

\$~39

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

Date of decision: 22.08.2019

+ W.P.(C) 9073/2019

SHUBHAM TUSHIR

..... Petitioner

Through Mr.Siddhartha Shankar Ray, Adv.
with Mr.Suryadeep Singh, Mr.Karan
Tarkar & Ms.Radha Tarkar, Adv.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Ms.Anju Gupta, Adv. with
Mr.Abhishek Choudhary, Adv. for R-
1 & 2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CM APPL. 37473/2019 (Exemption)

Allowed, subject to all just exceptions.

This application is, accordingly, disposed of.

W.P.(C) 9073/2019 & CM APPLN. 37472/2019

1. Vide the present petition, the petitioner seeks direction thereby directing the respondents to correct the date of birth of the Petitioner from 19.05.1994 to 09.05.1994 in its records. Consequently, direct the respondents to allow the Petitioner to take the Data Entry Speed Testing

(DEST)/Type Writing Test of the SSC Combined Higher Secondary Level (10+2) Exam-2017 scheduled for 03.09.2019 and not disqualify him on the basis of the mismatch in the date of birth.

2. The case of the petitioner is that in November 2017, vide Notification No. 3/3/2017-P&P-I, Respondent No. 2 notified the examination for recruitment to the posts of Lower Divisional Clerk/Junior Secretariat Assistant, Postal Assistant / Sorting Assistant and Data Entry Operator. The Examination was to be conducted in two stages, viz. (1) Tier-I (Computer Based Examination) from 04.03.2018 to 26.03.2018 and (2) Tier-II Examination (Descriptive Paper) on 08.07.2018. Thereafter, depending upon the results of the aforementioned written tests, the qualified candidates were to be called for a '*document verification*' exercise and a Data Entry Speed Testing (DEST)/Type Writing Test. The age limit for the test was 18-27 years [as on 01.08.2018 (i.e. candidates born not before 02.08.1991 and not later than 01.08.2000)]. The minimum eligibility was that the candidate must have passed the 12th Standard or equivalent examination from a recognized Board or University. Furthermore, the candidates were to apply online through the website <http://www.ssconline.nic.in>. The Petitioner, being an eligible candidate as per the conditions mentioned hereinabove, filled the

examination form on the aforementioned website of the Respondent No. 2. In February 2018, the Petitioner received his Admit Card for the Tier-I Written Test. However, in the said Test, the Petitioner noticed that his date of birth was mentioned as 19.05.1994 instead of 09.05.1994. The Petitioner thought the same would be a typographical error on part of the Respondents and thus, did not pay much heed to the same. Thereafter, the Petitioner undertook the Written Test - i.e. (1) Tier-I (Computer Based Examination) and cleared the same with extraordinary marks by securing 171 marks out of 200 in Tier-I. Thereafter, in July 2018, the Petitioner received the Admit Card for the Tier-II Written Test. In the said Admit Card, the date of birth of the petitioner was mentioned as 19.05.1994 instead of 09.05.1994. Accordingly, the Petitioner filed an application with the Respondent No.2 and stating therein, that an error could have occurred inadvertently while filling the online form and thus, requested that the same be corrected. However, there was no reply from the Respondent No. 2. Thereafter, the Petitioner undertook the 2nd Written Test - i.e. Tier-II Examination (Descriptive Paper) and cleared the same with extraordinary marks. The Petitioner secured 51 marks out of 100 in Tier-II Written Test. Accordingly, the Respondent No. 2 issued another Admit Card to the Petitioner and

informed that he has been found "*provisionally eligible*" for the Data Entry Speed Testing (DEST)/Type Writing Test on 03.09.2019. Further, it was informed that the Petitioner has to attend the '*document verification*' exercise on 18.08.2019. However, in the said Admit Card also, the date of birth of the Petitioner was mentioned as 19.05.1994 instead of 09.05.1994. Thus, on 18.08.2019 (i.e. the date of document verification), the Petitioner carried with himself a sworn Affidavit stating therein his correct date of birth. Further, the Petitioner also carried an original copy of his Passport and Pan Card and Class 10th certificate to produce before the Respondent No.2 during the '*document verification*' exercise. However, the Respondent No.2 refused to accept the said affidavit by stating his date of birth cannot be corrected without an order from an appropriate Court. Furthermore, the Respondent No.2 stated that the Petitioner would not be allowed to take the Data Entry Speed Testing (DEST)/Type Writing Test on 03.09.2019 in view of the mismatch in the date of birth. Thereafter, on 19.08.2019, the Petitioner prepared another affidavit and once again submitted the same with Respondent No.2 along with an application for correction of the date of birth. However, once again, the Respondent No. 2 refused to correct the date

of birth and stated that the same cannot be corrected in absence of an order from an appropriate Court.

3. Learned counsel appearing on behalf of the petitioner submits that if it is assumed that the Petitioner himself committed the error while filling the form, the Petitioner cannot be punished harshly for an inadvertent error which does not make him ineligible to take the exam. The Forms were filled in a cyber cafe during the midnight and the website of the Respondent No. 2 was under much stress, thus, the error is at worst bonafide and not intentional misrepresentation / suppression.

4. On the other hand, learned counsel appearing on behalf of the respondents submits that as per the notification dated 03.03.2017, the candidates must write their name, date of birth, father's name and mother's name strictly as given in the matriculation certificate otherwise their candidature may be cancelled at the time of document verification or as and when comes into the notice of the commission. It is further stated that the request for change/correction in any particulars in the Application Form, once submitted will not be entertained under any circumstances.

5. It is not in dispute that the Petitioner has cleared, both the Written Exams with extraordinary marks and thus, disqualifying him on the basis of

an immaterial error would be highly unjust, unlawful and against the principles of equity.

6. In the case of *Ajay Kumar Mishra v. Union Of India* [dated 23.12.2016 in WP (C) 11642/2016], this Court held 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.

.....
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."

7. The case in hand 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.

8. In the case of *Arkshit Kapoor vs. Union of India and Ors. [W.P. (C)*

No. 3721/2017 decided on 31.07.2017], this Court held 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 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 judgment 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 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."

9. It is not the case of the respondents that by filing wrong date of birth, the petitioner would get benefit out of it. However, the date of birth as

19.05.1994 instead of 09.05.1994 is inadvertently filled in online form. Thus, the petitioner who is at the present age, starving for the career cannot be punished for this minor error occurred on the part of the petitioner.

10. Accordingly, I hereby allow the present petition directing the respondent no.2 to correct the date of birth of the petitioner as 09.05.1994 instead of 19.05.1994 in its record and allow the petitioner to appear in the Data Entry Speed Testing (DEST)/Type Writing Test of the SSC Combined Higher Secondary Level (10+2) Exam-2017 to be held on 03.09.2019 and if eligible thereafter to allow the petitioner to participate in the selection process.

11. In view of above directions, the petition is accordingly allowed and disposed of.

12. Order *dasti* under the signatures of the Court Master.

13. Pending application stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 23, 2019
ab