



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

% **Date of order: 4th August, 2023**

+ **W.P.(C) 8653/2022 and CM APPL. No. 26061/2022**

PIYUSH VERMA Petitioner

Through: **Mr. Sachin Chowhan, Advocate**

versus

FOOD CORPORATION OF INDIA & ORS. Respondents

Through: **Ms. Richa Kapoor, Mr. Prakhar Dixit
and Ms. Eesha Sharma, Advocates**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition under Article 226 and 227 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

“a. To Issue a writ in the nature of Mandamus or any other appropriate writ and to further direct the respondent that notice dated 28.1.2022 in respect of petitioner be withdrawn, order dated 7.3.2022 whereby the representation of petitioner made against the notice dated 28.1.2022 has been rejected and order dated 18.5.2022 whereby the representation of petitioner dated 14.3.2022 has been rejected be quashed and further the candidature of petitioner to the post of Assistant Grade-III(Depot) be restored and petitioner be subjected for document verification and petitioner be given



appointment to the post of Assistant Grade-III(Depot) as per merit obtained in present selection process with all consequential benefit including seniority & promotion and pay & allowances and/or

b) Pass such or further Order(s)/Direction(s), which this Hon'ble Court may deem fit and proper in view of the facts and circumstances of the present case to meet the ends of justice."

2. The record before this Court reveals the following set of facts which has led to the filing of the instant case:

a. The respondent no. 1 invited applications for the post of Assistant Grade-III (Depot) vide Advt. No. 01/2019-FCI Category III published in the Employment news dated 23rd February 2019. The petitioner partook in the said recruitment process and appeared in the process as a candidate in the Category of Other Backwards Classes (hereinafter "OBC").

b. The petitioner appeared in the pre-exam of the selection process held in the first week of July, 2019 and cleared the same. Thereafter, he appeared for the main examination held on 27th July 2019 and secured 66.25 marks out of 120 in the written test. Upon securing qualifying marks, the petitioner was provisionally selected and placed in the waiting list.

c. Subsequently, on 17th December 2021 and 3rd January 2022, the respondent sent Call Letter to the candidates calling upon them for verification of documents for the selection process.



d. On 28th January 2022, the respondent issued a notice dated 28th January 2022, thereby cancelling the candidature of the petitioner for the post of Assistant Grade-III (Depot).

e. The petitioner upon receiving such information, made representation to the respondent vide email on 26th February 2022 against the cancellation of his candidature. To the said representation, the respondent replied on 7th March 2022 stating therein the reason for cancellation of the candidature of the petitioner being non-appearance for verification as well as non-submission of documents for verification and thereby, dismissing the representation so made in that regard.

f. Thereafter, the petitioner made another detailed representation against the reply dated 14th March 2022 against the notices issued by the respondent on 7th March 2022 and 28th January 2022. Ultimately, the respondents passed the order dated 18th May 2022 rejecting the representation of the petitioner against the cancellation of his candidature, reiterating the reason of absence from document verification conducted by the respondents.

g. Aggrieved by the aforementioned, the petitioner is now before this Court seeking the reliefs as stated above *inter alia* praying for setting aside/quashing of the orders/notices/replies cancelling the candidature of the petitioner for the post of Assistant Grade-III (Depot) and rejecting his representations made to that effect.



3. The learned counsel appearing on behalf of the petitioner submitted that all the relevant details and particulars such as name, address, phone number and email address were duly furnished by the petitioner at the time of filling up the application form at the time of selection process. The petitioner had provided his email address, i.e., 'piyush_020690@yahoo.com' and his phone no. '8285787045' to the respondent.

4. It is submitted that the respondent had been communicating with the petitioner for all necessary information at the time of selection process through SMS, phone and email, however, the communication regarding document verification was made only through email. There was no SMS or letter sent to the petitioner when the respondent decided to call upon the petitioner for document verification or when the candidature of the petitioner was cancelled.

5. It is further submitted that at the time of advertising the vacancy for the post of Assistant Grade-III (Depot), the general condition no. 12 of the Advertisement advised the candidates that the personal email ID and mobile no. should be kept active till the completion of recruitment process as the same may be used for future correspondence. Yet, the respondent failed to communicate the call for document verification through SMS, which was otherwise being used as a mode of communication, such as at the time of intimation regarding downloading of the admit cards for the pre-exams and the main examinations. It is submitted that the respondent was under



obligation to furnish the communication and intimation regarding document verification through both the means, i.e., SMS/mobile number as well as email ID.

6. It is submitted that the emails of respondent dated 1st December 2021, 17th December 2021 and 3rd January 2022 sent to petitioner on his email address, i.e., piyush_020690@yahoo.com cannot be considered to be a fair opportunity provided to the petitioner for document verification as inadvertently aforesaid email was never checked by petitioner during that time. Moreover, even the respondent never intimated the petitioner regarding document verification through SMS. Thus, making the reasoning of respondent for cancelling the candidature of petitioner for the post of Assistant Grade-III (Depot) wrong, illegal and arbitrary.

7. The learned counsel submitted that the waiting list panel for the post of Assistant Grade-III in selection process was declared by respondent in the month of December, 2019 and despite more than 2 years having been passed, the waiting list panel is operating and has not yet been exhausted. It is also submitted that after the release of the panel for the waiting list, the Covid-19 pandemic hit the world and the petitioner also lost his father in the first wave of the pandemic. It is submitted that the petitioner was not in a state to check the updates from the respondent. It is submitted that the absence of the petitioner was neither intentional nor deliberate and needs to be condoned by providing the petitioner a fair opportunity to provide his documents for verification.



8. The learned counsel submitted that the notice dated 28th January 2022, reply dated 7th March 2022 and 18th May 2022 are liable to be quashed and set aside. It is submitted that the said orders are non-speaking and mechanical and have been passed arbitrarily without affording any opportunity to be heard. Further, it is submitted that the respondent did not deal with the contents of the representation or the pleas and claims made therein. Hence, the orders are liable to be set aside.

9. It is submitted that the petitioner has been denied consideration and appointment on a hyper-technical ground without appreciating his merits. It is also submitted that no prejudice would be caused to respondent if the petitioner is given a fair opportunity for furnishing his document and is appointed as per merit obtained in the selection process.

10. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and the contentions raised therein and submitted that the petitioner has approached this Court with unclean hands by wilfully concealing facts. It is submitted that there is no role of respondents no. 2, 3 and 4 and they have been impleaded maliciously.

11. On the objections raised on behalf of the petitioner, it is submitted that the petitioner was duly informed and intimated to appear before respondent no. 1 for verification of documents through SMS on 1st December 2021, which was duly delivered to the mobile number provided by the petitioner. Further, the intimation for document verification was sent by the respondent



no. 1 on 17th December 2021 and 3rd January 2022 through email on the email address provided by the petitioner, i.e., piyush_020690@yahoo.com.

12. It is submitted that the petitioner was given three opportunities to appear before the respondent no. 1 for verification of his document, however, the petitioner failed to appear or even furnish any intimation regarding his non-appearance. Therefore, the candidature of the petitioner was cancelled due to lapses on his part.

13. It is also submitted that as far as appointment of petitioner on merit is concerned, he had admittedly scored 66.25 marks and was placed at SI. No. 311 under the OBC Category. Whereas, the last candidate who was selected under OBC Category, who scored 66.50, was placed at SI. No. 289. Without prejudice, even otherwise, if the petitioner be allowed to appear for document verification, he would have not been selected on merits for the post of Assistant Grade-III (Depot) under the OBC Quota. It is submitted that the entire recruitment process concluded on 9th May 2022 and thus it would not be possible for the respondent no. 1 to give petitioner any opportunity to appear and have his verification done.

14. Therefore, it is submitted that the instant petition is devoid of any merit and hence is liable to be dismissed.

15. Heard the learned counsel for the parties and perused the record.

16. The main contention raised on behalf of the petitioner is that an obligation was casted upon the respondent to communicate with the candidates through email as well as SMS during the selection process. Once



such an obligation was casted by the specific instruction given in the Advertisement that communication related to selection process for the post so advertised may be made by email and SMS, the candidature of the petitioner could not have been cancelled merely on the ground that the petitioner did not respond to intimation regarding document verification which was made only through email.

17. To address the principal contention, it is pertinent to reproduce the contents of the Advertisement made for the post in question. The relevant portion of the Advertisement bearing Advt. No. 1/2019-FCI Category-III dated 23rd February 2019, i.e., condition no. 12 of the General Information/Instruction, read as follows:

“Candidates in their own interest are advised to have and provide a valid personal email ID and mobile no. which should be kept active till the completion of this Recruitment Process as it may be used for future correspondence. FCI may send intimation to download call letters for Examination etc. through the registered e-mail ID. In case a candidate does not have a valid personal e-mail ID, he/she should create his/her new e-mail ID and mobile no. before applying on-line and must maintain that email account and mobile number.”

18. A perusal of the contents in the Advertisement makes it clear that the intention of such condition was to intimate the candidates, partaking in the process of selection against the vacancy for the posts declared in the Advertisement, that they may, in their own interest, make themselves available on the email and phone number that may be registered by them during the process of registration, so that any communication made



regarding the selection process may be made without any hindrances, delays or lapses. It is evident that the intention and purpose for including such a condition in the Advertisement inviting applications for the post of Assistant Grade-III (Depot) was merely to make the process of selection less tedious or complicated so that the candidates could be reached out easily.

19. In the said Advertisement, the words used '*Candidates in their own interest are advised*' reflects the advisory nature of the general conditions issued for the benefit of the candidates. There is nothing in the contents of the Advertisement which shows that the stipulation regarding email address and phone number was absolute. Moreover, the bare language of the Advertisement can be read to understand that both email address and phone numbers could have been used as alternative modes of communication. There is no absolute obligation on the part of the respondent that can be made out from the language used in the Advertisement regarding making communications through both the modes of communication.

20. Further, it seems that the petitioner has selectively read and interpreted the contents of the Advertisement as per his convenience, since it also includes the statement that '*FCI may send intimation to download call letters for Examination etc. through the registered e-mail ID*', which leaves no doubt to this effect that any communication regarding Call Letters was to be made through the registered email address of the respondent to the email IDs of the candidates.

21. Therefore, at the first instance it is evident that there is nothing in the



Advertisement issued by the respondent that shows that there was an obligation or any compulsion upon the respondent to communicate through both email and phone number while carrying out the selection process.

22. The petitioner has argued that the respondent did not afford proper opportunity to the petitioner before cancellation of his candidature. For adjudication of this ground, the relevant communications which flowed from the respondent to the petitioner are reproduced and analysed hereinafter.

23. At the first instance, the petitioner came to know about the cancellation of his candidature by the passing of the Notice bearing No. E.VI/37(2)/Cat.III/Waitlist-II/2021/NZ dated 28th January 2022. The subject matter of the Notice stated that the candidature of the candidates named in the list was cancelled due to non-appearance despite ample opportunities. The relevant portion of the Notice is reproduced hereunder:

“In reference to the Wait List-II Candidates shortlisted and called for Document Verification against Advt. No. 01/2019 FCI Category-III, (list already uploaded on the official website www.fci.gov.in), the candidature of the following candidates for the post of Assistant Grade-III (Depot) have been cancelled, as they did not appear for Document Verification despite being provided three opportunities:

<i>S. No.</i>	<i>POST</i>	<i>ROLL NO</i>	<i>CANDIDATE NAME</i>	<i>Status</i>
*	*	*	*	*



371	AG-III (DEPOT)	1411122702	PIYUSH VERMA	Candidature cancelled
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24. The notice dated 28th January 2022 was issued notifying the names of the candidates whose candidatures for the post of Assistant Grade -III was cancelled pursuant to their non-appearance after being afforded three opportunities to appear and have their documents verified.

25. Admittedly, prior to the passing of the aforesaid notice, the respondent had made communications via email to the petitioner, and all candidates placed similarly, asking him to appear for verification of documents. The petitioner, upon having gained the knowledge that his candidature was cancelled, made detailed representations to the respondents on 26th February 2022 and 19th March 2022. To the representation dated 26th February 2022, the respondent made the following reply vide communication No. E-VI/21(1)/Complaints/2021/NZ/30 dated 7th March 2022:

“In reference to the subject cited above, kindly refer to your letter dated: 26.02.2022 vide which you have requested to issue a new date for Document Verification. In this regard, the Document Verification for the post of Assistant Grade -III (Depot) against Advt. No. 01/2019 FCI Category-III on 17.12.2021 and 03.01.2022 with the 3rd and last opportunity on 11.01.2022. Since you did not appear for the Document Verification on any of the dates allotted allowed to you; therefore, your candidature has been already cancelled by this office vide Notice dated; 28.01.2021 (S No.-371) uploaded on the FCI website.”

26. Further, in its reply bearing No. E-VI/21(1)/Complaints/2021/NZ/80



dated 18th May 2022 to the representation of the petitioner dated 19th March 2022, the respondent stated as under:

“In reference to the subject cited above, kindly refer to your representation dated: 19.03.2022, In this regard, it is to reiterate that as a result of your absence from document verification conducted by this office on 17.12.2021 and 03.01.2022 and last opportunity on 11.01.2022. Your candidature has been already cancelled by this office vide Notice dated: 28.01.2021 (S.No.-371) uploaded on the FCI website. Further, it is not possible to restore the order dated: 28.01.2022 and call again for Document Verification.”

27. It has been repeatedly stated by the respondent that several opportunities were given to the candidates on 17th December 2021, 3rd January 2022 and 11th January 2022. The existence and exchange of such email communications has not been denied by the petitioner. He merely made the contention that the same were missed by him due to inadvertence.

28. The petitioner has appended the email correspondence, requiring appearance for verification of documents, made prior to the notice of cancellation of candidature. The relevant portion of the email communication dated 1st December 2021 is reproduced hereunder:

“Dear Candidate,

Name : PIYUSH VERMA

Registration No.: 4491312

Roll No. : 1411122702

Post : ASSISTANT GRADE-III (DEPOT)

Date of Documents Verification: 17-12-21



This has reference to you Application for the post of Assistant Grade-III (Depot) in Food Corporation of India. The result of online examination held on 27.07.2019 is available on FCI website.

Please download Call letter for Documents Verification <http://fci.gov.in> Call letter will not be dispatched by post separately.

Please note:

- 1. This email is not a Call letter. Please note that without Call letter you will not be allowed to appear.*
- 2. You are required to comply with the instructions given in the Call letter.”*

29. The aforesaid email was the first communication and intimation calling upon the petitioner to furnish his documents for verification. The date for the process of document verification was also fixed as 17th December 2021 and was expressly stated in the email correspondence. Thereafter, on the date as fixed for document verification, when the petitioner did not appear, the following communication was sent:

“Dear Candidate,

With reference, to your application against Advt. No. 01/2019-FCI category III published in Employment News dated 23.02.2019 and based on the WAIT LIST, wherein you were provisionally selected for the Post of Assistant Grade-III (Depot) and therefore called for Document Verification scheduled on 17.12.2021 at Food Corporation of India, Zonal Office (North), A-2A-2B, Sector-24, Noida, Uttar Pradesh-201301; however, you have failed to appear for the aforesaid Document Verification process on 17.12.2021.



Now, it has been decided by the Competent Authority to give 2nd opportunity to you for Document Verification. Accordingly, you are hereby directed to appear for Document Verification at Food Corporation of India, Zonal Office (North), A-2A-2B, Sector-24, Sector-4, Noida, Uttar Pradesh-201301 at 09:00 AM on 03.01.2022. Candidates not reporting on the date mentioned above will not be allowed to appear for the process of Document Verification.

The original Call Letter can be downloaded from the FCI website at www.fci.gov.in under Current Recruitment Section for Category III Recruitment and the same should invariably be carried by you along with the other requisite documents as specified in the Call Letter at the time of Document Verification. The instructions/terms & conditions mentioned in the original Call Letter shall remain unchanged and are to be strictly complied with except date and time of Document Verification. You will not be permitted to appear for the process of Document verification in case you do not bring the required documents. If, at any stage, it is found that you do not fulfil any of the conditions laid down in the advertisement for the Post, your candidature will be cancelled and no appeal against any such cancellation will be entertained at any stage.

The Call letter for Document Verification for the above mentioned Post does not confer any right on you for employment.

The decision of the Competent Authority of FCI in this regard shall be final and binding upon you. Any request for change in date/time for Document Verification will not be entertained.

This letter is being sent to the e-mail ID registered by you at the time of registration. Canvassing in any



form, or any attempt to influence the Corporation in any manner would result in disqualification and rejection of your candidature immediately. ...”

30. The above communication unequivocally stated that due to non-appearance on the date fixed for document verification, the petitioner was given 2nd opportunity. The communication was duly made on the same day when the petitioner failed to appear, granting another opportunity to appear on 3rd January 2022. It also expressly noted that the communication was sent to the email address registered by the petitioner at the time of registration for the selection process. It was also made clear in the said communication that the candidates who fail to appear on the subsequent date fixed for document verification, would not be allowed to, thereafter, appear for the process of document verification.

31. Thereafter, again due to non-appearance, the respondent no. 1 sent an email to the petitioner on 3rd January 2022 which stated as under:

“Dear Candidate,

With reference, to your application against Advt. No. 01/2019-FCI category III published in Employment News dated 23.02.2019 and based on the WAIT LIST, wherein you were provisionally selected for the Post of Assistant Grade-III (Depot) and therefore called for Document Verification scheduled on 17.12.2021 and 03.01.2022 at Food Corporation of India, Zonal Office (North), A-2A-2B, Sector-24, Noida, Uttar Pradesh-201301; however, you have failed to appear for the aforesaid Document Verification process on 17.12.2021 and 03.01.2022.

Now, it has been decided by the Competent Authority to give 3rd and last opportunity to you for



Document Verification. Accordingly, you are hereby directed to appear for Document Verification at Food Corporation of India, Zonal Office (North), A-2A-2B, Sector-24, Sector-4, Noida, Uttar Pradesh-201301 at 09:00 AM on 11.01.2022. the candidature of the candidates not reporting for DV on the date mentioned above is liable to be cancelled without giving any further notice.

The original Call Letter can be downloaded from the FCI website at www.fci.gov.in under Current Recruitment Section for Category III Recruitment and the same should invariably be carried by you along with the other requisite documents as specified in the Call Letter at the time of Document Verification. The instructions/terms & conditions mentioned in the original Call Letter shall remain unchanged and are to be strictly complied with except date and time of Document Verification. You will not be permitted to appear for the process of Document verification in case you do not bring the required documents. If, at any stage, it is found that you do not fulfil any of the conditions laid down in the advertisement for the Post, your candidature will be cancelled and no appeal against any such cancellation will be entertained at any stage.

The Call letter for Document Verification for the above mentioned Post does not confer any right on you for employment.

The decision of the Competent Authority of FCI in this regard shall be final and binding upon you. Any request for change in date/time for Document Verification will not be entertained.

This letter is being sent to the e-mail ID registered by you at the time of registration. Canvassing in any form, or any attempt to influence the Corporation in any



manner would result in disqualification and rejection of your candidature immediately. ...”

32. The last and final opportunity came to the petitioner by way of the correspondence reproduced above, however, admittedly despite the ultimatum, the petitioner failed to appear for the document verification.

33. The finality and strictness of the deadline is reflected in the correspondence dated 3rd January 2022. Once the 3rd and last opportunity was granted to the petitioner, which clearly stated that failure to appear on the last chance would lead to cancellation of candidature, there is nothing left for the petitioner to say or show that fair and reasonable opportunity was not afforded to him before cancellation of his candidature. The respondent no. 1 sent the email intimation on the registered email address of the petitioner. Thereafter, the failure to be updated, to follow up with the communication and to appear before the authority for the completion of selection process on three occasions is nothing but gross negligence on the part of the petitioner. The petitioner cannot bypass the selection process by way of filing the instant petition after having been truly negligent and ignorant.

34. In view of the aforesaid, this Court is of the considered view that at the first instance, there was no obligation on the part of the respondent to communicate to the petitioner through both the modes of communication, i.e., email and phone number. There is no merit in the argument advanced on behalf of the petitioner to this effect since there is nothing in the contents of the notified Advertisement to sustain the contention made by the petitioner.



Regardless of the same, the petitioner was being communicated through the registered email address furnished by him at the time of registration for the recruitment process.

35. Secondly, there is nothing in the record to show that fair, reasonable and just opportunity was not afforded to the petitioner. The email communications by the respondent no. 1 to the petitioner, undisputedly, were made to the petitioner timely and duly, not once but thrice. There was sufficient opportunity afforded to the petitioner to take part in the requisite process, yet he failed to be diligent and complete the process of selection.

36. Therefore, for the reasons stated above and considering the facts, circumstances, the arguments advanced during the course of hearing, the contentions made in the pleadings as well as the communications reproduced and addressed in the foregoing paragraphs, this Court is not inclined to grant any relief which has been sought by the petitioner.

37. Accordingly, the instant petition is dismissed for being completely devoid of merit, along with the pending applications.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 4, 2023
SV/MS

Click here to check corrigendum, if any