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

RESERVED ON: 29.08.2017
PRONOUNCED ON: 05.09.2017

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+ **LPA 521/2017 & C.M. 27500-01/2017**

UNIVERSITY OF DELHI & ANR. Appellants
Through: Mr. Mohinder J. S. Rupal &
Mr. Prang Newmai, Advocates.

Versus

ZOYA GILL & ORS. Respondents
Through: Mr. I.S. Singh, Mr. Abhishek
Singh & Mr. Pushkar Prehar, Advocates for
respondents No.1 & 2.
Mr. Arun Bhardwaj, Advocate for UOI.

LPA 552/2017 & C.M. 29781, 82, 83, 84/2017

KENDRIYA SAINIK BOARD & ORS. Appellants
Through: Mr. Arun Bhardwaj, Advocate.

Versus

SAHIL DALAL & ANR. Respondents
Through: Mr. Mohinder J. S. Rupal &
Mr. Prang Newmai, Advocates for R-2.
Mr. R. Balasubramaniam and Mr. Santosh
Kumar, Advocates for respondent.

+ **LPA 554/2017 & C.M. 29809, 10, 11, 12/2017**

KENDRIYA SAINIK BOARD & ANR. Appellants
Through: Mr. Arun Bhardwaj, Advocate.

Versus

ZOYA GILL & ORS.

..... Respondents

Through: Mr. I.S. Singh, Mr. Abhishek Singh & Mr. Pushkar Prehar, Advocates for respondents No.1 & 2.

Mr. Mohinder J. S. Rupal & Mr. Prang Newmai, Advocates for R-3.

LPA 555/2017 & C.M. 29847-48-49-50/2017

KENDIRYA SAINIK BOARD & ORS.

..... Appellants

Through: Mr. Arun Bhardwaj, Advocate.

Versus

DHAIRYA SHARMA & ORS.

..... Respondents

Through: Mr. Mohinder J. S. Rupal & Mr. Prang Newmai, Advocates for R-3.

Mr. R. Balasubramaniam and Mr. Santosh Kumar, Advocates for respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

S.RAVINDRA BHAT, J.

1. The University of Delhi and the Kendriya Sainik Board (hereafter referred to as “the University” and “the Board”) are aggrieved by a judgment of the learned Single Judge, allowing a writ petition, preferred by the respondent (hereafter “the candidate”) and directing her admission to an appropriate seat in humanities in a Delhi college. The candidate had complained of arbitrariness in the matter of selection and admission to the quota set apart for wards of soldiers and defense personnel who suffered in combat, or were disabled during active service. This included a category of wards whose parent

succumbed to combat injuries.

2. On 14 May, 1992, the Board issued a circular, whereby defense personnel who were disabled in action and were “boarded out” were recommended priority, in a quota, or reservation of seats in medical and dental colleges. This policy did not extend to admission to other courses. A Division Bench of this court had, in a judgment dated 23.09.2016, in *Ananya M.S. and Ors. Vs. Union of India and Others* (W.P. (C) No.7813/2016) spelt out that admission to medical and dental colleges in this quota should be confined to wards of personnel injured and also boarded out (i.e. in case the injured personnel was allowed to continue in service, his or her ward would not enjoy the facility of reservation). The candidate’s father, a commissioned officer in the Indian Army, had incurred a serious disability, in action with a militant organization, i.e. the Khalistan Commando Force, which led to a loss of his limb, sometime in 1990. The injury was classified as a battle or war injury. She secured 94.2% in her CBSE (12 Standard Board) examinations and applied under the quota set apart for injured service personnel’s wards. On 31.05.2017, the candidate applied for admission online in category II in humanities (political science, history, English and psychology). She expected that she would qualify in the cut-off list in the said stream.

3. On 03.06.2017, the candidate discovered that the Information Bulletin of the Delhi University had been amended and for the first time, the phrase “boarded out” was inserted in priority II and priority IV in CW category for admission to all under-graduate courses of

Delhi University. Upon inquiry, it was revealed that these changes were made pursuant to this court's decision in *Ananya* (supra). The candidate also complained that the University, omitted two categories that had been notified in the Board's circular, for the purpose of admission to its under-graduate courses. It was contended by the candidate that she would have fallen in the last category (category VII which applies to wards of ex-servicemen); yet, since the University omitted with that category, she was left with no benefit under the Board's policy. With these allegations, she approached this court, by a writ petition.

4. The candidate's argument was that she had applied for her admission online on 31.05.2017. The amended Information Bulletin which was uploaded on the site was much after the initiation of the admission process in her case, i.e. on 07.06.2017. It could not therefore, apply to the facts of the instant case and even assuming that the respondents could modify the Information Bulletin, it could not be done in this current academic session year as the admission process has already started. It can at best be done only in the next academic session as if this is permitted, the prejudice suffered by the candidate would be irreparable as she did not apply elsewhere. The candidate relied on *Mamta Bansal and Others v State of Punjab and Other* (2002) ILR 1 P & H 558; *Siddarth Singh v The Vice Chancellor, Delhi University & Others* (judgment of this court dated 29.10.2015 in LPA No.679/2014).

5. The University's position, before the single judge was that the reservation or preference was made available pursuant to guidelines prescribed by the other official respondents, i.e., the Union Government and the Board. It was pointed out that pursuant to the decision of this court in LPA 536/2016 (*Master Harshil Anand v. Union of India* delivered in October, 2016), a direction was issued to deliberate on the issue. By letter dated 24.05.2017, the Board specified the priorities and the applicability of the circular/policy to all professional or non-professional courses. On the basis of this letter, the University adopted the sum and substance of this letter and accordingly the Bulletin of Information for the year 2017-2018 provided CW reservation for under-graduate courses as per these priority guidelines. The words "boarded out" were added in Priority II & Priority IV. The number of priorities was limited to 5 instead of 7 as recommended by Board. Apart from relying on the letter of the Board, dated 24 May, 2017, the University also stated that the admission process started only on 29 June, 2017 and that the last date for online submission of application was 12 June, 2017. Since there was considerable time for candidate to be acquainted with the revised or amended Information Bulletin, requiring the guardian or parent of the candidate/ward to have been boarded out, no prejudice was caused. It was also submitted that a candidate, even after selection has no vested right to be granted admission and that the policy can undergo change, as it happened in this case. Moreover, the University asserted that the policy change was necessary because of direction by this court. Reliance was placed on *Tej Prakash Pathak and Others Vs. Rajasthan*

High Court and Others (2013) 4 SCC 540 to say that even after advertisement, the criteria can be changed. The University also relied on *Rakhi Ray & Others Vs. High Court of Delhi and Others* (2010) 2 SCC 637.

6. The Board, in its return, asserted its primacy in prescribing a uniform policy and spelling out eligibility criteria, in regard to admission under the reservation/quota for wards of the service personnel. It was further stated that these policies were framed keeping in mind the changing requirement of the wards/widows of ex-servicemen disabled in action and boarded out of service. The Board stated that it constantly maintained that the qualifying expression “boarded out” formed a part of Priority II and Priority IV in the list of seven priorities prescribed for CW reservations. Furthermore, the Board stated that the Department of Ex-servicemen Welfare maintained this stand since 14.05.1992 which was reinforced on 17.02.2015 as also on 19.05.2017. Since the candidate’s father was not boarded; yet had suffered a bullet injury, he was continued in service. Therefore, the benefit of Priority II could not be accorded to her. It was also stated that the candidate’s father had since taken pre-mature retirement in 2011 which was duly sanctioned. The petitioner/candidate, therefore, could not claim the benefit of category II but at best would be amenable to the benefit, if any, in category VII which applies to a reservation for the wards/widows of ex-servicemen.

7. The learned single judge allowed the candidate’s petition. The impugned judgment, *inter alia*, reasoned as follows:

“19. Submission of the learned counsel for respondent No. 5 on this count that the disclaimer clause “university reserved the right to amend or delete any priority without giving prior notice” comes to his aid is a misunderstood submission. It does not help the stand of respondent No.1 as this Information Bulletin was amended after the admission process had been initiated and was already in progress. This fact is not in dispute. It is an admitted fact that as per the earlier Information Bulletin uploaded by the University on its website, the words „boarded out” did not form a part of category II. It is the consistent case of the petitioners that between 22.05.2017 to 30.05.2017, the admission portal of Delhi University was not functional. On 31.05.2017 when the admission portal became available, the same old policy for admission of wards/widows/dependents of servicemen/ex-servicemen who had been disabled in action but not boarded out was reflected. Petitioner No.1 had online applied for admission on 31.05.2017. She had applied in category II for the subject humanities (political science, history, English and psychology). She was legitimately and rightly expecting that she would qualify in the cut-off list as having scored 94.2 % marks in her CBSE. It was genuine expectation that she would get admission in the course of her choice in terms of the reservation policy as categorized in category II and was a fully valid expectation. She had also not applied in any other university. 20 Once the admission process had started, it was not within the domain of the University to have made changes in the eligibility criteria. They could not have inserted the words „boarded out” in category II and category IV as has been done by them in the Information Bulletin which has now been uploaded on 07.06.2017. A valuable right of the petitioner has been jeopardized; jeopardized to such an extent that unless this is rectified, she would be hopelessly barred from getting admission in any course in a university of repute and for a meritorious student like her, this would be a huge emotional set back

which could probably not be reversed. This Court would also like to point out that as late as 26.05.2017, the petitioner had received a “Education Concessional Certificate” from the Zila Sainik Welfare Officer, Chandigarh informing petitioner No. 1 that she is eligible for educational concession for admission in the Delhi University against the armed forces quota in priority II.”

8. In the other appeals, the candidates had complained that the University arbitrarily refused to proceed with their applications, and that the changes were made after expiry of the last date for submission of applications, even after they had been called for counseling. Following the judgment in W.P.(C) 5324/2017 (dated 10.07.2017) the single judge allowed their petitions, resulting in two appeals LPA 554/2017 and LPA 521/2017.

Contentions of parties

9. It was argued by Mr. Mohinder Rupal, on behalf of the University, that it had received the Board’s letter dated 24.05.2017. Thereafter, it took a policy decision. Instead of seven categories indicated by the Board, the University retained Categories No. I to V only; this was well within its domain to do so. As a policy decision, the candidate could not challenge it. Learned counsel also argued that the Information Bulletin uploaded for the academic session 2017-2018 (on 07.06.2017) contains a disclaimer clause which reserves the right in the University to amend or delete any part of this bulletin without giving any prior notice. The University states that it is empowered to amend its earlier Information Bulletin, which had prescribed different criteria. Since no vested right has been created in favour of the

candidate, the single judge fell into error in issuing directions.

10. Learned counsel relied on *Tej Prakash Pathak* (supra) to say that earlier decisions which had frowned upon change of rules mid-stream, during selection process, doubted those rulings. It was submitted that since the candidate's rights had not been determined and the last date for submission of application had not passed in the present instance, the introduction of policy and change of eligibility condition was neither arbitrary nor illegal. The candidate had the opportunity to file a fresh application, if she was eligible. According to her, the amendment was notified on 03.06.2017. Since no candidate can claim vested right in continuance of rules or regulations or other conditions regulating admissions, the petition had to fail. The single judge fell into error, in allowing it.

11. Mr. Arun Bhardwaj, learned counsel for the Board also urged that the flexibility of changing the eligibility condition to indicate the "boarding out" condition cannot be challenged, since the extent of the reservation, the conditions under which it can be claimed and the categories who can benefit from it are to be spelt out through policies. It was underlined that once the Board categorized defense personnel who would be covered by its policies, to ensure uniformity, the organizations where such reservation was to be given, could not modify the benefits, either through expansion or restriction of benefits. Mr. Bhardwaj argued that the University could not have done away with Categories VI and VII, which were integral to the scheme and policy of reservation and prejudiced wards of serving and ex-

servicemen.

12. The Board further argued that the candidate in this case, could at best claim the benefit under Category VII as the ward of an ex-serviceman, given that her father had voluntarily retired from service in 2011. It was also argued that the boarding out condition was based on sound *rationale*, because those service personnel who were injured due to combat action or were disabled on account of active service, but were continued in service, were not of the same class as those who had to face termination of employment, on that account. Those among the injured or disabled, but who received awards were treated separately and placed in Category V, regardless of whether the parent was serving or ex-servicemen. Wards of such disabled service personnel, who were continued in service, could avail the benefit of reservation either in Priority VI or Priority VII. It was submitted that the classification based on the employee/parent being terminated or “boarded out” as a precondition attached in the eventuality of injury to the service personnel, was valid and rational. Being a matter of policy, the candidate could not successfully challenge it.

Analysis and findings

13. The candidate’s grievance was that despite her fulfilling the eligibility conditions originally published in the information bulletin by the University, on account of a later addition requiring disabled defense personnel to have been boarded out, her application was not considered.

14. The University’s defense was that the condition was introduced

as it were after the initial publication of information bulletin, i.e. sometime in May 2017 (on 25.05.2017). The Board supports the University's position by stating that this condition had to be followed by educational institutions granting reservation in terms of the previous judgment of this Court- for which the Board issued instructions, so far as categories 2 and 4 were concerned. The instructions were issued to all Universities on 24.05.2017.

15. As is evident from the discussion in the impugned judgment, the learned Single Judge went by the principle that rules of the game cannot be altered once the admission process begins. The Board and the University complained that no rights had accrued to any candidate and that even by her own admission the candidate became aware of the condition of the boarding committee on 03.06.2017. Therefore, she could not complain of any accrued or vested right in the eligibility conditions that were originally published – more so given that the processing of applications began on 29.06.2017.

16. Before discussion of the merits of the rival contentions, it would be essential to notice that when the Board initially introduced the reservations - on 14.05.1992, only four categories of priority were indicated: in terms of priorities 1-4, i.e. (a) those killed in action; (b) those disabled in action; (c) those dead in peace time with death attributable to military service, and (d) those disabled in peace time with disability attributable to military service. These reservations were confined to admissions in medical and dental colleges. On 03.06.1994, the Union Defense Ministry sought to standardize admission under the

quota in all central universities and other institutions for wards of defense personnel. The priorities recommended as follows:

“Priority-I: Widows/wards of Defence personnel killed in action.

Priority-II: Wards of serving personnel and ex-Servicemen disabled in action.

Priority-III: Widows/wards of defence personnel who died in peace time with death attributable to military service.]

Priority-IV: Wards of defence personnel disabled in peace time with disability attributable to military service.

Priority-V: Wards of ex-Servicemen and serving personnel who are in receipt of Gallantary Awards:-

- (1)ParamVir Chakra*
- (2)Ashok Chakra*
- (3)SarvottamYudhSeva Medal*
- (4)MahaVir Chakra*
- (5)Kirti Chakra*
- (6)UttamYudhSeva Medal*
- (7)Vir Chakra*
- (8)Shaurya Chakra*
- (9)YudhSeva Medal*
- (10)Sena, NauSena, Vayusena Medal*
- (11)Mention-in-Despatches*

Priority-VI: Wards of ex-servicemen

Priority-VII: Wards of serving personnel.”

17. Further instructions were issued which by and large maintained the above priorities. These instructions continued for quite some time. In *Ananya* (supra) it was noticed that there was a disconnect between

the guidelines - as amended, which qualified the categories in Priority II and IV to the effect that only the wards/widows of those priority categories, *and where the disabled personnel were boarded out of service*, were entitled to the protection. This court consequently held that this quota should be confined to wards of personnel injured, and also boarded out (i.e. in case the injured personnel was allowed to continue in service, his or her ward would not enjoy the facility of reservation). The necessary policy document leading to this was the letter of 24.05.2017, by the Board addressed to the University bringing to its notice Letter No. 6 [(1)/2017/D(Res-II) dated 19.05.2017] regarding the *inter-se* priority for reservation preference to the wards of armed forces personnel of the State/UTs for admission to medical/professional/non-professional courses. It was, for the first time, that this communication the words “*boarded out from service*” were added in priority II and priority IV, for non-professional/other professional courses. The single judge found that the University “*had amended its Information Bulletin only pursuant to this communication. This Information Bulletin had been amended by respondent No.1 on 07.06.2017.*”

18. Now, this policy change no doubt, was reflected in the first week of June, 2017, before the last date of submission of applications. Yet, it had a drastic effect of curtailing choices of applicants/candidates, who might, had they been informed earlier, applied elsewhere and explored more options. Moreover, the implications of on the one hand, restricting the priority altogether by

adding the boarding out condition, and on the other excluding Priority VI and VII meant that by one stroke, an entire category of personnel, who were seriously injured, by even losing a limb or having a life-long debilitating injury, and kept on rolls only as a policy, with little or no further career prospects, would no longer receive benefit for their wards. Also, wards of other serving and ex-servicemen categories were unable to secure the benefit of reservation.

19. The University had during the course of hearing, justified its stand - of deleting two categories, by stating that since reservations were in its institutions and colleges and it was a statutory authority with its independence it enjoyed autonomy in regulating the categories of personnel whose wards could be given benefit of reservation, in the 5% quota indicated by the Board. In support of this argument, the University had relied on the order in *Delhi Technological University, Delhi v. Sukhanshu Singh* (LPA 786/2010 decided on 12.11.2010). Specifically, reliance is placed on the following paragraph:

“In view of the preceding analysis, we are of the considered opinion that there is no command or mandate to the present university to fill up 5% quota from all the seven categories. The university, by a conscious decision, has excluded the last two categories. Therefore, no fault can be found with the same. That apart, it is submitted by Mrs. Begum, that the academic council, after due deliberation and taking into consideration the hardship factors, has restricted it to the first five categories. Be that as it may, the learned Single judge could not have treated the recommendations as a command and issued a writ of mandamus. Thus, we are unable to agree with the view taken by the learned Single Judge.”

20. This court is of opinion however, that this decision cannot extend to a universal principle that a University's autonomy in respect of reservations would *ipso facto* extend to its picking or choosing elements from a uniform system of preference or reservations, accepted by it from an organization, particularly of one like the Board. The Board has evolved a uniform policy, the structure of which has been accepted by all educational programmes which sign up or accept the 5% quota. The quota carries with it not only the outer limit or quantum of reservation, but also other conditions, such as the number of priorities, the conditions governing each, etc. This uniform scheme constitutes, in short a package, the elements in which should be left undisturbed. Any other interpretation can result in chaos for the policy itself, because one University may choose to retain reservation for wards of only one priority, whereas another may choose to extend it to five. Some may avoid reservations to gallantry awardees' wards altogether. Each such exclusion may be justified on grounds of exercise of power; yet allowing individual variations would mean that the all India character of the benefit, enjoyed by the defense services, with uniform benefits to its personnel and their dependents would be destroyed. It can also result in distorted results, as in the present case, where the petitioners' fathers were grievously wounded, or injured, but not boarded out. Even if the boarding out condition were left undisturbed, the petitioners would still have been considered under Priority VI or VII. However, the University's exclusion of those categories has sounded a death knell and put paid to their candidatures

altogether. The *rationale* for excluding these categories is absent altogether. Now, if the boarding out condition were to be introduced, as the University urges, and at the same time, the listed four priorities (excluding two) are to be upheld, the result would be that wards of those who suffered combat injuries and barely survived, or those who were seriously affected or disabled on account of reasons attributable to military service (but who are retained, on grounds of compassion) would have no reservation or priority, because they are wards of serving personnel for whom the University would permit no advantage in the CW category. Therefore, the mere assertion of the right to categorize, without any good reasons to exclude one or the other category strikes at the integrity of the entire scheme. *Sukhanshu Singh*, in this court's opinion, cannot be faulted in holding that the University possesses the power to accept or refuse the 5% quota; however, the autonomy to further deal with or restrict the categories, for the purpose of enjoying benefit, or imposing (or relieving) conditions, cannot, *per se* be upheld, unless a strong reason for departure is made, after due consultation with the concerned Union Defense Ministry authorities or the Board. In this case, there is no reason given for restricting the categories to only four.

21. Having regard to all the above circumstances, this court is of the opinion that the conclusions and directions of the learned single judge in the impugned judgment in these appeals cannot be faulted. The said impugned judgment and order and the other orders directing processing and grant of admission to the candidates is upheld. The

following directions are at the same time, issued, for future guidance:

- (a) The Delhi University shall strictly ensure that the Board's guidelines are embodied in its admission guidelines/instructions/ brochures unequivocally.
- (b) Those guidelines (of the Board) - as to the number of priorities, quantum of reservations and other preconditions and terms (such as those relating to "boarding out") shall be adhered to by the University. Any deviation should be after previous consultation with and concurrence of the Board.
- (c) Any changes necessitated on account of changes in the Board's policy or guidelines shall be clearly notified, in any ongoing admission process- in a corrigendum to be properly published granting proper time to candidates to opt- or file applications afresh.
- (d) Such changes or corrigenda should ordinarily be published or notified in the same manner as in the case of the original instructions/admission guidelines.

22. The appeals are dismissed, but in terms of the above directions, without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUNIL GAUR
(JUDGE)**

SEPTEMBER 5, 2017