

16.01.2024
Court No.13
Item No.426
pk

WPA 26322 of 2022

Anirban Hazra and others
Vs.
Union of India and others

Mr. Piyush Chaturbedi,
Mr. Debabrata Mondal,
Mr. Asim Hati,
Ms. Sreetama Neogi

... for the petitioners.

Mr. Bhudeb Chatterjee

... for the UOI.

1. The writ petitioners challenge findings of the BSF as communicated in a decision dated 04.11.2022. The findings against the petitioners are that there was a mismatch between the handwriting in the written examination with signature and handwriting the second phase selection examination i.e. PET, PST, Documentation, Trade Test and DME.
2. The said impugned order dated 04.11.2022 was communicated to the petitioner pursuant to orders in an earlier writ petition being WPA 24292 of 2022 where the writ petitioners challenged their non-selection in a declaration of final result dated 17.02.2022.
3. Such declaration dated 17.02.2022 contained the list of all successful candidates including the petitioners. However, in so far as 24 candidates were concerned, it was indicated at paragraph 5 that selection has been

withheld for mismatch of biometric data i.e. pending verification of signature from CFSL.

4. The facts of the case, briefly stated, are that pursuant to an advertisement dated 17.02.2020, the BSF conducted a recruitment process for the post of 'Constable (Crew)' in the water wing, by direct recruitment.
5. The process of selection involved an online application to be filled up by the candidate. Based on the online application, candidates would be called for written test in OMR Form. Before taking the aforesaid written test, the biometrics of the candidates involving thumb impression, signature and a photo identity were obtained.
6. The petitioners along with others qualified in the OMR written test. They were then called for second stage of selection process i.e. Physical Efficiency/ Physical Standard/ Documentation/ Trade test. They submitted a Statement form, Examination form and Declaration form.
7. The BSF Authorities, upon conclusion of the second part, found an alleged mismatch in respect of 24 candidates between biometrics taken before the OMR written test and at the time of the physical and medical test with that of the handwriting of the candidates in the written test.

8. At the time of writ petition came up for admission, the respondent BSF called upon to file a report by way of affidavit. A second report was also called from the BSF Authority, which has been filed. It appears from the two reports that what was implied as biometrics by the BSF Authorities was the signature and handwriting of each candidates.
9. In so far as the petitioners are concerned, and most likely in respect of 8 other candidates against whom similar suspicion was there, totalling to about 24 number of candidates, two documents were sent to the CFSL at Kolkata for verification. The said two documents were the handwriting in the written test and the hand writing and the signature in the first application form and the documentation at the time of PET, PST, Trade Test and DME (Detailed Medical Examination).
10. Admittedly, at the two stages of the recruitment process documents of identity like Aadhar Card etc. acceptable to the State were duly obtained from each of the candidates. There was no mismatch found in the photo identity card produced by the candidate before written examination and at the time of physical test and the medical test.
11. Based on the report of the CFSL, the respondent cleared 5 candidates out of 24 candidates and found them to be

genuine. The cases of 3 candidates were referred back to the CFSL for verification afresh and/or second opinion. In so far as 5 petitioners are concerned, their cases stood rejected based entirely on the CSFL report. In substance, the BSF Authority found that persons other than the petitioners had undertaken the written test by impersonation. The petitioners were not only denied recruitment but were also found to have indulged in use of unfair means in subject recruitment process.

12. Mr. Piyush Chaturvedi, Learned Counsel appearing for the petitioners would argue as follows:

- (a) The normal definition of biometrics understood in Section 2G of the Aadhar Act of 2016 involves thumb impression and IRIS (identification based on the pupil) and a photograph. The respondents admittedly did not find any mismatch in either of the photograph or the thumb impression of the candidates between the application form, the stage before the written test and the documentation at the time of PET, PST and DME. The finding of any irregularity against the

petitioners is perverse and not sustainable in law.

- (b) The report of the CFSL based on the two sets of documents sent to it can neither be conclusive nor the basis of any rejection of his client's candidature. Signatures and handwritings of the petitioners were not independently procured and supplied to the CSFL for an appropriate comparison. The CFSL report therefore, could not have been the basis of rejection of the petitioners.
- (c) The observation in the letter dated 04.11.2022 at paragraph 4 that the petitioners used unfair means in the recruitment process is a "Stigmatic". Before coming to any such stigmatic finding, the petitioners ought to have been supplied with the CFSL report to enable them to controvert and deal with the same. There is, therefore, denial of natural justice. The petitioners have been condemned without being heard.

(d) It is lastly argued by Mr. Chaturvedi that fairness test must be read into Articles 14 and 16 of the Constitution of India even in a recruitment process. The petitioners have been treated unfairly denial of the principles of natural justice before a stigmatic finding is given against them. The procedure followed for rejection of the petitioner's candidature based on the materials supplied to the CFSL for report is itself perverse. The impugned rejections of the petitioners' candidature therefore must be interfered with by this Court.

13. Aggressive reliance is placed by Mr Chaturvedi on a decision of a Single Bench of the Allahabad High Court dated 16.04.2018 in several writ petitions. The first one of which is WRIT-A No. – 2813 of 2017 (**Ran Vijay Singh and 34 others Vs. Union of India and 6 others**). Further reliance is also placed on the decision of the Division Bench affirming the judgement of the Single Bench of the Allahabad High Court in **Union of India Vs. Ran Vijay Singh** reported in **2019 SCC OnLine Allahabad 7037**.

14. Having carefully heard the learned advocates for the petitioners and the Union this Court finds that the irregularity found by the BSF is simplicitor as follows :

The candidate who applied on line, succeeded with physical efficiency and detailed medical examination may not have actually written the physical examination.

15. On the first question as to what “Biometrics” would involve, this Court is of the view that it is quite possible that a candidate’s LTI, photographs and even if taken, even IRIS would match before the physical examination, with that of the same biometrics of the candidates at the physical tests and the medical tests. The BSF have themselves not questioned. This would by itself not means that the respondent authorities cannot enquire into any irregularity in their own recruitment process. It is possible that their own officials may have participated in allowing such illegality to permit a third person to sit in the written test in place of the candidate.

16. In the backdrop of the above, this Court is of the clear view that sending of only the two documents for comparison and opinion of the CFSL i.e. OMR sheet containing handwriting of an alleged candidate including his signature and the other documents namely, those signed and written by the candidate at

the time of physical examination and DME, PET and PST, cannot be faulted.

17. In a recruitment process every citizen has a right to be considered fairly and equal opportunity at all stages in a recruitment process. At the stage of recruitment apart from the above, there can be no civil rights that accrue to a participating candidate. The subjective doubts, the basis for which may or may not be disclosed by the State cannot not be questioned by a writ court in course of judicial review.

18. The decision of the respondents in rejecting the candidature of the petitioners is based on a CFSL report. In the opinion of this court, there was definitely some evidence before the BSF and this Court to support conclusion arrived at by the respondent authorities.

19. The decision of the respondents cannot be deemed as perverse. A Writ Court cannot sit in appeal over administrative decision. Even if another view is possible in the facts of a case, a Writ Court does not and cannot impose the other view on the BSF. The decision of the respondents can definitely be characterized as a subjective one based on objective materials.

20. The disclosure of the CFSL report albeit similar and identical in respect of each of the five candidates cannot be a ground for interference under Article 226 of the Constitution of India.

21. Coming to the decision of the Allahabad High Court this court notes a lot of differences in the facts of the instant case with the facts of the said case. There was a Physical Efficiency Test even before a written test in the Allahabad case. After the Physical Efficiency Test involving biometrics and an identification card the second stage of the written examination followed. This was thereafter followed by a further medical examination. The scope of enquiry by the authorities in the said Allahabad case restricting themselves to handwriting and signatures only was found erroneous by the Single Bench and the Division Bench of that court.

22. What weighed with the Allahabad High Court in the said case is that under the threat of criminal procedure, the candidates who were doubted were asked to come and give their thumb impressions as well as handwriting and signature samples. After the CFSL examination based on the aforesaid materials, a drastic order resulting in serious civil consequences was passed against the petitioners therein. They were not only denied recruitment but also debarred from participating in any further recruitment to the post of Constable (GD) in the CRPF being conducted by the SSC for a period of five years. This is not only stigmatic but also has drastic civil consequences on the right of citizen to participate in the recruitment process of the State.

23. No such drastic civil consequences in the instant case except to a minimal extent of a finding that the petitioners may have engaged in unfair means. This court is therefore, of the view that the decision of the Allahabad High Court may not come to the aid of the petitioners.

24. In the facts and circumstances of the case, this Court finds that the rejection of the candidature of the petitioners does not call for any interference.

25. The petitioners have been provided with CFSL report. They cannot claim any right to be recruited in a recruitment process. They only have a right of participation and equal treatment with other candidates. The petitioners have not been denied any such rights.

26. For the reasons stated hereinabove, the writ petition fails and is hereby dismissed.

27. In view of dismissal of the writ petition, connection application, if any, is also dismissed.

28. There will be no order as to costs.

29. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)