

\$

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

% *Date of decision: 23.12.2016*

+ W.P.(C) 11642/2016 and CM No. 45868/2016 (stay)

AJAY KUMAR MISHRA Petitioner
Through: Mr. Vibhav Srivastava, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Anil Dabas, Advocate for
respondents 1, 5 and 6.
Mr. Naresh Kaushik, Advocate for
respondents 2, 3 and 4.
Ms. Shriambhra Kashyap and
Mr. Naresh Kaushik, Advocates
for UPSC.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

JUDGMENT

INDIRA BANERJEE, J (ORAL)

1. In this writ petition, the petitioner has challenged an order dated 11/11/2016, whereby the candidature of the petitioner for admission to the National Defence Academy has been cancelled on the ground of

furnishing incorrect information about the actual date of birth of the petitioner, in his application, and the petitioner has been informed that the petitioner had rendered himself liable for disciplinary action as per Rule 3 (3) of the Examination Notice No. 02/2016 – NBA – 1 dated 02 – 01 – 2016.

2. The Union Public Service Commission, being the respondent No. 2 published the said notice dated 02/01/2016, inviting applications inter alia for various posts in the Army wing of the National Defence Academy.

3. Pursuant to the notice, the petitioner applied online and was given the registration ID 11603758247. A copy of the application form has been annexed to the writ petition as Annexure 3. According to the petitioner, at the time of downloading the admit card for the written examination, the petitioner noticed that his date of birth had erroneously been entered as 11th of July 1998 instead of 10th of July 1998. The petitioner duly applied for rectification of the error in the date of birth.

4. In the meanwhile, the petitioner appeared for the written examination, which he successfully cleared, after which, he was called for an interview. The petitioner successfully cleared the interview as well as the medical test. However, the petitioner was not allowed to rectify the error in the date of birth. Instead, the impugned order was issued, cancelling the candidature of the petitioner, on the purported ground that the petitioner had furnished incorrect information in the application form with regard to the his date of birth.

5. The short question raised in this writ application is, whether the candidature of the petitioner, ought to have been cancelled on the ground of an error in typing his date of birth in the online application, after he had cleared the written test, the interview and the Medical Examination successfully. It is not in dispute that the difference was only of one day, and that the petitioner did not derive any benefit whatsoever, by reason of the difference.

6. There can be no doubt that a candidate applying for a government job, or for that matter, any job should fill in the application form

carefully. No candidate can claim any vested right to rectification of arrears in an application. Union Public Service Commission and the State Public Service Commissions deal with lacs of applications, which are received pursuant to an advertisement. Such applications are required to be processed within a short time. A candidate, who is not short-listed and/or not allowed to participate in the selection process by reason of his own laches in making careless mistakes, cannot claim any right to be allowed to participate in the selection process.

7. It is for the body conducting the selection process to decide whether mistakes should be allowed to be rectified, if so, whether they should be rectified within any specific time and what are the mistakes which can be allowed to be rectified and other similar questions. However, in view of the mandate of Articles 14 to 16 of the Constitution of India, there should be no discrimination or arbitrariness in deciding these questions. All candidates applying for the particular post/posts should be treated equally.

8. This is not a case where the petitioner had not at all been short-listed. It is not a case where the petitioner has not been allowed to participate in the selection process. The petitioner had been allowed to participate and had emerged successful in every stage.

9. It is true that whenever any material discrepancy is noticed in the application form and/or when any suppression and/or mis-representation is detected, the candidature might be cancelled even after the application has been processed and the candidate has been allowed to participate in the selection process. However, after a candidate has participated in the selection process and cleared all the stages successfully, his candidature can only be cancelled, after careful scrutiny of the gravity of the lapse, and not for trivial omissions or errors.

10. In WP (C) No.5857/2015 (Rakesh Kumar Versus Union of India) a Division Bench of this court passed an order dated 31st of August 2015 interalia holding that “this court is of the opinion, especially when the petitioner has served the Indian Army almost 20 years (19 years in fact), that the solitary instance of not disclosing a pending prosecution should

not have been the only basis for his discharge; rather the authority should have looked into the nature of the charge, the findings of the Criminal Court as well as his past service and then take a decision.” In this case, the respondents have not looked into the trivial nature of the lapse on the part of the petitioner.

11. In *State of Haryana Vs. Dinesh Kumar* reported in 2008 (3) SCC 222, the Supreme Court was concerned with a case where the candidature for appointment was rejected on the ground of suppression of arrest. The Supreme Court held that “*when the question as to what constitutes arrest*” *has all along engaged attention of the different High Courts, as also this Court it may not be altogether unreasonable to expect a layman to construe that he had never been arrested, on his appearing before the Court and being granted bail immediately. The position may have been different, had the person concerned not been released on bail.*” The Supreme Court gave the benefit of mistaken impression to the concerned candidate observing that there was no fully deliberate misrepresentation and concealment of facts, set aside the judgment of the High Court under appeal and directed the concerned respondents to take steps to issue

appointment letters to the concerned candidates. In this case it is nobody's case that there was any deliberate misrepresentation on the part of the petitioners.

12. The judgment of the Supreme Court in ***Devendra Kumar Vs. State of Uttarakhand*** reported in SCC 2013 (9) 363 is distinguishable in as much as the same pertains to suppression of an order of punishment for forgery. This case as observed above, appears to be a case of inadvertent mistake, where 11th has been typed instead of 10th in respect of the date. It is reiterated that the petitioner could not have gained anything by giving the wrong date of birth. Moreover the petitioner was required to submit his school certificate containing his date of birth.

13. There can be no dispute with the proposition of law in the judgment of the Supreme Court in ***T. Jayakumar Vs. A. Gopu and Anr.*** reported in (2008) 9 SCC 403, where the Supreme Court held that a candidate, who had been called for interview could not legitimately challenge his exclusion from consideration on the ground that his

application had been received beyond time. The judgment has no application in this case.

14. In *Avtar Singh Vs. Union of India* reported at (2016) 8 Supreme Court Cases 471, the Supreme Court in paragraphs 35 and 36 held as under:

“35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of the cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.”

15. As observed above, it is not the case of the respondents that the petitioner derived any advantage by entering the wrong date of birth in

his online and application. There is a difference between a mere inadvertent error and misrepresentation or suppression. There could be no intentional misrepresentation as the school certificate was submitted. The penalisation of cancellation of the candidature on the ground of a typographical error is arbitrary, unreasonable harsh and disproportionate to its gravity of the lapse. The writ petition is, therefore, allowed and the pending application also stands disposed of. The impugned order is set aside.

Copy of the order be given dasti to counsel for the parties under the signatures of Court Master.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

December 23, 2016

n