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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 3562/2017**

Date of decision: 25th April, 2017

MAJOR SHAILESH TIWARY Petitioner

Through Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through Ms. Barkha Babbar & Ms. Dipanjali Tyagi, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

SANJIV KHANNA, J. (ORAL):

As there is urgency in the matter, the respondents, who appear on advance notice, have waived right to reply and argued the matter.

2. Learned counsel for the respondents had initially objected to maintainability of the writ petition, but gave up the challenge when it was pointed out that the respondents have been filing writ petitions, in similar situations.

3. The petitioner, a member of the Indian Army, had applied in August, 2016 for selection to M. Tech in Computer Science. The selection is governed by Policy No. A/63062/Policy/GS/MT-10 dated 11th December, 2003. As per paragraph 4 to Appendix A, an Army officer is eligible if he has first class Engineering Degree or equivalent from a university/IIT with aggregate of 60% or more (6.5 CGPA or more).

4. The petitioner had graduated, and was awarded an engineering degree by the Military College of Telecommunication Engineering

(MCTE, for short). The Degree/completion certificate awarded by MCTE dated 28th June, 2008 states that the petitioner has successfully completed Technical Entry Scheme Course Serial-09 in high second class having obtained 6.13 CGPA.

5. The petitioner had undergone the said degree course from Jawaharlal Nehru University (JNU, hereinafter). JNU, for converting the CGPA into percentage vide policy dated 21st April, 2006, had applied the formula of $55 + (\text{CGPA} - 5.5) \times 5$ as the petitioner had secured CGPA grades between 5.5 to 6.49.

6. However, it appears that there was litigation on the grading/conversion table adopted by the JNU and thereafter, a revised conversion formula was issued vide notification dated 31st October, 2014. As per the said notification, conversion into percentage is made by applying the formula $5 + (\text{CGPA} \times 10)$. As per conversion by this formula, the petitioner had secured a first division, i.e., he had more than 60% marks. The petitioner relies upon information furnished under the Right to Information Act, 2005, that the new conversion formula has been given retrospective effect.

7. Before the Principal Bench of the Armed Forces Tribunal (Tribunal, for short), the marks secured by the petitioner in the written examination were called for and it was noticed that the petitioner had stood second in the written examination.

8. The respondents, to ascertain the stand of JNU, had written the letter dated 12th April, 2017 to clarify whether, as per academic ordinance issued on 1st January, 2016, students achieving CGPA of 5.5 and above but less than 6.5 were placed in the grade of high second class. By letter dated 20th April, 2017, JNU had informed the respondents that the conversion of the grading system (CGPA) to percentage score/marks is made as per the table suggested by the Internal Quality Assurance Cell and was approved by the

Executive Council of the JNU in its meeting held on 9th May, 2014. In other words, JNU had referred to the conversion formula issued on 31st October, 2014, which stipulates that the percentage will be $5 + (CGPA \times 10)$. As per this conversion formula, the petitioner, who had got CGPA grade of 6.13, had a score of 66.13% marks.

9. We have referred to the aforesaid facts only to point out the nature and extent of controversy, which has to be adjudicated in the Original Application filed by the petitioner before the Tribunal. The matter requires examination. Adverse consequences for the petitioner would be immense.

10. During the course of hearing, we had asked the respondents, whether they were willing to state that in case the petitioner succeeds, appropriate order and his rights would be protected. The respondents have stated that at best, the petitioner would be allowed to participate in the course next year, but, he would lose his chance with the current batch.

11. We may note that the respondents have taken the plea that conversion into percentage marks is not permissible, as per their policy. On the other hand, counsel for the petitioner has submitted that the respondents, themselves, are converting the CGPA grade marks into percentage marks. The petitioner has submitted that JNU awards CGPA grading out of nine points and, therefore, the CGPA score does not reflect the percentage obtained. He submits that the most appropriate, fair and satisfactory method to determine whether or not an officer is eligible, is to apply the conversion formula fixed by the JNU vide notification dated 31st October, 2014.

12. We observe that these issues will have to be examined and determined by the Tribunal. The respondents do not accept this revised formula and hence this is the dispute, which has to be adjudicated.

13. In view of the aforesaid position, we think that a just and equitable solution, for the time being till the dispute is adjudicated, has to be found.

We would permit the petitioner to appear and sit for the interview, but, his marks and result would not be declared unless the petitioner succeeds before the Tribunal and it is so directed. This direction would not create special equity in favour of the petitioner. We clarify that this order does not determine or decide the issue on merits.

14. With the aforesaid observations, the writ petition is disposed of. No costs.

Dasti under signature of the Court Master.

SANJIV KHANNA, J.

ANIL KUMAR CHAWLA, J.

APRIL 25, 2017
VKR

