

(2016) 09 AHC CK 0103

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 20946 of 2016

Chanda Jain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 10 ADJ 340 : (2017) 1 AllWC 852 : (2016) 4 UPLBEC 3287

Hon'ble Judges : Dilip Gupta and Manoj Kumar Gupta, JJ.

Bench : Division Bench

Advocate : Santosh Kumar Tripathi and Shailendra Singh, Advocates, for the Petitioner; A.S.G.I, N.C. Tripathi and Naresh Chandra Tripathi, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

1. The petitioner, who had responded to the advertisement issued on 3 August 2015¹ inviting applications from married/unmarried male or unmarried female candidates for grant of Short Service Commission in the Indian Army for Judge Advocate General Department (JAG), has filed this petition for quashing the subsequent advertisement dated 18 January 2016³ for the reason that the vacancies available against female candidates in the second advertisement were required to be filled-up by the first advertisement itself.

2. The first advertisement stipulated that the total number of vacancies were 14 out of which 10 were for male candidates and 4 were for female. The method of selection was indicated in Clause 6 of the advertisement, which is as follows :

"Method of Selection:

(a) Initial shortlisting of applications will be done by Recruiting Directorate, Integrated HQ of MoD (Army) and the decision of DG Recruiting will be final. Details of the shortlisted online applications will be put on Join Indian Army website. In this regard no representation will be entertained.

(b) The shortlisted candidates whose applications are found to be correct shall be detailed for SSB interview at allotted Selection Centres on specified dates.

(c) Two Stage Selection Procedure. Two stage selection procedure based on Psychological Aptitude Test is held at Selection Centres. All the candidates will face stage one test on first day of reporting at Selection Centres. The candidates who fail to pass stage one will be returned on the same day.

(d) Candidates who qualify stage II will submit self attested photocopies of educational documents to Selection Centre for completion of their Dossier/verification.

(e) Candidates who qualify at the Service Selection Board and are found medically fit by a Medical Board, will be placed in the order of merit. The final selection will be made in that order up to the number of vacancies available at that time."

3. The name of the petitioner appears at Serial No.12 in the merit list that was prepared. It is stated that initially there were only four vacancies for female candidates but later on the vacancies for female candidates were increased to 7. According to the petitioner, the second advertisement issued in January 2016 mentions four vacancies for female and so if such vacancies were available in January 2016, the merit list prepared in April 2016 should have included these 4 vacancies for female candidates in terms of the first advertisement and if that was so then the petitioner would have been selected since the total number of vacancies for female stood increased to 11 and one candidate had not joined. In this connection, petitioner has placed reliance on Clause 6(e) of the advertisement which provides that the final selection will be made upto the number of vacancies available at that time.

4. A counter affidavit has been filed by the respondents. In short it states that from 2014 to 2019, 28 candidates have to be inducted into JAG but these 28 vacancies are divided into two courses which commences in April and October every year. Thus, 14 vacancies are there in each course which include 10 for male and 4 for female candidates. During 2014 and 2015 only 44 officers were inducted in the training as against 56 and to make up the deficiency of 12 officers, the competent authority had decided to increase the vacancies by 6 in each year spreading over two years i.e. for April 2016 course and April 2017 course. Thus, for the 2016 course 6 additional officers had to be inducted into JAG. This would include 3 male and 3 female candidates. It is for this reason that the total number female candidates for 2016 was increased from 4 to 7. It will be useful to reproduce certain paragraphs of the counter affidavit to understand the procedure adopted by the respondents and the same are as follows :

4. That Indian Army Plans the quantum of induction through various entries based on future organisational requirement, well in advance and following a well defined procedure. The frequency of the courses every year has also been incorporated in various Army Instructions/Special Army Instructions issued by

the Ministry of Defence, Government of India. JAG entry for women is a part of Short Service Commission Women (Non-Tech) entry (known as SSCW(NT) JAG. The entry is governed by Special Army Instructions dated 01.04.1998 and Government of India letter dated 20.07.2006. The photo copy of the aforesaid Special Army Instructions dated 01.04.1998 and Government of India letter dated 20.07.2006 are being filed as Annexure CA-1 and Annexure CA-2 respectively to this affidavit.

5. That in Short service Commission (Women Non-Technical) JAG (Judge Advocate General) is an entry whereby candidates fulfilling the eligibility criteria as laid down in the Army Instructions/Special army Instructions and by the letter issued by the Government of India apply and the selection is made by a Service Selection Board (SSB) adopting the well defined selection procedure.

6. That there are various entries for induction of officers into Indian Army Courses for NDA, CDS, 10+2 TES and TGC commence in January and July every year whereas for Short Service Commission (TEC) and Short Service Commission (Non-Tech) including JAG Courses commence in April and October of a year. It is respectfully stated that each Course is independent and does not have any bearing to other Courses. Each Course is also having independent and well determined vacancies without having any bearing to the vacancies of other Courses.

7. That as per perspective induction plan in JAG entry, 28 candidates are to be inducted into JAG during 2014 to 2019 and 16 candidates during the next 04 years i.e. from 2020 to 2023. Accordingly 28 vacancies were divided between two Courses which commence in April and October every year (14 Vacancies in each Course which includes 10 vacancies for Men and 4 vacancies for Women).

8. That it is relevant to point out here that during the years 2014 and 2015 total induction of Officers in JAG was only 44 against planned intake of 56 (28+28) Officers and this situation caused a deficiency of 12 Officers into JAG cadre. Accordingly to make up deficiency of 12 Officers in JAG cadre, the Competent Authority decided to increase the vacancies of two courses by six vacancies in each, spread over two different years i.e. to April, 2016 Course and to April, 2017 Course. This spread over of vacancies was done to ensure even batch sizes of JAG officers so as to protect these officers against adverse promotional avenues in future.

9. That for kind convenience and ready reference, the details of vacancies so released are given in the following Chart:

S.No.

Name of Course

Vacancies as per initial plan

Vacancies as per revised plan

(a)

SSC (NT) JAG= 16 (Men) Apr. 16

10

13 (10+3)

(b)

SSC (NT) JAG= 16 (Women) Apr. 16

04

07 (4+3)

(c)

SSC (NT) JAG= 17 (Men) Oct. 16

10

10

(d)

SSC (NT) JAG= 17 (Women) Oct.16

04

04

(e)

SSC (NT) JAG= 18 (Men) Apr. 17

10

13 (10+3)

(f)

SSC (NT) JAG= 18 (Women) Apr. 17

04

07 (4+3)

5. Learned Senior Counsel appearing for the petitioner has made the following submissions :

(1) The first advertisement indicated that there were 14 vacancies out of which 10 were reserved for male and 4 for female. Even according to the Department, 6 additional female candidates had to be selected to make up the short fall in the two selections held in 2014 and 2015 and thus in terms of the conditions contained in Clause 6(e) of the first advertisement, all the additional 6 vacancies for female were required to be filled up from the merit list prepared in April 2016;

(2) The petitioner who was found to be medically fit was placed at Serial No.12 and, therefore, should have been granted selection since one candidate did not join; and

(3) Instead of selecting 7 female candidates in the April 2016 batch, the respondents have admittedly selected 8 female candidates. There is no reason why two more vacancies were not also increased.

6. Sri. Ashok Mehta, learned Assistant Solicitor General of India assisted by Sri. N.C. Tripathi and Sri. S.K. Rai has, however, placed reliance upon the averments made in the counter affidavit and has submitted that a decision had been taken by the Department on 25 February 2016 to fill-up the backlog 12 vacancies that had arisen in recruitment years 2014 and 2015 but with a rider that 6 of such vacancies will be filled-up in the recruitment year 2016 and remaining 6 in the recruitment year 2017. His submission is that these 12 vacancies were divided equally between male and female candidates and out of the 6 vacancies for the recruitment year 2016, only 3 female candidates and 3 male candidates were required to be selected in April 2016. The remaining 3 female candidates vacancies would have to be filled-up in the recruitment year 2017. The selection of the fourth female candidate was made because of the reason that the candidate at Serial No.6 who was initially found not meeting the medical requirements was subsequently found medically fit by the Review Board after seven female candidates had been selected.

7. We have considered the submissions advanced by learned counsel for the parties.

8. The counter affidavit mentions that the Indian Army plans the quantum of induction based on future organisational requirements following a well defined procedure. For grant of Short Service Commission in the Indian Army (non-technical), the terms and conditions are contained in the Circular dated 1 April 1998. Paragraph 4 deals with the educational qualifications while paragraph 6 deals with the selection procedure. The grant of Short Service Commission (non-technical) to women officers is contained in the Circular dated 20 July 2006. It has also been stated in the counter affidavit that in accordance with the induction plan only 28 candidates are required to be inducted in JAG every year from 2014 to 2019 and thereafter 16 candidates for the following four years from 2020 to 2023. 28 vacancies for each year are divided into two courses which commence in April and October every year. Thus, 14 vacancies are available in each course out of which 10 are for male and 4 for female. In 2014 and 2015, the total number of officers who had been inducted in JAG was only 44 as against the planned intake of 56. Thus, there was a deficiency of 12 officers in JAG and to make up this deficiency of 12 officers, the competent authority had on 25 February 2016 decided to increase the vacancies every year in 2016 and 2017 by 6. Thus, for the April 2016 course, out of these six vacancies, 3 were to be filled up by male and 3 by female candidates. This would also be clear from the chart prepared by the Department in paragraph 9 of the counter affidavit which has

been reproduced above.

9. In order to appreciate the issues raised in this petition, we consider it appropriate to reproduce the status of the joining letters issued to the candidates for the April 2016 course which has been enclosed as Annexure-3 to the writ petition and is as follows :

"Joining Letter Issued Status For Sscw Nt (Jag)-16, Apr 2016 Course

Notified vacancies-04, Revised Vacancies-07

Merit No.

Roll No.

Batch/Chest No.

Name

DOB

Med. Status

Date of JL issued

Reporting date

Remark

1.

950612

38299/34

ANAMIKA PUNDIR

05.03.92

Fit

04.03.16

01 Apr/02 Apr 2016

2.

950217

39310/22

K SHRUTI SUBADHI

27.05.92

Fit

08.03.16

01 Apr/02 Apr 2016

3.

950689

38299/33

B INDHU

26.11.91

Fit

15.03.15

01 Apr/02 Apr 2016

4.

950085

39310/27

ASHIMA DAS

10.10.92

Fit

04.03.16

01 Apr/02 Apr 2016

5.

950133

38299/18

SUNANDINI

22.02.92

Fit

04.03.16

01 Apr/02 Apr 2016

6.

950665

38299/39

SHAHNAZ

31.07.89

Not meeting medial OR

7.

950139

39310/03

KANIKA SHARMA

21.08.92

Fit

04.03.16

01 Apr/02 Apr 2016

8.

950592

39310/37

NAMRATA MAJHAIL

23.12.90

Fit

01.04.16

12-Apr-16

9.

950386

38299/31

PRIYANKA RATHOR

12.04.90

Fit

10.

950447

38299/35

PRIYA PATHANIA

25.12.89

Fit

11.

950073

38299/36

AGRIMA DUBEY

07.03.92

Fit

12.

950389

38299/32

CHANDA JAIN

05.01.89

Fit

13.

950059

38299/5

PULLUR DIVYA REDDY

30.01.92

Fit

14.

950190

38299/21

HITISHA RAWAL

02.10.91

Fit

15.

950463

38299/28

DIVYA TRIPATHI

06.11.91

Not meeting medial OR

16.

950066

38299/25

NIVEDITA PANDEY

05.03.92

AWTD

17.

950705

39310/23

RICHA SINGH

22.12.90

Fit

18.

950767

39310/01

SHALU SEHGAL

20.09.90

Fit

10. The petitioner is at Serial No.12 in the aforesaid list. If 7 vacancies (4+3) for women candidates were required to be filled up for the April 2016 course, then the first 8 upto Namrata Majhail should have been selected because the candidate at Serial No.6 was not meeting the medical requirements. Intimation letters were, accordingly, sent to eight candidates.

11. What has been stated by the petitioner is that the candidate at Serial No.5 joined the training but soon thereafter within two weeks left it as a result of which the candidate at Serial No.9 was selected. What has also been stated is that the candidate at Serial No.6 who was not meeting the medical requirements, was cleared by the Medical Review Board and she was also selected and an intimation letter was also issued in April 2016. Thus, in all instead of 7 female candidates who were required to be admitted, the respondents selected 8 female candidates.

12. It is for this reason that the learned Senior Counsel for the petitioner contended that if one additional female candidate had been selected, nothing prevented the Department from selecting 2 more female candidates from the merit list of April 2016. To support this contention, learned Senior Counsel has placed reliance upon paragraph 6(e) of the conditions contained in the

advertisement which stipulates that the final selection will be made in order up to the number of vacancies available at that time. Learned Senior Counsel submitted that as 6 additional vacancies for female candidates were available in April 2016, 10 female candidates should have been selected from the merit list of April 2016 in view of the policy decision taken on 25 February 2016 and three vacancies for female should not have been carried forward for the recruitment year 2017.

13. It is not in dispute that the advertisement issued in April 2016 was only for 14 vacancies. 10 out of these vacancies were reserved for male candidates and 4 for female candidates. This was the position when the first advertisement was issued on 3 August 2015. The dispute in the present petition is confined to the female candidates. It is a fact that out of the 56 candidates who had to be selected in 2014 and 2015, only 44 had been selected and there were 12 vacancies. The Army had taken a policy decision on 25 February 2016 to fill-up these 12 vacancies also. However, all these 12 vacancies were not to be filled up in the recruitment year 2016. The policy was to fill-up 6 vacancies in 2016 and the remaining 6 in 2017. Out of the 6 for the year 2016, 3 were required to be filled-up by male and 3 by female candidates. It is correct that in this way only 7 vacancies were required to be filled-up from the merit list prepared in April 2016 but in fact 8 female candidates have been selected. The Department has stated that initially the female candidate at Serial No.6 was not fulfilling the medical requirements and, therefore, the candidate next in order of merit at Serial No.8 was selected. One candidate at Serial No.5 joined the training but left within two weeks. Thus, the candidate at Serial No.9 was also selected. However, subsequently the Medical Review Board in August 2016 found that the candidate at Serial No.6 satisfied the medical requirements. In this way, respondent no.6 was also selected. This naturally increased the number of intake of female candidates from 7 to 8. The respondents could have cancelled the admission of candidate at Serial No.9 but instead of doing this they considered it appropriate to increase the intake. This could be for the reason that the candidates had undertaken the training for a substantial period of time. This decision cannot be said to be arbitrary in the facts and circumstances of the case. This was a policy decision.

14. In this connection, we feel tempted to quote a portion of the judgment rendered by the Supreme Court in the case of *Union of India v. Pushpa Rani & Ors.*, (2008) 9 SCC 242 which is as follows :

"Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such

matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides."

15. We, therefore, do not find any substance in the submission of learned Senior Counsel for the petitioner that if the Department had increased the intake of female by one, it should have increased the intake of female candidates by 2 so as to fill-up all the 6 additional vacancies in the year 2016 instead of filling-up three in 2016 and then three in 2017. A policy decision had been taken by the Army to only increase the intake by 3. It is for this reason that we also do not find any substance in the submission advanced by learned Senior Counsel for the petitioner that if there were six vacancies available for female candidates in April 2016, then all 6 should have been filled-up from the merit list of April 2016 for the reason that the advertisement itself stipulated that all the vacancies existing at the time of final selection should be filled-up. As noted above, the intake of female candidates had been increased only by 3 for the recruitment year 2016 and the remaining 3 vacancies for female candidates were to be filled-up in the recruitment year 2017.

16. Such being the position, it does not lie in the mouth of the petitioner to contend that 6 vacancies for female were required to be filled-up in the April 2016 course. The petitioner, therefore, cannot contend that she should have been selected from the merit list prepared in April 2016.

17. Thus, for all the reasons stated above, no relief can be granted to the petitioner.

18. The writ petition is, accordingly, dismissed.