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

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Judgment delivered on: 15.02.2023

+ **W.P.(C) 11660/2022 & CM No.34620/2022(for stay)**

NEERAJ SHARMA

..... Petitioner

versus

UOI & ANR.

.....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Amit Raghav with Ms.Seema Dolo,
Advocates.

For the Respondent: Mr. Anurag Ahluwalia, CGSC with
Mr. Kaushal Jeet Kait, GP & Mr. Jatin
Yadav, Advocates

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks quashing of the result dated 15.07.2022 to the extent that he has been declared failed in document verification examination by the respondent no.2 and also seeks setting aside of the cancellation of his candidature for recruitment in the Indian Coast

Guard 02/2022 batch as Navik (GD).

2. Petitioner applied to the post for being selected as Navik (General Duty) pursuant to an advertisement (undated) issued by the respondents with regard to recruitment *inter alia* as Navik (General Duty) wherein the applications were to be accepted commencing from 4th January, 2022 to 14th January, 2022.

3. The advertisement in paragraph 7 *inter alia* stipulated that applications would be accepted 'Online only'. Paragraph 7 also prescribed the documents that had to be uploaded along with the application.

4. The documents stipulated in the application were segregated into five categories i.e. (i) compulsory documents to be uploaded by all candidates during online application; (ii) additional documents to be uploaded by Navik (GD) candidates only during online application; (iii) additional documents to be uploaded by Yantrik (mechanical, Electrical and Electronics) candidates only during online application; (iv) documents to be uploaded if shortlisted for Stage II which was further sub-categorized into documents to be uploaded by (aa) all candidates; (ab) Navik (GD) candidates; and, (ac) Yantrik candidates; and, (v) documents to be uploaded by the candidates if shortlisted for Stage II.

5. The advertisement further stipulated the selection procedure

which *inter alia* provided that selection of recruits would be based on All India order of merit on their performance in Stage I, II, III and IV and the number of vacancies available for the post. It also stipulated that clearing all Stages I, II, III, IV and satisfactory performance in training was compulsory for recruitment in the Indian Coast Guard.

6. The Stages stipulated in the advertisement were provided as Stage I – Written Examination, Stage II involved physical fitness test, document verification and initial medicals examination, Stage III stipulated document verification, final medicals at INS Chilka, submission of original document, police verification and other associated forms and Stage IV involved training at INS Chilka.

7. Candidates clearing Stage I would progress to Stage II and so on depending on the number of vacancies available and ratio decided by the Indian Coast Guard.

8. Petitioner cleared Stage I, i.e., written examination and progressed on to Stage II. In Stage II, he also cleared the physical fitness test. However, at the stage of document verification he was disqualified and his candidature was rejected. The reason given for his disqualification is as under:-

***“NOT SHORTLISTED FOR STAGE-III FAILED IN
STAGE-II DOCUMENT VERIFICATION***

As you are not a bonafide candidate because your

application was with false information and did not match with information as per documents uploaded in application and was in contravention of Uploaded 10th Mark sheet in place of Photo ID Proof. Fail in document verification as per 'para 6(b)(ii) of the advertisement' and 'para 14 note (xxi)(xxix) & (xxv) of Appendix-A of E-admit card. "

9. Petitioner was disqualified and was not shortlisted for Stage III on the ground that he had uploaded a 10th Mark Sheet in place of Photo ID proof.

10. Learned counsel for the petitioner contends that the respondents failed to comply with principles of natural justice and also failed to give an opportunity to the petitioner to rectify the defect in the online application form. She submits that petitioner did not have wherewithal to fill up the application form online on his own and as such approached a Cyber Cafe for the purposes of uploading the form.

11. She submits that on account of an error he uploaded his 10th class Mark Sheet in place of the Aadhar Card as was required in the advertisement.

12. She further submits that as per the application form in case of a discrepancy, the respondents were obliged to inform the applicant about the shortcomings and give an opportunity to the applicant to rectify the error. She submits that opportunity was granted to other

candidates who uploaded incorrect documents to upload correct documents. However, no such opportunity was granted to the appellant. She further submits that appellant had nothing to gain by uploading an incorrect document as the appellant was otherwise eligible for applying for the said post.

13. *Per contra*, learned counsel for the respondent contends that the application form at several places clearly indicates that the candidates have to be careful in filling up of the application form and in uploading the documents and in case of any discrepancy, incorrect statement or false statement, the candidature would be liable to be cancelled. He submits that this was clearly spelt out and informed to the candidates in the advertisement and the application form itself and as the petitioner had admittedly uploaded an incorrect document, the candidature was liable to be rejected and has rightly been cancelled.

14. Learned counsel for the respondents further contends that the reliance placed by learned counsel for the petitioner on the FAQs (Frequently Asked Question) to contend that respondents were under an obligation to inform the candidate about any discrepancy, is misplaced as the FAQs did not form part of the application and in any case will not override the specific stipulation of the application.

15. Insofar as the contention of learned counsel for the petitioner with regard to informing other candidates about discrepancy in their application forms is concerned, it is admitted by the respondents that

such information was given to some candidates and an opportunity was given to upload the correct document. Learned counsel submits that even if some candidates were put to notice, the same would not make any difference for the reason that the application form was very clear and explicit.

16. Reference may be had to the terms and conditions of the application form. The application form particularly in Stage II sub-para 2 with regard to document verification reads as under:-

“(ii) Document Verification (Provisionally Pass/Fail). All the information provided in the online application has to match with all the original documents like grade X/XII/ Diploma mark sheet/photo Identity card/caste certificate/individual subject and aggregate marks. Any inconsistency in all the documents and application with respect to “Name, Date of birth, Parent’s name, Percentage of marks, Validity of documents, Caste certificate details etc.” will lead to failure in document verification and the candidature will be cancelled. The date of issue of all documents has to be the closing date of application or any date prior to closing date of application. The validity of all the uploaded documents has to be at least up to 31 Oct 22. In case of any mismatch of information provided in the application form, document uploaded (at online application Stage-I and II) and original documents produced for physical verification at Stage-II then the candidature will be cancelled. Any false declaration in the online application will lead to cancellation of candidature. Common reasons for rejection during Document Verification can be checked at

<https://joinindiancoastguard.cdac.in/cgept/assets/img/downloads/doc/Reasonfor Rejection.pdf>

17. The application form with regard to document verification stipulates that the date of issue of all documents has to be the closing date of the application or any date prior to closing date of application and the validity of all uploaded documents has to be up to at least 31 October, 2022.

18. As noticed above, the closing date of the application was 14th January, 2022. This condition stipulated that the documents required to be uploaded with the application form had to have been issued by the concerned authorities prior to 14th January, 2022 which would entail that eligibility emanating from the said document has to be valid as on the last date of the application. The validity of the documents were to be at least upto 31st October, 2022.

19. The other condition in document verification stipulated was that in case of mismatch of information provided in the application form, documents uploaded and original documents produced for the verification then the candidature was liable to be cancelled and further any false declaration in the online application would also lead to cancellation. The application form also stipulated the common reasons for rejection during document verification and one of the reasons is uploading of an incorrect document.

20. Further, it may be noticed that Clause 7 stipulating the procedure to apply mandated that the candidates have to abide by FAQs on the website.

21. The FAQs are appended with the advertisement with a hyperlink which when clicked takes one to the Indian Coast Guard Site FAQ page. The relevant FAQ is FAQ 48 which reads as under:-

“48. I was declared as pass in document verification when I reported for Stage-II of CGEPT. However, I received an email after few days (before declaration of result of Stage-II) that my documents are not in order and I am directed to forward my correct documents within 02 days. If my documents were not correct then how was I declared "Pass" at Stage-II. Can I be declared as "Fail" in document verification at a later date even after I am declared "Pass" in document verification at Stage-II?

The document verification is carried out at multiple stages of recruitment process even after Stage-II. The common causes for failing in document verification are mentioned here . You might have cleared the document verification during Stage-II due to oversight by the concerned recruitment officer. You would be informed about the shortcomings in your documents by email which can lead to your failure in document verification and you will be directed to submit the correct documents within 02 days. Failure to submit the correct document as required as per the examination rules within 0 2 days or as specified by ICG in the email will lead to cancellation of candidature. It must be remembered that the

document verification is carried out till Stage-IV of the recruitment process.

Note: The procedure of sending email as explained above is as per natural justice and to give an opportunity to submit the document as directed by ICG before arriving to the decision of "pass" or "fail" in document verification."

22. Answer to FAQ 48 stipulates that the candidate would be informed about the shortcomings in his documents by e-mail which can lead to his failure in document verification and would be required to submit correct documents within two days and failure to submit the correct documents as required by the examination rules within two days or as specified by the Indian Coast Guard in e-mail would lead to the cancellation of the candidature.

23. The note to FAQ 48 stipulates that procedure of sending e-mail is as per principle of natural justice and it gives an opportunity to submit the document as directed by ICG before arriving to the decision of "pass" or "fail" in document verification.

24. It is an admitted position that candidates who were similarly situated, as the petitioner, were sent an e-mail requiring them to rectify the error in the documents uploaded. FAQ 48 also provided as a hyperlink the common reasons of rejection during document verification at all stages of recruitment and one of the reasons stipulated is uploading of an incorrect document as in the case of the petitioner.

25. It is not in dispute that petitioner is otherwise eligible for applying for the said post and by uploading of an incorrect document, petitioner does not stand to gain any advantage or becomes eligible when he is otherwise ineligible.

26. Clearly, the petitioner has not uploaded a wrong document for gaining an advantage or crossing the threshold of eligibility. Respondents themselves have applied the FAQ in the case of other individuals and granted them an opportunity to rectify the defect. Clearly, petitioner has been discriminated against in respect of grant of an opportunity to rectify the defect.

27. The contention of learned counsel for the respondent that FAQs do not form part of the application form, in our view cannot be sustained for the reason that the advertisement itself stipulates that the candidates have to abide by the FAQs on the website and there is a hyperlink taking the candidates directly to the FAQs. Clearly, by providing the hyperlink in the advertisement itself, respondents have made all the terms and conditions of the FAQ a part of the application process.

28. Clearly, FAQ 48 stipulates that when a candidate reports for Stage II and is permitted to participate in Stage II and subsequently it is discovered that his documents are not in order, he shall be sent an e-mail to submit correct documents within two days and on his failure to

submit the correct documents his candidature shall be liable to be cancelled.

29. In the case of the petitioner, petitioner reported for Stage II and underwent the physical fitness test which petitioner duly qualified. However, at the stage of document verification, it was discovered that he had uploaded a wrong document. Thereafter he was not given an opportunity to correct the mistake and provide the correct document as was given to other candidates.

30. FAQ 48 itself has stipulated that the procedure of sending e-mail is as per the principles of natural justice. Clearly, the understanding of the respondents also is that prior to cancellation of a candidature on account of incorrect uploading of documents, an e-mail has to be sent so that it complies with the principles of natural justice, which we notice in the present case, has not be done qua the petitioner.

31. We may also notice that no doubt the advertisement as well as the application at various stages cautioned the candidates that they have to be careful while uploading the documents, however, it has to be kept in mind that the purpose is to ensure that no candidate by an unfair mean becomes eligible when he is ineligible.

32. It is not the case of the respondents that the petitioner is

otherwise disqualified or is not the individual who has filled up the application form. The only error is instead of uploading the Aadhar Card he has uploaded the Class 10th certificate. We also notice that in the application form, the petitioner has given correct details i.e. Aadhar Card number, Date of Birth, his name, Parent's name, in which there is no discrepancy. Accordingly, we are of the opinion that the petitioner has not uploaded any incorrect document to gain any undue advantage or to mislead the respondents in any manner.

33. We are further of the view that there was no deliberate intent on the part of the petitioner in uploading any incorrect document.

34. We may notice that petitioner was informed on 15.07.2022 that his candidature had been rejected and by the time the petitioner approached this Court on 2nd August, 2022, Stage III had already commenced i.e. training of the officers duly selected III had already commenced. Therefore, in that context this Court was not at that stage in a position to afford an opportunity to permit the petitioner to participate in Stage III. The number of seats reserved for Stage III were limited and permitting petitioner to participate in the training would have led to displacement of one of the candidates who had been selected in Stage III. It is clear that when a person clears a particular stage, a vested right accrues to that individual and as such all candidates who had been selected for Stage III and had already commenced their training, by the time petitioner could approach this Court, would have same vested rights/legitimate expectation of

completing the stage and progressing further. It was for that reason that this Court did not permit petitioner to participate from Stage III in the said advertisement. Another reason that weighed with the Court was that respondents had issued a fresh advertisement for recruitment to the post of Navik (General Duty) in August/September, 2022. Though petitioner was given an opportunity to apply and participate in the said advertisement, however petitioner decided to await the outcome of this petition.

35. We are informed that the Stage II, i.e., document verification of the subsequent advertisement issued in August/September, 2022 is still in the process of being finalized.

36. Reference may be had to the judgment of a Co-ordinate Bench of this Court dated 31st July, 2017 in WP(C) No.3721/2017 titled as ***Arkshit Kapoor vs. Union of India & Ors.*** In similar circumstances, the relief was moulded and a just, fair and equitable approach was adopted by the Court and the respondents therein were directed to consider the petitioner for the course/batch commencing after the said judgment, if otherwise eligible in other aspects. However, it was directed that he shall not claim any benefit in terms of seniority or otherwise on basis of his selection.

37. Following the said judgment, we are of the view that since we have held that petitioner is entitled to relief and could not be granted relief earlier, we direct the respondents to permit the petitioner to

participate in Stage II of the advertisement that has been issued in August/September, 2022. Petitioner shall not be entitled to any seniority or other benefits.

38. Petitioner however shall have to once again appear for the physical fitness test as well as the medical and document verification for the reasons that as per the rules of the armed forces, physical fitness is valid for a particular period and since petitioner had qualified the physical fitness tests more than six months ago, he shall have to undergo the physical fitness test as well as other medical test as required in the subject advertisement i.e. 1 of 2023. It is only in case petitioner qualifies the same, he shall be eligible for stage III.

39. Since the result of Stage II is in the process of being finalized, we direct the respondents to forthwith constitute a Board for conducting the physical fitness test and the medical examination of the petitioner. Same be done immediately at least prior to the declaration of the result of Stage II.

40. We direct that the petitioner shall report to the Recruitment Office of Indian Coast Guard at Sector-62, Noida on 21st February, 2023 at 10.00 AM.

41. It is clarified that this order has been passed in the peculiar facts and circumstances of the case.

42. Copy of the order be given *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

VIKAS MAHAJAN, J

FEBRUARY 15, 2023/ak

