

Sri Vivek Kumar Rai, Sri Manish Pandey, Sri
Rajnish Kumar Rai

Hon'ble Rajendra Kumar-IV, J.)

Civil Law - Service Matter - Appointment - Rejection of Appointment - On the basis of expert opinion, the candidature of the petitioners was rejected with the remarks 'handwriting/thumb impression mismatch.' The decision of the Railways was based on the expert opinion alone, without affording an opportunity to the petitioners or confronting them with the material/opinion, i.e., the opinion of the Government Examiner for Questionable Documents (GEQD). *Held* - Had the petitioners been afforded an opportunity, they could, in their defense, have obtained an opinion of another expert to confront the Railways. The impugned order of cancellation of the candidature of the petitioners could not have been sustained solely on the opinion of the handwriting expert, which was obtained behind the back of the petitioners, without confronting them with the incriminating material and without being supported by any other evidence. The respondents' action was not in conformity with the principles of natural justice. The respondents were directed to appoint the petitioners to Group-D posts forthwith. (Para 25, 33, 34, 36)

Allowed. (E-5)

List of Cases cited:

1. Rajesh Kumar Vs U.O.I.& ors., 2014 (10) ADJ 672
2. Ran Vijay Singh & ors. Vs U.O.I. & ors., Writ A No. 2813 of 2017
3. U.O.I.& ors. Vs Ran Vijay Singh & ors., Special Appeal No. 1045 of 2018, decided on 8 May 2019
4. Bhupendra Singh Vs U.O.I.& ors., Writ A No. 35333 of 2016, decided on 30.10.2018

(Delivered by Hon'ble Suneet Kumar, J.
&

1. Heard Shri Shyamal Narain, assisted by Shri Ravi Prakash Bhatt, learned counsel for the petitioners and Shri Manish Pandey, learned counsel appearing for the respondent.

2. Petitioner/original applicants, herein, are challenging the judgment and order dated 1 May 2018, passed by the Central Administrative Tribunal Allahabad Bench, Allahabad (for short 'Tribunal'), whereby, their candidature for appointment on Group-D post has been rejected.

3. Railway Recruitment Cell, North Central Railway, Allahabad (for short 'RRC'), invited applications from eligible candidates for recruitment to Group-D posts, i.e., Khalasi, Helper, Trackman, Peon, Parcel Porter, Safaiwala, etc. under North Central Railway, vide advertisement No. 01/2013, dated 27 July, 2013.

4. Petitioners appeared for the written test and were declared successful. The select list was published on the official website of R.R.C. on 15 December 2015. Thereafter, petitioners appeared for the Physical Examination Test (for short 'P.E.T'), held between 10 March 2015 to 14 March 2015, finally, 2609 candidates, including the petitioners came to be declared successful in the P.E.T. Thereafter, all the candidates, including, petitioners were called for verification of the documents and medical examination. The select list published on the website on 15 December 2015, was accompanied by a note running in fourteen paragraphs. The paragraph relevant for the purposes of this case is extracted:

“During various stages of scrutiny and Document Verification 339

candidates found indulged in impersonation. It is roved following extant procedure that these candidates did not appeared inn the written examination but some one else appeared in place of these candidates or handwriting/thumb impression of these candidates did not match in various documents. Hence apart from cancellation of candidature of the 339 candidates they are being debarred from all Railways examination through out Indian Railways as well as criminal case may also be registered against them on case to case basis.”

5. The candidature of the petitioners was rejected with the remarks ‘handwriting/thumb impression mismatch’.

6. Aggrieved, petitioners approached the Tribunal by filing original application, being O.A. No. 1789 of 2015, Vijay Pal and others versus Union of India and others, which came to be dismissed by the impugned order dated 1 May 2018.

7. During pendency of the original application, an interim order dated 31 December 2015, was granted by the Tribunal directing the respondents to keep 23 Group-D posts vacant. The operative portion of the order is extracted:

“Having heard learned counsel for both sides, it appears that the grounds for rejection are stigmatic and therefore some opportunity ought to have been given to the applicants before rejecting their candidature by the respondents. Therefore, prima facie, a case for interim protection is made out. Accordingly, the respondents are directed to keep 23 posts vacant till the next date.

If the facts are otherwise, the respondents are at liberty to file stay vacation application.”

8. During pendency of the original application, petitioners came to be issued memorandum dated 23 January 2016, stating therein, that though the candidature of the petitioners was already cancelled, however, petitioners were called upon by the respondents to show cause as to why they may not be debarred from all future R.R.C./R.R.B. examinations, further, why criminal case may not be instituted against them for indulging in malpractice to procure Government job by fraud and misrepresentation.

9. The notice alleged that the petitioners had resorted to impersonation, further, it was alleged that there was mismatch in the handwriting, and/or, thumb impression of the candidates. In other words, allegation against the petitioners was that they have resorted, by securing the services of someone else, in the written test on their behalf. The allegation levelled in the two memorandums of the same date is extracted:

“I. As confirmed by the Government Examiner of Questioned Documents, Hand writing on the Application Form and that on answer sheet (OMR)/verification sheets are of different person (s). It has been established that the candidate did not appear himself in the written examination or PET examination and rather somebody else appeared in the same on his behalf, which is a case of impersonation, a malpractice and an offence.

II. As you are aware bio-metrics attendance were obtained during each phase of examination. It is to bring into your notice that your thumb impression during document verification did not match with written and PET examination. It

means someone else had appeared in written and PET examination impersonating your candidature.”

10. Petitioners filed their objections to the show cause notice/memorandum denying the allegations of impersonation or mismatch in handwriting, and/or, thumb impression. The respondent-authority vide order dated 31 March 2016, rejected the objection stating that the reply submitted by the petitioners were not found satisfactory. Consequently, petitioners were debarred from taking future R.R.B./R.R.C. examinations for life.

11. Aggrieved, petitioners through an amendment application challenged the memorandum dated 22 January 2016 and the debarment order dated 31 March 2016.

12. The learned Tribunal, after exchange of pleadings and hearing the counsels for the respective parties, by the impugned order, partly allowed the original application of the petitioners. The impugned orders to the extent debarring the petitioners from future R.R.B./R.R.C. examinations for life was set aside. The decision of the respondents, however, cancelling the candidature of the petitioners was not interfered with.

13. The operative portion of the impugned order reads thus:

“24. In the circumstances, following the decision taken in the case of Santosh Kumar Tiwari (*supra*) to this case, we also come to the conclusion that from the facts and circumstances of the case based on the materials on record and as discussed in para 22, the respondents have not been able to establish the allegation of impersonation against the applicants, since

the allegation comprised of only mismatch of thumb impression or handwriting, without any mismatch of the signature of the applicants. In case of impersonation the mismatch in signature would have been detected also. The mismatch of signature is not reported or detected for any of the applicants in this case. However, there is violation of the instructions of the examination as per the advertisement No. 1/2023, for which there is mismatch of handwriting or mismatch of thumb impression for the applicants and these mismatches have not been explained satisfactorily as the explanation in one applicant's explanation/reply at Annexure A-10 of the OA reveals. In fact, there are such violations as mentioned in the Suppl. Affidavit filed by the applicants. Further, no specific reason has been indicated in the show cause notice or impugned order in support of the allegation of impersonation against any of the applicants. Hence, taking into accounts the facts of the case, we consider the cancellation of the candidature of the applicants for the advertisement No. 1/2013 to be just and proper. But the decision of the respondents to debar some of the applicants for all examinations of RRCs/RRBs is not at all justified based on the materials on record. Accordingly, the impugned orders dated 31.03.2016, debarring the applicants from all examinations of RRCs/RRBs is set aside and quashed. However, we uphold the decision/orders of the respondent No. 2 to cancel the candidature of the applicants for the examination pertaining to the advertisement No. 1/2013. Respondent No. 2 is directed to modify the penal action against the applicants accordingly. The interim orders in the case to keep 23 posts vacant in OA No. 1789/2015 and one post vacant in OA No. 73/2016 are vacated and if some of the applicants have appeared in

subsequent examinations provisionally by virtue of the interim orders, their candidature shall be considered by the respondent No. 2 as per the rules applicable for the said examination in view of the quashing of the punishment of debarment from all examinations of RRCs/RRBs as per this order.

25. *For the OA No. 73/2016, the allegation against the applicant is for mismatch of handwriting as verified by the GEQD like the case of the applicant No. 1 in the OA No. 1789/2015. The reply furnished to the show cause notice and enclosed at Annexure SA-2 of the Supplementary Affidavit filed by the applicant, does not give any convincing explanation for mismatch of handwriting. Hence, the finding as at para 24 will also be applicable for the OA No. 73/2016.*

26. *Before we part with the case, we notice that there appears to be no Rule or Regulation laying down the procedure to be followed by the RRC/RRB, in situations where there are discrepancies for a candidate like mismatch of handwriting or thumb impression or signature etc. or allegation of impersonation in the examination, as no such Rule/Regulation has been produced before us in this case. The respondents may consider to put in place an appropriate Rule/Regulation to deal with such situations in a just and fair manner as per the provision of law.”*

14. The coordinate Bench of this Court, on filing of the writ petition by the petitioners, passed an interim order dated 1 October 2018, staying the impugned order of the Tribunal until further orders and directed the respondents to keep 23 posts vacant and that would abide by the outcome of the writ petition. The

operative portion of the interim order is extracted:

“Having regard to the facts and circumstances of the case, until further orders, the impugned order dated 01.05.2018 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in O.A. No. 1789/2015 shall remain stayed and the respondents are directed to keep 23 posts vacant.”

15. Learned counsel for the respondents, on specific query, admits that the respondent-Railways have not filed writ petition challenging the order of the learned Tribunal, insofar as, the impugned order recorded a categorical finding with regard to impersonation that ‘... the respondents have not been able to establish the allegation of impersonation against the applicants, since the allegation comprised of only mismatch of thumb impression or handwriting without any mismatch of the signature of the applicants. In case of impersonation, the mismatch in signature would have been detected also. The mismatch of signature is not reported or detected for any of the applicants in this case...’

16. In the aforementioned backdrop, the learned counsel appearing for the petitioner submits that insofar as the allegation of impersonation levelled against the petitioners was held unworthy of belief by the learned Tribunal, rather, the allegation of impersonation was specifically rejected. The finding to that effect has attained finality as the same has not been challenged by the respondents.

17. It is, therefore, urged that after returning a categorical finding with regard to impersonation being unbelievable,

Tribunal committed an error in upholding the decision of the respondents to cancel the candidature of the petitioners at the examination. In other words, it is submitted that the petitioners had appeared for the examination and are entitled to appointment. In the circumstances, the question of mismatch of handwriting/thumb impression would not arise.

18. It is further submitted that the categorical finding recorded by the Tribunal that ‘... the respondents have not been able to establish the allegation of impersonation against the applicants...’ is contradictory for the reason that mismatch of handwriting, or, thumb impression, is possible in the event of impersonation.

19. It is further urged that it can safely be said that all the petitioners stand totally exonerated of the main charge of impersonation which was the substance and basis of the show cause notice/memorandum issued to them. It is further submitted that the candidature of the petitioners came to be cancelled prior to the issue of show cause notice/memorandum, accordingly, there is an element of pre-determination of mind of the respondent-Railways against the petitioners. The memorandum was confined to debarment from all future examinations for resorting to impersonation.

20. In the counter affidavit filed by the respondent, it is not being disputed that the petitioners herein were not confronted with the expert opinion or of the opinion of the Government Examiner for Questionable Documents (GEQD). It is admitted that on the allegations based on the opinion of the expert, memorandum was served upon the petitioners to show cause with regard to

their debarment and with not regarding the cancellation of their candidature in the examination. In other words, insofar as, cancellation of the candidature of the petitioners, was final as the memorandum was confined with their future debarment in RRB/RRC examinations. It is further stated that after considering the reply of the petitioners, the candidates came to be debarred. The candidature of the petitioners was cancelled due to the acts of irregularities/omissions noted in the impugned order. It is, however, not denied that material relied upon in non-suiting the petitioners, i.e., the expert opinion was not supplied to the petitioners, nor, filed before this Court or the Tribunal. In other words, the orders of cancellation of candidature came to be passed behind the back of the petitioners while cancelling their candidature, thereafter, upon notice, petitioners were debarred for all future RRB examinations.

21. It is not the case of the respondent-Railways that the show cause notice/memorandum was supported by any material, including, the opinion of the handwriting expert. Opinion of handwriting expert was not supplied in support of the memorandum to justify the allegation of mismatch of handwriting/thumb impression on the application form or on the subsequent papers pertaining to Written Examination/P.E.T. undertaken by the petitioners. The entire exercise was undertaken by the Railways behind the back of the petitioners.

22. The question that requires consideration is as to whether the respondents were justified on the available materials on record to hold petitioners guilty of impersonation, and/or, mismatch of handwriting/thumb impression on various documents.

23. In **Rajesh Kumar vs. Union of India and others¹**, this Court observed that handwriting expert opinion is at best an opinion, which is not conclusive proof of mismatch of handwriting or impersonation. Expert opinion has been considered to be of very weak nature, which requires corroboration from other material facts pertaining to the allegation.

24. This Court held as follows:

“Evidence of an expert is only an opinion. Expert evidence is only a piece of evidence and external evidence. It has to be considered along with other pieces of evidence. Which would be the main evidence and with is the corroborative one depends upon the facts of each case. An expert’s opinion is admissible to furnish the Court a scientific opinion which is likely to be outside the experience and knowledge of a Judge. This kind of testimony, however, has been considered to be of very weak nature and expert is usually required to speak, not to facts, but to opinions. It is quite often surprising to see with what facility, and to what extent, their views would be made to correspond with the wishes and interests of the parties who call them.”

25. The decision of the respondent is based on the expert opinion alone to establish guilt of impersonation, and/or, mismatch of handwriting/thumb impression without affording opportunity or confronting the petitioners with the material/opinion. Had it been so, the petitioners in their defence could also have obtained an opinion of the expert to confront the Railways. The impugned order of cancellation of the candidature of the petitioners could not have been sustained on the opinion of handwriting expert.

26. In **Ran Vijay Singh and others vs. Union of India and others²**, this Court in similar facts set aside the cancellation of the candidature and their debarment for three years from appearing in any examination of the Commission on the strength of an expert opinion.

“23. In the facts of the present case, despite allegation made in the notice dated 5.8.2015 about thumb impression, signatures and handwriting having not tallied, the respondents have confined their conclusion to the opinion of the handwriting expert. Such opinion cannot be construed as being conclusive.

24. In the present case not only the petitioners have been denied appointment but they are also debarred from appearing in any examination conducted by the Commission for three years. Such order of Commission is clearly stigmatic in nature. The order under challenge carries civil consequences also. Such order cannot be sustained merely on the strength of handwriting report, nature of which remains that of an opinion, and cannot be construed as conclusive.

25. The report of CFSL based upon handwriting expert’s opinion, moreover, has not been furnished to the petitioners. Petitioners consequently had no opportunity to controvert it.”

27. The decision rendered in Ran Vijay Singh (supra), was carried intra court appeal in Union of India and others vs. Ran Vijay Singh and others³, Division Bench observed as follows:

“At this juncture, we would also like to state that it is not the case of the

appellant-respondents that the process of selection suffers from mass-irregularity, but of unfair practices adopted by certain individuals.

Looking to this background also, we are of the considered opinion that while cancelling examination of the respondent-petitioners and further debarring him for three consecutive examinations the appellant should have supplied a copy of the opinion given by the handwriting expert. Non-supply of that is in violation of principles of natural justice.”

28. The aforementioned authorities came to be followed by the Division Bench in **Bhupendra Singh vs. Union of India and others**⁴, the relevant part of the order is extracted:

*“In both Ran Vijay Singh and Tulasi Ram Prajapati, the learned Judge found that the candidature of the petitioners could not have been unilaterally annulled without granting them an opportunity to rebut the findings recorded by the expert. These principles are clearly attracted to the facts of the present case. The submission of the learned Standing Counsel that the order is not stigmatic and there is no violation of Article 311 of the Constitution do not merit consideration since principles of natural justice would clearly apply in all situations where a person is visited with serious civil consequences. **Once the name of the petitioner stood included in the select list, his removal from the same on the allegation of impersonation must necessarily have been preceded by the issuance of a notice or at least an opportunity of hearing to the petitioner to establish that the adverse material which***

was relied upon by the respondents was not liable to be accepted. It is well settled that the opinion of an expert is not conclusive and remains just that, namely, an opinion.”

29. The respondents in the given facts of the case at hand were expected to confront the petitioners with the material relied upon against them, particularly, when the petitioners were being debarred from appearing in any further examination conducted by the RRB/RRC and their candidature was cancelled for the examination on mismatch of handwriting/thumb impression.

30. The opinion of the expert was required to have been viewed and considered with other materials available on record. The learned Tribunal has discarded the theory of impersonation setup by the respondent-Railways, then in that event, mismatch of handwriting/thumb impression of the petitioners becomes unsustainable, unless supported by any other material or evidence that petitioners have not appeared in the examination or have not filled the application form in their handwriting.

31. The respondent-Railways, in their counter affidavit, have not denied that at all stages of the examination, i.e., Written Test and P.E.T., thumb impression and signatures of the candidates was taken and the entire process was video-graphed. In this backdrop, it cannot be said that though the petitioners had appeared for the examination, yet at the same time, there was mismatch in handwriting/thumb impression.

32. It is not the case of the respondents that the petitioners, herein, had

