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

Date of decision: 13.05.2024

+ W.P.(C) 6776/2024, CM APPL. 28244/2024-Stay,

UNION OF INDIA AND ANR Petitioners

Through: Ms. Bharathi Raju, SPC

versus

GABBAR SINGH MEENA Respondent

Through: Ms. Sonika Gill, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J (ORAL)

CM APPL. 28245/2024-Exp & CM APPL. 28246/2024-Exp

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

W.P.(C) 6776/2024 & CM APPL. 28244/2024-Stay

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 21.09.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*the learned Tribunal*) in O.A. No. 1613/2019, whereby the learned Tribunal has, by placing reliance upon the decision rendered by a Coordinate Bench of the Tribunal in O.A. No. 4005/2017, allowed the original application filed by the respondent/ applicant and has directed the petitioners to issue an offer of appointment to the respondent based on his merit, *albeit*, after verifying the other eligibility criteria, including the educational qualifications. The learned Tribunal, *however*, directed that the respondent



would not be entitled to any seniority or consequential benefits.

4. Succinctly put, the respondent applied for the post of Assistant Loco Pilot (*ALP*) upon issuance of an advertisement issued by the petitioners in 2011. He was then duly issued an admit card to appear in the written examination. After emerging successful therein, he was first shortlisted for Psycho Aptitude Test, which was also cleared by him and then called for document verification on 18.07.2013. It was at this stage that the petitioners did not issue an offer of appointment to the respondent on the ground that he had not filled the date and place column in his application form. In fact, it is the petitioners' case that as the application form of the respondent was invalid, it was directed for rejection under para 6.15 of the advertisement.

5. The aforesaid circumstances led to the respondent initially serving a legal notice upon the petitioner and then approaching the Central Administrative Tribunal, Jaipur (*learned Jaipur Bench*) by way of O.A. No. 72/2016, which, was disposed of vide order dated 10.02.2016 with a direction to the petitioners to pass a reasoned order on the legal notice served by the respondent.

6. Hearing nothing in compliance thereof from the petitioners, the respondent once again approached the learned Jaipur Bench, this time by way of O.A. No. 292/2016. Though notice was issued therein, however upon an objection regarding the territorial jurisdiction of the learned Jaipur Bench by the petitioners, the same was returned for the respondent to file it before the appropriate Bench. It is, thus, that the respondent filed O.A. No.1613/2019 before the learned Tribunal, wherein the impugned order dated 21.09.2023 has been passed in favour of the respondent.

7. Being aggrieved, the petitioners have approached this Court.



8. Mrs. Bharathi Raju, learned counsel for the petitioners, relying upon *T. Jayakumar vs. A. Gopy & Anr.* (2008) 119 SCC 403 and *Bedanga Talukdar vs. Saifudaullah Khan & Ors.* (2011) 12 SCC 85, prays for setting aside of the impugned order, primarily submitting that the learned Tribunal has failed to appreciate that once the application of the respondent was deemed incomplete in terms of the advertisement issued by the petitioners, his candidature had to be *per se* rejected, especially, since candidatures of other candidates appearing for the said examination have been rejected on similar grounds. She submits that merely because the respondent was selected despite the violation of the conditions laid down in the advertisement, would not necessarily mean that the petitioners cannot cancel his candidature when the said defects in his application form came to light. Additionally, she seeks to place reliance on the decision of a Co-ordinate Bench of this Court in W.P.(C) 15051/2021 titled *Rohit Kumar vs. Union of India & Ors.*

9. *Per Contra*, Ms. Sonika Gill, learned counsel for the respondent, who appears on advance notice, supports the impugned order and submits that the writ petition is liable to be rejected as the petitioners, after passing and in compliance of the impugned order, have already issued an appointment letter to the respondent on 27.02.2024, calling upon him to undergo training, which is currently under progress and is likely to complete soon, if not already completed. She submits that the petitioners cannot be allowed to cancel the candidature of the respondent due to the purported mistake on the part of the respondent at the initial stages, pertinently, since it was the very same petitioners who issued an admit card to the respondent for his appearance in the written examination and also since it is the very same



respondent who not only successfully appeared in the written test but also qualified the Psycho Aptitude Test and is now about to finish his training. It is under these circumstances that she, therefore, prays for dismissal of the present writ petition.

10. Having considered the submissions of learned counsel for the parties and perused the record, we may at the outset note that the learned counsel for the petitioner has not been able to inform this Court as to whether the decision in O.A. No. 4005/2017 on which the learned Tribunal has relied upon has been assailed or not. We, therefore, have no option but to presume that the said order has attained finality.

11. At this stage, it may be apposite to note the relevant extracts of the impugned order which reads as under:-

“6. Conclusion:-

6.1 In view of the above analysis, we find that the applicant has already been permitted to appear in the examination and not was even selected. We are of the view that ends of justice would be duly met by directing the Competent Authority amongst the respondents to issue offer of appointment to the applicant as per his merit, after verifying the other eligibility criteria including the educational qualification, within 45 days from the date of receipt of a certified copy of this order. We order accordingly.

6.2 We make it clear that the applicant shall not be entitled to any seniority or consequential benefits. The actual benefit shall be given to the applicant from the date of joining.

6.3 OA is allowed in the aforesaid terms.”

12. Adverting to ***T. Jayakumar (supra)*** as also ***Bedanga Talukdar (supra)*** and the decision of this Court in ***Rohit Kumar (supra)***, on which reliance has been placed by the learned counsel for the petitioners, we find that these pertain to a situation very different from that involved in the



present case. Also, there is no denial by the learned counsel for the petitioner qua the factum of issuance of a communication directing the respondent to join the ongoing training as also that he was issued the admit card and shortlisted for the Psycho Aptitude Test and then also called for document verification. In effect, since this Court is dealing with a case wherein the respondent has already been selected, the ratio of the decisions in *T. Jayakumar (supra)* as also *Bedanga Talukdar (supra)* and the decision of this Court in *Rohit Kumar (supra)* are not applicable herein.

13. In these circumstances, we are of the view that the aforesaid decisions in *T. Jayakumar (supra)* as also *Bedanga Talukdar (supra)* and the decision of this Court in *Rohit Kumar (supra)* relied upon by the learned counsel for the petitioner are clearly distinguishable on facts, particularly since the defects in the application forms of the candidates therein were detected at a much earlier stage, leading to their candidature, whereas, in the present case the petitioners having already issued an appointment letter to the respondent, are now seeking to cancel his candidature at such a belated stage and that too, when the respondent is already undergoing training for the same.

14. Furthermore, in the considered opinion of this Court, if there was a fault on the part of the respondent in not filling both the date and place in the application form, it is an equal fault, if not greater fault, of the petitioners who not only processed the application form by issuing the admit card but also permitted the respondent to appear in the written examination and also called him for the Psycho Aptitude Test, wherein he was found to be successful. The respondent was given repeated approvals from time to time.

15. In any event, in the considered opinion of this Court, both the said



defects are very much rectifiable and curable in nature and are certainly not such which are and/ or can be some fatal discrepancies resulting in cancellation of the candidature of the respondent.

16. Lastly, it is pertinent to note that barring the non-filling of both the date and place column in the application form by the respondent, the petitioners have had no kind of complaints against him at any stage whatsoever. Moreover, not only the requisite details as required in the application form were/ are all duly filled in by the respondent and they are very much correct as there are no discrepancies or disputes qua them but the requisite documents were also brought forth by him as and when sought for. These all are relevant factors for consideration of the case of the respondent as also of the petitioners.

17. We are therefore of the view that since the respondent was very much found successful way back in the year 2012-13, it would be highly unjust to deprive him of appointment, especially considering that the learned Tribunal has already denied the grant of any seniority or consequential benefits to him.

18. Accordingly, finding no merit in the writ petition, we have no hesitation in dismissing the same in the aforesaid terms leaving the parties to bear their own respective costs.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

MAY 13, 2024/rr