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

+ W.P.(C) 4668/2017

Date of decision : 26.05.2017

SANDEEP

..... Petitioner

Through : Mr. P. Chandrasen, Sr.Adv.
with Mr.Dibya Nishant, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. Sanjeev Narula, CGSC with
Ms.A. Chandra, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

JUDGMENT (ORAL)

SANJIV KHANNA, J.

CM 20310/2017 (exemption)

Allowed subject to all just exceptions.

W.P.(C) 4668/2017 & CM No.20309/2017

The petitioner-Sandeep, impugns the order of discharge dated 9th March, 2017 passed by the Commander, Coast Guard Region (W) on behalf of Director General of the Indian Coast Guard.

2. The petitioner was inducted and appointed as a Navik (General Duty) in the -02/2014 batch.

3. Along with the application form, the petitioner had submitted documents including a Class XII certificate issued by the Council of Secondary Education, Mohali (CSEM).
4. The petitioner thereafter underwent 11 months training and was posted at Mumbai.
5. In March 2016, disciplinary action was initiated against the petitioner for submitting a Class XII educational certificate from a 'fake' or unrecognised board. Enquiry was conducted and evidence was recorded as per the provisions of the Coast Guard (Discipline) Rules, 1983.
6. Thereafter, the show cause notice dated 13th December, 2016 was issued that upon verification, it was ascertained and revealed that CSEM, i.e., Council of Secondary Education Mohali, was not a recognised board. The petitioner was asked to show cause, why action in terms of Rule 25 of the Coast Guard (General) Rules, 1986 be not taken for furnishing false/incorrect information at the time of recruitment. The petitioner submitted his reply. Upon consideration, the petitioner was discharged from service on 9th March, 2017.
7. The contention of the petitioner is that he has worked for two years. He has undergone training for eleven months. It would be unjust and unfair if the petitioner is discharged and made to suffer for no fault as he was innocent and unaware that CSEM was an unrecognized board. The petitioner had not concealed facts or made a misstatement.
8. The minimum required eligibility for being appointed as Navik (General Duty) in the Indian Coast Guard as prescribed by the Recruitment Rules, i.e., the Coast Guard (General) Rules, 1986 and the advertisement read:

"2. Educational Qualification: 10+2 with 60% marks aggregate in total and minimum 60% in each subject of Maths and Physics from an education board recognised by Central/State Government. (Maximum 5% relaxation in the above percentage for SC/ST candidates, sports person of National level and wards of Coast Guard uniform personnel deceased while in service.)"

9. The petitioner does not fulfil the minimum qualifications as his 10+2 was not from a recognised Board. CSEM is not a board recognised by the Central and the state governments. Hence, the petitioner was/is ineligible. The educational qualifications prescribed in the Recruitment Rules and the advertisement being mandatory and cannot be diluted and ignored for the petitioner was erroneously allowed to join and has worked. Appointments made contrary to the prescribed educational qualifications would suffer from illegality and is not an irregularity which can be condoned and overlooked. The petitioner has rightly been discharged.

10. Even if we accept the contention that the petitioner was unaware that the CSEM was not a recognised Board, it would not make any difference. Minimum educational qualifications prescribed for eligibility have to be determined objectively and as per the law, with reference to the prescribed qualifications. The petitioner's perception, even when bonafide, would not matter. The aforesaid observations are on the assumption that the assertion of the petitioner is true and correct.

11. Learned counsel for the petitioner has referred ***Rajendra Prasad Mathur vs. Karnataka University and Anr. 1986 (Supp) SCC 740***. In the said case, the question of equivalence had arisen in a case of a student admitted to a course. It was held that the student should not suffer once the question of equivalence was examined and the student was allowed to join the course. Reference to ***Ashok Chand Singhvi vs. University of Jodhpur***

(1989) 1 SCC 399 is also misplaced. In the said case the appellant was admitted to the University course. These judgments do not apply as the issue in the present case relates to minimum prescribed eligibility qualification for induction and appointment to a service. In the present case, we are dealing with the recruitment rules, enacted under the proviso to Article 309 of the Constitution and the advertisement issued prescribing the requisite educational qualifications. The Recruitment Rules with eligibility conditions are statutory and mandatory. Eligibility conditions in the advertisement are also binding and mandatory. Estoppel would not apply and perceived equivalence of CSEM certificate with that of a recognised board would not override the mandate of law.

12. In *Bhupendra Nath Hazarika & Anr. versus State of Assam & Ors.*, (2013) 2 SCC 516, it has been observed that wherever recruitment is regulated by statutory rules, recruitment to the posts must be in accordance with the rules. Appointments made *de hors* the rules would be illegal. Several earlier decisions have for been quoted for the aforesaid principle. Any order in favour of the petitioner would violate Articles 14 and 16 of the constitution.

13. Thus, the petitioner being ineligible cannot claim any right to continue in service. The writ petition is dismissed.

14. The respondents would inform the Ministry of Human Resources and Development about the unrecognised board, who would examine the matter and take action as per law.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

MAY 26, 2017/NS'