

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgement reserved on: 06.09.2021
Judgement pronounced on: 06.10.2021

+

W.P.(C) 9304/2021 & CM APPL. 28924/2021

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. R.V. Sinha, Senior Counsel for
Railways with Mr. A.S. Singh, Mr.
Amit Sinha and Ms. Sharanya Sinha,
Advocates.

versus

SUNEEL KUMAR

.....Respondent

Through: Mr. A.K. Trivedi and Mr. Naveen
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

TALWANT SINGH, J.:

1. The petitioners, i.e., Union of India and others, have filed the present writ petition challenging the order dated 16.03.2021, passed by the Central Administrative Tribunal [in short "CAT"], Principal Bench, New Delhi, in Original Application [OA] No. 1302/2018 and Miscellaneous Application [MA] No. 558/2021. The operative portion of the order dated 16.03.2021 reads as under:

"10. We, therefore, allow the OA and direct the respondents to treat the applicant as a candidate who did not suffer any disqualification and proceed to consider the issuance of the order of appointment, on the basis of the merit secured by him in the written test. The exercise in this behalf shall be completed within a period of two months from the date of receipt of a copy of this order. On being appointed, the

applicant shall not be entitled to any back wages, but the seniority shall be assigned to him on the basis of the rank in the selection list. There shall be no order as to costs."

2. In brief, the facts are that the present petitioners initiated a recruitment process to fill up 5679 vacancies of Khallasi (Group 'D') in the grade pay of Rs. 1800/- vide Notice No. 220-E/Open Mkt./RRC/2013 dated 30.12.2013. The respondent herein had applied in response to the said advertisement. The directions regarding filling up of the application form and the process of examination were also notified via the aforementioned recruitment notice dated 30.12.2013. The mode of selection involved a two-stage process including the written examination and the successful candidates had to go through the Physical Efficiency Test (PET). The candidates were required to go through all instructions before filling their applications. Clause 10.7 of the instructions regarding rejection of candidature reads as under:

"10. Invalid Applications:

Candidates are requested to read all instructions thoroughly before sending their applications. Otherwise their applications are likely to be rejected on one or more of the following reasons:

xxx

xxx

xxx

10.7 Applications without signature or with signatures in capital letters or with different signatures at different places'

3. As per the detailed instructions, signatures of the candidates on the application form, admit card, attendance sheet and OMR sheet must tally. The respondent appeared in the written examination but his name was not included in the list of successful candidates short listed for PET. The reason was that signature of the respondent were in different style and format on the application form initially submitted by him and on the OMR sheet filled during the written examination. Hence, he was not called for second stage of selection process, *i.e.*, PET. As per the petitioners, the candidature of the

respondent was rejected in March, 2015 but he approached the learned CAT belatedly in 2018 by filing the aforementioned OA.

4. The present respondent approached the CAT against rejection of his candidature. The petitioner herein had filed reply affidavit before learned CAT taking specific plea of limitation, violation of instructions and non-joinder of necessary parties and had also relied upon certain judgments. In the meantime, respondent had moved an MA 588/2021 seeking report of the forensic expert. This MA was taken up on 16.02.2021 but learned CAT was of the view that OA itself could be disposed of finally. So, the matter was posted on 16.03.2021. The OA was allowed and disposed of giving directions to the present petitioners to treat the present respondent as a candidate who did not suffer any disqualification and proceed to consider the issuance of the order of appointment, on the basis of the merit secured by him in the written test. The said order of learned CAT has been challenged by filing the present writ petition.

5. The matter was initially taken up on 01.09.2021. Arguments were heard on behalf of the petitioners and a limited notice, qua the aspect of the operative directions issued by the CAT, ordering appointment of the present respondent within fixed time frame, was issued. The respondent chose to place written synopsis on record. Similarly, written submissions were filed on behalf of the petitioners. The arguments were heard on 06.09.2021 from both the sides and the judgment was reserved.

6. Although many grounds have been raised to challenge the impugned order, however, at the time of arguments Mr. R.V. Sinha, learned counsel for the petitioners had confined his submissions to the following three main grounds:

- (i) The OA filed by the present respondent before learned CAT was hopelessly barred by limitation;

- (ii) The petitioners had rightly rejected the candidature of the respondent as his signatures on the OMR sheet in English were quite different from his signatures on the application form; and
- (iii) The learned CAT has ordered for appointment of the present respondent while allowing his OA, whereas even after passing the written examination, the respondent was to undergo physical efficiency test and his documents are to be verified before offering him the employment.

7. After hearing both the sides and going through the written submissions as well as the record, our considered view is expressed in the following paragraphs.

8. Although, on 01.09.2021 notice in the present writ petition was issued confining only to the third ground, i.e., the operative directions of the learned CAT but both sides have addressed arguments on the three grounds mentioned hereinabove, so, we are taking up all the three grounds for discussion one by one.

9. The first ground agitated by the learned counsel appearing for the petitioners is that since the candidature of the respondent was rejected in March, 2015, hence the original application filed by him in 2018 was barred by limitation as the respondent ought to have approached learned CAT within one year of the cancellation of his candidature. The learned counsel for the petitioner has relied upon following judgments in this regard:

- (a) *D.C.S. Negi Vs. Union of India and Others*, (2018) 16 SCC 721.
- (b) *S.S. Rathore Vs. State of Madhya Pradesh*, (1989) 4 SCC 582.

10. The contention of the respondent is that although the result of the written examination was declared in the 2015 itself on the website but as far as respondent was concerned, the only comment mentioned on the website was that he had not been short listed. Since no reason was mentioned for not shortlisting the respondent, he submitted RTI applications on 09.03.2015 and 17.03.2015 to know the cause for rejection of his candidature. After

making much efforts, ultimately the response was received from Office of the Chairman, Railway Recruitment Cell, Northern Railway vide order dated 01.06.2017 informing him for the first time that his candidature was rejected for violating the instructions contained in para no. 3/5.18/10.7 of the recruitment instructions and he had secured 89.33 marks appearing as SC candidate. It was also mentioned that the candidates called for PET in the SC category had a cut-off of 73.33 marks. Vide letter dated 16.06.2017 copies of the OMR sheet as well as the application form were supplied to the respondent. After receiving the said copies, he submitted a detailed representation dated 27.06.2017; followed by another representation dated 19.07.2017 to the petitioners to re-consider his candidature but no response was received. A copy of the OA shows that it was filed in March, 2018, i.e., within one year from the date when the respondent came to know for the first time about the actual reasons for rejection of his candidature.

11. In our view, the respondent could not have approached the CAT after March, 2015 only on the ground that his name was not short listed. He was neither knowing marks obtained in the said examination nor he was knowing the exact reason for rejection of his candidature. Respondent came to know the actual reason for rejection of his candidature only when he received response to his RTIs in 2017, after intervention of Central Information Commissioner. Copies of OMR Sheet and Application Form were supplied to him in June, 2017. He approached learned CAT within one year thereafter. Hence, the OA preferred by the respondent before the learned CAT was not barred by limitation and the same was rightly entertained by learned CAT.

12. The next ground agitated by Mr. R V Sinha on behalf of the petitioners is that the signatures in English on the OMR sheet and the

application form of the respondent are quite different. Mr. Sinha is correct in his submission that the signatures in English language of the respondent on the application form and the OMR sheet are not the same. For the sake of convenience and clarity, the extract of the application form and the OMR sheet showing the thumb impressions, signatures in Hindi and signatures in English are reproduced hereunder:

Application Form

Left Thumb Impression of Applicant

Applicant's Signature

(in English) - Sunil Kumar.

(in Hindi) - सुनील कुमार

NOT IN CAPITAL

OMR Sheet

6. परीक्षार्थी का हस्ताक्षर (हिन्दी में)
Candidate's Signature (in Hindi)

7. परीक्षार्थी का हस्ताक्षर (अंग्रेजी में)
Candidate's Signature in English (Capital Letters)

(NOT in Capital Letters)

13. The learned CAT has observed as under in this regard:

“6. With a view to ensure that the impersonation in the examination does not take place, the respondents have taken recourse to multiple safeguards. On the application, a candidate is required to put his thumb impression, signature in English and signature in Hindi. The same is repeated on the OMR sheet also. It is not in dispute that the thumb impression and signature in Hindi, put by the applicant on the OMR sheet tallied with those on the application form. The only difference is in respect of signature, in English.

7. In the signature in English, put by the applicant in the application form, he used two capital letters, one for 'Sunil', the

other for 'Kumar'. On the OMR sheet, there is an instruction. It reads as under:-

"NOT IN CAPITAL LETTERS"

8. Obviously being under the impression that the capital letters should not be used in the signature, the applicant has put his signature in a form, which is different from the one which existed on the application form. This constituted the basis for the respondents to reject the candidature of the applicant.

9. The explanation offered by the applicant is plausible and in fact, acceptable. The very purpose of having multiple methods is to ensure that the comparison becomes perfect and fool proof. The safest method is to compare the finger prints on the application form on the one hand and in the OMR sheet on the other. Even if it is difficult to compare with a naked eye, the help of the Forensic Laboratory can be taken. The Hindi signatures of the applicant in both the documents are so identical that even a naked eye can establish that. As observed earlier, the difference in the English signature is on account of the prohibition against using capital letters. Though the intention may have been to prohibit the entire signature being put in capital letters, the absence of such instruction in the application form became the root cause for this confusion. The benefit of meritorious position, secured by the applicant with the dint of hard work, cannot be denied to him, on account of such technical and unverified facts”.

14. We are in agreement with the learned CAT because if we see the Hindi signatures of the respondent, they are exactly the same on the application form as well as on the OMR sheet. Pertinently, the petitioners have not disputed the thumb impression of the respondent on the application form and the OMR sheet. It is not a case of impersonation. The only dispute raised by the petitioners, which is the ground for rejection of the candidature of the respondent, is that his signatures on the application form in English do not tally with his signatures on the OMR sheet in English.

15. It is to be noted here that the OMR sheet in the box provided for

signatures in English, specifically provides that “**NOT in Capital Letters**”. It is also to be kept in mind that the respondent was appearing for a ‘Group D’ post of Khallasi and his knowledge of English cannot be presumed to be as proficient as of a man of letters. The first impression, which one gets after reading the instruction in box no.7 on the OMR sheet at the place where the candidate has to sign, is that ***the capital letters are not to be used while signing in English.*** The respondent attempted to follow the said instruction by apparently refraining from using capital letters in his signatures as he had earlier used while signing on the application form.

16. In the application form, when the respondent had written his full name as his signatures, the first letter is capital ‘S’ for first name, i.e., ‘Suneel’ and thereafter he has put another capital letter ‘K’ while writing his last name ‘Kumar’ as part of his signatures. Since the respondent was prohibited from using capital letters in his signatures on OMR Sheet, he appears to have complied with the said directions. The intention of the petitioners while putting this instruction in box no.7 might be that the candidates should not write the full spellings of their names in capital letters as their signatures but it is nowhere specifically stated so and the only instructions that is there is “NOT in Capital Letters”. The only fault of the respondent is that he has tried to follow this direction in letter and spirit and in his innocence, he has restrained himself from signing in the usual way by using ‘S’ and ‘K’ in capital as part of his signatures.

17. The blame lies at the door of the official of the petitioners, who had drafted the OMR sheet and not with the candidate who has followed the instructions given in box no.7 of the OMR sheet. It is reiterated here that there is no allegation of impersonation against the respondent, as rightly observed by learned CAT. There is no dispute about his signatures in Hindi

as well as his thumb impressions. So, in our view, the respondent has not violated any instructions issued by the petitioners in their recruitment advertisement. Reliance is placed by the petitioners on the following judgments:

- (a) *Jatinder Kumar & Ors. vs State of Punjab*, reported as 1985 (1) SCC 122
- (b) *Sankarsan Das vs. UOI*, reported 1991 (3) SCC 47
- (c) *State of Tamil Nadu & Ors. vs G. Hemalathaa & Ors.*, Reported as 2019 SCC OnLine SC 1113,
- (d) *Bedanga Talukdar Vs. Saifudaullah Khan & Ors*, Reported as 2011 (12) SCC 85
- (e) *Dr. M. Vennila vs. Tamil Nadu Public Service Commission*, reported as 206 SCC OnLine Mad 465
- (f) *Dr. Anandamoy Ghos vs. Union of India & Ors.*, reported as 2014 SCC OnLine Cal 21543

18. These judgments are of no use to petitioners because it is not a case that the respondent has violated any of the instructions given in the recruitment advertisement or in the OMR sheet.

19. On the other hand, respondent has tried to follow the instructions given in box no.7 of the OMR sheet slavishly, by attempting not use the two capital letters, which were part of his usual signatures while signing on the OMR sheet.

20. Counsel for the respondent has relied upon a judgment of the High Court of Punjab and Haryana, in CWP 7598/2017, dated 14.03.2019, in the matter of “*Navin Kumar vs. Central Administrative Tribunal*”, wherein it was held:

“Consequently, orders of respondents (Annexure-P-6 and Annexure-P-7), rejecting the candidature of applicant-petitioner on the ground of mis-match of hand writing/signatures with various documents, are hereby quashed. Consequently, petition is allowed. Since, it is not disputed that applicant-petitioner was a successful candidate, respondents are directed to complete all formalities for his

appointment and consequently issue him appointment letter, as per result declared by them, considering that as a result of comparison of thumb impressions, he is same person, who had applied for Group 'D' post and was successful in same. The said order be complied with within four weeks from the date of receipt of certified copy of this order. Parties are left to bear their own costs”.

21. In view of the above, as far as the finding of the learned CAT extending the benefit of marks obtained by the respondent in the exam to him is concerned, we agree with the said findings as the respondent had secured 89.33, whereas the last SC candidate was selected at 77.30 marks in the selection process for the post of Khallasi. So the respondent is to be considered as a successful candidate in written examination.

22. As a last ground of challenge, Mr. R V Sinha, appearing on behalf of the petitioners, has also brought to our attention para 10 of the impugned order, in which a direction was passed by learned CAT for issuing the order of appointment to the present respondent on the basis of merit secured by him and the said exercise was to be completed within a period of 2 months from date of receipt of copy of the order by the present petitioners.

23. Mr. R V Sinha has submitted that after qualifying in the written test, the next step for a candidate is to go through a physical efficiency test (PET) and thereafter verification of documents and the medical examination take place. After qualifying at all these stages, the candidate is offered employment. We accept the arguments of Mr. Sinha. We are in total agreement with his submission that merely passing the written examination will not be the sole ground for issuing an offer of appointment to the present respondent. Hence, we modify the directions passed by learned CAT as under:

(a) The respondent shall be treated as having been qualified in the written examination as he had secured 89.33 marks and the last candidate selected in the SC category had secured 77.30 marks.

(b) The petitioner shall arrange to conduct PET for the respondent, and carry out verification of his original documents and also have him subjected to medical examination within 4 weeks from the date of this order.

(c) If the respondent passes through all the above stages, only then he will be offered the appointment on the post of Khallasi (Group 'D') with the petitioners.

(d) Needless state that the respondent will not to be entitled to any back wages but he shall be assigned his due seniority on the basis of his rank in the selection list.

24. The writ petition and the pending application are disposed of accordingly.

(TALWANT SINGH)
JUDGE

(RAJIV SHAKDHER)
JUDGE

OCTOBER 06, 2021/nk