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

+ W.P.(C) 4379/2016

DEV DUTT

.... Petitioner

Through: Mr. U. Srivastava, Adv.

versus

UNION OF INDIA AND ANR

..... Respondent

Through: Mr. Jagjit Singh with Mr. Preet Singh,
Adv.

+ W.P.(C) 4396/2016

SANEHAD AND ORS

..... Petitioner

Through: Mr. U. Srivastava, Adv.

versus

UNION OF INDIA AND ORS

..... Respondent

Through: Mr. Jagjit Singh with Mr. Preet Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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26.05.2016

Writ petition No. 4379 of 2016 preferred by Dev Dutt and writ petition No. 4396 of 2016 preferred by Sanehad, Sumit, Sandeep Kumar and Satish Malik impugn a common order dated 22.12.2015 passed by the Principal Bench of the Central Administrative Tribunal ('the Tribunal' for short) in O.A. No. 3628/2013 filed by Dev Dutt and O.A. NO. 126/2015 filed by Sanehad, Sumit, Sandeep Kumar and Satish Malik.

2. With the consent of counsel for the parties we have taken up the writ petitions for final hearing and disposal.

3. The petitioners herein had appeared for recruitment for grade-D posts as advertised by the Railway Recruitment Cell, Northern

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Railway. They were issued admit cards, had appeared in the written test, physical test and were medically examined. However, when the final results were declared, they were declared unsuccessful on the ground "case rejected by experts".

4. The petitioners filed the aforesaid O.As for setting aside and quashing the action of the respondents and directing the respondents to consider their appointment to the grade-D post in the Northern Railway as per the employment notification dated 17.12.2010. They had also prayed for consequential benefits.

5. The impugned order, we notice refers to case law on the scope and ambit of the power of judicial review. Judgment of the Chandigarh Bench of the Tribunal in Sandeep Kumar vs. Union of India & Another in O.A. 060/00574/2015 dated 04.11.2015 has been held to be *per in curium*. The Tribunal has referred to the decision of the Supreme Court in Special Leave to Appeal (C) No. 706/2014, ***UOI & Another vs. Sarwan Ram Another***, in which it has been observed:-

"Condition No.8.7(i) is one of the conditions mandate mentioned in the employment notice. We are of the view that in non-compliance of such condition, it was always open to the competent authority to reject such application being incomplete. Respondent No.1 having failed to do so, the competent authority has rightly rejected the application. In such circumstances, it was not open to the High Court to direct the authorities to consider the case of respondent No. 1 for appointment, sitting in appeal over the scrutiny of application by referring to certain certificate of length of service. "High Court under Article 226 of

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the Constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion based on some evidence to come to a conclusion whether the application form is defective."

Reference is also made to orders passed by the Tribunal in other cases predicated on similar ratio.

6. There can be no quarrel on the question that power of judicial review is restricted and limited to examination on whether there was an error in the decision making process, perversity and arbitrariness. However, the Tribunal has not adverted to the factual matrix specific to each petitioner before us and examined their disqualification applying the said test or parameters. The candidature of the petitioners was rejected stating "rejected by the experts". The said reason is cryptic and does not mention and state relevant reasons. Perhaps, at the time of rejection, furnishing of specific reasons was not required. However, once and when the petitioners had filed original applications questioning and challenging the action of the respondents, then the respondents should have clarified and point out the reason and grounds given by the experts for rejection of the candidature. The expression "*case rejected by the experts*" is the final conclusion and not the basis or the foundation why the candidature of the petitioners were rejected. It appears, that the respondents in some cases had relied on the report of the handwriting experts, and in other cases the application was treated as invalid on the ground that the applicant had signed in capital letters or the

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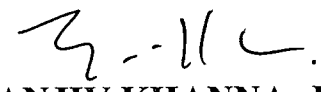
signatures were different at different places. We do not know whether this, that or any other reason had resulted in rejection of the candidature by the experts.

7. The courts/Tribunal certainly would not scrutinise or substitute their opinion for that of the experts. Nevertheless, the courts are required to go into and scrutinise the assertions within the four corners of the power of judicial review. The power of judicial review may be exercised rarely, but when circumstances and reasons do justify exercise of the power, the same is exercised and the act/action is quashed.

8. In view of the aforesaid discussion, we set aside the impugned order passed by the Tribunal in the two OAs preferred by the petitioners and direct the Tribunal to hear the entire matter afresh with reference to the factual background and matrix of each case. If required, the records shall be produced by the respondents. To cut short the delay, the parties are directed to appear before the Tribunal on 26.07.2016.

9. The writ petition is accordingly disposed of, without there being any order as to costs.

10. We clarify that we have not expressed any opinion on the merits of the case and the observations made above are only for disposal of the present writ petitions.


SANJIV KHANNA, J


NAJMI WAZIRI, J

MAY 26, 2016/acm