

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

+ **W.P.(C) 3721/2017**

Reserved on: 10th July, 2017
Date of decision : 31st July, 2017

ARKSHIT KAPOOR Petitioner
Through **Mr. Ankit Kohli, Advocate**

versus

UNION OF INDIA AND ORS. Respondents
Through **Mr. Dev P. Bhardwaj, CGSC**
and **Mr. Surender Kumar, Advocate** for
respondent Nos. 1, 5 & 6.
Mr. Naresh Kaushik & Mr. Derik Singh,
Advocates for UPSC.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J.

The petitioner has challenged an order dated 16.01.2017 passed by Union Public Service Commission, Respondent No.2, whereby the candidature of the Petitioner for admission to National Defence Academy was cancelled on the ground of furnishing incorrect information about his date of birth in the online application form for National Defence Academy & Navel Academy Examination-(I), 2016

(NDA&NA Exam (I)- 2016), invoking Rule 3 Note 3 of the Examination Notice No. 02/2016.NDA-I.

2. The Union Public Service Commission, New Delhi, Respondent No. 2, vide Examination Notice No. 02/2016-NBA-1 dated 02.01.2016 had invited applications for various posts in Army, Navy and Air Force Wings of National Defence Academy and Indian Naval Academy Course through NDA&NA Examination (1)-2016. The notice had stipulated that candidates born not earlier than 02.07.1997 and not later than 01.07.2000 were eligible to apply. Rule 3(b) of the notice is reproduced herein under:

“3. Conditions of eligibility

(b) Age Limits, Sex and Marital Status:

Only unmarried male candidates born not earlier than 02nd July, 1997 and not later than 1st July, 2000 are eligible.

The date of birth accepted by the Commission is that entered in the Matriculation or Secondary School Leaving Certificate or in a certificate recognised by an Indian University as equivalent to Matriculation or in an extract from a Register of Matriculates maintained by a University which must be certified by the proper authority of the University or in the Higher Secondary or an equivalent examination certificates. These certificates are required to be submitted only after the declaration of the result of the written part of the examination. No other document relating to age like horoscopes, affidavits, birth

extracts from Municipal Corporation, service records and the like will be accepted. The expression Matriculation/ Higher Secondary Examination Certificate in this part of the instruction includes the alternative certificates mentioned above.

NOTE 1: Candidates should note that only the date of birth as recorded in the Matriculation/Higher Secondary Examination Certificate available or an equivalent certificate on the date of submission of applications will be accepted by the Commission and no subsequent request for its change will be considered or granted.

NOTE 2: Candidates should also note that once a date of birth has been claimed by them and entered in the records of the Commission for the purpose of admission to an examination, no change will be allowed subsequently or at any subsequent examination on any ground whatsoever.

NOTE 3: The candidates should exercise due care while entering their date of birth in the respective column of the Online Application Form for the Examination. If on verification at any subsequent stage any variation is found in their date of birth from the one entered in their Matriculation or equivalent Examination certificate, disciplinary action will be taken against them by the Commission under the Rules.

NOTE 4: Candidates must undertake not to marry until they complete their full training. A candidate who marries subsequent to the date of his application though successful at this or any subsequent examination will not be selected for training. A candidate who marries during training shall be discharged and will be liable to refund all expenditure incurred on him by the Government.”

3. Pursuant to this notice, the petitioner applied online and was issued an Admit Card for the examination to be held on 17.04.2016.
4. The Petitioner while submitting his online application form had mentioned his date of birth as 07.09.1998 instead of 17.09.1998.
5. The petitioner appeared in the written examination, which he successfully cleared and was called for SSB interview at Selection Centre Central, Bhopal, where he submitted all educational certificates and mark sheets in original along with duly attested photocopies.
6. The petitioner claims to have successfully cleared the interview as well as the medical test. However, on 19.12.2016 the petitioner received an e-mail from the Respondent No.5, Director, Recruiting-6 ADG, MOD asking the petitioner to submit necessary affidavit explaining the mismatch of the date of birth in the application and 10th/12th class certificates.
7. The Petitioner submitted an affidavit stating that he had erroneously filled the date of birth as 07.09.1998 instead of 17.09.1998 and requested that necessary correction in his date of birth be made in the application form. However, the Petitioner was not

allowed to rectify the error in the date of birth. Instead, the impugned order was passed cancelling the candidature of the Petitioner on the ground that the petitioner had furnished incorrect information in the application form with regard to his date of birth.

8. Upon passing of impugned order, the petitioner made representations on dated 21.02.2017, 01.03.2017 and 02.03.2017 requesting for reconsideration of his case. Having received no response, the petitioner has filed the present petition praying for following reliefs:

“a. Issue an appropriate writ, order or direction quashing the order dated 16.01.2017 passed by the Respondent No.4, (Under Secretary, UPSC, New Delhi) on behalf of Respondent No.2;

b. Issue a writ, order or direction in the nature of mandamus directing the respondents to correct the Date of Birth of the petitioner as 17.09.1998 in place of 07.09.1988 in the application form of NDA&NA Examination (1)-2016;

c. Issue a writ, order or direction in the nature of mandamus directing the Respondents to consider the candidature of petitioner in NDA&NA Exam (1)-2016, and to allow the petitioner to join the course commenced on 2nd January, 2017.”

9. Notice of the petition was issued by this Court vide its order dated 01.05.2017 and pursuant thereto the second respondent, UPSC has filed its counter-affidavit. In the counter-affidavit and also argument before us, reliance has been placed on Note 3, to Rule 3 of

the examination notice. It has been contended that the candidates had been adequately warned to exercise due care while entering their date of birth in the respective column in the online application form for the examination. They were warned that if on verification at any subsequent stage any variation is found in their date of birth from the one entered in the matriculation or equivalent examination certificate, disciplinary action would be taken against them by the Commission under the rules. Reliance has also been placed on the judgment dated 01.02.2017 of this Court in WP(C) 3003/2016, **UPSC v. Tarun Arora**, and judgment of the Supreme Court in case of **UPSC v. S.Krishna Chaitanya**, (2011) 14 SCC 277, to contend that once the petitioner has adequately warned, no relief could be granted in his favour. The respondent further contended that the petition was liable to be dismissed on account of delay and laches as the same was filed only in April-2017, though, the impugned communication is dated 16.01.2017.

10. We have considered the rival submissions of the parties.

11. As far as plea of delay and laches is concerned, the same is only noted to be rejected. The impugned order/communication is dated 16.01.2017. The petitioner, on receipt of the same, submitted representations dated 21.02.2017, 01.03.2017 and 02.03.2017 and filed the present petition in April, 2017. We do not think that there is any delay or laches on part of the petitioner to file the present petition.

12. Though, it is correct that candidates had been adequately warned in the examination notice itself to be careful while entering the

date of birth in the online application form for the examination and that disciplinary action would be taken in case any variation was found between the date entered by them and the one shown in the matriculation or equivalent examination certificate, we cannot be oblivious to the fact that in the present case the mistake in recording the date of birth as 07.09.1998 instead of 17.09.1998 has absolutely no effect on the eligibility of the petitioner as according to the terms of the examination notice all the candidates born not earlier than 02.07.1997 and not later than 01.07.2000 were declared eligible to apply. Therefore, the petitioner stood nothing to gain by incorrectly filling up the date of birth in the application form. The mistake was inconsequential and of no effect and consequence. Neither will the correction of the mistake hinder and disrupt the selection process.

13. The petitioner has contended that he is a resident of a very small, backward and undeveloped village of District Kangra in Himachal Pradesh where the internet facilities are remotely available and the petitioner got his online application filled in a cyber cafe. The petitioner has further contended that in some other cases, variations in the names of candidates and/or in the names of their fathers and mothers were allowed to be corrected on a later date. The respondents, however, have pleaded that in case of discrepancy in date of birth, since there is a specific rule, the petitioner is not entitled to make a correction. The respondents have further pleaded that the petitioner did not come forward even at the time of downloading the admit card. However, this cannot take away from the fact that the petitioner, as stated above, stood nothing to gain by filling up incorrect date of birth

in the admission form. What is also of relevance is that the petitioner not only cleared the examination but was also declared successful in Stage 1 and 2 of SSB interview. The petitioner has rightly relied upon the judgment of this Court dated 23.12.2016 in WP (C) 11642/2016, *Ajay Kumar Mishra v. UOI* wherein this Court, in similar circumstances, observed as under:

“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 Commission 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 shortlisted. 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.”

After discussing various judgments of the Supreme Court, this Court further held as under:

“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 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.”

14. The present case is identical to the case of **Ajay Kumar Mishra** (*supra*). The petitioner stood nothing to gain by filling up an incorrect date of birth in the application form. Taking both dates into account, the petitioner would still be eligible for the examination.

15. The respondents have merely relied upon Note 3 of Rule 3 of the Examination Notice as reproduced above. A bare reading of the said Note would show that in case any variation is found in date of

birth, “Disciplinary Action” was warned. Disciplinary action is initiated when warranted and justified, and not for small and insignificant typing mistakes or lapse. These cannot be the ground for the cancellation of the candidature. Similar view was taken by this Court in the judgement of *Ajay Kumar Mishra (Supra)*. The aforesaid clause is not to disqualify and harm those who make small mistakes due to mechanical failure or slips of the hands or fingers, but to ensure administrative convenience and prevent candidates from seeking review or fresh considerations resulting in chaos, uncertainty and violation of timeline.

16. The respondent has relied upon the judgment dated 01.02.2017 in WP (C) 3003/2016, *UPSC v. Tarun Arora*, however, we feel that the said judgment would not be applicable to the facts of the present case. In the case of *Tarun Arora (Supra)* the candidate had not disclosed or stated any particular of his Post Graduation qualification, which was essential in terms of the advertisement and for this reason his candidature was rejected and he was not short listed and called for interview for selection. In that case, the respondent, therein had failed to give material information for judging his eligibility. The Court held that while examining such issues, the Court has to maintain a right balance between the mistake and chance to rectify the lapse, and the administrative difficulties and consequences, and that a strait jacket principle may not be universally applicable. The observation made by this Court is as under:

“15. The Courts, while examining such issues have to maintain a right balance between the mistake and chance

to rectify the lapse, and the administrative difficulties and consequences. Administrative difficulties, thus, should be balanced with the adverse impact befalling the candidate. A strait jacket precept may not be universally applicable. The nature of the selection process, the terms stipulated, whether the rectification and amendment would make the selection process unyielding and unmanageable, are different facets which must be considered. Where the application forms are vague and unclear, the benefit must and should be given to the applicant.”

17. The respondents have further relied upon the judgment of Supreme Court in *Secretary, UPSC and Anr. v. S.Krishna Chaitanya*, AIR 2011 SC 3101. In the said case also, the applicant was not issued the admission certificate by the authority and in fact it was only pursuant to the interim order passed that he was allowed to participate in the examination. It was a case where the application form had not been submitted within the prescribed time, and, therefore, would clearly not apply to the facts of the present case.

18. The respondents have further relied upon the judgment of the Supreme Court in *T.Jayakumar v. A. Gopu and Anr.*, (2008) 9 SCC 403. In that case though, the applicant in question was called for interview, he was not selected and appointed by the authority. Another fact which weighted with the Supreme Court was that the selected candidate had crossed the age bar for government employment by the time the matter has travelled to the Supreme Court. The defect in the application had made the candidate ineligible. One form was not signed and the other beyond time. In those facts the Supreme Court held as under:

“10. We are not aware any principle of law under which once a candidate is allowed participation in the selection process the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light. It is surely open to the Tribunal to examine whether the reason assigned by the selection authority for holding a candidate ineligible for selection was valid or unreasonable and arbitrary. If the reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary the Tribunal may certainly intervene but if the reason itself is valid the tribunal cannot interfere simply because the candidate was allowed participation in the selection process by being called for interview. The principle of estoppel has no application in such a case.

11. We are equally unable to appreciate the approach of the High Court. In the facts of the case it cannot be said that the decision of the concerned authority not to accept any of the two applications of respondent no. 1, the first being invalid for want of signature and the other being beyond time, was totally unreasonable and arbitrary. As a matter of fact the High Court has not come to any such finding. And yet the High Court observed that the second application ought to have been treated as ‘part and parcel’ of the first application and thus substituted its own view in the matter for the view taken by the respondent authority. Such an approach might have been permissible for the departmental appellate authority (provided there was one) but it was plainly beyond the scope of judicial review”.

19. A bare reading of the above would show that in case reason for excluding a candidate from the selection process is found to be unreasonable or arbitrary, the Court may certainly intervene but if the reason itself is valid, the Tribunal /Court cannot interfere. In the present case, as we have observed above, the petitioner would have been eligible for selection taking any of the two dates into consideration. His exclusion, after he had cleared his examination, was unreasonable and arbitrary. We may also note that the Supreme Court in the above judgment of *T.Jayakumar v. A.Gopu & Anr. (supra)* as far as the relief is concerned, had directed as under:

“14. This leaves us with respondent no.1 who is hopefully pursuing the matter for over eight years. The Tribunal and the High Court by interfering in his favour naturally gave him hope and expectations that he would be harbouring for eight years. We also cannot overlook the fact he was excluded from consideration simply because he inadvertently omitted to put his signature on his application form. Having regard to the special facts of 8 the case the concerned postal authorities are directed to find out a suitable vacant position against which respondent no.1 may be adjusted. In case no suitable post is available at present he should be accommodated in the next vacancy of EDBPM arising in future.”

20. In the facts of the present case, we are persuaded to adopt a just, fair and equitable approach. While we set aside the impugned order dated 16.01.2017 passed by UPSC and hold that the cancellation of the candidature of the petitioner in NDA&Na Exam (I)- 2016 was arbitrary and unreasonable, we mould the relief and direct that the petitioner shall be considered for the course/batch commencing after

the present judgment, if otherwise, eligible in other aspects. However, he would not be entitled to claim any benefit in terms of seniority or otherwise on basis of his selection in the NDA&Na Exam (I)- 2016.

21. With the above directions, the present writ petition is disposed of with no order as to cost.

NAVIN CHAWLA, J

SANJIV KHANNA, J

JULY 31, 2017

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