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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 23.04.2024***+ W.P.(C) 10076/2016
SACHIN

..... Petitioner

Through: Mr. Davender Kumar, Ms. Seema,
Mr. Ved Prakash Garg, Advs.

versus

UNION OF INDIA & ANR

..... Respondent

Through: Ms. Shiva Lakshmi, CGSC with Ms.
Arani Chaudhary, Adv.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of The Constitution of India seeks to assail the order dated 05.09.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi¹ in O.A. No. 2915/2015. *Vide* the impugned order, the learned Tribunal has rejected the Original Application (O.A.) filed by the petitioner.

2. Before dealing with the rival submissions of the learned counsel for the parties, we may note the brief factual matrix as emerging from the record.

3. Upon an advertisement being issued by the respondents on 30.08.2012 for recruitment against Group-D post in the Pay Band-I of Rs.5200-20200 with grade pay of Rs.1800/-, the petitioner applied and

¹ Hereinafter referred to as "*the Tribunal*"



appeared in the competitive examination. In fact, the petitioner was lucky to find his name in the final merit list published on 21.04.2014. Even though he was issued a posting order thereafter, however, before he could join the said posting, the respondents passed an order dated 23.04.2015, cancelling his candidature. This, the petitioner learnt, was on the account of purported mismatch of his handwriting and signatures on the Application Form *vis-a-vis* the OMR Sheet.

4. In these circumstances, the petitioner approached the Tribunal by way of the aforesaid O.A., which, as noted herein above, has been rejected by the Tribunal primarily on the ground that the decision of the respondents was based on the report of an Expert, who had opined that there was a mismatch in handwriting and signature of the petitioner. Aggrieved thereby the present petition has been filed by the petitioner.

5. We may note at this stage itself that during the course of the present proceedings, it was pointed out by the parties that the opinion of the respondents regarding the mismatch in the petitioners handwriting and the signatures on the Application Form and the OMR Sheet was not based on any Expert's opinion but, on the basis of apparent difference in the handwriting and the signature of the petitioner. It was under these circumstances that this Court, *vide* order dated 25.01.2017, had directed the respondents to send the petitioner's Application Form alongwith the OMR sheet to the FSL. In compliance of the aforesaid directions, the FSL has submitted a Report dated 29.12.2017 based on a comparison inter se the petitioner's handwriting in the documents i.e. Application Form and OMR Sheet.

6. Learned counsel for the petitioner relying upon the FSL Report



submits that majority of the signatures and handwriting of the petitioner in the two documents are matching, thus, the decision of the respondents of cancelling the candidature of the petitioner be set aside. Learned counsel for the petitioner further prays that the writ petition as also the O.A. be allowed and the respondents be directed to forthwith appoint the petitioner to a Group-D post in the Pay Band-I of Rs.5200-20200 with grade pay of Rs.1800/- alongwith all consequential benefits.

7. On the other hand, learned counsel for the respondents supporting the impugned order submits that when the FSL report itself shows that there was some discrepancy qua two of the comparisons made, this in itself is sufficient to discredit the candidature of the petitioner. Thus she prays that the present petition be dismissed.

8. Having considered the rival submissions of the learned counsel for the parties and perused the record, and based on what is before us, as visible to the naked eye, we are of the *prima facie* opinion that there is a flaw in the findings arrived at by the Tribunal. We say so, primarily, since the same is merely based on the alleged unsubstantiated oral opinion of an Expert as also since we, ourselves, from the bare reading and comparisons, are hardly able to either discern or decipher anything, much less, any difference and/ or discrepancy inter se the Application Form and/ or the OMR Sheet of the petitioner.

9. Considering the above, particularly as the findings of the Tribunal are merely based on the unsubstantiated oral opinion of an Expert, there is seemingly an error apparent on the face of the record and under such existing circumstances, the impugned order is an unfair and an unreasonable one which hardly exudes any confidence in us. We are of the firm opinion



that the present is a fit case for us to interfere by exercising the power of judicial review under Article 226 of The Constitution of India for adjudicating and reaching a conclusion otherwise than what has been arrived at by the Tribunal. This is, even though the same, as per settled law, is only required to be sparingly used and that too, if, as and when, required under exceptional circumstances and not as a matter of usual course. For us to exercise judicial review under the existing facts, we find able support in ***Union of India & Ors. vs. Kalidass Batish & Anr.***² wherein the Hon'ble Supreme Court while dealing with a similar situation held as under:-

“17. In K. Ashok Reddy v. Govt. of India [(1994) 2 SCC 303] this Court indicated that however wide the power of judicial review under Article 226 or 32 there is a recognised limit, albeit self-recognised, to the exercise of such power. This Court reiterated a passage from Craig's Administrative Law (2nd Edn., p. 291), vide SCC p. 315, para 21, as under:

“The traditional position was that the courts would control the existence and extent of prerogative power, but not the manner of exercise thereof. ... The traditional position has however now been modified by the decision in GCHQ case [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] . Their Lordships emphasised that the reviewability of discretionary power should be dependent upon the subject-matter thereof, and not whether its source was statute or the prerogative. Certain exercises of prerogative power would, because of their subject-matter, be less justiciable, with Lord Roskill compiling the broadest list of such forbidden territory....”

The observations of Lord Roskill, referred to above, are from Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] (GCHQ case) as under : (All ER p. 956d-e)

“But I do not think that that right of challenge can be unqualified. It must, I think, depend on the subject-matter of the prerogative power which is exercised. Many examples were

² (2006) 1 SCC 779



given during the argument of prerogative powers which as at present advised I do not think could properly be made the subject of judicial review. Prerogative powers such as those relating to the making of treaties, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others are not, I think, susceptible to judicial review because their nature and subject-matter is such as not to be amenable to the judicial process.”

Reference may also be made to ***Commissioner of Police vs. Raj Kumar***³ wherein the Hon’ble Supreme Court has held as under:-

“31. Public service — like any other, presupposes that the State employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision-making is neither illegal, unfair, or lacking in bona fides”

10. Regardless thereof, we also find that our view is further substantiated by the subsequent FSL Report as filed by the respondents pursuant to the order dated 25.01.2017 passed by the Court as it was called upon owing to the fact that no reasons had been assigned by the handwriting expert as to why the Consultant felt that the handwriting and signatures on the application form (mark AI) did not match with the handwriting and signatures on the OMR sheet, documents verification and the option form. In fact, the relevant portions of the said FSL Report of the respondents before us necessary for our adjudication are reproduced as under:-

³ (2021) 8 SCC 347



“IV. RESULT OF EXAMINATION

1. Thumb Impressions marked as A1 is Blurred and does not disclose sufficient No. of Ridge details in relative positions; hence, it is unfit for comparison.

LABORATORY EXAMINATIONS

1. ... the person who wrote blue enclosed specimen signatures & writings stamped and marked S1 to S4 also wrote red enclosed questioned signatures and writings similarly stamped and marked Q1 to Q5 & Q7.

1B. ... the person who wrote red/blue enclosed writings stamped and marked Q7 & S3 did not write the red enclosed writings similarly stamped and marked Q6.

... It has not been possible to express any opinion on red enclosed writings marked Q8, Q10; Q9 in comparison to supplied standards in the absence of common available characters for comparison.”

11. Thus, our reading of the said FSL Report filed by the respondents leads us to the conclusion that there is, and in fact can be, no definitive finding of fact or conclusion to the effect that there was a purported mismatch of the petitioner’s handwriting and signatures in the Application Form and/ or the OMR Sheet. More so, as the said FSL Report on which the respondents seek to place reliance upon is itself shrouded under cover in dark as observed therein and quoted hereinabove.

12. The aforesaid two factors, that of the order of the Tribunal being based on alleged unsubstantiated oral opinion of the Expert and the FSL Report filed by the respondents before us pursuant to an earlier order by us coupled with the fact that the petitioner, under the existing circumstances, was well and truly available for the benefit of doubt, in our considered opinion, are palpable enough for us to conclude that the Tribunal fell in grave error of ignoring them and holding otherwise. More so, whence both equities and balance of justice were tilting towards the petitioner. In any



event, the Tribunal did not have the benefit of the FSL Report before us today as it did not exist then.

13. For all the aforesaid factors, the impugned order passed by the Tribunal is liable to be set aside. The writ petition deserves to succeed and is, accordingly, allowed by setting aside the impugned order as also the order dated 23.04.2015 passed by the respondents rejecting the petitioner's candidature.

14. Resultantly, the respondents will appoint the petitioner on the post on which he was selected and grant him seniority from the date his similarly placed persons were appointed. However, it is made clear that though the petitioner will be granted all benefits of notional pay fixation at par with his batch mates but he will not be granted any back wages for the period he has remained out of service.

15. This order will, however, be implemented within a period of four weeks from today, failing which the petitioner will be entitled to receive wages from today itself.

16. The Registry of this Court shall return the original copy of the Application Form and the OMR Sheet of the petitioner along with the FSL Report dated 29.12.2017 to the respondents through counsel as per law as the soft copy thereof is already forming a part of the record of this Court.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

APRIL 23, 2024/al/akr