

(1999) 05 DEL CK 0049

In the Delhi High Court

Case No : C.W.No.271/99

Vikas Arora (Shri)

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 26-05-1999

Acts Referred:

Citation : (1999) 4 AD 34 : (1999) 80 DLT 531

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Mr. M.L. Kasturi, for the Appellant; Mr. R.K. Tikku, for the Respondent

Judgement

Mukul Mudgal, J.—This judgment will dispose of these writ petitions which arise from the denial of admissions to the petitioners to Batch No. 101 of National defense Academy/Naval Academy pursuant to an advertisement issued on 18th October, 1997 which called for filling up of 365 vacancies. The written examination was held by the Union Public Service Commission on 19th April, 1998 and out of 1.10 lac candidates, 4,700 candidates were called for interviews in the month of september/October 1998. Pursuant to the said interviews 398 candidates were declared successful and were sent for medical examination. The UPSC had declared the number of vacancies as 337 when it published the list of candidates in the Employment News dated 28th December, 1998-1st January, 1999. 60 candidates were not found medically fit and the only successful eligible candidates were thus numbered as 338. It is not in dispute that 141 candidates of Batch 100 were accommodated after the admission was concluded in batch 100. This was done pursuant to an order by the defense Minister and in requisite cases even the age relaxation was granted.

2. Originally the writ petition raised two issues i.e. (a) the relative merit ranking of various candidates and (b) the reduction of seats for the present Batch 101. However after the exchange of affidavits, the controversy now is confined to whether it was open to the respondents to reduce the number of seats in a given year/batch as so to deprive the candidates who were selected the benefit of

admission. It may not be out of place to mention that the Kerala High Court in CMP No. 10684/99 in OP No. 6289/99, T.M. Praveen Kumar Vs. Union Public Service Commission, which raises similar issues has passed an interim order dated 19th March, 1999 which directs the admissions of the petitioner therein as a candidate in the 101st batch. The respondents even as late as 20th May, 1999, when judgment was reserved, were not able to show whether the said order of the Kerala High Court was stayed or set aside by a superior Court. This Court was not inclined to pass any interim order but the matter was however set down for expeditious hearing. The respondents have taken a stand in the arguments that the 141 candidates left over from 100th Batch were accommodated on ad hoc basis and they did not displace the candidates of Batch 101, some of whom are petitioners before this Court. For this purpose it is necessary to extract the stand of the respondents in the counter affidavit in Writ Petition No. 271 of 1999 in this Court which reads as under:

"In reply to averments made in para 2(g) of the writ petition 141 left over candidates from 100 NDA Course were earlier sent for training against ad hoc additional capacity created at NDA as directed by the Hon"ble Raksha Mantri and were adjusted against the vacancies of 101 NDA Course."

3. In this connection the petitioners have relied upon a letter dated 1st September, 1998 by Additional Director General of Recruiting Adjutant General's Branch to a candidate of batch 100 for consideration for NDA 101 Course commencing January 1999, annexed to the rejoinder affidavit. The relevant extract from the said letter is as under:

"Against vacancies of 300, 702 candidates have qualified for 100 NDA Course. Therefore, a large number of qualified candidates could not be inducted into NDA because of the limited vacancies available. You being a candidate qualified for 100 NDA Course, are now being considered for 101 NDA Course provided the vacancies in that course are not fully subscribed and you meet the laid down eligibility criteria, which is as follows:

(a) You should be less than 19 years of age on the date of induction i.e. 01 Jn. 99":

(b) You should have passed 10+2 examination in full;

(c) You should be medically fit for which you will have to undergo medical examination again at Military Hospital, Khadekwasla for ascertaining the same;

(d) Allotment of service will be at the discretion of this HQ."

4. The learned counsel for the petitioner submitted that previous year so vacancies have been around 337 seats and the reduction from 337 to 232 as in order to accommodate the candidates left over from the 100 NDA Course. The writ petition has been filed due to the reduction of the vacancies from 337 to 232 for batch 101 only. In this connection the petitioner has relied upon annexure A5 which is the Union Public Service Commission advertisement of Batch 100 which

shows the number of vacancies intimated by the Government to be 337 even for the Batch No.100. The following is the extract from the aforesaid publication notifying the merit list:

"The following are the lists, in order of merit of 701 candidates, who have qualified on the basis of the results of the written examination held by the Union Public Service Commission in September 1997 and the interviews held by the Services Select corporation Board of the Ministry of defense for admission to the Army, Navy and Air Force Wings of National defense Academy for the 100th Course and Naval Academy to 10+2 (Executive Branch) for the 22nd course, commencing from July 1998.

There are some common candidates in the lists for Army, Navy, Air Force and Naval Academy. The total number of such candidates in the three lists is 674. The number of vacancies as intimated by the Government is 337 (214 for the Army, 30 for the Navy, 73 for the Air Force and 20 for the Executive Branch of the Naval Academy)."

5. Reliance is also placed by the petitioners on an affidavit filed in the Punjab & Haryana High Court by the respondent in a writ petition arising from the denial of admission in the 101 NDA Course. The relevant portion of the said affidavit filed in writ petition No. 1238 of 1999 in Punjab & Haryana High Court, is as follows:

"It is submitted that the approximate vacancies to be filled on the basis of this examination for 101 course for NDA was 355 i.e. 214 for Army, 43 in Navy, 73 for Air Force and 35 for Naval Academy....."

"The decision to send left over candidates of 100 NDA Course (September 1997 Examination) with 101 NDA Course was taken in a top level meeting under the Chairmanship of the Hon"ble defense Minister and Army authorities are simply following the instructions of the Ministry by issuing Joining instructions to these candidates. The relevant file/direction will be shown to the Hon"ble Bench at the time of hearing of the case. However, it is clarified that these left over candidates were not adjusted against the existing vacancies of the 101 NDA Course but they were inducted as a part of the ad hoc increased capacity at the academy"

6. The learned counsel for the respondent has taken stands which are at variance with each other. The first stand is that 141 left over candidates of Batch 100 were admitted by virtue of one time adjustment under the orders of the defense Minister. The other stand discernible from the pleadings is that 141 candidates were accommodated in Batch 101. The other contradiction is that in the High Court of Punjab & Haryana the number of vacancies for batch 101 have been enumerated as 355 whereas in this Court they have been stated to be 232. Whichever stand is taken as the correct stand, the respondents cannot treat the students in Batch 101 i.e. the petitioners herein, any differently. In case the left over candidates of Batch 100 were accommodated by way of ad hoc appointment, the same indulgence should have been shown to the candidates of Batch 101 also. However if the 141 candidates of batch 100 were accommodated

in Batch 101 than the respondents cannot deny the same accommodation in the next Batch to the students of batch 101 who have qualified for selection and have been denied admission . In fact an order was passed on 16th March, 1999 by this Court asking the respondents to consider whether the batch 101 could be considered for a similar relief as granted to batch 100. The relevant portion of the said order of this Court dated 16th March, 1999 reads as under:

"This writ petition is filed by the successful candidates in the Batch 101 for NDA/NA examination held in April, 1998. The advertisement for the examination issued in October, 1997 indicated approximately 365 vacancies. The merit list displayed by the U.P.S.C. displayed 337 candidates though The Employment News declared a merit list of 398 candidates. It seems that later on 141 candidates from the batch No. 100 were accommodated in the batch No. 101 by reduction of available seats to 232 in the Batch No. 101. Before the pronouncement on merits of the writ petition, the Respondents are directed to consider whether the candidates of the batch No. 101 can be accommodated in the vacancies of batch 102 in the same manner as was done for batch No. 100. I am informed by the learned counsel for the respondent that only the process for the selection of batch 102 is going on and it has not been finalized and is likely to be finalized only in mid-June. I am also informed that apart from the accommodation in batch 101 the requisite age relaxations were also granted to the candidates who were left over in batch No. 100.

Let such a decision be taken before 8th April, 1999 and the court be informed accordingly."

7. Even though this order was passed as far back as on 16th March, 1999, up to the date when judgment was reserved on 20th May, 1999, the respondents did not communicate any decision to this Court one way or the other.

8. Learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court reported as Prem Prakash Vs. Union of India (UOI) and Others, In the aforesaid judgment the Supreme Court has held as follows:

"It is ironical that the rectification of injustice done to some two persons should result in injustice to two others. But that is exactly what has happened in this case as if to illustrate that one man's food is another man's poison. The condition of the High Court is that though the petitioners were in the merit list of 11 persons for the year 1980 they could not be appointed as Sub Judges because Ajaib Singh and Ram Swarup who were wrongly excluded from the reserved appointments of 1979 had to be accommodated in the merit list of 1980 and after adjusting them against the reserved vacancies of 1980 no reserved vacancies were left for the candidates who were placed in the merit list of 1980. When in furtherance of the decision taken by the Full Court meeting of the High Court we directed on September 2, 1981 that the two candidates of 1979 must be included in the 1979 panel and appointed as Sub Judges despite the expiry of the duration of that panel little did we realise and it was not so stated before us

that the appointment of those two candidates of 1979 will mean the ouster of these two candidates of 1980. Such a strange results to be avoided if not at all costs at least within the framework of the Rules and the administrative instructions governing this matter. Justice to one group at the expense of injustice to another is perpetuation of injustice in some form or the other."

9. The principle set out by the Hon"ble Supreme Court in the aforesaid judgment would apply to the facts of the present case and it is not, Therefore, open to the respondent to deny admission to the students of 101 Batch by reduction of seats/ adhoc adjustment as was done in the case of the students Batch 100. Such denial of admission to the selected candidates f Batch 101 is discriminatory and violates Article 14 of the Constitution of India and no reason has been given how Batch 101 students stand on any different footing from Batch 100 except to state that Batch 100 surplus students were accommodated under the orders of the defense Minister who also granted age relaxation in the case, where it was necessary. It is also necessary to consider the legitimate expectation entertained by the petitioners. The Hon"ble Supreme Court in Punjab Communications Ltd. Vs. Union of India and Others, has laid down the following principles governing legitimate expectations:

"The basic principles in this branch relating to `legitimate expectation" were enunciated by Lord Diplock in Council of Civil Service Unions Vs. Minister of the Civil Service 1985 AC 374. It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment;....."

"The above survey of cases shows that the doctrine of legitimate expectation in the substantive sense has been accepted as part of our law and that the decision maker can normally be compelled to give effect to his representation in regard to the expectation based on previous practice or past conduct unless some overriding public interest comes in the way."

10. The petitioner are all accomplished young students who have secured high academic ranking, been subjected to a exhaustive and comprehensive interview by the Service Selection Board (SSB) and undergone a rigorous medical screening. Every year upwards of 300 students are admitted to the N.D.A. This has been the past intake even according to the respondents. The petitioners were entitled to a legitimate expectation that all the seats advertised for batch 101 for which they were selected would be filled up. Upon being qualified the petitioner would have a reasonable and legitimate expectation of admission which could have only been belied by a higher and overriding public interest. The accommodation of a previous batch cannot be said to constitute such public interest. The respondents reply and pleas do advert to any such public interest.

Accordingly even on this principle of legitimate expectation the petitioners were entitled to be granted the relief of admission. The fact that originally at least 337 seats were advertised and were available cannot be ignored. Mr. Tikku has handed over a chart in which intake of previous batches has been stated. The said intake is as follows:

Sl. Course Joining Cadets Remarks No. No. Instructions Under- going issued
trg. (A) 96 363 383 Including 10 foreign cadets. (B) 97 312 265 -do- (C) 98
501 414 Including 12 foreign cadets. (D) 99 318 332 Including 17 foreign
cadets. (E) 100 353 337 Including 13 foreign cadets. (F) 101 373 329
Including 14 (232+141)* foreign cadets. * 141 left over cadets of 100 NDA
Course. 11. Thus it will be seen that the capacity of intake has been always more
than 312 and has gone up to 501 in Batch 98. Consequently it is very clear that
the reduction of seats for the successful candidates of Batch 101 only to 232 is
occasioned by the absorption of 141 candidates from Batch 100. While
exigencies may compel the respondents to accommodate successful students
from one batch into the other, as was done in Batch 100, yet that cannot be at
the cost of successful students of the next batch. This would clearly be contrary
to the principle laid down in Prem Prakash's (supra) judgment. I am also
conscious of the fact that all the affected students may not have resources to
seek access to the Court and no order should be passed confined only to the
petitioners.

12. I am Therefore of the view that the denial of admission to 141 candidates of
101 batch is not justified and discriminatory and violates Article 14 of the
Constitution and accordingly it is directed that the leftover students from the list
of 338 selected students of batch 101 ousted by absorbing candidates of batch
100, be granted admission to NDA Course forthwith. This Court was informed
that this admission procedure for batch 102 will not to be finalised before June
1999 and consequently rather than grant admission to the petitioners to batch
101, these candidates should be accommodated in batch 102.

13. I am also conscious of the practical difficulty which would come in the way of
accommodation of the petitioner and, Therefore, it is directed that the admission
of 141 students beyond 232 seats can either by granting them adhoc admission
as per respondent's own past practices or could be by accommodating such
students in batch 102 with suitable age relaxations in both courses of action as
was done in the case of batch 100 students. It will be up to the respondents to
accommodate all such students who respond to directions pursuant to this
judgment. The respondent No. 3 will issue an advertisement within 2 weeks in
prominent newspapers all over the country about the relief granted by this
Judgment. The respondent No.3 will accordingly also in addition issue call letter
to all the leftover from the list of 338 successful students of batch 101 within 2
weeks from the date of this judgment calling upon the students to exercise their
option of joining within a week of receipt of the letter/publication of
advertisement and if such option is not exercised the respondents would thus

grant admissions only to such of the successful candidates who respond within the stipulated time and no further admission to the said students shall be allowed so as to avoid dislocation of further batches. I am also conscious of the fact that batch 102 Course for which finalisation is not likely before June will also have to be adjusted. The respondents may Therefore take care in future to ensure that such a situation does not occur and the accommodation may, Therefore, take place either on ad hoc basis or by accommodation in batch 102 by suitable adjustment. The effect may have to be spread over a couple of future batches by consequent reductions in the number of seats or by suitable ad hoc arrangement. This option is left open to the respondents.

14. With these observations the writ petition is allowed. There shall be no orders as to costs.