
(2010) 05 OHC CK 0014
In the Orissa High Court

Sri Priyaranjan Jena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:

Constitution of India, 1950 — Article 53

Citation : AIR 2010 Ori 165 : (2010) 2 OLR 203

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—This writ petition relates to admission of the petitioner to the M.B.B.S. Course pursuant to his appearance in the Joint Entrance Examination, 2008. The petitioner appeared in the said examination under the reserved category meant for children/widows of personnel of Armed/ Para-military Forces, who are native of Orissa. The prayer in the writ petition has been made to quash the order dated 19.6.2008 under Annexure-10 issued by the Industries Department, Government of Orissa to settle the process of admission in respect of Military (M.I.) category for the year 2008-09 on the ground that prioritization is not given in consonance with the provisions in vogue and for any other appropriate relief.

2. An Information Brochure for the Joint Entrance Examination, 2008 was published by the Chairman, J.E.E., 2008 for admission of candidates into Engineering/Medical/Dental/MBA/MCA/Hotel Management Courses. In paragraph-2.1.5 of the said brochure, it was mentioned as follows:

2.1.5. 2% of seats in engineering colleges and 3% seats in Government Medical colleges in MBBS and BDS courses are reserved for children/widows of personnel of Armed/Paramilitary Forces who are native of Orissa. Candidates applying under Military reserved category shall furnish a certificate in the prescribed format provided in this brochure as Appendix-IV at the time of counselling. The

priorities will be notified in the Counselling-cum-Admission instructions as per decision of the Government of Orissa.

On the results of the entrance examination being published, the petitioner's rank was 17 in the merit list under military category (M.I), so far as Medical Course is concerned, and 41 so far as Engineering Course is concerned. The petitioner has stated that he received the letter of intimation indicating his rank on 17.7.2008, where it was endorsed "all J.E.E. qualified candidates under military category for Medical/Engineering/Pharmacist streams are required to report at Rajya Sainik Board, Lewis Road, Nageswar Tangi, Bhubaneswar for prioritization on 7/8/9th July, 2008". In keeping with the said intimation and direction of the Chairman, J.E.E., the petitioner reported before the Rajya Sainik Board on 7.7.2008. It is the case of the petitioner that till that time, he was unaware of the order of prioritization in the military category. However, after reporting before the Rajya Sainik Board, the petitioner could come to know that wards of other armed forces personnel as well as Para-military forces have been given with "priority" at par with the wards of Armed Forces Personnel/Ex-service man. The petitioner could further come to know that "wards of defence personnel disabled in peace time with disability aggravated by military service and wards of Armed/Para-military personnel disabled in peace time with disability aggravated by service" have been given Priority-IV instead of Priority-VI though "wards of defence personnel disabled in peace time with disability attributable to military service and wards of Armed/Para-military personnel disabled in peace time with disability attributable to duty only need to be given priority-IV. Though the rank of the petitioner in the Military category was 17 and he was categorized under Priority-VI (Wards of Ex-servicemen/Ex-Armed personnel/Ex-Para-military personnel) for Medical courses, but due to wrong prioritization of some of the candidates who were much below the petitioner in the rank list under Priority-IV, which is due to serious lapses on the part of the Secretary, Rajya Sainik Board, Orissa, the petitioner was deprived from being admitted to M.B.B.S. Course.

3. Learned Counsel for the petitioner submitted that Indian Armed Forces is the primary military organization responsible for the territorial security and defence of India. The President of India is the Supreme Commander of the armed forces as enshrined under Article 53 of the Constitution of India, which is subordinate and responsible to the Government of India headed by the Prime Minister. The armed forces are administered by the Ministry of Defence and are comprised of the Indian Army, the Indian Navy and the Indian Air Force. Auxiliary services include the Indian Coast Guard and the Paramilitary forces of India. Since time immemorial, Defence or Military has been etymologically used as "Armed Forces" on different occasions for different purposes. In view of work culture, i.e., hazardous and inhospitable terrain duties in insurgency and counter-insurgency operations, battlefield activities during war/aggression and varied duties during National Calamities, the personnel of the defence services are made to retire/dischARGE at an early age, which varies from 35 to 57 years depending on rank, where they get much less pension compare to civilian counter-part. Hence, they

require a second career as they are young, active and energetic and their responsibilities and obligations are at the peak. Having given the best part of their life for the safety and security of the motherland, it becomes a national obligation to provide necessary facilities for their resettlement. Keeping these in mind, the Central Government as well as Government of Orissa have notified "Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 and the Orissa Ex-Servicemen (Recruitment to State Civil Services and Posts) Rules, 1985 respectively. The Government of Orissa, Industries Department, vide order No. VII.114/80-20992 dated 19.8.1981, intimated that reservation of seats to the extent of 5% of the total intake capacity of the Engineering College/ Engineering Schools/ ITIs/Polytechnics may be made for admission for the sons/ wards of the Armed Forces Personnel including Ex-Servicemen/para-military Forces of Orissa, who are permanently disabled or killed in war and hostilities in keeping with the request of Government of India, Ministry of Defence, Kendriya Sainik Board, New Delhi for reservation of seats for the children/ wards of Armed Forces. This has been reiterated vide Government of Orissa, Home Department letter No. Ex-44/83/Poll dated 26.3.1983. The Additional Secretary to the Ministry of Defence, New Delhi vide letter No. D.O. No. 3547/AS(R)/94 dated 3.6.1994 addressed to the Chief Secretaries of all States/U.Ts has recommended standardized prioritization for admission to medical/professional colleges in respect of defence category including wards of Gallantry Award winners, Ex-servicemen and serving personnel of Armed Forces. For better appreciation, the said prioritization depicted is quoted herein below:

Priority-I: Widows/wards of Defence personnel killed in action.

Priority-II: Wards of serving personnel and Ex-Servicemen disabled in action.

Priority-III: Widows/Wards of defence personnel disabled in peace time with death attributable to military service.

Priority-IV: Wards of defence personnel disabled in peace time with disability attributable to military service.

Priority-V: Wards of Ex-Servicemen personnel and serving personnel who are in receipt of Gallantry Awards:

- (1) Param Vir Chakra
- (2) Ashok Chakra
- (3) Sarvottam Yudh Seva Medal
- (4) Maha Vir Chakra
- (5) Kirti Chakra
- (6) Uttam Yudh Seva Medal
- (7) Vir Chakra

- (8) Shaurya Chakra
- (9) Yudh Seva Medal
- (10) Sena, Nau Sena, Vayu Sena Medal
- (11) Mention-in Despatches

Priority-VI: Wards of Ex-Servicemen.

Priority-VII: Wards of serving personnel.

The Government of Orissa, Health and Family Welfare Department vide resolution No. ME-II-IXM-5/97-18961/H. dated 26.5.1998 intimated that Government after careful consideration have been pleased to decide that 3% of the total intake of all medical colleges and paramedical colleges under the control of Health and Family Welfare Department shall be reserved for the children of Ex-Servicemen and Servicemen of Orissa, which was given effect to from the academic sessions 1998-1999. The Government of Orissa also in Industries Department letter No. V-TTI-235/2000/2065 dated 19.1.2001 intimated that two seats in each Government Engineering Colleges, two seats in each private Engineering Colleges (free seat) and one seat in ITI, Choudwar, 8 seats in all Government Medical Colleges in MBBS (on roster basis) and one seat in Dental Wing of S.C.B. Medical College have been kept reserved for the wards/ children/spouses of armed force personnel/Ex-servicemen/para-military personnel of Orissa serving/retired/permanently disabled or killed in war and hostilities. Again, the Government in Industries Department letter dated 10.8.2001 intimated that reservation of seats for sons/wards of Armed Force personnel including Ex-Servicemen/Para-military Forces of Orissa permanently disabled or killed in wars and hostilities is fixed by the Government at 2% of the total number of free category seats in Government as well as private technical institutions instead of 1% of the total sanctioned seats in Government and Private Engineering Colleges/ Schools of the State. The petitioner relying upon the information brochure of J.E.E. 2007 submitted that in the said brochure in Clause 2.1.5, it was stated that 2% of seats in Engineering colleges and 3% seats in Government Medical Colleges in MBBS and BDS courses are reserved for children/widows of personnel of Armed/Para-military Forces, who are native of Orissa. Candidates applying under Military reserved category shall furnish a certificate in the prescribed format provided in the brochure as Appendix-IV at the time of counselling. Further the said clause provided the prioritization, which would be followed for filling up the seats reserved under military category as per D.O. No. 3547 AS(R) 94 dated 3.6.1994 issued by the Ministry of Defence, Government of India. On the date of counselling, a list will be drawn under each priority category and allotment will be made as per the priority category mentioned above.

4. The Government of Orissa in Industries Department vide order No. 1-TTI-10/08-9187 dated 19.6.2008 intimated that in pursuance of the direction of this Court's order dated 26.9.2007 passed in W.P.(C) No. 8996 of 2007 and after

careful consideration of the recommendation of the Policy Planning Body (PPB) in its meeting held on 21.5.2008, Government has been pleased to decide that following prioritization will be followed during the academic session 2008-09 for admission to 2% of seats in Engineering colleges and 3% of seats in Government Medical Colleges in MBBS and BDS Courses reserved for children/widows of personnel of Armed/Para-military Forces, who are native of Orissa on the wrong notion that other armed forces/Para-military forces are also included in the armed forces. The petitioner being aggrieved by the order dated 19.6.2008 under Annexure-10 has preferred the present writ petition for appropriate relief.

5. Mr. Mohanty, learned Counsel for the petitioner strongly urged that the Chairman, J.E.E. 2008 should have notified the priorities in the counselling-cum-admission instruction. Instead of notifying the priorities, it kept the candidates in dark. Further, the J.E.E. Committee called all the 520 candidates, who appeared under the reserved category meant for the military (MI) candidates for counselling as a result, although the petitioner was ranked 17, was eliminated since the candidates in rank Nos. 105 and 178 were allotted priority-III, rank Nos. 66, 128, 136, 186, 204, 269, 473 and 478 were allotted priority-IV and rank No. 13 was allotted Priority-VI. For the aforesaid reason, the petitioner could not face the counselling and was not admitted even though he secured a higher rank. Mr. Mohanty has attempted to make out a case that the petitioner being the son of an ex-servicemen, he should have been considered separately from the wards of ex-Para-military forces.

6. The Chairman, J.E.E. filed a counter affidavit on 5.11.2008, inter alia, stating that the writ petition has become infructuous since all reserved seats ear-marked for children/widow of Armed Forces/Paramilitary personnel, who are residents of Orissa have been filled up during centralized counselling conducted on 11.7.2008 for MBBS and BDS Courses of the three Government Medical Colleges. It has been further stated in the counter affidavit that since the last date for admission was fixed as 30th September of the said year and the same is over, the writ petition has become infructuous. In that view of the matter it has been pleaded that the prayer made to quash the order dated 19.6.2008 under Annexure-10 and to stall the admission to the ear-marked reserved seat has also become academic and in-consequential. The Chairman has further stated in the counter affidavit that the information brochure was published as per the decision of the Policy Planning Body under which the J.E.E. Committee functions. As per policy of the Government as on the date of admission, 3% of the seats were reserved in Government Medical Colleges for MBBS and BDS Courses for children/widows of Armed Forces/ Para-military personnel of the State of Orissa. It is further asserted that the impugned order dated 19.6.2008 under Annexure-10 issued by the Industries Department of the Government of Orissa was pursuant to the direction of this Court passed in W.P.(C) No. 8996 of 2007 disposed of by judgment dated 26.9.2007. In the said judgment, this Court ruled that from the coming year, the reservation for children/widows of Armed Forces and Para-military personnel will be treated at par following the prioritization and it should

not be confined to only defence personnel as the same does not cover the members of other Armed Forces. The Chairman has further stated that when the candidates appeared before the Rajya Sainik Board, Orissa on perusal of the documents produced by such candidates in Appendix-IV, while filing up the other particulars provided in the same, although there was no prescribed column to indicate the priority of a candidate, the priority of the candidates were mentioned by the Rajya Sainik Board and no fault can be found in such action.

7. Mr. Mohanty, learned Counsel for the petitioner relying upon the rejoinder affidavit filed in reply to the counter affidavit of the Chairman, J.E.E., vehemently argued that the writ petition has not become infructuous and the J.E.E. Committee called all the 520 candidates without stating the minimum qualifying marks and without adhering to the principles laid down by the Supreme Court in the case of Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , which is contrary to law and the views expressed by the Supreme Court which definitely leads to erosion of standard of education in Medical Courses. The petitioner has fairly stated in the rejoinder affidavit that as regards the order dated 19.6.2008 under Annexure-10, the petitioner does not want to press the said prayer for quashing the said order dated 19.6.2008, since the same is an out-come of a judgment delivered by this Court. The petitioner has denied the fact that Rajya Sainik Board-opp. party No. 7 after perusal of the documents has issued priority certificate as per Appendix-IV since it is apparent that the Secretary, Rajya Sainik Board has lost its sight to the ingredients of Priority-IV as indicated in Annexure 10 which specifically prescribes that Priority IV is applicable only in case of Wards of defence/ Armed/Para-military personnel disabled in peace time with disability attributable to military service/duty. The said Secretary, Rajya Sainik Board, according to the petitioner, basing on the fact that Ex-servicemen or Ex-para-military personnel were receiving disability pension, issued priority certificates to their wards, which is irrelevant, since disability pension is granted to retired/invalidated persons, who acquired disability which is attributable to or aggravated by military service. This is in keeping with para-173 of Armed Pension Regulations, 1961 and 153 of Army Pension Regulations, 1961 and para-101 Navy Pension Regulations, 1964. According to Mr. Mohanty, Pension Payment Orders do not indicate whether the disability is attributable to or aggravated by military service. The petitioner states to have claimed information from the Secretary, Rajya Sainik Board under the Right to Information Act about the personal details, such as, service number, rank, name, Unit etc. in respect of the personnel whose Wards got admission to Medical Course, but the said information was not supplied to the petitioner. It is the case of the petitioner that some of the candidates, who have been admitted to Medical Course should have been given priority-VI instead of Priority-IV and those candidates being much below than the petitioner in rank in the entrance examination, the petitioner was entitled to be admitted to the Medical Course.

8. If the contentions raised by the petitioner are accepted following the principles as laid down by the Supreme Court in the case of Medical Council of India v.

Naina Verma and Ors. Civil Appeal No. 451 of 2005 disposed of on 13.1.2005, this Court can direct the opp. parties to give admission to the petitioner to M.B.B.S. Course in the coming session. Hence, this Court is unable to accept the contention made on behalf of the J.E.E. Committee, 2008 that the writ petition has become infructuous.

9. A counter affidavit has been filed by the Secretary, Rajya Sainik Board - opp. party No. 7, wherein, though not candidly but impliedly, the contention raised by the petitioner that prioritization was made and Priority-IV was allotted to some of the candidates basing upon the fact that they are the wards of the ex-servicemen, who are getting disability pension, has been admitted. The Secretary, Rajya Sainik Board has stated in paragraph-5 of the counter affidavit as follows:

That with regard to the averments made in paragraph-5 of the writ petition, it is humbly submitted that Priority-IV covers the Defence persons serving or retired who suffer/have suffered disability in peace time due to professional hazards, i.e. rigours, hardship of military service while carrying out duty. It can happen direct from hostile fire/mine blast or be aggravated from prolonged exposure for hardship, difficulties pressures of tough duty like service in extreme adverse climatic conditions, stressful situations. Those persons who suffer disability because of above mentioned conditions only get disability pension and those who are low medical category because of own mistake like road accident or illness due to personal negligence are not entitled disability pension. Hence, Priority-IV was given only to those who are in receipt of disability pension and the petitioner was given Priority-VI according to the order of the Priority as contained in the Government Order dated 19.6.2008 of the Industries Department. As has been regularly followed, Priority-IV is allotted to those who draw disability pension. There is no difference in grant of the pension amount in cases where it has been mentioned in the document disability attributable to military duty or aggravated by Military service. It is only those whose disability is less than 20 percent are not entitled disability pension. There is hardly any difference between the two terms-attributed to Military duty" or "aggravated by Military service" as They both draw same amount of disability pension as per the given percentage of disability. The term "attributed to Military duty" refers to a particular task whereas "aggravated by Military service" covers different tasks over a longer period of time. Those who do not get disability pension, are not given Priority-IV. Therefore, the contention of the complainant is incorrect. There has been no lapse on the part of OP No. 7.

10. Therefore, the moot question, which arises for determination in the present case, is as to whether, as contended by the Rajya Sainik Board, "disability attributable to military service" and "disability aggravated by military service" can be said to be synonymous. If the disability of the above types cannot be equated with each other, the action of the Rajya Sainik Board in giving Priority-IV to wards of ex-servicemen, who are receiving disability pension for disability

aggravated by military service cannot be sustained. It should be kept in mind, at this juncture, that the policy adopted by the Joint Entrance Examination Committee in case of candidates belonging to the reserved category (MI) i.e., giving admission to candidates who are given a higher priority even though such candidates are much below in the rank in the J.E.E. requires that the aforesaid two phrases, i.e., "disability attributable to military service" and "disability aggravated by the military service" should be strictly construed, as otherwise, the eligible candidates who have secured higher rank, would be debarred from getting admission to the M.B.B.S. Course under the said reserved category. The Rajya Sainik Board though has stated that various documents were checked by a committee before allotting priorities, but, in effect, it has been admitted by the said Rajya Sainik Board that Priority-IV was given basing on the receipt of the disability pension by the parents of the candidates. The Priority-IV, as defined in Annexure-10, i.e., the letter of the Government of Orissa in its Industries department specifically states that wards of defence personnel disabled in peace time with disability attributable to military service and wards of Arms and Para-military personnel disabled in peace time with disability attributable to duty. By no stretch of imagination, it can be said that "Disability attributable to military service" and "disability aggravated by the military service" are one and the same. A serviceman while on duty, if receives such injury so as to make him disable, only such disability can be said to be attributable to military service. Whereas, a person suffering from any type of ailment, while in military service, if posted in such place or kept in such situation, thereby the ailment aggravates and consequently, makes him disable, such disability can be said to have been aggravated by military service and not attributable to military service, such disability also entitles him to receive disability pension.

(Emphasis supplied)

11. This Court is, therefore, of the clear view that the Rajya Sainik Board has acted contrary to law as well as not in accordance with the instruction of the Government of Orissa in its Industries Department under Annexure-10 while allotting the Priority-IV to candidates solely basing on the facts that the parents of such candidates are receiving disability pension, as the disability pension is payable to ex-servicemen even when they having become disabled on account of their ailments being aggravated by military service.

12. It is an admitted case that due to such prioritization by the Rajya Sainik Board, at least 8 candidates were allotted priority-IV, who were much below the petitioner in the rank list of the J.E.E. Had they not been allotted Priority-IV, the petitioner having secured rank 17, would have definitely been admitted to the M.B.B.S. Course.

13. In consequence, therefore, finding as above this Court by adopting the ratio in the case of Medical Council of India (supra), directs that if the petitioner so chooses, he shall be given admission to M.B.B.S. Course in any of the three Government Medical Colleges to his choice in the session 2010-11 as a reserved

candidate in the seats reserved for children/widows of persons of Arms/para-military Forces.

14. In the result, the writ petition is allowed, but in the circumstances, without cost.