

Court No. - 39

Case :- WRIT - A No. - 19845 of 2018

Petitioner :- Union Of India Through The Secretary, Ministry Of Railways And Another

Respondent :- Gaurav Sharma And 3 Others

Counsel for Petitioner :- Rajnish Kumar Rai

Counsel for Respondent :- Sudeep Dwivedi

Hon'ble B. Amit Sthalekar,J.

Hon'ble Jayant Banerji,J.

Heard Sri Rajnish Kumar Rai, learned counsel for the petitioners and Sri Sudeep Dwivedi, learned counsel for the respondents no. 1 to 3.

This writ petition has been filed by the Union of India and the Railway Administration seeking quashing of the order dated 31.5.2018 passed by the Central Administrative Tribunal, Allahabad in O.A. No. 00047 of 2018 (Gaurav Sharma & others vs. Union of India and another).

Briefly stated, two original applications were filed being O.A. No. 46 of 2018 and O.A. No. 47 of 2018. O.A. No. 46 of 2018 was filed by one Tej Pal Verma whose candidature for the selection against the posts advertised by the Railway Recruitment Board vide Centralized Employment Notice (CEN) No. 03 of 2015 was rejected on the ground that in the photograph which he had filed along with his application form he was wearing sunglasses which was specifically prohibited by the instruction no. 7.04 of CEN No. 03 of 2015. That original application was dismissed by Tribunal on merit. The three respondents before us filed O.A. No. 47 of 2018 seeking quashing of the order dated 01.12.2017 and 3.1.2018 whereby their candidatures were rejected on the ground that they were required to fill up the self-declaration in their own running handwriting and not in block letters but these candidates instead had written their self-declaration in capital letters.

Sri Rajnish Kumar Rai, learned counsel for the petitioners submitted that the instruction no. 7.04 of CEN No. 03 of 2015 is mandatory because the very purpose of writing the self-declaration in a running hand was to prevent impersonation and also if there is any allegation of impersonation at any future time the candidate may be identified from his handwriting. He next submitted that the Tribunal in paragraph 17 of the impugned judgement has also noted that there is a violation of the instructions, since the respondents have written their self-declaration in capital letters violating the instruction no. 7.04 of CEN no. 03 of 2015 instructing the candidates to write the self-declaration in their own running handwriting and the purpose of these instructions apparently is to prevent impersonation but

thereafter, the Tribunal relying upon a judgement in the case of one Neeraj Kumar decided by the Delhi High Court has allowed the original application and set aside the orders dated 01.12.2017 and 3.1.2018.

Sri Sudeep Dwivedi, learned counsel for the respondents no. 1 to 3, on the other hand, submitted that the respondents are young persons and due to pressure and tension of examination, have committed this error and it is a minor lapse and should not be held against them and that the instruction no. 7.04 of CEN no. 03 of 2015 is only directory in nature and not mandatory.

We have heard learned counsel for the parties and perused the documents on record.

It would be necessary to advert to the instruction no. 7.04 of CEN no. 03 of 2015 which reads as under :

"7.04 Candidates must also bring one colour photograph (of size 3.5 cm x 3.5 cm), with clear front view of the candidate without cap and sunglasses, for appearing in the CBT/Examination (refer Para-5.05). Candidates will be required to copy the paragraph of self Declaration in RRB portion of the e-call letter/Hall Ticket, in their own running handwriting in the presence of the invigilator at the examination hall, affix their photograph and LTI and signature and hand over the same to the invigilator before the conclusion of the examination. Candidates filling the para in CAPITAL letters will be rejected."

The intendment of the petitioners in the above instructions is clear and unambiguous that the candidature of candidates filling the self-declaration in capital letters will be rejected. These words can hardly be interpreted to be directory in nature. In fact, the condition prescribed that the candidates filling the para in capital letters will be rejected, is a clear mandate and makes it absolutely known to the applicant who applies against the CEN no. 03 of 2015, that if he fills his self declaration in capital letters, his candidature will be rejected and that self-declaration must necessarily be written in his own running handwriting.

The Supreme Court in the case of ***Lachmi Narain and Others Vs Union of India And Others, (1976) 2 SCC 953***, in para 68 has held as under:-

"68. Section 6(2), as it stood immediately before the impugned notification, requires the State Government to give by Notification in the Official Gazette "not less than 3 months notice" of its intention to add to or omit from or otherwise amend the Second Schedule. The primary key to the problem whether a statutory provision is mandatory or directory, is the intention of the law-maker as expressed in the law, itself. The reason behind the provision may be a further aid to the ascertainment of that intention. If the legislative intent is expressed clearly and strongly in imperative words, such as the use of 'must' instead of

"shall", that will itself be sufficient to hold the provision to be mandatory, and it will not be necessary to pursue the enquiry further. If the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory (Crawford, the Construction of Statutes pp. 523-24). Here the language of sub-section (2) of Section 6 is emphatically prohibitive, it commands the Government in unambiguous negative terms that the period of the requisite notice must not be less than three months."

In the case of **Secretary, Tamil Nadu Public Service Commission vs. A.B. Natarajan and others, (2014) 14 SCC 95**, the Supreme Court in paragraphs 15 & 18 has held as under :

"15. Normally, a straightforward candidate, who does not want to indulge in any malpractice, would never make any effort to reveal his identity or make any special marking in his answer book. The purpose behind doing something abnormal or something which is not permitted, can be said to be an indication to the examiner about the identity of the candidate. Such an action on the part of the candidate cannot be tolerated if one wants clean, fair and transparent process of selection.

18. The candidates who had applied for Class I post, if selected, were to be class I officers of the State of Tamil Nadu. Not following the instructions given to them while appearing in the examination, which had been conducted for their selection, would either mean that they were so careless that they did not read or bother about the instructions to be followed or they wanted to give some indication to the examiner about their identity. In either case, such a candidate cannot be selected. A candidate, who is so careless that he does not bother about his own interest, cannot be expected to become a good officer. Interest of the candidate is to get through the examination and for that purpose he has to follow the instructions. By not following the instructions, he does not care of his own interest. So, if he has written the answer books carelessly without bothering about the instructions given to him, he is a careless person who must not be appointed as an officer and if he has done it deliberately, then also he should not be appointed as an officer because one who plans such illegalities even before joining his service, cannot be expected to become a fair and straightforward officer. So, in either case, such a candidate cannot be selected for appointment as an officer and that too a Class I officer of any State."

A Division Bench of this Court in **Special Appeal Defective No.123 of 2014, Smt. Arti Verma Vs. State of U.P. And Others** has held as under:

"Each candidate necessarily must bear the consequences of his failure to fill up the application form correctly. No fault can, therefore, be found in rejecting the application for correction when the candidate himself has failed to make a proper disclosure or where, as in the present case, the application is submitted under a wrong category. Interference of the High Court under Article 226 of the Constitution is clearly not warranted in such matters as it creates grave uncertainty since the selection process cannot be finally completed. Moreover, in the present case,

the appointment was of a contractual nature for a period of eleven months. Hence, considering the matter from any perspective, the learned Single Judge was not in error in dismissing the petition under Article 226 of the Constitution.

The Special Appeal is, accordingly, dismissed."

Another Division Bench, also of this Court in ***Special Appeal No.834 of 2013, Ram Manohar Yadav Vs. State of U.P. and Others*** has held as under:

"If prospective teacher can not even correctly fill up the simple on line application form for his employment, it is obvious what he is going to teach if appointed. There are certain decisions cited on this issue. But none of them deal with this aspect whether under the discretionary jurisdiction of the Court under Article 226 of the Constitution of India such incompetent persons should be allowed to play with the future of the next generation.

Therefore, we are of the opinion that the petitioner/appellant should wait till he attains sufficient maturity and learns to be more careful in filling up the applications for jobs. The appeal is therefore, dismissed."

The above two judgments of the Division Bench have been followed by a learned Single Judge of this Court in ***Writ Petition no. 4175 of 2017 (Rinkoo Vs. Union of India and Another)***. It was a case where the petitioner had wrongly shaded his OMR sheet and was given zero marks for the same.

From the above analysis, what we find is that the instruction no. 7.04 of CEN no. 03 of 2015 was absolutely mandatory and did not leave any scope for relaxation or interpretation to read it as directory in nature. In fact, the very purpose of requiring the candidate to give his self declaration in his own running handwriting was to eliminate impersonation in the selection. The very intent and purpose of these instructions therefore, was to maintain the utmost sanctity and purity of the selection and when the instructions itself mandate that the candidature of a candidate writing the self declaration in capital letters will be rejected, we cannot permit relaxation of the conditions only on the ground that the candidates were under pressure and tension of examination.

For the reasons aforesaid, we **allow** this writ petition and set aside the order of the Central Administrative Tribunal, Allahabad dated 31.05.2018 passed in O.A. No. 00047 of 2018 (Gaurav Sharma & others vs. Union of India and another).

There shall be no order as to costs.

Order Date :- 28.9.2018/nd