

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

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Date of decision: 23rd July, 2015

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W.P.(C) No.6671/2015

AYUSHI THROUGH: RAHUL KUMAR SINGH Petitioner

Through: Mr. Anoopam N. Prasad, Ms.
Vasundhara Nagrath and Mr. Satyam
Thareja, Advs.

Versus

DELHI TECHNOLOGICAL UNIVERSITY & ORS... Respondents

Through: Mrs. Avnish Ahlawat & Ms. Latika
Chaudhary, Advs. for R-1&2.
Mr. Raman Duggal, Adv. for R-3.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, an aspirant for admission to the Bachelor of Engineering (B.E.) / Bachelor of Technology (B. Tech) programme of the respondent No.1 Delhi Technological University (DTU) in the academic year 2015-16, has filed this petition seeking a direction to the respondent University; i) to grant to the petitioner the benefit of 5% reservation for children belonging to Priority V of the Defence Category; ii) to recognize the Gallantry Awards awarded to the father of the petitioner; and, (iii) to restrain the respondent University from displaying its list of provisionally selected candidates.

2. It is the case of the petitioner:

- (i) that the respondent University in its Information Brochure of the Joint Admission Counselling for the year 2015 has stipulated that 5% of the total seats are reserved for children belonging to the “Defence Category” in the following priority:-

“Priority I - Widows/wards of Defense Personnel/Para Military Personnel killed in action. Required Certificate: Proof in Original.

Priority II - Wards of serving Defense personnel and ex-servicemen/Para Military Personnel disabled in action. Required Certificate: Original disability certificate clearly indicating the disability is attributable to Military Services.

Priority III - Widows/wards of Defense Personnel/Para-Military Personnel who died in peace time with death attributable to Military Service. Required Certificate: Original death certificate clearly indicating the cause of death is attributable to Military Services.

Priority IV - Wards of Defense Personnel/Para Military Personnel disabled in peace time with disability attributable to Military Service. Required Certificate: Original disability certificate clearly indicating the disability is attributable to Military Services.

Priority V - Wards of serving Defense Personnel and Ex-servicemen para-Military / police personnel who are in receipt of Gallantry Awards: -

- (1) Param Vir Chakra
- (2) Ashok Chakra
- (3) Sarvottam Yudh Seva Medal
- (4) Mahavir Chakra
- (5) Kirti Chakra
- (6) Uttam Yudh Seva Medal
- (7) Vir Chakra
- (8) Shaurya Chakra
- (9) Yudh Seva Medal
- (10) Sena/ Nau Sena/ Vayusena Medal*

Priority VI – Wards of defense Ex-servicemen. Required Certificate: Original ex-servicemen Identity Card/discharge book/PPO (Pension Payment Order).

Priority VII – Wards of Serving Defense personnel. Required Certificate: Original Service identity Card and dependent card/ certificate issued by the competent authority.

Note: -

*This medal is awarded for Gallantry as well as for distinguished service. Accordingly it is notified in correspondence as under:

- (a) Sena Medal (G)/ Nau Sena Medal (G)/ Vayu Sena Medal (G) for the medal awarded for Gallantry.
- (b) Sena Medal (D)/ Nau Sena Medal (D)/ Vayu Sena Medal (D) for the medal awarded for Distinguished Service.

However, for the purpose for reservation, only notification which states that the Sena Medal has been awarded for Gallantry will be accepted and the Sena Medal for Distinguished Services will not be considered.”

- (ii) that the father of the petitioner, currently posted as Inspector, Delhi Police was awarded two Gallantry Medals – (a) Police Medal for Gallantry vide Notification dated 28th November, 2005; and (b) 1st Bar to Police Medal for Gallantry vide Notification dated 12th February, 2007;
- (iii) that the Ministry of Home Affairs, Government of India has issued a Certificate dated 11th June, 2015 to the effect that the petitioner is eligible for education concession for admission in Delhi University against the Armed Forces Quota under Priority V;
- (iv) that the petitioner went to the respondent University on 13th July, 2015 for document verification but the documents of the petitioner were not accepted on the ground that Gallantry Awards awarded to the father of the petitioner do not fall under Priority V of the Information Brochure aforesaid of the respondent University;

- (v) that the action of the respondent University of denying the aforesaid benefit of reservation under the Defence Category to the petitioner is illegal;
- (vi) that the list of ten awards included in Priority V (supra) cannot be construed as an exhaustive list inasmuch as it does not contain the word “only”;
- (vii) that the ten awards listed under Priority V (supra) pertain primarily to Gallantry Awards awarded to defence personnel and do not include any awards awarded to police personnel or Para military Forces;
- (viii) that Priority V (supra) being inclusive of “police personnel”, the Gallantry Awards awarded to police personnel cannot be excluded from the list of Gallantry Awards to recipients of whom the benefit under Priority V shall enure;
- (ix) that inclusion in Priority V of only some of the Gallantry Awards is arbitrary and bad in law;

- (x) that the respondent University is discriminating against the Gallantry Awards awarded to Police personnel.

3. Notice of the petition was issued on 14th July, 2015 for 16th July, 2015, when considering the urgency expressed, with consent, the counsels were finally heard without calling for a counter affidavit and judgment reserved.

4. It may however be noted that the counsel for the petitioner on 16th July, 2014 stated that he had filed an application to place additional documents on record. Since the said application had not been listed, copy thereof along with copies of the documents sought to be filed were taken on record and have also been considered.

5. The counsel for the petitioner has argued:

- (a) that the Ministry of Defence vide letter dated 3rd June, 1994 to the Chief Secretaries of all States / Union Territories though confirming that education is a State subject and universities are autonomous bodies, recommended standardization of preference for admission in defence quota, to bring about

uniformity in the States and Union Territories and further prescribed the seven categories aforesaid in respect of wards of Defence Category and requested for the said prioritisation to be followed in admission to medical / professional colleges;

- (b) that the Ministry of Home Affairs (Police Division) vide letter dated 21st July, 2009 to University of Delhi recommended that wards of Police personnel who are recipients of Gallantry Awards viz. President's Police Medal for Gallantry and Police Medal for Gallantry awarded by Ministry of Home Affairs be also made eligible for reservation in admission in various courses in the University of Delhi against Priority V of the seats reserved for defence category;
- (c) that the Deputy Registrar (Academic) of the University of Delhi vide letter dated 27th July, 2009 to the Faculty of Technology, University of Delhi informed of the inclusion of the police personnel who are recipients of Gallantry Awards viz. President's Police Medal for Gallantry and Police Medal for Gallantry awarded by the Ministry of Home Affairs under

Priority V of the Defence Category for the purpose of availing concession in admission of their wards under the aforesaid Defence Quota of 5%;

- (d) that the University of Delhi vide Circular dated 22nd May, 2014 has updated the guidelines for admission to various undergraduate and postgraduate courses and thereunder has included President's Police Medal for Gallantry and Police Medal for Gallantry in Priority V.

6. Per contra, the counsel for the respondent University contended that the matter is no longer *res integra*. Attention was invited to the judgment of this Court in ***Hridaya Bhushan Vs. Netaji Subhash Institute of Technology*** MANU/DE/2145/2013.

7. The counsel for the petitioner in rejoinder, in response to the Court's query, contended that the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 (in short "Delhi Professional Colleges Act") is not applicable to the respondent University.

8. I may at the outset state that a plain reading of the Clause aforesaid in the brochure published by the respondent University, to which there is no challenge, and with the terms contained wherein the admissions to the respondent University are to abide, does not show that the list of Gallantry Awards mentioned therein is only illustrative. Ordinarily, whenever the items included in a list are not intended or meant to be exhaustive, words such as “viz.”, “etc”, “and the like”, “and others”, “*inter alia*”, “such as” “namely” are added at appropriate place. Non mention of any of such words, is ordinarily indicative of the list or the bouquet of words including only the items contained therein and nothing else. In such an eventuality, *ejusdem generis* interpretation cannot be adopted. I am therefore of the opinion that the petitioner / her father, on a reading of the brochure, could not possibly have understood the said clause as being inclusive of the medals awarded to the father of the petitioner.

9. The ‘Note’ at the end of the clause aforesaid, in my view, was / is further indication, even to a person not versed in principles of interpretation of documents, that the list of Gallantry Awards contained therein is exhaustive. The Note, with respect to “Sena / Nau Sena / Vayusena Medal” clarifies that the benefit conferred by the Clause is to be available only to

such recipient of the said Gallantry Award who has been awarded for Gallantry and not to such awardee who, though has been awarded the same medal, but for distinguished service and not for gallantry. The said Note unequivocally conveys, that the decision, whether an award qualifies as a gallantry award or not for the purpose of the said Clause has not been left to any other person or authority, but is of the person / authority / University which is to grant such reservation / concession. The Note thus, reinforces my opinion that the petitioner / her father could not have understood the said Clause as applicable to them.

10. Neither has the counsel for petitioner pointed out nor have I been able to find the words “Gallantry Awards” to be of any definite connotation, for it to be said that the use of the said words is enough to convey as to which all awards are included or have to be necessarily included therein. The word ‘Gallantry’ means, either ‘courageous behaviour, especially in battle’ or “Polite attention or respect given by men to women”. The context in which the words “Gallantry Awards” is used in the Clause aforesaid leaves no manner of doubt that the awards referred to therein are in relation to the former and not latter of the two meanings of “Gallantry”. What will qualify as “courageous behaviour” and / or as “battle”, again is / or can be a matter

of subjective opinion and I am unable to find any objective test prescribed thereof also, neither in any statute or in any rules and regulations. In the absence of any definite connotation or measure of what act will and what will not qualify as gallant, and resultantly whether a particular award will be considered as an award for gallantry or not necessarily has to be of the authority / body which has made the rule conferring a benefit on recipients of gallantry award and once that authority / body has specified the awards, the question of application of principle of *ejusdem generis* does not arise. Of course, certain statutes / rules / regulation viz., the Rajasthan Gallantry Awards (Cash Rewards and Land Grant) Rules, 1966 are found to define ‘Gallantry Award’ but the definition therein also is for the purpose of those Rules only and exhaustive i.e. the awards, which for the purposes of the said Rules are to be understood as Gallantry Awards have been described. Only where the word ‘Gallantry’ or the expression ‘Gallantry Award’ is used without specifying the awards intended to qualify as gallantry award have the Courts ventured into interpreting the meaning of gallantry. Reference in this regard can be made to *Assistant Sub-Inspector (Ex.) Rajender Parsad Vs. Union of India* MANU/DE/9603/2006 where a Division Bench of this Court interpreted the expression “exceptional gallantry and devotion to

duty” as meaning that performance which is extraordinary and not merely average, good or even very good and to recent judgment of the High Court of Bombay in *V.M. Karve Vs. State of Maharashtra* MANU/MH/0900/2015 where the Division Bench of that Court expressed displeasure at the Government Resolution though using the expression “Awards for gallantry in the India-Pakistan conflict of 1971” but not prescribing the awards and proceeded to consider whether a particular award qualified as Gallantry Award in the said conflict. Interestingly, to the same effect is a recent judgment of the Supreme Court of Pakistan in *Ali Azhar Khan Baloch Vs. Province of Sindh* LEX/SCPK/0002/2015 where also in the absence of the definition of gallantry in the statute, the Supreme Court proceeded on the basis of the dictionary meaning of gallantry.

11. There is another impediment in believing the claim of the petitioner of having considered herself as eligible under the aforesaid Clause. The aforesaid Clause is under the Head of “Reservation for Defence Category”; the same provides for reservation of 5% of the total seats in the respondent University, for children belonging to “Defence Category”, in the priority mentioned thereunder. The use, in Priorities I to IV, is again of the words “Defence Personnel” or “Ex-servicemen” or “Para-Military Personnel” and

the words “Police Personnel” as found in Priority V (supra) are conspicuously absent therefrom. In the subsequent Priorities VI and VII also, there is no mention of “Police Personnel”. I have wondered whether reservation for “Defence Personnel” would include “Police Personnel”. At least in the ordinary parlance, it does not. Defence Forces are not understood as including the Police and Police Force is not understood as including the Defence Forces. Ordinarily, Defence Forces conveys Army / Military, Navy and Air Force only. The counsel for the petitioner has not shown that “Defence Personnel” would include “Police Personnel”. While “Defence Personnel” are understood as those guarding the country against threats from outside the country, the “Police Personnel” are understood as responsible for the internal policing and for maintenance of law and order in the country. The two are under the control of different ministries viz. the Defence Ministry of the Union and either the Home Ministry in the case of Union Territories or the State Governments in the case of the States of the country. In this regard, it may be noticed that though the Police Personnel may also carry arms but the expression “Armed Forces” also, is understood as connoting Army, Navy and Air Force only and not the Police Force. Reliance in this regard may be placed on *Akhilesh Prasad Vs. Union*

Territory of Mizoram (1981) 2 SCC 150 and *Sukhdev Singh Gill Vs. State of Punjab* (2000) 8 SCC 492.

12. The same also in my view, could not have led the petitioner into believing that she was eligible for the benefit of the said Clause.

13. I have made all the aforesaid observations in the context of the petitioner having not challenged the aforesaid Clause and rather having proceeded with the admission thereunder. Only when she failed to make the mark, has she come up with this petition. Though a ground of discrimination is raised but neither has any case therefor made out nor have the necessary parties in whose presence such a challenge could have been made been impleaded. The said clause, as admitted by the petitioner also, has been inserted in the brochure of the respondent University in accordance with the recommendation of the Ministry of Defence. Without the Union of India through the Ministry of Defence being impleaded as a party to the petition and which has not been done, no challenge to the Clause can be entertained. Else, the position in law is clear that a candidate who has participated in the admission process without challenging the Rules and Regulations of

admission, cannot, upon remaining unsuccessful, be permitted to challenge the same.

14. Rather the fact that the aforesaid reservation is on the recommendation of Ministry of Defence itself excludes the applicability thereof to police personnel.

15. The counsel for the respondent University is correct in contending that the question is no longer *res integra* and is fully covered by the ***Hridaya Bhushan*** (supra). The claim therein also was for admission under Priority V on the basis of two Police Medals for gallantry awarded by the President of India. While negating the claim, it was held that a University is an autonomous body, entitled to take its own decision in such matters for the purpose of giving reservation / preference in admission and any recommendations of the Government would not bind the University which can take its own view in the matter. It was further held that no material had been placed to show that the President's Police Medal for Gallantry and Police Medal for Gallantry awarded by the Ministry of Home Affairs are equal in all respects to the awards mentioned in Priority V. It was yet further held that the petitioner having not challenged the Clause earlier and

having challenged the same only after being denied the benefit thereof could not maintain the petition.

16. The matter, in my opinion, is placed beyond any pale of controversy by the dicta of the Supreme Court in ***Chandigarh Administration Vs. Manpreet Singh*** (1992) 1 SCC 380, also concerned with reservation in college admissions in favour of wards / spouses of Military / Para-Military personnel. The first priority while making such reservation was for wards / spouses of defence personnel who were awardees of Gallantry Decorations of Paramvir / Mahavir / Vir Chakra. The question for consideration before the Court was whether the said reservation applied also to wards of defence personnel who had been awarded Shaurya Chakra and whether the same was to be treated as equivalent to Vir Chakra. The Supreme Court, after noticing the “Order of Precedence of Awards” under Regulation 717 of Defence Services Regulations held that the Rule framed by Chandigarh Administration and as published by the college in its prospectus having provided reservation only for children and spouses of those defence personnel who were awardees of Gallantry Decorations of Paramvir / Mahavir / Vir Chakra, it was not open to the High Court to also include the Shaurya Chakra therein. The Supreme Court observed that the petitioner

therein also had not questioned the Rule and held that even if the High Court was satisfied that the Rule was discriminatory and bad for the reason of not including Shaurya Chakra and other gallantry awards, the only course open to the High Court was to strike the offending Rule and to direct the authorities to re-frame the Rule; however the Court could not have directed inclusion of Shaurya Chakra also therein. It was held that if the Rule had been struck down and re-framed to include other gallantry awards also, others who may be eligible thereunder and who had earlier not applied considering the Rule not applicable to them, would have also competed.

17. All that has been held by the Supreme Court in the *Chandigarh Administration* (supra) applies equally to the present situation also.

18. I may also mention that I had in *Sukhanshu Singh Vs. Delhi Technological University* 2010 SCC Online Delhi 3592 held that the respondent University, could not have on its own restricted the reservation under the defence category till Priority V only, as had been done then, and was bound by the entire recommendation of the Rajya Sainik Board under the Ministry of Defence and directed the petitioner therein to be admitted. However the said judgment was set aside by the Division Bench of this

Court in LPA No.786/2010 titled ***Delhi Technological University Vs. Sukhanshu Singh*** decided on 12th November, 2010. The Division Bench held that the respondent University was within its right to exclude Priority VI and Priority VII and no direction to the respondent University to abide fully by the recommendation of the Rajya Sainik Board could be issued. Though another Division Bench in ***Shivam Shresthi Vs. Union of India*** MANU/DE/4959/2012 expressed doubts as to the correctness of the view taken by the Division Bench in ***Sukhanshu Singh*** (supra) and referred the matter to a Full Bench but before the Full Bench the said petition was withdrawn on 11th September, 2012.

19. Thus as of today, the view of the Division Bench in ***Sukhanshu Singh*** (supra) holds the field and as per which the respondent University being an autonomous body is fully entitled to confine the reservation to a certain category of the recommendees only.

20. The respondent University in the present case having chosen to confine the reservation under Priority V only to the Gallantry Awards mentioned therein, no error can be found with their decision which requires interference under the writ jurisdiction.

21. As far as the reliance placed by the petitioner on the Certificate dated 11th June, 2015 issued by the Ministry of Home Affairs, Government of India and on the acceptance by the University of Delhi of the proposal of the Ministry of Home Affairs (Police Division) in their letter dated 21st July, 2009 to the University of Delhi is concerned, the same in the light of the respondent University being an autonomous body would be of no avail. If the petitioner felt that the respondent University also should make the same changes as effected by the University of Delhi, it ought to have got pursued the matter with the respondent University also and which she did not do.

22. The mystery however still remains as to the purport of the words “police personnel” in Priority V under the aforesaid Clause. In spite of my best endeavour, I have been unable to harmonize / reconcile the said words with the purport otherwise of the Clause of providing for reservation for defence personnel and their wards and spouses. In this regard, it may be mentioned that as per the information available on the official website of the Ministry of Home Affairs, Police has its own Gallantry Awards, distinct from the Gallantry Awards of the Armed Forces. Though Priority V of the aforesaid Clause uses the words “Police Personnel” but fails to mention therein any Gallantry Awards of the police personnel. The only inference

can be that the inclusion of the words “Police Personnel” in Priority V of the aforesaid Clause is a result of un-skillfulness of the draftsman and this Court has no option but to reject the said words. The Supreme Court in *Union of India Vs. Hansoli Devi* (2002) 7 SCC 273 has reiterated that where the intention of the legislature is found to be clear but the un-skillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language, it is permissible for the Court to reject the surplus words so as to make the statute effective.

23. The petition thus fails and is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 23, 2015
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