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

+ **W.P.(C) 2818/2023 and CM 46760/2024**

YOGESH

.....Petitioner

Through: Mr. Nitin K. Gupta, Mr. Pranjal Vyas, Mr. Aayush Tripathi and Mr. Dhruv Sikka, Advocates

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Syed Abdul Haseeb, CGSC

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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04.11.2024

C. HARI SHANKAR, J.

1. This writ petition assails an order dated 28 October 2022 passed by the Central Administrative Tribunal, Principal Bench¹ in OA 4560/2015. We deem it appropriate to reproduce the order in its entirety:

“The brief facts of the case are that in pursuance to Employment Notice dated 30.12.2013 issued by the respondent No.2, the applicant participated in the recruitment for Group-D post in the Northern Railway as an OBC candidate. He was successful in the written test and Physical Efficiency Test (PET). However, during the course of verification of documents, the respondents raised a doubt with regard to mismatch in handwriting and signatures and referred the matter to the Forensic Document Expert, who opined

Signature Not Verified¹ “the learned Tribunal”, hereinafter

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that the handwriting/signatures on the documents, namely, application form, OMR sheet and document verification data, did not match with each other. Accordingly, the respondents rejected his candidature vide notice dated 02.12.2015. Challenging the same, the applicant filed the present O.A. seeking the following relief(s):

“a. Direct the Respondents to set aside the 'Case Rejected i.e. Mismatch in handwriting/signature on relevant papers i.e application forms, OMR sheet & document verification papers etc" result dated 02.12.2015 issued by the Respondents issued against the Applicant;

b. remove the name of Applicant from the list of rejected candidates and declare the Applicant herein eligible for appointment in the Employment Notice No. 220-E/Open Mkt./RRC/2013 under OBC Category as per his merit;

c. Direct the Respondents to grant appointment to the Applicant on the appropriate post pursuant to the marks obtained by him alongwith all benefits and allowances, with retrospective effect from the date of withholding of candidature;

d. Pass any such other and further order(s)/direction(s) as this Hon'ble Court may deem fit and proper.”

2. Notices were issued to the respondents. The respondents have filed a detailed counter affidavit.

3. In the counter affidavit, the respondents have raised a preliminary objection regarding non-joinder of necessary party and, accordingly, the O.A. deserves to be dismissed in limine. It is also submitted by the respondents that in the Employment Notice dated 30.12.2013, there was a clear stipulation that candidates should fill up the application form in his/her own hand-writing. It is further submitted that the admission of a candidate at all stages was purely provisional, subject to satisfying the prescribed conditions. The applicant appeared in the written examination and PET, which were qualifying in nature. Thereafter, he was called for document verification and medical examination. It was also made clear to him that calling of a candidate for document verification does not confer any right upon the concerned candidate for medical examination or appointment on any post under the respondents. The Forensic Document Expert conducted verification of documents and during this process, it was observed that the signature of the applicant on the application form and other



documents did not match and, accordingly, his candidature was rightly rejected by the Competent Authority.

4. The respondents further submitted that this issue is no more res integra as has already been decided by the Chandigarh Bench of this Tribunal in **Deepak vs. Union of India & Another**² and by the coordinate bench of this Tribunal in **Devendra Kumar vs. Union of India & Another**³ and batch **Pradeep Kumar vs. Union of India & Another**⁴ and, accordingly, the O.A. is liable to be dismissed.

5. Today, there was no representation on behalf of the respondents. We have heard Mr. Anmol Joshi, proxy counsel for Mr. Nitin Kumar Gupta, learned counsel for the applicant.

6. Learned counsel for the applicant submits that there is a judgment passed by the Hon'ble High Court of Judicature for Rajasthan at Jaipur on the issue. However, the Hon'ble Supreme Court in Petition for Special Leave to Appeal No. 706/2014 dated 28.10.2014 (arising out of impugned final judgment/order dated 28.05.2013 in Writ Petition No. 13032 of 2011), set aside the said judgment dated 28.05.2013 of the Hon'ble High Court and held that "High Court under Article 226 of the Constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion".

7. In view of the above mentioned, we are not inclined to entertain the present O.A. and the same is accordingly dismissed. There shall be no order as to costs."

2. We are constrained to observe that the order passed by the learned Tribunal is extremely unsatisfactory, to say the least. It does not partake of the character of a judicial order at all. There is no discussion of facts. Reference has been made to a judgement of the High Court of Rajasthan and the Supreme Court without any mention of how they are relevant. The order is completely devoid of any discussion, much less finding.

² Order dated 9 September 2014 in **O.A. No. 1355/HR/2013**

³ Order dated 27 September 2015 in **O.A. No. 2356/2014**

⁴ Order dated 22 December 2015 in **O.A. No. 4143/2013**



3. Such an order can obviously not sustain for an instant. It is accordingly, set aside.

4. We are then left with the question of whether we should remand this matter to the learned Tribunal or proceed to decide the case on merits.

5. We are conscious of the fact that the petitioner has suffered seven years of litigation before the learned Tribunal and another year before this Court. It is over eight years since the date when the OA was filed.

6. The only issue in controversy was with respect to the identity of the petitioner. During the course of these proceedings on 4 March 2024, the following order was passed by this Court:

“1. For the reasons of parity with the order passed in W.P.(C) 5923/2019 on 01.11.2022, we direct the respondents to send a query to the Forensic Science Laboratory (FSL), GNCTD for giving a specific report as to whether the thumb impressions of the petitioner on the application form and the answer sheet are matching. The said report, we hope, will be furnished by the FSL within a period of eight weeks.

2. List on 02.08.2024.”

7. The report of the FSL has been produced before us in a sealed cover. We have seen the report. The FSL has confirmed that the thumb impression of the petitioner on the documents submitted during the test/examination process, corresponds to his admitted specimen thumb impression.



8. As such, there is no thumb impression mismatch of the petitioner as was originally suspected.

9. As the thumb impression of the petitioner has been found by the FSL to be matching with his admitted thumb impression, we do not deem it appropriate to keep this matter any further. The report of the FSL is extremely detailed and compares the petitioner's thumb impression with his admitted thumb impression. There is no reason for us to doubt the credibility of the decision of the FSL.

10. In that view of the matter, the doubt harboured by the respondent regarding the identity of the petitioner, on account of suspected mis-match of the thumb impression of the petitioner on his application form, ORM sheet and other documents submitted by him consequent to the Notification dated 30 December 2013, pursuant to which the petitioner applied, stands allayed.

11. Accordingly, the impugned order of the learned Tribunal is quashed and set aside. The respondent is directed to appoint the petitioner consequent to the Notification dated 30 December 2013, in accordance with his performance, along with others who had applied with the petitioner consequent to the said Notification. The petitioner would also be entitled to all consequential benefits except back wages. The petitioner would also be entitled to notional fixation of pay with effect from the date he would be appointed.

12. Let compliance with this order be ensured within eight weeks from today.



13. The writ petition stands allowed in the aforesaid terms.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

NOVEMBER 4, 2024/yg

Click here to check corrigendum, if any