

(2012) 07 DEL CK 0463
In the Delhi High Court
Case No : Writ Petition (C) 3893 of 2012

Arvind Kumar Agrwal

APPELLANT

Vs

National Board of Examination and Another

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 07 DEL CK 0463

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Dinesh Agnani with Ms. Leena Tuteja and Mr. Archit Vasudeva, for the Appellant; Rakesh Gosain, Advocate for the respondent No. 1 and Ms. Sweety Manchanda, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J.—Petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a writ of mandamus directing respondents to allow the petitioner to join the allotted seat with respondent no. 2 in the specialty of Radio Diagnosis for the academic session 2012-2013. Issue notice to show cause as to why petition be not admitted. Mr. Ramesh Gosain, Advocate, accepts notice on behalf of respondent no. 1 and Ms. Sweety Manchanda, Advocate, accepts notice on behalf of respondent no. 2.

2. With the consent of counsel for the parties, writ petition is set down for final hearing and disposal.

3. The necessary facts, to be noticed for disposal of the present writ petition, are that the petitioner, who is a qualified Doctor and was desirous of pursuing Post Graduation in the DNB Course, applied in the National Board Centralised Entrance Test for the Post Graduate course for admission to DNB, January, 2012, held by respondent no. 1. The petitioner appeared in the Centralised Entrance Test examination conducted by respondent no. 1 on 11.12.2011. The petitioner

qualified the test and secured 148rank. In March, 2012, petitioner was called for the first round of CET Centralised Counselling. The petitioner appeared for the first round of counselling but did not opt for any seat in the first counselling. On 1.6.2012 respondent no. 1 displayed the list of available seats for the second round of centralized counselling. On 7.6.2012, the petitioner resigned from the allotted seat in MD (TB & Chest) at SMS Medical College, Jaipur, which was accepted by the Office Order dated 8.6.2012. In the second round of counselling, which was held on 12.6.2012, the petitioner opted for the seat appearing at Serial No.97 of the seat Matrix for the specialty of Radio Diagnosis available with respondent no. 2 and he was given an allotment letter. On 13.6.2012 petitioner reported to respondent no. 2 for joining on the allotted seat and he was informed to pay the requisite fee as well as furnish an affidavit/undertaking. On 15.10.2012, when the petitioner approached respondent no. 2 with the requisite demand draft and documents, respondent no. 2 refused to allow the petitioner to join on the ground that the seat allotted to him, belongs to ST category whereas the petitioner belongs to a General category. The requests made by the petitioner to both respondents no. 1 and 2 did not achieve any result, which has led to the filing of the present writ petition.

4. Learned senior counsel for the petitioner submits that the petitioner has already resigned from the seat allotted to him in MD (TB & Chest) at SMS Medical College, Jaipur, as the seat was available with respondent no. 2 and an allotment letter has also been given to him. Counsel further submits that a right has been created in favour of the petitioner, which cannot be taken away, especially, in view of the fact that the seat under the ST category is lying vacant and none has claimed the same.

5. Learned senior counsel for petitioner, to persuade this Court, has relied upon P.V. Indiresan Vs. Union of India (UOI) and Others, , wherein the Supreme Court of India has allowed the Central Educational Institution to fill up the seat as no OBC candidate was available. Relevant portion of the judgment reads as under:

54. We, therefore, dispose of this appeal, affirming the decision dated 07.09.2010 of the learned Single Judge of the High Court, subject to the clarifications/ observations above, and subject to the following conditions:

(i) In regard to the admissions for 2011-2012, if any Central Educational Institution has already determined the "cut-off marks" for OBCs with reference to the marks secured by the last candidate in the general category, and has converted the unfilled OBC seats to general category seats and allotted the seats to general category candidates, such admissions shall not be disturbed. But where the process of conversion and allotment is not completed, the OBC seats shall be filled by OBC candidates.

(ii) If in any Central Educational Institution, the OBC reservation seats remain vacant, such institutions shall fill the said seats with OBC students. Only if OBC candidates possessing the minimum eligibility/qualifying marks are not available

in the OBC merit list, the OBC seats shall be converted into general category seats.

(iii) If the last date for admissions has expired, the last date for admissions shall be extended till 31.8.2011 as a special case, to enable admissions to the vacant OBC seats.

6. Learned counsel for respondent no. 1 while relying on a communication addressed to respondent no. 2 has submitted that the seat was allotted by respondent no. 1 to the petitioner inadvertently, however, the petitioner fulfils all the requirements of merit except that the seat has been reserved for a ST category. Learned counsel for the petitioner submits that petitioner should not be made to suffer on account of the lapse of respondent no. 1, who had inadvertently granted the seat to the petitioner, knowing fully well that the same was for a reserved category candidate.

7. Learned counsel for respondent no. 1 submits that no prejudice would be caused either to respondent no. 2 or any ST category candidate, in case the seat is allotted to the petitioner, as none has chosen to claim the ST category seat. Counsel further submits that the seat is reserved for ST candidate, which is available every four years. Since none has claimed the seat under ST category this year which would result in loss of a seat, however, this quota can be transferred to the next year and in this way the seat will not go a waste this year and also the interest of an ST candidate in future will be secured.

8. I have heard learned counsel for the parties and also considered their rival contentions. The basic facts of the case are not in dispute that the petitioner, who is a qualified Doctor and was desirous of pursuing Post Graduation in DNB Course, applied in National Board Centralised Entrance Test for the Post Graduate course for admission to DNB, January, 2012, held by respondent no. 1. The petitioner appeared in the Centralised Entrance Test examination conducted by respondent no. 1 on 11.12.2011. The petitioner qualified the test and secured 148rank. In March, 2012, petitioner was called for the first round of CET Centralised Counselling. The petitioner appeared for the first round of counselling but did not opt for any seat in the first counselling. On 1.6.2012 respondent no. 1 displayed the list of available seats for the second round of centralized counselling. On 7.6.2012, the petitioner resigned from the allotted seat in MD (TB & Chest) at SMS Medical College, Jaipur, which was accepted by the Office Order dated 8.6.2012. In the second round of counselling, which was held on 12.6.2012, the petitioner opted for the seat appearing at Serial No.97 of the seat Matrix for the specialty of Radio Diagnosis available with respondent no. 2 and he was given an allotment letter. On 13.6.2012 petitioner reported to respondent no. 2 for joining on the allotted seat and he was informed that he needs to pay the requisite fee as well as furnish an affidavit/undertaking, which was duly furnished by the petitioner. On 15.10.2012, when the petitioner approached respondent no. 2 with a requisite demand draft, respondent no. 2 refused to allow the petitioner to join on the ground that the seat belongs to ST category

whereas the petitioner belongs to General category.

9. The seat was offered to the petitioner admittedly on account of a genuine mistake. It is not in dispute that the petitioner fulfilled all other criteria for admission to the specialty of Radio Diagnosis available with respondent no. 2. Having regard to the fact that the petitioner had met the eligibility criteria and he was allotted a seat by respondent no. 1 though inadvertently, the petitioner resigned from the allotted seat in MD (TB & Chest) at SMS Medical College at Jaipur. For the mistake committed by the respondent no. 1, the petitioner cannot be made to suffer. I find force in the submission made by learned counsel for respondent no. 1 that since none has claimed the seat under ST category, the seat under ST category can be transferred for the next year. It would also be in the interest of ST candidate and in any case for the present year the seat would go a waste.

10. Accordingly, present writ petition is allowed. Petitioner shall be permitted to join respondent no. 2 forthwith. The seat for the ST candidate will be carried forward next year so that no prejudice would be caused to any ST candidate and with a view to secure the future of ST candidate.

11. Petition stands disposed of in view of above. CM 8146/2012 (STAY)

Application stands disposed of in view of the order passed in the writ petition.