

(2023) 07 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 3134 Of 2023, Civil Miscellaneous Application
No. 24494 Of 2023

Vinayak Sharma

APPELLANT

Vs

Indian Coast Guard Through Its Director General& Ors

RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Citation : (2023) 07 DEL CK 0001

Hon'ble Judges : Suresh Kumar Kait, J;Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Virendra Goswami, Abhinay Sharma, Mayank Tushamar, L.K. Srivastava, Parul Khurana, Pavan Narang, Himanshu Sethi, Aishwarya Chhabra, Aakanksha Kaul, Versha Singh, Archana Kumari

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The present petition is directed against the reply/rejection dated 27.12.2022 written by the respondents, whereby petitioner's candidature for appointment to the post of Assistant Commandant (General Duty) in Indian Coast Guard was cancelled. In addition, cancellation of Updated Select List-I Assistant Commandant (General Duty) 01/2023 batch issued by the respondents is also sought.

2. The facts giving rise to the present petition are that petitioner, a final year/sixth semester student of graduation course, pursuant to an Advertisement dated February, 2022 inviting applications for the post of Assistant Commandant (General Duty) in Indian Coast Guard, applied for the same under un reserved category.

3. According to petitioner, in terms of clause 4(a) of the advertisement, he was duly qualified and fulfilled the requisite conditions for the appointment to the post of Assistant Commandant (General Duty) in Indian Coast Guard. It is

averred on behalf of petitioner that the subject advertisement stipulated the following educational qualifications:

“(i) Should hold a degree of recognized university with minimum 60% aggregate marks.

(ii) Mathematics and Physics as subject upto Intermediate or class XII of 10+2+3 scheme of education or equivalent with minimum 55% aggregate marks in Mathematics and Physics. The candidates who have completed graduation after diploma, are also eligible, provided they should possess an aggregate of 55% marks in diploma with physics and mathematics in its curriculum.

4. Additional Eligibility Criteria

(a) Candidates appeared in the final year or final semester exam and awaiting result are allowed to apply provided that they should not have any present back papers. Such candidates should be able to submit provisional or original degree certificate issued by University at the time of Final Selection Board (FSB).”

4. Petitioner has claimed that being a student of sixth semester/final year, he was eligible for appointment to the post of Assistant Commandant (General Duty), however, since the advertisement with regard to final year/sixth semester student was not clear, petitioner vide e-mail dated 24.02.2022 written to the respondents, sought clarification in this regard. In reply thereto, respondents vide e-mail dated 24.02.2022, asked the petitioner to refer to the subject advertisement.

5. Petitioner also claims to have appeared in the various stages of examination. He appeared in stage-I examination, i.e. Screening Test held on 27.03.2022, Stage-II i.e. Preliminary Selection Board held on 30.06.2022 and qualified the same. In the meanwhile, petitioner’s result of sixth semester was declared on 16.07.2022 and he got his original Provisional Degree Certificate on 22.07.2022.

6. Thereafter, petitioner appeared in the stage-III examination i.e. Final Selection Board on 02.10.2022 and after qualifying the same, petitioner vide letter dated 07.10.2022 issued by the respondents, was instructed to appear in Final Medical Board Examination on 12.10.2022. Accordingly, petitioner appeared in the Final Medical Board Examination, however, vide letter dated 01.11.2022 he was informed having been declared “unfit” due to being “overweight”. Petitioner was given time to reduce his weight, which he claims to have accomplished within 42 days by reducing his weight by 15 kg. Respondents vide result dated 06.12.2022 declared petitioner qualified for stage-IV examination, i.e. Final Medical Board Examination. The final selection list for the post of Assistant Commandant (General Duty) was issued on 14.12.2022, however, petitioner could not find a place in the select list.

7. Being aggrieved, petitioner’s father vide representation dated 16.12.2022 to the Director General of Indian Coast Guard prayed for inclusion of petitioner’s name in the select list. Vide letter dated 27.12.2022, the respondents informed

petitioner's father that petitioner's candidature was rejected because at the time of filling-up the application form, petitioner was in fifth semester and not in sixth semester/final semester. Hence, he did not meet the minimum educational qualification as prescribed in Para 4 (a) of the advertisement.

8. Being dissatisfied, petitioner issued a legal notice dated 31.12.2022 to the Director General, Union of India through the Defence Secretary, however, the same was not replied to.

9. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that Clause- 4(a) of the advertisement notifies "final year or final semester" and petitioner vide his e-mail dated 24.02.2022 had sought clarification regarding the fulfilment of minimum educational qualification but instead of providing clarity on the issue, the respondents vide e-mail dated 24.02.2022 asked the petitioner to advert to the advertisement in question. Learned counsel for petitioner further submitted that respondents have failed to consider the term "final year" and have arbitrarily rejected petitioner's candidature for the reason which is not clear in the subject advertisement itself.

10. Attention of this Court was drawn to another advertisement for the subject post in batch 02/2023 wherein under the heading of "Additional Eligibility Criteria", respondents have replaced the word "appeared" with "studying" and also the date for submitting the final semester marks sheet / final degree, was notified. However, in the subject advertisement for the batch of 01/2023, there was no clarity on both these aspects.

11. It was further submitted that in another advertisement issued by the respondents for the batch 01/2024, even more clarity has been given with regard to "final year/semester" and a detailed explanation regarding the additional eligibility criteria has been notified. However, for the batch in question, respondents have failed to clarify between "final year and final semester".

12. Learned counsel for petitioner further submitted that respondents themselves had no clarity between "final year or final semester" at the time of publishing the subject advertisement. It was submitted that petitioner was in the sixth semester at the time of applying for the post in question and was awaiting results for the fifth semester. The result of fifth semester was declared on 29.03.2022. So, before conclusion of the recruitment process at the Stage-II, i.e. Preliminary Selection Board, petitioner had his final year mark-sheet in his hands, which is the stage prior to the Stage-III, i.e. Final Selection Board and could have produced his degree if asked for.

13. It was submitted by learned counsel for the petitioner that during selection process, no objection was raised by the respondents with regard to the petitioner's eligibility or the documents submitted by him and in view of advertisement in question, petitioner's candidature deserves to be considered.

14. On the other hand, learned senior panel counsel appearing on behalf of

respondents submitted that petitioner had applied for the post of Assistant Commandant (General Duty) for the batch 01/2023 and the information provided by him, at the time of filling-up of online application form, is taken to be true and correct. In the counter-affidavit, the respondents have stated that the document verification for the first time was done at stage-II and petitioner was declared qualified erroneously. However, at the stage of Final Selection Board, it came to the attention of the competent authority that the petitioner had not received his fifth semester results as on the date of submitting online application, i.e. on 28.02.2022. Since petitioner's result was declared on 27.03.2022 for the fifth semester, i.e. after a month of closing date of application and thereby, at the time of applying for the subject job, petitioner was in fifth semester and not in sixth semester. So, petitioner did not meet the minimum eligibility criteria as prescribed in Para 4(a) of the Advertisement in question.

15. Learned senior panel counsel submitted that one of the questions in the application form is "appeared in the final year/final semester examination with no present backlogs?", to which, the petitioner had replied as "Yes" whereas his result of fifth semester had not then been declared and he was not in final year/sixth semester. Thereby, the information provided by the petitioner at the time of filling-up his online application form was incorrect. Therefore, the respondents are entitled to cancel petitioner's candidature in terms of Para 7(b) and Para 15(a) of the advertisement, which stipulate that the online application of a candidate can be rejected at any stage if found ineligible as well as if a candidate does not meet the eligibility criteria or has submitted incorrect information.

16. Learned senior panel counsel submitted that the advertisement notified in the subsequent years for other jobs has no concern with the facts of the present case and hence, the present petition deserves to be dismissed.

17. In rebuttal, learned counsel for petitioner submitted that the respondents themselves had no clarity with regard to final year/final semester students and by subsequent advertisements, i.e. 02/2022 and 02/2023, respondents have tried to improve upon their own wrong-doing by specifically interpreting final year/final semester. For the lapse on the part of respondents, petitioner cannot be made to suffer.

18. Lastly, it was submitted by learned counsel for petitioner that at the time of submitting online application form, petitioner was in sixth semester and result of his fifth semester was awaited. Further, he has correctly filled-up the information that he was in sixth semester, as the said semester had commenced, which is the final year. Hence, the present petition deserves to be allowed and, therefore, a direction is sought to respondents to allow petitioner to join next batch of Indian Coast Guard from June, 2023.

19. In support of petitioner's case, reliance was placed upon decisions of Hon'ble Supreme Court in Charles K. Skaria and Ors. Vs. Dr. C. Mathew and Ors. (1980) 2 SCC 752; Ashok Chand Singhvi Vs. University of Jodhpur and others (1989) 1

SCC 399; Dolly Chhanda vs. Chairman, Jee and Others (2005) 9 SCC 779 and Union Public Service Commission Vs. Gyan Prakash Srivastava (2012) 1 SCC 537. Reliance was also placed upon decisions of this Court in Delhi Subordinate Services Selection Board Vs. Uma Shamkar Sharma 2013 SCC OnLine Del 1911 and Shazia Kalim Vs. Union of India 2023 SCC OnLine Del 851.

20. This Court has considered the submissions offered by both the sides and has also gone through the material placed on record as well as decisions relied upon.

21. Pertinently, petitioner had applied for the post of Assistant Commandant (GD) in Indian Coast Guard pursuant to the advertisement for 01/2023 batch, which reads as under:-

"JOIN INDIAN COAST GUARD

(MINISTRY OF DEFENCE)

AS AN ASSISTANT COMMANDANT- GENERAL DUTY, COMMERCIAL

PILOT LICENCE (CPL-SSA) AND TECHNICAL (ENGINEERING &

ELECTRICAL/ ELECTRONICS

FOR 01/2023 BATCH

APPLICATION WILL BE ACCEPTED 'ONLINE'

FROM 18 FEB 2022 (1100 HRS) TO 28 FEB 2022 (1700 HRS)

4. Additional Eligibility Criteria

a) Candidates appeared in the final year or final semester exam and awaiting result are allowed to apply provided that they should not have any present back papers. Such candidates should be able to submit provisional or original degree certificated issued by University at the time of Final Selection Board (FSB)."

22. According to the aforesaid advertisement for 01/23 batch, candidates who are either in final year or final semester and awaiting results were permitted to apply. It is undisputed that petitioner vide e-mail dated 24.02.2022 had sought a clarification from the respondent to have clarity about his eligibility to appear in the examination, in reply whereof petitioner was asked to refer to the advertisement in question.

23. Be that as it may. At this juncture this Court would also like to note that in the subsequent advertisement pertaining to batch 02/2023, the respondents under the heading of "Additional Eligibility Criteria", have replaced the word "appeared" with "studying". The advertisement of batch 02/2023 reads as under:-

"(MINISTRY OF DEFENCE)

AS AN ASSISTANT COMMANDANT- GENERAL DUTY, COMMERCIAL PILOT LICENCE (CPL-SSA) TECHNICAL (ENGINEERING & ELECTRICAL/ ELECTRONICS) & LAW

FOR 02/2023 BATCH

APPLICATION WILL BE ACCEPTED 'ONLINE'

FROM 17 AUG 2022 (1100 HRS) TO 07 SEP 2022 (1730 HRS)

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4. Additional Eligibility Criteria

d) Candidates who are studying in the final year/semester degree course and are yet to pass the final year degree examination can also apply provided candidate should not have any backlog and should have secured a minimum of 60% marks up to the last semester/ year for which results have been declared up to the time of submission of application. They are required to submit proof of passing the degree examination by 30 May 23 and no request for extending this date will be entertained on the grounds of late conduct of basic qualifying University Examination, delay in declaration of results or any ground whatsoever. Such candidates have to produce a certificate of final year/ semester result.(Format available on website)."

24. Thereafter another advertisement for batch 02/24 has been notified, which is as under:-

"JOIN INDIAN COAST GUARD

(MINISTRY OF DEFENCE)

AS AN ASSISTANT COMMANDANT- GENERAL DUTY, COMMERCIAL PILOT LICENCE (CPL-SSA) TECHNICAL (ENGINEERING & ELECTRICAL/ ELECTRONICS) & LAW

FOR 01/2024 BATCH

APPLICATION WILL BE ACCEPTED 'ONLINE'

FROM 25 JAN 2023 (1100 HRS) TO 09 FEB 2023 (1700 HRS)

5(d). Candidates who are studying in the final year/ final semester degree course and are yet to pass the final year degree examination can also apply provided candidate should not have any backlog and should have secured a minimum of 60% marks up to the last semester/year for which results have been declared at the time of submission of application. They are required to submit proof of passing the degree examination by 30 Nov 23 and no request for extending this date will be entertained on the grounds of late conduct of basic qualifying University Examination, delay in declaration of results or any other ground whatsoever. Such candidates have to produce a certificate signed by Registrar/ Controller of the University regarding non declaration of final year/ semester result (Format available on website)."

25. The extract of advertisements for batch 02/2023 and 01/2024 provide clarity that those candidates who are in final year/ semester are eligible to apply and

are required to submit their degree before the date specified in the advertisement.

26. Coming to the case in hand, there is no dispute to the position that at the time of filling up the online form, petitioner was in his sixth semester/ final year and his results for fifth semester were awaited. Also, petitioner had got his original Provisional Degree Certificate on 22.07.2022 i.e. prior to stage-III Final Selection Board on 02.10.2022. The stand of respondents is that the document verification for the first time was done at stage-II and petitioner was declared qualified erroneously. Meaning thereby, had the factum of petitioner's not meeting eligibility come to notice of respondents, the petitioner would have been able to show there and then by producing his graduate degree. Moreover, the advertisement in question also notifies that the successful candidates should be able to submit provisional / original degree at the time of Final Section Board i.e. Stage-III. It is not the case of either side that at the time of Final Section Board i.e. Stage-III, petitioner was asked to produce his degree, which he was unable to produce.

27. In *Ashok Chand Singhvi (Supra)*, wherein the Hon'ble Supreme Court in view of the fact that University had by mistake granted admission to a candidate despite his being ineligible, held that the fault laid with the College and especially when the candidate had joined the classes, he cannot be made to suffer. In the present case also, respondents did not check the qualification status of the petitioner during various stages of examination, especially when respondents have asserted that the stage for verification of the documents was Stage-II examination.

28. In *Union Public Service Commission (Supra)*, the Supreme Court held that UPSC is a constitutional body but its actions are not immune from judicial review. In the said case, the applicant /respondent had applied for the post of Legal Advisor-cum-Standing Counsel but had not enclosed copy of his Law degree, which was an essential. However, he had attached other certificates issued by other Government departments to show that he had worked for two different posts where degree in law was essential. The Supreme Court held that rejection of his application by the UPSC was arbitrary. Apparently, the facts of the present case are different and so decision in *Union Public Service Commission (Supra)* is of no assistance to the case of petitioner.

29. The Supreme Court in *Charles K. Skaria (Supra)*, with respect to three candidates who were admitted by the selection committee but ousted for not producing the certificate of diploma, directed creation of a seat by observing and holding as under:-

"22. The present case is a capital illustration of nominalism battling with realism for judicial success. Both sides admit that the appellants before us had secured diplomas. They further admit (ignoring for a moment the submission on 2% for outsiders) that if the diploma scores were added, the applicants, by the measure

of marks, deserve to be selected, provided the diploma obtained in the examination held in 1979 is within time. Then, why did the High Court upset their selection? Because the certificates of diploma were not attached to the applications and communication by the Registrar of the University to the selection committee was an unauthorised mode of proof, deviating from the prospectus, though authentic in fact. Two flaws vitiate this verbally virtuous approach. True, the prospectus directs that certificates shall be produced along with the applications for admission. The purpose obviously is to have instant proof of the qualification.

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28. To dismiss an appeal is merely to declare that judicial remedy will not issue and not that by other processes justice should not be sought or granted. From the humane perspective and with a view to helping Appellant 1 to pursue his relief through the university or other appropriate State agency, we directed the impleadment of the Indian Medical Council which is the statutory body concerned, at the national level, with higher medical degrees and courses. The Medical Council has not appeared before the court though its presence would have helped the forensic process to heal the fractured academic course. But we cannot wait longer. It behoves the State to give academic justice — not legal remedy — to Appellant 1 if circumstances permit, having regard to the fact that, with diploma qualification, he has spent months in doing his ophthalmology degree course. In law he fails, in justice he need not, if marginal adjustments by increasing one seat more were possible without injury to academic efficiency. What we mean is that though Appellant 1 has no legal claim to a seat, the overall circumstances will merit compassionate consideration, and we direct the Kerala University and the Indian Medical Council to permit him to complete his course by adding one more seat, for this year only, to the ophthalmic degree course.”

30. In *Dolly Chhanda (Supra)*, the Supreme Court in an appeal filed against the judgment and order passed by the High Court of Orissa, whereby petitioner therein was denied admission to MBBS Course, though had passed out JEE-2003 but could not produce the “category certificate” in requisite form, had observed and held as under:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in

the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

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9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29-6-2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year."

31. In Delhi Subordinate Services Selection Board (Supra), this Court held that if a date is prescribed in an advertisement as the last date by which a qualification has to be obtained, the date being sacrosanct has to be respected and it was for the Staff Selection Board to have notified the specific date. In the subsequent advertisements pertaining to batch 02/23 and 02/24, the respondents have categorically notified the last date for submitting the proof of passing the degree examination; whereas in the advertisement in question is silent on this aspect.

32. In Shazia Kalim (Supra), this Bench dealt with a case where the petitioner had qualified examination process for Combined Defence Services Examination (I), 2021, including women. However, she was not permitted to appear in the interview because she could not produce her original degree during scrutiny of documents. This Bench in view of the fact that the candidates who were in final year/semester year were permitted to show their degree at the commencement of the course, permitted the petitioner to join the course, if otherwise eligible.

33. In DR. Shidore Shital Mhatardeo Vs. National Board Of Examination 2019 SCC OnLine Del 10444, this Court dealt with a case wherein a direction was sought to the National Board of Examination to allot seat to the petitioners therein pursuant to final round of counseling which was held on 21.06.2019, though one of the petitioner was able to obtain degree certificate on 24.06.2019 and the other 30.06.2019 i.e. after the cut-off date, allotted seat and observed and held as under:-

"95. The concerned Counselling Committee of the NBE, in my view, lost focus of the fact that cases of the petitioners were poised at the stage of verification of

documents and/or certificates to enable it to conclude that they in point of fact met the eligibility criteria, the eligibility criteria being acquisition of MBBS degree. No candidate can claim admittance to a postgraduate course unless he or she has obtained the basic degree (with stipulated percentage wherever provided on or before cut-off date); as there can be no dilution qua the eligibility criteria. Those who haven't will have to await admittance in the following session. However, those who have passed may rely upon documents to establish the factum of having qualified the MBBS course.

96. The question is should such candidates not be given a greater leeway by interpreting the provision in issue purposefully and if I may say so more meaningfully. This is especially so when there was enough and more material already on record for concerned counselling authority to gather that both petitioners had in their possession acquired the basic qualification i.e. MBBS degree.

97. Obeisance to letter (and that too not completely) rather than the object of the provision led to the unfair denial of seats to the petitioners.

98. In this context let me advert to only one document each which was placed before the Counselling Committee by the petitioners. While Dr. Shidore had produced a "Passing Certificate" dated 23.02.2016, Dr. Jaya had produced a "Provisional Certificate" dated 06.11.2004. Both the documents bore the signatures of the competent authorities in the respective universities.

99. The question then which the NBE needed to ask itself was should it not give the petitioners the leeway to produce the original MBBS degree certificate or a letter from the competent authority, latest by the date when they joined the allotted institute? In my view, NBE ought to have granted that latitude to the petitioners.

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110. The petitioners, in fact, perhaps given their rank, had put all their eggs in one basket. Therefore, to deny the petitioners claim for a seat in DNB (Post MBBS) Course when seats are available would be, in my view, both unfair and unreasonable. I do realize that there is a very forceful argument advanced on behalf of the NBE that the concerned courses have already commenced.

111. This argument needs consideration but then one cannot lose sight of the fact that because a Court is inundated with matters, it cannot, even if it wants, adjudicate upon all causes on the first date of institution. These are matters, which, as colloquially put, want adjudication "as of yesterday". Therefore, interim orders of necessity have become the mainstay in such jurisdictions.

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135. If one were to distill the ratio of the judgments adverted to above what would come through is that while there can be no dilution of the essential eligibility criteria prescribed for gaining admission to the course, a distinction has to be drawn between the factum of a candidate having acquired the eligibility qualification(s) on or before the cut-off date as against the proof required to establish this fact.

136. A mere inability to produce the original degree or certificate on the cut-off date cannot be the reason for denying admission as long as there is material available with the Counselling Committee or the authority charged with the responsibility of admitting the student which is demonstrative of the fact that a candidate has acquired the eligibility qualification or met the eligibility criteria.

137. Apart from anything else, such conditions that require the production of original certificates depicting attainment of eligibility criteria by a certain date have been held by the courts as being directory and not mandatory.”

34. It is not the case that petitioner has not been able to qualify different stages of examination for the post in question. Petitioner’s strong determination to join the Force is established from the fact that he lost 15 kg in 42 days with utmost dedication to qualify the Stage-IV i.e. Medical by the respondents and he was declared successful.

35. During the course of hearing, this Court was informed by the respondents that vacancies for the post of Assistant Commandant (GD) for the year 2023 have already been filled up. The petitioner had filed CM APPL. 24494/2023 stating that upcoming batch 2/2023 is expected to join Indian Coast Guard in the month of June, 2023 and if petitioner is not permitted, he would suffer irreparable loss.

36. Learned counsel appearing on behalf of respondents had also agitated that the petitioner does not meet the eligibility age for 02/2023 batch and so he cannot be considered to appear along with 02/2023 batch.

37. Applying the dictum of Charles K. Skaria (Supra) and Dolly Chhanda (Supra) to the facts of the present case this Court finds that appointments for batch 01/2023 have already been done and all seats have already been filled, however, interest of justice would be met if one seat for petitioner is created with the batch 01/2023. Accordingly, the present petition is allowed.

38. Since in the facts of the present case this Court has already allowed the present petition, respondents are directed to consider the case of petitioner for appointment with 02/2023 batch, but having the seniority and consequential benefits of 01/2023 batch and in case no vacancy is available, respondents are directed to create one seat for petitioner with 01/2023 batch. Needless to say, this Court has not commented upon the other eligibility criteria than the one relating to production of educational degree. Subject to fulfilment of other eligibility criteria notified in advertisement of 01/2023 batch by the petitioner, the

respondents shall issue offer of appointment for the post of Assistant Commandant (GD) to him within two weeks of this judgment to enable the petitioner to join with batch 2/2023.

39. With directions as aforesaid, the present petition and pending application are accordingly disposed of.