

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-23157-2016

Date of decision: 08.11.2016

Sandeep Kumar

..... Petitioner

Versus

Union of India and others

..... Respondents

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

PRESENT: Mr. Diwan S. Adlakha, Advocate for the petitioner.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of Certiorari for quashing the impugned order dated 12.09.2016 (Annexure P-7) passed by respondent No. 3-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short 'the Tribunal') whereby the Review Application filed by respondents No. 1 and 2 for reviewing the order dated 04.11.2015 (Annexure P-4) is allowed and the order Annexure P-4 was recalled as well as the application for condonation of delay in filing the Review application was allowed. Further a writ of Mandamus has been sought directing respondents No. 1 and 2 to select/appoint the petitioner for the posts as advertised vide advertisement dated 30.08.2012 (Annexure P-1).

Mkt./RRC/2012 dated 30.08.2012 (Annexure P-1), respondents No. 1 and 2 invited applications under Open Market Recruitment from *bona fide* citizens of India and such other candidates declared eligible by the Ministry of Home Affairs, Government of India, to fill up a total of 7368 posts in Pay Band-1 ₹5200-20200/- with Grade Pay of ₹1800/- for the Divisions/workshops/units. The candidates were required to put their left-hand thumb impression at the designated box in the application form and in the absence thereof, the application was to be rejected summarily. It was also mentioned therein that the recruitment procedure would consist of written examination followed by Physical Efficiency Test (PET) and further, the final recruitment panel will be strictly based on merit position obtained in written examination. The petitioner being eligible as per the requirements, applied for the said post in one application form by fulfilling all the required formalities. Hence, after considering the application of the petitioner and finding him eligible, he was called for written examination for 17.11.2013, in which he appeared. After qualifying the written examination, the petitioner was shortlisted for PET by respondents No. 1 and 2 for 24.03.2014 in which he was found fit. Thereafter, vide letter dated 21.04.2014, the petitioner being found eligible in written examination and PET, was called for the verification of documents as well as for Medical Examination at the DRM Office, Northern Railway, Ferozepur (Punjab) for 26.05.2014. It was also mentioned in the said letter that the document verification would be of those candidates who would be found fit by the Screening Committee.

3. Upon verification of documents on 26.05.2014, the official respondents got conducted medical examination of the petitioner on

28.05.2014 at Railway Hospital, Ludhiana. Thereafter, respondents No. 1 and 2 declared the result on their website in which the petitioner found his name in the list of candidates, who were recommended by the committee to the technical expert for further examination. Consequently, the petitioner contacted the office of respondent No. 2 to verify his status in respect of the result. He was told to produce the Xerox copies of his Academic documents on 11.07.2014. Accordingly, on 11.07.2014, the petitioner again submitted his documents along with an application to respondent No. 2. Thereafter, in December, 2014, the petitioner was astonished and shocked, when he found from the website of respondents No. 1 and 2 that his candidature has been rejected on a flimsy ground that the Forensic Document Expert has reported mismatch in handwriting/signatures on his application form, Optical Marks Recognition (OMR) and document verification papers. Being aggrieved, after obtaining information (Annexure P-3) under the Right to Information Act (RTI), the petitioner filed Original Application No. 574 of 2015 before the Tribunal. The Tribunal after appreciating the facts and circumstances of the case allowed the Original Application of the petitioner vide order dated 04.11.2015 (Annexure P-4) and set aside the order Annexure P-2 vide which the candidature of the petitioner was rejected and also gave liberty to the official respondents to take fresh appropriate action in accordance with law regarding candidature of the petitioner. Respondents No. 1 and 2 instead of considering the claim of the petitioner filed Review Application No. 60 of 2016 (Annexure P-5) with an application for condonation of delay of 72 days before the Tribunal, mainly relying on the subsequent order dated 22.12.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi. The Tribunal allowed the review application of

respondents No. 1 and 2 and recalled the order dated 04.11.2015 (Annexure P-4) by condoning the delay vide order dated 12.09.2016 (Anexure P-7).

4. Learned counsel for the petitioner submitted that the Tribunal without adhering to the principles of natural justice as well as the relevant provisions of law has illegally and arbitrarily recalled the order Annexure P-4 while allowing the review application of respondents No. 1 and 2 vide order Annexure P-7. The Tribunal lost sight of the fact that the official respondents had the remedy to challenge the order Annexure P-4 before some higher Forum without adopting the recourse of review, because the review application of the official respondents was not maintainable. Respondents No. 1 and 2 in fact under the garb of their review application have got reviewed the original matter, which would be in the domain of Appellate Court.

5. After hearing learned counsel for the petitioner and going through the impugned order Annexure P-7 passed by the Tribunal, we do not find any merit in the present writ petition.

6. The candidature of the petitioner was rejected on the basis of report received from the Government Examiner of Questioned Documents (GEQD), nominated by Government of India, Ministry of Railway, who confirmed about the mismatch in handwriting, signatures of the petitioner on OMR, Application Form and document verification data papers. Consequently, the petitioner being aggrieved filed Original application No. 574 of 2015, before the Tribunal which was allowed vide order dated 04.11.2015 (Annexure P-4). Resultantly, the orders Annexures A-7 (Annexure P-2 herein) and A-8 were set aside and liberty was granted to respondents No. 1 and 2 to take fresh appropriate action in accordance with

law regarding candidature of the petitioner. However, respondents No. 1 and 2 filed review application Annexure P-5 for reviewing the said order Annexure P-4 which was allowed by the Tribunal vide order dated 12.09.2016 (Annexure P-7). For ready reference Para Nos. 4, 10 to 12 of the said order are reproduced as under:-

“4. In the instant R.A., the review applicants have placed reliance on judgments Annexure R-1 to R-4. Reliance has also been placed on subsequent order Annexure R-A/2 of Principal Bench in the case of Pardeep Kumar (supra). Reference has also made to judgment of Hon'ble Supreme Court in AIR 1977 SC 965- 'Chairman Board of Mining Examination and Chief Inspector of Mines Vs. Ramjee' to contend that natural justice is not an unruly horse nor lurking landmine nor a judicial cure all ills, if fairness is shown by the decision maker.

10. However, the fact remains that there are conflicting decisions on the subject by Coordinate Benches. Instant order dated 4.11.2015 is in conflict with some judgments of Coordinate Benches to some extent. Consequently, the appropriate remedy would be to refer the matter to larger Bench for authoritative settlement of the issue once and for all because the issue is arising in large number of cases all over India. In fact, Principal Bench in order date 22.12.2015 (Annexure R-A/2) in the case of Pradeep Kumar (supra) instead holding the instant order

dated 4.11.2015 per incuriam could have possibly referred the matter to larger Bench if the order dated 4.11.2015 was perceived to be in conflict with judgments Annexures R-1 & R-2.

11. Keeping in view the aforesaid peculiar facts and circumstances of the instant case, we are of the considered opinion that it would be appropriate to rehear the O.A. and after rehearing, if it is felt necessary to refer the matter to larger Bench, the same may be done or some other appropriate order may be passed. Judgments in the cases of Kamal Sengupta (supra) and M/s Jain Studios Ltd. (supra) are, therefore, not attracted to the peculiar facts and circumstances of the instant case and it cannot be said that the instant R.A. is not maintainable.

12. Resultantly, the instant R.A. is allowed. Order dated 04.11.2015 is recalled and the O.A. is ordered to be reheard.”

7. Undisputedly, in the employment notice Annexure P-1, *inter alia* various grounds to reject the candidature of a candidate were mentioned. The candidates were required to follow the instructions and failure to do so, could lead to rejection of the application. Similarly, applications without signatures could be rejected. If left hand thumb impression was not affixed at the designated box in the application form or was blurred/smudged, even then the application could be summarily rejected. If the applicant had not affixed his photograph such application could also be rejected straightway. Since, in the instant case, various

judgments were relied upon by both the sides before the Tribunal in support of their claim, so it was quite appropriate for the Tribunal to review its earlier order dated 04.11.2015 (Annexure P-4) and to rehear the matter afresh for effective adjudication.

8. In our view, at this stage, nothing adverse has been passed by the Tribunal against the petitioner in the impugned order dated 12.09.2016 (Annexure P-7) and, thus, the same is not liable to be interfered with. At best, the petitioner instead of knocking the doors of this Court should have pursued his case before the Tribunal effectively and made efforts to show that the earlier order dated 04.11.2015 (Annexure P-4) was legal and justified.

9. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

**(RAMENDRA JAIN)
JUDGE**

November 08, 2016
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**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No