

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2662 OF 2017

MS-16328L Major Neilvel Kandaswamy,	]	
S/o. Sh. N. Kandaswamy.	]	... Petitioner

Versus

Union of India & Ors.	]	... Respondents
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ALONG WITH

WRIT PETITION NO.2665 OF 2017

MS-15867P Major Amit Bhardwaj,	]	
S/o. Sh. S. R. Sharma.	]	... Petitioner

Versus

Union of India & Ors.	]	... Respondents
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Mr. Kartikeya Bahadur i/b Kranti L. C. for Petitioners in both Writ Petitions.

Mr. R. Rodrigues a/w Mr. Dushyant Kumar for Respondents in both Writ Petitions.

CORAM :- DR. MANJULA CHELLUR, C.J., &
G. S. KULKARNI, J.

DATE :- 8 MARCH, 2017

P. C. :-

1. The petitioners in both these writ petitions are before this Court being aggrieved by the rules or procedure adopted by the

respondent - authority for denying the Short Service Commissioned Officers of the Armed Force Medical Services admission in the Armed Force Medical College, Pune, as arbitrary and bad in law. Apparently, an appeal seems to have been filed before the Armed forces Tribunal, Mumbai, but since there is no regular sitting of the Officer at Mumbai, the present petitions are filed before us. Apparently, the petitioners are challenging Rule 6(b)(ii)(ab) and Rule 7(a)(ii) of the Training Rules of the Armed Forces Medical Services, 2012, as bad in law. It is also brought to our notice that Court No.3, Armed Forces Tribunal, Principal Bench, New Delhi, while considering a similar matter pertaining to other applicants, on 07/03/2017, made the following order which reads as under :-

“Learned counsel for the respondents on instructions from Lt. Col. M. K. Mishra, Legal Cell, states that the respondents shall counsel the petitioners in Category 1 after they have counseled the seats in AFMC, Pune, which have been allocated to the Permanent Commissioned Officers subject to the fact that any vacancy which is left over from the Permanent Commissioned Officers.

2. *Ms. Jyoti Singh, learned senior counsel appearing for the applicants has very fairly stated that though the statement made by the learned counsel for the respondents shall take care of the substantial portion of the concern of applicants with regard to the counseling for the Post Graduate seats in Armed Forces Medical College, Pune, however, while doing so, the respondents shall also consider the claim of the applicants*

over and above the claim of priority No.4 & 5 i.e. Ex. Servicemen and civilians. It is further stated that the applicants being Short Service Commissioned Officers cannot be discriminated in the matter of counseling in comparison to the aforesaid two categories.

3. *Having regard to the statements made by the learned counsel for the parties, we feel that no interim orders at this stage are required to be passed. However, we hope and trust that the applicants will be called for counseling both against priority No.1 and priority No.4 & 5 so far as the admission to AFMC, Pune. In the event of there being any grievance or reservation being expressed by any of the parties to the counseling, the parties are free to seek further clarification / modification of the order.*

4. *It is further clarified that the pendency of the present applications shall not come in the way of the respondents in re-framing the policy with regard to the counseling in case they desire to do so which shall be prospective in operation.*

5. *So far as the main matter is concerned, learned counsel for the respondents shall file reply affidavit within five weeks from today with an advance copy to the learned counsel for the appellants. Rejoinder, if any, may be filed within one week thereafter.*

6. *List on 26.04.2017.*

7. *A copy of this order to be given DASTI to the learned counsel for the parties.”*

2. Having gone through the above order, learned Counsel for respondent authority, on instructions from Lt. Col. M. K. Mishra, Legal Cell, has mentioned that the respondents shall counsel the petitioners in Category 1 after they have counseled the seats in AFMC, Pune, which have been allocated to the Permanent Commissioned Officers subject to the fact that any vacancy which is left over from the Permanent Commissioned Officers.

3. There cannot be a different yardstick for people of Maharashtra and other parts of the country. In that view of the matter, we are of the opinion that similar benefits have to be extended as mentioned in the order dated 07/03/2017.

4. So far as merits of the petitions, we dispose of the petitions opining that the appeals filed before the Armed Forces Tribunal will be decided on merits.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)