejected due to any deficiency at their end. No candidate should be callous in his/her approach. Having said this, it is equally not expected of any recruiting agency to be so laid-back in its approach in not taking due care and precaution to scrutinise each and every application atleast till the stage of completion of the selection process. In the present facts and circumstances of the case what is even more harrowing is the fact that when the stage of issuing an appointment letter reaches, some procedural deficiency in the application form not connected with any of the eligibility conditions which are fundamental pre-requisites to seek appointment on the said post viz. qualification, experience, age, etc., is made as a ground for rejection of the candidature.

14. It is understandable that the Petitioners receive copious amounts of application forms and it is difficult for them to scan through each of these applications before allowing them to sit for the Written Examination. However, it is not a justifiable ground for them to not scrutinise the forms of those candidates who had qualified in the Written Examination and admitted for the PET as only those who had qualified in the Written Examination were allowed to appear in the PET. Still, if the no. of candidates who had qualified the Written Examination and the PET was

exceptionally large, they should have been allowed to appear in the examination subject to proper verification of the application form. In the present case, the petitioner was declared successful in the Written Examination held on 24.06.2012, he had also qualified the PET held on 19.11.2012, on the basis of the Written Examination and performance of PET, he was informed vide letter dated 23.11.2012 that he was provisionally found eligible and the verification/ checking of his original documents/ certificates and his medical examination will be held on 17.12.2012, where he was found fit and was also advised to report to the Office of the Senior Divisional Personnel Officer, Northern Railway, Divisional Railway Office, Ambala Cantt., for further joining formalities on 15.4.2013. In none of these stages was the respondent ever communicated/ intimated by the petitioners about the error in the application form. The respondent had applied and received the confirmed appointment for the post applied for, which meant that his application form was processed at all levels and no apparent deficiency was found till then by the petitioners. Each time the respondent's name was found eligible for various processes viz. Written Examination, PET, Documents Verification, Medical Test, the petitioners ought to have scrutinised his

form. Hence, the Petitioners can't deny appointment to the respondent on the pretext that he has not signed on the application form. The respondent can't be made to suffer at such a later stage, for a fault that was unintentional on his part and something that could have been intimated to him by the Petitioners at the initial or nascent stage itself, rather than waiting for the entire process to get over and suddenly realising that the respondent had not signed on his application form, we can very well imagine the plight of the respondent who is on tenterhooks and going through a myriad of emotions, his dreams at the verge of being jeopardised.

15. The Ld. Tribunal has rightly held, that the respondent had affixed his thumb impression on the application form, apart from that his photo too was affixed on the form, therefore, the signature of the respondent was not the only evidence to establish his identity. For that reason, there is no weight in the contention of the petitioners that the respondent had failed to sign on the form.

16. To err is human, is a well accepted notion. So far as the applicability of this notion in the field of service or recruitment is concerned, the error should be of a very trivial nature and due to an

inadvertent error on the candidate's part, which by no means is deliberate or intentional or to derive some undue advantage. In any case, even where such kind of error takes place, it is for the recruiting agency to point out the same at the earliest possible stage so that the candidate can know the fate of his candidature instead of allowing him to fully participate in the entire selection process to be told at the end that he cannot make it because of the application being not signed or some column having been left blank or the form being not filled with the required ball point pen, etc. Rejection on such grounds after the completion of the entire selection process will certainly be devastating and catastrophic for the candidate, especially the one who had participated in all the processes laid down for the selection and was declared successful and is now just waiting for his letter of appointment. In a country like ours, where getting a job is scarce and far between, getting a job, let alone a dream job is like a dream come true, and one can very well imagine the trauma a person would have to undergo, if at a belated stage, he gets to know that his candidature has been turned down, owing to an inadvertent error.

17. Rejection can be justified only at some early stage, not at the stage of final selection. The argument of administrative convenience cannot be

used to jettison the mandate of Article 14. Nothing prevented the petitioners, from properly scrutinising the application form at the initial stage itself, which would stand the test of Article 14 of the Constitution.

18. It is a settled position that this Court can exercise the power of judicial review if there is a manifest error in the exercise of power. In ***B.C. Chaturvedi v. Union of India & Ors.*** [(1995) 6 SCC 749] it was held:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding to fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceeding against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion

or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the findings and mould the relief so as to make it appropriate to the facts of each case."

(Emphasis Supplied)

The Supreme Court, in the case of ***East Coast Railway & Anr v.***

Mahadev Appa Rao & Ors (2010)7 SCC 678 held:

"It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter."

The Hon'ble Supreme Court in ***Rai Bareli Kshetriya Gramin Bank v.***

Bhola Nath Singh & Ors., reported in JT 1997 (3) S.C. 717, has held as

under:-

"6.....The judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or voidation of principles of natural justice."

19. In view of the aforesaid discussion, the impugned order dated 31.10.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 4136/2013, is upheld and finding no merit in the present petition, the same is hereby dismissed.

Petitioner is directed to comply with the order passed by learned Tribunal within a period of 8 weeks from the date of this order.

20. With aforesaid directions, the present petition and the application stand disposed of.

(KAILASH GAMBHIR)
JUDGE

(I.S.MEHTA)
JUDGE

MARCH 18, 2015
pkb