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

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Date of Decision : August 04, 2016

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W.P.(C) 3137/2016

AJAY KUMAR

..... Petitioner

Represented by: Ms.Saahila Lamba, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Represented by: Mr.Prasanta Verma, Senior Central
Government Counsel with
Mr.Rishesh Mani Tripathi, GP,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Applying for the post of Constable (Crew) in the Water Wing of BSF, the petitioner indicated that he was seeking the benefit of reservations for members of the Scheduled Castes and was found eligible to compete and was issued the admit card requiring him to take the written examination to be held on December 06, 2015. The number of candidates being large, aid of technology was taken, in that, the written examination was an objective type paper requiring the candidates to mark the answers in an OMR answer sheet by darkening the applicable circles for the correct answer. The OMR sheet had likewise to be darkened to record the name, roll number and date of birth of the candidate. The petitioner filled up the OMR sheet but forgot to darken one of the block to record the date of birth. But this did not cause

any administrative inconvenience to tag the answer sheet and connect the same to the petitioner; apparent from the fact that the optical reader read the answer sheet and assigned the marks to the petitioner.

2. The result of written examination was declared by the respondents and cut off marks for the post of Constable (Crew) in SC category was 45. The answer key of question papers was also published by the respondents.

3. The name of petitioner was not featuring in the list of successful candidates issued by the respondents. The petitioner matched his answer sheet with the answer key provided by the respondents and to his utter surprise found that though he would have obtained 66 marks his name was not in the list of successful candidates.

4. In this view of the matter, the petitioner scanned/analyzed photocopy of his answer sheet which was provided to him by the respondents and it seemed that name of petitioner was not included in the list of successful candidates despite securing more than cut off marks for the reason he did not darken one of the block to record his date of birth.

5. This constrained the petitioner to file a writ petition being W.P.(C) No.517/2016 before this Court essentially seeking the relief that petitioner be permitted to appear in remaining phases of recruitment viz. documentation and physical measurement, physical efficiency test and trade test (second phase) and interview and medical examination (third phase). Vide order dated January 22, 2016 this Court permitted the petitioner to participate in remaining two phases of recruitment to the post of Constable (Crew) as an interim measure.

6. The petitioner participated in the remaining two phases and to his good fortune emerged successful therein.

7. After noting that petitioner has been successful in remaining two

phases of recruitment, vide order dated April 01, 2016 this Court disposed of aforesaid petition filed by petitioner with liberty to the petitioner granted to file a fresh petition challenging the action of the respondents in denying appointment to petitioner to the post of Constable (Crew) on the sole ground of petitioner not darkening one of the block to record the date of birth. An order which surprises us for the reason there was no necessity to compel the petitioner to file another writ petition because the issue at hand had already arisen and was the point on which the parties were litigating in the said writ petition.

8. Thus, the above caption petition has been filed by the petitioner and we would treat this to be a sequel to the earlier writ petition.

9. In essence, the stand taken by the respondents to deny appointment to the petitioner is that instructions prescribed in the OMR answer sheet required the candidate to correctly fill his essential particulars including date of birth and petitioner having not correctly darkened one of the block to record the date of birth, the respondents are justified in denying appointment to the petitioner.

10. The instruction relied upon by the respondents reads : *'you have to fill and shade your Name, Roll No., Date of Birth, Mode, Religion, Category and Question Booklet Series Code, because information's are essential for evaluation of the Answer Sheet'*.

11. The aforementioned instruction nowhere prescribes rejection of candidature of a candidate on the ground of incorrect filling of particulars by the candidate.

12. In the decision dated February 24, 2012 in W.P.(C) No.1004/2012 Delhi Subordinate Services Selection Board & Anr. Vs. Neeraj Kumar & Anr. and the decision dated August 29, 2012 in W.P.(C) No.5334/2012

Deepak Dhankar Vs. Union of India & Ors. it was held that instructions which are similar in nature to the one issued in the present case are directory in nature and their violation do not warrant rejection of the candidature of a candidate. Being relevant we note following observations made by this Court in Deepak Dhankar's case (supra):-

“Highlighting this was the very issue with reference to a similarly worded advertisement, in Neeraj Kumar's case (supra) case, was opined upon, and to which reasons we would only add that this requirement has to be treated as directory and not mandatory especially when the post in question is at the lowest rung of the ladder. The reason being that for these posts, minimum qualification prescribed is generally matriculate, and thus candidates have low literacy.”

13. It would also be relevant to note following observations made by the Rajasthan High Court in the decision dated September 04, 2012 SB Civil in Writ Petition No.9062/2012 Savita Budania Vs. State of Rajasthan & Ors.:-

“The respondents while making recruitment may avail assistance of technology but at the same time a human approach is also required to be kept in mind. The object of holding competitive test is to have best available hand and in this process merit should not be compromised just for the reason that the mechanical procedure adopted do not support the manual exercise. In the cases, if the human error is rectified with all diligence at earliest possible, a condonation of error is desirable.”

14. To justify action of respondents of denying appointment to petitioner, learned counsel for the respondents has relied upon a decision dated April 09, 2014 of the Punjab & Haryana High Court in CWP No.168/2013 Monika Yadav Vs. Staff Selection Commission & Anr. where appointment was denied to a candidate for the reason she had incorrectly darkened blocks to record her roll number.

15. The decision in Monika's case (supra) relied upon by the respondents is entirely distinguishable from the facts of present case for the reason the candidate in the said case had incorrectly darkened blocks to record her roll number, due to which reason the department could not tag her answer sheet and connect the same to the candidate due to which reason her OMR answer sheets were not evaluated at all and zero marks were awarded to her.

16. In the instant case, as already noted hereinabove the answer sheet of the petitioner was not only tagged but even connected to him and evaluated for marks.

17. The maxim *de minimis non curat lex* which is translated as '*law does not concern itself with trifles*' is squarely applicable in the present case and thus petitioner cannot be penalized for a trivial careless mistake committed by him of not darkening one block to record his date of birth.

18. In view of above discussion the present petition is allowed. A mandamus is issued to the respondents to appoint the petitioner to the post of Constable (Crew) in Water Wing in Border Security Force with consequential benefits of seniority and pay to be fixed notionally. We deny back wages.

19. No costs.

CM No.13384/2016

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 04, 2016/mamta