

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-12264-2016

Date of decision: 08.11.2016

Parveen Kumar

..... Petitioner

Versus

Central Administrative Tribunal, Chandigarh and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Bhupinder Malik, Advocate for the petitioner.

Mr. Sanjay Pathania, Advocate for
Mr. RTPS Tulsi, Advocate and
Mr. Lakhwinder Bir Singh, Advocate
for respondents No. 2 to 4.

RAMENDRA JAIN, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of *Certiorari* for quashing the order dated 22.04.2016 (Annexure P-1) passed by respondent No. 1-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal') whereby the Original Application No. 322 of 2016 (Annexure P-2) filed by the petitioner was dismissed and further to quash the order dated NIL (Annexure A-5) vide which the candidature of the petitioner was rejected by respondents No. 2 to 4. Further a writ of mandamus has been sought directing respondents No. 2 to 4 to consider the claim of the petitioner for selection and appointment on any Group "D" post from the date the other batch mates have been appointed.

No. 220/-E/Open Mkt./RRC/2013 dated 30.12.2013, published in Employment News dated January 11-17, 2014, invited applications to fill up 5679 vacancies in Pay Band-I in the pay scale of ₹ 5200-20200+GP ₹ 1800/- Group "D" posts. The petitioner being eligible applied under Other Backward Class (OBC) category and was issued Roll No. 50020396. Consequently, the petitioner appeared in the written examination on 30.11.2014 and cleared the same. Thereafter, the petitioner also cleared the Physical Examination Test (PET) which was scheduled for 24.04.2015. The petitioner was then called for document verification on 04.08.2015 and he submitted his required documents. The authorities concerned verified the documents of the petitioner and directed him to present himself for medical examination on 04.08.2015 in which he was found fit by the medical board. Thereafter, the petitioner came to know from the official website of respondents No. 2 to 4 that his documents were sent to the technical experts for further detailed examination. Finally, the respondents again updated the official website vide order dated NIL (Annexure A-5) with the status that case of the petitioner has been rejected by the experts. Being not satisfied, the petitioner applied to respondents No. 2 to 4 under the Right to Information Act (RTI Act) to supply him the copy of Application Form, copy of OMR Sheet, Hand-writing Recognition Form and a copy of Report of Hand-writing Expert, on the basis of which his candidature was rejected. Resultantly, respondents No. 2 to 4 vide letter dated 26.02.2016 (Annexure A-6) supplied the petitioner the copy of incomplete copy of his application form, a copy of OMR sheet and a copy of Hand-writing Recognition Form. However, the copy of report of hand-writing expert was not supplied to the petitioner on the pretext that disclosing of identity or report of the expert

cannot be disclosed in the public interest. Being aggrieved against the rejection of his candidature, the petitioner had filed the Original Application No. 322 of 2016 (Annexure P-2) before the Tribunal impugning the action of respondents No. 2 to 4 for rejecting his candidature on the ground of mismatch in handwriting/signature on application form, OMR and Document Verification Papers etc. The Tribunal after due contest rejected the original application of the petitioner vide impugned order dated 22.04.2016 (Annexure P-1).

3. Learned counsel for the petitioner by assailing the impugned order dated 22.04.2016 (Annexure P-1) contended that the Tribunal failed to appreciate that decision in *(i) O.A. No. 2356 of 2014, Devender Kumar Vs. The General Manager of Northern Railway and another*, decided on 27.07.2015 and *(ii) O.A. No. 4143 of 2013, Pardeep Kumar Vs. Union of India*, decided on 22.12.2015 were quite distinguishable from the facts of the case of the petitioner, because in those cases disputed signatures did not match, whereas in the case of the petitioner his signatures on all the documents were similar. He also contended that in the case of *Pardeep Kumar (supra)* it was observed that it is clear from a simple examination of the documents, even without relying on the report of the expert that there were different signatures on different documents and no report of handwriting expert was attached with the Original Application, whereas in the case of the petitioner, he had obtained a report of the hand-writing expert and attached the same with his Original Application, proving that his signatures and thumb impressions were similar. The Tribunal had not recorded any finding about the report of the hand-writing expert obtained by the petitioner and, thus, had violated the principles of natural justice. Since,

the petitioner had also affixed his thumb impressions on various documents, so it was incumbent upon respondents No. 2 to 4 to get compared his thumb impressions instead of his signatures, because the science of comparison of hand-writing is not a perfect science whereas the science, of comparison of thumb impressions is a perfect science. In support of his contentions, learned counsel for the petitioner has placed reliance upon (i) Monotosh Das Vs. Union of India (UOI) and others, 2008(3) GauLJ 525; (ii) O.A. No. 574 of 2015, Sandeep Kumar Vs. Union of India and another, decided on 04.11.2015; (iii) Sudhangshu Sekhar Biswas Vs. Union of India and others (Eastern Railway), 2010(2) WBLR 810; (iv) Vikas Kumar and others Vs. Union of India and others, 2006 (129) DLT 191; (v) Abhishek Kumar and another Vs. State of Jharkhand and others, 2009 (1) AIR Jhar R. 164; (vi) Raj Kumar and others Vs. Hari Chand (dead) through his LRs and others, 2014 (4) RCR (Civil) 304; (vii) Jasmal Kaur Vs. Malkiat Singh, 2012 (5) RCR (Civil) 268; (viii) Chamkaur Singh Vs. Mithu Singh, 2014 (1) RCR (Civil) 303; and (ix) Mohd. Altaf (2) and others Vs. U.P. Public Service Commissioner and another, 2008 (14) SCC 144.

4. After hearing learned counsel for the parties and going through the impugned order Annexure P-1 passed by the Tribunal, we do not find any merit in the present writ petition.

5. At the outset, it is pertinent to mention here that the employment notice does not create a right to be appointed to the post as per law declared by the Hon'ble Supreme Court under Article 141 of the Constitution of India as reiterated in Jatinder Kumar & others Vs. State of Punjab & others, (1985) 1 SCC 122 [3 Judges Bench]. The Apex Court

held that the process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. Undisputedly, the petitioner was bound to fulfill all the mandatory conditions of the employment notice and failure to comply with the same entitled the Competent Authority to reject any application, in accordance with law. For appreciation, reliance can be placed upon **Bedanga Talukdar Vs. Saifudaullah Khan and others, AIR 2012 SC 1803** and **Union of India and another Vs. Sarwan Ram and another in Civil Appeal No. 9388 of 2014 (SLP (C) No. 706 of 2014 decided on 08.10.2014 by the Hon'ble Supreme Court**, wherein it was held that it was always open to the competent authority to reject such application which is incomplete. The selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained.

6. In the instant case, the petitioner has not levelled any allegations of unfairness or arbitrariness against anyone, even against the Government Expert who, gave his opinion against the petitioner which was made the basis of rejection of his candidature. The plea of the petitioner that principles of natural justice have been violated while rejecting his candidature has no force, because by this time, it is well settled that natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Reliance can be placed upon

Chairman, Board of Mining Examination and Chief Inspector of Mines,

and another Vs. **Ramjee, AIR 1977 SC 965.** The opinion obtained by the petitioner from a private hand-writing and finger-print expert cannot be made the legal basis for rejecting the opinion of Government Examiner from which respondents No. 2 to 4 sought opinion about the candidature of the petitioner.

7. In **Sudhangshu Sekhar Biswas's case (supra)**, the Tribunal had set aside the rejection order of the candidature of the petitioner as the same was passed without assigning any reason and without any application of mind whereas in the instant case rejection order of the petitioner is well reasoned on the basis of report of hand-writing expert. In the cases relied upon by learned counsel for the petitioner the order cancelling the candidature of the petitioner(s) were passed without assigning any reason or without any application of mind and thus, no benefit of the same can be given to the petitioner.

8. We have gone through the impugned order dated 22.04.2016 (Annexure P-1) and find no illegality or perversity in the same. Accordingly, the instant petition is dismissed.

(RAMENDRA JAIN)
JUDGE

November 08, 2016
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(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No