

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

% **Date of decision: 5th August, 2021.**

+ **W.P.(C) 6989/2021**

VIDYANAND

..... Petitioner

Through: Mr. Shrutanjaya Bharadwaj,
Advocate.

Versus

CENTRAL AIRMEN SELECTION BOARD & ORS.

..... Respondents

Through: Mr. Vijay Joshi and Mr. Amit Gupta,
Advocates with Sargent Mr. D. N.
Srivastava.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

1. The petitioner appeared in the online test on 14th July, 2021 for selection to Group 'X' and Group 'Y' posts of 'Airmen' in the respondents Indian Air Force. He successfully completed the examination for Group 'X' posts but while he was sitting for the examination for Group 'Y' posts, he was ordered to leave by the officials present at the examination centre. The petitioner claims that the reason why he was removed from examination of Group 'Y' posts was that two photographs on the petitioner's admit card did not match. Aggrieved therefrom, the petitioner has filed the present petition for grant of a fresh opportunity to take the online test for Group 'Y' posts for the same batch.

2. The petition came up before this bench on 30th July, 2021. On the basis of the contention of the counsel for the petitioner that both the photographs on the admit card of the petitioner were the same, the counsel for the respondent was asked to take instructions.

3. The counsel for the respondents has obtained instructions and he appears along with Mr. D. N. Srivastava, Sargent. The counsel for the respondent has drawn our attention to Clause 4(c) of the advertisement dated 22nd January, 2021, (Annexure P-3 of the petition), which is set out below:

*(c) Passport size recent colour photograph (taken not before December 2020) of size 10 KB to 50 KB (front portrait in light background without head gear except for Sikhs). **The photograph is to be taken with candidate holding a black slate in front of his chest with his name and date of photograph taken, clearly written on it with white chalk in capital letters.***

4. The counsel for the respondents contends; (i) that in terms of the aforesaid Clause, the petitioner failed to upload a photograph with the petitioner holding a black slate in front of his chest with his name and date of photograph; (ii) that Clause 4(c) was a mandatory condition and since the petitioner did not comply with the same he was disqualified; (iii) that several other candidates who sat for this examination have been disqualified on account of non-adherence to mandatory conditions of the advertisement and therefore no exception can be made in the case of the petitioner; (iv) that the exam was conducted for lakhs of students all over India and it cannot be held again only for the petitioner on account of his lapse; (v) that the petitioner is only 18 years old and he would have opportunities to appear for

the said exam again. The counsel for the respondents relied upon the Supreme Court judgment in *State of Tamil Nadu and Others vs. G. Hemalathaa and Another* 2019 SCC OnLine 1113, which has been followed by the Division Bench of this Court in its judgment dated 13th September, 2019 in LPA 591/2019 titled *Parvesh Vs. Union of India*.

5. The counsel for the petitioner contends that the respondents never took the objection with reference to condition 4(c) above. As per the counsel for the petitioner, the only objection taken by the respondents was that the two photographs of the petitioner attached on the admit card did not match. Had there been objection with regard to the photograph uploaded by the petitioner, the respondents would have conveyed the same to the petitioner since the said photograph was uploaded in January, 2021. It is further contended that the sole purpose of uploading a photograph and then attaching the same to the admit card was to prevent impersonation. But since respondents had already required the petitioner to upload his Aadhaar, there could not be any case of impersonation. The respondents had not given any reasons for disqualification of the petitioner and his disqualification on account of non-compliance with condition 4(c) is being taken for the first time now. The counsel for the petitioner contends that the condition 4(c) in the advertisement was directory and not mandatory and therefore even if the petitioner had not strictly followed the same, it cannot be held against him. He relies upon judgment of Kerala High Court in *Satheesh Kumar T.T. & others Vs. Kerala Public Service Commission & others* 2014 SCC OnLine 20212.

6. In our view, there is no basis for the petitioner to contend that the condition 4(c) above was not mandatory. There is nothing in the advertisement or anywhere else to suggest that the aforesaid condition was not to be strictly complied with by the candidates applying for the post. As a candidate, applying for a sensitive post such as Airman in the Indian Air Force, the petitioner should have taken care to strictly follow and comply with the various terms and conditions as prescribed in the advertisement. It is not for the petitioner to decide for himself if condition was mandatory or not. The petitioner ought to have been aware of the terms and conditions of the advertisement pursuant to which he applied for the job of Airman. Having applied for the post, on the basis of terms and conditions prescribed in the advertisement, the petitioner cannot question or challenge the said conditions later, after he has been disqualified on account of non-compliance thereof.

7. There was no basis for the petitioner to assume that his disqualification was on account of difference between the two photographs of the admit card. There was nothing communicated by the respondents that suggested so. No merit is found in the contention of the petitioner that the respondents have not given any reasons as to why the petitioner was disqualified. In a competitive exam, there are lakhs of candidates who apply and many of them would be rejected for non-compliance with the prescribed conditions, the respondents cannot be expected to individually communicate each of the candidates the reasons of their disqualification/rejection.

8. The Supreme Court in *G. Hemalathaa* (supra) while dealing with an examination conducted by Tamil Nadu Public Service Commission, where

the candidate in violation of the conditions underlined the answer sheet with pencil, observed as under:

“8. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission.”

9. The Judgment in **G. Hemalathaa** (supra) has been followed by this Court in **Parvesh** (supra). The petitioner in **Parvesh** (supra) was an applicant for Staff Selection Commission examination and had made a mistake in filling the form and sought correction thereof. The contention of the petitioner that the instructions for filling the form were not mandatory in nature and are merely directory in nature was rejected by observing as under:

“7. Much has been argued by the counsel for the appellant that the instructions, which are at Annexure P-3, are not mandatory in nature and are merely directory in nature. We cannot accept this contention, especially looking to the clauses of the instructions, as stated hereinabove. No changes in a filled-up form are permitted. If such changes are allowed, there may be more applicants who may seek changes in filled-up forms every now and then. Alterations or amendments in completed forms by

applicants cannot be allowed as a regular feature. The applicants are not illiterate persons. These applicants are in search of Government employment, such as Lower Division Clerk, Junior Secretariat Assistant, Postal Assistant, Data Entry Operators etc. The public advertisement, regarding these vacancies, was dated 18th November, 2017. When an applicant applies for such public posts, he must be careful in filling up the forms. Once the form is filled up, the candidates know, in advance, that no alteration shall be permitted. This alteration prayed for by this appellant, from 'Hindi Typing Test' to 'English Typing Test', is not permissible at this stage."

10. The judgment in **Satheesh Kumar T.T.** (supra) relied upon by the counsel for the petitioner was in the context of appointment for the post of 'mazdoor' as opposed to the post of 'Airmen' involved in the case at hand. Even otherwise, in light of the aforesaid judgments of the Supreme Court and Coordinate Bench of this Court, no reliance can be placed on the same.

11. No merit is found in the petition.

Dismissed.

AMIT BANSAL, J.

RAJIV SAHAI ENDLAW, J.

AUGUST 5, 2021

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