
(2017) 07 DEL CK 0037

In the Delhi High Court

Case No : 5324 of 2017

ZOYA GILL & ANR

APPELLANT

Vs

UNIVERSITY OF DELHI & ORS

RESPONDENT

Date of Decision : 10-07-2017

Acts Referred:

Citation : (2017) 07 DEL CK 0037

Hon'ble Judges : Indermeet Kaur

Bench : SINGLE BENCH

Advocate : Indra Sen Singh, Abhishek Singh, Mohinder J.S. Rupal, Disha Malhotra, Parag Newmai, Arun Bhardwaj

Final Decision : Disposed off

Judgement

1. Petitioner No. 1 is the daughter of petitioner No.2. Petitioner 2 was commissioned in the Indian Army on 17.12.1988. While serving with 14 Bihar, on 21.08.1990 he was attacked by militants belonging to the Khalistan Commando Force. He suffered bullet injuries as a result of which his calf muscle and left leg were completely blown off. The incident was reported as a "battle casualty" and the injury sustained by him was declared as "war injury".

2. As per the policy bearing No. B/16122/LMC/Org 2 (MP) (c) dated 12.05.1997 of the Government of India, all battle casualties are retained in service till completion of their terms of engagement or if the individual is unwilling to serve or in exceptional cases due to medical reasons they are boarded out. Petitioner No. 2 chose to serve his motherland. Thereafter due to difficulties which increased with age, he found it difficult to perform his duties; accordingly he sought pre-mature retirement which was granted to him on 06.11.2011.

3. On 14.05.1992, respondent No. 5 (Kendriya Sainik Board, New Delhi) issued a circular whereby soldiers "disabled in action" and "boarded out" from service were recommended to be accorded priority for reservation of seats in medical/dental colleges. It was reiterated that this circular is for medical and dental

colleges alone. It did not relate to any nonprofessional/ non-medical/non-dental course.

4. On 23.09.2016, in W.P. (C) No.7813/2016 titled Ananya M.S. and Ors. Vs. Union of India and Others, a Bench of this Court held that for admission to the medical/dental colleges against the reserved quota of wards/widows/dependents of servicemen/ex-servicemen, it must be shown that the servicemen/ex-servicemen were not only disabled in action but also boarded out; meaning thereby that if the concerned servicemen/exservicemen continued in service after being disabled in action, the benefit of reservation in the medical/dental courses would not be available to his wards/widows/dependents. It was again reiterated that this judgment was only applicable to medical/dental courses.

5. Petitioner No. 1 scored 94.2% (best of four) marks in her CBSE result of class 12. Her result was declared on 28.05.2017. As per the Information Bulletin published by the Delhi University (respondent No.1), petitioner No. 1 was confident that she would be able to get her admission in the desired subjects in one of the good colleges of the University. She accordingly did not apply to any other University for the said stream.

6. That between 22.05.2017 to 30.05.2017, the admission portal of respondent No.1 was not functional. On 31.05.2017 when the admission portal became available, the same old policy for admission i.e. ward/widows/dependents of servicemen/ex-servicemen who were disabled in action but not boarded out was reflected. Petitioner No. 1 was fully confident that the Delhi University was following the same old policy as hitherto with regard to the benefit of reservation.

7. On 31.05.2017, petitioner No. 1 applied for admission online in category II in humanities (political science, history, English and psychology); she was legitimately expecting that she would qualify in the cut-off list in the said stream.

8. On 03.06.2017, petitioner discovered that the Information Bulletin of the Delhi University had been amended and for the first time, the words "boarded out" were inserted in priority II and priority IV in CW category for admission to all under-graduate courses of Delhi University. On verbal inquiry, it was revealed that these changes have been made following the ruling of this Court in W.P. (C) No.7813/2016. Further contention is that respondent No.1/Delhi University has thereafter omitted two categories for the purpose of admission to its under-graduate courses and even presuming that the petitioner would have fallen in the last category (category VII which applies to wards of ex-servicemen); since the Delhi University has done away with this category, petitioner No. 1 is now left with nothing in her hand which would enable her to get admission in the Delhi University. She was accordingly constrained to file the present writ petition.

9. Respondent No.1 has filed the reply. It is by way of a short affidavit. Contention of respondent No.1 is that the University of Delhi is providing reservation of seats under CW category for various under-graduate courses which seats are supernumerary. These admissions are conducted only as per the

guidelines laid down by respondents No. 2 to 5. Respondent No.1 in fact accepts the candidature of a party under the CW category on the basis of the certificate duly issued by respondents No. 2 to 5. Pursuant to the decision of the Division Bench in LPA No.536/2016 Master Harshil Anand Vs. UOI (delivered in October, 2016), the respondents had been directed to deliberate on the issue. Vide letter dated 24.05.2017, the Ministry of Defence, Kendriya Sainik Board (respondent No. 5) specified the priorities as also the applicability of the same to all professional or non-professional courses. On the basis of this letter, the Delhi University adopted the sum and substance of this letter and accordingly the Bulletin of Information for the year 2017-2018 provided CW reservation for under-graduate courses as per these priority guidelines. The words "boarded out" are added in Priority II & Priority IV. The number of priorities were limited to 5 instead of 7 as recommended by respondent No. 5. This affidavit reiterates that the comprehensible criteria for CW reservation for professional and non-professional courses has been effected after a considered policy decision has been taken and to apply the same criteria (as per the guidelines given by respondents No. 2 to 5) to all classes alike i.e. for both medical/dental colleges as also for the nonprofessional courses.

10. Respondent No. 5 on behalf of respondents No. 2 to 4 has filed a separate counter affidavit. The stand of respondent No. 5 is that W.P.(C) No.7813/2016 had categorically stated that the words "boarded out" were to be added in priority II and priority IV in the VII priorities which had been enlisted by the Kendriya Sainik Board, Ministry of Defence (respondent No. 5). It is in fact the Kendriya Sainik Board Ex-servicemen Welfare which has the exclusive power and duty to frame policies for the welfare of Exservicemen/ their widows/wards/dependents. These policies are framed keeping in mind the changing requirement of the wards/widows of exservicemen who have been disabled in action and boarded out of service. There can be no compromise with such a policy issued by the Ministry of Defence. Kendriya Sainik Board has constantly maintained that the words "boarded out" have formed a part of priority II and priority IV in the list of seven priorities which have been laid down for CW reservations. The Department of Ex-servicemen Welfare has maintained this stand since 14.05.1992 which was reinforced on 17.02.2015 as also on 19.05.2017. Since the father of petitioner No. 1 (petitioner No. 2) was not boarded out but although having suffered a bullet injury continued to retain himself in service, the benefit of priority II cannot be accorded to petitioner No.1. Another fact as pointed out in the counter affidavit of respondent No. 5 is that petitioner No. 2 has since taken pre-mature retirement in the year 2011 which has been duly sanctioned and as such petitioner No. 1 would even otherwise not fall in category II but at best would be amenable to the benefit, if any, in category VII which applies to a reservation for the wards/widows of ex-servicemen.

11. Rejoinder has been filed by the petitioner reiterating the averments made in the petition and denying the defence set up by the respondents.

12. On behalf of the petitioners, arguments have been addressed by Mr. Indra Sen Singh, Advocate. Learned counsel for the petitioners points out that the admission process has already been initiated; admittedly petitioner No. 1 had applied for her admission online on 31.05.2017. The amended Information Bulletin which was uploaded on the site was much after the initiation of the admission process of petitioner No. 1 i.e. on 07.06.2017. It cannot apply to the facts of the instant case and even presuming that the respondents have a right to modify the Information Bulletin, it cannot be done in this current academic session year as the admission process has already started. It can at best be done only in the next academic session as if this is permitted, the prejudice suffered by petitioner No. 1 would be irreparable. As already pointed out petitioner No. 1 has not applied for any other course in any University as having scored 94.2% marks, petitioner No. 1 was fully confident that she would fit in category II of the reserved quota (as per the policy guidelines of respondents No. 2 to 5); this amendment having been effected in the Information Bulletin in June, 2017, if permitted to be continued would cause an irreparable harm and injury to the petitioner who would be left in a lurch and even after scoring such high marks would not be permitted admission in any reputed University. Learned counsel for the petitioners in support of his submission has placed reliance on a Division Bench judgment of Punjab & Haryana High Court in (2002) ILR 1 Punjab and Haryana 558 Mamta Bansal and Others Vs. State of Punjab and Others; submission being that during the course of admission it is not appropriate to hamper the admissions by altering the eligibility conditions and for this purpose, the Competent Authority must act with great care and caution. Reliance has also been placed upon a judgment of a Bench of this Court delivered on 29.10.2015 in LPA No.679/2014 Siddarth Singh Vs. The Vice Chancellor, Delhi University & Others to support the same submission. Submission being reiterated that the case of the petitioner cannot be adversely affected.

13. On behalf of respondent No.1, arguments have been addressed by Mr. Mahinder J.S. Rupal, Advocate. It is pointed out that the Delhi University had received the letter of respondent No. 5 dated 24.05.2017; pursuant to this letter, a policy decision has been taken by the University; instead of seven categories which has been categorized by respondent No. 5, respondent No.1 has maintained categories No. I to V only; this was well within their domain to do so; this cannot be challenged. Learned counsel for respondent No.1 additionally points out that the Information Bulletin which has now been uploaded for the academic session 2017-2018 (on 07.06.2017) has a disclaimer clause which reserves the right in the University to amend or delete any part of this bulletin without giving any prior notice. Submission being that it is well within the domain of the University to have amended its earlier Information Bulletin which had laid down a different criteria. Since no vested right has been created in favour of the petitioner, this writ petition is not maintainable.

14. On behalf of respondents No. 2 to 5, arguments have addressed by Mr. Arun Bhardwaj, Advocate. The stand in the counter affidavit is reiterated. It is pointed

out that the judgment delivered by a Bench of this Court in W.P.(C) No.7813/2016 which has been upheld in LPA No.536/2016 led respondent No. 5 to address a letter dated 24.05.2017 to the University of Delhi wherein the changed criteria for the inter-se priorities for reservation to wards of Armed Forces personnel for admission to medical/professional/non-professional courses has been taken. It is pointed out that it was pursuant to this rule making policy of respondent No. 5 that respondent No.1 has modified the Information Bulletin; this was in terms of the policy which has been enunciated by respondent No. 5 which the Court must be slow to interfere with as a policy of a Government/ Department cannot become a subject matter of judicial review. It is pointed out that the judgment delivered in W.P.(C) No.7813/2016 which although was in the case of an MBBS/BDS course yet there being no intelligible differentia having been pointed out by the petitioners as to why the words "boarded out" should not be equally applicable to non-professional courses, a policy decision after due deliberations has been taken by respondent No. 5 to make applicable these words "boarded out" to be added in category II and category IV also for the purpose of reservation and which would be applicable not only to medical/dental colleges but to all other non-professional courses as well. Learned counsel for the said respondent has also placed reliance upon a judgment of the Apex Court reported in (2013) 4 SCC 540 Tej Prakash Pathak and Others Vs. Rajasthan High Court and Others; submission being that "the rules of the game" can be changed and it is well within the domain of respondent No. 5 to do it; only criteria being that such a change should not conflict with the other constitutional rights guaranteed to a party. For the same proposition reliance has also been placed upon (2010) 2 SCC 637 Rakhi Ray & Others Vs. High Court of Delhi and Others; submission being that even inclusion of the name of a party in a select list, it does not give him a vested right for admission. By applying the same criteria, a vested right has not been created of the petitioners. Reliance has also been placed upon (1997) 3 SCC 59 Dr. K.Ramulu and Another Vs. Dr. S. Suryaprakash Rao and Others.

15. Arguments have been heard. Record has been perused.

16. Petitioner No. 1 is admittedly the daughter of a soldier who was disabled in action while serving in Bihar 14. He however continued to remain in service and was not boarded out. The policy/guidelines issued by the Department of Ex-Servicemen Welfare (DESW) for MBBS and BDS seats were as follows:-
Guidelines issued by GoI/DESW for MBBS/BDS seats allotted by Ministry of Health and Family Welfare (MoHFW) and in vogue till 18th May, 2017

Category Priority

a) killed in action

1

b)Disabled in action and boarded out from service 2

- c) Died while in service with death attributable to Military Service 3
- d) Disabled in Service and boarded out with disability attributable to Military Service 4
- e) Gallantry Awardees/Decoration Holders (serving/retired) 5
- f) Wards of ESM (JCO/Ors) 6
- g) Wards of ESM (Officers) 7

17. These guidelines issued by the Government of India/DESW are for the MBBS/BDS seats. The words "boarded out" were introduced in priority II and priority IV. These have remained in force since the year 1992. Even as per the counter affidavit of respondent No. 5, it is clear that no formal guidelines had been issued by DESW for admission against seats reserved for wards of defence forces in Central/State universities/Government/professional/non-professional institutions till Order No. 6 (1)/2017/D(Res-II) dated 19.05.2017 although letter to this effect had been addressed by the then Hon'ble Defence Minister George Fernandes dated 17.11.2000 and 29.08.2003 to the HRD Minister reiterating that similar guidelines should be laid down for professional/non-professional courses but admittedly these guidelines never came into place. The priorities which have been aforementioned were only to apply to the MBBS and BDS courses. Even in the order dated 21.06.2017, this contention of the petitioners has been noted; it had rightly been pointed out that in the affidavit filed by respondent No. 5, it has been admitted that no formal guidelines were issued by Department of Ex-Servicemen Welfare (DESW), Kendriya Sainik Board with regard to reservations, for wards of defence forces in nonmedical seats. It has also been noted that the judgment of this Court delivered in Master Harshil Anand (supra) would not be applicable as that judgment was restricted to the reservation policy relating to medical and MBBS seats for which a recommendation had been given by the Kendriya Sainik Board as far back as in 1992 and the reservation policy of the University was issued pursuant to these recommendations of the Kendriya Sainik Board of the year 1992. In the course of arguments addressed before this Court nothing contrary has appeared. In fact it is clear that the words "boarded out" as appearing in category II and category IV only related to reservations for the MBBS and BDS/medical seats. It did not apply to other professional/non-professional courses.

18. On 24.05.2017, respondent No. 5 had addressed a letter to the University of Delhi bringing to its notice the letter No. 6 (1)/2017/D(Res-II) dated 19.05.2017 regarding the inter-se priority for reservation preference to the wards of armed forces personnel of the State/UTs for admission to medical/professional/non-professional courses. It was in this communication dated 24.05.2017 that the words "boarded out from service" were for the first time added in priority II and priority IV for the non-professional/other professional courses. Respondent No.1 had amended its Information Bulletin only pursuant to this communication. This Information Bulletin had been amended by respondent No.1 on 07.06.2017.

19. Submission of the learned counsel for respondent No. 5 on this count that the disclaimer clause "university reserved the right to amend or delete any priority without giving prior notice" comes to his aid is a misunderstood submission. It does not help the stand of respondent No.1 as this Information Bulletin was amended after the admission process had been initiated and was already in progress. This fact is not in dispute. It is an admitted fact that as per the earlier Information Bulletin uploaded by the University on its website, the words "boarded out" did not form a part of category II. It is the consistent case of the petitioners that between 22.05.2017 to 30.05.2017, the admission portal of Delhi University was not functional. On 31.05.2017 when the admission portal became available, the same old policy for admission of wards/widows/dependents of servicemen/ex-servicemen who had been disabled in action but not boarded out was reflected. Petitioner No.1 had online applied for admission on 31.05.2017. She had applied in category II for the subject humanities (political science, history, English and psychology). She was legitimately and rightly expecting that she would qualify in the cut-off list as having scored 94.2 % marks in her CBSE. It was genuine expectation that she would get admission in the course of her choice in terms of the reservation policy as categorized in category II and was a fully valid expectation. She had also not applied in any other university.

20. Once the admission process had started, it was not within the domain of the University to have made changes in the eligibility criteria. They could not have inserted the words "boarded out" in category II and category IV as has been done by them in the Information Bulletin which has now been uploaded on 07.06.2017. A valuable right of the petitioner has been jeopardized; jeopardized to such an extent that unless this is rectified, she would be hopelessly barred from getting admission in any course in a university of repute and for a meritorious student like her, this would be a huge emotional set back which could probably not be reversed. This Court would also like to point out that as late as 26.05.2017, the petitioner had received a "Education Concessional Certificate" from the Zila Sainik Welfare Officer, Chandigarh informing petitioner No. 1 that she is eligible for educational concession for admission in the Delhi University against the armed forces quota in priority II.

21. The Division Bench of Punjab and Haryana High Court in Mamta Bansal (supra) in the context of admission in the sports quota where a decision was taken by the Government to do away with the eligibility conditions which had caused serious prejudice to the general category students had held as follows:- "Every decision of the Government is supposed to be taken in good faith and preferably on data based studies. The government, in its wisdom, thus, had come to the conclusion that introduction of minimum qualifying marks in the competitive examination even by the reserved classes candidates was called for. Such a decision taken in May, 2000 at the time of publication of notification hardly calls for any such alteration, which amounts to a complete somersault to policy decision. The policies in regard to education matters ought to be framed

with considerable thought, caution and with due care to the attendant factors. But once such a policy decision is taken, it ought not to be altered frequently and that too without any compelling circumstances and without giving proper and sufficient notice to all concerned in this regard we again refer to the following observations of the Full Bench in Amardeep Singh Sahota's case (supra):

We have held that it is the jurisdiction of the State Government to lay down the policy for admission to the sports quota in the Medical Colleges but in our opinion the State Government should not change the policy every year and in one year change it many times as has been done in this year. We expect the State Government that any policy which it determines in regard to the sports quota for the next year, shall be permitted to continue for atleast three years so that students who are eligible in the sports quota may be aware of the said policy.

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During the course of admission, it is normally not appropriate to hamper the admission by altering the eligibility conditions. It has the effect not only of disturbing the admissions and causing disadvantage to the students at large, but also adversely affecting the commencement of the course. The Government and for that matter any competent authority must act with great care and caution in such matters."

22. This judgment was followed by the Division Bench of our Court in Siddarth Singh (supra). This was also a case where the petitioner had sought admission in the B.Com (Hons/Program/Course) under the sports quota. The eligibility conditions contained in the earlier Information Bulletin had been changed which had adversely affected the right of the said petitioner. The Court had noted that if this predicament is permitted to be continued, the writ petitioner would be left without admission inspite of securing high marks making him in-eligible for admission in the sports quota in the colleges of the respondent University or in any other college of repute. The stark reality of wasting one year of his academic life had been noted. The Division Bench had quoted with approval the dicta laid down in Mamta Bansal and had inter-alia held as follows:- "In a case where mid-term changes in the admission policy were made, to have held that the same cannot be allowed to adversely affect the interest of candidates and the calculations of the admission seekers correctly made for choice of subject and college on the basis of the admission policy originally announced cannot be allowed to be thwarted and the students taken by surprise. It was further held that the principle of equity and fairness would demand that the candidates in whose favour a right has accrued and they have exercised their permissible options based on terms and conditions of the brochure existing at the relevant time, should not be exposed to avoidable prejudice. We are therefore of the view that a case for directing admission of the appellant / writ petitioner is made out."

23. The ratio of the judgments are fully applicable to the case in hand.

24. The judgments relied upon by the respondents do not come to their aid. All

the aforementioned judgments i.e. Dr. K. Ramulu, Rakhi Ray and Tej Prakash Pathak (supra) related either to the recruitment process or to promotion. In Rakhi Ray the Court was of the view that the empanelment of a candidate by itself would only amount to a condition of eligibility for appointment. It did not create a vested right in such a party. Those judgments with utmost respect do not apply to the facts of the instant case.

25. The prayer made in the writ petition is allowed. The words "boarded out" have not found mention in the Information Bulletin pursuant to which petitioner No.1 had applied for her admission and the admission process already having started, the subsequent changes in the Information Bulletin where the words "boarded out" have been added being gravely prejudicial to the interest of the petitioner, cannot be read qua the petitioner.

26. Accordingly, petitioner No. 1 is permitted to be considered for admission as per priority II in the CW category for non-professional undergraduate course de hors the words "boarded out" which have to be necessarily excluded for the purpose of her admission. Her application be processed accordingly.

27. Petition disposed of.

28. Order dasti under signatures of the Court Master.