
(2021) 09 DEL CK 0263

In the Delhi High Court

Case No : Civil Writ Petition No. 1205, 1708, 9451, 10147, 10149, 10151, 10152, 10153, 10154, 10155, 10157, 10159, 10161, 10163, 10164, 10165, 10166, 10167, 10168, 10182, 10184, 10186, 10187, 10220, 10240, 10253, 10258 Of 2019, Civil Miscellaneous Application No. 5

Amit Kumar & Ors

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 22-09-2021

Acts Referred:

NDA & NA Examination (II), Rules, 2018 — Rule 5

Citation : (2021) 09 DEL CK 0263

Hon'ble Judges : Manmohan, J; Navin Chawla, J

Bench : Division Bench

Advocate : R.K. Tarun, Chiranjeev Kumar, Mukesh Sachdeva, Jatin Puniyani, Naresh Kaushik, Anand Singh, Abhishek Verma

Final Decision : Disposed Of

Judgement

Manmohan, J

1. The petitions have been heard by way of video conferencing.
2. Present writ petitions have been filed primarily challenging the impugned orders dated 09th November, 2018 passed by the UPSC cancelling the candidature of the Petitioners for National Defence Academy and Naval Academy Examination (II), 2018 and debarring the Petitioners permanently from appearing in all the future examinations/selections to be held by UPSC.
3. Learned counsel for the Petitioners states that the Petitioners had applied for the NDA Examination and were issued admit cards for the examination. He states that since mobile phones were not allowed in the examination hall, the Petitioners deposited their phones with the authorities. He points out that on the day of the NDA examination, a candidate by the name of Saurav Anand was arrested in Bihar for cheating through a mobile phone during the course of the

examination.

4. He states that ten days after taking the exam, the Petitioners received show cause notices from UPSC regarding failure to report activities of the candidate Saurav Anand who was caught cheating red handed in the State of Bihar.

5. He emphasises that a perusal of the show cause notices reveals that the allegation against the Petitioners were that the Petitioners failed to report beforehand about the activities of Saurav Anand on the WhatsApp group. He contends that the show cause notices contain neither any allegation of cheating against the Petitioners nor an allegation that the Petitioners were in possession of 'mobile phone' or were communicating with Mr. Saurav Anand on the WhatsApp group.

6. He states that vide impugned orders UPSC cancelled the candidature of the Petitioners for National Defence Academy and Naval Academy Examination (II), 2018 and debarred the Petitioners permanently from appearing in all the future examinations/selections to be held by UPSC

7. Today, Mr. Naresh Kaushik, learned counsel for UPSC states that UPSC has issued orders dated 15th September, 2021 to all the petitioners wherein it has converted the permanent debarment period to the actual period of debarment already undergone uptill now. He submits that the above orders have been issued as no criminal action has yet been established against the petitioners by Bihar Police and as the petitioners are of a young age and have a long future before them. The order dated 15th September, 2021 issued to one of the petitioners is reproduced hereinbelow for ready reference:-

"By Speed Post

No . 1/8(151/202 1/E-XII

Union Public Service Commission

(Examination Branch)

ORDER

That a cheating incident took place at the Patna Centre during conduct of the National Defence Academy/Naval Academy Examination (II), 2018, which was held on 09.09.2018. In this case, Shri Saurav Anand (the prime offender) was caught while using his mobile phone for cheating during currency of the Second Session (Paper-II) of the aforesaid Examination. In his undertaking, Shri Saurav Anand had stated that he used the mobile in both the Papers of the Examination. He further stated that he also transmitted questions through WhatsApp, to his friend and got back the answers. He also added that thereafter, his said friend Shri Jyotish Kumar Das transmitted the questions in the WhatsApp Group named Berojgartoliofficiall118.

2. That since Shri Amit Kumar was also the member of this WhatsApp Group, a Show Cause Notice was issued to him to explain his position as he was found to have acted in contravention of the relevant provisions of Rule 5 of the NDA & NA Examination (II), 2018 Rules. The Commission found him guilty of violating the aforesaid provisions of the Examination Rules and, therefore, cancelled his candidature for this Examination and debarred him permanently from appearing at all the future Examinations/Selections of the Commission vide letter dated 9th November, 2018. In addition to above candidate, the Commission imposed the aforesaid penalty upon 53 more candidates.

3. That aggrieved with above decision of the Commission, some of these candidates filed court cases in the Hon'ble High Courts of Delhi, Bihar and Jharkhand. Shri Raj Aryan is one of the aforementioned candidates and he had filed W.P. (C) No.279/2019 in the Hon'ble High Court of Jharkhand. The Hon'ble High Court vide its common judgment dated 03rd September, 2019 in the above WP (along with two tagged Writ Petitions i.e. WP (C) No. 3068/2019 of Maniratan Kumar and WP (C) No. 3059/ 2019 of Anupam Kumar Singh) directed to take a fresh decision by passing a Speaking Order.

4. That in deference to the above direction of the Hon'ble High Court of Jharkhand, the Commission re-examined the cases of the said three candidates and decided to reduce their penalty of permanent debarment to 10 years w.e.f. their initial debarment. Again being not satisfied with this fresh decision of the Commission, Shri Raj Aryan filed a new Writ Petition (C) No.202/2020 before the Hon'ble High Court of Jharkhand.

5. That in view of the relevant facts of Shri Raj Aryan, the whole matter has been considered afresh once again in the Commission and it has been noted that nearly 3 years period has since been elapsed after the imposition of the penalty upon him in November, 2018; no criminal action has yet been established against him by the Bihar Police; he is of very young age and has a long future before him.

6. That after taking the comprehensive and holistic view of all the relevant facts of the case of Shri Raj Aryan, the Commission has decided to convert the 10 years' debarment period of Shri Raj Aryan and reduce it to the actual period of debarment he has already undergone uptill now since November, 2018. Consequently, his debarment period stands expended and treated to be over by the date of issuance of the Commission's order i.e. 03.09.2021.

7. Since the case of Shri Amit Kumar is similarly placed as that of Shri Raj Aryan and to extend the benefit of equality and parity to all similarly situated candidates, including the facts stated in Para 5 above, the Commission has suo moto taken the lenient view and the Commission has decided to convert the permanent debarment period of Shri Amit Kumar (from appearing in all the Examinations/Selections of the Commission) by reducing the same to the actual period of debarment which he has already undergone uptill now, since November, 2018.

Consequently , his debarment period stands expended and would be over by the date of issuance of this order.

Sd/-

(Kripa Anna Ekka)

Under Secretary (NDA)

Union Public Service Commission

Shri Amit Kumar

Email:smartrajgupta009@gmail.com

S/o Shri Ashok Rana

Jhumra Muhalla Chaitra,

Chaitra -825401"

8. Keeping in view the aforesaid order dated 15th September, 2021, the prayer in the present writ petition challenging the permanent debarment has become infructuous.

9. Accordingly, the present writ petitions and applications stand disposed of as satisfied.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.