



2023:DHC:8490



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 7th November, 2023**
+ **W.P.(C) 14579/2023, CM APPL. 57927/2023 & 57928/2023**

SAURAV ANAND Petitioner
Through: **Ms. Aditi Shivadhatri and Mr. R.K. Tarun, Advocates with Capt. S Rani.**

versus

UNION PUBLIC SERVICE COMMISSION Respondent
Through: **Mr. _____ (Appearance not given)**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition has been filed under Article 226 of the Constitution of India read with Section 151 of the Code of Civil Procedure, praying as follows:

“i. Issue a writ in the nature of mandamus or any other appropriate writ/s, order/s, direction/s, directing the Respondent to set aside/quash the debarment letter dated 05.11.2018 issued by the Respondent and the proceedings, emanating therefrom, allowing the Petitioner to appear in all the future exams to be Conducted by the Respondent. and,

ii. Pass any other order/s or direction/s as this Hon'ble court may deem fit and proper be also awarded to the petitioner and against the respondents in the interest of justice.”



2. The relevant facts leading to the filing of the instant petition are as follows:

- a. The petitioner participated in the National Defence Academy/Naval Academy Examination II), 2018, which was scheduled for 9th September 2018.
- b. It has been stated that during the examination, the petitioner was allegedly caught using a mobile phone and subsequently, was taken into custody.
- c. Thereafter, the respondent issued a show cause notice dated 18th September 2018, to the petitioner, however the petitioner failed to respond to the same and afterwards, vide letter dated 5th November 2018, the petitioner was informed about his permanent debarment from future examinations conducted by the respondent.
- d. It has been further stated that, during the above said examination, there were other candidates who were debarred in manner similar to the petitioner and accordingly, a combined petition was preferred on behalf of the other candidates. This Court disposed of writ petition bearing W.P.(C) 1205/2019, and batch vide order dated 22nd September 2021, wherein, the Division Bench of this Court noted that as per the order dated 15th September 2021, issued by the Union Public Services Commission (hereinafter



“UPSC”), the act of permanent debarment of the other candidates was converted to the actual period of debarment already undergone. Henceforth, the prayer of setting aside of the permanent debarment in the above said batch was held to be infructuous.

- e. It has been stated that the present petitioner was under the impression that the observations and decisions made in the above said batch of petitions would also be applicable to him. However, the respondent did not extend the same parameters and quantum of punishment as extended to the petitioners in the above said batch of petitions.
- f. Aggrieved by the same, the petitioner herein filed a writ petition bearing W.P (C) no. 9787/2023, before this Court seeking setting aside of his permanent debarment, and vide order dated 26th July 2023, this Court disposed of the said petition with the directions to the petitioner to make a formal representation to the respondent.
- g. Consequently, the respondent passed a comprehensive order dated 16th October 2023, wherein, the respondent upheld the petitioner’s permanent debarment imposed vide earlier letter dated 5th November 2018.
- h. Being aggrieved by the above said decision of the respondent, the petitioner has approached this Court seeking quashing of the letter dated 5th November 2018, vide which



the respondent had permanently debarred the petitioner from appearing in the future examinations held by the respondent.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned letter dated 5th November 2018, is bad in law as the same is violative of the principles of natural justice, and the said letter affects the petitioner's fundamental and legal rights.

4. It is submitted that the petitioner was a minor aged 17 years 3 months at the time of the alleged incident, and the punitive punishment of permanent debarment imposed upon the petitioner by the respondent vide letter dated 5th November 2018, would exclude the petitioner from appearing in any of the exams held by the respondent in future.

5. It is submitted that the above decision of the respondent fails to consider the petitioner's promising future and potential for rehabilitation, and such an unyielding penalty, imposed without affording the petitioner even the slightest opportunity for reform, stands to negate years of the petitioner's hard work and dedication, and thus, the aforementioned punishment imposed upon the petitioner is against public morality and bad in the eyes of law and is therefore, liable to be set aside.

6. It is submitted that the impugned letter is liable to be set aside on the ground that the punishment imposed upon the petitioner by the respondent is against the principle of proportionality, wherein, the respondent was required to weigh the actual problem and then the punishment should have followed, however, the respondent herein, without awarding the petitioner any opportunity, in a mechanical manner permanently debarred the



petitioner from appearing in any future examination.

7. It is further submitted that the respondent has violated the principles of proportionality by debarring the petitioner permanently without considering the fact that the petitioner has already undergone custody and has lost 5 crucial years of his formative years.

8. It is submitted that the respondent, vide order dated 3rd September 2021, exonerated the other co-accused persons in the alleged incident by reducing their punishment of permanent debarment (later reduced to 10 years), to the period of punishment already undergone.

9. It is submitted that the respondent, in its mechanical disposition of the petitioner's representation dated 17th July 2023, deviated from its own precedent and rationale applied to similarly situated accused individuals. Contrary to its earlier stance, the respondent failed to exercise leniency in the petitioner's case, thus, acting in contradiction to its own order and reasoning. Consequently, the punitive punishment imposed upon the petitioner is legally flawed and ought to be set aside.

10. It is also submitted that the petitioner was in custody when the show cause notice dated 18th September 2018, was issued. Consequently, the petitioner was unaware of the issuance of the said show cause notice, rendering it impossible for him to respond. Although the respondent was aware of these circumstances, and despite this knowledge, it failed to provide the petitioner with a fair opportunity to present his case or offer an explanation. Instead, the respondent proceeded in a mechanical manner to impose the above said punishment upon the petitioner.



11. It is further submitted that in the present case, no criminal action against the petitioner has been established whatsoever, and the punishment imposed upon the petitioner is solely on the grounds that since the petitioner failed to submit a reply to the show cause notice dated 18th September 2018, and it was assumed that the petitioner did not have any explanation to submit, and has admitted the allegations leveled against the petitioner in relation to the alleged incident.

12. It further submitted that upon bare perusal of the letter dated 5th November 2018, by virtue of which the punishment was imposed upon the petitioner, it is evident that the respondent did so in complete contravention of basic principles of natural justice since the petitioner never got any opportunity to be heard and present his defence.

13. In view of the foregoing submissions, it is, therefore, submitted that the instant petition may be allowed and the impugned letter may be set aside.

14. *Per Contra* learned counsel appearing on behalf of the respondent vehemently opposed the instant petition and submitted that the same is liable to be dismissed being bereft of any merits.

15. It is submitted that the petitioner has neither violated any principles of natural justice nor has infringed upon any of the petitioner's fundamental and legal rights, and the allegations made on behalf of the petitioner are baseless.

16. It is submitted that every action on behalf of the respondent has been done in accordance with the law and the petitioner has not been able to show any *mala fide* on the respondent's part.



17. It is submitted that a cheating incident that took place at the Patna Centre during the National Defence Academy & Naval Academy Examination (II), 2018, which was held on 9th September 2018, wherein, the present petitioner, i.e., the prime offender, was caught using his mobile phone or cheating during currency of the second session (paper-II) of the aforesaid Examination.

18. It is submitted that in his undertaking, the petitioner had stated that he used the mobile phone in both the papers of examination. Further, the petitioner also stated that he had transmitted questions through Whatsapp, to his friend and got back the answers, and that the petitioner's friend Shri Jyotish Kumar Das transmitted the questions in the Whatsapp group namely 'Berojgartolioofficial1118'.

19. It is submitted that a show cause notice dated 18th September 2018 was issued to the petitioner as he was found to have acted in contravention of the relevant provisions of Rule 5 of the National Defence Academy & Naval Academy Examination (II), 2018, Rules.

20. It is also submitted that no reply to the said show cause notice was received from the petitioner. The petitioner has taken the plea in his representation that he was debarred merely for not replying to the show cause notice. However; this is not correct as he was debarred by the Commission due to him being the prime offender as he was caught red-handed doing cheating by the examination functionary.

21. It is also submitted that only after taking comprehensive and holistic view of all the relevant facts of the case, the Commission decided to reduce



the penalty imposed upon other candidates similarly placed, and the same consideration could not be extended to the present petitioner keeping in mind the gravity of his unlawful conduct.

22. It is further submitted that no case is made out for reduction in period of permanent debarment to the actual period of debarment since there is neither parity nor any similarity between the petitioner herein, who was the prime offender and other candidates.

23. In view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

24. Hear the learned counsel appearing on behalf of the parties and perused the record.

25. Before proceeding to adjudicate upon the issue in hand, this Court has taken a preliminary objection against the present petition, wherein, it is observed that the petitioner has not called the order dated 16th October 2023, in question which is the final statutory order passed by the respondent authority where the decision of imposition of punishment upon the petitioner has achieved finality and the same has been passed by a competent authority after following the due process of law. The question that is required to be adjudicated upon is whether this Court can issue a writ of mandamus if the order passed by the respondent authority has not been specifically challenged by the petitioner.

26. Now advertent to the facts of the instant petition.

27. It is the case of the petitioner that the petitioner was in custody when the show cause notice dated 18th September 2018, was issued. Consequently,



the petitioner was unaware of the issuance of the said show cause notice, rendering it impossible for him to respond. Although the respondent was aware of these circumstances, and despite this knowledge, it failed to provide the petitioner with a fair opportunity to present his case or offer an explanation. Instead, the respondent proceeded in a mechanical manner to impose the above said punishment upon the petitioner.

28. It is further submitted that even though no criminal action against the petitioner has been established, the respondent has been adamant in not reducing the terms of the punishment imposed upon the petitioner. The punishment so imposed, is solely on the grounds that the petitioner had failed to submit a reply to the show cause notice dated 18th September 2018. It has been submitted on behalf of the petitioner that the respondent assumed that the petitioner did not have any explanation to submit. The petitioner has further contended that bare perusal of the letter dated 5th November 2018, by virtue of which the punishment was imposed upon the petitioner, shows that evidently, the respondent's conduct is in complete contravention of principles of natural justice since the petitioner never got any opportunity to be heard and to present his defence.

29. In rival contentions, it has been submitted on behalf of the respondent that the petition is liable to be dismissed since the same is bereft of any merits. It has been submitted that the respondent has taken the decision of debarring the petitioner permanently only after considering the entire facts and circumstances. The allegations made against the respondent that the decision of imposing the above said penalty was made only because the



2023:DHC:8490



petitioner did not submit his reply to the show cause notice is refuted by the respondent, thereby, submitting to the effect that the petitioner was the prime offender and was caught cheating red handed, and he has admitted to his crime in his confession made before the Police and also in the undertaking given by him.

30. This Court has perused the entire material placed on record including the letter dated 5th November 2018, and the order dated 16th October 2023. Upon perusal, it is observed that the petitioner had filed a writ petition bearing W.P (C) no. 9787/2023, before this Court seeking setting aside of his permanent debarment imposed vide letter dated 5th November 2018. The said writ petition was disposed of vide order dated 26th July 2023, wherein, this Court had directed the petitioner to make a formal representation to the respondent and it had further directed the respondent to pass a speaking order in accordance with law.

31. Upon further perusal of the material available before this Court, it is observed that the petitioner had made a representation dated 27th July 2023, to the respondent. In his representation, the petitioner had requested the respondent to set aside the punishment of permanent debarment imposed upon him and to allow him to appear in all the future examinations to be conducted by the Union Public Services Commission, i.e., the respondent.

32. In response to the said representation, the respondent passed a detailed speaking order dated 16th October 2023, wherein, it upheld its previous decision of debarring the petitioner permanently from appearing in any future examination to be conducted by the respondent. The relevant extracts



of the same are reproduced herein below:

“..10. Whereas Shri Saurav Anand was sent to judicial custody having been caught red handed while cheating through his mobile phone and acted in contravention to Rule 5 (xi) of the NDA/NA Examination (II) - 2018 Rules which prohibits possession of or using mobile phone during the examination. Further, the criminal case is still ongoing against him and considering the fact that he was the prime offender in the cheating incident acting against the rules of the examination, the lenient view cannot be extended to his benefit. Therefore, keeping in view the gravity of the offence committed by him, it becomes irrelevant and of no merit that he was a minor on the date of commission of the alleged offence.

11. Therefore, no case is made out for reduction in period of permanent debarment to the actual period of debarment since there is neither parity nor any similarity between Saurav Anand who was the prime offender and other candidates. Hence, the commission has decided that the prayer made by Shri Saurav Anand in his representation dated 27.07.2023 cannot be acceded to.

12. Accordingly, the above representation of Shri Saurav Anand stands disposed of.”

33. Since the material facts have been stated in the foregoing paragraphs, therefore, at this juncture, this Court shall delve into the analysis of the preliminary objection mentioned above.

34. It is a settled legal principle that the Courts have to be hyper vigilant while issuing a writ of mandamus since the said writ is an extraordinary remedy which is to be invoked only upon special occasions and in exceptional circumstances.



35. The sole issue that requires consideration is with respect to the fact that the order dated 16th October 2023, accrues a fresh cause of action in favour of the petitioner and admittedly the same has not been challenged by the petitioner. Further, the order dated 16th October 2023, is now a final statutory order passed after contemplation of all the facts and circumstances. By virtue of the said final order the petitioner's debarment imposed vide earlier/initial letter dated 5th November 2018, has been upheld.

36. At this stage, it is pertinent to refer to the observations made by the Hon'ble Supreme Court in the matter of **Krishna Priya Ganguly v. University of Lucknow, (1984) 1 SCC 307**. In the said matter, the Hon'ble Court set aside the judgment of the concerned High Court, wherein, even though the respondent had merely prayed for a writ directing the State or the college to consider his case for admission but the High Court issued a writ of mandamus directing the college to admit him to the M.S. course. The Hon'ble Supreme Court held that the said High Court went a step further and granted a relief to the party which was not even prayed.

37. The case of **Krishna Priya Ganguly (Supra)** has been further followed by the Hon'ble Supreme Court in the matter of **Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi, (2010) 1 SCC 234**, wherein the Hon'ble Court held as under:

“30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he



seeks from the court. Normally, the court will grant only those reliefs specifically prayed for by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.

31. In Krishna Priya Ganguly v. University of Lucknow [(1984) 1 SCC 307] , overlooking the rule relating to grant of admission to postgraduate course in Medical College, the High Court in the exercise of powers under Article 226 of the Constitution directed the Medical Council to grant provisional admission to the petitioner. This Court set aside the order passed by the High Court observing that: (SCC p. 319, para 26)

“26. ... in his own petition in the High Court, the respondent had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightaway issued a writ of mandamus directing the college to admit him to the MS course and thus granted a relief to the respondent which he himself never prayed for and could not have prayed for.”

32. Again, in Om Prakash v. Ram Kumar [(1991) 1 SCC 441] , this Court observed: (SCC p. 445, para 4)

“4. ... A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute.”

38. In light of the facts of the instant petition, the respondent's concerned authority, i.e., the Under Secretary (NDA), Union Public Service Commission has passed a comprehensive speaking order and upheld its



initial decision. The same has not been disputed by the petitioner and no grounds have been raised by the petitioner *qua* it. Rather the petitioner has impugned the letter dated 5th November 2018, sent to the petitioner informing him of the disciplinary action taken against him which as of today has attained finality in view of the speaking order dated 16th October 2023.

39. This Court is of the view that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. It is deliberated that there is no provision or inherent power that authorizes Courts to grant relief which has not been explicitly prayed by the petitioner. There are conclusive observations of the Hon'ble Supreme Court in a catena of judgments that the Courts operate within limitations when it comes to granting relief.

40. The petitioner is seeking the relief of directions against the respondent to set aside the punishment of debarment imposed vide letter dated 5th November 2018, but has failed to acknowledge the fact that the said punishment has attained finality by virtue of order dated 16th October 2023, and the same has not been disputed or challenged by him.

41. This Court has the power to mould reliefs to meet the requirements of each case, but the same does not imply that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the Court.

42. Considering the facts, circumstances of the case and the preliminary objection mentioned above, this Court is of the view that since the petitioner has not challenged the order dated 16th October 2023, passed by the



2023:DHC:8490



respondent, the prayer sought for in this writ petition cannot be entertained and therefore, this writ petition is liable to be dismissed without delving upon the merits of the same.

43. In view of the above discussions, this petition stands dismissed, along with pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 7, 2023

pa/ryp/db

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 29.11.2023
16:03:26

W.P.(C) 14579/2023

Page 15 of 15