



2024:DHC:7919-DB



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

+ **W.P.(C) 14303/2024**

UNION OF INDIA & ORS.

.....Petitioners

Through: Ms. Shubhra Parashar, Mr.
V.P.S. Charak and Mr. Pushpender Pratap
Singh, Advs.

versus

SUNIL KUMAR RATHEE

.....Respondent

Through: Mr. Sachin Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MS. JUSTICE SHALINDER KAUR

JUDGMENT (ORAL)

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09.10.2024

C.HARI SHANKAR, J.

CM APPL. 59836/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 14303/2024 & CM APPL. 59837/2024

3. The respondent participated in the Combined Higher Secondary Level Examination conducted by the Staff Selection Commission¹ for

¹ "SSC" hereinafter



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recruitment to the post of Data Entry Operator and Lower Divisional Clerk. The respondent belongs to the Unreserved Category. He cleared all stages of the examination. In fact, the marks obtained by him, 147.75, were the highest in his category.

4. The examination was held in two stages, or Tiers. Prior to appearing in the Tier-I examination, the signatures and thumb impressions of the respondent were taken. It was only after the invigilator was satisfied regarding the veracity and identity of the respondent, that he was allowed to participate in the Tier-I examination.

5. Once again, for the Tier-II examination, the thumb impression and signatures of the respondent were again obtained by the invigilator.

6. The nomination status of the pending candidates was released by the petitioners on 16 March 2016, in which, against the roll number of the respondent, his candidature was shown to have been cancelled.

7. This was followed by an order, dated 10 March 2016, issued by the petitioners, which debarred the respondent from participating from all examinations to be conducted by the SSC for three years. The order merits reproduction, thus:

ORDER

Dated: 10/03/2016

“Whereas Shri Sunil Kumar Rathee S/o Shri Lilu Ram Rathee, VPO-Gaddi Kheri, District- Rohtak, Haryana 124001 was a candidate of Combined Higher Secondary Level (10+2)

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KUMAR
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Examination 2012 which was notified in the Employment News dated 14.07.2012 and appeared with Roll number 2201029624 for the said examination.

2. Whereas Shri Sunil Kumar Rathee provisionally called for skill Test (TT)/Data Entry Skill Test (DEST) of the aforesaid Examination and appeared in the said test on 17/03/2013.

3. Whereas the Commission, the Competent Authority in the matter, has made a conscious decision with a view to protecting the Integrity of the selection process and to prevent candidates who are prima facie found to indulge in unfair means in such examination from entering into government service through such manipulative practices.

4. Whereas the Commission gets regular verification of signatures, handwriting specimens etc from forensic experts who have proven expertise in such verification and had undertaken such verification of signatures, handwriting and thumb Impressions in the case of written examination papers and skill Test (TT)/Data Entry Skill Test (DEST) of the aforesaid examination.

5. Whereas report of the forensic expert has been received and reliable evidence has emerged during such verification that Shri Sunil Kumar Rathee had resorted to malpractice/unfair means in the said papers.

6. Now, therefore, Shri Sunil Kumar Rathee son of Shri Lilu Ram Rathee is hereby informed that his candidature in the Combined Higher Secondary Level (10+2) Examination 2012 is cancelled and he is debarred for a period of three years from the Commission's examinations, without prejudice to the rights of the Commission to initiate/seek criminal proceedings against you."

The order was, therefore, clearly stigmatic.

8. It is not a dispute that, prior to the passing of the aforesaid order, no show cause notice of explanation was ever sought from the respondent. Nor was the respondent provided any copy of the report of the Central Forensic Science Laboratory² to which, allegedly, the

² CFSL



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respondent's handwriting samples had been sent for verification, and which had certified the existence of a mismatch. It is also not in dispute that though, the respondent's thumb impressions were available with the petitioners, the thumb impressions were never sent for verification to the CFSL. It is stated on affidavit in the writ petition that only the signature and the handwriting of the respondent was sent to the CFSL for verification.

9. Aggrieved by the cancellation of his candidature, the respondent petitioned the learned Tribunal by way of OA 3321/2018.

10. By the impugned judgment dated 11 January 2024, the learned Tribunal has allowed the challenge of the respondent. In the operative portion, however, the learned Tribunal has not directed wholesale appointment of the respondent but has merely set aside the order cancelling his appointment and directed the petitioner to obtain the respondent's thumb impression and send it to the CFSL to re-examine the veracity of candidature of the respondent. It is further directed that, after the CFSL report is obtained, the petitioners' misgivings that the respondent was impersonated in the examination may be re-visited. In the event of the report of the CFSL or the thumb impressions of the respondent being in favour of the respondent, the learned Tribunal has directed that the respondent be issued an offer of appointment with consequential benefits.

11. The following passages from the impugned judgment may be reproduced:



“4. It is the case of the applicant that when before the candidature of the applicant was cancelled by the respondents, he was never put to any notice and therefore, there was complete violation of principles of natural justice, elaborating he draws attention to Para 6 of the impugned order, wherein it finds mention that the applicant has been debarred for a period of three years from the Commission's examinations. He argues that since the impugned order has civil consequences, principles of natural justice had to be followed mandatorily. He states that as his name appeared in the list of selected candidates, the right to legitimate expectation has accrued in his favour but the respondents have cancelled the candidature of the applicant on account of verification of the candidate's signatures, handwriting and thumb impression. He states that it is a settled law of the various High Courts as well as the Apex Court, that the CFSL report is not conclusive and cannot be the sole reason to cancel the candidature of the applicant. As the CFSL has verified only the signatures and handwriting and not thumb impression, the report of the CFSL should be ignored, as it was not a conclusive evidence, to arrive at a conclusion that, it is the case of impersonation. He states that while relying upon the CFSL report in the absence of the examination of the thumb impression, the candidature of the applicant could not be cancelled. He states that during the pendency of the OA, the law is evolved in favour of the applicant and time and again, the Tribunal as well as the Hon'ble High Courts have reiterated that in the absence of thumb impression, the CFSL report would not be conclusive and the same could not be followed.

5. In support of his contention, learned counsel for the applicant places reliance upon the Tribunal's judgement dated 18.10.2022 passed in OA No. 614/2015. The operative Para reads as under:-

“5. We have heard the learned counsels for the parties and also carefully examined the documents on record, as also the reports of the forensic experts submitted by the learned counsel for the respondents. We are of the considered view that we are not going into the merits of either the allegations against the applicant or applicant's own claim of innocence. The limited issue before us is whether the impugned order can be sustained, especially, when no opportunity was afforded to the applicant to contest the inference drawn by the respondents which led to the imposition of a very harsh penalty upon the applicant. Our answer this question is an unequivocal NO.



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We have no hesitation in setting aside the impugned order dated 04.08.2014 on the ground that it is violative of the principles of natural justice and no opportunity was afforded to the applicant nor was the report which was the basis of such an order ever shared with the applicant. While quashing the said order we remand the matter back to the competent authority amongst the respondents to review the said order in the light of facts and circumstances of the case after affording due and adequate opportunity to the applicant to present his case. The competent authority amongst the respondents is directed to carry out such review within a period of twelve weeks from the date of receipt of this order.”

6. Learned counsel for the applicant has placed reliance upon the following judgments:-

(i) Guwahati Bench of this Tribunal in the matter of ***Dipak Patar v Union of India & Ors.*** dated 08.05.2015 in OA No.040/00220/2014. The operative paras read as under:-

“13. The very point raised by the applicant is that before cancellation or declaration of his disqualification the applicant was not given any opportunity of being heard or my notice whatsoever was issued to him. In similar nature one Shri Ajay Kumar approached the Allahabad Bench of the Tribunal in OA No. 1487 of 2004 wherein it was held as under:

12. We have considered the averments made by applicant and have considered the submissions made by learned Counsel for the respondents and perused the record. Admittedly candidature of the applicant has been cancelled by the respondents without asking any explanation from the applicant in this regard. The respondent themselves came to the conclusion that the applicant was involved in fraudulent means in the Examination. Though the respondents have sought expert opinion from the Government Agency but all these happened on the back of the respondents. Therefore allegation of arbitrariness has been levelled



against the respondents. The respondents may have called the applicant before cancellation of his candidature and heard him and explain the material to be used against him. Since before passing impugned order no opportunity of hearing was granted to him, which is in violation of principles of audi alteram partem. In the case in hand not only his candidature for the examination has been cancelled, he has been debarred in future in appearing in any examination to be conducted by the respondents Board. The Hon'ble Supreme Court in plethora of judgments has held as under:

13. In view of the above, impugned order dated 1.10.2004 is set aside. Thus, the O.A. is allowed. No order as to costs."

14. In *Ram Chandra v State of U.P.*³, the Hon'ble Apex Court held that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. Further in *Ishwari Prasad Mishra v Md. Isa*⁴, the Apex Court held that expert evidence of handwriting can never be conclusive because it is after all opinion evidence. This view was reiterated in *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*⁵, wherein it was pointed out by the Hon'ble Apex Court that expert evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. In *Magan Diharilal v State of Punjab*⁶, the Hon'ble Apex Court held that it is now well settled that expert opinion must always be received with care, caution and perhaps none so with more caution than the opinion of a handwriting expert. It is unsafe to base a conviction solely on expert

³ AIR 1957 SC 381

⁴ AIR 1963 SC 1728

⁵ AIR 1964 SC 529

⁶ AIR 1977 SC 109



opinion without substantial corroboration. This type of evidence, being opinion evidence, is by its very nature, weak and infirm and cannot be itself form the basis of a conviction. Further in the case of *Fakhruddin v State of M.P.*⁷, the Hon'ble Apex Court considered the evidentiary name of expert opinion in regard to handwriting and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the Court must always try to see whether it corroborated by other evidence, direct or circumstantial, in *Chatt Ram v State of Haryana*⁸, the Hon'ble Supreme Court held that expert opinion of the handwriting even if admissible, was not a safe basis for finding a forgery.

15. After taking into conspectus the ratio laid down in the afore quoted decisions of the Hon'ble Supreme Court as well as the decision of the Allahabad Bench of the Tribunal, we are of the opinion that admittedly the declaration of the disqualification of the applicant without giving him an opportunity of hearing is against the principles of natural justice. Accordingly, we direct the respondent authority to provide the applicant adequate opportunity of being heard by way of making a representation to establish his case against the decision of the respondent authority for disqualification on the ground of "impersonation". The above order shall be complied with within a period of two months from the date of receipt of a copy of this order. The decision so arrived at by the authority shall be communicated to the applicant forthwith so as to enable him to agitate before the appropriate forum if he is not satisfied with the decision of the authority.

16. With the above observation the Original Application is disposed of. No order as to costs.

(ii) The judgment of the High Court of Punjab and Haryana at Chandigarh in the matter of *Naveen Kumar v Central Administrative Tribunal, Chandigarh Bench, Chandigarh and*

⁷ AIR 1967 SC 1326

⁸ AIR 1979 SC 1890



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*others*⁹ dated 14.03.2019, wherein the operative portion reads as under:-

“It goes to show that the thumb impressions of the applicant-petitioner matched with the application form, OMR sheet and other documents, meaning thereby that applicant-petitioner is same person, who filled up the application form with his own hand writing, and appeared in said examination and appeared at the time of scrutiny of documents also. Admittedly, the science of hand writing is weak science, whereas science of finger print is perfect science. Therefore, in case, there is choice between opinion of hand writing expert and opinion of finger print expert, opinion of finger print is safe to be relief upon. Since, in this case, thumb impressions of petitioner on application form, OMR sheet and subsequent documents have matched with his specimen thumb impressions, therefore, it is to be held that applicant-petitioner is same person, who appeared in examination.

Consequently, orders of respondents (Annexure P-6 and Annexure P-7) rejecting the candidature of the applicant-petitioner on the ground of mismatch 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 same order be complied with within your needs from the date of receipt of certified copy of this order. Parties are left to bear this own costs.”

8. Learned counsel for the respondents vehemently opposes the OA and draws strength from the counter reply and states that the handwriting as well as the signatures of the applicant were sent to the CFSL and in terms of the CFSL report, annexed at Page No. 30 of the OA, it was the case where the signature as well as handwriting do not match and in this situation, the applicant could not be permitted to proceed with the candidature and the same was duly cancelled by the respondents. He states that as it was a clear case of impersonation and the applicant, who may have reached the stage on merit, but since the candidature of the applicant was under cloud, he could not be extended the offer of appointment in view of

⁹ 2019 SCC OnLine P & H 284



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non-clearance from the CFSL. However, he does not dispute that there was no Show Cause Notice was issued before the impugned order (Annexure A-1 and A-2) was passed by the respondents nor were the contents of the CFSL report provided to the applicant along with the impugned orders.

9. Heard the counsel for the parties at length.

10. We have gone through the impugned order once again, wherein para 6 clearly mentions that the applicant has been debarred from the Commission's examinations. We are no doubt that it is the stigmatic order and has civil consequences, the respondents ought to have extended the opportunity to the applicant and communicated the reason for passing the impugned order. This reason is sufficient to quash the impugned order. With respect to the contention of the applicant, the CFSL report based on signatures and handwriting is not conclusive and should be ignored. We may reserve our comments with respect to the same. The candidature of the applicant is under cloud and the cloud has to be cleared."

12. Having heard Ms. Shubhra Parashar, learned Counsel for the petitioners and Mr. Sachin Chauhan, learned Counsel for the respondent at length, we find no reason to interfere with the impugned judgment of the learned Tribunal. It is a matter of record that the thumb impressions and signatures of the respondent were verified at the time of his undertaking of the Tier-I examination and it was only after the invigilator was satisfied regarding the respondent's identity that the examination was directed to be undertaken. The Tier-II examination was also permitted to be undertaken by the respondent. It was only thereafter that the respondent's candidature was cancelled purportedly on the ground that the CFSL, on comparison of the handwriting of the respondent, was of the view that the handwriting mismatched.

13. There is no explanation forthcoming as to why the respondent's



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thumb impressions were not sent for verification to the CFSL. The inadequacy of handwriting comparison as a basis to conclude forgery stands underscored by the several judgments to which reference figures in the impugned judgment of the learned Tribunal, including the decisions of the Supreme Court in *Ram Chandra, Ishwari Prasad Mishra, Shashi Kumar Banerjee, Magan Diharilal, Fakhruddin* and *Chatt Ram*, as well as the judgment of the High Court of Punjab and Haryana in *Naveen Kumar*.

14. Ms. Parashar relies on the judgment dated 12 December 2023 passed by High Court of Punjab and Haryana in *Alok Kumar v UOI*¹⁰, which states that fraud vitiates everything.

15. There can be no cavil with the said proposition. Fraud indeed vitiates everything, ecclesiastical and temporal. For that, however, fraud must be definitively shown to exist. The learned Tribunal has held, in the decision under challenge, that a mere handwriting mismatch – assuming it exists at all, as no copy of the CFSL report was ever provided to the respondent – could not be a conclusive indicator of forgery, especially as the thumb impression and handwriting of the respondent had once been verified at the time of his undertaking the Tier-I examination. We are in agreement with the learned Tribunal.

16. In fact, it is only to verify this fact that the learned Tribunal has directed the thumb impressions of the respondent to be sent to CFSL

¹⁰ 2023 SCC OnLine P&H 4880



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for verification. If the thumb impression verification would also result a finding adverse to the respondent, then, perhaps the principle that fraud vitiates everything could be pressed into service, but not earlier.

17. Besides, there was a complete abandonment – not just a breach – of the most basic principles of natural justice and fair play, in the manner in which the petitioners acted. The order dated 10 March 2016, whereby the respondent's candidature was cancellation, was plainly stigmatic – in fact, painfully so. It could not, therefore, have been issued without, *a priori*, making available, to the respondent, the material against him, including the CFSL report, if any, and affording him an opportunity to respond.

18. What was worse, the order does not merely cancel the respondent's candidature; it debars him from appearing in any examination conducted by the SSC for three years. A debarment order, whether in the commercial and contractual sphere or in any other, results in lasting personal, social and professional prejudice to the debarred person, and partakes of the character of a civil death. The consequences of such a debarment order, on the allegation of impersonation, on the candidate, can hardly be imagined. Full and complete compliance with the principles of natural justice have, therefore, to precede any such decision. Before debarring the respondent from appearing in any SSC examination for three years, on the ground of impersonation, therefore, the respondent had necessarily to be put to show cause, provided the material against him, afforded an opportunity to respondent, and heard in the matter. Nothing less



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than this would suffice, before passing an order of debarment.

19. We see no reason at all why this writ petition was preferred before this Court. All that has been done is that the petitioners has been directed to verify the identity of the respondent by sending his thumb impressions to the CFSL and to take a decision based on the report of the CFSL in that regard. Needless to say, any such decision must be preceded by the providing, to the respondent, of the material against him, and affording him a chance to respond.

20. We clarify that if, however, the petitioners proposes to debar the respondent from attempting any future examinations for any period of time, para 18 *supra* would be complied with, in letter and spirit.

21. With the above clarifications, therefore, we dismiss this writ petition *in limine*, as we find no case deserving of interference, by us, with the impugned judgment of the learned Tribunal.

C. HARI SHANKAR, J.

SHALINDER KAUR, J.

OCTOBER 9, 2024

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[Click here to check corrigendum, if any](#)