

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.456 of 2015

=====

1. Dheeraj Kumar S/o Sri Bhupendra Ray, R/o Vill.- Jalalpur, P.O.- Rasalpara, P.S.-
Doriganj, Dist.- Chapra (Saran) Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur,
Distt.- Vaishali
2. The Dy. Chief Personnel Officer/Recruitment, Dighaghat, Patna
.... Respondents

With

=====

Civil Writ Jurisdiction Case No. 1686 of 2015

=====

1. Pramod Kumar S/o Sri Kishori Prasad Resident of C/o Jitendra Pandey, Gudari
Bazar, Near Chandra Medical, P.O. Rajendra College, District Chapra (Saran).
2. Vikash Kumar S/o Sri Rajendra Ram R/o Village Dahiyari, P.O. S;ikariya, P.S.
Karakat (Gorari), District Rohtas.
3. Jagbandhu Roy S/o Sri Ram Sagar Roy Resident of C/o Sharda Nand yadav, Mo.
Krishnapur Allpatti, P.O. D.M.C., District Darbhanga.
4. Sanjiv Kumar S/o Sri Mahendra Pandit R/o Village Chhoti Paithana, P.O. Bari
paithana, P.S. Islampur, District Nalanda.
5. Ravi Ranjan Pal S/o Sri Shiv Muni Pal R/o Village Kosanda, P.O. Koath, P.S.
Suryapura, District Rohtas.
6. Nagendra Kumar S/o Sri Latu Yadav R/o Village Dobhi, P.O. Dobhi, District
Gaya.
7. Mukesh Kumar S/o Sri Dashrath Prasad Yadav R/o Musharniya, P.O. Gamheria
(Rampur), P.S. Sour Bazar, District Saharsa.
8. Ashok Kumar S/o Sri Ramlakhan Yadav R/o Village Maharaj Ganj, P.O. + P.S.
Sigori, District Patna.
9. Shilpa Kumari D/o Sri Arun Kumar Poddar R/o Moh. Salempur, Barh Bazar,
Ward No. 21, P.O. + P.S. Barh, District Patna Petitioners

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur,
District Vaishali
2. The Dy. Chief Personnal Officer/Recruitment, Dighaghat, Patna
3. Sunil Kumar Singh S/o Sri Mahesh Yadav Residing at Pipardih, Ward No. 33,
P.O. + P.S. + District Aurangabad Respondents

=====

Appearance :

(in both the cases)

For the Petitioner

: Mr. Awadh Bihari Ojha, Sr. Adv. with
M/S Bharat Bhushan & Nitesh Kumar, Advs.

(In CWJC No.456 of 2015)

For the Respondents/Railways: M/S Bindhyachal Singh & Manish Prakash, Advs.

(In CWJC No.1686 of 2015)

For the Respondents/Railways : M/S Naresh Dixit & Vivek Anand Amritesh, Advs.

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 24-11-2016

Heard learned counsel for the petitioners and the



learned counsel for the railways, in both the cases.

2. Both the writ petitions assail the common order dated 22.10.2014, passed by the Central Administrative Tribunal, Patna Bench, Patna, in O.A. Nos. 740 of 2013 and 787 of 2013 along with other O.As. The said O.As. had been filed challenging the order dated 04.10.2013 of the Chairman Railway Recruitment Cell, Patna, by which the candidature of the petitioners have been cancelled and they have further been debarred for life from appearing in any examination to be conducted by Railways from obtaining any service in Railways.

3. The short facts of the case are that pursuant to employment notice dated 15.12.2010, the applicants applied for Group 'D' post. The recruitment procedure consisted of written examination, after which the applicants were subjected to physical efficiency test and, thereafter, asked to appear for verification of the documents. The thumb impression and written samples of their hand-writing were taken at each of the stages. At one stage, it was noticed that these writ petitioners along with a huge number of applicants had indulged in impersonation and, accordingly, after issuing show cause notices and considering their explanations, as many as 525 candidates, including these petitioners, were debarred as above. The respondents had arrived at the said conclusion on the basis of the left thumb impression of the writ petitioner of C.W.J.C. No. 456 of 2013 whereas in the case of the petitioners of C.W.J.C. No. 1686 of 2015 it was found



that their left thumb impression were not readable and, therefore, their hand-writings were sent to the government examiner on questionable documents, who gave his opinion that the sample available for written examination are different from the other samples.

4. Aggrieved by the same, petitioners moved before the Central Administrative Tribunal, Patna Bench, which dismissed the O.As. filed by them after holding that even though a hand writing expert's opinion is a weak piece of evidence compared to other scientific examiners but there was hardly any material to suspect the integrity and efficiency of the hand writing expert in question to take a different view and, further, thousands of candidates appeared in the recruitment cell but only 525 cases could be detected where the candidates had practiced fraud and impersonation for getting a job contrary to approved norms and the punishment imposed is neither a case of personal vendetta nor a case of discrimination which calls for interference by the Tribunal. However, while dismissing the O.As., it was observed that if the candidates were still dissatisfied with the findings of the government examiner, they were at liberty to deposit a sum of Rs.5,000/- each in which event, the respondents shall send the admitted signatures and hand-writings of the candidates with suspected hand writing to another hand writing expert and if there would be any variation in the report of both the opinions, the respondents shall be free to take a fresh decision in the matter to



avoid injustice. The Tribunal, thus, observed that it did not find any infirmity in the impugned orders calling for interference.

5. Learned counsel for the petitioners submits that the reliance by the opposite parties on the two letters dated 14.02.2002 and 02.02.2005 is wholly unjustified as there was no such reference to the said letters in the advertisement and the only penalty for impersonation mentioned in the advertisement was a debarment from and cancellation of the candidature for the examination in question. Learned counsel relies upon the requirement given in the letter dated 14.02.2005 that the candidates found guilty of arranging impersonation should be debarred for life from appointment in the Railways, after giving them due notice and submits that this had to be clearly brought out in the employment notice and the applicants clearly warned about the consequences. It is submitted that since the same was not mentioned in the advertisement notice and there was no clear warning about the consequences the petitioners could not have been debarred for life from Railways service or appearing in the Railways examination. It is stated that as a matter of fact, even though the debarment is not general but the petitioners would continue to be declared ineligible for any Government service under the Central Government.

6. With respect to the petitioner Dheeraj Kumar, it is further submitted that at the time of examination when he was giving the thumb impression there had been burning of thumb and



fore-finger a few days back and for the said reason non-matching of the finger print cannot be considered impersonation and the said fact has been stated in the reply to the show cause filed by him, but the same has not been taken into consideration while passing the impugned order. Learned counsel also submits that at least the writ petitioners of C.W.J.C. No. 1686 of 2015 had taken a clear stand in the reply to the show cause that they be supplied copies of the report of the hand writing expert, but the same was not given to them and, thus, there has been violation of the principle of natural justice. With respect to the petitioner Dheeraj Kumar, it is admitted that he has not stated in so many words asking for the report of the finger print expert.

7. Learned counsel for the Railways, on the other hand, submits that the two letters dated 14.02.2002 and 02.02.2005 were part of general letters issued from time to time by the Railway Board and the same constitute policy decision taken at the highest level, therefore, it was open to the respondents to have acted upon the same while inflicting the punishment for the examination in question by debarring the petitioners for life from appearing in any examination of the Railways or obtaining Railways service. It is submitted that the requirement of mentioning in the advertisement the letter dated 02.02.2005 can not be considered to be mandatory and even if the same has not been mentioned the order in question could have been passed debarring the petitioners for life.



8. Learned counsel, further, submits that in a common examination process it is not possible for the examiner to consider the cases of thousands of candidates and supply copies of report in each of the matters and there being no mention of any personal malafide against the officers of the Railway Recruitment Cell, it would not at all be possible to comply in detail the principles of natural justice as though the persons in question were employees of the Railways and were not merely candidates seeking employment.

9. We have heard the learned counsels for the parties, perused the order of the Tribunal and the materials on the record. It is evident that the series of circulars have been necessitated on account of apprehension of impersonation found to be practiced by the candidates in the recruitment process of the Railways from time to time. Pursuant to the same by the two aforesaid letters dated 14.02.2002 and 02.02.2005, it had crystallized that the finger print may be taken as a piece of evidence itself apart from the hand-writing for the purpose of detecting cases of impersonation. This was the clear stand of the respondents at each stages of the recruitment process starting from the application in which the hand-writing in the form of self declaration and the left thumb impression of the candidate concerned were taken. So far as the petitioner Dheeraj Kumar, is concerned, his left thumb impression on the application was not found matching with the subsequent one taken at the time of examination and, thus, it is a



clear cut case of impersonation. With regard to the other nine petitioners also, who along with one more applicant, had filed O.A. No. 740 of 2013, since the finger prints were not legible, hence, their hand-writings collected at different stages were sent to the Government Examiner on questionable documents and as per the opinion of the expert the hand-writings were found not to be matching, the order has been passed against them. Hence, there does appear to be a clear procedure followed in respect of all the candidates and it can not be said to be arbitrary, discriminatory or unreasonable.

10. So far as the question of show cause notice is concerned, although the stand has been taken that copy of the report should be supplied, but according to the rules in order to maintain the confidentiality of the concerned hand writing finger print experts it was left open to the candidates to inspect the same in a manner so that the identity of the expert may not be disclosed.

11. In this regard, reference has been made in the order of the Tribunal to a decision of the Supreme Court in the case of ***Ram Preeti Yadav Vrs. U.P. Board of High School and Intermediate Education and Ors.; (2003) 8 S.C.C, 311***, in which it has been observed that in case of mass copying, the principle of natural justice need not be strictly complied with and there is no equity in favour of the candidate as he had used unfair-means in the examination. For the said reason, it was noted by the Tribunal that in the instant case the applicants applied high degree of fraud



by resorting to impersonation and there would be hardly any material for the present applicants to challenge the opinion of the Government Examiner on questionable documents. However, the Tribunal, further gave liberty to the petitioners to deposit a sum of Rs.5,000/- each with the respondents upon which the respondents would be obliged to send the admitted signatures and hand writings of the candidates with suspected hand writing to another hand writing expert and if there would be any variation in the reports of both the opinions, the respondents shall be free to take a decision in the matter to avoid injustice to a candidate.

12. In our view, the aforesaid direction takes care of any suspicion that the petitioners may not get justice with regard to the opinion of the hand writing expert as given earlier.

13. So far as the submission of learned counsel for the petitioners that the two letters had not been incorporated or even mentioned in the advertisement and in paragraph 10 of the advertisement it is stated that in case of any impersonation or other misconduct, the candidates would be disqualified for the said examination and, thus, the permanent disqualification could not have been directed by the impugned order, in our view, the advertisement is not supposed to include each and every matters, except what is broadly required for the purpose and such matter will be governed by the policy decision taken earlier by the respondents. Any person who comes forward to participate in a recruitment process, if so interested ought to have found out the



various terms and conditions whether stated in statutory rules or executive instruction. It is definitely open to the respondents to have acted in terms of the policy/direction contained in the letters issued from time to time. However, it would be better if the respondents had mentioned the same in the advertisement or the advertisement could have referred to a website where such terms and conditions could have been seen. That having been said, the same cannot be a ground for setting aside the order.

14. Thus, on a consideration of the entire matter, we do not feel inclined to interfere with the order of the Tribunal.

15. The writ petitions are, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Birendra Kumar, J)

SA/

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.01.2017
Transmission Date	

