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

Reserved on: 20.08.2018.

Date of Decision: 04.09.2018.

+ W.P.(C) 8415/2018 & C.M.No.32327/2018 (direction)

ANUJ PRATAP SINGH ...Petitioner

Through: Ms.Jyoti Singh, Senior Adv
with Mr.M.K.Bhardwaj, Adv with

Versus

UNION PUBLIC SERVICE COMMISSION & ANR.

...Respondents

Through: Mr.Naresh Kaushik &
Mr.Omung Gupta, Adv for R-1/UPSC.

Mr.Arun Bhardwaj, CGSC with Mr.Nikhil
Bhardwaj & Mr.Shushwat Sharma, Advs for
R-2/UOI.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India, impugning the order dated 10.07.2018, passed by the Principal Bench, Central Administrative Tribunal, New Delhi (hereinafter referred to as the "Tribunal"), dismissing O.A. No. 1358/2018 filed by him challenging the respondents' order dated 28.03.2018, by which his candidature for the Civil Services Examination 2017 (in short "CSE, 2017") was cancelled.

2. The facts relevant for the adjudication of the present petition are that the petitioner (applicant before the Tribunal), had appeared in the Civil Services Examination 2016 (in short "CSE 2016") and had qualified in both, the preliminary examination as also the main examination. Thereafter, when the petitioner appeared for his interview on 02.05.2017, while verifying his documents, the respondents noticed that that his date of birth had been wrongly recorded as 31.03.1991 in the applications submitted by him for both, the preliminary examination and the main examination, whereas his date of birth as recorded in his matriculation certificate was 30.03.1991. Upon detecting the said error in his date of birth, the petitioner was allowed to provisionally appear in the interview and was directed to submit an affidavit explaining the circumstances in which the mistake in his date of birth came to be recorded in his application forms. Accordingly, the petitioner submitted an affidavit alongwith an application on 16.05.2017. However, since the petitioner did not qualify his interview round, no further proceedings took place with regard to the change of his date of birth in his application forms for CSE 2016.

3. It emerges from the records that before the stage of appearing in the interview for the CSE 2016 had arrived on 02.05.2017, by the time the mistake in the petitioner's date of birth was detected by respondents, he had already applied for participating in the CSE 2017 pursuant to an advertisement dated 22.02.2017, issued by the respondent in this regard. For this purpose, the petitioner had submitted an application dated 12.03.2017, for sitting in the

preliminary examination, in which once again, he mentioned his date of birth as 31.03.1991, instead of 30.03.1991. After successfully clearing the preliminary examination for the CSE 2017, the petitioner was required to submit the application form for the main examination on 31.08.2017. Once again, the petitioner filled up his date of birth as 31.03.1991, in his application form for the main examination.

4. It is the petitioner's case that once having filled up his date of birth as 31.03.1991 in the application form for the preliminary examination, he had no option but to fill up the same date in the application form for the main examination as the respondent's system would not have accepted the latter form with any different date. He further claims that even otherwise, there was no prescribed modality available for change of date of birth in the application forms till the interview stage, at which point, the petitioner could effect the change in his date of birth by submitting an affidavit, as was done by him for the CSE 2016.

5. The result of the main examination for CSE 2017 was declared by respondent no.1/UPSC on 10.01.2018, whereafter vide letter dated 19.01.2018, the petitioner was called upon to appear for his interview, scheduled on 09.04.2018. At that stage, the concerned Under Secretary of the respondent no. 1/UPSC issued a letter dated 23.02.2018 to the petitioner requiring him to explain the difference in his date of birth as mentioned in the application forms, vis-a-vis his matriculation certificate. On the very same day, the petitioner sent a reply stating that he had acted bona fide and that he would get the error in his date of birth rectified at the time of his interview, by

furnishing an affidavit, as he had been required to do for the CSE 2016.

6. The aforesaid explanation offered by the petitioner was not found to be satisfactory and a show cause notice dated 21.03.2018 was issued to him asking him to explain why action should not be taken against him under Rule 14(5) of the Rules for the CSE 2017, for keeping silent about the error in his application forms till the same was pointed out by the respondent no. 1/UPSC vide letter dated 23.02.2018. In response to the show cause notice, the petitioner submitted a reply on 22.03.2018, which was again found to be unsatisfactory and finally an order dated 28.03.2018 was passed by the respondents, cancelling his candidature for the CSE 2017.

7. Aggrieved by the respondents' order dated 28.03.2018, the petitioner filed O.A. No. 1358/2018 before the Tribunal challenging the same. By an interim order dated 05.04.2018, the Tribunal directed the respondent no. 1/UPSC to allow the petitioner to appear in the interview/personality test scheduled to be held on 09.04.2018. After clearing the interview round, the petitioner was required to be medically examined on 10.04.2018. It emerges from the record that in the form for the medical examination as also in the attestation form, the petitioner had correctly mentioned his date of birth as 30.03.1991.

8. The final result for the CSE 2017 was declared on 27.04.2018, but the petitioner's result was withheld due to the pendency of the proceedings before the Tribunal. After completion of pleadings, the matter was heard and by the impugned order dated 10.07.2018, the Tribunal dismissed the petitioner's OA, by upholding the respondents'

decision to cancel his candidature for the CSE 2017 on the ground that the petitioner's mistake was not inadvertent, but a deliberate one since it is unfathomable as to how could he not know his own date of birth and that he had committed the same error of mentioning his incorrect date of birth on four different occasions. Aggrieved by the dismissal of his OA, the petitioner has approached this Court by filing the present petition.

9. Having set out the facts hereinabove, we may now refer to the rival submissions of the learned counsel for the parties. Ms. Jyoti Singh, learned Senior Advocate appearing for the petitioner, submitted that the Tribunal erred in holding that the petitioner's mistake was a deliberate one, without appreciating the fact that the error committed by him was inconsequential inasmuch as it would neither affect his eligibility for the CSE 2017, nor affect his date of superannuation in the event he is finally selected for appointment. She argued that the petitioner having derived no benefit whatsoever by incorrectly mentioning his date of birth, the Tribunal's conclusion that he had committed a wanton error, is wholly misconceived. Learned counsel further submitted that there is no rule or procedure prescribed by the respondents either for changing a candidate's date of birth on an application form or for filling up a different date of birth in separate application forms. Therefore, in view of the admitted position that in the CSE 2016, the respondents had permitted the petitioner to correct his date of birth on his submitting an affidavit at the stage of the interview, in the absence of any other prescribed modality, he was justified in expecting that the very same procedure would be adopted

by the respondent no.1/UPSC for changing his date of birth at the stage of the interview for the CSE 2017.

10. To buttress the aforesaid submission, Ms. Singh, Senior Advocate relied on two decisions of this Court in the case of ***Ajay Kumar Mishra v. Union of India and Ors.*** [W.P.(C) No. 11642/2016 decided on 23.12.2016] and ***Arkshit Kapoor v. Union of India and Ors.*** [W.P.(C) No.3721/2017 decided on 31.07.2017], wherein in similar circumstances, it was held that an inadvertent error in typing one's date of birth, from which no benefit can be derived, cannot be treated as a deliberate misrepresentation or suppression, and consequently, cannot be a ground to cancel a person's candidature.

11. On the other hand, Mr. Naresh Kaushik, learned counsel for the respondent no.1/UPSC contended that it was mandatory for all the candidates appearing in the CSE 2017, including the petitioner herein, to scrupulously follow the detailed instructions laid down by the UPSC for filling up the application forms for participating in the said examinations and in the case of any non-adherence, a candidate cannot be allowed to urge that his candidature should still be accepted. He further submitted that once it was found that the date of birth mentioned by the petitioner in his application forms was at variance with the date mentioned in his matriculation certificate, the respondents were justified in cancelling his candidature for the CSE 2017. He placed reliance on a decision of the High Court in ***Union Public Service Commission and Anr. v. Govt. of NCT of Delhi*** [W.P.(C) No. 10058/2009 decided on 25.01.2010] as also of the High Court of Calcutta in ***Dr. Anandamoy Ghosh v. Union of India & Ors.***

[W.P.C.T. No. 49/2012], in support of his contention that in a selection process for appointment to a public office, no deviation from the terms and conditions of the advertisement and rules can be allowed, and any such deviation would cause gross injustice to the other candidates.

12. Mr. Kaushik, learned counsel further submitted that the petitioner's mistake cannot be treated as a bona fide one, as is sought to be portrayed by the other side, since it was for the fourth time and not the first time that he had incorrectly entered his date of birth as 31.03.1991, instead of 30.03.1991, in the application forms for the Civil Services Examinations. He pointed out that except from the petitioner, no other candidate in the CSE 2016, has been permitted to seek change of his date of birth in the past two years as it appeared from the records are available with the respondents.

13. Having given our thoughtful consideration to the rival contentions of the parties, we have not been able to persuade ourselves to agree with the observation of the Tribunal that the error on the part of the petitioner in mentioning his incorrect date of birth in the application form for the CSE 2017, was deliberate inasmuch as he had committed the same error on four separate occasions. The Tribunal appears to have overlooked the circumstances in which the said error came to be recorded in the petitioner's application forms for the CSE 2017.

14. The sequence of events reveals that the variance in the petitioner's date of birth was first detected by the respondents on 02.05.2017, when he had appeared for the interview/personality test

for the CSE 2016. By that time, he had already filled up his application form for participating in the preliminary examination for the CSE 2017. Upon learning about the aforesaid mistake, the petitioner immediately took steps to get the same rectified. Since the respondents had not prescribed any procedure for rectifying an error in the candidate's date of birth, the petitioner approached the concerned Under Secretary of the respondent no. 1/UPSC, on whose advice, he submitted an affidavit explaining how the aforesaid mistake had crept into his application forms. Thereafter, when the petitioner qualified the preliminary examination, he was required to submit an application form for sitting in the main examination for the CSE 2017. At that stage, the petitioner was not in a position to submit the application form with his correct date of birth, since it was at variance with the date incorrectly recorded in the form for the preliminary examination and the system of the respondents would not accept any other date of birth. Thus, it appears that the petitioner had no option but to fill in his incorrect date of birth in the application form for the main examination, in order to enable him submit the same and appear for the said examination.

15. In the above facts and circumstances, we are unable to concur with the findings returned by the Tribunal that the aforesaid error was not inadvertent or that the petitioner had repeated the same on four different occasions. On the contrary, we find that once the petitioner was made aware of the mistake in his date of birth, he had thereafter mentioned his date of birth incorrectly only on one other occasion, i.e., at the time of submitting the application form for the main

examination in the CSE 2017, and that too only on account of the fact that he was not in a position to submit the said form by filling in his correct date of birth.

16. While there can be no doubt that it was incumbent upon the petitioner to fill in his correct particulars at every stage of the selection process, the question which has engaged us is whether every error committed by a candidate can be treated as a ground for canceling his candidature and that too at a stage when he has already cleared not only the preliminary examination, but also the main examination in a highly competitive examination like the Civil Services Examination.

17. While examining the issue at hand, a distinction also needs to be drawn between occurrence of inadvertent errors that do not result in the accrual of any undue benefits to the party making such an error, vis-a-vis material misrepresentations or suppressions by a party for deriving an unwarranted benefit, which aspect the Tribunal appears to have overlooked. In this regard, reliance may be placed upon the decision of the High Court in Ajay Kumar Mishra (supra), wherein while dealing with a situation in which the candidature of the petitioner therein for the National Defence Academy on account of erroneously entering his date of birth as 11.07.1998, instead of 10.07.1998, it was observed by a Division Bench as under:-

"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.

*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 WP(C) No. 11642/2016 9 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.*** (Emphasis added)

18. Reliance may also be placed upon a decision of a coordinate bench of this Court in **Arkshit Kapoor (supra)**, in which case a challenge was laid to the cancellation of the candidature of the petitioner therein for the National Defence Academy on account of his furnishing incorrect information about his date of birth. While affirming the decision in the case of **Ajay Kumar Mishra (supra)**, the Court had found that the petitioner before it stood nothing to gain by filling up his date of birth incorrectly as 07.09.1998, instead of 17.09.1998 in the application form and observed as under:-

“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 WP(C) 3721/2017 Page 10 birth, “Disciplinary Action” was warned. Disciplinary action is initiated when warranted and justified, and not for small aid

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.***

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 WP(C) 3721/2017 Page 14 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."* (emphasis added)

19. We may briefly deal with the decisions relied upon by the learned counsel for the respondent, which in our opinion are not at all applicable to the facts of the present case. In **Union Public Service Commission and Anr. vs. GNTCD (supra)**, a Coordinate Bench of this Court was faced with a situation in which the detailed application forms submitted by the respondents therein to the UPSC were rejected either for not annexing the requisite documents, or for annexing documents in the wrong format which omissions/errors cannot for obvious reasons, be treated as inconsequential in nature. Similarly, in

Dr. Anandamoy Ghosh (supra), a Division Bench of the High Court of Calcutta was faced with a completely different set of facts in which the omissions on the part of the petitioner therein in failing to mention his experience in the application form and not producing the requisite experience certificate in the format required by the Union Public Services Commission, could not be held to be inconsequential errors. In view of the admitted position in the instant case that the mistake on the part of the petitioner herein in mentioning his date of birth incorrectly has no bearing either on his eligibility for the CSE, 2017 or on the benefits liable to be derived by him if he ultimately clears examination and is selected for appointment, the said error wholly inconsequential and cannot be compared with the errors committed by the respondents in the captioned case cited on behalf of the learned CGSC.

20. It is an undisputed position that the petitioner herein had nothing to gain by filling up his date of birth incorrectly as 31.03.1991 instead of 30.03.1991, in the application forms for the CSE 2017. It is evident that the said error in his date of birth is wholly inconsequential particularly when the date of birth mentioned in his matriculation certificate is 30.03.1991. It is also an admitted position that the respondents had permitted the petitioner to carry out corrections in his date of birth for the CSE 2016 at the stage of the interview by submitting an affidavit. Thus, we find no reason to disbelieve the explanation offered by the petitioner that he was under a bona fide belief that the change in his date of birth for the CSE 2017 could only be effected at the stage of the interview/personality test, by submitting

the requisite affidavit. There appears nothing on the record that lends itself to the inference that the error made by the petitioner in mentioning his date of birth incorrectly, was, in any way deliberate or wanton.

21. In the light of the above discussion, we are of the view that the error on the part of the petitioner could not be treated as a misrepresentation or suppression of facts. We are of the considered opinion that a just and equitable approach needs to be adopted in the present case, especially in view of the fact the petitioner has already cleared the stages of the preliminary examination and the main examination and we are informed that he was permitted to appear in the interview/personality test for the CSE 2017. Moreover, in circumstances where the petitioner is an SC candidate and a qualified engineer from IIT, cancellation of his candidature at the final stage, would be a punitive action, completely disproportionate to bona-fide omission on his part.

22. For the aforementioned reasons, the impugned order dated 10.07.2018, passed by the Tribunal as also the respondents' decision dated 28.03.2018, cancelling the petitioner's candidature for the CSE 2017 cannot be sustained and are quashed and set aside. The respondents are directed to declare the petitioner's results for the CSE 2017 and, if found fit, process his application for selection in accordance with his merit in the said examination.

23. The writ petition is allowed on the aforementioned terms with no orders as to costs.

(REKHA PALLI)
JUDGE

(HIMA KOHLI)
JUDGE

SEPTEMBER 4th, 2018
ss/sr

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