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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : 21st February, 2013

\+ **W.P.(C) No.2274/2012 & CM No.4873/2012**

SUNIL BHARDWAJ ..... Petitioner

Through : Major K. Ramesh and Ms. Archana Ramesh, Advs.

versus

UOI AND ORS ..... Respondents

Through : Mr. Ankur Chhibber, Adv. for UOI.
Mr. Ashish Kumar, Adv. for Medical Council of India.

\+ **W.P.(C) No.2276/2012 and CM No.4875/2012**

BRIJPAL UPADHYAY ..... Petitioner

Through : Major K. Ramesh and Ms. Archana Ramesh, Advs.

versus

UOI AND ORS ..... Respondents

Through : Mr. Ankur Chhibber, Adv. for UOI.
Mr. Ashish Kumar, Adv. for Medical Council of India.

\+ **W.P.(C) 2277/2012 and CM No.4876/2012**

AMRITA DATLA ..... Petitioner

Through : Major K. Ramesh and

Ms. Archana Ramesh, Advs.

versus

UOI AND ORS. ..... Respondents

Through : Mr. Ankur Chhibber, Adv. for UOI.
Mr. Ashish Kumar, Adv. for Medical Council of India.

+ W.P.(C) 2278/2012 and CM No.4877/2012

RANJIT PAL SINGH BHOGAL ..... Petitioner

Through : Major K. Ramesh and Ms. Archana Ramesh, Advs.

versus

UOI AND ORS ..... Respondents

Through : Mr. Ankur Chhibber, Adv. for UOI.
Mr. Ashish Kumar, Adv. for Medical Council of India.

+ W.P.(C) 2279/2012 and CM No.4878/2012

SEEMA PRASAD PANDEY ..... Petitioner

Through : Major K. Ramesh and Ms. Archana Ramesh, Advs.

versus

UOI AND ORS ..... Respondent

Through : Mr. Ankur Chhibber, Adv. for UOI.
Mr. Ashish Kumar, Adv. for Medical Council of India.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

GITA MITTAL, J. (Oral)

1. These writ petitioners assail the common judgment dated 23rd September, 2011 passed by the Armed Forces Tribunal, New Delhi dismissing five petitions being O.A.Nos.262, 257, 258, 259 and 260 of 2011 filed by Maj. Brijpal Upadhyay, Ex.Major Ranjit Pal Singh Bhogal, Ex. Major (Mrs.) Amrita Datla, Ex.Major Sunil Bhardwaj, Ex. Major Lt.Col.(Mrs.) Seema Prasad Pandey v. Union of India & Ors. respectively. The petitioners have separately assailed this common judgment by way of the above five writ petitions. Inasmuch as these writ petitions raise similar questions of facts and identical questions of law, the same are taken up together for consideration and adjudication.

2. Inasmuch as, the order of the Armed Forces Tribunal takes into consideration the facts in the case of Major Brijpal Upadhyay, we are also noticing the facts of the same petition hereafter. On 18th February, 2003, this petitioner was granted Short Service Commission as a doctor in the Army Medical Corps. His initial appointment was for a period of five years, extendable initially for five years with an option for a further extension of four years. Major Brijpal Upadhyay applied for release from the Army on the 20th of February 2011.

3. Just as the other four petitioners, this petitioner applied to the R&R Medical Hospital at Delhi for undergoing the post-graduate

medical course for the Academic Session 2011. The grievance of the petitioner is that the respondents had notified a merit list of 56 doctors as having qualified for the post-graduate course being conducted by the R&R Hospital but gave admission to only 42 doctors. It is contended that the respondents took the illegal stand that the remaining 14 doctors, though in the merit list, could not be granted admission for the reason that the hospital did not have sufficient teaching faculty which was recognized by the University of Delhi.

4. The petitioners before us was amongst 14 doctors who were not granted admission despite their names existing on the merit list of 56 doctors. The petitioners assailed the action of the respondents in denying admission by way of the said application before the Armed Forces Tribunal contending that the respondents had sufficient teachers for teaching students of post graduate and diploma courses. Reliance was placed on the sanction accorded by the Medical Council of India for 70 vacancies of which 56 were intended for MD/MS candidates as well as balance were for diploma and DNB courses.

5. There was no dispute before the Tribunal or before this court that 56 doctors who were qualified were in the order of merit and the 42 doctors who were admitted were higher in merit than the petitioners. The case of the petitioner rests on the plea that given the declaration of the merit list of 56 doctors, the petitioners had a legitimate expectation to be admitted against the 56 vacancies for the post graduate course of MD/MS.

6. At this stage, we may briefly notice a few essential facts. It is an undisputed position that applications were invited for pursuing post graduate degree/diploma courses in institutions run by the Armed Forces for the 2011 session vide a prospectus and application form on terms detailed in the brochure. The respondents have pointed out the priorities and categorization of admission mentioned in the brochure. We may notice the following stipulation by the respondents in the brochure:-

> **"PRIORITY/CATEGORY FOR ADMISSION**
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> 4. Admissions for PG studies are governed by Govt. of India, Ministry of Defence letter No.FPC-8510/DGAFMS/DG-1D/2273/2001/D(Med) dated 05 Nov 2001, FPC-8510/DGAFMS/DG-1D/2556/D (Med) dt 02 Sep 2004, 8510/DGAFMS/DG-1D/3018/D (Med) dt 15 Oct 2004, 8510/DGAFMS/DG-1D/277/D (Medical) dt 14 Feb 2008. The admission and training are controlled by the Office of the DGAFMS in accordance with prevalent rules. The priority for admission of candidates is as follows:-
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> xxx
>
> (d) **Priority – IV –** Ex SSC AMC Officers released from the service after completion of contractual service within three years after their release from service.
>
> (i) The date of release should not be before 01 May 2008 or after 30 Apr 2011 for the session starting in May 2011.
> (ii) SSC AMC Officers in their last year of contractual service are also eligible to apply for this category. They

will be permitted to appear in the entrance test only with the permission of DGAFMS. They will apply through proper channel through their units and respective DGsMS for the above permission. However, on the date of counseling, they should produce documentary proof of their attaining Ex-SSC status by 30 Apr 11 without which they will not be considered for counseling.

(iii) Officers who have resigned their commission or not completed their contractual service are not eligible to appear under this category.

(iv) The upper age limit for this category shall remain 40 years as on 30 Apr 2011.

(e) **Priority – V –** Civilian candidates willing to serve in the Armed Forces Medical Services (AFMS) subject to their fulfilling the eligibility criteria mentioned in para 8 below. Civilian candidates will have to submit a bond agreement of `5 lacs at the time of admission and have to be medically fit to the standards required for commission in the AFMS. Officers of the AFMS who have resigned their commission or not completed contractual service as SSC officers are not eligible to be considered as Priority-V candidates even though they may be below 35 years of age."

It is admitted that the petitioners fall under the Priority –IV and V notified in the brochure.

7. The petitioners have placed heavy reliance on the following stipulation in the brochure:-

"NOTE : Candidate can apply only to ANY one institution for a particular session"

It is urged as a result of the stipulation above, the respondents deprived the candidates opportunity of applying in any other institution being run by the Armed Forces.

8. The respondents have also pointed out that in the said brochure, the candidates were duly notified that the Army Hospital (R&R), Delhi Cantt. is affiliated with the Delhi University. The details of the courses being conducted in the hospital were also duly notified. As a result of the said affiliation, the Army Hospital (R&R) was bound to comply with the stipulations made by the Delhi University in exercise of powers under the Delhi University Act as well as the statutes and ordinances framed in exercise of statutory power. The entire case of the respondents rests on the stand of the Delhi University with regard to the requirement of the teaching faculties in an institution affiliated to it, being recognized by the Delhi University.

9. The petitioners have pitched their case of legitimate expectation on the sole factor that the respondents had notified the eligibility list of 56 persons. In this regard, so far as number of seats for which admissions were effected is concerned, our attention has been drawn to Clause 7 of the brochure which reads as follows:-

> "7. The actual number of seats available in each subject shall be subject to vacancies available after fulfilling the training requirements of AFMS and sponsored candidates subject to MCI and relevant University regulations. <u>The number of seats available for non-service candidates</u>, after approval of DGSFMS, shall

be displayed by Army Hospital (R&R) Delhi Cantt before commencement of counseling."

10. Our attention has been drawn further to the following eligibility criteria on which reliance has been placed by the respondents:-

"**ELIGIBILITY CRITERIA**

8. The following eligibility criteria shall be applicable:-

xxx

(g) The number of candidates to be admitted in any discipline during a particular session will be determined by the number of post-graduate teachers available, the student-teacher ratio and any other criteria laid down by the Medical Council of India and Delhi University from time to time. However, the exact number of available seats, after approval of the DGAFMS, will be displayed on the notice board of the institution only before the start of counselling session."

11. The above extracts of the brochure show that all candidates were put to notice with regard to the requirements of the Delhi University. The respondents had also clearly informed all applicants that the exact available number of seats to which admission could be accorded to would be displayed on the notice board of the institution only before the start of the counselling session. There was never any declaration that the respondents were effecting 56 admissions.

Therefore, the petitioners cannot contend that they were not aware of the requirement of maintenance of a student-teacher ratio in terms of the criteria laid down by Medical Council of India (MCI) as well as by Delhi University or claim any right based on the declared merit list.

12. So far as the admission to the 2010 post graduate MD/MS courses which was to be conducted by the Army Hospital (R&R) is concerned, it is an admitted position before us that the respondents had notified that admissions were effected to only 42 seats on the 19th of April 2011 depending on available faculty for the course which commenced on 18th May, 2011. This position has been confirmed to Amrita Datla, one of the petitioners who had made an application under the Right to Information Act, 2005 to the Army Hospital (R&R). Thus, the position which emerges is that though the MCI had accorded recognition to 56 seats for post graduate MD/MS courses to be conducted by the Army Hospital (R&R), on account of want of recognised faculty position by the Delhi University, the respondents offered admission for only 42 seats to candidates out of a merit list of 56 in the order of merit.

13. Mr. Ankur Chhibber, learned counsel appearing for the Army Hospital (R&R) has also drawn our attention to the communication dated 11th April, 2011 annexed by the writ petitioner wherein the Directorate General of Medical Services had further informed the hospital to the effect that "*in view of the scarcity of resources, it has been decided that a maximum of nine seats will be offered to priority III, IV and V candidates subject to*

availability of teaching faculty and teaching beds". Therefore, .even out of the 42 seats to which admissions have been made, only nine seats were available for admission to the priority III, IV & V candidates. As noticed above, the petitioners fall in priority IV & V.

14. It is urged by learned counsel for the respondents that there is neither injustice nor error in not according admissions to the petitioners who would not have fallen in the 42 candidates who had been given admission.

15. In view of the above factual position, the tribunal considered the matter at length and by a judgment dated 23rd September, 2011 rejected the challenge laid by the petitioner. The tribunal has returned the finding that the action of the respondents was neither arbitrary nor malafide. The ground urged by the petitioners with regard to there being sufficient funds as well as facilities was considered irrelevant for the sole reason that lack of teaching faculty could not be compromised.

We are in respectful agreement with the findings of the tribunal on these issues.

16. We further find that the Armed Forces Tribunal has concluded that being the affiliating institution, the Delhi University alone was competent to certify the teaching positions as qualified supervisors within the meaning of the expression in the appropriate statutes. This finding has not been challenged before us.

17. Mr. K. Ramesh, learned counsel for the petitioner has urged that the petitioner had sought further information under Right to

Information Act, 2005 from the MCI, Delhi University as well as Army Hospital (R&R) and had received information with regard to the recognition accorded by the Delhi University to several teaching faculty of the Army Hospital (R&R). Based on this information, the petitioners had filed a review petition being R.A.No.59/2011 on the 10th of October 2011. This review petition was rejected by the tribunal again after detailed consideration on the 17th of November 2011. The learned tribunal was of the view that the recognition as good supervisor or supervisor was accorded after the cut-off date of 19th April, 2011.

18. As noted above, the Army Hospital (R&R) had conducted counselling of the successful candidates on the 19th of April 2011. We are informed that the course in question commenced on 18th May, 2011. A perusal of the order dated 17th November, 2011 on the R.A.No.59/2011 as well as response received by the petitioner from the Delhi University (under the Right to Information Act) with regard to the dates of the faculty recognition would show that none of the faculty had been recognized as teaching faculty prior to the commencement of the course even.

In this background, no benefit would enure to the petitioners based on the recognitions accorded by the Delhi University after the commencement of the course.

19. The matter did not end here. The petitioners before us filed further review petitions being R.A.Nos.10, 06, 07, 08 and 09 of 2012 with applications for condonation of delay. These review petitions were based on the action of the respondents with regard to

admissions for the academic session which commenced in 2010. It was pointed out by the petitioner that while admitting candidates pursuant to the examination held on 17th January, 2010 and counselling held on 25th and 26th March, 2010, the respondents admitted candidates even though the teaching faculty had not been recognized. It is urged that based on the action of the respondents for the year 2010, the present petitioners were entitled to admissions in the 2011 course. This submission did not find favour with the tribunal and the review petitions came to the rejected summarily by an order passed on 22nd February, 2012. We are also unable to agree with the challenge of the petitioners to the position taken by the tribunal so far as this ground is concerned. The course to which the petitioners sought admission was being conducted by a recognized institution and the courses were affiliated to the Delhi University and the norms laid down by the University of Delhi in exercise of statutory power had to be complied with. Even if we accept the contention of the petitioner that the respondents violated the norms or deviated from the same for the year 2010 however, it is well settled that a plea of discrimination would not rest on an illegality.

20. Learned counsel for the petitioner has urged at some length that these petitioners cannot be made to suffer for the faults of the respondents and that they must be considered for admission to the future courses. It is urged that the petitioners are in court since July, 2011 after they learnt of the aforesaid illegality in the actions

of the respondents and therefore, must be accommodated against seats in the future academic courses.

21. In this regard our attention has been drawn by the respondents to several judicial pronouncements of the Supreme Court wherein the Court has prohibited admissions to future courses based on entrance examination conducted for a particular academic year. So far as admissions to medical courses are concerned, the position is even stricter.

22. There is yet another reason why it would not be possible to accept this request. We are informed by Mr. Ashish Kumar, learned counsel appearing for Medical Council of India to the effect that the Medical Council of India has completely revamped the scheme of admissions to medical courses and that a centralized medical examination has been conducted this year for effecting admissions to all institutions and courses. It is urged that based thereon, an examination for the academic session 2013-14 has already been held. It is also pointed out that this scheme of Medical Council of India has been challenged by various institutions and the matter is presently before the Supreme Court of India and there is stay so far as publication of the result is concerned. It is however, pointed out that in view of the scheme notified by the Medical Council of India, the Directorate General of Medial Services of the Army has not conducted any entrance examination and that admissions would be effected based on the common entrance exam directed by the Medical Council of India which has been conducted by the National Board of Examinations subject to

the adjudication by the Supreme Court. In this regard, copy of the order dated 13th December, 2012 passed in Transfer Case (C) No.101/2012, A.P. Pvt. Medical & Dental College MGT Association v. Dr. N.T.R. University of Health Sciences and Anr. along with connected writ petitions has been paced before us.

23. In view of the above discussion, we see no reason to differ with the view taken by the Armed Forces Tribunal in the judgment dated 23rd September, 2011 and the orders dated 17th November, 2011 and 22nd February, 2012 dismissing the review petitions filed by the petitioners.

We find no merit in these writ petitions which are hereby dismissed.

For the same reasons, the pending applications do not survive for adjudication and are also dismissed.

There shall be no order as to costs.

GITA MITTAL, J

J.R. MIDHA, J

FEBRUARY 21, 2013
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