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

% Judgment delivered on: 09.11.2022

+ **W.P.(C) 15341/2022 & CM APPL. 47633/2022**

UNION OF INDIA AND ORS Petitioners

versus

SHRI SUMIT SURAJMAL Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Arunima Dwivedi, CGSC with Mr. Ved Prakash, Ms. Ashi Sharma and Ms. Pinky Panwar, Advocates.

For the Respondent: Mr. Ronak Karanpuria and Mr. Ashish Pandey, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE TUSHAR RAO GADELA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CAV 361/2022

Since the respondent has entered appearance, the caveat stands discharged.

CM APPL. 47634/2022 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 15341/2022

1. Petitioner impugns order dated 30.05.2022 whereby the original application filed by the respondent challenging the memo dated 24.04.2019, whereby his services were terminated on the ground that

Central Forensic Science Laboratory (CFSL) has given a negative report, has been allowed and petitioner has been directed to consider the candidature of the respondent for reinstatement.

2. The issue in the present case arose pursuant to receipt by Petitioner No.3 of the result of Direct Recruitment Examination held during the year 2013-14 to fill up the Sorting Assistant (SA) Cadre vacancies of Gujarat Circle of the year 2013 and 2014. Respondent was provisionally appointed as Sorting Assistant at RMS 'AM' Division after being declared successful and selected in the examination. Respondent joined as Sorting Assistant on 01.06.2015.

3. The Chief Postmaster General, Gujarat Circle, Ahmedabad by his order dated 21.12.2015 ordered cancellation of the Direct Recruitment Examination and directed all division heads to take necessary steps pursuant to the said direction. Accordingly, on 23.12.2015 a termination order was issued to the Respondent as also to other candidates who had been selected through the said process.

4. One other candidate Monu Tomar impugned a similar termination order and approached the Ahmedabad bench of the Tribunal. The Ahmedabad bench of the Tribunal by its order dated 18.03.2016 quashed the order of termination and directed the department to probe into the matter by a thorough investigation in a fair and transparent manner. Said order was challenged before the High Court of Gujarat at Ahmedabad. Said challenge was rejected by

judgment dated 16.08.2016. Thereafter an appeal was filed before the Supreme Court being Civil Appeal No.10513/2016 titled *Monu Tomar vs. Union of India & Ors.* which was disposed of on 13.07.2017.

5. The Supreme Court held that the Vigilance Committee report did not show that the entire examination was vitiated but some persons were suspected to have used malpractices in the examination. The Supreme Court permitted the petitioners to proceed against them in accordance with law and dispense with issuance of a formal show cause notice but directed that they would be personally called and explained the allegations and given some reasonable time to reply and thereafter a final decision be taken. In so far as those persons who were not suspected of having committed any malpractices and had undergone the prescribed course were directed to be reinstated with all consequential benefits and 50% back wages with liberty to take action in case subsequently it is found in investigation that they indulged in some malpractice.

6. Pursuant to the judgment of the Supreme Court, a Committee was constituted by the Petitioner and the Committee directed the specimen signatures of the candidates to be referred to CFSL for its opinion. The signature of the Respondent was also sent to CFSL and an opinion obtained. Pursuant to the receipt of opinion a notice was issued to the respondent on 25.04.2019 pointing out the discrepancy “CFSL report negative” and in view thereof he was informed that he has not been found fit for appointment/reinstatement and in case he

had to submit anything he could do so within 10 days.

7. Impugning the said letter dated 25.04.2019 respondent filed the subject Original Application before the Tribunal.

8. Before us also learned counsel for the Petitioner contended that the CFSL report was negative in so far as respondent was concerned and accordingly contended that the Petitioners had rightly taken a decision not to reinstate the respondent in service.

9. We may notice that in so far as the initial vigilance report is concerned, with regard to the respondent the major discrepancy as noticed by the investigation team was spelt out as “Volley Ball” written as “Vally Ball”.

10. Learned counsel for the Petitioner referred to paragraphs 2.5 & 2.6 of the Vigilance report which refers to several candidates giving same email IDs and mobile numbers.

11. Since the complete set of documents were not filed by the petitioner, learned counsel for the respondent has handed over a set of documents which were filed as Annexure A-3 (Colly) (pages 40-44) and Annexure A-10 (pages 76-86) along with the counter affidavit filed before the Tribunal. Same are taken on record.

12. Perusal of the application form which was annexed at page 41 shows that the mobile number and email address of the Respondent is

different from the common email address and mobile number identified in the vigilance report. Clearly paragraphs 2.5 and 2.6 of the vigilance report do not apply to the Respondent.

13. The only discrepancy which is stated to be a major discrepancy pointed out by the vigilance investigation is that the Respondent has spelt “Volly Ball” as “Vally Ball”.

14. The impugned letter dated 25.04.2019 does not refer to the said discrepancy however refers only to the CFSL report and observes “CFSL report negative”.

15. The copy of the CFSL report which has been handed over by learned counsel for the Respondent in Court shows that the opinion given by CFSL is as under:-

“OPINION

The documents of this case have been carefully and thoroughly examined with the necessary scientific aids.

- 1. The person who wrote the blue enclosed signatures stamped and marked S1 to S100 also wrote the red enclosed signatures similarly stamped and marked Q2 and Q3.*
- 2. All the writing characteristics as occurring in questioned signatures marked Q1 could not be collectively accounted for from the supplied specimen signatures. As such, it has not been possible to express any opinion regarding its authorship.”*

(Emphasis Supplied)

16. The CFSL, in so far as the questioned signatures Q2 & Q3 which are signatures on the typing test and data entry test, has opined that the person who wrote the questioned signatures also wrote the sample signatures marked S1 to S100 which confirms that it is the Respondent who had appeared for the typing test and the data entry test.

17. In so far as the questioned signature on the OMR sheet is concerned, the opinion rendered by the CFSL is that all the written characteristics could not be collectively accounted for as such it was not possible to express any opinion regarding the authorship.

18. By no stretch of imagination said report qua questioned signature Q1 could be said to be a negative report. The report of CFSL is inconclusive in so far as questioned signature mark Q1 is concerned. Clearly if there is a doubt and CFSL has not been able to render any opinion the benefit of doubt would enure to the candidate and said report cannot be said to be a negative report.

19. The basis of the termination letter is the vigilance report which as noticed hereinabove has noticed an alleged major discrepancy as only a spelling mistake. The basis of the impugned order dated 25.04.2019 is an alleged negative CFSL report which as noticed hereinabove is not a negative report. In fact, it is positive in respect of two signatures and inconclusive with regard to the third.

20. Accordingly, we are of the view that there is no foundational basis for an action against the respondent and the entire action is based on an incorrect opinion of the petitioners and accordingly cannot be sustained.

21. Though the Tribunal has relied on the decisions of a Coordinate Ahmedabad bench of the Tribunal in *Pramod Kumar v. Union of India & others* (O.A. No.222/2019) decided on 12.07.2021 and in *Atul Rajendraprasad Yadav v. Union of India & others* (OA. NO.223/2019) decided on 21.10.2021, we find that the respondent is better placed than the petitioners therein.

22. In view of the above, we find no merit in the petition. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J.

TUSHAR RAO GADELA, J.

NOVEMBER 09, 2022/rk