

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

% **Date of decision: 18th September, 2020.**

+ **W.P.(C) 4610/2020**

VAIBHAV PRASAD SINGH

..... Petitioner

Through: Mr. Pushpendra Kumar Dhaka, Mr.
Satendra Mavi and Mr. Swarn Singh,
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Piyush Beriwal, Mr. Neeraj, Mr.
Ankit Raj, Mr. Sahah Garg, Ms.
Vandana Dewan and Ms. Damini
Garg, Advs. for R-1 to 3 with Col.
V.S. Negi, Lt. Col. Kumar
Umashankat, Lt. Col. Vivek
Khanduri and Maj. A.S. Katoch.
Mr. Amitesh Kumar, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a candidate for recruitment as a Commissioned Officer in the 130th Technical Graduate Course of the respondents No. 1 to 3 Indian Army, applications wherefor were invited vide advertisement dated 12th October, 2018 and examination wherefor was held in 2019 and interviews wherefor were held on 8th August, 2019, has filed this petition impugning the cancellation of his candidature, on 21st January, 2020.

2. The petition came up for admission before this Court on 28th July, 2020, when it was the contention of the counsel for the petitioner that the candidature of the petitioner in the recruitment process undertaken by him was cancelled for the reason of the petitioner not having minimum 67% marks in B. Tech. (Civil Engineering) and instead having 66.67% marks; that the petitioner had 4037 out of 6000 marks, equivalent to 67.28% marks and that in the advertisement inviting applications for recruitment in the said course, there was no minimum of 67% marks prescribed.

3. A perusal of the said advertisement filed as Annexure P-3 to the petition, on 28th July, 2020, indeed showed the same to be not prescribing the minimum of 67% marks in B. Tech. (Civil Engineering). However though it was the contention of the counsel for the respondents No. 1 to 3 Indian Army appearing on advance notice on 28th July, 2020 that the advertisement was not the sole source of the minimum qualification but he was unable to immediately show where the said qualification was prescribed. On the contrary, the counsel for the petitioner on 28th July, 2020 reiterated that there was no minimum marks prescribed anywhere. In the circumstances, notice of the petition was ordered to be issued and the counsel for respondent No.4 Dr. APJ Abdul Kalam Technical University, from which the petitioner had done his B. Tech. (Civil Engineering), also appearing on advance notice, was requested to elucidate on the marks of the petitioner and the petition posted to 11th August, 2020.

4. On 11th August, 2020, the counsel for the respondent No.4 Dr. APJ Abdul Kalam Technical University, on instructions from the Law Officer of the University, stated that Annexure P-7 dated 28th February, 2020 to the petition, showing the petitioner to have 67.28% marks by the end of the 6th

sememster/3rd year and 67.46% marks at the end of the 8th semester/4th year, was correct and as per the University Ordinance; it as also stated that the final percentage of the marks of the petitioner, after graduating in B. Tech. (Civil Engineering), was 67.46%.

5. However, the counsel for the respondents No. 1 to 3 Indian Army on 11th August, 2020 stated that while Annexure P-7, being the Certificate dated 28th February, 2020, was issued by the Additional Controller of Examination of the respondent No. 4 Dr. APJ Abdul Kalam Technical University, the earlier Certificate dated 11th January, 2020 showing the petitioner to be having 66.67% marks was issued by the Controller of Examination of the respondent No. 4 Dr. APJ Abdul Kalam Technical University; it was argued that the Additional Controller of Examination could not, without referring to the earlier Certificate and explaining the same, issue another certificate depicting a different picture. It was further the contention of the counsel for the respondents No. 1 to 3 Indian Army that the petitioner had indulged in suppression and in other examinations in which he had appeared, has filled in different percentages of marks. Attention in this regard was drawn to various documents annexed to the counter affidavit filed by the respondents No. 1 to 3 Indian Army. It was also the contention of the counsel for the respondents No. 1 to 3 Indian Army on 11th August, 2020, that the subject course had commenced as far back as on 14th January, 2020 and it was not possible to allow the petitioner to join. It was further contended that the cause of action, if any accrued to the petitioner on 21st January, 2020, when the cancellation letter was issued but the first legal notice got issued by the petitioner was after two months therefrom and this petition itself had come up first before the Court after

much delay, on 28th July, 2020. It was also the argument that the petitioner had otherwise indulged in falsehood and misrepresentation and was not entitled to any relief.

6. On request of the counsel for the petitioner for opportunity to file rejoinder to the counter affidavit filed by the respondents No. 1 to 3 Indian Army, the matter was adjourned to 25th August, 2020 and the counsel for the respondent No.4 Dr. APJ Abdul Kalam Technical University was also directed to clarify and the Vice Chancellor of the said University was also requested to, in a communication under his/her hand, certify that he/she has personally verified the records.

7. On 25th August, 2020, the matter was adjourned to 11th September, 2020.

8. On 11th September, 2020 the affidavit/letter filed by the respondent No.4 Dr. APJ Abdul Kalam Technical University in pursuance to directions contained in the order dated 11th August, 2020, were perused and satisfaction with respect thereto expressed in the open Court, though not recorded in the order of that date. It was not deemed necessary to so record in the order of 11th September, 2020 because it had already been recorded in the earlier order, that the 130th Technical Graduate course for which the petitioner had competed, had already commenced; it was deemed necessary to make further enquiries before granting any relief to the petitioner on the basis of the clarification issued by the respondent No.4 Dr. APJ Abdul Kalam Technical University. Personal presence of the competent officer of the respondents No. 1 to 3 Indian Army today, was directed.

9. The proceedings today have been joined by Col. V.S. Negi, Lt. Col. Kumar Umashankat, Lt. Col. Vivek Khanduri and Maj. A.S. Katoch from

the respondents No. 1 to 3 Indian Army and the position has been understood from them.

10. They have explained, (i) that the petitioner was qualified to join only the Civil Engineering stream of the Technical Graduate Course of the respondents No. 1 to 3 Indian Army and had applied in the said stream only; (ii) that though in the advertisement published of recruitment for the 130th Technical Graduate course there were 10 vacancies in the stream of Civil Engineering and the petitioner, in the merit list was 6th in position, but the said course having begun and nearing completion, the possibility of the petitioner now joining therein does not exist; (iii) that the vacancy position is advertised for each year and the vacancies are not carried forward; (iv) that the 131st Technical Graduate course is scheduled to now commence on 19th October, 2020; in the recruitment advertisement for the 131st course, there were only 8 vacancies in the stream of Civil Engineering and for which 17 candidates qualified and of which the first 8 have already been picked up for the course; (v) that the 8 vacancies in the stream of Civil Engineering for the current 131st Technical Graduate course having already been filled up, the petitioner cannot be accommodated therein; (vi) that the petitioner has also applied for the Short Service Commission (SSC) in the Indian Army and has also applied in the recruitment process for 132nd Technical Graduate Course and can compete therein and if selected, can join the 132nd Technical Graduate course; and, (vii) that it is not possible to otherwise accommodate the petitioner.

11. The counsel for the petitioner has contended that it would be the gross injustice, if inspite of a finding that the candidature of the petitioner was wrongly cancelled, the petitioner is not granted any relief. He contends

that in the 130th Technical Graduate course, though there were 10 vacancies and the petitioner was 6th in the merit list but only 8 joined and the remaining two seats remained vacant. It is argued that the Ministry of Defence can always release an additional vacancy and the petitioner can undergo training with the 131st Technical Graduate course.

12. We have also enquired from the officers present, with respect to the seniority and are informed that all officers, on successful completion of the course, are commissioned on the same day and their *inter se* seniority is as per their performance in the course and not as per the merit in the recruitment process.

13. The counsel for the petitioner has contended that the petitioner, after undergoing the course with the 131st batch, can be given the seniority above those of the 131st batch.

14. The counsel for the respondents No. 1 to 3 Indian Army has contended that as demonstrated from the documents filed with the counter affidavit of the respondents No. 1 to 3 Indian Army, there indeed was a requirement of minimum 67% marks and which is not disputed today. It is argued that the petitioner, by misrepresenting on 28th July, 2020 that there was no such requirement, got notice of the petition issued and the entire proceeding thereafter has been on the basis of such misrepresentation, and the petitioner is not entitled to any extraordinary relief as is suggested by the counsel for the petitioner. He has also contended that the grievance if any of the petitioner, should be against his University i.e. the respondent No.4 Dr. APJ Abdul Kalam Technical University which issued two different certificates and which University, on enquiries by the respondents No. 1 to 3 Indian Army also had informed that the petitioner did not have

minimum 67% marks. It is also argued that it is the petitioner only who has been interpreting the Ordinance of the respondent No.4 Dr. APJ Abdul Kalam Technical University to compute his marks above 67% and all other students of the said University who had also applied, interpreted the Ordinance otherwise and as per which interpretation, the petitioner did not have 67% marks.

15. We may notice that the entire situation has arisen, (a) owing to the provision in the advertisement inviting applications for the 130th Technical Course making eligible, for applying for the course, not only those who had passed the requisite engineering degree course but also those in the final year of the engineering degree course subject to their having minimum 67% aggregate marks of first, second and third year of the four year engineering degree course; (b) and further owing to the language of the Ordinance of the respondent No.4 Dr. APJ Abdul Kalam Technical University providing for computation of final result only of the engineering degree course and not having specific provision for computing result, after three years of the engineering degree course and interpretation thereof for computing the aggregates marks at the end of 6th Semester out of total 8 Semesters of B. Tech. Course. The counsel for the respondent No.4 Dr. APJ Abdul Kalam Technical University assures us that he has advised the University to take remedial measures so that the students, in future, do not face the difficulties, as the petitioner in this case has faced.

16. We also call upon the respondents 1 to 3 Indian Army to consider making specific provision in advertisements for further courses, qua the manner of computing aggregate result of the first three years of the four year engineering degree course, so that irrespective of the method prevalent

in different Universities , there is uniformity in the matter of computation thereof for the purpose of recruitment in the Technical Graduate Course at Indian Military Academy.

17. However considering all the aforesaid, we, without giving any finding on the contentions aforesaid of the counsel for respondents Indian Army, lest the same affects induction in future of the petitioner in the Indian Army, are unable to grant any relief to the petitioner.

18. The counsel for the petitioner has expressed apprehension that even if the petitioner were to participate in the recruitment process for the 132nd Technical Graduate course or otherwise in the Indian Army, the respondents No. 1 to 3 Indian Army may not select the petitioner owing to the petitioner having filed this petition against them.

19. We are confident that such apprehensions of the petitioner are misplaced and the officers present during the hearing have also assured us that no such factors prevail in the matter of recruitment.

20. The counsel for the petitioner at this stage states that the petitioner has filed written submissions dated 25th August, 2020 clarifying that the petitioner has not indulged in any suppression or concealment qua 67% marks.

21. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 18, 2020/'bs'