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

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Judgment delivered on: 23.09.2016

+ W.P.(C) 7813/2016 & CM Nos.32294/2016, 33498/2016

ANANYA M S AND ORS

..... Petitioners

versus

UNION OF INDIA AND ORS

..... Respondents

Advocates who appeared in the case:

For the Petitioner:

Mr. K.K. Sharma, Sr. Advocate with Mr. Rajiv Bakshi and Ms. Bhanita Patowary, Advocates.

For the Respondents:

Mr. Mohinder J.S. Rupal with Ms. Simran Jeet, Advocates for respondent No.1.
Mr. Rajesh Gogna, CGSC with Ms. L. Gangmei, Advocate for respondent No.1.
Mr. T. Singhdev with Ms. Biakthansangi, Advocates for respondent No.3.

+ W.P.(C) 8358/2016 & CM Nos.34630/2016, 35101/2016

AMRIT SAMRA AND ORS

..... Petitioners

versus

UNIVERSITY OF DELHI AND ORS

..... Respondents

Advocates who appeared in the case:

For the Petitioner:

Mr. Himanshu Sharma, Advocate.

For the Respondents:

Mr. Mohinder J.S. Rupal with Mr. Simran Jeet, Advocates for respondent No.1.
Ms. Anita Sahani, Advocate for respondent No.2.
Mr. Harish Kumar Garg with Mr. R.M. Tripathi, Advocates

+ W.P.(C) 8582/2016 & CM No.35330/2016

VEDIKA RAI

..... Petitioner

versus

UNIVERSITY OF DELHI AND ORS

..... Respondents

Advocates who appeared in the case:

For the Petitioner: . Mr. Virender Kadian, Advocates.

For the Respondents: Mr. Mohinder J.S. Rupal with Ms. Simran Jeet,
Advocates for respondent No.1.
Mrs. Bharathi Raju, Advocates for respondent
Nos.2 and 3.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

23.09.2016

SANJEEV SACHDEVA, J (ORAL)

1. The petitioner in W.P. (C) 7813/2016 challenges the omission of the words "Boarded Out of Service" in Priority II & IV in the category of candidates belonging to Children and Widows of Armed and Para Military Personnel (CWWAPP) also referred to as CW category in the information bulletin of the University of Delhi for the academic session 2016-17.

2. It is contended that reservation for the CW category has been made based on the recommendation of the Kendriya Sainik Board, Ministry of Defence, which in respect of the two priorities has stipulated "disabled in action and boarded out from service" and

“disabled in service and boarded out with disability attributable to military service”. It is contended that the said categories have been granted reservations since May 1992 and include the words “boarded out from service”.

3. Learned counsel for the petitioner contends that the Universities do not have the power to grant any reservation on their own and the reservations are to be granted based on the recommendations of the concerned Ministry. Insofar as reservation for the CW category is concerned, the University could not on its own have modified or altered the categories of persons to whom reservation would be available. The University has to act in accordance with the categories defined by the Ministry of Defence. It is contended that the Ministry of Defence, while defining the categories of persons to whom reservations would be available, has specifically recommended that the same would be applicable insofar as category II and IV are concerned to personnel who are “disabled in action/service and boarded out from service”. Additional documents have been tendered by the petitioner in Court. The same are taken on record.

4. Reliance is placed by the petitioner on letter dated 14.05.1992 of Kendriya Sainik Board, Ministry of Defence, with regard to reservation of seats in Medical, Dental Colleges, which records that till last year i.e. 1991, admission to medical/dental colleges, the priorities included wards of serving and retired personnel of armed forces. It is noted that in view of the limited seats being released by

the Ministry of Health and Family Welfare every year and other constraints, the Ministry of Defence has modified the priorities. The words “disabled” and “Boarded out of Service” were included in priorities II and IV.

5. Reference is also drawn to letter dated 17.02.2015 of the Kendriya Sainik Board, which modifies the letter dated 14.05.1992 and includes priorities VI and VII in the list of V priorities, as stipulated by the letter dated 14.05.1992. Reliance is also placed on the notice, of the Kendriya Sainik Board, Ministry of Defence, inviting applications for admission to medical colleges and dental colleges for the academic year 2016-17, wherein also in priority II and IV, the words used are “disabled” and “boarded out”.

6. It is pointed out that in the said notice of the Kendriya Sainik Board, in paragraph 2 under the heading “Eligibility for candidates”, it is specifically mentioned that wards of serving personnel, except in priority V, and of civilians are not eligible. Priority V deals with Gallantry Awards/Decoration Holders both serving and retired. As per the said notice, wards of serving personnel are not eligible. Exception is carved out for Gallantry Awards/Decoration Holders.

7. It is contended that even in the year 2013 – 2014 and 2014 – 2015 the words “boarded out from service” were included in the priorities II and IV.

8. Furthermore, it is pointed out by the learned counsel for the

Delhi University that Kendriya Sainik Board's opinion was sought on 06.09.2016 and the officers of the Kendriya Sainik Board were also involved in the process of short-listing of candidate for admission. The officers of the Kendriya Sainik Board, who were present for the purposes of scrutiny of the application forms of the concerned CW categories, have noted that boarded out certificate would be required to be submitted by the candidates, who were claiming benefit under priority II and IV. The request letter sent by Delhi University as well as the Minutes of the meetings of the officers of the Kendriya Sainik Board have been tendered in Court. The same are taken on record.

9. The petitioners in WP(C) 8358/2016 and WP(C) 8582/2016 are seeking a mandamus to the respondent University to follow the guidelines prescribed in the Bulletin of Information for the academic session 2016-17 and to grant admission to candidates belonging to CW category in accordance with the priority II and IV as stipulated by omitting the words "boarded out of service".

10. It is contended that since the respondent University issued the Bulletin of Information, the respondent University is liable to comply with the same strictly and the same cannot be modified or amended.

11. It is contended that Guru Gobind Singh Indraprastha University – Respondent No.2 did not have any reservation for the defence category in its information bulletin. However, the Delhi University had a category for defence personnel and in priority II and IV, the words 'boarded out' were not included. It is contended that the Delhi

University should strictly comply with the category as contained in the information bulletin.

12. Insofar as Guru Gobind Singh Indraprastha University is concerned, since the said University did not have the said category originally in its information bulletin, the petitioners in WP(C) 8358/2016 and WP(C) 8582/2016 cannot seek enforcement of the category. It may be noted that subsequently the said University has included the defence category, however, the said category, as included by the respondent Guru Gobind Singh Indraprastha University is in accordance with the recommendation of the Kendriya Sainik Board, contains the words 'disabled and boarded out' in priority II and IV.

13. The petitioners in WP(C) 8358/2016 and WP(C) 8582/2016 cannot have a grievance with regard to Guru Gobind Singh Indraprastha University. No mandamus can be issued to the said university as the information bulletin originally did not contain any reservation and the reservation now carved out contains the words 'disabled and boarded out' in priorities II and IV.

14. Insofar as the Delhi University is concerned, the petitioners in WP(C) 8358/2016 and WP(C) 8582/2016 contend that as the University in their brochure had not included the words 'boarded out', the University cannot now, at this stage, include the same. It is contended that the Academic Council had framed the categories in the manner in which the same have been reflected in the information bulletin. It is contended that the respondents cannot be permitted to

change the rules of the game midway. Reliance is placed on the decision of the Supreme Court in **Ramesh Kumar vs High Court of Delhi & Anr.:** (2010) 3 SCC 104 and **Rakhi Ray & Ors. vs. High Court of Delhi & Ors.:** (2010) 2 SCC 637.

15. Writ Petitions WP(C) 8358/2016 and WP(C) 8582/2016 are in the nature of cross petitions to WP(C) 7813/2016.

16. The relevant priorities given in the Information Bulletin of the Delhi University for the academic year 2016 - 2017 read as under:

“E. Five percent (5%) seats are reserved on horizontal (compartmental) basis for the candidates belonging to Children/Widows of the eligible Armed Forces Personnel (C.W.) category. As per the guidelines approved by the Academic Council vide circular No, Aca.I/UG-PG Admission/2014/759 dated 22/05/2014 admission of candidates belonging to C.W. categories have to be made in the following order of priorities:

- I. Widows/Wards of Defence Personnel killed in action;*
- II. Wards of serving Personnel and Ex- Servicemen disabled in action;*
- III. Widows/Wards, of Defence Personnel who died in peace time with death attributable to Military Service;*
- IV. Wards of Defence Personnel disabled in peace time with disability attributable to the Military service and*
- V. Wards of Ex-servicemen Personnel and serving*

personnel including Personnel of Police forces who are in receipt of Gallantry Awards;

Category- V (Gallantry Awards) include: Param Vir Chakra, Ashok Chakra, Sarvottam Yudh Seva Medal, Maha Vir Chakra, Kirti Chakra, Uttam Yudh Seva Medal, Vir Chakra, Shaurya Chakra, Yudh Seva Medal Sena, Nau Sena, Vayusena Medal, Mention-in-Despatches, President's Police Medal for Gallantry, Police Medal for Gallantry. ”

17. It may be noted that words “boarded out from service” have been omitted from category II and words “boarded out from service with disability attributable to military/ para military service” have been omitted from category IV.

18. The information bulletin issued by the Delhi University for the year 2013 - 2014, read as under:

“2.2.3 Five percent (5%) seats are reserved on horizontal basis for the candidates belonging to Children, Widows and Wives of Armed and Para Military Personnel (CWWAPP) category.

The seats of CWWAPP category will be filled in the following order of priority:

- (i) The candidates who are sons/ daughters/ widows of armed, forces personnel including para military personnel killed in action from 1947-48 onwards.*
- (ii) The candidates who are sons/ daughters/ wives of armed forces personnel including para military personnel disabled in action and boarded out from service.*

- (iii) *The candidates who are sons/ daughters/ widows of armed forces personnel including para military personnel who died while in service with death attributable to military/ para military service.*
- (iv) *The candidates who are sons/ daughters/ wives of armed forces personnel including para military personnel disabled in peace time and boarded out from service with disability attributable to military/ para military service.*
- (v) *Wards of Ex-servicemen personnel and serving personnel of the Defence/Armed Forces and all Police Forces who are in receipt of Gallantry Awards.*

(underlining supplied)

19. It may be noted that in the priority (ii) and (iv) the words "and boarded out from service" and "and boarded out from service with disability attributable to military/ para military service" respectively, are present which have been omitted from the bulletin of 2016 - 2017. The other priorities remain the same.

20. For the 2014 - 2015, the respondent Delhi University had omitted the words "boarded out from service" in priority II and IV from the Information Bulletin. However, vide Corrigendum dated 20.06.2014, the said words were reintroduced in priority II and IV.

21. The letter of Kendriya Sainik Board, Ministry of Defence dated 14.05.1992 reads as under:

“Tel. No. 6872362

Government of India
Ministry of Defence
Kendriya Sainik Board
West Block-IV, Wing – 7
R.K. Puram, New Delhi-66

No. 192/KSB/17/F-II/92-93

14 May 92

Service HQr's
Zonal Directors
RSBs/ZSBs

**RESERVATION OF SEATS IN MEDICAL /DENTAL
COLLEGES FOR THE WARDS OF DEFENCE
PERSONNEL AS A GOVERNMENT OF INDIA NOMINEE**

1. Till last year for the admission to Medical/Dental Colleges, the priorities also included the wards of serving and Retd. Personnel of the Armed Forces. In view of the limited seats being released by the Ministry of Health & Family Welfare every year and other constraints, the Ministry of Defence has modified the priorities as follows:

	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 Awards /Decoration Holders (serving /retired)	5

2. It is requested to give wide publicity of this information to all concerned.

(Sakti Singh)
Brig.
Secretary
Kendriya Sainik Board”

22. By letter dated 17.02.2015, the Kendriya Sainik Board partially modified the categories and included two additional categories. The letter dated 17.02.2015 reads as under:

“Government of India
Ministry of Defence
Kendriya Sainik Board
West Block-IV, Wing – 7
R.K. Puram, New Delhi-66

No. 192/KSB/17/F-II/2015-16

17 Feb 15

Service HQr's
Zonal Directors
RSBs/ZSBs

**RESERVATION OF SEATS IN MEDICAL /DENTAL
COLLEGES FOR THE WARDS OF DEFENCE
PERSONNEL AS A GOVERNMENT OF INDIA NOMINEE**

1. Till last year for the admission to Central seats released by the Ministry of Health & Family Welfare to Kendriya Sainik Board (MoD) in various Medical/Dental Colleges, five priorities were considered for Wards of ESM. In partial modification of MoD letter No. 192/KSB/17/F-II/92-93 dated 14 May 1992, the approval of the Competent Authority is conveyed to include two additional categories i.e. Wards of ESM (JCO/Ors) and Wards of ESM (Officers) at priority 6 & 7 respectively in the existing list of five priorities. Priorities to be considered from Academic Year 2015-16 onwards are as under:-

	<i>Category</i>	<i>Priority</i>
<i>a</i>	<i>Killed in Action</i>	<i>1</i>
<i>b</i>	<i>Disabled in Action and boarded out from service</i>	<i>2</i>
<i>c</i>	<i>Died while in service with death attributable to Military service.</i>	<i>3</i>
<i>d</i>	<i>Disabled in service and boarded out with disability Attributable to Military service</i>	<i>4</i>
<i>e</i>	<i>Gallantry Awards /Decoration Holders (serving /retired)</i>	<i>5</i>
<i>f</i>	<i>Wards of ESM (JCO/Ors)</i>	<i>6</i>
<i>g</i>	<i>Wards of ESM (Officers)</i>	<i>7</i>

2. *It is requested to give wide publicity of this information to all concerned.*

(Rohtas Singh)
Cmde
Secretary
Kendriya Sainik Board

Copy to:

Under Secretary to the Govt. of India
Ministry of Health & Family Welfare
(ME-IV Section), Nirman Bhawan,
New Delhi”

23. Perusal of the Ministry of Defence letter dated 14.05.1992, as modified by the letter dated 17.02.2015, shows that the categories II

and IV, as carved out by the Ministry of Defence, is for officers disabled in action and boarded out from service or disabled in service and boarded out with disability attributable to military services.

24. Further it may be noted that by letter dated 31.08.2016, the joint secretary, Ministry of Defence has requested the Delhi University to follow the legibility criteria laid down by Ministry of Defence for all categories. The letter dated 31.08.2016 reads as under:

" Dated the 31st August, 2016

To,

*Joint Registrar,
Faculty of Medical Sciences,
University of Delhi,
North Campus,
New Delhi-110021.*

*Subject: Eligibility criteria for reserve seats in
medical/dental colleges for wards of armed forces
personnel – regarding*

Sir,

*I am directed to forward herewith a copy of
representation dated 31.8.2016 on the above mentioned
subject.*

*2. In the representation it is mentioned that in the
information bulletin of Delhi University for the session
2016- 17 for admission to Under Graduate degree,
courses (MBBS/BDS) the words 'Boarded out' have been
omitted in the two categories viz. Priority ii and Priority
iv. As per the guidelines of Ministry of Defence for
Priority ii and Priority iv the words ' Boarded out' are*

clearly mentioned. The text of the category in the guidelines of Ministry of Defence is as under: -

- (i) Priority ii – Disabled in action and Boarded out from service with disability attributable to military service.*
- (ii) Priority iv – Disabled in service and Boarded out with disability attributable to military service.*

3. It is, therefore, requested to follow the eligibility criteria laid down by the Ministry of Defence for all Priorities. A copy of the guidelines of Ministry of Defence is also enclosed.

*Yours faithfully,
(Amit Biswas)
Under Secretary to the Govt. of India
Telefax: 23061120*

Encl: As above."

25. Reservation for the CW category is granted on the recommendation of the Ministry of Defence. If an authority accepts the recommendation and agrees to grant reservation then it has to comply with the recommendation in so far as the category of persons to whom reservation is to be granted, is concerned. It cannot alter the category.

26. The Delhi University, by omitting the words “boarded out of service”, have made the category also open to serving personnel who may be disabled in action or disabled in service, but not boarded out. The said category would be, to a grant extent, enlarged from the restricted category created by the Kendriya Sainik Board.

27. It may be open to the University to accept or not to accept the recommendation of the Kendriya Sainik Board in granting reservation at all or to any particular category but once it has decided to accord reservation to the military personnel and to the category as recommended by the Kendriya Sainik Board, it would not be open to the University to amend the category as stipulated by the Kendriya Sainik Board. The classification of personnel in different categories would be within the domain of the Kendriya Sainik Board and not the University.

28. The University may, in certain circumstances, not agree to grant reservation to a particular category but once it decides to grant reservation to a particular category, then it cannot reclassify the category. It is noticed that reservation has not been granted to category VI and VII as recommended by the Kendriya Sainik Board by its letter dated 17.02.2015. Whether the University is obliged to or not, is not in issue in these petitions, so I am not examining the said issue.

29. In the instant case, since the Delhi University has agreed to grant reservation to wards of defence personnel in category I to V, the University has to grant the same in accordance with the classification of the Ministry of Defence. Who is to be classified in which category is within the domain of the recommending authority i.e. Kendriya Sainik Board, Ministry of Defence. The Kendriya Sainik Board, comprising of experts, having classified personnel in different

categories, it would not be open to the University to amend the classification. Once the University has accepted that reservation is to be granted to a particular category, it cannot on its own amend the category. The action of the university in omitting the words “boarded out from service” from category II and the words “boarded out from service with disability attributable to military/ para military service” from category IV is unsustainable.

30. The contention of the petitioners in WP(C) 8358/2016 and WP(C) 8582/2016, that the university cannot be permitted to alter the priorities midway and include the words “boarded out from service” after the same has been published in the information bulletin, is not sustainable. As held hereinabove, the classification of categories is within the domain of the Kendriya Sainik Board, Ministry of Defence and the university cannot on its own alter the classification of the categories. The Delhi University could not have unilaterally omitted the words “boarded out from service” from category II and the words “boarded out from service with disability attributable to military/ para military service” from category IV. Since the action of the Delhi university in omitting the said words was *per se* illegal, the petitioners cannot insist upon the illegality to be perpetuated. There cannot be any *estoppel* in any illegal action.

31. The reliance placed, by the petitioners in WP(C) 8358/2016 and WP(C) 8582/2016, on the decision in the case of **Ramesh Kumar** (supra) and **Rakhi Ray** (supra) is misplaced inasmuch as the same are

not applicable in the facts of the present case. In the said decisions, the Supreme Court was dealing with the process of recruitment and it has been held that once the rules for recruitment had been laid down, the same cannot be changed. This is not the case at hand. As noted hereinabove, the action of the Delhi University in changing the classification of categories II and IV was *per se* illegal. The illegality is sought to be rectified. There is thus no merit in WP(C) 8358/2016 and WP(C) 8582/2016.

32. In view of the above, the WP(C) 7813/2016 is allowed and in WP(C) 8358/2016 and WP(C) 8582/2016 are dismissed.

33. The respondent Delhi University is directed to apply categories II and IV in accordance with the stipulation of the Kendriya Sainik Board, Ministry of Defence. The categories II and IV shall read as under:

Category II – Disabled in action and Boarded out from service with disability attributable to military service.

Category IV – Disabled in service and Boarded out with disability attributable to military service.

No orders as to costs.

SANJEEV SACHDEVA, J

SEPTEMBER 23, 2016
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